

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 11 October 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-3108, P-2400, P-2240 P-2478 and P-0787**

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

The Office of the Prosecutor

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Counsel for the Defence

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Legal Representatives of Victims

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**Unrepresented Applicants
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States Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, pursuant to article 69(2) of the Rome Statute (the ‘Statute’) and rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-3108, P-2400, P-2240, P-2478 and P-0787’.

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 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 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](#)).

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](#)).

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 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 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 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 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 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](#)).

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](#)).

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 1 August 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 68(3) Requests.¹² The Chamber observes that the Victims' Consolidated Response appears to contain various errors as it refers to the Prosecution's fifth and sixth requests pursuant to rule 68(2)(b), however, the Chamber understands from its content that the Victims' Consolidated Response rather pertains to the First and Second 68(3) Requests.

11. On 24 June 2022, 4 July 2022, 7 July 2022 and 8 July 2022 respectively, the CLR indicated via email that she does not intend to respond to the Fourth, Fifth, Sixth and Seventh 68(3) Requests.¹³

II. APPLICABLE LAW

12. Rule 68(3) of the Rules is an exception to the general rule set out in article 69(2) of the Statute, which provides that the testimony of a witness at trial shall be given in person.¹⁴ Rule 68(1) of the Rules mandates that the introduction of prior recorded

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), 1 August 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](#)).

¹¹ [Response](#), p. 64.

¹² See 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](#) (the 'Victims' Consolidated Response'); 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 See Email from the CLR to the Chamber dated 24 June 2022, at 12:23; Email from the CLR to the Chamber dated 4 July 2022, at 15:21; Email from the CLR to the Chamber dated 7 July 2022 at 15:15; Email from the CLR to the Chamber dated 8 July 2022 at 15:22.

¹⁴ See Appeals Chamber, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Judgment on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules", 13 May 2022, [ICC-01/12-01/18-2222 OA 4](#), paras 1, 80 (the 'Al Hassan OA 4 Judgment'); Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-al-Rahman*, First Decision on the Prosecution's Request to Introduce Prior Recorded Testimonies under Rule 68(3), 20 January 2022, [ICC-02/05-01/20/559-Red](#), para. 10 and references therein (the 'Abd-Al-Rahman Rule 68(3) Decision').

testimony must not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the remaining sub-rules of rule 68 of the Rules are met.

13. Rule 68(3) of the Rules allows the introduction of previously recorded testimony of a witness when:

- (i) the witness is present before the Chamber;
- (ii) the witness does not object to the introduction of his or her prior recorded testimony; and
- (iii) both parties and the Chamber have the opportunity to examine the witness during the proceedings.

14. 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.¹⁵ In this regard, the Chamber makes the following observations regarding its assessment of the prior recorded testimony sought to be introduced pursuant to rule 68(3) of the Rules.

15. First, the Chamber considers that it has greater discretion in respect of the application of rule 68(3) compared with the application of rule 68(2) of the Rules. This is because, apart from the formal requirements outlined above, the only other limitation is that the introduction of the prior recorded testimony pursuant to rule 68(3) of the Rules may not be prejudicial to or inconsistent with the rights of the accused. As the Appeals Chamber has held, whether or not this is the case is something that must be

¹⁵ [Abd-Al-Rahman Rule 68\(3\) Decision](#), para. 11; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P 0287, and the Ngaïssona Defence Motion to Limit the Scope, 1 April 2021, [ICC-01/14-01/18-907-Red](#), para. 9 (the 'Yekatom/Ngaïssona Rule 68(3) Decision'); Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, 5 August 2020, [ICC-01/12-01/18-987-Red](#), para. 10 (the 'Al Hassan Rule 68(3) Decision'). See also Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", 1 November 2016, [ICC-02/11-01/15-744 OA 8](#), paras 69-72 (the 'Gbagbo and Blé Goudé OA 8 Judgment').

determined on a case-by-case basis and the relevant factors may vary per case and per witness.¹⁶

16. Second, in undertaking its assessment, the Chamber will have regard to any specific objections raised by Defence, and determine whether such objections preclude the introduction of a witness's prior recorded testimony pursuant to rule 68(3) of Rules.

17. Third, in determining whether prior recorded testimony should be introduced pursuant to rule 68(3) of the Rules, the Chamber is also guided by the fact that rule 68(3) of the Rules typically carries a lower risk of interference with the fair trial rights of the accused than rule 68(2)(b) of the Rules,¹⁷ given that the witness appears before the Chamber and is available for examination, including by the Defence. In this regard, an 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 and matters of an exculpatory nature, remains unaffected by the use of rule 68(3) of the Rules.¹⁸

18. Fourth, the Chamber is also guided by the fact that the Appeals Chamber has held that expeditiousness is a factor relevant to the application of rule 68(3) of the Rules, 'since its use in principle aims at reducing the amount of time devoted to hearing oral testimony in court' and can streamline the presentation of evidence.¹⁹ In this respect, the Chamber notes that although the witness still appears in court for a limited examination-in-chief, the calling party is expected to streamline its questioning considerably.

19. Last, the Chamber highlights that its determination on the introduction of the prior recorded testimony is preliminary in nature and subject to the fulfilment during the hearing of the requirements of rule 68(3) of the Rules, namely: (i) the witness being present before the Chamber; (ii) not objecting to the submission of their prior recorded testimony and; (iii) the parties and the Chamber having an opportunity to examine the

¹⁶ [Gbagbo and Blé Goudé OA 8 Judgment](#), para. 69.

¹⁷ [Abd-Al-Rahman Rule 68\(3\) Decision](#), para. 11; [Yekatom/Ngaissona Rule 68\(3\) Decision](#), para. 14, referring to Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3), 9 June 2016, [ICC-02/11-01/15-573-Red](#), (the 'Gbagbo and Blé Goudé Rule 68 Decision'), para. 24.

¹⁸ [Abd-Al-Rahman Rule 68\(3\) Decision](#), para. 12.

¹⁹ [Gbagbo and Blé Goudé OA 8 Judgment](#), paras 60-61.

witness. Accordingly, the Chamber will make its final determination when each witness appears before it.

III. ANALYSIS

A. General Objections by the Defence

20. Before turning to an analysis of the prior recorded testimony sought to be introduced, the Chamber notes that the Defence raises a number of general objections which pertain to the use of rule 68(3) of the Rules in this case. Accordingly, as a preliminary matter, the Chamber will first address any general objections that the Defence raises.

1. *The Defence's submission in respect of the alleged difference in nature between prior recorded testimony and in-court testimony*

21. The Defence argues that the Chamber should assign less weight to prior recorded testimony introduced pursuant to rule 68(3) of the Rules in comparison to full *viva voce* testimony because, *inter alia*: (i) the statements sought to be introduced are produced by the Prosecution and are typically not verbatim transcripts;²⁰ and (ii) rule 68(3) witnesses are not questioned in a courtroom where the parties can monitor the questions being asked and observe the witnesses' responses and mannerisms.²¹ As a result, the Defence submits that there is no way to verify whether the information proffered by the witness in their statement has been obtained via leading questions or has been faithfully recorded.²² The Defence submits that, taken together, prior recorded testimony introduced pursuant to rule 68(3) has a lower value in comparison to a full examination in court.²³

22. The Chamber rejects the Defence's submissions in this regard and notes that its position is unsupported by a reading of rule 68(3). As previously indicated, rule 68(3) is a permissible exception to the principle of orality espoused in article 69(2) of the Statute.²⁴ Neither the Rules nor the Statute contemplate the situation whereby prior

²⁰ [Response](#), paras 35-36. *See also* paras 160-162.

²¹ [Response](#), paras 36-37.

²² [Response](#), paras 37-38, 161-162.

²³ [Response](#), paras 39-41.

²⁴ [Al Hassan OA 4 Judgment](#), paras 1, 80.

recorded testimony introduced under rule 68(3) is to be automatically afforded less weight than fully *viva voce* testimony. Furthermore, the Appeals Chamber has held, albeit in the context of rule 68(2) of the Rules, that it would defeat the purpose of rule 68 if written statements were automatically accorded lower evidentiary weight.²⁵

23. The Chamber also observes that rule 68 of the Rules does not require that prior recorded testimony take the form of a verbatim transcript of what the witness said. The Defence's submissions are largely premised on the assumption that the Prosecution has acted in bad faith in preparing the statement for witness to sign based on its interview(s). The Chamber rejects this and observes that members of the Prosecution are subject to a comprehensive code of conduct which regulates investigations and mandates, *inter alia*, impartial conduct in the course of such investigations.²⁶ In any event, the Chamber observes that the Defence's submissions fail to take into account that, pursuant to rule 68(3) of the Rules, the witness will still appear in court. Accordingly, the witness is still available for questioning by the Defence, and by the Chamber, and his or her evidence may be tested before the Chamber. The Defence's submissions are therefore dismissed.

24. The above notwithstanding, the Chamber recalls that, in line with its approach to its assessment of evidence, it will only assess the evidentiary weight to be accorded to such testimony, as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, in its judgment pursuant to article 74 of the Statute.²⁷

2. *The Defence's submission that introducing prior recorded testimony pursuant to rule 68(3) fails to save time*

25. As noted above, one of the factors relevant to the application of rule 68(3) of the Rules is to facilitate the expeditious conduct of proceedings.²⁸ In this regard, the

²⁵ See Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, [ICC-01/04/02/0-2666-Red](#), para. 628.

²⁶ See Office of the Prosecutor, [Code of Conduct for the Office of the Prosecutor](#), 5 September 2013, Section 6.

²⁷ [Directions on the Conduct of Proceedings](#), para. 16.

²⁸ Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al*, Decision on the Prosecution Rule 68(2) and (3) Requests, 12 November 2015, [ICC-01/05-01/13-1478-Red-Corr](#), para. 51. See paragraph 18 above.

Defence makes several submissions as to why allowing the use of rule 68(3), in this case, will not facilitate the expeditiousness of the trial.

26. First, the Defence argues that introducing prior recorded testimony pursuant to rule 68(3) prolongs the procedure because the whole statement is introduced and the Prosecution is not required to conduct focussed questioning as they would be required to do for a fully *viva voce* witness.²⁹ The Defence submits that it will not know which parts of the statement the Prosecution considers relevant in relation to the charges³⁰ and thus it will be required to test all points raised in the witness's statement. Therefore, the Defence argues that it potentially requires the same amount of time for its cross-examination that the Prosecution spent interviewing each witness when obtaining their statement.³¹ Accordingly, the Defence submits that there will be no time saved by utilising rule 68(3) of the Rules, and rather it would be more efficient to hear the witnesses' testimony in full.³²

27. The Chamber is not convinced by the Defence's submissions in this regard and finds that they are based on a misunderstanding of rule 68(3) of the Rules. The Chamber highlights that when a witness's prior recorded testimony is introduced under rule 68(3), this largely constitutes the witness' evidence-in-chief.³³ It is therefore up to the non-calling party, as it would be if the witness was testifying in full, to determine which points it wishes to focus on and how it intends to best utilise its time during cross-examination. The Chamber notes that the right to examine witnesses is not absolute, and rather is subject to judicial oversight to ensure that the trial is fair, expeditious, and conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. In this regard, the Defence is required to focus its cross examination on relevant issues. As outlined in the Additional Directions on the Conduct of Proceedings, the Defence will be provided with an equivalent amount of time for cross-examination of each rule 68(3) witness as the Prosecution would have

²⁹ [Response](#), paras 50-52.

³⁰ [Response](#), para. 61.

³¹ [Response](#), para. 53.

³² [Response](#), paras 54-56.

³³ [Abd-Al-Rahman Rule 68\(3\) Decision](#), para. 12.

required had its rule 68(3) application been denied.³⁴ However, the Chamber may, following a specific and motivated request, decide that additional time is warranted for cross-examination of a particular witness.³⁵

28. Second, the Defence submits that the use of rule 68(3) creates a form of hybrid testimony where parts of the witness's evidence are oral and other parts are written which makes it difficult to resolve any contradictions between various aspects of a witness's testimony.³⁶ Third, the Defence avers that rule 68(3) witnesses tend to deviate from what was stated in their prior recorded testimony, and as a result, the Defence will be forced to spend time verifying the content of the witness statement through cross-examination.³⁷ Last, the Defence notes that, pursuant to the Witness Preparation Protocol, the calling party has an obligation to notify the non-calling party of any clarifications, changes or corrections made by the witness to their previous statements.³⁸ The Defence argues that if a rule 68(3) witness were to change or correct their statement during a preparation session, it could cause confusion as to what weight the Chamber should attribute to that statement.³⁹ The Defence further asks the Chamber to decide that if a rule 68(3) witness alters their statement in a preparation session, that the witness must undergo a full *viva voce* examination-in-chief.⁴⁰

29. The Chamber finds that these submissions are all largely premised on hypothetical scenarios and based upon unsubstantiated generalisations without any specific foundation. The Chamber will not address arguments in the abstract and these submissions are therefore rejected. As noted above, the Defence will be provided with an equivalent amount of time for cross-examination of each rule 68(3) witness as the Prosecution would have required had its rule 68(3) application been denied.⁴¹ However, this does not preclude the Defence from making a motivated application to the Chamber on a case-by-case basis for additional time to cross-examine a witness or for a witness

³⁴ Additional Directions on the Conduct of Proceedings, 16 September 2022, [ICC-01/14-01/21-479](#), para. 17 (the 'Additional Directions on the Conduct of Proceedings').

³⁵ [Additional Directions on the Conduct of Proceedings](#), para. 17.

³⁶ [Response](#), paras 63-65.

³⁷ [Response](#), paras 62-63.

³⁸ [Annex A to Directions on the Conduct of Proceedings](#), para. 32.

³⁹ [Response](#), paras 77-80.

⁴⁰ [Response](#), para. 79.

⁴¹ [Additional Directions on the Conduct of Proceedings](#), para. 17.

to undergo a full *viva voce* examination-in-chief in relation to changes or corrections to their prior recorded testimony in a preparation session.

3. *The Defence's submission regarding the relation of prior recorded testimony to the 'acts and conduct of the accused'*

30. The Defence avers that the prior recorded testimony sought to be introduced by the Prosecution through rule 68(3) relates to the 'acts and conduct of the accused' and therefore must be able to be tested by the Defence in order to safeguard the rights of the Accused and the fairness of the trial.⁴²

31. The Chamber rejects this argument. Contrary to rule 68(2)(b) and (c), rule 68(3) does not include any requirement stipulating that the prior recorded testimony of a witness must not relate to the acts and conduct of the accused or that this may be a factor against introduction. In any event, the Chamber reminds the Defence that it will have the opportunity to cross-examine all witnesses whose prior recorded testimony is introduced under rule 68(3) of the Rules on any relevant issues.

4. *The Defence's submission regarding contested facts and corroboration*

32. The Defence submits that prior recorded testimony introduced under rule 68 of the Rules must not relate to contested facts.⁴³ The Defence further submits that for prior recorded testimony to be introduced it must only relate to elements that corroborate other elements that have been tested, and that the Prosecution does not specify for each witness in what way their testimony would be cumulative or corroborative of other testimony or evidence on the record of the case.⁴⁴

33. The Chamber notes that rule 68(3) does not exclude the introduction of prior recorded testimony relating to contested facts, nor does it provide that the prior recorded testimony must relate to elements that corroborate other elements that have been tested. Accordingly, the Defence's submissions in this respect are rejected.

⁴² [Response](#), para. 46.

⁴³ [Response](#), para. 42.

⁴⁴ [Response](#), paras 28-29.

5. *The Defence's submission regarding the language of certain witness statements*

34. The Defence contends that fourteen witness statements which the Prosecution seeks to introduce under rule 68(3) of the Rules were written in English by an investigator and read back to the witnesses by an interpreter in order to be validated by the witness.⁴⁵ The Defence submits that without having access to recordings or transcripts of these interviews, it is impossible for it to know whether the statements were translated correctly when being read back to the witness and thus whether they bear sufficient indicia of reliability.⁴⁶

35. The Chamber has reviewed the fourteen witness statements highlighted by the Defence and observes that each statement contains a certification from an interpreter to the effect that: (i) the interpreter is duly qualified to interpret from the language of the statement into a language which the witness speaks and understands; (ii) the interpreter has orally translated the statement from English to a language that the witness speaks and understands; (iii) the witness appeared to have heard and understood the translation of the statement; and (iv) the witness acknowledged that the facts and matters set out in his/her statement, as translated by the interpreter, are true to the best of the witness's knowledge and recollection.⁴⁷

36. Absent specific allegations from the Defence about the quality of a particular translation, the Chamber has no reason to doubt the interpreter's certification and, in particular, that the interpreter accurately translated the content of the statement to the witness. In any event, pursuant to the witness preparation protocol, a witness has an opportunity to review his or her statement with an interpreter prior to testifying and, as a result, should the witness identify any issues, these will be notified to the non-calling party prior to the commencement of his or her testimony.⁴⁸ Accordingly, the Defence's submissions are rejected.

⁴⁵ [Response](#), para. 81.

⁴⁶ [Response](#), paras 82-84.

⁴⁷ See, for example **P-2573**: CAR-OTP-2119-0532-R01 at 0558.

⁴⁸ [Annex A to Directions on the Conduct of Proceedings](#), para. 32(a).

6. *The Defence's submission that the Prosecution seeks the admission of an unreasonable volume of evidence through rule 68(3)*

37. The Defence submits that the Prosecution seeks to introduce 192 documents as annexes and associated material to the statements of 25 witnesses pursuant to rule 68(3).⁴⁹ The Defence submits that the Prosecution fails to explain how it intends to use these documents and that by introducing them in this manner the Prosecution attempts to shield them from adversarial debate.⁵⁰ In this regard, the Defence argues that the Prosecution should present these documents to the witnesses in court so that they can be submitted through the witnesses, otherwise the Defence will be required to address each item with the witness individually.⁵¹

38. The Chamber finds that the Defence's submissions are premised on a misunderstanding of rule 68(3) of the Rules. First, in accordance with the jurisprudence of the Court, annexes to the witness's statement, or documents otherwise associated with it, that are used or explained by the witness may be introduced with the prior recorded testimony.⁵² As a result, when the Chamber allows the introduction of a witness's prior recorded testimony pursuant to rule 68(3) of the Rules, it also considers whether the annexes and associated material should be introduced with it.

39. Second, the Chamber recalls, as noted above,⁵³ that its determination of the introduction of the prior recorded testimony and associated material of a witness is preliminary and subject to the fulfilment during the hearing of the requirements of rule 68(3). In this regard, the Chamber notes that, during the witness preparation session before appearing in court, the witness will be given an opportunity to review his or her statement, as well as any annexes and/or associated material that were used or explained by the witness in the statement. Once the witness appears in court he or she will be requested to confirm whether he or she objects to the introduction of his or her prior

⁴⁹ [Response](#), para. 85.

⁵⁰ [Response](#), paras 87-88.

⁵¹ [Response](#), para. 89.

⁵² [Ongwen Rule 68\(2\)\(b\) Decision](#), para. 10; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, [ICC-01/09-01/11-1938-Cross-Red2](#), paras 33 and 134; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0103, 11 March 2016, [ICC-01/04-02/06-1205](#), paras 7; [Gbagbo and Blé Goudé Rule 68 Decision](#), para. 9.

⁵³ See paragraph 19 above.

recorded testimony and associated material. Therefore these documents may be deemed to be submitted through the witness in the same way as if the witness had testified in full.

40. Third, the Chamber rejects the Defence's submissions to the effect that introduction of associated material pursuant to rule 68(3) shields them from adversarial debate. As previously noted, the Defence will have an opportunity to cross-examine the witnesses on any relevant issues. It is up to the Defence to determine which points it wishes to focus on and how it intends to best utilise its time during cross-examination, which may include asking relevant questions in respect of particular annexes or associated material. The Defence's objections are therefore rejected.

B. Analysis of the prior recorded testimony sought to be introduced pursuant to rule 68(3) of the Rules

41. The present decision pertains to the first five witnesses whom the Prosecution proposes to call pursuant to rule 68(3) of the Rules.⁵⁴ 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.⁵⁵ The Chamber notes that it granted the Prosecution an envelope of time for the presentation of its case in the Additional Directions on the Conduct of the Proceedings.⁵⁶ In making that determination, the Chamber took into consideration the time requested by the Prosecution for any supplementary examination of requested rule 68(3) witnesses. Accordingly, the Chamber deems it unnecessary to rule on any further discrete requests for additional time to conduct direct examination at this stage.

1. P-3108

42. According to the Prosecution, P-3108 is 'an investigative Analyst with the Office of the Prosecutor', who conducted an analysis of certain Call Data Records (the 'CDR')

⁵⁴ See Annex A to the Prosecution's Notification of an Updated Order of Appearance, 5 September 2022, ICC-01/14/01/21-470-Conf.

⁵⁵ See, for example [Sixth 68\(3\) Request](#), para. 21; [Third 68\(3\) Request](#), para. 35; [Fourth 68\(3\) Request](#), para. 48.

⁵⁶ [Additional Directions on the Conduct of Proceedings](#), para. 5.

which ‘included telephone numbers attributed to [the Accused].’⁵⁷ It submits that the purpose of P-3108’s report is to ‘identify relevant communications of the Accused from the CDR’, and ‘highlights the intersection of [the Accused’s] calls with other persons relevant to the events charged, [REDACTED]’.⁵⁸ The Prosecution seeks the introduction of a report created by P-3108 and a number of items of associated material,⁵⁹ and requests one hour to complete a supplemental examination of P-3108.⁶⁰

43. At the outset, the Chamber notes that the Prosecution requests that the Chamber grant leave to allow the Prosecution to add two items to its List of Evidence.⁶¹ In its decision entitled ‘Decision on the Prosecution’s Request to Vary the Time Limit to Submit Non-Witness Related Evidence’, the Chamber recalls that it has already ruled on this discrete request and ordered the Prosecution to submit an updated List of Evidence.⁶²

44. Turning to the requirements of rule 68(3) of the Rules, the Prosecution submits that P-3108’s material should be introduced because it: (i) would reduce the time of a full examination from four hours to one hour;⁶³ (ii) bears sufficient indicia of reliability;⁶⁴ and (iii) is not prejudicial to the Accused because the Defence will have the opportunity to examine P-1308 and has been in possession of her report for almost a year and received the final version on 30 May 2022.⁶⁵

45. The Defence submits that P-3108’s report does not constitute prior recorded testimony within the meaning of rule 68(3) of the Rules. The Defence notes that P-3108 did not produce the report in her capacity as a potential witness, but rather appears to have been acting within the scope of her duties as a Prosecution staff member.⁶⁶ The

⁵⁷ [Sixth 68\(3\) Request](#), para. 3.

⁵⁸ [Sixth 68\(3\) Request](#), para. 11.

⁵⁹ Annex A to the Sixth 68(3) Request.

⁶⁰ [Sixth 68\(3\) Request](#), paras 2, 21.

⁶¹ [Sixth 68\(3\) Request](#), paras 22-25.

⁶² Decision on the Prosecution’s Request to Vary the Time Limit to Submit Non-Witness Related Evidence, 9 September 2022, [ICC-01/14/01/21-474](#), para. 19.

⁶³ [Sixth 68\(3\) Request](#), para. 15.

⁶⁴ [Sixth 68\(3\) Request](#), para.16.

⁶⁵ [Sixth 68\(3\) Request](#), paras 18-20.

⁶⁶ [Response](#), paras 174-176.

Defence also points to inconsistencies in the Prosecution's approach to the submission of similar reports completed by members of its team.⁶⁷

46. The Chamber agrees with the Defence that P-3108's report does not constitute prior recorded testimony within the meaning of rule 68(3) of the Rules. The Chamber finds that the report is not distinguishable from the other internal documents that are prepared by the parties in the context of legal proceedings. This framing of the report is supported by the fact that P-3108 states that the report was undertaken in order to 'inform the disclosure process, and to assess the relevance of the materials for the case.'⁶⁸ The Chamber also notes that the report is not signed and contains no commitment by the author to the truth of its content. Accordingly, the Chamber finds that it is more appropriately categorised as internal work product in the sense of rule 81(1) of the Rules and does not qualify as prior recorded testimony for the purposes of rule 68 of the Rules. As a result, the Prosecution is unable to seek its introduction via rule 68(3) of the Rules and the Sixth 68(3) Request is rejected.

47. Furthermore, the Chamber is of the view that, although P-3108's report, annexes and other associated material can be introduced through the Bar Table, it would be unduly prejudicial to do so and the Defence should be allowed to cross examine her. Specifically, the Chamber bases this finding on the fact that: (i) both parties want P-3108 to testify in person; (ii) P-3108 has had to issue corrections to her prior analysis, which relate to issues concerning source attribution;⁶⁹ and (iii) the report highlights calls attributed to the Accused and [REDACTED].⁷⁰ Accordingly, the Chamber instructs the Prosecution, should it wish to rely on the evidence of P-3108, to call her to testify fully *viva voce*.

2. P-2400

48. According to the Prosecution, P-2400 is '[REDACTED]' who was arrested by the Seleka, along with P-2241, while he was working at [REDACTED].⁷¹ In his statement,

⁶⁷ [Response](#), para. 177.

⁶⁸ CAR-OTP-2136-0675 at 0675.

⁶⁹ See [Sixth 68\(3\) Request](#), para. 22.

⁷⁰ See CAR-OTP-2136-0675, at 0677.

⁷¹ [Third 68\(3\) Request](#), para. 18.

P-2400 describes being taken by the Seleka to Camp de Roux, where he was interrogated and accused of being an intelligence agent of Bozizé.⁷² He further describes his treatment while at Camp de Roux⁷³ and how he was then taken to the *Office Central de Répression du Banditisme* (the ‘OCRB’) where, on the apparent instructions of Mr Said, he was placed in an underground cell located under Mr Said’s office.⁷⁴ P-2400 states that he was detained in this cell for five days with four other prisoners before being moved to an above ground cell where he witnessed prisoners being mistreated by the Seleka while at the OCRB.⁷⁵ P-2400 further states that after one week and five days of detention he was eventually released.⁷⁶ P-2400’s prior recorded testimony and associated material is comprised of his witness statement, and six photographs,⁷⁷ three of which are annexed to his statement.⁷⁸

49. The Prosecution argues that its request to call P-2400 as a rule 68(3) witness should be granted because: (i) it will advance the expeditiousness of the proceedings by reducing its examination of P-2400 by three hours;⁷⁹ (ii) P-2400’s statement bears sufficient indicia of reliability for introduction into evidence;⁸⁰ and (iii) P-2400’s evidence is cumulative to and corroborative of P-2241, P-2239 and P-2237’s testimony.⁸¹

50. The Defence objects to P-2400 being called as a rule 68(3) witness. First, the Defence submits that P-2400’s prior recorded testimony lacks corroboration, in particular that P-2239 and P-2337 cannot corroborate P-2400’s account and they contradict P-2400 on key elements of his prior recorded testimony.⁸² Second, the

⁷² CAR-OTP-2104-0424 at 0429-0430, paras 27-28.

⁷³ CAR-OTP-2104-0424 at 0430-0431, paras 31-34.

⁷⁴ CAR-OTP-2104-0424 at 0431-0433, paras 37-45.

⁷⁵ CAR-OTP-2104-0424 at 0434-0436, paras 46-58.

⁷⁶ CAR-OTP-2104-0424 at 0437, para. 60.

⁷⁷ The Chamber notes that although the witness does not specifically comment on CAR-OTP-2105-1038, CAR-OTP-2015-1039, and CAR-OTP-2105-1040 they are duplicates of the photographs annexed to P-2400’s witness statement which he does comment on. In this regard, the Chamber can discern no prejudice to the Defence and accordingly sees no reason why these should not be introduced with the witness’s prior recorded testimony.

⁷⁸ Annex A to the Third 68(3) Request, p. 4.

⁷⁹ [Third 68\(3\) Request](#), para. 35.

⁸⁰ [Third 68\(3\) Request](#), para. 36.

⁸¹ [Third 68\(3\) Request](#), para. 38.

⁸² [Response](#), paras 143-144.

Defence submits that there are several inconsistencies in the prior recorded testimony of P-2400 as compared to the accounts of other witnesses, specifically P-2241, which makes P-2400's testimony unreliable.⁸³ Specifically, the Defence points out that there are contradictions in respect of: (i) the [REDACTED];⁸⁴ (ii) whether [REDACTED]; (iii) [REDACTED]; (iv) the [REDACTED]; (v) which [REDACTED]; and (vi) whether [REDACTED].⁸⁵ Last, the Defence submit that P-2400's prior recorded testimony contains instances of hearsay, which renders it unreliable.⁸⁶

51. The Chamber finds that P-2400's prior recorded testimony can be introduced pursuant to rule 68(3) of the Rules. First, in respect of the alleged contradictions between P-2400's testimony and that of P-2241, the Chamber considers that the inconsistencies pointed out by the Defence are not so significant that it would require P-2400 to testify fully *viva voce* in order to safeguard the rights of the Accused. In this regard, the Chamber observes that the majority of the contradictions pointed out by the Defence are between P-2400 and P-2241, both of whom will be available for cross-examination. In respect of the alleged contradictions between P-2400 and P-2337, as well as the alleged lack of corroboration and instances of hearsay, the Chamber finds that these are not of such a nature and degree which would warrant calling P-2400 to testify in full.

52. Furthermore, the Chamber notes that introducing P-2400'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 Prosecution's request to introduce P-2400's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules is granted.

3. P-2240

53. The Prosecution submits that P-2240 is '[REDACTED]'.⁸⁷ In his witness statement, P-2240 discusses, *inter alia*, his [REDACTED],⁸⁸ as well as the

⁸³ [Response](#), paras 143-144.

⁸⁴ [Response](#), para. 143.

⁸⁵ [Response](#), para. 144.

⁸⁶ [Response](#), para. 145.

⁸⁷ [Fourth 68\(3\) Request](#), para. 31.

⁸⁸ CAR-OTP-2107-8860 at 8864-8865, paras 16-22

[REDACTED].⁸⁹ P-2240 also discusses the structure and operation of the OCB, [REDACTED], the [REDACTED] and the transfer of prisoners to the OCB from Camp de Roux and from Camp des *Sapeurs Pompiers*.⁹⁰ P-2240 further describes operations in Boy Rabe, and provides information about events that took place at the CEDAD and its structures.⁹¹ P-2240's prior recorded testimony consists of his witness statement and contains no associated material.⁹²

54. The Prosecution submits that P-2240's evidence should be introduced under rule 68(3) because: (i) it would reduce his examination in chief from eight hours to two hours;⁹³ (ii) his evidence has sufficient indicia of reliability;⁹⁴ (iii) it would not be prejudicial to the Accused as the Defence will have an opportunity to cross-examine P-2240;⁹⁵ and (iv) P-2240's evidence and the six other witnesses⁹⁶ it seeks to introduce in its Fourth 68(3) Request 'all corroborate each other to a certain extent' and their evidence is 'corroborative and cumulative to the evidence of other witnesses whom the Prosecution proposes to call *viva voce*'.⁹⁷

55. The Defence objects to the admission of P-2240's prior recorded testimony under rule 68(3) of the Rules. The Defence makes the following submissions (which also pertain to the six other witnesses that are the subject of the Fourth 68(3) Request, including P-2478 and P-0787 who are addressed in the present decision): (i) his evidence relates to the core charges against Mr Said;⁹⁸ (ii) his evidence should be treated with greater caution as he is [REDACTED];⁹⁹ and (iii) the Prosecution has failed to establish that his testimony is corroborated.¹⁰⁰

⁸⁹ CAR-OTP-2107-8860 at 8866-8867, paras 23-28.

⁹⁰ CAR-OTP-2107-8860 at 8867-8869, paras 29-40.

⁹¹ CAR-OTP-2107-8860 at 8870-8872, paras 41-53.

⁹² Annex A to the Fourth 68(3) Request, p. 9.

⁹³ [Fourth 68\(3\) Request](#), para. 48.

⁹⁴ [Fourth 68\(3\) Request](#), para. 49.

⁹⁵ [Fourth 68\(3\) Request](#), para. 50.

⁹⁶ P-0435, P-0787, P-1737, P-2161, P-2478 and P-2504.

⁹⁷ In particular, P-1167, P-2105 P-2563, P-0338, P-0547, P-1743, P-3056. See [Fourth 68\(3\) Request](#), para. 51.

⁹⁸ [Response](#), para. 158.

⁹⁹ [Response](#), para. 159.

¹⁰⁰ [Response](#), para. 163.

56. The Chamber is satisfied that the issues above should not preclude the introduction of P-2240's prior recorded testimony pursuant to rule 68(3) of the Rules. First, the fact that a witness may be [REDACTED] whose prior recorded testimony relates to the core of the charges against the Accused does not in and of itself justify hearing the witness in full. In this regard, the Chamber is of the view that the introduction of P-2240's prior recorded testimony will not prejudice the Accused since rule 68(3) of the Rules allows for P-2240's cross-examination. The Defence will have a reasonable opportunity to question the witness on issues identified as core for its case as well as any inconsistencies and issues with corroboration identified by the Defence. The Chamber further notes that the introduction of P-2240's prior recorded testimony will advance the expeditiousness of the proceedings. Accordingly, in light of the above, the Prosecution's request to introduce P-2240's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules is granted.

4. P-2478

57. According to the Prosecution, P-2478 was '[REDACTED]'.¹⁰¹ P-2478's prior recorded testimony includes information regarding: (i) the arrival of the Seleka in Bangui;¹⁰² (ii) the structure and hierarchy of the OCRB;¹⁰³ the role and actions of Mr Said at the OCRB;¹⁰⁴ and the relationship between [REDACTED].¹⁰⁵ The witness also provides information on the detention and alleged mistreatment committed at the OCRB by the Seleka¹⁰⁶ and provides details on the [REDACTED].¹⁰⁷ P-2478's prior recorded testimony and associated material consists of their witness statement, two annexes, and 21 photographs.¹⁰⁸

58. As noted above,¹⁰⁹ the Prosecution submits that P-2478's prior recorded testimony should be introduced under rule 68(3) because: (i) it would reduce P-2478's

¹⁰¹ [Fourth 68\(3\) Request](#), para. 37.

¹⁰² CAR-OTP-2107-8835 at 8838-8839, paras 12-15.

¹⁰³ CAR-OTP-2107-8835 at 8839-8843, paras 16-29.

¹⁰⁴ CAR-OTP-2107-8835 at 8839-8841, 8846-8849, paras 16-17, 21, 44, 50, 53-56.

¹⁰⁵ CAR-OTP-2107-8835 at 8839-8840, paras 16-17.

¹⁰⁶ See, for example CAR-OTP-2107-8835 at 8844-8845, paras 36-37.

¹⁰⁷ See, for example CAR-OTP-2107-8835 at 8841, 8846-8847, 8850, paras 21, 44, 60.

¹⁰⁸ Annex A to the Fourth 68(3) Request, pp 10-12.

¹⁰⁹ See paragraph 54 above and references therein.

examination in chief from eight hours to one hour;¹¹⁰ (ii) P-2478's evidence has sufficient indicia of reliability;¹¹¹ (iii) it would not be prejudicial to the Accused as the Defence will have an opportunity to cross-examine P-2478;¹¹² and (iv) P-2478's evidence and the six other witnesses¹¹³ it seeks to introduce in its Fourth 68(3) Request 'all corroborate each other to a certain extent' and their evidence is 'corroborative and cumulative to the evidence of other witnesses whom the Prosecution proposes to call *viva voce*'.¹¹⁴

59. As noted above,¹¹⁵ the Defence submits that the Prosecution's application to introduce P-2478's prior recorded testimony should be rejected. Specifically, the Defence avers that: (i) P-2478's evidence relates to the core charges against Mr Said;¹¹⁶ (ii) P-2478's evidence should be treated with greater caution as the witness is [REDACTED];¹¹⁷ and (iii) the Prosecution has failed to establish that P-2478's testimony is corroborated.¹¹⁸

60. As discussed above,¹¹⁹ the Chamber is satisfied that the issues above should not preclude the introduction of P-2478's prior recorded testimony pursuant to rule 68(3) of the Rules. First, the fact that a witness may be [REDACTED] whose prior recorded testimony relates to the core of the charges against the Accused does not in and of itself justify hearing the witness in full. In this regard, the Chamber is of the view that the introduction of P-2478's prior recorded testimony will not prejudice the Accused since rule 68(3) of the Rules allows for P-2478's cross examination. The Defence will still have a reasonable opportunity to question the witness on issues identified as core for its case as well as any inconsistencies and issues with corroboration identified by the Defence. The Chamber further notes that the introduction of P-2478's prior recorded

¹¹⁰ [Fourth 68\(3\) Request](#), para. 48.

¹¹¹ [Fourth 68\(3\) Request](#), para. 49.

¹¹² [Fourth 68\(3\) Request](#), para. 50.

¹¹³ P-0435, P-0787, P-1737, P-2161, P-2240 and P-2504.

¹¹⁴ In particular, P-1167, P-2105 P-2563, P-0338, P-0547, P-1743, P-3056. See [Fourth 68\(3\) Request](#), para. 51.

¹¹⁵ See paragraph 55 above and references therein.

¹¹⁶ [Response](#), para. 158.

¹¹⁷ [Response](#), para. 159.

¹¹⁸ [Response](#), para. 163.

¹¹⁹ See paragraph 56 above.

testimony will advance the expeditiousness of the proceedings. Accordingly, in light of the above, the Prosecution's request to introduce P-2478's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules is granted.

5. P-0787

61. According to the Prosecution, P-0787 is '[REDACTED]'.¹²⁰ The Chamber notes from a review of his witness statement that P-0787 provides information, *inter alia*, about Mr Said's role and authority at the OCRB¹²¹ and describes the OCRB compound, including the underground detention facility.¹²² He also describes, *inter alia*, visits made to the OCRB by people such as Nourredine Adam,¹²³ Adoum Rakiss¹²⁴ and French military personnel who interviewed two prisoners about their experience at the OCRB.¹²⁵ In addition, the Chamber notes that P-0787 describes an occasion when [REDACTED].¹²⁶ P-0787's prior recorded testimony consists of his witness statement and three annexes.¹²⁷

62. The Prosecution submits that P-0787's prior recorded testimony should be accepted under rule 68(3) because: (i) it would reduce his examination in chief from eight hours to one hour;¹²⁸ (ii) his evidence has sufficient indicia of reliability;¹²⁹ (iii) it would not be prejudicial to the Accused as the Defence will have an opportunity to cross-examine P-0787;¹³⁰ and (iv) P-0787's evidence and the six other witnesses¹³¹ it seeks to introduce in its Fourth 68(3) Request 'all corroborate each other to a certain extent' and their evidence is 'corroborative and cumulative to the evidence of other witnesses whom the Prosecution proposes to call *viva voce*'.¹³²

¹²⁰ [Fourth 68\(3\) Request](#), para. 15.

¹²¹ CAR-OTP-2036-0410 at 0418-0419, 00431, paras 41-42, 75, 98.

¹²² CAR-OTP-2036-0410 at 0422-0423, paras 57-60.

¹²³ CAR-OTP-2036-0410 at 0422, paras 55-56.

¹²⁴ CAR-OTP-2036-0410 at 0424-0425, paras 66-72.

¹²⁵ CAR-OTP-2036-0410 at 0423-0424, paras 61-65.

¹²⁶ CAR-OTP-2036-0410 at 0427-0428, paras 79-87.

¹²⁷ Annex A to the Fourth 68(3) Request, p. 5.

¹²⁸ [Fourth 68\(3\) Request](#), para. 48.

¹²⁹ [Fourth 68\(3\) Request](#), para. 49.

¹³⁰ [Fourth 68\(3\) Request](#), para. 50.

¹³¹ P-0435, P-2478, P-1737, P-2161, P-2240 and P-2504.

¹³² In particular, P-1167, P-2105 P-2563, P-0338, P-0547, P-1743, P-3056. See [Fourth 68\(3\) Request](#), para. 51.

63. As noted above,¹³³ the Defence submits that the Prosecution's application to introduce P-0787's prior recorded testimony should be rejected. Specifically, the Defence avers that: (i) his evidence relates to the core charges against Mr Said;¹³⁴ (ii) his evidence should be treated with greater caution as he is [REDACTED];¹³⁵ and (iii) the Prosecution has failed to establish that his testimony is corroborated.¹³⁶ In addition, the Defence submits that P-0787's prior recorded testimony contradicts that of [REDACTED] in a number of respects, in particular with regard to [REDACTED].¹³⁷

64. As discussed above,¹³⁸ the Chamber is satisfied that the issues above should not preclude the introduction of P-0787's prior recorded testimony pursuant to rule 68(3) of the Rules. First, the fact that a witness may be [REDACTED] whose prior recorded testimony relates to the core of the charges against the Accused does not in and of itself justify hearing the witness in full. In this regard, the Chamber is of the view that the introduction of P-0787's prior recorded testimony will not prejudice the Accused since rule 68(3) of the Rules allows for P-0787's cross-examination. The Defence will still have a reasonable opportunity to question the witness on issues identified as core for its case as well as any issues of inconsistencies and issues with corroboration identified by the Defence. Specifically, the Chamber notes that in relation to the objections raised by the Defence in respect of inconsistencies between P-0787 and [REDACTED] that both witnesses will be available for cross examination. The Chamber further notes that the introduction of P-0787's prior recorded testimony will advance the expeditiousness of the proceedings. Accordingly, in light of the above, the Prosecution's request to introduce P-0787's prior recorded testimony and associated material pursuant to rule 68(3) of the Rules is granted.

¹³³ See paragraph 55 above and references therein.

¹³⁴ [Response](#), para. 158.

¹³⁵ [Response](#), para. 159.

¹³⁶ [Response](#), para. 163.

¹³⁷ [Response](#), paras 134-135.

¹³⁸ See paragraphs 56 and 60 above.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS the introduction of the prior recorded testimony and associated materials of P-2400, P-2240, P-2478 and P-0787; and

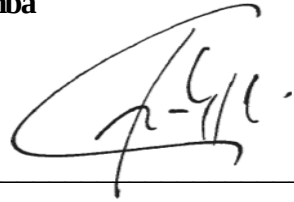
REJECTS the Prosecution's request to introduce the prior recorded testimony and associated material of P-3108.



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 11 October 2022

At The Hague, The Netherlands