

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **5 September 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**

**Prosecution's Notification of an Updated Order of Appearance**

**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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**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Prosecution hereby files a revised order of appearance (Annex A). The revised order has been coordinated closely with the Victims and Witnesses Section (“VWS”) and takes into consideration the pending appeal regarding the Decision on the Use of Video Link Technology (“AVL Decision”).<sup>1</sup> Thus, the Prosecution hereby notifies the Chamber, Parties and Participants that arrangements are being made to ensure that listed witnesses in the first three blocks (extending from 26 September 2022 to 15 December 2022) can appear in-person at the seat of the Court so that the trial can proceed in a smooth and uninterrupted manner, notwithstanding the pending appeal.

## II. SUBMISSIONS

2. The revised order of appearance set out in Annex A is submitted to project the Prosecution’s planning and ensure advance notice to the Parties, Participants and the Chamber. The Prosecution is mindful of a pending decision on its rule 68(3) request and the projected time to hear the proposed witnesses in the first three blocks may shift depending on the Trial Chambers ruling.

3. The first block of witnesses to be called remains the same. Namely, P-0547, P-0388, P-3056 and P-2105. The original anticipated order of appearance submitted on 13 June 2013<sup>2</sup> planned for the OCRB focussed witnesses to be heard first, followed by witnesses related to the contextual elements of war crimes and crimes against humanity. In the revised order in Annex A, this general approach remains the same while the exact position of certain witnesses has been rearranged.

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<sup>1</sup> ICC-01/14-01/21-442.

<sup>2</sup> ICC-01/14-01/21-354-Conf-AnxB.

4. Given the need to ensure a smooth and uninterrupted trial notwithstanding the pending appeal, the uncertainty related to the timing of a decision by the Appeals Chamber, and the considerable amount of advance planning needed to facilitate witness testimony<sup>3</sup>, the Prosecution deems it prudent to organise in person testimony at the seat of the Court for all witnesses scheduled to appear within the first three blocks. Therefore, the Prosecution has made sure that all OCRB-related witnesses on the List of Witnesses who have the requisite travel documents or are likely to acquire these in time for the start of the trial have been moved into the first three blocks.

5. The Prosecution submits that this approach is the best way to ensure a safe, smooth and uninterrupted presentation of evidence in the current circumstances. This decision is taken without prejudice to the Prosecution's legal and factual position in relation to the use of AVL testimony in this case. It also does not interfere with the issue currently on appeal, which relates to a legal question.<sup>4</sup> The present approach will ensure sufficient time for reliable and successful planning and handling the challenging logistics surrounding witness testimony until the appeal is decided.

6. The Prosecution remains available to discuss the details relating to witness testimony and other issues at any time, including during a status conference before the start of the trial in accordance with regulation 54 of the Regulations of the Court.

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<sup>3</sup> Next to the Prosecution, the VWS, LSS, and VPRS are most affected in terms of advance planning.

<sup>4</sup> The certified issue for appeal is as follows: Does the Court's legal framework allow Trial Chambers to treat testimony given via audio-video technology as an equivalent alternative to in-court testimony, which can be resorted to whenever the conditions of rule 67 of the Rules are satisfied, or are there additional criteria that Trial Chambers should consider in exercising their discretion, in general or on a case-by-case basis, before authorising the use of audio-visual technology. *See* ICC-01/14-01/21-453, para. 10.

### III. CONCLUSION

7. For the reasons above, the Prosecution hereby submits a revised order of appearance.

A handwritten signature in black ink, consisting of a stylized initial 'K' followed by a horizontal line and a period.

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**Karim A.A. Khan Q.C., Prosecutor**

Dated this 5<sup>th</sup> day of September 2022  
At The Hague, The Netherlands