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**International
Criminal
Court**

Original: English

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

Date: 14 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-2263's prior recorded testimony pursuant to
rule 68(3)**

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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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 "*Annex A to the witness preparation log of P-2263*" ("Witness Preparation Log Annex") of P-2263 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-2263 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.

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

¹ The annex lists the Prior Recorded Testimony of P-2263 which comprises the Annex to the witness preparation log of P-2263. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-556, para. 33.

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

5. 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).⁴ The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-2263.⁵

IV. SUBMISSIONS

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

6. 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*

7. The Witness Preparation Log Annex is relevant and probative to the present case as it expands the scope of P-2263’s prior statements and therefore constitutes a witness statement that is subject to the requirements as set out in rule 76(1) and (3) of the Rules.⁶ P-2263 read again 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-2263 had some additions and minor clarifications to make. The substantive additions concern the new identity card he has, a few

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

⁴ 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.

⁵ ICC-01/14-01/21-556.

⁶ See Decision related to the Witness Preparation Log of P-0547, ICC-01/14-01/21-491, para.11.

corrections relevant to the events leading up to his arrest, the commander who was in charge of the OCRB and events following his transfer to Ngaragba prison.

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

8. The Chamber has authorised the Prosecution's introduction of P-2263's prior recorded testimony under rule 68(3) in its Decision dated 21 November 2022.⁷ The Prosecution was granted 1 hour for a supplementary examination. If the Request is granted the Prosecution can further streamline its examination of the witness under 1 hour as detailed below.

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

9. The Witness Preparation Log Annex has sufficient indicia of reliability for introduction into evidence. The Witness signed the Witness Preparation Log Annex⁸ after its content was read back to him in Sango, a language he understands.⁹ His Annex also bears the signature of the interpreter, showing that the Witness understood the content of the Annex read back to him in Sango.¹⁰ The Witness was shown his original statements and he verified that his signature appeared on pages 1229 and 1240 of statement CAR-OTP-2089-1229, as well as on pages 3074 and 3089 of statement CAR-OTP-2091-3074. The Witness was read his English statements in Sango by the interpreter¹¹ and confirmed its accuracy, subject to certain corrections and clarifications reflected in Annex A.¹²

10. The information in the Witness Preparation Log Annex add more details to his other prior recorded testimony. The Witness also provides a reasonable explanation

⁷ ICC-01/14-01/21-556.

⁸ CAR-OTP-00036082 at 000003.

⁹ CAR-OTP-00036080 at 000003.

¹⁰ CAR-OTP-00036082 at 000002.

¹¹ P-2263: CAR-OTP-2089-1229 (ENG) and CAR-OTP-2091-3074; CAR-OTP-00036080 at 000003.

¹² CAR-OTP-00036080 at 000002; CAR-OTP-00036082.

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.¹³

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

11. 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 Annex on 8 February 2024 via email.¹⁴ The documents will be formally disclosed next week.

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

12. 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.

¹³ CAR-OTP-00036080 at 000002-000003; CAR-OTP-00036082.

¹⁴ E-mail from the Prosecution to the Defence dated 08 February 2024.

V. RELIEF SOUGHT

13. 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-2263 subject to the fulfilment of the further conditions of rule 68(3).

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 14th day of February 2024

At The Hague, The Netherlands