

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 3 June 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 5th and 6th Requests to
introduce prior recorded testimony pursuant to rule 68(2)(b)
(ICC-01/14-01/21-323-Red and ICC-01/14-01/21-328-Red)**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Legal Representative”)¹ facing the same considerable workload as the Defence as a result of the Prosecution’s simultaneous applications,² hereby submits her consolidated response in support of the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Fifth Application”) and the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Sixth Application”), (jointly the “Applications”).³

2. The Legal Representative submits that the Fifth Application regarding the admission of the prior recorded testimonies and associated material of Witnesses P-1967 and P-2280 (the “Two Witnesses”); and the Sixth Application regarding the admission of the prior recorded testimonies and associated material of Witnesses P-0622, P-1289, P-1432, P-2172, P-2179, P-2239, P-2337, P-2519 and P-3047 (the “Nine Witnesses”) under rule 68(2)(b) of the Rules of Procedure and Evidence (the “Rules”) should be granted.

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; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-311](#), 27 May 2022.

² See the “Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)” (Trial Chamber VI), [No. ICC-01/14-01/21-341](#), 1 June 2022, para. 6: “*The Chamber considers that the efficacy of proceedings is best served by allowing sufficient time for responses to applications under rule 68 of the Rules and bar table motions to be carefully considered. [...] the Chamber is mindful of the fact that the Prosecution has been unable to file the rule 68 applications within the time frame originally envisaged and has itself required an extension of time limit. In these circumstances, the Chamber considers that good cause has been shown to extend the time limit set for the filing of the Defence responses to the sixth bar table motion, the first and second rule 68(3) applications and the fifth and sixth rule 68(2)(b) applications*” (footnote omitted). See also the Defence Request for Extension of Time, *supra* note 8, paras. 25 and 46.

³ See the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with Confidential Annex A, [No. ICC-01/14-01/21-323-Conf](#) and [No. ICC-01/14-01/21-323-Red](#), 23 May 2022 (the “Fifth Application”); and the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with Confidential Annex A, [No. ICC-01/14-01/21-328-Conf](#) and [No. ICC-01/14-01/21-328-Red](#), 23 May 2022 (the “Sixth Application”) (jointly the “Applications”).

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 Two Witnesses, on the one hand, pertain to the crime base of the charges against Mr Saïd as well as the contextual elements of crimes against humanity; in particular, they provide pertinent background information about the *Office Central de Répression du Banditisme* (the “OCRB”) at the time relevant to the charges. The statements of the Nine Witnesses, on the other hand, are limited to the experience of victims of the crimes that allegedly occurred at 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”).⁴ The Defence filed a request for

⁴ See the “Directions on the Conduct of Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022 (the “Directions”).

reconsideration or leave to appeal said Directions on 15 March 2022,⁵ which the Chamber rejected on 8 April 2022.⁶

6. On 23 May 2022, the Prosecution filed the Applications.⁷

7. On 30 May 2022, the Defence requested an extension of time to respond to, *inter alia*, the Applications (the “Defence Request for Extension of Time”).⁸ On the same day, the Chamber ordered any responses to said request to be filed by 1 June, at the latest.⁹

8. On 1 June 2022, the Legal Representative filed her response to the Defence Request for Extension of Time not opposing the latter and seeking an equivalent extension of time in case the Chamber would grant any extension.¹⁰

9. On the same day, the Chamber partially granted the Defence Request for Extension of Time,¹¹ but did not similarly vary the deadline for the OPCV to respond to the same filings on the basis that “*good cause has not been shown*”,¹² and considering that said decision does not constitute an automatic right for the Defence to reply to the Legal Representative’s responses.¹³

⁵ 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.

⁶ 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.

⁷ See the Applications, *supra* note 3.

⁸ See the “*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*”, [No. ICC-01/14-01/21-334-Conf](#), 30 May 2022 (the “Defence Request for Extension of Time”).

⁹ See the email from Trial Chamber VI to the parties and participants entitled “*Decision reducing time limit for response to Defence filing ICC-01/14-01/21-344-Conf*”, 30 May 2022 at 15:02.

¹⁰ See the “*Victims’ response to the ‘Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*”, [No. ICC-01/14-01/21-339](#), 1 June 2022.

¹¹ See the “*Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)*”, *supra* note 2.

¹² *Idem*, para. 8.

¹³ *Ibid.*

III. SUBMISSIONS

10. 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”).¹⁴

11. She further concurs with the Prosecution that the admissibility of the material identified in the Applications is not affected by the Appeals Chamber’s recent judgment in *Al Hassan*.¹⁵ Indeed, said material all constitute “*previously recorded testimony*” within the meaning of rule 68(2)(b) of the Rules, as defined in the Victims’ Consolidated Response.¹⁶ The proposed statements do not concern the acts or conduct of the Accused. Instead, the statements of the Two Witnesses, on the one hand, pertain to the crime base of the charges against Mr Saïd as well as the contextual elements of crimes against humanity; in particular, they provide pertinent background information about the OCRB at the time relevant to the charges.¹⁷ The statements of the Nine Witnesses, on the other hand, are limited to the experience of victims of the crimes that allegedly occurred at the OCRB.¹⁸

12. Moreover, the testimonies and related material possess sufficient indicia of reliability¹⁹ and are corroborative of evidence which will be provided by witnesses

¹⁴ 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 (the “Victims’ Consolidated Response”), paras. 9-15, including footnotes.

¹⁵ See the Fifth Application, *supra* note 3, para. 7, including footnotes.

¹⁶ See the Victims’ Consolidated Response, *supra* note 14, paras. 9-15, including footnotes.

¹⁷ See the Fifth Application, *supra* note 3, paras. 2 and 8.

¹⁸ See the Sixth Application, *supra* note 3, paras. 2 and 7.

¹⁹ 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; the Fifth Application, *supra* note 3, paras. 2, and 16-19; and the Sixth Application, *supra* note 3, paras. 2, and 38-39.

who will testify *viva voce* during the trial.²⁰ 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.²¹ This is especially true for witnesses P-0622, P-1289, P-1432, P-2179, P-2239, P-2519 and P-3047 who were all detained at the OCRB in deplorable and inhumane conditions. Some of them were severely beaten, and even tortured. 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.²²

13. 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 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.

14. Furthermore, due to the nature of the previously recorded testimonies and related material, which (i) go to proof of a matter other than the acts and conduct of

²⁰ See the Fifth Application, *supra* note 3, paras. 4, and 20-22; and the Sixth Application, *supra* note 3, paras. 4, and 40-42.

²¹ See the "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", *supra* note 19, para. 21.

²² 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.

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.

15. 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-1967, P-2280, P-0622, P-1289, P-1432, P-2172, P-2179, P-2239, P-2337, P-2519 and P-3047 under rule 68(2)(b).

A handwritten signature in black ink, appearing to read 'Pellet', followed by a period.

Sarah Pellet

Dated this 3rd day of June 2022

At The Hague, The Netherlands