



Original: English

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

Date: 25 May 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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Victims' consolidated response to the Prosecution's 2nd and 3rd Requests to
introduce prior recorded testimony pursuant to rule 68(2)(b)
(ICC-01/14-01/21-307-Red and ICC-01/14-01/21-308-Red)**

Source: Office of Public Counsel for Victims

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
 Mr Mame Mandiaye Niang
 Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
 Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet
 Mr Tars Van Litsenborgh

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims****The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings (the “Legal Representative”),¹ hereby submits her consolidated response in support of the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Second Application”) and the “Prosecution third request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Third Application”), (jointly the “Applications”).²

2. The Legal Representative submits that the Second Application regarding the admission of the prior recorded testimonies and associated material of Witnesses P-0491, P-0510, P-0529, P-0662, P-0882, P-1808, and P-2386 (the “Seven Witnesses”); and the Third Application regarding the admission of the prior recorded testimonies and associated material of Witnesses P-0358, P-1180, P-2263, and P-2295 (the “Four Witnesses”) under rule 68(2)(b) of the Rules of Procedure and Evidence (the “Rules”) should be granted.

3. In particular, the Legal Representative posits that the formal submission of said testimonies and material will expedite the proceedings saving valuable court time, and would not unfairly prejudice the rights of Mr Mahamat Saïd Abdel Kani (“Mr Saïd” or the “Accused”). As stressed by the Prosecution, the proposed statements do not concern the acts or conduct of the Accused. The statements of the Seven Witnesses, on the one hand, are limited to evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, they pertain to three specific events that occurred in Bangui between March and December 2013. The statements of the Four Witnesses, on the other hand, are limited to the experience of victims of the alleged crimes that occurred at the *Office Central de Répression du*

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#), p. 47, lines 1-13.

² See the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with Confidential Annex A, [No. ICC-01/14-01/21-307-Conf](#) and [No. ICC-01/14-01/21-307-Red](#), 13 May 2022 (the “Second Application”); and the “Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with Confidential Annex A, [No. ICC-01/14-01/21-308-Conf](#) and [No. ICC-01/14-01/21-308-Red](#), 13 May 2022 (the “Third Application”) (jointly the “Applications”).

Banditisme (the “OCRB”). In addition, all statements: (i) have indicia of reliability; (ii) are of a cumulative reciprocal nature, in that they refer to similar facts; (iii) are corroborated by evidence which the Accused could effectively confront, including through cross-examination; and (iv) concern the impact of crimes on victims.

4. Lastly, the Legal Representative submits that said evidence will further assist the Chamber in assessing the nature, complexity and extent of the victimisation. In addition, the admission of this evidence may also be valuable to the determination of the appropriate form and amount of reparations to be ultimately awarded to the victims concerned, should the Accused be convicted.

II. PROCEDURAL BACKGROUND

5. On 8 March 2022, Trial Chamber VI (the “Chamber”) issued the Directions on the Conduct of Proceedings (the “Directions”).³ The Defence filed a request for reconsideration or leave to appeal said Directions on 15 March 2022,⁴ which the Chamber rejected on 8 April 2022.⁵

6. On 13 May 2022, the Prosecution filed the Applications.⁶

7. On 18 May 2022, the Defence filed the “*Version confidentielle expurgée de la ‘Requête de prorogation du délai de réponse à la ‘Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-307-Conf) et à la ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-308-Conf) en vertu de la Norme 35 du Règlement de la Cour’*” (the “Defence Request for Extension of Time”).⁷ On the same day, the Prosecution and

³ See the “Directions on the Conduct of Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022 (the “Directions”).

⁴ See the “*Demande de reconsidération ou, subsidiairement, demande d’autorisation d’interjeter appel des ‘Directions on the Conduct of Proceedings’ (ICC-01/14-01/21-251) déposées le 9 mars 2022’*”, [No. ICC-01/14-01/21-259-Conf and No. ICC-01/14-01/21-259-Red](#), 15 March 2022.

⁵ See the “Decision on Defence Request for Reconsideration or Leave to Appeal the ‘Directions on the Conduct of Proceedings’ (ICC-01/14-01/21-251)”, [No. ICC-01/14-01/21-275](#), 8 April 2022.

⁶ See the Applications, *supra* note 2.

⁷ See the “*Version confidentielle expurgée de la ‘Requête de prorogation du délai de réponse à la ‘Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-307-*

the Legal Representative informed the Chamber that they did not intend to respond to said Request.⁸

8. On 19 May 2022, the Chamber partially granted the Defence Request for Extension of Time.⁹

III. SUBMISSIONS

9. The Legal Representative relies on her previous submissions about the legal framework for introduction of prior recorded testimony pursuant to rule 68(2)(b), as set out in the “Victims’ consolidated response to the Prosecution’s Requests to introduce prior recorded testimony under rule 68(2)(b) and (c) (ICC-01/14-01/21-289-Red and ICC01/14-01/21-290-Red)” (the “Victims’ Consolidated Response”).¹⁰

10. The materials identified in the Applications all constitute “*previously recorded testimony*” within the meaning of rule 68(2)(b) of the Rules, as defined in the Victims’ Consolidated Response.¹¹ The proposed statements do not concern the acts or conduct of the Accused. Instead, the statements of the Seven Witnesses, on the one hand, are limited to evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, they pertain to three specific events that occurred in Bangui between March and December 2013.¹² The statements of the

Conf) *et à la* ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-308-Conf) *en vertu de la Norme 35 du Règlement de la Cour*”, [No. ICC-01/14-01/21-313-Conf-Red](#) and [No. ICC-01/14-01/21-313-Red2](#), 18 May 2022.

⁸ See the email from the Prosecution to Trial Chamber VI entitled “RE: “Order reducing time limit for responses to Defence request for extension of time (ICC-01/14-01/21-313-Conf-Red)”, 18 May 2022 at 13:46; and the email from the Legal Representative to Trial Chamber VI entitled “RE: “Order reducing time limit for responses to Defence request for extension of time (ICC-01/14-01/21-313-Conf-Red)”, 18 May 2022 at 15:04.

⁹ See the “Decision on Defence Request for Extension of Time for Responses to Rule 68(2)(b) Applications (ICC-01/14-01/21-313-Conf-Exp)” (Trial Chamber VI), [No. ICC-01/14-01/21-314](#), 19 May 2022.

¹⁰ See the “Victims’ consolidated response to the Prosecution’s Requests to introduce prior recorded testimony under rule 68(2)(b) and (c) (ICC-01/14-01/21-289-Red and ICC01/14-01/21-290-Red)”, [No. ICC-01/14-01/21-306](#), 12 May 2022, paras. 9-15 including footnotes.

¹¹ *Ibid.*

¹² See the Second Application, *supra* note 2, paras. 7-8.

Four Witnesses, on the other hand, are limited to the experience of victims of the alleged crimes that occurred at the OCRB.¹³

11. Moreover, the testimonies and related materials possess sufficient indicia of reliability¹⁴ and are corroborative of evidence which will be provided by witnesses who will testify *viva voce* during the trial.¹⁵ In addition, their introduction through rule 68(2)(b) would also protect the rights of the participating victims to fair and expeditious proceedings, while sparing the witnesses the burden of appearing in person and avoiding the risk of re-traumatisation.¹⁶ This is especially true for witnesses P-0662, P-1180, P-2263 and P-2295 who were all detained in deplorable conditions. Hence, the admission of their previously recorded testimonies will negate the need to unnecessarily put them in the position to revisit their painful memories and relive their traumatic experiences in front of the Judges and the public at large.¹⁷

12. Therefore, granting the Applications will also be in line with the Chamber's duty to ensure that the trial is fair and expeditious and that it is conducted with due regard to the protection of victims and witnesses pursuant to article 64(2) of the

¹³ See the Third Application, *supra* note 2, paras. 7-8.

¹⁴ See the "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)" (Trial Chamber I), [No. ICC-02/11-01/15-573-Red](#), 9 June 2016, para. 22. According to Trial Chamber I, the statements of witnesses taken by the Office of the Prosecutor pursuant to rule 111 of the Rules and under all applicable guarantees, including Article 54(1) of the Statute, bear sufficient indicia of reliability.

¹⁵ See the Second Application, *supra* note 2, paras. 34-36; and the Third Application, *supra* note 2, paras. 23-24.

¹⁶ See the "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", *supra* note 14, para. 21.

¹⁷ See also in this regard the Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, [COM\(2011\) 275 final](#), 18 May 2011, pp. 9-10. This proposal for EU's minimum standards on victims states that "[a]ll victims of crime are per se vulnerable and accordingly require sensitive and careful treatment. However, some victims are particularly vulnerable to further victimisation or intimidation by the accused or suspected person or his associates. In addition, some victims are particularly at risk of being further distressed or harmed by their involvement in criminal proceedings whether through the giving of evidence or through other forms of participation. Such victims require special measures in order to minimise the likelihood of further harm occurring. [...] [S]econdary victimisation [should be prevented] by ensuring that the victim is interviewed as early as possible and that interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them". See also, for UN standards – [Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles and Justice for Victims of Crime and Abuse of Crime](#), 1999, pp. 34-40, and 69-71.

Statute. This also falls within the Chamber's obligation to take appropriate measures for the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, according to article 68(1) of the Statute.

13. Furthermore, due to the nature of the previously recorded testimonies and related materials, which (i) go to proof of a matter other than the acts and conduct of Mr Saïd; and (ii) are cumulative or corroborative of other evidence, their admission into evidence would not be prejudicial to or inconsistent with the rights of the Accused.

14. Finally, the submission of these statements and associated material will further assist the Chamber in assessing the nature, complexity and extent of the victimisation caused by the Seleka. In addition, the admission of said material may also be valuable for the determination of the appropriate form and amount of reparations to be ultimately awarded to the victims concerned, should the Accused be convicted.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to admit the prior recorded testimonies and associated material of Witnesses P-0491, P-0510, P-0529, P-0662, P-0882, P-1808, P-2386, P-0358, P-1180, P-2263, and P-2295 under rule 68(2)(b).



Sarah Pellet

Dated this 25th day of May 2022

At The Hague, The Netherlands