

**Cour
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**
Original: **19 October 2026**
Date: **26 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

**Public Redacted Version of “Defence Response to the Prosecution’s First 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

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☐ The Office of Public Counsel for
Victims

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I. INTRODUCTION

1. The Prosecution's first application under Rule 68(2)(b)¹ seeks to introduce the prior recorded testimony of P-1370, P-1393 and P-1416. These testimonies go directly to matters in dispute between the parties, including one of the charged incidents and the broader allegation of a policy to neutralise alleged criminals. One also refers, in more than a merely incidental manner, to the acts and conduct of the accused, contrary to the requirements of the provision.
2. The Defence is mindful of the Trial Chamber III's ("Chamber") interest in keeping the hearing hours to a minimum² and does not intend to oppose Prosecution requests where the admission of prior recorded testimony would not involve matters that require the witness to be questioned in court.
3. In this case, however, P-1416 and P-1370 directly address charged Incident [REDACTED] in their prior recorded statements. The Defence accordingly considers it necessary to cross-examine P-1416 who collected information concerning the alleged murder, and whose account was subsequently conveyed to the second witness, P-1370. The Defence does not object to the admission of the latter witness's prior recorded testimony.
4. The Defence also disagrees with the Prosecution's characterisation of P-1393's interview as not concerning the acts and conduct of the accused. It does, for the reasons set out below. The Defence accordingly requests that P-1393 give evidence *viva voce* or, alternatively, pursuant to Rule 68(3). Moreover, contrary to the Chamber's specific guidance, the Prosecution impermissibly seeks to introduce items as "associated material" despite P-1393 not being familiar with their contents.

II. APPLICABLE LAW

5. 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

¹ 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, [ICC-01/21-01/25-518-Conf](#), 7 October 2026 ("Application").

This submission is filed **confidentially** pursuant to [Regulation 23bis\(2\)](#) 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 Transcript of Status Conference, [ICC-01/21-01/25-T-012-CONF-ENG ET](#), 13 October 2026, p. 11, line 25; p. 12, line 1.

proceedings, it must be applied cautiously, consistently with fair trial guarantees and the principle of equality of arms.³

6. In particular, Rule 68(2)(b) needs to 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.⁴
7. 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),⁵ and take into account any other circumstances relevant to safeguarding the accused’s rights,⁶ given 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.⁷
8. Where the testimony concerns matters that are materially disputed, central to the proceedings, or uncorroborated, the Chamber must be especially vigilant to ensure that its admission does not prejudice the defendant or undermine the fairness of the proceedings.⁸

III. SUBMISSIONS

9. The prior recorded testimonies of P-1370, P-1393 and P-1416 concern, by the Prosecution’s own admission, issues that are materially in dispute between the parties.⁹ The Defence does not intend to systematically object to the admission of prior recorded

³ *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.

⁴ *Al Hassan Appeal Judgment*, paras 54, 55.

⁵ *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.

⁶ *Al Hassan Appeal Judgment*, para. 81.

⁷ *Al Hassan Appeal Judgment*, para. 82.

⁸ *Al Hassan Appeal Judgment*, para. 81. See also *Ruto and Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony”, [ICC-01/09-01/11-2024 \(OA10\)](#), 12 February 2016, para. 85; *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”, [ICC-01/05-01/08-1386](#), 3 May 2011, para. 78.

⁹ *Application*, para. 11.

testimonies that concern issues in dispute.¹⁰ Rather, it will assess whether, in situations where the Defence cannot cross-examine the witness, the admission of these prior recorded statements would cause prejudice to Mr Duterte.

P-1393

i) The prior recorded testimony goes to acts and conduct of Mr Duterte

10. The Prosecution seeks to introduce P-1393's prior recorded testimony¹¹ to support the alleged policy of neutralising alleged criminals through violent crimes, demonstrate the police's *modus operandi*, and establish the absence of disciplinary measures in response to such conduct. The statement contains passages which directly address the alleged acts and conduct of Mr Duterte. These passages are not peripheral nor incidental. Instead, they are central to the testimony's evidentiary significance.¹²
11. Citing P-1393's "expertise" and "perspective", the statement attributes his [REDACTED]'s alleged killing to payments purportedly made by Mr Duterte to police officers.¹³ Although P-1393 later clarifies that he [REDACTED], he insists on this point by explaining that police friends had told him that officers were assigned "quotas", set directly by [REDACTED], chief of the San Jose del Monte City Police Station at that time, specifying how [REDACTED].¹⁴
12. The significance of these alleged quotas is underscored by the witness's further reference to them in connection with payments that policemen allegedly received from funeral parlours for each body delivered.¹⁵ These allegations, read in their entirety, go beyond evidence of the police's pattern of conduct: they directly implicate Mr Duterte in the alleged killings and in the supposed system underpinning them.
13. In these circumstances, and in the absence of any undertaking from the Prosecution that it would refrain from relying on these references,¹⁶ the Defence asks to cross-examine P-1393, as being necessary to establish the source and nature of the information he received, assess its probative value and reliability, clarify the basis on which he

¹⁰ [Application](#), para. 11.

¹¹ P-1393, [PHL-OTP-00248853-R01](#), [PHL-OTP-00248854-R01](#), [PHL-OTP-00248855-R01](#).

¹² *Abd-Al-Rahman*, Decision on the Prosecution's sixth, seventh and eighth applications to introduce prior recorded testimonies under Rule 68(2)(b), [ICC-02/05-01/20-808-Red](#), 7 November 2022 ("*Abd-Al-Rahman Decision*"), para. 8.

¹³ P-1393, [PHL-OTP-00248855-R01](#), at 0036, lines 1155-1165.

¹⁴ P-1393, [PHL-OTP-00248855-R01](#), at 0037, lines 1197-1199. See also P-1393, [PHL-OTP-00248853-R01](#), at 0016, lines 493-508.

¹⁵ P-1393, [PHL-OTP-00248855-R01](#), at 0027, lines 855-865.

¹⁶ [Abd-Al-Rahman Decision](#), para. 11.

attributes these alleged practices directly to Mr Duterte and, ultimately, to allow for the identification and proper assessment of potentially significant exculpatory elements for the accused. On this ground alone, the evidence should not be admitted.¹⁷ Other grounds, set out below, provide a further basis for the inadmissibility of P-1393's prior recorded testimony.

ii) The prior record testimony relates to issues that are materially in dispute

14. The Prosecution justifies the introduction of P-1393's prior recorded testimony on the basis that the account of the alleged killing of the witness's [REDACTED] is intended to demonstrate a preference by the police for killing rather than arresting suspects, the methods allegedly employed to conceal such crimes, and the absence of any disciplinary consequences for those involved.¹⁸ These matters, however, are at the very heart of the case and are materially in dispute between the parties.
15. Also relevant is that P-1393 did not personally witness his [REDACTED]'s death or the events that preceded it.¹⁹ Rather, he has sought to reconstruct what happened and infer the reasons behind it on the basis of hearsay information provided by third parties who are not Prosecution witnesses. As a result, his account is often contradictory and confused, and cannot properly be admitted to substantiate matters that are central to the case and remain in dispute.

iii) The witness displays indicia of unreliability

16. The Defence recognises that, in assessing whether prior recorded testimony meets the requirement of "sufficient indicia of reliability",²⁰ the Trial Chamber is not required to look beyond the formal requirements governing its admission. This does not, however, preclude the Chamber from considering other relevant factors where the circumstances of a particular case make such an assessment appropriate.²¹ Here, a relevant factor is the hostility expressed by P-1393 during his interview towards the accused, including

¹⁷ [Al Hassan Appeal Judgment](#), para. 49.

¹⁸ [Application](#), paras 21, 22, 23.

¹⁹ P-1393, [PHL-OTP-00248855-R01](#), at 0005, lines 118-120. *See also* P-1393, [PHL-OTP-00248855-R01](#), at 0018, lines 560-561; at 0020, lines 635-643; at 0021, lines 644-664.

²⁰ Rules of Procedure and Evidence, [Rule 68\(2\)\(b\)\(i\)](#).

²¹ *Yekatom and Ngaissona*, First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, [ICC-01/14-01/18-1833-Corr-Red](#), 17 April 2023, paras 46-47. *See also* *Gbagbo and 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)", [ICC-02/11-01/15-744](#), 1 November 2016, para. 104.

his statements that “[REDACTED]” and “[REDACTED]”.²² These kinds of statements are relevant to an assessment of the reliability of P-1393’s testimony, particularly when considered alongside the numerous internal inconsistencies, omissions and contradictions in his account,²³ some of which were themselves identified by Prosecution’s investigators.²⁴

17. Taken together, these circumstances mitigate against the admission of P-1393’s prior recorded testimony under Rule 68(2)(b), given that it does not meet the required threshold of sufficient indicia of reliability. Defence cross-examination is required to test the witness’s credibility²⁵ and ability to provide relevant evidence capable of assisting the Chamber in establishing the truth.

iv) The prior record testimony is prejudicial to, or inconsistent with the rights of Mr Duterte

18. The Prosecution’s position is that the Defence can expose discrepancies between P-1393’s account and other evidence through the cross-examination of other witnesses *viva voce*. In the case of P-1393, this is insufficient, primarily because this witness advances a series of central allegations against Mr Duterte and his alleged policy, which are based predominantly on information received from third parties. The identities of these third parties are not specified²⁶ or have repeatedly been redacted,²⁷ preventing the Defence from independently verifying their credibility, the sources of their information, and the reliability of the accounts they provided. The fact that P-1393’s account rests

²² P-1393, [PHL-OTP-00248853-R01](#), at 0034-0035, lines 1119-1123, 1125-1128.

²³ For instance, the witness repeatedly states that [REDACTED]. See P-1393, [PHL-OTP-00248853-R01](#), at 0008, lines 216-291; at 0023, line 724; at 0031, lines 1019-1021; P-1393, [PHL-OTP-00248855-R01](#), at 0017, lines 516-530.

²⁴ See e.g. P-1393, [PHL-OTP-00248855-R01](#), at 0047, lines 1537-1538; at 0048, lines 1568-1570.

²⁵ *Ntaganda*, Decision on Defence Requests to add D-0185, D-0207, and D-0243 to its List of Witnesses and for the admission of prior recorded testimony pursuant to Rule 68(2)(b), [ICC-01/04-02/06-2099](#), 6 November 2017, para. 31 (“[t]he Chamber further notes the Prosecution’s argument that it should be authorised to test Witness D-0207’s credibility and any potential bias through cross-examination. Noting that the proposed evidence of Witness D-0207 may challenge certain aspects of Witness P-0898’s testimony, the Chamber finds that it would be appropriate for the testimony to be subject to cross-examination”).

²⁶ See e.g. [PHL-OTP-00248855-R01](#), at 0006, line 140.

²⁷ See e.g. [PHL-OTP-00248855-R01](#), at 0026, lines 828, 840, 846; at 0027, lines 868-869; at 0037, lines 1205, 1208-1211; at 0038, line 1248; at 0039, lines 1261, 1274-1277.

largely on such second-hand information makes it more important that his testimony be heard *viva voce* or, at a minimum, pursuant to Rule 68(3).

v) *The associated materials were not explained by the witness*

19. The Prosecution has sought to introduce a series of materials through P-1393 on the basis that they form an integral part of the prior recorded testimony.²⁸ The Chamber has held that where a witness does not “meaningfully” use and explain associated material in their prior recorded testimony, such material cannot be considered an integral part of the statement itself and, consequently, cannot be introduced into evidence.²⁹ The approach therefore requires an effective engagement by the witness with the document, rather than a mere reference to or mention of it.
20. By contrast, the Prosecution has sought to introduce materials that do not properly form part of the witnesses’ prior recorded testimony. The Defence accordingly objects to the admission of (i) the [REDACTED] report “[REDACTED]”, in particular pages 12 to 14, referring to the alleged extrajudicial killing of [REDACTED]; and (ii) P-1393’s prior statement to [REDACTED].³⁰
21. The [REDACTED] report³¹ is [REDACTED] pages in length, only two of which are relevant to P-1393’s proposed testimony. Even as regards those specific pages, the witness does not meaningfully engage with the material, stating that although he had read the report he “[REDACTED]”.³² When asked directly about the differences between the account contained in the report and the version he subsequently provided to the Prosecution, P-1393 explained that, during his interview, he had been able to “[REDACTED]”, whereas in the [REDACTED] report, “[REDACTED]”, was all that was written.³³ The witness therefore did not explain, or otherwise demonstrate substantive knowledge of the contents of the report. His evidence makes clear that he was not familiar with the substance of it.
22. Moreover, the relevant pages identified in the Prosecution’s Application do not exclusively concern the alleged killing of his [REDACTED]. Those parts also contain

²⁸ [Application](#), paras 12, 24.

²⁹ 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. 32.

³⁰ [Application](#), para. 24.

³¹ [PHL-OTP-0003-1004](#).

³² P-1393, [PHL-OTP-00248855-R01](#), at 0032, line 1030.

³³ P-1393, [PHL-OTP-00248855-R01](#), at 0033, line 1054.

[REDACTED], with reference to other events unrelated to the one on which the witness was questioned.³⁴ Given these circumstances, the [REDACTED] report cannot be regarded as an integral part of the witness's prior recorded testimony.

23. Likewise, the statement of [REDACTED],³⁵ on which [REDACTED] subsequently relied in preparing the relevant section of its report, cannot properly be considered an associated document of the interview. Here again, P-1393 states that [REDACTED].³⁶ He therefore provides no substantive explanation of the document or its contents. Moreover, the statement includes an account from the victim's [REDACTED], which is extraneous to P-1393's evidence and not mentioned during his interview.³⁷ For these reasons, the document should be excluded, as it is not necessary for an understanding of P-1393's prior recorded testimony.

P-1416

i) The prior record testimony relates to issues that are materially in dispute

24. P-1416 is [REDACTED]. In his statement dated 2 August 2026, P-1416 indicated that he wanted "[REDACTED]".³⁸ His testimony directly concerns a disputed incident charged under Count 3, allegedly committed in the context of the [REDACTED] – another key aspect of the proceedings, as it forms part of the policy to "neutralise" attributed to Mr Duterte. This Defence accordingly asks to examine the witness on these matters.
25. P-1416's prior statement provides his account of the alleged circumstances surrounding the [REDACTED] victims' deaths, focusing on three key aspects: first, his viewing of the bodies and bullet wounds;³⁹ second, his alleged [REDACTED];⁴⁰ and third, his attribution of their killing to police officers acting for monetary gain.⁴¹ Each of these aspects requires more examination than is possible on the basis of P-1416's statement, which spans fewer than ten pages and was taken by the Prosecution without any indication of the questions asked. In particular, in the absence of the [REDACTED], it

³⁴ [PHL-OTP-0003-1004](#), at 1016-1017.

³⁵ [PHL-OTP-00247446-R01](#).

³⁶ P-1393, [PHL-OTP-00248855-R01](#), at 0031, line 1003.

³⁷ P-1393, [PHL-OTP-00247446-R01](#), at 0005-0006.

³⁸ P-1416, [PHL-OTP-00249329-R01](#), at 0004, para. 14.

³⁹ P-1416, [PHL-OTP-00249329-R01](#), at 0005, paras 20-22.

⁴⁰ P-1416, [PHL-OTP-00249329-R01](#), at 0005, paras 23-27.

⁴¹ P-1416, [PHL-OTP-00249329-R01](#), at 0007, para. 31.

is essential that the Defence can question the witness about it, as he appears to be the only person able to provide first-hand information concerning [REDACTED].

26. The same applies to the P-1416's account of a conversation with [REDACTED], during which one allegedly stated that [REDACTED].⁴² It is not clear from P-1416's account what knowledge these [REDACTED] had of the incident, how they obtained that information or whether their remarks were merely speculative. Similarly, paragraph [REDACTED] of P-1416's statement refers only in general terms to police officers allegedly carrying out extrajudicial killings because they were "[REDACTED]", without providing any further information as to whether Mr Duterte was responsible for these alleged payments or whether the police acted on its own initiative, through other channels and outside any alleged common plan. Cross-examination would allow the Defence to clarify the context of this allegation that goes directly to the charges as framed.
27. P-1416 should therefore be heard *viva voce* or, at a minimum, pursuant to Rule 68(3), which would allow the Defence to cross-examine him on the disputed issues in his statement.

ii) The prior record testimony is not corroborated nor cumulative

28. The Prosecution submits that P-1416's prior recorded testimony is corroborative of, and cumulative to, other evidence expected from additional witnesses. Of the witnesses identified in the Application, [REDACTED] is the only person capable of providing information relevant to the matters addressed by P-1416. [REDACTED] and [REDACTED] only repeat information reportedly provided to them by [REDACTED], and are unable to independently corroborate his account. [REDACTED] was not present during the same stages of the incident described by P-1416. As for P-1370, her version is based solely on details recounted by P-1416, as she [REDACTED]. Moreover, the Defence does not object to the admission of P-1370's testimony under Rule 68(2)(b), making it more important to have the opportunity to question P-1416, being the person whose account underpins her statement.

⁴² P-1416, [PHL-OTP-00249329-R01](#), at 0007, para. 31.

29. P-1416 is accordingly the only person identified by the Prosecution as being in a position to explain, on the basis of [REDACTED], how the victims were allegedly [REDACTED] as well as how they were allegedly murdered.
30. P-1416's account also contains significant inconsistencies with the only other testimony regarding Incident [REDACTED], provided by [REDACTED].⁴³ Those discrepancies require further examination, both to establish what actually occurred and to test the witnesses' credibility, as they concern critical stages of an incident underlying the charges against Mr Duterte and potentially bearing directly on the confirmation of Count 3. Prior recorded testimony has been rejected where it was uncorroborated or inconsistent with the testimony of other witnesses in the case.⁴⁴

iii) The prior record testimony is prejudicial to, or inconsistent with the rights of Mr Duterte

31. The Prosecution submits that the admission of P-1416's prior recorded testimony would not cause prejudice, given the nature of his evidence and the Defence's ability to examine other witnesses and, through them, test the discrepancies between his statement and other evidence. That submission overlooks the unique nature of P-1416's evidence.
32. P-1416 is the only witness who claims to [REDACTED]. His statement is concise, yet sufficiently detailed to raise material questions about the version explained by [REDACTED]. Crucially, the Prosecution's investigators did not follow up on these matters or seek clarification to P-1416.
33. The Defence therefore submits that the admission of P-1416's prior recorded testimony without an opportunity to cross-examine him would compromise the rights of the accused. P-1416 is a key witness concerning Incident [REDACTED] and provides information that no other witness identified by the Prosecution is in a position to supply.

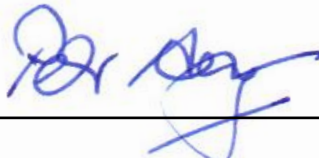
⁴³ For example, P-1416 maintains that [REDACTED], whereas [REDACTED] provides a different account, stating that [REDACTED]. See P-1416, [PHL-OTP-00249329-R01](#), para. 20; [REDACTED], [PHL-OTP-00000551-R02](#), at 0019, line 616; at 0020, lines 619-651; at 0021, lines 652-668.

P-1416 further states that he [REDACTED]. On the contrary, [REDACTED] describes [REDACTED]. See P-1416, [PHL-OTP-00249329-R01](#), at 0006, paras 24, 25; [REDACTED], [PHL-OTP-00000551-R02](#), at 0010, lines 289-293.

⁴⁴ *Ntaganda*, Public redacted version of 'Decision on admission of prior recorded testimony of Witness P-0773 under Rule 68', 2 December 2016, ICC-01/04-02/06-1667-Conf, [ICC-01/04-02/06-1667-Red](#), 27 February 2017, paras 17-19.

IV. CONCLUSION AND RELIEF SOUGHT

34. The Defence supports the use of Rule 68(2)(b) to expedite the trial, particularly in light of Mr Duterte's age and frailty. However, procedural efficiency must not come at the expense of his fundamental right to defend himself effectively.
35. The Defence does not object to the admission of P-1370's prior recorded testimony. It submits, however, that P-1393 and P-1416 should be heard *viva voce* or, alternatively, pursuant to Rule 68(3), given the centrality of their evidence and the need for cross-examination. The admission of associated materials must likewise remain subject to the Chamber's strict criteria and cannot extend to evidence that witnesses have neither meaningfully addressed nor explained in their prior recorded testimony.
36. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber
- REJECT** the Prosecution's Application for P-1393 and P-1416; or, in the alternative
- REJECT** the request for admission of PHL-OTP-0003-1004, and PHL-OTP-00247446-R01 under Rule 68(2)(b).



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 26th day of October 2026
At The Hague, the Netherlands