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Date: **10 June 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 third request to introduce prior recorded testimony pursuant to rule 68(3)”, ICC-01/14-01/21-348-Conf, dated 8 June 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 Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”) of six witnesses—P-1429, P-2241, P-2400, P-2692, P-2931 and P-3064<sup>1</sup>—pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”).<sup>2</sup>

2. All Six Witnesses are 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 Six Witnesses’ direct examination from 24 hours to 6 hours, thus saving at least 18 hours of court time. Moreover, it would not prejudice the Defence as the witnesses will be fully 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

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<sup>1</sup> Hereinafter “Six Witnesses”.

<sup>2</sup> Annex A (A1 to A6) lists the prior recorded testimonies of P-1429, P-2241, P-2400, P-2692, P-2931, and P-3064, 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).<sup>3</sup>

### **IV. SUBMISSIONS**

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

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

8. All the Prior Recorded Testimonies relate to the crimes committed at the OCRB and a specific incident mentioned in the Decision on the Confirmation of Charges (“Confirmation Decision”).<sup>4</sup> All of the Six Witnesses were victims detained at the OCRB during the charged period. Three witnesses were detained in the underground cell,<sup>5</sup> and one witness also corroborates the arrest and killing of Oswald SANZE.<sup>6</sup> The witnesses also provide evidence about the Seleka’s mistreatment of detainees at the OCRB and the presence of Mr SAID at the OCRB.

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<sup>3</sup> Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3), ICC-01/14-01/21-322-Conf, paras. 5-12.

<sup>4</sup> See Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Red, 9 Dec. 2021 (“Confirmation Decision”), Section D (operative part), at pp. 55, 57-58, para. 29 (c); (i); (j); (m) and (q) .

<sup>5</sup> P-2400, P-2931 and P-3064.

<sup>6</sup> P-2931.

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

(i) P-1429<sup>7</sup>

10. P-1429 [REDACTED] who was detained in mid-July 2013 at Camp *Sapeurs Pompiers* [REDACTED].<sup>8</sup> He states that he was put in a cattle lorry alone and that he saw other lorries in the compound containing other prisoners.<sup>9</sup> On the third day of detention, he was interrogated by [REDACTED].<sup>10</sup> It was decided that P-1429 should be transferred to the OCRB, and he was taken [REDACTED].<sup>11</sup> Upon his arrival to the OCRB and, on orders of Mahamat Said Abdel Kani ("Mr SAID"), P-1429 [REDACTED] were put into different cells.<sup>12</sup> [REDACTED].<sup>13</sup>

11. P-1429 details that the Seleka submitted the detainees to dire detention conditions and beat them regularly.<sup>14</sup> The witness also states that ADAM visited the OCRB regularly.<sup>15</sup> P-1429 was taken to the tribunal several times while detained at the OCRB.<sup>16</sup> On the last visit, P-1429 [REDACTED] were provisionally released.<sup>17</sup> This was in mid-August 2013, after P-1429 had been detained for 21 days.<sup>18</sup>

12. P-1429's prior recorded testimony is comprised of one statement and two annexes.<sup>19</sup> His testimony is corroborated by [REDACTED] and whose testimony will also be requested to be introduced into evidence pursuant to rule 68(3).

<sup>7</sup> P-1429's evidence is related to the sub-incident confirmed in the Confirmation Decision (operative part), at p.57, para. 29(i).

<sup>8</sup> P-1429, CAR-OTP-2043-0317 at 0321-0322, paras. 27-32.

<sup>9</sup> P-1429, CAR-OTP-2043-0317 at 0322, paras. 34-36.

<sup>10</sup> P-1429, CAR-OTP-2043-0317 at 0323, paras. 43-45.

<sup>11</sup> P-1429, CAR-OTP-2043-0317 at 0323, paras. 45.

<sup>12</sup> P-1429, CAR-OTP-2043-0317 at 0324, paras. 47-48.

<sup>13</sup> P-1429, CAR-OTP-2043-0317 at 0324-0325, paras. 48-55.

<sup>14</sup> P-1429, CAR-OTP-2043-0317 at 0326, paras. 62-63.

<sup>15</sup> P-1429, CAR-OTP-2043-0317 at 0326, paras. 65-67.

<sup>16</sup> P-1429, CAR-OTP-2043-0317 at 0327, paras. 70-71.

<sup>17</sup> P-1429, CAR-OTP-2043-0317 at 0327, para. 71.

<sup>18</sup> P-1429, CAR-OTP-2043-0317 at 0327, para. 71.

<sup>19</sup> See Annex A (A1) for the complete list.

(ii) P-2241<sup>20</sup>

13. P-2241 [REDACTED] who was arrested by the Seleka, along with P-2400, at [REDACTED].<sup>21</sup> [REDACTED] was put into a vehicle with no inscriptions and tinted windows and was then taken to Camp de Roux.<sup>22</sup> That same day, P-2241 and P-2400 were transferred to the OCRB accompanied by Prosecutor TOLMO.<sup>23</sup> Upon arrival, P-2241 and P-2400 were separated, [REDACTED].<sup>24</sup> [REDACTED].<sup>25</sup> Then, two Seleka took P-2241 into a big room [REDACTED].<sup>26</sup>

14. On the second day, Mr SAID took P-2241 and the [REDACTED], and told them that during the day they should stay in another office.<sup>27</sup> P-2241 states that during [REDACTED] detention [REDACTED] saw Mr SAID regularly at the OCRB.<sup>28</sup>

15. While at the OCRB, P-2241 saw Seleka bringing in prisoners, beating them and tying them up as well as taking them in and out of the prison cells.<sup>29</sup> [REDACTED] also recalls hearing the screams of a prisoner who was beaten by Seleka.<sup>30</sup> [REDACTED] later observed the prisoner's dreadful state and could see his hands and arms dangling.<sup>31</sup> After one week of detention, Mr SAID came to see P-2241.<sup>32</sup> He told [REDACTED] that he was supposed to interview [REDACTED] but was waiting to hear the decision of the President on whether [REDACTED] was to be released, and that he would take P-2241 to the Prosecutor to be interviewed.<sup>33</sup> Later, Mr SAID took

<sup>20</sup> P-2241's evidence is related to the sub-incident confirmed in the Confirmation Decision (operative part), pp. 58-59, para. 29(q).

<sup>21</sup> P-2241, CAR-OTP-2092-3851 at 3853-3855, paras. 15-23.

<sup>22</sup> P-2241, CAR-OTP-2092-3851 at 3855-3958, para. 27-40.

<sup>23</sup> P-2241, CAR-OTP-2092-3851 at 3859-3860, para. 41-46.

<sup>24</sup> P-2241, CAR-OTP-2092-3851 at 3861, paras. 51-56.

<sup>25</sup> P-2241, CAR-OTP-2092-3851 at 3861-3862, para. 56.

<sup>26</sup> P-2241, CAR-OTP-2092-3851 at 3861-3862, para. 56-58.

<sup>27</sup> P-2241, CAR-OTP-2092-3851 at 3863, para. 60-61.

<sup>28</sup> P-2241, CAR-OTP-2092-3851 at 3864, paras. 67-70.

<sup>29</sup> P-2241, CAR-OTP-2092-3851 at 3865-3866, para. 75; CAR-OTP-3863-2864 at 3863-3865, paras. 62-65.

<sup>30</sup> P-2241, CAR-OTP-2092-3851 at 3865-3866, para. 75.

<sup>31</sup> P-2241, CAR-OTP-2092-3851 at 3865-3866, para. 75.

<sup>32</sup> P-2241, CAR-OTP-2092-3851 at 3868, para. 83.

<sup>33</sup> P-2241, CAR-OTP-2092-3851 at 3868, para. 83.

P-2241 [REDACTED] to the Prosecutor's office for interview. While the [REDACTED], the Prosecutor told [REDACTED] that [REDACTED] would be taken back to the OCRB pending the President's decision.<sup>34</sup> P-2241 was never told about the reasons for [REDACTED] arrest.<sup>35</sup>

16. P-2241 was taken back to the OCRB.<sup>36</sup> Two weeks and two days later, [REDACTED].<sup>37</sup> [REDACTED].<sup>38</sup>

17. P-2241's prior recorded testimony and associated material consists of one statement as well as photographs shown to the witness during the interview about which [REDACTED] made substantive comments.<sup>39</sup> [REDACTED] evidence is cumulative to and corroborative of P-2400, a witness whom the Defence will also have the opportunity to cross-examine. [REDACTED] testimony is further corroborated by P-2337 and P-2239 whose testimony has been requested to be submitted pursuant to rule 68(2)(b) of the Rules.

(iii) P-2400<sup>40</sup>

18. P-2400 [REDACTED] who was arrested by the Seleka, along with P-2241, while he was working at [REDACTED].<sup>41</sup> He was beaten by the Seleka with rifle butts and placed in a white coloured vehicle with no registration plates.<sup>42</sup> P-2400 and P-2241 were taken to Camp de Roux and upon arrival P-2400 was interrogated by a Seleka

<sup>34</sup> P-2241, CAR-OTP-2092-3851 at 3869, para. 90.

<sup>35</sup> P-2241, CAR-OTP-2092-3851 at 3869, para. 89-93.

<sup>36</sup> P-2241, CAR-OTP-2092-3851 at 3869, para. 93.

<sup>37</sup> P-2241, CAR-OTP-2092-3851 at 3870, para. 94-95.

<sup>38</sup> P-2241, CAR-OTP-2092-3851 at 3870, para. 95.

<sup>39</sup> See Annex A (A2) for the complete list.

<sup>40</sup> P-2400's evidence is related to the sub-incident confirmed in the Confirmation Decision, pp. 58-59, para. 29(q).

<sup>41</sup> P-2400, CAR-OTP-2104-0424 at 0427-0428, paras. 16-24.

<sup>42</sup> P-2400, CAR-OTP-2104-0424 at 0428, paras. 21.

who accused P-2400 of being a relative and an intelligence agent of BOZIZE.<sup>43</sup> Then, P-2400 was severely mistreated including by being tied up in the *arbatachar* method.<sup>44</sup>

19. After he was taken back to the *Place d'Armes* at Camp de Roux, P-2400 and P-2241 were taken to the OCRB.<sup>45</sup> Upon arrival there, a Seleka took down P-2400's name in a notebook, and P-2400 was then hit by a Seleka and fell on the ground.<sup>46</sup> About one hour later, on the instructions of Mr SAID, P-2400 was taken to the underground cell, which was located underneath Mr SAID's office.<sup>47</sup> For five days, P-2400 was detained in the underground cell with four other male prisoners in inhumane conditions.<sup>48</sup> P-2400 was not provided with medical attention,<sup>49</sup> and he was not visited by the Prosecutor or provided with legal counsel.<sup>50</sup>

20. On the sixth day of his detention, P-2400 was taken to an above-ground cell because [REDACTED].<sup>51</sup> While detained in the above-ground cell, P-2400 witnessed prisoners being beaten and having their hands and feet tied together on orders of Seleka commanders several times, including once by Mr SAID.<sup>52</sup> After one week and five days of detention and [REDACTED], Mr SAID released the witness.<sup>53</sup>

21. P-2400's prior recorded testimony and associated material is comprised of one statement, three annexes, and six photographs of the injuries he sustained.<sup>54</sup> His evidence is cumulative to and corroborative of P-2241 as well as P-2239 and P-2337.<sup>55</sup>

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<sup>43</sup> **P-2400**, CAR-OTP-2104-0424 at 0429-0430, paras. 27-28.

<sup>44</sup> **P-2400**, CAR-OTP-2104-0424 at 0430-0431, paras. 31-34.

<sup>45</sup> **P-2400**, CAR-OTP-2104-0424 at 0431-0432, paras. 36-38.

<sup>46</sup> **P-2400**, CAR-OTP-2104-0424 at 0432, paras.39-40.

<sup>47</sup> **P-2400**, CAR-OTP-2104-0424 at 0432-0433, paras. 41-44.

<sup>48</sup> **P-2400**, CAR-OTP-2104-0424 at 0433, para. 45; at 0434-0435, paras.50-51.

<sup>49</sup> **P-2400**, CAR-OTP-2104-0424 at 0434, paras. 46-48.

<sup>50</sup> **P-2400**, CAR-OTP-2104-0424 at 0434, para. 47.

<sup>51</sup> **P-2400**, CAR-OTP-2104-0424 at 0435, para. 52.

<sup>52</sup> **P-2400**, CAR-OTP-2104-0424 at 0435-0436, paras 56-57.

<sup>53</sup> **P-2400**, CAR-OTP-2104-0424 at 0437, paras. 60-61.

<sup>54</sup> See Annex A (A3) for the complete list.

<sup>55</sup> See Prosecution's sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-328-Conf.

(iv) P-2692<sup>56</sup>

22. P-2692 [REDACTED].<sup>57</sup> He provides information about his arrest and detention at the OCRB on two occasions by the Seleka.<sup>58</sup> On [REDACTED] June 2013, he was arrested while [REDACTED].<sup>59</sup> P-2692 was held overnight at Camp Kassai, where the Seleka tied him up in the *arbatachar* method, poured water on him and threw stones and bricks at him.<sup>60</sup> The next morning he and another prisoner were transferred to the OCRB in a camouflage patterned army green pick-up.<sup>61</sup> P-2692 heard the Seleka in the back of the pick-up blame them for being Christians who had ruled the country for 50 years.<sup>62</sup>

23. The OCRB Colonel asked P-2692 [REDACTED].<sup>63</sup> [REDACTED] and after P-2692 was released to get medical treatment.<sup>64</sup> A week later, P-2692 was arrested again and taken to the OCRB.<sup>65</sup> He describes the cell he was placed in as being so cramped that prisoners had to sleep on their sides, head to toe.<sup>66</sup> Over the next weeks the OCRB Colonel and other Seleka elements regularly interrogated P-2692 [REDACTED].<sup>67</sup> One night, the Seleka took P-2692 to NDRESS cemetery and threatened to bury him [REDACTED].<sup>68</sup>

24. P-2692 observed that prisoners were mistreated by the Seleka at the OCRB. He heard a prisoner scream while being beaten by Seleka behind the OCRB cell block,

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<sup>56</sup> P-2692's evidence is related to the sub-incident confirmed in the Confirmation Decision at p. 55-56, para. 29(c).

<sup>57</sup> P-2692, CAR-OTP-2125-0922 at 0924, para. 15

<sup>58</sup> P-2692, CAR-OTP-2125-0922 at 0924, para. 12, at 0927, para. 26.

<sup>59</sup> P-2692, CAR-OTP-2125-0922 at 0924, paras. 12-14

<sup>60</sup> P-2692, CAR-OTP-2125-0922 at 0924-0925, para. 16-19.

<sup>61</sup> P-2692, CAR-OTP-2125-0922 at 0925, para. 20.

<sup>62</sup> P-2692, CAR-OTP-2125-0922 at 0925, para. 20

<sup>63</sup> P-2692, CAR-OTP-2125-0922 at 0925-0926, paras. 21-23.

<sup>64</sup> P-2692, CAR-OTP-2125-0922 at 0926, para. 23

<sup>65</sup> P-2692, CAR-OTP-2125-0922 at 0927, paras. 26-28

<sup>66</sup> P-2692, CAR-OTP-2125-0922 at 0927, para. 29

<sup>67</sup> P-2692, CAR-OTP-2125-0922 at 0927-0928, paras. 30-31.

<sup>68</sup> P-2692, CAR-OTP-2125-0922 at 0929, para. 35.

who was then brought into P-2692's cell.<sup>69</sup> P-2692 saw that the prisoner's body was covered in *chicotte* wounds.<sup>70</sup> He recalls another occasion where a large group of prisoners, accused of plotting a coup against DJOTODIA and distributing leaflets, were severely beaten in the courtyard by the Seleka on the OCRB Colonel's orders.<sup>71</sup> They were made to lie face-down on the ground, had sand and water poured on their backs, and were beaten with *chicottes* until their backs were covered in blood.<sup>72</sup> P-2692 also observed prisoners with marks on their bodies similar to those he sustained from having been tied up in the *arbatachar* method.<sup>73</sup>

25. P-2692 was released from the OCRB on [REDACTED] July 2013 after his family paid another ransom, and on that occasion the OCRB colonel gave him a handwritten release slip.<sup>74</sup> The slip bears the initials "C'MSAK", the date [REDACTED] July 2013, and the time [REDACTED]. It bears the official rank "Le Colonel" and provides the phone number "[REDACTED]", which is a mobile phone number attributed to Mr SAID.<sup>75</sup>

26. P-2692's prior recorded testimony and associated material is comprised of his statement, an annex which is his OCRB release slip or liberation document, and a press article that reported on his detention at the OCRB.<sup>76</sup>

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<sup>69</sup> P-2692, CAR-OTP-2125-0922 at 0928, para. 32.

<sup>70</sup> P-2692, CAR-OTP-2125-0922 at 0928, para. 32.

<sup>71</sup> P-2692, CAR-OTP-2125-0922 at 0928, para. 33.

<sup>72</sup> P-2692, CAR-OTP-2125-0922 at 0928, para. 33.

<sup>73</sup> P-2692, CAR-OTP-2125-0922 at 0929, para. 34.

<sup>74</sup> P-2692, CAR-OTP-2125-0922 at 0929, para. 39; **Liberation**, CAR-OTP-2125-0936.

<sup>75</sup> See **Telecommunications Report** at CAR-OTP-2136-0675 at 0677-0679 and Annex to Report: CAR-OTP-2136-0683

<sup>76</sup> See Annex A (A4) for the complete list.

(v) P-2931<sup>77</sup>

27. On the evening of 16 July 2013 the Seleka arrested P-2931, [REDACTED], Oswald SANZE, a member of the FACA who lived in [REDACTED], and a [REDACTED].<sup>78</sup> P-2931 recalls armed Seleka entering SANZE's house, hearing gunshots from within the house, and SANZE being thrown on top of P-2931 in the pickup truck that took them away.<sup>79</sup> P-2931 recalls that the truck stopped at the *Hôpital Communautaire de Bangui* where the Seleka put SANZE's body on the ground before driving off.<sup>80</sup> At 01:00 a.m the pickup arrived at a location that P-2931 later learned was the OCRB.<sup>81</sup> The Seleka took P-2931 out of the truck and tied his arms and legs with a rope called a "*roselle*" such that he could not move and had to lay down on his side.<sup>82</sup> The Seleka initially interrogated P-2931, asking him where SANZE's weapon was and slapped him.

28. P-2931 describes a tall dark skinned Seleka "*chef*" who ordered that P-2931 be put in a cell instead of the underground cell (*sous-sol*).<sup>83</sup> P-2931 was then untied and placed in a very small (3m<sup>2</sup>) cell with 13 detainees.<sup>84</sup> There was barely enough space in the cell for every detainee and no room to lie down.<sup>85</sup> He confirms that detainees had to urinate and defecate in a pot, close to which he sat in the cell.<sup>86</sup> P-2931 states that the detainees in his cell told him that SAID was the chief.<sup>87</sup> He provides information about the mistreatment of detainees by the Seleka, including one FACA detainee who had been tied and consequently whose hands were paralysed.<sup>88</sup> P-2931

<sup>77</sup> P-2931's evidence is related to the sub-incident confirmed in the Confirmation Decision, at p. 56, para. 29(j).

<sup>78</sup> P-2931, CAR-OTP-2135-2245 at 2248, paras. 17-23; CAR-OTP-2135-2260 at 2262, paras. 11-17; Confirmation Decision, para. 102.

<sup>79</sup> P-2931, CAR-OTP-2135-2245 at 2249, paras. 24-28.

<sup>80</sup> P-2931, CAR-OTP-2135-2245 at 2249-2250, paras. 29-33.

<sup>81</sup> P-2931, CAR-OTP-2135-2245 at 2250, paras. 34-35, and at 2251, para. 42.

<sup>82</sup> P-2931, CAR-OTP-2135-2245 at 2251, para. 38.

<sup>83</sup> P-2931, CAR-OTP-2135-2245 at 2251, paras. 40-41.

<sup>84</sup> P-2931, CAR-OTP-2135-2245 at 2251, para. 41.

<sup>85</sup> P-2931, CAR-OTP-2135-2245 at 2251, para. 41.

<sup>86</sup> P-2931, CAR-OTP-2135-2245 at 2251, para. 41.

<sup>87</sup> P-2931, CAR-OTP-2135-2245 at 2251, para. 41.

<sup>88</sup> P-2931, CAR-OTP-2135-2245 at 2252, para. 45.

observed scars from the ropes around his wrists.<sup>89</sup> P-2931 also recalls that all the detainees in the cell were Christians.<sup>90</sup> He states further that sometimes Seleka gave the detainees food, but most of the time it was the detainees' family members who did so.<sup>91</sup>

29. On 22 July 2013, P-2931's [REDACTED].<sup>92</sup> He subsequently learned through his parents that they had found SANZE's body while looking for them both at the morgue.<sup>93</sup>

30. P-2931's prior recorded testimony comprises two statements, a sketch depicting the layout of the OCRB, and documents shown to the witness during the interview about which he made substantive comments.<sup>94</sup> His testimony is corroborated by P-2105, a *viva voce* witness whom the Defence will also have opportunity to cross-examine.

(vi) P-3064<sup>95</sup>

31. On [REDACTED] August 2013, the Seleka arrested P-3064 together with [REDACTED] (P-3053),<sup>96</sup> P-3056, and an unidentified man, who were [REDACTED].<sup>97</sup> P-3064 confirms that they were all driven to "OCRB NGOUCIMENT" where they were detained for the night—facts corroborated by P-3056 and P-3053's accounts.<sup>98</sup> The four men were transferred to OCRB CENTRAL the next morning and detained in

<sup>89</sup> **P-2931**, CAR-OTP-2135-2245 at 2252, para. 45.

<sup>90</sup> **P-2931**, CAR-OTP-2135-2245 at 2253, para. 51.

<sup>91</sup> **P-2931**, CAR-OTP-2135-2245 at 2253, para. 52.

<sup>92</sup> **P-2931**: CAR-OTP-2135-2245 at 2253, para. 54 (Fr). *See also* **P-2931**: CAR-OTP-2135-2260 at 2262-2263, paras. 17-18.

<sup>93</sup> **P-2931**, CAR-OTP-2135-2245 at 2253, paras. 54-55; CAR-OTP-2135-2260 at 2263, para. 18.

<sup>94</sup> See Annex A (A5) for the complete list.

<sup>95</sup> **P-3064**'s evidence is related to the sub-incident confirmed in the Confirmation Decision, at p. 56, para. 29(m). [REDACTED] is referenced therein as one of the victims with whom P-3053 and P-3056 were arrested.

<sup>96</sup> [REDACTED]. *See Investigation Report*, CAR-OTP-2134-1593.

<sup>97</sup> **P-3064**, CAR-OTP-2135-2824 at 2827, paras. 16-20.

<sup>98</sup> **P-3064**, CAR-OTP-2135-2824 at 2828 -2829 , paras. 21-29.

an underground cell in the room next to the OCRB Chief's office.<sup>99</sup> P-3064 heard the Seleka refer to the OCRB Chief as "Colonel".<sup>100</sup> P-3064 describes the underground cell as small, dark with no air or light, and being very unhealthy, with lots of flies and bugs.<sup>101</sup> He confirms that the detainees in the underground cell had to urinate on the floor as there was nowhere else to relieve themselves.<sup>102</sup>

32. P-3064 recounts that on the first day of their detention, no one came to open the cell, and their requests for water and food were ignored.<sup>103</sup> Their demand to know why they were arrested was equally disregarded by the Seleka.<sup>104</sup> P-3064 later came to learn that on the second day of their detention, his brother-in-law brought them food which the detainees were given through the underground cell.<sup>105</sup> He corroborates the account of P-3056's interrogation at *Primature*, by a man P-3056 believed was ADAM.<sup>106</sup> P-3056 told P-3064 that he was also accused of being [REDACTED].<sup>107</sup> P-3064 also recalls hearing people screaming or crying at night while he was detained in the underground cell.<sup>108</sup>

33. P-3064, P-3056 and P-3053 were interviewed by a lady prosecutor who came to the OCRB on the third day of their detention.<sup>109</sup> P-3064 recalls that she took down his statement and he signed it.<sup>110</sup> She returned the following day and had the men

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<sup>99</sup> **P-3064**, CAR-OTP-2135-2824 at 2829 -2830 , paras. 30-34.

<sup>100</sup> **P-3064**, CAR-OTP-2135-2824 at 2830, para. 32.

<sup>101</sup> **P-3064**, CAR-OTP-2135-2824 at 2830, para. 36.

<sup>102</sup> **P-3064**, CAR-OTP-2135-2824 at 2830, para. 36.

<sup>103</sup> **P-3064**, CAR-OTP-2135-2824 at 2831, para. 37.

<sup>104</sup> **P-3064**, CAR-OTP-2135-2824 at 2831, para. 40.

<sup>105</sup> **P-3064**, CAR-OTP-2135-2824 at 2831, para. 38.

<sup>106</sup> **P-3064**, CAR-OTP-2135-2824 at 2831-2832, paras. 41-44.

<sup>107</sup> **P-3064**, CAR-OTP-2135-2824 at 2832, para. 45.

<sup>108</sup> **P-3064**, CAR-OTP-2135-2824 at 2834, para. 54.

<sup>109</sup> **P-3064**, CAR-OTP-2135-2824 at 2833, para. 48.

<sup>110</sup> **P-3064**, CAR-OTP-2135-2824 at 2833, paras. 49-50.

transferred to the tribunal.<sup>111</sup> P-3064 told the tribunal judge about their arrest and detention by the Seleka, following which all men were released.<sup>112</sup>

34. P-3064's prior recorded testimony and associated material comprises a statement, two annexes as well as photographs and documents shown to the witness during the interview.<sup>113</sup> His evidence is cumulative to and corroborative of P-3056 and P-3053.

(vii) Granting the Request Would Advance the Expeditionness of the Proceedings

35. 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 Six witnesses, the Prosecution estimates a savings of at least 18 hours of court time.

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

36. The Prior Recorded Testimonies have sufficient indicia of reliability for introduction into evidence. The testimonies were obtained by the Prosecution in the ordinary course of investigations and the Six 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.<sup>114</sup> Where an interpreter was used, the witnesses confirmed that they read over the statement with

<sup>111</sup> **P-3064**, CAR-OTP-2135-2824 at 2834, para. 52.

<sup>112</sup> **P-3064**, CAR-OTP-2135-2824 at 2834, para. 52.

<sup>113</sup> See Annex A (A6) for complete list.

<sup>114</sup> **P-1429**, CAR-OTP-2043-0317 at 0330; **P-2241**, CAR-OTP-2092-3851 at 3873; **P-2400**, CAR-OTP-2104-0424 at 0438; **P-2692**, CAR-OTP-2125-0922 at 0931; **P-2931**, CAR-OTP-; CAR-OTP-2135-2260 at 2264; **P-3064**, CAR-OTP-2135-2824 at 2840.

the interpreter and confirmed its accuracy.<sup>115</sup> Their statements also bear the signature of an interpreter, certifying that each witness appeared to have heard and understood the translation.<sup>116</sup>

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

37. 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.

38. It is also relevant to note that the evidence of the Six Witnesses is highly corroborated in some instance by each other and by other evidence. In particular: (i) P-2241 and P-2400's accounts closely corroborate each other as they both describe being arrested together, and are corroborated by P-2337 and P-2239; (ii) P-3064's account is closely corroborative of his fellow detainees P-3053 and P-3056; (iii) P-1429's account is corroborated by P-0787; and iv) P-2931's account is corroborated by P-2105. In addition, the evidence of the Six Witnesses is corroborated by and cumulative to the evidence of the three other OCRB victims whom the Prosecution proposes to testify *viva voce* with a full direct examination— P-0547, P-1743, and P-3056.

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

39. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Six Witnesses of no more than 1 hour per

<sup>115</sup> P-2241, CAR-OTP-2092-3851 at 3874; P-2400, CAR-OTP-2104-0424 at 0438; P-2692, CAR-OTP-2125-0922 at 0931; P-2931, CAR-OTP-2135-2260 at 2264.

<sup>116</sup> P-2241, CAR-OTP-2092-3851 at 3874; P-2400, CAR-OTP-2104-0424 at 0439; P-2692, CAR-OTP-2125-0922 at 0931; P-2931, CAR-OTP-; CAR-OTP-2135-2260 at 2265.

witness. The Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

#### **E. RELIEF SOUGHT**

40. 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 Six Witnesses of no more than 1 hour per witness.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 10<sup>th</sup> day of June 2022  
At The Hague, The Netherland