



Original: **English**

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

Date: **15 November 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 request to introduce prior recorded
testimony pursuant to rule 68(3)”, ICC-01/14-01/21-526-Conf, dated 3 November
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”) introduce into evidence “Annexe A au Registre de préparation des témoins pour la préparation de P-2240” (“Witness Preparation Log Annex”) of P-2240 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-2240 is relevant, reliable, probative, and corroborated by other evidence. Granting the Request will enhance the expeditiousness of the proceedings by reducing the estimated length of the witness’s direct examination from 2 hours to 1 hour, thus saving at least 1 hour of 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. URGENCY

This Request is filed urgently as the testimony of P-2240 is expected to commence in the afternoon of 3 November 2022.

¹ Annex A lists the Prior Recorded Testimony of P-2240 which comprises the Annex to the witness preparation log of P-2240. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-499-Conf, para. 56.

IV. 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 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-2240.⁵

V. 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-2240’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-2240 read again his witness statement taken by investigators of the Office of

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-01/14-01/21-499-Conf, para. 56.

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

the Prosecutor. He was requested to provide whether he has any corrections, clarifications or additions to make. P-2240 had extensive additions and minor clarifications to make. The substantive additions concern events at the OCRB directly relevant to the charged crimes and acts and conduct of the Accused, Mr SAID. Further, the witness provides additional detail regarding the Boy Rabe disarmament operations relevant to the contextual elements of crimes against humanity.

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

8. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2240 in its Decision dated 11 October 2022.⁷ The Prosecution was granted 2 hours for a supplementary examination. However, if this Request is granted, the Prosecution estimates that it can further streamline its examination in chief to 1 hour instead of 2, as detailed further below.

(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 has signed the Witness Preparation Log Annex⁸ after its content was read back to him in French, a language he understands.⁹ His Annex also bears the signature of an interpreter, showing that the Witness understood the content of the Annex read back to him in French.¹⁰ The Witness was shown his original statement in French and he verified that his signature appeared on page 1 at ERN page 0780 and on page 17 at ERN page 0796 of his statement CAR-OTP-2110-0780. The Witness read his statement in French and confirmed the accuracy of

⁷ ICC-01/14-01/21-499-Conf, para. 56.

⁸ CAR-OTP-00000455-000001 at 000005.

⁹ CAR-OTP-00000454-000001 at 000003.

¹⁰ CAR-OTP-00000455-000001 at 000005.

his statement that he read, subject to certain corrections and clarifications reflected in (Annex A).¹¹

10. The information in the Witness Preparation Log Annex adds more details to his other prior recorded testimony.¹² The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement but in a less chronological or understandable way.

11. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witnesses [REDACTED] and [REDACTED] whose testimony the Prosecution seeks to introduce through rule 68(2)(b)¹³ or through rule 68 (3), granted by the Chamber.¹⁴ The Witness generally distinguishes between information about which he has direct knowledge and information that he acquired from other sources like [REDACTED].¹⁵

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

12. 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 has received the Witness preparation log and its Annex A on 28 October 2022 via email¹⁶ which were then formally disclosed on 31 October 2022.¹⁷

¹¹ CAR-OTP-00000454-000001 at 000002.

¹² P-2240 statement: CAR-OTP-2110-0780 (FRA).

¹³ ICC-01/14-01/21-328-Conf.

¹⁴ ICC-01/14-01/21-519-Conf, para. 57.

¹⁵ CAR-OTP-00000455-000001 at 000001 (para. 19).

¹⁶ E-mail from the Prosecution to the Defence dated 28 October 2022 at 18H37.

¹⁷ Trial INCRIM package 094 31 October 2022.

D. The Prosecution should be allowed to conduct a focused supplementary examination of the Witness

13. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Witness. In this regard, the Prosecution had been granted 2 hours for the supplementary examination of the Witness but would only use 1 hour of the time to make any necessary but limited clarifications. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

E. RELIEF SOUGHT

14. 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-2240 subject to the fulfilment of the further conditions of rule 68(3).

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

Karim A. A. Khan KC, Prosecutor

Dated this 15th day of November 2022

At The Hague, The Netherlands