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TRIAL CHAMBER V

Before:

**Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of the corrected version of

**First Decision on the Prosecution Requests for Formal Submission of Prior
Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69(2) of the Rome Statute (the ‘Statute’) and Rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules’.

I. Procedural history and submissions

1. On 6 May 2020, following a request by the Office of the Prosecutor (the ‘Prosecution’),¹ the Chamber designated the Registry Senior Legal Advisor, or anyone delegated by him, to witness declarations under Rule 68(2)(b) of the Rules for purposes of the present case.²
2. On 16 October 2020, following an extension request by the Prosecution,³ the Chamber amended the deadlines for the submission of applications pursuant to Rule 68 of the Rules⁴ and provided initial guidance for the Prosecution’s forthcoming applications under this provision (the ‘Initial Guidance’).⁵
3. Between 3 November 2020 and 11 January 2021, the Prosecution submitted eight requests for formal submission of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules for 55 witnesses (respectively, the ‘First Request’,⁶ the

¹ Prosecution’s Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, 22 April 2020, ICC-01/14-01/18-489.

² Decision on the Prosecution’s Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-01/14-01/18-508 (the ‘Declaration Decision’).

³ Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68, 14 September 2020, ICC-01/14-01/18-652 (the ‘Rule 68 Time Limit Request’). The Chamber further notes that, on 15 September 2020, the Prosecution submitted further observations, in particular with regard to its intended use of Rule 68(3) of the Rules, *see* Prosecution’s Observations on its intended approach to Rule 68(3) in the presentation of its case, ICC-01/14-01/18-655.

⁴ Initial Directions on the Conduct of the Proceeding, ICC-01/14-01/18-631 (the ‘Initial Directions’), para. 33.

⁵ Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, ICC-01/14-01/18-685.

⁶ Prosecution’s Request the [sic] Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 3 November 2020, ICC-01/14-01/18-710-Conf (with confidential Annexes A and B) (public redacted version notified on 25 May 2021, ICC-01/14-01/18-710-Red) (corrigendum of Annex A notified on 7 July 2021, ICC-01/14-01/18-710-Conf-AnxA-Corr).

‘Second Request’,⁷ the ‘Third Request’,⁸ the ‘Fourth Request’,⁹ the ‘Fifth Request’,¹⁰ the ‘Sixth Request’,¹¹ the ‘Seventh Request’,¹² the ‘Eighth Request’,¹³ and, jointly, the ‘Requests’¹⁴).

4. On 9 November 2020, the Prosecution filed its Final Witness List, indicating (i) the witnesses it intends to call to testify fully *viva voce*, (ii) the witnesses it intends to call pursuant to Rule 68(3) of the Rules and (iii) the witnesses whose testimony it seeks to introduce pursuant to Rule 68(2) of the Rules.¹⁵

⁷ Prosecution’s Second Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 27 November 2020, ICC-01/14-01/18-744-Conf (with confidential Annexes A and B) (public redacted version notified on 31 March 2021, ICC-01/14-01/18-744-Red).

⁸ Prosecution’s Third Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 27 November 2020, ICC-01/14-01/18-745-Conf (with confidential Annexes A and B) (public redacted version notified on 22 February 2021, ICC-01/14-01/18-745-Red).

⁹ Prosecution’s Fourth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 22 December 2020, ICC-01/14-01/18-794-Conf (with confidential Annexes A and B) (public redacted version notified on 31 March 2021, ICC-01/14-01/18-794-Red) (corrected version of Annex A notified on 7 July 2021, ICC-01/14-01/18-794-Conf-AnxA-Corr).

¹⁰ Prosecution’s Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 22 December 2020, ICC-01/14-01/18-795-Conf (with confidential Annexes A and B) (public redacted version notified on 22 February 2021, ICC-01/14-01/18-795-Red).

¹¹ Corrigendum to the “Prosecution’s Sixth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)” (ICC-01/14-01/18-802-Conf), 12 January 2021, ICC-01/14-01/18-802-Conf-Corr (with confidential Annexes A and B) (original filing notified on 8 January 2021) (public redacted version of the corrigendum notified on 26 March 2021, ICC-01/14-01/18-802-Corr-Red).

¹² Prosecution’s Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 11 January 2021, ICC-01/14-01/18-808-Conf (with confidential Annexes A and B) (public redacted version notified on 31 March 2021, ICC-01/14-01/18-808-Red).

¹³ Prosecution’s Eighth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 11 January 2021, ICC-01/14-01/18-812-Conf (with confidential Annexes A and B) (public redacted version notified on 22 February 2021, ICC-01/14-01/18-812-Red).

¹⁴ The Chamber notes that each of these requests annex a summary chart of the relevant materials as Annex A, as well as the relevant statements and associated items as Annex B.

¹⁵ Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-724 (with confidential Annexes A-C) (corrigendum of Annex C notified on 8 January 2021, ICC-01/14-01/18-724-Conf-AnxC-Corr). Annex A to the Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf-AnxA, contains the Final Witness List.

5. Between 16 November 2020 and 22 February 2021,¹⁶ the Chamber received responses to the Requests from the Yekatom Defence,¹⁷ the Ngaïssona Defence¹⁸ (jointly, ‘the Defence’), the Common Legal Representative of the Former Child

¹⁶ On 1 December 2020, following a request by the Yekatom Defence, the Single Judge suspended the commencement of the Yekatom Defence’s time limit to respond to the Second and Third Requests and indicated that he would review this ruling upon receipt of further information on 4 December 2020 (see email from the Yekatom Defence to the Chamber and the Registry, 27 November 2020, at 18:47; email from the Chamber, 1 December 2020, at 16:37). On 2 December 2020, the Chamber partially granted a request from the Ngaïssona Defence to extend the deadline to respond to the Second and Third Requests, (see Defence Request Pursuant to Regulation 35 to vary time Limit for the Response to the Prosecution’s Second and Third Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), 1 December 2020, ICC-01/14-01/18-748-Conf; Decision on the Ngaïssona Defence Request for Variation of Time Limit, 2 December 2020, ICC-01/14-01/18-749). On 22 December 2020, following a request from the Ngaïssona Defence (see email from the Ngaïssona Defence, 22 December 2020, at 11:53), the Chamber granted an extension to respond to the Fourth and Fifth Requests to all participants (see email from the Chamber, 22 December 2020, at 13:55). On 15 January 2021, the Chamber granted the Ngaïssona ‘Defence Consolidated Request Pursuant to Regulation 35 to vary time Limit for the Response to the Prosecution’s Sixth, Seventh, and Eighth Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)’, 12 January 2021, ICC-01/14-01/18-815-Conf, to extend the deadline to respond to the Sixth, Seventh and Eighth Requests (see email from the Chamber, 15 January 2021, at 10:38).

¹⁷ Yekatom Defence Response to Prosecution’s Rule 68(2)(b) Applications (ICC-01/14-01/18-710-Conf), 16 November 2020, ICC-01/14-01/18-732-Conf (with confidential Annex A) (public redacted version notified the same day, ICC-01/14-01/18-732-Red and ICC-01/14-01/18-732-AnxA-Red) (the ‘Yekatom Defence Response to the First Request’). On 10 December 2020, the Yekatom Defence informed the Chamber that it does not intend to respond to the Second and Third Requests, see email from the Yekatom Defence, 10 December 2020, at 16:03. Yekatom Defence Consolidated Response to Prosecution’s Fourth and Fifth Submissions of Rule 68(2) Applications (ICC-01/14-01/18-794-Conf and ICC-01/14-01/18-795-Conf), 15 January 2021, ICC-01/14-01/18-823-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-823-Red) (the ‘Yekatom Defence Response to the Fourth and Fifth Requests’); Corrigendum to “Yekatom Defence Response to ‘Prosecution’s Sixth, Seventh and Eighth Formal Submissions of Rule 68(2) Applications’ (ICC-01/14-01/18-802-Conf, ICC-01/14-01/18-808-Conf and ICC-01/14-01/18-812-Conf)” (ICC-01/14-01/18-845-Conf), 2 March 2021, ICC-01/14-01/18-845-Conf-Corr (with confidential Annex A) (original filing notified on 21 January 2021) (public redacted version notified on 6 April 2021, ICC-01/14-01/18-845-Corr-Red).

¹⁸ Defence response to “Prosecution’s Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”, 16 November 2020, ICC-01/14-01/18-733-Conf (public redacted version notified on 14 January 2022, ICC-01/14-01/18-733-Red) (the ‘Ngaïssona Defence Response to the First Request’); Defence Consolidated Response to Prosecution requests ICC-01/14-01/18-744 and ICC-01/14-01/18-745, 18 December 2020, ICC-01/14-01/18-785-Conf (public redacted version notified on 27 January 2022, ICC-01/14-01/18-785-Red) (the ‘Ngaïssona Defence Response to the Second and Third Requests’); Defence Consolidated Response to the Prosecution Fourth and Fifth Requests for the formal submission of prior recorded testimony pursuant to Rule 68(2)(b) (ICC-01/14-01/18-794-Conf and ICC-01/14-01/18-795-Conf), 15 January 2021, ICC-01/14-01/18-826-Conf (public redacted version notified on 20 January 2022, ICC-01/14-01/18-826-Red) (the ‘Ngaïssona Defence Response to the Fourth and Fifth Requests’); Defence Consolidated Response to the Prosecution Sixth, Seventh and Eighth Requests for the formal submission of prior recorded testimony pursuant to Rule 68(2)(b) (ICC-01/14-01/18-802-Conf, ICC-01/14-01/18-808-Conf, ICC-01/14-01/18-812), 22 February 2021, ICC-01/14-01/18-887-Conf (public redacted version notified on 21 January 2022, ICC-01/14-01/18-887-Red).

Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLRv’).¹⁹

6. On 22 January 2021, the Chamber rejected the Prosecution’s request for leave to reply²⁰ to the Defence’s respective responses to the Fourth and Fifth Requests.²¹
7. On 25 January 2021, the Chamber received the Prosecution’s request to amend its Eighth Request ‘to exclude additional portions of P-0342’s statements’ (the ‘Amendment Request’).²²
8. On 24 June 2021, the Prosecution informed the Chamber that witnesses P-0811 and P-1172 (subject to the Third and Fourth Requests, respectively) had passed away.²³
9. On 27 September 2021, the Chamber granted the Prosecution’s requests²⁴ to add P-2687 to the Final Witness List and to remove P-1932. Accordingly, it considered the Seventh Request with respect to P-1932²⁵ moot. Furthermore, it deferred its decision on the Prosecution’s request to introduce P-2687’s prior

¹⁹ Common Legal Representatives’ Joint Response to the “Prosecution’s Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”, 16 November 2020, ICC-01/14-01/18-731-Conf (the ‘CLRv Response to the First Request’); Common Legal Representatives’ Joint and Consolidated Response to the Prosecution’s Second and Third Request for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b), 10 December 2020, ICC-01/14-01/18-761-Conf (the ‘CLRv Response to the Second and Third Requests’); Common Legal Representatives’ Joint and Consolidated Response to the Prosecution’s Fourth, Fifth, Sixth, Seventh and Eight [sic] Requests for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b), 14 January 2021, ICC-01/14-01/18-820-Conf (the ‘CLRv Response to the Fourth, Fifth, Sixth, Seventh and Eighth Requests’).

²⁰ Prosecution’s Consolidated Request for Leave to Reply to the YEKATOM and NGAISSONA Defence’s Responses to the Prosecution’s Fourth and Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), (ICC-01/14-01/18-823-Conf) (ICC-01/14-01/18-826-Conf), 19 January 2021, ICC-01/14-01/18-836-Conf. *See also* Defence Response to the “Prosecution’s Consolidated Request for Leave to Reply to the YEKATOM and NGAISSONA Defence’s Responses to the Prosecution’s Fourth and Fifth Request for the Formal Submissions of Prior Recorded Testimony pursuant to Rule 68(2)(b), (ICC-01/14-01/18-823-Conf) (ICC-01/14-01/18-826-Conf), 21 January 2021, ICC-01/14-01/18-844-Conf (public redacted version notified on 2 March 2021, ICC-01/14-01/18-844-Red).

²¹ Email from the Chamber, 22 January 2021, at 15:32.

²² Prosecution’s Request to amend its “Eighth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)” to exclude additional portions of P-0342’s Statements, ICC-01/14-01/18-850 (with one confidential annex).

²³ *See* email from the Prosecution, 24 June 2021, at 16:39.

²⁴ Prosecution’s request for leave to add P-2687 to its Final Witness List and for the formal submission of his prior recorded testimony pursuant to Rule 68(2)(b), 29 June 2021, ICC-01/14-01/18-1043-Conf (with confidential Annexes A and B) (public redacted version notified on 30 June 2021, ICC-01/12-01/14-1043-Red).

²⁵ Seventh Request, ICC-01/14-01/18-808-Red, paras 35-39.

recorded testimony pursuant to Rule 68(2)(b) of the Rules (the ‘Ninth Request’),²⁶ which was opposed by the Defence.²⁷

10. On 15 September 2022, following a decision by the Chamber,²⁸ the Yekatom Defence filed a supplemental response to the Sixth Request in relation to witnesses P-0365 and P-2671.²⁹
11. On 15 November 2022, the Prosecution notified the Chamber and the participants of the withdrawal of witness P-1442 (subject to the Sixth Request) and confirmed the death of witnesses P-0811 and P-1172.³⁰

II. Analysis

12. In the present decision, the Chamber will address the First, Second, Third, Fourth and Fifth Requests. It will rule on the remaining requests in due course.
13. The Chamber will first set out (A) the ‘Applicable law’ and (B) its ‘Additional considerations’, before turning to (C) its ‘Preliminary remarks regarding associated items’, and (D) the ‘Analysis of the prior recorded testimonies’.
14. Each request will be assessed on a case-by-case basis and with due regard to the specific nature and content of each prior recorded testimony.³¹ The Chamber will be guided by the principles regarding Rule 68 of the Rules as set out in section

²⁶ Decision on the Prosecution Request to Add P-2687 to its Final Witness List, ICC-01/14-01/18-1118-Conf.

²⁷ Defence Response to “Prosecution’s request for leave to add P-2687 to its Final Witness List and for the formal submission of his prior recorded testimony pursuant to Rule 68(2)(b)”, 12 July 2021, ICC-01/14-01/18-1059-Conf (public redacted version notified on 22 July 2021); Yekatom Defence Response to ‘Prosecution’s Request for Leave to add P-2687 to its Final Witness List and for the Formal Submission of his Prior Recorded Testimony pursuant to Rule 68(2)(b)’ (ICC-01/14-01/18-1043-Conf), 12 July 2021, ICC-01/14-01/18-1060-Conf (public redacted version notified the same day).

²⁸ Corrected version of the Decision on the Yekatom Defence Motion for Finding of Disclosure Violation, 3 October 2022, ICC-01/14-01/18-1566-Conf-Corr (original decision and public redacted version thereof notified on 5 September 2022) (public redacted version of the corrigendum notified on 3 October 2022, ICC-01/14-01/18-1566-Red-Corr).

²⁹ Supplemental Response to “Prosecution’s Sixth Formal Submissions of Prior Recorded Testimony pursuant to Rule 68(2)”, ICC-01/14-01/18-1574-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version notified on 16 September 2022).

³⁰ Email from the Prosecution, 15 November 2022, at 13:38.

³¹ Initial Guidance, ICC-01/14-01/18-685, paras 28, 34.

(A) and in its Initial Guidance,³² as well as the additional considerations set out in section (B).

15. Where prior recorded testimony is introduced pursuant to Rule 68(2)(b) of the Rules, full consideration of the standard evidentiary criteria, in particular in terms of its relevance and probative value, is deferred to the Chamber's eventual deliberation of its judgment.³³

A. Applicable law

16. Rule 68(1) of the Rules gives the Chamber discretion to 'allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met'.
17. Pursuant to Rule 68(2)(b) of the Rules, the Chamber may allow the introduction of 'prior recorded testimony' of a witness who is not present before the Chamber if the following requirements are met. First, the prior recorded testimony goes to proof of 'a matter other than the acts and conduct of the accused'. Second, it is accompanied by a declaration by the testifying person that 'the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief', which has been witnessed by a person authorised by the Chamber or in accordance with the law and procedure of a State, as detailed in Rule 68(2)(b)(ii) and (iii) of the Rules.³⁴
18. The Chamber notes that its determination whether a prior recorded testimony can be introduced pursuant to Rule 68 of the Rules depends on its consideration of the testimony as a whole.³⁵

³² Initial Guidance, ICC-01/14-01/18-685, paras 23-34.

³³ The Chamber recalls the Presiding Judge's directions in this regard, *see* Initial Directions, ICC-01/14-01/18-631, section M.(1), Submission Approach.

³⁴ In this regard, *see* Declaration Decision, ICC-01/14-01/18-508.

³⁵ *See also* 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 Ngaissona Defence Motion to Limit the Scope of P-2926's Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red) (the 'Rule 68(3) Decision'), para. 16.

19. In determining whether introduction of prior recorded testimony falling under Rule 68(2)(b) of the Rules may be allowed, the Chamber shall consider several factors, including those listed in sub-rule (i) of this provision.
20. An assessment under Rule 68(2)(b) of the Rules is thus essentially two-tiered. First, the Chamber needs to determine whether the prior recorded testimony goes to proof of a matter *other* than the acts and conduct of the accused. Where this is the case, chambers may advance to the second step of assessing the factors set out in Rule 68(2)(b) of the Rules, and any other factors deemed relevant under the circumstances.³⁶
21. Where the Chamber concludes that a prior recorded testimony is not suitable for introduction under Rule 68(2)(b) of the Rules, it may introduce it *proprio motu* pursuant to Rule 68(3) of the Rules. In this regard, and in the interest of expeditiousness, the Chamber considers that the participants' submissions made in the context of Rule 68(2)(b) of the Rules are sufficient to satisfy the requirement of 'hearing the parties'³⁷ also for its determination under Rule 68(3) of the Rules.
22. In the following, the Chamber will address its interpretation of the abovementioned requirements and factors governing its assessment of the Requests.

1. *Requirements under Rule 68(2)(b) of the Rules*

- i. Notion of 'prior recorded testimony'

23. The Chamber recalls that the notion of 'prior recorded testimony' includes audio- and video-recorded testimony, transcripts of a testimony of a witness and written statements taken under Rules 111 and 112 of the Rules.³⁸ For the purposes of

³⁶ 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 (the '*Al Hassan Appeals Judgment*'), paras 48-49, 81-82.

³⁷ Rule 68(1) of the Rules.

³⁸ Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 11. See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, ICC-02/04-01/15-596-Conf (public

Rule 68 of the Rules, the person must understand, when providing their statement, that ‘he or she is providing information which may be relied upon in the context of legal proceedings’.³⁹ This is the case when the person is questioned in the capacity of a witness in the context of, or in anticipation of legal proceedings.⁴⁰

24. Furthermore, the Chamber recalls that ‘prior recorded testimony’ within the meaning of Rule 68 of the Rules also includes any annex to witness statements, or item otherwise associated with it, as long as it is used or explained by the witness in their statement and thereby forms an integral part of the testimony itself.⁴¹
25. In principle, translations of prior recorded testimonies do not require a separate assessment. Rather, the Chamber’s assessment of the document in its original language extends to any translation thereof. In case of associated audio-visual material, this assessment further extends to any associated transcripts and translations thereof, if they were duly disclosed.⁴²

redacted version notified the same day, ICC-02/04-01/15-596-Red) (the ‘Ongwen Rule 68(2)(b) Decision’), para. 9; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Corrigendum: Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, ICC-01/09-01/11-1938-Conf-Corr (with one confidential annex) (corrigendum and public redacted version of corrigendum notified on 28 August 2015, ICC-01/09-01/11-1938-Corr-Red2) (the ‘Ruto and Sang Decision on Prior Recorded Testimony’), paras 30-33; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Prosecution Rule 68(2) and (3) Requests, 11 November 2015, ICC-01/05-01/13-1478-Conf (corrected public redacted version notified on 12 November 2015, ICC-01/05-01/13-1478-Red-Corr) (the ‘Bemba et al. Rule 68 Decision’), paras 28-31. *See also* Working Group of Lessons Learnt: Second report of the Court to the Assembly of States Parties, 31 October 2013, ICC-ASP/12/37/Add.1, Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), Annex II.A (the ‘Working Group Report’), para. 13.

³⁹ Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecutor’s Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, para. 49; Ongwen Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 9.

⁴⁰ Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 11, *referring to* Ongwen Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 9; Bemba et al. Rule 68 Decision, ICC-01/05-01/13-1478-Red-Corr, para. 32.

⁴¹ Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 13, *with further references to the jurisprudence*. The Chamber notes in this regard that these decisions make reference to ‘documents’ associated with the statement, but considers the term ‘items’ more apt to also include other materials such as audios, videos or photographs.

⁴² *See also* Initial Directions, ICC-01/14-01/18-631, para. 64.

ii. Meaning of ‘going to proof of a matter other than the acts and conduct of the accused’

26. Prior recorded testimony can only be introduced pursuant to Rule 68(2)(b) of the Rules if it ‘goes to proof of a matter other than the acts and conduct of the accused’. According to the Appeals Chamber, what constitutes prior recorded testimony going to proof of the acts and conduct of the accused under this provision may depend upon ‘the nature of the charges in each case’.⁴³
27. The purpose of this limitation is to safeguard ‘a fair trial in full equality’,⁴⁴ in particular ensuring the accused’s right to confront and examine those persons making direct allegations against them in court.⁴⁵ At the same time, the Appeals Chamber cautioned that ‘chambers must be careful not to apply this concept in a manner that may defeat the objective of rule 68 of the Rules [notably to ‘reduce the length of ICC proceedings and to streamline evidence presentation’⁴⁶], or that may inhibit written testimony limited to contextual elements of crimes or background information that may be relevant to the charges’.⁴⁷
28. Bearing in mind the nature of the charges in this case, the expression ‘acts and conduct of the accused’ must be interpreted in its plain and ordinary meaning, namely as referring to the personal actions and omissions of the accused.⁴⁸

⁴³ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, paras 3, 54.

⁴⁴ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, paras 3, 55.

⁴⁵ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, paras 75-77. *See also Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 12.

⁴⁶ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, para. 55, n. 101.

⁴⁷ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, paras 3, 55.

⁴⁸ *See also* Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, First Decision on the Prosecution’s requests to introduce prior recorded testimonies under Rule 68(2)(b), 2 March 2022, ICC-02/05-01/20-612-Conf (public redacted version notified the same day, ICC-02/05-01/20-612-Red) (the ‘*Abd-Al Rahman* Rule 68(2)(b) Decision’), para. 15; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on admission of prior recorded testimony of Witness P-0773 under Rule 68, 2 December 2016, ICC-01/04-02/06-1667-Conf (public redacted version notified on 27 February 2017, ICC-01/04-02/06-1667-Red) (the ‘*Ntaganda* Rule 68(2) Decision’), para. 11; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 11 referring to the jurisprudence of the ICTY with regard to Rule 92bis of the ICTY Rules of Procedure and Evidence: ICTY, Trial Chamber, *Prosecutor v. Slobodan Milošević*, Decision on Prosecution’s Request to have Written Statements Admitted under rule 92bis, IT-02-54-T, 21 March 2002, para. 22 (‘The phrase “acts and conduct of the accused” in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so’); Appeals Chamber, *Prosecutor v. Stanislav Galić*, Decision on Interlocutory Appeal Concerning rule 92bis(C), IT-98-29-AR73.2, 7 June

Specifically, the Chamber understands it as referring to those actions of the accused described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish their criminal responsibility for the crimes charged.⁴⁹

29. Limited, peripheral references to the accused in a prior recorded testimony do not *per se* preclude this testimony from being introduced under Rule 68(2)(b) of the Rules when (i) the calling party indicates that it does not intend to rely on that reference and (ii) this reference is not significant to the case or is, in any event, of limited importance and does not constitute the core of the testimony.⁵⁰ Any such reference would in any case not be considered to establish the acts and conduct of the accused for the purposes of the Chamber's judgment pursuant to Article 74 of the Statute.⁵¹

iii. Declaration of the testifying person

30. The Chamber recalls that it has designated the Registry Senior Legal Advisor, or anyone delegated by him, as the person authorised to witness declarations made

2002, para. 10 (There is a 'clear distinction drawn in the jurisprudence of the Tribunal between (a) the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of those others. It is only a written statement which goes to proof of the latter acts and conduct which Rule 92bis(A) excludes from the procedure laid down in that Rule'); Trial Chamber, *Prosecutor v. Milan Lukić and Sredoje Lukić*, Decision on Prosecution Motion for Admission of Evidence Pursuant to rule 92 bis, IT-98-32/1-T, 22 August 2008, para. 17; Trial Chamber, *Prosecutor v. Radovan Karadžić*, Decision on Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to rule 92bis (Witnesses for Sarajevo Municipality), IT-95/18-PT, 15 October 2009, para. 5; Trial Chamber, *Prosecutor v. Goran Hadžić*, Decision on Prosecution Omnibus Motion to Admit GH-139's Evidence Pursuant to Rule 92bis, IT-04-74-75-T, 24 January 2013, para. 15.

⁴⁹ In this regard, the Chamber recalls the relevant drafting history of Rule 68(2)(b) of the Rules, see Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 21: 'Rule 68(2)(b) applies to the acts and conduct of the accused as confirmed in accordance with article 61 of the Statute, which addresses the confirmation of charges before the trial. In the text of the corresponding ICTY Rule 92bis, an additional statement is included which reads "as charged in the indictment". It was decided not to include this additional statement, as the concept of an "indictment" does not appear in the Court's statutory instruments, and it is sufficiently clear that rule 68(2)(b) has no application beyond the charges confirmed in accordance with article 61 of the Statute.' See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 12.

⁵⁰ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, para. 50, referring to *Ongwen* Rule 68(2) Decision, ICC-02/04-01/15-596-Red, para. 13. See also *Abd-Al-Rahman* Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Red, para. 16.

⁵¹ *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, para. 50; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 13; *Abd-Al-Rahman* Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Red, para. 16.

pursuant to Rule 68(2)(b) of the Rules for the purposes of this case. Furthermore, it notes that it has approved a standardised form of accompanying declarations, as proposed by the Registry.⁵²

31. Accompanying declarations may not contain any new information and must be made ‘reasonably close in time’ to when the prior recorded testimony is being submitted.⁵³
32. The introduction of any prior recorded testimony pursuant to Rule 68(2)(b) of the Rules is dependent on the provision of these declarations. Any favourable rulings by the Chamber in this decision are thus made on a conditional basis, pending provision of the required declarations.⁵⁴

iv. Absence of prejudice to or inconsistency with the rights of the accused

33. The introduction of a prior recorded testimony is not permitted if it is prejudicial to or inconsistent with the rights of the accused, as mandated by Rule 68(1) of the Rules. In this regard, the Chamber recalls that Rule 68(2)(b) of the Rules is an exception to the principle of orality and that the introduction of prior recorded testimony under this rule deprives an accused of his right to confront witnesses

⁵² Declaration Decision, ICC-01/14-01/18-508, paras 6-8, p. 7; Registry transmission of the standardised forms accompanying witness declarations pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence, 18 May 2020, ICC-01/14-01/18-522 (with one confidential annex).

⁵³ See also Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 24.

⁵⁴ See also Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Corrigendum of ‘Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution’, 19 October 2016, ICC-01/04-02/06-1588, 12 December 2016, ICC-01/04-02/06-1588-Corr, para. 7; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on the ‘Motion on behalf of Mr Aimé Kilolo for the Admission of the Previously Recorded Testimony pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence’, 29 April 2016, ICC-01/05-01/13-1857, para. 20; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, paras 30, 222-223; 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-Conf (public redacted version notified the same day, ICC-02/11-01/15-573-Red) (the ‘*Gbagbo and Blé Goudé* Rule 68 Decision’), para 23; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, 16 October 2020, ICC-01/12-01/18-1111-Conf (public redacted version notified on 29 October 2020, ICC-01/12-01/18-1111-Red) (the ‘*Al Hassan* Rule 68(2)(b) Decision’), para. 11, p. 9.

in court.⁵⁵ In light of this restriction to the accused's rights, a careful balancing of all relevant factors is required when assessing this requirement.⁵⁶

34. The Chamber may take different considerations into account, including the interests of the Defence to challenge the evidence in its witness examination,⁵⁷ as well as the nature⁵⁸ or scope of the statement.⁵⁹

2. *Factors guiding the Chamber's discretion in assessing applications pursuant to Rule 68(2)(b) of the Rules*

35. Provided that a prior recorded testimony meets the abovementioned requirements, the Chamber's decision as to whether to allow the introduction of a prior recorded testimony pursuant to this provision is discretionary.⁶⁰ Each prior recorded testimony must be assessed case-by-case,⁶¹ and on the basis of the circumstances before the chamber.
36. In this regard, the Chamber notes that Rule 68(2)(b)(i) of the Rules contains a non-exhaustive list of factors that the Chamber shall bear in mind in the exercise of such discretion. These include whether or not the testimony in question (i)

⁵⁵ Initial Guidance, ICC-01/14-01/18-685, paras 26, 30; *Al Hassan Appeals Judgment*, ICC-01/12-01/18-2222, paras 1, 80.

⁵⁶ See also *Al Hassan Appeals Judgment*, ICC-01/12-01/18-2222, paras 1, 80; Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel Kani*, 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 (public redacted version notified on 21 October 2022, ICC-01/14-01/21-507-Red (the '*Said Rule 68(2)(b) Decision*'), para. 13.

⁵⁷ See also Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551, 19 January 2017, ICC-01/04-02/06-1733, para. 23; *Ntaganda Rule 68(2) Decision*, ICC-01/04-02/06-1667-Red, paras 18-19.

⁵⁸ See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 16 August 2018, ICC-02/04-01/15-1322-Conf (public redacted version notified the same day), para. 21.

⁵⁹ See also Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence', 12 November 2015, ICC-01/05-01/13-1481-Conf-Exp-Corr, confidential *ex parte*, only available to the Prosecution and Registry (corrected confidential *ex parte* version and public redacted version notified on 23 February 2017, ICC-01/05-01/13-1481-Red-Corr) (the '*Bemba et al. Rule 68(2)(c) Decision*'), para. 22.

⁶⁰ *Al Hassan Appeals Judgment*, ICC-01/12-01/18-2222, para. 2; *Bemba et al. Rule 68 Decision*, ICC-01/05-01/13-1478-Red-Corr, para. 95; *Ongwen Rule 68(2)(b) Decision*, ICC-02/04-01/15-596-Red, para. 6; *Al Hassan Rule 68(2)(b) Decision*, ICC-01/12-01/18-1111-Conf, para. 7; Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 19. In this regard, the Chamber also recalls the findings in its Initial Guidance, ICC-01/14-01/18-685, paras 23-24.

⁶¹ See also Initial Guidance, ICC-01/14-01/18-685, paras 14, 34.

relates to issues that are not materially in dispute; (ii) is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts; (iii) relates to background information; (iv) is such that the interests of justice are best served by its introduction; and (v) has sufficient indicia of reliability.⁶² The Chamber notes that these factors are merely guiding the Chamber's discretion, but are not mandatory pre-conditions for the applicability of Rule 68(2)(b) of the Rules.⁶³

37. The Chamber concurs with Trial Chamber VII that the 'purpose of Rule 68(2)(b) of the Rules is to identify certain situations where it is not necessary to examine witnesses while preserving the fair and expeditious conduct of the proceedings'.⁶⁴ This sub-rule should thus be used to streamline the proceedings where it can avoid the calling of witnesses whose evidence, in light of its content and significance to the case, does not need to be 'tested' through an oral examination of the witness at trial.⁶⁵

38. The Chamber will limit its determinations to those factors disputed between the parties, or which are otherwise of particular importance to the present decision,

⁶² See e.g. Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Bemba Defence Application for Admission of D20-2's Prior Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules, 29 March 2016, ICC-01/05-01/13-1753, paras 6-7; Decision on Request for Formal Submission of D23-1's Expert Report Pursuant to Rule 68(2)(b) or, in the Alternative, Rules 68(3) and 67, 19 February 2016, ICC-01/05-01/13-1641, para. 7.

⁶³ *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 6; *Bemba et al.* Rule 68 Decision, ICC-01/05-01/13-1478-Red-Corr, para. 95. See also Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, paras 19, 22.

⁶⁴ *Bemba et al.* Rule 68 Decision, ICC-01/05-01/13-1478-Red-Corr, para. 106. See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 7; *Al Hassan* Rule 68(2)(b) Decision, ICC-01/12-01/18-1111-Red, para. 7; *Abd-Al-Rahman* Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Red, para. 13.

⁶⁵ The Chamber recalls the drafting history of the amendments to Rule 68(2)(b) of the Rules (see Assembly of States Parties, Twelfth Session, The Hague 20-28 November 2013, Resolution ICC-ASP/12/Res.7). According to the working group, '[t]he addition of this provision [Rule 68(2)(b)] is primarily intended to expedite proceedings by allowing the introduction of a limited class of evidence without the need to arrange for a witness to travel in order to appear in Court. Allowing such testimony to be admitted in the witness' absence, provided that certain procedural steps are met, would expedite proceedings and have additional budgetary benefit' (see Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 18). Moreover, the working group stated that '[t]he effect of adopting the amendment to rule 68 could lead to a reduction in the length of ICC proceedings and streamline evidence presentation' (see Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 43). It further indicated that '[t]he proposed new Rule 68 of the Rules of Procedure and Evidence would allow the judges of the Court to reduce the length of Court proceedings and streamline evidence presentation by increasing the instances in which prior recorded testimony could be introduced instead of hearing the witness in person, while paying due regard to the principles of fairness and the rights of the accused' (see Report of the Working Group on Amendments, ICC-ASP/12/44, para. 8). See also *Al Hassan* Appeals Judgment, ICC-01/12-01/18-2222, paras 3, 55; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 7; *Said* Rule 68(2)(b) Decision, ICC-01/14-01/21-507-Red, para. 14.

and are not self-explanatory in the present circumstances. Notably, the Chamber does not consider it necessary to further define the factors of whether the prior recorded testimony ‘is of cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts’ or ‘relates to background information’. In this regard, the Chamber also notes that, based on the wording of the rule, the prior recorded testimony does not need to be of cumulative or corroborative nature to oral testimony of the *same* events or facts, but it is sufficient that the oral testimony concerns *similar* facts.⁶⁶

i. ‘relates to issues that are not materially in dispute’

39. The Chamber clarifies that this factor, as worded in Rule 68(2)(b)(i) of the Rules, must not be understood to provide either party with a unilateral ‘veto power’ over the introduction of a prior recorded testimony by indicating that issues addressed in the testimony are materially in dispute. While the Chamber appreciates the importance of the participants’ arguments in this regard, the Chamber shall make its own determination as to whether the prior recorded testimony relates to, or impacts on matters which are conceivably disputed between the parties, and whether these matters are of at least sufficient significance for the Chamber’s eventual determination of the charges against the accused in its judgment under Article 74 of the Statute.⁶⁷

ii. ‘the interests of justice are better served by its introduction’

40. The Chamber notes at the outset that the Court’s legal framework does not define the concept of ‘interests of justice’. Its meaning must therefore be interpreted in the specific context of Rule 68(2)(b) of the Rules.

41. This Chamber considers that, in this specific context, the ‘interests of justice’ are better served by the introduction of a prior recorded testimony when such introduction allows, *inter alia*, to (i) safeguard the expeditiousness of the proceedings; (ii) streamline the presentation of evidence; (iii) focus live testimony on those topics of greatest relevance to the proceedings; (iv) minimise

⁶⁶ See also *Said* Rule 68(2) Decision, ICC-01/14-01/21-507-Red, para. 29.

⁶⁷ See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 15; *Said* Rule 68(2)(b) Decision, ICC-01/14-01/21-507-Red, para. 22.

cumulative in-court testimony on aspects which are expected to also be addressed by other witnesses; (v) save resources which may instead be utilised for other purposes and/or avoid witnesses having to travel in order to appear in court;⁶⁸ and (vi) best serve the victims' interests.⁶⁹

iii. 'has sufficient indicia of reliability'⁷⁰

42. The Chamber stresses at the outset that this factor must be differentiated from the Chamber's ultimate assessment of the standard evidentiary criteria of each item of evidence. Accordingly, in assessing an application pursuant to Rule 68(2)(b) of the Rules, the Chamber shall not make findings as to whether it is satisfied that the prior recorded testimony is reliable. Rather, this determination shall only be made as part of the Chamber's holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute.⁷¹
43. For the purposes of Rule 68(2)(b) of the Rules, the Chamber shall only conduct a preliminary assessment which 'can be more cursory in nature so that, even if some factors, such as the witness's competence to testify about the facts, the internal consistency of the statement and potential inconsistencies with other evidence in the record, are not taken into account during this assessment, they may still be considered when assessing the probative value of the evidence'.⁷² This factor is thus without prejudice to the Chamber's discretion to determine the probative value of evidence in accordance with Article 69(4) of the Statute.⁷³

⁶⁸ See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 16. In this regard, the Chamber also notes the drafting history of Rule 68(2)(b)(i) of the Rules and the declared purposes of its adoption, see above n. 65.

⁶⁹ See also *Said* Rule 68(2)(b) Decision, ICC-01/14-01/21-507-Red, para. 23.

⁷⁰ The Chamber notes that some of the jurisprudence referenced in this section pertains to Rule 68(2)(c) or (d) of the Rules. While acknowledging that 'sufficient indicia of reliability' is a *requirement* under these provisions, as opposed to only a *factor* guiding the Chamber's assessment, the Chamber nonetheless finds the jurisprudence instructive for the context of Rule 68(2)(b) of the Rules.

⁷¹ Initial Directions, ICC-01/14-01/18-631, para. 53.

⁷² 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 (OA8) (the '*Gbagbo and Blé Goudé* Appeals Judgment'), para. 3. See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 17; *Said* Rule 68(2)(b) Decision, ICC-01/14-01/21-507-Red, para. 25.

⁷³ Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 22. See also *Ruto and Sang* Decision on Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, para. 67.

44. As held by the Appeals Chamber, ‘in assessing whether a statement bears “sufficient indicia of reliability”, trial chambers retain discretion to consider those factors that may be relevant to its determination on a case-by-case basis’.⁷⁴
45. An important factor in determining whether a prior recorded testimony shows ‘sufficient indicia of reliability’ is the fulfilment of formal requirements at the time the prior recorded testimony is taken. Formal requirements previously considered by chambers of this Court included the following: whether the prior recorded testimony (i) was obtained by the Prosecution in the ordinary course of its investigations; (ii) was signed by the witness and the investigator(s) conducting the interview; (iii) was given voluntarily; (iv) was obtained in the presence of a qualified interpreter; (v) was verified by the witness at the time; and (vi) includes information that the witness was given an explanation of the procedure and was informed of the significance of providing the statement to the

⁷⁴ *Gbagbo and Blé Goudé Appeals Judgment*, ICC-02/11-01/15-744 (OA8), para. 103. In this context, the Chamber notes that some chambers have limited their assessment to formal requirements. For instance, in the *Bemba et al. case*, Trial Chamber VII held that ‘[t]he Chamber considers that the assessment of reliability is preliminary at this stage, but notes that the Statement appears to have been: (i) obtained by the Prosecution in the ordinary course of its investigations; (ii) signed by the witness and the two investigators conducting the interview; (iii) given voluntarily; and (iv) declared to be accurate by the witness at the time of giving it. Noting further that reliability is not an issue contested by the Defence, the Chamber thus finds that the Statement bears sufficient indicia of reliability in accordance with Rule 68(2)(c)(i) of the Rules’; see *Bemba et al. Rule 68(2)(c) Decision*, ICC-01/05-01/13-1481-Red-Corr, para. 20. Other chambers, however, have considered factors beyond formal requirements. For instance, in the *Ntaganda case*, Trial Chamber VI held that ‘[i]n conducting its assessment of the reliability of P-0103’s prior recorded testimony under Rule 68(2)(c) of the Rules, the Chamber has taken into consideration, *inter alia*, the fact that: i) his statement to the Prosecution was signed, and stated to have been given voluntarily; ii) his testimony was given in the presence of a qualified interpreter; iii) he declared on his honour and conscience that the information contained in his statement is accurate; iv) his statement is internally coherent; and v) he admitted when he did know certain information’ (footnote omitted), see 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 (the ‘*Ntaganda Rule 68(2)(c) Decision*’), para. 16. See also 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 P-0022, P-0041 and P-0103, 20 November 2015, ICC-01/04-02/06-1029 (with one public annex), paras 24-25, 34, 36. In the *Ruto and Sang case*, Trial Chamber V(A) considered that while ‘some aspects of the prior recorded testimony may be inconsistent with other evidence admitted on the record [...] these inconsistencies, in light of the formal indicia of reliability [...], are not sufficient to make the written statement unreliable pursuant to Rule 68(2) (d) of the Rules’, see *Ruto and Sang Decision on Prior Recorded Testimony*, ICC-01/09-01/11-1938-Corr-Red2, paras 86, 117, 133. In the *Ongwen case*, Trial Chamber VII focussed on the assessment of formal requirements and limited considerations regarding the substance of statements to grave credibility issues which required the witness’s appearance at trial; see *Ongwen Rule 68(2)(b) Decision*, ICC-02/04-01/15-596-Red, para. 19.

Prosecution (the ‘Formal Requirements’).⁷⁵ Consistent with previous decisions of other chambers,⁷⁶ the Chamber clarifies that no single indicator is, in and of itself, conclusive or mandatory to establish the presence of ‘sufficient indicia of reliability’, but their presence may militate in favour of the introduction of a prior recorded testimony.

46. The Appeals Chamber further clarified that ‘Trial Chambers are not precluded from looking beyond formal requirements, if they consider it to be appropriate in a particular case’.⁷⁷ Noting the Presiding Judge’s directions with regard to the submission of evidence, this Chamber is of the view that any consideration beyond formal requirements, if considered appropriate in particular circumstances, must be performed in accordance with the Chamber’s deferred consideration of the standard evidentiary criteria of the evidence submitted until deliberating the judgment.⁷⁸
47. The Chamber thus agrees with Trial Chamber VII’s approach to limit its assessment regarding the substance of statements to establishing whether issues pertaining to the credibility of the information provided by a witness in their prior recorded testimony are so manifest and of such a nature that the questioning of the witness at trial would be more appropriate than the introduction of the prior recorded testimony under Rule 68(2)(b) of the Rules.⁷⁹

B. Additional considerations

48. Whenever the requirements set out above⁸⁰ are fulfilled, the Chamber will also take the following additional consideration into account.
49. First, it will pay heed to the impact of the number of requests granted under Rule 68 of the Rules on the accused’s rights. In this regard, the Chamber recalls

⁷⁵ *Ruto and Sang* Decision on Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, paras 65-66; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 18; *Bemba et al.* Rule 68(2)(c) Decision, ICC-01/05-01/13-1481-Red-Corr, para. 20; *Ntaganda* Rule 68(2)(c) Decision, ICC-01/04-02/06-1205, para. 16; *Gbagbo and Blé Goudé* Rule 68 Decision, ICC-02/11-01/15-573-Red, para. 22.

⁷⁶ *Ruto and Sang* Decision on Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, para. 65; *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 18.

⁷⁷ *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744 (OA8), para. 104.

⁷⁸ Initial Directions, ICC-01/14-01/18-631, para. 53.

⁷⁹ See also *Ongwen* Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 19.

⁸⁰ See II. A. Applicable law, 1. Requirements.

that, in its Initial Guidance, it held that a party's discretion to determine the organisation and evidence presentation of its case, including the use of Rule 68 of the Rules, is not absolute.⁸¹ It further found that 'the Prosecution's projected use of Rule 68 of the Rules appeared, *prima facie*, disproportionate in light of the principles of orality and publicity and potentially prejudicial to the rights of the accused',⁸² stressing that 'Rule 68(2) of the Rules represents a full exception to the principles of orality and publicity'.⁸³

50. Despite this guidance, a comparison between the Provisional Witness List⁸⁴ and the Final Witness List shows that the number of Rule 68(2)(b) applications in fact increased, while the number of Rule 68(3) applications was slightly reduced, and the number of witnesses expected to testify fully *viva voce* remained almost the same. The Chamber also notes the Ngaïssona Defence's submissions in this respect.⁸⁵
51. As previously stated, there is no clear-cut and general mathematical calculation as to how many witnesses should be called fully *viva voce*.⁸⁶ Accordingly, the Chamber will not limit the number of prior recorded testimonies to be introduced under Rule 68 of the Rules in the abstract. Nonetheless, the overall use of Rule 68(2) of the Rules and its impact on the accused's rights will be taken into account in the Chamber's case-by-case assessment of the individual requests, in accordance with Rule 68(1) of the Rules.
52. Second, the Chamber will take into consideration that witness availability has been impacted by different circumstances in recent years, including the Coronavirus pandemic and related travel restrictions.

⁸¹ Initial Guidance, ICC-01/14-01/18-685, paras 23-31.

⁸² Initial Guidance, ICC-01/14-01/18-685, para. 33.

⁸³ Initial Guidance, ICC-01/14-01/18-685, paras 29-31.

⁸⁴ Notification of the Provisional List of Prosecution Witnesses with a Summary of their Anticipated Testimony, 31 August 2020, ICC-01/14-01/18-642-Conf (with confidential Annex A).

⁸⁵ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 3-4.

⁸⁶ Initial Guidance, ICC-01/14-01/18-685, para. 27.

53. Third, and mindful of its obligation to ensure the expeditiousness of the proceedings, it will give due consideration to the duration and speed of the Prosecution's presentation of evidence thus far.

C. Preliminary remarks regarding associated items

54. The Chamber observes that, in some instances, the Prosecution seeks to introduce only certain associated items, while witnesses in fact also discuss other annexes attached to the prior recorded testimony or even items that are not annexed. The Chamber is of the view that all items which have been discussed by a witness form an integral part of the prior recorded testimony and should thus be introduced under Rule 68(2)(b) of the Rules, regardless of whether a request was made in this regard.⁸⁷ Accordingly, and where deemed appropriate, it will therefore introduce all such associated items.

D. Analysis of the prior recorded testimonies

55. The Chamber will now turn to its individual assessment of the First, Second, Third, Fourth and Fifth Requests, and address the participants' submissions, as necessary.

1. First Request

56. In its First Request, the Prosecution seeks the introduction of the prior recorded testimonies of witnesses P-2326, P-2324, P-2325, P-1773, P-1864, P-1871, P-0289, P-2132 and P-2393, including statements and associated items.
57. The Chamber notes that the prior recorded testimonies subject to this request all relate to non-charged incidents or locations, namely Berbérati, Boda and Carnot. In this regard, the Chamber recalls its previous findings that the facts relating to

⁸⁷ Similarly, see Nineteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1647, P-2083, P-2082, P-2625, P-2582, P-1442 and P-1558, 21 December 2022, ICC-01/14-01/18-1712-Conf, para. 41; Twelfth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1704, P-1528, and P-0314, 14 April 2022, ICC-01/14-01/18-1364-Conf (public redacted version notified the same day), para. 37; Ninth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-0992, P-0446, P-0888, P-0889 and P-1416, 21 December 2021, ICC-01/14-01/18-1226-Conf, para. 19; Rule 68(3) Decision, ICC-01/14-01/18-907-Red, paras 26, 73.

these incidents or locations pertain to the contextual elements of the charged crimes and may only be used for the purposes of establishing these elements.⁸⁸

i. Submissions

58. The Prosecution submits that the prior recorded testimonies of these witnesses fulfil all requirements under Rule 68(2)(b) of the Rules and that their introduction is warranted. Specifically, the Prosecution submits that the proposed prior recorded testimonies concern neither the acts or conduct of the accused, nor matters materially in dispute.⁸⁹ Rather, the Prosecution argues, they are ‘limited to evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s engagement in an armed conflict throughout the relevant period and the group’s course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organizational policy’.⁹⁰
59. According to the Prosecution, (i) the tendered evidence further ‘bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case’; (ii) the witnesses’ accounts were signed in accordance with Rule 111 of the Rules; (iii) the statements contain an ‘express acknowledgment attesting to its voluntariness and the truth of its contents’;⁹¹ and (iv) the formal submission of the prior recorded testimonies would expedite the proceedings and not prejudice the accused.⁹² With regard to the associated items, the Prosecution avers that they form an ‘inseparable and indispensable part’ of the testimonies and should therefore equally be submitted.⁹³

⁸⁸ Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial, 29 October 2020, ICC-01/14-01/18-703-Conf (public redacted version notified on 30 October 2020, ICC-01/14-01/18-703-Red) (the ‘Decision on the Scope of the Charges’), paras 45-53.

⁸⁹ First Request, ICC-01/14-01/18-710-Red, para. 15.

⁹⁰ First Request, ICC-01/14-01/18-710-Red, paras 4, 13, *referring to* Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, 14 May 2020, ICC-01/14-01/18-403-Conf-Corr (original version notified on 11 December 2019) (the ‘Confirmation Decision’), para. 64, pp. 107, 111.

⁹¹ First Request, ICC-01/14-01/18-710-Red, para. 14.

⁹² First Request, ICC-01/14-01/18-710-Red, paras 47-49.

⁹³ First Request, ICC-01/14-01/18-710-Red, para. 16.

60. The CLRV support the introduction of the prior recorded testimonies subject to the First Request, submitting that ‘(i) the prior recorded testimonies and associated exhibits go to proof of a matter other than the acts and conduct of the Accused; (ii) the evidence contained in said testimonies have *indicia* of reliability; (iii) their introduction shall best serve the interests of justice and will not be prejudicial to the fairness of the proceedings and the rights of the Accused; and (iv) this course of action will also promote the rights of the Victims to fair and expeditious proceedings’.⁹⁴
61. The Yekatom Defence (i) notes that ‘all tendered materials are intended to prove the requisite contextual elements to war crimes and crimes against humanity’; (ii) does not oppose the formal submission of the witness statements of P-2324, P-2326, P-1871, P-0289, P-2132, and P-2393 and the associated items, as well as the associated items to the witness statements of P-2325, P-1773 and P-1864; but (iii) seeks the ‘exclusion, inclusion and the limitation on the use of certain paragraphs’ in the statements of P-2325, P-1773 and P-1864.⁹⁵
62. The Ngaïssona Defence opposes the First Request in its entirety. Specifically, it opposes the introduction of the statements of all nine witnesses because they (i) relate to the alleged acts and conducts of the accused; (ii) relate to issues that are materially in dispute, namely the non-confirmed incidents Berbérati, Boda and Carnot; (iii) are not of a cumulative or corroborative nature; (iv) do not merely relate to background information; and (v) the interests of justice are not best served by their introduction. In the event that the Chamber decides to allow their introduction, it argues that ‘the associated exhibits, where applicable, are not inseparable and indispensable parts of the proposed statements and should therefore not be introduced via Rule 68(2)(b)’.⁹⁶
63. As regards P-2324, P-2325 and P-2326 (the ‘Berbérati Witnesses’), the Ngaïssona Defence further submits that since the Prosecution seeks the introduction of all three statements, they cannot be deemed corroborative as none of them will be given as oral testimony. Furthermore, it points out a number of

⁹⁴ CLRV Response to the First Request, ICC-01/14-01/18-731-Conf, para. 3.

⁹⁵ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 2-4, 5-34, 36.

⁹⁶ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 1-2.

contradictions between these three statements, as well as with regard to P-1077's statement, who would also not give full oral testimony in light of the Prosecution's request under Rule 68(3) of the Rules.⁹⁷

ii. *Chamber's determinations*

a. P-2326

64. P-2326 was [REDACTED] of Berbérati.⁹⁸
65. In his statement,⁹⁹ the witness describes the situation in Berbérati before, during and after the conflict. In particular, P-2326 discusses, *inter alia*, the arrival of the Seleka in Berbérati on 31 March 2013 and crimes allegedly committed by them; the arrival of the Anti-Balaka in Berbérati from 31 January 2014 onwards and their alleged targeting of Muslims and commission of crimes (killing, pillaging and destruction of properties, including mosques); the arrival of another Anti-Balaka group on 11 February 2014 from Carnot; the Anti-Balaka leadership in Berbérati; the 'Mokom branch' of the Anti-Balaka; clashes between the Anti-Balaka and the international forces; the flight of Berbérati's Muslims; the Muslim enclave at the bishop's compound in Berbérati; as well as crimes allegedly committed by the Anti-Balaka in other towns, such as Boda and Carnot.
66. With regard to Mr Ngaïssona, the witness states that he was a 'public figure in sports', who 'proclaimed himself the Anti-Balaka coordinator' at some point. He further states that soon thereafter, Mr Ngaïssona sent a mandate to [REDACTED] for the area. P-2326 further indicates that Mr Ngaïssona [REDACTED]. The witness claims [REDACTED] indicating that Mr Ngaïssona had decided that the 'Anti-Balaka were no longer a group of combatants but became a political association' and that a document signed by Mr Ngaïssona [REDACTED].

⁹⁷ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 27-28. With regard to P-1077, the Chamber notes that the witness meanwhile testified pursuant to Rule 68(3) of the Rules, see Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, ICC-01/14-01/18-1457-Conf; transcripts of hearings, ICC-01/14-01/18-T-149-CONF-ENG and ICC-01/14-01/18-T-150-CONF-ENG.

⁹⁸ First Request, ICC-01/14-01/18-710-Conf, para. 22; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 5.

⁹⁹ Statement, CAR-OTP-2100-2178.

However, crimes were allegedly still committed thereafter. According to the witness, after Mr Ngaïssona became the Anti-Balaka's 'overall leader' and 'got them organised', they started military trainings in Berbérati. He never saw Mr Ngaïssona himself in Berbérati.¹⁰⁰ The witness does not mention Mr Yekatom.

67. The witness further discusses and provides copies of records of victims allegedly injured by the Seleka and Anti-Balaka [REDACTED] (Annex A, CAR-OTP-2100-2213; Annex B, CAR-OTP-2100-2245; Annex C, CAR-OTP-2100-2271; Annex D, CAR-OTP-2100-2283; Annex E, CAR-OTP-2100-2301; Annex F, CAR-OTP-2100-2312; Annex H, CAR-OTP-2100-2372); provides copies of his notebook, in which he collected information during the conflict (Annex G, CAR-OTP-2100-2331); and drew a sketch of the Poto-Poto neighbourhood (Annex I, CAR-OTP-2100-2380). The witness further discusses dossier CAR-OTP-2003-1654, at 1736.
68. The Chamber observes that the witness gave direct evidence on Mr Ngaïssona's alleged role as Anti-Balaka coordinator and in organising and training the group.¹⁰¹ In light of this information, and noting the Ngaïssona Defence's objections in this regard,¹⁰² the Chamber considers that P-2326's statement touches upon the acts and conduct of Mr Ngaïssona and is not suitable for introduction under Rule 68(2)(b) of the Rules.
69. Accordingly, the Chamber rejects the introduction of P-2326's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

b. P-2324

70. P-2324 was [REDACTED] in Berbérati during the relevant period.¹⁰³
71. In his statement,¹⁰⁴ the witness describes the situation in Berbérati before and during the conflict. In particular, the witness discusses the relationship between

¹⁰⁰ Statement, CAR-OTP-2100-2178, at 2191-92, paras 63-64, 66.

¹⁰¹ Statement, CAR-OTP-2100-2178, at 2191, paras 63-64.

¹⁰² Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 22-23.

¹⁰³ First Request, ICC-01/14-01/18-710-Conf, para. 18; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 5-6.

¹⁰⁴ Statement, CAR-OTP-2100-2002.

Christians and Muslims before the conflict; the arrival of the Seleka; the arrival of the Anti-Balaka on 7 February 2014; the Anti-Balaka leadership in Berbérati and [REDACTED] with them; the alleged targeting of the Muslim population and their properties and commission of various crimes by the Anti-Balaka; [REDACTED] Muslims' displacement to a bishop's compound and the living conditions there; the displacement of the Muslim population from Berbérati; and the alleged acts of the Anti-Balaka in other towns in the western Central African Republic (the 'CAR').

72. Furthermore, the witness describes [REDACTED] a '*communiqué*' (see CAR-OTP-2084-0157), signed by Mr Ngaïssona, by virtue of which the Muslims were granted free movement during Ramadan.¹⁰⁵ The witness does not mention Mr Yekatom.
73. The witness [REDACTED] a sketch of the bishop's compound where the displaced Muslims stayed (Annex A, CAR-OTP-2100-2035). He also discusses photographs [REDACTED] at the bishop's compound (Annex B, CAR-OTP-2100-2039 to CAR-OTP-2100-2064); a memorandum addressed to [REDACTED] (Annex C, CAR-OTP-2100-2065); pictures taken in 2015 of destroyed houses and mosques in Berbérati (Annex D, CAR-OTP-2100-2068 to CAR-OTP-2100-2082); a complaint filed following an alleged 19 September 2014 assault by the Anti-Balaka (Annex E, CAR-OTP-2100-2083); a copy of the petition [REDACTED] (Annex F, CAR-OTP-2100-2086); pictures of a [REDACTED] in Berbérati in 2015 (Annex G, CAR-OTP-2100-2087 to CAR-OTP-2100-2156); and a copy of a memorandum sent to the CAR President by several Muslim NGOs dated 8 June 2016 (Annex H, CAR-OTP-2100-2158). The witness further discusses two videos (CAR-OTP-2079-0808 and CAR-OTP-2079-0693), as well as two documents (CAR-OTP-2084-0157 and CAR-OTP-2003-1654, at page 1736).
74. The Chamber takes note of the Ngaïssona Defence's objections.¹⁰⁶ With regard to its submissions that the statement goes to Mr Ngaïssona's acts and conduct,

¹⁰⁵ Statement, CAR-OTP-2100-2002, at 2026-27, paras 84-88, and in particular para. 85.

¹⁰⁶ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 11-16, 27-28.

the Chamber observes that the references to Mr Ngaïssona are of limited and peripheral nature. Notably, they concern information reported to the witness by others. Moreover, the Chamber notes that the Prosecution does not intend to rely on this part of P-2324's statement,¹⁰⁷ and that it would, in any case, not constitute the core of P-2324's testimony. In light of the above, the Chamber is satisfied that P-2324's prior recorded testimony is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 84-88 for the purposes of establishing Mr Ngaïssona's acts and conduct.

75. The Chamber is also not persuaded by the Ngaïssona Defence's submissions that the statement relates to issues materially in dispute, and, in any event, not to an extent that would preclude the introduction of the statement under Rule 68(2)(b) of the Rules. The Chamber is mindful that the connection between the National Coordination and the Anti-Balaka in Berbérati is contested by the Ngaïssona Defence. However, it notes that the witness has no direct knowledge in this regard. The Chamber thus does not consider that it would be assisted in its determinations by hearing this witness on these issues in court.
76. With respect to the Ngaïssona Defence's argument that the introduction would not serve the interests of justice, the Chamber notes the following. As regards the submissions pertaining to the redactions applied to the statement, the Chamber notes that a lesser redacted version, in which the sought information is unredacted,¹⁰⁸ is now available to the Ngaïssona Defence. Consequently, the Chamber sees no need to further address these submissions. As regards the Ngaïssona Defence's arguments on the witness's basis of the knowledge and the lack of identification of the perpetrators by the witness, the Chamber notes that it will consider these factors when assessing the probative value of P-2324's evidence in the context of its deliberation of the judgment.

¹⁰⁷ In this regard the Chamber observes that the Prosecution seeks to exclude paragraph 85 of P-2324's prior recorded testimony, *see* Annex A to the First Request, ICC-01/14-01/18-710-Conf-AnxA-Corr, p. 2.

¹⁰⁸ The Chamber notes in this regard that the redactions to paragraph 89 of the statement have been lifted in CAR-OTP-2100-2002-R02.

77. As regards the Ngaïssona Defence's argument regarding corroborative nature,¹⁰⁹ the Chamber notes that this is solely one of the factors which may guide the Chamber's discretion, but is not a mandatory pre-condition for the applicability of Rule 68(2)(b) of the Rules. In light of the fact that the events in Berbérati are not a charged incident, the Chamber does not find corroboration determinative to its assessment of the Berbérati Witnesses. Moreover, it notes that P-1077 already testified in relation to the events in Berbérati and that the Defence had the opportunity to examine this witness. Any potential contradictions between statements of the Berbérati Witnesses, as raised by the Ngaïssona Defence, will be assessed by the Chamber when deliberating on the judgment.
78. Additionally, the Chamber considers that P-2324's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
79. As regards the associated items, the Chamber observes that Annexes A to H, as well as videos CAR-OTP-2079-0808 and CAR-OTP-2079-0693 and documents CAR-OTP-2084-0157 and CAR-OTP-2003-1654, have all been used and explained by the witness in his statement and thus form an integral part of it. The Chamber dismisses the Ngaïssona Defence's objections with regard to the photographs taken by [REDACTED] (Annex B),¹¹⁰ noting that the introduction of associated items is not limited to documents created by witnesses themselves.
80. In light of these considerations, and further noting the absence of objections from the Yekatom Defence and the CLRV, the Chamber considers that the introduction of P-2324's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. It particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
81. Accordingly, the Chamber grants the introduction of P-2324's statement¹¹¹ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following

¹⁰⁹ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 27-28.

¹¹⁰ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Conf, para. 16.

¹¹¹ Statement, CAR-OTP-2100-2002; CAR-OTP-2118-1043 (Translation).

exceptions: items CAR-OTP-2084-0157 and CAR-OTP-2003-1654, page 1736 have already been recognised as submitted and therefore the Chamber need not rule on them again.¹¹²

c. P-2325

82. P-2325 was [REDACTED] in Berbérati at the relevant period. He later acted as [REDACTED].¹¹³
83. In his statement,¹¹⁴ the witness describes the situation in Berbérati before and after the conflict. He discusses, *inter alia*, the arrival of the Seleka in Berbérati on 26 March 2013 and crimes allegedly committed by them; the arrival of the Anti-Balaka on 7 February 2014 and crimes allegedly committed by them against Muslims (killing, looting and destruction, including of mosques); displaced Muslims at [REDACTED] and the bishop's compound; evacuation of Muslims to Cameroon; the Anti-Balaka leadership in Berbérati [REDACTED], their connection to the 'coordination in Bangui', including Mr Ngaïssona, 'MOKOM' and Wenezoui, and decisions made by them.¹¹⁵
84. The witness states [REDACTED] Mr Yekatom [REDACTED]. According to the witness, [REDACTED] 'Rambhot the famous Anti-Balaka chief' and [REDACTED].¹¹⁶ He further indicated that Mr Ngaïssona's name was amongst those '[they] constantly heard' in relation to the national coordination.¹¹⁷
85. The witness further [REDACTED] discusses a sketch of Poto-Poto neighbourhood, indicating locations at which bodies were found (Annex A, CAR-OTP-2100-2407), records [REDACTED] of two killings (Annex B, CAR-OTP-

¹¹² Sketch, CAR-OTP-2100-2035 (Annex A); Photographs, CAR-OTP-2100-2039 to CAR-OTP-2100-2064 (jointly, Annex B); Memorandum, CAR-OTP-2100-2065 (Annex C); Photographs, CAR-OTP-2100-2068 to CAR-OTP-2100-2082 (jointly, Annex D); Document, CAR-OTP-2100-2083 (Annex E); Letter, CAR-OTP-2100-2086 (Annex F); Photographs, CAR-OTP-2100-2087 to CAR-OTP-2100-2156 (jointly, Annex G); Memorandum, CAR-OTP-2100-2158 (Annex H); Videos, CAR-OTP-2079-0808 and CAR-OTP-2079-0693.

¹¹³ First Request, ICC-01/14-01/18-710-Conf, para. 21 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 5. The Chamber notes that the paragraph numbers in the First Request are out of order and restart at paragraph 20 as of the submissions pertaining to P-2325.

¹¹⁴ Statement, CAR-OTP-2100-2386.

¹¹⁵ Statement, CAR-OTP-2100-2386, at 2401, paras 64-65.

¹¹⁶ Statement, CAR-OTP-2100-2386, at 2404, para. 75.

¹¹⁷ Statement, CAR-OTP-2100-2386, at 2401, para. 64.

2100-2408) and [REDACTED] book titled [REDACTED] (Annex C, CAR-OTP-2100-2410). The witness was also shown an article by the AFP News Agency (CAR-OTP-2001-4257).¹¹⁸

86. The Chamber takes note of the Yekatom Defence's submission that paragraph 75 of P-2325's statement ought to be excluded, or in the alternative, that the Chamber should 'refrain from considering this paragraph to establish Mr. Yekatom's acts and conduct for the purpose of its final judgment'.¹¹⁹ The Chamber further notes the Ngaïssona Defence's objections.¹²⁰
87. Having regard to the relevant parts of P-2325's prior recorded testimony,¹²¹ the Chamber observes that the reference to Mr Ngaïssona concerns minor and peripheral hearsay information given to the witness by two individuals by the names of [REDACTED]. As regards the references to Mr Yekatom, the Chamber notes that they pertain to an [REDACTED] two years after the charged period. Moreover, it notes that the reference is limited and would, in any case, not constitute the core of P-2325's testimony.
88. In light of the above, the Chamber is satisfied that P-2325's statement is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraph 64 for the purposes of establishing Mr Ngaïssona's acts and conduct, or on paragraph 75 for the purposes of establishing Mr Yekatom's acts and conduct.
89. Additionally, the Chamber considers that P-2325's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
90. As regards the associated items, the Chamber observes that Annexes A to C, as well as item CAR-OTP-2001-4257, have been used and explained by the witness in his statement and thus form an integral part of it.

¹¹⁸ Statement, CAR-OTP-2100-2386, at 2395, para. 40.

¹¹⁹ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 5-12.

¹²⁰ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 17-21.

¹²¹ Statement, CAR-OTP-2100-2386, paras 64-65, 75.

91. In light of these considerations, and noting that the CLRV do not object, the Chamber considers that the introduction of P-2325's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
92. Accordingly, the Chamber grants the introduction of P-2325's statement¹²² and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exceptions: items CAR-OTP-2100-2410 and CAR-OTP-2001-4257 have already been recognised as submitted and therefore the Chamber need not rule on them again.¹²³

d. P-1773

93. P-1773 was a [REDACTED] resident of Boda during the relevant period.¹²⁴
94. In his statement,¹²⁵ the witness describes the situation in Boda before and during the conflict. In particular, he discusses the arrival of the Seleka; the arrival of the Anti-Balaka around 20 January 2014 and crimes they allegedly committed against the Muslim population; the Anti-Balaka leadership in Boda; the arrival of Muslims fleeing from surrounding areas in Boda as of January 2014; Muslims fleeing from Boda as of January 2014, including [REDACTED]; the arrival of the Sangaris in February 2014 who separated Muslims and Christians; the arrival of the African-led International Support Mission in the CAR (the 'MISCA') and the evacuation of Muslims from June 2014 onwards.
95. P-1773 states having heard that 'Rambo' was one of '*le plus important de tous les leaders Anti-Balaka*'¹²⁶ and that he was '*la tête des Anti-Balaka dans la LOBAYE*'. Further, the witness heard that, at some point between 2014 and 2015,

¹²² Statement, CAR-OTP-2100-2386; CAR-OTP-2107-6435 (Translation).

¹²³ Sketch, CAR-OTP-2100-2407 (Annex A); Document, CAR-OTP-2100-2408 (Annex B).

¹²⁴ First Request, ICC-01/14-01/18-710-Conf, para. 28 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 6.

¹²⁵ Statement, CAR-OTP-2064-0063.

¹²⁶ Statement, CAR-OTP-2064-0063, at 0077, para. 80.

‘Rambo’ asked the Anti-Balaka ‘*d’arrêter de massacrer les musulmans*’.¹²⁷ The witness does not mention Mr Ngaïssona.

96. The witness further drew a sketch of Boda, identifying several places discussed in his statement (Annex 1, CAR-OTP-2064-0084).
97. The Chamber observes that paragraphs 80 and 94 of P-1773’s statement make explicit reference to ‘Rambo’ and his role. However, these references are of limited and peripheral nature and are merely based on what the witness generally heard. Moreover, it notes that the Yekatom Defence did not object to these paragraphs, that the Prosecution does not intend to rely on this part of P-1773’s statement,¹²⁸ and that it would, in any case, not constitute the core of P-1773’s testimony. In light of the above, the Chamber is satisfied that P-1773’s statement is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 80 and 94 for the purposes of establishing Mr Yekatom’s accused’s acts and conduct.
98. The Ngaïssona Defence objects to the introduction of P-1773’s prior recorded testimony, arguing that (i) the statement does not merely relate to background information but rather to the alleged widespread and systematic attack on the civilian population in Boda; (ii) P-1773’s statement raises fundamental questions, *inter alia*, on how the Anti-Balaka members in Boda were identified; and (iii) it should be provided with an opportunity to seek clarifications from this witness, *inter alia*, regarding the Anti-Balaka’s clothing and weapons or the identity of the ‘alleged Anti-Balaka victims’.¹²⁹ It further argues that the statements by P-1773, P-1864 and P-1871 (the ‘Boda Witnesses’) cannot be considered to be of cumulative or corroborative nature because they are all subject to the First Request and, if granted, neither one of these witnesses will testify orally.¹³⁰
99. In this respect, the Chamber recalls that Boda is a non-charged incident. It further notes that the core of the P-1773’s evidence relates to his personal experience as

¹²⁷ Statement, CAR-OTP-2064-0063, at 0080, para. 94.

¹²⁸ In this regard the Chamber observes that the Prosecution seeks to exclude paragraph 80 and 94 of P-1773’s prior recorded testimony, *see* Annex A to the First Request, ICC-01/14-01/18-710-Conf-AnxA-Corr, p. 6.

¹²⁹ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 29.

¹³⁰ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 31.

a Muslim confined to the Boda enclave, and thus the contextual elements of the case, and that he does not mention Mr Ngaïssona at all. The remaining issues raised by the Ngaïssona Defence, such as the Anti-Balaka's clothing, appear to be of general nature. In the Chamber's view, these matters have already been discussed in court, and may be further explored, with numerous other witnesses. The Chamber does not consider P-1773's testimony exceptional in this regard.

100. As regards the Ngaïssona Defence's argument regarding the corroborative nature, the Chamber recalls that this is solely one factor which may guide the Chamber's discretion, but is not a mandatory pre-condition for the applicability of Rule 68(2)(b) of the Rules. In light of the fact that the events in Boda are not a charged incident, the Chamber does not find corroboration determinative to its assessment of the Boda Witnesses.
101. The Yekatom Defence opposes the introduction of paragraph 29 of P-1773's statement, which relates to information about the Anti-Balaka allegedly using violence to prevent the free movement of Muslims after 5 December 2013, including between Mbaïki and Bangui. According to the Yekatom Defence, it is unclear from whom, when and through which means P-1773 obtained this information. Considering that Mr Yekatom is alleged to have had 'control over the Lobaye prefecture ergo responsible for the crimes committed therein', the Yekatom Defence opposes the formal submission of this excerpt 'because its low probative value is outweighed by the prejudice caused in case of submission'.¹³¹ The Chamber observes that these objections merely relate to the probative value of paragraph 29 of P-1773's statement, and recalls that it will assess this during its deliberations on the judgment.
102. Furthermore, the Chamber considers that P-1773's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

¹³¹ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 13-19.

103. As regards the associated item, the Chamber observes that Annex 1 has been used and explained by the witness in his statement and thus forms an integral part of it.
104. In light of these considerations, the Chamber considers that the introduction of P-1773's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
105. Accordingly, the Chamber grants the introduction of P-1773's statement¹³² and the associated item¹³³ pursuant to Rule 68(2)(b) of the Rules.

e. P-1864

106. P-1864 is a Muslim civilian who moved to Boda in 2013.¹³⁴
107. In her statement,¹³⁵ the witness describes, *inter alia*, the Seleka's presence in Boda when she arrived; what she heard about the alleged Anti-Balaka attack on Bangui on 5 December 2013 (the '5 December Bangui Attack'); the crimes allegedly committed by the Anti-Balaka in Boda; Muslims fleeing to the Central Mosque in Boda following the Anti-Balaka attack; her confinement at the [REDACTED]; [REDACTED] around February 2014 where she [REDACTED] and [REDACTED] was killed; fleeing from Boda to [REDACTED] and passing through Anti-Balaka checkpoints on the way; and her living conditions in [REDACTED].
108. The witness indicates having heard from [REDACTED], that 'Rambo was the overall leader of the Anti-Balaka and that his group was based in PK9'.¹³⁶ The witness does not mention Mr Ngaïssona.

¹³² Statement, CAR-OTP-2064-0063.

¹³³ Sketch, CAR-OTP-2064-0084 (Annex 1).

¹³⁴ First Request, ICC-01/14-01/18-710-Red, para. 32 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 5.

¹³⁵ Statement, CAR-OTP-2064-0860.

¹³⁶ Statement, CAR-OTP-2064-0860, at 0864, para. 23.

109. The witness further provided an authorisation to the Prosecution for the release of [REDACTED] following the above incident (Annex A).
110. The Yekatom Defence informs the Chamber of a typographical error, notably the fact that the Prosecution meant to exclude paragraph 23 (instead of 13) of P-1864's statement, which the Yekatom Defence does not oppose.¹³⁷ It however opposes the formal submission of paragraphs 16 and 49 to 50 of P-1864's statement.¹³⁸ As regards paragraph 16, which concerns information relayed to the witness by a third party who was purportedly in Cattin on 5 December 2013, the Yekatom Defence submits that the area mentioned by the third party is vast and questions the reliability of the information provided. In the Yekatom Defence's view, 'the low probative value is outweighed by the prejudice caused in case of submission' of P-1864's statement. With regard to paragraphs 49 and 50, which concern the witness's experience at Anti-Balaka checkpoints in PK9, it argues that this paragraph goes to proof of the acts and conduct of Mr Yekatom, because the checkpoints referred to are alleged to have been under Mr Yekatom's control. In the alternative, it requests that the Chamber refrain from considering these paragraphs for the acts and conduct of Mr Yekatom in its judgment.¹³⁹
111. With regard to the Yekatom Defence's objection to paragraph 16, the Chamber recalls that it will assess the probative value of P-1864's prior recorded testimony during the deliberation on the judgment. As regards the objection to paragraphs 49 and 50, the Chamber observes that these paragraphs merely relate to the witness's experience with other Anti-Balaka elements when entering Bangui. However, P-1864 neither directly refers to Mr Yekatom, nor discusses any connection of these elements to Mr Yekatom. As regards paragraph 23, the Chamber considers that the reference to Mr Yekatom is of limited nature and the information provided is merely based on what the witness heard from [REDACTED] and thus limited to what is in her statement. Moreover, the Chamber notes that the Prosecution does not intend to rely on this part of P-1864's

¹³⁷ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 20-21; Annex A to the Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Conf-AnxA.

¹³⁸ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 22-27.

¹³⁹ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, paras 28-34.

statement¹⁴⁰ and that it would, in any case, not constitute the core of P-1864's testimony.

112. In light of the above, the Chamber is satisfied that P-1864's statement is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraph 23 for the purposes of establishing Mr Yekatom's acts and conduct.
113. The Ngaïssona Defence opposes the introduction of P-1864's statement because it relates to matters materially in dispute, such as the 5 December Bangui Attack and the Anti-Balaka leadership.¹⁴¹ It further argues that the statements of the Boda Witnesses cannot be considered cumulative or corroborative because they are all subject to the First Request and, if granted, neither one of these witnesses will testify orally.¹⁴² The Chamber considers the issues raised by the Ngaïssona Defence to be too broad and generic to preclude the applicability of Rule 68(2)(b) of the Rules. As regards the arguments regarding cumulative and corroborative nature, the Chamber recalls its findings above.¹⁴³
114. Additionally, the Chamber considers that P-1864's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
115. In light of these considerations, the Chamber is of the view that the introduction of P-1864's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-1864 would be required to testify about [REDACTED] and [REDACTED] being killed, thereby risking potential re-traumatisation.¹⁴⁴

¹⁴⁰ In this regard the Chamber observes that the Prosecution seeks to exclude paragraph 23 of P-1864's prior recorded testimony, *see* Annex A to the First Request, ICC-01/14-01/18-710-Conf-AnxA-Corr, p. 7 with the correction noted by the Yekatom Defence, *see* Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, para. 21.

¹⁴¹ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 29.

¹⁴² Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 31.

¹⁴³ *See above*, P-1773, para. 100.

¹⁴⁴ *See also* CLRV Response to the First Request, ICC-01/14-01/18-731-Conf, para. 18.

116. As regards the associated item, the Chamber notes that Annex A has been used and explained by the witness in her statement and thus forms an integral part of it. Since this item has not yet been disclosed to the Defence, the Chamber defers its decision on this item and orders the Prosecution to disclose it within 10 days of notification of this decision. The Defence may submit observations on the introduction of this item, if any, within 10 days of disclosure.
117. Accordingly, the Chamber grants the introduction of P-1864's statement¹⁴⁵ pursuant to Rule 68(2)(b) of the Rules.

f. P-1871

118. P-1871 is a Muslim civilian who resided in Boda during the relevant period.¹⁴⁶
119. In her statement,¹⁴⁷ the witness describes the situation in Boda before and during the conflict, as well as her flight to [REDACTED]. In particular, she discusses the Seleka's arrival in Boda; the Anti-Balaka's arrival in Boda in January 2014 after Djotodia resigned; fleeing [REDACTED] to the Central Mosque in the Ali neighbourhood in Boda and seeing dead bodies on the way; refugees at the Central Mosque; attempting to flee with her family towards [REDACTED]; being stopped on the way by the Anti-Balaka, who [REDACTED] after identifying them as Muslims; and her arrival at the [REDACTED].
120. The witness heard that 'Rambo was the leader of the Anti-Balaka in Boda'.¹⁴⁸ She does not mention Mr Ngaïssona.
121. The witness further provided an authorisation to the Prosecution for the release of any records relating to her medical treatment following the above incident (Annex A).

¹⁴⁵ Statement, CAR-OTP-2064-0860; CAR-OTP-2118-4347 (Translation). With regard to the translation, the Chamber notes that the Prosecution sought the introduction of CAR-OTP-2107-8170. However, this appears to be a previous draft version of the translation. Noting that a later finalised version of this translation is available in JEM under CAR-OTP-2118-4347, and linked to the statement, the Chamber introduces this item instead.

¹⁴⁶ First Request, ICC-01/14-01/18-710-Conf, para. 35 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 6.

¹⁴⁷ Statement, CAR-OTP-2064-0884.

¹⁴⁸ Statement, CAR-OTP-2064-0884, at 0893, para. 51.

122. As regards the reference to Mr Yekatom,¹⁴⁹ the Chamber considers that it is limited to what the witness heard. Moreover, it notes that the Yekatom Defence did not oppose the First Request in relation to P-1871,¹⁵⁰ that the Prosecution does not intend to rely on this part of P-1871's statement,¹⁵¹ and that it would, in any case, not constitute the core of her testimony.
123. The Chamber also notes the Ngaïssona Defence's submission that P-1871's statement does not merely relate to background information, but covers Anti-Balaka roadblocks, which relates to the allegation that Mr Ngaïssona ordered the erection of roadblocks.¹⁵² In this respect, the Chamber notes that the witness does not make any reference to Mr Ngaïssona. Accordingly, the Chamber does not consider that the prior recorded testimony goes to proof of a matter concerning the acts and conduct of the accused. Moreover, the Chamber considers that the Ngaïssona Defence has had and will have further opportunities to question other witnesses about the roadblocks.
124. In light of the above, the Chamber is satisfied that P-1871's statement is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraph 51 for the purposes of establishing Mr Yekatom's acts and conduct.
125. In relation to the Ngaïssona Defence's submissions regarding cumulative or corroborative nature,¹⁵³ the Chamber recalls its findings above.¹⁵⁴ The Chamber also notes that the statement relates to issues that are not materially in dispute and concerns non-charged incidents. Additionally, the Chamber considers that P-1871's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
126. In light of these considerations, the Chamber considers that the introduction of P-1871's prior recorded testimony is not prejudicial to or inconsistent with the

¹⁴⁹ Statement, CAR-OTP-2064-0884, at 0893, para. 51.

¹⁵⁰ Yekatom Defence Response to the First Request, ICC-01/14-01/18-732-Red, para. 3.

¹⁵¹ In this regard the Chamber observes that the Prosecution seeks to exclude paragraph 51 of P-1871's prior recorded testimony, *see* Annex A to the First Request, ICC-01/14-01/18-710-Conf-AnxA-Corr, p. 7.

¹⁵² Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 30.

¹⁵³ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 31.

¹⁵⁴ *See above*, P-1773, para. 100.

accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-1871 would be required to testify, *inter alia*, about [REDACTED] and [REDACTED] being killed, thereby risking potential re-traumatisation.¹⁵⁵

127. As regards the associated item, the Chamber notes that Annex A has been used and explained by the witness in her statement and thus forms an integral part of it. Since this item has not yet been disclosed to the Defence, the Chamber defers its decision on this item and orders the Prosecution to disclose it within 10 days of notification of this decision. The Defence may submit observations on the introduction of this item, if any, within 10 days of disclosure.

128. Accordingly, the Chamber grants the introduction of P-1871's statement¹⁵⁶ pursuant to Rule 68(2)(b) of the Rules.

g. P-0289

129. P-0289 was [REDACTED] in Carnot at the relevant time.¹⁵⁷

130. In his statement,¹⁵⁸ the witness describes the situation in Carnot before, during and after the conflict. P-0289 discusses, *inter alia*, the arrival of the Seleka; the arrival of the Anti-Balaka; crimes allegedly committed by the Anti-Balaka against the Muslim population; the Anti-Balaka leadership in Carnot; fleeing Muslims seeking refuge at the Carnot church and their living conditions; and Muslims fleeing from Carnot. The witness does not mention the accused.

131. P-0289 further drew two sketches of Carnot (Annex A, CAR-OTP-2024-0307 and Annex B, CAR-OTP-2024-0308) and discusses videos CAR-OTP-2012-0477 and CAR-OTP-2019-1359 (at 03:50 to 17:00).

¹⁵⁵ See also CLRV Response to the First Request, ICC-01/14-01/18-731-Conf, para. 18.

¹⁵⁶ Statement, CAR-OTP-2064-0884; CAR-OTP-2118-4362 (Translation).

¹⁵⁷ First Request, ICC-01/14-01/18-710-Conf, para. 38 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 7.

¹⁵⁸ Statement, CAR-OTP-2024-0288.

132. In light of the above, the Chamber is satisfied that P-0289's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision.
133. The Chamber takes note of the Ngaïssona Defence's objection to the introduction of the prior recorded testimonies of P-0289, P-2132 and P-2393 (the 'Carnot Witnesses'), arguing that they cannot be considered cumulative or corroborative because they are all subject to the First Request and, if granted, neither one of these witnesses will testify orally.¹⁵⁹ In light of the fact that the events in Carnot are not a charged incident, the Chamber does not find corroboration determinative to its assessment of the Carnot Witnesses.
134. For similar reasons, the Chamber also disagrees with the Ngaïssona Defence's arguments that it should be allowed to question P-0289 because his statement relates to the allegation of a widespread and systematic attack and does not 'provide a clear description of the Anti-Balaka leadership in Carnot'.¹⁶⁰ The Chamber notes that it will assess P-0289's evidence in relation to the Anti-Balaka leadership in Carnot in the context of deliberating on the judgement. It further considers the fact that P-0289's statement goes solely to contextual elements to make it particularly suitable for introduction under Rule 68(2)(b) of the Rules. Moreover, and bearing in mind the evidence already on the record on this matter, it does not consider it necessary to hear this witness live.
135. Furthermore, and contrary to the Ngaïssona Defence's submission,¹⁶¹ the Chamber considers the introduction of P-0289's prior recorded testimony to be in the interests of justice as it streamlines the presentation of evidence. As regards the Ngaïssona Defence's submissions regarding P-0289's interactions with the media and NGOs '[REDACTED] are part of the Prosecution's evidence',¹⁶² it notes that it will take them into consideration, together with any related documentary evidence, when assessing the probative value of P-0289's prior recorded testimony. With respect to the submissions regarding the list of IDPs

¹⁵⁹ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 38.

¹⁶⁰ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 32.

¹⁶¹ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 33.

¹⁶² Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Conf, para. 33.

who allegedly stayed in the Carnot parish,¹⁶³ the Chamber recalls that Carnot is not a charged incident and thus finds it unnecessary to receive further evidence on the matter.

136. Additionally, the Chamber considers that P-0289's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
137. As regards the associated items, the Chamber observes that Annexes A and B, as well as videos CAR-OTP-2012-0477 and CAR-OTP-2019-1359 (at 03:50 to 17:00) have been used and explained by the witness in his statement and thus form an integral part of it.
138. In light of these considerations, and noting that neither the Yekatom Defence nor the CLRV raised objections, the Chamber considers that the introduction of P-0289's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights.
139. Accordingly, the Chamber grants the introduction of P-0289's statement¹⁶⁴ and associated items pursuant to Rule 68(2)(b) of the Rules, with the following exceptions: items CAR-OTP-2012-0477 and CAR-OTP-2019-1359 have already been recognised as submitted and therefore the Chamber need not rule on them again.¹⁶⁵

h. P-2132

140. P-2132 was the [REDACTED] at the relevant time and until 2016.¹⁶⁶
141. In his statement,¹⁶⁷ the witness describes the situation in Carnot before, during and after the conflict. In particular, he discusses the arrival of the Seleka; the arrival of the Anti-Balaka on 3 February 2014; crimes allegedly committed by

¹⁶³ See Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Conf, para. 33, *referring to* Investigation note, CAR-OTP-2110-0290.

¹⁶⁴ Statement, CAR-OTP-2024-0288.

¹⁶⁵ Sketch, CAR-OTP-2024-0307 (Annex A); Sketch, CAR-OTP-2024-0308 (Annex B).

¹⁶⁶ First Request, ICC-01/14-01/18-710-Conf, para. 42 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 7.

¹⁶⁷ Statement, CAR-OTP-2080-0884.

the Anti-Balaka against the Muslim population; the Anti-Balaka leadership in Carnot and [REDACTED]; Muslims staying at the Catholic Church [REDACTED] for protection; and Muslims fleeing from Carnot. The witness does not mention the accused.

142. The witness further provides his CV (Annex 1, CAR-OTP-2080-0906) and a municipal note (Annex 3, CAR-OTP-2080-0909), and discusses a report by *Médecins Sans Frontières* (Annex 2, CAR-OTP-2001-2247 and the signed version thereof, CAR-OTP-2080-0908).
143. In light of the above, the Chamber is satisfied that P-2132's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision.
144. The Chamber takes note of the Ngaïssona Defence's objection to the introduction of P-2132's prior recorded testimony, arguing that it does not merely relate to background information, but raises questions such as whether the crimes can be attributed to the Anti-Balaka.¹⁶⁸ While this question, in relation to contextual elements, can conceivably be seen as materially in dispute, the Chamber recalls that Carnot is a not a charged incident. Furthermore, it considers the fact that P-2132's statement goes solely to contextual elements to make it particularly suitable for introduction under Rule 68(2)(b) of the Rules. In relation to the Ngaïssona Defence's submissions pertaining to the corroboration of the Carnot Witnesses, the Chamber recalls its findings above.¹⁶⁹
145. Additionally, the Chamber considers that P-2132's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
146. As regards the associated items, the Chamber observes that Annexes 1 to 3 have been used and explained by the witness in his statement and thus form an integral part of it.

¹⁶⁸ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, para. 34.

¹⁶⁹ See above, P-0289, para. 133.

147. In light of these considerations, and noting that neither the Yekatom Defence nor the CLRV raised objections, the Chamber considers that the introduction of P-2132's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
148. Accordingly, the Chamber grants the introduction of P-2132's statement¹⁷⁰ and associated items pursuant to Rule 68(2)(b) of the Rules, with the following exception: item CAR-OTP-2001-2247 (Annex 2) has already been recognised as submitted and therefore the Chamber need not rule on it again.¹⁷¹

i. P-2393

149. P-2393 was a Muslim civilian residing in Carnot during the relevant period.¹⁷²
150. In his statement,¹⁷³ the witness describes the situation in Carnot before, during and after the conflict. P-2393 discusses, *inter alia*, the arrival of the Seleka and crimes allegedly committed by them; the arrival of the Anti-Balaka on 5 February 2014 and a [REDACTED], on 7 February 2014; crimes allegedly committed by the Anti-Balaka against the Muslim population, including the looting [REDACTED]; the arrival of the MISCA in Carnot between 15 to 25 February 2014; the Anti-Balaka leadership in Carnot; and Muslims seeking refuge at the IDP site at the Catholic church.
151. The witness mentions a person by the name 'Rambo'. According to the witness, 'Rambo' was an Anti-Balaka element in 'his early twenties' and, at the time of the statement (April 2019), a diamond miner.¹⁷⁴ P-2393 indicates that [REDACTED] 'persons within the Anti-Balaka who did not agree with many of their actions and [who] did not participate actively in what the group was doing',

¹⁷⁰ Statement, CAR-OTP-2080-0884; CAR-OTP-2104-1076 (Translation).

¹⁷¹ CV, CAR-OTP-2080-0906 (Annex 1); Municipal note, CAR-OTP-2080-0909 (Annex 3); Report, CAR-OTP-2080-0908.

¹⁷² First Request, ICC-01/14-01/18-710-Red, para. 45 [sic]; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 7.

¹⁷³ Statement, CAR-OTP-2108-0140.

¹⁷⁴ Statement, CAR-OTP-2108-0140, at 0150, para. 61, at 0165, para. 128, at 0166, paras 129-30, at 0167-68, para. 140.

including ‘Rambo’.¹⁷⁵ P-2393 further states that he met ‘Rambo’;¹⁷⁶ that ‘Rambo’ injured Muslims but confessed and asked for forgiveness;¹⁷⁷ that ‘Rambo’ destroyed the mosque of Aladji Bachirou with another Anti-Balaka member, but that he regretted it;¹⁷⁸ that ‘Rambo’ wanted to find a way to stop the attacks’;¹⁷⁹ that ‘Rambo’, like other young adults, realised that the Anti-Balaka leaders were using and encouraging them to commit crimes and therefore started to complain and betray them;¹⁸⁰ and that ‘Rambo’ was ‘moving around all over CARNOT’, was usually seen in Gbaya neighbourhood and might have been in Sinacolo’s group.¹⁸¹

152. The witness further indicates that in 2017, [REDACTED] a document signed by Mr Ngaïssona, appointing Namssenmo as Com-Zone after Sinacolo’s arrest.¹⁸² Moreover, he states that Kinda Bidon and Namssenmo travelled to Bangui to meet with Mr Ngaïssona and that [REDACTED] attended a meeting with Mr Ngaïssona in Bangui ‘after he had taken over as the Anti-Balaka leader in Carnot’.¹⁸³
153. The witness further discusses his [REDACTED] which shows that he was the [REDACTED] (Annex 1, CAR-OTP-2108-0174) and two stills of video CAR-OTP-2088-0977 (at 00:02:52:14 and 00:02:47:12).
154. The Chamber is of the view that the witness’s references to ‘Rambo’ concern an individual other than Mr Yekatom. In this regard, it notes that the Yekatom Defence did not object to the introduction of P-2393’s prior recorded testimony and that the witness, contrary to other evidence on the record, describes Mr Yekatom as (i) in his early twenties at the time of the events, (ii) based in Carnot, and (iii) as a diamond miner.

¹⁷⁵ Statement, CAR-OTP-2108-0140, at 0150, para. 61, at 0165, para. 128, at 0166, paras 129-31.

¹⁷⁶ Statement, CAR-OTP-2108-0140, at 0166, para. 131.

¹⁷⁷ Statement, CAR-OTP-2108-0140, at 0166, para. 129.

¹⁷⁸ Statement, CAR-OTP-2108-0140, at 0167-68, para. 140.

¹⁷⁹ Statement, CAR-OTP-2108-0140, at 0166, para. 130.

¹⁸⁰ Statement, CAR-OTP-2108-0140, at 0160, para. 102, at 0166, para. 133.

¹⁸¹ Statement, CAR-OTP-2108-0140, at 0160, para. 104.

¹⁸² Statement, CAR-OTP-2108-0140, at 0153, para. 73.

¹⁸³ Statement, CAR-OTP-2108-0140, at 0154, para. 77.

155. The Chamber takes note of the Ngaïssona Defence's objections.¹⁸⁴ With regard to its submissions that the statement goes to Mr Ngaïssona's acts and conduct, the Chamber observes that the references to Mr Ngaïssona are of limited and peripheral nature. Notably, they concern information reported to the witness by others. Moreover, the Chamber notes that the Prosecution does not intend to rely on this part of P-2393's statement,¹⁸⁵ and that it would, in any case, not constitute the core of P-2393's testimony.
156. In light of the above, the Chamber is satisfied that P-2393's prior recorded testimony is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 73 and 77 for the purposes of establishing Mr Ngaïssona's acts and conduct. Furthermore, and in light of its finding above that the witness's references to 'Rambo' concern an individual other than Mr Yekatom, it will not rely on paragraphs 61, 102, 104, 128-131, 133-134, and 140 for the purposes of establishing Mr Yekatom's acts and conduct.
157. The Chamber is also not persuaded by the Ngaïssona Defence's submissions that the statement relates to issues materially in dispute, and in any event not to an extent that would preclude the introduction of the statement under Rule 68(2)(b) of the Rules. The Chamber is mindful that the connection between the National Coordination and the Anti-Balaka in the provinces, as well as Mr Ngaïssona's role in the issuance of badges, is contested by the Ngaïssona Defence. However, it notes that the witness has no direct knowledge in this regard. The Chamber thus does not consider that it would be assisted in its determinations by hearing this witness on these issues in court. It also notes that this is solely one of the factors which may guide the Chamber's discretion, but is not a mandatory pre-condition for the applicability of Rule 68(2)(b) of the Rules.
158. Additionally, the Chamber considers that P-2393's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

¹⁸⁴ Ngaïssona Defence Response to the First Request, ICC-01/14-01/18-733-Red, paras 35-38.

¹⁸⁵ In this regard the Chamber observes that the Prosecution seeks to exclude paragraphs 73 and 77 of P-2393's prior recorded testimony, *see* Annex A to the First Request, ICC-01/14-01/18-710-Conf-AnxA-Corr, p. 9.

159. As regards the associated items, the Chamber observes that Annex 1 and the two stills of video CAR-OTP-2088-0977 have been used and explained by the witness in his statement and thus form an integral part of it.
160. In light of these considerations, and further noting the absence of objections from the Yekatom Defence and the CLRV, the Chamber considers that the introduction of P-2393's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. It particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
161. Accordingly, the Chamber grants the introduction of P-2393's statement¹⁸⁶ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exception: item CAR-OTP-2088-0977 has already been recognised as submitted and therefore the Chamber need not rule on it again.¹⁸⁷

2. Second Request

162. In its Second Request, the Prosecution seeks the introduction of the prior recorded testimonies of witnesses P-2486, P-2546, P-2422, P-2416 and P-1779, including statements and associated items.
163. The Chamber notes that the prior recorded testimonies subject to this request all relate to non-charged incidents or locations, namely in Yaloké, Gaga and Zawa. In this regard, the Chamber recalls its previous findings that the facts relating to these incidents or locations pertain to the contextual elements of the charged crimes and may only be used for the purposes of establishing these elements.¹⁸⁸

i. Submissions

164. The Prosecution submits that the prior recorded testimonies of these witnesses fulfil all requirements under Rule 68(2)(b) of the Rules and that their introduction is warranted. Specifically, the Prosecution submits that the proposed prior

¹⁸⁶ Statement, CAR-OTP-2108-0140; CAR-OTP-2107-6531 (Translation).

¹⁸⁷ Photo, CAR-OTP-2108-0174 (Annex 1).

¹⁸⁸ Decision on the Scope of the Charges, ICC-01/14-01/18-703-Red, paras 45-53.

recorded testimonies concern neither the acts or conduct of the accused,¹⁸⁹ nor matters materially in dispute.¹⁹⁰ Rather, the Prosecution argues, they are limited to ‘evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s engagement in an armed conflict throughout the relevant period and the group’s course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organisational policy’.¹⁹¹

165. According to the Prosecution, (i) the tendered evidence further ‘bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case’; (ii) the witnesses’ accounts were signed in accordance with Rule 111 of the Rules; (iii) the statements contain an ‘express acknowledgment attesting to its voluntariness and the truth of its contents’; (iv) the statements are ‘internally consistent, and sufficiently corroborated by other evidence in the case’; and (v) the formal submission of the prior recorded testimonies would expedite the proceedings and not prejudice the Defence.¹⁹² With regard to the associated items, the Prosecution avers that they form an ‘inseparable and indispensable part’ of the prior recorded testimonies and should therefore equally be submitted.¹⁹³

166. The CLRV support the introduction of the prior recorded testimony subject to the Second and Third Requests, submitting that ‘(i) the prior recorded testimonies and associated exhibits go to proof of a matter other than the acts and conduct of the accused; (ii) the evidence contained in said testimonies have indicia of reliability; (iii) their introduction shall best serve the interests of justice and will not be prejudicial to the fairness of the proceedings and the rights of both Accused; and (iv) this course of action will also promote the rights of the Victims to fair and expeditious proceedings’.¹⁹⁴

¹⁸⁹ Second Request, ICC-01/14-01/18-744-Red, para. 4.

¹⁹⁰ Second Request, ICC-01/14-01/18-744-Red, para. 11.

¹⁹¹ Second Request, ICC-01/14-01/18-744-Red, paras 4, 9.

¹⁹² Second Request, ICC-01/14-01/18-744-Red, paras 10-11, 36-40.

¹⁹³ Second Request, ICC-01/14-01/18-744-Red, para. 12.

¹⁹⁴ CLRV Response to the Second and Third Requests, ICC-01/14-01/18-761-Conf, para. 3.

167. The Yekatom Defence indicated that it would not file a response to the Second and Third Requests.¹⁹⁵ The Ngaïssona Defence defers to the Chamber's discretion with regard to the prior recorded testimonies subject to the Second and Third Requests, but requests that 'the entirety of the witnesses' statements be introduced, rather than the selection made by the Prosecution'.¹⁹⁶ While it acknowledges that these prior recorded testimonies do not concern the acts and conduct of Mr Ngaïssona, it indicates, standing by its prior submissions, that the Prosecution's 'extensive projected use' of Rule 68(2)(b) of the Rules is disproportionate.¹⁹⁷

ii. *Chamber's determinations*

a. P-2486

168. P-2486 is a [REDACTED] civilian who was living in the bush near Boda during the relevant period.¹⁹⁸

169. In her statement,¹⁹⁹ P-2486 discusses, *inter alia*, the Anti-Balaka arriving in Boda; her group fleeing from the bush in Boda towards [REDACTED] village and allegedly being attacked by the Anti-Balaka near [REDACTED]; another encounter of her group with the Anti-Balaka elements near Gaga, who looted their cattle, gathered them in one place and guarded them; their transfer from Gaga to [REDACTED] in Yaloké; their subsequent transfer to Yaloké town hall by MISCA forces who protected them from Anti-Balaka attacks; the living conditions in the Yaloké town hall, including the inadequacy of the food, which led to the death of [REDACTED]; her stay in Yaloké town hall [REDACTED]; and the Anti-Balaka leadership in Yaloké and Gaga. The witness does not mention the accused.

¹⁹⁵ Email from the Yekatom Defence, 10 December 2020, at 16:03.

¹⁹⁶ Ngaïssona Defence Response to the Second and Third Requests, ICC-01/14-01/18-785-Red, para. 4.

¹⁹⁷ Ngaïssona Defence Response to the Second and Third Requests, ICC-01/14-01/18-785-Red, para. 6.

¹⁹⁸ Second Request, ICC-01/14-01/18-744-Conf, para. 14; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 7.

¹⁹⁹ Statement, CAR-OTP-2116-0281.

170. The witness further discusses 13 photographs (CAR-OTP-2061-4482 to CAR-OTP-2061-4494) shown to her.
171. In light of the above, the Chamber is satisfied that P-2486's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that the statement relates to issues that are not materially in dispute²⁰⁰ and concerns non-charged incidents. Furthermore, the Chamber considers that P-2486's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
172. As regards the associated items, the Chamber observes that items CAR-OTP-2061-4482 to CAR-OTP-2061-4494 have been used and explained by the witness in her statement and thus form an integral part of it.
173. In light of these considerations, and noting that neither the Defence nor the CLRV raised objections, the Chamber considers that the introduction of P-2486's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
174. Accordingly, the Chamber grants the introduction of P-2486's statement²⁰¹ and associated items²⁰² pursuant to Rule 68(2)(b) of the Rules.

b. P-2546

175. P-2546 is a [REDACTED] who lived in Yaloké during the relevant period.²⁰³
176. In his statement,²⁰⁴ the witness states that he was [REDACTED] for Yaloké at the end of September 2013. He describes the situation in Yaloké before 2013 and

²⁰⁰ In this regard, the Chamber notes that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimonies subject to the Second Request.

²⁰¹ Statement, CAR-OTP-2116-0281; CAR-OTP-2118-4694 (Translation).

²⁰² Photographs, CAR-OTP-2061-4482 to CAR-OTP-2061-4494.

²⁰³ Second Request, ICC-01/14-01/18-744-Conf, para. 17; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

²⁰⁴ Statement, CAR-OTP-2114-0402.

during the conflict. He discusses, *inter alia*, an incident in Gaga and events in Boali; going to Bangui for a [REDACTED] until February 2014; the events in Bangui on 5 December 2013 and the roadblocks established thereafter; the Anti-Balaka's control over Yaloké in February 2014; the Anti-Balaka leadership in Yaloké; [REDACTED] the mayor, the Anti-Balaka leaders, the sub-prefect for Yaloké and [REDACTED] to address the situation in Yaloké; the Peuhls' living conditions; the destruction of the Yaloké Central Mosque; the evacuation of the Muslims from Yaloké and the role of the United Nation's Multidimensional Integrated Stabilization Mission in the Central African Republic therein; [REDACTED]; attacks on Peuhls; and many Peuhls fleeing to Cameroon.

177. The witness further identifies several of the locations described in his statement on two satellite images (Annex A, CAR-OTP-2114-0444 and Annex B, CAR-OTP-2114-0445).
178. The witness indicates that people in Mbaïki said that 'Rambo' was 'one of the chiefs of the Anti-Balaka'.²⁰⁵ However, when directly asked about Yekatom, the witness stated that he had heard Yekatom's name in the media, that Yekatom was 'an MP' who fired shots in the assembly and was later arrested, but did not know about his connection to the Anti-Balaka.²⁰⁶ When asked about Ngaïssona, the witness indicated knowing him 'from a sporting point of view', that he was the 'President of a Sports club, Minister of Sports of Central Africa' and that he only heard from the media that there was an arrest warrant against him for his association with the Anti-Balaka.²⁰⁷
179. In light of the limited and peripheral nature of the references to the accused, and noting that the Defence made no observations in this regard, the Chamber is satisfied that P-2546's statement is suitable to be introduced under this provision. However, it will not rely on paragraph 58 for the purposes of establishing Mr Yekatom's acts and conduct, or on paragraph 130 for the purposes of establishing either of the accused's acts and conduct.

²⁰⁵ Statement, CAR-OTP-2114-0402, at 0419, para. 58.

²⁰⁶ Statement, CAR-OTP-2114-0402, at 0441, para. 130 f.

²⁰⁷ Statement, CAR-OTP-2114-0402, at 0441, para. 130 d.

180. The Chamber also notes that the statement relates to issues that are not materially in dispute²⁰⁸ and concerns non-charged incidents. Furthermore, the Chamber considers that P-2546's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
181. As regards the associated items, the Chamber further observes that both Annexes A and B have been used and explained by the witness in his statement and thus form an integral part of it.
182. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-2546's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber further finds that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
183. Accordingly, the Chamber grants the introduction of P-2546's statement²⁰⁹ and associated items²¹⁰ pursuant to Rule 68(2)(b) of the Rules.

c. P-2422

184. P-2422 is a Muslim woman who [REDACTED] in Yaloké.²¹¹
185. In her statement,²¹² the witness describes the situation in Yaloké before and after Djotodia came to power in 2013. Notably, the witness discusses the Seleka's arrival in Yaloké and their alleged targeting of Christian civilians following their arrival; the first Anti-Balaka attack on Gaga prior to the alleged 5 December Bangui Attack and the Seleka subsequently driving the Anti-Balaka back to the bush and allegedly killing Christian civilians in Gaga; the second Anti-Balaka attack on Gaga shortly after Djotodia resigned; the Seleka fleeing from Yaloké after the second Gaga attack; the Anti-Balaka attack on Zawa one or two days

²⁰⁸ In this regard, the Chamber notes that neither of the Defence teams raised specific objections to the introduction of the prior recorded testimonies subject to the Second Request.

²⁰⁹ Statement, CAR-OTP-2114-0402; CAR-OTP-2118-4647 (Translation).

²¹⁰ Satellite images, CAR-OTP-2114-0444 (Annex A); CAR-OTP-2114-0445 (Annex B).

²¹¹ Second Request, ICC-01/14-01/18-744-Conf, para. 21; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 9.

²¹² Statement, CAR-OTP-2110-0801.

after; [REDACTED]; [REDACTED] the names of several Anti-Balaka commanders being discussed at the property; the Anti-Balaka killing imam Djbrine and [REDACTED] in Yaloké town; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

186. The witness indicates that she does not know Mr Yekatom. She had only heard of Mr Ngaïssona's name and that he was arrested, but not by whom or for what.²¹³
187. The witness further identifies a number of locations on satellite images of Yaloké (Annex 1, CAR-OTP-2110-0841), Gaga (Annex 2, CAR-OTP-2110-0842), as well as the property [REDACTED] (Annex 3, CAR-OTP-2110-0843), and drew a diagram of this property (Annex 4, CAR-OTP-2110-0844).
188. In light of the above, and noting that the Defence made no observations in this regard, the Chamber is satisfied that P-2422's statement is suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²¹⁴ and concerns non-charged incidents. Furthermore, the Chamber considers that P-2422's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
189. As regards the associated items, the Chamber further observes that Annexes 1 to 4 have been used and explained by the witness in her statement and thus form an integral part of it.
190. In light of these considerations, and noting that the Defence does not object, the Chamber considers that the introduction of P-2422's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber also notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-2422 would otherwise be required to testify, *inter alia*, about [REDACTED], thereby risking potential re-traumatisation.²¹⁵

²¹³ Statement, CAR-OTP-2110-0801, at 0837, para. 112.

²¹⁴ In this regard, the Chamber notes that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimonies subject to the Second Request.

²¹⁵ See also CLRV Response to the Second and Third Requests, ICC-01/14-01/18-761-Conf, para. 15.

191. Accordingly, the Chamber grants the introduction of P-2422's statement²¹⁶ and associated items²¹⁷ pursuant to Rule 68(2)(b) of the Rules.

d. P-2416

192. P-2416 is a Muslim civilian who lived in Yaloké before and during the conflict.²¹⁸

193. In his statement,²¹⁹ the witness describes the situation in Yaloké before and after Djotodia came to power in 2013. In particular, the witness states that both Muslims and Christians used to live in Yaloké. P-2416 then describes the Seleka's arrival in Yaloké after Djotodia took power and their departure after he resigned; the Sangaris' arrival in Yaloké in January 2014 and their role in protecting the Muslim population of Yaloké; alleged attacks on the Muslims in Yaloké by the Anti-Balaka; the Anti-Balaka leadership in Yaloké; the move of the Muslim population to the mosque and the compound [REDACTED]; the evacuations of Muslims from Yaloké to Cameroon and Chad, including his own; and a 'Peuhl enclave' in Yaloké.

194. The witness indicates that he does not know Mr Yekatom. Furthermore, P-2416 stated that he had only heard of a person by the name Ngaïssona 'who was arrested by the ICC', but that he did not have further information about him.²²⁰

195. The witness also provides a photograph (Annex 1, CAR-OTP-2106-0547); comments on a satellite image (Annex 2, CAR-OTP-2106-0548); commented on screenshots of video CAR-OTP-2106-0138 (Annexes 3 to 25, CAR-OTP-2106-0549 to CAR-OTP-2106-0560); provides a video of 'Le Bleu', CAR-OTP-2106-0684, and comments on screenshots thereof (Annexes 27 to 30); provides a video of Dodeski, CAR-OTP-2106-0685, and comments on screenshots thereof (Annexes 31 to 34, CAR-OTP-2106-0561 and CAR-OTP-2106-0562); comments on videos CAR-OTP-2023-0376 (Annexes 35 to 38, CAR-OTP-2106-0563 to CAR-OTP-2106-0564) and CAR-OTP-2106-0139 (Annexes 39 to 45, CAR-

²¹⁶ Statement, CAR-OTP-2110-0801; CAR-OTP-2118-4438 (Translation).

²¹⁷ Satellite images, CAR-OTP-2110-0841 to CAR-OTP-2110-0843; Sketch, CAR-OTP-2110-0844.

²¹⁸ Second Request, ICC-01/14-01/18-744-Red, para. 27; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 9.

²¹⁹ Statement, CAR-OTP-2106-0489.

²²⁰ Statement, CAR-OTP-2106-0489, at 0542, para. 130.

OTP-2106-0565 to CAR-OTP-2106-0568); and comments on photos CAR-OTP-2085-8005, CAR-OTP-2085-8615, CAR-OTP-2085-9385, CAR-OTP-2085-8445, CAR-OTP-2085-9265, CAR-OTP-2085-9045 from Yaloké (Annexes 46 to 51, CAR-OTP-2106-0569 to CAR-OTP-2106-0571). The Chamber notes that all annexes are compiled in document CAR-OTP-2106-0686.

196. In light of the above, and noting that the Defence made no observations in this regard, the Chamber is satisfied that P-2416's statement is suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²²¹ and concerns non-charged incidents. Furthermore, the Chamber considers that P-2416's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
197. As regards the associated items, the Chamber notes that the witness not only used and explained the annexes submitted by the Prosecution (Annexes 2, 4, 11, 14, 18, 21, 25, 35, 39, 40, 48 and 49), but also the remainder of the abovementioned items. The Chamber thus considers that they all form an integral part of his statement.
198. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-2416's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
199. Accordingly, the Chamber grants the introduction of P-2416's statement²²² and associated items pursuant to Rule 68(2)(b) of the Rules, with the following exceptions: items CAR-OTP-2023-0376, CAR-OTP-2085-8005, CAR-OTP-2085-8615, CAR-OTP-2085-9385, CAR-OTP-2085-8445, CAR-OTP-2085-

²²¹ In this regard, the Chamber notes that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimonies subject to the Second Request.

²²² Statement, CAR-OTP-2106-0489; CAR-OTP-2118-2086 (Translation).

9265 and CAR-OTP-2085-9045 have already been recognised as submitted and therefore the Chamber need not rule on them again.²²³

e. P-1779

200. P-1779 was [REDACTED] in the village of Gaga before and during the conflict.²²⁴

201. In his statement,²²⁵ the witness describes Gaga before the conflict; the arrival of the Seleka; the Anti-Balaka leadership in Gaga; the alleged Anti-Balaka attacks on Gaga; his [REDACTED] and the Anti-Balaka attacks [REDACTED]. The witness does not mention the accused. The witness further identifies several of the locations in Gaga on two satellite images (Annex A, CAR-OTP-2087-9916 and Annex B, CAR-OTP-2087-9917).

202. In light of the above, and noting that the Defence made no observations in this regard, the Chamber is satisfied that P-1779's statement is suitable to be introduced under this provision. The Chamber also notes that the statement relates to issues that are not materially in dispute²²⁶ and concerns non-charged incidents. Furthermore, the Chamber considers that P-1779's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

203. As regards the associated items, the Chamber further observes that Annexes A and B have been used and explained by the witness in his statement and thus form an integral part of it.

²²³ Photograph, CAR-OTP-2106-0547 (Annex 1); Satellite image, CAR-OTP-2106-0548 (Annex 2); Video, CAR-OTP-2106-0138 and screenshots thereof, CAR-OTP-2106-0549 to CAR-OTP-2106-0560 (Annexes 3 to 25); Video, CAR-OTP-2106-0684 and screenshots thereof (Annexes 27 to 30); Video, CAR-OTP-2106-0685 and screenshots thereof, CAR-OTP-2106-0561 to CAR-OTP-2106-0562 (Annexes 31 to 34); Video, CAR-OTP-2106-0139 and screenshots thereof, CAR-OTP-2106-0565 to CAR-OTP-2106-0568 (Annexes 39 to 45). Noting that Annexes 27-30 have not been registered under a separate ERN, the Chamber also introduces the compilation document CAR-OTP-2106-0686.

²²⁴ Second Request, ICC-01/14-01/18-744-Conf, para. 33; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

²²⁵ Statement, CAR-OTP-2087-9894.

²²⁶ In this regard, the Chamber notes that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimonies subject to the Second Request.

204. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1779's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
205. Accordingly, the Chamber grants the introduction of P-1779's statement²²⁷ and associated items²²⁸ pursuant to Rule 68(2)(b) of the Rules.

3. Third Request

206. In its Third Request, the Prosecution seeks the introduction of the prior recorded testimonies of witnesses P-0811, P-0595, P-0732, P-1598, P-1964 and P-2205, including statements and associated items.
207. The Chamber notes that the prior recorded testimonies subject to this request all relate to non-charged incidents or locations, namely in Guen and Bossemtélé. In this regard, the Chamber recalls its previous findings that the facts relating to these incidents or locations pertain to the contextual elements of the charged crimes and may only be used for the purposes of establishing these elements.²²⁹

i. Submissions

208. The Prosecution submits that the prior recorded testimonies of these witnesses fulfil all requirements under Rule 68(2)(b) of the Rules and that their introduction is warranted. Specifically, the Prosecution submits that the proposed prior recorded testimonies concern neither the acts or conduct of the accused,²³⁰ nor matters materially in dispute.²³¹ Rather, the Prosecution argues, they are limited to 'evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict throughout the relevant period and the group's course of

²²⁷ Statement, CAR-OTP-2087-9894.

²²⁸ Satellite images, CAR-OTP-2087-9916 (Annex A) and CAR-OTP-2087-9917 (Annex B).

²²⁹ Decision on the Scope of the Charges, ICC-01/14-01/18-703-Red, paras 45-53.

²³⁰ Third Request, ICC-01/14-01/18-745-Red, paras 4, 11.

²³¹ Third Request, ICC-01/14-01/18-745-Red, para. 11.

conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organisational policy’.²³²

209. According to the Prosecution, (i) the tendered evidence further ‘bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case’; (ii) the witness’s accounts were signed in accordance with Rule 111 of the Rules; (iii) the statements contain an ‘express acknowledgment attesting to its voluntariness and the truth of its contents’; (iv) the statements are ‘internally consistent, and sufficiently corroborated by other evidence in the case’; and (v) the formal submission of the prior recorded testimonies would expedite the proceedings and not prejudice the Defence.²³³ With regard to the associated items, the Prosecution avers that they form an ‘inseparable and indispensable part’ of the prior recorded testimonies and should therefore equally be submitted.²³⁴

210. The Chamber recalls the CLRV’s and the Ngaïssona Defence’s submissions set out above.²³⁵ It further recalls that the Yekatom Defence indicated that it would not file a response to the Third Request.²³⁶

ii. *Chamber’s determinations*

a. P-0811

211. Noting that P-0811 has passed away,²³⁷ the Chamber considers the Third Request with regard to P-0811 moot and will not address the submissions made in this regard.

b. P-0595

212. P-0595 is a Muslim and [REDACTED] Guen until 2014.²³⁸

²³² Third Request, ICC-01/14-01/18-745-Red, paras 4, 9.

²³³ Third Request, ICC-01/14-01/18-745-Red, paras 3, 10-11, 39.

²³⁴ Third Request, ICC-01/14-01/18-745-Red, para. 12.

²³⁵ See above, 2. Second Request, i. Submissions, paras 166-167.

²³⁶ Email from the Yekatom Defence, 10 December 2020, at 16:03.

²³⁷ See above, I. Procedural history, paras 8, 11.

²³⁸ Third Request, ICC-01/14-01/18-745-Conf, para. 14; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

213. In his statement,²³⁹ P-0595 describes the situation in Guen before and during the conflict and his flight to [REDACTED] following the attack by the Anti-Balaka. In particular, he discusses that Muslims and Christians lived peacefully together in Guen before the conflict; the arrival of the Anti-Balaka in Guen on 1 February 2014; an alleged Anti-Balaka attack on the Muslim population in Guen, leading to 22 killings and pillaging; [REDACTED], in which the Anti-Balaka allegedly killed 42 Muslims; the Anti-Balaka leadership in Guen, which was led by an individual named Beina who, according to the witness, [REDACTED]. The witness does not mention the accused.
214. The witness further discusses photos of three individuals (Annex 1, CAR-OTP-2018-0777; Annex 2, CAR-OTP-2018-0778; and Annex 3, CAR-OTP-2018-0779), video CAR-OTP-2019-1230 (of which a screenshot is annexed to the statement as Annex 4, CAR-OTP-2018-0780), locations in Guen based on a Google maps satellite image (Annex 5, CAR-OTP-2018-0781), and a document showing different weapons (Annex 6, CAR-OTP-2018-0782). In addition, the witness drew a sketch of different locations in Guen (Annex 7, CAR-OTP-2018-0783).²⁴⁰
215. In light of the above, the Chamber is satisfied that P-0595's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²⁴¹ and concerns non-charged incidents. Furthermore, the Chamber considers that P-0595's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
216. As regards the associated items, the Chamber observes that Annexes 1 to 7 have been used and explained by the witness in his statement and thus form an integral part of it. With regard to Annex 4, the Chamber notes that while the witness's statement only lists the screenshot of this video (CAR-OTP-2019-0780) as an

²³⁹ Statement, CAR-OTP-2018-0761.

²⁴⁰ The Chamber notes that the Prosecution did not provide the ERNs for Annexes 6 and 7. However, the Chamber was able to identify these annexes in JEM.

²⁴¹ In this regard, the Chamber notes particularly that neither one of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

annex and not the video itself (CAR-OTP-2019-1230), this video has been shown to and commented on by the witness in full and thus equally forms an integral part of P-0595's statement.

217. In light of these considerations, and noting that neither the Defence nor the CLRVR object, the Chamber considers that the introduction of P-0595's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
218. Accordingly, the Chamber grants the introduction of P-0595's statement²⁴² and associated items,²⁴³ pursuant to Rule 68(2)(b) of the Rules.

c. P-0732

219. P-0732 was a Muslim resident of Guen at the time of the alleged Anti-Balaka attack on Guen.²⁴⁴
220. In her statement,²⁴⁵ P-0732 describes the situation in Guen before and during the conflict, as well as her flight to [REDACTED]. In particular, she discusses that Muslims and Christians lived peacefully together before the conflict; the arrival and alleged first Anti-Balaka attack on Guen, which led to the alleged killing of 22 Muslims and looting of Muslim houses; the alleged killing of 43 men by an individual with the name Beina and his Anti-Balaka elements a few days after the alleged first attack; [REDACTED]; and Beina's leadership of the Anti-Balaka in Guen. The witness does not mention the accused.

²⁴² Statement, CAR-OTP-2018-0761.

²⁴³ Photo, CAR-OTP-2018-0777 (Annex 1); Photo, CAR-OTP-2018-0778 (Annex 2); Photo, CAR-OTP-2018-0779 (Annex 3); Screenshot of video, CAR-OTP-2018-0780 (Annex 4) and the underlying video, CAR-OTP-2019-1230; Satellite image, CAR-OTP-2018-0781 (Annex 5); Document showing weapons, CAR-OTP-2018-0782 (Annex 6); Sketch, CAR-OTP-2018-0783 (Annex 7).

²⁴⁴ Third Request, ICC-01/14-01/18-745-Red, para. 18; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

²⁴⁵ Statement, CAR-OTP-2061-0003.

221. The witness further drew and discusses a sketch [REDACTED] (Annex 1, CAR-OTP-2061-0022) and discusses video CAR-OTP-2019-1230, in which she identified several individuals and locations.
222. In light of the above, the Chamber is satisfied that P-0732's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²⁴⁶ and concerns non-charged incidents. Furthermore, the Chamber considers that P-0732's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
223. As regards the associated items, the Chamber observes that Annex 1 and video CAR-OTP-2019-1230 have been used and explained by the witness in her statement and thus form an integral part of it.
224. In light of these considerations, and noting that neither the Defence nor the CLRV have raised objections, the Chamber considers that the introduction of P-0732's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights. The Chamber also notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-0732 would be required to testify, *inter alia*, about [REDACTED], thereby risking potential re-traumatisation.²⁴⁷
225. Accordingly, the Chamber grants the introduction of P-0732's statement²⁴⁸ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exception: item CAR-OTP-2019-1230 is already submitted in the context of this decision in relation to P-0595²⁴⁹ and therefore the Chamber need not rule on it again.²⁵⁰

²⁴⁶ In this regard, the Chamber notes particularly that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

²⁴⁷ See also CLRV Response to the Second and Third Requests, ICC-01/14-01/18-761-Conf, para. 15.

²⁴⁸ Statement, CAR-OTP-2061-0003; CAR-OTP-2107-7884 (Translation).

²⁴⁹ See above, P-0595, para. 218.

²⁵⁰ Sketch, CAR-OTP-2061-0022 (Annex 1).

d. P-1598

226. P-1598 was a [REDACTED], during the relevant period.²⁵¹
227. In his statement,²⁵² the witness describes, *inter alia*, the Seleka's arrival in and departure from Guen; the Anti-Balaka's arrival in Guen on 1 February 2014 and hearing that they killed 26 persons and injured 13 persons that day; hearing about the Anti-Balaka looting shops in Guen; the Anti-Balaka leadership in Guen; a massacre on 4 February 2014 in Guen, in which 43 Muslims were killed; the Anti-Balaka allegedly killing six Muslims in Ngaboua; and the displacement of Muslims from Guen. The witness does not mention the accused.
228. The witness bases his statement on his notes taken at the time of the events (Annex A, CAR-OTP-2057-0911). The witness further drew two sketches of [REDACTED] (Annex B, CAR-OTP-2057-0915) and Guen (Annex C, CAR-OTP-2057-0916), indicating various locations. The witness further identifies a subordinate of an individual by the name of Beina in a picture (Annex D, CAR-OTP-2057-0917) and discusses a photograph of a young boy, whom he did not recognise (Annex E, CAR-OTP-2057-0918). P-1598 was further shown parts of video CAR-OTP-2019-1230, in which he identified an individual and the location of Guen.
229. In light of the above, the Chamber is satisfied that P-1598's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²⁵³ and concerns non-charged incidents. Furthermore, the Chamber considers that P-1598's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

²⁵¹ Third Request, ICC-01/14-01/18-745-Conf, para. 23; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

²⁵² Statement, CAR-OTP-2057-0892.

²⁵³ In this regard, the Chamber notes particularly that neither one of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

230. As regards the associated items, the Chamber observes that Annexes A to E as well as video CAR-OTP-2019-1230 have been used and explained by the witness in his statement and thus form an integral part of it.
231. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1598's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
232. Accordingly, the Chamber grants the introduction of P-1598's statement²⁵⁴ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exception: items CAR-OTP-2057-0911 and CAR-OTP-2019-1230²⁵⁵ have already been submitted and therefore the Chamber need not rule on them again.²⁵⁶

e. P-1964

233. P-1964 was [REDACTED] in Guen during the relevant period.²⁵⁷
234. In his statement,²⁵⁸ the witness describes, *inter alia*, the Seleka in Guen; the arrival of the Anti-Balaka in Guen on 1 February '2012';²⁵⁹ the Anti-Balaka allegedly targeting the Muslim population by killing and injuring civilians and looting and destroying their properties; hearing about 43 people being killed on the day of the Anti-Balaka attack; [REDACTED] victims who were injured by the Anti-Balaka; the destruction of three mosques in Guen; being reproached by the Anti-Balaka [REDACTED]; being told by the Anti-Balaka [REDACTED];

²⁵⁴ Statement, CAR-OTP-2057-0892.

²⁵⁵ The Chamber clarifies that CAR-OTP-2019-1230 is submitted in the context of this decision in relation to P-0595, *see above*, P-0595, para. 218.

²⁵⁶ Sketch, CAR-OTP-2057-0915 (Annex B); Sketch, CAR-OTP-2057-0916 (Annex C); Photo, CAR-OTP-2057-0917 (Annex D); Photo, CAR-OTP-2057-0918 (Annex E).

²⁵⁷ Third Request, ICC-01/14-01/18-745-Conf, para. 27; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

²⁵⁸ Statement, CAR-OTP-2094-1755.

²⁵⁹ The Chamber notes in this regard that the witness also states the following: 'Investigators asked me if I was sure of the year and I said yes. They asked me who was president at the time and I said that it was DJOTODIA. I added that after the Anti-Balaka attack, we remained in trouble, so they changed him and put SAMBA PANZA in power. I don't remember how long after the events that SAMBA PANZA came to power', *see* CAR-OTP-2094-1755, at 1758, para. 24.

and the Anti-Balaka leadership in Guen. The witness does not mention the accused.

235. The witness further drew a sketch, illustrating and discussing locations in Guen (Annex A, CAR-OTP-2094-1769) and identified an Anti-Balaka subordinate to an individual by the name of Beina in a photograph (Annex B, CAR-OTP-2094-1770).
236. In light of the above, the Chamber is satisfied that P-1964's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²⁶⁰ and concerns non-charged incidents. Furthermore, the Chamber considers that P-1964's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
237. As regards the associated items, the Chamber observes that Annexes A and B have been used and explained by the witness in his statement and thus form an integral part of it.
238. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1964's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
239. Accordingly, the Chamber grants the introduction of P-1964's statement²⁶¹ and associated items,²⁶² pursuant to Rule 68(2)(b) of the Rules.

²⁶⁰ In this regard, the Chamber notes particularly that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

²⁶¹ Statement, CAR-OTP-2094-1755; CAR-OTP-2107-6358 (Translation).

²⁶² Sketch, CAR-OTP-2094-1769 (Annex A); Photograph, CAR-OTP-2094-1770 (Annex B).

f. P-2205

240. P-2205 [REDACTED] in Bossemptélé during the relevant period.²⁶³
241. In his statement,²⁶⁴ the witness describes the situation in Bossemptélé before and during the conflict. In particular, he discusses that the situation between Muslims, Christians and animists before the conflict was generally peaceful; the arrival of the Seleka in Bossemptélé and crimes allegedly committed by them; the creation of '*autodéfense*' groups by June or July 2013 to 'try to chase away the Seleka'; an alleged Anti-Balaka attack on Bossemptélé on 18 January 2014; crimes allegedly committed by the Anti-Balaka in Bossemptélé against Muslims; [REDACTED]; Muslims staying at the Catholic mission for shelter and their evacuation to Cameroon; the Anti-Balaka leadership in Bossemptélé; and seeing Anti-Balaka elements of young age, some aged below 15. The witness does not mention the accused.
242. The witness further provides and discusses several photographs and videos (CAR-OTP-2083-0942 to CAR-OTP-2083-3161; CAR-OTP-2083-1170; CAR-OTP-2083-1173; CAR-OTP-2083-1200; CAR-OTP-2083-1231; CAR-OTP-2083-1234; CAR-OTP-2083-2125 to CAR-OTP-2083-2126), and comments on article CAR-OTP-2122-9994, in which [REDACTED].
243. In light of the above, the Chamber is satisfied that P-2205's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that it relates to issues that are not materially in dispute²⁶⁵ and concerns non-charged incidents. Furthermore, the Chamber considers that P-2205's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

²⁶³ Third Request, ICC-01/14-01/18-745-Conf, para. 35; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 7.

²⁶⁴ Statement, CAR-OTP-2108-0465.

²⁶⁵ In this regard, the Chamber notes particularly that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

244. As regards the associated items, the Chamber observes that the abovementioned items have been used and explained by the witness in his statement and thus form an integral part of it.
245. In light of these considerations, and noting that neither the Defence nor the CLRVR object, the Chamber considers that the introduction of P-2205's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
246. Accordingly, the Chamber grants the introduction of P-2205's statement²⁶⁶ and associated items,²⁶⁷ pursuant to Rule 68(2)(b) of the Rules.

4. Fourth Request

247. In its Fourth Request, the Prosecution seeks the introduction of the prior recorded testimonies of witnesses P-0460, P-0461, P-1143, P-1721, P-2472, P-2698, P-1172, P-0974, P-0473 and P-1990, including statements and associated items.

i. Submissions

248. The Prosecution submits that the prior recorded testimonies of these witnesses fulfil all requirements under Rule 68(2)(b) of the Rules and that their introduction is warranted. Specifically, the Prosecution submits that the proposed prior recorded statements concern neither the acts or conduct of the accused,²⁶⁸ nor matters materially in dispute.²⁶⁹ Rather, the Prosecution argues, they are limited to 'evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict throughout the relevant period and the group's course of

²⁶⁶ Statement, CAR-OTP-2108-0465; CAR-OTP-2107-6579 (Translation).

²⁶⁷ Photos, videos and their metadata registered between CAR-OTP-2083-0942 to CAR-OTP-2083-3161; Videos, CAR-OTP-2083-1170; CAR-OTP-2083-1173; CAR-OTP-2083-1200; CAR-OTP-2083-1231; CAR-OTP-2083-1234; their transcriptions, CAR-OTP-2127-6555; CAR-OTP-2127-6558; CAR-OTP-2127-6241; CAR-OTP-2127-6243; CAR-OTP-2127-6246; and translations, CAR-OTP-2127-6606; CAR-OTP-2127-6610; CAR-OTP-2127-6358; CAR-OTP-2127-6361; CAR-OTP-2127-6365; Article, CAR-OTP-2122-9994.

²⁶⁸ Fourth Request, ICC-01/14-01/18-794-Red, paras 4, 11.

²⁶⁹ Fourth Request, ICC-01/14-01/18-794-Red, para. 11.

conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organisational policy'. Specifically, it concerns the 'campaign of retributive violence committed by the Anti-Balaka against Muslim civilians in BANGUI, pursuant to a criminal organisational policy'.²⁷⁰

249. According to the Prosecution, (i) the tendered evidence further 'bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case'; (ii) the witnesses' accounts were signed in accordance with Rule 111 of the Rules; (iii) the statements contain an 'express acknowledgment attesting to its voluntariness and the truth of its contents'; (iv) the statements are 'internally consistent, and sufficiently corroborated by other evidence in the case'; and (v) the formal submission of the prior recorded testimonies would expedite the proceedings and not prejudice the Defence.²⁷¹ With regard to the associated items, the Prosecution avers that they form an 'inseparable and indispensable part' of the prior recorded testimonies and should therefore equally be submitted.²⁷²
250. The CLRV support the introduction of the prior recorded testimonies subject to the Fourth, Fifth, Sixth, Seventh and Eighth Request, submitting that '(i) the prior recorded testimonies and associated exhibits go to proof of a matter other than the acts and conduct of the accused; (ii) the evidence contained in said testimonies have indicia of reliability; (iii) their introduction will best serv[e] the interests of justice and will not be prejudicial to the fairness of the proceedings and the rights of both Accused; and (iv) this course of action will also promote the rights of the Victims to fair and expeditious proceedings'.²⁷³
251. The Yekatom Defence does not oppose the formal submission of the prior recorded statements of P-0460, P-0461, P-1143, P-2472 and P-1172, including the associated items. It further does not oppose the formal submission of P-1721's prior recorded testimony 'on the understanding that specified paragraphs are

²⁷⁰ Fourth Request, ICC-01/14-01/18-794-Red, paras 4, 9.

²⁷¹ Fourth Request, ICC-01/14-01/18-794-Red, paras 3, 10, 74.

²⁷² Fourth Request, ICC-01/14-01/18-794-Red, para. 12.

²⁷³ CLRV Response to the Fourth, Fifth, Sixth, Seventh and Eighth Requests, ICC-01/14-01/18-820-Conf, para. 3.

excluded [...] in accordance with the Fourth Request’, and P-0473’s prior recorded testimony ‘on the condition that paragraphs 70 and 71 be included’. It opposes the introduction of the statements of P-2698, P-0974 and P-1990 and their associated items, arguing that this ‘would infringe Mr. Yekatom’s fair trial rights and the fairness of these proceedings’.²⁷⁴

252. The Ngaïssona Defence recalls its previous submission that the Prosecution’s extensive projected use of Rule 68(2)(b) of the Rules is disproportionate.²⁷⁵ With regard to P-0460, P-0461, P-1143 and P-0473, it defers to the Chamber’s discretion.²⁷⁶ With respect to P-1721, P-2472, P-2698 and P-1990, it defers to the Yekatom Defence.²⁷⁷

253. In the event that the Chamber grants the Prosecution’s requests in relation to P-0460, P-0461 and P-1143, the Ngaïssona Defence requests that ‘the statements be tendered in their entirety, rather than the selection by the Prosecution, insofar as the excluded paragraphs do not go to the “acts and conduct” of Mr Ngaïssona, provide valuable background information about the Witness’s knowledge, and in some cases, provide potentially exonerating information’ and not submit them piecemeal.²⁷⁸ With respect to P-0473, although deferring to the Chamber’s discretion, it submits that the Prosecution’s proposed exclusion of certain paragraphs is warranted because the witness discusses the alleged acts and conduct of Mr Ngaïssona and the relevant paragraphs relate to matters that are materially in dispute, namely, Mr Ngaïssona’s alleged role as national coordinator and alleged contributions.²⁷⁹ It opposes the requests with regard to P-1172 and P-0974.²⁸⁰

²⁷⁴ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 2-4.

²⁷⁵ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 5.

²⁷⁶ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 6.

²⁷⁷ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 10.

²⁷⁸ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 7-8, 17.

²⁷⁹ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 9.

²⁸⁰ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 11-15.

ii. *Chamber's determinations*

a. P-1172

254. Noting that P-1172 has passed away,²⁸¹ the Chamber considers the Fourth Request with regard to P-1172 moot and will not address the submissions made in this regard. The Chamber will address the Prosecution's request under Rule 68(2)(c) of the Rules²⁸² in due course.

b. P-0460

255. P-0460 was a [REDACTED] who lived in Bangui during the relevant period.²⁸³

256. In her statement,²⁸⁴ P-0460 describes the situation in Bangui before, during and after the conflict. She describes, *inter alia*, former president Bozizé's speech on 12 November 2012 in the football stadium in Bangui, encouraging the people to rise up and kill all Muslims; an alleged Anti-Balaka attack on Bouca on 25 November 2013 and the alleged targeting and commission of crimes against the Muslim population; the Anti-Balaka allegedly attacking Bangui on '7 December'²⁸⁵ 2013 and the alleged targeting and commission of crimes against the Muslim population, including the killing [REDACTED]; fleeing to the mosque in PK5 and seeing 85 bodies there; her evacuation [REDACTED]; and sexual violence allegedly committed by the Anti-Balaka in Combattants and PK12, [REDACTED] Anti-Balaka elements on 6 December 2013.

257. The witness does not mention the accused. Further noting that the Prosecution did not seek the exclusion of any paragraphs from P-0460's statement, the Chamber considers the Ngaïssona Defence's submissions regarding the exclusion of paragraphs relating to Mr Ngaïssona²⁸⁶ misplaced.

²⁸¹ See *above*, I. Procedural history, paras 8, 11.

²⁸² Prosecution's Request for Submission of the Prior Recorded Testimony of P-1172 pursuant to Rule 68(2)(c), 28 November 2022, ICC-01/14-01/18-1677-Conf (with confidential Annexes A and B) (public redacted version notified the same day).

²⁸³ Fourth Request, ICC-01/14-01/18-794-Conf, para. 14; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 4.

²⁸⁴ Statement, CAR-OTP-2013-0536.

²⁸⁵ The Chamber notes in this regard that this is the date specified by the witness in her statement, CAR-OTP-2013-0536, at 0543, paras 35-36, at 0544, para. 41.

²⁸⁶ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 7.

258. The witness further drew a sketch of her neighbourhood in Bangui (Annex I, CAR-OTP-2013-0549).
259. In light of the above, the Chamber is satisfied that P-0460's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that the prior recorded testimony relates to issues that are not materially in dispute.²⁸⁷ Furthermore, the Chamber considers that P-0460's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
260. As regards the associated item, the Chamber further observes that Annex I has been used and explained by the witness in her statement and thus forms an integral part of it.
261. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-0460's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction, particularly noting that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-0460 would otherwise be required to testify, *inter alia*, about the crimes committed [REDACTED], thereby risking potential re-traumatisation.²⁸⁸
262. Accordingly, the Chamber grants the introduction of P-0460's statement²⁸⁹ and associated item²⁹⁰ pursuant to Rule 68(2)(b) of the Rules.

c. P-0461

263. P-0461 is a Muslim civilian who lived in Bangui during the relevant period.²⁹¹

²⁸⁷ In this regard, the Chamber notes particularly that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

²⁸⁸ See also CLRV Response to the Fourth, Fifth, Sixth, Seventh and Eighth Requests, ICC-01/14-01/18-820-Conf, para. 18.

²⁸⁹ Statement, CAR-OTP-2013-0536; CAR-OTP-2122-4754 (Translation).

²⁹⁰ Sketch, CAR-OTP-2013-0549 (Annex I).

²⁹¹ Fourth Request, ICC-01/14-01/18-794-Red, para. 22; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 4.

264. In his statement,²⁹² the witness describes the situation in Bangui before, during and after the conflict. In particular, he describes former president Bozizé's speech at PK0 at the end of 2012; the Seleka's arrival in Bangui in March 2013; the formation of self-defence groups which became known as the Anti-Balaka; the 5 December Bangui Attack and crimes allegedly committed by the Anti-Balaka against the Muslim population; the organisation of the Anti-Balaka and its leaders after 5 December 2013; and [REDACTED].
265. The witness mentions that Mr Ngaïssona made several speeches on Radio Ndeke Luka, mostly in Sango, stating that he was the leader and National Coordinator of all Anti-Balaka in the CAR.²⁹³ P-0461 also indicates that Mr Ngaïssona announced on the radio 'that in the time of fasting the Anti-Balaka should leave the Muslims in peace'.²⁹⁴ The witness does not mention Mr Yekatom.
266. The witness also drew a sketch of the location of [REDACTED] house (Annex A, CAR-OTP-2031-0202), [REDACTED] village (Annex B, CAR-OTP-2031-0203), and the location of a house used by Anti-Balaka leader [REDACTED] (Annex E, CAR-OTP-2031-0206). Furthermore, he points out locations on printouts of satellite images (Annex C, CAR-OTP-2031-0204 and Annex D, CAR-OTP-2031-0205) and provides a photograph of a deceased individual (Annex F, CAR-OTP-2031-0207). He also provides his consent for the release of phone data (Annex G, CAR-OTP-2031-0209). The witness further discusses his screening note, CAR-OTP-2011-0003.
267. The Chamber takes note of the Ngaïssona Defence's submissions.²⁹⁵ In this regard, it observes that the Prosecution did not seek to exclude any portions of P-0461's statement. The Chamber is of the view that the references to Mr Ngaïssona's acts and conduct in the paragraphs mentioned above are of peripheral nature and limited to (i) what the witness heard on the radio, (ii) generic information about Mr Ngaïssona allegedly proclaiming himself as national coordinator of the Anti-Balaka, and (iii) the witness's aspirations to meet

²⁹² Statement, CAR-OTP-2031-0190.

²⁹³ Statement, CAR-OTP-2031-0190, at 0197, para. 38, at 0198, para. 43.

²⁹⁴ Statement, CAR-OTP-2031-0190, at 0198, para. 43.

²⁹⁵ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 6-7 17. *See above*, 4. Fourth Request, i. Submissions, para. 253.

Mr Ngaïssona, which however never materialised. Moreover, the Chamber notes that they would, in any case, not constitute the core of P-0461's testimony.

268. In light of the above, the Chamber is satisfied that P-0461's prior recorded testimony is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 38 and 43 for the purposes of establishing Mr Ngaïssona's acts and conduct.
269. Lastly, the Chamber considers that P-0461's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
270. As regards the associated items, the Chamber further observes that Annexes A to F, as well as item CAR-OTP-2011-0003, have been used and explained by the witness in his statement and thus form an integral part of it.
271. In light of these considerations, and noting that neither the Yekatom Defence nor the CLRV object, the Chamber considers that the introduction of P-0461's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
272. Accordingly, the Chamber grants the introduction of P-0461's statement²⁹⁶ and associated items,²⁹⁷ pursuant to Rule 68(2)(b) of the Rules.

d. P-1143

273. P-1143 was [REDACTED] in Bangui during the relevant period.²⁹⁸
274. In his statement,²⁹⁹ P-1143 describes the situation in Bangui before, during and after the conflict. In particular, he describes Bozizé's instruction to create self-

²⁹⁶ Statement, CAR-OTP-2031-0190; CAR-OTP-2107-1266 (Translation).

²⁹⁷ Sketch, CAR-OTP-2031-0202 (Annex A); Sketch, CAR-OTP-2031-0203 (Annex B); Photo, CAR-OTP-2031-0204 (Annex C); Photo, CAR-OTP-2031-0205 (Annex D); Sketch, CAR-OTP-2031-0206 (Annex E); Photo, CAR-OTP-2031-0207 (Annex F); Consent form, CAR-OTP-2031-0209 (Annex G); Screening note, CAR-OTP-2011-0003.

²⁹⁸ Fourth Request, ICC-01/14-01/18-794-Conf, para. 28; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 4.

²⁹⁹ Statement, CAR-OTP-2058-0227.

defence groups in Bangui prior to the Seleka's arrival; the Seleka's arrival and alleged crimes committed by them; the 5 December Bangui Attack; the Anti-Balaka allegedly targeting Muslims and crimes committed; fleeing of Muslims; the Anti-Balaka leadership in Bangui; and [REDACTED] the Anti-Balaka leaders. The witness does not mention the accused.

275. The witness also provides a copy of his notebook (Annex A, CAR-OTP-2058-0503), a copy of lists of victims in [REDACTED] (Annex B, CAR-OTP-2058-0529) and an updated version of that list (Annex C, CAR-OTP-2058-0531); drew sketches of Dedengue 2 (Annex D, CAR-OTP-2058-0250 and CAR-OTP-2035-0172); and provides an authority to release information (Annex E, CAR-OTP-2058-0251).
276. In light of the above, the Chamber is satisfied that P-1143's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. The Chamber also notes that the prior recorded testimony relates to issues that are not materially in dispute.³⁰⁰ Furthermore, the Chamber considers that P-1143's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
277. As regards the associated items, Chamber further observes that Annexes A to E as well as item CAR-OTP-2035-0172 have been used and explained by the witness in his statement and thus form an integral part of it.
278. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1143's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.

³⁰⁰ In this regard, the Chamber notes particularly that neither of the Defence teams has raised specific objections to the introduction of the prior recorded testimony.

279. Accordingly, the Chamber grants the introduction of P-1143's statement³⁰¹ and associated items,³⁰² pursuant to Rule 68(2)(b) of the Rules.

e. P-1721

280. P-1721 is a Christian civilian, married to [REDACTED], who lived in [REDACTED] during the relevant time.³⁰³

281. In his statement,³⁰⁴ the witness describes the situation in [REDACTED] before, during and after the conflict. In particular, he discusses the relationship between Muslims and Christians before the conflict; the Seleka's arrival; the Anti-Balaka's arrival and alleged crimes committed by them, including killings, rapes, looting and the destruction of mosques in [REDACTED] and Boeing; the 5 December Bangui Attack; and the fleeing of civilians, including himself and his family, to [REDACTED].

282. The witness describes walking past the Anti-Balaka base at the Yamwara School about a week after 5 December 2013.³⁰⁵ He indicates having heard that 'Rambo' was the commander of the Anti-Balaka stationed there. P-1721 claims having seen 'Rambo' on multiple occasions at the Yamwara School, describes his appearance³⁰⁶ and identifies him in a video.³⁰⁷ Moreover, he indicates hearing that 'Rambo and his men' were responsible for the destruction of the Boeing mosque.³⁰⁸ The witness does not mention Mr Ngaïssona.

283. The witness also drew a sketch of the area around 'RDOT' and Golf Club (Annex 1, CAR-OTP-2061-0058) and discusses video CAR-OTP-2012-0523, in which he identifies 'Rambo'.

³⁰¹ Statement, CAR-OTP-2058-0227; CAR-OTP-2122-4161 (Translation).

³⁰² Notebook, CAR-OTP-2058-0503 (Annex A); List, CAR-OTP-2058-0529 (Annex B); List, CAR-OTP-2058-0531 (Annex C); Sketch, CAR-OTP-2058-0250 (Annex D); Document of authorisation, CAR-OTP-2058-0251 (Annex E); Sketch, CAR-OTP-2035-0172.

³⁰³ Fourth Request, ICC-01/14-01/18-794-Conf, para. 34; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 4.

³⁰⁴ Statement, CAR-OTP-2061-0044.

³⁰⁵ Statement, CAR-OTP-2061-0044, at 0049, para. 38.

³⁰⁶ Statement, CAR-OTP-2061-0044, at 0050, paras 39-41.

³⁰⁷ Statement, CAR-OTP-2061-0044, at 0054, para. 66.

³⁰⁸ Statement, CAR-OTP-2061-0044, at 0051, para. 45.

284. The Chamber takes note that the Yekatom Defence does not oppose the introduction of P-1721's prior recorded testimony, but only 'on the understanding that paragraphs 39-41 and 45 are excluded [...] as stated in Annex A to the Fourth Request'.³⁰⁹ Noting that P-1721 gives direct evidence on Mr Yekatom's alleged presence at the Yamwara School base during the relevant time as well as indirect evidence regarding the destruction of the Boeing mosque by 'Rambo and his men', the Chamber finds that his prior recorded testimony touches upon the acts and conduct of Mr Yekatom. Further compounded by the fact that P-1721 clearly identified Mr Yekatom in a video, the Chamber does not consider his prior recorded testimony suitable for introduction under Rule 68(2)(b) of the Rules.

285. Accordingly, the Chamber rejects the introduction of P-1721's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

f. P-2472

286. P-2472 is a Muslim civilian, who was working at the [REDACTED].³¹⁰

287. In his statement,³¹¹ the witness discusses, *inter alia*, the 5 December Bangui Attack and continuous attacks thereafter for three months; the Anti-Balaka's alleged targeting of Muslims; alleged crimes committed by the Anti-Balaka; the evacuation of Muslims following the 5 December Bangui Attack; and his [REDACTED].

288. The witness indicates that 'Rambo', whom he identified in a picture,³¹² and Wenezoui were commanding the Anti-Balaka in Boeing, where many violent attacks 'came from', with 'Rambo' occupying the western zone in Boeing near the airport. The witness did not see 'Rambo' and Wenezoui at attacks, but believes that they were in charge 'because the Anti-Balaka who came to attack came from the direction of BOEING'. The witness says he got the information from self-defence groups in PK5. He also notes that 'Rambo' and Wenezoui

³⁰⁹ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 3, 16. See also Annex to the Fourth Request, ICC-01/14-01/18-794-Conf-AnxA, p. 4.

³¹⁰ Fourth Request, ICC-01/14-01/18-794-Conf, para. 40; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 2.

³¹¹ Statement, CAR-OTP-2110-0355.

³¹² Statement, CAR-OTP-2110-0355, at 0370, para. 81.

‘were not hiding’ but stating on the radio that they were ‘Anti-Balaka chiefs’. Moreover, the witness describes that the base commanded by ‘Rambo’ and Wenezoui was close to the Muslim cemetery behind the airport of Bangui.³¹³ The witness does not mention Mr Ngaïssona.

289. The witness further provides and discusses a document entitled ‘*Couper la racine*’ (Annex 1, CAR-OTP-2110-0385); 24 photos of events in and around Bangui he either took himself or received from others on Facebook (Annex 2, CAR-OTP-2110-1053 to CAR-OTP-2110-1076); a memorandum by the [REDACTED] (Annex 3, CAR-OTP-2110-0388); a photocopy of a document prepared by the [REDACTED] (Annex 4, CAR-OTP-2110-0396); his notes about events in Bangui between 5 December 2013 and 23 January 2014 (Annex 5, CAR-OTP-2110-0399); and a Facebook post by the witness (Annex 6, CAR-OTP-2110-0436). The witness identifies ‘Yekatom Rambo’ in picture CAR-OTP-2110-1075.

290. While the witness makes reference to Mr Yekatom, the Chamber is of the view that these references are of limited nature and that this part of P-2472’s statement would, in any case, not constitute the core of his testimony. Moreover, the Chamber recalls that the Prosecution does not intend to rely on these paragraphs³¹⁴ and that the Yekatom Defence did not object to the introduction of P-2472’s prior recorded testimony. In light of the above, the Chamber is satisfied that P-2472’s prior recorded testimony is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 26-28 and 81 for the purposes of establishing Mr Yekatom’s acts and conduct.

291. Additionally, the Chamber considers that the statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

³¹³ Statement, CAR-OTP-2110-0355, at 0360, paras 26-28.

³¹⁴ See Annex A to the Fourth Request, ICC-01/14-/01/18-794-Conf-AnxA, p. 6.

292. As regards the associated items, the Chamber further observes that Annexes 1 to 6³¹⁵ have been used and explained by the witness in his statement and thus form an integral part of it.
293. In light of these considerations, and noting that neither the Defence³¹⁶ nor the CLRV object, the Chamber considers that the introduction of P-2472's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
294. Accordingly, the Chamber grants the introduction of P-2472's statement³¹⁷ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exception: item CAR-OTP-2110-1075 has already been recognised as submitted and therefore the Chamber need not rule on it again.³¹⁸

g. P-2698

295. P-2698 is a [REDACTED] in Bangui and former member of the NGO [REDACTED] which was involved with the [REDACTED].³¹⁹
296. In his statement,³²⁰ the witness describes the situation in Bangui before, during and after the conflict. He describes, *inter alia*, the relationship between Muslims and Christians before the conflict; the Seleka's arrival; the alleged Anti-Balaka attacks on Bangui and Boeing on 5 December 2013; alleged crimes committed by the Anti-Balaka, including by 'Yekatom's' elements; Muslims fleeing from

³¹⁵ With regard to Annex 2, the Chamber notes that the Prosecution submitted only 10 out of the 24 pictures, see ICC-01/14-01/18-794-Conf-AnxA, pp. 5-8. The pictures are registered between CAR-OTP-2110-1053 to CAR-OTP-2110-1076.

³¹⁶ The Ngaïssona Defence defers to the Yekatom Defence's position regarding the introduction of P-2472's prior recorded testimony, see Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 10. The Yekatom Defence does not oppose it, see Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, para. 2.

³¹⁷ Statement, CAR-OTP-2110-0355; CAR-OTP-2122-4595 (Translation).

³¹⁸ Document, CAR-OTP-2110-0385 (Annex 1); Photos, CAR-OTP-2110-1053 to CAR-OTP-2110-1076 (Annex 2); Document, CAR-OTP-2110-0388 (Annex 3); Document, CAR-OTP-2110-0396 (Annex 4); Document, CAR-OTP-2110-0399 (Annex 5); Facebook post, CAR-OTP-2110-0436 (Annex 6).

³¹⁹ Fourth Request, ICC-01/14-01/18-794-Conf, para. 46; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 3.

³²⁰ Statement, CAR-OTP-2126-0254.

Bangui; the activities of [REDACTED]; the Anti-Balaka base at Yamwara School; and [REDACTED].

297. The witness makes several remarks in relation to Mr Yekatom. In particular, he states that everybody was aware that ‘Alfred YEKATOM RAMBO’ was the Anti-Balaka leader in that area, and that his nickname was ‘RAMBO’.³²¹ The witness indicates that he saw him ‘before the 5 December 2013 incidents’³²² and that he knows a Muslim man who was taken prisoner by Mr Yekatom’s group somewhere near Kapou and that this man informed him about the Anti-Balaka cutting people with machetes, and Mr Yekatom’s elements detaining, torturing and killing people.³²³ He indicates that Mr Yekatom occupied Yamwara School and used it as his base,³²⁴ and that he saw his elements stationed at a roundabout in Boeing on the way to Boulata shortly after 5 December 2013.³²⁵ P-2698 further discusses a second attack by Mr Yekatom and his elements on *quartier* Foulbe Rue Boulata around 20 December 2013³²⁶ and further attacks along the main road from Yamwara School to Boeing and PK5.³²⁷ The witness also describes another man who was caught by the Anti-Balaka, taken to Yamwara School and eventually killed.³²⁸ The witness does not mention Mr Ngaïssona.
298. The witness further discusses an [REDACTED] form (Annex A, CAR-OTP-2126-0268), two satellite images (Annex B, CAR-OTP-2126-0269 and Annex C, CAR-OTP-2126-0270), four photographs (Annex D, CAR-OTP-2119-0188 to CAR-OTP-2119-0191) and video CAR-OTP-2012-0523.
299. The Ngaïssona Defence defers to the Yekatom Defence’s position regarding the introduction of P-2698’s prior recorded testimony.³²⁹ The Yekatom Defence objects to its introduction. It argues that (i) following an unsuccessful attempt to interview the witness, and noting his unique position as the only Prosecution

³²¹ Statement, CAR-OTP-2126-0254, at 0258, paras 18, 22.

³²² Statement, CAR-OTP-2126-0254, at 0259, para. 22.

³²³ Statement, CAR-OTP-2126-0254, at 0259, paras 23-24.

³²⁴ Statement, CAR-OTP-2126-0254, at 0259, para. 25.

³²⁵ Statement, CAR-OTP-2126-0254, at 0260, para. 26.

³²⁶ Statement, CAR-OTP-2126-0254, at 0260, para. 27.

³²⁷ Statement, CAR-OTP-2126-0254, at 0260, para. 28.

³²⁸ Statement, CAR-OTP-2126-0254, at 0261-62, paras 30-33.

³²⁹ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 10.

witness who participated [REDACTED], it should be afforded an opportunity to examine the witness in court; (ii) the prior recorded testimony goes to Mr Yekatom's acts and conduct, and concerns disputed issues; and (iii) given the gravity of the allegations against Mr Yekatom, it must be given a chance to put credibility issues arising from the prior recorded testimony to the witness.³³⁰

300. The Chamber notes that P-2698 provides information on Mr Yekatom's alleged presence and leadership at the Yamwara School base and the [REDACTED] at this location. Moreover, it notes that P-2698 indicates having [REDACTED] Mr Yekatom before 5 December 2013 around Cattin, that he speaks about attacks carried out by elements under Mr Yekatom's command, and that he was aware that Mr Yekatom's base was at Yamwara. The Chamber is of the view that these matters touch upon Mr Yekatom's acts and conduct. Thus, it does not consider P-2698's prior recorded testimony suitable for introduction under Rule 68(2)(b) of the Rules.

301. Accordingly, the Chamber rejects the introduction of P-2698's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

h. P-0974

302. P-0974 is [REDACTED] who joined the Anti-Balaka during the relevant time period,³³¹ and eventually became [REDACTED].

303. In his statement,³³² the witness describes the arrival of the Seleka in Bouar in April 2013 and alleged crimes committed by them; the formation of self-defence groups by the name 'Anti-Zarangina' in the provinces; the 5 December Bangui Attack which led to [REDACTED]; FACA members, [REDACTED], joining the Anti-Balaka; joining an Anti-Balaka group [REDACTED]; [REDACTED]; displaced Muslims in Mbaïki; and the roles of several Anti-Balaka leaders.

³³⁰ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Conf, paras 30-40.

³³¹ Fourth Request, ICC-01/14-01/18-794-Conf, para. 57; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 2.

³³² Statement, CAR-OTP-2058-0165.

304. The witness indicates that ‘Rombot’ was one of the leaders of the resistance groups in the south³³³ and that ‘Alfred Yekatom’ was the ‘Chef of BIMBO area’.³³⁴ P-0974 further recounts having gone to [REDACTED] sometime between January and March 2014, where many Muslims had sought refuge. According to the witness, [REDACTED] ‘Rombhot (Yekatom)’ there and heard that Muslims paid him money to be allowed to be evacuated.³³⁵ The witness further gives evidence about Rombhot committing crimes against the population and his own elements, including killings, looting and kidnapping. According to P-0974, ‘ROMHBHOT’s way of dealing with problems was to kill people’.³³⁶ The witness further discusses Rombhot having ‘his whims’, ‘go[ing] astray’, doing ‘his own things’ and Kamazoulai distancing himself from him.³³⁷ The witness also indicates that Rombhot fled to DRC together with other corporals of the FACA ‘to start the movement in the ‘South’.³³⁸ The witness identifies Mr Yekatom in video CAR-OTP-2012-0513.³³⁹
305. P-0974 states that Mr Ngaïssona returned to Bangui after Djotodia resigned and [REDACTED].³⁴⁰ Furthermore, he recounts that Mr Ngaïssona [REDACTED] and was proclaimed National Coordinator of the Anti-Balaka.³⁴¹ According to P-0974, Mr Ngaïssona was also [REDACTED]. P-0974 indicates that [REDACTED].³⁴² P-0974 indicates that despite Mr Ngaïssona’s appointment as national coordinator, some Anti-Balaka answered to ‘Mokom’.³⁴³
306. The witness further drew a diagram of the [REDACTED] (Annex A, CAR-OTP-2058-0184); [REDACTED] (back side of Annex A); and [REDACTED] (Annex

³³³ Statement, CAR-OTP-2058-0165, at 0171, para. 36.

³³⁴ Statement, CAR-OTP-2058-0165, at 0175, para. 67.

³³⁵ Statement, CAR-OTP-2058-0165, at 0178, para. 88.

³³⁶ Statement, CAR-OTP-2058-0165, at 0179, paras 94-95.

³³⁷ Statement, CAR-OTP-2058-0165, at 0179, paras 93-94.

³³⁸ Statement, CAR-OTP-2058-0165, at 0179, para. 91.

³³⁹ Time stamps 09:08, 35:29, 50:57.

³⁴⁰ Statement, CAR-OTP-2058-0165, at 0176, para. 75.

³⁴¹ Statement, CAR-OTP-2058-0165, at 0177, para. 77.

³⁴² Statement, CAR-OTP-2058-0165, at 0177, paras 80-81.

³⁴³ Statement, CAR-OTP-2058-0165, at 0178, para. 86.

B, CAR-OTP-2058-0186). The witness further discusses video CAR-OTP-2012-0523.³⁴⁴

307. The Yekatom Defence objects to the introduction. It argues that (i) the witness has a unique viewpoint on many issues (including privileged information [REDACTED] by virtue of [REDACTED]; insights on [REDACTED] Yamwara School in December 2013 [REDACTED]; and [REDACTED]), which warrants hearing his testimony *viva voce*; (ii) the prior recorded testimony goes to Mr Yekatom's acts and conduct and concerns disputed issues; and (iii) not being able to put credibility issues arising from the prior recorded testimony to the witness would be highly prejudicial to Mr Yekatom.³⁴⁵

308. The Ngaïssona Defence also objects. It argues that (i) the witness's evidence goes to the acts and conduct of Mr Ngaïssona; (ii) his evidence relates to issues materially in dispute; and (iii) introducing the prior recorded testimony would deprive Mr Ngaïssona of his right 'to not only confront and examine a witness making directions allegations against him, but also to elicit potentially exonerating evidence from this witness during questioning'.³⁴⁶

309. The Chamber notes that P-0974 provides a significant amount of information on the actions of both accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish their criminal responsibility. Moreover, it is worth noting that most of the information is based on [REDACTED]. The information provided by the witness in relation to Mr Yekatom's and Mr Ngaïssona's acts and conduct cannot be considered limited or peripheral, even when read without the paragraphs sought to be excluded by the

³⁴⁴ The Chamber notes that the ERN of the video shown to P-0974 is erroneously recorded as 'CAR-OTP-2012-0513' in P-0974's statement (see CAR-OTP-2058-0165, at 0181, para. 110). However, noting that the video title is listed as 'Special Investigation Video' and that the information given by the witness at specific timestamps matches the images captured in video CAR-OTP-2012-0523, titled 'ANNEX C / ANNEX A / ANNEX C / ANNEX B / Video 178 / RCA : SPECIAL INVESTIGATION LA FRANCE ARME LES MILICES CHRÉTIENN...', the Chamber considers the statement to contain a typographical error in this respect.

³⁴⁵ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Conf, paras 46-58.

³⁴⁶ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 11, 14-15.

Prosecution.³⁴⁷ On the contrary, the Chamber is of the view that it touches upon both accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules. Thus, it does not consider P-0974's prior recorded testimony suitable for introduction under this provision.

310. Accordingly, the Chamber rejects the introduction of P-0974's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

311. Nonetheless, the Chamber considers that P-0974's evidence, particularly paragraph 81 of his statement, could assist the Chamber in its determination of the truth. Moreover, noting that the Defence sought to question the witness,³⁴⁸ it finds it appropriate to *proprio motu* introduce his prior recorded testimony pursuant to Rule 68(3) of the Rules.

312. Noting that Annexes A to B and video CAR-OTP-2012-0523 have been used and explained by the witness in his statement and thus form an integral part of it, the Chamber grants the introduction of P-0974's statement³⁴⁹ and associated items, pursuant to Rule 68(3) of the Rules, with the following exception: item CAR-OTP-2012-0523 has already been recognised as submitted and therefore the Chamber need not rule on it again.³⁵⁰ The Chamber's ruling is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony.

i. P-0473

313. P-0473 is a Muslim [REDACTED] during the relevant period.³⁵¹

314. In his statement,³⁵² the witness describes, *inter alia*, a gathering at PK0 where Bozizé addressed the population upon his return from Libreville; the alleged killing of Muslims by the Presidential Guard between January and March 2013;

³⁴⁷ See Annex to the Fourth Request, ICC-01/14-01/18-794-Conf-AnxA, p. 10 in which it seeks to exclude paragraphs 81, 91, 94-96.

³⁴⁸ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, para. 50; Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 15.

³⁴⁹ Statement, CAR-OTP-2058-0165; CAR-OTP-2118-0813 (Translation).

³⁵⁰ Sketches, CAR-OTP-2058-0184 (Annex A) and CAR-OTP-2058-0186 (Annex B).

³⁵¹ Fourth Request, ICC-01/14-01/18-794-Conf, para. 63; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 3.

³⁵² Statement, CAR-OTP-2124-0224.

the creation of COCORA by ‘Levy Yakete’; COCORA’s proximity to the KNK and to Bozizé; the barricades erected in Bangui by COCORA and its members who later became the Anti-Balaka; the Seleka’s arrival on 24 March 2013 and alleged crimes committed by them; and the Anti-Balaka’s arrival on 5 December 2013 and alleged crimes committed by them.

315. The witness states that Mr Ngaïssona pronounced that he was the coordinator of the Anti-Balaka and that because of this, ‘everyone knew he was financing them’. He further heard that Mr Ngaïssona was a member of the KNK and a supporter of Bozizé.³⁵³ The witness indicates having heard that the Anti-Balaka members in PK13, Gobongo and Miskine felt that Mr Ngaïssona tricked them and that they did not trust him. Further, the witness states that Mr Ngaïssona initially told the Anti-Balaka about his plan but then did ‘not keep his promise’, which made the Anti-Balaka members angry and led to a split sometime in 2015-2016, after which Anti-Balaka members of Gbaya ethnicity united under Maxime Mokom’s leadership.³⁵⁴
316. The witness further indicates that [REDACTED] ‘ROMBHOT YEKATOM’ [REDACTED] Mr Yekatom appeared on behalf of the Anti-Balaka and allegedly stated that he was looking for peace and reconciliation.³⁵⁵
317. The Ngaïssona Defence defers to the Chamber’s discretion, but submits that the exclusion of paragraphs, as requested by the Prosecution,³⁵⁶ is warranted, as they go to the alleged acts and conduct of Mr Ngaïssona and concern matters materially in dispute.³⁵⁷ The Yekatom Defence does not oppose the introduction of P-0473’s prior recorded testimony ‘on the condition that paragraphs 70-71 be included’, which are ‘beneficial to Mr. Yekatom’.³⁵⁸

³⁵³ Statement, CAR-OTP-2124-0224, at 0233, para. 52.

³⁵⁴ Statement, CAR-OTP-2124-0224, at 0233, paras 53-54.

³⁵⁵ Statement, CAR-OTP-2124-0224, at 0235-36, paras 70-71.

³⁵⁶ The Chamber notes that the Prosecution seeks to exclude paragraphs 52-54, and 70-71, *see* Annex to the Fourth Request, ICC-01/14-01/18-794-Conf-AnxA, p. 11.

³⁵⁷ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 9.

³⁵⁸ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 20-23.

318. As regards Mr Yekatom, the Chamber notes the absence of objections by the Yekatom Defence and is of the view that the references made by the witness are peripheral and do not go to the acts and conduct of the accused. However, the Chamber is of the view that the references to Mr Ngaïssona, albeit limited and based on hearsay, touch upon his role within the Anti-Balaka. In this regard, the Chamber particularly notes that the witness discusses Mr Ngaïssona's alleged financing of the Anti-Balaka and pronouncing himself as national coordinator. In light of this, it does not consider P-0473's prior recorded testimony suitable for introduction under Rule 68(2)(b) of the Rules.
319. Accordingly, the Chamber rejects the introduction of P-0473's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

j. P-1990

320. P-1990 is a Christian and [REDACTED] during the relevant period.³⁵⁹
321. In his statement,³⁶⁰ the witness describes, *inter alia*, the 5 December Bangui Attack; the fleeing of Muslims from Bangui; the Anti-Balaka allegedly targeting Muslims and 'Christians who had telephone numbers of Muslims'; the Anti-Balaka's base at Yamwara School and the checkpoints established around it; the alleged killings and burials at Yamwara School; and [REDACTED]. The witness further indicates that Yamwara school was a mixed public school with both Christians and Muslims but became a Christian school after the conflict 'which started in 2013'.
322. According to the witness, Mr Yekatom, who was also known as 'Rambo', was the leader of the Anti-Balaka group at Yamwara school. P-1990 indicates that he [REDACTED] and that he had no bad reputation at first, but that this changed after Mr Yekatom occupied Yamwara School. He further indicates that Mr Yekatom did not prevent the bad behaviour of his elements, encouraged them to attack PK5 and that he occupied a house near Yamwara School.³⁶¹ Moreover, P-

³⁵⁹ Fourth Request, ICC-01/14-01/18-794-Conf, para. 67; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 8.

³⁶⁰ Statement, CAR-OTP-2124-0247.

³⁶¹ Statement, CAR-OTP-2124-0247, at 0254-55, para. 28.

1990 states that Mr Yekatom's group only left Yamwara School when Djotodia left Bangui, which he believed happened in 2014.³⁶² The witness does not mention Mr Ngaïssona.

323. The witness further identifies relevant locations around the Yamwara School on a satellite image (Annex A, CAR-OTP-2124-0261) and in three photographs (Annex B, CAR-OTP-2119-0187; Annex C, CAR-OTP-2119-0188; and Annex D, CAR-OTP-2119-0193).
324. The Ngaïssona Defence defers to the Yekatom Defence's position regarding the introduction of P-1990's prior recorded testimony.³⁶³ The Yekatom Defence objects to the introduction, for 'essentially the same grounds as [for] P-2698'.³⁶⁴ In particular, it argues that (i) the witness has privileged information due to his position at the relevant time; (ii) his prior recorded testimony goes to Mr Yekatom's acts and conduct and concerns disputed issues; and (iii) the nature of the P-1990's allegations against Mr Yekatom warrant an examination to test his credibility, particularly in light of other contradictory evidence tendered.³⁶⁵
325. The Chamber is of the view that the references to Mr Yekatom and to the Anti-Balaka's activities at Yamwara School, albeit rather limited and partly based on hearsay, go to the acts and conduct of the accused, as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish Mr Yekatom's criminal responsibility. In this regard, the Chamber notes that the witness (i) indicates [REDACTED] Mr Yekatom; (ii) provides evidence about Mr Yekatom's leadership within the Anti-Balaka, in particular that Mr Yekatom encouraged his elements to attack PK5 and about the Anti-Balaka's acts of violence at Yamwara School, including killings; and (iii) indicates having been [REDACTED] at Yamwara School. In light of this information, the Chamber considers that P-1990's prior recorded testimony is not suitable for introduction under Rule 68(2)(b) of the Rules.

³⁶² Statement, CAR-OTP-2124-0247, at 0255, para. 37.

³⁶³ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 10.

³⁶⁴ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, para. 66.

³⁶⁵ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 59-67.

326. Accordingly, the Chamber rejects the introduction of P-1990's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

327. Nonetheless, the Chamber considers that P-1990's evidence, particularly paragraphs 32 and 38 to 44 of his statement, could assist the Chamber in its determination of the truth. Moreover, noting that the Yekatom Defence sought to question the witness,³⁶⁶ it finds it appropriate to *proprio motu* introduce his prior recorded testimony pursuant to Rule 68(3) of the Rules.

328. Noting that Annexes A to D have been used and explained by the witness in his statement and thus form an integral part of it, the Chamber grants the introduction of P-1990's statement³⁶⁷ and associated items, pursuant to Rule 68(3) of the Rules, with the following exception: item CAR-OTP-2119-0193 has already been recognised as submitted and therefore the Chamber need not rule on it again.³⁶⁸ The Chamber's ruling is subject to the witness's appearance before the Chamber and his consent to the introduction of his testimony.

5. *Fifth Request*

329. In its Fifth Request, the Prosecution seeks the introduction of the prior recorded testimonies of witnesses P-0520, P-0589, P-1584, P-1676, P-1865 and P-2377, including statements and associated items.

i. Submissions

330. The Prosecution submits that the prior recorded testimonies of these witnesses fulfil all requirements under Rule 68(2)(b) of the Rules and that their introduction is warranted. Specifically, the Prosecution submits that the proposed prior recorded testimonies concern neither the acts or conduct of the accused,³⁶⁹ nor matters materially in dispute.³⁷⁰ Rather, the Prosecution argues, they are limited to 'evidence of the crime base forming a part of the contextual elements for war

³⁶⁶ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, para. 67.

³⁶⁷ Statement, CAR-OTP-2124-0247; CAR-OTP-2122-5638 (Translation).

³⁶⁸ Satellite image, CAR-OTP-2124-0261 (Annex A); Photographs, CAR-OTP-2119-0187 (Annex B); CAR-OTP-2119-0188 (Annex C).

³⁶⁹ Fifth Request, ICC-01/14-01/18-795-Red, paras 4, 11.

³⁷⁰ Fifth Request, ICC-01/14-01/18-795-Red, para. 11.

crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict throughout the Relevant Period and the group's course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organisational policy'. Specifically, it concerns the 'campaign of retributive violence committed by the Anti-Balaka against Muslim civilians in specific towns and villages in western CAR, pursuant to a criminal organisational policy'.³⁷¹

331. According to the Prosecution, (i) the tendered evidence further 'bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case'; (ii) the witnesses' accounts were signed in accordance with Rule 111 of the Rules; (iii) the statements contain an 'express acknowledgment attesting to its voluntariness and the truth of its contents'; (iv) the statements are 'internally consistent, and sufficiently corroborated by other evidence in the case'; and (v) the formal submission of the prior recorded testimonies would expedite the proceedings and not prejudice the Defence.³⁷² With regard to the associated items, the Prosecution avers that they form an 'inseparable and indispensable part' of the prior recorded testimonies and should therefore equally be submitted.³⁷³

332. The Chamber recalls the CLRV's submissions set out above.³⁷⁴

333. The Yekatom Defence does not oppose the introduction of the prior recorded testimonies of P-0520, P-0589, P-1676, P-1865 and P-2377, including associated items. It further does not oppose the introduction of P-1584's prior recorded testimony 'on the understanding that specified paragraphs are excluded from [the] tendered witness statement[] in accordance with the [...] Fifth Request'.³⁷⁵

334. The Ngaïssona Defence defers to the Chamber's discretion with regard to P-0520, P-1676, P-1865, P-2377 and P-0589.³⁷⁶ With respect to the introduction of P-

³⁷¹ Fifth Request, ICC-01/14-01/18-795-Red, paras 4, 9.

³⁷² Fifth Request, ICC-01/14-01/18-795-Red, paras 3, 10, 37-38.

³⁷³ Fifth Request, ICC-01/14-01/18-795-Red, para. 12.

³⁷⁴ See above, 4. Fourth Request, i. Submissions, para. 250.

³⁷⁵ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 2-3.

³⁷⁶ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 6.

1584's prior recorded testimony, it defers to the Yekatom Defence.³⁷⁷ In the event that the Chamber grants the Prosecution's requests in relation to P-0520, P-1676, P-1865 and P-2377, it requests that 'the statements be tendered in their entirety, rather than the selection by the Prosecution, insofar as the excluded paragraphs do not go to the "acts and conduct" of Mr Ngaïssona, provide valuable background information about the Witness's knowledge, and in some cases, provide potentially exonerating information' and not submit them 'piecemeal'.³⁷⁸ With respect to witness P-0589, although deferring to the Chamber's discretion, it submits that the Prosecution's proposed exclusion of certain paragraphs is warranted because they 'contain information directly related to the alleged "acts and conduct" of Mr Ngaïssona'.³⁷⁹

ii. *Chamber's determinations*

a. P-0520

335. P-0520 is a Muslim of [REDACTED] ethnicity. He was [REDACTED] and a resident [REDACTED] of Bangui at the relevant time. He [REDACTED] functioned as [REDACTED], and was a [REDACTED].³⁸⁰

336. In his statement,³⁸¹ the witness describes the situation in Bangui before, during and after the conflict. In particular, he describes Bozizé's speech on 15 March 2013; the creation of COCORA and the creation of the Anti-Balaka by Bozizé and his involvement in distributing weapons, ammunition and money; the Anti-Balaka's arrival in Bangui on 5 December 2013; their alleged commission of crimes and targeting of Muslims; the [REDACTED] and its work; the situation of Peuhls and the impact of the conflict on this community.

337. The witness indicates that (i) Mr Ngaïssona was one of the Anti-Balaka leaders and a minister; (ii) they used [REDACTED]; (iii) [REDACTED]; and (iv)

³⁷⁷ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 10.

³⁷⁸ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 7-8.

³⁷⁹ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 9.

³⁸⁰ Fifth Request, ICC-01/14-01/18-795-Conf, para. 14; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 2.

³⁸¹ Statement, CAR-OTP-2050-0788.

[REDACTED].³⁸² He further states that, in his view, the most responsible perpetrators of the Anti-Balaka are Bozizé, ‘Lévi YAKETE’ and Mr Ngaïssona; the latter because he proclaimed himself as ‘*coordinateur général des Anti-Balaka*’ in front of the national and international community.³⁸³ P-0520 does not mention Mr Yekatom.

338. The witness further provides and discusses the statute and internal regulations of the [REDACTED] (Annex A, CAR-OTP-2050-0806); a memorandum of 1 March 2014 [REDACTED] (Annex B, CAR-OTP-2050-0817); a memorandum on [REDACTED] (Annex C, CAR-OTP-2050-0820); a letter dated 25 September 2013 [REDACTED] (Annex D, CAR-OTP-2050-0822³⁸⁴); and a letter [REDACTED] (Annex E, CAR-OTP-2050-0824). He further commented on report CAR-OTP-2049-0462.

339. The Chamber takes note of the Ngaïssona Defence’s submissions.³⁸⁵ The Chamber is of the view that the references to Mr Ngaïssona’s acts and conduct in these paragraphs are of peripheral nature and limited to (i) personal information about their alleged relationship; (ii) generic information about Mr Ngaïssona allegedly proclaiming himself as ‘*coordinateur général des Anti-Balaka*’, and (iii) the witness’s opinions regarding Mr Ngaïssona’s alleged responsibility. Moreover, the Chamber notes that they would, in any case, not constitute the core of P-0520’s testimony. In light of the above, the Chamber is satisfied that P-0520’s prior recorded testimony is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 44 and 69 for the purposes of establishing Mr Ngaïssona’s acts and conduct.

340. Furthermore, the Chamber considers that P-0520’s statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

³⁸² Statement, CAR-OTP-2050-0788, at 0797, para. 44.

³⁸³ Statement, CAR-OTP-2050-0788, at 0802-03, para. 69.

³⁸⁴ The Chamber notes that another version of the letter has also been registered under CAR-OTP-2034-3886, as indicated in P-0520’s statement, CAR-OTP-2050-0788, at 0800.

³⁸⁵ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 7-8, 17. *See above*, 5. Fifth Request, i. Submissions, para. 334.

341. As regards the associated items, the Chamber observes that Annexes A to E, as well as item CAR-OTP-2049-0462, have been used and explained by the witness in his statement and thus form an integral part of it.
342. In light of these considerations, and noting that neither the Yekatom Defence nor the CLRV object, the Chamber considers that the introduction of P-0520's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
343. Accordingly, the Chamber grants the introduction of P-0520's statement³⁸⁶ and associated items,³⁸⁷ pursuant to Rule 68(2)(b) of the Rules.

b. P-1676

344. P-1676 is a Muslim of [REDACTED] ethnicity and was the [REDACTED] in Bangui during the relevant period.³⁸⁸
345. In his statement,³⁸⁹ the witness describes, *inter alia*, the 5 December Bangui Attack and the Anti-Balaka's alleged targeting of Muslims; that dead bodies were brought to the Ali Babolo mosque and that they could not be buried at the Muslim cemetery as the access was blocked by the Anti-Balaka; and Muslims fleeing, including the witness and his family, in February 2014 to [REDACTED]. The witness does not mention the accused. The witness further identifies the event at the Ali Babolo mosque in photographs CAR-OTP-2030-0065, CAR-OTP-2030-0066 and CAR-OTP-2030-0067. He also commented on photographs CAR-OTP-2030-0061 to CAR-OTP-2030-0064 and CAR-OTP-2030-0068 to CAR-OTP-2030-0069.

³⁸⁶ Statement, CAR-OTP-2050-0788; CAR-OTP-2059-1407 (Translation).

³⁸⁷ Document, CAR-OTP-2050-0806 (Annex A); Document, CAR-OTP-2050-0817 (Annex B); Document, CAR-OTP-2050-0820 (Annex C); Document, CAR-OTP-2050-0822 (Annex D); Document, CAR-OTP-2050-0824 (Annex E); Report, CAR-OTP-2049-0462.

³⁸⁸ Fifth Request, ICC-01/14-01/18-795-Conf, para. 25; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 13.

³⁸⁹ Statement, CAR-OTP-2066-0105.

346. In light of the above, the Chamber is satisfied that P-1676's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision.
347. Furthermore, the Chamber considers that P-1676's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
348. As regards the associated items, the Chamber observes that the abovementioned photographs have been used and explained by the witness in his statement and thus form an integral part of it.
349. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1676's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
350. Accordingly, the Chamber grants the introduction of P-1676's statement,³⁹⁰ and associated items,³⁹¹ pursuant to Rule 68(2)(b) of the Rules.

c. P-1865

351. P-1865 is a Muslim woman of [REDACTED] ethnicity, who resided in [REDACTED] during the relevant period.³⁹²
352. In her statement,³⁹³ the witness describes, *inter alia*, the Anti-Balaka's arrival in [REDACTED] and crimes allegedly committed by them; the alleged targeting of Muslims by the Anti-Balaka; Anti-Balaka entering her house, raping her, and [REDACTED]; the Muslim population fleeing; taking refuge at the Central Mosque in PK5 in Bangui with many other Muslims and [REDACTED]. The

³⁹⁰ Statement, CAR-OTP-2066-0105.

³⁹¹ Photographs, CAR-OTP-2030-0061 to CAR-OTP-2030-0069.

³⁹² Fifth Request, ICC-01/14-01/18-795-Conf, para. 29; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 3.

³⁹³ Statement, CAR-OTP-2066-0134.

witness does not mention the accused. The witness further marked two drawings of a human body to explain the details of her rape (Annex 1, CAR-OTP-2066-0148 and Annex 2, CAR-OTP-2066-0149).

353. As the Prosecution does not suggest to exclude any paragraphs from this witness's prior recorded testimony,³⁹⁴ the Chamber disregards the Ngaïssona Defence's submissions in this regard.³⁹⁵
354. In light of the above, the Chamber is satisfied that P-1865's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. Furthermore, the Chamber considers that P-1865's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
355. As regards the associated items, the Chamber observes that Annexes 1 and 2 have been used and explained by the witness in her statement and thus form an integral part of it.
356. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-1865's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that the introduction contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence. Furthermore, it notes that P-1865 would otherwise be required to testify, *inter alia*, about her rape, thereby risking potential re-traumatisation.
357. Accordingly, the Chamber grants the introduction of P-1865's statement³⁹⁶ and associated items,³⁹⁷ pursuant to Rule 68(2)(b) of the Rules.

³⁹⁴ Annex A to the Fifth Request, ICC-01/14-01/18-795-Conf-AnxA, p. 7.

³⁹⁵ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, para. 7.

³⁹⁶ Statement, CAR-OTP-2066-0134.

³⁹⁷ Drawings, CAR-OTP-2066-0148 (Annex 1) and CAR-OTP-2066-0149 (Annex 2).

d. P-2377

358. P-2377 is a [REDACTED] journalist and [REDACTED] who travelled to the CAR [REDACTED].³⁹⁸

359. In his statement,³⁹⁹ the witness describes, *inter alia*, his travel to Bossangoa from Bangui, during which he saw Anti-Balaka wearing *gris-gris* along the way and indicating that they were protecting the villages from the Seleka; his interview [REDACTED]; visits to a [REDACTED]; and the 5 December Bangui Attack, including [REDACTED]. The witness does not mention the accused.

360. The witness further discusses a press article he authored (Annex 1, CAR-OTP-2108-0632), and two photos (Annex 2, CAR-OTP-2059-1707 and Annex 3, CAR-OTP-2014-0802). He also [REDACTED] discusses numerous video rushes, registered between CAR-OTP-2108-0675 and CAR-OTP-2108-1660, and at CAR-OTP-2108-1710.⁴⁰⁰

361. In light of the above, the Chamber is satisfied that P-2377's statement does not go to proof of the accused's acts and conduct within the meaning of Rule 68(2)(b) of the Rules and is thus suitable to be introduced under this provision. Furthermore, the Chamber considers that P-2377's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.

³⁹⁸ Fifth Request, ICC-01/14-01/18-795-Conf, para. 34; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 10.

³⁹⁹ Statement, CAR-OTP-2108-0609.

⁴⁰⁰ In particular, he discusses video footage [REDACTED] of Peuhl victims (CAR-OTP-2108-0681), video footage [REDACTED] of dead bodies at the mosque (CAR-OTP-2108-0682), video footage [REDACTED] of Bossangoa and its mosque (CAR-OTP-2108-1031), video footage [REDACTED] of the woman [REDACTED] (CAR-OTP-2108-1096), video footage [REDACTED] (CAR-OTP-2108-1298), video footage [REDACTED] of Peuhl victims at a hospital (CAR-OTP-2108-1300 to CAR-OTP-2108-1305, CAR-OTP-2108-1308, CAR-OTP-2108-1311, CAR-OTP-2108-1315), video footage [REDACTED] showing dead bodies [REDACTED] (CAR-OTP-2108-1455 to CAR-OTP-2108-1457, CAR-OTP-2108-1462 to CAR-OTP-2108-1463, CAR-OTP-2108-1465 to CAR-OTP-2108-1466, CAR-OTP-2108-1458 to CAR-OTP-2108-1460), video footage of a wounded Muslim woman [REDACTED] (CAR-OTP-2108-1468), video footage [REDACTED] (CAR-OTP-2108-1474), video footage [REDACTED] (CAR-OTP-2108-1635) and video footage [REDACTED] (CAR-OTP-2108-1643).

362. As regards the associated items, the Chamber observes that Annexes 1 to 3 and the abovementioned video rushes have been used and explained by the witness in his statement and thus form an integral part of it.
363. In light of these considerations, and noting that neither the Defence nor the CLRV object, the Chamber considers that the introduction of P-2377's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. In this regard, the Chamber particularly notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.
364. Accordingly, the Chamber grants the introduction of P-2377's statement,⁴⁰¹ and associated items, pursuant to Rule 68(2)(b) of the Rules, with the following exceptions: items CAR-OTP-2108-0748 and CAR-OTP-2108-1031 have already been recognised as submitted and therefore the Chamber need not rule on them again.⁴⁰²
365. Since Annexes 2 and 3 have not yet been disclosed to the Defence, the Chamber defers its decision on these items and orders the Prosecution to disclose them within 10 days of notification of this decision. The Defence may submit observations on the introduction of these items, if any, within 10 days of disclosure.
366. The Chamber further instructs the Prosecution to review the necessity of the redactions applied to the Fifth Request, para. 36, as well as to P-2377's statement, CAR-OTP-2108-0609, at 0624 and 0625 and file lesser redacted versions within two weeks of notification of the present decision.

⁴⁰¹ Statement, CAR-OTP-2108-0609; CAR-OTP-2107-8810 (Translation).

⁴⁰² Press article, CAR-OTP-2108-0632 (Annex 1); Videos registered between CAR-OTP-2108-0675 and CAR-OTP-2108-1660 and at CAR-OTP-2108-1710, and their respective transcriptions and translations.

e. P-0589

367. P-0589 is a Muslim of [REDACTED] ethnicity and was resident [REDACTED] in Bangui during the relevant period.⁴⁰³
368. In his statements,⁴⁰⁴ the witness describes, *inter alia*, the Seleka's takeover of Bangui on 24 March 2013; Bozizé's speech at PK10 in February 2013 directing the youth to defend the country; the establishment of roadblocks by members of auto-defence groups; the recruitment and training of Anti-Balaka [REDACTED]; the 5 December Bangui Attack and [REDACTED]; the alleged targeting of Muslims; the crimes allegedly committed by the Anti-Balaka, including the killing [REDACTED] and the destruction of [REDACTED]; the Anti-Balaka leadership; and Muslims fleeing to foreign countries.
369. The witness indicates that Mr Ngaïssona was one of the leaders of the Anti-Balaka, notably the '*Coordinateur General*'; that he [REDACTED]; that two months before the 5 December Bangui Attack, [REDACTED] Mr Ngaïssona [REDACTED] stated that '*il fallait détruire tous les bien des musulmans et les tuer*'⁴⁰⁵ and that Bozizé allegedly financed Mr Ngaïssona and the Anti-Balaka, but that this ended when Mr Ngaïssona wanted to take power himself.⁴⁰⁶ He further indicates that Mr Ngaïssona [REDACTED] having instructed the Anti-Balaka elements to not destroy [REDACTED] house.⁴⁰⁷ The witness also mentions that 'Rambo' was '*un sergent de l'armée qui s'est faire appeller Général*' who was on the Mbaïki axis.⁴⁰⁸
370. The witness further provides a copy of his complaint to the *Tribunal de Grande Instance de Bangui* about [REDACTED] (Annex A, CAR-OTP-2059-0391) and a photo of the killed victim [REDACTED] (Annex B, CAR-OTP-2059-0405).

⁴⁰³ Fifth Request, ICC-01/14-01/18-795-Conf, para. 18; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 2.

⁴⁰⁴ First Statement, CAR-OTP-2029-0014; Second Statement, CAR-OTP-2059-0387.

⁴⁰⁵ First Statement, CAR-OTP-2029-0014, at 0024-25, paras 68-69.

⁴⁰⁶ First Statement, CAR-OTP-2029-0014, at 0025, para. 74.

⁴⁰⁷ First Statement, CAR-OTP-2029-0014, at 0024, para. 68

⁴⁰⁸ First Statement, CAR-OTP-2029-0014, at 0025, para. 70.

371. The Chamber observes that, while the references to Mr Ngaïssona are limited in number, the witness gives direct evidence on his alleged role as Anti-Balaka coordinator, including his capacity to order Anti-Balaka elements to (not) attack a certain target. In light of this information, and noting the Ngaïssona Defence's objections in this regard,⁴⁰⁹ the Chamber considers that P-0589's prior recorded testimony touches upon the acts and conduct of the accused and is thus not suitable for introduction pursuant to Rule 68(2)(b) of the Rules.

372. Accordingly, the Chamber rejects the introduction of P-0589's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.

f. P-1584

373. P-1584 is a Muslim civilian of [REDACTED] ethnicity, who lived in Bangui before and during the conflict.⁴¹⁰

374. In his statement,⁴¹¹ he describes, *inter alia*, the emergence of the Seleka; Bozizé's speech at the stadium in Bangui one and a half months before the arrival of the Seleka; the creation of 'KOKARA'; the emergence of the Anti-Balaka; the 5 December Bangui Attack and crimes allegedly committed by the Anti-Balaka; the targeting of Muslims; dead bodies at the Ali Babolo mosque; and the evacuation of Muslims from Bangui, [REDACTED] in February 2014.

375. The witness indicates that 'Rambo' was one of the leaders of the Anti-Balaka, and that his real name is 'Maxime Pecom'. He states that there was a video of 'Rambo' talking to the Sangaris forces '*à propos d'armes que les Anti-Balaka avaient reçues*'. He indicates that he personally never saw 'Rambo' on the ground but heard that his zone of influence reached from Mbaïki to PK9 and that 'Rambo' and his elements were the ones committing '*massacres et tueries*' on this axis, all the way to Bangui.⁴¹² The witness further says he learned that 'Rambo' forced people to vote for him during the last elections in the CAR, that he was elected

⁴⁰⁹ Ngaïssona Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-826-Red, paras 9, 17(b).

⁴¹⁰ Fifth Request, ICC-01/14-01/18-795-Conf, para. 22; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 4.

⁴¹¹ Statement, CAR-OTP-2056-0447.

⁴¹² Statement, CAR-OTP-2056-0447, at 0467, paras 130-32.

deputy and sits in parliament, and that he is a FACA member close to Bozizé.⁴¹³ P-1584 does not mention Mr Ngaïssona.

376. The Chamber recalls that the Ngaïssona Defence defers to the Yekatom Defence, which in turn indicates that it does not oppose the introduction of P-1584's prior recorded testimony 'on the understanding that paragraphs 130-131 and part of paragraph 132 are excluded [...] in accordance with Annex A to the Fifth Request'.⁴¹⁴ While the Chamber has taken note of the Yekatom Defence reserving its right to be heard should the Chamber not be minded to exclude these paragraphs, it does not consider that further submissions on the matter are necessary to adjudicate the request.
377. The Chamber is of the view that the paragraphs mentioning 'Rambo' are of peripheral nature and merely based on what the witness heard. Moreover, the Chamber recalls that the witness thinks that 'Rambo's real name is 'Maxime Pecom'. In light of this, the Chamber is satisfied that P-1584's statement is suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 130-133 for the purposes of establishing Mr Yekatom's acts and conduct.
378. Additionally, the Chamber considers that P-1584's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
379. In light of these considerations, and noting that neither the Ngaïssona Defence nor the CLRV object, the Chamber considers that the introduction of P-1584's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction. Furthermore, the Chamber notes that this contributes to the expeditiousness of the proceedings and streamlines the presentation of evidence.

⁴¹³ Statement, CAR-OTP-2056-0447, at 0467, para. 133.

⁴¹⁴ Yekatom Defence Response to the Fourth and Fifth Requests, ICC-01/14-01/18-823-Red, paras 3, 17.

380. Accordingly, the Chamber grants the introduction of P-1584's statement⁴¹⁵ pursuant to Rule 68(2)(b) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the receipt of the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules, the prior recorded testimonies of the following witnesses are introduced into evidence, pursuant to Rule 68(2)(b) of the Rules:

- **P-2324:** Statement, CAR-OTP-2100-2002; Translation, CAR-OTP-2118-1043 and associated items CAR-OTP-2100-2035 (Annex A); CAR-OTP-2100-2039 to CAR-OTP-2100-2064 (jointly, Annex B); CAR-OTP-2100-2065 (Annex C); CAR-OTP-2100-2068 to CAR-OTP-2100-2082 (jointly, Annex D); CAR-OTP-2100-2083 (Annex E); CAR-OTP-2100-2086 (Annex F); CAR-OTP-2100-2087 to CAR-OTP-2100-2156 (jointly, Annex G); CAR-OTP-2100-2158 (Annex H); CAR-OTP-2079-0808 and CAR-OTP-2079-0693. However, the Chamber will not rely on paragraphs 84-88 of the statement for the purposes of establishing Mr Ngaïssona's acts and conduct.
- **P-2325:** Statement, CAR-OTP-2100-2386; Translation, CAR-OTP-2107-6435 and associated items CAR-OTP-2100-2407 (Annex A) and CAR-OTP-2100-2408 (Annex B). However, the Chamber will not rely on paragraph 64 of the statement for the purposes of establishing Mr Ngaïssona's acts and conduct, or on paragraph 75 for the purposes of establishing Mr Yekatom's acts and conduct.
- **P-1773:** Statement, CAR-OTP-2064-0063 and associated item CAR-OTP-2064-0084 (Annex 1). However, the Chamber will not rely on paragraphs 80 and 94 of the statement for the purposes of establishing Mr Yekatom's accused's acts and conduct.

⁴¹⁵ Statement, CAR-OTP-2056-0447.

- **P-1864:** Statement, CAR-OTP-2064-0860 and Translation, CAR-OTP-2118-4347. However, the Chamber will not rely on paragraph 23 of the statement for the purposes of establishing Mr Yekatom's acts and conduct.
- **P-1871:** Statement, CAR-OTP-2064-0884 and Translation, CAR-OTP-2118-4362. However, it will not rely on paragraph 51 of the statement for the purposes of establishing Mr Yekatom's acts and conduct.
- **P-0289:** Statement, CAR-OTP-2024-0288 and associated items CAR-OTP-2024-0307 (Annex A) and CAR-OTP-2024-0308 (Annex B).
- **P-2132:** Statement, CAR-OTP-2080-0884; Translation, CAR-OTP-2104-1076 and associated items CAR-OTP-2080-0906 (Annex 1); CAR-OTP-2080-0908 (Annex 2) and CAR-OTP-2080-0909 (Annex 3).
- **P-2393:** Statement, CAR-OTP-2108-0140; Translation, CAR-OTP-2107-6531 and associated item CAR-OTP-2108-0174 (Annex 1). However, the Chamber will not rely on paragraphs 73 and 77 of the statement for the purposes of establishing Mr Ngaïssona's acts and conduct, or on paragraphs 61, 102, 104, 128-131, 133-134, and 140 for the purposes of establishing Mr Yekatom's acts and conduct.
- **P-2486:** Statement, CAR-OTP-2116-0281; Translation, CAR-OTP-2118-4694 and associated items CAR-OTP-2061-4482 to CAR-OTP-2061-4494.
- **P-2546:** Statement, CAR-OTP-2114-0402; Translation CAR-OTP-2118-4647 and associated items CAR-OTP-2114-0444 (Annex A); CAR-OTP-2114-0445 (Annex B). However, the Chamber will not rely on paragraph 58 of the statement for the purposes of establishing Mr Yekatom's acts and conduct or on paragraph 130 for the purposes of establishing either of the accused's acts and conduct.
- **P-2422:** Statement, CAR-OTP-2110-0801; Translation, CAR-OTP-2118-4438 and associated items CAR-OTP-2110-0841 to CAR-OTP-2110-0844.
- **P-2416:** Statement, CAR-OTP-2106-0489; Translation, CAR-OTP-2118-2086 and associated items CAR-OTP-2106-0547 (Annex 1); CAR-OTP-2106-0548 (Annex 2); CAR-OTP-2106-0138; CAR-OTP-2106-0549 to CAR-OTP-2106-0560 (Annexes 3 to 25); CAR-OTP-2106-0684; CAR-OTP-2106-0685; CAR-OTP-

2106-0561 to CAR-OTP-2106-0562 (Annexes 31 to 34); CAR-OTP-2106-0139; CAR-OTP-2106-0565 to CAR-OTP-2106-0568 (Annexes 39 to 45) and CAR-OTP-2106-0686 (which contains, *inter alia*, Annexes 27-30).

- **P-1779:** Statement, CAR-OTP-2087-9894 and associated items CAR-OTP-2087-9916 (Annex A) and CAR-OTP-2087-9917 (Annex B).
- **P-0595:** Statement, CAR-OTP-2018-0761 and associated items CAR-OTP-2018-0777 (Annex 1); CAR-OTP-2018-0778 (Annex 2); CAR-OTP-2018-0779 (Annex 3); CAR-OTP-2018-0780 (Annex 4); CAR-OTP-2019-1230; CAR-OTP-2018-0781 (Annex 5); CAR-OTP-2018-0782 (Annex 6) and CAR-OTP-2018-0783 (Annex 7).
- **P-0732:** Statement, CAR-OTP-2061-0003; Translation, CAR-OTP-2107-7884 and associated item CAR-OTP-2061-0022 (Annex 1).
- **P-1598:** Statement, CAR-OTP-2057-0892 and associated items CAR-OTP-2057-0915 (Annex B); CAR-OTP-2057-0916 (Annex C); CAR-OTP-2057-0917 (Annex D) and CAR-OTP-2057-0918 (Annex E).
- **P-1964:** Statement, CAR-OTP-2094-1755; CAR-OTP-2107-6358 (Translation) and associated items CAR-OTP-2094-1769 (Annex A) and CAR-OTP-2094-1770 (Annex B).
- **P-2205:** Statement, CAR-OTP-2108-0465; Translation, CAR-OTP-2107-6579 and associated items CAR-OTP-2083-0942 to CAR-OTP-2083-3161; CAR-OTP-2083-1170; CAR-OTP-2083-1173; CAR-OTP-2083-1200; CAR-OTP-2083-1231; CAR-OTP-2083-1234 (including their transcriptions, CAR-OTP-2127-6555; CAR-OTP-2127-6558; CAR-OTP-2127-6241; CAR-OTP-2127-6243; CAR-OTP-2127-6246; and translations, CAR-OTP-2127-6606; CAR-OTP-2127-6610; CAR-OTP-2127-6358; CAR-OTP-2127-6361; CAR-OTP-2127-6365; as well as item CAR-OTP-2122-9994).
- **P-0460:** Statement, CAR-OTP-2013-0536; Translation, CAR-OTP-2122-4754 and associated item CAR-OTP-2013-0549 (Annex I).

- **P-0461:** Statement, CAR-OTP-2031-0190; Translation, CAR-OTP-2107-1266 and associated items CAR-OTP-2031-0202 (Annex A); CAR-OTP-2031-0203 (Annex B); CAR-OTP-2031-0204 (Annex C); CAR-OTP-2031-0205 (Annex D); CAR-OTP-2031-0206 (Annex E); CAR-OTP-2031-0207 (Annex F); CAR-OTP-2031-0209 (Annex G) and CAR-OTP-2011-0003. However, the Chamber will not rely on paragraphs 38 and 43 of the statement for the purposes of establishing Mr Ngaïssona's acts and conduct.
- **P-1143:** Statement, CAR-OTP-2058-0227; Translation, CAR-OTP-2122-4161 and associated items CAR-OTP-2058-0503 (Annex A); CAR-OTP-2058-0529 (Annex B); CAR-OTP-2058-0531 (Annex C); CAR-OTP-2058-0250 (Annex D); CAR-OTP-2058-0251 (Annex E) and CAR-OTP-2035-0172.
- **P-2472:** Statement, CAR-OTP-2110-0355; CAR-OTP-2122-4595 (Translation) and associated items CAR-OTP-2110-0385 (Annex 1); CAR-OTP-2110-1053 to CAR-OTP-2110-1076 (Annex 2); CAR-OTP-2110-0388 (Annex 3); CAR-OTP-2110-0396 (Annex 4); CAR-OTP-2110-0399 (Annex 5) and CAR-OTP-2110-0436 (Annex 6). However, the Chamber will not rely on paragraphs 26-28 and 81 of the statement for the purposes of establishing Mr Yekatom's acts and conduct.
- **P-0520:** Statement, CAR-OTP-2050-0788; Translation, CAR-OTP-2059-1407 and associated items CAR-OTP-2050-0806 (Annex A); CAR-OTP-2050-0817 (Annex B); CAR-OTP-2050-0820 (Annex C); CAR-OTP-2050-0822 (Annex D); CAR-OTP-2050-0824 (Annex E) and CAR-OTP-2049-0462. However, the Chamber will not rely on paragraphs 44 and 69 of the statement for the purposes of establishing Mr Ngaïssona's acts and conduct.
- **P-1676:** Statement, CAR-OTP-2066-0105 and associated items CAR-OTP-2030-0061 to CAR-OTP-2030-0069.
- **P-1865:** Statement, CAR-OTP-2066-0134 and associated items CAR-OTP-2066-0148 (Annex 1) and CAR-OTP-2066-0149 (Annex 2).
- **P-2377:** Statement, CAR-OTP-2108-0609; Translation, CAR-OTP-2107-8810 and associated items CAR-OTP-2108-0632 (Annex 1); CAR-OTP-2108-0675 to CAR-

OTP-2108-1660 and CAR-OTP-2108-1710, and their respective transcriptions and translations.

- **P-1584:** Statement, CAR-OTP-2056-0447. However, it will not rely on paragraphs 130-133 of the statement for the purposes of establishing Mr Yekatom's acts and conduct.

REJECTS the requests to introduce the prior recorded testimonies of the following witnesses pursuant to Rule 68(2)(b) of the Rules:

- **P-2326**
- **P-1721**
- **P-2698**
- **P-0974**
- **P-0473**
- **P-1990**
- **P-0589**

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimonies of the following witnesses will be introduced pursuant to Rule 68(3) of the Rules:

- **P-0974:** Statement, CAR-OTP-2058-0165; Translation, CAR-OTP-2118-0813 and associated items CAR-OTP-2058-0184 (Annex A) and CAR-OTP-2058-0186 (Annex B).
- **P-1990:** Statement, CAR-OTP-2124-0247; Translation, CAR-OTP-2122-5638; and associated items CAR-OTP-2124-0261 (Annex A); CAR-OTP-2119-0187 (Annex B) and CAR-OTP-2119-0188 (Annex C).

CONSIDERS the Third Request with regard to P-0811, and the Fourth Request with regard to P-1172, moot;

ORDERS the Registry to reflect in JEM that the witnesses' prior recorded testimonies have been introduced as soon as a declaration under Rule 68(2)(b)(ii) and (iii) of the Rules has been filed; and to link these declarations to the prior recorded testimonies and mark them with the 'Related to Witness' field;

ORDERS the Prosecution to disclose Annex A to P-1864's statement; Annex A to P-1871's statement; and Annexes 2 and 3 to P-2377's statement within 10 days of notification of this decision;

ORDERS the Defence to submit observations on the introduction of Annex A to P-1864's statement; Annex A to P-1871's statement; and Annexes 2 and 3 to P-2377's statement, if any, within 10 days of their disclosure;

REMINDS the Prosecution of its directions to publish public redacted versions of the prior recorded testimonies (*see* in particular, emails from the Chamber on 3 June 2021, at 15:58 and 20 August 2021, at 10:16);

ORDERS the Prosecution to file a public redacted version of its leave to reply request ICC-01/14-01/18-836-Conf;

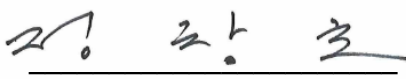
ORDERS the CLRV to file public redacted versions of their responses ICC-01/14-01/18-731-Conf, ICC-01/14-01/18-761-Conf, ICC-01/14-01/18-820-Conf;

ORDERS the Yekatom Defence to file a public redacted version of its supplemental submissions in filing ICC-01/14-01/18-1574-Conf-Exp;

INSTRUCTS the Prosecution to review the necessity of the redactions applied to the Fifth Request, paragraph 36, as well as to P-2377's statement, CAR-OTP-2108-0609, at 0624 and 0625, and file lesser redacted versions within two weeks of notification of the present decision; and

INSTRUCTS the Prosecution to file a corrigendum of Annex A to the Fourth Request, ICC-01/14-01/18-794-Red, aligning the paragraph numbers in the redacted version with those of the confidential version, ICC-01/14-01/18-794-Conf.

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

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 17 April 2023

At The Hague, The Netherlands