

Trial Hearing

(Open Session)

ICC-01/14-01/21

WITNESS: CAR-OTP-P-3056

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 Friday, 14 October 2022
9 (The hearing starts in open session at 9.45 a.m.)
10 THE COURT USHER: [9:45:53] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SAMBA: [9:46:19] Good morning, everyone.
14 Madam Court Officer, can you kindly call up the case.
15 THE COURT OFFICER: [9:46:28] 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, case reference ICC-01/14-01/21.
18 And we are in open session.
19 PRESIDING JUDGE SAMBA: [9:46:43] Thank you very much.
20 Can counsel please announce their representation.
21 MS MAKWAIA: [9:46:49] Thank you, Madam President. Good morning,
22 your Honours. For the Prosecution this morning, myself, Holo Makwaia, Le Bailly
23 Brunhild, Leonie von Braun and Sanyu Ndagire. Thank you.
24 PRESIDING JUDGE SAMBA: [9:47:01] Thank you very much, Madam Prosecutor.
25 Yes, Ms Pellet for the Defence -- for the victims.

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1 MS PELLET: [9:47:09](Interpretation) Thank you very much, your Honour. The
2 victims are today represented by Tars Van Litsenborgh and me, Sarah Pellet, from
3 the -- counsel for the Office of Public Counsel for Victims. Thank you.

4 PRESIDING JUDGE SAMBA: [9:47:23] Thank you very much, Ms Pellet.
5 Ms Naouri for the Defence, please.

6 MS NAOURI: [9:47:31](Interpretation) My thanks, your Honour. I have Florian
7 François-Jacquemin, I have Dov Jacobs and Léa Allix, and we have Sarah Valduriez.
8 And of course myself as lead counsel of this team. Thank you.

9 PRESIDING JUDGE SAMBA: [9:47:49] Thank you very much.
10 And, for the record, I note that Mr Said is in court.

11 Mr Witness, good morning. I hope you had a good night.

12 WITNESS: CAR-OTP-P-3056 (On former oath)

13 (The witness speaks French)

14 THE WITNESS: [9:48:05](Interpretation) Good morning. Yes, yes, I did.

15 PRESIDING JUDGE SAMBA: [9:48:09] Okay. Thank you very much.

16 Now, yesterday -- Mr Witness, we are going to continue with your cross-examination
17 put by counsel for the Defence, and I wish to remind you that you are still under oath
18 to tell the truth to this Court.

19 Yesterday, before we left, the Defence wanted to put a document to you, and the
20 Chamber allowed the Prosecution to have a look at it because they had not seen it

21 before yesterday. We are informed by the Prosecution that they have no objection to
22 that document.

23 So I would like to invite counsel to continue with the cross-examination, please.

24 Thank you.

25 MR FRANÇOIS-JACQUEMIN: [9:49:00](Interpretation) Good morning, the Bench.

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1 QUESTIONED BY MR FRANÇOIS-JACQUEMIN: (Interpretation) (Continuing)

2 Q. [9:49:08] Good morning, Mr Witness.

3 A. [9:49:10] Good morning.

4 MR FRANÇOIS-JACQUEMIN: [9:49:11](Interpretation) I have one single question
5 to put to the witness, but I need to go into private session, please, your Honour.

6 PRESIDING JUDGE SAMBA: [9:49:16] Very well.

7 Madam Court Officer, can we go into private session, please.

8 (Private session at 9.49 a.m.)

9 THE COURT OFFICER: [9:49:30] We are in private session, your Honours.

10 (Redacted).

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 (Redacted).

2 (Redacted).

3 (Redacted).

4 (Redacted).

5 Q. [9:54:42] My thanks, Mr Witness. Nothing further.

6 MR FRANÇOIS-JACQUEMIN: (Interpretation) Thank you very much,

7 your Honour.

8 PRESIDING JUDGE SAMBA: [9:54:52] Very well. Thank you very much, Counsel.

9 I'd like to turn to the Prosecution and ask whether you have any question in
10 re-examination, please.

11 MS MAKWAIA: [9:55:06] Thank you, Madam President. I may have one or two.

12 That's all.

13 PRESIDING JUDGE SAMBA: [9:55:14] Yes, Counsel, put your question.

14 QUESTIONED BY MS MAKWAIA:

15 Q. [9:55:21] Good morning, Mr Witness.

16 A. [9:55:24] Good morning.

17 Q. [9:55:27] Yesterday you were shown a document that you had written a
18 chronology of events, do you recall that, by my learn friends across the bar?

19 MS NAOURI: [9:55:44](Interpretation) Objection.

20 THE WITNESS: [9:55:47](Interpretation) Yes.

21 MS NAOURI: [9:55:49](Interpretation) I do apologise.

22 PRESIDING JUDGE SAMBA: [9:55:51] Sorry, Mr Witness, can you allow me to
23 listen to what Ms Naouri has to say in objection, please.

24 Yes, Ms Naouri.

25 MS NAOURI: [9:56:01](Interpretation) I'm grateful, your Honour. Yes, we enter

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1 the objection here in this re-examination question or line of questions because this
2 document is part of his written statement that bears upon the account of what
3 happened to the witness. The Prosecution decided not to return to these matters in
4 his -- in its in-chief. So this material is simply -- during the cross-examination,
5 forgive me. This is material that cropped up in the in-chief. So, once again, to
6 circumvent the procedure, to go back in re-examination on matters that were
7 addressed by the Prosecution during the examination-in-chief but elected not to -- not
8 to address in detail by, for example, showing that written chronology written by the
9 witness to the witness, so therefore we enter an objection to this line of reason and
10 this approach. And there it is, your Honour.

11 PRESIDING JUDGE SAMBA: [9:57:03] Ms Naouri, what we are going to do is
12 to -- out of curiosity, I am going to allow counsel, because I don't know the question
13 she wants to put. I also want to deal with that document. So let's allow her.
14 And, Mr Witness, I'm going to ask of you to listen, but do not answer after counsel
15 would have put her question until I tell you to do so, so I see whether or not it's a
16 question fit for re-examination. Thank you very much.

17 Counsel, Madam Prosecutor, put the question. Let me hear you.

18 MS MAKWAIA: [9:57:41] Thank you, your Honours.

19 Q. [9:57:44] Mr Witness, you have given evidence on 12 and 13 October to the
20 Court. Can you tell us what is this evidence based on.

21 PRESIDING JUDGE SAMBA: [9:57:59] Excuse me, Ms Makwaia, and sorry if I
22 mispronounce your name, actually. Am I correct in pronouncing Ms Makwaia?

23 MS MAKWAIA: [9:58:11] You are correct, Madam President.

24 PRESIDING JUDGE SAMBA: [9:58:13] Thank you very much.

25 What do you mean "what is this evidence based on"? Evidence, are you talking

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1 about the chronology of events that the witness put before the Court, as in tab 6,
2 following?

3 MS MAKWAIA: [9:58:29] I'm talking about his testimony, Madam President.

4 PRESIDING JUDGE SAMBA: [9:58:33] Well, no, you are supposed to ask questions
5 that are new, things that came up fresh in cross-examination.

6 MS MAKWAIA: [9:58:40] Okay. I can -- I was trying to move away from the
7 chronology of events.

8 PRESIDING JUDGE SAMBA: [9:58:47] You can move away from it, but whatever
9 question you want to ask, as you know, I'm sure you know, must be something that
10 came up new in cross-examination.

11 MS MAKWAIA: [9:59:00]

12 Q. [9:59:01] Mr Witness, can you assist the Court, please. Why did you write the
13 chronology of events?

14 PRESIDING JUDGE SAMBA: [9:59:07] There is an answer to that. The witness had
15 told us that he did that document because he wanted compensation from his torturer.
16 If you look at the testimony, you will see that answer there. It's nothing new.

17 MS MAKWAIA: [9:59:24] A final question, if you may allow me.

18 PRESIDING JUDGE SAMBA: [9:59:26] Carry on.

19 MS MAKWAIA: [9:59:28]

20 (Redacted).

21 (Redacted).

22 MS MAKWAIA: [9:59:54] Thank you, Madam President, your Honours. I have no
23 further questions for the witness.

24 PRESIDING JUDGE SAMBA: [9:59:57] Thank you very much, Madam Prosecutor.

25 Mr Witness, we have one or two -- a few questions that we would like for you to

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1 clarify for us, if you may. I'd want to start off with the document you referred to
2 yesterday as a chronology of events which you say you gave the original to the Office
3 of the Prosecutor, the investigators of the Office of the Prosecutor in Bangui.

4 Now, I would like for you to look at that document and confirm to me whether or not
5 that is in fact the document -- or those are the documents you are talking about.

6 Madam Court Clerk, can you take the originals of those documents to the witness,
7 please. Yes.

8 THE COURT OFFICER: [10:01:23] Just for the record, your Honours, the documents
9 that are currently presented to the witness was CAR-OTP-2130-6658, 6659, 6660, 6661,
10 6662 and 6663, redacted 01. Thank you.

11 PRESIDING JUDGE SAMBA: [10:01:42] Thank you very much.

12 Are those the documents you gave to the investigators of the Office of the Prosecutor
13 of the ICC, Mr Witness?

14 THE WITNESS: [10:02:06](Interpretation) Yes, what you are saying is accurate. It's
15 the same document.

16 PRESIDING JUDGE SAMBA: [10:02:12] Thank you very much.

17 Mr Court Clerk, can we ask kindly that you retrieve those documents that will stay
18 with the Registry.

19 MS NAOURI: [10:02:22](Interpretation) Your Honour, excuse me. Sorry. If we
20 could perhaps during the break, if we could also analyse the originals because the
21 Defence team hasn't seen them as yet. If it's possible.

22 PRESIDING JUDGE SAMBA: [10:02:40] Yes. That's very possible and, really, the
23 right thing to do. You can look at it because it was with the Office of the Prosecutor.

24 It's the same document that we saw, but it's fine for you to see it in its original form.

25 Thank you.

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1 Mr Witness, you told us yesterday that -- rather, you suggested that Mr Said was not
2 someone who was unknown during the period concerned in the Central African
3 Republic. You said he could rather be recognised. Even though you said you did
4 not know him at that point in time, could you tell us why you would say he was
5 somebody who could be easily recognised or why he was known, a known individual.
6 Thank you.

7 THE WITNESS: [10:03:52](Interpretation) I said that Mr Said was a rather prominent
8 figure for the only reason -- for the simple reason is that the day we were arrested at
9 the OCRB Ngouciment, and when he arrived at the OCRB, most of my relatives, who
10 were Muslims, started speaking his name, and they recognised him.

11 PRESIDING JUDGE SAMBA: [10:04:26] Okay. Thank you very much.

12 And I'd also want to refer you to the testimony of -- in T-20, that transcript of T-20,
13 where you say that, you know, when you were arrested at your cousin's funeral,
14 (Redacted), you said the commander of the OCRB Ngouciment informed you that a
15 well-known and dangerous person in your group was in cahoots with the
16 President Bozizé.

17 Now, that person who you referred to as a "dangerous person" -- we're in closed
18 session, are we, Madam Court Officer?

19 THE COURT OFFICER: [10:05:29] We are still in private session, yes,
20 Madam President.

21 PRESIDING JUDGE SAMBA: [10:05:33] Yes.

22 Mr Witness, we are in private session. So the person who you say was referred to as
23 a dangerous person and a cohort of the President Bozizé, can you tell us the name of
24 that person. We have a name, but we may be mistaken. So give us the name now
25 that we're in private session.

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- 1 THE WITNESS: [10:06:05](Interpretation) In the beginning, when the commander of
2 this unit made that statement, I did not know who amongst us was in cahoots with
3 Mr Bozizé, and this came as a surprise. What came as a surprise was, when
4 the -- Tolmo, the public prosecutor, gave instructions to free us - so myself,
5 (Redacted).
6 (Redacted).
7 (Redacted).
8 (Redacted).
9 (Redacted).
10 (Redacted).
11 (Redacted).
12 (Redacted).
13 (Redacted).
14 (Redacted).
15 (Redacted).
16 (Redacted).
17 (Redacted).
18 (Redacted).
19 (Redacted).
20 (Redacted).
21 (Redacted).
22 (Redacted).
23 PRESIDING JUDGE SAMBA: [10:09:29] Thank you very much, Mr Witness.
24 (Trial Chamber confers)
25 PRESIDING JUDGE SAMBA: [10:09:56] Ms Naouri, during --

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1 MS NAOURI: [10:10:04](Interpretation) Yes, your Honour, no questions.

2 PRESIDING JUDGE SAMBA: [10:10:10] -- during cross-examination -- Ms Naouri,
3 can you be on your legs, please.

4 MS NAOURI: [10:10:17](Interpretation) I was listening to the interpretation,
5 your Honour. Sorry.

6 PRESIDING JUDGE SAMBA: [10:10:20] No, that's okay.

7 During cross-examination, you had asked about -- or for the original of a document,
8 the release document. We have it here in court now. The witness brought it. I
9 want to know whether or not you still want to have a look at it.

10 MS NAOURI: [10:10:40](Interpretation) Yes, your Honour. We were actually
11 waiting for the end to see if we could have the original of this document. So thank
12 you for suggesting it right from now. Thank you.

13 PRESIDING JUDGE SAMBA: [10:10:55] Madam Court Officer, can you get the
14 document to Ms Naouri, please, while we deal with the other questions.

15 I'll now pass the microphone over to my colleague to put questions or a question to
16 the witness.

17 Judge Ugalde, please.

18 Oh, a question to the Prosecution. Thank you.

19 JUDGE UGALDE: [10:11:27] Thank you, Madam President.

20 Concerning this document that the witness has recognised to have been written by
21 him and handed over to the Prosecution, I want to ask you about what has been
22 introduced in eCourt. Because if you see tabs 6, 7, 8 and 9, they all appear to be
23 photographs of the document. However, tab 10 and 11 appear to be photocopies of
24 the photograph of that document. And I say "appear to be" because we saw the
25 original this morning, at least for tab 10, and we could see that the original is actually

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1 a photograph, but in the tab it looks like a photocopy of that photograph.

2 I just wanted to ask you whether you know whether what was presented to us is

3 indeed a photocopy of that photograph, or whether there is any other reason why we

4 see a black and white display of this document rather than the, say, original blue

5 colour that the document was written, the pen was written in blue, or the pen used

6 was in blue.

7 So I just want to get a sense whether -- why is there such a difference between what

8 actually -- the actual document is and what is presented to us? If you have an

9 explanation, I will appreciate it. Thank you.

10 THE COURT OFFICER: [10:13:57] For the record, Judge Ugalde refers to the item

11 CAR-OTP-2130-6662-R01. It's visible on evidence channel 1.

12 MS MAKWAIA: [10:14:12] Thank you for that question, your Honour.

13 There is no particular reason at all as to why the ones you stated appear to be copies

14 of a photograph, your Honour. The -- it was simply the way the production team

15 produced these documents.

16 The original documents, as you have seen, are in blue, and then there's two additional

17 separate sheets in white, also written in blue. So there is really no particular reason.

18 It's just the way they produced them.

19 And further to that, your Honour, it's very faint. For example, annex D6, there is a

20 part missing. This is why I then requested for the original to be taken from the vault

21 so that it could be available for inspection. Thank you. I hope I've answered your

22 question.

23 PRESIDING JUDGE SAMBA: [10:15:20] Thank you very much, Madam Prosecutor.

24 Well, I'd want to thank you, Counsel, Madam Prosecutor, and of course, Ms Pellet

25 and Ms Naouri, for these proceedings so far, including the testimony of this witness.

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1 And, Mr Witness, on behalf of the Court, and indeed on behalf of this Chamber, we
2 wish to thank you for your assistance to the Court. We wish you well in your future
3 endeavours, and we wish you safe travelling mercies as you return back home.

4 Thank you very much.

5 My understanding --

6 THE WITNESS: [10:16:03](Interpretation) Thank you.

7 (The witness is excused)

8 PRESIDING JUDGE SAMBA: [10:16:05] My understanding, Madam Prosecutor, is
9 that the next witness will be a week from now.

10 MS MAKWAIA: [10:16:15] That is correct, your Honours.

11 PRESIDING JUDGE SAMBA: [10:16:17] Okay. Thank you.

12 I'm going to rise the Court and adjourn this matter and all proceedings till we meet
13 again on Monday, a week from now.

14 Thank you.

15 THE COURT USHER: [10:16:31] All rise.

16 (The hearing ends in private session at 10.16 a.m.)