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

Date: 18 March 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***

Public

Public Redacted Version of “Prosecution’s Notification Related to Incident (r) of Paragraph 33 of the Document Containing the Charges”, ICC-01/14-01/21-262-Conf, dated 18 March 2022

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby notifies Mr MAHAMAT SAID ABDEL KANI (the “Accused”), and informs Trial Chamber VI (the “Chamber”), that it intends to present evidence at trial related to incident (r) at paragraph 33 of the Document Containing the Charges (“DCC”), which Pre-Trial Chamber II did not confirm in its Decision on the Confirmation of Charges (“Decision”).¹ The Prosecution’s evidence will demonstrate that Witnesses P-1432 and P-1762 were detained at the OCRB [REDACTED], thus within the temporal scope of the charges. The Decision allows for the presentation of the evidence of additional victims at trial so far as their evidence falls within the temporal scope of the charges.²

II. CONFIDENTIALITY

2. This document is filed as Confidential pursuant to regulation 23*bis*(1) of the Regulations of the Court, as it contains information relating to Prosecution witnesses and other documents containing confidential information. A public redacted version will be filed simultaneously.

III. BACKGROUND

3. On 16 August 2021, the Prosecution filed its “Document Containing the Charges”.³

4. On 26 October 2021, the Prosecution filed a “Corrected Version of the Document Containing the Charges”.⁴

¹ ICC-01/14-01/21-218-Conf, paras. 116-117.

² ICC-01/14-01/21-112-218-Conf, p. 29, para. 80 ; p. 55, para. 29.

³ ICC-01/14-01/21-144-Conf.

⁴ ICC-01/14-01/21-144-Conf-Corr.

5. On 9 December 2021, the Pre-Trial Chamber confirmed charges 1 to 7 against the Accused and committed him to trial.⁵ These charges relate to 18 of the 20 incidents set out in the DCC regarding the OCRB detention site. The Pre-Trial Chamber declined to confirm two of these sub-incidents. Notably, it held that incident (r) of paragraph 33 of the DCC fell outside the temporal scope of the charges.⁶

IV. SUBMISSIONS

A. The Decision allows for the presentation of the evidence of additional victims at trial which falls within the temporal scope of the charges

6. The Pre-Trial Chamber considered, the victim-incidents that took place at the OCRB as non-exhaustive. It stated that “it understands that this list [of incidents] is meant to provide examples of the conduct underlying the charges”.⁷ In section D of “The Charges” the Chamber determined that “Mr SAID was in charge of the OCRB detention centre, and the OCRB operating there, at the times when the arrest, detention and/or mistreatment of persons occurred, including the following” and specified 18 of the 20 incidents relevant to the OCRB.⁸ The Pre-Trial Chamber’s approach is consistent with the DCC, where the Prosecution also described the victim-incidents at OCRB as non-exhaustive. Thus, the Prosecution can present evidence of additional victim-incidents at trial so far as these fall within the temporal scope of the charges. This approach is fully consistent with the Court’s legal framework⁹ and its jurisprudence,¹⁰ which allow for the charges to be described with respect to confined

⁵ ICC-01/14-01/21-112-218-Conf.

⁶ ICC-01/14-01/21-112-218-Conf, paras. 116-117.

⁷ ICC-01/14-01/21-112-218-Conf, p. 29, para. 80.

⁸ ICC-01/14-01/21-112-218-Conf, p. 55, para. 29 (emphasis added).

⁹ See Regulation 52 of the Regulations of the Court (regulating the content of the DCC); article 74(2) (indicating that a final decision shall not exceed the facts and circumstances described in the charges and any amendments); article 67(1)(a) of the Statute (on the accused’s right to be informed promptly and in detail of the nature, cause and content of the charge). On the right to notice: see *Lubanga AJ*, para. 124 and *Ntaganda AJ*, para. 325 (stating that while the confirmation decision defines the parameters of the charges, further details about the charges may be provided in auxiliary documents).

¹⁰ The Appeals Chamber has confirmed this approach: see *Ntaganda AJ*, para. 327 (“it is not necessarily inconsistent with article 74(2) of the Statute for the Prosecutor to formulate and for the pre-trial chamber to

temporal and geographical parameters and list individual criminal acts and victims on a non-exhaustive manner.

7. This notification is submitted in the interest of fair and transparent proceedings and seeks to provide additional notice to the Accused, and inform the Chamber, of the Prosecution's intention to present evidence of incident (r) at trial.

B. Incident (r) of the DCC falls within the temporal scope of the case

8. In the DCC, the Prosecution included incident (r) related to crimes committed at the OCRB,¹¹ which reads as follows:

[o]n or around [REDACTED], P-1432, a [REDACTED], was arrested [REDACTED] by OCRB-Seleka. He was then tied using the *arbatachar* method, beaten with rifle butts, and taken to *Sapeurs Pompiers* where he was detained in a container with around 30 other people. Around the same time, P-1762, also [REDACTED], was arrested on his way [REDACTED], tied *arbatachar*, and detained in that same container at *Sapeurs Pompiers*. Around early September¹² 2013, P-1432 and P-1762 were transferred to the OCRB, [REDACTED]. At the OCRB, these [REDACTED] men were detained in the underground cell in SAID's office. The detainees received little food and water and had to urinate in a corner. They did not receive medical treatment for their injuries. After around two weeks, they were transferred to above ground cells. P-1432 and P-1762 were then sent to the *Tribunal de Grande Instance* to appear before a judge. [REDACTED], and they were taken back to the OCRB. A few

confirm charges that do not consist of an exhaustive list of individual criminal acts"); see also para. 326 (quoting [Bemba Dissent](#), paras. 27-28). The Prosecution notes the recent Decision in the Ali Muhammad Ali Abd-Al-Rahman (*Ali Kushayb*) case where Pre-Trial Chamber II rejected the Prosecution's request to amend the charges to include the names of additional victims on the basis that the "indication of specific figures as to the victims [...] should not be understood as limitative or restrictive" nor "definitive" and neither constituted "an upper limit of the number of victims" nor a "minimum" number. Consequently, if "other persons [...] are at a later stage found to have been murdered or raped", and they "fall within the temporal and geographical parameters, as well as within the charged role of the accused, a trial chamber assessing the relevant evidence may include those persons in the crime as charged," see ICC-02/05-01/20-626, paras. 18; 20; 22-24. This approach is also consistent with that of the *ad hoc* tribunals: *Šainović* AJ, paras. 233-235, 558.

¹¹ ICC-01/14-01/21-144-Conf-Corr, p. 14.

¹² Emphasis added.

days later, on [REDACTED], P-1432 and P-1762 were released on conditions.

9. Most likely prompted by a clerical mistake of the Prosecution when it referred to in “early September” in the DCC, the Pre-Trial Chamber concluded that “[s]ince the statements of Witnesses P-1432 and P-1762 reveal that both witnesses were detained at the OCRB from early September [REDACTED], the incident falls outside the temporal scope of the charges brought against Mr SAID.”¹³ However, the evidence shows that both witnesses were transferred to the OCRB [REDACTED] and not in early September. The accounts of Witnesses P-1432 and P-1762 in relation to their detention at the OCRB in August 2013 are corroborated by other evidence, including by other witnesses and documents.¹⁴

10. According to Witness P-1432, [REDACTED], he was arrested one morning [REDACTED] in [REDACTED] August by the Seleka and brought to the camp of the Seleka base at the *Sapeurs Pompiers* in Bangui.¹⁵

11. P-1432 also states that Witness P-1762, [REDACTED], was put into the same container he was being detained [REDACTED] of P-1432’s detention.¹⁶ While P-1762 does not provide any date estimation of his own, P-1762 states that upon his arrival at the base of the *Sapeurs Pompiers*, he was put into a container along with 30 other prisoners including [REDACTED].¹⁷ [REDACTED] P-1432.¹⁸ From this moment onwards, both witnesses were together throughout the rest of their detention.

¹³ ICC-01/14-01/21-218-Conf, p. 38, para. 117.

¹⁴ P-1432: CAR-OTP-2050-0172, CAR-OTP-2045-0996; P-1762: CAR-OTP-2130-2147; P-0547: CAR-OTP-2018-0389; [REDACTED]; P-0787: CAR-OTP-2130-0893; P-0338: CAR-OTP-2130-5761; P-1967: CAR-OTP-2118-6365; Photos: CAR-OTP-2069-3221 to CAR-OTP-2069-3246; Investigator’s report: CAR-OTP-2135-2325; *Procès-verbal de notification*: CAR-OTP-2050-0189 *Mandat de dépôt*: CAR-OTP-2050-0187; *Ordonnance de mise en liberté sous contrôle judiciaire*: CAR-OTP-2050-0188; CAR-OTP-2073-0736; Investigator’s Report CAR-OTP-2130-7969.

¹⁵ P-1432: CAR-OTP-2050-0172 at 0174 - 0177, paras. 17-38.

¹⁶ P-1432: CAR-OTP-2050-0172 at 0177, paras. 30-35.

¹⁷ P-1762: CAR-OTP-2130-2147 at 2156, para. 42. [REDACTED].

¹⁸ The correct spelling of P-1432 is at the front page of his statement CAR-OTP-2050-0172.

12. According to P-1762's account¹⁹ he was detained at the *Sapeurs Pompiers* site [REDACTED] and was transferred [REDACTED] to the OCRB together with P-1432.²⁰ This transfer date is corroborated by the "*procès verbal de notification*,"²¹ provided by P-1432, [REDACTED]. Thus, the Prosecution submits that this day is the actual transfer date of both witnesses to the OCRB.²²

13. Both witnesses state that they were subsequently detained in the underground cell at the OCRB.²³ That their detention occurred in [REDACTED] August is also corroborated by information they provide about co-detainees.²⁴ Witness P-1432 indicated that, while in the underground cell, he saw a paralysed man who worked at [REDACTED].²⁵ Witness P-1762 indicated that he saw a civilian [REDACTED], tied using the arbatachar-method and that his hands were paralysed.²⁶ The detainee who matches this description is P-0547. Witness P-0547 stated that he was detained in the underground cell at [REDACTED] August²⁷ and that there was [REDACTED] in the underground cell with him who had been taken to the *Camp des Sapeurs Pompiers* before he was taken to the OCRB.²⁸

14. [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].³¹

¹⁹ P-1762: CAR-OTP-2130-2147 at 2157-2158, paras. 47; 52-55.

²⁰ P-1432: CAR-OTP-2050-0172 at 0177, paras. 38-39.

²¹ *Procès-verbal de notification*: CAR-OTP-2050-0189.

²² Note that P-1432's screening indicated that once the Seleka left, the police drafted the necessary documentation for the detainees and submitted it to the tribunal; see CAR-OTP-2045-0996 at 1000.

²³ P-1432: CAR-OTP-2050-0172 at 0178, para. 41; P-1762: CAR-OTP-2130-2147 at 2159, para. 58.

²⁴ P-0547: CAR-OTP-2018-0389 at 0399, para. 73; [REDACTED].

²⁵ P-1432: CAR-OTP-2050-0172 at 0178, para. 45.

²⁶ P-1762: CAR-OTP-2130-2147 at 2159-2160, paras. 62-63.

²⁷ P-0547: CAR-OTP-2018-0389 at 0398, paras. 62-63.

²⁸ [REDACTED]. P-0547: CAR-OTP-2018-0389 at 0399, para. 73.

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

15. Witnesses P-1432 and P-1762 state that they were still detained at the OCRB during the handover ceremony between the Seleka and the official authorities which resulted in the Seleka leaving the OCRB.³² This ceremony was on 30 August 2013.³³

16. Witness P-1967, [REDACTED], provided photos in relation to the departure of the Seleka from the OCRB³⁴ and stated that this meeting was on 30 August 2013 when President DJOTODIA and Minister BINOUA were addressing the Seleka and asked them to leave the OCRB premises.³⁵ After the ceremony held on 30 August 2013, Witnesses P-1432 and P-1762 were still held at the OCRB. Both were released later [REDACTED].³⁶ This date is also corroborated by the official documents provided by the witnesses.³⁷

V. CONCLUSION

17. On the basis of the information outlined above, the Prosecution hereby notifies the Accused, and informs the Chamber, that it intends to present evidence at trial for incident (r) of the DCC as it falls within the scope of the charges.



Karim A. A. Khan QC, Prosecutor

Dated this 18th day of March 2022
At The Hague, The Netherlands

³² P-1762: CAR-OTP-2130-2147 at -2162-2163, paras.76; 80; P-1432: CAR-OTP-2050-0172 at 0179, paras. 54-55.

³³ P-0787: CAR-OTP-2130-0893 at 0917, para. 101; P-0338: CAR-OTP-2130-5761 at 5788-5789, paras. 150-156; P-1967: CAR-OTP-2118-6365 at 6457 in relation to P8301174 to P8301201.

³⁴ Photos: CAR-OTP-2069-3221 to CAR-OTP-2069-3246.

³⁵ P-1967: CAR-OTP-2118-6365 at 6457 in relation to P8301174 to P8301201.

³⁶ P-1432: CAR-OTP-2050-0172 at 0180, paras. 58-59; P-1762: CAR-OTP-2130-2147 at 2164, para. 87.

³⁷ *Mandat de dépôt*: CAR-OTP-2050-0187; *Ordonnance de mise en liberté sous contrôle judiciaire*: CAR-OTP-2050-0188; CAR-OTP-2073-0736. Note that the latter certificate relates to P-1432. Witness P-1762 at Investigator's Report CAR-OTP-2130-7969 explains that he mistakenly took P-1432 release order because they were taken together to the Tribunal.