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**International
Criminal
Court**

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Date: 8 November 2022**

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-1429, P-1737, P-1762, P-0435, P-2692, P-2607, P-2504, P-3064, P-2241 and P-2161

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

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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-1429, P-1737, P-1762, P-0435, P-2692, P-2607, P-2504, P-3064, P-2241 and P-2161’.

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 the deadline for the submission of a number of rule 68 requests was extended on 11 May 2022.²

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’).³

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’).⁴

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; [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.

³ 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](#)) (the ‘First Rule 68 (3) Request’).

⁴ 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](#)) (the ‘Second Rule 68(3) Request’).

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’).⁵
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’).⁶
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’).⁷
7. On 28 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’).⁸
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’).⁹

⁵ 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](#)) (the ‘Third Rule 68(3) Request’).

⁶ 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](#)) (the ‘Fourth Rule 68(3) Request’).

⁷ 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](#)).

⁸ Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(3), 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](#)).

⁹ 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').¹⁰ Therein, it requested that all the Prosecution's requests pursuant to rule 68(3) of the Rules be rejected.¹¹

10. On 3 June 2022 and 20 June 2022, the Common Legal Representative of Victims (the 'CLR') filed consolidated responses to the First, Second and Third Rule 68(3) Requests.¹²

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.¹³

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 approved four of the Prosecution's requests and rejected one (the 'First Rule 68(3) Decision').¹⁴ In its decision, the Chamber also considered and ruled on a number of general objections made by the Defence.¹⁵

¹⁰ 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').

¹¹ [Response](#), p. 73.

¹² [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.

¹³ Email from the CLRV to the Chamber dated 24 June 2022, at 12:23; Email from the CLRV to the Chamber dated 4 July 2022, at 15:21; Email from the CLRV to the Chamber dated 7 July 2022 at 15:15; Email from the CLRV to the Chamber dated 8 July 2022 at 15:22.

¹⁴ 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 of the decision was filed on the same day, [ICC-01/14-01/21-499-Red](#) (the 'First Rule 68(3) Decision')

¹⁵ [First Rule 68\(3\) Decision](#), paras 21-40.

II. APPLICABLE LAW

13. 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.

14. 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.¹⁶ 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 regard.

15. 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.¹⁷ In this regard, the Chamber will not repeat the discussion and refers to the First Rule 68(3) Decision.

III. ANALYSIS

16. 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-1429, P-1737, P-1762, P-0435, P-2692, P-2607, P-2504, P-3064, P-2241 and P-2161.¹⁸ 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.¹⁹ As 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.²⁰

¹⁶ [First Rule 68\(3\) Decision](#), paras 14-19.

¹⁷ [First Rule 68\(3\) Decision](#), paras 21-41.

¹⁸ Annex A to the Prosecution's Notification of an Updated Order of Appearance, 5 September 2022, ICC-01/14/01/21-470-Conf.

¹⁹ See e.g. [Second Rule 68\(3\) Request](#), para. 20; [Third Rule 68\(3\) Request](#), para. 35; [Fourth Rule 68\(3\) Request](#), para. 48.

²⁰ [First Rule 68\(3\) Decision](#), para. 41.

I. P-1429

17. According to the Prosecution, P-1429 is [REDACTED].²¹ In his statement, P-1429 states that he was [REDACTED].²² P-1429 describes that he later learned that the Seleka had detained [REDACTED], and because [REDACTED].²³ After arriving at Camp *Sapeurs Pompiers*, P-1429 was placed in a container on the back of a lorry for three days and ultimately transferred to the *Office Central de Répression du Banditisme* (the ‘OCRB’) where he remained for a period of three weeks. While at the OCRB, P-1429 observed daily activities at the centre, including beatings of detainees and Seleka members returning to the OCRB with looted objects after apparent attacks.²⁴ P-1429 also describes being interrogated by [REDACTED]²⁵ and appearing before tribunal judges a number of times before being provisionally released in mid-August 2013.²⁶ P-1429’s prior recorded testimony is comprised of his witness statement and two annexes containing sketches of a Seleka base and the OCRB.²⁷

18. The Prosecution submits that its request to call P-1429 as a rule 68(3) witness should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-1429 from four hours to one hour;²⁸ (ii) P-1429’s statement bears sufficient indicia of reliability for introduction into evidence;²⁹ and (iii) P-1429’s account is corroborated by [REDACTED] testimony and is therefore not prejudicial or inconsistent with the rights of the accused.³⁰

19. The Defence argues that P-1429’s prior recorded testimony does not possess sufficient indicia of reliability and that P-1429 must therefore be called to provide testimony as a full *viva voce* witness.³¹ First, the Defence notes that, in his testimony, P-1429 explains that he shared a cell with other individuals, including [REDACTED].³²

²¹ [Third Rule 68\(3\) Request](#), para. 10.

²² CAR-OTP-2049-0166, at 0170, paras 20-21.

²³ CAR-OTP-2049-0166, at 0172, para. 33.

²⁴ CAR-OTP-2049-0166, at 0172, para. 34, at 0175, para. 62, at 0176, paras 66-67.

²⁵ CAR-OTP-2049-0166, at 0173, para. 45.

²⁶ CAR-OTP-2049-0166, at 0177, paras 70-71.

²⁷ [Third Rule 68\(3\) Request](#), para. 12; Annex A to the Third Rule 68(3) Request, p. 2.

²⁸ [Third Rule 68\(3\) Request](#), para. 36.

²⁹ [Third Rule 68\(3\) Request](#), para. 37.

³⁰ [REDACTED].

³¹ [Response](#), para. 132.

³² [Response](#), para. 133.

The Defence goes on to highlight that, in [REDACTED].³³ According to the Defence, such an omission casts doubt on the credibility of P-1429's prior recorded testimony.³⁴ Second, the Defence alleges inconsistencies and a lack of corroboration between the prior recorded testimony of P-1429 and [REDACTED].³⁵ In particular, the Defence makes reference to: (i) an inconsistency regarding the actual identity of [REDACTED]; (ii) the fact that [REDACTED] cannot corroborate P-1429's account that the latter was indeed detained at the OCRB nor the conditions of his detention at the OCRB; and (iii) the fact that [REDACTED] learned of the alleged reasons for P-1429's detention through hearsay.³⁶ Lastly, the Defence submits that the Prosecution's investigators failed to ask P-1429 about [REDACTED] and the [REDACTED].³⁷

20. The Chamber finds that P-1429's prior recorded testimony can be introduced pursuant to rule 68(3) of the Rules. First, in respect of the alleged contradictions between the accounts of P-1429 and [REDACTED], the Chamber notes that [REDACTED] failed to sign his statement, which in turn undermines the reliability of its contents and the significance of any inconsistencies between his account and any others. In any event, while the Chamber acknowledges that P-1429 is not explicitly mentioned in [REDACTED] statement, both accounts are consistent in the fact that [REDACTED].³⁸ Furthermore, the Chamber notes that the Defence will have an opportunity to cross-examine P-1429 about his time at the OCRB.

21. Second, with regard to the alleged inconsistencies and lack of corroboration between the prior recorded testimony of P-1429 and [REDACTED], the Chamber finds that these are not of such a nature and degree so as to require P-1429 to testify as a full *viva voce* witness in order to safeguard the rights of the accused. In particular, the Chamber finds that any inconsistencies between P-1429 and [REDACTED], does not warrant P-1429 being heard fully *viva voce*.

22. The above notwithstanding, the Chamber notes that both witnesses will be called to testify orally and that, as mentioned above, the Defence will be able to conduct cross-

³³ [Response](#), para. 133.

³⁴ [Response](#), para. 137.

³⁵ [Response](#), paras 134-136.

³⁶ [Response](#), paras 135-136.

³⁷ [Response](#), para. 137.

³⁸ **P-1429**: CAR-OTP-2049-0166-R02, at 0174-0175, paras 54-55 [REDACTED].

examinations of both individuals.³⁹ Last, regarding the nature and substance of the investigators' questioning during the recording of P-1429's statement, the Defence will be able to cross-examine P-1429 on any relevant matters which may affect his credibility.

23. The Chamber also finds that introducing P-1429's prior recorded testimony will reduce the time for the Prosecution's direct examination by three hours, thereby advancing the expeditiousness of the proceedings. Accordingly, in light of the above, the Chamber grants the Prosecution's request to introduce P-1429's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

2. P-1737

24. According to the Prosecution, P-1737 is a [REDACTED].⁴⁰ P-1737 describes his time [REDACTED], including the training [REDACTED].⁴¹ He explains that [REDACTED] the OCRB, General Nourredine Adam was in charge⁴² and Mr Said was the deputy in charge of the OCRB.⁴³ Additionally, P-1737 states that Mr Said and Mr Adam gave orders to Seleka members to torture OCRB detainees for the purpose of obtaining confessions and that the Seleka would use the *arbatachar* technique when carrying out the acts.⁴⁴ [REDACTED].⁴⁵ P-1737's prior recorded testimony and associated material consists of a written statement, annexes to the statement, and various items including photographs.⁴⁶

25. The Prosecution asks the Chamber to grant its request to call P-1737 as a rule 68(3) witness because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-1737 from approximately eight hours to just one hour;⁴⁷ (ii) P-1737's testimony contains [REDACTED] that has sufficient

³⁹ [REDACTED].

⁴⁰ [Fourth Rule 68\(3\) Request](#), para. 20.

⁴¹ CAR-OTP-2055-0137, at 0142, paras 28-29.

⁴² CAR-OTP-2055-0137, at 0145, paras 44-47.

⁴³ CAR-OTP-2055-0137, at 0141, para. 24.

⁴⁴ CAR-OTP-2055-0137, at 0147, para. 54-55.

⁴⁵ CAR-OTP-2055-0137, at 0147, para. 54; CAR-OTP-2055-0137 at 0148, paras 59-60.

⁴⁶ [Fourth Rule 68\(3\) Request](#), para. 25.

⁴⁷ [Fourth Rule 68\(3\) Request](#), paras 2, 48.

indicia of reliability and is corroborative of other evidence;⁴⁸ and (iii) it will not prejudice the Defence as the witness will be fully available for cross-examination.⁴⁹

26. The Defence objects to the Prosecution's request to admit P-1737's prior recorded testimony under rule 68(3) of the Rules. In particular, the Defence notes that the Prosecution refers to P-1737 [REDACTED] who will provide evidence linking Mr Said and his contribution to the alleged crimes.⁵⁰ As a result, the Defence argues that P-1737's testimony goes to the heart of the charges against Mr Said and must therefore be treated with the highest level of caution so as not to violate rule 68.⁵¹ The Defence argues that, [REDACTED].⁵² In light of this, the Defence submits that the introduction of the witness's prior recorded testimony without submitting it to an examination and a cross-examination is to take a considerable risk with regard to the objective of holding a fair trial as key testimony for the Prosecution could prove to be unreliable and of questionable probative value.⁵³

27. The Chamber is of the view that P-1737 should be called to testify as a full *viva voce* witness. While the fact that a witness may [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-1737 the Chamber finds that he must be called to provide testimony as a *viva voce* witness.

28. The Chamber notes that P-1737 [REDACTED] and is able to provide potentially significant evidence regarding the accused [REDACTED]. Given the witness's [REDACTED], the Chamber finds that it would be prejudicial to the accused to introduce the witness's prior recorded testimony under rule 68(3) of the Rules. Further, the Chamber considers that calling P-1737 as a rule 68(3) witness would be unlikely to achieve the aim of streamlining in-court questioning. Accordingly, in light of the above,

⁴⁸ [Fourth Rule 68\(3\) Request](#), paras 7, 51.

⁴⁹ [Fourth Rule 68\(3\) Request](#), paras 2, 50.

⁵⁰ [Response](#), paras 158-159.

⁵¹ [Response](#), paras 158-159. The Defence cites the Trial Chamber in *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman Kushayb*, 2 May 2022, ICC-02/05-01/20-680-Red, para. 14.

⁵² [Response](#), para. 160.

⁵³ [Response](#), para. 162.

the Chamber rejects the Prosecution's request to introduce P-1737's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

3. P-1762

29. According to the Prosecution, P-1762 is a [REDACTED] whom the Seleka arrested, beat, and tied up via the *arbatachar* method before transferring him to Camp *Sapeurs Pompiers* and then to the OCRB.⁵⁴ While at the OCRB, P-1762 reports being held in a hole without food for two weeks⁵⁵ and seeing an individual who [REDACTED].⁵⁶ P-1762 describes the OCRB conditions generally (including not receiving medical care or food), the appearance of Seleka officers (types of uniforms and garb used, etc.), and [REDACTED].⁵⁷ P-1762 also states that he observed a General Moussa and Nourredine Adam speaking at Camp *Sapeurs Pompiers* before detainees were transferred to the OCRB.⁵⁸ P-1762's prior recorded testimony consists of his witness statement and its six annexes, including photographs and two judicial documents from his proceedings issued by the *Tribunal de Grande Instance*.⁵⁹

30. The Prosecution submits that its request to call P-1762 as a rule 68(3) witness should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-1762 from four hours to one hour;⁶⁰ (ii) P-1762's testimony bears sufficient indicia of reliability for introduction into evidence;⁶¹ and (iii) its introduction into evidence is not prejudicial to or inconsistent with the rights of the accused. On the last point, the Prosecution notes that the Defence will have ample opportunity to cross-examine P-1762 and that P-1762's evidence is cumulative and corroborative of three other OCRB victims who will testify as full *viva voce* witnesses.⁶²

31. The Defence argues that, contrary to the Prosecution's assertion, the prior recorded testimonies of the three other OCRB victims do not in fact corroborate the

⁵⁴ [Second Rule 68\(3\) Request](#), para. 12; CAR-OTP-2073-0568-R01, at 0572, paras 20-24.

⁵⁵ CAR-OTP-2073-0568-R01, at 0578-0580, paras 58-75.

⁵⁶ CAR-OTP-2073-0568-R01, at 0579, para. 62.

⁵⁷ CAR-OTP-2073-0568-R01, at 0578-0580, paras 57-75.

⁵⁸ CAR-OTP-2073-0568-R01, at 0577, para. 53.

⁵⁹ [Second Rule 68\(3\) Request](#), para. 15.

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

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

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

account put forth in P-1762's prior recorded testimony.⁶³ For example, the Defence notes that although P-1762 explains that he was [REDACTED] testimony would in fact place P-1762 at the OCRB in [REDACTED].⁶⁴ The Defence points out a second instance [REDACTED].⁶⁵ The Defence also argues that P-1762 was not in a position to know which Seleka members were talking to each other (referring to an alleged conversation between Nourredine Adam and General Moussa), adding that P-1762 made such an assertion only because [REDACTED].⁶⁶ As a result, the Defence posits that P-1762 could simply not be in a position to conclude that Seleka commanders were indeed coordinating actions in a joint manner.⁶⁷

32. The Chamber finds that P-1762's prior recorded testimony can be introduced pursuant to rule 68(3) of the Rules. First, allowing P-1762's testimony under rule 68(3) would promote the expeditiousness of the proceedings by reducing the Prosecution's examination from four hours to one hour. Second, the Chamber does not find that the potential inconsistencies highlighted by the Defence are of such a nature and degree that P-1762 should be required to testify as a full *viva voce* witness. On this point, the Chamber notes that the Prosecution submitted that P-1762 made some clarifications following the recording of his prior testimony but that the 'additional information and corrections the witness provided are limited and do not detract from the sufficient level of reliability'.⁶⁸ The inconsistency relates to the witness initially identifying [REDACTED]⁶⁹ only to later provide a different name to the Prosecution's investigators after he [REDACTED].⁷⁰ The Chamber finds that this and the other inconsistencies highlighted by the Defence as set out above do not require the witness to testify as a full *viva voce* witness because the Defence will have the opportunity to cross-examine P-1762 on relevant aspects of his testimony.⁷¹ Accordingly, in light of

⁶³ [Response](#), paras 112-114.

⁶⁴ [Response](#), para. 115.

⁶⁵ [Response](#), paras 116-117.

⁶⁶ [Response](#), para. 122.

⁶⁷ [Response](#), para. 122.

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

⁶⁹ CAR-OTP-2073-0568-R01, at 0573, paras 28-29.

⁷⁰ CAR-OTP-2073-0589.

⁷¹ 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.

the foregoing, the Chamber grants the Prosecution's request to introduce P-1762's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

4. P-0435

33. The Prosecution submits that P-0435 is a [REDACTED].⁷² P-0435's prior recorded testimony provides an overview of the [REDACTED]⁷³ [REDACTED] information pertaining to Mr Adam, including his control over the Seleka.⁷⁴ P-0435 also discusses Seleka activity in Boy Rabe, [REDACTED] killings, abductions, and acts of looting committed by the Seleka⁷⁵ [REDACTED].⁷⁶ P-0435's prior recorded testimony and associated material consists of two written statements, 13 annexes, and ten documents which [REDACTED].⁷⁷

34. The Prosecution asks the Chamber to grant its request to call P-0435 as a rule 68(3) witness because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-0435 from approximately eight hours to just one hour;⁷⁸ (ii) P-0435's testimony speaks to [REDACTED] and has sufficient indicia of reliability;⁷⁹ and (iii) it would not prejudice the Defence as the witness will be fully available for cross-examination.⁸⁰

35. The Defence objects to the Prosecution's request and argues that inconsistencies exist between P-0435's two prior recorded testimonies.⁸¹ The Defence notes that, in [REDACTED] first statement, [REDACTED].⁸² The Defence also highlights that P-0435's most recent testimony is not in the form of a *verbatim* transcript which leaves the Defence unable to determine the degree to which the investigator's questions were leading in nature. As a result, the Defence argues that the inconsistencies between both testimonies cast serious doubt on P-0435's credibility and [REDACTED].⁸³ In light of

⁷² [Fourth Rule 68\(3\) Request](#), paras 9-10; CAR-OTP-2017-0036-R01 at 0041-0042, paras 30-31.

⁷³ CAR-OTP-2017-0036-R01, at 0049-0051, paras 82, 85-90.

⁷⁴ CAR-OTP-2017-0036-R01, at 0053, para. 104, at 0059, para. 134.

⁷⁵ CAR-OTP-2017-0036-R01, at 0060-0061, paras 140-144, 146-147.

⁷⁶ CAR-OTP-2017-0036-R01, at 0061, para. 147.

⁷⁷ [Fourth Rule 68\(3\) Request](#), para. 14.

⁷⁸ [Fourth Rule 68\(3\) Request](#), para. 2.

⁷⁹ [Fourth Rule 68\(3\) Request](#), para. 7.

⁸⁰ [Fourth Rule 68\(3\) Request](#), para. 2.

⁸¹ [Response](#), para. 171; CAR-OTP-2017-0036-R01; CAR-OTP-2136-0576-R01;

⁸² [Response](#), para. 171.

⁸³ [Response](#), para. 171.

the abovementioned factors, the Defence submits that the introduction of P-0435's prior recorded testimony without submitting [REDACTED] to a full direct examination and cross-examination will jeopardise the fairness of the trial as key testimony for the Prosecution could prove to be unreliable and of questionable probative value.⁸⁴

36. The Chamber is satisfied that the issues above should not preclude the introduction of P-0435's prior recorded testimony pursuant to rule 68(3) of the Rules. First, although the Defence argues that P-0435 is an [REDACTED] who has a significant interest in [REDACTED], the Chamber notes that P-0435 in fact [REDACTED]. Second, with regard to the inconsistencies between P-0435's prior recorded statements and the lack of a *verbatim* transcript, the Chamber recalls that it previously ruled on this issue in its First Rule 68(3) Decision⁸⁵ and determines that the Defence will have reasonable opportunity to cross-examine P-0435. Third, the Defence submits that persons who [REDACTED]. In this regard, the Chamber observes that the Defence has not provided a sufficient explanation of the reasons for believing the witness would be [REDACTED]. On this point, the Chamber notes again that the Defence will have reasonable opportunity to cross-examine P-0435. Lastly, the Chamber finds that the introduction of P-0435's prior recorded testimony will advance the expeditiousness of the proceedings, and therefore grants the Prosecution's request to introduce P-0435's testimony and associated material pursuant to rule 68(3) of the Rules.

5. P-2692

37. According to the Prosecution, P-2692 is [REDACTED] who was arrested by the Seleka and held at Camp Kassai for one night (where he was tied up in the *arbatachar* method and mistreated) before being transferred to the OCRB.⁸⁶ The Prosecution submits that P-2692 was released to get medical treatment after [REDACTED], but was arrested and taken to the OCRB again a week later.⁸⁷ In his statement, P-2692 describes staying in an overly cramped cell,⁸⁸ being interrogated [REDACTED],⁸⁹ and

⁸⁴ [Response](#), para. 162.

⁸⁵ [First Rule 68\(3\) Decision](#), para. 23.

⁸⁶ [Third Rule 68\(3\) Request](#), paras 22-23; CAR-OTP-2125-0922.

⁸⁷ [Third Rule 68\(3\) Request](#), para. 23.

⁸⁸ CAR-OTP-2125-0922, at 0927, para. 29.

⁸⁹ CAR-OTP-2125-0922, at 0927-0928, paras 30-31.

[REDACTED].⁹⁰ While he was not beaten himself, P-2692 notes that the OCRB Seleka beat others (including inflicting *chicotte* wounds on their backs) and that some prisoners were interrogated about their alleged role in preparing a coup against Djotodia.⁹¹ According to P-2692, a particular OCRB Colonel who spoke Arabic was present during such beatings and appeared to be the one giving the orders.⁹² P-2692 was eventually released [REDACTED].⁹³ Upon his release, an OCRB Colonel gave P-2692 a release slip which confirmed that he was indeed free.⁹⁴ The Prosecution submits that the witness's 'prior recorded testimony and associated material is comprised of his statement, an annex which is his OCRB release slip or liberation document, and a press article that reported on his detention at the OCRB'.⁹⁵

38. The Prosecution submits that its request to call P-2692 as a rule 68(3) witness should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-2692 from four hours to one hour;⁹⁶ (ii) P-2692's testimony bears sufficient indicia of reliability for introduction into evidence;⁹⁷ and (iii) the Defence will have ample opportunity to cross-examine P-2692.⁹⁸

39. The Defence argues that P-2692's prior recorded testimony does not have sufficient indicia of reliability because it is inconsistent with [REDACTED].⁹⁹ The Defence notes that, in his statement, P-2692 states that [REDACTED] and does not specify that the Seleka transported [REDACTED], but says that he later learned that the Seleka [REDACTED], whereas, in [REDACTED], P-2692 states that he [REDACTED] arrested and transferred to Camp Kassai ([REDACTED]).¹⁰⁰ In addition, the Defence submits that several portions of P-2692's testimony are

⁹⁰ CAR-OTP-2125-0922, at 0929, para. 35.

⁹¹ CAR-OTP-2125-0922, at 0928, para. 33.

⁹² CAR-OTP-2125-0922, at 0928, para. 33.

⁹³ CAR-OTP-2125-0922, at 0929, para. 38.

⁹⁴ CAR-OTP-2125-0922, at 0929, para. 39.

⁹⁵ [Third Rule 68\(3\) Request](#), para. 26.

⁹⁶ [Third Rule 68\(3\) Request](#), para. 35.

⁹⁷ [Third Rule 68\(3\) Request](#), para. 36.

⁹⁸ [Third Rule 68\(3\) Request](#), para. 37.

⁹⁹ [Response](#), para. 146.

¹⁰⁰ [Response](#), para. 146.

hearsay.¹⁰¹ For example, the Defence notes that P-2692 discusses [REDACTED] but that he was not present during such interactions because he was detained at the time.¹⁰²

40. The Chamber finds that P-2692's prior recorded testimony can be introduced pursuant to rule 68(3) of the Rules. First, allowing P-2692's testimony under rule 68(3) would promote the expeditiousness of the proceedings by reducing the Prosecution's examination by more than two-thirds. Second, regarding the witness's alleged inconsistent statements, the Chamber does not find these to be of a such a nature and degree that would require P-2692 to testify full *viva voce*. In particular, to the extent that P-2692's statements regarding [REDACTED] could be regarded as inconsistent, this matter may be put to the witness when he appears before the Chamber. Third, in respect of the Defence's argument that some of P-2692's testimony is based on hearsay, the Chamber finds that this is not of such a nature and degree which would warrant calling P-2692 to testify in full. Additionally, P-2692 will appear before the Chamber and the Defence will have a reasonable opportunity to address aspects pertaining to his credibility and the probative value of his prior recorded testimony.¹⁰³ Accordingly, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-2692's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

6. P-2607

41. The Prosecution submits that 'P-2607's [REDACTED], was a [REDACTED].¹⁰⁴ In his prior recorded testimony, P-2607 describes that a person who had witnessed [REDACTED] informed him that the Seleka had arrived in two vehicles - a black car and an army green BG75 with 'OCRB' written on it.¹⁰⁵ [REDACTED], Mr Said 'came out into the road and started shooting his pistol into the air' and said 'you don't know why [REDACTED] is here and it is not the time for you to be here.'¹⁰⁶ Shortly thereafter, P-2607 saw a BG75 with 'OCRB' written on it leave the OCRB. P-2607

¹⁰¹ [Response](#), para. 147.

¹⁰² [Response](#), para. 147

¹⁰³ 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.

¹⁰⁴ [Second Rule 68\(3\) Request](#), para. 16.

¹⁰⁵ CAR-OTP-2125-0855-R02, at 0857-0858, paras 16-17.

¹⁰⁶ CAR-OTP-2125-0855-R02, at 0858, paras 18-20.

recalls seeing [REDACTED].¹⁰⁷ When P-2607 [REDACTED].¹⁰⁸ The witness's 'prior recorded testimony is comprised of his witness statement, and related documents including his [REDACTED].'¹⁰⁹

42. The Prosecution argues that its request to call P-2607 as a rule 68(3) witness should be granted because: (i) '[h]is evidence is directly corroborated by [REDACTED] who witnessed the OCRB Seleka detain [REDACTED]';¹¹⁰ (ii) doing so would reduce the time required for in-person examination from four hours to one hour;¹¹¹ (iii) P-2607's prior recorded testimony bears sufficient indicia of reliability for introduction into evidence;¹¹² and (iv) the Defence will have ample opportunity to cross-examine the witnesses.¹¹³

43. The Defence objects to P-2607 being called as a rule 68(3) witness. First, the Defence submits that a reading of P-2607's prior recorded testimony does not enable one to determine how and by whom such testimony is corroborated.¹¹⁴ The Defence argues that the Prosecution cannot simply submit that testimony is corroborated and leave it to the Defence and the Chamber to surmise where such corroboration exists.¹¹⁵ The Defence goes on to note that none of the prior recorded testimonies of the other witnesses cited by the Prosecution corroborate P-2607's testimony.¹¹⁶ It submits that one such prior recorded testimony is that of [REDACTED] who contradicts P-2607's testimony regarding the role [REDACTED] and [REDACTED] and whether the [REDACTED].¹¹⁷ Second, the Defence calls P-2607's credibility into question because he previously [REDACTED] (before the Seleka's arrival in Bangui) and because his [REDACTED].¹¹⁸ Lastly, the Defence posits that P-2607's prior recorded testimony is based in large part on hearsay rather than facts and situations he witnessed directly.¹¹⁹

¹⁰⁷ CAR-OTP-2125-0855-R02, at 0858, paras 21-22.

¹⁰⁸ CAR-OTP-2125-0855-R02, at 0859, para. 24.

¹⁰⁹ [Second Rule 68\(3\) Request](#), para. 19.

¹¹⁰ [Second Rule 68\(3\) Request](#), para. 19.

¹¹¹ [Second Rule 68\(3\) Request](#), para. 20.

¹¹² [Second Rule 68\(3\) Request](#), para. 21.

¹¹³ [Second Rule 68\(3\) Request](#), para. 23.

¹¹⁴ [Response](#), para. 125.

¹¹⁵ [Response](#), para. 125.

¹¹⁶ [Response](#), para. 126.

¹¹⁷ [Response](#), para. 127.

¹¹⁸ [Response](#), para. 128.

¹¹⁹ [Response](#), para. 129.

44. The Chamber is satisfied that the issues raised by the Defence should not preclude the introduction of P-2607's prior recorded testimony pursuant to rule 68(3) of the Rules. The Chamber takes note of the Defence's first argument and refers to the Prosecution's submission that P-2067's evidence is corroborated by the testimony of [REDACTED]. In light of the above and regarding the inconsistencies between the testimony of P-2607 and [REDACTED], the Chamber observes that the Defence will be able to cross-examine P-2607 [REDACTED]. The Chamber further notes that introducing P-2607's prior recorded testimony will shorten the time that the Prosecution needs for its direct examination by three hours, thereby advancing the expeditiousness of the proceedings. Accordingly, in light of the above, the Chamber grants the Prosecution's request to introduce P-2607's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

7. P-2504

45. According to the Prosecution, P-2504 [REDACTED]¹²⁰ While at the [REDACTED], P-2504 [REDACTED].¹²¹ P-2504 attests to the [REDACTED]¹²² and details that Mr Said used the central OCRB as the Seleka base upon the Seleka's arrival in Bangui.¹²³ P-2504's prior recorded testimony adds that Mr Said served as the head of the OCRB from 24 March 2013 until Djotodia's resignation¹²⁴ and recalls [REDACTED] that the Seleka would obey Mr Said's orders and address him as Colonel.¹²⁵ P-2504's prior recorded testimony also describes that [REDACTED].¹²⁶ The witness's 'prior recorded testimony and associated material consists of one statement, six annexes, and 13 photographs he commented on in his written statement'.¹²⁷

46. The Prosecution submits that P-2504's prior recorded testimony should be accepted under rule 68(3) because: (i) it would reduce his examination in chief from

¹²⁰ [Fourth Rule 68\(3\) Request](#), para. 43; CAR-OTP-2111-0177, at 0179, para. 11.

¹²¹ CAR-OTP-2111-0177, at 0181, para. 26.

¹²² CAR-OTP-2111-0177, at 0182-0183, paras 34-36.

¹²³ CAR-OTP-2111-0177, at 0183, para. 38.

¹²⁴ CAR-OTP-2111-0177, at 0183, para. 38.

¹²⁵ CAR-OTP-2111-0177, at 0184, para. 42.

¹²⁶ CAR-OTP-2111-0177, at 0185, paras 48-52.

¹²⁷ [Fourth Rule 68\(3\) Request](#), para. 47.

eight hours to one hour;¹²⁸ (ii) the evidence has sufficient indicia of reliability;¹²⁹ (iii) P-2504 and the six other witnesses who are the subject of the Fourth Rule 68(3) Request ‘all corroborate each other to a certain extent’ and their evidence is ‘corroborated by and cumulative of the evidence of other witnesses whom the Prosecution proposes to call *viva voce*.’¹³⁰

47. The Defence submits that the Prosecution’s application to introduce P-2504’s prior recorded testimony should be rejected. In particular, the Defence contends that the prior recorded testimony of [REDACTED] contradicts that of P-2504 in certain respects,¹³¹ including regarding the manner in which and from whom P-2504 learned of the [REDACTED].¹³² The Defence argues that the number of perceived inconsistencies cast doubt on the reliability of P-2504’s prior recorded testimony and that the introduction of P-2504’s prior recorded testimony without submitting him to both a direct examination and cross-examination would jeopardise the fairness of the trial as key testimony for the Prosecution could prove to be unreliable and of questionable probative value.¹³³

48. The Chamber is of the view that P-2504 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-2504 the Chamber finds that he must be called to provide testimony as a *viva voce* witness.

49. First, the Chamber notes that P-2504 [REDACTED] is in a position to provide potentially significant evidence regarding the accused’s conduct (including giving orders to and interacting on multiple occasions with the Seleka as well as the accused’s alleged involvement in the arrest and detention of a [REDACTED]). Second, P-2504’s account regarding [REDACTED] is inconsistent with [REDACTED] prior recorded

¹²⁸ [Fourth Rule 68\(3\) Request](#), paras 2, 48.

¹²⁹ [Fourth Rule 68\(3\) Request](#), paras 2, 49.

¹³⁰ [Fourth Rule 68\(3\) Request](#), para. 51, referring to P-1167, P-2105, P-2563; P-0338; P-0547, P-1743, and P-3056.

¹³¹ [Response](#), paras 165-170.

¹³² [Response](#), paras 166-170.

¹³³ [Response](#), paras 162, 170.

testimony. For example, P-2504 states that he [REDACTED], whereas [REDACTED]. Given the witness's presence at the OCRB and potential knowledge of events that are the subject of this case, the Chamber finds that it would be prejudicial to the accused to introduce the witness's prior recorded testimony under rule 68(3) of the Rules. Lastly, the Chamber considers that calling P-2504 as a rule 68(3) witness would be unlikely to achieve the aim of streamlining in-court questioning. Accordingly, in light of the foregoing, the Chamber rejects the Prosecution's request to introduce P-2504's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

8. *P-3064*

50. The Prosecution submits that the Seleka arrested P-3064 alongside others [REDACTED].¹³⁴ In his prior recorded testimony, P-3064 describes: (i) the conditions he experienced while detained in a small and dark underground cell adjacent to the OCRB head's office;¹³⁵ (ii) being given food that he believes his brother-in-law brought to the OCRB;¹³⁶ (iii) receiving a visit from a female prosecutor who recorded his signed statement;¹³⁷ and (iv) being transferred to a tribunal and subsequently released by a judge.¹³⁸ P-3064's prior recorded testimony and associated material comprises a statement, two annexes as well as photographs and documents shown to P-3064 during his interview.¹³⁹

51. The Prosecution submits that P-3064's prior recorded testimony should be introduced under rule 68(3) because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-3064 from four hours to one hour;¹⁴⁰ (ii) P-3064's testimony bears sufficient indicia of reliability for introduction into evidence;¹⁴¹ (iii) the introduction of P-3064's prior recorded testimony is 'closely corroborative of his fellow detainees' and is therefore not prejudicial to or

¹³⁴ [Third Rule 68\(3\) Request](#), para. 31.

¹³⁵ CAR-OTP-2135-2824, at 2829-2830, paras 30-34, 36.

¹³⁶ CAR-OTP-2135-2824, at 2831, para. 38.

¹³⁷ CAR-OTP-2135-2824, at 2833, paras 48-50.

¹³⁸ CAR-OTP-2135-2824, at 2834, para. 52.

¹³⁹ [Third Rule 68\(3\) Request](#), para. 34.

¹⁴⁰ [Third Rule 68\(3\) Request](#), para. 35.

¹⁴¹ [Third Rule 68\(3\) Request](#), para. 36.

inconsistent with the rights of the accused;¹⁴² and (iv) the Defence will have ample opportunity to cross-examine P-3064.¹⁴³

52. The Defence argues that the Chamber should reject the Prosecution's application to introduce P-3064's prior recorded testimony.¹⁴⁴ Specifically, the Defence submits that P-3064 is not in a position to corroborate the testimony of his [REDACTED] either because P-3064 did not directly witness certain acts [REDACTED] or because P-3064 did not [REDACTED].¹⁴⁵ It also highlights that he frequently indicates that he cannot remember certain details because of his situation.¹⁴⁶

53. The Chamber is satisfied that the issues identified by the Defence do not preclude the introduction of P-3064's testimony pursuant to rule 68(3) of the Rules. First, allowing P-3064's testimony under rule 68(3) would promote the expeditiousness of the proceedings by shortening the Prosecution's examination from four hours to one hour. Second, the Chamber finds that P-3064 will appear before the Chamber and the Defence will have a reasonable opportunity to address aspects pertaining to his credibility and the probative value of his prior recorded testimony and provide information regarding the individuals with whom he was arrested and detained. Accordingly, in light of the foregoing, the Chamber grants the Prosecution's request to introduce P-3064's prior recorded testimony and associated material into evidence pursuant to rule 68(3) of the Rules.

9. *P-2241*

54. According to the Prosecution, P-2241 is a [REDACTED] who was arrested by the Seleka, along with P-2400.¹⁴⁷ P-2241's prior recorded testimony includes information regarding: (i) [REDACTED];¹⁴⁸ (ii) the Seleka's treatment of OCRB prisoners;¹⁴⁹ and (iii) P-2241's interactions with Mr Said¹⁵⁰ and Mr Said's role at the

¹⁴² [Third Rule 68\(3\) Request](#), para. 38, referring to witnesses P-3053 and P-3056.

¹⁴³ [Third Rule 68\(3\) Request](#), para. 37.

¹⁴⁴ [Response](#), para. 155.

¹⁴⁵ [Response](#), paras 155-156.

¹⁴⁶ [Response](#), para. 157.

¹⁴⁷ [Third Rule 68\(3\) Request](#), para. 13; CAR-OTP-2092-3851, at 3855, paras 22-25.

¹⁴⁸ CAR-OTP-2092-3851, at 3860, paras 47.

¹⁴⁹ CAR-OTP-2092-3851, at 3863-3866, paras 64, 75.

¹⁵⁰ CAR-OTP-2092-3851, at 3868-3869, paras 83-93; CAR-OTP-2092-3851, at 3870, para. 95.

OCRB (such as giving orders and being reported to).¹⁵¹ The witness discusses not being informed of the [REDACTED] and eventually interacting with a prosecutor.¹⁵² [REDACTED] ‘prior recorded testimony and associated material consists of one statement as well as [two] photographs shown to the witness during the interview about which [REDACTED] made substantive comments’.¹⁵³

55. The Prosecution submits that P-2241’s prior recorded testimony should be introduced under rule 68(3) because: (i) it would reduce P-2241’s examination in chief from four hours to one hour;¹⁵⁴ (ii) it has sufficient indicia of reliability;¹⁵⁵ (iii) ‘P-2241 and P-2400’s accounts closely corroborate each other as they both describe being arrested together, and are corroborated by P-2337 and P-2239’ (‘and corroborated by and cumulative of the evidence of three other OCRB victims’ who have testified or will testify *viva voce* under full direct examination);¹⁵⁶ and (iv) it will not be prejudicial to or inconsistent with the rights of the accused as the Defence will have an opportunity to cross-examine P-2241.¹⁵⁷

56. The Defence argues that the Prosecution’s application to introduce P-2241’s prior recorded testimony should be rejected. Specifically, the Defence contests the reliability and accuracy of P-2241’s prior recorded testimony.¹⁵⁸ In support of its argument, the Defence notes that the Prosecution’s Trial Brief states that P-2241’s arrest occurred in [REDACTED], whereas in [REDACTED] prior recorded testimony, P-2241 stated that [REDACTED] occurred [REDACTED] and about [REDACTED].¹⁵⁹ The Defence also highlights inconsistencies between P-2241’s prior recorded testimony and [REDACTED] and notes that many of P-2241’s statements appear to be based on hearsay.¹⁶⁰

¹⁵¹ CAR-OTP-2092-3851, at 3863, paras 60-61; CAR-OTP-2092-3851, at 3867, para. 81.

¹⁵² CAR-OTP-2092-3851, at 3855, para. 26, at 3869, paras 90-93.

¹⁵³ [Third Rule 68\(3\) Request](#), para. 17; Annex A to the Third Rule 68(3) Request.

¹⁵⁴ [Third Rule 68\(3\) Request](#), para. 35.

¹⁵⁵ [Third Rule 68\(3\) Request](#), para. 36.

¹⁵⁶ [Third Rule 68\(3\) Request](#), paras 18, 38, referring in particular to P-0547, P-1743, and P-3056.

¹⁵⁷ [Third Rule 68\(3\) Request](#), para. 37.

¹⁵⁸ [Response](#), para. 138.

¹⁵⁹ [Response](#), para. 139.

¹⁶⁰ [Response](#), paras 141-142.

57. The Chamber is satisfied that P-2241's prior recorded testimony may be introduced pursuant to rule 68(3) of the Rules. First, in respect of the alleged inconsistencies in P-2241's prior recorded testimony and [REDACTED], as well as the discrepancies regarding P-2241's [REDACTED], the Chamber does not believe that such issues are of such a nature and degree that would require P-2241 to testify fully *viva voce*. The Defence will have a reasonable opportunity to question P-2241 on issues identified as core for its case as well as any inconsistencies and issues it considers relevant. Lastly, the Chamber notes that the introduction of P-2241's prior recorded testimony will advance the expeditiousness of the proceedings and therefore grants the Prosecution's request to introduce P-2241's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

10. P-2161

58. The Prosecution submits that P-2161 is a former Seleka member [REDACTED].¹⁶¹ In his prior recorded testimony, P-2161 describes, *inter alia*: (i) being ordered by a Seleka [REDACTED]; (ii) the individuals in charge of [REDACTED] and the overall number of Seleka forces located there;¹⁶² (iii) [REDACTED]; and (iv) [REDACTED].¹⁶³ P-2161 also [REDACTED] details [REDACTED]: (i) the OCRB's layout, structure, and organization; (ii) [REDACTED].¹⁶⁴ The witness's 'prior recorded testimony and associated material consists of a statement, one annex, and 14 documents he commented on, provided to the Prosecution, and, for most, authored'.¹⁶⁵

59. The Prosecution argues that its request to call P-2161 as a rule 68(3) witness should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing the time of a full examination of P-2161 from approximately eight hours to just one hour;¹⁶⁶ (ii) P-2161's testimony contains [REDACTED] that has sufficient indicia of reliability and is corroborative of other evidence;¹⁶⁷ and (iii) its introduction

¹⁶¹ [Fourth Rule 68\(3\) Request](#), para. 26.

¹⁶² CAR-OTP-2100-2673, at 2676-2677, paras 15-24.

¹⁶³ CAR-OTP-2100-2673, at 2678, paras 28-30, at 2676 to 2677, paras 15-24.

¹⁶⁴ CAR-OTP-2100-2673, at 2680-2686, paras 43-72.

¹⁶⁵ [Fourth Rule 68\(3\) Request](#), para. 30.

¹⁶⁶ [Fourth Rule 68\(3\) Request](#), paras 2, 48.

¹⁶⁷ [Fourth Rule 68\(3\) Request](#), paras 7, 49, 51.

would not be prejudicial to or inconsistent with the rights of the accused because the Defence will be able to fully cross-examine P-2161 in court.¹⁶⁸

60. The Defence objects to P-2161 being called as a rule 68(3) witness. The Defence makes the following submissions: (i) P-2161's evidence relates to the core charges against Mr Said;¹⁶⁹ (ii) P-2161's evidence should be treated with greater caution as he is [REDACTED];¹⁷⁰ (iii) [REDACTED] P-2161 [REDACTED];¹⁷¹ and (iv) the Prosecution has failed to establish that P-2161's testimony is corroborated.¹⁷² Due to the abovementioned factors, the Defence submits that the introduction of P-2161's prior recorded testimony without submitting him to examination and cross-examination would jeopardise the fairness of the trial as key testimony for the Prosecution could prove to be unreliable and of questionable probative value.¹⁷³

61. The Chamber is of the view that P-2161 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-2161 the Chamber finds that he must be called as a *viva voce* witness.

62. The Chamber notes that, [REDACTED], P-2161 served as a member of the Seleka [REDACTED] and is able to provide potentially significant evidence regarding the accused [REDACTED]. Given the witness's role [REDACTED], the Chamber finds that it would be prejudicial to the accused to introduce the P-2161's prior recorded testimony under rule 68(3) of the Rules. Further, the Chamber considers that calling P-2161 as a rule 68(3) witness would be unlikely to achieve the aim of streamlining in-court questioning. Accordingly, in light of the above, the Chamber rejects the Prosecution's request to introduce P-2161's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules.

¹⁶⁸ [Fourth Rule 68\(3\) Request](#), paras 2, 50.

¹⁶⁹ [Response](#), para. 158.

¹⁷⁰ [Response](#), paras 158-159.

¹⁷¹ [Response](#), para. 160.

¹⁷² [Response](#), para. 163.

¹⁷³ [Response](#), para. 162.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS the introduction of the prior recorded testimony and associated materials of P-1429, P-1762, P-0435, P-2692, P-2607, P-3064, and P-2241; and

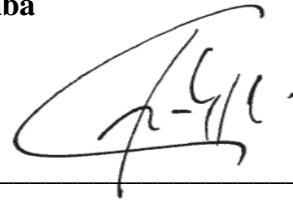
REJECTS the Prosecution's request to introduce the prior recorded testimony and associated material of P-1737, P-2504, and P-2161.



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 8 November 2022

At The Hague, The Netherlands