

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**
Date: **12 October 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(2)(b) to introduce into evidence Prior Recorded Testimonies of Witnesses P-1370, P-1393 and P-1416”, 7 October 2026, ICC-01/21-01/25-518-Conf

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution requests the formal submission of the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-1370, P-1393, and P-1416 (“Three Witnesses”) in accordance with article 69(2) and (4) of the Rome Statute (“Statute”), rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”), and the “Directions on the Conduct of Proceedings” (“Directions”).² The Prosecution further requests the designation of the Registry Legal Counsel, or any appropriate person delegated by him, as the person authorised to witness declarations required pursuant to rule 68(2)(b)(ii) and (iii) of the Rules.

2. As submitted, the Prior Recorded Testimonies of the Three Witnesses do not concern the acts and conduct of the Accused. They primarily relate to the contextual elements of crimes against humanity, particularly the policy to ‘neutralise’ through violent crimes, including murder, alleged criminals in the Philippines.³ The evidence of P-1370 and P-1416 also relates to charged Incident [REDACTED].⁴

3. The Prior Recorded Testimonies are therefore relevant, reliable, probative, and suitable for formal submission in written form, as explained below. For each, a brief summary of the salient issues in their statements is set out, along with the associated documents, and examples of other evidence which corroborates the witnesses’ accounts.

4. The introduction of the Three Witnesses’ Prior Recorded Testimonies into evidence is not prejudicial to, or inconsistent with, the rights of the Accused. They are also of a cumulative or corroborative nature, as set out below. Granting the request will enhance the expeditiousness of the proceedings, obviate the unnecessary appearance of the witnesses, save valuable court time and resources, and serve the interests of justice.⁵

¹ Annex A (A1 to A3) lists the Prior Recorded Testimonies of the Three Witnesses which comprise their witness statements (at I) and associated material (at II). The material related to P-1393’s Prior Recorded Testimony which the Prosecution does not seek to introduce into evidence is also included (at A2 III). See Directions on the conduct of proceedings, 19 June 2026, [ICC-01/21-01/25-471](#) (“Directions”), para. 59.

² The Directions, [ICC-01/21-01/25-471](#), para. 59.

³ Confidential Decision on the confirmation of charges, 23 April 2026, ICC-01/21-01/25-417-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-417-Red](#)) (“Confirmation Decision”), paras. 60-66.

⁴ Confirmation Decision, para. 102.

⁵ Pursuant to article 64 (3)(a) of the Statute, the Chamber shall “[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of proceedings.” See also *Katanga*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled “Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings”, 12 July 2010, [ICC-01/04-01/07-2259 OA10](#), para. 43 (“The Appeals Chamber observes that expeditiousness is a recurrent theme in the Court’s legal instruments. The Statute and the Rules of Procedure and Evidence place an onus on all those involved in the trial to act in a diligent and expeditious manner in the performance of their

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this application and its Annex A are filed as confidential, as they contain sensitive witness related information. A public redacted version of the application will be filed shortly.

III. SUBMISSIONS

A. Legal Basis

6. Rule 68(2)(b) of the Rules allows for the introduction of a witness's previously recorded testimony that goes to proof of a matter other than the acts and conduct of the accused and is accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief.⁶ As shown below, the Court's jurisprudence has clearly outlined the requirements of the introduction of Prior Recorded Testimonies under rule 68(2)(b) of the Rules.

7. The Court's jurisprudence has construed the expression "acts and conduct" as "refer[ring] to the personal actions and omissions of the accused, which are described in the charges against him or her or which are otherwise relied upon to establish his or her criminal responsibility for the crimes charged".⁷ Accordingly, peripheral references to the accused "cannot be considered as going to [their] acts and conduct", especially "when the calling party

obligations. The duty applies to the Chambers of the Court, the parties and participants.[...]"). See also *Ntaganda*, Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0055, TC VI, 29 October 2015, [ICC-01/04-02/06-961](#), para. 13; *Gbagbo & Blé Goudé*, Decision on Prosecutor's application under Rules 68(2)(b) and 68(3), 9 June 2016, ("Gbagbo & Blé Goudé, Rule 68 Decision"), [ICC-02/11-01/15-573-Red](#), paras. 25, 42; *Yekatom & Ngaissona*, Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, 16 October 2020, ("Yekatom & Ngaissona Decision on Initial Guidance Rule 68"), [ICC-01/14-01/18-685](#), para. 26; *Gbagbo & Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", 1 November 2016, ("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, 12 November 2015, [ICC-01/05-01/13-1478-Red-Corr](#), paras. 48, 51.

⁶ See rule 68(2)(b) of the Rules of Evidence and Procedure.

⁷ See *Ntaganda*, Decision on admission of prior recorded testimony of Witness P-0773 under Rule 68, 27 February 2017, ("Ntaganda Rule 68(2)(b) Decision P-0773"), [ICC-01/04-02/06-1667-Red](#), para. 11, (citing, *Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, [ICC-01/04-02/06-596-Red](#), paras. 11-12 ("Ongwen Rule 68 (2)(b) Decision"). See also *Yekatom & Ngaissona*, First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, 17 April 2023, ("Yekatom & Ngaissona First Rule 68(2)(b) Decision"), [ICC-01/14-01/18-1833-Corr-Red](#), para. 28; *Al Hassan*, Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules, 15 November 2021, [ICC-01/12-01/18-1924](#), para. 12.

indicates it does not intend to rely on that reference”.⁸ The Appeals Chamber in *Al Hassan*, also found that even when references to the accused are more than ‘incidental’, statements can still be admitted under Rule 68(2)(b) when “the reference is not of significance to the case or is, in any event, of limited importance and does not constitute the core of the prior recorded testimony”.⁹

8. However, this exclusion of incriminating evidence under rule 68(2)(b) does not include “evidence with respect to the acts and conduct of other persons, whether alleged co-perpetrators, subordinates or otherwise, which are attributed to the accused in the charges by reason of the mode of liability alleged.”¹⁰ Thus, proof of the latter may be formally submitted under rule 68(2)(b).

9. The purpose of rule 68(2)(b) is to “streamline the presentation of evidence and thus expedite the proceedings, in accordance with the criterion of good trial management.”¹¹ The jurisprudence of the Court also establishes that the decision to introduce into evidence the prior recorded testimony of a witness, pursuant to rule 68(2)(b) is discretionary,¹² and that its purpose is to “identify situations where it is not necessary to examine witnesses, while preserving a fair

⁸ *Ntaganda* Rule 68(2)(b) Decision P-0773, [ICC-01/04-02/06-1667-Red](#), para. 12; *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), paras. 29, 74; *Ongwen*, Decision on Defence Request to Introduce Previously Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, [ICC-02/04-01/15-1294](#), para. 5; *Ntaganda*, Decision on Prosecution application for admission of prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under Rule 68(2)(b), 18 January 2017, (“*Ntaganda* Rule 68(2)(b) Decision P-0020, P-0057 and P-0932”), [ICC-01/04-02/06-1730-Red](#), para. 7; *Ongwen* Rule 68 (2)(b) Decision, [ICC-01/04-02/06-596-Red](#), para. 13; *Abd-Al-Rahman*, First Decision on the Prosecution’s requests to introduce prior recorded testimonies under Rule 68(2)(b), 2 March 2022, (“*Abd-Al-Rahman* First Rule 68(2)(b) Decision”), [ICC-02/05-01/20-612-Red](#), para. 16; *Al Hassan*, Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules, 15 November 2021, [ICC-01/12-01/18-1924](#), para. 13.

⁹ *Al Hassan*, Appeal Judgment of the Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules, 13 May 2022, (“*Al Hassan* Rule 68(2)(b) AJ”), [ICC-01/12-01/18-2222](#), para. 50. See also *Abd-Al-Rahman*, Decision on the Prosecution’s sixth, seventh and eighth rule 68(2)(b) applications, 7 November 2022, [ICC-02/05-01/20-808-Red](#), para. 8 (citing *Al Hassan* Rule 68(2)(b) AJ).

¹⁰ *Ongwen* Rule 68 (2)(b) Decision [ICC-01/04-02/06-596-Red](#), para. 12. See also *Abd-Al-Rahman* First Rule 68(2)(b) Decision, [ICC-02/05-01/20-612-Red](#), para. 15, (citing *Ongwen* Rule 68 (2)(b) Decision, [ICC-01/04-02/06-596-Red](#)).

¹¹ *Abd-Al-Rahman* First Rule 68(2)(b) Decision, [ICC-02/05-01/20-612-Red](#), para. 13. See also *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 41.

¹² *Al Hassan*, Second Decision on the introduction of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules, 23 February 2012, (“*Al Hassan* Second Rule 68(2)(b) Decision”), [ICC-01/12-01/18-1314-Red](#), para. 7; *Ongwen*, Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 16 August, 2018, (“*Ongwen* Decision on Defence Rule 68(2)(b)”), [ICC-02/04-01/15-1322-Red](#), para. 8; *Yekatom & Ngaïssona* Decision on the Prosecution Requests under Rule 68(3), 1 April 2021, (“*Yekatom & Ngaïssona* Rule 68(3) decision”), [ICC-01/14-01/18-907-Red](#), para. 14; *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 35; *Ntaganda* Rule 68(2)(b) Decision P-0773, [ICC-01/04-02/06-1667-Red](#), para. 8.

and expeditious trial”.¹³ In exercising this discretion, the Appeals Chamber in *Bemba*¹⁴ articulated a non-exhaustive list of factors that the Chamber shall consider in determining whether to introduce into evidence prior recorded testimony falling under rule 68(2)(b). These are, *inter alia*: whether the Prior Recorded Testimony (i) relates to issues that are not materially in dispute;¹⁵ (ii) is of a cumulative or corroborative nature;¹⁶ (iii) relates to background information; (iv) is such that the interests of justice are best served by its introduction;¹⁷ and (v) has sufficient indicia of reliability.¹⁸

10. Finally, the procedural safeguards inherent to the application of rule 68(2)(b) contribute to the preservation of the Accused’s rights. Considering that the introduction of uncross-examined evidence unrelated to the acts and conduct of an accused is “one of the statutory exceptions to the rule of orality and publicity”,¹⁹ rule 68(2)(b) does not *per se* unfairly prejudice the Defence.²⁰ On the contrary, the Court’s jurisprudence confirms that its application “is *per se* generally considered *compatible* with the rights of the accused”²¹ and all statutory rights

¹³ *Al Hassan*, Third Decision on the introduction of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules, 26 March 2021, [ICC-01/12-01/18-1402-Red2](#), para. 9; *Al Hassan* Second Rule 68(2)(b) Decision, [ICC-01/12-01/18-1314-Red](#), para. 7; *Yekatom & Ngaissona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 37.

¹⁴ *Bemba*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”, (“*Bemba* Rule 68 AJ”), 3 May 2011, [ICC-01/05-01/08-1386](#), para. 78.

¹⁵ In *Gbagbo & Blé Goudé*, Trial Chamber I determined that rule 68(2)(b) of the Rules allows for the submission of statements that (i) do not relate to core issues materially in dispute or (ii) are limited solely to the destruction caused and the casualties of the alleged attacks, but not to its authors or causes (*Gbagbo & Blé Goudé*, Decision on the “Prosecution’s consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088, 6 June 2017, (“*Gbagbo & Blé Goudé* Rule 68 Decision”), [ICC-02/11-01/15-950-Red](#), paras. 19-20, 36-37). See also *Ongwen* Rule 68 (2)(b) Decision, [ICC-01/04-02/06-596-Red](#), para. 15.

¹⁶ This is one of the factors that may be considered by the Chamber, but is not a *conditio sine qua non* for introduction of the testimony in writing (*Gbagbo & Blé Goudé*, Decision on the request for leave to appeal the “Decision on the ‘Prosecution’s consolidated application to conditionally admit the prior recorded statement and related documents of various witnesses under rule 68 and Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088’”, 12 September 2017, [ICC-02/11-01/15-1023](#), para. 13). In *Ntaganda*, it was established that minor discrepancies between accounts do not prevent introduction of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules, 12 January 2017, (*Ntaganda* Rule 68(2)(b) Decision, [ICC-01/04-02/06-1715-Red](#), para. 14).

¹⁷ *Ongwen* Rule 68 (2)(b) Decision, [ICC-01/04-02/06-596-Red](#), para. 16.

¹⁸ See *Ongwen* Rule 68 (2)(b) Decision, [ICC-01/04-02/06-596-Red](#), paras. 17-19. See also *Ntaganda* Rule 68(2)(b) Decision P-0020, P-0057 and P-0932, [ICC-01/04-02/06-1730-Red](#), para. 19; *Gbagbo & Blé Goudé*, Rule 68 Decision, [ICC-02/11-01/15-573-Red](#), para. 22.

¹⁹ *Yekatom & Ngaissona* Decision on Initial Guidance Rule 68, [ICC-01/14-01/18-685](#), para. 26 (footnotes omitted). See also *Bemba* Rule 68 AJ, [ICC-01/05-01/08-1386](#), para. 78.

²⁰ See *Bemba et al*, Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, [ICC-01/05-01/13-1478-Red-Corr](#), paras. 38-39; *Ongwen*, Decision on Defence Rule 68(2)(b), [ICC-02/04-01/15-1322-Red](#), para. 7.

²¹ *Yekatom & Ngaissona* Decision on Initial Guidance Rule 68, [ICC-01/14-01/18-685](#), para. 26 (citing, *Gbagbo & Blé Goudé* Rule 68 AJ, [ICC-02/11-01/15-744 OA 8](#), para. 74) (emphasis added). See also *Al Hassan*, Decision on

because it is express in the Court’s procedural framework. Furthermore, the Chamber’s appropriate exercise of its discretion in determining the evaluative criteria as defined in the Rules, among others, serves as a sufficient procedural safeguard against potential prejudice. Similarly, the fact that all Parties can avail themselves of the provision further underscores its inherent neutrality.²² Thus, any claim of prejudice should only be entertained in light of the particular circumstances of a specific witness, their evidence, and the case — not presumptively, nor in the abstract.

B. Overview of the Prior Recorded Testimonies of P-1370, P-1393 and P-1416

11. The Prior Recorded Testimonies of the Three Witnesses relate to alleged extrajudicial killings committed in Central Luzon (Region 3) of the Philippines and to the contextual elements of crimes against humanity.²³ Their evidence is particularly relevant to murders, including under Count 3 (Incident [REDACTED]), committed by members of the Philippine National Police (“PNP”) in the municipalities of [REDACTED] and San Jose Del Monte, and to the policy to ‘neutralise’ through violent crimes, including murder, alleged criminals in the Philippines. As [REDACTED] of extrajudicial killings, the Three Witnesses further provide evidence of [REDACTED] [REDACTED] and the circumstances of the killing of [REDACTED] by members of the PNP. While some aspects of the Three Witnesses’ proposed evidence may relate to issues ‘materially in dispute’, this should not be a hindrance to their admission under article 68(2)(b). As the *Yekatom & Ngaïssona* Trial Chamber made clear, “this factor [...] must not be understood to provide either party with a unilateral ‘veto power’ over the introduction of a prior recorded testimony by indicating that issues addressed in the testimony are materially in dispute”.²⁴

12. In addition to the statements of the Three Witnesses, the Prosecution seeks to introduce into evidence their associated material,²⁵ which forms an integral part of their Prior Recorded Testimonies.²⁶ These items are also necessary to fully comprehend the accounts of the Three

the introduction into evidence of P-0590’s prior recorded testimony pursuant to Rule 68(2)(b) of the Rules and related Regulation 35 requests, 28 January 2022, [ICC-01/12-01/18-2096](#), para. 12.

²² See *Ruto & Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, (“*Ruto & Sang* Prior Recorded Testimony Decision”), [ICC-01/09-01/11-1938-Corr-Red2](#), para. 25. See also *Ongwen*, Decision on Defence Rule 68(2)(b), [ICC-02/04-01/15-1322-Red](#), para. 5.

²³ P-1370, PHL-OTP-00249305; P-1393, PHL-OTP-00248853, PHL-OTP-00248854, PHL-OTP-00248855; and P-1416, PHL-OTP-00249329.

²⁴ *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 39.

²⁵ See Annex A (Part II of A1 to A3).

²⁶ See *Ongwen* Decision on Defence Request Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence, (“*Ongwen* Defence Rule 68(2)(c) Decision”), [ICC-02/04-01/15-1288](#), paras. 8, 10. See also *Yekatom & Ngaïssona*

Witnesses, because the items are discussed and/or clarified in their testimonies. The introduction of this material is supported by the *Ruto & Sang* Trial Chamber's finding that "exhibits associated with these recordings are also admissible so long as 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."²⁷ The *Yekatom & Ngaïssona* Trial Chamber also held that "the introduction of associated items is not limited to documents created by witnesses themselves."²⁸

(i) *Prior Recorded Testimony of P-1370*

13. The Prosecution seeks to submit into evidence P-1370's Prior Recorded Testimony, which comprises her statement and 14 associated items that were used and explained by the witness in her statement and relate to information and events discussed therein.

14. P-1370 is [REDACTED]²⁹ – [REDACTED].³⁰ In her statement, the witness provides background information about [REDACTED]³¹ and describes the evening of [REDACTED], when [REDACTED] left the house [REDACTED] [REDACTED]³² – [REDACTED] the incident.³³ P-1370 further describes looking for [REDACTED] after they did not return home that night³⁴ and how [REDACTED] [REDACTED].³⁵ The witness explains that [REDACTED]

Rule 68(3) Decision, [ICC-01/14-01/18-907-Red](#), para. 26, *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), paras. 237, 244, 260, 270, 277, 292, 312, 328, 341, 348, 355, 362.

²⁷ See *Ruto & Sang* Prior Recorded Testimony Decision, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33. See also *Ntaganda*, Transcript of 20 June 2016, [ICC-01/04-02/06-T-105-Red2-ENG CT](#), p. 94, lines 2-7; *Ntaganda* Decision on Prosecution application under Rule 68(2)(c), [ICC-01/04-02/06-1205](#), para. 7; [ICC-01/04-02/06-1029](#), paras. 23, 35; *Ongwen* Defence Rule 68(2)(c) Decision, [ICC-02/04-01/15-1288](#), paras. 8, 10, (citing *Ongwen* Rule 68(2)(b) Decision, [ICC-01/04-02/06-596-Red](#), para. 10). *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), paras. 79, 90, 137, 146; *Abd-Al-Rahman* First Rule 68(2)(b) Decision, [ICC-02/05-01/20-612-Red](#), para. 16.

²⁸ *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 79.

²⁹ See Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, p. 155; P-1370, PHL-OTP-00249305 at 0004, para. 12.

³⁰ P-1370, PHL-OTP-00249305 at 0004, para. 12, at 0005, para. 16; Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, paras 288-289.

³¹ P-1370, PHL-OTP-00249305 at 0005, paras 16-17.

³² See Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, p. 155; P-1370, PHL-OTP-00249305 at 0005, paras 18-19.

³³ Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, paras. 288-289.

³⁴ P-1370, PHL-OTP-00249305 at 0005-0006, paras 20-23.

³⁵ P-1370, PHL-OTP-00249305 at 0006, paras 24-25.

told her [REDACTED] [REDACTED] [REDACTED].³⁶ P-1370 describes [REDACTED]'[REDACTED]³⁷ [REDACTED].³⁸ [REDACTED].³⁹

15. P-1370's Prior Recorded Testimony goes to proof of Count 3 murders committed by police and non-police assets in the [REDACTED] Municipal Police Station ("MPS") in the municipality of [REDACTED], Region 3 and, in particular, to the proof of charged Incident [REDACTED].⁴⁰ The proposed evidence is also relevant to the policy to 'neutralise' through violent crimes, including murder, alleged criminals in the Philippines.

16. The Prosecution tenders 14 associated documents for formal submission, as set out in Confidential Annex A (A1). P-1370's associated material consists of: (i) [REDACTED]'s birth certificate⁴¹; (ii) two morgue receipts; (iii) two photographs of [REDACTED]; (iv) the above-mentioned court documents; (v) [REDACTED]'s death certificate, and; (vi) a photograph of [REDACTED]'s body at the morgue.

(ii) Prior Recorded Testimony of P-1416

17. The Prosecution seeks to submit into evidence P-1416's Prior Recorded Testimony, which comprises a single witness statement of 2 August 2026 as set out in Confidential Annex A (A3).

18. P-1416 is [REDACTED], one of the victims of Incident [REDACTED] as set out above,⁴² and [REDACTED].⁴³ In his statement, the witness describes the day [REDACTED] left home [REDACTED] [REDACTED].⁴⁴ P-1416 started looking for [REDACTED] [REDACTED].⁴⁵ Two or three days later, P-1416 learned that dead bodies, including one [REDACTED] [REDACTED].⁴⁶ After that, P-1416 went to the morgue in [REDACTED]

³⁶ P-1370, PHL-OTP-00249305 at 0006, para. 26.

³⁷ P-1370, PHL-OTP-00249305 at 0006-0007, paras 27-28, 33.

³⁸ P-1370, PHL-OTP-00249305 at 0007, paras 29-30.

³⁹ P-1370, PHL-OTP-00249305 at 0007-0008, paras 30-32, 35; P-1370's Annex D, PHL-OTP-00249314, PHL-OTP-00249315, PHL-OTP-00249316, PHL-OTP-00249317, PHL-OTP-00249318.

⁴⁰ Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, paras 264-266, 288-289.

⁴¹ The front and back of [REDACTED]'s birth certificate were registered separately. See PHL-OTP-00249306 (back) and PHL-OTP-00249307 (front).

⁴² P-1416, PHL-OTP-00249329 at 0004, para. 15; Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, paras 288-289.

⁴³ P-1416, PHL-OTP-00249329 at 0004, paras 12, 15.

⁴⁴ P-1416, PHL-OTP-00249329 at 0004, para. 16.

⁴⁵ P-1416, PHL-OTP-00249329 at 0004-0005, paras 17-18.

⁴⁶ P-1416, PHL-OTP-00249329 at 0005, para. 19.

where he saw [REDACTED]'s bodies with bullet wounds.⁴⁷ P-1416 further describes [REDACTED] on the night of the incident.⁴⁸ P-1416 also speaks of the profound impact that [REDACTED]'s death had [REDACTED].⁴⁹

19. P-1416's Prior Recorded Testimony goes to proof of Count 3 murders committed by the [REDACTED] MPS in the municipality of [REDACTED], Region 3 and, in particular, to the proof of charged Incident [REDACTED] and the pattern of violence against alleged criminals.⁵⁰ The proposed evidence is also relevant to the policy to 'neutralise' through violent crimes, including murder, alleged criminals in the Philippines.

(ii) *Prior Recorded Testimony of P-1393*

20. The Prosecution seeks to submit into evidence P-1393's Prior Recorded Testimony, which comprises three transcribed statements of 4 July 2026 and four associated items that were used and explained by the witness in his statement and relate to information and events discussed therein.

21. P-1393 is the [REDACTED], an alleged drug user who was killed by PNP officers on [REDACTED].⁵¹ P-1393 was present when members of the San Jose Del Monte City Police Station ("SJDMCPS") came to his house and killed [REDACTED],⁵² who was defenceless and, contrary to the police reports,⁵³ did not resist arrest.⁵⁴ Although P-1393 did not witness the killing [REDACTED], he heard gunshots,⁵⁵ and was told by his neighbours, who were afraid to testify about what they saw,⁵⁶ that the police officers who killed [REDACTED] first spoke to him and [REDACTED] to the *barangay*.⁵⁷ The police officers then manufactured a self-

⁴⁷ P-1416, PHL-OTP-00249329 at 0005, para. 20.

⁴⁸ P-1416, PHL-OTP-00249329 at 0005-0006, paras 23-27.

⁴⁹ P-1416, PHL-OTP-00249329 at 0006, para. 28.

⁵⁰ Prosecution's Trial Brief, ICC-01/21-01/25-490-Conf, paras 264-266, 288-289.

⁵¹ P-1393, PHL-OTP-00248853 at 0008-0009, 0019-0020, 0024-0026, 0028-0030, lines 214-219, 265-268, 608-618, 768-827, 895-963. [REDACTED]. See PHL-OTP-0003-1004 at 1015-1017.

⁵² P-1393, PHL-OTP-00248854 at 0012-0013, lines 368-379, PHL-OTP-00248855 at 0008-0013, 0018-0020, 0043-0047, lines 221-245, 250-382, 553-626, 1401-1526. See also PHL-OTP-00249429.

⁵³ See PHL-OTP-00240332 at 0002; PHL-OTP-00240389 at 0003, PHL-OTP-00240390 at 0003.

⁵⁴ P-1393, PHL-OTP-00248853 at 0009, 0031, lines 245, 256-263, 988-998.

⁵⁵ P-1393, PHL-OTP-00248853 at 0008, 0022-0023, lines 216-219, 705-746, PHL-OTP-00248854 at 0008-0011, lines 221-252, 262-292, 317-339.

⁵⁶ P-1393, PHL-OTP-00248855 at 0005, 0015, lines 118-120, 472.

⁵⁷ P-1393, PHL-OTP-00248853 at 0031, lines 997-1016, PHL-OTP-00248854 at 0009-0011, PHL-OTP-00248855 at 0004-0005, 0043, lines 99-112, 1390-1400. According to P-1393, when other people were killed in the area, [REDACTED] were brought to the barangay. See PHL-OTP-00248855 at 0022, lines 694-705.

defence scenario by making [REDACTED]⁵⁸ and by planting drugs, a gun, and money on the victim.⁵⁹ P-1393 also expresses the profound pain he and his family suffered after [REDACTED]’s murder.⁶⁰ P-1393 further describes the changes in the PNP’s conduct during One Time Big Time (“OTBT”) police operations after Mr. DUTERTE became president, including their preference for killings instead of arrests⁶¹ to reach the quotas imposed by [REDACTED], the then chief of the SJDMCPS.⁶²

22. P-1393’s proposed evidence also shows that the police officers involved in the killing of [REDACTED] did not face any disciplinary measures.⁶³

23. P-1393’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 police’s *modus operandi* of the charged crimes.

24. The Prosecution tenders four associated documents for formal submission, as set out in Confidential Annex A (A2). P-1393’s associated material consists of: (i) two sketches depicting the crime scene; (ii) a report from [REDACTED], in particular pages 12 to 14, referring to the extrajudicial killing of [REDACTED]; and (iii) P-1393’s prior statement [REDACTED].⁶⁴

C. The Prior Recorded Testimonies are admissible under rule 68(2)(b)

25. The Prior Recorded Testimonies that the Prosecution seeks to introduce into evidence, pursuant to rule 68(2)(b) of the Rules, are relevant, reliable and probative.⁶⁵

⁵⁸ P-1393, PHL-OTP-00248855 at 0004-0006, 0014-0017, 0043, lines 93-142, 1390-1398, 434-539. *See also* photographs obtained from [REDACTED] depicting bullet holes on P-1393’s wall: PHL-OTP-00249421, PHL-OTP-00249424

⁵⁹ PHL-OTP-00248853 at 0009, lines 248-253, PHL-OTP-00248855 at 0020-0021, lines 627-664.

⁶⁰ P-1393, PHL-OTP-00248853 at 0027-0029, 0035, lines 856-893, 935-929, 1127-1142, PHL-OTP-00248855 at 0051-0053, lines 1665-1736.

⁶¹ P-1393, PHL-OTP-00248853 at 0015-0017, 0020-0022, lines 442-483, 524-538, 627-689, PHL-OTP-00248855 at 0024-0027, lines 775-799, 815-862.

⁶² P-1393, PHL-OTP-00248853 at 0017-0019, lines 536-588. PHL-OTP-00248855 at 0014, 0036-0037, lines 421-432, 1164-1199. *See also* the [REDACTED] [REDACTED] attesting that he was the chief of the SJDMCPS between 15 October 2018 and 2 June 2020. *See* PHL-OTP-00240312 at 0003.

⁶³ P-1393, PHL-OTP-00248855 at 0043-0044, lines 1401-1444.

⁶⁴ The Prosecution notes that this associated document also includes [REDACTED] [REDACTED]. *See* PHL-OTP-00247446 at 0005-0006. The Prosecution does not intend to seek the admission of [REDACTED] into evidence.

⁶⁵ *Gbagbo & Blé Goudé* Rule 68 Decision, [ICC-02/11-01/15-950-Red](#), para. 22.

26. All Three Witnesses have attested that their Prior Recorded Testimonies were given voluntarily and their contents were true to the best of their recollection of the events.⁶⁶ P-1370 and P-1416 signed their Prior Recorded Testimonies after they were read back to them.⁶⁷ The Prior Recorded Testimonies were conducted in English and interpreted into Tagalog, a language that the witnesses fully understand; and for P-1370 and P-1416, they also bear the interpreters' signature, certifying that each witness appeared to have heard and understood the translation.⁶⁸ The Prior Recorded Testimonies of all Three witnesses are internally consistent.⁶⁹ Accordingly, the Prior Recorded Testimonies have the necessary indicia of reliability for introduction into evidence.

D. The Prior Recorded Testimonies of the Three Witnesses are cumulative to, and corroborative of, evidence to be provided by *viva voce* witnesses

27. The Prior Recorded Testimonies of the Three Witnesses on the contextual elements of crimes against humanity, in particular a policy to 'neutralise' through violent crimes, including murder, alleged criminals in the Philippines, are cumulative in nature, and corroborative of other evidence,⁷⁰ as described in the following paragraphs.

28. P-1370's evidence relating to Incident [REDACTED] is corroborative of, and cumulative to, the evidence expected to be provided by, in particular, *viva voce* witnesses [REDACTED], as well as the evidence of [REDACTED].

29. P-1416's evidence relating to Incident [REDACTED], is also corroborative of, and cumulative to, the evidence expected to be provided by, in particular, *viva voce* witnesses [REDACTED], as well as the evidence of [REDACTED], and [REDACTED].

30. P-1393's proposed evidence relating to extrajudicial killings committed by members of the SJDMCPS and their preference for killings over arrests is corroborative of, and cumulative to the expected *viva voce* evidence of [REDACTED]. His evidence on the *modus operandi* of the charged crimes, including the conduct of OTBT operations and the perpetrators' 'practice'

⁶⁶ P-1370, PHL-OTP-00249305 at 0003, paras. 5, 9, 41-42; P-1393, PHL-OTP-00248855 at 0054, lines 1460-1770; P-1416, PHL-OTP-00249329 at 0003, 0007, paras. 5, 9, 35-37.

⁶⁷ P-1370, PHL-OTP-00249305 at 0002, 0009; P-1416, PHL-OTP-00249329 at 0002, 0008.

⁶⁸ P-1370, PHL-OTP-00249305 at 0003, 0009-0010, para. 4; P-1393, PHL-OTP-00248853 at 0003, lines 42-54; P-1416, PHL-OTP-00249329 at 0003, 0008-0009, para. 8.

⁶⁹ *Gbagbo & Blé Goudé* Rule 68 AJ, [ICC-02/11-01/15-744 OA 8](#), para. 3; *Ntaganda* Rule 68(2)(b) Decision P-0020, P-0057 and P-0932, [ICC-01/04-02/06-1730-Red](#), para. 13.

⁷⁰ See *Bemba* Rule 68 AJ, [ICC-01/05-01/08-1386](#), para. 78.

of planting weapons, drugs, and money on victims to stage self-defence scenarios is further corroborative of, and cumulative to, the evidence to be provided by, witnesses P-0003, P-0009, P-1036, P-1077, P-1160, P-1174, P-1202, P-1205, P-1207, P-1209, P-1211, P-1235, P-1236, P-1261, P-1262, and P-1407. P-1393's proposed evidence on the impunity afforded to members of the PNP involved in extrajudicial killings is further cumulative and corroborative to the Prosecution evidence to be submitted on the NAPOLCOM's practice of dismissing cases against police officers involved in such killings.⁷¹

E. The introduction of the Prior Recorded Testimonies of the Three Witnesses is not prejudicial to, or inconsistent with the rights of the Accused

31. The introduction of the Prior Recorded Testimonies of the Three Witnesses into evidence would not be prejudicial to, or inconsistent with the rights of the Accused, given the nature of the testimony of each witness, as set out above.⁷² Furthermore, the Defence retains the possibility to cross-examine other *viva voce* witnesses on the basis of information contained in the Prior Recorded Testimonies, lead contradictory evidence during the Defence case, or – to the extent that discrepancies exist with any other evidence – advance arguments on the weight to be attributed to the Prior Recorded Testimonies.

F. Request to designate the Legal Counsel of the Registry or any appropriate person delegated by him to witness the declarations required under rule 68(2)(b)(ii) and (iii)

32. Prior recorded testimony may only be introduced under rule 68(2)(b) if the testifying person declares that it is true and correct through the formalities specified in sub-rules (ii) and (iii). In order to satisfy these requirements, the Prosecution requests that the Chamber designate Registry Legal Counsel, or any appropriate person delegated by him, as the person authorised to witness declarations required pursuant to rule 68(2)(b)(ii) and (iii) for the purpose of this case.⁷³

⁷¹ See *e.g.* NAPOLCOM decisions dismissing the cases against members of the SJDLMCPS: PHL-OTP-00240390 at 0004-0005. See also PHL-OTP-00240389 at 0005.

⁷² See *Bemba* Rule 68 AJ, [ICC-01/05-01/08-1386](#), para. 78. See also *Yekatom & Ngaïssona* First Rule 68(2)(b) Decision, [ICC-01/14-01/18-1833-Corr-Red](#), para. 27; *Al Hassan* Rule 68(2)(b) AJ, [ICC-01/12-01/18-2222](#), para. 55.

⁷³ *Ntaganda*, Decision on Prosecution's request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules, 16 July 2015, [ICC-01/04-02/06-729](#), para. 5; *Yekatom & Ngaïssona*, Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, 6 May 2020, [ICC-01/14-01/18-508](#), para. 6. See also *Abd-Al-Rahman* First Rule 68(2)(b) Decision, [ICC-02/05-01/20-612-Red](#), paras. 17-19.

IV. CONCLUSION

33. For the above reasons, the Prosecution respectfully requests that the Chamber admit the proposed Prior Recorded Testimonies of the Three Witnesses *in lieu* of their *viva voce* testimony, as set out at Annex A.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Acting Prosecutor

Dated this 12th day of October 2026

At The Hague, the Netherlands