

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 December 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) and to include two items to the Prosecution's List of Evidence", ICC-01/14-01/21-565-Conf, dated 7 December 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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Other

I. INTRODUCTION

1. The Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence “*Annexe A au Registre de préparation du témoin P-2692*” and “*Annex A to the witness preparation log of P-2692*” (“Witness Preparation Log Annexes”) of P-2692 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 Annexes of P-2692 are 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 the 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.

3. Further, the Prosecution requests to exceptionally be allowed to add to its List of Evidence (“LoE”) two photos provided by the witness [REDACTED]³. The Victim Participation Application Form was disclosed to the Accused on 7 July 2022, so no undue prejudice occurs.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Request and its Annexes 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.

¹ Both annexes list the Prior Recorded Testimony of P-2692 which comprise the Annexes to the witness preparation log of P-2692. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-519-Conf, para. 40.

³ [REDACTED].

III. URGENCY

5. This Request is filed urgently as the testimony of P-2692 is expected to commence on 14 December 2022.

IV. APPLICABLE LAW

6. 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.”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-2692.⁶

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 Annexes should be introduced into evidence pursuant to rule 68(3). They are relevant, reliable, probative, and corroborative of other evidence.

(i) *The Prior Recorded Testimony is Relevant and Probative*

⁴ ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 1-13.

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, para. 5-12.

⁶ ICC-01/14-01/21-519-Conf.

9. The Witness Preparation Log Annexes are relevant and probative to the present case as they expand the scope of P-2692's prior statement and therefore constitute witness statements that are subject to the requirements as set out in rule 76(1) and (3) of the Rules.⁷ P-2692 read again his witness statement taken by investigators of the Office of the Prosecutor. He was requested to provide whether he has any corrections, clarifications or additions to make. P-2692 had some additions and minor clarifications to make. The witness was shown several photographs of the OCRB compound including its main building and cells. P-2692 was able to identify the location where he was detained in the OCRB as well as the location of the table of the OCRB Colonel he describes in his statement.

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

10. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2692 in its Decision dated 28 October 2022.⁸ The Prosecution was granted 1 hour for a supplementary examination. However, in the light of the recently adopted procedural requirements in this case, the witness would have to be shown his Annex and the document shown to him 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 Annexes have sufficient indicia of reliability for introduction into evidence. The Witness signed the Witness Preparation Log Annexes⁹ after their content was read back to him in French, a language he understands.¹⁰ His Annexes also bear the signature of interpreters, showing that the Witness understood

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

⁸ ICC-01/14-01/21-519-Conf.

⁹ CAR-OTP-00000767 at 000004; CAR-OTP-00000768 at 000004.

¹⁰ CAR-OTP-00000767 at 000002-000004; CAR-OTP-00000768 at 000002-000005.

the content of the Annexes read back to him in French.¹¹ The Witness was shown his original statement and he verified that his signature appeared on pages 0922 and 0931 of his statement CAR-OTP-2125-0922. The Witness read his statement in French¹² and confirmed the accuracy of his statement that he read, subject to certain corrections and clarifications reflected in Annex A.¹³

12. The information in the Witness Preparation Log Annexes add more details to his other prior recorded testimony. The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement. The Witness generally distinguishes between information about which he has direct knowledge and information that he acquired from other sources.¹⁴

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

13. 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 received the Witness preparation log and its Annexes on 06 December 2022 via email¹⁵ which were then formally disclosed on 07 December 2022.¹⁶

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

14. 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

¹¹CAR-OTP-00000767 at 000004; CAR-OTP-00000768 at 000005.

¹²P-2692 statement: CAR-OTP-2130-6685 (FRA).

¹³CAR-OTP-00000767 at 000002; CAR-OTP-00000768 at 000002.

¹⁴CAR-OTP-00000767 at 000002; CAR-OTP-00000768 at 000002

¹⁵E-mail from the Prosecution to the Defence dated 6 December 2022.

¹⁶Trial INCRIM package 107, 7 December 2022.

avoid additional court time in the 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. Request to add two items to the List of Evidence

15. The Prosecution requests to be allowed to add one item to its LoE and to the List of Material the Prosecution intends to use during the examination of P-2692. These items are photos [REDACTED]¹⁷, annexed to the witness' Victim's Participation Application Form. These photos [REDACTED]. The Prosecution showed the witness these photos during his preparation session on 05 and 06 December 2022.¹⁸

16. The addition of the items to the Prosecution's LoE and its List of Material would cause no undue prejudice to the Accused. The items were disclosed to the Defence on 7 July 2022. The items are limited in scope and the Defence will be able to question the witness regarding these as well during cross-examination.

F. RELIEF SOUGHT

17. For the above reasons, the Prosecution requests that the Chamber introduce into evidence Witness Preparation Log Annexes (Annex A) as additional prior recorded testimony of P-2692 subject to the fulfilment of the further conditions of rule 68(3).

18. Additionally, the Prosecution requests that the Chamber grant leave to the Prosecution to add pages 3824 and 3825 from item CAR-OTP-2135-3812 to its LoE and its List of Material that Prosecution intends to use during the P-2692's examination.

¹⁷ [REDACTED].

¹⁸ CAR-OTP-00000767 at 000003; CAR-OTP-00000768 at 000003.

A handwritten signature in black ink, consisting of a stylized initial 'K' followed by a long horizontal line that ends in a small dot.

Karim A. A. Khan KC, Prosecutor

Dated this 8th day of December 2022

At The Hague, The Netherlands