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

Date: 14 April 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 "Corrigendum of "Prosecution's response to "Motion of the Defence to draw the procedural consequences of the Prosecution's failure to comply with the Chamber's instructions on the witness preparation procedure in the Preparation Protocol and in the oral decision of 29 January 2024 during the preparation session of P-2573.""", ICC-01/14-01/21-798-Conf, dated 5 July 2024" ",
ICC-01/14-01/21-798-Conf, dated 5 July 2024

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Defence Request alleging that the preparation of Witness P-2573 did not comply with the witness preparation protocol¹ ("Protocol") and Trial Chamber VI's ("Chamber") oral guidance provided to Parties orally on 29 January 2024² is incorrect and should be rejected. The Prosecution submits that the Defence Request seeks to reduce witness preparation to merely reading back the witness's statement, disregarding several paragraphs of the Protocol, particularly paragraph 24. This approach risks wasting court time, by for example, showing photographs that the witness may not be able to comment on. It also defeats a fundamental purpose of preparation which is to assist the witness mentally prepare to give evidence on what are often traumatic events.

2. Paragraph 24 of the Protocol provides that the questioning lawyer may "[s]how the witness potential exhibits, *regardless of whether or not the witness has previously seen them, and ask him or her to comment on them for the purpose of ascertaining whether the witness can usefully comment on them during testimony.*"³ The Chamber's oral guidance on 29 January 2024 does not alter this provision.

3. The Prosecution understands that the Chamber's oral guidance was designed to prevent a situation similar to that which occurred for Witness P-1269 and which resulted in a witness providing new information that had never been stated before. This is not the case with Witness P-2573.

4. The Prosecution submits that the preparation of Witness P-2573 did not yield any new information. The preparation was solely conducted to "assess and clarify the

¹ ICC-01/14-01/21-251-AnxA .

² ICC-01/14-01/21-T-048-CONF-ENG, pp. 5 l.21 to p. 6 l.7.

³ ICC-01/14-01/21-251-AnxA, para.24.

witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.”⁴

5. Details concerning the name change of Witness P-2573 were not elicited for the first time during the witness preparation session. This information was voluntarily provided by the witness to the Prosecution while arranging his travel to The Hague. Furthermore, the Defence has been aware of Witness P-2573's name change since 18 April 2024.⁵ Clarifying and confirming the preferred name of Witness P-2573 during his preparation is reasonable, appropriate and consistent with paragraph 20 of the Protocol.

6. In relation to still images taken from the video CAR-OTP-2055-2610, this item was disclosed to the Defence at the pre-confirmation stage on 14 June 2021.⁶ The item was also included on the Defence's amended List of Evidence at the confirmation stage of proceedings.⁷ Therefore, no prejudice arises.

7. The still images are directly related to content in Witness P-2573's statement and were solely used to clarify this content visually. The Defence assertion that “substantial new information” was elicited is therefore incorrect.

8. The Prosecution does, however, acknowledge that item CAR-OTP-2055-2610 is not on its list of evidence. The Prosecution did not appreciate this when carrying out Witness P-2573's preparation. Rather, the Prosecution mistakenly assumed that the video was on the list of evidence since it had been disclosed to the Defence on 14 June 2021.⁸ The Prosecution will urgently apply to include item CAR-OTP-2055-2610 and associated still images to its list of evidence.

⁴ ICC-01/14-01/21-251-AnxA, para. 1(b).

⁵ ICC-01/14-01/21, Trial Rule 77 package 104, 18 April 2024.

⁶ ICC-01/14-01/21, Pre-Confirmation INCRIM package 022, 14 June 2021.

⁷ ICC-01/14-01/21-202-Conf-Anx1.

⁸ ICC-01/14-01/21, Pre-Confirmation INCRIM package 022, 14 June 2021.

II. CONFIDENTIALITY

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

III. THE LAW

10. On 9 March 2022, the Chamber issued its Directions on the Conduct of Proceedings wherein it established a witness preparation protocol.⁹ The Protocol set out the purpose of witness preparation:

- a) To assist the witness who will be giving evidence during the proceedings:
 - (i) to help ensure that the witness gives relevant, accurate and structured testimony; and
 - (ii) to help ensure the well-being of the witness.
- b) For the calling party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.¹⁰

11. The Protocol further expressly sets out permitted conduct. This includes:

- a) “question[ing] the witness on inconsistencies in his or her prior statements”¹¹;
- b) “explaining, in general terms, the topics that the calling party intends to cover in examination-in chief.....[and] the non-calling party”¹²; and
- c) “[s]how[ing] the witness potential exhibits, regardless of whether or not the witness has previously seen them, and ask him or her to comment on them

⁹ ICC-01/14-01/21-251, para.44.

¹⁰ ICC-01/14-01/21-251-AnxA, para. 1.

¹¹ ICC-01/14-01/21-251-AnxA, para 20.

¹² ICC-01/14-01/21-251-AnxA, para 21-22.

for the purpose of ascertaining whether the witness can usefully comment on them during testimony.”¹³

12. On 29 January 2024, the Chamber provided additional guidance after Witness P-1269 disclosed new information. The Chamber stated:

“the Chamber notes that the purpose of witness preparation is to help ensure that the witness gives relevant, accurate and structured testimony and for the calling party to assess and clarify the witness's evidence in order to facilitate the focussed, efficient and effective questioning of the witness during the proceedings. With this in mind, the Chamber stresses that witness preparation should be focussed on checking whether there are any corrections or clarifications to the witness's prior recorded testimony and not to be conducted for the purpose of seeking new evidence or continuing the calling party's investigations. The calling party is expected to be vigilant in this respect and if, during the course of checking or clarifying the witness's evidence, the witness starts to give substantive new information, then the calling party should seize the line of questioning and conduct any necessary examination in the courtroom. In connection with the foregoing, if the calling party wishes to show or discuss new exhibits to the witness which the witness has not seen before, then the Chamber encourages the calling party to do so in the courtroom during the questioning of the witness.”¹⁴

¹³ ICC-01/14-01/21-251-AnxA, para 24.

¹⁴ ICC-01/14-01/21-T-048-CONF-ENG, p. 5 l.17 to p. 6 l.7

IV. SUBMISSIONS

The Prosecution was entitled to ask Witness P-2573 about his name

Questions concerning Witness P-2573's name comply with paragraph 20 of the Protocol

13. Witness P-2573's statement was taken in November 2019. On 12 March 2024, while preparing for Witness P-2573's travel to The Hague to testify, members of the Prosecution Field Office contacted him to obtain a passport. During this process, Witness P-2573 provided identity documents that are now the subject of the Defence Request. Witness P-2573 also informed the Prosecution that he had changed his name because of security concerns.

14. The Prosecution drafted an Investigation Report dated 8 April 2024 based on this information. This Report (attached as Annex A), along with the underlying identity documents, was disclosed to the Defence on 18 April 2024.¹⁵

15. The Defence's characterisation of "information" concerning Witness P-2573's name change, identity and biographic details is therefore incorrect. First, this information was not generated during his preparation but resulted from the process of arranging his travel to the Hague, as acknowledged by the Defence.¹⁶

16. Second, the Prosecution submits that it was entitled to ask Witness P-2573 about his name in accordance with paragraph 20. Specifically, paragraph 20 allows a party to: i) review prior statements from a witness and to understand what was said before; ii) to identify any contradictions or discrepancies between the witness's current testimony and any prior statements; and importantly iii) directly ask the witness about these inconsistencies.

¹⁵ ICC-01/14-01/21, Trial Rule 77 package 104, 18 April 2024.

¹⁶ ICC-01/14-01/21-796-Conf, para. 17.

17. The Prosecution submits that it would be artificial to not enquire about Witness P-2573's name during his preparation. Specifically, the Prosecution was entitled to ask Witness P-2573 why the name in his statement was not the name he was currently using and was entitled to confirm the name that Witness P-2573 wished to be used during his preparation. The same is true for clarifying Witness P-2573's date of birth.

The Prosecution was entitled to show Witness P-2573 images he had not seen before

Showing Witness P-2573 images from a video is permitted and did not yield new information

18. The video that forms the subject of the Defence complaint (video CAR-OTP-2055-2610) is a public news report sourced from France24. It is not new to the Defence and was disclosed to them on 14 June 2021.¹⁷ The Defence has also included the video on its amended List of Evidence during the confirmation of the charges.¹⁸ Thus, no reasonable claim can be made that using the video or stills taken from it is prejudicial.

19. Paragraph 24 of the Protocol further explicitly provides for the possibility of showing a witness material they have not seen before during the preparation session. The Prosecution submits that the Chamber's guidance, provided to the Parties on 29 January 2024 does not change this.

20. The Prosecution understands the Chamber's guidance is designed to prevent a similar situation to that which arose in the case of Witness P-1269, namely new evidence being generated which may impact fairness.

21. The Chamber's guidance, does not, as the Defence Request seeks to argue, instruct counsel to ignore paragraph 24. The Chamber's guidance also does not propose that counsel waste court time by showing photographs a witness may not be

¹⁷ ICC-01/14-01/21, Pre-Confirmation INCRIM package 022, 14 June 2021.

¹⁸ ICC-01/14-01/21-202-Conf-Anx1.

able to comment on during examination in chief. Nor does it reduce witness preparation to merely reading back a witness's statement and listed exhibits.

22. The Prosecution submits that the Defence Request fails to acknowledge or address paragraph 24 of the Protocol and explain why it does not apply in this instance.

23. The Prosecution submits that the use of the video and still images in this instance did not yield new information. Witness P-2573's statement describes in detail various [REDACTED]. He further describes the [REDACTED]. Witness P-2573 was shown still images of the [REDACTED].

24. In this context, it cannot be fairly asserted that Witness P2573's preparation constituted "continuing the calling party's investigations." Indeed the Defence Request fails to identify with any specificity any new information that was yielded by showing Witness P-2573 still images of video CAR-OTP-2055-2610.

The showing of still images preparation assisted Witness P-2573's preparation

25. The use of the video in this particular instance promoted rather than undermined fairness. It further promoted the purpose of witness preparation as set out under paragraph 1 of the Protocol.

26. Witness P-2573 arrived in the Hague on Monday 1 July 2024. His preparation commenced in the morning of 2 July 2024. In addition to the limited time to complete his preparation, the Prosecution was informed that Witness P-2573 [REDACTED]. This necessitated the Prosecution to be mindful and consider measures to ensure that Witness P-2573's preparation served its purpose.

27. The Prosecution submits that the ability to show Witness P-2573 still images of subjects mentioned in his statement, as permitted under paragraph 24 of the Protocol, facilitated the preparation. It further does not undermine the Defence's ability to test Witness P-2573's account of events through cross-examination.

The Protocol permits parties to explain, in general terms, topics that parties may cover.

28. The Prosecution submits that the Defence Request also advocates for paragraphs 21 and 22 of the Protocol to be disregarded. This suggestion should be rejected.

29. Paragraphs 21 and 22 of the Protocol expressly allow for parties to explain in "general terms" topics they may be asked about during their testimony in court. This includes "that the witness may be questioned by counsel of the non-calling party on **certain matters** in his or her statement." This provision does no more than allow parties to signpost to a witness topics that may be covered.

30. The Prosecution submits that these provisions serve a valuable purpose. They ensure that the witness has a clear understanding of what subjects will be addressed and assists a witness to focus their thoughts and recollections on relevant information. It further assists a witness to mentally prepare and reduce anxiety typically associated with giving evidence on what are often traumatic events. For example, Witness P-2573 who was approximately [REDACTED] at the time of relevant events, responded emotionally to viewing items CAR-OTP-2017-0919 and CAR-OTP-2017-0921. The Defence Request cannot credibly maintain that this response should be reserved for the courtroom alone without any prior warning.

31. Adhering to the Protocol by informing a witness of topics they may be questioned about does not, therefore, cause unfairness or limit or impact a party's ability to question a witness. Rather it assists a witness to provide testimony that is more coherent and structured during their examination.

V. CONCLUSION

32. Based on the forgoing, the Prosecution requests that the Chamber rejects the Defence Request.



Karim A. A. Khan KC, Prosecutor

Dated this 14th day of April 2025
At The Hague, The Netherlands