

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 Judge Rosario Salvatore Aitala, Presiding, Judge Antoine Kesia-Mbe Mindua and
6 Judge Tomoko Akane
7 Confirmation of Charges Hearing - Courtroom 3
8 Tuesday, 12 October 2021
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: [9:34:40] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE AITALA: [9:35:00] Good morning, everyone. Parties,
14 participants, and Mr Said, good morning.
15 I introduce the Chamber. To my right is Judge Antoine Kesia-Mbe Mindua; to my
16 left, Judge Tomoko Akane; I'm Rosario Salvatore Aitala, the presiding judge.
17 Court officer, will you please call the case.
18 THE COURT OFFICER: [9:35:51] Good morning, Mr President, your Honours.
19 This is the second situation in the Central African Republic in the case of the
20 Prosecutor v. Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
21 And for the record, we are in open session.
22 PRESIDING JUDGE AITALA: [9:36:06] Thank you very much.
23 I remind everybody that you should speak slowly in order to allow the interpreters to
24 do their job.
25 Now, before we start the hearing on the confirmation of charges, the Chamber will

1 address the requests submitted by the Defence on 11 October - yesterday - 2021.

2 But before this, I will ask the parties to introduce themselves, starting with the
3 Prosecution.

4 Mr Prosecutor, will you please introduce yourself and your colleagues.

5 MR KHAN: [9:36:49] Good morning, Mr President, your Honours. My name is
6 Karim Ahmad Khan. I'm the Prosecutor. I'm joined today by Mr Eric MacDonald,
7 senior trial lawyer; Ms Leonie von Braun, trial lawyer; and Ms Ramu Bittaye, who is
8 the case manager of the case.

9 PRESIDING JUDGE AITALA: [9:37:08] Thank you very much.

10 Madam Counsel for the Defence, will you please introduce yourself and your
11 colleagues.

12 MS NAOURI: [9:37:16](Interpretation) Thank you, Mr President.

13 Next to me, Mr Jacobs; behind me, François-Jacquemin; and our case manager,
14 Victoria Amann-Lasnier. I am Jennifer Naouri, lead counsel for Mr Said.

15 Thank you, Mr President.

16 PRESIDING JUDGE AITALA: [9:37:39] Thank you very much, counsel.

17 Counsel for OPCV, please. Will you please introduce yourself and your colleague.

18 MS PELLET: [9:37:47](Interpretation) Thank you, Mr President.

19 My name is Sarah Pellet, counsel at the OPCV. And next to me, Caroline Walter,
20 jurist for the OPCV. Thank you.

21 PRESIDING JUDGE AITALA: [9:38:01] Thank you very much.

22 So I was -- as I was mentioning, the Chamber will first address the request of the
23 Defence filed yesterday, 11 October 2021, to be granted leave to appeal the decision of
24 the Defence request for postponement of the confirmation hearing. For the records,
25 it is document number 201.

1 I will now give the floor to the Prosecution and the OPCV if they wish to respond to
2 the request orally and shortly.

3 Please, Mr Prosecutor.

4 MR KHAN: [9:38:35] With -- with your leave, Mr President, Mr Eric MacDonald will
5 respond for the Prosecution.

6 PRESIDING JUDGE AITALA: [9:38:41] Mr MacDonald, the floor is yours.

7 MR MACDONALD: [9:38:46] Thank you very much, Mr Prosecutor, your Honours.

8 I will be doing my -- I'll be delivering my response in English because these are legal
9 matters, and I shall be brief and to the point.

10 The Defence application for leave to appeal, we submit, should be rejected. The two
11 issues the Defence raises either misrepresent your decision or simply they are in
12 disagreement with it. Accordingly, the Defence fails to demonstrate the existence of
13 an appealable issue genuinely arising from the decision.

14 Now, for these reasons alone, your Honours, the Defence application should be
15 rejected. Since the purported issues do not arise from the decision, the Prosecution
16 sees no need to address the remaining aspects pursuant to Article 81(2).

17 I will address briefly the two issues raised by the Defence. The first issue can be
18 summarised as follows.

19 The Defence argues at paragraph 31 of their application that the Chamber has not
20 provided any reasons when it underlined, and, I quote:

21 "That a postponement of the confirmation hearing is a serious measure that may only
22 be taken on an exceptional basis in light of its important implications on the
23 competing interests of the parties to the proceedings." End of quote.

24 The Defence's first issue misrepresents the decision and therefore it does not
25 genuinely arise from it.

1 Why? Because the Chamber did explain how it came to its conclusion not to
2 postpone the confirmation hearing and extensively addressed the Defence's
3 submissions and arguments.

4 The Chamber referenced the competing interests of the parties -- sorry. The
5 Chamber's reference to the competing interests of the parties was only one of the
6 many reasons the Chamber gave when it rejected the Defence's request.

7 Furthermore, both the Prosecution and the Defence have an interest in expeditious
8 proceedings, and the Chamber's reference is clearly on its face -- especially since the
9 Prosecution opposed the Defence's request to postpone the confirmation hearing -- so
10 you clearly addressed that issue, your Honours. I don't need to repeat all the
11 reasons when discussing the issue of the competing interests.

12 I will now move to the second issue.

13 As stated earlier, this issue also misrepresents the decision and does not genuinely
14 arise from it. The second issue can be roughly translated as follows, at page 12 of the
15 application: Did the Pre-Trial Chamber guarantee in the contested decision the right
16 of the Defence to have the time necessary for the preparation of its defence, a right
17 enshrined in Article 70 -- 67(1) of the Rome Statute?

18 Now, your Honours, under this issue, the Defence further argues at page 13 and 14 of
19 its application, that the Chamber did not take into consideration, first, the
20 circumstances of the case when it rejected the application; and, two, the Chamber did
21 not address the obligation or necessity for the Defence to analyse the totality of the
22 Prosecution's evidence in order to prepare itself for the confirmation hearing.

23 Contrary to the Defence's arguments, the Chamber did indeed take into account the
24 circumstances of the case. You extensively addressed the various circumstances,
25 including the Defence's submissions and arguments.

1 Furthermore - and, contrary to the Defence's submission - the Chamber did
2 specifically address at paragraph 21 of the decision, the -- the Defence's arguments
3 that it needed more time to analyse all the elements disclosed by the Prosecution.

4 Mr President, your Honours, we respectfully submit that the Defence's mere
5 disagreement with the Chamber's conclusion does not constitute an issue for
6 interlocutory appeal.

7 Therefore, the Defence's application should be rejected.

8 Thank you. This concludes my -- our response. Sorry.

9 PRESIDING JUDGE AITALA: [9:44:54] Thank you, Mr MacDonald, Mr Prosecutor.

10 Madam Counsel for OPCV, will you please make your submissions, if you have any.

11 MS PELLET: [9:45:05](Interpretation) Thank you, Mr President.

12 It is our desire to proceed quickly, and we simply want to say on this point that we
13 agree with the submissions made by the Prosecutor. The two questions raised by the
14 Defence in our opinion is simply a disagreement with what the Chamber's decision is
15 with regard to the rejection of the appeal for deference of the confirmation of charges
16 hearing. That is why that request should simply be thrown out.

17 As far as we are concerned, we have the opportunity to express the views and
18 concerns of the victims, and, in that regard, I would like to say that the victims call for
19 a rapid holding of the confirmation of charges hearings in order to obtain
20 explanations as to the various questions that they raised concerning the crimes that
21 they were subjected to.

22 I also want to underscore that the rights to an expeditious trial, contrary to the
23 assertions and thoughts of the Defence, it's not a right that pertains mostly to the
24 accused. At paragraph 11, it implies that this is a matter of legal principle, and the
25 constant jurisprudence of this Court, whereby all parties and participants are

1 concerned by the application of the law -- particularly, the victims, who are
2 participating in the proceedings and who expect an outcome to the crimes that they
3 were subjected to eight years ago.

4 Thank you, Mr President.

5 PRESIDING JUDGE AITALA: [9:47:03] Thank you, Madam Counsel. What we will
6 do now, I will adjourn the hearing for approximately half an hour.

7 So we see you back in more or less at 10.15 in the courtroom.

8 Thank you very much.

9 THE COURT USHER: [9:47:20] All rise.

10 (Recess taken at 9.47 a.m.)

11 (Upon resuming in open session at 10.24 a.m.)

12 THE COURT USHER: [10:24:15] All rise.

13 Please be seated.

14 PRESIDING JUDGE AITALA: [10:26:08] Welcome back.

15 Now, the Chamber will render its decision on the Defence's request for leave to
16 appeal the 'Decision on the Defence's request for postponement of the confirmation
17 hearing,' document number 201.

18 The Chamber notes Article 82(1)(d) of the Rome Statute.

19 The Defence's request raises two issues. The first, the Defence submits that the
20 decision lacks reasoning in respect of the Chamber's finding that the competing
21 interests of the parties to the proceedings must be considered in deciding whether the
22 postponement of the confirmation hearing is warranted.

23 Secondly, the Defence submits that the decision fails to take into consideration the
24 particular circumstances of the case and the arguments of the Defence on the
25 necessity to analyse all items of evidence disclosed by the Prosecution.

1 The Chamber also notes the oral submissions of the Office of the Prosecutor and of
2 the Office of Public Counsel for Victims on the request of the Defence.

3 The Chamber decides that the issues raised by the Defence do not arise from the
4 decision and are not appealable under Article 81 -- 82(1)(d) of the Rome Statute.

5 With reference to the first issue, the Chamber considers that the Defence
6 misrepresents the Chamber's decision, which has addressed the Defence's
7 submissions thoroughly.

8 With reference to the second issue, the Chamber notes that the Defence misrepresents
9 again the decision and expresses a mere disagreement with the Chamber.

10 The Chamber in its decision has indeed already taken into account all the
11 circumstances of the matter and has taken multiple measures to address the needs of
12 the Defence for adequate time. The issue is, therefore, not appealable.

13 What issues there are regarded as not appealable, and, having said -- having said that,
14 the Chamber notes that there is no need to address the other conditions under Article
15 81 (sic)(1)(d). For these reasons, the Chamber rejects the Defence's request in its
16 entirety, and we will continue with the hearing as programmed. Thank you.

17 Now turning to the matter of today's hearings, which is the confirmation of the
18 charges brought by the Office of the Prosecutor against Mr Said, it is my duty to recall
19 that at this stage, the Chamber will not decide on the guilt or innocence of the suspect
20 pursuant to Article 61(7) of the Rome Statute. Our duty consists in determining
21 whether there exists sufficient evidence to establish substantial grounds to believe that
22 Mr Said has committed the crimes with which he has been charged.

23 The following general principles apply to this hearing:

24 First, in accordance with Article 66 of the Rome Statute, the suspect shall be presumed
25 innocent until proven guilty before the Court.

1 Second, the burden of the proof rests with the Office of the Prosecutor, who, as a
2 result, will have to provide sufficient evidence in order to prove the charges brought
3 against Mr Said to the relevant standard I've just mentioned pursuant to Article 61(7)
4 of the Statute.

5 Third, the Defence will benefit of all rights enshrined in Article 61(6) and 7 -- 67 of the
6 Rome Statute.

7 I will also recall that the general rule is that this hearing is public, and therefore it will
8 be held in open session. It might occur that, with a view to protecting private or
9 confidential information, particularly regarding victims and witnesses, parts of the
10 hearing will be held in private or closed session, depending on the decision of the
11 Presidency of the Chamber.

12 Pursuant to the order set in the schedule for the confirmation of charges hearing,
13 filing 172 of 14 September 2021, the parties and participants shall have 20 minutes
14 each for the opening statements. Then they will have one and a half hours to present
15 their observations under Rule 111 (sic) of the Rules of Procedure and Evidence, as
16 well as their responses thereto.

17 The Prosecution is granted one and a half hours and the Defence three and a half
18 hours to present their respective arguments on the merits.

19 The Office of Public Counsel for Victims is granted one hour to present its arguments
20 on the merits.

21 The parties at the end and the participants will have each 30 minutes for the closing
22 arguments.

23 Now, I will remind that parties and participants' submissions should be concise in
24 nature. Repetitions must be avoided. In particular, it is recalled that Rule 111 (sic)
25 observations constitute an opportunity for raising issues or objections that were not

1 previously brought to the Chamber's attention, and the parties and participants shall
2 therefore refrain from repeating or reformulating previous submissions.

3 Second, closing statements may not be used to raise new arguments but only to
4 respond to arguments and questions raised during the hearing.

5 Technically, I recall that whenever parties and participants refer to evidence, they
6 must indicate its level of confidentiality and specify whether it is necessary to move
7 into private or closed session. Also, when in public session, parties and participants
8 shall refrain from mentioning the names of victims and witnesses and rather refer to
9 their respective codes and pseudonyms.

10 Now, pursuant to Rule 111(1) (sic) of the Rules of Procedure and Evidence, I ask the
11 court officer to read out the charges as presented by the Prosecution in an abridged
12 version of the document containing the charges.

13 I recall that the Defence has waived its right for the entire document to be read, but I,
14 also, speaking to the public, recall that the full version of such document is publicly
15 available and provides better details about the charges.

16 Now, please, court officer, will you please read the charges in the abridged version
17 provided by the Prosecutor.

18 Thank you.

19 THE COURT OFFICER: [10:33:51] Thank you, Your Honour.

20 The summary of the charged crimes.

21 The Prosecutor brings 14 charges against Mr Mahamat Said Abdel Kani in relation to
22 two detention sites in Bangui, the capital city of the Central African Republic.

23 1. Charges 1 to 7 concern crimes at a detention site known as the *Office Central De*
24 *Répression du Baditisme*, or OCRB for short, from at least 12 April 2013 until 30 August
25 2013, relating to persons perceived to be supporters of François Bozizé, the former

1 president of the Central African Republic;

2 2. Charges 8 to 14 concern crimes relating to acts at a detention site known as the
3 *Comité Extraordinaire pour la Défense des Acquis Démocratiques*, or CEDAD for short,
4 between mid-September 2013 and 8 November 2013.

5 The crimes charged are the following:

6 Crimes committed at the OCRB from at least 12 April 2013 until 30 August 2013
7 (Counts 1 to 7)

8 COUNT 1. Imprisonment or other severe deprivation of physical liberty as a crime
9 against humanity, at the OCRB, of persons perceived to be BOZIZE supporters,
10 between 12 April 2013 and 30 August 2013, punishable under article 7(1)(e).

11 2. Torture as a crime against humanity, at the OCRB, of persons perceived to be
12 BOZIZE supporters, including at least 16 persons who were tied using the *arbatachar*
13 method and other persons who were severely mistreated in other ways, between 12
14 April 2013 until on or about 30 August 2013, punishable under Article 7(1)(f).

15 3. Torture as a war crime, at the OCRB, of persons perceived to be BOZIZE
16 supporters, including at least 16 persons who were tied using the *arbatachar* method
17 and other persons who were severely mistreated in other ways, between 12 April 2013
18 until on or about 30 August 2013, punishable under article 8(2)(c)(i)-4.

19 4. Cruel treatment as a war crime, at the OCRB, of persons perceived to be BOZIZE
20 supporters, including at least 16 persons who were tied using the *arbatachar* method
21 and other persons who were severely mistreated in other ways and detained under
22 dire conditions, between 12 April 2013 until on or about 30 August 2013, punishable
23 under article 8(2)(c)(i)-3.

24 5. Other inhumane acts as a crime against humanity, of persons perceived to be
25 BOZIZE supporters, who were detained in deplorable conditions at the OCRB, and

1 who were verbally and physically abused, including during interrogations, from on
2 or about 12 April 2013 until on or about 30 August 2013, punishable under
3 article 7(1)(k).

4 6. Outrages upon personal dignity as a war crime, of persons perceived to be
5 BOZIZE supporters, who were detained in deplorable conditions at the OCRB and/or
6 were tied using the *arbatachar* method, and/or were verbally and physically abused,
7 from on or about 12 April 2013 until on or about 30 August 2013, punishable under
8 article 8(2)(c)(ii)

9 7. Persecution as a crime against humanity, on political, ethnic, religious and/or
10 gender grounds, concerning the persons detained at the OCRB, based on the facts
11 underlying Counts 1 to 6, punishable under article 7(1)(h).

12 Crimes committed at the CEDAD compound between mid-September 2013 and 8
13 November 2013 (Counts 8 to 14)

14 Count 8. Imprisonment as a crime against humanity, of at least 33 persons at the
15 CEDAD compound between mid-September 2013 and 8 November 2013, punishable
16 under article 7(1)(e).

17 9. Torture as a crime against humanity, at the CEDAD compound, insofar as several
18 men were handcuffed to each other for several weeks, were hooded for prolonged
19 periods including by adding pepper powder into their hoods, were bitten until they
20 passed out or submerged underwater to simulate drowning, or tied using the
21 *arbatachar* method, as well as other acts of comparable severity, between
22 mid-September 2013 and 8 November 2013, punishable under article 7(1)(f).

23 10. Torture as a war crime, at the CEDAD compound, in relation to the same acts
24 just described for Count 9, between mid-September 2013 and 8 November 2013,
25 punishable under article 8(2)(c)(i)-4.

1 11. Cruel treatment as a war crime, at the CEDAD compound, also in relation to the
2 acts described for Count 9, between mid-September 2013 and 8 November 2013,
3 punishable under Article 8(2)(c)(i)-3.

4 12. Other inhumane acts as a crime against humanity, insofar as at least 33 persons
5 were detained at the CEDAD compound in deplorable conditions between
6 mid-September 2013 and 8 November 2013, and the Seleka at the CEDAD compound
7 refused to acknowledge their arrest, detention and abduction, or to give information
8 on their fate or whereabouts to their family members, punishable under article 7(1)(k).

9 13. Outrages upon personal dignity as a war crime, of at least 33 person who were
10 detained in deplorable conditions at the CEDAD compound, and/or were tied using
11 the *arbatachar* method, and/or were beaten or verbally and physically abused, between
12 mid-September 2013 and 8 November 2013, punishable under article 8(2)(c)(ii).

13 14. Persecution as a crime against humanity, on political, ethnic, religious, and/or
14 gender grounds, carried out against at least 33 persons detained at CEDAD, based on
15 the facts underlying Counts 8 to 13, punishable under article 7(1)(h).

16 Thank you, Mr President.

17 PRESIDING JUDGE AITALA: [10:42:05] Thank you very much, Mr Court Officer.

18 Now, as I mentioned, the parties will have 20 minutes each.

19 We start with the Office of the Prosecutor.

20 Mr Prosecutor, the floor is yours for 20 minutes.

21 MR KHAN: [10:42:25] Mr President, your Honours, it's a real privilege to address
22 you and address this Chamber for the first time as Prosecutor.

23 One must start, of course, with recalling the resilience, the courage, and, indeed, the
24 patience of the survivors, the witnesses and the victims, who have courageously come
25 forward to the office to give very difficult accounts upon which we rely to support

1 this case and commend it to go to trial.

2 The fact that we are here today should not be taken as a given. The last few months
3 of 2019, the investigations being conducted by the office were suspended because of
4 want of resources. Then, of course, the investigations and the work was affected,
5 like the rest of the world, by the worldwide pandemic that continues to today.

6 But the fact we are here today is a result of partnerships; that enough good people,
7 enough people desirous of telling the truth, have banded together to ensure that
8 allegations can be subjected to due process and to be determined by independent and
9 impartial judges. That's the beauty of this system and this Court in whose premises I
10 have the honour to stand.

11 Significant thanks must be given to not just survivors and victims - they are in the
12 first category - but also to international organisations, the NGOs, and I think it's right
13 to say, first and foremost, to the national authorities of the Central African Republic.
14 It was a desire for accountability that led the Central African Republic to refer this
15 situation to the Court back on 30 May 2014.

16 And, your Honour, with the greatest of respect, a great deal of credit goes to
17 your Honour and this Pre-Trial Chamber that in the less than 10 months since Mr Said
18 was arrested, a very well-structured set of proceedings have been put in place to
19 allow, consistent with the presumption of innocence, the allegations that I put before
20 this Court to be properly scrutinised.

21 Your Honour, Mr Mahamat Said Abdel Kani, of course is 51 years of age. We've
22 heard the charges that have been read out against him. And, your Honours, all three
23 of you are very familiar with the agony that was the Central African Republic from
24 2012 onwards.

25 For those who are not, perhaps I can be permitted to very briefly state what is

1 well known. That President Bozizé, after almost one decade in power, was ousted
2 by the Séléka armed group, which was an amalgam of different factions that came
3 together for that purpose, and the Séléka, mostly Muslims, targeted those that were
4 perceived to be supporters of former President Bozizé.

5 And they viewed these individuals as perceived supporters on account of various
6 interlacing characteristics. Particularly, the evidence shows, those that were
7 Christians; those that resided in certain parts of Bangui; those that worked in certain
8 professions; those that had been employed by the previous government of President
9 Bozizé. And also, in terms detentions, the evidence overwhelmingly shows that
10 predominantly men were targeted.

11 These combined intersecting reasons found the charge of persecution contrary to
12 Article 7(1)(f) -- (1)(h) of the Rome Statute; namely, persecution on political, ethnic,
13 religious and gender grounds.

14 But, Mr President, your Honours, it was this mistreatment that the Séléka were
15 inflicting - these crimes that, we say, occurred - that also galvanised the community to
16 create their own structures to defend themselves against those attacks. And in
17 tandem with that, in tandem with that, the former forces and elements and supporters
18 of former President Bozizé reorganised themselves from the -- from the DRC and
19 from Cameroon, and then they joined together in inflicting pain and misery on the
20 people of the Central African Republic.

21 Currently, as your Honours know before Trial Chamber V, in the Yekatom and the
22 Ngaïssona case, the allegations in relation to what was called the "Anti-Balaka
23 movement" are under consideration. Unfortunately for the people of the Central
24 African Republic, they were also not spared by the Séléka, and this case is but one
25 snapshot, one still picture of a course of criminality that requires review by this

1 Chamber.

2 Mr President, your Honours, in my respectful submission - and your Honours will
3 decide in due course - this is as straightforward a case as is likely to come before this
4 Court. This is not a case where your Honours are going to be challenged to look at
5 complicated theories of liability, of a military commander or a civilian superior
6 removed from the theatre of conflict. It is a detention case. And, we say, the
7 evidence overwhelmingly shows that Mr Said was in the room where it happened.
8 He encouraged it, he facilitated it, but he also took part in beatings and mistreatment
9 that justifies the forms of participation that are charged -- that are put in the
10 document containing charges.

11 People were put in just appalling conditions with no regard for their humanity.

12 Your Honour, the conduct charged is of course alleged to be in the course of an armed
13 conflict, not of an international character, and we say Mr Said knew that his fellow
14 citizens were targeted, simply because they were viewed as perceived Bozizé
15 supporters. But that was the singular reason where they -- why their humanity was
16 disregarded and their rights violated. He knew that his own conduct was in the
17 context of this armed conflict, and it was in that context that people were being raped,
18 people were being killed and persecuted for that reason.

19 Now, one has to be clear, Mr Said is not being charged for those murders, for those
20 rapes that are part of the underlying evidence in this case. But it is my respectful
21 submission that he cannot on any view plead ignorance.

22 It is important to note that from the evidence in support of these charges, at the time
23 he was overseeing the OCRB, the world was already aware of the rapes taking place.

24 The groans from OCRB and the plaintive cries that are mentioned in the evidence had
25 reached all the way to Geneva and international organisations. An example,

1 perhaps two, may suffice for the moment.

2 In CAR-OTP-2001-1759, at page 1764, Human Rights Watch reports that in May 2013,
3 rapes were alleged to have been committed in Bangui at the time Mr Said is said to
4 have been actively involved in abducting people and interrogating people and
5 helping in the running of the CEDAD detention facility.

6 The Office of the High Commissioner for Human Rights in Geneva, on 12 September
7 2013, in their report, the "Situation of human rights in the [CAR]", noted that people
8 were being raped as perceived Bozizé's supporters in Bangui. They quote seven
9 women being raped in one incident. From another source, four women were raped.
10 And in another variety of sources, they mention a 12-year-old girl was raped.

11 Mr Eric MacDonald will, in due course, and with the leave of the Court, flesh-out the
12 evidence or highlight evidence that we say is of particular relevance to your Honours'
13 pending determination.

14 But one thing is clear, in relation to the attacks in April 2013 and August 2013 at
15 Boy-Rabe, the evidence discloses that Mr Said was present. This was not a well-kept
16 secret. The crimes, the scale, the link to the conflict and the discriminatory intent
17 was open to everybody and, unfortunately, particularly keenly felt by the civilians in
18 the CAR.

19 Mr President, the OCRB itself was a catalog of misery. The charges themselves
20 perhaps speak for themselves: Beatings, whipping, (Redacted)
21 (Redacted). But perhaps one particular form of odious torture
22 and mistreatment signals the wanton disregard for the sanctity of human life that
23 every individual, regardless of race or religion or ethnic origin, has by virtue of their
24 humanity, and that is the *arbatachar* method of mistreatment.

25 Your Honour, I'm not intending to refer to any confidential information in this

1 hearing, and I would ask perhaps if your Honours could press evidence 2 and

2 a photograph can be displayed which speaks volumes.

3 This is a survivor. Somebody, who by the grace and mercy of the Almighty, lived to

4 tell the tale. And the wounds one sees on his arms and shoulder - is P-547 - are as

5 a result of this *arbatachar* mistreatment, where hands are tied together with ankles and

6 elbows to contort the human body from its natural pose into an extremely painful

7 debilitating form of cruelty. It was not a restraint. It was deliberately done.

8 Your Honour, so painful was it for P-547, that at page -- paragraph 59 of his statement,

9 he states it was so bad, the pain was so excruciating, he asked his tormentors to put

10 him out his of his misery and kill him.

11 In relation to the conditions, another photograph speaks far more eloquently than I

12 could ever hope to do. Your Honour will see on the screen two pictures. The hole

13 below is the location where many of those unfortunate souls were placed in terrible

14 conditions, without toilet, food or any type of care. Literally standing above them

15 was Mr Said. We say that room and that area was his office. The evidence

16 discloses that. He used to frequent it.

17 And perhaps it's quite apt that literally standing on their heads, trampling on their

18 dignity, stamping on their rights - he cannot plead ignorance - the smell was awful,

19 the proximity could not have been closer. This is the type of criminality that gave

20 rise to the charges before your Honours.

21 When, by the end of August he moved -- he was moved from OCRB, his superior,

22 Nouradine Mahamat Adam, appointed him to the CEDAD, and this was a facility of

23 the intelligence services of the CAR, which was turned - with the assistance,

24 connivance and actions of Mr Said - to an unofficial detention centre. And again, the

25 same type of treatment of *arbatachar*, of -- of beatings, of floggings continued. And

1 all of that is in the file.

2 Your Honours, relatives were never informed where their loved ones were. They
3 went missing sometimes for weeks. They didn't know. Some thought they had
4 died. But that agony, that trauma that was inflicted by being held incommunicado,
5 is captured in the charge of other inhumane acts.

6 Your Honour, upon commencing my term as Prosecutor, I instructed all the senior
7 trial attorneys in the case to certify whether or not their cases gave rise to a realistic
8 prospect of conviction. Mr Eric MacDonald has so certified.

9 For today's hearing, we say that manifestly the confirmation standard is met.

10 With your leave, the last word, of course, must go to the victims and survivors who
11 have been waiting for these years for some form, some modicum of justice and
12 accountability. I have them, Mr President, your Honours, perhaps as many of us do,
13 very much in my mind's eye.

14 I have seen on the Court's Twitter account and on the Court's webpages different
15 photographs of individuals in different locations following these proceedings.

16 Can I just say that this office and myself pledge to do our best, to work closer with the
17 people of the Central African Republic, to develop deeper bonds with them and with
18 the national authorities of the Central African Republic, the Specialised Court of the
19 CAR, consistent with the principle of complementarity. I have said repeatedly in
20 various fora that the forum of justice is not important. The principle of justice is.

21 But, your Honours, today this Chamber is the forum, and your Honours are the
22 judges, and we are confident that after considering all the evidence, you will decide to
23 commit this case to trial.

24 Your Honours, those complete my opening remarks, hopefully within the time limits.

25 Thank you so much.

1 PRESIDING JUDGE AITALA: [11:01:21] Thank you, Mr Prosecutor, for your
2 statements.

3 On a general note, since this is, as you mentioned, your first time addressing
4 a Chamber in your position -- capacity as Prosecutor, we wish you and your
5 colleagues success in the accomplishment of the Court's mandate.

6 Now, it's one past 11. I will now adjourn the hearing for half an hour.

7 11.30 we will resume. And we will continue with you, Madam Counsel for the
8 Office of Public Counsel for Victims.

9 So thank you very much and see you later.

10 Thank you.

11 THE COURT USHER: [11:02:03] All rise.

12 (Recess taken at 11.02 a.m.)

13 (Upon resuming in open session at 11.32 a.m.)

14 THE COURT USHER: [11:32:24] All rise. Please be seated.

15 PRESIDING JUDGE AITALA: [11:32:43] Welcome back. So I hear the --

16 Mr Prosecutor, did you want to introduce someone? We are being told. Please.

17 MR KHAN: [11:32:56] Please, Mr President, I introduce to my left, Colleen Gilg,
18 who's a trial lawyer in the office.

19 Thank you so much.

20 PRESIDING JUDGE AITALA: [11:33:06] Thank you very much.

21 Good morning. Welcome.

22 Now we turn to the Office of Public Counsel for Victims.

23 Madam Counsel, the floor is yours for 20 minutes.

24 MS PELLET: [11:33:17](Interpretation) Thank you, Mr President.

25 Mr President, your Honours, you have authorised 27 victims to participate in today's

1 hearing in your decision of 6 October 2021. Allow me to start by making
2 a preliminary comment relating to the Defence's repeated statements - and,
3 sometimes verbatim - relating to the participation of victims in the proceedings before
4 this Court so as to lift any ambiguity as to their role in these proceedings.

5 Mr Said's Defence has continually, from the very beginning of the preliminary phase
6 of the trial, has recalled consistently, and I quote, that:

7 The issue of the participation of victims in these trials is a fundamental question that
8 goes to the very fairness of the trial, given that the role of participating victims is one
9 that is broad and varied and *which will impact on the numerous substantive matters
10 and questions that will be discussed during the proceedings, particularly those
11 relating to the rights of the accused and his innocence.

12 Reference is document 128, paragraph 19, repeated in document 181-Red paragraph 7,
13 and also in document 88, paragraph 6 and 10.

14 And indeed, Article 68(3) of the Rome Statute allows victims to participate in the
15 proceedings and to express their views and concerns when their interests are
16 concerned. And therefore, necessarily, they speak on fundamental questions,
17 including the confirmation of charges hearing. The fact that victims had - and, I quote
18 the Defence once more - "provided narratives in their applications to participate,
19 which point to the responsibility of the suspect since they need to establish a link
20 between the charges brought against the accused person," this does not in any way
21 amount to formulating accusations against the suspect.

22 Mr President, I was referring there to document 109, paragraph 2, 22 and 23, repeated
23 in document 63, paragraph 48 and 57, as well as paragraph 88, paragraph -- document
24 88, paragraph 9.

25 The need to demonstrate causality and a nexus between the crimes charged has no

1 other goal than to enable the Chamber to make a prima facie determination on the
2 status of victim.

3 This was also confirmed by the Appeals Chamber a month ago when it dismissed the
4 Defence's submission *that participation forms could -

5 and I quote: "may in some way influence the decisions taken as to innocence or
6 culpability"

7 and are therefore" "are crucial to the preparation of the Defence".

8 The Appeals Chamber rejected that argument and referenced a decision of 2007, in

9 which the single judge of Pre-Trial Chamber II specified that any decision taken in

10 application of Rule 89 of the Rules of Procedure - and, I quote -

11 *is not "to make a final determination of the nature of the crimes which the events

12 described by the applicant may constitute, or to analyse whether the constituent

13 elements of each such crime are effectively present: both these analyses pertain to the

14 determination of the guilt of the accused, rather than to the assessment of the status of

15 victims whose personal interests are affected within the meaning of article 68,

16 paragraph 3, of the Statute."

17 I am referring there to ICC-02/04-101, paragraph 13.

18 Mr President, your Honours, the role of victims in this procedure does not consist in

19 formulating any accusations whatsoever against the suspect. That onus is on the

20 Prosecution. They therefore intervene in the proceedings because they have

21 a possibility to collaborate to the determination of the truth. They provide and shed

22 light on a different angle, but this is primordial to the quest for judicial truth which is

23 the very foundation of the procedures for which we are gathered today.

24 Mr President, your Honours, the participation of victims in today's hearing, the

25 hearing which is opening today and also in trials before the Court in general, is

1 essential because it is a constant reminder to all that justice rendered within this
2 institution is rendered in the name of the victims in order to preserve future
3 generations *from unimaginable atrocities that deeply shock the conscience of
4 humanity with a view to make sure that the most serious crimes of concern to the
5 international community as a whole do not go unpunished.

6 The crimes that underpin the victimisation of victims that we are talking about
7 are -- occur, first of all, in the framework of systematic and widespread attacks and
8 then in the context of a non-armed international conflict in which two camps clashed
9 to the detriment of the civilian population. Mr Said is suspected of having
10 committed crimes against humanity -- humanity, including imprisonment or serious
11 deprivation of physical liberty, torture, persecution and other inhumane acts. He is
12 also charged or suspected of having committed war crimes; namely, torture and cruel
13 treatment and at -- and affecting the dignity of victims, *committed at the Office
14 central de répression du banditisme, OCRB, between 12 April and 30 August 2013
15 and at the Comité extraordinaire pour la défense des acquis démocratiques , CEDAD,
16 from mid-September to 8 November 2013.

17 Mr President, your Honours, the victims who have been admitted to participate do
18 not have much in common among themselves. The vast majority of them are men
19 who were the direct victims of the crimes for which we are gathered today. They
20 come from various ethnic backgrounds and from even broader professional
21 backgrounds. There was really no reason for them to come together or to meet. Yet,
22 they were all arrested arbitrarily, tortured, and they were victims of inhumane
23 treatment. They were detained at the OCRB and CEDAD incommunicado. Some
24 of them finally were released after several days or even several weeks. Some were
25 isolated without any contact with their families, which continually tried to seek and

1 find them.

2 Other victims never came back and disappeared in the jails of the Séléka. Their
3 families henceforth are convinced that they were assassinated in those jails.

4 Their imprisonment is invariably one that occurred in inhumane conditions. They
5 were deprived of water and food. They were often hooded and handcuffed. They
6 were never formally charged.

7 They were detained simply because they lived in certain neighbourhoods in Bangui
8 which were known to be Bozizé's strongholds in 2013. Some of them were detained
9 because they were of Gbaya or Banda ethnic origin; some because they were
10 Christians; and -- some because they had worked under the overthrown
11 administration and because Séléka considered that for these reasons, they were
12 people who supported Bozizé.

13 The victims and their families are all wondering why they were subjected to such evil.
14 They are therefore expecting explanations from the Court. In fact, the victims
15 participating in the procedures today have all testified through their narrative of the
16 events that victimised them. They testified of the particularly cruel nature of the
17 crimes that were committed against them and also of the systematic and widespread
18 nature of such crimes.

19 Mr President, your Honours, these victims and their families also have something else
20 in common. They are terrorised. They live in constant fear of being arrested in the
21 streets in Bangui or to be recognised by their torturers and, some of whom, continue
22 to serve within the internal security forces or within the Central African Armed
23 Forces, while others hold high offices within the Central African administration.
24 We must therefore recognise the immense courage that these *victims have shown
25 in filling out the participation forms which were submitted to you and which I

1 referred to a short while ago.

2 They fear for their security. They fear for the safety of their families. And therefore,
3 they all seek to remain anonymous. Regardless of the Defence's arguments, this is
4 their absolute right. It is in no way a whim of the victims. They are not in so doing
5 being liars or less courageous people.

6 And talking about courage, as the Prosecutor said a short while ago, participating in
7 proceedings before this Court exposes victims to potential risks as I have said. But
8 furthermore, this participation also plunges them back into the hell of the events that
9 they experienced in 2013.

10 Mr President, your Honours, I've said this already. Victims are expecting
11 explanations, but they have been waiting for too long, eight years. They need
12 explanations to be able to forget the tragic events that victimised them. This
13 forgetting enables them to build back. But it is impossible to forget and build back
14 as long as they do not understand why they -- their brother, their son, their
15 spouse -- were arrested, tortured, held in arbitrary detention, sometimes for days and
16 sometimes for weeks, and even some of them ending up being assassinated.

17 For the surviving victims, the persistent pain and the scars on their body following
18 the repeated beatings are things with which they are confronted every day and are
19 constant reminders of the cruelty, of the hell, they went through and the memories
20 they can hardly forget.

21 They are sad. There is an emptiness in them. There is anger. There is fear of
22 death. They are profoundly traumatised and have been so from the time of these
23 events, and, today, they cannot sleep and cannot build back and forge ahead.

24 The families of the victims who died are unable to have closure as long as they don't
25 have explanations on what befell their own and the reasons why this happened.

1 Your Honours, Mr President, building back the lives of *the victims calls for
2 a recognition of the crimes that they were subjected to by re-establishing the judicial
3 reasons for which they were victimised and through the punishment of the
4 perpetrators of these crimes, including Mr Said.

5 Before I conclude, Mr President, your Honours, allow me to say a thing about all the
6 other victims -- victims of the acts of violence by Séléka that are included in the PCB,
7 *but not taken into consideration by the OTP. The attack of the 7th arrondissement in
8 Bangui on 13 April 2013, the attacks in Boy-Rabe in Bangui from 14 to 16 April 2013,
9 and from 20 to 24 August 2013, the attack of a minibus in PK9 in Bangui, on 13 July
10 2013, or around this date.

11 I hope that in subsequent matters they will not be forgotten because these victims too
12 do exist, even though the applicable law within the Court does not give them
13 a possibility to be heard*.

14 Most victims lost everything during the events that we are focusing on today,
15 including their professional activities, their ability to support their -- their families
16 and the education of their children, their roles within the family, their health and their
17 well-being. And, in some cases, they simply lost their lives.

18 Victims and families therefore are looking to the Court because their participation in
19 these proceedings is an essential step in building back their lives.

20 I thank you, Mr President. I thank you, your Honours.

21 PRESIDING JUDGE AITALA: [11:48:59] Thank you very much, Madam Counsel,
22 for your statements.

23 Now I turn to the Defence.

24 Madam Counsel for the Defence, you have 20 minutes for your opening statements.

25 Thank you.

1 MS NAOURI: [11:49:19](Interpretation) Thank you, Mr President.

2 Mr President, your Honours, let us briefly revisit the recent history of the Central

3 African Republic. Odile Tobner, a renowned *Africanist, stated as follows:

4 "The wounds caused by French colonisation in Africa, manifested in the Central

5 African Republic in a particularly visible manner. Nowhere else are those wounds

6 more deep, recurrent, and incurable. At the heart of the continent, this territory in

7 which curses abound, bear testimony to the martyrdom of African peoples."

8 The case before us today is an example of the wounds. It is up to us to first of all

9 come back to the context of the charges. It is critical to look into the narrative of the

10 Prosecution because their analysis is fragmentary and deficient.

11 Why? The reality does not correspond with the accusation, and so they need to try

12 to transform it. And in so doing, they overlook certain aspects which are crucial, but

13 the facts are stubborn, and we are going to bring them to light.

14 To begin with, the case of the Prosecution presupposes the existence of a state, and,

15 yet, the Prosecution never explicitly states that and deliberately maintains a blurred

16 line between the state and the Séléka because it is impossible for them to demonstrate

17 concretely the functioning of the state or the functioning of Séléka.

18 Consequently, one of the crucial elements to understand the Prosecution is the

19 concept of the state in the CAR. Already, during the colonial period overseen by the

20 French, Obangui-Chari was a subject of a practically non-existent administration to

21 such a point that some referred to it as the "Cinderella of the empire" because it was

22 exploited by the colonisers without any benefits for them.

23 Ever since decolonisation, the CAR has become a country of instability which is near

24 constant. Because of its geographical location, the country is an enclave in a region

25 where insecurity reigns supreme. The lack of the control of the security services of

1 the state has -- as a consequence, to leave the country exposed to various forms of
2 banditry. For example, the highway robbers also known as "zaraguinas."

3 Furthermore, the hinterland of the CAR is a prime target for attacks from foreign
4 groups. For example, the continuous attacks of the LRA.

5 In this complicated security context, the Central African state seems to have lost, ever
6 since the '80s, its institutional capacities preventing it from being functional and
7 ensuring the security of its territory.

8 It is for this reason that several experts define the Central African Republic as
9 a shadow state, and this is a second element which is crucial to be taken into
10 consideration if we want to understand the evidence of the Prosecution.

11 In response to that model of a shadow state incapable of protecting its populations, in
12 particular, in the hinterland, non-organised and opportunistic armed groups
13 proliferated - and, these are groups which progressed constantly - quarrelling
14 amongst themselves; others sporadically rallied with the FACA. And others were
15 fighting against each other; while others still set themselves up as opposition to the
16 powers that be.

17 Another key of understanding is the conditions under which the presidency of
18 François Bozizé took place over 10 years. Ever since his arrival in power, it was an
19 antidemocratic regime characterised by serious violations on human rights.

20 And the Prosecutor seems to have forgotten that. This is why, *since the early 2000s,
21 non-centralised groups have been taken over by figures presenting themselves as
22 leaders who transform these groups into civil-politically armed groups with the
23 intention of participating in peace agreements or ceasefire agreements.

24 During these hearings, we will go into the details of the creation and composition of
25 each of those groups in order to demonstrate how the alliances and splits amongst

1 those groups prevented them from forming an entity that is homogeneous and
2 structured. And these were the groups which formed on a temporary basis in 2012,
3 the coalition known as Séléka.

4 And this is crucial because the Prosecution in its DCC and PCB relies on a vague
5 concept that does not cover any concrete reality, and that is Séléka.

6 The word "Séléka" simply means alliance or coalition in the Sango language. It is
7 therefore imperative to look into the reality encompassed by this word.

8 From the Prosecution evidence, it emerges that Séléka is a nebulous entity made up of
9 various groups who, for a brief moment in time, coalesced against a common enemy,
10 President Bozizé, and which disintegrated once the common threat disappeared.

11 And a striking example of the Prosecutor's penchant for denial of the disorganisation
12 of these groups is the arrival of those groups in Bangui in March 2013.

13 According to the Prosecution, it was Michel Djotodia who issued the order to take
14 over Bangui. And yet, from the evidence, it emerges that Michel Djotodia had been
15 taken hostage in Bambari; that he had been detained incommunicado by other
16 members of the Séléka, and that he only learned over the radio that the groups were
17 moving towards Bangui.

18 It is all the more fundamental to look into what the expression "Séléka" stands for. If
19 we consider that once President Bozizé left power, it is that Séléka that became the
20 state, according to the Prosecution. We have said that the coalition disintegrated
21 once the government of a national unity was put into place in accordance with the
22 Libreville agreement. *Roland Marchal, a research fellow in the CRNS, explains that
23 in the months that followed the Séléka was merely a very loose confederation of
24 armed groups living off the population. Their chiefs were unable to control them, and
25 the chain of command was almost inexistent. It is therefore not possible to use the

1 word "Séléka" to refer to the state.

2 The most flagrant example of the confusion, deliberately created by the Prosecution,
3 between the Séléka and the state is the fact that they described the OCRB and CEDAD
4 as a -- Séléka bases. And yet the ORCB (sic) was created by French cooperation in
5 the '80s, and it was part of the state's structure ever since that date.

6 Furthermore, as from the creation of the ORCB (sic), it was *Commissaire* Mazengue
7 who was responsible, and he was the same commander in charge at the relevant
8 period of the charges.

9 The OCRB was placed under the authority of the director-general of the police and
10 the ministry of security, and therefore it was part of the state's structure, and the
11 Prosecution evidence reveals that arrests and detentions at the OCRB were done
12 under the jurisdictional control of the public prosecutor.

13 It is worth pointing out that many detainees at the OCRB were people that were
14 described as Séléka members.

15 So what is the Prosecution telling us? That OCRB is supposed to be a Séléka base
16 with detainees which are Séléka in the majority?

17 By using the word "base," the Prosecutor alludes to secrecy.

18 But the OCRB was an open space, frequently visited by the Red Cross, NGOs, and
19 representatives of French authorities.

20 For example, a French soldier stated that most of the time the people detained were
21 free within the compound. Only the most dangerous people were detained. "I
22 rarely saw anyone locked in what -- in the cells that were there."

23 I will say a word on the functioning of the OCRB.

24 We must be realistic. With very limited staff and in a situation of total chaos and
25 faced with a limited state structure, Mazengue used elements who had volunteered,

1 including Mr Said.

2 That does not mean that there was a structured functioning within the OCRB.

3 Several witnesses in fact state that it was not possible to say who was in charge of the

4 ORCB (sic). A knowledgeable witness told us: "You are asking me who was at the

5 head of the OCRB? It is difficult to say because it was changing all the time."

6 In order to try and circumvent the structural problem inherent to the OCRB, the

7 Prosecution preferred to make assumptions regarding the role of Mr Said. We will

8 demonstrate that such a process prevents the Prosecution from establishing any

9 responsibility of Mr Said because they postulated without any proof that Mr Said was

10 allegedly in charge, and therefore, they considered that he was de facto responsible

11 for everything that happens in the OCRB, whether he was physically present there or

12 not.

13 In fact, we have heard that Mr Said was responsible for events in Boy-Rabe, and that

14 is new. It is not in the DCC. It is not in the PCB. *If this is a new charge, we have

15 not been notified thereof.

16 The reality is that ORCB (sic) was in total disorganisation. And, so, in such

17 a situation, *there is no person clearly identified as a leader. It's impossible. And Mr.

18 Said is trying to assist Mazengué as a volunteer [...] cannot be held responsible for the

19 acts of other people who claimed to be occupying various positions.

20 In such a context of disorder, it would be impossible for the Prosecution to prove any

21 state or organisational policy or any common plan.

22 Still, in order to try and cover up the factual complexity of the situation on the field,

23 the Prosecution states that there was a non-international armed conflict in the CAR

24 between the end of 2012 up until 10 January 2014. By targeting a particularly broad

25 period without specifically focusing on the relevant period of the charges, the

1 Prosecution is trying to give an impression of continuity in the politico-military
2 situation in the CAR.

3 Nothing could be further from the truth, and nothing could be any more simplistic.

4 We shall demonstrate in our oral submissions that nothing makes it possible to
5 establish the existence of an armed conflict between March and September 2013.

6 And this is a conclusion confirmed by the case law of the Court and by the literature
7 of available experts, and we will come back to that.

8 And wherever there is no armed conflict, there is no war crime during the period
9 targeted by the charges. And so, why does the Prosecution present such a truncated
10 account, *so far from reality? Because the Prosecution did not want to look into the
11 people *who were really relevant in order to understand the events. The

12 Prosecution used every weapon in their arsenal to show that there was the existence
13 of a non-international armed conflict.

14 *But then, where are those people who represent these so-called "functional states"?

15 Where are the highest-ranking leaders of the Séléka? Why is that -- is it that the
16 Prosecution is not interested in them? Is it because that those leaders are not
17 known?

18 To the contrary. They are known to everyone.

19 Or is it because they are in hiding and they cannot be found? Quite the contrary.

20 They are not in hiding. Their testimonies will be fundamental to establish the truth.
21 And based on what they will tell us, it will be necessary either to prosecute them or to
22 drop the charges against those who were part of the structure set up by the
23 transitional government of President Djotodia.

24 That is the logical thing to do. Either the accusation considers the testimonies of
25 these high-profile actors of the crisis as credible, and, in that case, any person

1 prosecuted as part of the state structure existing under President Djotodia would then
2 have to be freed - thanks to those testimonies - or, the Prosecution considers that these
3 people played a questionable role in the crisis and, as high-ranking leaders, they
4 would be prosecuted by the Court.

5 Questioning the highest-ranking leaders will make it possible *not to present a false
6 account of the recent history of the CAR, and it will avoid validating this account *of
7 those who are still in power or who work for the new government. So why are these
8 high-ranking officials not of interest to the Prosecution? The response, Mr President,
9 your Honours, we will try to give it in private session. And before we go into private
10 session, I would like to point out that this was -- will be the last subject of my
11 presentation. Mr President, please, if we can go into private session.

12 PRESIDING JUDGE AITALA: [12:08:38] Madam Counsel, you are left with one
13 minute.

14 You know it?

15 Okay, Mr Court Officer. Let's move into private session, please.

16 (Private session at 12.08 p.m.)

17 THE COURT OFFICER: [12:08:51] We are in private session, Mr President.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 12.10 p.m.)

8 THE COURT OFFICER: [12:10:31] We are back in open session, Mr President.

9 PRESIDING JUDGE AITALA: [12:10:40] We are now back in open session.

10 The -- the Defence for Mr Said has concluded her opening statements.

11 Now the parties will have the possibility under Rule 122(3) of the Rules of Procedure

12 and Evidence to raise objections or make observations concerning an issue related to

13 the proper conduct of the proceedings prior to the confirmation hearing.

14 I will remind once again that the issues and objections which were already brought to

15 the Trial Chamber's attention cannot be raised and should not be raised at this stage.

16 And I also recall that pursuant to Rule 122(4), at no subsequent point may such

17 objections and observations be raised or made again in the confirmation or trial

18 proceedings.

19 Please adhere strictly to the time allocated.

20 And now we start with the counsel for the Defence.

21 Madam Counsel, the floor is yours.

22 MS NAOURI: [12:12:01](Interpretation) Thank you, Mr President, Dov Jacobs will

23 present our observations on this matter. Thank you, your Honour.

24 PRESIDING JUDGE AITALA: [12:12:11] Maître Jacobs, the floor is yours.

25 Mr Jacobs, let me add that the Prosecution has indicated that they do not intend to

1 raise objections or make observations. So we will give you at the latest until one
2 when we will adjourn the hearing. Okay?

3 MR JACOBS: [12:13:01](Interpretation) I have understood, Mr President.

4 Mr President, your Honours, *by allowing the Defence to raise any questions on
5 the regularity of procedures prior to the hearing, Rule 122(3) has a corrective or
6 remedial function in that it deals with anything that pertains to the fairness of the
7 procedure, giving opportunity for such discussions to take place upstream before this
8 *hearing and before any discussions on the merits.

9 Specifically, the beginning of the hearing is the single opportunity for a party to make
10 an assessment of the entire procedure that occurred before the hearing and to raise on
11 that basis a number of exceptions and make a number of observations. This crucial
12 moment in the hearings allows the parties and the Chambers to read the procedure of
13 any defects that might undermine the proper conduct of proceedings in general, and,
14 by extension, the decision on the confirmation of charges that will follow.

15 The Defence notes that relating to the functioning of Rule 122, the last version of the
16 practice guide for Chambers, which was published in 2019, brings together the ideas
17 of the judges of the Court relating to what should be best practices when it comes to
18 conduct of proceedings, and, in that regard states as follows, at paragraph 46:

19 [...] challenges as to the form raised under 122(3) may also deal with time lines to
20 allow the parties to prepare for confirmation of charges.

21 It is therefore pursuant to the letter and spirit of Rule 122(3) that we make the
22 following observations on behalf of the Defence.

23 First of all, relating to the DCC -- and, the PCB, pre-confirmation brief -- the document
24 containing the charges is an essential document. It is the first document that enables
25 the right of the person who is being accused to be notified of the charges.

1 It is also the basic document on which the Defence works.

2 In this case, let us point out that it is the PCB, the pre-confirmation brief -- that is, the
3 DCC, which is referenced at the -- as a footnote in the Prosecutor's document, which
4 indeed has become the basic working document of the Defence.

5 In fact, the DCC, without references, only -- is only a series of allegations that are not
6 buttressed or demonstrated.

7 This document only derives meaning when the PCB then provides the Chamber and
8 the Defence with the manner in which it intends to support its incriminating charges.

9 The DCC has a final function of focusing discussions because it is on the basis of the
10 DCC that the Chamber will decide either to dismiss the charges; or, to confirm only
11 those for which it would have decided that the Prosecution provided substantial
12 grounds to believe that they have been so established.

13 Now, for the DCC and the PCB to play these key roles in the proceedings, we also
14 need to fulfil -- this document -- these documents also need to fulfil a minimum
15 requirement of clarity. But this is not the case for the Defence, and we shall
16 demonstrate this by using a few examples.

17 First, the Defence was able to observe that quite frequently the Prosecution simply
18 expressed an affirmation within the body of a text and then would refer to
19 a note -- a footnote, to one or several references, without mentioning the content of
20 the evidence or the witness statement to which they are referring to, that is, to which
21 the Prosecution is referring to.

22 In terms of methodology, such an approach does not amount to a genuine
23 demonstration. When there is no clear explanation as to why evidence underpins an
24 allegation, when there is no hierarchy established between the various pieces of
25 evidence, when no indication is provided as to the authenticity of the evidentiary

1 materials or the credibility of the witnesses, the Prosecution deprives the Defence and
2 the Chamber of essential tools with which to assess its case.

3 The Defence and the Chamber, therefore, find themselves in a position where they
4 themselves must reconstitute the arguments and submissions that the Prosecution
5 would have done rather clearly in its PCB.

6 Clearly, we observe that the Prosecutor used what could be referred to as an IKEA
7 method in its demonstration, where the reader is provided with an allegation and
8 ERN code and then has to reconstitute the demonstration by himself or herself.

9 Secondly, the manner in which the charges are pleaded cumulatively does not allow
10 the Defence or Chamber to fully understand what the Prosecutor encompasses in
11 each of these charges.

12 Cumulative charging does not excuse the Prosecution of the requirement to provide
13 a coherent narrative of its charges. *In fact, choosing a legal qualification is not a
14 disembodied or technical exercise ; a legal qualification narrates a point of view, a
15 story as to how to understand an incident.

16 Legal qualification narrates a point of view, a story, which enables understanding,
17 particularly in relation to the alleged perpetrators.

18 Let me repeat the last sentence to be clear.

19 Legal qualification narrates a point of view, a story, on the manner in which an
20 incident is understood, particularly in relation to the intent of the alleged
21 perpetrators.

22 Therefore, when it comes to a narrative, a specific incident cannot be at the same time
23 a war crime and a crime against humanity because each obeys a specific logic in its
24 narrative.

25 But the Prosecutor never explains incident by incident why such-and-such an incident

1 is characterised in one way rather than in another, and, even less so, how the incident
2 as described dovetails with the narrative on a war crime or a crime against humanity.
3 Therefore, we see that the Prosecutor uses the IKEA method even further because on
4 several issues, the evidence is not only diverse -- because we do not even know the
5 type of building that we are supposed to piece together.

6 *Third, a word on the legal characterization of facts under 7(1)(k), other inhumane
7 acts, which the Prosecutor relies on in counts 5 and 12.

8 Let us point out that this article in the Statute is not without controversy and without
9 difficulty because it actually calls on the judges to determine by analogy. Because it
10 speaks of similar acts in the determination of the material scope of the Rome Statute,
11 which is in direct contradiction with the principle of legality, which under Article 22
12 of the Statute provides that the definition of a crime should be interpreted strictly and
13 cannot be expanded by analogy.

14 In these conditions, therefore, Article 7(1)(k), if used, can only be done -- can only be
15 used in exceptional circumstances and cannot *constitute a catch-all category for the
16 Prosecution in which to include everything that doesn't fall in the other categories,
17 as if one were sweeping things under the rug.

18 This actually is what the Prosecution does. Because in its legal characterisation, it
19 succinctly outlines a number of legal criteria and then goes on to outline a series of
20 factual disjointed allegations without making any effort to determine how these
21 allegations meet the legal requirements as they ought to.

22 In these circumstances, therefore, the charges 5 and 12 should be discarded *in limine*
23 for lack of precision.

24 Now, my second series of observations is about Prosecution disclosures and what it
25 tells us about the deficiencies in its investigations and, therefore, challenges the whole

1 foundation of the trial.

2 First of all, we must recall the scope of the divulgation undertaken by the Prosecutor
3 in relation to the confirmation of charges hearing. More than 12,000 elements, pieces
4 of evidence were disclosed; 60,000 pages of documents were disclosed. To fully
5 grasp the scope of the disclosure, let us say that the 60,000 pages are 20 per cent
6 higher than the evidence disclosed by the Prosecutor before the beginning of trial in
7 the Gbagbo and Blé Goude case.

8 *First of all, this is a significant volume of material -- of evidence, and when we look
9 specifically at what is referred to by the Prosecutor as incriminating evidence, it is not
10 obvious how it relates to the charges or allegations. The Prosecutor in support of his
11 allegations in the PCB only used about 800 pieces of evidence, of the 8069 INCRIM
12 elements disclosed.

13 *This leaves the Defence in a position of having to second-guess how the 7,225 other
14 pieces of evidence will be used in relation to the remaining crimes.

15 Secondly, with such a volume of disclosures, one could expect that the files would
16 include all useful and relevant elements, inculpatory as well as exculpatory evidence.
17 Yet, when we analyze the disclosed materials, we note that the Prosecutor has very
18 little material from major stakeholders in the Central African crisis. For example,
19 364 pieces of evidence out of the 12,000 relate to about --

20 THE INTERPRETER: [12:30:11] Sorry, Mr President, we didn't follow what counsel
21 said at that point.

22 PRESIDING JUDGE AITALA: [12:30:16] Mr Counsel, will you please repeat because
23 we -- we have lost something.

24 Thank you.

25 MR JACOBS: [12:30:26](Interpretation) Let me repeat, 364 pieces of evidence from

1 the Central African authorities from the 12,000 pieces of evidence disclosed by the
2 Prosecutor, amounting to -- out of which only about 200 relate to the period for which
3 charges are brought.

4 We have zero, zero material from the South African authorities; whereas, we know
5 that it was the main international contingent on the ground, particularly in early 2013.

6 We have zero elements from the Chadian authorities; whereas, Chad, even in
7 successive writings in -- on Chad, that on -- the Central African Republic -- was fully
8 involved, as is known by all, involved in those crisis in the Central African Republic.

9 There are other sources that have been unused by the Prosecutor, and for that reason I
10 would like to talk about them in private session, Mr President, with your leave.

11 PRESIDING JUDGE AITALA: [12:32:00] Mr Court Officer, we will move into
12 private session.

13 (Private session at 12.32 p.m.)

14 THE COURT OFFICER: [12:32:08] We are in private session, Mr President.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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1 (Redacted)

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4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Open session at 12.35 p.m.)

11 THE COURT OFFICER: [12:35:09] We're back in open session, Mr President.

12 PRESIDING JUDGE AITALA: [12:35:12] Thank you very much.

13 Mr Counsel, please.

14 MR JACOBS: [12:35:16](Interpretation) Under these circumstances, it should be
15 noted that the case file of the Prosecutor is incomplete and fragmentary because it is
16 lacking most of the useful elements from actors who were in fact important in the
17 crisis. Conducting proceedings on such a defective case file is taking a risk of
18 missing the essential parts and drawing conclusions on the basis of incomplete
19 information.

20 Thirdly, it emerges from the Prosecution evidence that they did not investigate in
21 a neutral manner to establish responsibilities and prosecute those they felt to be the
22 ones most responsible for the alleged crimes.

23 While the Prosecutor repeatedly invokes in his DCC the responsibility at the highest
24 level of what they referred to as Séléka, it appears that he did not take any measures
25 to prosecute those high-ranking officers.

1 Mr President, I would like to go back once again, with your permission, briefly, into
2 private session, and this will be the last time to -- for a certain issue.

3 PRESIDING JUDGE AITALA: [12:37:06] Mr Court Officer, we will move into
4 private session, please.

5 (Private session at 12.37 p.m.)

6 THE COURT OFFICER: [12:37:13] We're back in -- we are in private session,
7 Mr President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 (Redacted)

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3 (Redacted)

4 (Redacted)

5 (Open session at 12.39 p.m.)

6 THE COURT OFFICER: [12:39:55] We are back in open session, Mr President.

7 PRESIDING JUDGE AITALA: [12:40:00] Thank you very much.

8 Mr counsel, please proceed.

9 MR JACOBS: [12:40:06](Interpretation) Thank you, Mr President.

10 Faced with these elements, one can wonder why the investigation of the

11 Prosecutor - rather than being conducted sincerely in the search for the truth in

12 accordance with the obligations of the Prosecutor, pursuant to Article 54 of the Rome

13 Statute - was not, from the very outset, based on compromises with the various actors

14 of the crisis, in contradiction with all the principles of fair and impartial justice.

15 This issue constitutes a defect in the investigation which has brought us here today

16 and undermines the proceedings in their entirety.

17 Now I will go on to my third and last point, general observations on the fairness of

18 the proceedings that preceded these hearings.

19 And, before I continue, Mr President, I have understood that I can go on to 1 p.m.? I

20 will try to finish before that.

21 The Defence during the phase which preceded the confirmation of charges hearing

22 raised, as time went on, as is their duty, a certain number of issues that affected the

23 ability of the Defence to exercise its rights, and, as a consequence, which undermined

24 the fairness of the proceedings.

25 To deem that the Defence did not need to mention these issues in detail today, and we

1 do not -- we are not going to do that, the Chamber felt -- and, I will quote document
2 number 188, paragraph 15:

3 It is unclear how the Chamber's instruction not to repeat such observations or
4 objections which the Chamber has already disposed of and which are, therefore,
5 unlikely to be considered again, would affect the Defence's rights.

6 End of quote.

7 The Chamber is of the opinion that because the issues that the Defence wanted to
8 raise today have already been disposed of by the judges, it would not be necessary to
9 revisit them because they will no longer be discussed in the future.

10 Nevertheless, the Defence respectfully submits that that is not the case and, why is
11 that? Because these issues, even though they were indeed disposed by the Chamber,
12 for the most part were not the subject of an assessment by the highest instance of the
13 Court, that is, the Appeals Chamber, and therefore there was no final decision taken.

14 One example of issues that could *not have been taken to the Appeals Chamber:

15 Even though the Defence had detailed subject by subject the number of hours that
16 they needed to present its observations during the confirmation of charges hearings in
17 order to challenge the charges, the Chamber relied in a generic manner on the
18 invocation of its discretionary powers and its -- expeditiousness of these proceedings
19 to give a number, *3h30, which is much shorter than what the Defence had requested,
20 but without providing any reasoning for the decision.

21 However, the fact that the judges have a margin of discretion in the exercise of their
22 functions does not exempt them from their obligation to justify their decision.

23 Here, *the Defence requested a little over three days of hearings to present its
24 challenges and not three days (sic)... Not -- not one week. Not three weeks.

25 Two -- or, rather, days, which were considered as being too much.

1 This position was all the more surprising because if we remember well, the
2 confirmation of charges hearing was postponed on the 30th of June from the 5th to the
3 12th of October 2021.

4 And, for what reason?

5 And I refer you to decision 112, paragraph 15:

6 Developments having since occurred in the schedule of the judiciary, the Court's
7 calendar and the concurrent responsibilities of the judges of the Chamber in other
8 proceedings make it necessary to reschedule this date, whilst preserving the
9 expeditiousness of the proceedings.

10 *The hearing was postponed by one week, seven days, from 5 to 12 October, for
11 purely logistical reasons that had nothing to do with the case but with schedule of the
12 judges or the Court calendar. However, when the Defence asked for two
13 or three days to present its defence, but the expeditiousness of the proceedings was
14 invoked against it. So this issue, which was crucial, could not therefore
15 be lodged before the Appeals Chamber.

16 Another example - and, I will not come back because we talked about it - is the time
17 that the Defence would have had to discuss the Prosecution's charges. That was
18 not -- it was not possible to take that to the Appeals Chamber.

19 *One last point before concluding. It was all the more important for the Defence to be
20 able to analyse all the Prosecution evidence, that the Pre-Trial Chamber has access to
21 it, that is part of the case file and that, according to recent case law of the court, the
22 Pre-Trial Chamber can use that evidence for the confirmation of charges decision. In
23 the confirmation of charges decision in the Abd Al Rahman case of 9 July 2021, the
24 Chamber said that they had analysed the totality of the evidence disclosed by the
25 Prosecutor, in addition to the evidence included by the Prosecutor on its list of

1 evidence. So preventing the Chamber from preparing itself in good conditions is
2 creating the risk that the confirmation of charges decision will be rendered on the
3 basis of evidence that the Chamber will have analysed but that the Defense will not
4 have been in a position to fully challenge, and that will call into question the fairness
5 of the proceedings in their entirety. And I will conclude, Mr President, your Honours,
6 on what emerges: The confirmation of charges hearing begins today on a triple
7 violation of the principles of the confirmation of charges. A DCC and a PCB ...
8 And I will repeat the last sentence. I'm saying that the hearing is beginning under
9 a triple violation of the rights of the Defence.

10 First of all, a DCC and a PCB that do not meet the requirements in the area of clarity
11 and notification of charges; an investigation that was not carried out in a sincere
12 manner and which undermines the proceedings; a violation of the fundamental rights
13 of the Defence in the area of the respect of their right to have the necessary time for
14 the preparation of the hearing, a violation that could have been brought before the
15 Appeals Chamber -- a violation that was not able to be brought before the
16 Appeals Chamber.

17 That violation, if not remedied, would reduce the confirmation of charges phase as
18 a validation or a rubber-stamping of the allegations of the Prosecutor. So this goes
19 against the letter and spirit of the Rome Statute, and, the judges are the guarantors,
20 and it will be contrary to the exemplary nature of this Court to which the
21 International *Criminal Court is attached.

22 PRESIDING JUDGE AITALA: [12:52:16] Thank you, Mr Counsel.

23 All your observations have been duly noted.

24 Mr Prosecutor, will you respond? Do you intend to respond to the -- these
25 observations?

- 1 MS VON BRAUN: [12:52:36] Your Honour? Your Honour?
- 2 PRESIDING JUDGE AITALA: [12:52:37] Yes, please.
- 3 MS VON BRAUN: [12:52:38] Is it working? Yes? Sorry.
- 4 We would like to respond briefly to what has been provided by the Defence.
- 5 However, if possible, if we could have five to 10 minutes to discuss some of the issues
- 6 that were just raised very spontaneously now, that would be most kind.
- 7 PRESIDING JUDGE AITALA: [12:52:57] Yeah, well, in any case I was asking just to
- 8 evaluate about the conduct of the proceedings. What I will do, I will adjourn the
- 9 hearing for the lunch break now.
- 10 MS VON BRAUN: [12:53:03] All right.
- 11 PRESIDING JUDGE AITALA: [12:53:04] And will reconvene in one and a half hours,
- 12 and at the very beginning, you will be allowed to make your observations.
- 13 So -- okay, so now it's 12.55 almost so ...
- 14 MR KHAN: [12:53:22] Mr President, perhaps, with your leave, as we've got five
- 15 minutes --
- 16 PRESIDING JUDGE AITALA: [12:53:23] Mr Prosecutor --
- 17 MR KHAN: [12:53:23] -- I won't be here after the break --
- 18 PRESIDING JUDGE AITALA: [12:53:24] -- you're (Overlapping speakers) start now?
- 19 MR KHAN: [12:53:24] -- so perhaps with your leave, I can just give some
- 20 spontaneous responses for --
- 21 PRESIDING JUDGE AITALA: [12:53:33] If you want to start now --
- 22 MR KHAN: [12:53:33] -- five minutes and then I --
- 23 PRESIDING JUDGE AITALA: [12:53:34] If you want to start now --
- 24 MR KHAN: [12:53:37] (Overlapping speakers)... indeed.
- 25 PRESIDING JUDGE AITALA: [12:53:38] -- you're allowed to do so.

1 MR KHAN: [12:53:38] I'm grateful.

2 PRESIDING JUDGE AITALA: [12:53:39] Please.

3 MR KHAN: [12:53:40] Your Honours, it seems at the outset that my learned friends
4 have not completely -- they've sought to revisit matters that have already been
5 adjudicated.

6 My initial response is that in terms of the disclosure, the comparators are quite
7 inappropriate. Both the -- they're complaining that there's too much evidence and,
8 yet, also, at the same time, that they've being given too little. The key issues
9 regarding the amounts of items referenced in the document containing charges and in
10 the pre-confirmation brief, should, if anything, give some assurance to the Defence
11 that particular documents have been relied on that gives a clear target for them to
12 challenge in this hearing.

13 But the other arguments regarding the unavailability of evidence from various state
14 parties or actors that may, they say, be in -- have been in the region, is entirely
15 speculative and one that one struggles to see what is the prejudice from the Defence.
16 Of course, they have their rights also to obtain evidence and information from any
17 sources; it's not just the Office of the Prosecutor. But these arguments that they raise
18 that this country or that country or this organisation must have had evidence is really
19 an argument of conjecture that really can be given, we say, very short shrift.

20 In terms of the very nice - and, I commend my learned friend for it - the very vivid
21 IKEA model, I think IKEA has been given a bit of a bad rap. Sometimes the
22 instructions are extremely clear, and, of course people walk to the shops for a reason.
23 But leaving that particular argument to one side, in terms of the substantive
24 arguments, any written pleadings or any arguments, when the Defence put forward
25 their case, they can challenge if there's inaccuracies in the footnotes or if footnotes

1 don't support propositions.

2 Or, if the evidence disclosed does not meet the confirmation standard, well, this
3 hearing is exactly the opportunity for them to point your judges in the right direction,
4 and, the Office, and so that only a case that is supported by evidence can go forward.
5 Your Honour, I won't say anything more regarding the allegations that the Office of
6 the Prosecutor doesn't investigate neutrally. I don't think much attention needs to be
7 given to that. It's a statutory requirement and if there's any substance to that, action
8 can be taken.

9 But again, the argument about which witnesses are called, and, particularly at this
10 stage of the proceedings, is one that is not a really intrinsic or relevant consideration
11 at this stage of proceedings.

12 Your Honour, I think my learned friend, Leonie von Braun, will probably have some
13 more pertinent and significant arguments to make after the break, but they're my
14 immediate reaction. Certainly there's nothing to say that the -- individually or
15 cumulatively, the various complaints - if I can put them like that, I say they're no
16 more than really, than complaints - that have been put forward by the Defence are
17 such that make -- give any basis for their contention that there's a defect in the
18 proceedings up to this point.

19 It's a try. Your Honours will decide if it's a good try or not, but we say it can be
20 dismissed quite summarily.

21 PRESIDING JUDGE AITALA: [12:57:24] Thank you, Mr Prosecutor. Then we're at
22 almost one. I will then adjourn the hearing for one and a half hours for the lunch
23 break. We will therefore resume at 14.30 with the Office of the Prosecutor
24 continuing with their observations.

25 Thank you very much.

1 THE COURT USHER: [12:57:48] All rise.

2 (Recess taken at 12.57 p.m.)

3 (Upon resuming in open session at 2.30 p.m.)

4 THE COURT USHER: [14:30:49] All rise.

5 Please be seated.

6 PRESIDING JUDGE AITALA: [14:31:05] Good afternoon. Welcome back.

7 So the floor is of the Office of the Prosecutor to respond under Rule 122.

8 Mr MacDonald.

9 MR MACDONALD: [14:31:24] Thank you very much, your Honours.

10 Just to note the arrival of two new colleagues for this session; Mrs Hernández and

11 also Mrs Ndagire.

12 Mrs Von Braun will be responding to the Defence's arguments. Thank you very

13 much.

14 PRESIDING JUDGE AITALA: [14:31:48] Okay. Welcome to your new colleagues.

15 Mrs Von Braun, please.

16 MS VON BRAUN: [14:31:55] Mr President, your Honours, thank you for giving me

17 the opportunity to briefly respond to the Defence submissions pursuant to

18 Rule 122(3).

19 Mr Prosecutor has already addressed some of the issues raised by the Defence, so I

20 will be very brief and I will also not repeat any of his submissions.

21 Let me first address though the challenges to the DCC and related to the specificity of

22 the charges. Contrary to the Defence submissions, the charges, your Honours, are

23 set out in a clear, exhaustive and self-contained manner. They are as specific as

24 possible in the circumstances and unambiguous.

25 The factual scope of the charged crimes is outlined and Mr Said has been provided

1 sufficient notice of what he has been charged with to prepare his defence.

2 As required by the Chambers Practice Manual, the Statute, the rules of evidence and
3 procedure, the DCC sets out the material facts, alleged crimes, temporal, geographical
4 scope of the crimes, identified, and total number of victims for each incident, objective
5 and subjective elements of the applicable modes. And, finally, the counts make clear
6 which crimes are charged for these material facts.

7 The pre-confirmation brief complements the document containing the charges. It is
8 the document that summarises and cites the evidence. These citations, along with
9 the evidence cited there, have to be read of course.

10 The requirement of the DCC is to set out the material facts. Not a narrative of a story.

11 Of course, your Honours, the material facts of an incident can constitute both a war
12 crime and a crime against humanity. This has been adjudicated frequently also by
13 this Court.

14 Let me briefly touch on the charge of other inhumane acts as this is an issue
15 specifically raised by the Defence. Contrary to the Defence's assertion, the
16 Prosecution has set out exactly what it deems to constitute such acts.

17 For example, Count 12 expressly states that it is the deplorable detention conditions
18 and the refusal to acknowledge the whereabouts or fate of the detainees at CEDAD to
19 the family members, which constitute these other inhumane acts.

20 The Defence's assertion that Article 7(1)(k) violates the principle of legality is
21 unfounded, and, indeed, they cite no legal authority for this position.

22 I also want to be clear, because it was raised by the Defence: Mr Said is not being
23 charged for any participation, individual criminal responsibility related to crimes
24 committed during the Boy-Rabe operations. The evidence though that he was
25 present at both operations has been disclosed to the parties during the course of the

1 pretrial proceedings. It is nothing new. But there is no expansion in any way of the
2 charges.

3 On the allegations made by the Defence in respect of disclosure, I refer back to what
4 Mr Prosecutor has submitted before the break. In fact, the Prosecution has
5 addressed these issues on numerous occasions in the course of the pretrial
6 proceedings.

7 While the Defence is speculating about information and evidence that they have
8 allegedly not received, they failed to make a specific request or demonstrate how any
9 such materials relate to a live issue in this case.

10 Mr President, your Honours, it is Mr Said who is charged because of the evidence we
11 hold to establish his individual criminal responsibility. And Mr Said only. It has
12 never and will never be persuasive to argue that others may also have committed
13 crimes at the same time or before or after the period relevant to the charges.

14 To be sure, Mr Said is not the only one allegedly responsible for crimes committed
15 during the conflict in CAR on the Séléka side or any other side. He is not here
16 because he is seemingly a more low level member of the former Séléka coalition, but
17 because the evidence demonstrates his individual criminal responsibility.

18 The Defence has launched quite serious allegations against the Prosecution in
19 its investigation today. These have no basis. To finalise this point very briefly, I
20 request to go into private session.

21 PRESIDING JUDGE AITALA: [14:37:30] Mr Court Officer, we move into private
22 session, please.

23 (Private session at 2.37 p.m.)

24 THE COURT OFFICER: [14:37:39] We're in private session, Mr President.

25 (Redacted)

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16 (Open session at 2.38 p.m.)

17 THE COURT OFFICER: [14:38:52] We are back in open session, Mr President.

18 PRESIDING JUDGE AITALA: [14:38:58] Thank you. Please continue.

19 MS VON BRAUN: [14:39:00] Thank you.

20 The other individuals referenced by the Defence were also interviewed, including on
21 broad aspects of the conflict, relevant beyond what is immediately relevant to the case
22 at hand.

23 Thus, your Honours, I conclude my brief response by reiterating that the charges set
24 out before you today are brought against Mr Said for his acts and conduct. They are
25 clear, defined and exhaustive.

1 And the Defence has not managed to raise a significant doubt as to this assertion. I
2 thank you for your attention.

3 PRESIDING JUDGE AITALA: [14:39:43] Thank you very much.

4 Okay. The Chamber has taken note of the observations of the Defence, of the
5 response of the Prosecution and pursuant to Rule 122(6) of the Rules of Procedure and
6 Evidence will rule -- will rule on them in due course.

7 Now we will proceed to hearing the parties' and participants' submissions on the
8 merits.

9 We'll start with the Office of the Prosecutor.

10 You do have an hour and a half. I will be grateful if you make it by four. In case
11 you don't, please let me know. We will see whether we can arrange, with the
12 indulgence of the interpreters, a very small continuation after four.

13 But if you make it, this will be appreciated

14 Thank you very much.

15 MR MACDONALD: [14:40:36] Thank you, your Honour.

16 Our aim is to finish. My presentation is to last an hour, an hour and 10 minutes, so
17 before the deadline in question.

18 PRESIDING JUDGE AITALA: [14:40:45] Very good to hear. Thank you.

19 MR MACDONALD: [14:40:48] It's intended to last an hour, an hour and 10 minutes.

20 PRESIDING JUDGE AITALA: [14:40:54] Well, the caveat is less appreciated than
21 the ...

22 MR MACDONALD: [14:41:00] If you allow me just a second, I want to sort out the
23 technical issues.

24 I would kindly ask that we be allowed to show a PowerPoint presentation. And I
25 understand it will be on evidence channel 2. So we shall all go to that channel, if you

1 so wish.

2 PRESIDING JUDGE AITALA: [14:41:30] Yes, you're allowed to do so.

3 MR MACDONALD: [14:41:58] Thank you, your Honour.

4 (Interpretation) I will address the Chamber in French, and my presentation will be
5 done in French.

6 I would like to assure everyone that no closed or private session will be necessary.

7 And if it is necessary for whatever reason, and I do something that should not be
8 done, then I am sure that it can be redacted, if necessary, and then retransmitted.

9 Mr President, Madam, your Honours, I will highlight the charges relating to Mr Said.

10 The Chamber has already been able to take note of our pre-confirmation brief; so my
11 observations today will focus on the key aspects of evidence presented by the

12 Prosecution in support of the vital facts which formulates the basis of our charges.

13 We will -- the Prosecution submits that there are substantial grounds to believe that

14 Mr Said committed the crimes of which he has been accused and must therefore be

15 referred to trial. The evidence will show that Mr Said is criminally liable for war

16 crimes and crimes against humanity committed between April and November 2013 in

17 two detention sites. I'm going to repeat them in French. Although, this has already

18 been done *by my OPCV colleagues, because I believe it's very important to

19 remember, it's the Central Office of Repression of Banditry, known as OCRB, and the

20 other site was the Extraordinary Committee for the Defence of Acquired Democratic

21 Rights, known as CEDAD.

22 I call upon you to look upon your screens once again. Here again, we can see the

23 alleged crimes committed at OCRB. I'm not going to read them out. They are

24 before you. But they are grounds 1 to 7 relating to Article 7 and 8 as regards war

25 crimes and crimes against humanity.

1 On the next slide, you can see the crimes -- the alleged crimes committed in CEDAD.

2 Here, once again, there are seven grounds against -- under Article 7 and 8 of the

3 Statute, crimes against humanity and war crimes.

4 The charges are supported by evidence given by several insider witnesses or what we

5 call in French, *témoins initiés*, and also by documents, videos and photographs. But

6 above all, it is based on the narratives of victims themselves.

7 The victims provided horrendous accounts of their suffering at the hands of Mr Said

8 and his subordinates and collaborators, which I will now briefly summarise today.

9 Mr President, Madam, your Honours, my presentation will firstly focus on the

10 evidence which supports the constitutive elements under the chapter of articles on

11 war crimes and crimes against humanity, if you allow me.

12 I will then describe the role of Mr Said at OCRB and then later at CEDAD, the two

13 areas where the alleged crimes were committed in 2013.

14 And, finally, I will return to the list of crimes committed in these two detention sites

15 and provide evidence proving Mr Said's involvement in the commissioning of these

16 crimes.

17 Let me start out by the crimes under crimes -- war crimes.

18 War crimes were committed between April and November 2013. Throughout this

19 period, an internal armed conflict was consuming the Central African Republic. This

20 conflict started well before the alleged crimes and continued for many months

21 thereafter.

22 At the end of 2012, François Bozizé was president of the Central African Republic.

23 The Prosecutor this morning recalled that he seized power - it was a coup

24 d'état - which took place in March 2003. One of the parties to the armed conflict was

25 a coalition of various political factions and armed groups known as "Séléka."

1 Mr Said belonged to this group.

2 Two of the main leaders of the Séléka were Michel Djotodia and Nouradine Adam.

3 The other party to the armed conflict was a group loyal to the cause of President

4 Bozizé, and we know them as the pro-Bozizé forces.

5 During the conflict, the pro-Bozizé forces reorganised themselves in order to include

6 self-defence groups which already existed or were newly created. These groups

7 evolved during the conflict and became what we know as Anti-Balaka. The leaders

8 of the group included Bozizé and members of his inner circle, including Levy Yakété,

9 Patrice-Edouard Ngaïssona, Bernard Mokom, Maxime Mokom and Olivier

10 Koudemon.

11 Allow me to revert to some key points in the conflict.

12 Towards the month of August 2012, the Séléka rebel coalition emerged down -- in the

13 northern eastern part of the Central African Republic. This coalition was unified in

14 particular by a feeling of dissatisfaction against Bozizé and their desire to oust him

15 from power.

16 The 24th of March 2013, the Séléka took over the control of Bangui after having

17 defeated the national forces and the South African troops. They toppled Bozizé who,

18 with his allies, were forced into exile.

19 The leader of the Séléka, Michel Djotodia, proclaimed himself as president of the

20 Central African Republic. The Séléka attack on Bangui exposed its strengths and

21 military forces. They forced Bozizé and his allies to retreat and temporarily the

22 conflict was less intense, but it did not put an end to the war.

23 Your Honours, there was no peaceful settlement to the conflict. There was no

24 sustainable absence of armed conflict between the warring parties. And, in addition

25 to that, there was clearly a resumption of armed clashes between the two parties in

1 the conflict.

2 After taking over Bangui, the Séléka anticipated a counterattack and immediately put
3 into place a plan to counter such an attack. From their side, Bozizé and his allies
4 rapidly regrouped their fighters and provided support, training as well as
5 consolidating self-defence groups with the aim of taking power again by force. In
6 any case, *that is what they did.

7 And a considerable number of experienced combatants remained loyal to Bozizé.

8 Amongst them, you could find former members of the Central African armed forces,
9 known as FACA, and also the presidential guard of Bozizé.

10 Although the seizure of Bangui by the Séléka forced many combatants to leave
11 Bangui, they withdrew intact. They had the time and force to hide and carry away
12 stocks of military armaments.

13 Several pro-Bozizé combatants regrouped themselves in the border regions of the
14 Central African Republic waiting an opportune moment to launch a counterattack.
15 Certain forces loyal to Bozizé remained in Central African Republic and put up an
16 armed resistance.

17 Mr President, Madam, your Honours, here you can see the map which -- on the
18 screen. Initially, you can see Bangui. The town is close to the border with the
19 Democratic Republic of the Congo. When Bangui was captured by the Séléka,
20 Bozizé and his close allies fled to Yaoundé, the capital of Cameroon. Several
21 pro-Bozizé combatants also withdrew to the Democratic Republic of the Congo,
22 below the Oubangui river, in a town called Zongo.

23 Other combatants withdrew in zones close to the border with Cameroon. They
24 gathered in areas like Bertoua and Garoua-Boulai. These locations were strategically
25 selected because they were close to the main supply axis between Cameroon,

1 Yaoundé was the capital, and Bangui.

2 Some weeks after having fled Bangui, Bozizé organised high-level meetings to plan
3 his return to power. Those working with him communicated with the self-defence
4 groups, which already existed, and the new recruits in order to organise them, to arm
5 them and to train them.

6 In our PCB and -- shows other examples. But from June 2013, structured
7 military-like training with former members of FACA took place in areas such as
8 Zongo and Kalongoi, in RDC, and Gobéré, and also in the Central African Republic as
9 you can see on the map. It was at this time that the pro-Bozizé forces started to fight
10 back, including launching attacks against the Séléka.

11 Different actors amongst the pro-Bozizé forces made significant inroads during this
12 period and the movement was known, as I've already stated, as Anti-Balaka.

13 However -- however, it is the same armed group, Mr President, which fought the
14 Séléka continuously since the end of 2012.

15 In the months that followed the seizing of power by the Séléka, the Anti-Balaka
16 launched major attacks and started to retake territories in the hands of the Séléka.

17 Again, in our PCB, and I quote this by way of an example:

18 "A significant Anti-Balaka attack took place in September 2013 in Bossangoa."

19 The 5th of December 2013, the Anti-Balaka launched a coordinated attack of a large
20 scale in Bangui with the aim of ousting the Séléka. Long-term allies of Mr Bozizé,
21 including Maxime Mokom, Alfred -- and Alfred Yekatom supervised this attack on
22 Bangui.

23 I'm being told that perhaps I'm speaking a little too fast.

24 I think that the English transcript, no doubt, has now caught up with me.

25 Within some weeks, Michel Djotodia, particularly under international pressure, was

1 forced to resign and Séléka had to retreat. Nevertheless, the hostilities between
2 Anti-Balaka and the Séléka continued throughout the year 2014, well beyond the
3 period relating to the charges against Mr Said.

4 Your Honours, the details in our PCB. And the time of the alleged facts, there was
5 an armed conflict of a non-international state.

6 Now I will look at the contextual evidence of the crimes against humanity.

7 During the period of the charges, evidence in our case shows that Séléka carried out
8 a widespread and systematic attack and in pursuit of a policy of state or an
9 organisation against a civilian population of Bangui perceived as supporters of the
10 Bozizé cause.

11 As I have just mentioned, after having taken power in March 2013, the Séléka knew
12 that Bozizé and his allies were actively seeking to return to power. The Séléka knew
13 very well that a persistent threat existed for their government.

14 To counter that, the Séléka undertook to suppress all resistance to their government.

15 They made no distinctions between peaceful political opponents and genuine threats
16 to their security. On the contrary, they targeted all perceived supporters of Bozizé.

17 The Séléka identified the presumed supporters of Bozizé by basing themselves on
18 a variety of factors which they considered as indicative of support for Mr Bozizé.

19 They targeted, in particular, Christians, individuals of Gbaya, Mandja or Banda
20 ethnicity, former members of FACA or the presidential guard, and fourthly, residents
21 of certain neighbourhoods in Bangui traditionally supporting Bozizé.

22 The crimes committed by Mr Said and his subordinates at OCRB and CEDAD were
23 part of this attack. I will return soon to the details of these crimes in the two
24 detention sites, but before doing that, allow me to describe other incidents which
25 occurred during the attacks, including four additional incidents outlined in the

1 document of charges where we have the contextual elements of these elements.

2 These additional events were a part of the attack against the civilian population and
3 are as follows, and they occurred in Bangui:

4 In April 2013, the Séléka launched an offensive against the 7th arrondissement of
5 Bangui.

6 In April 2013, again, the Séléka carried out its first operation in the Boy-Rabe
7 neighbourhood.

8 In August 2013, the Séléka carried out a second operation in the Boy-Rabe
9 neighbourhood.

10 And, finally, between April and *August, in July 2013, there was an attack on minibus
11 passengers at a checkpoint at PK9.

12 You can see this on the map.

13 And I'd like to draw your attention and submit to you that there is an error in our
14 annex B on -- in our PCB, where PK9 is not indicated correctly. But here, on the map
15 on your screen, it is correct. So this was a mistake with the GPS, which we will
16 amend and correct in the annex in written submissions as soon as possible.

17 I will continue.

18 The offensive against the 7th arrondissement and the operations carried out in the
19 Boy-Rabe neighbourhood were large-scale attacks launched in residential areas which
20 were densely populated. It is not security operations aiming to neutralise
21 combatants.

22 Why? How? An examination of the type of victims and the type of crimes
23 commissioned shows this abundantly. The Séléka knowingly targeted old people,
24 women and young children.

25 *Your Honours, on the screen right now you can see a woman called Sandrine and

1 her baby who were shot dead by the Séléka in their own home during an operation
2 carried out in the Boy-Rabe neighbourhood in April 2013.

3 During this very same operation, the Séléka raped several women.

4 These were targeted and systematic acts. By way of example, a victim described
5 how she was gang-raped over several days on the orders of a military chief of the
6 Séléka.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Your Honours, this rape was an act of pure revenge against the family suspected of
15 supporting Bozizé.

16 During the events surrounding the 7th arrondissement and the Boy-Rabe
17 neighbourhood, the Séléka went from door to door completely looting all houses.

18 There again, these acts were carried out systematically. The looting committed in
19 Boy-Rabe lasted for several days and hundreds of Séléka elements participated.

20 The Séléka also used informants who pointed out the location of houses where
21 non-Muslims lived. These houses and their occupants were the targets of violence;
22 whereas the houses of Muslims were saved.

23 Another witness described that the Séléka arbitrary seized men and boys in the street
24 and forced them to lie down on the ground in a line and executed them one by one.

25 Witnesses described how during the same major operation carried out in the

1 Boy-Rabe neighbourhood in August 2013, they just managed to escape such an
2 execution. (Redacted)

3 (Redacted)

4 (Redacted)

5 Similarly, in July 2013, Séléka arbitrarily arrested, tortured and then killed a group of
6 passengers on a minibus at the checkpoint of PK9.

7 What had these victims done? These victims were passengers in a bus where the
8 Séléka had found a bag containing T-shirts -- containing T-shirts with a logo or face of
9 Mr Bozizé.

10 Mr President, Madam, your Honours, the alleged crimes were committed by applying
11 and in the pursuit of a state policy or an organisation. This can be seen by the
12 pattern -- a pattern constant where the targeted civilian population were victims in
13 the hands of the Séléka.

14 The commanders and members of the Séléka, regardless of their ethnic or national
15 affiliations, worked together and attacked the civilian population of Bangui perceived
16 as supporters of Bozizé and made many victims.

17 Once again, by way of an example, Adam and high-ranking commanders were
18 present on the ground. They gave the orders during the operations which took place
19 over several days.

20 The state or organisation policy is also shown by the words and gestures of the Séléka
21 commanders during the coordination of the attack.

22 Again, Nouradine Adam - at that time, at that time indeed was a minister of public
23 security and the superior of Mr Said - stated that Boy-Rabe must be burnt down.

24 This is witness 1719.

25 He also said that the victims of OCRB, and I quote, "They are beasts who supported

1 Bozizé." Witness P-0622.

2 The crimes committed at OCRB and at CEDAD, which you can see now seen on your
3 screen, are part of this attack. The crimes committed at OCRB and CEDAD were
4 also planned, coordinated and supervised by military leaders of the Séléka. They
5 were executed according to a systematic mode of operation. They were carried out
6 in a regular fashion over a prolonged period creating many victims.

7 Allow me now, before looking at the alleged crimes, to describe the role of Mr Said at
8 OCRB and CEDAD.

9 After having taken control of Bangui by the Séléka, on or around 12 April 2013,
10 Mr Said was nominated de facto head of the central office of the OCRB by
11 Mr Nouradine Adam, who was then the minister of public security.

12 You have seen the decrees. It's on the lists. It is in the document that you have as
13 part of our Prosecution submissions.

14 OCRB is a police unit in the centre of Bangui and, indeed, a pre-existing Central
15 African institution as mentioned by our colleague. It did pre-exist before they took
16 control of Bangui.

17 On the screen you can see an aerial view of the OCRB. It's a satellite image of
18 a well-known site which goes back to 2013. So this is the year in question.

19 Together with his deputy, Mahamat Tahir, and his close collaborators, Hissene
20 Damboucha and Soumayele Yaya, Mr Said was at the head of more than 60 elements
21 of the Séléka and at that centre between 12 April and 31 August 2013.

22 On the screen you can see a list of members of Séléka produced or compiled at the
23 time the events took place and authenticated by an insider witness, and this list shows
24 that Mr Said was the one who was responsible.

25 You can see the name of Mr Said, which is in position number 1, and also that of

1 Mahamat Tahir, who is number 2.
2 Once again, Mr President, Madam, your Honours, these are documents when the
3 actual facts took place.
4 Other Sélékas of high rank were in regular contact with Mr Said at OCRB,
5 including -- sorry. I do apologise. Forgive me. Please give me one moment.
6 Yes, that's right.
7 So other high-ranking Séléka were in regular contact with Mr Said at the OCRB. For
8 example, Mr Hissene Damboucha, Mahamat Sallet Adoum Kette - that's his full
9 name - and Mr Adoum Rakiss.
10 Evidence will show that Mr Said was the most influential member of Séléka at OCRB.
11 *Mr Said exercised his control on the OCRB until the end of August 2013, when
12 the Séléka were chased out of the OCRB because of the alleged crimes committed.
13 Mr Adam, his superior, was dismissed from his functions or duties as minister and
14 appointed director of CEDAD, once again, by decree on 22 August 2013.
15 This is part of our document and submissions.
16 For his part, the building of CEDAD was in a villa in a residential area on the
17 outskirts of the centre of Bangui. Once again, you can see an image of this taken by
18 satellite, taken in 2013.
19 The inside witnesses described Mr Said as a commander of operations for Adam, and,
20 in that title, he had the authority on the Séléka who were working in the OCRB.
21 Mr Said received and carried out the orders of Adam. Mr Said recruited former
22 Sélékas of the OCRB and transferred them to the CEDAD. Mr Said organised and
23 supervised the patrols responsible for arresting the victims and even participated in
24 their arrests.
25 According to the decree number *1318, CEDAD was an intelligence-gathering

1 service to fight against threats affecting the national security. However, the Séléka,
2 under the aegis of Adam, changed the CEDAD into a detention centre, a secret
3 detention centre, with no judicial control. Mr Said and his subordinates permitted
4 fear and suffering to occur to the detainees and their families until 8 November 2013,
5 at least to that date.

6 Allow me to return now to the OCRB and describe the crimes that were committed.
7 Once I've described those crimes, I will turn to the question of individual criminal
8 liability of Mr Said.

9 In paragraph 33 of the DCC and paragraph 141 to 200 of the PCB, the Prosecution has
10 described the salient facts and evidence to support the charges for grounds 1 to 7.

11 On the screen, you can find the image of the surroundings of the OCRB. You can see
12 the main entrance. The compound is surrounded by high walls. And it has seven
13 ground cells. On this image, you can see the inside of one these cells from the door
14 to the back and the other way around which -- and you can see the doors open here.
15 I would like to point out that this is 2016, during a mission of the Prosecution to this
16 very site. So they are not photos which date to 2013.

17 Between 12 April 2013 and his departure in 31 August 2013, Mr Said and his deputy
18 and his close collaborators arrested and detained perceived supporters of Bozizé in
19 the ground cells as well as the cell under his office.

20 The detainees were mainly men, Christians, and belonging to certain ethnic groups
21 traditionally allied to the Bozizé cause. Furthermore, some detainees carried out
22 professions or occupied positions which were deemed to be linked to Bozizé or his
23 former government. These men were deprived of their fundamental rights. They
24 were arbitrarily arrested, subjected to inhumane detention conditions and were
25 deprived of any review on the legality of their detention.

1 The prisoners were detained in horrendous conditions. The cells were overcrowded.
2 About 12 to 15 detainees were squashed together in the cells. These cells were small,
3 suffocating, and no window, with a single bucket as -- used as a toilet. They only
4 received scant or no food and water, which forced them to drink their own urine.
5 The detainees were frightened, starved, thirsty and unable to sleep.

6 Witness P-0622 stated, and I quote:

7 "It was impossible to lie down because the cell was so full." End of quote.

8 The witness added, and I quote:

9 "I was so thirsty that I had no other alternative but to drink my own urine."

10 End of citation.

11 During the period in question, at least 31 detainees who were male were also detained
12 in the cell which was known as *trou* or the "hole."

13 The Prosecution described this morning the atrocious conditions in which the victims
14 were detained. So I won't go back to that. However, it is important to note that the
15 presence of the detainees in this hole was kept secret, secret from any visits from the
16 authorities. Witness P-0547 said there was no trace whatsoever in -- of their
17 detention in the registers of the OCRB.

18 Commander Yaya told his men that if any relatives came enquiring *about the
19 witness, they should say that he had been taken elsewhere. This is the statement of
20 P-0547. Depriving the rights of the detainees, the inhuman detention conditions and
21 the arbitrary character of the arrests meet all the requirements of the elements of
22 a crime of imprisonment, which make up a crime against humanity.

23 However, the poor treatment given to the detainees went far beyond the inhumane
24 conditions. Mr Said and his collaborators sub- -- made -- at least 16 male detainees
25 were subjected to the method of torture known as *arbatachar*.

1 Mr President, your Honours, this morning you saw the horrible wounds caused by
2 this method. The detainees were attached or tied according to this method, not only
3 attached in this method, which is torture in itself, but also they were beaten so that
4 they could extract information or confessions.

5 *Arbatachar* -- or simply were beaten without the *arbatachar* method, but they were
6 beaten. And witnesses confirmed that they could no longer walk. They couldn't
7 use their limbs. Some were even paralysed temporarily. Others had discoloured
8 arms and couldn't even feed themselves anymore. Others were so exhausted that
9 they needed help to change position. And others, again, suffered infections -- from
10 infections.

11 Your Honours, this method would fall under the elements of crime of torture making
12 up a crime against humanity and a war crime. Furthermore, this method in question
13 caused extreme pain, but the method meant that the position was designed to have
14 them in a humiliating and degrading position, which means it also is a crime which is
15 an outrage on human dignity which is a war crime.

16 As I've already said, other forms of bad treatment reached the level of torture and
17 were also inflicted in the OCRB. This means intensive beating with whips, planks,
18 the butt of rifles, kicks, creating open wounds. One of the detainees, P-2263, arrested
19 *on a charge related to tracts in July 2013, stated, and I quote:

20 "They give us the order one by one to lie down on the ground on our stomachs. I
21 heard them say to their men in Sango to beat us and to put us in the cells. The
22 Séléka took a 20-litre petrol can filled with water and mixed the water with soil,
23 which was next to us. One by one we had to submit this ritual which I'm now going
24 to describe. We had to lie down, and they mixed water and mud on our back.
25 Then, they added stones coming from the ground. I think it was to even -- to worsen

1 the pain. The Séléka then came with rope usually used to attach cows. They beat
2 us with the rope. They beat us on our backs one by one. When one of them was
3 tired, another took over.

4 The order was to whip us, each one of us, 20 times. They restarted if someone made
5 noise whilst they were beating us. During these beatings, I had to urinate on myself.
6 I know that someone defecated in their underwear."

7 The Séléka also inflicted serious mental suffering by threatening to kill the detainees.
8 The proof reveals that Mr Said himself -- himself, vis-à-vis a witness, carried out
9 a simulation of execution to a detainee which he accused of supporting Mr Bozizé.

10 The torture at OCRB was practised in order to inflict physical pain and psychological
11 suffering and to obtain information or confessions; to punish, intimidate or to stop the
12 detained persons.

13 During the period under question, the tortured detainees were under the guard and
14 control of the Séléka who were the subordinates of Mr Said. The prisoners detained
15 in OCRB were all out of combat or were civilians, members of medical staff or
16 religious staff and did not actively take part in the hostilities.

17 And finally, the Séléka targeted victims because of their identity, their religion, their
18 ethnic affiliation and their gender. The victims were selected as targets for political
19 motives because they were considered as supporters of the former president, Bozizé.

20 Mr Said himself accused the witnesses of supporting Bozizé. Subordinates and
21 collaborators also said such statements vis-à-vis the detainees during the
22 cross-examination and during their bad treatments.

23 Furthermore, the evidence shows that the ethnic, religious and gender motives can be
24 invoked on the basis of the evidence available. The victims were largely from certain
25 ethnic groups, *such as the Gbaya. The victims were Christians ;

1 the victims were almost exclusively men.

2 The discriminatory intention of Mr Said was established, but the operation mode of
3 the crimes committed against the victims, which is described in paragraph 33 of the
4 document -- notification of charges.

5 Mr President, Madam, your Honours, the evidence summarised in the PCB clearly
6 establishes the existence of substantial grounds to believe that the crimes of
7 imprisonment, torture, cruel treatment and other inhuman acts, outrages to the
8 dignity of the person and finally, persecution were committed against detainees at
9 OCRB.

10 I would like to point out that there might be ongoing redactions, and I'm sorry. And
11 it is better to be cautious indeed.

12 Now, let me briefly ...

13 I will now turn to some elements regarding the modes of liability. Mr Said is
14 charged for crimes which he committed under modes of responsibility pursuant to
15 Articles 25(3)(a)(b)(c) and (d). However, for the purposes of my presentation, I will
16 only summarise the evidence relating to Article 25(3)(a) because this element or these
17 elements of evidence also apply to the modes of liability in the alternative provided
18 for under Article 25(3)(b)(c) and (d).

19 We respectfully, Mr President, ask your Chamber to confirm the charges under these
20 four modes of liability and to leave the ultimate decision on this question to the
21 Trial Chamber if you came to confirm the charges.

22 Your Honours, the evidence on the case file show that Mr Said participated in the
23 alleged crimes committed at OCRB as a direct co-perpetrator in the meaning of
24 Article 25(3)(a). As provided for in paragraphs 201 and 242 of our DCC, Mr Said had
25 a plan or an agreement with - and, I quote - the following persons, their names will

1 appear on the screen:

2 Mr Mohamed Nouradine Adam, who was Mr Said's superior; Mr Mahamat Tahir, his
3 deputy;

4 Mr Soumayele Yaya, the most trusted collaborator of his; Mr Mahamat Sallet,
5 a high-ranking official of the Séléka; Mr Hissene Damboucha, a high-ranking
6 personality within the Séléka and also deputy to Sallet;

7 Adoum Rakiss, deputy chief of the Central African Police;

8 And finally, Mr Fadoul Al-Bachar, deputy chief of CEDAD.

9 And as well, there were also other Séléka of the OCRB.

10 The agreement sought to target presumed supporters of Mr Bozizé by committing
11 those crimes outlined in counts 1 to 7. The existence of such an agreement is not
12 only established through the mutual and regular coordination in view of committing
13 the crimes, but also in the execution of the same crimes. The execution of the crimes
14 in itself discloses the existence of this coordination as well.

15 Mr Said exercised control on the commission of these crimes through his essential
16 contribution to the agreement of the co-perpetrators. The Prosecution relies on
17 evidence from at least nine insider -- insider witnesses who testify to the essential
18 contribution of Mr Said to the crimes.

19 Furthermore, several victims themselves described the direct participation of Mr Said
20 in their arrests and in the grievous mistreatments that they were subjected to. The
21 testimonies of victims are also, in part, supported by documentary evidence.

22 Throughout the entire period covered by the charges, Mr Said was in control of OCRB.
23 In that capacity, he ordered and supervised the arrest and detention of Mr Bozizé's
24 supporters.

25 He also ordered the detention of some of them in the cell which was called the hole or

1 the *trou*, which was under his office. Mr Said controlled access to that cell, which
2 was located under his office. He was able to see, hear or even smell the detainees
3 who were under his own office. He was fully aware of the conditions of their
4 detention and total absence of regular judicial procedures in regard thereto.

5 As you can see on your screen, there is an ordinance for the liberation of a detained
6 person. It is signed by Mr Said himself. The letter C stands for colonel and MSAK
7 are the initials of Mr Mahamat Said Abdel Kani.

8 Now Mr President, your Honours, Mr Said authorised the *arbatachar* torture methods
9 and said to the staff of OCRB that this was the best means of obtaining confessions.

10 As you will see in our brief at paragraph 226 to 235, Mr Said provided weapons, food,
11 vehicles, uniforms and identity cards to the Séléka.

12 On your screen you can see a sample of an identity card. And once again, you see
13 the initials CMSAK which refer to Colonel Mahamat Said Abdel Kani.

14 Mr Said was the Séléka leader when it came to operations that were carried out on the
15 ground involving arrests. His telephone number -- his mobile telephone number
16 was written on OCRB vehicles. With his subordinates, Yaya and Tahir, Mr Said also
17 conducted violent interrogations from another office which was situated within the
18 premises of OCRB. A witness describes how he was subjected to a fake execution by
19 Mr Said himself.]

20 Mr President, your Honours, the evidence presented by the Prosecution also
21 demonstrates that Mr Said contributed intentionally to the crimes charged and in full
22 knowledge thereof. He was present at all times at OCRB during the period charged.
23 Mr Said was also the most influential Séléka personality stationed at OCRB. He gave
24 orders and was the administrator of OCRB.

25 The evidence will show that the underground cell was located in his office and that he

1 ordered -- and that he ordered persons to be detained there. He also participated
2 himself in arrests and in the poor physical treatment of the detainees. He
3 coordinated and communicated regularly with his elements who also maltreated the
4 detainees. In other words, he had knowledge.

5 Finally, when it comes to evidence in support of liability in the alternative, as I
6 mentioned, we would like to refer you, Mr President, to paragraph 243 to 254 of our
7 pre-confirmation brief.

8 Now, let me turn to crimes committed at CEDAD.

9 After 31 August 2013, Mr Said and other former Sélékas of OCRB were transferred to
10 CEDAD, which is also situated or located in Bangui, as you can see on your screen.

11 You can see the external wall of CEDAD and the main entrance, and this image again
12 was collected by Prosecution staff on the ground in 2016.

13 Mr President, your Honours, CEDAD was only democratic by name because at least
14 between 15 September and or around 8 November 2013, at least 33 persons who were
15 considered to be Bozizé supporters were abducted and detained in the small cells at
16 CEDAD by Mr Said and his collaborators.

17 The modus operandi at CEDAD was also the following:

18 It is described in paragraph 64 of the DCC, and it entailed victims being abducted at
19 their homes or in the streets and violently forced into vehicles. The vehicles had
20 tinted glasses and had no licence numbers, known in Quebec as ghost vehicles. The
21 victims would be hooded and beaten. And in some cases, chili powder would be
22 added to the hoods and that would burn the eyes of the victims.

23 Quite often, the arrest patrol -- patrols would go around Bangui to ensure that the
24 hooded victims would not be able to locate the areas to which they were being taken.
25 CEDAD had to be dissimulated from the public and excluded from any judicial

1 oversight.

2 The CEDAD location or premises was surrounded by high walls and it was difficult
3 to identify it as a state agency or a detention centre. The judiciary, including the
4 police and the public
5 prosecutor, did not have access to CEDAD.

6 Arrests themselves were not only arbitrary, but victims were in all aspects deprived
7 of the application of the law throughout their detention at CEDAD. Their detentions
8 averaged -- lasted one week, but in some cases would extend to several weeks.

9 Victims were detained in small cells in disastrous conditions. And I draw your
10 attention to your screen. I also point out that these photographs were taken in
11 December 2013, about one month after the CEDAD was shut down or closed.

12 The cells were small and overpopulated or overcrowded. The cells had no toilets.
13 There were no medical facilities at CEDAD. Food and water were not provided in
14 sufficient quantity for the detainees. The detainees were regularly interrogated by
15 Séléka and quite often violently in regard to their presumed status as Bozizé or
16 Anti-Balaka supporters.

17 The detainees were not formally charged and their detention was not subject to any
18 judicial control.

19 Victims were also not authorised to contact their family members. The family
20 members did not receive any information and would search for their relatives as best
21 they could. Some went to the radio to seek information; others went to the
22 mortuaries to find out if their relatives had died. They had no information and so
23 thought that their relatives or close ones were dead. These essential facts support
24 the count of imprisonment and other inhumane acts.

25 Your Honours, the Prosecution recognises the particular suffering of members of

1 families by including the idea of other inhumane acts. The sufferance -- the suffering
2 by these members is so grievous that it bears similarity to the charges or to the acts
3 covered by Article 7 of the Statute. In this regard, I refer you, your Honours, to our
4 brief at paragraph 306-311.

5 The family members were not only left to their own devices without contacts or
6 information, but they were also threatened and even tortured if they managed to find
7 the site of CEDAD as experienced by one witness.

8 And with your permission, Mr President, I would like us to go to private session.

9 PRESIDING JUDGE AITALA: [15:48:37] Mr Court Officer, let's move to private
10 session, please.

11 (Private session at 3.48 p.m.)

12 THE COURT OFFICER: [15:48:43] We are in private session, Mr President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 3.50 p.m.)

5 THE COURT OFFICER: [15:50:40] We are back in open session, Mr President.

6 PRESIDING JUDGE AITALA: [15:50:49] Thank you very much, sir.

7 Mr Prosecutor.

8 MR MACDONALD: [15:50:53](Interpretation) Thank you.

9 During their detention, the victims were physically and mentally mistreated to such
10 a point that their treatment can be considered as torture. The detained persons were
11 severely beaten with wooden planks and rifles during questioning. Others were
12 burned with hot irons and left standing in the sun unhooded for hours on end. At
13 least 10 detainees were tied up according to the *arbatachar* method. As it has already
14 been said, this method is consistent with the crime of torture, but also to the crime of
15 outrages upon human dignity.

16 The crime of persecution was also perpetrated against the victims in CEDAD. The
17 victims were deprived of their fundamental rights. They were taken as targets for
18 political, ethnic, religious or sexist reasons.

19 For the detainees in the OCRB and the CEDAD detainees, those in CEDAD were
20 almost exclusively Central African men, Christians from the Gbaya, Banda and
21 Mandja ethnic group. The specific discriminatory intention is highlighted by the
22 model of criminal behaviour and also as described by the statements given by the
23 Séléka of CEDAD during the relevant period.

24 Mr President, your Honours, the evidence establish also that there are sufficient
25 grounds to believe that the crimes of imprisonment, torture, cruel treatment, other

1 inhumane acts, outrages upon human dignity and persecution were perpetrated
2 against the detained persons and that other inhumane acts were perpetrated against
3 their loved ones who were not informed about their fate.

4 The criminal individual responsibility of Mr Said at the CEDAD, and it can be
5 described as follows:

6 Mr Said is accused of having provided all assistance possible in the commission of
7 crimes in CEDAD under Article *25(3). In the alternative, Mr Said is reproached
8 for having contributed in all manners possible in the commission of crimes by a group
9 of people acting in concert under Article 25(3)(d). Many insider witness stated that
10 Mr Said directly contributed to the crimes charged.

11 A witness, which I shall not mention in public session, explains that Mr Said became
12 the commander of operations for Mr Adam in the CEDAD. In that capacity, he was
13 responsible for the recruitment and organisation. And he had under his orders, five
14 colonels who supervised patrols for arrests. And the code is P-2105.

15 The Séléka that Mr Said commanded at the OCRB had also been transferred with him
16 to the CEDAD, and that is testified to not only by witness statements, but also by
17 a document; namely, a list of the Séléka of the CEDAD which you can see on your
18 screens.

19 On that document, you can see the names of Mr Mahamat Tahir, Hissene Damboucha,
20 Mahamat Sallet as well as the name of Mr Said himself.

21 The colonels who were under the orders of Mr Said had about 20 men under their
22 responsibilities. According to the evidence, Mr Said even had a list containing the
23 names of people to be abducted. This list had been provided to him by Mr Adam.

24 Mr Said equally carried out personally patrols and arrested victims with his
25 subordinates.

1 (Redacted)

2 (Redacted) Furthermore, he acknowledged or he was
3 recognised by Witness P-3029 as one of the leaders of Séléka at the CEDAD who
4 brought people tied up according to the *arbatachar* method within the compound of
5 CEDAD.

6 Lastly, another witness, P-1004, described how Mr Said supervised personally the
7 serious beatings of detained persons. And now, I'm almost at the end.

8 Mr Said -- I will talk about knowledge and intention.

9 Mr Said acted for the purpose of facilitating the commission of crimes at the CEDAD.

10 Witness P-0853 remembers that Mr Said was regularly present and sometimes even
11 slept at CEDAD.

12 Witness P-3029 also saw blood on the clothes on the ground in the compound which
13 confirms once again the poor treatment inflicted at CEDAD.

14 Neighbours to the CEDAD compound reported having heard the cries of people who
15 were being maltreated.

16 Lastly, the compound was small and its cells were visible both from the entrance and
17 from the building containing the offices. It is inconceivable that a person frequently
18 and regularly at the CEDAD would not have noticed what the detainees -- that the
19 detainees were there.

20 Mr President, your Honours, I will conclude.

21 It is our submission that on the basis of the essential facts presented in the DCC,
22 supported by our list of evidence and as summarised in the pre-confirmation brief, it
23 is necessary to confirm the charges and all the modes of responsibility.

24 For the ascertainment of the truth, it will be necessary to refer Mr Said for trial.

25 Thank you for your attention.

- 1 PRESIDING JUDGE AITALA: [15:59:08] Thank you very much, Mr Prosecutor.
2 So it's almost four. Thank you for finishing before 4 p.m.
3 Now the schedule for tomorrow will be that we will -- I will give the floor to the
4 counsel for the victims, to the counsel for the OPCV. And for tonight, I think this is
5 all.
6 I would like to thank everyone and especially all the court staff, our interpreters,
7 technical staff and everyone who's contributed to this hearing.
8 We will see you then tomorrow at 9.30 and have a nice evening.
9 Thank you very much.
10 THE COURT USHER: [15:59:57] All rise.
11 (The hearing ends in open session at 4.00 p.m.)