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**International
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Court**

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TRIAL CHAMBER VI

**Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public redacted version of

Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-2931, P-0481, P-0349, P-2328, P-0834, P-2573, P-2232, P-0884, P-2251 and P-0291

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, pursuant to article 69(2) of the Rome Statute (the ‘Statute’) and rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-2931, P-0481, P-0349, P-2328, P-0834, P-2573, P-2232, P-0884, P-2251 and P-0291’.

I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber issued the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’ setting deadlines for the filing of applications pursuant to rule 68 of the Rules by the Office of the Prosecutor (the ‘Prosecution’).¹ Further directions on the filing of applications under rule 68 of the Rules were issued on 9 March 2022² and the deadline for the submission of a number of rule 68 requests was extended on 11 May 2022.³
2. On 20 May 2022, the Prosecution filed its first application to introduce the prior recorded testimony of P-2573 pursuant to rule 68(3) of the Rules (the ‘First Rule 68(3) Request’).⁴
3. On 23 May 2022, the Prosecution filed its second application to introduce the prior recorded testimonies of three witnesses (P-0481, P-1762 and P-2607) pursuant to rule 68(3) of the Rules (the ‘Second Rule 68(3) Request’).⁵

¹ [Decision Setting the Commencement Date of the Trial and Related Deadlines](#), 21 February 2022, ICC-01/14-01/21-243, para. 28.

² [Directions on the Conduct of Proceedings](#), 9 March 2022, ICC-01/14-01/21-251 (the ‘Directions on the Conduct of Proceedings’), paras 37-39.

³ [Decision on Requests to Vary the Time Limits pertaining to the Introduction of Prior Recorded Testimony of Witnesses pursuant to Rule 68 \(ICC-01/14-01/21-300-Conf-Red and ICC-01/14-01/21-291\)](#), 11 May 2022, ICC-01/14-01/21-305.

⁴ Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3), 20 May 2022, ICC-01/14-01/21-322-Conf. A public redacted version was filed on 31 May 2022 ([ICC-01/14-01/21-322-Red](#)).

⁵ Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3), 23 May 2022, ICC-01/14-01/21-326-Conf. A public redacted version was filed on 27 May 2022 ([ICC-01/14-01/21-326-Red](#)).

4. On 8 June 2022, the Prosecution filed its third application to introduce the prior recorded testimonies of six witnesses (P-1429, P-2241, P-2400, P-2692, P-2931 and P-3064) pursuant to rule 68(3) of the Rules (the ‘Third Rule 68(3) Request’).⁶
5. On 12 June 2022, the Prosecution filed its fourth application to introduce the prior recorded testimonies of seven witnesses (P-0435, P-0787, P-1737, P-2161, P-2240, P-2478 and P-2504) pursuant to rule 68(3) of the Rules (the ‘Fourth Rule 68(3) Request’).⁷
6. On 21 June 2022, the Prosecution filed its fifth application to introduce the prior recorded testimonies of one witness, P-0834, pursuant to rule 68(3) of the Rules (the ‘Fifth Rule 68(3) Request’).⁸
7. On 24 June 2022, the Prosecution filed its sixth application to introduce the prior recorded testimony of one witness, P-3108, pursuant to rule 68(3) of the Rules (the ‘Sixth Rule 68(3) Request’).⁹
8. On 27 June 2022, the Prosecution filed its seventh application to introduce the prior recorded testimonies of six witnesses (P-0291, P-0349, P-0884, P-2232, P-2251 and P-2328) pursuant to rule 68(3) of the Rules (the ‘Seventh Rule 68(3) Request’).¹⁰

⁶ Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3), 8 June 2022, ICC-01/14-01/21-348-Conf. A public redacted version was filed on 10 June 2022 ([ICC-01/14-01/21-348-Red](#)).

⁷ Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3), 12 June 2022, ICC-01/14-01/21-357-Conf. A public redacted version was filed on 20 June 2022 ([ICC-01/14-01/21-357-Red](#)).

⁸ Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(3), 21 June 2022, ICC-01/14-01/21-371-Conf. A public redacted version was filed on 26 July 2022 ([ICC-01/14-01/21-371-Red](#)).

⁹ Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(3) and to include two items to the List of Evidence, 24 June 2022, ICC-01/14-01/21-374-Conf. A public redacted version was filed on 28 June 2022 ([ICC-01/14-01/21-374-Red](#)).

¹⁰ Prosecution’s seventh request to introduce prior recorded testimony pursuant to rule 68(3), in relation to P-0291, P-0349, P-0884, P-2232, P-2251, and P-2328, 27 June 2022, ICC-01/14-01/21-376-Conf. A public redacted version was filed on 5 July 2022 ([ICC-01/14-01/21-376-Red](#)).

9. On 20 July 2022, the Defence filed its consolidated response to the Prosecution's seven requests (the 'Response').¹¹ Therein, it requested that all the Prosecution's requests pursuant to rule 68(3) of the Rules be rejected.¹²

10. On 3 June 2022 and 20 June 2022, the Common Legal Representative of Victims (the 'CLRV') filed consolidated responses to the First, Second and Third Rule 68(3) Requests.¹³

11. On 24 June 2022, 4 July 2022, 7 July 2022 and 8 July 2022 respectively, the CLRV indicated via email that she does not intend to respond to the Fourth, Fifth, Sixth and Seventh Rule 68(3) Requests.¹⁴

12. On 11 October 2022, the Chamber issued its 'Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-3108, P-2400, P-2240, P-2478 and P-0787' in which the Chamber granted four of the Prosecution's requests and rejected one (the 'First Rule 68(3) Decision').¹⁵ In its decision, the Chamber also considered and ruled on a number of general objections made by the Defence.¹⁶

13. On 28 October 2022, the Chamber issued its 'Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-1429, P-1737, P-1762, P-0435, P-2692, P-2607, P-2504, P-3064, P-2241 and P-2161' in which

¹¹ Corrigendum de la « Réponse consolidée de la Défense aux sept demandes déposées par l'Accusation en vertu de la Règle 68(3) (ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-326-Conf, ICC-01/14-01/21-348-Conf, ICC-01/14-01/21-357-Conf, ICC-01/14-01/21-371-Conf, ICC-01/14-01/21-374-Conf et ICC-01/14-01/21-376-Conf) » déposée le 20 juillet 2022 (ICC-01/14-01/21-417-Conf), 30 July 2022, ICC-01/14-01/21-417-Conf-Corr. A public redacted version was filed on 1 August 2022 ([ICC-01/14-01/21-417-Corr-Red](#)) (the 'Response').

¹² [Response](#), p. 64.

¹³ [Victims' consolidated response to the Prosecution's Requests to introduce prior recorded testimony pursuant to rule 68\(3\) \(ICC-01/14-01/21-322-Red and ICC-01/14-01/21-326-Red\)](#), 3 June 2022, ICC-01/14-01/21-344; [Victims' response to the "Prosecution's third request to introduce prior recorded testimony pursuant to rule 68\(3\)" \(ICC-01/14-01/21-348-Red\)](#), 20 June 2022, ICC-01/14-01/21-368.

¹⁴ Email from the CLRV, 24 June 2022, at 12:23; Email from the CLRV, 4 July 2022, at 15:21; Email from the CLRV, 7 July 2022, at 15:15; Email from the CLRV, 8 July 2022, at 15:22.

¹⁵ Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-3108, P-2400, P-2240, P-2478 and P-0787, 11 October 2022, ICC-01/14-01/21-499-Conf. A public redacted version was filed on the same day, [ICC-01/14-01/21-499-Red](#) (the 'First Rule 68(3) Decision').

¹⁶ [First Rule 68\(3\) Decision](#), paras 20-40.

the Chamber granted seven of the Prosecution's requests and rejected three (the 'Second Rule 68(3) Decision').¹⁷

II. APPLICABLE LAW

14. The Chamber recalls its findings on the applicable law made in the First Rule 68(3) Decision, especially with regard to the rights of the accused and the requirements set out in rule 68(3) of the Rules.

15. Further, it reiterates that, subject to the fulfilment of these requirements, the Chamber's determination to allow the introduction of prior recorded testimony is discretionary and requires a case-by-case assessment. In this regard, the Chamber recalls that it outlined the various considerations regarding this assessment in its First Rule 68(3) Decision.¹⁸ The Chamber will not repeat the discussion on the applicable law in the present decision and refers to the First Rule 68(3) Decision in this respect.

16. In addition, the Chamber notes that the Defence has raised a number of objections regarding the general use of rule 68(3) of the Rules in this case, which the Chamber has already ruled on in the First Rule 68(3) Decision.¹⁹ In this regard, the Chamber will not repeat the discussion and refers to the First Rule 68(3) Decision.

III. ANALYSIS

17. The present decision pertains to a set of ten witnesses whom the Prosecution proposes to call pursuant to rule 68(3) of the Rules: P-2931, P-0481, P-0349, P-2328, P-0834, P-2573, P-2232, P-0884, P-2251 and P-0291.²⁰ At the outset, the Chamber notes that the Prosecution has requested additional time to conduct a supplementary examination of each of the witnesses that are the subject of the present decision.²¹ As

¹⁷ Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-1429, P-1737, P-1762, P-0435, P-2692, P-2607, P-2504, P-3064, P-2241 and P-2161, 28 October 2022, ICC-01/14-01/21-519-Conf. A public redacted version was filed on 8 November 2022, [ICC-01/14-01/21-519-Red](#) (the 'Second Rule 68(3) Decision').

¹⁸ [First Rule 68\(3\) Decision](#), paras 14-19.

¹⁹ [First Rule 68\(3\) Decision](#), paras 21-40.

²⁰ Annex A to the Prosecution's Notification of an Updated Order of Appearance, 5 September 2022, ICC-01/14/01/21-470-Conf.

²¹ See e.g. [Second Rule 68\(3\) Request](#), para. 20; [Third Rule 68\(3\) Request](#), para. 35; [Fourth Rule 68\(3\) Request](#), para. 48.

noted in the First Rule 68(3) Decision, the Chamber has already granted the Prosecution an envelope of time for the presentation of its case. The Chamber will therefore not rule on any further discrete requests for additional time to conduct direct examination at this stage.²²

1. P-2931

18. According to the Prosecution, P-2931 was arrested at home by the Seleka on the evening of 16 July 2013 along with [REDACTED], and was subsequently transferred to the *Office Central de Répression du Banditisme* (the ‘OCRB’).²³ P-2931 states that, on the way to the OCRB, the Seleka passed by the *Hôpital Communautaire* to drop off his [REDACTED] who was seriously injured during the arrest.²⁴ The witness was detained at the OCRB [REDACTED],²⁵ during which time he was tied up,²⁶ interrogated, and physically struck by a member of the Seleka.²⁷ P-2931 describes the conditions of the OCRB,²⁸ including events such as: (i) helping another detainee who had scarred wrists and paralysed hands as a result of being previously tied up by the Seleka;²⁹ (ii) witnessing other detainees claim that Mr Said was the leader;³⁰ and (iii) [REDACTED].³¹ [REDACTED].³² P-2931’s prior recorded testimony and associated material is comprised of ‘two statements, a sketch depicting the layout of the OCRB, and documents shown to the witness during the interview’.³³

19. The Prosecution argues that its request to call P-2931 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing its examination of P-2931 by three hours;³⁴ (ii) P-2931’s testimony bears sufficient indicia of reliability;³⁵ and (iii) the introduction of P-2931’s

²² [First Rule 68\(3\) Decision](#), para. 41.

²³ [Third Rule 68\(3\) Request](#), para. 27.

²⁴ CAR-OTP-2135-4093, at 4098 to 4099, paras 27, 29-32.

²⁵ CAR-OTP-2135-4093, at 4100 to 4102, paras 40-53.

²⁶ CAR-OTP-2135-4093, at 4099 to 4100, paras 37-38.

²⁷ CAR-OTP-2135-4093, at 4100, para. 39.

²⁸ CAR-OTP-2135-4093, at 4100, para. 41.

²⁹ CAR-OTP-2135-4093, at 4101, para. 45.

³⁰ CAR-OTP-2135-4093, at 4100, para. 41.

³¹ CAR-OTP-2135-4093, at 4102, para. 54.

³² CAR-OTP-2135-4093, at 4102, para. 55.

³³ [Third Rule 68\(3\) Request](#), para. 30; Annex A to the Third Rule 68(3) Request, p. 6.

³⁴ [Third Rule 68\(3\) Request](#), para. 36.

³⁵ [Third Rule 68\(3\) Request](#), para. 37.

testimony is not prejudicial to the rights of the accused.³⁶ The Prosecution notes that the Defence will have reasonable opportunity to cross-examine P-2931 and that P-2931's evidence is corroborated by P-2105's testimony and corroborated by and cumulative to the evidence of three other OCRB victims whom the Prosecution seeks to call *viva voce*.³⁷

20. The Defence argues that, contrary to the Prosecution's assertion, P-2105's prior recorded testimony does not corroborate the allegations in P-2931's prior recorded testimony.³⁸ [REDACTED] P-2105 only mentions learning through hearsay that [REDACTED].³⁹ The Defence also posits that P-2931's prior recorded testimony includes several statements based on hearsay or double hearsay [REDACTED].⁴⁰

21. The Defence also objects to the introduction of document [REDACTED] as associated material.⁴¹ The Defence argues that the document, [REDACTED], does not contain sufficient indicia of reliability because it appears to [REDACTED] which impedes the Defence from analysing [REDACTED].⁴² The Defence notes that [REDACTED] is unsigned and that it previously objected to the introduction of the document in its Response to the sixth bar table motion.⁴³ [REDACTED].⁴⁴

22. The Chamber finds that P-2931's prior recorded testimony can be introduced pursuant to rule 68(3) of the Rules, with the exception of [REDACTED] (as explained below). First, with regard to the alleged lack of corroboration between P-2931's testimony and that of P-2105 (who has already provided in-court testimony as a full *viva voce* witness), the Chamber notes that corroborating evidence is not a requirement for the introduction of prior recorded testimony under rule 68(3) of the Rules. Nonetheless, the Chamber notes that P-2931's and P-2105's accounts are consistent in

³⁶ [Third Rule 68\(3\) Request](#), para. 38.

³⁷ [Third Rule 68\(3\) Request](#), paras 30, 39. Specifically, P-0547, P-1743 and P-3056.

³⁸ [Response](#), para. 148.

³⁹ [Response](#), para. 148.

⁴⁰ [Response](#), para. 149.

⁴¹ [Response](#), para. 150.

⁴² [Response](#), para. 152.

⁴³ [Response](#), para. 153.

⁴⁴ [Response](#), para. 154.

that both individuals state [REDACTED].⁴⁵ Second, in respect of the Defence's argument that some of P-2931's testimony is based on hearsay, the Chamber finds that this is not of such a nature and degree which would preclude the introduction of the witness's testimony under rule 68(3) of the Rules. Additionally, P-2931 will appear before the Chamber and the Defence will have a reasonable opportunity to question the reliability of his prior recorded testimony.⁴⁶ Third, the Chamber notes that the introduction of P-2931's prior recorded testimony will advance the expeditiousness of the proceedings.

23. Lastly, the Chamber agrees with the Defence that [REDACTED] should not be introduced pursuant to rule 68(3) of the Rules because it is unsigned [REDACTED]. Accordingly, in light of the above, the Chamber grants the Prosecution's request to introduce P-2931's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules, with the exception of [REDACTED].

2. P-0481

24. The Prosecution submits that P-0481 is [REDACTED] who 'reports that he was arrested in June 2013 by Mahamat SALLET and other Seleka elements, on the order of Nourredine ADAM'.⁴⁷ P-0481 describes being detained at the OCRB⁴⁸ together with [REDACTED]⁴⁹ and not being given sufficient water and food.⁵⁰ While at the OCRB, P-0481 heard people being beaten and saw people with their hands tied and lashes on their arms.⁵¹ P-0481 states that he was tied up the entire time he was at the OCRB with the exception of [REDACTED].⁵² At the OCRB, the witness saw the Seleka carrying OCRB prisoners who were tied up in the *arbatachar* method⁵³ who they subsequently stabbed and killed with bayonets.⁵⁴ The witness states that the Seleka killed the

⁴⁵ [REDACTED].

⁴⁶ The accused's right under article 67(1)(e) of the Statute to cross-examine a witness, including to address any issues of credibility or probative value, remains unaffected by the use of rule 68(3) of the Rule.

⁴⁷ [Second Rule 68\(3\) Request](#), para. 10.

⁴⁸ CAR-OTP-2018-0530-R01, at 0539 to 0543, paras 56-86.

⁴⁹ CAR-OTP-2018-0530-R01, at 0539, para. 57; at 0540, paras 62-63.

⁵⁰ CAR-OTP-2018-0530-R01, at 0540, paras 60, 63.

⁵¹ CAR-OTP-2018-0530-R01, at 0542, para. 77.

⁵² CAR-OTP-2018-0530-R01, at 0542, paras 78-80; at 0547, para. 113.

⁵³ CAR-OTP-2018-0530-R01, at 0544, para. 94.

⁵⁴ CAR-OTP-2018-0530-R01, at 0544, para. 95.

prisoners because [REDACTED].⁵⁵ The witness describes his interrogation by Mr Adam about [REDACTED],⁵⁶ [REDACTED].⁵⁷ P-0481 states that the Seleka tortured him by, *inter alia*, beating him as he was tied [REDACTED].⁵⁸ P-0481's prior recorded testimony and associated material is comprised of his witness statement and 12 annexes.⁵⁹

25. The Prosecution requests that the Chamber grant its request to introduce P-0481's prior recorded testimony pursuant to Rule 68(3) because: (i) doing so will advance the expeditiousness of the proceedings, by reducing its examination of P-0481 by three hours;⁶⁰ (ii) P-0481's testimony bears sufficient indicia of reliability;⁶¹ and (iii) its introduction is not prejudicial to the rights of the accused. On this last point, the Prosecution notes that the Defence will have reasonable opportunity to cross-examine the witness and that P-0481's testimony is corroborated by and cumulative of the evidence of four witnesses (three of whom are OCRB victims and one of whom is an insider witness) that the Prosecution plans to call *viva voce*.⁶²

26. First, the Defence submits that P-0481 is the [REDACTED].⁶³ As a result, the Defence argues that it would be contrary to logic to use rule 68(3) to introduce P-0481's prior recorded testimony when such testimony goes to the heart of the allegations against the accused.⁶⁴ Second, the Defence notes that, in asserting that four other witnesses corroborate P-0481's prior recorded testimony, the Prosecution does not articulate how or why they corroborate P-0481's account, and instead leaves it to the Defence and the Chamber to surmise where such corroboration exists.⁶⁵ By way of example, the Defence notes that witnesses P-0547, P-1743, and P-3056 cannot corroborate the events that P-0481 experienced during his detention at the OCRB

⁵⁵ CAR-OTP-2018-0530-R01, at 0544, para. 95.

⁵⁶ CAR-OTP-2018-0530-R01, at 0545 to 0546, paras 101-107.

⁵⁷ CAR-OTP-2018-0530-R01, at 0546, para 107.

⁵⁸ CAR-OTP-2018-0530-R01, at 0546 to 0547, paras 108-110.

⁵⁹ [Second Rule 68\(3\) Request](#), para. 11; Annex A to the Second Request, pp. 2-3.

⁶⁰ [Second Rule 68\(3\) Request](#), para. 20.

⁶¹ [Second Rule 68\(3\) Request](#), para. 21.

⁶² [Second Rule 68\(3\) Request](#), para. 23. Specifically, P-0547, P-1743, P-3056, and P-2504.

⁶³ [Response](#), para. 104.

⁶⁴ [Response](#), para. 104.

⁶⁵ [Response](#), para. 105. Specifically, P-0547, P-1743, P-3056, and P-2504.

because [REDACTED].⁶⁶ With regard to the fourth witness, P-2504, the Defence notes that [REDACTED].⁶⁷ Lastly, the Defence submits that P-0481's [REDACTED] casts doubt on the reliability of his prior recorded testimony as well as his ability [REDACTED].⁶⁸

27. The Chamber is of the view that P-0481 should be called to testify as a full *viva voce* witness. The Chamber observes that P-0481 is the only subject of [REDACTED] the charged crimes whom the Prosecution intends to rely on as a witness [REDACTED]. Indeed, the Chamber notes that corroborating evidence is not a requirement for the introduction of prior recorded testimony under rule 68(3) of the Rules and recalls that rule 68(3) of the Rules does not preclude the introduction of a witness's testimony when that witness is [REDACTED].⁶⁹ Nonetheless, the Chamber considers that P-0481 appears to be in a position to provide potentially significant evidence and the Chamber finds it appropriate in the current instance to have the witness testify fully *viva voce*. Accordingly, in light of the above, the Chamber rejects the Prosecution's request to introduce P-0481's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

3. P-0349

28. According to the Prosecution, P-0349 [REDACTED].⁷⁰ In his prior recorded testimony, P-0349 refers to the formation of the Seleka coalition⁷¹ and provides information regarding Seleka commanders.⁷² He describes the Seleka attack on Bangui in March 2013 [REDACTED].⁷³ P-0349 details [REDACTED].⁷⁴ [REDACTED].⁷⁵ The witness also describes the Seleka's operations in Boy Rabe⁷⁶ and events at the

⁶⁶ [Response](#), para. 107.

⁶⁷ [Response](#), para. 107.

⁶⁸ [Response](#), para. 108.

⁶⁹ See [Decision on the Prosecution's Sixth Request Pursuant to Rule 68\(2\)\(b\) of the Rules, 21 November 2022, ICC-01/14-01/21-555-Red](#).

⁷⁰ [Seventh Rule 68\(3\) Request](#), para. 13.

⁷¹ CAR-OTP-2075-0812-01, at 0816 to 0818, paras 19-28.

⁷² CAR-OTP-2075-0812-01, at 0816 to 0818, paras 22-28.

⁷³ CAR-OTP-2075-0812-01, at 0820, para. 40.

⁷⁴ CAR-OTP-2075-0812-01, at 0823, para. 56.

⁷⁵ CAR-OTP-2075-0812-01, at 0823, para. 57.

⁷⁶ CAR-OTP-2075-0812-01, at 0828 to 0829, paras 81-87.

CEDAD.⁷⁷ P-0349's prior recorded testimony is comprised of his statement and associated material which consists of one video and four photographs.⁷⁸

29. The Prosecution argues that its request to call P-0349 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-0349 from approximately eight hours to one hour;⁷⁹ (ii) P-0349's testimony bears sufficient indicia of reliability,⁸⁰ particularly noting that his evidence is corroborated 'by other Prosecution witnesses and evidence';⁸¹ and (iii) the introduction of P-0349's testimony is not prejudicial to the rights of the accused,⁸² because the Defence will have sufficient time to prepare and conduct its cross-examination.⁸³

30. The Defence argues that P-0349 must be called to testify *viva voce* before the Chamber because the Prosecution itself submits that, [REDACTED], he will provide evidence that other witnesses cannot.⁸⁴ As a result, the Defence posits that P-0349's testimony goes to the heart of the charges against Mr Said (particularly with regard to the contextual elements relating to crimes against humanity) which justifies submitting the witness to both a direct examination and cross-examination.⁸⁵ Lastly, the Defence notes that, [REDACTED], his prior recorded testimony is not in the form of a *verbatim* transcript, which further reinforces the need for P-0349 to testify fully *viva voce* in order to preserve the equity of the procedure.⁸⁶

31. The Chamber is satisfied that the issues outlined above do not preclude the introduction of P-0349's prior recorded testimony pursuant to rule 68(3) of the Rules. Regarding the lack of a *verbatim* transcript to accompany P-0349's prior recorded

⁷⁷ CAR-OTP-2075-0812-01, at 0823 to 0825, paras 58-62.

⁷⁸ [Seventh Rule 68\(3\) Request](#), para. 15; Annex A to the Seventh Request, p. 8.

⁷⁹ [Seventh Rule 68\(3\) Request](#), para. 28; In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-0349 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would 'require at least 50 hours of court time'.

⁸⁰ [Seventh Rule 68\(3\) Request](#), para. 31.

⁸¹ [Seventh Rule 68\(3\) Request](#), para. 34.

⁸² [Seventh Rule 68\(3\) Request](#), para. 36.

⁸³ [Seventh Rule 68\(3\) Request](#), para. 37.

⁸⁴ [Response](#), para. 186.

⁸⁵ [Response](#), para. 186.

⁸⁶ [Response](#), para. 187.

testimony, the Chamber recalls that it previously ruled on this issue in its First Rule 68(3) Decision⁸⁷ and finds that the Defence will have reasonable opportunity to cross-examine P-0349 on aspects of his prior statement. Additionally, the Chamber notes that the witness [REDACTED] does not provide evidence regarding the accused's specific acts and conduct, but instead offers [REDACTED]. The Chamber also finds that introducing P-0349's prior recorded testimony will reduce the time for the Prosecution's direct examination to one hour, thereby advancing the expeditiousness of the proceedings. Accordingly, in light of the above, the Chamber grants the Prosecution's request to introduce P-0349's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

4. P-2328

32. The Prosecution submits that [REDACTED] and held this position until DJOTODIA's departure from Bangui.⁸⁸ In his prior recorded testimony, P-2328 describes, *inter alia*, the following: (i) the history of conflicts occurring in the CAR dating back to 1978;⁸⁹ (ii) the way in which groups in the CAR evolved into the Anti-Balaka and the way in which the Anti-Balaka was organised;⁹⁰ (iii) Bozizé and his associates going into exile (including how they brought, stored, and distributed weapons during that time);⁹¹ (iv) the structure of the Seleka and [REDACTED];⁹² (v) the structure of the Anti-Balaka in Bangui and the Anti-Balaka's 5 December 2013 attack on the Bangui;⁹³ and (iv) the situation in Bangui following the Anti-Balaka's 5 December 2013 attack and how the Anti-Balaka interacted with the transitional government and the FACA.⁹⁴ The Prosecution submits that 'P-2328's prior recorded testimony includes his statement, transcripts of his testimony in the' case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiïssona* (the 'Yekatom and Ngaiïssona case'), and associated material which 'consists of an annex to his statement

⁸⁷ [First Rule 68\(3\) Decision](#), para. 23.

⁸⁸ [Seventh Rule 68\(3\) Request](#), para. 25.

⁸⁹ CAR-OTP-2099-0165 at 0168 to 0171, paras 14-38.

⁹⁰ CAR-OTP-2099-0165 at 0172 to 0179, paras 39-70.

⁹¹ CAR-OTP-2099-0165 at 0173 to 0174, paras 44-50; at 0179, paras 71-74.

⁹² CAR-OTP-2099-0165 at 0180, para. 79; at 0215 to 0220, paras 258-288.

⁹³ CAR-OTP-2099-0165 at 0179-0182, paras 75-90.

⁹⁴ CAR-OTP-2099-0165 at 0185 to 0188, paras 99-116.

and documents shown to him during his testimony in the *Yekatom and Ngaïssona* case.’⁹⁵

33. The Prosecution argues that its request to call P-2328 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-2328 from approximately eight hours to two hours;⁹⁶ (ii) P-2328’s testimony bears sufficient indicia of reliability;⁹⁷ and (iii) the introduction of P-2328’s testimony is not prejudicial to the rights of the accused,⁹⁸ because the Defence will have sufficient time to prepare and conduct its cross-examination.⁹⁹

34. The Defence objects to the introduction of P-2328’s prior recorded testimony. In particular, the Defence argues that introducing the prior recorded testimony and the transcript of P-2328’s in-court testimony in the *Yekatom and Ngaïssona* case would lead to an incomprehensible puzzle comprised of P-2328’s prior recorded statement, his testimony in the *Yekatom and Ngaïssona* case, and his eventual testimony before the Chamber in the present matter.¹⁰⁰ The Defence questions how such an exercise would contribute to the clarity, effectiveness, and expeditiousness of the proceedings if the Defence is to revisit all of the witness’s statements and adds that neither the Chamber nor the parties will be in a position to make easy use of such testimony or understand how to afford it proper weight.¹⁰¹ Lastly, the Defence argues that P-2328’s prior recorded testimony contains many instances of hearsay.¹⁰² In particular, the

⁹⁵ [Seventh Rule 68\(3\) Request](#), para. 27; Annex A to the Seventh Rule 68(3) Request, pp. 25-26.

⁹⁶ [Seventh Rule 68\(3\) Request](#), para. 29; In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-2328 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would ‘require at least 50 hours of court time’.

⁹⁷ [Seventh Rule 68\(3\) Request](#), para. 31; The Prosecution notes that P-2328, like four other witnesses subject to this Decision (P-2232, P-0884, P-2251 and P-0291) already confirmed the accuracy of his statement and interview transcripts under oath in the *Yekatom and Ngaïssona* case. Additionally, the Prosecution submits that P-2328’s evidence, like that of five other witnesses subject to this Decision (P-0349, P-2232, P-0884, P-2251 and P-0291) is corroborated by other Prosecution witnesses and evidence, and that these six witnesses differentiate between information they have direct knowledge on and information they acquired from other sources (See [Seventh Rule 68\(3\) Request](#), paras 32-37).

⁹⁸ [Seventh Rule 68\(3\) Request](#), para. 36.

⁹⁹ [Seventh Rule 68\(3\) Request](#), para. 37.

¹⁰⁰ [Response](#), para. 188.

¹⁰¹ [Response](#), para. 193.

¹⁰² [Response](#), para. 201.

Defence notes what it perceives as a lack of an effort by the Prosecution to have the witness provide clarifications regarding the sources of the information he provided which, as a result, calls into question his testimony's reliability.¹⁰³

35. The Chamber is satisfied that the issues identified by the Defence do not preclude the introduction of P-2328's prior recorded testimony pursuant to rule 68(3) of the Rules. First, the Chamber notes that the evidence P-2328 provides does not specifically relate to the OCRB, the acts of the accused, or the events that are the subject of the present case. As a result, the Chamber considers, together with the factors described below, that it would not be prejudicial to the accused to introduce P-2328's testimony under rule 68(3) of the Rules. Second, allowing P-2328's testimony under rule 68(3) would promote the expeditiousness of the proceedings by shortening the Prosecution's examination from approximately eight hours to two hours. Third, in respect of the Defence's argument that some of P-2328's testimony is based on hearsay, the Chamber does not find these instances to be of such a nature and degree which would preclude the introduction of the witness's testimony under rule 68(3) of the Rules. The Chamber also recalls that P-2328 will appear before the Chamber and that the Defence will have a reasonable opportunity to question the reliability of his testimony. Accordingly, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-2328's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

5. *P-0834*

36. According to the Prosecution, 'P-0834 is a civilian who describes the disarmament operation in [REDACTED].¹⁰⁴ [REDACTED].¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED].¹⁰⁷ [REDACTED].¹⁰⁸ [REDACTED].¹⁰⁹ [REDACTED].¹¹⁰

¹⁰³ [Response](#), para. 202.

¹⁰⁴ [Fifth Rule 68\(3\) Request](#), para. 9.

¹⁰⁵ CAR-OTP-2048-0310-R01, at 0315, paras 25-29.

¹⁰⁶ CAR-OTP-2048-0310-R01, at 0315, para. 30.

¹⁰⁷ CAR-OTP-2048-0310-R01, at 0316, paras 32-33, 37.

¹⁰⁸ CAR-OTP-2048-0310-R01, at 0316, paras 35-37.

¹⁰⁹ CAR-OTP-2048-0310-R01, at 0316 to 0317, para. 37.

¹¹⁰ CAR-OTP-2048-0310-R01, at 0317, paras 40, 42.

[REDACTED].¹¹¹ [REDACTED].¹¹² [REDACTED].¹¹³ [REDACTED]¹¹⁴ and learning from a [REDACTED]¹¹⁵ [REDACTED].¹¹⁶ [REDACTED].¹¹⁷ Last, the witness states that [REDACTED] told him that [REDACTED] had witnessed a Seleka massacre of bus passengers coming from PK9 during a road check after finding a bag with T-shirts exhibiting Bozizé's image.¹¹⁸ P-0834's prior recorded testimony is comprised of two statements and four annexes.¹¹⁹

37. The Prosecution argues that its request to call P-0834 as a witness under rule 68(3) of the Rules should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-0834 from four hours to one hour;¹²⁰ (ii) P-0834's testimony bears sufficient indicia of reliability;¹²¹ (iii) P-0834 is a vulnerable witness;¹²² and (iv) the witness's testimony is not prejudicial to the rights of the accused.¹²³ With regard to witness's vulnerability, the Prosecution notes [REDACTED].¹²⁴ Due to the violent events the witness describes and his level of vulnerability, the Prosecution submits that P-0834's testimony raises a higher risk of re-traumatisation¹²⁵ and that having the witness testify fully *viva voce* would only cause him additional burden and may trigger intense emotions.¹²⁶ The Prosecution therefore argues that having the witness testify under rule 68(3) of the Rules is 'the appropriate measure to mitigate these factors'.¹²⁷ Additionally, the Prosecution submits that the Defence will have reasonable opportunity to cross-examine P-0834 and that his evidence on the events in [REDACTED] 'does not relate to issues that are likely to be

¹¹¹ CAR-OTP-2048-0310-R01, at 0318, para. 47.

¹¹² CAR-OTP-2048-0310-R01, at 0318, para. 49.

¹¹³ CAR-OTP-2048-0310-R01, at 0319, para. 54.

¹¹⁴ CAR-OTP-2048-0310-R01, at 0319, para. 50.

¹¹⁵ CAR-OTP-2048-0310-R01, at 0318, para. 44.

¹¹⁶ CAR-OTP-2048-0310-R01, at 0319, para. 51.

¹¹⁷ CAR-OTP-2048-0310-R01, at 0320 to 0321, paras 62, 64.

¹¹⁸ CAR-OTP-2048-0310-R01, at 0319, para. 55.

¹¹⁹ [Fifth Rule 68\(3\) Request](#), para. 13; Annex A to the Fifth Rule 68(3) Request, p. 2.

¹²⁰ [Fifth Rule 68\(3\) Request](#), para. 14.

¹²¹ [Fifth Rule 68\(3\) Request](#), para. 15.

¹²² [Fifth Rule 68\(3\) Request](#), para. 16.

¹²³ [Fifth Rule 68\(3\) Request](#), para. 18.

¹²⁴ [Fifth Rule 68\(3\) Request](#), para. 16.

¹²⁵ [Fifth Rule 68\(3\) Request](#), para. 16.

¹²⁶ [Fifth Rule 68\(3\) Request](#), para. 16.

¹²⁷ [Fifth Rule 68\(3\) Request](#), para. 17.

materially in dispute and is primarily relevant for the contextual elements.’¹²⁸ Lastly, the Prosecution submits that P-0834’s evidence is corroborated by and cumulative to multiple Prosecution witnesses, two of whom will testify *viva voce*.¹²⁹

38. The Defence objects to the introduction of P-0834’s prior recorded testimony pursuant to rule 68(3) of the Rules. First, the Defence disagrees with the Prosecution’s assertion that P-0834’s testimony is corroborated by and cumulative to the evidence of other witnesses because the Prosecution does not explain how the testimony of such witnesses actually corroborates P-0834’s account.¹³⁰ The Defence adds that while the witnesses the Prosecution identified as being corroborative of P-0834’s testimony all refer to events relating to [REDACTED], none actually mention P-0834 and P-0834 himself does not specifically describe who would have witnessed the events [REDACTED].¹³¹ The Defence also argues that P-0834 is not in a position to provide evidence regarding [REDACTED] or regarding the PK9 Minibus Incident because his statements are based on hearsay.¹³²

39. The Chamber is of the view that P-0834’s prior recorded testimony may be introduced pursuant to rule 68(3) of the Rules. First, the Chamber does not find that the introduction of such testimony would be inconsistent with or prejudicial to the rights of the accused for reasons herein stated. With regard to the hearsay portions of P-0834’s testimony alleged by the Defence, the Chamber does not consider the extent of the hearsay to rise to such a level so as to preclude the introduction of his evidence under rule 68(3) of the Rules. Furthermore, the Chamber considers that having the witness testify orally will not alter the hearsay nature of the evidence. Second, the Chamber is of the view that introducing P-0834’s testimony under rule 68(3) of the Rules would promote the expeditiousness of the proceedings by shortening the Prosecution’s examination to one hour and would assist in preventing the potential re-traumatisation of the witness. Therefore, in light of the witness’s individual circumstances as well as the factors laid out above, the Chamber grants the Prosecution’s request to introduce P-

¹²⁸ [Fifth Rule 68\(3\) Request](#), para. 19.

¹²⁹ [Fifth Rule 68\(3\) Request](#), para. 19.

¹³⁰ [Response](#), para. 172.

¹³¹ [Response](#), para. 172.

¹³² [Response](#), para. 173.

0834's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

6. *P-2573*

40. The Prosecution submits that P-2573 is '[REDACTED] who provides information about the Seleka's attack' on the passengers of a minibus in PK9 'on or around 13 July 2013'.¹³³ In his prior recorded testimony, P-2573 describes [REDACTED].¹³⁴ [REDACTED]¹³⁵ [REDACTED]¹³⁶ [REDACTED].¹³⁷ While at the PK9 checkpoint, P-2573 saw six or eight men being arrested and tied up on the floor of the checkpoint, and later learned [REDACTED] that the men were arrested because two of them were wearing Bozizé T-shirts.¹³⁸ One of the detainees told the witness that [REDACTED] was looking for Bozizé's men so that he could kill them.¹³⁹ The witness recounts seeing [REDACTED] prisoners who were tied up in the *arbatachar* method [REDACTED]¹⁴⁰ and later saw [REDACTED] the prisoners, whose hands were tied [REDACTED].¹⁴¹ P-2573 then witnessed [REDACTED] place bags over the prisoners' heads and push them into the river [REDACTED]¹⁴² and recalls seeing dead bodies in the river the following day.¹⁴³ P-2573's prior recorded testimony is comprised of his statement and associated material which the witness commented on to indicate various locations.¹⁴⁴

41. The Prosecution argues that its request to call P-2573 as a witness under rule 68(3) of the Rules should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-2573 from six hours to one hour;¹⁴⁵ (ii) P-2573's testimony bears sufficient indicia of reliability;¹⁴⁶ and (iii) the witness's

¹³³ [First Rule 68\(3\) Request](#), para. 14.

¹³⁴ CAR-OTP-2119-0532-R02, at 0535 to 0536, paras 17-25.

¹³⁵ CAR-OTP-2119-0532-R02, at 0540, paras 36-37; at 0541 to 0543, paras 41-45.

¹³⁶ CAR-OTP-2119-0532-R02, at 0543, paras 46-48.

¹³⁷ CAR-OTP-2119-0532-R02, at 0546, paras 57-58.

¹³⁸ CAR-OTP-2119-0532-R02, at 0547, para. 64.

¹³⁹ CAR-OTP-2119-0532-R02, at 0548, para. 66.

¹⁴⁰ CAR-OTP-2119-0532-R02, at 0548, para. 66.

¹⁴¹ CAR-OTP-2119-0532-R02, at 0548 to 0549, paras 67-70.

¹⁴² CAR-OTP-2119-0532-R02, at 0549, para. 71.

¹⁴³ CAR-OTP-2119-0532-R02, at 0550, para. 75.

¹⁴⁴ [First Rule 68\(3\) Request](#), para. 1, n. 1; Annex A to the First Rule 68(3) Request, p. 2.

¹⁴⁵ [First Rule 68\(3\) Request](#), para. 18.

¹⁴⁶ [First Rule 68\(3\) Request](#), para. 19.

testimony is not prejudicial to the rights of the accused.¹⁴⁷ As regards the reliability of P-2573's prior recorded testimony, the Prosecution submits that the witness provides a reasonable explanation for why he was 'more detailed and forthcoming' in his statement than his initial screening. Furthermore, the Prosecution submits that the witness's evidence is corroborated and that he differentiates between information stemming from his direct knowledge and information he learned from other sources.¹⁴⁸ The Prosecution notes that P-2573's insider position does not *per se* bar the introduction of his evidence by way of rule 68(3).¹⁴⁹ As other factors in favour of introducing the witness's prior recorded testimony via rule 68(3), the Prosecution submits that: (i) P-2573's evidence on the PK9 minibus incident and [REDACTED] 'does not relate to issues that are likely to be materially in dispute'; (ii) P-2573's evidence is only 'relevant to the contextual elements' and corroborative of other evidence; and (iii) introduction through rule 68(3) 'may help to prevent re-traumatisation of the witness [REDACTED]'.¹⁵⁰

42. The Defence objects to the introduction of P-2573's prior recorded testimony under rule 68(3) of the Rules. First, the Defence submits that P-2573 did not personally witness the PK9 minibus incident and that the four witnesses whom the Prosecution alleges corroborate P-2573's testimony regarding the incident do not in fact corroborate the witness's account.¹⁵¹ The Defence supports its position by highlighting that three of the witnesses who allegedly corroborate P-2573's account of the PK9 minibus incident did not in fact witness the incident themselves (for example, P-0491 who, per the Defence, learned of the incident from P-0529 and P-0529 who allegedly heard the story from another witness), and the fourth witness (P-1808) is unable to [REDACTED].¹⁵² Second, regarding [REDACTED], the Defence argues that a large part of P-2573's testimony is based on hearsay and that none of the witnesses referred to by the Prosecution [REDACTED], which therefore does not corroborate P-2573's

¹⁴⁷ [First Rule 68\(3\) Request](#), para. 21.

¹⁴⁸ [First Rule 68\(3\) Request](#), para. 20.

¹⁴⁹ [First Rule 68\(3\) Request](#), para. 21.

¹⁵⁰ [First Rule 68\(3\) Request](#), para. 23.

¹⁵¹ [Response](#), paras 91, 93.

¹⁵² [Response](#), para. 93.

testimony.¹⁵³ Lastly, the Defence notes that P-2573 [REDACTED], which could impact his credibility.¹⁵⁴

43. The Chamber is of the view that P-2573 should be called to testify as a full *viva voce* witness. While the fact that a witness may be [REDACTED] whose prior recorded testimony relates to the charges against the accused does not in and of itself bar the introduction of his or her prior recorded testimony pursuant to rule 68(3) of the Rules, for reasons specific to P-2573 the Chamber finds that he must be called as a *viva voce* witness. The Chamber notes that P-2573 provides significant information regarding the [REDACTED] and the alleged PK9 minibus attack, including [REDACTED]. Therefore, the Chamber is of the view that the importance of P-2573's testimony and the existence of certain inconsistencies between his evidence and that of other witnesses, when taken together, are of such a nature and degree so as to require P-2573 to testify as a full *viva voce* witness in order to safeguard the rights of the accused.¹⁵⁵ Consequently, the Chamber finds that it would be prejudicial to the accused to introduce P-2573's prior recorded testimony and associated material under rule 68(3) of the Rules and rejects the Prosecution's request.

7. P-2232

44. According to the Prosecution, [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷ In the Prosecution's submission, the witness's prior recorded testimony describes a number of events and activities pertaining to the Anti-Balaka's organization, *inter alia*: (i) the exile of Bozizé and his close associates to Cameroon after the Seleka's takeover of Bangui in late March 2013;¹⁵⁸ (ii) [REDACTED] initiation of Anti-Balaka activities [REDACTED];¹⁵⁹ (iii) [REDACTED] coordination of Anti-Balaka [REDACTED] and

¹⁵³ [Response](#), paras 95-97.

¹⁵⁴ [Response](#), para. 99.

¹⁵⁵ [Decision on the Prosecution's First, Second and Fourth Requests Pursuant to Rule 68\(2\)\(b\) of the Rules, filed on 20 October 2022 \(ICC-01/14-01/21-507-Conf\)](#), 21 October 2022, ICC-01/14-01/21-507-Red, paras 110-111, 131.

¹⁵⁶ [Seventh Rule 68\(3\) Request](#), para. 19.

¹⁵⁷ [First Rule 68\(3\) Request](#), para. 20.

¹⁵⁷ [Seventh Rule 68\(3\) Request](#), para. 19.

¹⁵⁸ [Seventh Rule 68\(3\) Request](#), para. 20.

¹⁵⁹ [Seventh Rule 68\(3\) Request](#), para. 20; CAR-OTP-2100-2569-R01, at 2573, paras 15-19.

the oversight and provision of tactics [REDACTED];¹⁶⁰ (iv) the coordination of Anti-Balaka activities in Cameroon [REDACTED];¹⁶¹ (v) the provision [REDACTED] of weapons, ammunitions, food, and money to the Anti-Balaka [REDACTED];¹⁶² and (vi) the Anti-Balaka's aim of re-installing Bozizé in power.¹⁶³

45. The Prosecution argues that its request to call P-2232 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-2232 from approximately eight hours to one hour;¹⁶⁴ (ii) P-2232's testimony bears sufficient indicia of reliability;¹⁶⁵ and (iii) the introduction of P-2232's testimony is not prejudicial to the rights of the accused,¹⁶⁶ because the Defence will have sufficient time to prepare and conduct its cross-examination.¹⁶⁷

46. The Defence objects to the introduction of P-2232's prior recorded testimony. As discussed previously, the Defence submits that introducing the prior recorded testimony and the transcript of P-2232's in-court testimony in the *Yekatom and Ngaiissona* case would lead to an incomprehensible puzzle comprised of P-2232's prior recorded statement, his testimony in the *Yekatom and Ngaiissona* case, and his eventual testimony before the Chamber in the present matter.¹⁶⁸ The Defence questions how such an exercise would contribute to the clarity, effectiveness, and expeditiousness of the proceedings if the Defence is to revisit all of the witness's statements and adds that neither the Chamber nor the parties will be in a position to make easy use of such testimony or understand how to afford it proper weight.¹⁶⁹

¹⁶⁰ [Seventh Rule 68\(3\) Request](#), para. 20; CAR-OTP-2090-0561-R01, at 0574 to 0575, paras 87-90.

¹⁶¹ [Seventh Rule 68\(3\) Request](#), para. 20.

¹⁶² [Seventh Rule 68\(3\) Request](#), para. 20.

¹⁶³ [Seventh Rule 68\(3\) Request](#), para. 20.

¹⁶⁴ [Seventh Rule 68\(3\) Request](#), para. 28. In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-2232 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would 'require at least 50 hours of court time'.

¹⁶⁵ [Seventh Rule 68\(3\) Request](#), para. 31.

¹⁶⁶ [Seventh Rule 68\(3\) Request](#), para. 36.

¹⁶⁷ [Seventh Rule 68\(3\) Request](#), para. 37.

¹⁶⁸ [Response](#), para. 188.

¹⁶⁹ [Response](#), para. 193.

47. Additionally, the Defence highlights what it argues are inconsistencies between the Prosecution's description of P-2232's testimony and P-2232's prior in-court testimony in the *Yekatom and Ngaïssona* case. For example, the Defence notes that the Prosecution submits that the witness's prior recorded testimony states that, while in [REDACTED], P-2232 [REDACTED].¹⁷⁰ The Defence then refers to P-2232's in-court testimony in *Yekatom and Ngaïssona* wherein the witness provides a different account by stating [REDACTED].¹⁷¹ The Defence also points to alleged inconsistencies between P-2232's testimony and that of [REDACTED], referring to, *inter alia*, P-0966's [REDACTED].¹⁷² Lastly, the Defence argues that P-2232's prior recorded testimony contains numerous instances of hearsay.¹⁷³

48. The Chamber is satisfied that the issues identified by the Defence do not preclude the introduction of P-2232's prior recorded testimony pursuant to rule 68(3) of the Rules. First, allowing P-2232's testimony under rule 68(3) would promote the expeditiousness of the proceedings by shortening the Prosecution's examination from approximately eight hours to one hour. Second, in respect of the alleged inconsistencies between P-2232's testimony and his in-court testimony in *Yekatom and Ngaïssona* as well as those between P-2232's testimony and that of [REDACTED], the Chamber does not consider the issues pointed out by the Defence to be so significant so as to require P-2232 to testify fully *viva voce* in order to safeguard the rights of the accused. In this regard, the Chamber observes that the Defence will be able to cross-examine P-2232 on issues relating to his prior recorded testimony. Further, the Chamber notes that the fact that one witness may comment on a specific issue or topic (such as [REDACTED] in the example provided by the Defence) and another witness fails to mention that same topic does not in and of itself mean that the witnesses are inconsistent. The Chamber therefore finds that the inconsistencies and instances of hearsay as alleged by the Defence are not of such a nature and degree which would preclude the introduction of the witness's testimony under rule 68(3) of the Rules. Accordingly, in light of the

¹⁷⁰ [Response](#), para. 188; *see* [Seventh Rule 68\(3\) Request](#), para. 19.

¹⁷¹ [Response](#), para. 195.

¹⁷² [Response](#), para. 196.

¹⁷³ [Response](#), para. 197.

foregoing, the Chamber grants the Prosecution's request to introduce P-2232's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

8. *P-0884*

49. The Prosecution submits that P-0884 [REDACTED].¹⁷⁴ P-0884's evidence discusses: (i) the creation and advancement of the Seleka to Bangui;¹⁷⁵ (ii) the activities of the Anti-Balaka,¹⁷⁶ including the 5 December 2013 attack¹⁷⁷ and the Anti-Balaka's objective of removing President Djotodia from power;¹⁷⁸ and (iii) briefly, the Seleka's targeting of civilians because they were perceived to be Bozizé's supporters.¹⁷⁹ P-0884's prior recorded testimony consists of his interview transcripts, transcripts of his oral testimony in the *Yekatom and Ngaiissona* case, and associated material, including annexes to his interviews and other relevant documents discussed during his oral testimony in the *Yekatom and Ngaiissona* case.¹⁸⁰

50. The Prosecution argues that its request to call P-0884 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-0884 from approximately eight hours to one hour;¹⁸¹ (ii) P-0884's testimony bears sufficient indicia of reliability;¹⁸² and (iii) the introduction of P-0884's testimony is not prejudicial to the rights of the accused,¹⁸³ because the Defence will have sufficient time to prepare and conduct its cross-examination.¹⁸⁴

51. The Defence objects to the Prosecution's request to admit P-0884's prior recorded testimony under rule 68(3) of the Rules. In particular, the Defence argues that, contrary

¹⁷⁴ [Seventh Rule 68\(3\) Request](#), para. 16.

¹⁷⁵ CAR-OTP-2072-1356 at 1372-1373, line 536-599; CAR-OTP-2072-1541 at 1546-1547, line 169-184; at 1574-1575, line 1120-1166; ICC-01/14-01/18-T-054-CONF-ENG ET, pp. 21-26, 32-33.

¹⁷⁶ [Seventh Rule 68\(3\) Request](#), para. 17.

¹⁷⁷ CAR-OTP-2072-1541 at 1558-1559, 1569-1570.

¹⁷⁸ CAR-OTP-2072-1541 at 1576; CAR-OTP-2080-1678 at 1681-1684.

¹⁷⁹ CAR-OTP-2072-1913 at 1946-19478; ICC-01/14-01/18-T-054-CONF-ENG ET, pp. 26, 40.

¹⁸⁰ [Seventh Rule 68\(3\) Request](#), para. 18.

¹⁸¹ [Seventh Rule 68\(3\) Request](#), para. 28. In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-0884 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would 'require at least 50 hours of court time'.

¹⁸² [Seventh Rule 68\(3\) Request](#), para. 31.

¹⁸³ [Seventh Rule 68\(3\) Request](#), para. 36.

¹⁸⁴ [Seventh Rule 68\(3\) Request](#), para. 37.

to the Prosecution's assertion, P-0884's testimony is not in fact corroborated by P-0966.¹⁸⁵ The Defence notes that the Prosecution refers to P-0884 as [REDACTED] who also provides 'information about the Anti-Balaka activities in [REDACTED].'¹⁸⁶ Regarding P-0966, the Defence states that [REDACTED], and therefore could not corroborate accounts of an event to which he was not a direct witness.¹⁸⁷ On the part of P-0884, the Defence argues that the witness is not able to provide precise information regarding the 5 December 2013 attack, [REDACTED].¹⁸⁸ Further, the Defence argues that P-0884 is unable to provide the slightest relevant information regarding [REDACTED].¹⁸⁹

52. The Chamber is of the view that P-0884's prior recorded testimony may be introduced pursuant to rule 68(3) of the Rules. First, allowing P-0884's testimony under rule 68(3) would promote the expeditiousness of the proceedings by shortening the Prosecution's examination of P-0884 to one hour. Second, in respect of the Defence's argument that P-0884's testimony is not corroborated by that of other witnesses or that portions of his statements appear to be based on hearsay, the Chamber notes that corroborating evidence is not a requirement for the introduction of prior recorded testimony under rule 68(3) of the Rules and does not find the instances of hearsay alleged by the Defence to be of such a nature and degree which would preclude the introduction of the witness's testimony under rule 68(3) of the Rules. Additionally, the Chamber notes that P-0884 will appear before the Chamber and the Defence will have a reasonable opportunity to cross-examine the witness. Accordingly, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-0884's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

9. *P-2251*

53. According to the Prosecution, P-2251 joined the Anti-Balaka [REDACTED].¹⁹⁰ The witness recalls [REDACTED]¹⁹¹ and discusses the formation of the Anti-Balaka

¹⁸⁵ [Response](#), para. 194.

¹⁸⁶ [Response](#), para. 194.

¹⁸⁷ [Response](#), para. 194.

¹⁸⁸ [Response](#), para. 194.

¹⁸⁹ [Response](#), para. 194.

¹⁹⁰ [Seventh Rule 68\(3\) Request](#), para. 22.

¹⁹¹ CAR-OTP-2093-0045-R02, at 0048, paras 14-16.

group [REDACTED]¹⁹² and how Anti-Balaka leaders organised in Ngobere.¹⁹³ The witness describes the Anti-Balaka attacks on the Seleka in Bossangoa,¹⁹⁴ [REDACTED],¹⁹⁵ [REDACTED],¹⁹⁶ [REDACTED],¹⁹⁷ and [REDACTED].¹⁹⁸ He further details the ways in which the Anti-Balaka prepared for the 5 December 2013 attack on Bangui¹⁹⁹ and [REDACTED].²⁰⁰ P-2251's prior recorded testimony is comprised of his statement and transcripts of his oral testimony in the *Yekatom and Ngaïssona* case, as well as associated material and annexes.²⁰¹

54. The Prosecution argues that its request to call P-2251 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the proceedings, by reducing its examination of P-2251 from approximately eight hours to one hour;²⁰² (ii) P-2251's testimony bears sufficient indicia of reliability;²⁰³ and (iii) the introduction of P-2251's testimony is not prejudicial to the rights of the accused,²⁰⁴ because the Defence will have sufficient time to prepare and conduct its cross-examination.²⁰⁵ Additionally, the Prosecution points out that Trial Chamber V in the *Yekatom and Ngaïssona* case accepted the introduction of P-2551's statement pursuant to rule 68(3) as requested by the Prosecution in that case.²⁰⁶

55. The Defence objects to the introduction of P-2251's prior recorded testimony. As discussed previously in the present decision, the Defence submits that introducing the prior recorded testimony and the transcript of witnesses' in-court testimony in the

¹⁹² CAR-OTP-2093-0045-R02, at 0048 to 0051, paras 16-18, 22, 30-33, 39.

¹⁹³ CAR-OTP-2093-0045-R02, at 0050 to 0051, paras 34-37.

¹⁹⁴ CAR-OTP-2093-0045-R02, at 0052 to 0053, paras 44-52.

¹⁹⁵ CAR-OTP-2093-0045-R02, at 0053 to 0055, paras 53-57.

¹⁹⁶ CAR-OTP-2093-0045-R02, at 0054, para. 58.

¹⁹⁷ CAR-OTP-2093-0045-R02, at 0054, paras 58-59.

¹⁹⁸ CAR-OTP-2093-0045-R02, at 0055 to 0056, paras 60-70.

¹⁹⁹ CAR-OTP-2093-0045-R02, at 0058 to 0059, paras 84-89.

²⁰⁰ CAR-OTP-2093-0045-R02, at 0059 to 0061, paras 90-101.

²⁰¹ [Seventh Rule 68\(3\) Request](#), para. 24; Annex A to the Seventh Rule 68(3) Request, pp. 22-23.

²⁰² [Seventh Rule 68\(3\) Request](#), para. 28. In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-2251 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would 'require at least 50 hours of court time'.

²⁰³ [Seventh Rule 68\(3\) Request](#), para. 31.

²⁰⁴ [Seventh Rule 68\(3\) Request](#), para. 36.

²⁰⁵ [Seventh Rule 68\(3\) Request](#), para. 37.

²⁰⁶ [Seventh Rule 68\(3\) Request](#), para. 32.

Yekatom and Ngaïssona case would lead to an incomprehensible puzzle comprised of the witnesses' prior recorded statement, testimony in the *Yekatom and Ngaïssona* case, and their eventual testimony before the Chamber in the present matter.²⁰⁷ The Defence questions how such an exercise would contribute to the clarity, effectiveness, and expeditiousness of the proceedings if the Defence is to revisit all of the witnesses' statements. The Defence argues that such an approach will leave neither the Chamber nor the parties in a position to make easy use of such testimony or understand how to afford it proper weight.²⁰⁸

56. Specifically with regard to P-2251, the Defence argues that the Prosecution's request asserts that P-2251's evidence provides information on the activities and chiefs of the Anti-Balaka group in Gobere but that, in reality, the witness only offers a confused account of events that took place in Gobere.²⁰⁹ In particular, the Defence argues that the witness is unsure of [REDACTED] and that the witness's description [REDACTED] is unclear as well as inconsistent with [REDACTED] (P-0966) [REDACTED]²¹⁰ The Defence also argues that P-2251's prior recorded testimony is not corroborated, pointing out that P-2251 mentions that [REDACTED] but that P-0966's testimony did not mention the same event.²¹¹ Lastly, the Defence submits that P-2251's prior recorded testimony contains numerous instances of hearsay.²¹²

57. The Chamber is satisfied that the issues identified by the Defence do not preclude the introduction of P-2251's prior recorded testimony pursuant to rule 68(3) of the Rules. First, allowing P-2251's testimony under rule 68(3) would promote the expeditiousness of the proceedings by shortening the Prosecution's examination from approximately eight hours to one hour. Second, in respect of the alleged inconsistencies between P-2251's testimony and that of [REDACTED], the Chamber does not consider the issues pointed out by the Defence to be of such a nature and degree that would warrant calling P-2251 to testify *viva voce* in order to safeguard the rights of the accused. In this regard, the Chamber observes that the Defence will be able to cross-

²⁰⁷ [Response](#), para. 188.

²⁰⁸ [Response](#), para. 193.

²⁰⁹ [Response](#), para. 198.

²¹⁰ [Response](#), para. 198.

²¹¹ [Response](#), para. 199.

²¹² [Response](#), para. 200.

examine P-2251 on issues relating to his prior recorded testimony. Accordingly, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-2251's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

10. P-0291

58. According to the Prosecution, P-0291 was [REDACTED].²¹³ P-0291 provides information regarding the following: (i) the electoral system and policies under Bozizé's government;²¹⁴ (ii) members of Bozizé's government;²¹⁵ and (iii) the conditions the witness believes led to the formation of the Seleka coalition in the CAR and the ensuing violence.²¹⁶ The witness also describes the [REDACTED] Libreville ceasefire agreement as well as the agreement's ramifications²¹⁷ and the Seleka attack on Bangui in March 2013.²¹⁸ Additionally, P-0291 provides information on the Seleka's administration of the CAR from March 2013 to January 2014²¹⁹ and crimes allegedly committed by the Seleka during that period.²²⁰ The witness also describes the structure of the Seleka²²¹ and the Anti-Balaka.²²² In the *Yekatom and Ngaïssona* case, P-0291 testified, *inter alia*, about [REDACTED] the National Security Council meetings of the Seleka government.²²³ P-0291's prior recorded testimony consists of his witness statement, transcripts of his oral testimony in the case of *Yekatom and Ngaïssona*, and associated material, including annexes to his statement and relevant items discussed during his oral testimony in the *Yekatom and Ngaïssona* case.²²⁴

59. The Prosecution argues that its request to call P-0291 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the

²¹³ [Seventh Rule 68\(3\) Request](#), para. 11.

²¹⁴ CAR-OTP-2034-0104-R01, at 0108 to 0109, paras 11-21.

²¹⁵ CAR-OTP-2034-0104-R01, at 0111 to 0112, paras 30-41.

²¹⁶ CAR-OTP-2034-0104-R01, at 0110, paras 22-26.

²¹⁷ CAR-OTP-2034-0104-R01, at 0113 to 0115, paras 53-65.

²¹⁸ CAR-OTP-2034-0104-R01, at 0115 to 0116, paras 66-70.

²¹⁹ CAR-OTP-2034-0104-R01, at 0116 to 0119, paras 71-99.

²²⁰ CAR-OTP-2034-0104-R01, at 0118 to 0119, paras 89-90, 94-99.

²²¹ CAR-OTP-2034-0104-R01, at 0120 to 0121, paras 100-110.

²²² CAR-OTP-2034-0104-R01, at 0122 to 0123, paras 116-123.

²²³ Transcript of hearing, 12 July 2021, ICC-01/14-01/18-T-051-CONF-ENG, p. 39, line 4 to p. 42, line 19.

²²⁴ [Seventh Rule 68\(3\) Request](#), para. 12.

proceedings, by reducing its examination of P-0291 to two hours;²²⁵ (ii) P-0291's testimony bears sufficient indicia of reliability;²²⁶ and (iii) the introduction of P-0291's testimony is not prejudicial to the rights of the accused,²²⁷ because the Defence will have sufficient time to prepare and conduct its cross-examination.²²⁸ Additionally, the Prosecution points out that Trial Chamber V in the *Yekatom and Ngaïssona* case accepted the introduction of P-0291's statement pursuant to Rule 68(3) as requested by the Prosecution in that case.²²⁹

60. The Defence notes the Prosecution's assertion that P-0291 will be able to provide information that no other witness is able to offer with regard to the heart of the charges, particularly the contextual elements of the crimes against humanity.²³⁰ Accordingly, the Defence argues that P-0291 must be called to provide testimony as a full *viva voce* witness.²³¹ The Defence also argues that introducing the prior recorded testimony and the transcript of P-0291's in-court testimony in the *Yekatom and Ngaïssona* case (as well as that of the three other witnesses that are the subject of this decision and who also testified in that case) would not meaningfully contribute to procedural clarity, effectiveness, and expeditiousness.²³² In this regard, the Defence submits that in addition to having to analyse both the prior recorded testimony of such witnesses as well as the contents of their testimony in *Yekatom and Ngaïssona*, the Chamber as well as the parties will not be able to make easy use of the overall testimony available or afford the different testimony proper weight.²³³

61. The Chamber is satisfied that the issues identified by the Defence do not preclude the introduction of P-0291's prior recorded testimony pursuant to rule 68(3) of the Rules. First, allowing P-0291's testimony under rule 68(3) would promote the

²²⁵ [Seventh Rule 68\(3\) Request](#), para. 29. In its Request, the Prosecution does not provide an estimate for the expected time of testimony for P-0291 full *viva voce* testimony. However, it submits that, together with five other witnesses, the combined time of examination would 'require at least 50 hours of court time'.

²²⁶ [Seventh Rule 68\(3\) Request](#), para. 31.

²²⁷ [Seventh Rule 68\(3\) Request](#), para. 36.

²²⁸ [Seventh Rule 68\(3\) Request](#), para. 37.

²²⁹ [Seventh Rule 68\(3\) Request](#), para. 32.

²³⁰ [Response](#), para. 186.

²³¹ [Response](#), para. 186.

²³² [Response](#), para. 193.

²³³ [Response](#), para. 193.

expeditiousness of the proceedings by shortening the Prosecution's examination from approximately eight hours to two hours. Second, in respect of the Defence's argument that P-0291 will provide unique evidence in this case (particularly with regard to the contextual elements of crimes against humanity), the Chamber does not find this argument convincing and notes that P-0291 will appear before the Chamber during which time the Defence will have a reasonable opportunity to question the witness on issues it deems pertinent. Additionally, the Chamber notes that, similarly to witnesses P-0349 and P-2328, this witness does not provide evidence regarding the OCRB, the accused's specific acts and conduct, or the crimes charged in the present case. As a result, the Chamber considers that it would not be prejudicial to the accused to introduce P-0291's testimony and therefore, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-0291's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS the introduction of the prior recorded testimony and associated materials of P-2931 (with the exception of [REDACTED]), P-0349, P-2328, P-0834, P-2232, P-0884, P-2251 and P-0291;

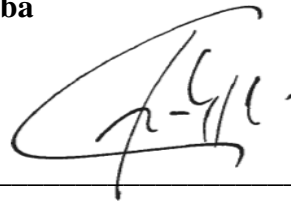
REJECTS the Prosecution's request to introduce the prior recorded testimony and associated material of P-0481 and P-2573.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 21 December 2022

At The Hague, The Netherlands