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Original: **English**

No.: **ICC-01/21-01/25**
Original: **23 October 2026**
Date: **2 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 Second Application Under Rule 68(2)(b)"

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

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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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, through its second application under Rule 68(2)(b),[1] seeks to submit the prior recorded testimony of P-0024, P-1357, and P-1359, along with their associated materials.

2. The Defence takes no position on whether these statements should be admitted through this procedure. It nevertheless objects to the introduction of documents that the witnesses have neither meaningfully used nor explained in their testimony. Accordingly, the Defence opposes the inclusion of the report entitled "[REDACTED]", [REDACTED] by P-1357, into evidence.

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, consistently 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. The Chamber, in the exercise of its discretion, is requested to apply particular caution when applying the criteria under Rule 68(2)(b)(i),[3] and take into account any other circumstances relevant to safeguarding the accused's rights,[4] 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.[5]

5. With respect to the associated materials, a mere reference to or explanation of the documents is insufficient; the witness must engage with them in a "meaningful" manner, as their relevance and probative value depend on the extent to which they are

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[1] Prosecution's second application under rule 68(2)(b) to introduce into evidence Prior Recorded Testimonies of Witnesses P-0024, P-1357, and P-1359, ICC-01/21-01/25-521-Conf, 12 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] *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.
[4] *Al Hassan* Appeal Judgment, para. 81.
[5] *Al Hassan* Appeal Judgment, para. 82.

discussed in the prior recorded testimony.[6] Where this requirement is not met, the associated materials cannot be considered an integral part of the statement itself and, as a result, be introduced by means of Rule 68(2)(b).

III. SUBMISSIONS

6. The prior recorded testimonies of P-0024 and P-1359 pertain to issues that are materially disputed in the proceedings, relating, respectively, to the provenance and reliability of the documents provided to the Prosecution by [REDACTED],[7] and the alleged policy of neutralising suspected criminals adopted by Mr Duterte.[8]

7. Nonetheless, the Defence does not take a position on the admission of their statements pursuant to Rule 68(2)(b). However, it informs the Trial Chamber III ("Chamber") that it does not intend to cross-examine P-0024, having already extensively addressed its concerns regarding the introduction of the [REDACTED] dataset into the evidentiary record of this proceedings.[9]

8. Concerning P-1357, the sole apparent purpose of tendering her statement is the admission of a report as associated material.[10] The Defence submits that this witness exemplifies the very type of individual whom the Chamber urged the Prosecution to remove from its list.[11] In her [REDACTED] statement, P-1357 merely confirms that she [REDACTED], and provides [REDACTED].[12] Her testimony is entirely peripheral, as it does not address the substance of [REDACTED] research, the allegations made, or the findings reached. The witness is not even familiar with the events occurring after [REDACTED], having ceased working on the subject following [REDACTED].[13] Her testimony, therefore, adds nothing of substance to the evidence in this case and there is no justification for retaining her on the witness list, particularly given that the alleged

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[6] 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 ("First Decision on Rule 68(3)"), para. 32.
[7] Application, paras 7, 10.
[8] Application, para. 16.
[9] *See e.g.* Defence Reply to "Prosecution's Response to Defence Motion Pursuant to an Order of the Trial Chamber", ICC-01/21-01/25-516-Conf, 5 October 2026; Defence Motion Pursuant to Order of the Trial Chamber, ICC-01/21-01/25-507-Conf, 22 September 2026, paras 19-23; Defence Request to Amend the E-Court Protocol in Relation to Open Source and User-Generated Material, ICC-01/21-01/25-486-Conf, 31 August 2026, para. 2.
[10] PHL-OTP-0003-0886.
[11] Transcript of Third Status Conference, ICC-01/21-01/25-T-011-CONF-ENG ET, 16 September 2026, p. 6, lines 4-8.
[12] *See e.g.* PHL-OTP-0003-0886, at 0897-0898; at 0919.
[13] P-1357, PHL-OTP-00100499-R01, at 0007, para. 35.

extrajudicial killings in Davao will be addressed by other contextual witnesses, both *viva voce* and in accordance with Rule 68(3).[14]

9. Further and/or alternatively, the Defence objects to the Prosecution's improper use of Rule 68(2)(b) to introduce associated material that the witness has neither meaningfully used nor explained, contrary to the Prosecution's assertions.[15] Indeed, across a report exceeding [REDACTED], P-1357 deals with virtually none of its core aspects including, *inter alia*, [REDACTED], [REDACTED],[16] and the claim that "[REDACTED]".[17] This failure effectively to address the report undermines its relevance and probative value, which, as the Chamber has expressly recognised, "is necessarily linked to the extent a witness discusses it in their prior recorded testimony".[18] Accordingly, this item cannot be considered an integral part of the witness's statement and introduced pursuant to Rule 68(2)(b).

10. Finally, and in any event, the Defence indicates that it has no wish to cross-examine P-1357, given the marginal relevance of her testimony, a conclusion reinforced by the Prosecution's own treatment of both [REDACTED] statement and report. [REDACTED].[19] The report itself is cited only sparingly and with reference to a handful of pages. This alone underscores the negligible significance of these materials and demonstrates the Prosecution's disregard for the Chamber's direction to "conduct a thoughtful assessment" of the evidence and refrain from seeking the admission of items "which are repetitive or of such limited relevance as to be almost irrelevant".[20]

IV. CONCLUSION AND RELIEF SOUGHT

11. 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.

[14] *See e.g.* [REDACTED].
[15] Application, para. 12.
[16] PHL-OTP-0003-0886, at 889-890.
[17] PHL-OTP-0003-0886, at 0894.
[18] First Decision on Rule 68(3), para. 32.
[19] [REDACTED].
[20] First Decision on Rule 68(3), para. 39.

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

REJECT the request for admission of PHL-OTP-0003-0886, under Rule 68(2)(b).



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 2nd day of November 2026
At The Hague, the Netherlands