

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 April 2025

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez
Judge Keebong Paek, Alternate Judge**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public Redacted

**Decision on the Defence's Request under Rule 68(2)(b) to Introduce the Prior
Recorded Testimony of P-0015, P-0025, P-2926 and P-0405**

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for
Victims

☐ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, pursuant to 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 ‘Decision on the Defence’s Request under Rule 68(2)(b) to Introduce the Prior Recorded Testimony of P-0015, P-0025, P-2926 and P-0405’.

I. PROCEDURAL HISTORY

1. On 8 October 2024, the Chamber issued the ‘Third Directions on the Conduct of Proceedings’ setting deadlines for the filing of applications pursuant to rule 68 of the Rules by the Defence.¹
2. On 3 March 2025, the Defence submitted its request pursuant to rule 68(2)(b) of the Rules for the introduction of the prior recorded testimony of four witnesses: P-0015, P-0025, P-2926 and P-0405 (the ‘Request’).²
3. On 5 March 2025, the Chamber filed the ‘Fourth Directions on the Conduct of Proceedings’, in which it instructed the Defence to ask the witnesses who were the subject of the Request whether they would be prepared to testify in person if the Request were rejected.³
4. On 14 March 2025, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request (the ‘Response’).⁴
5. The Common Legal Representative of Victims did not file observations on the Request.

¹ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#), para. 16.

² Version publique expurgée de la « Requête visant à introduire la Déclaration Antérieure des témoins P-0015, P-0025, P-2926 et P-0405 en vertu de la Règle 68(2)(b) du Règlement de procédure et de preuve », 10 March 2025, [ICC-01/14-01/21-931-Red](#). A confidential version was filed on 3 March 2025 (ICC-01/14-01/21-931-Conf).

³ Fourth Directions on the Conduct of Proceedings, 5 March 2025, [ICC-01/14-01/21-932](#), para. 15.

⁴ Prosecution response to Defence’s request to introduce prior recorded testimonies of Witnesses P-0015, P-0025, P-2926 and P-0405 pursuant to rule 68(2)(b) of the rules of procedure and evidence (ICC-01/14-01/21-931-Conf), 14 March 2025, ICC-01/14-01/21-938-Conf.

6. On 21 March 2025, the Defence filed an update on the witnesses that are the subject of the Request, informing the Chamber that: (i) P-0015 indicated that she is willing to testify if need be; (ii) P-0025 and P-2926 indicated that they do not wish to testify and the Defence does not intend to request a summons compelling the witnesses to appear; and (iii) the Defence has not yet been able to contact P-0405 [REDACTED].⁵

II. APPLICABLE LAW

7. For the applicable law, the Chamber refers to the ‘Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules’, which it considers to be applicable *mutatis mutandis* to Defence rule 68(2)(b) requests.⁶

III. ANALYSIS

8. The Request pertains to four witnesses, P-0015, P-0025, P-2926 and P-0405. In the Defence’s submission, the prior recorded testimony of these witnesses and the annexes thereto satisfy the requirements of rule 68(2)(b) of the Rules as they provide sufficient indicia of reliability, are relevant to the case and corroborate other evidence in the record.⁷ According to the Defence, the introduction of the evidence provided by the four witnesses would contribute to the emergence of the truth and the expeditiousness of the proceedings.⁸

9. The Chamber will deal with the Request in respect of each of the witnesses separately below.

⁵ Version confidentielle expurgée des « Soumissions de la Défense conformément à la « Decision on the Defence’s Request for an Extension of Time to File its Final List of Witnesses, List of Evidence and Complete Disclosure » (ICC-01/14-01/21-920- Conf-Exp) rendue par la Chambre de première instance VI le 21 février 2025 », 26 March 2025, [ICC-01/14-01/21-948-Red](#). A confidential version was filed on 21 March 2025, ICC-01/14-01/21-948-Conf-Red (the ‘Defence Submissions’), paras 39-42. A confidential *ex parte* version was filed simultaneously (ICC-01/14-01/21-948-Conf-Exp).

⁶ Public Redacted Version of Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, 21 October 2022, [ICC-01/14-01/21-507-Red](#) (the ‘First Rule 68(2)(b) Decision’), paras 9-15, 17-33. A confidential version was filed on 20 October 2022 (ICC-01/14-01/21-507-Conf).

⁷ Request, [ICC-01/14-01/21-931-Red](#), para. 13.

⁸ Request, [ICC-01/14-01/21-931-Red](#), para. 13.

A. P-0015

10. The Defence submits that P-0015 is an international jurist with [REDACTED] of experience in the field of conflict studies, both at the academic and political levels, with particular expertise on the issue of armed non-state actors.⁹ P-0015's prior recorded testimony comprises a two-page statement referring to two publications [REDACTED] (the '2013 Report') and [REDACTED] (the '2016 Report')) and one publication, [REDACTED] (the '2017 Report')).¹⁰ P-0015's prior recorded testimony affirms the content and conclusions of the 2013 Report, confirms that a scientific and legal approach validated by peer review was followed in its drafting, and states that the report was based on open source material as well as sources on the ground with direct access to the situation.¹¹ The three reports are annexed to and submitted with P-0015's statement, together with a copy of P-0015's passport and curriculum vitae.¹²

11. The Prosecution argues that the documents that the Defence seeks to introduce under rule 68(2)(b) in respect of P-0015 'are not testimonial in nature and can be sought to be submitted through other avenues.'¹³ The Prosecution further submits that the 2013 Report lacks sufficient indicia of reliability. In this regard, the Prosecution notes that, while P-0015 states that sources on the ground with direct access to the situation were relied upon in writing the article, the footnotes do not refer to persons who were interviewed or observations/findings that P-0015 personally made in CAR.¹⁴ Finally, the Prosecution contends that P-0015's alleged prior recorded testimony relates to issues that are materially in dispute and, in relation to certain issues (for example 'the existence or non-existence of an armed conflict, the alleged "disappearance" of one of the parties to the conflict, and the alleged "disorganisation of the Seleka and the Anti-balaka"'), provide 'new accounts that are internally inconsistent and contradict the evidence on the record.'¹⁵

⁹ Request, [ICC-01/14-01/21-931-Red](#), para. 14.

¹⁰ CAR-D33-0014-2691, *referring to* CAR-D33-0014-1617, CAR-D33-0014-1632, CAR-D33-0014-1742.

¹¹ CAR-D33-0014-2691, at 2691.

¹² Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, p. 2.

¹³ Response, ICC-01/14-01/21-938-Conf, paras 11-13.

¹⁴ Response, ICC-01/14-01/21-938-Conf, para. 14.

¹⁵ Response, ICC-01/14-01/21-938-Conf, paras 15-16.

12. Regarding the 2016 Report and the 2017 Report, the Chamber notes that these reports concern conflicts in countries other than the Central African Republic that took place a number of years after the events that are the subject of the present proceedings. The Chamber cannot discern the relevance of these reports from the Request or from the statement of P-0015 through which the Defence seeks to submit the reports. Accordingly, the Chamber rejects the Request in respect of these two reports (CAR-D33-0014-1632 and CAR-D33-0014-1742).

13. The Chamber notes that the substance of P-0015's prior recorded testimony as it pertains to this case is an academic article (the 2013 Report) containing legal and factual conclusions regarding the situation in the Central African Republic during the period relevant to the charges. The Chamber is of the view that the evidence that the Defence seeks to introduce is not testimonial in nature and can therefore be introduced without having to conform to the requirements of rule 68 of the Rules and, in particular, the declaration/certification process necessary for the completion of the rule 68(2)(b) formalities.

14. The Chamber does not consider that any weight or value is added to the 2013 Report by the two-page statement of P-0015 validating its content and conclusions and loosely describing the methodology employed in its production. The 2013 Report speaks for itself and, in line with its approach to the assessment of evidence, the Chamber will consider the weight to be accorded to this evidence, as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused. Accordingly, the Defence would not be prejudiced by the introduction of the 2013 Report through the bar table.

15. Therefore, the Chamber rejects the Request insofar as it pertains to P-0015's prior recorded testimony. Should the Defence wish to submit the 2013 Report into evidence, it may submit a request to do so via the bar table.

B. P-0025

16. The Defence submits that P-0025 is an anthropologist [REDACTED] who testifies as to the heterogeneous nature of the Seleka coalition and the emergence of the

Anti-Balaka in the second half of 2013.¹⁶ P-0025's prior recorded testimony comprises a two-page statement referring to an article authored by P-0025 [REDACTED] (the 'Article').¹⁷ P-0025's prior recorded testimony: (i) affirms the content and conclusions of the Article; (ii) confirms that he followed a scientific approach validated by [REDACTED] by peer review; and (iii) states that the Article was based on P-0025's [REDACTED], as well as on the scientific and grey literature available at the time.¹⁸ The Article is annexed to and submitted with P-0025's statement, together with a copy of his passport and curriculum vitae.¹⁹

17. The Prosecution argues that P-0025's statement does not 'meet the requirements of a prior recorded statement or testimony since it is not countersigned by an investigator, Counsel(s) or any other representative of the Said Defence team who interviewed the Witness.'²⁰ In addition, the Prosecution objects to the introduction of the Article under rule 68(2)(b) of the Rules as it contains information relating to core issues disputed between the parties.²¹

18. The Chamber notes that the substance of P-0025's evidence is the Article [REDACTED], which comments on the social, political and historical dimensions of the violence in the Central African Republic [REDACTED]. The Chamber is of the view that the evidence that the Defence seeks to introduce is not testimonial in nature and can therefore be introduced without having to conform to the requirements of rule 68 of the Rules, and in particular the declaration/certification process necessary for the completion of the rule 68(2)(b) formalities.

19. The Chamber does not consider that any weight or value is added to the Article by the two-page statement of P-0025 validating its content and conclusions and loosely describing the methodology employed in its production. The Article speaks for itself and, in line with its approach to the assessment of evidence, the Chamber will consider the weight to be accorded to this evidence, as part of the holistic assessment of all

¹⁶ Request, [ICC-01/14-01/21-931-Red](#), paras 25-26, 29.

¹⁷ CAR-D33-0014-3340, *referring to* CAR-D33-0014-2705.

¹⁸ CAR-D33-0014-3340.

¹⁹ Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, p. 3.

²⁰ Response, ICC-01/14-01/21-938-Conf, para. 20.

²¹ Response, ICC-01/14-01/21-938-Conf, paras 21-23.

evidence submitted when deciding on the guilt or innocence of the accused. Accordingly, the Defence would not be prejudiced by the introduction of the Article through the bar table.

20. Therefore the Chamber rejects the Request insofar as it pertains to P-0025's prior recorded testimony. Should the Defence wish to submit the Article (CAR-D33-0014-2705) into evidence, it may submit a request to do so via the bar table.

C. P-2926

21. The Defence submits that P-2926 is an Associate Researcher at the [REDACTED], who testifies as to the disorganisation of the Seleka coalition as well as on the emergence of the Anti-Balaka in late 2013 and early 2014.²² P-2926's prior recorded testimony comprises transcripts of his testimony over two days before Trial Chamber V in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the 'Yekatom and Ngaïssona Case') where he appeared as a witness for the Prosecution.²³ The Defence requests submission of a number of annexes or items of associated material including a letter of instruction [REDACTED] from the Prosecution to P-2926 for the preparation of an expert report in the *Yekatom and Ngaïssona* Case, the expert report prepared by P-2926, his notebooks and previous annotated versions of the expert report, his curriculum vitae and other documents associated with his report.²⁴

22. The Prosecution argues that P-2926's prior recorded testimony relates to issues that are materially in dispute and should be introduced into evidence under rule 68(3) of the Rules rather than under rule 68(2)(b) of the Rules.²⁵

23. The Chamber notes that P-2926's prior recorded testimony contains background information and information relevant to establishing the contextual elements in the present case. Having considered the arguments presented by the parties in their briefs, the Chamber is of the view that these issues are materially in dispute. However, the

²² Request, [ICC-01/14-01/21-931-Red](#), paras 31-32.

²³ Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, referring to CAR-D33-0014-2797, CAR-D33-0014-2884, CAR-D33-0014-2987, CAR-D33-0014-3092.

²⁴ Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, pp. 4-6.

²⁵ Response, ICC-01/14-01/21-938-Conf, paras 24-25.

Chamber notes that this is merely a factor to be considered and not a bar to the introduction of prior recorded testimony under rules 68(2)(b) of the Rules.²⁶

24. The Chamber further finds that P-2926's prior recorded testimony has sufficient indicia of reliability given the circumstances in which it was given. The Chamber considers that the information provided by P-2926 is of a cumulative or corroborative nature in that other witnesses will give or have given oral testimony of similar facts. P-2926's prior recorded testimony does not mention the accused or pertain to his acts and conduct.

25. The Chamber finds that it would be in the interests of justice to introduce P-2926's prior recorded testimony and associated materials pursuant to rule 68(2)(b) of the Rules in order to streamline the presentation of evidence and to avoid calling numerous oral witnesses to testify regarding the same or similar events. In addition, the Chamber accepts the Defence's submission that it would be in the interests of justice that P-2926's testimony in the *Yekatom and Ngaïssona* Case should be placed on the record given that the expert report prepared by the witness was already submitted into evidence during the questioning of another witness in this case.²⁷

26. Taking the above into consideration, the Chamber allows the introduction of P-2926's prior recorded testimony and associated material under rule 68(2)(b) of the Rules.²⁸

D. P-0405

27. The Defence submits that P-0405 is a [REDACTED].²⁹ According to the Defence, P-0405's testimony is relevant to the timing of the emergence of the Anti-Balaka self-defence groups, the weapons available to them, the number of FACA elements and the number of leaders involved in the Anti-Balaka.³⁰ The Defence submits

²⁶ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), paras 21-22.

²⁷ See Request, [ICC-01/14-01/21-931-Red](#), para. 35.

²⁸ Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, pp. 4-6.

²⁹ Request, [ICC-01/14-01/21-931-Red](#), para. 37.

³⁰ Request, [ICC-01/14-01/21-931-Red](#), paras 38-45.

that P-0405's testimony is cumulative of and corroborated by the evidence of other Prosecution witnesses.³¹

28. The Prosecution is not opposed to the introduction of P-0405's testimony under rule 68(2)(b) of the Rules.³²

29. The Chamber notes that P-0405's prior recorded testimony is comprised of [REDACTED]. Therefore, the Chamber is satisfied that the prior recorded testimony bears sufficient indicia of reliability for the purposes of introduction pursuant to rule 68(2)(b) of the Rules.

30. The Chamber notes that P-0405's prior recorded testimony does not mention the accused nor does it pertain to his acts and conduct. The Chamber notes that the prior recorded testimony contains background information and information relevant to establishing the contextual elements in the present case. The Chamber considers that P-0405's prior recorded testimony is broadly speaking cumulative and corroborative of other similar evidence it has received on the issues the Defence considers relevant to the present case.³³ Noting that P-0405 joined the Anti-Balaka in November 2013 and does not appear to have extensive information regarding the organisation and activities of the Anti-Balaka prior to this time,³⁴ the Chamber considers it would be in the interests of justice to introduce the prior recorded statement of P-0405 pursuant to rule 68(2)(b) of the Rules in order to streamline the presentation of evidence and to avoid calling numerous oral witnesses to testify regarding the same or similar events.

31. Taking the above into consideration, the Chamber allows the introduction of the prior recorded testimony of P-0405 under rule 68(2)(b) of the Rules.³⁵ The Chamber notes that [REDACTED].³⁶ [REDACTED]

³¹ Request, [ICC-01/14-01/21-931-Red](#), paras 38-46.

³² Response, ICC-01/14-01/21-938-Conf, para. 27.

³³ Request, [ICC-01/14-01/21-931-Red](#), paras 40-45.

³⁴ CAR-OTP-2107-3558, at 4563; CAR-OTP-2118-6171 at 6179.

³⁵ Annex to Request, ICC-01/14-01/21-931-Conf-Anx1, pp. 7-8.

³⁶ Defence Submissions, [ICC-01/14-01/21-948-Red](#), para. 42.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS the introduction of the prior recorded testimony and associated material of P-2926 and the prior recorded testimony of P-0405 pursuant to rule 68(2)(b) of the Rules; and

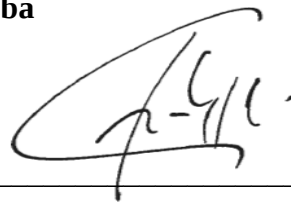
REJECTS the remainder of the Request.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

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

Dated 2 April 2025

At The Hague, The Netherlands