

1 International Criminal Court
2 Pre-Trial Chamber II
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 Rosario Salvatore Aitala, Judge Antoine Kesia-Mbe Mindua and
6 Judge Tomoko Akane
7 Confirmation of Charges Hearing - Courtroom 3
8 Thursday, 14 October 2021
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:44] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE Aitala: [9:32:05] Good morning. *Bonjour.* Good morning,
14 everyone.
15 Good morning, Mr Said.
16 Mr Court Officer, will you please call the case.
17 THE COURT OFFICER: [9:32:17] Good morning, Mr President, your Honours.
18 This is the second situation in the Central African Republic, in the case of The
19 Prosecutor v. Mahamat Said Abdel Kani, case number ICC-01/14-01/21.
20 And for the record, we are in open session.
21 PRESIDING JUDGE AITALA: [9:32:34] Thank you very much.
22 So now, according to our schedule, it's the time for the Legal Representative of the
23 Victims, or the -- or the OPCV, to present her closing statement.
24 You have 30 minutes, but if you need a little bit more, I will allow. So since you have
25 not spoken before, we want to hear the voice of the victims.

1 Thank you very much.

2 MS PELLET: [9:33:25](Interpretation) Thank you, Mr President. I'll try to remain
3 within the 30 minutes that have been granted, maybe plus one or two more minutes,
4 but I'll remain within that bracket.

5 Mr President, your Honours, I have already recalled the crimes that Mr Said is
6 suspected of having committed in my opening statement, and I will not repeat that.

7 It applies -- the same applies to victimisation.

8 Those crimes occurred within the framework of the implementation of a common
9 plan *or design whose purpose was to target presumed supporters of Bozizé in
10 Bangui and to commit such crimes charged in the DCC, at the OCRB and at CEDAD.

11 This common plan was implemented pursuant to a more global policy of Séléka,
12 which sought to maintain the organisation in power.

13 The existence of this policy was confirmed on Wednesday morning by the Defence
14 itself when it said, and I quote:

15 "The only element that will somewhat briefly link part of these groups that operated
16 independently from each other was their dissatisfaction with President Bozizé."

17 I'm referring to the French transcript, realtime, number 5, page 10, lines 17 to 21, and
18 in -- which was confirmed at pages 17 and 18, when the Defence simply endorsed a
19 Prosecution's expert's explanations *provided in the Ngaïssona and Yekatom case.

20 *Recent jurisprudence of the *Court has determined in this regard that, and I state, in
21 English, as follows:

22 (Speaks English) "A policy may consist of a pre-established design or plan, but it may
23 also crystallise and develop only as actions are undertaken by the perpetrators."

24 (Interpretation) I refer you to the judgment of Pre- -- Trial Chamber IX, number
25 ICC-02/04-01/15-1762-Red, of 4 February 2021, at paragraph 2679.

1 Your Honours, in spite of the Defence's efforts, that is, Mr Said's Defence efforts, to
2 persuade you and persuade us that no common plan existed, the evidence *provided
3 by the Prosecutor demonstrates that such a plan was actually designed and
4 implemented, and that Mr Said played an essential role in that plan as * a
5 high-ranking colonel within Séléka, and the de facto leader of OCRB, as well as
6 *supervisor of the detention centre and also as the commander responsible for
7 operations at CEDAD.

8 He encouraged and supervised the commission of these crimes against the victims.

9 He did not do anything to avoid the commission of such crimes, and he even
10 committed some himself.

11 It is paradoxically behind * this role and this status within Seleka that the Defence
12 seems to hide in order to force the Chamber to look away from the suspect and focus
13 its eyes simply on what Defence refers to as being, "the highest-*ranking responsible
14 officials."

15 The Defence would further go on to accuse the Prosecutor * of failing to conduct
16 honest investigations because they simply focus on the *responsibility of Mr Said and
17 not of other members of Séléka. Reference transcript 04, French, realtime, page 43
18 to 45.

19 Yet, the Defence has tried to * have us to believe that Mr Said should not be
20 prosecuted by this Court and that his superiors should be prosecuted instead.

21 This is absurd, Mr President, your Honours.

22 On Tuesday, I explained this. * This confirmation of charges hearing is an important
23 step towards rebuilding the lives of the victims, who have been waiting far too long
24 for explanations about the fate they endured.

25 * Clearly, victims would be very happy for Séléka suspects of the highest ranks to be

1 prosecuted, but their absence from the dock * today does not exonerate Mr Said in
2 any way, contrary to what Mr Said's Defence has attempted to explain * in vain.

3 And I refer here to transcript, in French, number 4, page 34, 43 and 44.

4 Incidentally, I note that if -- while the Defence has failed to demonstrate that Séléka
5 was a disorganised entity - and, I will revisit this point * later - the Defence never,
6 however, contested *or challenged Mr Said's belonging to that association. Nor did
7 it *a fortiori* challenge his role in that organisation - particularly, at the OCRB and at
8 CEDAD - within the time mentioned in the charges.

9 Maybe Mr Said was the only member of that organisation who was not opportunistic
10 in changing groups, depending on the development of events. And I'm referring
11 here, to what Madam Naouri said in transcript 5, French, page 5 and 6.

12 Mr Jacobs * also tried to get you to believe that it * was quite normal, and I quote:

13 "It is normal that Mr Said *as a volunteer would take part in the management * by
14 ensuring that staff working at the OCRB were provided with food and the resources
15 to discharge their peace-keeping mission."

16 *In fact, that it is even more normal, he said, that the suspect was a volunteer who
17 worked in the reception and sorting of persons who were arrested. I'm referring to
18 the French transcript, number 5, from page 44 to 45.

19 Furthermore, *whereas Defence arguments on the colonial past of the Central African
20 Republic and the ghost-state structure *may correspond to the contextual history of
21 this case - and, reference, French transcript 004, realtime, page 28 and 29 -

22 even if we were to agree that these arguments correspond at least in part to the
23 historical context of the case, such acts cannot justify, let alone annihilate the criminal
24 responsibility of the perpetrators of those crimes, particularly Mr Said.

25 * The Defence provides arguments about the word "Séléka" meaning alliance, but

1 these arguments are not clear. It is semantics *and words that the Defence is using to
2 try to hide reality. And I refer you to transcript number 4, French, page 29, from line
3 14.

4 Similarly, the *same applies to their reference to the lack of staff at the OCRB, and I
5 refer to transcript number 4, French, page 31, lines 14 to 18.

6 If we were to set aside poor Albert Camus and *with him, all the ills of the world, let
7 me simply recall that Séléka, that group, that organisation, was *probably made up of
8 subgroups, but that doesn't deprive it of being a group - in any event, *did not stop it
9 from calling itself Séléka. So this is not a word that comes out of the figment of the
10 Office of the Prosecutor.

11 Incidentally, while they complain that the highest-*ranking officials of this very
12 Séléka are not in the dock instead of their client, the Defence in so doing contradicts
13 its own theory, whereby, there was no * group, there was no organisation, and there
14 was no structure.

15 That having been said, Mr President, your Honours, if we were to give any amount of
16 credit to the paradoxical reasoning and unconvincing reasoning of the Defence, which
17 argues, and I quote, that:

18 "[...] the grades used by individuals [within Séléka] are of no significance. And
19 particularly do not reflect the existence of a global or general organisation or of
20 an -- of a hierarchy." Reference, French transcript, number 5, pages 33, at line 12
21 to 14.

22 *So if we were to ascribe any value to this assertion, this argument concerning the
23 charging of the highest-ranking officials of the organisation, to whom I just referred,
24 rather than charging Mr Said, this argument should be set aside *in limine*.

25 On this point, Mr President, your Honours, let me *state as forcefully as I can that by

1 so *summarily dismissing the entire body of evidence provided by the Prosecutor, by
2 the -- against the suspect and referring to them as *slandorous of the suspect, and
3 about which Mr Jacquemin stated, "something of it will always remain," * let me say
4 that such an argument is not worthy. I would refer you to French transcript, page 55
5 (sic), lines 1 to 5.

6 The victims, I repeat, were arrested violently and imprisoned and not simply received
7 in prison cells as the Defence would have us believe. They were tortured for days,
8 sometimes for weeks *and held under inhumane conditions.

9 And, the Chamber is now aware of these things.

10 The victims were not simply sorted out, as the Defence would have you believe.

11 * And all of this was done under the orders of Mr Said, when it did not happen
12 literally under his office.

13 The Defence has repeated its submissions several times, even before the confirmation
14 of charges hearing. I refer you to documents * ICC-01/14-01/21-175-Red2 and
15 document * ICC-01/14-01/21-164-Corr-Red. The Defence has failed in this effort
16 *during these hearings, but continues to *insist on ascribing a role *to these hearings
17 that is different from that of the confirmation of charges hearing as provided for in the
18 texts or in the texts and -- legal texts of this Court and the jurisprudence flowing
19 therefrom.

20 Mr President, your Honours, the confirmation of charges hearing is not a trial, but a
21 preliminary hearing at which the Prosecutor *adduces evidence sufficient to bring the
22 matter to trial.

23 In *the Gbagbo case, document ICC-02/11-01/11-325 of 14 December 2012, at
24 paragraph 22 (sic), the Pre-Trial Chamber I * confirmed that the confirmation of
25 charges hearing has a limited scope and purpose, in accordance with the Court's

1 statutory regime. This Chamber added, and I quote, in English :

2 (Speaks English) "[...] one of the core purposes of confirmation of charges is to fix and
3 delimit the factual scope of trial."

4 (Interpretation) That is at paragraph 27.

5 * Ultimately, therefore, we must bear in mind "the lower evidentiary standard, limited
6 evidentiary scope and distinct evidentiary rules applicable at the confirmation of
7 charges stage

8 And this was also equally recalled by Trial Chamber V(A) in the Ruto case, reference
9 document ICC-01/09-01/11-1334 of 3 June 2014, at paragraph 14.

10 * For that matter, in the Chambers Practice Manual on proceedings, repeatedly
11 referenced by the Defence during this hearing, the judges recall as follows:

12 "In *decisions confirming the charges, in order not to pre-determine issues or
13 pre-adjudicate probative value of evidence which will be fully tested only at trial, the
14 Pre-Trial Chamber should keep the reasoning strictly limited to what is necessary and
15 sufficient for the Chamber's findings on the charges."

16 And I'm referring to page 18 * of the practice manual in French.

17 And once again, the guide provides that:

18 "* What the Pre-Trial Chamber must verify is that the charges enable the suspect to
19 identify the *historical event[s] at issue and the criminal conduct alleged, in order to
20 defend him or herself."

21 This is at page 13.

22 I'll stop there, and point out in this regard that the Prosecutor equally insisted on the
23 limited scope of the evidence at this stage of the proceedings in their closing
24 statement yesterday. I'm referring to transcript number 05, in French, realtime,
25 page 67, lines 14 to 19.

1 * In the final analysis, the Defence merely repeated the same arguments over and
2 over again throughout this hearing. And by doing so, it adopted the same method it
3 criticized the Prosecution for; namely, the presentation of flimsy arguments that were
4 without factual or legal foundation.

5 In so doing, it fails to discharge its duty of presenting organised and structured
6 observations - and this, in spite of their use of a PowerPoint presentation.

7 The Defence, in so doing, simply presented its own reading of history without
8 providing any probative argument that question or challenge the evidence provided
9 by the Prosecutor. In that regard, the Defence referred to the corrective functions
10 and *outcomes of the various proceedings that -- held before the confirmation of
11 charges hearing, pursuant to its right under Rule 122(3) of the Rules of Procedure and
12 Evidence.

13 The Defence underscored the essential nature of the DCC and of the PCB as a base for
14 their work and went on to *quickly allege that such -- that the two documents were
15 not clear and that * nothing was provided in support of the allegations contained
16 therein *. I'm referring to the French transcript, 004, page 37 and 38.

17 * Since the Defence itself undertook a comparative exercise, I would like to point out
18 that the Defence benefitted from an extensive and detailed DCC and a list of evidence
19 as well as a pre-confirmation brief, and that goes well beyond the statutory
20 requirements for the Prosecutor.

21 Let me merely say that when the Defence argues that it is difficult to navigate through
22 this vast amount of evidence, that is a baseless argument. The *Defence argument
23 about lack of specificity and ambiguity in the documents * fails to provide detailed
24 substantiated grounds for such arguments, and all of these I believe are thus without
25 a basis.

1 But, Mr President, your Honours, it is neither for you, nor for the Prosecutor, nor for
2 the victims to stand in for the Defence, which simply pointed at deficiencies in
3 the -- pointed to alleged deficiencies, without substantiating such deficiencies in
4 relation to the * shortcomings of the Prosecutor, * and without showing the
5 consequences of these alleged shortcomings on the work of the Defence and on the
6 outcome of the confirmation of charges hearing.

7 Finally, it is clear that *on this point, the Defence is short * on arguments and * is not
8 concerned about confirming its assertions and, therefore, relies on incomplete
9 quotations *taken out of context, in order to substantiate their own * narrative on the
10 events, and, in so doing, might *rid them of meaning and mislead the Chamber.

11 An example, * which I will not revisit, was pointed out yesterday by the Prosecutor
12 relating to the United Nations Commission of Inquiry report. And I refer you to
13 transcript 05, English, pages 81 to 82, and I will quote in English because this part is
14 not complete in the French transcript, at page 70.

15 * So let me refer solely to what Mr Jacobs said yesterday morning when quoting a
16 remark in my opening statements - in which my learned colleague carefully avoided
17 the next bit of the excerpt, which reads as follows:

18 "Counsel --"

19 THE ENGLISH INTERPRETER: [09:53:22] Rather --

20 MS PELLET: [09:53:22](Interpretation) "The detainees were held * in inhumane
21 conditions * simply because simply they lived in certain neighbourhoods of Bangui
22 and were known -- which were known to be the * Bozizé strongholds, because some
23 of them were of Gbaya or Banda * ethnicity, or because some of them were of a certain
24 religious inclination, or because some of them were working in the administration
25 that had been overthrown."

1 And, this is the excerpt that was left out --

2 "And because the Seleka felt that that made of them persons who were Bozizé's
3 supporters."

4 And this can be found in the French transcript at 004 at lines 24 - or, rather, page 24,
5 lines 15 to 21.

6 Mr President, your Honours, the Defence * challenges the legal characterisation of the
7 Prosecutor of the crime under Article 7(1)(k) of the Rome Statute, an article which,
8 according to Defence, lends itself to controversial interpretation, and therefore, they
9 argue, that the crimes should be set aside for lack of precision. * Once again, I refer to
10 T-004, French version, pages 39 and 40

11 The Defence argues that using this article should only be exceptional. Otherwise, *
12 there is a risk that it will be a catch-all provision. But let us, * in this regard, refer to
13 the *travaux préparatoires* *on the Rome Statute in the International Law Commission
14 directory of 1996, Volume II, Part Two, page 53, paragraph 17, * and even to the
15 jurisprudence of this Court, which confirms that this is not the case and that * far from
16 being a catch-all provision, various *strict criteria pertaining to this category of
17 * residual crimes have actually been set up and applied..

18 The Trial Chamber IX recently * highlighted these safeguarding measures in the
19 Ongwen judgement. And I refer you to the Ongwen case *and its judgment of 4
20 February 2021, document ICC-02/04-01/15-176-Red, at paragraphs 2741-2753.

21 One of the findings of that Chamber is particularly applicable in this case. And I
22 want to quote paragraph 2744, in French -- in English, rather, and I refer you to the
23 foot -- footnote of that relevant citation. That will be number -- footnote number
24 7205. I quote, in English:

25 (Speaks English) "International case-law suggests that serious beatings, subjection to

1 deplorable condition[s] of detention and requiring persons to witness the beatings or
2 killings of others can constitute other inhuman[e] acts."

3 (Interpretation) When it comes to the specificity of these crimes, the Chamber
4 continued as follows at paragraph 2747, and I quote, in English:

5 (Speaks English) "The Chamber can enter a conviction under Article 7(1)(k) if the
6 perpetrator inflicts great suffering, or serious injury to body or to mental or physical
7 health, by means of a course of conduct which, despite comprising also acts falling
8 under one or more of the enumerated crimes, is, in its entirety, not identical, but [is]
9 nonetheless 'similar' in character in terms of nature and gravity, to those
10 enumerated crimes."

11 (Interpretation) * Finally, the Chamber also specified that it is not necessary for the
12 perpetrators to have had to make a value judgment on the inhumane character of the
13 act and that it suffices simply to establish that the perpetrator knew that the factual
14 circumstances would be relevant to that character.

15 * And I'm referring here to paragraph 2753 of the judgment in the Ongwen case.
16 Therefore, the evidence of the Prosecutor is sufficient to demonstrate that those
17 crimes existed, both in relation to the inhumane and deplorable conditions in which
18 Mr Said's victims were held but also, as suggested by the Prosecutor yesterday, in
19 relation to the families of these victims who were abducted and held in secret and
20 who knew nothing about what was happening to their relatives, and, who went
21 through hell, in addition to the terror that they must have felt through these events.

22 I'm referring to transcript number 4, in French, at page 80 and 81.

23 Let me conclude, Mr President, your Honours, by saying that the Prosecutor has
24 demonstrated that there is sufficient evidence to establish the existence of substantive
25 reasons to believe that Mr Said committed the crimes charged and that such crimes

1 meet the probative threshold required under Article 61(5) of the Rome Statute.
2 All of these facts have been demonstrated or established by the Prosecutor with
3 sufficient evidence at the level of *these confirmation of trial -- confirmation of
4 charges * hearings to enable the Pre-Trial Chamber to come to a determination. And,
5 on these grounds, * I submit that Mr Said should be referred to trial.

6 I thank you, Mr President. Thank you, Your Honours.

7 PRESIDING JUDGE AITALA: [10:00:39] Thank you very much, Madam Counsel,
8 for the OPCV.

9 Now this leads us to the final statements for the Defence.

10 Madam Counsel, the floor is yours.

11 MS NAOURI: [10:01:09](Interpretation) Thank you, Mr President.

12 Mr President, your Honours, after having read in detail the DCC, the PCB, and after
13 having listened with keen interest to the Prosecution, we are putting the question of
14 the ascertainment of the truth: * Does the reality that the Prosecution claimed to
15 have portrayed before the Chamber come close to the truth of what may have really
16 happened in the CAR between March and December 2013?

17 And this is a fundamental question. Because the Prosecution's understanding of the
18 situation has important consequences.

19 It is on the basis of his comprehension of the situation that an arrest warrant was
20 issued against Mr Said. It is also based on the perception of his dynamics on the
21 ground that explains the decision of the Prosecution to channel its efforts against
22 low-ranking members of what they perceived to be the constituent parts of the Séléka,
23 without looking into the highest-ranking officials of the transitional government of
24 President Djotodia - or even, the most prominent personalities of what they described
25 as being the Séléka.

1 This is what also explains its *unequivocal decision to treat the former-high officials
2 of the transitional government - and, those who are actually part of the current
3 government - with leniency.

4 Never up to this point was the vision of the Prosecution examined in depth. The
5 issue was examined in general terms. * Never was the reality of the contents of the
6 Séléka - * or what the contents of Séléka might have been ever the subject of an
7 adversarial debate.

8 Never was the characterisation of the situation in the CAR between March and
9 September 2013 ever debated before the judges of the Court.

10 Never was the existence -- or, more specifically, the absence of an armed conflict
11 between the period March to September 2013 * the object of an adversarial proceeding.

12 Never was the functioning of this structure of the state of the CAR under the
13 government of President Djotodia * ever debated.

14 Never was the context of chaos and criminality prevailing in the CAR between March
15 and December 2013 was ever analysed.

16 The Prosecution could have dealt with all these matters without any fear of
17 contradiction. In the absence of an adversarial debate, the Chamber did not have the
18 opportunity to assess the relevance and validity of these submissions. The deed has
19 now been done, and, during these hearings, we have discussed the assumptions of
20 the Prosecution, each of his argument -- arguments, the evidence that they have
21 presented and the conclusions drawn therefrom.

22 Now, what does the Prosecution tell you?

23 They tell us that the methodical examination of the credibility of the witnesses * at
24 this stage of the proceedings is not necessary. Page 67, lines 9 to 13, of * yesterday's
25 transcripts.

1 Is the hearing a masquerade of * adversarial debates? The fact must be duly noted.

2 At the end of this in-depth examination, nothing remains of the Prosecutor's initial

3 thesis. The entire edifice, which was methodically constructed, is now in ruins.

4 Why? Because it was built on sand, on false premises, * presumptions on historical,

5 cultural and political conflations.

6 A demonstration of the Prosecution is based on two pillars: On the one hand, the

7 affirmation that Séléka existed as an organised and structured group capable of

8 reporting to a chain of command. On the other hand, that the transitional

9 government of * Michel Djotodia was, in reality, a structure which, in their opinion,

10 was the Séléka and * thereby they deliberately perpetuated confusion between what

11 the Séléka supposedly was and what the government was supposed to be.

12 On the basis of these two pillars, the Prosecution claims, first of all, that a

13 non-international armed conflict allegedly raged in the CAR between March and

14 September 2013; and secondly, that all the state structures, including the OCRB and

15 the CEDAD, were supposedly Séléka bases and, therefore, instruments of the

16 so-called " Séléka policy."

17 We have examined this theory from various perspectives during the hearing. From

18 our point of view, the theory of the Prosecution could not stand scrutiny and the

19 pillars of their arguments have turned out to be made of sand.

20 We have, in fact, demonstrated during the hearings how the attempt to engage in the

21 path of least resistance and simplification has a -- serious consequences and the

22 accusation misinterpreted the events that they are talking about.

23 Let us begin with the foundations of their arguments.

24 First of all, the Prosecution ignores the context within which an ephemeral movement

25 made up of *civilo-politico* armed movements came into being. And that has misled

1 them.

2 In the opinion of all the specialists of the CAR, the creation of *civilo-politico* armed
3 groups as from early 2000s was motivated before everything else by local economic
4 interests. These were opportunistic groups that were progressively considered by
5 observers as rebellions and which ended up, in 2012, by forming a temporary
6 coalition.

7 What does the Prosecutor tell us about these groups? Nothing. Nothing in the
8 DCC. Nothing in the PCB. And nothing at all in the courtroom itself. We have
9 heard them talk about the anti-Bozizé and the Anti-Balaka, both during the
10 presentation of the -- the presentation, and in their closing arguments. They gave us
11 long presentations on these armed groups. And yet, we are not dealing here with
12 the Yekatom and Ngaïssona case. And so, why, therefore, have they not explained
13 to us what Séléka is?

14 Why did the Prosecution not even make an attempt to talk about its creation? Why
15 did the Prosecution remain tongue-tied when it came to explaining the groups that
16 made up Séléka? Why is it that the Prosecution fails to explain its structure? How
17 orders were communicated? How were the alleged chains of command functioning?
18 Why does the Prosecutor limit themselves to refer in a perfunctory manner to only a
19 few groups without ever explaining how such groups functioned as a collective?
20 Because by choosing to overlook these elements, the Prosecution can circumvent the
21 need to detail the large number of those groups, the internal power struggles, and, in
22 so doing, the Prosecution spares itself from facing up to the fact that these groups
23 made up a nebulous entity of people unsatisfied with President Bozizé. So to skirt
24 around this obstacle, the Prosecution presupposes or prefers to assume the existence
25 of the coalition.

1 A simple analysis of the foundation used to demonstrate its thesis by the Prosecution
2 exposes its fragility. Séléka was not a hierarchical or organised structure, and it did
3 not have a chain of command, and it was not guided by any given objective.

4 Faced with these unimpeachable acts, the entire edifice crumbles. The alleged or
5 assumed Séléka never existed as an organised or structured groups, and, so, the
6 Séléka could not have been a party to an armed conflict and could not have morphed
7 into a state structure.

8 With regard to the absence of the armed conflict between March and September

9 * 2017, demonstrated by unanimous literature, the reports of specialists are
10 unequivocal and the settled law is clear.

11 At the very earliest, the armed conflict in the CAR began only as from the month of
12 September 2013. Prior to that date, the CAR experienced unrest and internal
13 tensions reflected in the isolated and sporadic acts of violence.

14 It would seem that the Prosecution hopes, within the framework of the case before us,
15 to obtain a result that is different than the result obtained in the Yekatom and
16 Ngaïssona. That is not the case here.

17 In the instant case, and, in the absence of an armed conflict, between March and
18 September 2013, there simply was no war crimes that could have been perpetrated
19 during that period. All allegations made by the Prosecutor of war crimes collapse,
20 and, consequently, there is no doubt that the charges of war crimes must be
21 dismissed.

22 We would then be left to focus on the allegations related to the commission of crimes
23 against humanity. To that end, it is necessary to look into the transitional
24 government of President Djotodia. It should be noted here, that the Prosecutor

25 * made an incomprehensible attempt to prove the existence of a policy, which

1 apparently was devised by Séléka and implemented by both the Séléka and state
2 structures.

3 The Prosecution relies on the premise that * the idea that the Séléka was supposedly
4 the state, and that as a result, the OCRB and CEDAD were Séléka bases.

5 The evidence for that, as put forward by the Prosecution, is * President Djotodia's
6 Decree appointing ex-Séléka members to ministerial posts, thereby consolidating the
7 position of the former Séléka leaders who, according to their thesis, were loyal to him
8 and obeyed his orders.

9 And yet, we have seen that not only was the government of President Djotodia a
10 government of national union, but also the leaders of the former groups, which
11 temporarily constituted the Séléka coalition, were not answerable to anyone, and,
12 more specifically, made a mockery of the state structure.

13 At no point did the Prosecution demonstrate this reality. * At no point did the
14 Prosecution prove the endurance of the Séléka coalition, let alone that the former
15 coalition in any shape or form was ever integrated into the structure of the state.

16 On the contrary, what emerges from the Prosecution evidence itself is * the existence
17 of horrific common law criminality, and the state was incapable of dealing with this
18 situation inter alia because they did not have the necessary resources.

19 It was within this context that the OCRB and the CEDAD, in their capacity as state
20 structures, attempted to remain functional. We have already demonstrated that the
21 OCRB was primarily a police station that had to intervene in a period strongly
22 characterised by criminality.

23 The witnesses themselves stated that the OCRB habitually dealt with common law
24 offences and crimes, and that the detainees were common law criminals and people
25 masquerading as Séléka who had been arrested by the elements of the OCRB.

1 The OCRB was, therefore, not a Séléka base, but a state structure under the authority
2 of the director-general of the police and the ministry of security. They complied
3 with the jurisdictional processes under the supervision of the public prosecutor.

4 The Prosecution interprets the existence of volunteers in the OCRB - such as Mr Said,
5 who collaborated with Mazengue, the director of the OCRB - as evidence that it was a
6 Séléka bases -- a Séléka base.

7 But this is not a revelation. The highest-ranking officials of the state stated that there
8 was a severe shortage of personnel and that the FACA had fled, and it was not until
9 the month of August that some of them returned and resumed their duties. And
10 that, even upon their return, the state structures were still facing serious shortages in
11 personnel and it was for that reason that they had to be realistic and accept the
12 assistance of volunteers to attempt to contain the criminality in Bangui.

13 The problem of the Prosecution is simple:

14 They cannot prove that the OCRB was a Séléka base where there was a hierarchical
15 structure within which Mr Said played a role.

16 They cannot prove that there was an organisation within OCRB, and so they
17 circumvent the difficulty by placing emphasis on the excesses that apparently took
18 place at the OCRB.

19 And by presupposing the leadership role of Mr Said, they are attempting to attribute
20 such acts to him in the hope of covering up the [...] evidence concerning the liability
21 or responsibility of Mr Said.

22 But the demonstration of the Prosecution does not resist scrutiny, because it appears
23 from its evidence that the OCRB is a dysfunctional location without a structure. And
24 consequently, it is not possible to assume that Mr Said was * allegedly responsible for
25 everything that happened there.

1 And particularly, we have demonstrated that several individuals there acted on an
2 individual basis. The same reasoning applies to CEDAD.

3 I will say one word on the state policy.

4 The Prosecution does not attempt at any time to establish its existence. And yet, one
5 can only point a light on the events that occurred in the OCRB and CEDAD - within
6 the framework of the judicial characterisation of a crime against humanity - as from
7 the moment when the Prosecution must have established as a prerequisite, a state
8 policy, the structure within which the OCRB and CEDAD operated.

9 Did the Prosecution have enough evidence to ascertain this, whether there was a state
10 policy? Yes.

11 Obviously, as they recalled in public hearing, *en réponse* -- in response to the Defence,
12 which commented on the gaps in -- of the investigations of the Prosecution, inter alia,
13 the fact that there was a lack of certain key witnesses * to understand the crisis, the
14 Prosecutor stated, and I quote page 55, lines 22 to 25:

15 "The other witnesses referred to by the Defence were also interviewed, including
16 within the broadest context of the conflict."

17 The Prosecution also acknowledged having interviewed certain key witnesses to
18 understand the crisis, but they did not draw the consequences therefrom.

19 Why did they not use that information? Why did they ignore portions of the
20 testimonies that would make it possible to make a determination on the state policy?

21 And why set aside the pertinent and even crucial testimonies of certain witnesses
22 interviewed, such as P-1019?

23 These witnesses are supposed to have been part of the state policy that made it
24 possible, according to the Prosecution, to establish * allegations crimes against

25 humanity. And if that is the case, these witnesses were actors of that state policy and,

1 therefore, must be prosecuted. * And yet, to everyone's astonishment, during the
2 hearing, the Prosecution stands by its position that the testimonies of the key actors of
3 the crisis are not enough to support prosecutions

4 And insofar as the Prosecution does not prosecute them because they feel that the
5 evidence is not enough, it is tantamount to saying that they do not have enough
6 evidence to establish this policy of the state.

7 And therefore, the allegation of crimes against humanity and -- charged against
8 Mr Said collapses, because the facts charged against him must fall within the context
9 of the Prosecution's allegations in the state policy that is supposed to have existed
10 during the presidency of Michel Djotodia.

11 The Prosecutor met with them. The Prosecutor considers that they did not have any
12 role in the state policy because they did not use their testimony. So Mr Said cannot
13 be prosecuted. And if these witnesses are not bothered, there is even less
14 justification for Mr Said to be charged.

15 The Prosecution must be coherent. They cannot plead one thing, that there was the
16 existence of a crime against humanity, which presupposes the existence of a state
17 policy, and, then, the contrary, that it is not necessary to take into account the
18 testimony of several political leaders to try to establish the state policy.

19 Specifically, and contrary to the Prosecution allegations, the Prosecutor was clearly in
20 contact with these witnesses as early as 2013, during the events, because P-1019,
21 which the accusation -- or, rather, which the Prosecution decided to discard, stated
22 clearly, unequivocally, concerning his relationship with the Prosecutor, the former
23 Prosecutor, and I quote:

24 "She gave me * a lot of advice. We have to avoid violence and restore peace."

25 P -- document 323 (sic) -- 1172, lines 1009 to 1010.

1 * So the point was indeed to discuss the events of 2013 with this witness. The
2 Defence took [account] of these elements, developing all these arguments on the basis
3 of the testimonies of knowledgeable people, because the accusations against Mr Said
4 calls into question the government of Mr Djotodia.
5 Consequently, in the absence of the Séléka structure and the state policy, the crimes
6 against humanity also collapse, and the charges must be dismissed.
7 So what remains of the case file presented to you by the Prosecutor? Nothing.
8 Mr President, your Honours, we came close to -- did we come close to the truth while
9 listening to the Prosecution? Obviously, no. We went further away from it,
10 because the reality that they told us about is imaginary.
11 The Prosecution account overlooks the complexity of the CAR * society, * and what
12 proves the complexity of the recent events of the past 20 years in CAR is the existence
13 of numerous judicial proceedings touching upon the events that occurred there,
14 particularly the creation of a special criminal court and the high number of cases
15 before the ICC relating to the situation in that country.
16 It is, therefore, incumbent upon us, in a complex situation, to make a clear distinction
17 between the facts under international criminal law and those under common law. It
18 is incumbent on us to give the possibility to Central Africans to take charge of their
19 destiny - and that is where this hearing takes up all its importance, a hearing which,
20 as recalled by case law, is a mechanism intended to protect the rights of the Defence
21 against any violations and abusive accusations and -- which are unfounded.
22 It is the perfect opportunity to refuse to follow the Prosecution * which is trying to
23 prosecute facts that do not fall under the jurisdiction of international criminal
24 tribunals. It is incumbent on us to give the local jurisdictions the possibility to
25 initiate prosecutions and to ascertain the truth.

1 It is up to you, Mr President, your Honours, to remind all those who are listening that
2 there cannot be justice without truth. * The onus of proof rests on the shoulders of
3 the Prosecution, and not on the Defence. Before this Court, the Defence does not
4 have an obligation to present contrary evidence, but merely to demonstrate that the
5 evidence presented by the Prosecution in support of its arguments is not sufficient to
6 warrant a confirmation of the charges.

7 The Prosecution's words are simply empty rhetoric. Our task is to examine the facts.
8 And the facts are based on the reality right here before us. Take them into account.
9 Analyse them. Do not confirm the charges against Mr Said, and justice would have
10 been served.

11 Thank you.

12 PRESIDING JUDGE AITALA: [10:31:56] Thank you very much, Madam Counsel.

13 Now, with the final statements of the Defence, we come to the end of the confirmation
14 of charges hearings. As parties and participants know, the decision on the
15 confirmation of charges has to be delivered within 60 days from today.

16 Mr Said, you should understand then, that in 60 days, the Chamber will deliver its
17 decision on whether the charges brought by the Prosecutor should be confirmed or
18 not, and this is done in accordance with Regulation 53 of the Regulations of the Court.

19 I would like to thank all the lawyers of the Prosecutor, of the Defence, of the PCV, the
20 interpreters for their professional work, we appreciate it very much; court reporters,
21 technicians, security officers and all staff and representatives of the Registry for their
22 cooperation.

23 So the hearing is adjourned, and we wish everyone a pleasant day.

24 Thank you.

25 THE COURT USHER: [10:33:12] All rise.

1 (The hearing ends in open session at 10.33 a.m.)

2 CORRECTIONS REPORT

3 The following corrections, marked with an asterisk and not included in the
4 audio-visual recording of the hearing, are brought into the transcript.

5 Page 3 lines 4-7:

6 "and that Mr Said played an essential role in that plan as a colonel, high-ranking
7 leader of Séléka, and the de facto leader of OCRB, as well as * supervisor of the
8 detention centre and also as the commander of the detention centre at CEDAD." is
9 corrected to "and that Mr Said played an essential role in that plan as a high-ranking
10 colonel within Séléka, and the de facto leader of OCRB, as well as supervisor of the
11 detention centre and also as the commander responsible for operations at CEDAD."

12 Page 3 lines 11-12:

13 "It is paradoxically behind this screen * of his role and status that the Defence seems
14 to hide ..." is corrected to "It is paradoxically behind this role and this status within
15 Seleka that the Defence seems to hide ..."

16 Page 3 lines 22-24:

17 "The confirmation of charges hearings is an important step in the reconstruction of the
18 lives of victims who are expecting an outcome on their fate, and, they have been
19 waiting for too long."
20 is corrected to "This confirmation of charges hearing is an important step towards
21 rebuilding the lives of the victims, who have been waiting far too long for
22 explanations about the fate they endured."

23 Page 3 line 25:

24 "Clearly, victims will be very happy for Séléka suspects " is corrected to "Clearly,
25 victims would be very happy for Séléka suspects "

1 Page 4 line 25 to page 5 line 1

2 "The Defence provides argument on the meaning of Séléka as being a coalition. But
3 that is not clear. " is corrected to "The Defence provides arguments about the word
4 "Séléka" meaning alliance, but these arguments are not clear."

5 Page 5 line 19-21:

6 "So if we were to ascribe any value to these arguments, the idea of inculcating the
7 highest-*ranking officials of the organisation, which I have just mentioned in relation
8 to Mr Said, should be set aside in limine."

9 is corrected to "So if we were to ascribe any value to this assertion, this argument
10 concerning the charging of the highest-ranking officials of the organisation, to whom I
11 just referred, rather than charging Mr Said, this argument should be set aside in
12 limine."

13 Page 6 lines 3-4:"let me say that all of this is not worthy and dignifying."

14 is corrected to "let me say that such an argument is not worthy."

15 Page 6 lines 11-12:

16 "And all of this was done under the orders by -- by the orders of Mr Said, and, it all
17 happened literally in * or under his office in some instances."

18 is corrected to "And all of this was done under the orders of Mr Said, when it did not
19 happen literally under his office."

20 Page 6 line 24 to page 7 line 1:

21 " confirmed that the confirmation of charges hearing has a specific goal and a limited
22 scope, and this was confirmed by a subsequent jurisdiction. I quote, in English"
23 is corrected to "confirmed that the confirmation of charges hearing has a limited scope
24 and purpose, in accordance with the Court's statutory regime. This Chamber added,
25 and I quote, in English:"

1 Page 7 lines 5-7:

2 "Ultimately, therefore, we must bear in mind that the -- in the matters of * evidence, it
3 must be * less strict, and there is a limited scope to evidence as well as to the
4 distinction rules pertaining to the administration of * evidence."
5 is corrected to "Ultimately, therefore, we must bear in mind "the lower evidentiary
6 standard, limited evidentiary scope and distinct evidentiary rules applicable at the
7 confirmation of charges stage". "

8 Page 7 lines 10-11:

9 "The Chambers Practice Manual on proceedings by the way has been repeatedly
10 referenced by the Defence during this hearing, and in it, the judges recall as
11 follows:..."

12 is corrected to "For that matter, in the Chambers Practice Manual on proceedings,
13 repeatedly referenced by the Defence during this hearing, the judges recall as
14 follows:..."

15 Page 8 lines 1-4:

16 "The Defence also continually repeated the same arguments throughout * this hearing
17 and went on to actually endorse the same method it challenges the Prosecution *of
18 using; namely, the -- and -- presentation of loose arguments that are without legal
19 foundation." is corrected to

20 "In the final analysis, the Defence merely repeated the same arguments over and
21 over again throughout this hearing. And by doing so, it adopted the same method it
22 criticized the Prosecution for; namely, the presentation of flimsy arguments that were
23 without factual or legal foundation."

24 Page 8 lines 17-20:

25 "In so doing, the Defence undertook a * comparative exercise. But let me point out

1 that she -- that Defence * benefitted from, was provided *with a detailed DCC and a
2 list of evidence as well as a pre-trial brief, and that goes beyond the statutory
3 requirements for the Prosecutor." is corrected to "Since the Defence itself undertook a
4 comparative exercise, I would like to point out that the Defence benefitted from an
5 extensive and detailed DCC and a list of evidence as well as a pre-confirmation brief,
6 and that goes well beyond the statutory requirements for the Prosecutor."

7 Page 8 line 21-22:

8 "Let me further * simply say that when the Defence * says it is difficult to navigate
9 *through these documents, this vast amount of documents, that is a baseless
10 argument."

11 is corrected to "Let me merely say that when the Defence argues that it is difficult to
12 navigate through this vast amount of evidence, that is a baseless argument."

13 Page 9 lines 15-17:

14 "So let me refer to what Mr Jacobs said yesterday morning in the opening
15 statements - *although, my learned colleague carefully avoided the next bit of the
16 excerpt he quoted and -- the counsel did not read out the entire quotation, which is, as
17 follows:"

18 is corrected to "So let me refer solely to what Mr Jacobs said yesterday morning when
19 quoting a remark in my opening statements - in which my learned colleague carefully
20 avoided the next bit of the excerpt, which reads as follows:"

21 Page 10 lines 9-10:

22 "Reference T-004, page 34 (sic) and 39." is corrected to "Once again, I refer to T-004,
23 French version, pages 39 and 40."

24 Page 10 line 17:

25 "residual crimes have actually set up and can be applied" is corrected to "residual

1 crimes have actually been set up and applied."

2 Page 11 lines 11-14:

3 "Finally, the Chamber also specified that it is not necessary for the perpetrators to
4 have had to make a valid judgment on the inhumane character of the act and that it
5 suffices simply to establish that the perpetrator knew that the circumstances would be
6 relevant to that character." is corrected to "Finally, the Chamber also specified that it is
7 not necessary for the perpetrators to have had to make a value judgment on the
8 inhumane character of the act and that it suffices simply to establish that the
9 perpetrator knew that the factual circumstances would be relevant to that character."

10 Page 11 line 15:

11 "And I'm referring here to paragraph 2774 (sic) in the Ongwen case." is corrected to

12 "And I'm referring here to paragraph 2753 of the judgment in the Ongwen case."

13 Page 12 lines 12-14:

14 "Is the reality that the Prosecution claimed to have portrayed before the Chamber
15 comes close to the truth of what may have really happened in the CAR between
16 March and December 2013?"

17 Is corrected to

18 "Does the reality that the Prosecution claimed to have portrayed before the Chamber
19 come close to the truth of what may have really happened in the CAR between March
20 and December 2013?"

21 Page 12 line 24: "unequitable" is corrected to "unequivocal"

22 Page 13 lines 3-4:

23 "Never was the reality of the contents of the Séléka - what thought the Séléka really
24 covered - was the subject in adversarial debates." is corrected to

25 "Never was the reality of the contents of the Séléka - what the Seleka might comprise

1 - the subject of adversarial debate. “
2 Page 13 lines 4-5:” what thought the Seleka really covered was the subject in
3 adversarial debates.”
4 is corrected to “or what the contents of Séléka might have been ever the subject of
5 an adversarial debate.”
6 Page 13 line 8:
7 “was” is deleted
8 Page 13 line 10:
9 “was” is deleted
10 Page 13 lines 21-22 “ at this stage of the proceedings “ is translated and added
11 Page 13 lines 22-23 “of the transcripts” is corrected to “of yesterday’s transcripts”
12 Page 14 lines 2-3:” presumptions on historic, cultural and political affirmations
13 confusions”
14 is corrected to” presumptions on historical, cultural and political confluences.”
15 Page 14 lines 7-8:” President Djotodia was, in reality, a structure; namely, the Séléka”
16 is corrected to “ Michel Djotodia was, in reality, a structure which, in their opinion,
17 was the Séléka.”
18 Page 14 lines 8-9:” thereby they deliberately created confusion between what the
19 Séléka could have been and what the government could have been.” is corrected to “
20 thereby they deliberately perpetuated confusion between what the Séléka supposedly
21 was and what the government was supposed to be.”
22 Page 16 line 7 :”2017 (sic)” is corrected to “2013”
23 Page 16 line 23 “ had an incomprehensible attempt to prove the existence of a
24 strategy.”
25 is corrected to “ made an incomprehensible attempt to prove the existence of a

1 policy."

2 Page 17 lines 1-2:"Séléka was a state." is corrected to "the idea that the Séléka was

3 supposedly the state, "

4 Page 17 lines 3-5:" that the appointment of President Djotodia also led to the

5 appointment of ex-Seleka members to positions of ministers there by consolidating

6 the position of the former Seleka leaders, which according to their position,"

7 is corrected to " President Djotodia's Decree appointing ex-Séléka members to

8 ministerial posts, thereby consolidating the position of the former Séléka leaders who,

9 according to their thesis,"

10 Page 17 lines 14-15:"the existence of [...], its common law criminality"

11 is corrected to "the existence of horrific common law criminality"

12 Page 18 line 22" allegedly " is translated and added

13 Page 19 line 11 " to understand the crisis" is translated and added

14 Page 19 line 22" allegations " is translated and added

15 Page 19 line 24 to page 20 line 1 "And yet, it is understood during the hearing that the

16 Prosecution stands by its position that the testimonies of the high-profile actors is not

17 enough to support prosecutions" is corrected to "And yet, to everyone's astonishment,

18 during the hearing, the Prosecution stands by its position that the testimonies of the

19 key actors of the crisis are not enough to support prosecutions"

20 Page 20 line 22 "a lot of " is translated and added

21 Page 20 line 24:"So it was necessary to describe the crisis with this witness"

22 is corrected to "So the point was indeed to discuss the events of 2013 with this

23 witness"

24 Page 21 line 9:" situation "

25 is corrected to " society"

1 Page 21 lines 9-13 "and this complicates the events that happened during the years --
2 the last 20 years. And there were normal --certain judicial procedures that existed,
3 particularly the creation of a special court and the important number of cases before
4 the ICC"
5 is corrected to "and what proves the complexity of the recent events of the past 20
6 years in CAR is the existence of numerous judicial proceedings touching upon the
7 events that occurred there, particularly the creation of a special criminal court and the
8 high number of cases before the ICC relating to the situation in that country"
9 Page 21 lines 20-22 " which is trying to prosecute facts that do not fall under the
10 jurisdiction of international criminal tribunals." Is translated and added.