

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 May 2025

TRIAL CHAMBER VI

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

with confidential Annex A

Public redacted version of “Prosecution’s response to “*Deuxième Requête de la Défense afin de soumettre des éléments de preuve par le biais d’une Bar Table*” (ICC-01/14-01/21-973-Conf) ”, ICC-01/14-01/21-978-Conf, dated 9 May 2025

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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☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

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(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

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Mr Zavala Giler Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) objects to the formal submission of four items of evidence out of seven set out in the Annex to the *“Deuxième Requête de la Défense afin de soumettre des éléments de preuve par le biais d’une Bar Table”*¹ (“Request”) for the reasons stipulated below and detailed in the attached Annex A.
2. Alternatively, and if recognised by Trial Chamber VI (“Chamber”) as formally submitted, these items of evidence should be given no weight for the same reasons.
3. The Prosecution has no objection to the formal submission through the bar table of three items of evidence listed in Annex A: CAR-OTP-00001203, CAR-OTP-00001221, and CAR-D33-0014-3466.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(2) of the Regulations of the Court, this response is filed as confidential with a confidential Annex A because it responds to a confidential filing. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

5. The Defence seeks the admission into evidence of seven items of evidence.
6. The introduction of items of evidence from the bar table requires consideration of three standard evidentiary criteria. The items in question must be *prima facie* (i)

¹ ICC-01/14-01/21-973-Conf-AnxA.

relevant to material issues at trial, (ii) probative, and (iii) their potential prejudicial effect must be weighed against their probative value.²

Preliminary observations

7. In conformity with the Chamber's decision of 20 March 2025,³ the Prosecution conveyed its detailed position on the items of evidence set out in Annex A,⁴ in the context of the *inter partes* consultation initiated by the Defence on 29 and 30 April 2025.⁵

Items of evidence related to witnesses

8. The Defence requests the formal submission of one item of evidence, CAR-D33-0015-3466, related to two Prosecution Witnesses: P-0349⁶ and P-2161.⁷

9. The Prosecution objects to the submission of CAR-D33-0015-3466 via a bar table motion.

10. CAR-D33-0015-3466, is a [REDACTED],⁸ that the Defence advances complements [REDACTED], [REDACTED], which includes the testimony of [REDACTED].⁹ The

² *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision on the Prosecution's bar table motion, 27 February 2023, ICC-02/05-01/20-885-Red, para. 25; *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence), 12 April 2022, ICC-01/14-01/18-1359, para. 10; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Prosecution's Request for Admission of Documentary Evidence, 10 June 2014, ICC-01/09-01/11-1353, paras. 14-16; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of the First decision on the prosecution and defence request for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paras. 13-16; *The Prosecutor v. Thomas Lubanga Dyilo*, Corrigendum to Decision on the admissibility of four documents, 20 January 2011, ICC-01/04-01/06-1399-Corr, paras. 27-31; *The Prosecutor v. German Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecutor's Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, para. 14.

³ ICC-01/14-01/21-942, para. 12.

⁴ Email from the Prosecution of 30 April 2025 at 13:05; Email from the Prosecution of 2 May 2025 at 9:55.

⁵ Email from the Defence of 29 April 2025 at 16:28; Email from the Defence of 1 May 2025 at 14:56.

⁶ Designated as a Rule 68(3) witness by the Chamber, see ICC-01/14-01/21-571-Red.

⁷ *Viva voce* witness.

⁸ The Defence collected CAR-D33-0015-3466 from [REDACTED] on 24 March 2025, see Request para. 16. The Prosecution notes that CAR-D33-0015-3466 is a public document, easily accessible on the website of [REDACTED].

⁹ Request, Confidential Annex A.

Defence argues in particular that CAR-D33-0015-3466 is relevant to contextualize and bolster the credibility of [REDACTED] testimony as presented in [REDACTED].

11. The Prosecution submits that CAR-D33-0015-3466 lacks *prima facie* relevance and has no probative value given that [REDACTED], the official transcript of the aforementioned hearing, has already been formally submitted through a rule 68(3) witness. The Defence has been in possession of [REDACTED] since 16 August 2021, when it was disclosed by the Prosecution.¹⁰ It subsequently used this item of evidence during the cross-examination of P-0349 and P-2161, who testified before the Chamber on 15-16 July 2024¹¹ and between 4-6 September 2024.¹² The Defence read excerpts of [REDACTED] to P-0349 and P-2161, who both commented on it,¹³ and formally submitted this item of evidence through P-0349.¹⁴
12. Further, the Defence contention that CAR-D33-0015-3466 is relevant to bolster the credibility of [REDACTED] is inapposite. [REDACTED] is not a witness listed to appear before the Chamber, he is not mentioned on the updated Defence List of Witnesses,¹⁵ and as confirmed by the Defence in its Request, he will not be called by the Defence.¹⁶ The excerpts of [REDACTED] testimony read to P-0349 and P-2161 and their comments form part of the record. Their respective testimony and the material formally submitted through these witnesses, which includes [REDACTED], constitute the evidentiary body that will be the subject of further consideration by the Chamber during its assessment of the evidence.
13. In light of the above, the Defence has not met the required standard to warrant the formal submission of CAR-D33-0015-3466 into evidence.

¹⁰ Pre-Confirmation INCRIM package 043, 16 August 2021.

¹¹ T-095- ENG-Conf-CT; T-096-ENG-Conf-CT.

¹² T-107-ENG-Conf-CT; T-108-ENG-Conf-CT; T-109-ENG-Conf- CT.

¹³ [REDACTED]; [REDACTED].

¹⁴ [REDACTED].

¹⁵ ICC-01/14-01/21-948-Conf-Anx2.

¹⁶ Request, para. 16.

Other

14. The Prosecution objects to the submission via a bar table motion of three items of evidence , CAR-OTP-00037673, CAR-OTP-00037682, and CAR-OTP-00037683.

15. CAR-OTP-00037673, CAR-OTP-00037682 are expert reports on crime scenes at the *Section de Recherches et d'Investigations* ("SRI"), Camp de Roux, *Colline des Panthères* and the surroundings of the Oubangui river dated 16 January 2019 and 8 December 2017, respectively, and CAR-OTP-00037683 is the English translation of CAR-OTP-00037682.

16. The Defence contends that these items of evidence are relevant to assess the credibility of Prosecution witnesses, in particular concerning their evidence on the topography of Camp de Roux, the surroundings of the Oubangui River, and the SRI. However, the Defence alleges without demonstrating or giving concrete examples of how these items may affect the assessment of the credibility of Prosecution witnesses. This is not an issue that can be determined in the abstract. The Defence must discharge the onus placed on it by presenting clear and cogent facts or evidence which show that the requested items will indeed affect the assessment of the credibility of the prosecution witnesses. Mere generalized statements do not suffice. Consequently, the Defence has not met the required standard to warrant the formal submission of the said items into evidence.

IV. RELIEF REQUESTED

17. In light of the aforementioned reasons, the Prosecution respectfully requests the Chamber to reject the formal submission of four items of evidence out of seven, listed in Annex A appended to this response.

18. In the alternative, and if recognised as formally submitted, the Chamber should grant no weight to these items of evidence, when deciding on the guilt or innocence of Mr. SAID in its judgement pursuant to article 74 of the Rome Statute of the International Criminal Court.



Karim A. A. Khan KC, Prosecutor

Dated this 15th day of May 2025

At The Hague, The Netherlands