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**Cour
Pénale
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**International
Criminal
Court**

Original: English

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

Date: 3 October 2024

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez
Alternate Judge: Judge Keebong Paek

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Confidential

**Prosecution's request pursuant to regulation 35 to add Four items to its list of
evidence**

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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Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. Pursuant to regulation 35 of the Regulations of the Court ("Regulations") and articles 64(2), 64(6)(f) and 69(3) of the Rome Statute ("Statute"), the Prosecution requests Trial Chamber VI ("Chamber") to exceptionally permit the addition of four items of evidence to the Prosecution's list of evidence ("List of Evidence").

2. The items sought to be admitted are photographs that form part of the FSS OCRB evidence relevant to issues in this trial. During his testimony next week Witness P-3112 will attest to their authenticity and content, with a view to clarifying the inaccuracies between the description of certain items in the Prosecution's Fifth application to submit evidence from the bar table¹ and the description of the same items in witness P-3112's expert reports CAR-OTP-2062-0743 and CAR-OTP-2058-0264.²

3. The four photographs, CAR-OTP-2033-6946, CAR-OTP-2033-6948, CAR-OTP-2033-6955 and CAR-OTP-2033-6979 which depict the cells at the OCRB, are in the process of being disclosed to the Defence this week.

4. The Prosecution submits that there is good cause to admit these items. P-3112 was only able to identify the four photographs during the witness preparation session conducted this week.

5. The Prosecution further submits that all items sought to be admitted are relevant, probative and will assist the Chamber in its determination of the truth under article 69(3) of the Statute.

6. The Prosecution respectfully submits that the addition of the requested materials to the List of Evidence is in the interests of justice and will not cause any prejudice to the Accused's right to a fair trial under article 67(1). The four items the

¹ ICC-01/14-01/21-321-Red.

² ICC-01/14-01/21-694, paras. 90-91.

Prosecution seeks to add to its List of Evidence form part of the FSS expert reports on the OCRB, and CEDAD, material in the Defence's possession since June 2021.

II. CONFIDENTIALITY

7. The Request is filed as "Confidential" since it refers to confidential materials involving Witness P-3112. The Prosecution will file a public redacted version of this filing.

III. SUBMISSIONS

A. There is good cause to permit the addition of four photographs

a. The relevance of the photographs to P-3112's anticipated testimony only became apparent on 02 October 2024.

8. Regulation 35(2) of the Regulations provides that the Chamber "may extend or reduce a time limit if good cause is shown [...]. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control."

9. In its Decision on the Prosecution's Applications for Submission of Documents from the Bar Table,³ the Chamber drew the Prosecution's attention to the inaccuracies between the description of certain items in the Prosecution's Fifth application to submit evidence from the bar table⁴ and the description of the same items in the witness P-3112's expert reports CAR-OTP-2062-0743 and CAR-OTP-2058-0264.⁵ The Chamber further instructed that Witness P-3112 may be expected to give useful

³ ICC-01/14-01/21-694.

⁴ ICC-01/14-01/21-321-Red.

⁵ ICC-01/14-01/21-694, paras. 90-91.

evidence about the authenticity and/or content of the items including inconsistencies in his expert reports.

10. The Prosecution only commenced its witness preparation of P-3112 this week, and during the course of which the witness had the opportunity to read through his reports and related material and provide any clarifications thereto. Witness P-3112 identified CAR-OTP-2033-6946, CAR-OTP-2033-6948, CAR-OTP-2033-6955 and CAR-OTP-2033-6979 as the correct photographs that he refers to as photographs 254, 255, 256 and 257 respectively in expert report CAR-OTP-2062-0743.⁶

11. The Prosecution submits that there is good cause to extend the time limit to add the four requested items to its List of Evidence.

B. The photographs are relevant and their admission is in the interests of justice.

12. Witness P-3112 is an expert witness who will testify next week, about the crime scene examinations he conducted at the OCRB and CEDAD compounds in 2016 and 2017, as part of the Prosecution's investigation in this case.

13. The Prosecution submits that the four photographs are relevant, reliable and authentic because they provide the Chamber and Defence with a detailed view of the cells within the OCRB compound, and therefore are relevant to proving where the crimes were committed. The photographs also corroborate the accounts of Prosecution witnesses such as P-0338, P-0787, P-1737, P-2161, P-2105, P-1167, P-2478, P-2563, P-0481 and P-0547, all of whom have attested, before this Chamber, to the layout of the OCRB compound, where Mr SAID's office was located and what the cells looked like in 2013.

⁶ The annex to the witness preparation log of P-3112, which is the source here, will be disclosed before the end of this week

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14. The photographs were obtained from an objective primary source, the Forensic Services Section of the Prosecution, and therefore provide the necessary indicia of authenticity and reliability. The photographs were saved on digital carriers, saved on a hard disk and submitted for registration by the FSS according to standard procedure in the Prosecution.⁷

15. The Prosecution submits that the addition of the four photographs are in the interests of justice because they will also assist the Chamber in its determination of the truth.

C. Admission of the four items of evidence will not cause any prejudice to the Accused.

16. The photographs are being disclosed to the Defence this week, the Prosecution submits that no prejudice ensues, because they are similar to other photographs disclosed in June 2021 as part of the FSS OCRB evidence.

17. The Prosecution submits that, under the circumstances, adding these items to the List of Evidence causes no prejudice. On the contrary, the Defence will have sufficient time to review the four photographs, and cross examine witness P-3112 during the course of his testimony.

⁷ FSS Report OCRB, CAR-OTP-2118-3740 at 3763 (Eng); CAR-OTP-2062-0743 at 0765 (Fr).

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IV. RELIEF SOUGHT

18. For the above reasons, the Prosecution respectfully requests that it be permitted to add the following four photographs to its List of Evidence: CAR-OTP-2033-6946, CAR-OTP-2033-6948, CAR-OTP-2033-6955 and CAR-OTP-2033-6979.



Karim A. A. Khan KC, Prosecutor

Dated this 3rd day of October 2024
At The Hague, The Netherlands