

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 September 2022

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

**Prosecution's response to the Defence request
related to the witness preparation of P-0547 (ICC-01/14-01/21-486-Conf)**

Source: Office of the Prosecutor

Pursuant to Trial Chamber VI's instruction dated 18 November 2022, this document is reclassified as Public.

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A.A. Khan KC
Mr Mame Mandiaye Niang
Ms Holo Makwaia

Counsel for Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet
Mr Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. Trial Chamber VI (“Chamber”) should reject the Defence Request.¹ The Prosecution understands that the Defence seeks a French translation of the Annex A to the Witness Preparation Log for the Preparation of P-0547.² However, this log is not a witness statement within the meaning of rule 76 of the Rules of Procedure and Evidence (“Rules”) but a log to facilitate the disclosure of information obtained during witness preparation.

2. The Prosecution has fulfilled its obligations set out in the Witness Preparation Protocol,³ which does not stipulate that the disclosable information obtained from the preparation session be provided in French. Further, the Defence of the Accused Mahamat Said Abdel Kani (“Mr SAID”) are fluent in both English and French and can help him understand the process and content of the disclosed information ahead of the testimony of P-0547. P-0547 can be cross-examined by the Defence on all issues relevant to his prior testimony as well as information disclosed by the Prosecution pursuant to rule 77 of the Rules.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion is filed as confidential as it references *inter partes* communications between the Prosecution and the Defence, which are confidential. A public redacted version will be filed as soon as practical.

¹ ICC-01/14-01/21-486-Conf.

² CAR-OTP-00000180 disclosed as Rule 77 in Pre-Trial Rule 77 package 057 on 23 September 2022.

³ ICC-01/14-01/21-251-AnxA.

III. SUBMISSIONS

4. On 21 and 22 September 2022 the Prosecution conducted the witness preparation of P-0547 ahead of his scheduled *viva voce* testimony in line with the Witness Preparation Protocol.⁴ The Prosecution provided the Defence with a courtesy copy of the witness preparation log on 22 September 2022⁵ shortly after it finished the preparation session with the witness, and formally disclosed the log the following day.⁶ The record of this session has therefore been provided.

5. The Defence now requests to receive "*la déclaration antérieure du témoin P-0547 issue de l'interrogatoire... menée pendant la session de préparation du témoin*". From the submissions, the Prosecution understands that the Defence wishes to receive a French translation of the provided log, as the actual log was already disclosed in English. Prior to filing its Request the Defence approached the Prosecution to request a French translation of Annex A to the Witness Preparation Log for the Preparation of P-0547, which the Prosecution rejected.⁷ No further requests were made on an *inter partes* basis.

6. The log and its Annex A follow the requirements of record keeping stipulated in the applicable Witness Preparation Protocol.⁸ Further, Annex A contains the information obtained during the preparation session that the Prosecution deems subject to disclosure. The Annex includes any corrections, clarifications or additional information provided by P-0547. It also includes a list of the materials that have been shown to the witness, including new materials. Where a clarification or correction was made with regards to one of the prior statements this is also clearly noted. The session was conducted to assess and clarify the witness's evidence in order to facilitate the focussed, efficient and effective questioning of the witness during the proceedings.

⁴ ICC-01/14-01/21-251-AnxA, paras. 10-11.

⁵ E-mail of 22 September 2022 at 18:21hrs.

⁶ Pre-Trial Rule 77 package 057, 23 September 2022.

⁷ Defence e-mails of 22 September 2022 at 19:02hrs and 23 September 2022 at 11:24hrs, Prosecution e-mail of 23 September 2022 at 13:15hrs from the Prosecution.

⁸ ICC-01/14-01/21-251-Anx, paras. 14-15, 31-32.

The witness was shown exhibits, such as items previously provided by him as well as exhibits he had not yet seen, in order to ascertain whether he could usefully comment on them during his testimony.

7. The Witness Preparation Protocol does not stipulate that the Prosecution has to provide the log or any clarifications or corrections included therein in French or another language Mr SAID understands. Contrary to the Defence's arguments, the log of the preparation session is also not a prior statement within the meaning of rule 76 of the Rules. Any other reading of the applicable protocol would defy the very purpose of witness preparation. This reading is also not changed by the fact that the witness *signed* the log. This process ensures that the captured clarifications or corrections are indeed correct and are provided with full knowledge and agreement of the witness.

8. P-0547 will testify *viva voce* before the Chamber. His testimony will be the evidence, not his prior statements or the comments disclosed in Annex A to the log. Therefore, the witness preparation log is disclosed pursuant to rule 77 of the Rules. This practice is also followed in previous and other ongoing proceedings before the Court.

9. Finally, there is no prejudice to the Accused Mr SAID. His Defence team is fluent in both English and French and can assist Mr SAID to understand the process of the witness preparation and confer with him about the information provided during the session, which the Prosecution has disclosed.

Pursuant to Trial Chamber VI's instruction dated 18 November 2022, this document is reclassified as Public.

IV. RELIEF SOUGHT

10. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Defence's Request.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 26th of September 2022
At The Hague, The Netherlands