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

Date: 20 January 2023

## 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 four items to the Prosecution's List of Evidence", ICC-01/14-01/21-585-Conf, dated 16 January 2023

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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## **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 requests that Trial Chamber VI (“Chamber”) introduce into evidence “Annexe A au Registre de préparation du témoin pour la préparation de P-2931” (“Witness Preparation Log Annex”) of P-2931 pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”)<sup>1</sup> 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-2931 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 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”) four documents shown to the witness during his witness preparation including three photographs annotated by the witness that are all listed in the Witness Preparation Log Annex,<sup>3</sup> and which are all supporting P-2931’s testimony. One document was disclosed to the Accused on 7 July 2021<sup>4</sup> and the three photographs annotated by the witness were disclosed on 13 January 2023,<sup>5</sup> which originals photographs shown to the witness, were previously disclosed on 23 April 2021<sup>6</sup> so there would be no undue prejudice.

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<sup>1</sup> Annex A lists the Prior Recorded Testimony of P-2931 which comprises the Annex to the witness preparation log of P-2931. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

<sup>2</sup> ICC-01/14-01/21-571-Conf, paras. 22-23.

<sup>3</sup> CAR-OTP-2128-0747 [REDACTED], CAR-OTP-00000803 (original photograph CAR-OTP-2069-3224 annotated by P-2931), CAR-OTP-00000804 (original photograph CAR-OTP-2094-1939 annotated by P-2931), and CAR-OTP-00000805 (original photograph CAR-OTP-2094-1941 annotated by P-2931).

<sup>4</sup> Pre-Confirmation INCRIM package 029 07 July 2021.

<sup>5</sup> Trial INCRIM package 112 13 January 2023.

<sup>6</sup> CAR-OTP-2069-3224, CAR-OTP-00000804 and CAR-OTP-2094-1941.

## **II. CONFIDENTIALITY**

4. Pursuant to regulation 23bis(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**

5. This Request is filed urgently as the testimony of P-2931 is expected to commence on 18 January 2023.

## **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.”<sup>7</sup>

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).<sup>8</sup> The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-2931.<sup>9</sup>

## **V. SUBMISSIONS**

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<sup>7</sup> ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 1-13.

<sup>8</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>9</sup> ICC-01/14-01/21-571-Conf, paras. 22-23.

**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.

(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-2931's prior statements and therefore constitute a witness statement that is subject to the requirements as set out in rule 76(1) and (3) of the Rules.<sup>10</sup> P-2931 was read again in Sango his witness statements 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-2931 had some additions and minor clarifications to make. The substantive additions concern the identification of [REDACTED] relevant to the charged crimes of contextual elements and the events at the OCRB directly relevant to the charged crimes. In fact, the witness provides additional details regarding the identification of Seleka during his arrest and during his detention at the OCRB, and he recognised his detention cell at the OCRB.

(ii) *Granting the Request Would Advance the Expediitiousness of the Proceedings*

10. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2931 in its Decision dated 12 December 2022.<sup>11</sup> The Prosecution was granted 1 hour for a supplementary examination.

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<sup>10</sup> See Decision related to the Witness Preparation Log of P-0547, ICC-01/14-01/21-491, para.11.

<sup>11</sup> ICC-01/14-01/21-571-Conf, paras. 22-23.

(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 signed the Witness Preparation Log 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 interpreters, 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 statements in French and he verified that his signature appeared on the ERN pages 2246 and 2256 of his first statement CAR-OTP-2135-2245 and on the ERN pages 2260 and 2264 of his second statement CAR-OTP-2135-2260. The Witness was read back in Sango his statements in French and confirmed the accuracy of his statements, subject to certain corrections and clarifications reflected in Annex A.<sup>15</sup>

12. The information in the Witness Preparation Log Annex adds more details to his other prior recorded testimony.<sup>16</sup> The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statements.

13. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witness P-2105 whose testimony this Chamber has already heard *viva voce*,<sup>17</sup> and documentary evidence.<sup>18</sup> The Witness generally

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<sup>12</sup> CAR-OTP-00000802 at 000005.

<sup>13</sup> CAR-OTP-00000802.

<sup>14</sup> CAR-OTP-00000802 at 000005.

<sup>15</sup> CAR-OTP-00000802.

<sup>16</sup> P-2931 statements: CAR-OTP-2135-2245 (FRA) and CAR-OTP-2135-2260 (FRA).

<sup>17</sup> ICC-01/14-01/21-T-024-CONF-ENG (P-2105 in-court testimony transcript relevant to the [REDACTED] and the arrest/ detention of P-2931).

<sup>18</sup> CAR-OTP-2128-0750 (first page of complaint by [REDACTED]) and CAR-OTP-2128-0753 (second page of complaint by [REDACTED]); see also CAR-OTP-2044-0734 at 0790 ([REDACTED] registered as deceased in the admission of the [REDACTED] morgue) and CAR-OTP-2074-0080 (media press article about [REDACTED]).

distinguishes between information about which he has direct knowledge and information that he acquired from other sources.<sup>19</sup>

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

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 Witness preparation log and its Annex were formally disclosed to the Defence on 13 January 2023,<sup>20</sup> on the same last day of the witness preparation session.<sup>21</sup>

**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 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 four items to the List of Evidence**

16. The Prosecution requests to be allowed to add four items to its LoE and to the List of Material the Prosecution intends to submit for P-2931's testimony. One document is the [REDACTED] provided by P-2890,<sup>22</sup> and already disclosed to the Defence as incriminating evidence on 7 July 2021.<sup>23</sup> This document corroborates P-2931's testimony related to the [REDACTED]. The three other items are photographs

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<sup>19</sup> CAR-OTP-00000802 at 000002-000003.

<sup>20</sup> Trial INCRIM package 112 13 January 2023.

<sup>21</sup> CAR-OTP-00000801 at 000003; CAR-OTP-00000802 at 000005.

<sup>22</sup> CAR-OTP-2128-0747.

<sup>23</sup> Pre-Confirmation INCRIM package 029 07 July 2021.

annotated by the witness during his witness preparation session on 13 January 2023,<sup>24</sup> which were disclosed to the Defence as incriminating evidence on 13 January 2023. The three original photographs that the witness was shown were previously disclosed on 23 April 2021<sup>25</sup> and already on the LoE.

17. In line with the Trial Chamber's decisions via Emails on 1 December 2022 and 12 January 2023 on submitted materials, the Prosecution does not intend to show these items to the witness as part of its direct examination as any items mentioned in the Witness Preparation Log Annex will be deemed recognised as formally submitted during the fulfilment of the rule 68(3) requirements in court for the annex to the witness's preparation log. Additionally, the witness has already shown emotional distress related to one document and has already commented or annotated the three other photographs to the best of his knowledge and recognition during the witness preparation session.<sup>26</sup>

18. The addition of the four items to the Prosecution's LoE and its List of Material would cause no undue prejudice to the Accused. One document was disclosed as incriminating evidence to the Defence on 7 July 2021 and the three original photographs on 23 April 2021. The items are limited in scope, are not relevant to acts and conduct of the Accused, Mr SAID and the Defence will be able to question the witness regarding these items as well during cross-examination.

## F. RELIEF SOUGHT

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<sup>24</sup> CAR-OTP-00000802 at 000004-000005: CAR-OTP-00000803 (annotated photograph CAR-OTP-2069-3224), CAR-OTP-00000804 (annotated photograph CAR-OTP-2094-1939), and CAR-OTP-00000805 (annotated photograph CAR-OTP-2094-1941).

<sup>25</sup> CAR-OTP-2069-3224 disclosed in Pre-Confirmation INCRIM package 035 07 July 2021, CAR-OTP-2094-1939 and CAR-OTP-2094-1941 both disclosed in Pre-Confirmation INCRIM package 003 23 April 2021.

<sup>26</sup> CAR-OTP-00000802 at 000004-000005.

19. For the above reasons, the Prosecution requests that the Chamber introduce into evidence the Witness Preparation Log Annex (Annex A) as additional prior recorded testimony of P-2931 subject to the fulfilment of the further conditions of rule 68(3).

20. Additionally, the Prosecution requests that the Chamber grant leave to the Prosecution to add four items, CAR-OTP-2128-0747, CAR-OTP-00000803, CAR-OTP-00000804 and CAR-OTP-00000805 to its LoE and its List of Material that the Prosecution intends to submit for P-2931's testimony.



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

Dated this 20<sup>th</sup> day of January 2023  
At The Hague, The Netherlands