

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 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) for P-0787”, ICC-01/14-01/21-540-Conf, dated 11
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-0787*” (“Witness Preparation Log Annex”) of P-0787 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-0787 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 1 hour, thus saving 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

4. This Request is filed urgently as the testimony of P-0787 is expected to commence on 11 November 2022.

¹ Annex A lists the Prior Recorded Testimony of P-0787 which comprises the Annex to the witness preparation log of P-0787. 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. 64.

IV. APPLICABLE LAW

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)³ and in its recent filing.⁴ The Prosecution also refers to the Chamber's decision granting the introduction of the prior recorded testimony of P-0787.⁵

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-0787'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-0787 read again his witness statement taken by investigators of the Office of the Prosecutor. He was requested to provide whether he had any corrections, clarifications or additions to make. P-0787 had some additions and minor clarifications to make. The substantive additions concern events at the OCRB⁷ directly relevant to the charged crimes and acts and conduct of the Accused, Mr SAID. Further, the

³ 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.

⁴ ICC-01/14-01/21-531-Conf, paras. 5-7.

⁵ ICC-01/14-01/21-499-Conf, para. 64.

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

⁷ See Annex A, pages 3-7. CAR-OTP-00000594.

witness provides additional details regarding the lack of due process at the OCRB, the detention and mistreatment of prisoners at the OCRB relevant to the contextual elements of crimes against humanity.⁸

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

8. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-0787 in its Decision dated 11 October 2022.⁹ The Prosecution was granted 1 hour for a supplementary examination. However, the introduction of the Witness Preparation Log Annex would further expedite the proceedings to 0.5¹⁰ hour.

(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 Annex¹¹ after its content was read back to him in French, a language he understands.¹² 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.¹³ The Witness was shown his original statement in English and he verified that his signature appeared on page 1 at ERN page 0410 and on page 28 at ERN page 0437 of his statement CAR-OTP-2036-0410. The Witness read his statement in French and confirmed the accuracy of his statement that he read, subject to certain corrections and clarifications reflected in Annex A.¹⁴

⁸ See Annex A, pages 4-7. CAR-OTP-00000594.

⁹ ICC-01/14-01/21-499-Conf, para. 64.

¹⁰ See Annex A, page 4.

¹¹ See Annex A, page.8. CAR-OTP-00000594.

¹² See Annex A, pages.1-8. CAR-OTP-00000594.

¹³ See Annex A, page. 8. CAR-OTP-00000594.

¹⁴ See Annex A, pages.2, 3. CAR-OTP-00000594.

10. The information in the Witness Preparation Log Annex adds more details to his other prior recorded testimony.¹⁵ The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement.

11. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witnesses [REDACTED] and [REDACTED] whose in-court testimony has already been heard by the Court¹⁶ or of witnesses [REDACTED] and [REDACTED] whose testimonies the Prosecution seeks to introduce pursuant to rule 68(3), granted by the Chamber.¹⁷ The Witness generally distinguishes between information about which he has direct knowledge and information that he acquired from other sources or he did not verify.¹⁸ He further elaborated when he only heard and did not see certain events.¹⁹

(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. Courtesy copies of the Witness preparation log and its Annex A were sent to the Defence on 10 November 2022 via email;²⁰ both of which will then be formally disclosed as soon as possible.

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

¹⁵ P-0787 statement: CAR-OTP-2036-0410.

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ See Annex A, page.3. CAR-OTP-00000594.

¹⁹ See Annex A, page 6.

²⁰ E-mail from the Prosecution to the Defence dated 10 November 2022 at 20:17.

been granted 1 hour for the supplementary examination of the Witness but wishes to avoid additional court time. 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-0787 subject to the fulfilment of the further conditions of rule 68(3).



Karim A. A. Khan KC, Prosecutor

Dated this 18th day of November 2022
At The Hague, The Netherlands