



Original: **English**

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

Date: **19 November 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***

Public

Public redacted version of “Prosecution’s request pursuant to regulation 35 to add three items to its list of evidence”, ICC-01/14-01/21-842-Conf, dated 29 August 2024

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. 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 three items of evidence to the Prosecution’s list of evidence (“List of Evidence”).

2. The items sought to be admitted all relate to [REDACTED] of Witness P-2232 [REDACTED]. Specifically, item [REDACTED]. Item [REDACTED]. It was disclosed to the Defence on 28 November 2022. Item [REDACTED].

3. The Prosecution makes this request because on 28 August 2024, during the course of Witness P2232’s testimony, the Witness stated “[REDACTED].”¹ This was the first time that the Witness provided information that [REDACTED].²

4. The Prosecution submits that there is good cause to admit these items. Prior to Witness P-2232 voluntarily providing this information, the Prosecution could neither foresee nor anticipate that [REDACTED].

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). This is because: the items do not go to the acts and conduct of the Accused; the key documents have been in the Defence’s possession since November 2022; and because [REDACTED] for Witness P-2232 is a matter that the Defence must have already considered.

¹ ICC-01/14-01/21-T-102-ENG RT, p. 28 lines 2-8; p. 53, lines 14-25; p.54. lines 1-25; p.55, lines 1-25; p.56, lines 1-2.

² CAR-OTP-2090-0561, paras 61-62.

II. CONFIDENTIALITY

7. The Request is filed as “Confidential” since it refers to confidential materials involving Witness P-2232. The Prosecution will file a public redacted version of this filing.

III. SUBMISSIONS

A. There is good cause to permit the addition of three items containing [REDACTED] of P-2232.

a. The relevance of [REDACTED] for Witness only became apparent on 28 August 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. Witness P-2232 provided witness statements to the Office of the Prosecutor in September 2018 and February 2019. In his first witness statement, Witness P-2232 provided as follows:

61. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[REDACTED].

62. [REDACTED]. [REDACTED].

10. Witness P-2232's statements do not, either directly or indirectly, imply that [REDACTED].

11. On 28 August 2024, Witness P-2232 commenced giving evidence before the Chamber. During the course of his testimony, the Witness [REDACTED]. He testified that [REDACTED]. He also [REDACTED].

12. Witness P-2232's testimony before the Chamber was [REDACTED]. [REDACTED]

13. The Prosecution submits that, before Witness P-2232's testimony on 28 August 2024, it was not reasonably possible to foresee [REDACTED]. The Prosecution was also not in a position to determine that [REDACTED] should have been included in its List of Evidence. Given the circumstances, the Prosecution submits that there is good cause to extend the time limit to add the three requested items to its List of Evidence.

B. [REDACTED] Witness P-2232's testimony and [REDACTED] are relevant and their admission is in the interests of justice.

14. Witness P-2232 is [REDACTED]. In addition to [REDACTED]. Moreover, [REDACTED].

15. The Prosecution submits that the three items relating [REDACTED] are relevant and probative because they relate to [REDACTED].

16. Furthermore, the Defence has already recognised the relevance of the items being sought for admission. First, on 14 August, the Defence requested Item 3 from the Prosecution. Additionally, during its cross-examination of Witness P-2232, the Defence questioned the Witness about [REDACTED].

17. The Chamber is also alive to the potential for such evidence to assist it in its final determination of the evidence in the case.³

³ ICC-01/14-01/21-T-103-ENG RT, p. 7 lines 24-25; p.8, lines 1-4.

18. In this regard, the *Ntaganda* Trial Chamber held, "additions to a list of witnesses after the relevant deadline may, in principle, be made when the terms of Regulation 35(2) of the Regulations are met or, even where the terms of that regulation have not been met, where to do so would nonetheless be in the interests of justice and the determination of the truth".⁴ The Prosecution submits that this line of reasoning applies in the present instance by way of analogy.

19. The Prosecution submits that the addition of the three items are in the interests of justice because they will also assist the Chamber's determination of the truth.

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

20. Items 1 and 2 were disclosed to the Defence on 28 November 2022. Following an express request from the Defence on 14 August 2024, Item 3 was disclosed on 23 August 2024. The Prosecution submits that Item 3 is merely the source data that supports Item 2 - [REDACTED].

21. The Prosecution submits that, under the circumstances, adding the items to the List of Evidence causes no prejudice. On the contrary, the Defence has had sufficient time to review the materials and must have considered them, as evidenced by its explicit request for Item 3, the raw source data.

⁴ *Prosecutor v. Ntaganda*, "Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior record testimony of Witness P-0551", 19 January 2017, ICC-01/04-02/06-1733, para. 6.

IV. RELIEF SOUGHT

22. For the above reasons, the Prosecution respectfully requests that it be permitted to add the following three items to its List of Evidence: [REDACTED] ("Item 1"); [REDACTED] ("Item 2"); and [REDACTED] ("Item 3).



Karim A. A. Khan KC, Prosecutor

Dated this 19th day of November 2022
At The Hague, The Netherland