

Trial Hearing
WITNESS: CAR-OTP-P-0547

(Open Session)

ICC-01/14-01/21

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Miatta Maria Samba, Judge María del Socorro Flores Liera and
6 Judge Sergio Gerardo Ugalde Godínez
7 Trial Hearing - Courtroom 1
8 Tuesday, 4 October 2022
9 (The hearing starts in open session at 9.37 a.m.)
10 THE COURT USHER: [9:37:05] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SAMBA: [9:37:36] Good morning, everyone.
14 Madam Court Officer, can you kindly mention the case.
15 THE COURT OFFICER: [9:37:46] Good morning, Madam President, your Honours.
16 The situation in the Central African Republic II, in the case of The Prosecutor versus
17 Mahamat Said Abdel Kani, ICC reference 01/14-01/21.
18 And we are in open session.
19 PRESIDING JUDGE SAMBA: [9:37:59] Thank you very much.
20 Can I ask counsel to announce their representation, please.
21 Ms Makwaia, for the Prosecution.
22 MS MAKWAIA: [9:38:09] May it please the Court, for the Prosecutor this morning,
23 myself, Holo Makwaia, Leonie von Braun, Andreina Rodriguez, Yuichiro Omori and
24 Ramu Bittaye. Thank you.
25 PRESIDING JUDGE SAMBA: [9:38:26] Thank you very much.

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- 1 Ms Pellet, please, for the counsel for victims.
- 2 MS PELLET: [9:38:34](Interpretation) Thank you, Madam President.
- 3 The victims are represented by Tars Van Litsenborgh and by myself, Sarah Pellet,
- 4 counsel with the Office Of Public Counsel for Victims.
- 5 PRESIDING JUDGE SAMBA: [9:38:47] Thank you very much.
- 6 Ms Naouri, for the Defence, please.
- 7 MS NAOURI: [9:38:54](Interpretation) Thank you very much, your Honour.
- 8 Next to myself, Maître Jacobs and Allix and Francois-Jacquemin, Valduriez and
- 9 Manon Lanselle. And we also have Capucine Banet. And I am Jennifer Naouri.
- 10 PRESIDING JUDGE SAMBA: [9:39:14] Thank you very much, Ms Naouri.
- 11 And for the record, I note that the accused, Mr Said, is in court.
- 12 Good morning, Mr Said.
- 13 MR SAID: [9:39:34](Interpretation) Good morning, madam. I also greet the judges
- 14 who are next to you.
- 15 PRESIDING JUDGE SAMBA: [9:39:46] Thank you very much.
- 16 Good morning, Mr Witness. I hope you rested well.
- 17 WITNESS: CAR-OTP-P-0547 (On former oath)
- 18 (The witness speaks Sango)
- 19 THE WITNESS: [9:40:07](Interpretation) Good morning, madam. I've rested well,
- 20 and I also greet you and greet everybody who is in the courtroom, in particular, the
- 21 Presiding Judge. Thank you.
- 22 PRESIDING JUDGE SAMBA: [9:40:20] Thank you very much.
- 23 So we will continue, Mr Witness, with your questioning by the Defence counsel, and
- 24 just to remind you that you are still under oath.
- 25 Ms Naouri, you can continue with your cross-examination of this witness, please.

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1 MS NAOURI: [9:40:52](Interpretation) Thank you, your Honour. And to continue
2 on the line of questioning we were on yesterday, can we go into private session,
3 please.

4 PRESIDING JUDGE SAMBA: [9:41:04] We can do that.

5 Madam Court Officer, can you get us into private session for some time.

6 Ms Naouri, if we are to come back to public session, can you let us know. I mean,
7 let's try a bit to keep some of the testimonies in public session, if you may, please.

8 Thank you.

9 Madam Court Officer, can you get us into private session for now, please.

10 (Private session at 9.41 a.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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- 1 your Honours.
- 2 PRESIDING JUDGE SAMBA: [11:02:54] Thank you very much.
- 3 I'll stand this matter down till 11.30, please. Thank you.
- 4 THE COURT USHER: [11:03:04] All rise.
- 5 (Recess taken at 11.03 a.m.)
- 6 (Upon resuming in open session at 11.40 a.m.)
- 7 THE COURT USHER: [11:40:08] All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE SAMBA: [11:40:37] Good morning, again.
- 10 We are in closed session, are we, or open session?
- 11 We are in open session.
- 12 Madam Court Officer, if you can get us into private session, please.
- 13 (Private session at 11.41 a.m.)
- 14 THE COURT OFFICER: [11:41:08] We are in private session, your Honours.
- 15 PRESIDING JUDGE SAMBA: [11:41:11] Thank you very much.
- 16 Madam Prosecutor, I take note of -- you may want to be on your legs, please. I take
- 17 note of your request via email regarding Rule 74 assurances. Can you confirm.
- 18 MS MAKWAIA: [11:41:33] I confirm that, Madam President.
- 19 PRESIDING JUDGE SAMBA: [11:41:35] Yes. Do you want to make oral
- 20 submissions? I'll invite you to do that, if you want to.
- 21 MS MAKWAIA: [11:41:44] Yes, Madam President.
- 22 As indicated in the email, the Prosecutor respectfully requests that the Chamber
- 23 cautions the witness under Rule 74, given the nature of answers that he has been
- 24 providing to the Chamber with the respect to questions being put to him (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 It is our submission, Madam President, your Honours, that the witness be provided
3 this assurance. If he's given caution under Rule 74, any information that he gives
4 before this Chamber, we submit, should, therefore, be covered under this rule, and it
5 should not be used in any future proceedings. It should not be given to any states as
6 provided for in the rule.

7 Madam President, I would just like to refer you to jurisprudence in the matter of
8 Ongwen, ICC-02/4, of 6 December 2017, at paragraph 6, which also addressed similar
9 matters.

10 Further to the provision of assurances under Rule 74, Madam President,
11 your Honours, it is also our submission that the line of questioning has now gone
12 beyond testing his credibility. Because, indeed, if the line of questioning was with
13 respect to testing the witness's credibility, it has certainly gone beyond that. The
14 Defence has now entered a totally different realm, digging deeper into matters that
15 are not before this Court.

16 Madam President, your Honours, as we are all aware, the charges are limited in scope
17 and time. These issues being raised occurred in 2014. The witness has already
18 answered if the issue was to test his credibility. He has already answered he knew
19 (Redacted). He has provided full answers to the relationship. We, therefore, also
20 object on that note.

21 Thank you, Madam President.

22 PRESIDING JUDGE SAMBA: [11:44:23] Thank you very much.

23 Ms Pellet, please.

24 MS PELLET: [11:44:29](Interpretation) Thank you, your Honour.

25 We endorse what has just been said by the Office of the Prosecution. * And that was

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1 the purpose of my previous request, to be able to consult my client in case he needed
2 legal advice, because he himself had specified, during his answers to Me Naouri's
3 questions, that there was a potential problem for him, to answer the questions that
4 were put to him.

5 So I fully support what has just been said, and I believe that he needs these assurances
6 according to Rule 74. Thank you.

7 PRESIDING JUDGE SAMBA: [11:45:11] Thank you very much.

8 Ms Naouri, please.

9 MS NAOURI: [11:45:20](Interpretation) Thank you, your Honour.

10 As regards the first question, as regards the assurances of Rule 74, we have no
11 objections at all. We are in your hands because it's the Chamber that decides. We
12 would only like to remind you that, as regards Rule 74(3)(b), once the witness has
13 received these assurances, he must be asked to answer the questions of the Defence.
14 This is important to us.

15 Now, as regards the line of questioning, this, of course, affects the credibility of the
16 witness. That's clear. But not only his links (Redacted). What he says, what
17 he does, what are his motives. When looking at the messages, we are trying to look
18 at his motivation.

19 As regards of the scope of charges, the scope is limited, it's true, but the charges were
20 formulated by the Prosecution in their brief. And I'm referring to paragraph 3, that
21 the time period is between end of March 2012 and 10 January 2014, at least. So we
22 are within that range of the charges as defined by the Prosecution in their brief.
23 (Redacted).where we are talking about
24 the charges as formulated by the Prosecution.

25 The Anti-Balaka, how can you not be interested in the Anti-Balaka when the

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1 Prosecution alleges an armed conflict between the Seleka forces and the pro-Bozizé
2 forces that later became the Anti-Balaka?
3 Regardless which -- however you approach this and the charges, we are -- it is linked
4 to the questions that we are putting to the witness, and it is our duty as Defence to
5 explore all the elements which this witness can provide us based on their personal
6 experience, on their personal knowledge and understanding as regards the charges
7 which have been outlined in the brief.

8 Thank you, Madam President.

9 PRESIDING JUDGE SAMBA: [11:47:58] Thank you very much, Ms Naouri.

10 We shall rise and consider our decision, and we will come back to court. Thank you
11 very much.

12 THE COURT USHER: [11:48:17] All rise.

13 (Recess taken at 11.48 a.m.)

14 (Upon resuming in open session at 12.28 p.m.)

15 THE COURT USHER: [12:28:14] All rise.

16 Please be seated.

17 PRESIDING JUDGE SAMBA: [12:28:43] All right. Good afternoon, everyone.

18 I have a ruling to deliver in line with the request and answer given by counsel for the
19 Defence and the victims representative.

20 The Chamber has considered the Prosecution's request for Rule 74 assurances of
21 P-0547. The Prosecution submits that Rule 74 assurances are required because the
22 line of cross-examination relates to matters which pertain to an accused currently
23 facing proceedings before this Court.

24 The Chamber notes that the common Legal Representative of Victims supports the
25 Prosecution's request, and that the request is not opposed by the Defence.

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1 The Chamber finds that Rule 74 assurances shall be granted to this witness. The
 2 Chamber notes that Ms Pellet is currently assigned as the legal representative of
 3 P-0547 and can, therefore, act as Rule 74 counsel.
 4 However, the Chamber stresses that this rule is strictly limited to legal advice in
 5 relation to matters of self-incrimination and cannot go beyond this into all the matters
 6 relating to the substance of P-0547's testimony.
 7 Furthermore, the Chamber notes that the Prosecution makes submissions in respect of
 8 the relevance of the line of questioning currently being pursued by the Defence. In
 9 particular, the Prosecution submits that the line of questioning is beyond the scope of
 10 the charges and goes beyond issues of credibility.
 11 The Defence in response contests the submission and submits that the line of
 12 questioning is relevant.
 13 The Chamber rejects the Prosecution's submissions in this regard and finds that, at
 14 present, the line of questioning remains potentially relevant and the Defence is
 15 allowed to continue to explore this issue.
 16 However, the Chamber stresses that the Defence must keep its questioning concise
 17 and will continue to monitor its progress. That would be our ruling.
 18 Madam Court Officer, please bring the witness in. Thank you.

19 MS PELLET: [12:31:35](Interpretation) Your Honour, excuse me. * Before bringing
 20 him into the courtroom, shouldn't I be allowed to proceed in accordance with your
 21 decision?

22 PRESIDING JUDGE SAMBA: [12:31:56] Is there anything you want to say about the
 23 decision?

24 MS PELLET: [12:32:01](Interpretation) I want to inform my client.

25 PRESIDING JUDGE SAMBA: [12:32:07] Can you allow the witness to come in, and

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1 when we address him, if you have to talk to him, you will talk to him thereafter.

2 Thank you very much.

3 Call the witness in, please.

4 Yes, Ms Pellet, what's your concern?

5 MS PELLET: [12:34:01](Interpretation) Sorry, my apologies. I think there is a
6 problem of interpretation. I have nothing to say about the decision. I just wanted
7 to put your decision into effect before he enters into the court. I think there was
8 not -- that my request was not properly understood.

9 PRESIDING JUDGE SAMBA: [12:34:18] That's okay.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE SAMBA: [12:34:33] Mr Witness, thank you very much for your
12 cooperation so far.

13 During the break, the Prosecution requested that the Chamber gives you assurances
14 against self-incrimination. Now, the Chamber gives you the assurance that your
15 testimony will not be used against you in any subsequent proceedings before this
16 Court. Now, this applies as long as you do not commit any offence or offences or
17 misconduct when testifying, such as by giving testimony which is false.

18 If any question is asked that could lead to yourself incrimination, we will hear your
19 answer in private session and keep your answer confidential.

20 So, at this point, pursuant to Rule 74(10) of the Rules of Procedure and Evidence, you
21 may consult with Ms Pellet now if you wish to do so. You do not have to do so, but
22 you may if you wish. However, I must warn you that you can only discuss issues
23 relating to potential self-incrimination, and you cannot discuss any other aspect of
24 your testimony with her.

25 So, if you want, you can consult with Ms Pellet. She can guide you against -- as to

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1 issues relating to self-incrimination.

2 Ms Pellet, please, you wanted to say something to us now.

3 Mr Witness, am I clear as to the assurances that I have given to you?

4 THE WITNESS: [12:37:02](Interpretation) I've understood you, but before starting to

5 answer the questions, I would like to apologise to the Defence counsel. I'd like to

6 apologise to the Judges. I would like to apologise to the Prosecution.

7 You know, I'm a human being. It's my way of speaking. I am talking as if I am a

8 bit agitated. I hope that Ms Naouri won't think that I'm angry against her. By

9 nature, I am a nervous individual, but I'm not angry against her. It's just my way of

10 expressing myself.

11 I know I talk in an exuberant way, high, loud voice. But, really, I'm not angry. It's

12 just the way I am. I always speak aloud and with exuberance, but I am not angry

13 against her.

14 I wasn't feeling happy because Defence counsel tried to make me go around in circles,

15 and I didn't like that. I raised it during the hearing. Everybody saw that. But I

16 want to assure you, I want to assure the Defence counsel, I have no problem with the

17 questions they are putting to me. They can put any question they like, and if I can, I

18 will answer. I'm here to tell the truth. I'm not here to lie.

19 This is a High Court. I didn't come here for my fun. Thank you very much.

20 PRESIDING JUDGE SAMBA: [12:39:22] Thank you very much, Mr Witness. We do

21 appreciate the assurance given to us. I'll ask again that, you know, you remain calm.

22 Don't be upset. Don't be agitated. Questions are meant to be answered. You see,

23 because if you get upset, you are not going to be able to tell your story in the manner

24 that you want the Court to hear it. And these information that you give are what we

25 will look at as a court, as a Chamber, in looking at -- in determining what's relevant

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1 for the charges before us and what may not be relevant. So you just calm down so
2 that, you know, your temperament does not affect your testimony in any way. Do
3 not be upset. Just calm down. I'm very happy you have had a glass the water.

4 And I am sure Ms Naouri also will very much appreciate the assurance that you've
5 given to her.

6 So on which note, I am going to ask the Defence counsel Naouri to continue her line
7 of cross-examination, just to say that for now we are in open session.

8 Ms Naouri, if you want us to go into private session, please let us know. We have 20
9 minutes to go before lunch.

10 MS NAOURI: [12:41:02](Interpretation) Thank you, your Honour. Indeed, since
11 we are talking about the same subject, I'd like to go into private session.

12 PRESIDING JUDGE SAMBA: [12:41:12] Madam Court Officer, can we go briefly
13 into private session, please. Thank you.

14 (Private session at 12.41 p.m.)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted):

Trial Hearing

(Private Session)

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WITNESS: CAR-OTP-P-0547

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [12:57:08] (Redacted)

5 I see that it is 12:57. I don't know whether it's a good idea to start a new topic. It's
6 up to you, Madam Judge.

7 PRESIDING JUDGE SAMBA: [12:57:23] Well, we are going to allow you to go until
8 *at least 10 after 1pm, if you may.

9 MS NAOURI: [12:57:41](Interpretation) Perfect, Madam Judge.

10 Q. [12:57:43] Mr Witness, we are going to now move on to another topic. You told
11 us yesterday when you were questioned by the victim legal
12 representatives -- transcript 14, 46, lines 16 and 17, you said: "I cannot give you a list
13 of everything that was looted from me." End of quote.

14 So I'm nevertheless going to ask you, please, could you tell us what you remember,
15 what was taken, what was looted from your house.

16 A. [12:58:36] I'm just giving you small details of what I can remember. For
17 example, (Redacted)

18 (Redacted) I'm just telling you

19 about the goods which are of high value. There was also a TV and a fridge.

20 I drew up a list, but I can't remember anymore. There were shoes, clothes which
21 were taken. (Redacted)

22 (Redacted)

23 I've already told you here that if I hadn't been facing hardships, the owner would
24 have started proceedings against me, but he took pity on me because I was facing
25 such hardships.

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1 PRESIDING JUDGE SAMBA: [13:00:10] Do you want -- Ms Naouri, do you want us
2 to continue in private session? Because, really, we are in private session.

3 MS NAOURI: [13:00:21](Interpretation) Thank you, your Honour, for the question.

4 As it's a matter of his property, by way of precaution, I thought that it could be
5 identifying. But if you think -- just, please, allow me to reflect a minute. I think it
6 will be wise to stay in private session because we are going to go into his house,
7 where he lived, et cetera. Thank you, your Honour.

8 PRESIDING JUDGE SAMBA: [13:00:43] All right. Thank you. That's noted.

9 Carry on, please.

10 MS NAOURI: [13:00:49](Interpretation)

11 Q. [13:00:49] Witness, I'm going to refresh your memory with your statement that
12 you gave to the investigators of the Office of the Prosecutor. This is your first
13 statement in 2015, CAR-OTP-2018-0389, and it's page 0393, and it's the first tab on our
14 list. Version English is tab 2.

15 And what I'm interested in particular is paragraph 27 where you state that, "All our
16 goods were pillaged and taken by the Seleka elements, and I'll give you a list of some
17 goods that were pillaged from my domicile. There was a plasma television, a
18 motorbike, two freezers, two decoders, ten pairs of shoes, clothing, a 5 KVA generator,
19 a PC, and a Nissan Almera car, and a Mitsubishi pick-up truck with a cabin at the
20 front." This is an exhaustive list. And, of course, they took a lot of other goods as
21 well.

22 So could you confirm to us that all the items that I have listed were indeed items that
23 were pillaged from you, Witness.

24 A. [13:02:39] Madam, those are the goods -- that's the property that was taken from
25 my house. And it's here that I also remember the property that was taken from the

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1 houses of other people. Property belonging to other people were also taken. Bags
2 of cement. It was real pillaging that took place. I wasn't the only victim of the
3 pillaging. All of the neighbourhood was pillaged.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 For example, the computer was mentioned that they took. There were lots of things
9 that they pillaged. Lots of them.

10 Q. [13:04:13] Witness, I just want to go back to this list. So, first of all, you have
11 the plasma television. Do you remember the brand of this television? Because we
12 are talking about goods of value. So do you remember the brand of television that it
13 was?

14 A. [13:04:42] The brand? Was it Thompson? No, I've forgotten. I no longer
15 remember. I purchased it because at the time I found it better. I bought it in
16 Cameroon.

17 Madam, I didn't have a distinction. I didn't know it was going to be pillaged. I was
18 looking for a television. I didn't even know that I was going to appear before this
19 Court and that such objects would be spoken about. I thought that you were going
20 to question me with regards to the generator, perhaps. Was it Yamaha? No, it
21 wasn't Yamaha. It must be a German make. It was an object which was an -- a
22 second-hand object that came from Europe. We call them European second-hand
23 goods. So when I tested it, it worked very well, and I purchased it. Was it a Bosch?
24 I no longer remember. Bosch? I think it was Bosch.

25 Q. [13:06:37] Thank you, Witness.

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1 Now, you stated -- it doesn't matter if you don't remember exactly, but you said that
2 you bought it second-hand from Europe. Do you remember the approximate value
3 or how much you paid for this television?

4 PRESIDING JUDGE SAMBA: [13:06:52] He bought it from Cameroon was his
5 testimony, counsel, the television.

6 MS NAOURI: [13:07:06](Interpretation) In the French transcript, page 51: "It must
7 be a German make. It was an object which is what we call second-hand goods from
8 Europe. These are second-hand goods which come from Europe."

9 PRESIDING JUDGE SAMBA: [13:07:20] Because you referred to the television
10 instead of the generator. Now, what you just read goes for the generator, but when
11 you mentioned the television, the plasma television, the witness's testimony is that it
12 was bought in Cameroon.

13 MS NAOURI: [13:07:45](Interpretation) Thank you, your Honour, because, indeed,
14 there is doubt. I think that we have shed light on a small doubt with regards to the
15 transcript because we are talking about televisions. He was looking for a television.
16 "I didn't know that I was going to testify before this Court." That procedure helped
17 us shed light on things. Thank you.

18 Q. [13:08:08] Now that we've managed to shed light on that, could you tell us - and
19 we will come back to the generator later - the television, do you remember how much
20 it cost you, approximately? Just an estimate is enough for us.

21 A. [13:08:36] (Redacted), because I bought it there. And it's this size. This is the
22 screen size. At the time, the plasma screens were starting to appear on the market.

23 PRESIDING JUDGE SAMBA: [13:09:01] Okay. I'm going to ask that we stop here
24 for now.

25 Mr Witness, we are going to take some break for lunch, and we'll -- no, we are going

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- 1 to stop for today, actually, based on the information I gave to the Court a few days
- 2 ago. And I think we meet again here on Thursday. Okay?
- 3 So I will rise the Court.
- 4 THE COURT USHER: [13:09:36] All rise.
- 5 PRESIDING JUDGE SAMBA: [13:09:37] And ask that we meet on Thursday.
- 6 Thank you.
- 7 (The hearing ends in private session at 1.09 p.m.)