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**Cour
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**International
Criminal
Court**

Original: English

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

Date: 23 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-1524 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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I. INTRODUCTION

1. The Prosecution requests that Trial Chamber VI ("Chamber") introduce into evidence "*Annex A to the witness preparation log of P-1524*" ("Witness Preparation Log Annex") of P-1524 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-1524 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 one 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-1524 which comprises the Annex to the witness preparation log of P-1524. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-507-Conf, para. 64.

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-1524.⁵

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-1524’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.⁶ P-1524 was read his witness statement and was requested to inform the Prosecution of any corrections and/or clarifications that he wished to make to his statement. P-1524 was also asked questions about information in his witness statement that was unclear. P-1524 provided clarifications to his witness statement.

³ ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 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-01/14-01/21-507-Conf.

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

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

8. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-1524 in its Decision dated 21 October 2022.⁷ The Prosecution was granted one hour for a supplementary examination. If the Request is granted the Prosecution will be able to further streamline its examination of the witness.

(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 Annex after its content was read back to him in Sango (a language that he understands).⁸ The Annex further includes the signature of the interpreter confirming that the Annex was read back to him in Sango.⁹ The Witness was also shown his witness statement of CAR-OTP-2062-0468 and verified that his signature appeared on pages 0468 and 0491. The Witness was read his statement (which is in English) by an interpreter who translated it into Sango¹⁰ and confirmed its accuracy, subject to corrections, clarifications and additional information that is recorded in Annex A.¹¹

10. The information in the Witness Preparation Log Annex adds more details to the witness' other prior recorded testimony. The witness also provides reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement.

⁷ ICC-01/14-01/21-507-Conf.

⁸ CAR-OTP-00036108.

⁹ CAR-OTP-00036108.

¹⁰ P-1524 English statement: CAR-OTP-2062-0468.

¹¹ CAR-OTP-00036108.

(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 a courtesy copy of the Witness preparation log and its Annex on 23 February 2024 via email.¹² These documents will also be formally disclosed imminently.

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 accordance with the Chamber's instructions that questioning be focused, relevant and expeditious.

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-1524 subject to the fulfilment of the further conditions of rule 68(3).



Karim A. A. Khan KC, Prosecutor

Dated this 23rd day of February 2024

At The Hague, The Netherlands

¹² E-mail from the Prosecution to the Defence dated 23 February 2024.