



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 Annexes A and B**

**Public Redacted Version of “Prosecution’s request to introduce prior recorded
testimony pursuant to rule 68(3) for P-0435”, ICC-01/14-01/21-552-Conf, dated 15
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-0435” (“Witness Preparation Log Annex”, annexed as Annex B to this Request) 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 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 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.

II. CONFIDENTIALITY

3. 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 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-0435 is expected to commence on 17 November 2022.

¹ Annex B to this Request is the Witness Preparation Log Annex, which the Prosecution seeks its introduction into evidence in this Request. Annex A to this Request is a witness preparation log of P-0435. 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. 36.

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-0435.⁵

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). They are 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 they expand the scope of P-0435’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.⁶ P-0435 read again the witness statements taken by investigators of the Office

³ ICC-01/14-01/21-T-030-ENG RT 02-11-2022 T, page 35, lines 1-13.

⁴ ICC-01/04-01/21-322-Conf, paras. 5-12.

⁵ ICC-01/14-01/21-519-Conf, para. 36.

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

of the Prosecutor. The Witness was requested to provide whether there are any corrections, clarifications or additions to make.⁷ P-0435 had some additions and minor clarifications to make. The key additions concern [REDACTED].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-0435 in its decision dated 28 October 2022.⁹ The Prosecution was granted 1 hour for a supplementary examination. The introduction of the Witness Preparation Log Annex would further expedite the proceedings.

(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 signed the Witness Preparation Log Annex¹⁰ after she read the content in French, a language the Witness understands.¹¹ The Witness Preparation Log Annex also bears the signature of an interpreter, showing that the Witness understood the content of the Annex in French.¹² During the preparation session, P-0435 was shown the first statement in English and verified that the signature appeared on 0037 and 0073 of the first statement CAR-OTP-2017-0036 as the Witness's signature. P-0435 was further shown the second statement in French and verified that the signature appeared on 0576 and 0587 of the second statement CAR-OTP-2136-0576 as the Witness's signature.¹³ The Witness read the two statements in

⁷ See Annex A, pages 2-3.

⁸ See Annex B, pages 1-5.

⁹ ICC-01/14-01/21-519-Conf, para. 36.

¹⁰ See Annex B, page 5. .

¹¹ See Annex A, page 3.

¹² See Annex B, page 5.

¹³ See Annex A, page 2.

French and confirmed the accuracy of these statements, subject to certain corrections and clarifications reflected in the Witness Preparation Log Annex.¹⁴

10. The information in the Witness Preparation Log Annex adds more details to P-0435's 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 statements.

11. The events mentioned by the Witness are further corroborated by other evidence. The Witness generally distinguishes between information about which the Witness has direct knowledge and information that the Witness acquired from other sources.¹⁶

(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.

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. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

F. RELIEF SOUGHT

¹⁴ See Annex A, pages 2-3; Annex B, pages 1-5.

¹⁵ P-0435 1st statement: CAR-OTP-2017-0036; P-0435 2nd statement: CAR-OTP-2136-0576.

¹⁶ See Annex B, page 1-2.

14. For the above reasons, the Prosecution requests that the Chamber introduce into evidence Witness Preparation Log Annex (Annex B of this Request) as additional prior recorded testimony of P-0435 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