

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 December 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-2607”, ICC-01/14-01/21-566-Conf, dated 7 December 2022

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A.A. Khan KC

Mr Mame Mandiaye Niang

Ms Holo Makwaia

Counsel for Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet

Mr Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

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-2607” (“Witness Preparation Log Annex”, annexed as Annex A 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

4. This Request is filed urgently as the testimony of P-2607 is expected to commence on 12 December 2022.

¹ Annex A to this Request is the Witness Preparation Log Annex, which the Prosecution seeks its introduction into evidence in this Request at CAR-OTP-00000751. 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. 44.

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.”³

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).⁴ The Prosecution also refers to the Chamber’s decision granting the introduction of the prior recorded testimony of P-2607.⁵

V. 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 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

8. The Witness Preparation Log Annex is relevant and probative to the present case as they expand the scope of P-2607’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-2607 read again the 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 ICC-01/04-01/21-322-Conf, para. 5-12.

⁵ ICC-01/14-01/21-519-Conf, para. 44.

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

the Prosecutor. The Witness was requested whether he had any corrections, clarifications or additions to make. P-2607 had some additions and clarifications to make. The key additions concern further detail of his [REDACTED] and his own occupation at the relevant period, the presence of his [REDACTED] former classmates from the army at the [REDACTED] and at the OCRB, names of persons listed as elements of ORCB Damala including Mahamat SAID's relatives as well as the reason for his departure from [REDACTED], expanding the scope of the Witness' statement.⁷

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

9. The Chamber granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-2607 in its decision dated 28 October 2022.⁸ 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

10. The Witness Preparation Log Annex has sufficient indicia of reliability for introduction into evidence. The Witness signed the Witness Preparation Log Annex⁹ after he read the content in French, a language the Witness understands. The Witness Preparation Log Annex also bears the signatures of two interpreters, showing that the Witness understood the content of the Annex in French and was able to make comments and clarifications in Sango that the interpreters translated.¹⁰ During the preparation session, P-2607 was shown his prior statement in English and verified that his signature appeared on page 0855 and 0861. The Witness read the French

⁷ See Annex A, pages 1-5.

⁸ ICC-01/14-01/21-519-Conf, para. 44.

⁹ See Annex A, page 5 at 000005.

¹⁰ See Annex A, page 5, at 000005.

translation of his statement and confirmed the accuracy of this statement, subject to certain corrections and clarifications reflected in the Witness Preparation Log Annex.¹¹

11. The information in the Witness Preparation Log Annex adds more details to P-2607's 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 statements. The Witness generally distinguishes between information about which he has direct knowledge and information that he acquired from other sources.¹³

(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 focused and efficient during the presentation of evidence.

F. RELIEF SOUGHT

14. For the above reasons, the Prosecution requests that the Chamber introduce into evidence the Witness Preparation Log Annex (Annex A of this Request) as additional

¹¹ Annex A, pages 1-5.

¹² P-2607 statement: CAR-OTP-2125-0855.

¹³ See Annex A, pages 1-5.

prior recorded testimony of P-2607 subject to the fulfilment of the further conditions of rule 68(3).



Karim A. A. Khan KC, Prosecutor

Dated this 8th day of December 2022
At The Hague, The Netherlands