

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**No.: ICC-01/14-01/21
Date: 21 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 Sixth Request Pursuant to Rule 68(2)(b) of the
Rules**

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*, having regard to articles 67 and 69(2) of the Rome Statute (the ‘Statute’) and rule 68 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Sixth Request Pursuant to Rule 68(2)(b) of the Rules’.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 23 May 2022, the Office of the Prosecutor (the ‘Prosecution’) filed its sixth request to introduce the prior recorded testimony of nine further witnesses pursuant to rule 68(2)(b) of the Rules (the ‘Request’).¹

2. The Prosecution submits for all witnesses generally that their prior testimonies are reliable, probative and relevant,² that they do not go to the acts and conduct of the accused³ and that they have sufficient indicia of reliability.⁴ Further, it argues that the introduction of the prior recorded testimonies would save the Chamber court time, the avoidance of repetition and therefore serve the interests of justice.⁵

3. Concerning whether the prior recorded testimonies relate to issues materially in dispute, the Prosecution submits that the factual allegations contained in the witness testimonies are not in dispute but rather their legal characterisation or significance.⁶ Lastly, the Prosecution submits that, due to the cumulative or corroborative character of the prior recorded testimony of all nine witnesses, their introduction is not prejudicial to the Defence.⁷

¹ Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b), 23 May 2022, ICC-01/14-01/21-328-Conf. A public-redacted version of the Request was filed on 27 May 2022, [ICC-01/14-01/21-328-Red](#). The witnesses are: P-0622, P-1289, P-1432, P-2172, P-2239, P-2337, P-2519 and P-3047.

² Request, [ICC-01/14-01/21-328-Red](#), paras 2, 8-37.

³ Request, [ICC-01/14-01/21-328-Red](#), para. 7.

⁴ Request, [ICC-01/14-01/21-328-Red](#), paras 38-39.

⁵ Request, [ICC-01/14-01/21-328-Red](#), paras 3, 45-46.

⁶ Request, [ICC-01/14-01/21-328-Red](#), para. 43.

⁷ Request, [ICC-01/14-01/21-328-Red](#), paras 47-49.

4. On 3 June 2022, the Common Legal Representative of Victims (the ‘CLR’) filed her response to the Request.⁸

5. She submits that the Request should be granted with regard to all nine witnesses.⁹ The CLRV submits that the prior recorded testimonies of all witnesses concerned do not relate to the acts and conduct of the accused,¹⁰ that they possess sufficient indicia of reliability¹¹ and are corroborative of other evidence which will be provided by witnesses appearing live before the Chamber.¹² Thus, in the eyes of the CLRV, the introduction of the prior recorded testimony will be in accordance with a fair and expeditious trial.¹³

6. On 8 July 2022, the Defence filed its response to the Request, submitting that it should be rejected in its entirety (the ‘Response’).¹⁴

7. The Defence raises several objections on a general level. First, it notes that the prior recorded testimonies are not verbatim transcriptions of the interviews, which, in the view of the Defence, enhances the prejudice to the accused should they be introduced.¹⁵ Further, it submits that the Prosecution does not explain systematically for all nine witnesses why they are not available to provide their testimony *viva voce*. This, according to the Defence, is a precondition for the introduction of prior recorded testimony pursuant to Rule 68(2)(b).¹⁶

8. The Defence also makes reference to its interpretation of ‘acts and conduct of the accused’ which it adopted in a previous filing¹⁷ and submits that the prior recorded

⁸ Victims’ consolidated response to the Prosecution’s 5th and 6th Requests to introduce prior recorded testimony pursuant to rule 68(2)(b) (ICC-01/14-01/21-323-Red and ICC-01/14-01/21-328-Red), [ICC-01/14-01/21-345](#).

⁹ [ICC-01/14-01/21-345](#), para. 2.

¹⁰ [ICC-01/14-01/21-345](#), para. 11.

¹¹ [ICC-01/14-01/21-345](#), para. 12.

¹² [ICC-01/14-01/21-345](#), para. 12.

¹³ [ICC-01/14-01/21-345](#), para. 13.

¹⁴ Réponse de la Défense à la « Prosecution sixth request to introduce prior recorded testimony pursuant to Rule 68(2)(b) » (ICC-01/14-01/21-328-Conf) déposée le 23 mai 2022, 8 July 2022, ICC-01/14-01/21-398-Conf. A public redacted version was filed on 18 July 2022, [ICC-01/14-01/21-398-Red](#).

¹⁵ Response, [ICC-01/14-01/21-398-Red](#), para. 11.

¹⁶ Response, [ICC-01/14-01/21-398-Red](#), para. 17.

¹⁷ Réponse de la Défense à la « Prosecution first request to introduce prior recorded testimony pursuant to Rule 68(2)(b) » (ICC-01/14-01/21-289-Conf) déposée le 29 avril 2022, 9 June 2022, ICC-01/14-01/21-

testimony of all nine witnesses contains information related to acts and conduct of the accused, as understood by the Defence.¹⁸

9. Further, the Defence submits that the content of all prior recorded testimonies relates to issues materially in dispute,¹⁹ that they must only contain information which is corroborated by other evidence – which the prior recorded statements do not²⁰ – and that they do not possess sufficient indicia of reliability.²¹

10. Additionally, in respect of P-1432 and P-3047, the Defence requests that the request be rejected *in limine*, since both witnesses were subject of the Prosecution’s then pending request to amend the charges.²²

II. APPLICABLE LAW

11. For the applicable law, the Chamber refers to the ‘Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules’.²³

III. ANALYSIS

12. At the outset, the Chamber notes that, in its Response, the Defence reiterates a number of arguments that were previously raised and dealt with in the context of the Chamber’s Decision on the Prosecution’s First, Second and Fourth Requests pursuant to rule 68(2)(b) of the Rules.²⁴ The Chamber refers to its previous decision in this regard and will hereinafter only deal with the Defence’s arguments that are specific to the Request.

349-Conf. A public redacted version was filed on 15 June 2022, [ICC-01/14-01/21-349-Red](#), paras 10-20.

¹⁸ Response, [ICC-01/14-01/21-398-Red](#), paras 19-24.

¹⁹ Response, [ICC-01/14-01/21-398-Red](#), para. 25.

²⁰ Response, [ICC-01/14-01/21-398-Red](#), paras 27-57.

²¹ Response, [ICC-01/14-01/21-398-Red](#), paras 58-75.

²² Response, [ICC-01/14-01/21-398-Red](#), paras 14-16.

²³ Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, 20 October 2022, ICC-01/14-01/21-507-Conf. A public-redacted version was filed on 21 October 2022, [ICC-01/14-01/21-507-Red](#) (the ‘First Rule 68(2)(b) Decision’).

²⁴ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#) paras 17-22, 24, 35-42.

13. The Chamber will conduct an individual witness-by-witness assessment in order to decide whether the introduction of the prior recorded testimony may be allowed under rule 68(2)(b) of the Rules.

1. P-0622

14. P-0622 is an [REDACTED], who during the period of the charges, [REDACTED]. In his statement,²⁵ P-0622 recounts how he was arrested by the Seleka and brought to the *Office Centrafricain pour la Répression du Banditisme* (the ‘OCRB’) on [REDACTED] 2013, together with [REDACTED] other persons.²⁶ He describes the events at the OCRB, including the conditions of detention,²⁷ how he and his cell-mates were tortured [REDACTED]²⁸ and interrogated about Bozizé during the torture.²⁹ The witness saw dead inmates when soldiers opened his cell and provides evidence regarding how the Seleka disposed of the bodies.³⁰ P-0622 further states that he was transferred to *Camp de Roux* on [REDACTED] 2013,³¹ recounts his detention there, including cases of torture and murder of detainees that he witnessed,³² and how he was released on [REDACTED] 2013.³³ Additionally, the witness provided maps of both the OCRB³⁴ and *Camp de Roux*³⁵ and identified a number of persons on photographs shown to him.³⁶

15. The associated material³⁷ submitted with P-0622’s statement consists of sixteen annexes (and their translations, where applicable) among them four diagrams drawn by

²⁵ CAR-OTP-2022-0121-R02, the French original, and CAR-OTP-2029-0210-R02, the English translation. For ease of reference, all citations are made to the English version of the statement.

²⁶ CAR-OTP-2029-0210-R02, at 0215 to 0217, paras 33-51.

²⁷ CAR-OTP-2029-0210-R02, at 0218, paras 56-63.

²⁸ CAR-OTP-2029-0210-R02, at 0219, paras 64-67, at 0220, paras 78-80.

²⁹ CAR-OTP-2029-0210-R02, at 0217, para. 43.

³⁰ CAR-OTP-2029-0210-R02, at 0218 to 0219, paras 63-64; at 0220, paras 74-77.

³¹ CAR-OTP-2029-0210-R02, at 0221, para. 94.

³² CAR-OTP-2029-0210-R02, at 0221 to 0225, paras 95-136.

³³ CAR-OTP-2029-0210-R02, at 0225, paras 137-140.

³⁴ CAR-OTP-2029-0210-R02, at 0221, paras 90-91.

³⁵ CAR-OTP-2029-0210-R02, at 0226, paras 142-144.

³⁶ CAR-OTP-2029-0210-R02, at 0227 to 0231, paras 153-231.

³⁷ The Chamber understand this term to mean ‘annexes or associated material’ as specific by the Prosecution in the Annex to the Request.

the witness (and their translations),³⁸ eleven photographs and a video shown for the purpose of the identification of persons.³⁹

16. The Chamber notes that P-0622 is part of a group of [REDACTED] persons who were allegedly arrested and mistreated by the Seleka and who witnessed others being mistreated during their detention at the OCRB, which constitutes the basis for the factual allegations contained in incident ‘e’ of the charged crimes.⁴⁰ The Defence disputes these allegations and argues that P-0622’s testimony is of low probative value due to hearsay.⁴¹

17. The Chamber notes the Prosecution’s submission that the events are not materially in dispute but merely contested as to their legal significance while the Defence argues on the other hand that all prior recorded testimonies are disputed in their specific detail as well as entirety. The Chamber recalls its prior jurisprudence that the fact of whether an issue is materially in dispute cannot be understood as a *de facto* veto by which a party can simply block the introduction of any prior recorded statement by claiming that an issue is materially in dispute.⁴² Ultimately, the determination of materiality will be made by the Chamber. In the current instance, the issue is one of the charged incidents which forms the factual allegations of the charged crimes. In this sense, the Chamber notes that this witness’s prior recorded testimony concerns a central allegation against the accused. The Chamber considers these incidents to be materially disputed between the parties – not merely with regard to their legal significance but in their totality. Accordingly, the prior recorded testimony relates to issues materially in dispute and does not relate to background information.

18. The Chamber also notes that P-0622 is the only person who is subject of incident ‘e’ whom the Prosecution intends to rely on as a witness. The Chamber notes that the Prosecution has charged 18 incidents in the present case and considers that these

³⁸ CAR-OTP-2022-0150, CAR-OTP-2029-0238, CAR-OTP-2022-0151, CAR-OTP-2029-0240, CAR-OTP-2022-0152, CAR-OTP-2029-0242, CAR-OTP-2022-0153 and CAR-OTP-2029-0244.

³⁹ CAR-OTP-2022-0154-R01, CAR-OTP-2022-0164, CAR-OTP-2022-0166, CAR-OTP-2022-0168, CAR-OTP-2022-0170, CAR-OTP-2022-0172, CAR-OTP-2022-0174, CAR-OTP-2022-0176, CAR-OTP-2022-0178, CAR-OTP-2022-0180 and CAR-OTP-2022-0182.

⁴⁰ Decision on the Confirmation of the Charges, 9 December 2021, [ICC-01/14-01/21-218-Red](#), (the ‘Confirmation Decision’), p. 55.

⁴¹ Response, [ICC-01/14-01/21-398-Red](#), paras 26, 68-69.

⁴² First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), para. 21.

charges are not so expansive that the interests of justice would favour eliminating cumulative in-court testimony on the charged crimes in order to safeguard the expeditiousness of proceedings.

19. Under these circumstances, in the current case, the Chamber finds it unduly prejudicial to the Defence to introduce the prior recorded testimony of the witness via rule 68(2)(b) of the Rules. In this regard, the Chamber is of the view that the Defence should be accorded the right to test P-0622's evidence in court. Accordingly, the Chamber rejects the Prosecution's request to introduce the prior recorded testimony of P-0622 pursuant to rule 68(2)(b) of the Rules.

20. Instead, the Chamber finds that P-0622's prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules. In this regard, the Chamber notes that P-0622's prior recorded testimony bears sufficient indicia of reliability. P-0622's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood. In light of the foregoing, the Chamber considers it appropriate to allow the introduction of P-0622's prior recorded testimony under rule 68(3) rather than rule 68(2)(b) of the Rules, should the Prosecution wish to rely upon his testimony. The Chamber's ruling in this respect is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony pursuant to this provision. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether it wishes P-0622 to testify pursuant to rule 68(3) of the Rules.⁴³

2. P-1289

21. P-1289 used to [REDACTED] and worked during the [REDACTED]. In his statement,⁴⁴ P-1289 describes, *inter alia*, the Seleka's arrival in Bangui and the political situation at the time,⁴⁵ his arrest by the Seleka on [REDACTED] May 2013,

⁴³ The Prosecution's decision whether to call P-0622 (or any other witness who is subject to this decision) as a live witness and use rule 68(3) of the Rules can be communicated via Email.

⁴⁴ CAR-OTP-2053-0359-R02, the English original, and CAR-OTP-2127-7632-R01, the French translation. All citations are made to the English original.

⁴⁵ CAR-OTP-2053-0359-R02, at 0362 to 0364, paras 16-29.

[REDACTED],⁴⁶ his detention at and the conditions in the OCRB⁴⁷ and his interrogation and release by Nourredine Adam the following day.⁴⁸

22. The associated material submitted with P-1289's statement consists of five annexes, among them several documents,⁴⁹ a sketch of the OCRB detention facility done by the witness during the interview⁵⁰ and [REDACTED] related to the date of P-1289's arrest.⁵¹

23. The Chamber notes that P-1289 is the subject of incident 'a' of the charged crimes.⁵² His arrest, detention and subsequent release constitute the factual allegations contained in this incident. The Defence disputes these allegations and submits that the prior recorded testimony is uncorroborated.⁵³

24. The Chamber repeats its considerations concerning whether an issue is materially in dispute⁵⁴ and is of the view that they equally apply in this case. The Chamber therefore finds that P-1289's prior record testimony does not pertain to background information but relates to a central allegation against the accused and is materially in dispute. Furthermore, P-1289 is the only subject of incident 'a' of the charged crimes whom the Prosecution intends to rely on as a witness. Again, the Chamber notes that the Prosecution has charged 18 incidents in the present case and considers that these charges are not so expansive that the interests of justice would favour eliminating cumulative in-court testimony on the charged crimes in order to safeguard the expeditiousness of proceedings.

25. Under these circumstances, in the current case, the Chamber finds it unduly prejudicial to the Defence to introduce the prior recorded testimony of this witness via rule 68(2)(b) of the Rules. In this regard, the Defence should be accorded the right to test P-1289's evidence in court. Consequently, the Chamber rejects the Prosecution's

⁴⁶ CAR-OTP-2053-0359-R02, at 0365 to 0367, paras 36-47.

⁴⁷ CAR-OTP-2053-0359-R02, at 0367 to 0373, paras 48-77.

⁴⁸ CAR-OTP-2053-0359-R02, at 0373 to 0375, paras 81-91.

⁴⁹ CAR-OTP-2053-0401, CAR-OTP-2053-0402 and CAR-OTP-2053-0407.

⁵⁰ CAR-OTP-2053-0382.

⁵¹ CAR-OTP-2053-0383-R01.

⁵² [Confirmation Decision](#), p. 29.

⁵³ Response, [ICC-01/14-01/21-398-Red](#), paras 26, 39-46.

⁵⁴ See para 17 above.

request to introduce the prior recorded testimony of P-1289 pursuant to rule 68(2)(b) of the Rules.

26. Instead, the Chamber finds that P-1289's prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules. In this regard, the Chamber notes that P-1289's prior recorded testimony bears sufficient indicia of reliability. P-1289's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood and translated by a qualified translator. In light of the foregoing, the Chamber considers it appropriate to allow the introduction of P-1289's prior recorded testimony under rule 68(3) rather than rule 68(2)(b) of the Rules, should the Prosecution wish to rely upon his testimony. The Chamber's ruling in this respect is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony pursuant to this provision. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether it wishes P-1289 to testify pursuant to rule 68(3) of the Rules.

3. P-1432

27. P-1432 is a [REDACTED] who, at the time relevant to the charges, [REDACTED]. In his statement⁵⁵ P-1432 describes how the Seleka arrested him while pillaging [REDACTED] one morning in mid-August 2013.⁵⁶ He further describes how he was detained at *Sapeurs Pompiers* for approximately two weeks⁵⁷ before being transferred to the OCRB. There, he was put in an underground room,⁵⁸ was interrogated by a Seleka commander [REDACTED]⁵⁹ and describes the conditions of detention at the OCRB.⁶⁰ The witness states that, after the Seleka left the OCRB, he could leave the underground room, spent his time outside the cell during the day and was only locked

⁵⁵ CAR-OTP-2050-172-R02 (French original) and CAR-OTP-2073-0743-R02 (English translation). For ease of reference, all citations are made to the English version of the statement.

⁵⁶ CAR-OTP-2073-0743-R02, at 0746 to 0747, paras 17-24.

⁵⁷ CAR-OTP-2073-0743-R02, at 0748 to 0749 paras 26-39.

⁵⁸ CAR-OTP-2073-0743-R02, at 0750, para. 41.

⁵⁹ CAR-OTP-2073-0743-R02, at 0750, para. 47.

⁶⁰ CAR-OTP-2073-0743-R02, at 0750 to 0751, paras 43-45, 48-51.

up at night.⁶¹ P-1432 describes ultimately being brought before a judge, told that the Seleka accused him of being involved in the ‘unrest in the country’ and released on [REDACTED] September 2013.⁶²

28. The associated material submitted with P-1432’s statement consists of eight annexes, among them four photographs of the injuries he sustained during the arrest by the Seleka,⁶³ a sketch of the OCRB produced by P-1432 during the interview⁶⁴ and three judicial documents.⁶⁵

29. The Prosecution submits⁶⁶ that P-1432’s testimony is corroborated by witnesses who will be appearing live before the Chamber,⁶⁷ another witness who is also the subject of this Request⁶⁸ and a witness whose statement was subject to a request pursuant to rule 68(2)(c) of the Rules.⁶⁹

30. The Defence submits that P-1432’s testimony is not of a corroborative nature.⁷⁰ It argues that the witnesses cited by the Prosecution were not detained at the same time as P-1432 at the OCRB,⁷¹ that they are not able to corroborate all aspects of P-1432’s account⁷² or are not able to corroborate the detention of P-1432, since they were not detained themselves at the OCRB.⁷³ Particularly, in respect of P-1762 – whose statement is supposed to corroborate P-1432 – the Defence argues that the different accounts concerning the length of P-1762 and P-1432’s detention prevent any consideration of the two testimonies being corroborative.⁷⁴ In respect of P-1297, the Defence submits that, since P-1297 was [REDACTED], he cannot corroborate P-

⁶¹ CAR-OTP-2073-0743-R02, at 0751, paras 54-56.

⁶² CAR-OTP-2073-0743-R02, at 0751, paras 58-59.

⁶³ CAR-OTP-2050-0183, CAR-OTP-2050-0184, CAR-OTP-2050-0185 and CAR-OTP-2050-0186.

⁶⁴ CAR-OTP-2050-0190.

⁶⁵ CAR-OTP-2050-0187-R01, CAR-OTP-2050-0188 and CAR-OTP-2050-0189.

⁶⁶ Request, [ICC-01/14-01/21-328-Red](#), para. 39, n. 119.

⁶⁷ P-0547, P-1762 and P-2478.

⁶⁸ P-2179.

⁶⁹ P-1297. The Chamber notes that it granted the request to introduce P-1297’s prior recorded statement and associated material pursuant to Rule 68(2)(c) of the Rules; 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-Conf. A public redacted version of the decision has been filed on 26 October 2022, [ICC-01/14-01/21-506-Red](#).

⁷⁰ Response, [ICC-01/14-01/21-398-Red](#), paras 47-53.

⁷¹ P-0547, Response, [ICC-01/14-01/21-398-Red](#), para. 48.

⁷² P-2478, Response, [ICC-01/14-01/21-398-Red](#), para. 45.

⁷³ Response, [ICC-01/14-01/21-398-Red](#), para. 51.

⁷⁴ Response, [ICC-01/14-01/21-398-Red](#), [ICC-01/14-01/21-398-Red](#), para. 49.

1432's evidence.⁷⁵ Equally P-2478, in the view of the Defence, cannot provide corroborating evidence since he was not detained at the OCRB.⁷⁶

31. The Chamber notes that P-1432's testimony describes his arrest [REDACTED] in August 2013 and his detention and treatment at the OCRB as well as its structure and functioning. Although the Chamber determined that this incident is not one of the charged crimes in the present case, P-1432's evidence may be relevant to other parts of the Prosecution case, in particular the contextual elements of crimes against humanity.⁷⁷ Having considered the arguments presented by the parties in their briefs, the Chamber is of the view that these issues are materially in dispute.

32. Nonetheless, the Chamber notes that P-1432's prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused and is cumulative of the evidence of many oral witnesses whom the Prosecution intends to call to testify regarding their detention and mistreatment at the OCRB.

33. In the latter regard, the Chamber notes that the Defence mischaracterises the requirements of rule 68(2)(b) of the Rules when arguing that evidence has to concern the same facts. As previously explained,⁷⁸ rule 68(2)(b) of the Rules refers not only to corroborative evidence but also to evidence of a cumulative nature. Accordingly, it is incorrect to suggest that corroboration is a requirement for the introduction of prior recorded testimony pursuant to rule 68(2)(b) of the Rules.

34. Equally, it is not a requirement that there is a full overlap between the content of the prior recorded testimony introduced via rule 68(2)(b) of the Rules and the expected testimony of the relevant *viva voce* witnesses. Accordingly, the Defence's submissions that P-1297 and P-2478 cannot provide evidence of such quality is misguided. P-1297's prior recorded testimony describes how the Seleka attacked [REDACTED] in August 2013.⁷⁹ P-2478 was [REDACTED] whose testimony pertains to the structure and

⁷⁵ Response, [ICC-01/14-01/21-398-Red](#), para. 51.

⁷⁶ Response, [ICC-01/14-01/21-398-Red](#), para. 50.

⁷⁷ Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), 20 April 2022, ICC-01/14-01/21-282, para. 18; Decision on the Scope of the Charges, 6 September 2022, [ICC-01/14-01/21-472](#), p. 9.

⁷⁸ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), para. 28.

⁷⁹ CAR-OTP-2039-0167, at 0173 to 0176, paras 44-60.

functioning of the OCRB, including the underground room and P-2478 was present at the OCRB when the Seleka left.⁸⁰ Therefore, P-1432's testimony is of a cumulative nature to the testimony provided by these witnesses.

35. Concerning P-1762, the Chamber notes that P-1432 identifies P-1762 in his prior recorded testimony.⁸¹ Equally, P-1762 identifies P-1432 in his testimony.⁸² Both witnesses were transferred together from *Sapeurs Pompiers* to the OCRB where they were both detained in the underground room. Accordingly, irrespective of a possible discrepancy concerning the length of the detention, the Chamber finds that P-1432's testimony is at a minimum partly of a corroborative nature. Further, the Chamber notes that P-1762 will testify before the Chamber and that the Defence will therefore have the possibility to question him on this matter.

36. Lastly, the Chamber notes that the testimony bears sufficient indicia of reliability. P-1432's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood. The Chamber notes the Defence's submissions, but is of the view that the deficiencies identified by the Defence above in respect of P-1432's prior recorded testimony are not of such a nature or degree that the introduction of this prior recorded testimony should be precluded. Considering the above, particularly in light of the cumulative and corroborative nature of the statement, the Chamber considers that it would be in the interest of justice to introduce the statement and associated material of P-1432 pursuant to rule 68(2)(b) of the Rules in order to streamline the presentation of evidence and to avoid calling numerous oral witnesses to testify regarding the same or similar events. Accordingly, the Chamber grants the Request with regard to P-1432's prior recorded statement and the associated material.

⁸⁰ CAR-OTP-2107-8835, at 8839 to 8850, paras 16-60, at 8851 to 8852, paras 63-68.

⁸¹ CAR-OTP-2073-0743, at 0749, para. 35. *Compare with*, CAR-OTP-2073-0568, at 0570, para. 12, at 0573, para. 29. *See also* CAR-OTP-2073-0568, at 0576, para. 42 regarding the name P-1432 uses to describe P-1762.

⁸² CAR-OTP-2073-0568.

4. P-2172

37. P-2172 is [REDACTED]. In his statement,⁸³ P-2172 recounts how he was arrested by the Seleka and brought to the OCRB in [REDACTED] August 2013.⁸⁴ P-2172 describes being summoned to the Prosecutor's office in response to [REDACTED]. The Prosecutor informed P-2172 that he was under arrest.⁸⁵ The witness states that he was arrested by the Seleka for six hours overall.⁸⁶ The witness recalls being accused of organising a coup by Nouredine Adam, who then gave the order to release the witness.⁸⁷

38. There is no associated material submitted with P-2172's statement.

39. The Chamber notes that, while P-2172's statement is relatively short, his arrest and detention at the OCRB constitute the factual allegations forming the basis of incident 'k' of the charged crimes.⁸⁸ The Defence disputes these allegations and argues that the corroborating evidence identified by the Prosecution differs with regard to the time of the arrest provided by P-2172.⁸⁹ The Chamber repeats its considerations concerning whether an issue is materially in dispute⁹⁰ and is of the view that they equally apply in this case. In this sense, the Chamber notes that this witness's prior recorded testimony concerns a central allegation against the accused. The Chamber considers these incidents to be materially disputed between the parties – not merely with regard to their legal significance but in their totality. Accordingly, the prior recorded testimony relates to issues materially in dispute and does not relate to background information.

40. Further, P-2172 is the sole subject of incident 'k' of the charged crimes. The Chamber notes that the Prosecution has charged 18 incidents in the present case and considers that these charges are not so expansive that the interests of justice would

⁸³ CAR-OTP-2130-6313 (French original) and CAR-OTP-2135-3738 (English translation). For ease of reference, all citations are made to the English version of the statement.

⁸⁴ CAR-OTP-2135-3738, at 3742 to 3743, paras 19-23.

⁸⁵ CAR-OTP-2135-3738, at 3742; para. 18.

⁸⁶ CAR-OTP-2135-3738, at 3743, para. 21 and at 6314, para. 23.

⁸⁷ CAR-OTP-2135-3738, at 3742 to 3743, paras 21-23.

⁸⁸ [Confirmation Decision](#).

⁸⁹ Response, [ICC-01/14-01/21-398-Red](#), paras 26, 54.

⁹⁰ See para. 17 above.

favour eliminating cumulative in-court testimony on the charged crimes in order to safeguard the expeditiousness of proceedings.

41. Under these circumstances, in the current case, the Chamber finds it unduly prejudicial to the Defence to introduce the prior recorded testimony of this witness via rule 68(2)(b) of the Rules. In this regard, the Defence should be accorded the right to test P-2172's evidence in court. Consequently, the Chamber rejects the Prosecution's request to introduce the prior recorded testimony of P-2172 pursuant to rule 68(2)(b) of the Rules.

42. The Chamber notes the fact that the prior recorded testimony of P-2172 is extremely short. Therefore, the length of P-2172's expected testimony should be relatively short. Accordingly, the Chamber finds that the witness should testify fully *viva voce*, since introduction of the prior recorded statement via rule 68(3) of the Rules would not significantly expedite the proceedings. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether it wishes to call P-2172 as a witness.

5. P-2179

43. P-2179 [REDACTED]. In his statement,⁹¹ P-2179 recounts how he was arrested together with another person and beaten by the Seleka in [REDACTED].⁹² The witness recalled that he and the other prisoner were tied up in the *arbatachar* style,⁹³ a practice he also saw the Seleka use on three other prisoners.⁹⁴ P-2179 further states that he was struck with a machete by a member of the Seleka, sustaining an injury from which he still suffers.⁹⁵ Further, the witness recounts his subsequent imprisonment at the OCB for [REDACTED], including the conditions of detention, its functioning and his subsequent escape with help from a member of the Seleka.⁹⁶

⁹¹ CAR-OTP-2088-2250-R01 (English original); CAR-OTP-2130-2342-R01 (French translation). All citations are made to the English version of the statement.

⁹² CAR-OTP-2088-2250-R01, at 2255 to 2256, paras 30-31.

⁹³ CAR-OTP-2088-2250-R01, at 2261, para. 57.

⁹⁴ CAR-OTP-2088-2250-R01, at 2261, paras 56-59.

⁹⁵ CAR-OTP-2088-2250-R01, at 2263, paras 65-66.

⁹⁶ CAR-OTP-2088-2250-R01, at 2266 to 2272, paras 82-109.

44. The associated material submitted with P-2179's statement consists of twelve annexes (containing mostly photos)⁹⁷ and 44 further photos shown to the witness.⁹⁸

45. The Chamber notes that P-2179's arrest, his treatment by the Seleka and his detention at the OCHR constitute the factual allegations forming the basis of incident 'p' of the charged crimes.⁹⁹ The Defence disputes these allegations and argues that the evidence identified by the Prosecution as corroborating is of no such nature.¹⁰⁰

46. The Chamber repeats its considerations concerning whether an issue is materially in dispute¹⁰¹ and is of the view that they equally apply in this case. In this sense, the Chamber notes that this witness's prior recorded testimony concerns a central allegation against the accused. The Chamber considers these incidents to be materially disputed between the parties – not merely with regard to their legal significance but in their totality. Accordingly, the prior recorded testimony relates to issues materially in dispute and does not relate to background information.

47. Further, the Chamber notes that P-2179 is the only person who is subject of this incident whom the Prosecution intends to rely on as a witness. The Chamber notes that the Prosecution has charged 18 incidents in the present case and considers that these charges are not so expansive that the interests of justice would favour eliminating cumulative in-court testimony on the charged crimes in order to safeguard the expeditiousness of proceedings.

⁹⁷ CAR-OTP-2088-2285, CAR-OTP-2088-2290, CAR-OTP-2088-2291, CAR-OTP-2088-2292, CAR-OTP-2088-2293, CAR-OTP-2088-2294, CAR-OTP-2088-2295, CAR-OTP-2088-2296, CAR-OTP-2088-2297, CAR-OTP-2088-2300, CAR-OTP-2088-2301, CAR-OTP-2088-2302, CAR-OTP-2088-2303, CAR-OTP-2088-2304, CAR-OTP-2088-2305, CAR-OTP-2088-2306 and CAR-OTP-2088-2307.

⁹⁸ CAR-OTP-2059-0549, CAR-OTP-2065-0357, CAR-OTP-2069-2343, CAR-OTP-2069-1409, CAR-OTP-2069-2319, CAR-OTP-2069-2499, CAR-OTP-2069-2623, CAR-OTP-2069-2624, CAR-OTP-2069-2079, CAR-OTP-2069-2680, CAR-OTP-2069-2707, CAR-OTP-2069-2732, CAR-OTP-2069-3154, CAR-OTP-2069-1193, CAR-OTP-2069-2166, CAR-OTP-2069-0936, CAR-OTP-2069-0937, CAR-OTP-2069-1403; CAR-OTP-2033-7729, CAR-OTP-2033-7732, CAR-OTP-2033-7733, CAR-OTP-2033-7737, CAR-OTP-2033-7739, CAR-OTP-2033-7746, CAR-OTP-2033-7754, CAR-OTP-2033-7177, CAR-OTP-2069-3221, CAR-OTP-2069-3224, CAR-OTP-2069-3225, CAR-OTP-2069-3226, CAR-OTP-2069-3227, CAR-OTP-2069-3228, CAR-OTP-2069-3229, CAR-OTP-2069-3230, CAR-OTP-2069-3231, CAR-OTP-2069-3232, CAR-OTP-2069-3233, CAR-OTP-2069-3234, CAR-OTP-2069-1206, CAR-OTP-2069-1207, CAR-OTP-2069-1208, CAR-OTP-2069-1209, CAR-OTP-2069-1210 and CAR-OTP-2069-1991.

⁹⁹ [Confirmation Decision](#).

¹⁰⁰ Response, [ICC-01/14-01/21-398-Red](#), paras 26, 30-31.

¹⁰¹ See para. 17 above.

48. Under these circumstances, in the current case, the Chamber finds it unduly prejudicial to the Defence to introduce the prior recorded testimony of the witness via rule 68(2)(b) of the Rules. In this regard, the Chamber is of the view that the Defence should be accorded the right to test P-2179's evidence in court. Accordingly, the Chamber rejects the Prosecution's request to introduce the prior recorded testimony of P-2179 pursuant to rule 68(2)(b) of the Rules.

49. Instead, the Chamber finds that P-2179's prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules. In this regard, the Chamber notes that P-2179's prior recorded testimony bears sufficient indicia of reliability. P-2179's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood and translated by a qualified translator. In light of the foregoing, the Chamber considers it appropriate to allow the introduction of P-2179's prior recorded testimony under rule 68(3) rather than rule 68(2)(b) of the Rules, should the Prosecution wish to rely upon his testimony. The Chamber's ruling in this respect is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony pursuant to this provision. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether it wishes P-2179 to testify pursuant to rule 68(3) of the Rules.

6. P-2239

50. P-2239 is [REDACTED] and was working [REDACTED]. In his statement,¹⁰² P-2239 recounts how he was arrested by the Seleka at the *Camp de Roux*, [REDACTED].¹⁰³ He further described how he, P-2241, P-2400 ([REDACTED] who was arrested together with P-2241) and a Seleka fighter were all brought to the OCRB.¹⁰⁴ P-2239 describes the detention conditions at the OCRB and its structure and

¹⁰² CAR-OTP-2130-4729-R02 (French original) and CAR-OTP-2104-0918-R02 (English translation). For ease of reference, all citations are made to the English version of the statement.

¹⁰³ CAR-OTP-2104-0918-R02, at 0923 to 0928, paras 26-43.

¹⁰⁴ CAR-OTP-2104-0918-R02, at 0928, paras 44-46.

functioning.¹⁰⁵ After the Seleka left the OCRB, the witness was told that he was released and could go home.¹⁰⁶

51. There is no associated material submitted with P-2239's statement.

52. The Prosecution submits that P-2239's testimony is corroborated by three witnesses appearing live before the Chamber, P-2400, P-2240 and P-2241.¹⁰⁷ It also argues that other witnesses will testify and provide evidence on the OCRB's conditions of detention.¹⁰⁸ Further, the Chamber notes that P-2337, who is also subject of this Request, gives an account of the arrest of P-2241 and P-2400 and mentions meeting P-2239 at the OCRB.¹⁰⁹

53. The Defence submits that P-2239 is one of the main witnesses of incident 'q' of the charged crimes.¹¹⁰ It further argues that P-2239 and P-2337 contradict each other on 'key elements' of the incident. First, according to the Defence, the two statements differ as to the identity of the person who brought P-2239, P-2241 and P-2400 to the OCRB. Second, the exact location of detention of P-2239 at the OCRB is, according to the Defence, also different in the accounts of the two witnesses.¹¹¹

54. In respect of P-2241 and P-2400, the Defence argues that P-2239's prior recorded testimony cannot be of a corroborative nature since he was not detained in the same cell as the other two witnesses and received some information from P-2241.¹¹²

55. First, the Chamber repeats again that the Defence misstates the criteria of rule 68(2)(b)(i) of the Rules: in order to be of a cumulative or corroborative nature, it is not a requirement that there is a full overlap between the content of the prior recorded testimony introduced via rule 68(2)(b) of the Rules and the expected testimony of the relevant *viva voce* witnesses.

¹⁰⁵ CAR-OTP-2104-0918-R02, at 0928 to 0932, paras 47-65.

¹⁰⁶ CAR-OTP-2104-0918-R02, at 0935 to 0936, paras 79-80.

¹⁰⁷ Request, [ICC-01/14-01/21-328-Red](#), para. 39, n. 119.

¹⁰⁸ Request, [ICC-01/14-01/21-328-Red](#), para 39, n. 119.

¹⁰⁹ CAR-OTP-2104-0411, at 0414 to 0416, paras 19-28, at 0419, para. 38.

¹¹⁰ Response, [ICC-01/14-01/21-398-Red](#), para. 22.

¹¹¹ Response, [ICC-01/14-01/21-398-Red](#), para. 33

¹¹² Response, [ICC-01/14-01/21-398-Red](#), para. 56.

56. P-2241 will appear as live witness before the Chamber. He will testify about the same event as described in P-2239's testimony. P-2400 has already testified before the Chamber¹¹³ and the Defence had an opportunity to question the witness with regard to this incident. His testimony is corroborative in this regard. Equally, the Chamber finds that P-2239 and P-2337 corroborate each other. The fact that their accounts differ on two points does not mean that their overall accounts of the incident are distinct. Further, the two differences pointed out by the Defence are not of such nature that it would affect the overall corroborative character of the statements. P-2240 also already testified before the Chamber.¹¹⁴ He was questioned by the Defence, [REDACTED].

57. The Chamber further notes that the factual allegations regarding P-2239's arrest and detention form part of incident 'q' of the charged crimes. P-2239 is one of the subjects of this incident. The Chamber recalls that P-2241 and P-2400, who are also subjects of this incident, are testifying before the Chamber which means that P-2239 is not the sole witness related to this incident who can provide evidence.

58. Additionally, the Chamber remarks that the testimony goes to proof of a matter other than the acts and conduct of the accused and that the issues of the testimony are disputed by the Defence. The Chamber repeats its considerations concerning whether an issue is materially in dispute¹¹⁵ and is of the view that they equally apply in this case. The Chamber also notes that P-2239's prior recorded testimony bears sufficient indicia of reliability. P-2239's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood and translated by a qualified translator. The Chamber notes the Defence's submissions, but is of the view that the deficiencies identified by the Defence above in respect of P-2239's prior recorded testimony are not of such a nature or degree that the introduction of this prior recorded testimony should be precluded.

¹¹³ Transcripts of hearing, 2 and 3 November 2022, ICC-01/14-01/ 21-T-030-CONF-ENG and ICC-01/14-01/ 21-T-031-CONF-ENG.

¹¹⁴ Transcripts of hearing, 3 and 4 November 2022, ICC-01/14-01/ 21-T-031-CONF-ENG and ICC-01/14-01/ 21-T-032-CONF-ENG.

¹¹⁵ See para. 17 above.

59. Considering the above, particularly in light of the cumulative and corroborative nature of the statement, the Chamber is of the view that it is apposite to introduce P-2239's prior recorded testimony under rule 68(2)(b) of the Rules. Accordingly, the Chamber grants the Request with regard to P-2239's prior recorded testimony.

7. P-2337

60. P-2337 is an [REDACTED]. In his statement,¹¹⁶ P-2337 recounts witnessing the arrest by the Seleka of [REDACTED] (P-2400) and [REDACTED] (P-2241) in [REDACTED] where P-2400 [REDACTED].¹¹⁷ He further describes how he subsequently visited [REDACTED] in the OCRB and how he would bring him medication during visiting times.¹¹⁸ During one of these visits he also spoke with P-2239, [REDACTED], who was arrested while [REDACTED] and was also detained at the OCRB.¹¹⁹

61. There is no associated material submitted with P-2337's statement.

62. The Prosecution submits that P-2337's testimony is corroborated by two witnesses appearing live before the Chamber, P-2241 and P-2400.¹²⁰ Further, the Chamber notes that P-2239, who is also subject of this Request, mentions P-2337 in his statement.¹²¹

63. The Defence submits that P-2337 is a main witness to incident 'q' of the charged crimes¹²² and that P-2337 and P-2239 do not corroborate each other.¹²³ It further argues that P-2337's testimony does not corroborate that of P-2400, since – in the eyes of the Defence – it differs from the latter's account with regard to the date of the arrest.¹²⁴

64. In respect of the last point raised by the Defence, the Chamber recalls again that the testimonies do not have to be of a cumulative or corroborative nature in all aspects.

¹¹⁶ CAR-OTP-2104-0411-R02 (English translation) and CAR-OTP-2130-4699-R02 (French original). For ease of reference, all citations are made to the English version of the statement.

¹¹⁷ CAR-OTP-2104-0411, at 0414 to 0416, paras 19-28.

¹¹⁸ CAR-OTP-2104-0411, at 0417 to 0418, paras 32-37.

¹¹⁹ Request, [ICC-01/14-01/21-328-Red](#), para. 28 ; CAR-OTP-2104-0411-R02 at 0419, para. 38.

¹²⁰ Request, [ICC-01/14-01/21-328-Red](#), para. 39, n. 119.

¹²¹ CAR-OTP-2104-0918, at 0936, para. 82.

¹²² Response, [ICC-01/14-01/21-398-Red](#), para. 22.

¹²³ Response, [ICC-01/14-01/21-398-Red](#), para. 57, *see also*, para. 53 above.

¹²⁴ Response, [ICC-01/14-01/21-398-Red](#), para. 57.

Further, the purported difference in the testimonies is not of such a nature as to conclude that the two statements do not corroborate each other.

65. Further, the Chamber recalls that, while P-2337 provides testimony with regard to incident ‘q’ of the charged crimes, P-2241– who is subject of this incident – will appear before the Chamber. P-2400 – who is also a subject of this incident – has already provided his testimony to the Chamber¹²⁵ and was questioned by the Defence. Accordingly, the Chamber notes that P-2337 is not the sole witness related to this incident who can provide evidence.

66. Additionally, the Chamber remarks that the testimony goes to proof of a matter other than the acts and conduct of the accused and that the issues of the testimony are disputed by the Defence. The Chamber repeats its considerations concerning whether an issue is materially in dispute¹²⁶ and is of the view that they equally apply in this case. The Chamber also notes that P-2337’s prior recorded testimony bears sufficient indicia of reliability. P-2337’s statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood and translated by a qualified translator. Lastly, the Chamber finds that none of the arguments and submissions raised by the Defence are of such a nature or degree that the introduction of this prior recorded testimony should be precluded.

67. Considering the above, especially the fact that P-2337’s testimony is corroborative of witnesses who have or will appear before the Chamber, the Chamber finds it appropriate to introduce the statement pursuant to rule 68(2)(b) of the Rules. Accordingly, the Chamber grants the Request with regard to P-2337 and authorises the introduction of his statement pursuant to rule 68(2)(b) of the Rules.

¹²⁵ Transcripts of hearing, 2 and 3 November 2022, ICC-01/14-01/ 21-T-030-CONF-ENG and ICC-01/14-01/ 21-T-031-CONF-ENG.

¹²⁶ See para. 17 above.

8. P-2519

68. P-2519 is [REDACTED]. In his statement,¹²⁷ P-2519 *inter alia* describes his arrest by the Seleka about [REDACTED] after the Seleka entered Bangui in March 2013¹²⁸ and his detention at the OCRB.¹²⁹ The witness states that he was interrogated, tortured and locked into a cell with 17 other prisoners.¹³⁰ P-2519 recounts that a Seleka Colonel would come to their cell almost every night to beat one of the detainees¹³¹ and that there was a cell in the basement of the OCRB.¹³² He states that he was detained at the OCRB for [REDACTED], before he was transferred to Ngaragba prison, where he was detained for two more weeks, before he was released.¹³³

69. The associated material submitted with P-2519's statement consists of one annex, an administrative document.¹³⁴

70. The Chamber notes that P-2519's arrest by the Seleka, and his treatment and detention at the OCRB constitute the factual allegations forming the base of incident '1' of the charged crimes.¹³⁵ The Defence disputes these allegations and argues that the statement is internally inconsistent with regard to the time of the arrest of the witness.¹³⁶

71. The Chamber repeats its considerations concerning whether an issue is materially in dispute¹³⁷ and is of the view that they equally apply in this case. In this sense, the Chamber notes that this witness's prior recorded testimony concerns a central allegation against the accused. The Chamber considers these incidents to be materially disputed between the parties – not merely with regard to their legal significance but in their totality. Accordingly, the prior recorded testimony relates to issues materially in dispute and does not relate to background information.

¹²⁷ CAR-OTP-2127-9471-R02 (English original) and CAR-OTP-2130-5310-R02. All citations are made to the English version of the statement.

¹²⁸ CAR-OTP-2127-9471, at 9476, para. 35.

¹²⁹ CAR-OTP-2127-9471, at 9476 to 9484, paras 34-88.

¹³⁰ CAR-OTP-2127-9471, at 9477 to 9480, paras 42-63.

¹³¹ CAR-OTP-2127-9471, at 9480, para. 63.

¹³² CAR-OTP-2127-9471, at 9483, para. 80.

¹³³ CAR-OTP-2127-9471, at 9483 to 9485, paras 85-93.

¹³⁴ CAR-OTP-2008-2415.

¹³⁵ [Confirmation Decision](#).

¹³⁶ Response, [ICC-01/14-01/21-398-Red](#), paras 26, 60.

¹³⁷ See para. 17 above.

72. Further, P-2519 is the only subject of incident '1' of the charged crimes. The Chamber notes that the Prosecution has charged 18 incidents in the present case and considers that these charges are not so expansive that the interests of justice would favour eliminating cumulative in-court testimony on the charged crimes in order to safeguard the expeditiousness of proceedings

73. Under these circumstances, in the current case, the Chamber finds it unduly prejudicial to the Defence to introduce the prior recorded testimony of the witness via rule 68(2)(b) of the Rules. In this regard, the Chamber is of the view that the Defence should be accorded the right to test P-2519's evidence in court. Accordingly, the Chamber rejects the Prosecution's request to introduce the prior recorded testimony of P-2519 pursuant to rule 68(2)(b) of the Rules.

74. Instead, the Chamber finds that P-2519's prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules. In this regard, the Chamber notes that the witness's prior recorded testimony bears sufficient indicia of reliability. P-2519's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in a language the witness spoke and understood and translated by a qualified translator. In light of the foregoing, the Chamber considers it appropriate to allow the introduction of P-2519's prior recorded testimony under rule 68(3) rather than rule 68(2)(b) of the Rules, should the Prosecution wish to rely upon his testimony. The Chamber's ruling in this respect is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony pursuant to this provision. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether P-2519 will testify pursuant to rule 68(3) of the Rules.

9. P-3047

75. P-3047 was [REDACTED] and lived in Boy Rabe at the time relevant to the charges. In his statement,¹³⁸ he describes his arrest by the Seleka and his detention at

¹³⁸ CAR-OTP-2130-6904-R01 (French original).

the OCRB, which lasted about six or seven nights.¹³⁹ The witness describes the functioning and structure of the OCRB and states that he was also interrogated by Nourredine Adam during this time.¹⁴⁰ P-3047 attributes his release to a simple misunderstanding and mistake.¹⁴¹ P-3047 subsequently fled the country and returned to the CAR after the takeover by the Anti-Balaka.¹⁴²

76. The associated material submitted with P-3047's statement consists of six annexes, and seven additional photos that were shown to the witness during the interview.

77. The Prosecution does not make any concrete submissions regarding which evidence would corroborate P-3047's prior recorded testimony, but makes a general statement that it 'plans to call twelve other OCRB victims (or relatives of victims) to testify live at trial'.¹⁴³

78. The Defence submits that the prior recorded testimony is incoherent and unreliable. Specifically, it argues that the email communication in annex A of the statement is missing its final page.¹⁴⁴ The Defence additionally avers that the content of the email exchange contradicts P-3047's statement.¹⁴⁵ Further, according to the Defence, this email communication implies that P-3047 had some sort of contact with a person called [REDACTED], which the Defence wishes to explore.¹⁴⁶

79. First, the Chamber notes that P-3047's prior recorded testimony does not go to the acts and conduct of the accused. Second, it finds that P-3047's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with the declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the

¹³⁹ CAR-OTP-2130-6904, at 6910 to 6913, paras 32-46.

¹⁴⁰ CAR-OTP-2130-6904, at 6911, paras 41-42 and at 6913, para. 46.

¹⁴¹ CAR-OTP-2130-6904, at 6913, paras 47-49.

¹⁴² CAR-OTP-2130-6904, at 6914 to 6915, paras 51-61.

¹⁴³ Request, [ICC-01/14-01/21-328-Red](#), para. 40.

¹⁴⁴ Response, [ICC-01/14-01/21-398-Red](#), para. 62.

¹⁴⁵ Response, [ICC-01/14-01/21-398-Red](#), para. 67.

¹⁴⁶ Response, [ICC-01/14-01/21-398-Red](#), para. 64.

Court; and (iii) in a language the witness spoke and understood. Accordingly, it bears sufficient indicia of reliability.

80. The Chamber further remarks that, while P-3047's prior recorded testimony relates to the structure and functioning of the OCRB and the contextual elements, it does not pertain to one of the incidents forming the charged crimes.

81. The Chamber notes that P-3047's prior recorded testimony describes his arrest by the Seleka and his detention at the OCRB as well as its structure and functioning. Although the Chamber determined that this incident is not one of the charged crimes in the present case, P-3047's evidence may be relevant to other parts of the Prosecution case, in particular the contextual elements of crimes against humanity.¹⁴⁷ Having considered the arguments presented by the parties in their briefs, the Chamber is of the view that these issues are materially in dispute.

82. The Defence argues that it wishes to question the witness about his contact and connection with **Olivier Koudemon** and explore whether P-3047's arrest was connected to this issue.¹⁴⁸ The person in question has been named by the Prosecution as one of the 'leaders of the pro-Bozizé forces'.¹⁴⁹

83. While the Chamber does not agree with the Defence's assertions¹⁵⁰ that this shows that P-3047 would have participated in illegal activities, there remains some uncertainty as to the exact details of P-3047's relationship with [REDACTED]. Considering that the Prosecution mentioned the person as an actor potentially connected to the alleged conflict in which this case is embedded, the Chamber finds it inappropriate to introduce the prior recorded testimony of this witness via rule 68(2)(b) of the Rules. The Defence should be accorded the right to test P-3047's evidence and explore the issue raised in the paragraphs above with the witness in court. Consequently, the Chamber rejects the Request in respect of P-3047.

¹⁴⁷ Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), 20 April 2022, ICC-01/14-01/21-282, para. 18; Decision on the Scope of the Charges, 6 September 2022, [ICC-01/14-01/21-472](#), p. 9.

¹⁴⁸ Response, [ICC-01/14-01/21-398-Red](#), para. 64.

¹⁴⁹ [REDACTED].

¹⁵⁰ Response, [ICC-01/14-01/21-398-Red](#), para. 64.

84. Instead, the Chamber finds that P-3047's prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules. As noted above,¹⁵¹ the prior recorded statement bears sufficient indicia of reliability. In light of the foregoing, the Chamber considers it appropriate to allow the introduction of P-3047's prior recorded testimony under rule 68(3) rather than rule 68(2)(b) of the Rules, should the Prosecution wish to rely upon his testimony. The Chamber's ruling in this respect is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony pursuant to this provision. To this end, the Prosecution is to confirm within 10 days of the issuance of this decision whether it wishes P-3047 to testify pursuant to rule 68(3) of the Rules.

¹⁵¹ See para. 79 above.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request with regard to P-1432, P-2239 and P-2337;

ALLOWS the introduction of the prior recorded testimony and associated material of these witnesses, subject to the required declaration pursuant to rule 68(2)(b) of the Rules;

ORDERS the Registry, upon filing of the witness declaration made pursuant to rule 68(2)(b)(iii) of the Rules, to reflect in the eCourt metadata the introduction of the prior recorded testimony and associated material as identified in the present decision;

ALLOWS the introduction of the prior recorded testimony and associated material related to witnesses P-0622 P-1289, P-2179, 2519 and P-3047 pursuant to rule 68(3) of the Rules; and

REJECTS the remainder of the Request.



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 November 2022

At The Hague, The Netherlands