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

Date: **27 May 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
with Confidential Annex A**

**Public Redacted Version of “Prosecution’s second request to introduce prior
recorded testimony pursuant to rule 68(3)”, ICC-01/14-01/21-326-Conf, dated 23 May
2022**

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I. INTRODUCTION

1. The Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”) of three witnesses—P-0481, P-1762, and P-2607¹—pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”).²

2. All Three Witnesses are victims (or [REDACTED] of victims) of the charged crimes at the OCRB. Their Prior Recorded Testimonies are relevant, reliable, probative, and corroborated by other evidence.

3. Granting the Request will enhance the expeditiousness of the proceedings by reducing the estimated length of the Three Witnesses’ direct examination from a total of 12 hours to 3 hours, thus saving at least 9 hours of court time. Moreover, it would not prejudice the Defence, as the witnesses will be available for cross-examination and any further questioning by the Chamber.

4. Should the Chamber grant the Request, the Prosecution further requests leave to conduct a streamlined supplementary examination to clarify certain points and elaborate on specific issues highly relevant to this case.

II. CONFIDENTIALITY

5. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Request and its Annex are filed as confidential because they contain information that may identify

¹ Hereinafter “Three Witnesses.”

² Annex A (A1 to A3) lists the prior recorded testimonies of P-0481, P-1762, and P-2607, which comprise their witness statements (at I) and associated material (at II). Where items are necessary to understand a particular witness’s prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence, those items are also referenced (at III). These materials are all hyperlinked. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

Prosecution witnesses and refer to confidential items of evidence. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

6. The Prosecution relies on its previous submissions on the legal framework for introduction of prior recorded testimony pursuant to rule 68(3), as set out in its first application under rule 68(3).³

IV. SUBMISSIONS

A. The Prior Recorded Testimonies should be conditionally introduced into evidence pursuant to rule 68(3)

7. Subject to the fulfilment of the further conditions of rule 68(3), the Prior Recorded Testimonies should be introduced into evidence. They are relevant, reliable, probative, and corroborative of other evidence.

8. The Prior Recorded Testimonies are relevant as they relate to the crime base of the charges against Mahamat Said Abdel Kani ("Mr SAID"). P-0481 and P-1762 are direct victims of the crimes at the OCRB, and P-2607 provides direct evidence relevant to the charged crime of persecution.

9. Key aspects of each witness's evidence are further highlighted below.

³ Prosecution's first request to introduce prior recorded testimony pursuant to rule 68(3), ICC-01/14-01/21-322-Conf, 20 May 2022, paras. 5-12.

P-0481⁴

10. P-0481, a [REDACTED] of BOZIZE,⁵ reports that he was arrested in June 2013 by Mahamat SALLET and other Seleka elements, on the order of Nourredine ADAM⁶ ["ADAM"].⁷ P-0481 was detained at the OCRB in a cell above ground with a Seleka named YAYA, who was being disciplined for the escape of the [REDACTED].⁸ Some days after his arrest, the witness states that ADAM interrogated him about weapons allegedly hidden by BOZIZE.⁹ During a break in the interrogation, OCRB Seleka elements severely beat him and tortured him by putting [REDACTED] on his hands.¹⁰ P-0481 was later interviewed by Prosecutor Alain TOLMO without counsel or being informed of the reasons of his arrest or of any charges against him.¹¹ During his detention, P-0481 was deprived of sufficient food and medical care.¹² Eventually, P-0481 was transferred to the *Tribunal de Grande Instance* [REDACTED] 2013.¹³

11. P-0481's prior recorded testimony consists of his witness statement and associated items, including (i) photographs of the witness's scars; and (ii) P-0481's written complaint to the *Commission Mixte d'Enquete* (CMDE), which describes his ordeal at the OCRB and attaches relevant documentation.¹⁴

⁴ Confirmation Decision, p. 54, para. 29(b).

⁵ **P-0481**: CAR-OTP-2018-0530-R01 at 0533-0534, paras. 15, 18-24.

⁶ In the interest of clarity, the Prosecution refers throughout this filing to Nourredine Adam as "ADAM," though the witnesses reference him by both his first and last names.

⁷ **P-0481**: CAR-OTP-2018-0530-R01 at 0538, paras. 46, 51, at 0540, para. 64 (referring to Mahamat "SALE"). See also **BINUCA report**: CAR-OTP-2034-0226 at 0251, paras. 114-115; **CAR press article**: CAR-OTP-2087-9504.

⁸ **P-0481**: CAR-OTP-2018-0530-R01 at 0539, paras. 57-62. [REDACTED]. **P-2105**: CAR-OTP-2078-0003-R01 at 0014, 0015, 0017, 0019-0020, paras. 63-64, 73, 83, 104-106; **MoPS**: CAR-OTP-2034-3563; **TGI register**: CAR-OTP-2008-2415 at 2500, entry 530.

⁹ **P-0481**: CAR-OTP-2018-0530-R01 at 0545-0546, paras. 101-107.

¹⁰ **P-0481**: CAR-OTP-2018-0530 at 0546-0547, paras. 108-111, 140, 149. **P-0481 Annex D, E, F**: CAR-OTP-2018-0639, CAR-OTP-2018-0640, CAR-OTP-2018-0646.

¹¹ **P-0481**: CAR-OTP-2018-0530-R01 at 0547, paras. 114-116.

¹² **P-0481**: CAR-OTP-2018-0530-R01 at 0540, paras. 60, 63-64, at 0542-0543, paras. 80, 84, at 0547, para. 113.

¹³ **P-0481**: CAR-OTP-2018-0530-R01 at 0548, paras. 117-121.

¹⁴ CAR-OTP-2018-0566-R01.

P-1762¹⁵

12. P-1762, a [REDACTED], was arbitrarily arrested, beaten and tied *arbatachar* by the Seleka in 2013, on his way back from a [REDACTED] gathering.¹⁶ Afterwards, the Seleka detained him for a few days at their base at *Sapeurs-pompiers* with [REDACTED] (P-1432).¹⁷ Then, the Seleka transferred him to the OCRB with P-1432 and three men [REDACTED].¹⁸ At the OCRB, the Seleka detained the witness in a hole for two weeks with P-1432 and the three men [REDACTED] and other civilian men.¹⁹ During this time, he also describes seeing a man matching the description of P-0547, [REDACTED].²⁰ When the Seleka were ousted from the OCRB, P-1762 was taken out of the hole and moved to an above ground cell along with P-1432.²¹ On [REDACTED] September 2013, P-1762 was released from the OCRB together with P-1432.²²

13. P-1762 describes the inhumane conditions of detention at the OCRB, including not being provided with adequate food or medical care.²³ He also describes a smell of

¹⁵ The Prosecution notes that P-1762's evidence is relevant for the chapeau elements of the crimes against humanity charges, regardless of whether his evidence can be lead in relation to the *actus reus* elements of the OCRB charges against Mr SAID. The latter issue is subject to a pending request before Pre-Trial Chamber II. See ICC-01/14-01/21-294-Conf.

¹⁶ **P-1762:** CAR-OTP-2073-0568-R01 at 0572-0573, paras. 20-30; **P-1762 Annex 2:** CAR-OTP-2073-0732 (photograph of the witness' injury [REDACTED]).

¹⁷ **P-1762:** CAR-OTP-2073-0568-R01 at 0574-0578, paras. 31-56. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0176-0177, paras. 26-39.

¹⁸ **P-1762:** CAR-OTP-2073-0568-R01 at 0578, paras. 55, 57. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0177, paras. 39-40; **P-1432 Annex 8:** CAR-OTP-2050-0189 (*Proces-verbal* states that P-1432 was notified on [REDACTED] August 2013 of the criminal proceedings against him for manoeuvre likely to cause serious harm). Thus, the Prosecution believes P-1432 and P-1762 were transferred to the OCRB on or about [REDACTED] August 2013 as it matches both witnesses' timelines in their statements as well.

¹⁹ **P-1762:** CAR-OTP-2073-0568-R01 at 0578-0581, paras. 57-75, esp. para. 61. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0178-0179, paras. 41, 43, 45, 54; **P-0547:** CAR-OTP-2018-0389-R01 at 0399, para. 73; **P-2179:** CAR-OTP-2088-2250 at 2268, paras. 89-92.

²⁰ **P-1762:** CAR-OTP-2073-0568-R01 at 0579, paras. 62-63, 65, 72-73. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0178-0179, paras. 45.

²¹ **P-1762:** CAR-OTP-2073-0568-R01 at 0581, paras. 76-79 (the Prosecution believes this is on 30 August 2013 when the Seleka were ousted from the OCRB). This detail of men detained in a hole at the OCRB and liberated is corroborated by P-2478. See **P-2478:** CAR-OTP-2110-0745-R01 at 0758-0759, paras.53-59. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0179, paras. 54-55.

²² **P-1762:** CAR-OTP-2073-0568-R01 at 0583, paras. 86-87; **P-1762 annex:** CAR-OTP-2073-0736 (release order of P-1432). See also **P-1432:** CAR-OTP-2050-0172-R01 at 0180, para. 59; **P-1432 Annex 7:** CAR-OTP-2050-0188 (release order of P-1432).

²³ **P-1762:** CAR-OTP-2073-0568-R01 at 0579-0580, paras. 62, 66-71, 74. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0178-0179, paras. 46, 48 and 51.

dead animals in the underground cell.²⁴ Of particular note, he provides information relevant to the Seleka's persecution and torture of perceived pro-BOZIZE supporters as he could hear and see the infliction of pain [REDACTED] on P-0547 by the Seleka at the OCRB.²⁵

14. P-1762 also provides details relevant to the Seleka armed group's level of organisation. For example, he states that the Seleka wore black uniforms at the OCRB,²⁶ a sign of logistical ability, and that Sudanese General MOUSSA and ADAM conversed at *Sapeurs-Pompiers*²⁷ right before the transfer of detainees from *Sapeurs-Pompiers* to the OCRB, a sign of different Seleka commanders coordinating operations together.²⁸

15. P-1762's prior recorded testimony consists of his witness statement and its six annexes, including one photograph of his injury on his [REDACTED] caused by the Seleka during his arrest, and two judicial documents from his proceedings issued by the TGI.²⁹

²⁴ **P-1762:** CAR-OTP-2073-0568-R01 at 0579, para. 67. This detail is consistent with P-0547's testimony of a dead body being present in the underground cell around the same time and leaving an unbearable smell after being removed from it. See **P-0547:** CAR-OTP-2018-0389-R01 at 0398-0399, para. 66.

²⁵ **P-1762:** CAR-OTP-2073-0568-R01 at 0579, paras. 62-63, 65, 72-73. See also **P-0547:** CAR-OTP-2018-0389-R01; **P-1432:** CAR-OTP-2050-0172-R01 at 0178, para. 45.

²⁶ **P-1762:** CAR-OTP-2073-0568-R01 at 0578, paras. 57-58, at 0580, para. 75. This detail is also corroborated by other witnesses, including live witness P-1167. See, e.g., **P-1167:** CAR-OTP-2127-7671-R01 at 7687, para. 88 (Nouredine [ADAM] provided black uniforms reserved to the police to the OCRB-Seleka); **P-1004:** CAR-OTP-2130-1736-R01 at 1742, para. 35 (General NOUREDINE [ADAM] brought police black uniforms to OCRB-Seleka).

²⁷ **P-1762:** CAR-OTP-2073-0568-R01 at 0574, paras. 34-38, at 0577-0578, paras. 53-54, 56 (the Prosecution believes this is Sudanese General Moussa ASSIMEH, head of *Sapeurs-Pompiers* and Nourredine ADAM). See also **P-1432:** CAR-OTP-2050-0172-R01 at 0176, paras. 27-29 (General MOUSSA and Nourradine ADAM interacted and interrogated P-1432 on the same day at *Sapeurs-Pompiers*).

²⁸ **P-1762:** CAR-OTP-2073-0568-R01 at 0578-0579, paras. 55, 57. See also **P-1432:** CAR-OTP-2050-0172-R01 at 0177, paras. 39-40.

²⁹ See Annex A (A2) for the complete list.

P-2607

16. P-2607's [REDACTED], was a [REDACTED] member who was arrested by Seleka on or about [REDACTED] June 2013.³⁰ That day, [REDACTED] had been [REDACTED].³¹ P-2607 then went [REDACTED], and people there told him that the vehicle [REDACTED] was a black car with tinted windows and that the black car was accompanied by another vehicle, an army green BG75 with OCRB written on it.³² From prior discussions with [REDACTED], P-2607 recognised that the army green vehicle sounded like a vehicle known to be used by Mr SAID.³³

17. Because they had been told one of the cars was from the OCRB, [REDACTED] left to go to the OCRB.³⁴ [REDACTED] attempted to enter the OCRB premises.³⁵ [REDACTED] Mr SAID then came out into the road and started shooting his pistol in the air.³⁶ Mr SAID instructed the other Seleka elements not to let them through and told them: *"you don't know why [REDACTED] is here and it is not the time for you to be here."*³⁷ P-2607 then saw the same army green BG75 with OCRB written on it, which [REDACTED] had pointed out to him before, drive out of the compound with [REDACTED].³⁸ A short while later, P-2607 heard gunshots.³⁹

³⁰ **P-2607**, CAR-OTP-2125-0855 at 0857, paras. 14-15.

³¹ **P-2607**, CAR-OTP-2125-0855 at 0857-0858, para. 16.

³² **P-2607**, CAR-OTP-2125-0855 at 0858, para. 17.

³³ [REDACTED] pointed out to P-2607 a plain coloured army green B75 with the letters OCRB written on it, saying that it belonged to a Seleka called Mahamat SAID. [REDACTED]. **P-2607**, CAR-OTP-2125-0855 at 0857, para. 14.

³⁴ **P-2607**, CAR-OTP-2125-0855 at 0858, para. 18.

³⁵ **P-2607**, CAR-OTP-2125-0855 at 0858, para. 20.

³⁶ **P-2607**: CAR-OTP-2125-0855 at 0858, para. 20.

³⁷ **P-2607**: CAR-OTP-2125-0855 at 0858, para. 20.

³⁸ **P-2607**: CAR-OTP-2125-0855 at 0858, para. 21.

³⁹ **P-2607**: CAR-OTP-2125-0855 at 0858, para. 22.

18. [REDACTED].⁴⁰ P-2607 observed that [REDACTED] appeared to have been shot in the head since there was blood coming out of the side of his head.⁴¹ [REDACTED].⁴²

19. P-2607's prior recorded testimony is comprised of his witness statement, and related documents including [REDACTED].⁴³ His evidence is directly corroborated by [REDACTED] who witnessed the OCRB Seleka detain [REDACTED].⁴⁴

(i) Granting the Request Would Expedite the Proceedings

20. The Prosecution estimates that a full direct examination for each witness would require approximately 4 hours of court time. If the Request is granted, the Prosecution would seek only 1 hour per witness for supplemental examination, as detailed further below. Thus, if the Request is granted for all Three Witnesses, the Prosecution estimates a savings of at least 9 hours of court time.

(ii) The Prior Recorded Testimonies Bear Sufficient Indicia of Reliability for Introduction into Evidence

21. The Prior Recorded Testimonies have sufficient indicia of reliability for introduction into evidence. The Three Witnesses have signed their statements, attesting that their testimony was read back to them, was given voluntarily, and that their contents were true to the best of their recollection of the events.⁴⁵ Where an interpreter was used, the witnesses confirmed that they read over the statement with the interpreter and confirmed its accuracy.⁴⁶ Their statements also bear the signature

⁴⁰ **P-2607**: CAR-OTP-2125-0855 at 0859, para. 23.

⁴¹ **P-2607**: CAR-OTP-2125-0855 at 0859, para. 24.

⁴² **P-2607**: CAR-OTP-2125-0855 at 0859, para. 24.

⁴³ See Annex A (A3) for the complete list.

⁴⁴ **P-2504**: CAR-OTP-2111-0177 at 0185, paras. 48-49.

⁴⁵ **P-0481**: CAR-OTP-2018-0530-R01 at 0555; **P-1762**: CAR-OTP-2073-0568-R01 at 0585; **P-2607**: CAR-OTP-2125-0855 at 0861.

⁴⁶ **P-0481**: CAR-OTP-2018-0530-R01 at 0555; **P-1762**: CAR-OTP-2073-0568-R01 at 0585; **P-2607**: CAR-OTP-2125-0855 at 0861.

of an interpreter, certifying that each witness appeared to have heard and understood the translation.⁴⁷

22. P-1762 made some clarifications subsequently to his interview, which the Prosecution will be able to formalise during the requested supplementary examination. However, the additional information and corrections the witness provided are limited and do not detract from the sufficient level of reliability required for this request.⁴⁸

(iii) Introduction of the Prior Recorded Testimonies is not Prejudicial To or Inconsistent with the Rights of the Accused

23. The introduction of the Prior Recorded Testimonies into evidence is not prejudicial to or inconsistent with the rights of the Accused. The Defence will have ample opportunity to cross-examine the witnesses. Furthermore, their evidence is cumulative to and corroborative of the evidence of the three OCRB victims whom the Prosecution proposes to testify *viva voce* with a full direct examination— P-0547, P-1743, and P-3056—as well as [REDACTED] witness P-2504.

D. The Prosecution should be allowed to conduct a focused supplementary examination of the Three Witnesses

24. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Three Witnesses of no more than 1 hour per witness. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

⁴⁷ **P-0481:** CAR-OTP-2018-0530-R01 at 0555; **P-1762:** CAR-OTP-2073-0568-R01 at 0586; **P-2607:** CAR-OTP-2125-0855 at 0862.

⁴⁸ **Investigations report:** CAR-OTP-2130-7969 and CAR-OTP-2073-0589.

E. RELIEF SOUGHT

25. For the above reasons, the Prosecution requests that the Chamber:

- (a) Introduce into evidence the Prior Recorded Testimonies, as set out in Annex A to this filing, subject to the fulfilment of the further conditions of rule 68(3); and
- (b) Grant leave for the Prosecution to conduct a limited supplementary examination of the Three Witnesses of no more than 1 hour per witness.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 27th day of May 2022

At The Hague, The Netherlands