



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)
and to include one item to the Prosecution’s List of Evidence”, ICC-01/14-01/21-544-
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 du témoin pour la préparation de P-1429*” and “*Annex A to the witness preparation log of P-1429*” (“Witness Preparation Log Annexes”) of P-1429 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 Annexes of P-1429 are 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 the 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.

3. Further, the Prosecution requests to exceptionally be allowed to add to its List of Evidence (“LoE”) a document provided by the witness that is annexed to his Victim’s Participation Application Form³, which is a copy of a court document supporting P-1429’s testimony. The document was disclosed to the Accused on 7 July 2022, so there would be no undue prejudice.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Request and its Annexes are filed as confidential because they contain information that may

¹ Both annexes list the Prior Recorded Testimony of P-1429 which comprise the Annexes to the witness preparation log of P-1429. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² ICC-01/14-01/21-519-Conf, para. 23.

³ CAR-OTP-2135-3837 at 3849 - 3850.

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-1429 is expected to commence on 15 November 2022.

IV. APPLICABLE LAW

5. 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.”⁴

6. 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).⁵ The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-1429.⁶

V. SUBMISSIONS

A. The Prior Recorded Testimony should be conditionally introduced into evidence pursuant to rule 68(3)

⁴ ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 1-13.

⁵ 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.

⁶ ICC-01/14-01/21-519-Conf, para. 23

7. Subject to the fulfilment of the further conditions of rule 68(3), the Witness Preparation Log Annexes should be introduced into evidence pursuant to rule 68(3). They are relevant, reliable, probative, and corroborative of other evidence.

(i) The Prior Recorded Testimony is Relevant and Probative

8. The Witness Preparation Log Annexes are relevant and probative to the present case as they expand the scope of P-1429's prior statement and therefore constitute witness statements that are subject to the requirements as set out in rule 76(1) and (3) of the Rules.⁷ P-1429 read again his witness statement taken by investigators of the Office of the Prosecutor. He was requested to provide whether he has any corrections, clarifications or additions to make. P-1429 had some 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 [REDACTED] and the events leading up to their arrest and detention by the Seleka.

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

9. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-1429 in its Decision dated 28 October 2022.⁸ The Prosecution was granted 1 hour for a supplementary examination. However, in the light of the recently adopted procedural requirements in this case, the witness would have to be shown his Annexes and the photos shown to him during the interview, which would significantly increase the estimated court time of 1 hour.

(iii) The Prior Recorded Testimony Bears Sufficient Indicia of Reliability for Introduction into Evidence

⁷ See Decision related to the Witness Preparation Log of P-0547, ICC-01/14-01/21-491, para.11.

⁸ ICC-01/14-01/21-519-Conf, para. 23.

10. The Witness Preparation Log Annexes have sufficient indicia of reliability for introduction into evidence. The Witness signed the Witness Preparation Log Annexes⁹ after their content was read back to him in French, a language he understands.¹⁰ His Annexes also bear the signature of an interpreter, showing that the Witness understood the content of the Annexes read back to him in French.¹¹ The Witness was shown his original statement in French and he verified that his signature appeared on 0317 and 0030 of his statement CAR-OTP-2043-0317. 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.¹²

11. The information in the Witness Preparation Log Annexes add more details to his other prior recorded testimony.¹³ The Witness also provides a reasonable explanation for corrections and clarifications, including that the main information was already captured in the statement.

12. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witness [REDACTED] whose testimony this Chamber will soon hear and which the Prosecution seeks to introduce pursuant to 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.¹⁵

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

⁹ CAR-OTP-00000590 at 000003; CAR-OTP-00000591 at 000003.

¹⁰ CAR-OTP-00000590 at 000002 - 000003; CAR-OTP-00000591 at 000002 - 000003.

¹¹ CAR-OTP-00000590 at 000003; CAR-OTP-00000591 at 000003.

¹² CAR-OTP-00000590 at 000002; CAR-OTP-00000591 at 000002.

¹³ P-1429 statement: CAR-OTP-2043-0317 (FRA).

¹⁴ ICC-01/14-01/21-499-Conf, para 64.

¹⁵ CAR-OTP-00000590 at 000002; CAR-OTP-00000591 at 000002.

13. 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 received the Witness preparation log and its Annexes on 10 November 2022 via email¹⁶ which were then formally disclosed on 11 November 2022.¹⁷

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

14. 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 1 hour for the supplementary examination of the Witness but wishes to avoid additional court time in the light of the recently adopted procedural requirements. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

E. Request to add one item to the List of Evidence

15. The Prosecution requests to be allowed to add one item to its LoE and to the List of Material the Prosecution intends to use during the examination of P-1429. This item is [REDACTED]. This document corroborates P-1429's testimony concerning his eventual release from the OCRB. The Prosecution will show this item to the witness as part of its direct examination.

16. The addition of the item to the Prosecution's LoE and its List of Material would cause no undue prejudice to the Accused. The item was disclosed to the Defence on 7 July 2022. The item is limited in scope and the Defence will be able to question the witness regarding this item as well during cross-examination.

¹⁶ E-mail from the Prosecution to the Defence dated 10 November 2022 at 20:31.

¹⁷ Trial INCRIM package 099, 11 November 2022.

F. RELIEF SOUGHT

17. For the above reasons, the Prosecution requests that the Chamber introduce into evidence Witness Preparation Log Annexes (Annex A) as additional prior recorded testimony of P-1429 subject to the fulfilment of the further conditions of rule 68(3).

18. Additionally, the Prosecution requests that the Chamber grant leave to the Prosecution to add pages 3849 and 3850 from item CAR-OTP-2135-3837 to its LoE and its List of Material the that Prosecution intends to use during the P-1429's examination.



Karim A. A. Khan KC, Prosecutor

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