

**Cour
Pénale
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**International
Criminal
Court**

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

Date: 15 August 2025

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba , Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godinez
Judge Keebong Paek , Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Corrected version of “Public Redacted Version of “Prosecution Response to Defence’s Request to Introduce Prior Recorded Testimony of P-0035 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (ICC-01/14-01/21-999-Conf)”, ICC-01/14-01/21-1005-Conf, dated 31 July 2025”, ICC-01/14-01/21-1005-Red, dated 5 August 2025

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) opposes the “Defence Request”¹ to introduce the prior recorded testimony of witness P-0035 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) since a) the prior recorded testimony of P-0035² relates to issues that are materially in dispute and of significance or uncorroborated by other evidence, b) P-0035’s prior recorded testimony is not entirely corroborative or cumulative in nature, and c) the interest of justice would be served by calling the witness to testify *viva voce* or at a minimum, by introducing the prior recorded testimony pursuant to rule 68(3) of the Rules.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis (2) of the Regulations of the Court, this filing is filed as confidential because it responds to the Defence’s Request which was filed confidentially and because it refers to confidential items of evidence. A public redacted version will be filed as soon as practicable.

III. PROCEDURAL HISTORY

3. On 21 March 2025, the Defence requested additional time to complete its investigations.³
4. On 1 April 2025, the Chamber issued its decision on the Defence’s request for additional time to complete its investigations and set the deadline of 2 May 2025 for, *inter alia*, the Defence to file any request to introduce the prior recorded testimony pursuant to rule 68 of the Rules.⁴
5. On 2 May 2025, the Defence requested additional time to complete its investigations.⁵

¹ ICC-01/14-01/21-999-Conf (Defence Request).

² **P-0035 proces verbal:** CAR-D33-0015-4474.

³ ICC-01/14-01/21-948-Conf-Red.

⁴ ICC-01/14-01/21-955-Conf.

⁵ ICC-01/14-01/21-975-Conf-Red.

6. On 23 June 2025, the Chamber rendered its decision setting final deadlines for the Defence's presentation of evidence and ordering, *inter alia*, the Defence to file any request pursuant to rule 68 of the Rules for the State officials no later than three days [REDACTED] and in any event no later than 22 August 2025.⁶
7. On 18 July 2025, the Defence submitted their request for the formal submission of prior recorded testimony for P-0035 pursuant to Rule 68(2)(b) of the Rules.⁷
8. On 25 July 2025, the Chamber issued a decision setting a deadline in respect of P-0405 and ordering the Defence to file its formal notice notifying the conclusion of its presentation of evidence on 5 September 2025.⁸

IV. SUBMISSIONS

A. The prior recorded testimony of P-0035 relates to issues that are materially in dispute and of significance⁹ or uncorroborated by other evidence

9. The Prosecution respectfully submits that P-0035 should testify entirely *viva voce* at the seat of the court or at a minimum, pursuant to rule 68(3) of the Rules since his "prior recorded testimony relates to matters which are soundly and conceivably disputed between the parties, and are crucial, or of at least sufficient significance for the Chamber's eventual determination of the charges against the accused in its judgement under Article 74 of the Statute."¹⁰
10. Witness P-0035 was present in Bangui during the entire period relevant to the charges¹¹ and his evidence goes beyond background information as relevant to the contextual elements of the crimes charged in this case, which relate to issues that are materially in dispute and of significance or uncorroborated by other evidence. In particular, P-0035's prior recorded testimony relates to key aspects of the Defence case such as the non-

⁶ ICC-01/14-01/21-986-Conf-Red.

⁷ ICC-01/14-01/21-999-Conf (Defence Request).

⁸ ICC-01/14-01/21-1002-Conf-Red.

⁹ ICC-01/12-01/18-2241, para. 15 (*Al Hassan* case); see also ICC-02/04-01/15-596-Red, para. 15 (*Ongwen* case).

¹⁰ ICC-01/12-01/18-2241, para. 15 (*Al Hassan* case); see also ICC-02/04-01/15-596-Red, para. 15 (*Ongwen* case).

¹¹ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4475 ("2. *Déploiement à Bangui*").

existence of an armed conflict,¹² it contests other witnesses' accounts, and is inconsistent with a large body of other evidence on record on these issues.

11. For example, P-0035 claims that there was no coordination between the different groups that composed the Seleka, that this "Coalition" was not something well organized in appearance¹³ and that the Seleka were barely armed when they arrived in Bangui on 24 March 2013.¹⁴ The witness also claims that there was no hierarchy within the Seleka.¹⁵ However, this claim is in fact contradicted by a substantial body of other evidence that is already on record, which indicates that; i) the Seleka had the capacity to conduct military operations, most notably the 24 March 2013 capture of Bangui,¹⁶ and ii) the Seleka controlled large territory in the Central African republic "CAR" from late 2012, including its capital by 24 March 2013 as well as other critical CAR territory and therefore was sufficiently organized.¹⁷
12. For instance, P-0787 explains that even if the Seleka were composed of different groups that were traditionally rivals, they worked together within the Seleka coalition.¹⁸ P-0435 confirms that the Seleka had 7000 members in Bangui including many small groups under the command of a General and during the preparation of its rebellion, each General

¹² **P-0035 proces verbal:** CAR-D33-0015-4474 at 4478-4479, 4481-4484, 4486-4487. Defence Request, paras. 15, 17, 18, 20-21. See also ICC-01/12-01/18-449-Conf, paras. 239-300 (Defence trial brief).

¹³ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4482 ("*Il n'y a pas de coordination entre les différents groupes qui composent la Seleka*"). See also Defence Request, para. 19.

¹⁴ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4478 ("*Ils étaient a peine armes*").

¹⁵ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4484 ("*Il n'y a pas de hierarchie*").

¹⁶ **P-1167:** T-034-CONF-ENG CT, 43:9-19; **P-1167:** T-035-CONF-ENG-CT, 55:6-9; **P-2563:** T-113-ENG-CONF CT, 4:15-5:25, 6:1-5; **P-2563:** T-112-ENG-CONF CT, 11:6-11, 17:23-18:3, 19:14-18, 29:1-5; **P-0787 statement:** CAR-OTP-2130-0893 at 0915, para. 93; **P-0881 statement:** CAR-OTP-2130-5262 at 5268, para. 32; **P-0435 statement:** CAR-OTP-2104-0954 at 0979, para. 134; **P-0510 statement:** CAR-OTP-2017-0835 at 0838-0839, paras. 14-16; **P-0338:** T-017-ENG-CONF CT, 47:18-23; **P-1167:** T-034-ENG-CONF CT, 54:16-55:16; **P-2105:** T-023-ENG-CONF CT, 27:19-28 :8, 29:2-24; **P-0342:** T-124-ENG-CONF, 28:8-13. P-0342 provided photograph **CAR-OTP-2074-1121** taken in Bangui at that time showing a Seleka element with arsenal; **P-1263:** T-104-ENG-CONF CT, 35:16-36:17; 43:4-46:1-2; **P-1263:** T-105-ENG-CONF CT, 3:25-42; **P-0342:** T-123-ENG-CONF CT, 52:8-17; **P-0342:** T-124-ENG-CONF CT, 11:12-24:10; **P-2563:** T-112-ENG-CONF CT, 36:3-20; T-114-ENG-CONF CT, 12: 4-15; See **photographs** CAR-OTP-2074-1124, CAR-OTP-2069-3249 and CAR-OTP-2042-4942. See also **photographs** CAR-OTP-2074-0814 and CAR-OTP-2074-0824 taken by P-0342 showing armed Seleka troops carrying weapons. **P-1264:** T-098-ENG-CONF-CT, 10:18-11:4; **P-0481:** T-072-ENG-CONF CT, 10:21-11:16; **P-2478 statement:** CAR-OTP-2107-8835, para. 26; **P-1825 statement:** CAR-OTP-2079-0315, para. 21. **P-1205:** T-024-ENG-CONF-CT, 32:2-22:5. **P-2563:** T-112-ENG-CONF CT, 18:4-20; **P-2105:** T-23-ENG-CONF CT, 27:19-28:13. **P-2105:** T-023-ENG-CONF CT, 27 :7-11; **P-2105 :** T-025-ENG-CONF CT, 28:25-29:9; **P-2563:** T-112-ENG-CONF CT, 25:1-20. **P-2105:** T-023-ENG-CONF CT, 31:12-32 :20; **FIDH report:** CAR-OTP-2001-2890 at 2903 and 2905.

¹⁷ **P-1263:** T-104-ENG-CONF CT, 32 :7-15; **P-3056:** T-20-CONF-ENG CT, 9:16-10:2; **P-0342:** T-123-CONF-ENG CT, 47:1-49:22; **P-1737:** T-044-CONF-ENG CT, 10:20-11:6; **HWR report:** CAR-OTP-2001-1870 at 1883 and 1888.

¹⁸ **P-0787 statement:** CAR-OTP-2130-0893 at 0915, para. 93.

brought their elements and Nourredine ADAM was known for commanding the highest number of Seleka elements.¹⁹ P-0881 states that the Seleka were well equipped in military arms, had vehicles and used military grades to coordinate orders.²⁰ Also, P-0510 gives an example of when BOZIZE himself realized that the Seleka were stronger militarily in a battle on the road to Boali, he returned to Bangui.²¹ The International Federation for Human Rights “FIDH” report states that despite the presence of international forces of FOMAC and from South Africa and the peace agreements of ECCAS, the Seleka entered the capital and overthrew the regime of BOZIZE.²² In DJOTODIA’s estimation, the war commanders were accompanied by 5,000 men when they entered Bangui on 24 March 2013 and continued to other locations with the aim of taking control of the whole territory. The Seleka were heavily armed with submachine guns, guns, grenades and knives.²³

13. The Human Rights Watch “HRW” report states that on 10 December 2012, an alliance of three major rebel groups known as the Seleka coalition began a campaign to overthrow the government of BOZIZE. On 24 March 2013, the Seleka took control of Bangui and seized control of 15 out of the 16 provinces in the CAR. The Seleka forces destroyed numerous rural villages and looted country-wide.²⁴ Indeed, as the Seleka moved down to Bangui from the northeast, they captured major towns along the way. The Seleka looted the civilian population and threatened, injured or killed those who tried to resist. The HRW documented attacks by the Seleka forces and their allies in the northern CAR between February and June 2013.²⁵

14. P-0035 claims that on 24 March 2024, the Seleka were armed with cartridge belts but mainly used machetes.²⁶ P-0035 appears to support the Defence’s allegations that there was no fight in Bangui on 24 March 2013 except for reported gun shots,²⁷ Seleka chasing and

¹⁹ **P-0435 statement:** CAR-OTP-2104-0954 at 0979, para. 134.

²⁰ **P-0881 statement:** CAR-OTP-2130-5262 at 5268, para. 32.

²¹ **P-0510 statement:** CAR-OTP-2017-0835 at 0838-0839, paras. 14-16.

²² **FIDH report:** CAR-OTP-2001-2890 at 2903.

²³ **FIDH report:** CAR-OTP-2001-2890 at 2905.

²⁴ **HRW report:** CAR-OTP-2001-1870 at 1883.

²⁵ **HRW report:** CAR-OTP-2001-1870 at 1888.

²⁶ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4481 (“*Les membres de la Seleka etaient armes avec des cartouchieres mais ils se servaient surtout de leur machettes*”). See also Defence Request, para. 17.

²⁷ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4481 (“*ils ont tire en l’air de joie en arrivant a Bangui*”) and 4483 (“*on nous rapporte des coups de feu dans tels faubourgs de Bangui*”).

cutting the FACA with machetes,²⁸ and stealing all mattresses at the hospital²⁹ and all the pick-up vehicles.³⁰ However, this claim is contradicted by a substantial body of other evidence on record which demonstrate that there was heavy fighting in Bangui before and on 24 March 2013.³¹ P-0510 states that heavy weaponry was used during the battles between the Presidential guards of BOZIZE and the Seleka in Bangui on 24 March 2013 while the witness was at home on the outskirts of Bangui. P-0510 saw heavy weaponry such as large long guns mounted on trucks which could shoot at buildings, vehicles or helicopter. P-0510 heard mortar shells falling on Bangui as both Seleka and FACA used RPGs and grenades. The Seleka obtained their arms from the Sudanese militias and seized big weapons from BOZIZE's Guantanamo prison base in Bossembele as well as the ones they seized from the FACA in Damara and from the South African soldiers in Bangui.³² P-0510 heard the Seleka engaging the South African soldiers at PK10 in a major fight resisting the Seleka gaining control of Bangui.³³

15. P-0035 claims that the Anti-Balaka is a small group that was not organized,³⁴ and that there was no coordination between them before the attack of 5 December 2013 on Bangui.³⁵ This claim is contradicted by a substantial body of other evidence on record which demonstrate that; i) the pro-BOZIZE forces were organized,³⁶ ii) the pro-BOZIZE forces carried out coordinated military attacks,³⁷ and 3) the pro-BOZIZE forces had significant logistical

²⁸ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4481 ("A ce moment la, ceux qui étaient pris par la Seleka en uniforme étaient decoupés à la machette") and 4482 ("Ils étaient pris pour cible. Durant plusieurs semaines il y a eu une chasse aux FACA").

²⁹ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4478 ("quand ils sont arrivés à Bangui, ils ont volés tous les matelats de l'hôpital").

³⁰ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4482 ("La Seleka avait volé tous les pick-up").

³¹ **P-0510 statement:** CAR-OTP-2017-0835 at 0838-0839, paras. 14-16.

³² **P-0510 statement:** CAR-OTP-2017-0835 at 0838, para. 15.

³³ **P-0510 statement:** CAR-OTP-2017-0835 at 0839, para. 16.

³⁴ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4486 ("C'est des groupuscules qui ne sont pas organisés").

³⁵ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4486 ("Il n'y avait pas de coordination avant le 5 décembre 2013").

³⁶ **B2 Report of 6 July 2013:** CAR-OTP-2075-0908; **B2 Report of 1 August 2013:** CAR-OTP-2075-0933; **P-1339:** T-131-CONF-ENG CT, 19:16-20:1; **P-2232:** T-102-CONF-ENG CT, 12:18-15:25; **P-2328 statement:** CAR-OTP-2099-0165 at 0179, para.73; **P-1339:** T-131-CONF-ENG CT, 19:1-24; **Letter from CAR to DRC:** CAR-OTP-2034-4641; **B2 Report of 5 July 2013:** CAR-OTP-2075-0906; **MoPS document:** CAR-OTP-2034-3552 at 3553.

³⁷ **P-0342:** T-123-ENG-CONF CT, 34:14-24; **P-1339:** T-131-CONF-ENG CT, 1-11; **P-0547:** T-012-ENG-CONF CT, 15:22-16:1; **P-2232:** T-102-ENG-CONF CT, 7-13, 19:14-23, 21:11-22:25, 36:11-23, 39:17-40:9; **B2 Report of 19 August 2013:** CAR-OTP-2075-0949; **Media article:** CAR-OTP-2050-0989; ; **P-1339:** T-131-ENG-CONF CT, 38:6-15 ; 41:6-12; **P-2328 statement:** CAR-OTP-2099-0165 at 0179-0180, 0182, paras. 75, 87-89; **P-1339:** T-131-ENG-CONF CT, 30:15-23; **P-0975 statement:** CAR-OTP-2107-1329 at 1336, paras. 37-40. **P-0291:** T-60-ENG-CONF CT, 10:15-24.

capacity.³⁸ The evidence further shows that elements of the FACA and other groups loyal to BOZIZE were used to consolidate self-defence groups in the CAR into the Anti-Balaka, led by BOZIZE and his allies.³⁹ The Anti-Balaka emerged as an insurgency group which was a key part of the pro-BOZIZE forces providing considerable additional combat power in carrying out attacks against the Seleka in western CAR, leading to a large scale attack on Bangui on the 5 December 2013. In fact, the Seleka continually monitored pro-BOZIZE forces through security and intelligence activities.⁴⁰

16. P-0035 claims that the Seleka stole all the pick-up vehicles and repainted them in pink,⁴¹ which is a new information that is not supported or corroborated by any evidence on record. On the contrary, other witnesses described vehicles used by the Seleka for example, as a “white un-plated BJ75 pick-up truck”,⁴² a “white 4x4 Toyota Seleka vehicle”,⁴³ an “army green BG75 with OCB written on it and a black car with tinted windows”,⁴⁴ a “white Land Cruiser”,⁴⁵ a “grey VX (...) large vehicle”,⁴⁶ or “green BG75 vehicles”.⁴⁷ Furthermore, photographs already formally submitted through witnesses on the record show army green and white Seleka vehicles.⁴⁸ The FIDH report also refers to a large

³⁸ **P-2328 statement:** CAR-OTP-2099-0165 at 0173-0174, paras. 45-49; **P-1339:** T-131-ENG-CONF CT, 6-14, 30:3-23; **P-2232:** T-102-ENG-CONF CT, 39:8-40:24; 42:2-20.

³⁹ See ICC-01/14-01/18-403-Corr-Red (*Yekatom and Ngaïssona* Confirmation Decision), paras. 62, 111.

⁴⁰ See *ordre de mission - CAR-OTP- 2034-2837* at 2838 (Ordre de mission from the MoPS REDACTED); The document demonstrates awareness for pro-Bozize supporters in Zongo; **CAR-OTP- 2034-3090** (Ordre de Mission from the MoPS authorizing REDACTED to go to Zongo on a security mission); The document demonstrates that in July 2013 there was an identified security issue with pro- Bozize forces in Zongo; **CAR-OTP- 2034-3103** (Ordre de Mission from the MoPS authorizing REDACTED to go to Zongo); The document demonstrates that in early August 2013 there was an identified security issue with pro-Bozize forces in Zongo; **CAR-OTP- 2034-4018** (a group of documents regarding a mission to Congo and the FACA which fled with war weapons, vehicles and munition there after 24 March 2013). See also Military intelligence reports - **CAR-OTP-2075-0906** (Military intelligence report of 5 July 2013, informing the government about the pro-BOZIZE forces organising themselves to attack the current regime); **CAR-OTP-2075-0908** (Military intelligence report of 6 July 2013, informing the government of a preparatory meeting carried out by a group of rebels, presided by Captain GOUDEMON, a former Presidential Guard); **CAR-OTP-2075-0933** (Military intelligence report of 1 August 2013, informing the government of the existence of a group of rebels in Cameroon preparing to destabilise the current regime and the group is commanded by pro-BOZIZE officers including GOUDEMON, PAPY BOZIZE, GBADORA and FRANCOIS BOZIZE).

⁴¹ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4482 (“*Cotation 1084: (...) La Seleka avait vole tous les pick-up et les avaient repeints en rose*”).

⁴² **P-0358 statement:** CAR-OTP-2043-0433 at 0445, para. 85.

⁴³ **P-2263 statement:** CAR-OTP-2089-1229 at 1231, para. 15

⁴⁴ **P-2607 statement:** CAR-OTP-2125-0855 at 0858, para. 17.

⁴⁵ **P-0622 statement:** CAR-OTP-2022-0121 at 0126, para. 37.

⁴⁶ **P-2692 statement:** CAR-OTP-2125-0922 at 0927, para. 28.

⁴⁷ **P-2386 statement:** CAR-OTP-2135-2792 at , para. 37.

⁴⁸ CAR-OTP-2047-0326, CAR-OTP-2047-0327, CAR-OTP-2047-0333, CAR-OTP-2047-0334, CAR-OTP-2047-0366 and CAR-OTP-2047-0404.

number of Seleka pick-up trucks recognizable by daubs of paint and slogan, which carry submachine guns mounted on tripods, rocket launchers and rockets.⁴⁹

17. P-0035's prior recorded testimony thus relates to issues that are materially in dispute and of significance or uncorroborated by other evidence for the Chamber's determination of the charges, namely, the contextual elements of war crimes and crimes against humanity. For these reasons, P-0035 should be called to appear before the Chamber so that he may be subjected to cross-examination to test the veracity or reliability of his evidence.

B. P-0035's prior recorded testimony is not entirely corroborative or cumulative in nature

18. As demonstrated hereinabove at paragraphs 11-16, P-0035's prior recorded testimony is not entirely corroborative or cumulative in nature. The "mere fact that other Prosecution witnesses provided testimony on a certain issue does not per se render [P-0035's] evidence on that issue corroborative or cumulative."⁵⁰ There exists a substantial body of other evidence on record which directly contradict P-0035's version of events. Consequently, P-0035's prior recorded testimony is not entirely corroborative or cumulative in nature, and as such, he should be called to appear in court so that he can be examined by all parties.

C. The interest of justice would be served by calling witness P-0035 to testify *viva voce* or at a minimum, by introducing the prior recorded testimony pursuant to rule 68(3) of the Rules

19. The Chamber's decision of whether to introduce a prior recorded testimony pursuant to rule 68(2)(b) of the Rules is a discretionary one and the entire purpose of this provision is to identify situations where it is not necessary to examine witnesses, while preserving a fair and expeditious trial.⁵¹
20. The Prosecution submits that it is in the interest of justice for P-0035 to testify *viva voce* before the court since P-0035's testimony is uniquely relevant as he is the only

⁴⁹ **FIDH report:** CAR-OTP-2001-2890 at 2905.

⁵⁰ ICC-01/12-01/18-1924 (*Al Hassan* case), para. 17. Emphasis added.

⁵¹ ICC-01/12-01/18-1402-Red2, para. 9 (*Al Hassan* case); ICC-01/12-01/18-1111-Red, para. 7 (*Al Hassan* case);

witness called by the defence who was present in the CAR during the charged period, and its therefore important that all parties are allowed to cross examine him.⁵² But more importantly, P-0035's allegations or assertions are not supported by any cited sources or evidence,⁵³ yet the same are contradicted in material terms by a large body of other evidence on record.⁵⁴ Furthermore, P-0035 fails to explain the basis of his knowledge,⁵⁵ yet he was REDACTED in the CAR during the relevant period of charges,⁵⁶ and resided in Bangui.⁵⁷ P-0035's omission to cite sources and provide basis of his knowledge, makes it difficult for the Prosecution and the Chamber to assess the credibility and reliability of P-0035's prior recorded testimony. It is therefore necessary and in the interest of justice that P-0035 be required to appear in court and be subjected to examination by all parties. This will enable the parties and the court to test the veracity of P-0035's evidence through proper cross-examination, in accordance with the principles of a fair trial, and the right to challenge evidence under the Rome Statute.

21. The Prosecution also submits that the search for the truth militates in favour of calling P-0035 to testify *viva voce* before this Chamber. P-0035's presence before the Chamber is necessary to clarify unsubstantiated allegations and internal inconsistencies in his prior recorded testimony such as those referred to at paragraphs 11-16 hereinabove, and for example, his allegations of the Seleka being barely armed or that the Seleka coalition was not something well organized in appearance⁵⁸ while acknowledging he does not have more information about the different groups within the Seleka.⁵⁹ In addition, P-0035's claim on the one hand, that there was no coordination between the Anti-Balaka groups before the attack of Bangui on 5 December 2013,⁶⁰ and on the other hand, that a movement of 1,000 to 20,000 fighters arriving in Bangui is necessarily coordinated in a certain measure,⁶¹ requires

⁵² ICC-01/05-01/13-1641, paras. 4-7.

⁵³ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4475-4487.

⁵⁴ See above paragraphs 11-16.

⁵⁵ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4475-4487.

⁵⁶ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4475 (*deploiement a Bangui*).

⁵⁷ **P-1289 statement:** CAR-OTP-2053-0359 at 0362, para. 19, at 0377, para. 106. **P-2386 statement:** CAR-OTP-2135-2792 at 2796-2797, para. 26, at 2798, para. 37, at 2799, para. 42.

⁵⁸ See above paragraph 11.

⁵⁹ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4478 (*"Je n'ai pas d'autres informations que celles déjà indiquées"*).

⁶⁰ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4487 (*"Il n'y avait pas de coordination avant le 5 decembre 2013"*).

⁶¹ **P-0035 proces verbal:** CAR-D33-0015-4474 at 4487 (*"Toutefois un mouvement de 1000 a 20 000 combattants qui arrivent a Bangui est nécessairement coordonne dans une certaine mesure"*).

some clarification. In view of the foregoing, it is in the interest of justice to allow the Prosecution to cross-examine P-0035 on various issues that are materially in dispute and relevant to the reliability of his prior testimony.

22. The Prosecution observes that during his interview, P-0035 volunteered personal comments in his answers⁶², denoting his willingness to comment further on certain topics. There is no mention in the Defence Request nor in P-0035's prior recorded testimony of P-0035's refusal or unavailability to testify *viva voce*. On the contrary, given that P-0035 has already consented for the interview, as approved by the REDACTED, there is no legal impediment to him testifying *viva voce*. P-0035 is REDACTED and his appearance in court can be secured in a timely manner without any delay. The Defence Request presents no concrete evidence that there would be any hardship, financial or otherwise, for him to testify in The Hague.
23. Furthermore, several witnesses refer to P-0035 in their testimonies on relevant facts of the case.⁶³ As such, given his position, and considering that he was directly involved with both sides of the conflict, it is only fair that all parties are afforded an opportunity to examine him.
24. Finally, the Prosecution submits that calling witness P-0035 to testify *viva voce* or pursuant to rule 68(3) of the Rules is not prejudicial to or inconsistent with the rights of the accused and will better assist the Chamber to determine the truth in this case and assess the probative value of P-0035's prior recorded testimony as part of its holistic assessment when deliberating its judgement pursuant to article 72(2) of the Rome Statute.⁶⁴

⁶² **P-0035 proces verbal:** CAR-D33-0015-4474 at 4480 ("*a titre personnel*"), at 4484 ("*REDACTED*").

⁶³ See **P-0884:** CAR-OTP-00001058 at 000017 (ICC-01/14-01/18-T-058-CONF-ENG ET) ; **P-0084:** CAR-OTP-00001097 at 000019-000020 (ICC-01/14-01/18-T-055-CONF-ENG ET) ; **P-0435 statement:** CAR-OTP-2017-0036 at para. 89 ; **P-0789 statement:** CAR-OTP-2023-0621 at 0635, para. 100; **P-0622 statement:** CAR-OTP-2029-0210 at 0224, paras. 122-125; **P-2386 statement:** CAR-OTP-2135-2792 at , para. 37.

⁶⁴ See ICC-01/14-01/21-932, para. 27 (Fourth Directions on the Conduct of Proceedings).

V. RELIEF SOUGHT

25. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Defence's Request to introduce the prior recorded testimony of witness P-0035 pursuant to rule 68(2)(b) of the Rules, and to order the witness to testify *viva voce* or at a minimum, to order his prior recorded testimony to be introduced pursuant to Rule 68(3) of the Rules instead, subject to fulfilment of the legal requirements of Rule 68(3) of the Rules.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 15th day of August 2025
At The Hague, The Netherlands