

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 November 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María 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***

**Public
with Confidential Annex A**

Public Redacted Version of "Prosecution's request to introduce prior recorded testimony pursuant to rule 68(3)", ICC-01/14-01/21-531-Conf dated 4 November 2022.

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence “Annexe A au Registre de préparation des témoins pour la préparation de P-2478” (“Witness Preparation Log Annex”) of P-2478 pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”)¹ in addition to the introduction of the prior recorded testimony already granted for this witness.²

2. The Prosecution submits that the Witness Preparation Log Annex of P-2478 is relevant, reliable, probative, and corroborated by other evidence. Granting the Request will enhance the expeditiousness of the proceedings by not further extending the estimated length of the witness’s direct examination of 1 hour, thus saving court time. Moreover, it would not prejudice the Defence, as the witness will be fully available for cross-examination and any further questioning by the Chamber.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Request and its Annex are filed as confidential because they contain information that may identify Prosecution witnesses and refer to confidential items of evidence. A public redacted version will be filed as soon as practicable.

III. URGENCY

4. This Request is filed urgently as the testimony of P-2478 is expected to commence in the afternoon of 4 November 2022.

¹ Annex A lists the Prior Recorded Testimony of P-2478 which comprises the Annex to the witness preparation log of P-2478. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-499-Conf, para. 60.

IV. APPLICABLE LAW

5. In its oral ruling dated 2 November 2022, the Chamber stated that “[...] should the Prosecution want to introduce additional information provided by the witness, that did not form part of the prior recorded testimony previously ruled on by the Chamber, it must request the authorization of the Chamber to do so pursuant to rule 68(3) of the Rules of Procedure and Evidence.”³

6. In its oral decision dated 3 November 2022, the Chamber authorized the introduction of the annex to P-2240’s preparation log under rule 68(3) of the Rules and instructed the Prosecution that, when satisfying the outstanding requirements of rule 68(3), it also fulfils these requirements in respect of the annex.⁴

7. The Prosecution relies on its previous submissions on the legal framework for introduction of prior recorded testimony pursuant to rule 68(3), as set out in its first application under rule 68(3).⁵ The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-2478.⁶

V. SUBMISSIONS

A. The Prior Recorded Testimony should be conditionally introduced into evidence pursuant to rule 68(3)

8. Subject to the fulfilment of the further conditions of rule 68(3), the Witness Preparation Log Annex should be introduced into evidence pursuant to rule 68(3). It is relevant, reliable, probative, and corroborative of other evidence.

³ ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 1-13.

⁴ ICC-01/14-01/21-T-031-ENG RT 03-11-2022 T, page 57, lines 2-5.

⁵ Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3), ICC-01/04-01/21-322-Conf, 20 May 2022, paras. 5-12.

⁶ ICC-01/14-01/21-499-Conf, para. 60.

(i) The Prior Recorded Testimony is Relevant and Probative

9. The Witness Preparation Log Annex is relevant and probative to the present case as it expands the scope of P-2478's prior statement and therefore constitutes a witness statement that is subject to the requirements as set out in rule 76(1) and (3) of the Rules.⁷ P-2478 read again her witness statement taken by investigators of the Office of the Prosecutor. She was requested to provide whether she had any corrections, clarifications or additions to make. P-2478 had some additions and minor clarifications to make. The substantive additions concern events at the OCRB directly relevant to the charged crimes and acts and conduct of the Accused, Mr SAID. Further, the witness provides additional details regarding [REDACTED] at the OCRB, [REDACTED] at the OCRB relevant to the contextual elements of crimes against humanity.

(ii) Granting the Request Would Advance the Expeditionness of the Proceedings

10. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2478 in its Decision dated 11 October 2022.⁸ The Prosecution was granted 1 hour for a supplementary examination. However, in light of the recently adopted procedural requirements in this case, the witness would have to be shown her Annexes and the photos shown to her during the interview, which would significantly increase the estimated court time of 1 hour.

(iii) The Prior Recorded Testimony Bears Sufficient Indicia of Reliability for Introduction into Evidence

11. The Witness Preparation Log Annex has sufficient indicia of reliability for introduction into evidence. The Witness has signed the Witness Preparation Log

⁷ See Decision related to the Witness Preparation Log of P-0547, ICC-01/14-01/21-491, para.11.

⁸ ICC-01/14-01/21-499-Conf, para. 60.

Annex⁹ after its content was read back to her in French, a language she understands.¹⁰ Her Annex also bears the signature of an interpreter, showing that the Witness understood the content of the Annex read back to her in French.¹¹ The Witness was shown her original statement in French and she verified that her signature appeared on page 1 at ERN page 0745 and on page 23 at ERN page 0767 of her statement CAR-OTP-2110-0745. The Witness read her statement in French and confirmed the accuracy of her statement that she read, subject to certain corrections and clarifications reflected in Annex A.¹²

12. The information in the Witness Preparation Log Annex adds more details to her other prior recorded testimony.¹³ The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement but with a less clear basis of knowledge or the name of a particular person of interest.

13. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witnesses [REDACTED], [REDACTED] and [REDACTED] whose in-court testimony has already been heard by the Court¹⁴ or of witness [REDACTED] whose testimony the Prosecution seeks to introduce pursuant to rule 68(3), granted by the Chamber.¹⁵ The Witness generally distinguishes between information about which she has direct knowledge and information that she acquired from other sources like [REDACTED].¹⁶

(iv) Introduction of the Prior Recorded Testimony is not Prejudicial To or Inconsistent with the Rights of the Accused

⁹ CAR-OTP-00000461-000001 at 000005.

¹⁰ CAR-OTP-00000460-000001 at 000003.

¹¹ CAR-OTP-00000461-000001 at 000005.

¹² CAR-OTP-00000460-000001 at 000002-000003.

¹³ P-2478 statement: CAR-OTP-2110-0745 (FRA).

¹⁴ [REDACTED].

¹⁵ ICC-01/14-01/21-519-Conf, para. 53.

¹⁶ CAR-OTP-00000461-000001 at 000001 (para. 18) and at 000002 (para. 50).

14. The introduction of the Prior Recorded Testimony into evidence would not prejudice the Accused. The Defence will have ample opportunity to cross-examine the Witness. Moreover, the Defence has received the Witness preparation log and its Annex A on 01 November 2022 via email¹⁷ which were then formally disclosed on 01 November 2022.¹⁸

D. The Prosecution should be allowed to conduct a focused supplementary examination of the Witness

15. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Witness. In this regard, the Prosecution had been granted 1 hour for the supplementary examination of the Witness but wishes to avoid additional court time in light of the recently adopted procedural requirements. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

E. RELIEF SOUGHT

16. For the above reasons, the Prosecution requests that the Chamber introduce into evidence Witness Preparation Log Annex (Annex A) as additional prior recorded testimony of P-2478 subject to the fulfilment of the further conditions of rule 68(3).

17.



Karim A. A. Khan KC, Prosecutor

Dated this 16th day of November 2022
At The Hague, The Netherlands

¹⁷ E-mail from the Prosecution to the Defence dated 01 November 2022 at 08H19.

¹⁸ Trial INCRIM package 095 01 November 2022.