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**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **23 January 2024**

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-01/14-01/21-673-Conf, dated 22 January 2024**

Source: Office of the Prosecutor

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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-2241” (“Witness Preparation Log Annex”) of P-2241 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-2241 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 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. 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

¹ Annex A lists the Prior Recorded Testimony of P-2241 which comprises the Annex to the witness preparation log of P-2241. 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. 57.

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. In its oral decision dated 3 November 2022, the Chamber authorized the introduction of the annex to P-2240’s preparation log under rule 68(3) of the Rules and instructed the Prosecution that, when satisfying the outstanding requirements of rule 68(3), it also fulfils these requirements in respect of the annex.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-2241.⁶

IV. 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). It is 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 it expands the scope of P-2241’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

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

⁴ ICC-01/14-01/21-T-031-ENG RT 03-11-2022 T, page 57, lines 2-5.

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. 57.

Rules.⁷ P-2241's witness statement taken by investigators of the Office of the Prosecutor was read back to the witness in Sango by a certified interpreter. She was requested to provide whether she had any corrections, clarifications or additions to make. P-2241 had one minor correction to make. The additional information concerns the identification of photographs of the OCRB compound and buildings directly relevant to the charged crimes at the OCRB. Further, the Witness identified a photograph of [REDACTED], a gendarmerie officer, that she saw at Camp de Roux relevant to the detention, mistreatment and transfer of prisoners from Camp de Roux to the OCRB relevant to the contextual elements of crimes against humanity.

(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-2241 in its Decision dated 28 October 2022.⁸ The Prosecution was granted 1 hour for a supplementary examination. However, if this Request is granted, the Prosecution estimates that it can further streamline its examination-in-chief under 1 hour, as detailed further below.

(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 has signed the Witness Preparation Log Annex⁹ after its content was read back to her in Sango, a language she understands.¹⁰ Her Annex also bears the signature of an interpreter, showing that the Witness understood the content of the Annex read back to her in Sango.¹¹ The Witness was shown her original statement in English and she verified that her signature appeared

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. 57.

⁹ CAR-OTP-00025608 at 0001.

¹⁰ CAR-OTP-00025609 at 0003.

¹¹ CAR-OTP-00025608 at 0002.

on page 1 at ERN page 3851 and on page 23 at ERN page 3873 of her statement CAR-OTP-2092-3851. The Witness's statement was read back in Sango and she confirmed its accuracy, subject to a minor correction and some additional information reflected in Annex A.¹² The witness corrected [REDACTED] older brother" to now read [REDACTED] younger brother".

11. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of Witness P-2400 whose in-court testimony has already been heard by the Court¹³ or of Witnesses P-2239 and P-2337 whose testimony the Prosecution seeks to introduce pursuant to rule 68(2)(b), granted by the Chamber.¹⁴

(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 19 January 2024 via e-mail.¹⁵

B. 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 1 hour for the supplementary examination of the Witness but would only under the estimated time to meet the necessary procedural requirements.

¹² CAR-OTP-00025608 at 0001.

¹³ P-2400 transcripts : T-030 and T-031 on 02-03 November 2022.

¹⁴ ICC-01/14-01/21-555-Conf, paras. 59 and 67.

¹⁵ E-mail from the Prosecution to the Defence dated 19 January 2024 at 14H09.

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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-2241 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 23rd day of January 2024
At The Hague, The Netherlands