

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 August 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 Requests pursuant to Rule 68(2)(b) to Introduce the
Prior Recorded Testimony of P-0035 and P-0037**

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*, 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 ‘Decision on the Defence’s Requests pursuant to Rule 68(2)(b) to Introduce the Prior Recorded Testimony of P-0035 and P-0037’.

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 23 June 2025, the Chamber issued the ‘Decision Setting Final Deadlines for the Defence’s Presentation of Evidence and Related Directions’, in which it ordered the Defence to file any request pursuant to rule 68 of the Rules for P-0035 and P-0037 no later than 22 August 2025.²
3. On 18 July 2025, the Defence filed a request pursuant to rule 68(2)(b) of the Rules for the introduction of the prior recorded testimony of P-0035 (the ‘First Request’).³
4. On 31 July 2025, the Office of the Prosecutor (the ‘Prosecution’) responded to the First Request (the ‘First Response’).⁴

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

² Decision Setting Final Deadlines for the Defence’s Presentation of Evidence and Related Directions, 23 June 2025, [ICC-01/14-01/21-986-Red](#), p. 17. A confidential and confidential redacted versions were filed on the same day (ICC-01/14-01/21-986-Conf-Exp; ICC-01/14-01/21-986-Conf-Red).

³ Version publique expurgée de la « Requête visant à introduire la Déclaration Antérieure du témoin P-0035 en vertu de la Règle 68(2)(b) du Règlement de procédure et de preuve », 30 July 2025, ICC-01/14-01/21-999-Red. A confidential version was filed on 18 July 2025 (ICC-01/14-01/21-999-Conf).

⁴ 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, 15 August 2025, ICC-01/14-01/21-1005-Red-Corr. A confidential version was filed on 31 July 2025 (ICC-01/14-01/21-1005-Conf) and subsequently corrected on 15 August 2025 (ICC-01/14-01/21-1005-Conf-Corr).

5. On 4 August 2025, the Defence filed a request pursuant to rule 68(2)(b) of the Rules for the introduction of the prior recorded testimony of P-0037 (the ‘Second Request’).⁵

6. On 13 August 2025, the Prosecution responded to the Second Request (the ‘Second Response’).⁶

7. The Common Legal Representative of Victims did not file observations on the First or Second Requests.

II. APPLICABLE LAW

8. 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.⁷

III. SUBMISSIONS

A. First and Second Requests

9. The First and Second Requests pertain to two witnesses, P-0035 and P-0037, respectively. According to the Defence’s submission, the prior recorded testimony of these witnesses meet the requirements of rule 68(2)(b) of the Rules as they have sufficient indicia of reliability,⁸ are relevant to the case and corroborate other evidence in the record.⁹ The Defence further avers that the introduction of their prior recorded

⁵ Requête visant à introduire la Déclaration Antérieure du témoin P-0037 en vertu de la Règle 68(2)(b) du Règlement de procédure et de preuve., 4 August 2025, ICC-01/14-01/21-1007-Conf.

⁶ Corrected version of “Prosecution Response to Defence’s Request to Introduce Prior Recorded Testimony of P-0037 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (ICC-01/14-01/21-1007-Conf)”, ICC-01/14-01/21-1009-Conf, dated 13 August 2025., 18 August 2025, ICC-01/14-01/21-1009-Conf-Corr.

⁷ 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](#), paras 9-15, 17-33. A confidential version was filed on 20 October 2022 (ICC-01/14-01/21- 507-Conf). *See also* 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, 2 April 2025, [ICC-01/14-01/21-957-Red](#), para. 7. A confidential version was filed simultaneously (ICC-01/14-01/21-957-Conf).

⁸ First Request, ICC-01/14-01/21-999-Red, paras 22-26; Second Request, ICC-01/14-01/21-1007-Conf, paras 22-26.

⁹ First Request, ICC-01/14-01/21-999-Red, paras 4, 14-21; Second Request, ICC-01/14-01/21-1007-Conf, paras 4, 14-21.

testimony will contribute to the emergence of the truth and expeditiousness of the proceedings.¹⁰

10. The Defence submits that P-0035 and P-0037 provide information regarding the contextual elements which corroborates evidence already on the record,¹¹ noting that it is crucial for the expeditiousness of the proceedings to allow the introduction of their prior recorded testimony as calling them *viva voce* would not have any additional benefit.¹² In this regard, the Defence submits, *inter alia*, that their prior recorded testimony does not deal with Mr Said's individual criminal responsibility.¹³ Furthermore, the Defence notes that during their formal hearings with the [REDACTED], P-0035 and P-0037 gave all the information they considered useful and calling them to appear orally before the Chamber will not change this position.¹⁴

11. In respect of the substance of P-0035's prior recorded testimony, the Defence submits that P-0035 is a retired [REDACTED] civil service official.¹⁵ Specifically, between [REDACTED] 2013, he [REDACTED].¹⁶ The Defence submits that his prior recorded testimony is relevant to: (i) the security situation in the north of the country; (ii) the structure of the Seleka; (iii) the formation of the transitional government following the Libreville Agreements of January 2013; (iv) the absence of armed confrontations in March 2013 in Bangui; (v) the willingness of Djotodia's government to exercise control over indiscipline within the Seleka; and (vi) the emergence of the Anti-Balaka in late 2013 and early 2014.¹⁷

12. In respect of the substance of P-0037's prior recorded testimony, the Defence submits that P-0037 is an [REDACTED] and from [REDACTED].¹⁸ The Defence

¹⁰ First Request, ICC-01/14-01/21-999-Red, paras 4, 6; Second Request, ICC-01/14-01/21-1007-Conf, paras 4, 6.

¹¹ First Request, ICC-01/14-01/21-999-Red, paras 5, 14-21; Second Request, ICC-01/14-01/21-1007-Conf, paras 5, 14-21.

¹² First Request, ICC-01/14-01/21-999-Red, paras 6-7; Second Request, ICC-01/14-01/21-1007-Conf, paras 6-7.

¹³ First Request, ICC-01/14-01/21-999-Red, para. 6; Second Request, ICC-01/14-01/21-1007-Conf, para. 6.

¹⁴ First Request, ICC-01/14-01/21-999-Red, para. 7; Second Request, ICC-01/14-01/21-1007-Conf, para. 7.

¹⁵ First Request, ICC-01/14-01/21-999-Red, para. 11.

¹⁶ First Request, ICC-01/14-01/21-999-Red, para. 11.

¹⁷ First Request, ICC-01/14-01/21-999-Red, para. 12.

¹⁸ Second Request, ICC-01/14-01/21-1007-Conf, para. 11.

submits that P-0037's prior recorded testimony is relevant to: (i) the presence and activities of [REDACTED]; (ii) the descent of the Seleka towards Bangui on 24 March 2013; (iii) attempts to secure Bangui; (iv) cooperation with [REDACTED]; (v) the willingness of Djotodia's government to exercise control over indiscipline within the Seleka, including cantoning such individuals with the support of the international community; (vi) the functioning of Djotodia's government; and (vii) the emergence of the Anti-Balaka in late 2013.¹⁹

B. First and Second Responses

13. In the First and Second Responses, the Prosecution submits that the First and Second Requests should be rejected and P-0035 and P-0037 should be called to testify orally. In respect of P-0035, the Prosecution submits that he should be called fully *viva voce* or, in the alternative, pursuant to rule 68(3) of the Rules.²⁰ In respect of P-0037, the Prosecution submits that he should be called to testify pursuant to rule 68(3) of the Rules.²¹

14. In support of its submission, the Prosecution avers that the witnesses' prior recorded testimony relates to issues that are materially in dispute and of significance or uncorroborated by other evidence.²² Specifically, the Prosecution submits that P-0035 and P-0037 were present in Bangui during the period relevant to the charges and their evidence goes beyond background information as relevant to the contextual elements of the crimes charged in this case.²³

15. In respect of P-0035, the Prosecution submits that his 'prior recorded testimony relates to key aspects of the Defence case such as the non-existence of an armed conflict', challenges other witnesses' testimony, and is not consistent with a large volume of evidence on record related to those issues.²⁴ In this regard, the Prosecution highlights a number of assertions by P-0035 in his prior recorded testimony and makes

¹⁹ Second Request, ICC-01/14-01/21-1007-Conf, para. 12.

²⁰ First Response, ICC-01/14-01/21-1005-Red-Corr, paras 1, 9.

²¹ Second Response, ICC-01/14-01/21-1009-Conf-Corr, paras 1, 11.

²² First Response, ICC-01/14-01/21-1005-Red-Corr, para. 10; Second Response, ICC-01/14-01/21-1009-Conf-Corr, paras 11-12.

²³ First Response, ICC-01/14-01/21-1005-Red-Corr, para. 10; Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 13.

²⁴ First Response, ICC-01/14-01/21-1005-Red-Corr, para. 10.

reference to the evidence of other witnesses which, in its submission, contradicts P-0035's account.²⁵

16. The Prosecution also avers that it will not serve the interests of justice if P-0035 is not called to testify fully *viva voce* or pursuant to rule 68(3) of the Rules.²⁶ In this regard, the Prosecution notes that he is the only witness called by the Defence who was present in CAR during the charged period, yet he fails to explain his basis of knowledge and his allegations are not supported by and are contradicted by evidence on the record.²⁷ The Prosecution submits that calling him to appear orally before the Chamber will allow the Parties to clarify and test his evidence and there is no legal impediment to him testifying.²⁸

17. In respect of P-0037, the Prosecution submits that his evidence relates to key aspects of the Defence case such as the alleged non-existence of an armed conflict and the organisation of the parties to the conflict.²⁹ In this regard, the Prosecution notes that a substantial part of the Prosecution's evidence contradicts P-0037's evidence, and makes reference to evidence on the record which, in its view, demonstrates that P-0037's evidence is neither cumulative nor corroborative.³⁰

18. Last, the Prosecution submits that it is in the interests of justice to introduce P-0037's prior recorded testimony pursuant to rule 68(3) of the Rules in order to safeguard the expeditiousness of the proceedings, streamline the presentation of evidence and focus live testimony on topics which have the 'greatest relevance to the proceedings'.³¹ The Prosecution also submits that there is no legal impediment to P-0037 testifying and his testimony is 'uniquely relevant',³² noting that examination of P-0037 is necessary to, *inter alia*, explore his basis of knowledge and generally assess the 'credibility and reliability of his prior recorded testimony.'³³

²⁵ First Response, ICC-01/14-01/21-1005-Red-Corr, paras 11-18.

²⁶ First Response, ICC-01/14-01/21-1005-Red-Corr, paras 19-24.

²⁷ First Response, ICC-01/14-01/21-1005-Red-Corr, paras 20-21.

²⁸ First Response, ICC-01/14-01/21-1005-Red-Corr, paras 21-24.

²⁹ Second Response, ICC-01/14-01/21-1009-Conf-Corr, paras 15, 17.

³⁰ Second Response, ICC-01/14-01/21-1009-Conf-Corr, paras 18-20.

³¹ Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 23.

³² Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 23.

³³ Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 24.

IV. ANALYSIS

A. Requirements of rule 68(2)(b)(i)

19. The Chamber notes that both P-0035's and P-0037's prior recorded testimony comprise transcripts of interviews with the respective witnesses conducted by the [REDACTED], in the presence of the Defence.³⁴ Both witnesses signed their respective transcripts, and, at the beginning of the interview, they took an oath to speak the truth and were reminded that the purpose of the interview was for the use in judicial proceedings.³⁵ As such, the Chamber considers that the statements constitute prior recorded testimony within the meaning of rule 68 of the Rules and that both witnesses' prior recorded testimony bear sufficient indicia of reliability within the meaning of rule 68(2)(b)(i) of the Rules.

20. In respect of the substance of P-0035's and P-0037's prior recorded testimony, the Chamber notes that their prior recorded testimony does not relate to the acts and conduct of the accused and rather relates to background information and the contextual elements in the present case. As noted on several occasions, the Chamber finds that the contextual elements in this case are materially in dispute.³⁶ This notwithstanding, the Chamber reiterates that this does not bar the introduction of prior recorded testimony under rule 68(2)(b) of the Rules and rather is merely a factor to be considered.³⁷

21. Turning to the factor as to whether the prior recorded testimony is cumulative or corroborative in nature, the Chamber recalls that not every single fact described in the prior recorded testimony needs to be cumulative of other oral evidence regarding the same facts. Rather it is sufficient that the prior recorded testimony is cumulative of oral evidence of *similar* facts.³⁸ In this regard, contrary to the Prosecution's implication,

³⁴ P-0035, CAR-D33-0015-4474, at 4474; P-0037, CAR-D33-0015-4492, at 4492.

³⁵ P-0035, CAR-D33-0015-4474, at 4474; P-0037, CAR-D33-0015-4492, at 4492.

³⁶ See, for example, 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'). A confidential version was filed on 20 October 2022 (ICC-01/14-01/21-507-Conf), para. 94.

³⁷ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), paras 21-22.

³⁸ First Rule 68(2)(b) Decision, [ICC-01/14-01/21-507-Red](#), para. 29.

prior recorded testimony sought to be introduced pursuant to rule 68(2)(b) of the Rules does not need to be ‘*entirely* corroborative or cumulative in nature.’³⁹

22. In respect of P-0035, the Chamber notes that Defence submits that P-0035 testifies about, *inter alia*, the structure of the Seleka and its level of (dis)organisation, the government of national unity following the Libreville agreements, the absence of fighting in Bangui in March 2013, and the emergence of the Anti-Balaka in late 2013.⁴⁰ The Chamber recalls that a number of oral witnesses have given evidence about these matters.⁴¹ The Chamber notes the Prosecution’s submissions that there are some inconsistencies between P-0035’s evidence and that of some oral witnesses.⁴² However, the Chamber finds that, to the extent that there are inconsistencies, these are not of such a nature or degree that the introduction of the prior recorded testimony should be precluded. Accordingly, the Chamber finds that P-0035’s prior recorded testimony is cumulative of other oral evidence within the meaning of rule 68(2)(b) of the Rules and, particularly at this stage of the proceedings, it is unnecessary to call a further witness to give evidence of the same or similar events.

23. In respect of P-0037, the Chamber notes that Defence submits that P-0037 testifies about, *inter alia*, the descent of the Seleka towards Bangui, attempts to secure Bangui, Djotodia’s government and its attempt to exercise control over the Seleka, including cantoning, and the emergence of the Anti-Balaka in late 2013.⁴³ As with P-0035, the Chamber recalls that a number of oral witnesses have given evidence about these matters.⁴⁴ The Chamber notes the Prosecution’s submissions that there are

³⁹ See First Response, ICC-01/14-01/21-1005-Red-Corr, para. 18; Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 20 (emphasis added).

⁴⁰ First Request, ICC-01/14-01/21-999-Red, para. 12.

⁴¹ In respect of the organisation of the Seleka, the Chamber notes, for example, that P-0349, P-0884, P-2328, P-0119 and P-2563 gave oral evidence on this matter. In respect of the government of national unity following the Libreville agreements, the Chamber notes, for example, that P-0291 gave oral evidence on this matter. In respect of the level of fighting in Bangui in March 2013 and the FACA, the Chamber notes, for example, that P-2328, P-2232 and P-2105 gave oral evidence on this matter. In respect of the emergence of the Anti-Balaka in late 2013, the Chamber notes, for example, that P-0291, P-0884 and P-2251 gave oral evidence on this matter.

⁴² See First Response, ICC-01/14-01/21-1005-Red-Corr, paras 11-16.

⁴³ Second Request, ICC-01/14-01/21-1007-Conf, para. 12.

⁴⁴ In respect of the Seleka’s descent towards Bangui, the Chamber notes, for example, that P-2105, P-2232, P-2179, P-1263, P-2563 and P-0291 gave oral evidence on this matter. In respect of the attempts to secure Bangui, the Chamber notes, for example, that P-0291, P-2328, P-2105, P-1737, P-0349 gave oral evidence on this matter. In respect of Djotodia’s government and its attempt to exercise control over

inconsistencies between P-0037's evidence and that of some oral witnesses.⁴⁵ However, the Chamber finds that, to the extent that there are inconsistencies, these are not of such a nature or degree that the introduction of the prior recorded testimony should be precluded. Accordingly, the Chamber finds that P-0037's evidence is cumulative of other oral evidence within the meaning of rule 68(2)(b) of the Rules and rejects the Prosecution's submissions that P-0037's evidence is 'uniquely relevant'.⁴⁶ As with P-0035, the Chamber finds, at this stage of the proceedings, it is unnecessary to call a further witness to give evidence of the same or similar events.

24. The Chamber also notes that both P-0035 and P-0037 stated the limits of their knowledge on several occasions and did not go beyond this and discuss matters which they did not know about.⁴⁷ In this respect, the Chamber observes that the added value of calling P-0035 and P-0037 to testify orally would be minimal and it would unnecessarily delay the closure of the presentation of evidence.

25. Last, the Chamber considers it would be in the interests of justice to introduce the statements and associated material of P-0035 and P-0037 pursuant to rule 68(2)(b) of the Rules in order to streamline the presentation of evidence.

26. Taking the above into consideration, the Chamber allows the introduction of P-0035's and P-0037's prior recorded testimony pursuant to rule 68(2)(b) of the Rules.

B. Requirements of rule 68(2)(b)(ii) and (iii) of the Rules

27. The Chamber notes that rules 68(2)(b)(ii) and (iii) of the Rules stipulate that prior recorded testimony introduced pursuant to rule 68(2)(b) can only be introduced if 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. Furthermore, such declarations can be made, *inter alia*, in accordance with the law and procedure of a State.

the Seleka, the Chamber notes, for example, that P-0349, P-0291, P-0884, P-2328 gave oral evidence on this matter. In respect of the emergence of the Anti-Balaka, the Chamber notes, for example, that P-0291, P-0884 and P-2251 gave oral evidence on this matter.

⁴⁵ See Second Response, ICC-01/14-01/21-1009-Red-Corr, para. 19.

⁴⁶ Second Response, ICC-01/14-01/21-1009-Conf-Corr, para. 23.

⁴⁷ See, for example, P-0035, CAR-D33-0015-4474, at 4476, 4477; P-0037, CAR-D33-0015-4492, at 4494, 4498.

28. The Chamber notes that the prior recorded testimony of P-0035 and P-0037 was taken in accordance with [REDACTED] law during a formal hearing before the [REDACTED]. The Chamber further notes that at the beginning of the hearing, prior to their deposition, P-0035 and P-0037 both took an oath to tell the truth and nothing but the truth.⁴⁸ Accordingly, the Chamber finds that the requirements of rule 68(2)(b)(ii) and (iii) of the Rules are satisfied. The Registry is therefore ordered to mark P-0035's and P-0037's prior recorded testimony as formally submitted in eCourt.

⁴⁸ CAR-D33-0015-4474, at 4474; CAR-D33-0015-4492, at 4492.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS the introduction of the prior recorded testimony of P-0035 and P-0037 pursuant to rule 68(2)(b) of the Rules; and

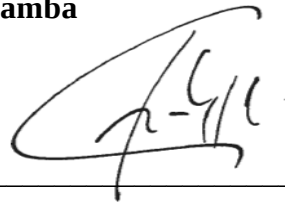
ORDERS the Registry to mark CAR-D33-0015-4474 and CAR-D33-0015-4492 as formally submitted in eCourt.



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 26 August 2025

At The Hague, The Netherlands