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Date: **3 November 2026**

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 "Prosecution response to the Defence request regarding additional evidence for sentencing (ICC-01/14-01/21-1061-Conf)", ICC-01/14-01/21-1068-Conf, dated 16 October 2026

Source: **Office of the Prosecutor**

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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") opposes the *Requête de la Défense en vue de l'admission d'éléments de preuve supplémentaires en vue de la détermination de la peine*" ("Defence Request")[1] since the documentary evidence sought for admission has not met the requirements of rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules"), is cumulative of the evidence already on record, and is not relevant to mitigating circumstances in the case, except for documents pertaining to the medical status[2] and previous criminal record[3] of the Accused.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is classified confidential since it contains confidential information. A public redacted version shall be filed as soon as practicable.

III. PROCEDURAL BACKGROUND

3. On 23 September 2026, the Chamber delivered its judgment pursuant to article 74 of the Statute and convicted Mahamat Said Abdel Kani (Mr Said) of several crimes against humanity ("Trial Judgment").[4]

4. On the same day, the Chamber issued a decision setting *inter alia*, time limits for the Parties and Participants to file any requests for additional evidence by 7 October 2026 ("Decision on the Sentencing Procedure").[5] The deadline was subsequently varied to 9 October 2026.[6]

5. On 9 October 2026, the Defence Request was filed, in which the Defence (a) requests the Chamber to dispense with the mandatory certification

[1] Requête de la Défense en vue de l'admission d'éléments de preuve supplémentaires en vue de la détermination de la peine, ICC-01/14-01/21-1061-Conf, 9 October 2026.
[2] Items 1-19 of Annex A to the Defence Request.
[3] Item 154 of Annex A to the Defence Request.
[4] ICC-01/14-01/21-1054-Red.
[5] ICC-01/14-01/21-1055, paras 5-7.
[6] Decision on the Defence's Requests concerning the Sentencing Procedure, ICC-01/14-01/21-1058, para. 32.

requirements under rule 68(2)(b) for 11 new Defence witness statements;[7] (b) seeks to tender previous statements of three witnesses originally interviewed by the Prosecution;[8] (c) seeks to submit other documentary evidence, including press articles and medical reports of Mr Said.

IV. SUBMISSIONS

A. DOCUMENTS RELATED TO PERSONAL CIRCUMSTANCES OF MR SAID[9]

Medical reports, related photographs[10] and Criminal Record Check (*casier judiciare*)[11]

6. The Defence is seeking the submission into evidence of Mr Said's medical reports and related photographs since they relate to personal circumstances and demonstrate *inter alia* the seriousness of Mr Said's health problems during detention to date.[12] Similarly, the Defence is seeking the submission of the criminal record (*casier judiciare*)of Mr Said.[13] The Prosecution defers to the Chamber in relation to the admission of these documents.

B. STATEMENTS OF THREE PROSECUTION WITNESSES[14]

i. Objection to Tendering Statements of the three Prosecution Witnesses

7. The Defence seeks the admission under rule 68(2)(b) of the statements of Witnesses P-0234, P-1019, and P-0964,[15] Because the Chamber did not take into account statements that were not submitted into evidence for the purposes of the Trial Judgment. In the Trial Judgment, the Chamber observed that despite

[7] P-0039, P-0040, P-0041, P-0042, P-0044, P-0047, P-0048, P-0049, P-0051, P-0053, and P-0056
[8] P-0234, P-1019, and P-0964.
[9] The Defence Request, Items 1-19 and 154 of Annex A.
[10] Items 1-20 of Annex A to the Defence Request.
[11] Item 154 of Annex A to the Defence Request.
[12] The Defence Request, para. 27.
[13] The Defence Request, para. 28.
[14] The Defence Request, Items 20 to 107 of Annex A.
[15] The Defence Request, para. 38 to 40, Items 20-107 in Annex A.

having access to the statements taken by the Prosecution, the Defence made no attempt to introduce the statements of these witnesses into evidence, rather the Defence relied on extracts presented to Prosecution witnesses in Court to comment on in its submissions.[16]

8. The Defence relies on this very exclusion to advance a legally flawed contention: arguing that because the Chamber did not take these materials into account during the conviction phase, the principles of procedural fairness require that they now be admitted to evaluate the "gravity of the crimes," the "organization of the OCRB," and the "intent of the Accused". The Prosecution submits that this argument fundamentally misconstrues the structural boundary between articles 74 and 76 of the Statute, and represents an impermissible, backdoor attempt to relitigate settled facts.

ii. Good cause not shown

The Prosecution submits that the Defence has not shown good cause why these statements should be admitted into evidence at this late stage of the proceedings. Throughout the trial, all parties were accorded ample opportunity by the Chamber to submit into evidence all the pieces of evidence they intended to rely on. Despite the Defence having access, it made no effort to introduce them into evidence. The failure by the Defence to submit the said statements does not constitute good cause to warrant submission at this stage.

9. The Defence further contends that these witnesses provide evidence about the gravity of the crimes, the manner in which crimes were committed, organization of the OCRB and the degree of Mr Said's participation.[17]

10. The Prosecution submits that the Defence Request should be rejected since the evidence sought to be admitted will be cumulative in nature and of no added

[16] The Trial Judgment, para. 43.
[17] The Defence Request, para. 40.

value. Further, the seriousness of the crimes, the manner in which crimes were committed, organization of the OCRB and the degree of Mr Said's participation were substantive issues at trial which were extensively analysed and considered by the Chamber, and to which the Chamber has already rendered its judgment.[18]

iii. Purport of these statements and Prosecution objections

1. P-0234

11. Witness P-0234 [REDACTED]. In his prior recorded testimony, P-0234 discusses, *inter alia*, (i) the situation in CAR from August 2012; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED] in 2013 regarding pillaging and the dead male bodies that were found in the Oubangui river in July 2013.

12. In the Trial Judgment, the Chamber has made factual and legal findings which relate to the gravity of the crimes. The Chamber discussed at length the particular acts satisfying the elements of the crimes against humanity, and the evidence that the Chamber considered to arrive at its findings.[19] The Chamber similarly made factual findings relevant to the events prior to and after 24 March 2013, including the Seleka's advancement in 2012 up until the aftermath of the attacks of 5 December 2013 on Bangui.[20] Therefore, P-0234's prior recorded testimony[21] and related annexes regarding these events and the crimes that were committed, including the Seleka's looting in Boy Rabe[22] and the killing

[18] See SAID judgment ICC-01/14-01/21-1054 at pages 337 - 669
[19] The Trial Judgment, paras 613 to 663 and 845 to 868.
[20] The Trial Judgment, paras. 353 to 393.
[21] CAR-OTP-2005-5407-R01, CAR-OTP-2005-5407-R02, CAR-OTP-2013-0403-R01, CAR-OTP-2013-0403-R02 and CAR-OTP-2135-3094-R01.
[22] Annex I of P-0234's statement: CAR-OTP- 2005-5422-R01; Annex III of P-0234's statement: CAR-OTP-2005-5426-R01.

of male passengers whose bodies were later found in the Oubangui river in July 2013,[23] is duplicative[24] and unnecessary for sentencing Mr Said.

13. During the trial, the Defence attempted to elicit confirmation of propositions, from extracts of P-0234's statements, which they put to Prosecution witnesses in court. The Defence put to Witness P-0349 the proposition that the Seleka were not organised on account of being able to choose their own ranks,[25] and similarly put the proposition to Witness P-2563 that there was no clear hierarchy at the OCRB and that [REDACTED] at the OCRB during the charged period.[26] The Defence failed to introduce the statements of P-0234 into evidence and subsequently averred the same propositions in their Closing Brief.[27] The Chamber neither took the propositions nor the statements into account for purposes of the Trial Judgment, holding that "reading a part of a statement of a third party to a witness […] does not mean that the relevant portion of the statement of the third party is introduced as independent stand-alone evidence in the case".[28]

14. The Chamber's findings in the Trial Judgment confirm that while low-ranking Seleka members could often choose their own military ranks, this would be done in consultation with the approval of their superiors.[29] The Chamber similarly found in relation to Mr Said's role at the OCRB, that he was the *de facto* top ranking official of the OCRB and was in charge.[30] The case record also contains ample evidence regarding the organisation of the OCRB. For instance,

[23] Annex II of P-0234's statement: CAR-OTP-2005-5424-R01.
[24] *See* paras 721, 722 and 736 of the the Trial Judgment wherein the Chamber found that multiple witnesses testified in the trial to the Seleka's widespread looting in Boy Rabe during both the April and August 2013 operations; *See* paras 740 to 748 of the SAID Trial Judgment wherein the Chamber assessed the evidence of witnesses P-0529, P-0491, P-2573 and P-1808 regarding the killing of the minibus bus passengers on or about 13 July 2013.
[25] T-095-ENG, p.50, l.9-15: Defence counsel read to witness P-0349 paragraph 47 of P-0234's statement CAR-OTP-2005-5407.
[26] T-115-FRA, p.33, l.16-20 : Defence counsel read to witness P-2563 paragraph 98 of P-0234's statement CAR-OTP-2005-5407.
[27] Defence Closing Brief, ICC-01/14-01/21-1039-Red, paras, 43 and 631.
[28] The Trial Judgment, para. 43.
[29] Trial Judgment, ICC-01/14-01/21-1054-Red, paras. 641, 775-776.
[30] Trial Judgment, ICC-01/14-01/21-1054-Red, paras. 913, 1112-1119.

in the Trial Judgment, the Chamber made factual findings regarding the roles of Mazangue and Mr Said at the OCRB,[31] and similarly made an analysis of the evidence regarding Mr Said's role at the OCRB and degree of participation in the crimes that were committed at the OCRB.[32] Therefore, P-0234's statement[33] regarding the same topics is cumulative and unnecessary for sentencing Mr Said. Also, given that P-0234's statement goes to the acts and conduct of Mr Said, it cannot therefore be introduced into evidence pursuant to rule 68(2)(b).

2. P-1019

15. Witness P-1019 [REDACTED]. The Defence proposes to submit the prior recorded testimony of Witness P-1019, on the premise of [REDACTED] in CAR during the charged period, coupled with the alleged crucial information he provides for the evaluation of the criteria related to sentencing.[34] While the witness' prior statements[35] have probative value, the evidence provided within them is of a cumulative nature and therefore they cannot be introduced pursuant to rule 68(2)(b).

16. As mentioned above, the Chamber already made factual and legal findings in the Trial Judgment that relate to the gravity of the crimes.[36] During the trial the Defence attempted to elicit confirmation of propositions, from extracts of P-1019's statements, which they put to Prosecution witnesses in court. The Defence during the confirmation of charges hearing, alleged on the premise of extracts of P-1019's prior testimony, that the shifting allegiances within the CPJP hierarchy indicated that the Seleka coalition lacked coordination.[37] The Defence

[31] The Trial Judgment, paras. 929, 1179 to 1180 and 1104 to 1137.
[32] The Trial Judgment, paras. 1104 to 1137.
[33] CAR-OTP-2135-3128-R01.
[34] The Defence Request, para. 40.
[35] Listed as items 53 to 94 in ICC-01/14-01/21-1061-Conf-Anx1.
[36] The Trial Judgment, paras. 613 to 663, and 845 to 868
[37] T-0005-FRA, p.7, l.15-16 : Defence counsel read onto the case record a part of page 1029 of P-1019's transcribed statement CAR-OTP-2093-1024-R02.

similarly put the proposition to witness P-3114 that Mr Said was not a senior Seleka leader because [REDACTED] did not even know who he was.[38]

17. Consistent with its treatment of P-0234's statements , the Defence failed to introduce the statements of P-1019 into evidence and averred the same propositions in their Closing Brief.[39] Consequently the Chamber neither took the propositions nor the statements into account for purposes of the Trial Judgment.[40]

18. Moreover, the evidence on the case record demonstrates the implausibility of the propositions. The Chamber already pronounced itself in the Trial Judgment on the matter of the Seleka's requisite degree of organisation as an armed group from at least late December 2012; rejecting the Defence's suggestion that power struggles and shifting allegiances within the sub-groups forming the Seleka made 'any coordination impossible' during the relevant timeframe.[41] As such P-1019's prior recorded testimony is cumulative of evidence already on the case record and which the Chamber has already addressed in the Trial Judgment. The prior recorded testimony[42] is similarly cumulative of the Chamber's findings regarding Mr Said's essential contribution to the common plan.[43] The Chamber should therefore reject the Defence's request to submit P-1019's prior recorded testimony under rule 68(2)(b). With respect to item 101 of Annex A,[44] which is an annex to P-1019's witness statement the Prosecution notes that it has already been formally submitted by P-0291.

[38] [REDACTED] : [REDACTED].
[39] Defence Closing Brief, ICC-01/14-01/21-1039-Red, paras. 21 and 635.
[40] SAID Trial Judgment, ICC-01/14-01/21-1054-Conf, para. 43.
[41] The Trial Judgment, paras. 530-531.
[42] P-1019 transcribed statement CAR-OTP-2093-0963-R01 at pp.1179-1180, l.1247.
[43] The Trial Judgment, paras. 1770-1771.
[44] CAR-OTP-2079-1004.

3. P-0964

19. P-0964 [REDACTED] during the period relevant to the charges. The Defence also proposes to submit his prior recorded testimony on the premise of [REDACTED] in CAR during the charged period, coupled with the crucial information he provides for the evaluation of the criteria related to sentencing.[45] While the witness' prior statements[46] are of significant probative value, the evidence provided within them is of a cumulative nature and therefore they cannot be introduced pursuant to rule 68(2)(b). As mentioned in the preceding paragraphs, the Chamber already made factual and legal findings within the Trial Judgment that relate to the gravity of the crimes.[47]

20. During the trial, the Defence attempted to elicit confirmation of propositions, from extracts of P-0964's statements, which they put to a Prosecution witness in court. The Defence put to Witness P-2563 the proposition that the transitional government set up mixed police-Seleka patrols as part of the confidence-building measures and that measures were equally taken to encourage civil servants to return to work given the shortage of the FACA.[48] To the same Witness, the Defence put the proposition that ranks in the Seleka were self-appointed and not taken seriously, hence the Seleka was not an organisation with sufficient structure.[49]

21. The Defence failed to introduce the statements of P-0964 into evidence and averred the same propositions in their Closing Brief.[50] Consequently the Chamber neither took the propositions nor the statements into account for purposes of the Trial Judgment.[51] Moreover, the prior testimony of P-0964 is

[45] ICC-01/14-01/21-1061-Conf, para. 40.
[46] The Defence Request, Items 29 to 52 of Annex A.
[47] The Trial Judgment, paras. 613 to 663, and 845 to 868
[48] T-115-FRA, p.16, l.7-28 : Defence counsel read onto the record page 0282, lines 251-268 of P-0964's transcribed statement CAR-OTP-2092-3276-R02
[49] T-115-FRA, p.26, l.13-24 : Defence counsel read onto the record lines 609-620 of -0964's transcribed statement CAR-OTP-2092-3310-r01.
[50] Defence Closing Brief, ICC-01/14-01/21-1039-Red, paras. 368.
[51] SAID Trial Judgment, ICC-01/14-01/21-1054-Conf, para. 43.

corroborative of evidence already on the case record and therefore it cannot be introduced pursuant to rule 68(2)(b). The Chamber's findings in the Trial Judgment confirm that while low-ranking Seleka members could often choose their own military ranks, this would be done in consultation with the approval of their superiors.[52] The judgment's findings similarly establish that mixed police-Seleka patrols were implemented as part of the *de facto* government's steps to disarm the armed Seleka of Bangui.[53]

(iv) Sentencing Cannot be used to re-litigate

22. It is a foundational principle of international criminal procedure that a party cannot use the sentencing phase to introduce contextual evidence on the acts and conducts of the accused that it strategically failed to properly tender during the trial on the merits. In *The Prosecutor v. Jean-Pierre Bemba Gombo,* Trial Chamber III established that while a sentencing bench possesses broader contextual discretion regarding personal mitigation criteria, it is strictly prohibited from altering, expanding, or reconsidering the factual parameters of the underlying conviction record.[54] In the present case, the Defence had over three years of trial proceedings to request the *viva voce* calling or formal submission of these prominent figures; having failed to do so, it cannot now utilize the article 76 sentencing framework to fill self-inflicted evidentiary gaps.

(v) The Structural Finality and Authority of Article 74

23. The sentencing phase must treat the factual and legal conclusions within the Trial Judgment as an absolute *res judicata* baseline. The Appeals Chamber has explicitly held that sentencing hearings cannot be weaponized as an appellate or collateral forum to chip away at the Chamber's definitive findings regarding organization, modes of liability, or command structures[55]

[52] Trial Judgment, ICC-01/14-01/21-1054-Red, paras. 641, 775-776.
[53] SAID Trial Judgment, ICC-01/14-01/21-1054-Conf, para. 655.
[54] ICC-01/05-01/08-3399.
[55] *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2442.

24. In its explicit findings under paragraph 43 of the Trial Judgment, the Chamber did not leave an open door for late submission; rather, it delineated what constituted the authenticated trial record. The Defence's explicit intention to use statements of the three Prosecution witnesses to contest the organization of the OCRB and minimize Mr. Said's significant level of participation is an undisguised collateral attack on the Trial Judgment itself. Permitting a party to reshape the established gravity metrics using materials explicitly excluded under Paragraph 43 fractures the trial's structural integrity, compromises judicial finality, and must be denied.

C. The 11 Defence Witness Statements sought to be admitted[56] and the witnesses identification cards.[57]

I. Objection to the dispensation of certification under Rule 68(2)(b) for the 11 Defence Witnesses.

i. Lack of Indicia of Reliability

25. The Defence contends that the summaries related to 11 Defence witnesses[58] written by its own staff members, signed via identity cards, possess "sufficient indicia of reliability" and for that reason rule 68(2)(b) certification should be dispensed with.

The Prosecution opposes this Defence Request as the standard falls drastically short of the strict evidentiary threshold required by the Court. These statements are unsworn, entirely un-vetted by cross-examination, and lack any objective, independent validation. Their certification under rule 68(2)(b) is therefore, mandatory for them to be submitted into evidence.

[56] The Defence Request, para. 32, Items 134-153 of Annex A.
[57] The Defence Request, Items 155-165 of Annex A.
[58] P-0039, P-0040, P-0041, P-0042, P-0044, P-0047, P-0048, P-0049, P-0051, P-0053, P-0056.

ii. The sought admission is untimely and procedurally deficient.

26. The Prosecution notes that these statements were gathered during an investigative mission to Bangui conducted between 24 February and 1 March 2026. The Defence held this material in its exclusive possession for over six months before attempting to introduce it following a rendering of a verdict of guilt. This tactical withholding of material frustrates the expeditious administration of justice.

27. The jurisprudence is settled that an application to introduce evidence outside scheduled frameworks must satisfy the stringent requirements of regulation 35(2) of the Regulations of the Court ("Regulations"). A party must demonstrate that its failure to act within standard parameters arose from "good cause" or reasons entirely beyond its control. The Appeals Chamber has repeatedly emphasized that tactical convenience or internal delays do not constitute "good cause."[59] Having possessed these statements since March 2026, the delay constitutes a disregard for procedural deadlines, justifying summary rejection *in limine*.

iii. Violating the statutory spirit and "checks and balances" of Rule 68(2)(b).

28. The explicit purpose of rule 68(2)(b) is to provide the Chamber with reliable, non-*viva-voce* evidence through strict administrative safeguards as set out. The Rule dictates that a non-appearing witness's statement must be formally certified by a designated officer of the Court or an authorized person to certify that the contents are true and accurate.

29. As explicitly detailed in the jurisprudence of Trial Chamber X, rule 68(2)(b) cannot be transformed into a structural loophole to circumvent proper evidentiary scrutiny.[60] In *Al Hassan*, the Chamber specifically rejected requests

[59] *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, ICC-02/11-01/15.
[60] *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-2610.

to waive witnessing protocols for sentencing purposes, ruling that a relaxation of standards during sentencing does not authorize a total collapse of statutory reliability controls.

iv. The Defence had full opportunity at trial to lead mitigating evidence

30. The Defence formally opened its case on 17 March 2025 and concluded on 2 September 2025. Having systematically chosen not to call these witnesses *viva voce* when it had the unfettered opportunity to do so, the Defence cannot now utilize the sentencing phase to bypass proper procedural rules to seek admission under rule 68(2)(b).

v. Distinction of the Inapplicable Precedent in The Prosecutor v. Bosco Ntaganda[61]

31. The Defence fundamentally misconstrues the legal rationale and factual context under which Trial Chamber VI exercised its discretion to admit sentencing evidence in *The Prosecutor v. Bosco Ntaganda*. The Defence relies on *Ntaganda* to argue that the formal certification safeguards mandated by rule 68(2)(b) can be effortlessly set aside. The Prosecution submits that the material admitted in *Ntaganda* possesses unique, objective characteristics that are entirely absent from the present application, rendering that decision factually and legally distinguishable on three critical fronts:

(i) Contemporaneous, objective media vs. Ex Post Facto litigious narratives

32. In *Ntaganda*, the items admitted by the Chamber from the Bar Table primarily comprised verbatim transcriptions and translations of contemporary video recordings (specifically, item DRC-OTP-0127-0064 detailing rank ceremonies and community interactions). These video recordings captured events in real time in 2004, leaving no margin for investigator bias or subsequent witness manipulation. Conversely, the 11 defence statements sought to be introduced

[61] ICC-01/04-02/06-2402

by the Defence here are subjective, summaries drafted by the Defence, engineered over a decade after the core events, and explicitly curated for the sole purpose of litigation.

(b) Prior disclosure and temporal accountability vs. Tactical withholding

33. The source videos, transcripts, and official UN/MONUC documents in the *Ntaganda* record had been long-disclosed to all parties, allowing for comprehensive administrative and contextual benchmarking. In stark contrast, the Defence in the present case took these 11 statements between 24 February and 1 March 2026, yet withheld them from disclosure for over six months, only requesting admission after an adverse judgment on the merits had been rendered.

(b) Objective source verification vs. Unverifiable self-validation

34. In *Ntaganda*, strict verification of sources was readily possible within the circumstances of the case. The items bore institutional logos, metadata, or unmanipulated visual signatures that permitted the Chamber to establish an objective baseline of authenticity. Here, the Defence is requesting the Chamber to accept signatures on statements as self-authenticating, backed only by identity documents. This completely insulates the material from objective verification and deprives the Prosecution of its statutory right to assess authenticity.

35. Crucially, even when evaluating formal reports from established entities like the United Nations or international news agencies in *Ntaganda*, the Chamber refused to dispense with reliability checks, actively rejecting materials that lacked explicit indicators of provenance, authorization, or finalized status (such as draft unauthenticated UN briefs or raw Reuters articles). Given that the core indicators of automatic reliability found in *Ntaganda* are entirely absent here,

the Prosecution respectfully submits that the *Ntaganda* decision is not binding, and the statutory checks and balances of rule 68(2)(b) must be strictly enforced.

(I) The 11 Defence Witnesses are not relevant to mitigating factors

36. The Defence requests the submission into evidence of 11 new witness statements collected during Defence investigations which *inter alia* describe Mr Said as a generous person in the community.[62] The Prosecution submits that such circumstances are irrelevant since "assistance to persons other than the victims[…]and selective assistance to the victims[…] may be of limited, if any, relevance to the sentence."[63] In this particular case, this evidence is of limited, if any, relevance since the Defence has failed to demonstrate that any, or, some of the persons Mr Said is alleged to have assisted were victims in the case. Consequently, it does not constitute a mitigating circumstance in this case.

37. The Defence asserts that Mr Said is an important pillar to his family and that his absence has a big impact both to the community and his family. The Prosecution submits that such circumstances are irrelevant since "family circumstances alleged by the Defence are common to many convicted persons and are not exceptional. They therefore do not constitute a mitigating circumstance in this case."[64]

D. Submission of 26 documents[65] comprising press articles and reports relating to gravity.

38. The Defence is seeking the submission of 16 press articles and 10 reports related to the gravity and extent of the harm caused. The Defence has not demonstrated good cause to introduce the aforesaid newspaper articles and reports into

[62] The Defence Request, Paras. 32 – 36.
[63] Prosecutor v. Bemba, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 21 June 2016, para. 72.
[64] Prosecutor v. Bemba, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 21 June 2016, paras. 77-78.
[65] The Defence Request, paras. 23-25, Items 108 to 133 of Annex A.

evidence at this stage of the proceedings. Despite the Defence having access to most of these documents throughout trial, the Defence made no effort to introduce them into evidence during trial.[66]

39. The Defence submits that these press articles and reports touch on the general functioning of the OCRB before and after the charges, seriousness of the crimes, harm to the victims and the degree of Said's participation.

40. The Prosecution respectfully submits that the Defence Request should be rejected since the submission of these press articles and reports in evidence will be cumulative and of no added value as the general functioning of the OCRB, seriousness of the crimes, harm to the victims and the degree of Mr Said's participation were substantive issues before the Chamber and to which the Chamber has rendered a judgment. the Chamber considered in detail the functioning of the OCRB and the role and functions of Mr Said and rendered its decision on the same.[67] It also considered Mr Said's criminal responsibility[68] and the gravity of the crimes.[69] As submitted, the sentencing phase is not an opportunity to re-litigate such matters.[70]

41. Taking into account the purposes for which press articles and reports are prepared and information available regarding the methodology used, as a general rule, the Chamber has approached the content of press article and reports with caution. The Defence has not demonstrated that the information they intent to rely on in the aforesaid press articles and reports meet the said strict criteria set out by the Chamber.[71]

[66] See SAID judgment ICC-01/14-01/21-1054 at para. 43.
[67] The Trial Judgment, paras. 905-931.
[68] The Trial Judgment, paras. 658-669.
[69] The Trial Judgment, paras. 613-663 and 845-868.
[70] ICC-01/05-01/08-3384 at para. 21
[71] The Trial judgment, para. 319 -321

42. Article 76(1) of the Statute provides that the Chamber, "when considering the appropriate sentence, shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence […]."[72] In the circumstances, the Defence has not demonstrated that it will still be necessary to submit the aforesaid statements in evidence despite the same being cumulative of other evidence on record. The said press articles and reports also refer to the conduct of third parties, including failure to investigate the alleged crimes of others. The conduct of third parties, including failure to investigate others' crimes, are irrelevant to the appropriate sentence. The Defence has in fact, failed to demonstrate the relevance of this circumstance to any of the factors set out in article 78(1) or rule 145.[73]

V. RELIEF SOUGHT

43. For the foregoing reasons, the Prosecution respectfully requests Trial Chamber VI to:

(I) **REJECT** the Defence Request to dispense with the certification requirements under rule 68(2)(b) for the 11 proposed Defence witnesses and deny admissibility;

(II) **DENY** the admission of the previous statements of Witnesses P-0234, P-1019, and P-0964; and

(III) **DENY** the admission of the press articles and reports.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 3rd day of November 2026
At The Hague, The Netherlands

[72] Prosecutor v. Katanga, Decision on sentence pursuant to article 76 of the Statute, ICC-01/04-01/07-3484-tENG-Corr, 23 October 2015, para. 25.
[73] Prosecutor v. Bemba, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 21 June 2016, paras. 85-86.