

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 28 October 2022

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge Maria del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Confidential

Prosecution's Response to Disclosure Request related to P-3108 (ICC-01/14-01/21-516-Conf)

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the***Court to:****The Office of the Prosecutor**

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I. INTRODUCTION

1. Trial Chamber VI (“Chamber”) should dismiss the Defence’s request to disclose additional materials and lift certain standard redactions prior to the commencement of the testimony of P-3108 (“Request”),¹ in so far as it is not moot due to additional disclosure effected. The Prosecution has provided all relevant information pertaining to the testimony of P-3108 to the Defence. Her testimony concerns only the analysis of the call data records (“CDR”) of Mr. SAID. Concerning the information pertinent to the testimony of P-3108 the Request has been addressed in its entirety by the Prosecution and only limited standard redactions are retained as set out below.

2. However, the Defence is not impeded in its ability to effectively, independently and efficiently cross-examine P-3108 without having the additional information requested in Annexes A, C, and D at this time in the proceedings. The information requested in these Annexes goes far beyond the scope of the subject matter of the witness’s testimony. The Prosecution will of course review the requests in good faith and disclose with lesser redactions or additional items where possible and material to the preparation of the Defence in relation to the witnesses concerned. In some cases (Annex C) further information as to why the listed items are material to their preparation is required from the Defence.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this Response is filed as confidential as it refers to a filing of the same designation. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/21-516-Conf (“Request”).

III. SUBMISSION

1. The Defence has all necessary information to effectively cross-examine

4. The Prosecution has considered the Defence's request and carefully reviewed the information sought.² The scope of the testimony of P-3108 is limited to the call data records and telecommunications of Mr. SAID as well as the relevant attribution information. The Prosecution wishes to emphasise that it has already re-disclosed the Call Data Records and Telecommunications report and its Annex, which are the products relevant to the testimony of P-3108 without *any* redactions.³

5. In addition, the Prosecution has reviewed the remaining standard redactions in the sources cited in these two products and has indicated as much to the Defence. As the Defence request is extensive, this exercise has taken time to be completed with the necessary diligence and care.

6. The Prosecution understands that with respect to the ERNs listed in **Annex B (List 2)** the Defence now only requests the lifting of standards redactions to items, which are not in **Annex E**. The Prosecution has reviewed the relevant ERNs and finds as follows:

- CAR-OTP-2135-3387 is the first version of the Annex for the SAID CDR report produced by P-3108, which was subsequently corrected and then redisclosed without any redactions on 21 October 2022.⁴ The old report CAR-OTP-2135-3387 is not relied upon by the Prosecution anymore and aside from the information corrected was unchanged.
- CAR-OTP-2125-0934 has been disclosed without any redactions on 29 July 2022.
- CAR-OTP-2013-0341-R01 is a List obtained from Africard with passport information, which features two witnesses (P-1019 and P-0349) to whose personal information B.1. redactions have been applied. In addition, passport information and phone numbers of others in this list had been redacted using

² Request, para. 2 – 8.

³ See Trial Rule 77 Package 062, 21 October 2022, and Trial Reclassification to Incrim Package 010, 25 October 2022.

⁴ See CAR-OTP-00000420.

the category B.5 to protect the personal contact information. However, following the Defence request, the Prosecution made a further assessment and finds that all these standard redactions can be lifted. It shall re-disclose the unredacted list today, 28 October 2022. It should be noted however, that the Defence has been in possession of the relevant attribution information from this list through the disclosed Annex to the telecommunications report of Mr. SAID already.

- CAR-OTP-2023-0768-R01 has been disclosed unredacted with the corresponding excerpt used in P-3108's report. However, the few remaining B.1. redactions have been reviewed and the document will be disclosed with the redactions lifted on 28 October 2022.
- CAR-OTP-2091-2259-R02 has been re-disclosed in a lesser redacted version on 21 October 2022. This includes the portion which holds the attribution information. In addition, two B.5. redactions have been lifted upon further review. For the remaining standard redactions in this document there exists an objectively justifiable risk of exposure to those persons whose names remain redacted, which are family members of P-2069 as well as an interpreter working for the OTP. The Prosecution submits these redactions are necessary and proportionate as they do not include information disclosable pursuant to rule 77 nor do they contain information relevant to the attribution assessment conducted by P-3108. The Defence suffers no prejudice with the retention of the redactions.
- CAR-OTP-2006-0763-R01 has been disclosed unredacted with the corresponding excerpt used in P-3108's report, which is the part relevant to the attribution.⁵ The B.1. redactions in place have been reviewed, and the unredacted document will be disclosed on 28 October 2022.

7. With the exception of the standard redactions remaining in CAR-OTP-2091-2259-R02 the Defence request regarding the items in Annexes B and E is moot. The Prosecution submits that, the Defence has all the information necessary in its

⁵ Pre-Trial Incrim Package 072, 30 May 2022.

possession to effectively cross-examine P-3108. It has the underlying data, attribution sources, and the analysis of P-3108. The Defence can scrutinise not only the methodology applied by P-3108 but also assess the totality of the underlying sources used by P-3108 to reach her conclusions. The remaining standard redactions are justified and do *not* concern attribution information.

2. The information requested in Annexes A, C and D is not relevant to the testimony of P-3108

8. In relation to **Annex A (List 1)** sent by the Defence, the Prosecution submits that these items are *not* material to the preparation of the cross-examination of Witness P-3108.

9. The documents mentioned in **Annex A** are relevant only to call data records of *witnesses* in the case and not Mr. SAID's communications. These reports were made to assist the Defence in navigating the extensive data and provide relevant attribution information while the alternative would have been to just disclose raw CDRs without necessary background information.

10. The Defence's reasoning that the disclosure of all this information is necessary in order to effectively cross-examine P-3108 is not convincing. In every report disclosed, P-3108 has described the applied methodology, the data analysed, and provided which witnesses the assessments relate to. The Defence is not barred from questioning her on any of these reports to scrutinise her methodology as well as the scope of her work in the SAID case. The Prosecution has informed the Defence that in relation to the witnesses for whom these reports were created the review for lifting standard redactions is ongoing and further disclosure will be facilitated as soon as possible and in advance of the witnesses's testimony. It is reiterated that the Prosecution does not rely on any of the information in these disclosure reports for purposes of its case.

11. The same argument applies to the items in **Annex D**. This list also concerns only call data records of reports related to other witnesses in the case and the underlying sources of the reports that are not relevant to P-3108's anticipated testimony. In

addition, the Prosecution submits that - contrary to the Defence assertion - the reports listed in Annex D were only completed and registered after they were finalised and quality control had been ensured, in mid October 2022. Thereafter they were disclosed to the Defence. Furthermore, their disclosure has been effected well in advance of the scheduled witness testimony to provide the Defence adequate time to scrutinise the reports and request further information if deemed material.

12. In relation to **Annex C**, the Prosecution submits that these items are also all cited in the CDR reports disclosed to the Defence, which concern witnesses, and not the telecommunications relevant to the testimony of P-3108, the telecommunications report relevant to Mr. SAID. Furthermore, the Prosecution notes that the Defence request is vague as the list of the Defence does not provide in which CDR reports the items are cited. In this regard, the Prosecution has requested the Defence to be more specific in their request to allow the Prosecution to review in a timely manner. Under these circumstances an assessment as to the materiality or even relevance of the requested information is made difficult.

IV. RELIEF SOUGHT

13. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Defence's Request with regard to the items listed in Annexes A, C and D and with regard to the standard redactions still included in Item CAR-OTP-2091-2259-R02.



Karim A. A. Khan KC, Prosecutor

Dated this 28th day of October 2022

At The Hague, The Netherlands