

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 28 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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Decision on the Defence's Request related to the
Witness Preparation Log of P-0547**

Decision 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
Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to rule 76 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Defence’s Request related to the Witness Preparation Log of P-0547’.

I. PROCEDURAL HISTORY

1. On 9 March 2022, the Chamber issued the Directions on the Conduct of Proceedings.¹ Therein the Chamber adopted the witness preparation protocol² which was annexed thereto (the ‘Witness Preparation Protocol’).³
2. On 22 September 2022, the Office of the Prosecutor (the ‘Prosecution’) disclosed the log of the witness preparation session of P-0547 to the Defence, which contained, *inter alia*, various ‘corrections and clarifications’⁴ made by P-0547 during his witness preparation session (‘Annex to P-0547’s Witness Preparation Log’).⁵
3. On 23 September 2022, the Defence requested that the Chamber order the Prosecution to, *inter alia*, disclose a French translation of Annex to P-0547’s Witness Preparation Log (the ‘Request’).
4. On 26 September 2022 the Prosecution responded to the Request, submitting that it should be rejected (the ‘Response’).⁶

¹ Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#).

² Directions on the Conduct of Proceedings, para. 44.

³ Annex A to the Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-AnxA](#) (the ‘Witness Preparation Protocol’).

⁴ Demande visant à obtenir communication à la Défense de déclaration antérieure du témoin P-0547 issue de l’interrogatoire menée pendant la session de préparation du témoin ayant eu lieu les 21 et 22 septembre 2022 en français afin de respecter le droit de l’Accusé de recevoir les déclarations de témoins dans une langue qu’il comprend en vertu de la Règle 76(3) du Règlement de procédure et de preuve., 23 September 2022, ICC-01/14-01/21-486-Conf (the ‘Request’), para. 2.

⁵ CAR-OTP-00000180 (‘Annex to P-0547’s Witness Preparation Log’).

⁶ Prosecution’s response to the Defence request related to the witness preparation of P-0547 (ICC-01/14-01/21-486-Conf), 26 September 2022, ICC-01/14-01/21-489-Conf.

II. SUBMISSIONS

5. In the Request, the Defence submits that, during his witness preparation session, P-0547 was questioned by the Prosecution on his previous witness statement so that he could add to or specify its content.⁷ The Defence notes that the Annex to P-0547's Witness Preparation Log is signed by the witness and, in its view, constitutes a new statement by P-0547.⁸ The Defence submits that P-0547's evidence must be viewed as a whole and it is not possible to understand the substance of P-0547's evidence if the Annex to P-0547's Witness Preparation Log is distinguished from his two previous statements,⁹ particularly as they are all statements of the witness and interdependent.¹⁰

6. The Defence makes reference to rule 76 of the Rules, noting that the accused must be able to read the allegations by witnesses in a language which he understands.¹¹ In this instance, the Defence avers that the allegations made by P-0547 are contained in the aforementioned three documents.¹² The Defence notes that P-0547's previous statements were disclosed in French and, given that the Annex to P-0547's Witness Preparation Log constitutes, in its view, a statement, it must also be translated into French.¹³ In this regard, the Defence requests the Chamber to order the Prosecution, pursuant to rule 76 of the Rules, to disclose the Annex to P-0547's Witness Preparation Log to the Defence in French.¹⁴

7. In the Response, the Prosecution submits that the Request should be rejected.¹⁵ The Prosecution submits that the Annex to P-0547's Witness Preparation Log has been disclosed in English¹⁶ and follows the requirements of the witness preparation protocol, noting any corrections, clarifications or additional information provided by P-0547.¹⁷ In this regard, the Prosecution states that the witness preparation protocol does not

⁷ Request para. 6.

⁸ Request, para. 8.

⁹ CAR-OTP-2025-0566; CAR-OTP-2084-0036.

¹⁰ Request, para. 8.

¹¹ Request, para. 9.

¹² Request, para. 10.

¹³ Request, para. 10.

¹⁴ Request, para. 11.

¹⁵ Response, para. 10.

¹⁶ Response, para. 5.

¹⁷ Response, para. 7.

stipulate that it has to provide the witness preparation log in French or another language which the accused understands.¹⁸ Furthermore, the fact that it is signed by the witness, in the Prosecution's view, does not change this.¹⁹

8. The Prosecution also highlights that P-0547 will testify fully *viva voce* before the Chamber.²⁰ In this sense, the Prosecution notes that it is his testimony in court which will constitute his evidence, not any prior statements or comments disclosed in the Annex to P-0547's Witness Preparation Log.²¹

9. Last, the Prosecution submits that there is 'no prejudice to the [accused]' as the Defence are '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.'²²

III.ANALYSIS

10. Following a review of the Annex to P-0547's Witness Preparation Log, the Chamber notes that it contains new substantive information and that the witness was shown documents that he had not previously been shown by the Prosecution. Accordingly, the Chamber finds that Annex to P-0547's Witness Preparation Log expands the scope of P-0547's prior statement and likely future testimony and therefore constitutes a witness statement that is subject to the requirements as set out in rule 76(1) and (3) of the Rules.²³

11. The Chamber expects that this part of the preparation log should therefore, in future, be disclosed to the Defence in French, in accordance with the timeline as set out in the Witness Preparation Protocol.

¹⁸ Response, para. 7.

¹⁹ Response, para. 7.

²⁰ Response, para. 8.

²¹ Response, para. 8.

²² Response, para. 9.

²³ Appeals Chamber, *Prosecutor vs. Bosco Ntaganda*, Judgment on the appeal of Mr Bosco Ntaganda against the "Decision on Defence requests seeking disclosure orders and a declaration of Prosecution obligation to record contacts with witnesses", 20 May 2016, [ICC-01/04-02/06-1330](#), para. 26.

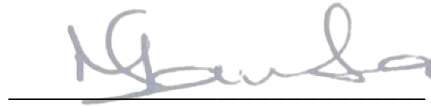
12. In respect of Annex to P-0547's Witness Preparation Log, the Chamber is mindful that P-0547 is due to commence his testimony of Thursday 29 September and that the Defence is scheduled to commence its cross-examination on Monday 3 October. The Prosecution is ordered to provide a French translation of Annex to P-0547's Witness Preparation Log by 16:00 on Friday 30 September.

13. That notwithstanding, the Chamber is of the view that the current unavailability of a French translation of Annex to P-0547's Witness Preparation Log should not impede the commencement of the Prosecution's examination in chief. In this regard, the Chamber does not consider that the Defence suffers any prejudice by the fact that it does not have a French translation at the start of P-0547's examination in chief considering that it will not be commencing its cross examination until Monday 3 October and that counsel for Mr Said is fluent in both English and French.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request; and

ORDERS the Prosecution to provide a French translation of Annex to P-0547's Witness Preparation Log no later than 16:00 on Friday 30 September.

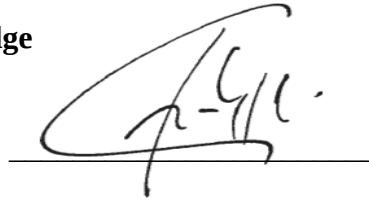


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 28 September 2022

At The Hague, The Netherlands