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**Cour  
Pénale  
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**International  
Criminal  
Court**

Original: English

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

Date: 6 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***

**Confidential  
with Confidential Annex A**

**Prosecution's request to introduce P-0622's prior recorded testimony pursuant to  
rule 68(3)**

**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:****The Office of the Prosecutor**

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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-0622" ("Witness Preparation Log Annex") of P-0622 pursuant to rule 68(3) of the Rules of Procedure and Evidence ("Request")<sup>1</sup> in addition to the introduction of the prior recorded testimony already granted for this Witness.<sup>2</sup>

2. The Prosecution submits that the Witness Preparation Log Annex of P-0622 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

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<sup>1</sup> Annex A lists the Prior Recorded Testimony of P-0622 which comprises the Annex to the witness preparation log of P-0622. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

<sup>2</sup> ICC-01/14-01/21-555-Conf, para. 20.

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Chamber, it must request the authorization of the Chamber to do so pursuant to rule 68(3) of the Rules of Procedure and Evidence.”<sup>3</sup>

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.<sup>4</sup>

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).<sup>5</sup> The Prosecution also refers to the Chamber's decision granting the introduction of the prior recorded testimony of P-0622.<sup>6</sup>

#### **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-0622'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

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<sup>3</sup> ICC-01/14-01/21-T-030-ENG RT 02-11-2022, p. 35, l. 1-13.

<sup>4</sup> ICC-01/14-01/21-T-031-ENG RT 03-11-2022, p. 57, l. 2-5.

<sup>5</sup> 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.

<sup>6</sup> ICC-01/14-01/21-555-Conf, para. 20.

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Rules.<sup>7</sup> P-0622 read back his witness statement in French 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-0622 had some additional information concerning the identification of photographs and video images of some persons of interest directly relevant to the charged crimes at the OCRB and Mr SAID and to the contextual elements of crimes against humanity and war crimes.

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

9. The Chamber has granted the Prosecution's request under rule 68(3) to introduce the prior recorded testimony of P-0622 in its Decision dated 21 November 2022.<sup>8</sup> The Prosecution requests 1 hour for a supplementary examination, 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 Annex<sup>9</sup> after he read its content in French, a language he understands.<sup>10</sup> His Annex also bears the signature of an interpreter, who was present in case the Witness needed interpretation in Sango.<sup>11</sup> The Witness was shown his original statement in French and he verified that his signature appeared on page 2 at ERN page 0122 and on page 28 at ERN page 0148 of his statement CAR-OTP-2022-0121. The Witness read his statement in French and confirmed its accuracy subject to some additional information reflected in Annex A.<sup>12</sup>

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

<sup>8</sup> ICC-01/14-01/21-555-Conf, para. 20.

<sup>9</sup> CAR-OTP-00036079 at 0002.

<sup>10</sup> CAR-OTP-00036078 at 0002-0003.

<sup>11</sup> CAR-OTP-00036079 at 0002.

<sup>12</sup> CAR-OTP-00036079 at 0001-0002.

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11. The information in the Witness Preparation Log Annex adds some information to his prior recorded testimony,<sup>13</sup> knowing that the main information was already captured in the statement.

(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 2 February 2024 via e-mail<sup>14</sup> which will be formally disclosed as soon as possible.

**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 submits 1 hour for the supplementary examination of the Witness but will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

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<sup>13</sup> P-0662 statement: CAR-OTP-2099-0336 (ENG).

<sup>14</sup> E-mail from the Prosecution to the Defence dated 2 February 2024 at 17h02.

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**V. 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-0622 subject to the fulfilment of the further conditions of rule 68(3).



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**Karim A. A. Khan KC, Prosecutor**

Dated this 6<sup>th</sup> day of February 2024  
At The Hague, The Netherlands