

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **6 March 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***

**Public  
with Confidential Annex A**

**Public Redacted Version of “Prosecution’s request to introduce P-2519’s prior recorded testimony pursuant to rule 68(3)”, ICC-01/14-01/21-682-Conf, dated 30 January 2024**

**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**

Mr Karim A.A. Khan KC  
Mr Mame Mandiaye Niang  
Ms Holo Makwaia

**Counsel for Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Sarah Pellet  
Mr Tars Van Litsenborgh

**The Office of Public Counsel  
for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Oswaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Prosecution requests that Trial Chamber VI (“Chamber”) introduce into evidence “*Annex A to the witness preparation log of P-2519*” (“Witness Preparation Log Annex”) of P-2519 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-2519 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.

3. The Prosecution further requests to exceptionally add to its List of Evidence (“LoE”) two pages that were appended to P-2519’s Victim’s Participation Application Form and that were shown to P-2519 during the course of the preparation session.<sup>3</sup> These pages include a [REDACTED]. No prejudice is caused by their addition because this information contained within this item is referenced in P-2519’s witness statement which was disclosed to the Defence on 29 July 2022. The Victim Participation Application Form was disclosed to the Defence on 26 January 2024.

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<sup>1</sup> The annex lists the Prior Recorded Testimony of P-2519 which comprises the Annex to the witness preparation log of P-2519. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

<sup>2</sup> ICC-01/14-01/21-555-Conf, para. 74.

<sup>3</sup> [CAR-OTP-00025568-R01](#) pg 12-13.

## II. CONFIDENTIALITY

4. 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

5. 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>4</sup>

6. 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>5</sup> The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-2519.<sup>6</sup>

## IV. SUBMISSIONS

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

7. 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.

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

<sup>5</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>6</sup> ICC-01/14-01/21-555-Conf.

(i) The Prior Recorded Testimony is Relevant and Probative

8. The Witness Preparation Log Annex is relevant and probative to the present case as it expands the scope of P-2519'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.<sup>7</sup> P-2519 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-2519 was also asked questions about information in his witness statement that was unclear. P-2519 provided clarifications to his witness statement. P-2519 was further shown photographs of the OCRB and individuals. P-2519 was able to identify the OCRB and certain individuals in the photographs that he viewed.

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

9. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2519 in its Decision dated 21 November 2022.<sup>8</sup> 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

10. 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).<sup>9</sup> The Annex further includes the signature of the interpreter confirming that the Annex was read back to him in Sango.<sup>10</sup> The Witness was also shown his witness statement of

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

<sup>8</sup> ICC-01/14-01/21-555-Conf.

<sup>9</sup> CAR-OTP-00025635; CAR-OTP-00025636.

<sup>10</sup> CAR-OTP-00025635; CAR-OTP-00025636.

CAR-OTP-2127-9471 and verified that his signature appeared on pages 9471 and 9487. The Witness was read his statement (which is in English) by an interpreter who translated it into Sango<sup>11</sup> and confirmed its accuracy, subject to corrections, clarifications and additional information that is recorded in Annex A.<sup>12</sup>

(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 25 January 2024 via email.<sup>13</sup> 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.

**C. Request to add three pages to the List of Evidence**

13. The Prosecution requests that the Chamber grants its request to add two pages to the LoE and to the List of Material that the Prosecution intends to use during the examination of P-2519. These pages were appended to P-2519's [REDACTED].

14. The addition of the pages does not cause prejudice, since the Defence is already aware of their substance. Specifically, information concerning [REDACTED].

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<sup>11</sup> P-2519 English statement: CAR-OTP-2127-9471.

<sup>12</sup> CAR-OTP-00025636.

<sup>13</sup> E-mail from the Prosecution to the Defence dated 25 January 2024.

Moreover, the pages are limited in scope and the Defence will have the opportunity to question P-2519 about them, should it wish to do so.

## V. RELIEF SOUGHT

15. 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-2519 subject to the fulfilment of the further conditions of rule 68(3).

16. Additionally, the Prosecution requests that the Chamber grant leave to the Prosecution to add the final two pages of item CAR-OTP-00025568 to its LoE and its List of Material.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

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

Dated this 6<sup>th</sup> day of March 2024  
At The Hague, The Netherlands