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**International  
Criminal  
Court**

Original: English

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

Date: 21 February 2024

**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***

**Confidential  
with Confidential Annex A**

**Prosecution's request to introduce P-2179's prior recorded testimony pursuant to  
rule 68(3)**

**Source: Office of the Prosecutor**

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**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-2179” (“Witness Preparation Log Annex”) of P-2179 pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”),<sup>1</sup> except for two photographs included in the Witness Preparation Log Annex, in addition to the introduction of the prior recorded testimony already granted for this Witness.<sup>2</sup>

2. The Prosecution submits that the Witness Preparation Log Annex of P-2179 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 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. APPLICABLE LAW

4. 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

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<sup>1</sup> Annex A lists the Prior Recorded Testimony of P-2179 which comprises the Annex to the witness preparation log of P-2179. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

<sup>2</sup> ICC-01/14-01/21-555-Conf, para. 49.

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Chamber, it must request the authorization of the Chamber to do so pursuant to rule 68(3) of the Rules of Procedure and Evidence.”<sup>3</sup>

5. 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.<sup>4</sup>

6. 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).<sup>5</sup> The Prosecution also refers to the Chamber's decision granting the introduction of the prior recorded testimony of P-2179.<sup>6</sup>

#### IV. SUBMISSIONS

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

7. 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), except for two photographs included in the Witness Preparation Log Annex that the Prosecution no longer intends to rely on.<sup>7</sup> It is relevant, reliable, probative, and corroborative of other evidence.

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

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

<sup>5</sup> 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.

<sup>6</sup> ICC-01/14-01/21-555-Conf, para. 49.

<sup>7</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0002 (photographs No 24 and 36).

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(i) The Prior Recorded Testimony is Relevant and Probative

8. The Witness Preparation Log Annex is relevant and probative to the present case as it expands the scope of P-2179'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.<sup>8</sup> P-2179's witness statement taken by investigators of the Office of the Prosecutor was read back to the witness in Sango by a certified interpreter. He was requested to provide whether he had any corrections, clarifications or additions to make. P-2179 had some minor corrections to make. The additional information concerns the identification of photographs of the Camp de Roux and persons of interest directly relevant to the contextual elements of war crimes. Further, the Witness identified another person in a previously shown photograph,<sup>9</sup> General BOMBAYEKE,<sup>10</sup> relevant to the contextual elements of war crimes.

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

9. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2179 in its Decision dated 21 November 2022.<sup>11</sup> The Prosecution was granted 1 hour for a supplementary examination. However, if this Request is granted, the Prosecution estimates that it can further streamline its examination-in-chief under 1 hour, as detailed further below.

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

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

<sup>8</sup> See Decision related to the Witness Preparation Log of P-0547, ICC-01/14-01/21-491, para.11.

<sup>9</sup> Photograph: CAR-OTP-2069-1409.

<sup>10</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0002 (No 14).

<sup>11</sup> ICC-01/14-01/21-555-Conf, para. 49.

Annex<sup>12</sup> after its content was read back to him in Sango, a language he understands.<sup>13</sup> His Annex also bears the signature of an interpreter, showing that the Witness understood the content of the Annex read back to him in Sango.<sup>14</sup> The Witness was shown his original statement in English and he verified that his signature appeared on page 1 at ERN page 2250 and on page 234 at ERN page 2283 of his statement CAR-OTP-2088-2250. The Witness's statement was read back in Sango and he confirmed its accuracy, subject to some minor corrections and some additional information reflected in Annex A.<sup>15</sup> The witness corrected the description of one photograph at CAR-OTP-2033-7177 that the Prosecution no longer intends to rely on.<sup>16</sup> Similarly, the Prosecution will no longer rely on another photograph shown to the witness at CAR-OTP-2069-1193,<sup>17</sup> noting the erroneous ERN recorded in the witness' prior statement that should read CAR-OTP-2069-1192.<sup>18</sup>

11. The information in the Witness Preparation Log Annex adds some information to this prior recorded statement,<sup>19</sup> knowing that the main information was already captured in that statement.

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

12. 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 20 February 2024 via e-mail.<sup>20</sup>

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<sup>12</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0003.

<sup>13</sup> P-2179 witness preparation log: CAR-OTP-00036102 at 0002-0003.

<sup>14</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0003.

<sup>15</sup> P-2179 witness preparation log annex: CAR-OTP-000360103 (FRA).

<sup>16</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0002 (photograph No 36).

<sup>17</sup> P-2179 witness preparation log annex: CAR-OTP-00036103 at 0002 (photograph No 24).

<sup>18</sup> P-2179 statement: CAR-OTP-2088-2250 at 2277 (CAR-OTP-2069-1193 should read CAR-OTP-2069-1192).

<sup>19</sup> P-2179 statement: CAR-OTP-2088-2250 (ENG).

<sup>20</sup> E-mail from the Prosecution to the Defence dated 20 February 2024 at 10h11 (courtesy copies).

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

13. 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 will endeavour to meet the necessary procedural requirements under the estimated time.

**V. RELIEF SOUGHT**

14. 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-2179 subject to the fulfilment of the further conditions of rule 68(3), except for two photographs at CAR-OTP-2069-1193 and CAR-OTP-2033-7177 included in the Witness Preparation Log Annex (Annex A).



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**Karim A. A. Khan KC, Prosecutor**

Dated this 21<sup>st</sup> day of February 2024  
At The Hague, The Netherlands