

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 31 January 2024

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 Request under Rule 68(3) to Introduce the Prior
Recorded Testimony of P-1339 and Order in Respect of Related Matters**

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

The Office of the Prosecutor

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Legal Representatives of Victims

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**Unrepresented Applicants
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**The Office of Public Counsel
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REGISTRY

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Counsel Support Section

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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 articles 69(2) and (3) of the Rome Statute and rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Request under Rule 68(3) to Introduce the Prior Recorded Testimony of P-1339 and Order in Respect of Related Matters’.

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 2022 and on 11 May 2022.² At the time, it was anticipated that P-1339 would testify in the case of *The Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaissona* (the ‘Yekatom and Ngaissona Case’). The deadline for the submission of a rule 68 request pertaining to P-1339 was accordingly extended to 20 days after the completion of his testimony.³

2. On 11 October 2022, the Chamber issued its first rule 68(3) decision in which it granted the Prosecution’s request in respect of four witnesses and rejected it in respect of one witness and considered and ruled on a number of general objections made by the Defence (the ‘First Rule 68(3) Decision’).⁴

3. On 28 October 2022, the Chamber issued its second rule 68(3) decision in which it granted the Prosecution’s request in respect of seven witnesses including P-3064 and rejected it in respect of three witnesses (the ‘Second Rule 68(3) Decision’).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](#), paras 37-39; 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](#) (the ‘Decision on Requests to Vary the Time Limits’), para. 17.

³ Decision on Requests to Vary the Time Limits, [ICC-01/14-01/21-305](#), para. 17.

⁴ Public Redacted Version of 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-Red](#). A confidential version was filed on the same day (ICC-01/14-01/21-499-Conf).

⁵ Public redacted version of 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, 8 November 2022, [ICC-01/14-01/21-519-Red](#). A confidential version was filed on 28 October 2022, ICC-01/14-01/21-519-Conf.

4. On 12 December 2022, the Chamber issued its third rule 68(3) decision in which it granted the Prosecution's request in respect of eight witnesses including P-2232 and rejected it in respect of two witnesses (the 'Third Rule 68(3) Decision').⁶

5. On 13 January 2023, the Prosecution filed its eighth application to introduce the prior recorded testimony of P-1339 pursuant to rule 68(3) of the Rules (the 'Eighth Rule 68(3) Request').⁷

6. On 6 March 2023, the Defence filed its response to the Prosecution's Eighth Rule 68(3) Request (the 'Response'), requesting that the Prosecution's request be rejected.⁸

7. The Common Legal Representative of Victims did not submit observations regarding the Eighth Rule 68(3) Request.

II. APPLICABLE LAW

8. The Chamber recalls its findings on the applicable law made in the First Rule 68(3) Decision, particularly with regard to the rights of the accused and the requirements set out in rule 68(3) of the Rules.⁹ The Chamber reiterates that, subject to the fulfilment of these requirements, its determination to allow the introduction of prior recorded testimony is discretionary and requires a case-by-case assessment.¹⁰ In this regard, the Chamber recalls that it outlined the various considerations regarding this assessment in its First Rule 68(3) Decision.¹¹ 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.

⁶ 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, 12 December 2022, [ICC-01/14-01/21-571-Red](#). A confidential version was filed on 21 December 2022 (ICC-01/14-01/21-571-Conf).

⁷ Prosecution's eighth request to introduce prior recorded testimony pursuant to rule 68(3) and to include 22 items relating to P-1339 to the List of Evidence, 13 January 2023, [ICC-01/14-01/21-582-Red](#). A confidential version was filed on the same day (ICC-01/14-01/21-582-Conf).

⁸ Réponse de la Défense à la « Prosecution eighth request to introduce prior recorded testimony pursuant to Rule 68(3) and to include 22 items relating to P-1339 to the List of Evidence » (ICC-01/14-01/21-582-Conf), 8 March 2023, [ICC-01/14-01/21-601-Red](#). A confidential version was filed on 6 March 2023 (ICC-01/14-01/21-601-Conf). The deadline for a response was delayed pending disclosure of the relevant documents, which was completed on 23 February 2023 (*See* email from the Chamber, 7 September 2022, at 09:35; email from the Chamber, 23 February 2023, at 12:50).

⁹ First Rule 68(3) Decision, [ICC-01/14-01/21-499-Red](#), paras 12-19.

¹⁰ First Rule 68(3) Decision, [ICC-01/14-01/21-499-Red](#), para. 14.

¹¹ First Rule 68(3) Decision, [ICC-01/14-01/21-499-Red](#), paras 14-19.

III. SUBMISSIONS

1. P-1339

9. According to the Prosecution, P-1339 is an Anti-Balaka insider [REDACTED].¹² The Prosecution states that P-1339 [REDACTED].¹³ Specifically, the Prosecution notes that P-1339's testimony covers:

(i) pro-Bozize forces' preparations [REDACTED] with the aim to fight back against the Seleka; (ii) the emergence of the Anti-Balaka group [REDACTED], in light of the plan set in motion [REDACTED] in mid-2013; (iii) the structure of the Anti-Balaka group [REDACTED]; (iv) military trainings [REDACTED], including the use of firearms; (v) the purchase of weapons and firearms from various places on multiple occasions, including from [REDACTED]; (vi) the recruitment of soldiers by the Anti-Balaka, the number of which increased up to over 3,000 members; (vii) the preparation for the attack on Bangui on 5 December 2013 by the Anti-Balaka group [REDACTED]; (viii) the joining of the Anti-Balaka group [REDACTED] for the attack on Bangui; (ix) the Anti-Balaka's 5 December 2013 attack on Bangui, [REDACTED].¹⁴

10. The Prosecution notes that P-1339's prior recorded testimony includes his statement, transcripts of his oral testimony in the *Yekatom and Ngaïssona* Case, and associated material.¹⁵ In this regard, the Prosecution also requests that the Chamber grant it leave to add 22 items¹⁶ to the Prosecution's list of evidence filed on 13 June 2022 (the 'List of Evidence'), as all of the items were produced after this date.¹⁷

11. The Prosecution submits that its request to call P-1339 as a witness under rule 68(3) should be granted because: (i) it will advance the expeditiousness of the

¹² Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), para. 18.

¹³ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), para. 18.

¹⁴ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), para. 19.

¹⁵ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), para. 20. *See also* Annex A to the Prosecution's eighth request to introduce prior recorded testimony pursuant to rule 68(3) and to include 22 items relating to P-1339 to the List of Evidence, 13 January 2023, ICC-01/14-01/21-582-Conf-AnxA ('Annex A to the Eighth Rule 68(3) Request').

¹⁶ Identified in Annex A to the Eighth Rule 68(3) Request, ICC-01/14-01/21-582-ConfAnxA: CAR-OTP-00000014-R01; CAR-OTP-00000015-R01; ICC-01/14-01/18-T-151-CONF-ENG; ICC-01/14-01/18-T-151-CONF-FRA; ICC-01/14-01/18-T-152-CONF-ENG; ICC-01/14-01/18-T-152-CONF-FRA; ICC-01/14-01/18-T-153-CONF-ENG; ICC-01/14-01/18-T-153-CONF-FRA; ICC-01/14-01/18-T-154-CONF-ENG; ICC-01/14-01/18-T-154-CONF-FRA; ICC-01/14-01/18-T-155-CONF-ENG; ICC-01/14-01/18-T-155-CONF-FRA; ICC-01/14-01/18-T-156-CONF-ENG; ICC-01/14-01/18-T-156-CONF-FRA; ICC-01/14-01/18-T-157-CONF-ENG; ICC-01/14-01/18-T-157-CONF-FRA; ICC-01/14-01/18-T-158-CONF-ENG; ICC-01/14-01/18-T-158-CONF-FRA; ICC-01/14-01/18-T-159-CONF-ENG; ICC-01/14-01/18-T-159-CONF-FRA; ICC-01/14-01/18-T-160-CONF-ENG; ICC-01/14-01/18-T-160-CONF-FRA.

¹⁷ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 5, 29.

proceedings by reducing the estimated length of its examination of P-1339 from approximately eight hours to one hour;¹⁸ (ii) P-1339's prior recorded testimony bears sufficient indicia of reliability and is corroborated by other evidence, including other rule 68(2) and 68(3) witnesses, 'all of whom describe events relevant to the formation, structure, and activities of the Anti-Balaka in 2013';¹⁹ (iii) the introduction of P-1339's prior recorded testimony into evidence is not prejudicial to or inconsistent with the rights of the accused;²⁰ and (iv) the Defence will have sufficient time to prepare and conduct its cross-examination of P-1339.²¹

12. The Defence objects to the introduction of P-1339's prior recorded testimony. In particular, the Defence highlights that, thus far, the Prosecution has sought to introduce the evidence of all seven witnesses whom it considers to be Anti-Balaka insiders pursuant to rule 68(2)(b) or rule 68(3) of the Rules.²² The Defence submits that, should the Chamber allow the introduction of P-1339's prior recorded testimony pursuant to rule 68(3) of the Rules, it would mean that no Anti-Balaka insider witness will have been submitted to a complete direct and cross-examination in the current proceedings.²³

13. The Defence further avers that P-1339's prior recorded testimony relates to questions that are central to the core issues in the present case²⁴ and granting the Prosecution's request would result in not having a single *viva voce* witness testify on the contextual elements of war crimes in the present proceedings.²⁵ The Defence points to jurisprudence of the Court which establishes the Chamber's duty to be vigilant that the introduction of prior recorded testimony will not be prejudicial to or inconsistent with the rights of the accused or the fairness of the trial when considering the

¹⁸ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 3, 21.

¹⁹ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 2, 22-24.

²⁰ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 3, 25-27.

²¹ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 3, 25-27.

²² Response, [ICC-01/14-01/21-601-Red](#), para. 19. The Defence notes that, among the Anti-Balaka insider witnesses, P-0966's prior recorded testimony was introduced pursuant to rule 68(2)(b) of the Rules and that of P-2232, P-0884 and P-2251 was introduced pursuant to rule 68(3) of the Rules.

²³ Response, [ICC-01/14-01/21-601-Red](#), para. 20.

²⁴ Response, [ICC-01/14-01/21-601-Red](#), paras 23, 28-34.

²⁵ Response, [ICC-01/14-01/21-601-Red](#), para. 23.

introduction of prior recorded testimony that relates to issues that are materially in dispute, central to the core issues of a case or is uncorroborated.²⁶

14. The Defence posits that the Prosecution has both failed to demonstrate that P-1339's prior recorded testimony is corroborative of other evidence²⁷ and that the testimony possesses sufficient indicia of reliability.²⁸

15. With regard to the issue of corroboration, the Defence argues that the Prosecution simply asserts that P-1339's testimony is corroborated by other evidence without articulating specific instances in which the testimony of other witnesses corroborate that of P-1339.²⁹ In particular the Defence challenges whether P-1339's prior recorded testimony is indeed corroborated by that of P-0884 and P-2269.³⁰

16. For example, the Defence notes that the Prosecution cites portions of P-0884's testimony in the *Yekatom and Ngaïssona* Case as corroborative of P-1339's account that Mr Yekatom was present in Zongo. The Defence highlights that P-0884's testimony is hearsay evidence because P-0884 did not actually see Mr Yekatom before December 2013, and therefore his testimony is not corroborative of P-1339's testimony.³¹

17. With regard to P-2269, the Defence notes that P-2269 has yet to testify in the current proceedings and has not been the subject of a request pursuant to rule 68 of the Rules.³² The Defence adds that P-2269, [REDACTED].³³

²⁶ Response, [ICC-01/14-01/21-601-Red](#), paras 28-31 referring to Appeals Chamber, *The Prosecutor v Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", 1 November 2016, [ICC-02/11-01/15-744](#) (the '*Gbagbo and Blé Goudé* Judgment'), para. 69. See also Trial Chamber V, *The Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaïssona*, Public redacted version of Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and Ngaïssona Defence Motion to Limit the Scope of P-2926's Evidence, 1 April 2021, [ICC-01/14-01/18-907-Red](#) (the '*Yekatom and Ngaïssona* Decision'), para. 14.

²⁷ Response, [ICC-01/14-01/21-601-Red](#), paras 35-46.

²⁸ Response, [ICC-01/14-01/21-601-Red](#), paras 47-63.

²⁹ Response, [ICC-01/14-01/21-601-Red](#), paras 37-38.

³⁰ Response, [ICC-01/14-01/21-601-Red](#), para. 44.

³¹ Response, [ICC-01/14-01/21-601-Red](#), para. 45.

³² Response, [ICC-01/14-01/21-601-Red](#), para. 46.

³³ Response, [ICC-01/14-01/21-601-Red](#), para. 46.

18. Further, the Defence submits that P-1339's prior recorded testimony does not contain sufficient indicia of reliability. In this regard, the Defence highlights that part of P-1339's prior recorded testimony is not in *verbatim* form which does not allow the parties and the Chamber to fully appreciate the dynamic of the exchange and the nature of questions posed during P-1339's interview.³⁴

19. The Defence also argues that P-1339's first statement to the Prosecution not only contains a number of contradictions but also contradicts the testimony that P-1339 gave in the *Yekatom and Ngaiissona* case.³⁵ For example, the Defence notes that P-1339 states that [REDACTED].³⁶ The Defence highlights that P-1339 also testified that [REDACTED].³⁷ The Defence argues that P-1339 could not possibly have [REDACTED], a point that renders P-1339's accounts contradictory and therefore not credible.³⁸

20. The Defence identifies another perceived contradiction in P-1339's temporal account of events by pointing to P-1339's prior recorded testimony wherein he testifies that [REDACTED]. The Defence notes that P-1339 [REDACTED].³⁹

21. The Defence also highlights what it submits are a number of other inconsistencies and contradictions in P-1339's testimony, including P-1339's account regarding what occurred [REDACTED].⁴⁰ In particular, the Defence notes that P-1339's prior recorded testimony states that [REDACTED] but that, in the *Yekatom and Ngaiissona* Case, P-1339 testified that [REDACTED].⁴¹

22. Finally, the Defence identifies what it submits are inconsistencies in P-1339's description of [REDACTED].⁴² For example, the Defence submits that P-1339 initially stated that he [REDACTED].⁴³ The Defence notes that P-1339 corrected his prior recorded testimony prior to testifying in the *Yekatom and Ngaiissona* Case and deleted

³⁴ Response, [ICC-01/14-01/21-601-Red](#), para. 47.

³⁵ Response, [ICC-01/14-01/21-601-Red](#), para. 48.

³⁶ Response, [ICC-01/14-01/21-601-Red](#), para. 49.

³⁷ Response, [ICC-01/14-01/21-601-Red](#), para. 49.

³⁸ Response, [ICC-01/14-01/21-601-Red](#), para. 49.

³⁹ Response, [ICC-01/14-01/21-601-Red](#), para. 52.

⁴⁰ Response, [ICC-01/14-01/21-601-Red](#), para. 51.

⁴¹ Response, [ICC-01/14-01/21-601-Red](#), para. 51.

⁴² Response, [ICC-01/14-01/21-601-Red](#), paras 55-58.

⁴³ Response, [ICC-01/14-01/21-601-Red](#), para. 55.

[REDACTED].⁴⁴ The Defence also highlights P-1339's testimony in the *Yekatom and Ngaïssona* Case in which P-1339 stated that he did not make the corrections to his prior recorded testimony and that his initial account was accurate, before contradicting himself again and stating that [REDACTED].⁴⁵

IV. ANALYSIS

A. Determination in respect of P-1339

23. The Chamber recalls that its determination to allow the introduction of prior recorded testimony is discretionary and requires a case-by-case assessment.⁴⁶ This determination is governed, in particular, by the overarching requirement, set out in rule 68(1) of the Rules, that the introduction of prior recorded testimony should not be prejudicial to or inconsistent with the rights of the accused.

24. The Chamber notes that P-1339's testimony is primarily relevant to the organisation and activities of the Pro-Bozize forces and the Anti-Balaka between the Seleka takeover of Bangui in March 2013 and the Anti-Balaka's 5 December 2013 attack on Bangui.⁴⁷ This evidence is relied upon by the Prosecution to establish the contextual elements of war crimes, namely the existence of an armed conflict during the period relevant to the charges.⁴⁸ Having considered the arguments presented by the parties in their briefs,⁴⁹ the Chamber is of the view that the continued existence of an armed conflict between March and December 2013 is materially in dispute.

⁴⁴ Response, [ICC-01/14-01/21-601-Red](#), para. 55.

⁴⁵ Response, [ICC-01/14-01/21-601-Red](#), para. 56.

⁴⁶ First Rule 68(3) Decision, [ICC-01/14-01/21-499-Red](#), para. 14; Trial Chamber I, *The Prosecutor v Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, First Decision on the Prosecution's request to introduce prior recorded testimonies under Rules 68(3), 20 January 2022, [ICC-02/05-01/20-559-Red](#), para. 11; *Yekatom and Ngaïssona* Decision, [ICC-01/14-01/18-907-Red](#), para. 14; Trial Chamber X, *The Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of the Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, 5 August 2020, [ICC-01/12-01/18-987-Red](#), para. 10. *See also Gbagbo and Blé Goudé* Judgment, [ICC-02/11-01/15-744](#), paras 69-72.

⁴⁷ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), paras 18-19.

⁴⁸ Eighth Rule 68(3) Request, [ICC-01/14-01/21-582-Red](#), para. 2.

⁴⁹ Prosecution's Trial Brief, 28 July 2022, [ICC-01/14-01/21-359-Red](#) (the 'Prosecution's Trial Brief'), paras 9-13. The confidential version was filed on 13 June 2022 (ICC-01/14-01/21-359-Conf). Mémoire de première instance de la Défense, 29 August 2022, [ICC-01/14-01/21-449-Red](#), paras 275-300. The confidential version was filed on 12 August 2022 (ICC-01/14-01/21-449-Conf).

25. The Chamber notes that a number of Prosecution witnesses are expected to give evidence fully *viva voce* on matters relevant to establishing the contextual elements of war crimes. The testimony of a number of other witnesses is expected to be given pursuant to rule 68(3) of the Rules meaning that they will be available for cross-examination by the Defence on any of the issues arising in their prior recorded testimony. The Chamber nonetheless acknowledges the Defence submission that granting the Prosecution's request would mean that no Anti-Balaka insider witnesses will have been submitted to a complete direct and cross-examination in the current proceedings.⁵⁰

26. Given the relevance of P-1339's anticipated testimony to issues that are materially in dispute, the Chamber considers that it would be appropriate to hear P-1339 fully *viva voce*. Accordingly, the Prosecution's request to introduce the prior recorded testimony and associated material of P-1339 pursuant to rule 68(3) of the Rules and its related request to add these items to the List of Evidence are rejected.

B. Order in respect of P-2232 and P-3064

27. As indicated in previous decisions pursuant to rule 68 of the Rules, the Chamber's assessment in respect of rule 68 requests made earlier in the proceedings is preliminary⁵¹ and may be subject to change as the evidence unfolds.⁵² The Chamber may exercise its discretion to revisit its earlier rulings pursuant to rule 68 of the Rules.

1. P-2232

28. As noted above, the Chamber has determined that the contextual elements of war crimes in this case are materially in dispute between the parties.⁵³ In light of the analysis of the evidence to date, the Chamber considers it prudent to have an additional witness testify fully *viva voce* on the contextual elements of war crimes. To that end, the Chamber has further analysed the prior recorded testimony of those witnesses who are

⁵⁰ Response, [ICC-01/14-01/21-601-Red](#), para. 20.

⁵¹ [First Rule 68\(3\) Decision](#), [ICC-01/14-01/21-499-Red](#), para. 19.

⁵² Decision on the Prosecution's First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, 21 October 2022, ICC-01/14-01/21-507-Red (the 'First Rule 68(2)(b) Decision'), para. 41. The confidential version was filed on 20 October 2022 (ICC-01/14-01/21-507-Conf).

⁵³ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), para. 145.

in a position to offer evidence on this aspect of the Prosecution's case, all of whose prior recorded testimony the Chamber previously authorised to be introduced pursuant to either rule 68(2)(b) or rule 68(3) of the Rules. Having conducted this analysis, the Chamber finds that P-2232 should testify fully *viva voce*.

29. The Chamber notes that the Prosecution indicates that P-2232 is [REDACTED]. The Chamber recalls that, in the Prosecution's submission, P-2232 testifies in respect of a number of relevant issues, including:

(i) the exile of Bozize and his close associates to Cameroon after the Seleka's takeover of Bangui in late March 2013; (ii) [REDACTED] initiation of Anti-Balaka activities [REDACTED]; (iii) [REDACTED] coordination of Anti-Balaka [REDACTED] and the oversight and provision of tactics [REDACTED]; (iv) the coordination of Anti-Balaka activities in Cameroon [REDACTED]; (v) the provision [REDACTED] of weapons, ammunitions, food, and money to the Anti-Balaka [REDACTED]; and (vi) the Anti-Balaka's aim of re-installing Bozize in power.⁵⁴

30. Given the relevance of P-2232's anticipated testimony to issues that are materially in dispute, the Chamber considers it appropriate to hear P-2232 fully *viva voce*. Accordingly, the Chamber revokes the authorisation to introduce P-2232's prior recorded testimony pursuant to rule 68(3) of the Rules,⁵⁵ and orders the Prosecution to call P-2232 to testify as a fully *viva voce* witness.

2. P-3064

31. The Chamber recalls that it previously granted the Prosecution's request to allow P-3064's prior recorded testimony and associated material to be introduced pursuant to rule 68(3) of the Rules.⁵⁶ P-3064 is yet to testify before the Chamber. The Chamber observes that P-3064 is an alleged victim of Incident (m)⁵⁷ and notes the Prosecution's submission that the material facts in relation to this incident are based on the accounts provided by P-3053, P-3056 and P-3064.⁵⁸ In this regard, the Chamber recalls that

⁵⁴ Third Rule 68(3) Decision, [ICC-01/14-01/21-571-Red](#), para. 44.

⁵⁵ Third Rule 68(3) Decision, [ICC-01/14-01/21-571-Red](#), para. 48.

⁵⁶ Second Rule 68(3) Decision, [ICC-01/14-01/21-519-Red](#), paras 50-53.

⁵⁷ See Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, [ICC-01/14-01/21-218-Red](#), pp 57-58, para. 29(m). The confidential version was filed on the same day (ICC-01/14-01/21-218-Conf).

⁵⁸ Prosecution's Trial Brief, [ICC-01/14-01/21-359-Red](#), para. 207.

P-3053's prior recorded testimony was introduced pursuant to rule 68(2)(c) of the Rules⁵⁹ and P-3056 testified before the Chamber between 12 and 14 October 2022.⁶⁰

32. Since the original decision on P-3064's rule 68(3) request, the Chamber has had the opportunity to analyse the testimony of P-3053 and P-3056 in greater detail, and considers that it would be appropriate to hear the testimony of P-3064 fully *viva voce*. Accordingly, the Chamber revokes the authorisation to introduce P-3064's prior recorded testimony pursuant to rule 68(3) of the Rules, and orders the Prosecution to call P-3064 to testify as a fully *viva voce* witness.

C. Time for Presentation of Prosecution Case

33. In its Additional Directions on the Conduct of Proceedings, the Chamber granted the Prosecution a maximum of 122 hours for the examination-in-chief of the witnesses it intended to call.⁶¹ The Chamber has since rejected 17 requests under rule 68(2)(b) of the Rules (authorising the introduction of the testimony of 16 of those witnesses under rule 68(3) of the Rules) and has rejected six requests under rule 68(3) of the Rules. These rulings, together with the rulings in the present decision, clearly impact the time required for the Prosecution's examination of its witnesses.

34. The Prosecution has indicated that it intends to introduce the testimony of 16 witnesses (whose testimony it originally sought to introduce under rule 68(2)(b) of the Rules) under rule 68(3) of the Rules. Regarding the witnesses whose testimony the Prosecution originally sought to introduce under rule 68(3) of the Rules, the Chamber has already heard the testimony of P-3108 and P-1737 in full and received indications that the Prosecution intends to call P-2504 and P-2161 to testify in full. In relation to P-0481, P-2573 and P-1563 (whose testimony was not authorised for introduction under rule 68(2)(b) or 68(3) of the Rules), the Chamber has not received any further information. The Prosecution is to provide the Chamber with an updated list of

⁵⁹ Public Redacted Version of Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, 20 October 2022, [ICC-01/14-01/21-506-Red](#), paras 69-75. A confidential version was filed on the same day (ICC-01/14-01/21-506-Conf).

⁶⁰ Transcript of hearing, 12 October 2022, ICC-01/14-01/21-T-020-CONF-ENG CT; Transcript of hearing, 13 October 2022, ICC-01/14-01/21-T-021-CONF-ENG CT; Transcript of hearing, 14 October 2022, ICC-01/14-01/21-T-022-ENG-CONF-CT.

⁶¹ Additional Directions on the Conduct of Proceedings, 16 September 2022, [ICC-01/14-01/21-479](#), para. 5.

witnesses it still intends to call by 9 February 2024. Once the final number of Prosecution witnesses is known, the Chamber will adjust the time granted to the Prosecution for the examination-in-chief of witnesses accordingly. In this regard, the Prosecution is also ordered to submit an updated estimate of the time that it requires for the remainder of the presentation of its case.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecution's request to introduce the prior recorded testimony and associated material of P-1339 pursuant to rule 68(3);

ORDERS the Prosecution to call P-1339 to testify as a fully *viva voce* witness;

REVOKES the authorisation to introduce the prior recorded testimony and associated material of P-2232 and P-3064 pursuant to rule 68(3) of the Rules;

ORDERS the Prosecution to call P-2232 and P-3064 to testify as fully *viva voce* witnesses; and

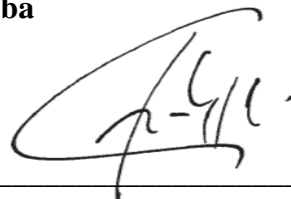
ORDERS the Prosecution to provide the Chamber by 9 February 2024 with an updated list of witnesses it still intends to call and to submit an estimate of the time that it requires for the remainder of the presentation of its case.



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 31 January 2024

At The Hague, The Netherlands