

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **26 July 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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public
with Confidential Annex A**

Public Redacted Version of “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(3)”, ICC-01/14-01/21-371-Conf, dated 21 June 2022

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 hereby requests that Trial Chamber VI (“Chamber”), pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Rules”) introduce into evidence the statement and associated material (“Prior Recorded Testimony”) of Witness P-0834 (“Witness”) (“Request”),¹ and allow the Prosecution to conduct limited supplementary questioning.

2. P-0834’s Prior Recorded Testimony is relevant, reliable, probative, and corroborated by other evidence. Moreover, P-0834 is a vulnerable witness and limiting his direct examination will protect his well-being.

3. Granting the Request will enhance the expeditiousness of the proceedings by reducing the estimated length of P-0834’s direct examination from 4 hours to 1 hour, thus saving at least 3 hours of court time. Moreover, introducing his Prior Recorded Testimony is not prejudicial to or inconsistent with the rights of the Accused, as the Witness will be fully available for cross-examination and any further questioning by the Chamber.

4. Should the Chamber grant the Request, the Prosecution requests leave to conduct a streamlined supplementary examination to clarify certain points and elaborate on specific issues highly relevant to this case.

II. CONFIDENTIALITY

5. 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

¹ Annex A lists the prior recorded testimony of P-0834 which comprises his witness statements (at I) and associated material (at II). Where items are necessary to understand a particular witness’s prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence, those items are also referenced (at III). These materials are all hyperlinked. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

a Prosecution witness and they refer to confidential items of evidence. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

6. The Prosecution relies on its previous submissions about 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).²

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 Prior Recorded Testimony should be introduced into evidence pursuant to rule 68(3). It is relevant, reliable, probative, and corroborative of other evidence. In addition, P-0834 is in a vulnerable situation and at risk of re-traumatisation. Limiting his *viva voce* testimony will thus also be beneficial for his well-being.

8. P-0834's statements relate to the chapeau elements of crimes against humanity, specifically to the Boy Rabe operation in April 2013. The Prosecution has identified this operation as part of the Seleka's consistent pattern of violence against civilians that are reflective of the Seleka's attack directed against the civilian population in Bangui perceived to be BOZIZE supporters.³

² Prosecution's first request to introduce prior recorded testimony pursuant to rule 68(3), ICC-01/14-01/21-322-Conf, paras. 5-12.

³ See Prosecution's Trial Brief, ICC-01/14-01/21-359-Conf, paras. 80-86; paras. 91-95.

P-0834's Prior Recorded Testimony

9. P-0834 is a civilian who describes the disarmament operation in Boy Rabe in April 2013.⁴ He states that on 14 April 2013, the Seleka came to Boy Rabe and sealed the neighbourhood to prevent people from fleeing.⁵ He heard rocket launchers and Kalashnikovs firing.⁶ [REDACTED].⁷ [REDACTED].⁸ [REDACTED]⁹ [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED].¹²

10. [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶

11. While P-0834 was detained, he heard about an incident involving Seleka and the massacre of passengers on a bus from PK9. He heard that during a road check the Seleka stopped a bus coming from PK9 and, while they were searching the passengers' belongings, they found a T-shirt with an image of BOZIZE. The Seleka took the bus to an unknown location, killed the driver first and then all the passengers in the bus – men, women and even babies.¹⁷

12. [REDACTED].¹⁸ [REDACTED]¹⁹ [REDACTED].²⁰ [REDACTED].²¹

⁴ P-0834, CAR-OTP-2029-0248 at 0251-0254, paras. 16-39.

⁵ P-0834, CAR-OTP-2029-0248 at 0251, paras. 19-20.

⁶ P-0834, CAR-OTP-2029-0248 at 0252, paras. 23-24.

⁷ P-0834, CAR-OTP-2029-0248 at 0252, paras.25-29.

⁸ P-0834, CAR-OTP-2029-0248 at 0253, para. 30.

⁹ P-0834, CAR-OTP-2029-0248 at 0253, paras. 31-36.

¹⁰ P-0834, CAR-OTP-2029-0248 at 0254, para. 37.

¹¹ P-0834, CAR-OTP-2029-0248 at 0253-0254, paras. 35-37.

¹² P-0834, CAR-OTP-2029-0248 at 0254, para. 37.

¹³ P-0834, CAR-OTP-2029-0248 at 0254, paras. 39-42.

¹⁴ P-0834, CAR-OTP-2029-0248 at 0255, paras. 44-46.

¹⁵ P-0834, CAR-OTP-2029-0248 at 0255, para. 47.

¹⁶ P-0834, CAR-OTP-2029-0248 at 0255, para. 49.

¹⁷ P-0834, CAR-OTP-2029-0248 at 0256, para. 55.

¹⁸ P-0834, CAR-OTP-2029-0248 at 0256, paras. 50-51.

¹⁹ P-0834, CAR-OTP-2029-0268 at 0271-0272.

²⁰ P-0834, CAR-OTP-2029-0248 at 0257, paras. 58-70; CAR-OTP-2029-0268 at 0271-0272.

²¹ P-0834, CAR-OTP-2029-0248 at 0261-0262, paras. 91-97.

13. P-0834 Prior Recorded Testimony comprises of two statements and four annexes.²² In accordance with the established jurisprudence of the Court,²³ the annexes - constituting associated material - should also be introduced pursuant to rule 68(3) in order to ensure full understanding of the submitted testimony.

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

14. The Prosecution estimates that a full direct examination of P-0834 would require at least 4 hours of court time. If the Request is granted, the Prosecution would seek only 1 hour for focused supplemental examination, as detailed further below. Thus, the introduction of the evidence pursuant to rule 68(3) serves good trial management as it allows the Chamber to save up to 3 hours of direct-examination time by the Prosecution.

(ii) The Prior Recorded Testimonies Bear Sufficient Indicia of Reliability for Introduction into Evidence

15. The Prior Recorded Testimony of P-0834 has sufficient indicia of reliability for introduction into evidence. The testimony was obtained by the Prosecution in the ordinary course of investigations pursuant to rule 111 of the Rules. P-0834 has signed his statements, attesting that his testimony was read back to him. The statements were given voluntarily, and the witness confirmed that their contents were true to the best of his recollection of the events.²⁴ The Prior Recorded testimony is also internally consistent and corroborated by other evidence.

²² See Annex A for more details.

²³ See e.g. ICC-02/05-01/20-559-Red, para. 17, referring to: ICC-01/14-01/18-907-Red, para. 13; ICC-01/12-01/18-987-Red, para. 17.

²⁴ **P-0834**, CAR-OTP-2029-0248 at 0263-0264; CAR-OTP-2029-0268 at 0273-0274.

(iii) P-0834 is a vulnerable witness

16. P-0834 is in a vulnerable situation. [REDACTED]. During conversations with the Prosecution, the witness [REDACTED]. In addition, due to the violent events he describes and his vulnerability, his testimony raises a higher than usual risk of re-traumatization because it touches upon sensitive subjects, including [REDACTED]. Because of this, the Prosecution believes that exposing P-0834 to testify *viva voce* with full examination will only cause additional burden and may trigger intense emotions.

17. Therefore, the introduction of his prior-recorded testimony under rule 68(3) is the appropriate measure to mitigate these factors and to have the witness available for any limited supplementary questioning and cross-examination by the Defence.

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

18. The introduction of the Prior Recorded Testimony into evidence is not prejudicial to or inconsistent with the rights of the Accused. The Defence will have ample opportunity to cross-examine P-0834. Indeed, the Defence has had the Prior Recorded Testimony in its possession since before the confirmation hearing.²⁵ The Prosecution has also highlighted the Witness's evidence in the Pre-Confirmation Brief²⁶ and in the Trial Brief.²⁷ The right of Mr SAID's counsel to cross-examine P-0834, including addressing any issues of credibility or probative value and any matters of an exculpatory nature, remains unchanged. Rule 68(3) of the Rules is namely not intended to replace oral testimony but, rather, complements it.²⁸

²⁵ Both statements and annexes were disclosed to the Defence in Pre-Confirmation INCRIM package 036 12 July 2021.

²⁶ Pre-Confirmation Brief, ICC-01/14-01/21-155-Conf, para. 58

²⁷ Trial Brief, ICC-01/14-01/21-359-Conf, para. 63.

²⁸ ICC-02/05-01/20-559-Red, para. 12 and 35.

19. Moreover, evidence of P-0834, which relates to the Boy Rabe operation, does not relate to issues that are likely to be materially in dispute and is primarily relevant for proving the contextual elements. Also, the evidence of P-0834 is corroborated and cumulative to the evidence of witnesses such as P-1524, P-0100, P-1313, P-0119, P-1264, P-1297, and P-0547. Of these P-0119 and P-0547 will testify live with a full direct examination conducted by the Prosecution.

B. The Prosecution should be allowed to conduct a focused supplementary examination of P-0834

20. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of P-0834 of no more than 1 hour. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and would use the time to make any necessary clarifications and ask additional questions about the Boy Rabe operation in April 2013.

E. RELIEF SOUGHT

21. For the above reasons, the Prosecution requests that the Chamber:

- (a) Introduce into evidence the Prior Recorded Testimony of P-0834, as set out in Annex A to this filing, subject to the fulfilment of the further conditions of rule 68(3); and
- (b) Allow the Prosecution to conduct a limited supplementary examination of P-0834 of no more than 1 hour.



Karim A. A. Khan QC, Prosecutor

Dated this 26th day of July 2022

At The Hague, The Netherland