

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 17 September 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

Public Redacted Version of 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-Corr, dated 18 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-0037 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) since (a) P-0037’s² 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.”³, (b) it is not entirely corroborative or cumulative in nature, and (c) the interest of justice would be served by introducing the prior recorded testimony pursuant to rule 68(3) of the Rules.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis* (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 information. 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.⁴
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.⁵
5. On 2 May 2025, the Defence requested additional time to complete its investigations.⁶

¹ ICC-01/14-01/21-1007-Conf (Defence Request).

² **P-0037 *procès verbal***: CAR-D33-0015-4492.

³ ICC-01/12-01/18-2241, para. 15 (*Al Hassan* case); *see also* ICC-02/04-01/15-596-Red, para. 15 (*Ongwen* case).

⁴ ICC-01/14-01/21-948-Conf-Red.

⁵ ICC-01/14-01/21-955-Conf.

⁶ 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 and in any event no later than 22 August 2025.⁷
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.⁸
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 2025.⁹
9. On 31 July 2025, the Prosecution submitted its response to the Defence request for the formal submission of prior recorded testimony for P-0035 pursuant to rule 68(2)(b) of the Rules.¹⁰
10. On 4 August 2025, the Defence submitted its request for the formal submission of prior recorded testimony for P-0037 pursuant to rule 68(2)(b) of the Rules.¹¹

IV. SUBMISSIONS

A. The prior recorded testimony of P-0037 relates to issues that are materially in dispute and of significance.¹²

11. The Prosecution respectfully submits that P-0037 should testify 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

⁷ ICC-01/14-01/21-986-Conf-Red.

⁸ ICC-01/14-01/21-999-Red.

⁹ ICC-01/14-01/21-1002-Conf-Red.

¹⁰ ICC-01/14-01/21-1005-Conf. A public redacted version, ICC-01/14-01/21-2005-Red, was filed on 5 August 2025.

¹¹ Defence Request.

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

significance for the Chamber's eventual determination of the charges against the accused in its judgement under Article 74 of the Statute."¹³

12. At the outset, the Prosecution submits that that the Defence concedes that P-0037's testimony relates to "contextual elements of both the crime against humanity and the war crime during the period of the charges"¹⁴ These are 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 judgment under article 74 of the Statute.¹⁵ It must be recalled that so far, there are no agreed facts on these issues by both parties.
13. Witness P-0037 was present in [REDACTED] during a period relevant to the charges, namely between [REDACTED]¹⁶ and his evidence goes beyond mere background information as it is relevant to the contextual elements of the crimes charged in this case,¹⁷ which relate to issues that are materially in dispute and of significance.
14. In particular, P-0037 states that the Seleka ranks were fictional.¹⁸ He further claims that, the FACA did not engage in armed confrontations on 24 March 2013¹⁹, the FACA had been disbanded in March 2013,²⁰ the Anti-Balaka did not exist then²¹ and were not organised between [REDACTED]²², and that the groups which emerged in September 2013 were not considered to be sufficiently armed.²³
15. The aforementioned issues pertain to key aspects of the Defence case which constitute issues materially in dispute, such as the non-existence of an armed conflict, the alleged

¹³ ICC-01/12-01/18-2241, para. 15 (*Al Hassan* case); see also ICC-02/04-01/15-596-Red, para. 15 (*Ongwen* case).

¹⁴ ICC-01/14-01/21-1007-Conf at paras. 12 -13, "Defence Motion to introduce Witness P-0037's Prior Statement pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence."

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

¹⁶ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4494 ("3. [REDACTED]").

¹⁷ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4494, 4499-4500. Defence Request, paras. 5, 12-13, 16-21.

¹⁸ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 (« [REDACTED] »).

¹⁹ ICC-01/14-01/21-1007-Conf, para. 16 Defence Motion to introduce Witness P-0037's Prior Statement pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence.

²⁰ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 (« *Les FACA, au moment où les séléka arrivent [REDACTED], se sont débandés.* »).

²¹ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4499 ("*Il n'y a pas d'Anti-Balaka à ce moment là [REDACTED]*". See also, « *[À ce moment là, les Anti-Balaka n'existent pas.* »).

²² **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 ("[REDACTED] [...] *Et il n'y avait pas du tout de FACA organisée.*").

²³ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4499 (« [REDACTED]. » ; « [REDACTED]. »).

“disappearance” of one of the parties to the conflict, and the alleged “disorganisation of the Anti-Balaka”, as can be unambiguously discerned in the Defence Pre-Trial Brief and submissions.²⁴ Further, the significance of these issues is illustrated by the fact that P-0022 and P-0015, sole *viva voce* witnesses of the Defence thus far, were called to testify on the non-existence of an armed conflict.²⁵ The Defence explicitly highlighted the significance and contentious aspect of these issues in its related submissions: *“Cet article de synthèse traite des sujets permettant de dater le début de l’émergence des Anti-Balaka ce qui impacte la qualification du conflit dans l’affaire Said puisque les éléments constitutifs du CANI ne sont pas rassemblés durant la période des charges”*.²⁶

16. Contrary to the aforesaid assertions by the Defence, a substantial part of the Prosecution evidence shows that the Seleka and pro-Bozize forces were sufficiently organised at all material times relevant to the charges. Though the pro-BOZIZE forces, initially included the FACA and Presidential Guards (until 24 March 2013, while BOZIZE remained in power in Bangui), from 24 March 2013 onwards, the pro-BOZIZE forces included elements of the FACA and Presidential Guards and, increasingly as the year progressed, pre-existing and new self-defence groups that were armed, organised and instructed by the pro-BOZIZE forces.²⁷ These pro-Bozize forces progressively became known as the Ant-Balaka.²⁸ The Anti-Balaka existed between June²⁹ and December 2013³⁰, they were sufficiently organised,³¹ armed,³² carried out coordinated military attacks³³ and controlled certain parts of the Central African republic “CAR”³⁴ during the time relevant to the charges. The evidence also shows that there were armed confrontations on the 24 March 2013 between the Seleka and the FACA.³⁵

²⁴ ICC-01/14-01/21-449-Conf, paras. 239-300 (Defence trial brief); see for instance ICC-01/14-01/21-966, para. 20.

²⁵ ICC-01/14-01/21-959-Red, paras. 13-14. See also, ICC-01/14-01/21-921-Conf-Anx3, para. 15.

²⁶ ICC-01/14-01/21-921-Conf-Anx3, para. 15. See also ICC-01/14-01/21-959-Red, para. 14: « Discuter de la teneur de l’article de P-0015 et de sa méthodologie est crucial parce que ce sont des éléments très importants qui s’inscrivent dans la question de la qualification juridique de la situation. Appeler P-0015 est donc important pour la manifestation de la vérité dans le présent dossier [...] ».

²⁷ **P-2232**: T-102-CONF-ENG CT page 24 lines 18-21.: see also ICC-01/14-01/21-359-Conf at para. 17 “The Prosecution’s Pre-Trial Brief”.

²⁸ **P-2232**: T-102-CONF-ENG CT page 24 lines 18-21.

²⁹ **P-2232**: T-102-CONF-ENG CT page 24 lines 18-21. See also T-102-CONF-ENG CT page 24 lines 18-21.

³⁰ **P-2232**: T-102-CONF-ENG CT, page 55 lines 1 - 11

³¹ ICC-01/14-01/21-359-Conf at para. 30-39 “The Prosecution’s Pre-Trial Brief”.

³² ICC-01/14-01/21-359-Conf at para. 42- 43 “The Prosecution’s Pre-Trial Brief”.

³³ ICC-01/14-01/21-359-Conf at para. 40 – 41 “The Prosecution’s Pre-Trial Brief”.

³⁴ T-062-CONF-ENG CT page 66 lines 9-24 and page 67 lines 1-7.

³⁵ **P-0510 statement**: CAR-OTP-2017-0835 at 0838-0839, paras. 14-16.

17. In view of the foregoing, it is evident that P-0037's prior recorded testimony relates to issues that are materially in dispute and of significance, namely the contextual elements of war crimes and crimes against humanity. Consequently, the requirements of rule 68(2)(b) are not met. For these reasons, P-0037 should be called to appear before the Chamber pursuant to rule 68(3) of the Rules so that he may be subjected to cross-examination to test the veracity and reliability of his evidence.

B. P-0037's prior recorded testimony is not entirely corroborative or cumulative in nature.

18. P-0037's prior recorded testimony is not entirely corroborative or cumulative in nature. P-0037 claims that the FACA had been disbanded in March 2013,³⁶ there were no armed confrontation on 24 March 2013³⁷, the Anti-Balaka did not exist then³⁸ and were not organised between [REDACTED]³⁹, and that the groups which emerged in September 2013 were not considered to be sufficiently armed.⁴⁰

19. There exists a substantial body of other evidence on record and in support of the Prosecution case which is neither cumulative nor corroborated by P-0037's prior recorded testimony. For instance, the Prosecution evidence shows that when the Seleka took over the CAR government on 24 March 2013, there were armed confrontations between the Seleka and the FACA⁴¹, there was no peaceful settlement between the two opposing parties, and that hostilities continued between forces loyal to the former government of BOZIZE and the Seleka, though initially at a lower degree of frequency and intensity than just prior to the takeover.⁴² By June 2013, the pro-BOZIZE forces which included the former FACA soldiers loyal to Bozize and other pre-existing and emerging "self-defence" groups in the CAR, became widely known as the "Anti-Balaka."⁴³ The Anti-Balaka not

³⁶ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 (« Les FACA, au moment où les séléka arrivent [REDACTED], se sont débandés. »).

³⁷ ICC-01/14-01/21-1007-Conf at para. 16.

³⁸ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4499 ("Il n'y a pas d'Anti-Balaka à ce moment là [REDACTED]"). See also, « [À] ce moment là, les Anti-Balaka n'existent pas ».)

³⁹ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 (« [REDACTED] [...] Et il n'y avait pas du tout de FACA organisée. »).

⁴⁰ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4499 (« [REDACTED] qui me font penser qu'il y a une forme d'organisation qui s'opposerait à la Séléka. » ; « [REDACTED]. »).

⁴¹ **P-0510 statement:** CAR-OTP-2017-0835 at 0838-0839, paras. 14-16.

⁴² See ICC-01/14-01/21-359-Conf paras. 11-13, 40-41, 44-46 of The Prosecution's Pre-Trial Brief.

⁴³ **P-2232:** T-102-CONF-ENG CT page 24 lines 18-21.

only existed between June and December 2013,⁴⁴ but was sufficiently organised, armed, and carried out coordinated military attacks and controlled some parts of the CAR.⁴⁵ The Defence has not demonstrated that P-0037's prior recorded testimony is entirely corroborative or cumulative of the aforesaid Prosecution evidence. The mere fact that some Prosecution and Defence witnesses provided testimony on a certain issue touched upon by P-0037 in his testimony, does not per se render P-0037's evidence on that issue corroborative or cumulative.⁴⁶

20. As demonstrated hereinabove, P-0037's prior recorded testimony is not entirely corroborative or cumulative in nature and therefore the requirements of rule 68(2)(b) of the Rules are not met. Consequently, P-0037 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 introducing the prior recorded testimony of Witness P-0037 pursuant to rule 68(3) of the Rules.

21. 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.⁴⁷
22. In the present case, it is in the interest of justice to introduce P-0037's prior recorded testimony through rule 68(3) of the Rules to, *inter alia*, safeguard the expeditiousness of the proceedings, streamline the presentation of evidence, focus live testimony on those topics of greatest relevance to the proceedings and minimise cumulative in-court testimony. P-0037 is based in [REDACTED] and his appearance in court can be secured in a timely manner without any delay⁴⁸. There is no indication in the Defence Request nor in P-0037's prior recorded testimony that P-0037 is either unwilling or unable to testify before the

⁴⁴ **P-2232**: T-102-CONF-ENG CT page 24 lines 18-21. *See also* T-102-CONF-ENG CT page 24 lines 18-21. *See also* **P-2232**: T-102-CONF-ENG CT, page 55 lines 1 - 11

⁴⁵ ICC-01/14-01/21-359-Conf **Prosecution's Trial Brief** at paras. 30-43.; *See also* the testimony of P-2232. *See also* T-062-CONF-ENG CT page 66 lines 9-24 and page 67 lines 1-7.

⁴⁶ ICC-01/12-01/18-1924 (*Al Hassan* case), para. 17. *Emphasis added.*

⁴⁷ ICC-01/12-01/18-1402-Red2, para. 9 (*Al Hassan* case); ICC-01/12-01/18-1111-Red, para. 7 (*Al Hassan* case);

⁴⁸ CAR-D33-0015-4492.

Court. Given that P-0037 has already consented to being interviewed with the approval of the [REDACTED], there is no legal impediment to him testifying pursuant to rule 68(3) of the Rules. The Defence Request presents no concrete evidence that there would be any hardship, financial or otherwise, for P-0037 to testify in The Hague.

23. Moreover, P-0037 should testify *viva voce* before the court since P-0037's testimony is uniquely relevant as: i) he is one of the only two witnesses called by the Defence present in the CAR during the charged period, and ii) he held [REDACTED].⁴⁹ If permitted by the Chamber to examine P-0037, the Prosecution will streamline its examination and focus live testimony on those topics of greatest relevance to the proceedings. Since P-0037's prior recorded statement pertains to issues which are materially in dispute, it is in the interest of justice that all parties are allowed to examine him.⁵⁰
24. But more importantly, P-0037's assertions in his prior recorded testimony are not supported by any cited sources or evidence.⁵¹ In particular, P-0037 fails to explain the basis of his knowledge, alluding to being in possession of information, including from the media, or hearing rumours,⁵² yet, P-0037 [REDACTED].⁵³ This omission renders the examination of P-0037 necessary to assess the credibility and reliability of his prior recorded testimony.
25. While the Defence argues that P-0037's position will not change if called to testify,⁵⁴ it will be in the interest of justice for the Court and the Prosecution to question P-0037 as this will enable the parties and the Court to test the veracity of P-0037's evidence through examination, in accordance with the principles of a fair trial, and the right to challenge evidence under the Rome Statute. In the circumstances, the interests of justice militate in favour of calling P-0037 to testify pursuant to rule 68(3) of the Rules before this Chamber and clarify unsubstantiated allegations such as those referred to at paragraph 14 hereinabove.

⁴⁹ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4494 (3. [REDACTED])

⁵⁰ ICC-01/05-01/13-1641, paras. 4-7.

⁵¹ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497, 4499-4500.

⁵² **P-0037 procès verbal:** CAR-D33-0015-4492 at 4497 (« [REDACTED] », « [REDACTED] », 4499-4500 (« [REDACTED] »)).

⁵³ **P-0037 procès verbal:** CAR-D33-0015-4492 at 4494 (3. [REDACTED]).

⁵⁴ Defence Request, para. 7.

26. Finally, the Prosecution submits that calling Witness P-0037 to testify pursuant to rule 68(3) of the Rules is not prejudicial to nor 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-0037's prior recorded testimony as part of its holistic assessment when deliberating its judgement pursuant to article 74(2) of the Rome Statute.⁵⁵

V. RELIEF SOUGHT

27. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Defence Request to introduce the prior recorded testimony of Witness P-0037 pursuant to rule 68(2)(b) of the Rules, and 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.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', with a large, stylized initial 'M' on the left.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 17th day of September 2025
At The Hague, The Netherlands

⁵⁵ See ICC-01/14-01/21-932-Corr-Red, para. 27 (Fourth Directions on the Conduct of Proceedings).