

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Rosario Salvatore Aitala, Judge Antoine Kesia-Mbe Mindua and
6 Judge Tomoko Akane
7 Confirmation of Charges Hearing - Courtroom 3
8 Wednesday, 13 October 2021
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:43] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE AITALA: [9:32:08] Good morning, everyone.
14 Parties, participants, Mr Said, good morning.
15 Court officer, will you please call the case.
16 THE COURT OFFICER: [9:32:19] Good morning, Mr President, your Honours.
17 This is the second situation in the Central African Republic, in the case of The
18 Prosecutor versus Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
19 And for the record, we are in open session.
20 PRESIDING JUDGE AITALA: [9:32:37] Thank you very much.
21 So this morning our schedule will continue with the submissions from
22 the -- the statements from the representative of victims, the representative of OPCV.
23 Madam Counsel, the floor is yours.
24 MS PELLET: [9:32:59](Interpretation) Thank you, Mr President.
25 I really do not have any substantive observations at -- I do not have any substantive

1 observations to make during this present session. But I will make my statements in
2 my final statements that will be made subsequently, pursuant to the time I was
3 allotted in your decision. Thank you.

4 PRESIDING JUDGE AITALA: [9:33:27] Well, thank you very much then. We take
5 note that you are renouncing making statements at this stage. Then, Madam
6 Counsel, the floor is with the Defence. You have three and a half hours overall, so,
7 yeah, the first chunk of one and a half hours before we break, please.

8 MS NAOURI: [9:34:10](Interpretation) Thank you, Mr President.* As we recalled in
9 our opening statement, the narrative of the Prosecutor is fragmentary, laconic and
10 presents the central African reality through a simplistic prism, and the consequence is
11 that they omitted important elements for the understanding of events. * It would first
12 be necessary to deal with the ins and outs that make it possible to understand the
13 situation as it existed on the ground during the period of the charges before
14 determining the legal characterization of this situation, it is crucial because
15 the judicial consequences that will arise from the qualification of the situation which
16 prevailed in the CAR between March and September 2013 shall be important with
17 regard to the basis of the charges alleged by the Prosecution and, in particular,
18 concerning war crimes.

19 My presentation will be supported by a PowerPoint so as to give it a bit of a structure.
20 It will be presented on evidence 2.

21 Throughout its DCC and the PCB, the Prosecution postulates that, one, first of all,
22 Seleka existed as a clear, hierarchical and structured group, paragraph 11 of the DCC
23 and 18 of PCB, that it was a group capable of carrying out coordinated operations.
24 And secondly, that structure is supposed to have stood the test of time and became
25 the state, paragraphs 20 to 26 of the PCB.

1 In reality, as its name indicates, the Seleka is a mere coalition which means an
2 ephemeral alliance of people and groups for the purpose of making their voices heard,
3 their grievances heard, in this case against the policies of President Bozizé. This
4 alliance does not mean that all the participants are in agreement on how to resolve
5 the discontent and so, consequently, this coalition does not constitute an organisation.

6 * It is for this reason that it is incumbent on us to consider the facts concretely and to
7 look into whether the Seleka was an armed group, particularly because this issue was
8 never discussed in an adversarial manner based on concrete elements.

9 The reason motivating the creation of * these opposition groups, we know that
10 the various groups making up Seleka create -- were created to oppose
11 President Bozizé * in an attempt to allow for a truly democratic opposition. And this
12 is document 93, 140, 141 and 148.

13 * The number of groups, and therefore of leaders multiplied in the years 2000.
14 Document 93, 115 and 141. These groups were particularly numerous.

15 * The Prosecution in its DCC paragraph 11, and PCB paragraph 13, gives a simplistic
16 view of these groups, which formed as a circumstantial alliance, the Seleka. The
17 Prosecutor neither explains its specificities nor its leadership problems.

18 So we can mention here all the internal fights. And we cannot talk about all
19 the contradictions and internal contradictions, but we will give an overview. * We will
20 talk about the claimed paternity of some of those groups because this saga is complex
21 and circumvoluted and this sage was documented. We will choose the most revealing
22 examples of the lack of cohesion and homogeneity among those groups. The first
23 group, the creation of the FDPC, the Democratic Front, on 15 June 2004. The first
24 president of the FDPC was supposed to be Abdoulaye Miskine. He is supposed to
25 have created that movement on 15 July 2004 and * signed a ceasefire agreement with

1 the government of Bozizé on 2 February 2007.

2 From that moment, the fate of this movement was quite fluctuating: First of all,
3 because the agreement was not -- the peace agreement was not respected by
4 President Bozizé. FDPC launched an attack against FACA, which led to a new
5 agreement on 3 July 2009. Document number 50.

6 The enemies of yesterday became the friends of today. In January 2012, Abdoulaye
7 Miskine fought alongside FACA.

8 In January 2012, Abdoulaye Miskine fought alongside FACA, * the forces of Bozizé,
9 against the FPR, the movement of Baba Laddé. Document 151.

10 And that did not prevent Abdoulaye Miskine later on from participating in a meeting
11 in Niamey in 2012 in the presence of Michel Djotodia and Joachim Kokaté, members
12 of the CPJP. Document number 125.

13 After Niamey, Abdoulaye Miskine, Michel Djotodia and Joachim Kokaté are
14 supposed to have put in place FURCA, the United Front for the Renaissance of the
15 Central African Republic. It was a first alliance to fight against President Bozizé, and
16 that was done on 15 March 2012.

17 However, Joachim Kokaté immediately left that alliance and joined President Bozizé.
18 Document number 50.

19 Subsequently, in autumn of 2012, Abdoulaye Miskine is supposed to have also
20 participated in the same capacity as the UFDR, the CPJP-Fundamental and the CPSK,
21 in the creation of Seleka. Document 151.

22 It is interesting to note that in March 2013 Abdoulaye Miskine left Seleka to fight
23 against that same movement and that in a *communiqué* dated 10 September 2013,
24 Abdoulaye Miskine announced that his party, the FDPC, was joining FROCCA, Front
25 for the Restoration of Constitutional Order in the Central African Republic, which

1 was a movement associated to President Bozizé.

2 Here we have a perfect example of the opportunism which guided the various groups
3 and factions. Abdoulaye Miskine changed alliance based on developments in
4 the situation in the CAR. Exhibit 151.

5 Now, regarding the Union of Republican Forces, Florian Ndjadder presented himself
6 as the leader of the UFR that is supposed to have created after having been arrested
7 and tortured by President Bozizé. Document 82.

8 He * allegedly signed the global accord on 15 December 2008 on behalf of the UFR.

9 However, the evidence on his group on the field is thin and the representatives of
10 the DDR responsible for disarmament * allegedly acknowledged that this group never
11 really existed. Document 141. It is interesting to note that we have contradictory
12 elements, and some insider witnesses indicate that the UFR was reportedly not a part
13 of Seleka. * Document 131, line 260.

14 Other sources indicate that the circumstantial coalition benefited from * intermittent
15 support of the UFR. Document number 45.

16 * Now let us turn our attention to the creation of the Union of Democratic Forces for
17 Development, UFDR, and the internal squabbles within that movement which is
18 supposed to have been set up on 14 September 2006. The UFDR is one of the most
19 emblematic groups which later participated in the * so-called Seleka coalition, but it is
20 also one of the groups for which contradictions are numerous. The information at
21 our disposal provide very different information regarding the paternity of the group
22 and its members who kept on opposing each other and fighting against each other.

23 I will refer you now, amongst other things, to the following references: P-413,
24 paragraph 48. Exhibit 320, lines 852 to 855. Document 141, pages 430 to 432.
25 Document 131, page 125. Document 50, page 163 and 164. * Document 86.

1 Document 125. And Document 320, pages 985 and 999.

2 Let us take an example. Some witnesses state that the UFDR was created by

3 Michel Djotodia and Damane Zakaria in 2006, specifically P-413 and P-1019.

4 Other well-informed sources explain that, from the outset, the groups making up this

5 union were composed by armed men from rural areas who were uncentralised, and

6 they made up flexible alliances before transforming themselves into rebels.

7 Document 141 * page 430.

8 Because of monetary reasons, there were skirmishes between the various groups.

9 And that led, after 2005, to Goula leaders, including Damane Zakaria, to create an

10 alliance with Abakar Sabone, another former liberator who had turned against

11 President Bozizé.

12 Now, given that Abakar Sabone was in Cotonou, in consideration of the facts, it

13 seems that it was Damane Zakaria who was in fact the leader of the UFDR.

14 Document 141.

15 Other sources indicate that the UFDR was allegedly led by Florian Ndjadder who

16 claimed attacks that took place between 2005 and 2007. Document 131, page 125.

17 It is also interesting to note that while Michel Djotodia was jailed with Abakar Sabone

18 in Benin, Damane Zakaria signed an agreement, a peace agreement with Bangui in

19 April 2007. And thereafter, Damane Zakaria was appointed into the government of

20 President Bozizé. And this was disapproved by Michel Djotodia, and that led to

21 confrontations between rival factions of the UFDR. Document 50.

22 Michel Djotodia dismissed Damane Zakaria in May 2008 and replaced him by

23 Younous Oumar and Joseph Zoundeko. Document 50.

24 It is interesting to also note that shortly after June 2008 Abakar Sabone left the UFDR,

25 and he had been the spokesperson of that movement, but he took over the MLCJ in

1 2008. Document 50.

2 Abakar Sabone changed camps on several occasions. Document 125.

3 This information show clearly that within the same group there were serious
4 disagreements. And it is practically impossible to establish who was the leader of
5 the group because the final objective of everyone to -- was to accede to positions of
6 power that were financially beneficial.

7 Now I will go to the creation of the Convention of Patriots for Justice and Peace, CPJP,
8 in 2008. It was never a unanimous decision and its internal functioning was
9 characterised by constant power struggles.

10 * A source in a unique position indicates that in 2008 Dhaffane is supposed to have

11 created the Convention of Patriots for Justice and Peace, CPJP, with Nouredine

12 Adam. It was supposed to be a political party. P-413, paragraphs 49 and 51.

13 More specifically, the CPJP was allegedly created by Dhaffane and Issa Bourma,

14 the uncle of Nouredine Adam. P-413, paragraphs 53 and 54.

15 Dhaffane then took over the political leadership of the CPJP, but allegedly was not

16 aware that Nouredine and Ali Mahamat Daba and Al Bachar Fadoul, whose father is

17 the uncle of the mother of Dhaffane, were organising combatants in the field. P-413,
18 paragraph 60.

19 Other well-informed witnesses stated that the CPJP was created by Nouredine

20 Adam and Abdoulaye Hissène - document 321, page 1028 - and that there was

21 a disagreement between these two men which led to the creation of the two wings of

22 the CPJP - P-0291, paragraph 51 - and that subsequently Charles Massi took over

23 the movement.

24 It was only after the death of Charles Massi that Abdoulaye Hissène and Nouredine

25 Adam fought against each other to take over the leadership of the CPJP. P-413,

1 paragraph 61. According to others, the CPJP is supposed to have been created by
2 Charles Massi after having been a minister under President Bozizé. Document 141,
3 page 432.

4 With regard to Abdoulaye Hissène, he supposedly remained at the CPJP and allied
5 himself with President Bozizé for the purpose of fighting against the Seleka.

6 Document -- P-1019, page 1029.

7 It is interesting to note that certain elements indicate that the UFDR and the CPJP,
8 which were temporarily allied within the Seleka, * clashed with each other over a long
9 period of time against a backdrop of ethnic tensions between the Goula and the

10 Runga for the control of territories and resources. Document 45, page 1892.

11 Several materials at our disposal illustrate the internal chaos within the CPJ and their
12 relationships with the other groups. * And here I refer to exhibit 141, page 0432;

13 document 45, page 1892; document 47, page 0027; document 50, page 0163; document
14 35, page 0249; document 72, document 68 -- or, rather, document 72, page 68, and the
15 testimony of P-0291, paragraph 51.

16 In the final analysis, who amongst Abdoulaye Hissène, Nouredine Adam,
17 Charles Massi and Mahamat Zakaria created the CPJP and was the leader? Who had
18 the authority to sign agreements on behalf of the CPJP? *Impossible to know or to say!

19 One last word on the creation of the Patriotic Convention for the Salvation of Kodro,
20 the CPSK, in June 2012.

21 Dhaffane is supposed to have created the CPSK in June 2012 after having been
22 a member of the CPJP. Document 50, page 164, and document 12.

23 And yet, other information in the case file show that Dhaffane was a member of the
24 UFDR on an individual basis without his own group and that the CPSK never existed.

25 Document 321, page 1031. According to others, Dhaffane simply coordinated

1 the action between the former comrades of President Bozizé who had fled and
2 the UFDR. Document 320, page 0998.

3 Whatever the case, the power struggles internally between Mohamed Moussa
4 Dhaffane, Michel Djotodia and Nouredine Adam created situations that were
5 complex and difficult to follow, even well * before March 2013. We will refer you to
6 the following documents: Number 125, number 385, number 50, number 77, number
7 143, number 112 and number 95.

8 Each group that was a part of the coalition from the very outset experienced internal
9 conflicts and, yet, the Prosecution does not mention that. They behave as if
10 the various groups were clearly defined and that they had the capacity to coordinate
11 themselves and yet nothing could be further from the reality.

12 For example, why does the Prosecution not mention that the CPJP was created
13 independently from the UFDR and that from the very beginning there was a power
14 struggle at the head of the CPJP?

15 Upon analysis, it seems that these groups were disparate and that it was
16 a hodgepodge of different groups that did not co-exist in a peaceful manner.

17 The internal struggles and external struggles added to the fight for legitimacy to be
18 recognised as opposition. The legitimate opposition to the government prevented
19 any form of coordination. The levels of division were not resolved by the temporary
20 coalition of these various groups.

21 And this is what was referred to as the Seleka. This was an opportunistic creation in
22 reaction to the government of President Bozizé.

23 The only element that brought together in an ephemeral manner part of these groups
24 which operated independently from each other, * and as we have just seen where
25 sometimes rivals was their discontent against President Bozizé. So this was a mixed

1 basket of a coalition which was joined by other groups subsequently. Document 27.

2 Sometimes Seleka was * described as a regional movement, and according to Roland
3 Marchal, a researcher in Ceri-Sciences-Po and a specialist in the CAR, they were, and I
4 quote, "nothing more than a federation of armed groups that were themselves poorly
5 structured without any real chain of command." Document 113.

6 So there was no hierarchy between the Seleka groups. The elements that made up
7 the different groups were scattered in the various zones and even in other movements,
8 and their numbers were insufficient. Document 152.

9 It appears that in reality these groups came together in 2012 for a single reason, that is
10 to participate in the Libreville summit on 11 January 2013.

11 It should be noted that in February 2013, that is one month after the Libreville accords,
12 the presidential camp multiplied its provocations and in March 2013 President Bozizé
13 did not respect the Libreville accords. President Bozizé even announced during
14 a ceremony to celebrate his 10 years in power that he would be, once again,
15 a candidate in the upcoming elections, which was in contradiction with the Libreville
16 accords. P-291, paragraph 58. Document 407 and document 146.

17 Now, regarding the circumstances of the arrival of Seleka in Bangui, it was not
18 a coordinated military operation.

19 The Prosecution postulates that what they refer to as Seleka reportedly succeeded in
20 capturing Bangui and they put that forward as evidence that Seleka was capable of
21 organising themselves. Paragraph 18 of the PCB.

22 This attempted explanation, *a posteriori*, does not stand up to analysis. The evidence
23 relied upon by the Prosecution show that the arrival in Bangui was not coordinated.

24 Nothing was organised and nothing was planned.

25 The evidence is clear. Those who are supposed to have been the masterminds

1 behind Seleka, those who were supposed to have been giving orders, according to
2 the Prosecution, were taken hostage in Bambari by UFDR elements. P-1019, lines
3 1 -- 545 to 546, document 407, paragraph 24, and * P-0291, paragraph 13.

4 This hostage taking took place in the days preceding the advance towards Bangui and
5 these people were maintained incommunicado during that period. P-291,
6 paragraph 63. And these so-called people who issued orders learned over the radio
7 that the groups making up Seleka were advancing towards the red line and in
8 the direction of Bangui. Document -- P-1019, pages 1041, 1053, 1054 and 1061. It is
9 evident from the evidence that it is not clear who gave any orders at all. Document
10 321, lines 1 -- 573.

11 An insider witness states clearly, and I quote: "What happened between
12 the international community and Seleka, God alone knows." Document 321, lines
13 1249 to 1251.

14 In such a context, it is difficult to imagine the existence of any sort of chain of
15 command. P-1019, who is a well-informed source, indicates that President Djotodia
16 was not aware of the military chain of command because he arrived Bangui only after
17 the groups that made up the Seleka alliance had already arrived. Document 320,
18 lines 1508 to 1513. And that President Djotodia was not aware of what had
19 happened between his arrival in Bangui. Document 320, page 1008.

20 In the same vein, none of the high-ranking dignitaries of the so-called Seleka received
21 any report related to the incidents involving South African elements during which
22 the person who was supposed to be the chief of military staff, Issa Issaka, was
23 injured. Document 320, * page 1011, line 1624.

24 It was only after Issa Issaka went to Sibut that the leaders of the biggest parties of
25 Seleka became aware of that isolated incident. Document 321, page 1059. And this

1 clearly proves the absence of a structure and a chain of communication.

2 The Prosecution prefers to ignore the testimonies coming from well-informed sources
3 and states in its PCB that "the capture of Bangui in * March 2013 was methodically
4 planned by the military leaders, the high-ranking military leaders of Seleka, amongst
5 others President Michel Djotodia, Noureddine Adam and Mohamed Moussa
6 Dhaffane." End of quotation, paragraph 19 of the PCB. And this paragraph 19 is
7 based on a single witness, that is Witness P-0776.

8 Now, regarding Witness P-776, * we are going to consider that the decision of the
9 Chamber concerning him is valid from the moment when there was no longer any
10 possible contact with him, the Chamber will therefore not rely on his statement.

11 This information coming from 776 is moot.

12 * Regarding P-1167, who should be coming to corroborate P-776, the Prosecution did
13 not refer this in the PCB, but would like introduce it in a roundabout way through a
14 recent motion, because they are aware of how weak their case is. So this witness
15 reported a hearsay from someone, from a third party, who himself had heard only
16 about what had been discussed. The Prosecution feels that they can lay
17 the foundation for such an allegation based on an anonymous statement and on
18 hearsay, which are both sources with very low probative value.

19 And yet, the Prosecutor has in their disposal information indicating the contrary and
20 they did not find it useful to present that information to the Chamber.

21 And it was also based on hearsay reported by P-1167 that the Prosecutor based his
22 allegation according to which the above-mentioned military leaders met to draft an
23 operations plan.

24 And yet, P-1167 clearly indicates * at paragraphs 27 to 33 that he heard about the plan,
25 and I quote, "to capture Bangui" through a person that he describes as a Seleka rebel

1 who himself had heard about that plan from a colonel who is supposed to have
2 participated in a meeting. There is therefore nothing tangible. This is
3 second-degree hearsay.

4 This double anonymous hearsay is the only source used by the Prosecution that is
5 supposed to have made it possible to prepare a plan by the various groups in order to
6 advance to Bangui. And yet we have seen that there is an abundance of evidence to
7 the contrary, coming, amongst others, from the statements of the highest ranking
8 officials and the most informed individuals.

9 Now, once the groups making up Seleka arrived Bangui, what happened?

10 Michel Djotodia, who was not in Bangui, finally went from Sibut to Bangui in
11 the afternoon of 23 March 2013. Document 320, pages 1007 and 1008.

12 It is important to note here that on the eve of that day, * Michel Djotodia had received
13 support from international stakeholders, document 320, lines 791 to 807, lines 624 to
14 658 and lines 747 to 802. Djotodia had received international support, particularly the
15 support of the ambassador of France. Document 320, lines 1888 and 1891. Document
16 329, lines 268 to 272. On 24 March 2013, Michel Djotodia proclaimed himself as
17 the president of the Republic and very quickly the situation was formalised and led to
18 the creation of the National Transitional Council on 13 April 2013. So this was
19 the creation of a government of national union, not a Seleka government, as claimed
20 by the Prosecutor. Since 31 March 2013, President Djotodia nominated a union
21 government. I refer to exhibit 2004-1597, page 1605 to 1607. Exhibit 45 and
22 exhibit 407. The government of the national union was made up of 34 ministers, only
23 nine of them were officially affiliated to the ex-Seleka. Exhibit 45.

24 Yet, the Prosecution is not really interested in the reality of this government which
25 was made up by President Djotodia and focused solely on the nomination of former

1 members of the alliance which was the Seleka. Paragraph 20 of the PCB.

2 But if we analyse the material which the Prosecution submits for this assertion, it

3 appears clearly that here is a government of a national union which is made

4 within the -- whilst respecting the constitution and the Libreville agreement of

5 11 January 2013. Exhibit 287. A government with Nicolas Tiangaye as prime

6 minister. P-291, who has a unique position, indicates, and I quote:

7 "All the groups who participated in the Libreville Summit were represented in

8 the transition government, including the ministers of the former regime of Bozizé."

9 Paragraph 75. By applying the presidential decree, number 13.011 to 13.009 - this is

10 exhibit 2004-1597 - personalities with a profile of * experts in their field and

11 representatives of civil society were also appointed. For example, Arsène Sende,

12 magistrate, who became a minister of justice; or Charles Armel Doubane, former

13 ambassador of the Central African Republic at the United Nations, became

14 the minister of foreign affairs. Exhibit 407. In these circumstances, to talk about

15 a Seleka government does not reflect reality. As regards the National Security Council,

16 the proceedings carried out by the Prosecution is the same. They only mention

17 Nouredine Adam as one of the members, but omit to specify that * the presidential

18 decree to which the Prosecution refers is on the footnote of page 57 of the PCB, states

19 that this council is made up of several ministers representing very different

20 affiliations.

21 On 13 positions, only three former Seleka. Especially what the Prosecution does not

22 say, that COMFORCE of FOMAC, the attaché of the defence for the -- France and

23 the mediator representative responsible to resolve the crisis in the Central African

24 Republic were also part of this body and were there to be consulted. * It's as if the

25 Prosecution was ignoring the security context that existed in Bangui the moment of

1 that -- of setting up of that council, which, as the name indicates, is a national council
2 for security. And also the Prosecutor seems to be oblivious of the security context
3 generally and its impact. President Djotodia never denied that the Security Council
4 exists since March 2013 and that that was very difficult. As soon as he took over
5 the functions, the bandits and individual -- spontaneous individuals suddenly
6 cropped up within the Seleka because they hoped to obtain advantages through that.
7 *Exhibit 321, lines 267 to 282; Exhibit 149, page 2571; P-2841, paragraph 83; P-2563,
8 line 704; Exhibit 155; Exhibit 153 and Exhibit 262. In the same way, President Djotodia,
9 as well as the prime minister Tiangaye, publicly intervened to explain that
10 * the elements claiming to be ex-Seleka must be billeted to avoid problems of
11 criminality. Exhibit 320, line 1778 to 1795. * Exhibit 321, line 1468 to 1482.
12 * It should also be noted that some individuals had seized weapons and were looting
13 while pretending to be elements of the Seleka. Exhibit 180 and exhibit 155.
14 As P-234 stated, a man of law, *des gens* without belief or law * were suddenly claiming
15 to be Seleka. P-0234, page -- paragraph, sorry, 68.
16 President Djotodia decided to try and disarm *the elements claiming to be ex-Seleka.
17 Exhibit 261. Exhibit 320, line 1776 to 1820. Exhibit 321, line 1474 to 1481, and line
18 1598 to 1609.
19 President Djotodia then went against -- visited the leaders of the neighbourhoods to
20 try and disarm the various areas in Bangui. Exhibit 2.
21 In May 2013, the prime minister announced that the combatants who did not obey, be
22 they Seleka or former members of FACA, would not be authorised to hold arms and
23 had to hand them over as soon as possible before they would go to the barracks
24 outside Bangui. Exhibit 45.
25 It should be noted that on 12 September 2013 President Djotodia announced

1 the immediate dissolution of the Seleka coalition. Exhibit 26. And he took a decree
2 to formalise this dissolution. Exhibit 160.

3 Article 2 of the decree specifies that * any individual who was acting on behalf or in
4 the name of Seleka and the CPJP would be subject to sanctions. It therefore becomes
5 apparent that the state didn't have any impact * on representatives of the different
6 groups present in Bangui.

7 In particular, an expert commissioned by the Prosecution in the case Yekatom and
8 Ngaïssona indicates, and I quote: "The Seleka was a circumstantial coalition of armed
9 groups, the reality of power did not find itself in the government of
10 Michel Djotodia/Nicolas Tiangaye but with the commanders.

11 Amongst them, the hierarchy and the discipline was quasi-inexistent. On the one
12 hand, the Seleka was ungovernable because of the absence of internal discipline. On
13 the other hand, it was not capable of governing because the armed groups which
14 made it up had only one aim (to oust President Bozizé) and they did not have people
15 capable of running the country. They were barely functional. The government did
16 not have any authority on the Seleka commanders.

17 Even the political representatives of Seleka had no influence on the commanders and
18 amongst themselves they didn't obey each other. The different armed groups did
19 not -- only recognised the authority of their direct leader." Exhibit 407.

20 This is an expert of the Prosecution, Roland Marchal, who is a well-informed
21 individual who was responsible for research in the CRNS, explains the Seleka as
22 follows, and I quote:

23 "There was no real political control: it was, rather, a federation of armed groups, who
24 they themselves were weakly structured, without a -- without a real chain of
25 command." Exhibit 113.

1 In the same vein, Clotaire Saulet Surungba states clearly, and I quote:

2 "However, it is easy to confirm with force that after 24 March 2013, the leaders of
3 the Seleka, as well as the president of the Republic, Michel Djotodia, lost control of his
4 men, both at Bangui as well as in the interior of the country." Exhibit 137, page 73.

5 He also explains that the so-called different ranks of the different individuals were
6 self-imposed, and I quote:

7 "The Seleka combatants did not recognise any hierarchical authority and their
8 'military culture' was such that they had a preference for the rankings of captain,
9 colonel and general, which they gave themselves.

10 One could see a colonel seated in the back of a pick-up, with a captain comfortably
11 seated in the passenger seat of a vehicle driven by a general!

12 The officials and the senior ranking individuals of the administration had no
13 relevance for these new masters."

14 End of quote. Exhibit 137, page 74.

15 Testifying before the American Congress, an expert indicated, and again I quote:

16 "There still is no internal cohesion within the Seleka movement.

17 The Seleka is born from a coalition of combatants coming from rebel groups which
18 have existed already for a long time and historically they are against each other, and
19 they conflict with each other, without any loyal troops to individual commanders,
20 with a poor hierarchical system.

21 There is no agenda, no ideology, or political platform which is consistent behind
22 the Seleka movement, apart a general feeling that the northern part of the country
23 was historically overlooked.

24 Apart from that they were principally Muslims and motivated by opportunism, there
25 was not a lot which the Seleka movement had in common.

1 ... The absence of internal control meant that it was difficult for the political leaders to
2 have any impact on the various arms of the movement."

3 * Exhibit CAR-OTP-2081-0496, page 0531.

4 Similarly, the Defence refers to exhibit CAR-OTP-2001-1767, page 1779, P-0291,
5 page 0048. Exhibit CAR-OTP-2081-0496, page 0531. And exhibit 113, page 7.
6 Sorry, page 0007.

7 In such a context, it's very difficult to understand why the Prosecution qualifies
8 the OCRB and the CEDAD as a Seleka base. Paragraph 21 of the PCB.

9 In analysis, it appears that the OCRB and the CEDAD is in the state structure which
10 was attempting to run smoothly.

11 From the available material, it seems that the OCRB is an office which pre-existed
12 the government of President Djotodia. Exhibit 115. * Exhibit 323, lines 145 to 167
13 to -- P-0338, page 5764 to 5767.

14 This not only existed but was included in the state structure and which continues,
15 despite the difficult conditions, to fight against widespread banditry. P-1167,
16 paragraph 59.

17 Let me remind you that the OCRB is managed by General Louis Mazangue.

18 * Exhibit 323, lines 1460 to 1466; and Exhibit CAR-OTP-2034-1740.

19 * Furthermore, some witnesses, such as P-1019, described Mazengué as the major
20 player of the OCRB. Exhibit 323, line 1460 to 1466.

21 The OCRB was under the authority of the general direction of the Central African
22 police. And here I refer to CAR-OTP-2034-3653, page 3654.

23 The direction of the general police of the Central African Republic was under
24 the authority of the minister of security.

25 And here I refer to CAR-OTP-2034-1740. And exhibit 323, line 149, and

1 line 190 to 199.

2 The OCRB, above all, is a police office which is included in the state structure and
3 which * would step in in a period which had a high rate of criminality and
4 delinquency.

5 The Witness 1167, which the Prosecution refers to frequently, states the following,
6 and I quote:

7 "The OCRB had to intervene when there were serious crimes committed, including
8 violent crimes. For example, theft by the -- which was carried out with arms. * 114 is
9 the police emergency number, which already existed in the past. The OCRB staff
10 received telephone calls from the public on that particular line. The people pointed
11 out offences, principally theft, and the staff of OCRB intervened often in situ."

12 Paragraph 58.

13 Furthermore, OCRB got to know, and I quote:

14 "There were frequently offences between citizens, as well as pointing out offences
15 committed by the Seleka, such as theft and looting, where the Seleka or the OCRB also
16 took action." Paragraph 59.

17 Which is also confirmed by French military, which is * CAR-OTP-2116-0776.

18 As regards the way in which the OCRB functioned since March 2013, let me remind
19 you here that at the very beginning when the transition power became in operation,
20 almost all the FACA or police had fled and there was a serious lack of staff. This is
21 * CAR-OTP-2093-1142 at line 1185, line 1439 to 1453.

22 The OCRB was understaffed. That's the reason why the position of the transitional
23 government was that even if the duty police took their work, other voluntary
24 elements who were present must stay there to offer support. And it's one of the
25 insider witnesses who says this. * And I refer to Exhibit 323, line 1421 to line 1453.

1 Consequently, the individuals in OCRB under the direction of Mazangue were not
2 Seleka but voluntaries who tried to help in a chaotic situation where there were was
3 banditry taking place at an alarming rate.

4 This situation created chaos within the OCRB where it was impossible to establish
5 who was in charge. There was no hierarchical structure. It was simply impossible
6 to know what sort of hierarchical structure existed. There were a lot of individuals
7 who were trying to take action to fight against banditry.

8 P-234, who knew what was going on and said, and I quote:

9 "You ask me who was at the head of the OCRB. It's difficult to say because it
10 changed all the time." Paragraph 98.

11 And I stress the importance of this witness who is in a good position to understand
12 what was going on.

13 * From the evidence of the Prosecution, there was a structural problem with the
14 functioning of the OCRB which, as a result, makes it impossible to know who the
15 head of the OCRB was. We'll come back to that a little later on.

16 But we should note now that the OCRB worked together with the prosecution of
17 the Republic. Many witnesses corroborate this.

18 When analysing this, that despite of the poor means available to the OCRB and
19 the constant chaos, the OCRB worked together with the prosecutor of the Republic to
20 make sure that arrests and detentions were part of a judicial review. We will go back
21 to that a little bit later today and we'll quote many witnesses who can uphold this.

22 According to the prison population of the OCRB, P-2239 states, and I quote:

23 "The majority of other prisoners were all young delinquents in Seleka who were
24 accused of theft, drug trafficking and breaking in." Paragraph 48.

25 P-0885 states, and I quote: "The Seleka who committed crimes were taken to the

1 OCRB." Paragraph 53.

2 And he continues: "When there was an arrest of a member of the Seleka, when -- took
3 that person to the SRI or to the OCRB. There were police and gendarme in those
4 locations. The local population called us to tell us about crimes." Paragraph 49.

5 P-2563, as far as he was concerned, he had the following explanation. Answering
6 the question: * " Can you give us an example of the type of offences that the Seleka
7 had to commit to be imprisoned in the OCRB if you have any?"

8 The answer: "The majority of time they looked at the cases of the people they took
9 drugs, they stole things and they drank too much alcohol."

10 And, therefore, it's very difficult to understand how the Prosecution bases its
11 arguments on the OCRB was a Seleka base, whereas it's a location where *delinquents
12 and criminals, claiming to be Seleka, were imprisoned. A strange base for the Seleka,
13 the function thereof being to imprison ex-Seleka or looters claiming to be Seleka and
14 to subject them to a normal legal procedure, given that they were presented to the
15 Prosecutor of the Republic.

16 Turning to CEDAD, the former National Bureau of Documentation, BND, which
17 became the Extraordinary Committee for the Defence of Democratic Rights, here it
18 had the same function of the OCRB. It had a state structure.

19 So let us look at the analysis. It appears that the first criteria to allow us to qualify
20 this as an armed conflict, the situation in the Central Republic of Africa between
21 March and September 2013, are not met. The Prosecution, under general expressions
22 such as the "Seleka" cannot sidestep the reality that there was not, between March and
23 September 2013, an organised group capable of carrying out military operations.
24 The reality is that this was a coalition grouping a nebulous group of dissatisfied
25 individuals who were unhappy with Bozizé, who went to Bangui to express their

1 dissatisfaction, which led to the resignation of Bozizé. And so, between March 2013
2 and December 2013, a transitional government attempted, in a very troubled context
3 and internal tensions, to stop isolated and sporadic actions of violence.

4 Furthermore, Witness 0234, a man of law, says the following things:

5 "You're asking me to explain the chain of command within Seleka. That makes me
6 laugh. What chain of command? I must refer you to Djotodia to ask him to clarify
7 this. There were many nationalities in Seleka, like Chadians, like Sudanese, et cetera.
8 Each of these commanders had his own men. You can talk about -- about
9 a 'deregulation' of the command chain." End of quote. Paragraph 92.

10 Since the Prosecution was not able to establish substantial grounds to believe that
11 there was an armed conflict during the period where this took place within the OCRB,
12 all allegation of war crimes cannot be confirmed.

13 Now, nevertheless, we look at the intensity and the continuity which is alleged of the
14 so-called armed conflict, as well the question of who would be the other party of the
15 so-called conflict so that we can answer exhaustively the arguments put forward by
16 the Prosecution.

17 As regards the judicial qualification of the situation which reigned in CAR between
18 March and September 2013, I would like to point that one of the basis of the
19 argumentation put forward by the Prosecution, that there was an armed conflict of
20 a non-international character which started in December 2012 and which was
21 followed uninterruptedly during the period in question, * on the one hand the Seleka
22 and on the other the pro-Bozizé group who reconstituted themselves as Anti-Balaka..
23 Paragraph 8 and 9 of the PCB.

24 Of course, well aware of the weakness of this argument and the complete unlinking
25 with or not reflecting reality of what was happening on the ground, the Prosecution

1 tried to sidestep the difficulty of the temporal time of the armed conflict in the first
2 paragraphs of the PCB because it starts by explaining why the report of the
3 International Commission of Investigation on the CAR from the United Nations and
4 said there was no armed conflict between March and September 2013 and stated that
5 this was erroneous.

6 In this report, the United Nations experts, after a very careful factual analysis of the
7 situation, said that the level of hostility between March 2013 until the beginning of
8 December did not reach the level to be regarded as an armed conflict. And here I
9 refer to CAR-OTP-2001-7017, * paragraph 86.

10 The Prosecution puts forward this report as if it's the sole document where there was
11 a single position, forgetting to specify that the legal conclusions of the investigation
12 commission was based on an analysis of statements made of the CICR -- CICR.
13 ICRC.

14 In fact, the United Nations report stresses a change in legal qualification of the
15 situation in CAR operating by the ICRC between 2012 and 2013.

16 In fact, in 2012, an armed conflict, non-international, was identified by the ICRC,
17 whereas, in 2013, the ICRC did not identify any armed conflict and mentions
18 the presence on the -- on CAR, not of combatants, but, and I'll quote in English, *'but
19 of "weapon bearers"'" which the ICRC invites everyone to respect their obligation as
20 regards human rights, as regards human rights, and does not mention the existence of
21 obligation as regards humanitarian international law, which would have been
22 the case if there would have been an armed conflict of a non-international nature.
23 The Prosecution didn't follow the advice of the United Nations and attempts to say
24 that in 2013 there was an armed conflict of a non-international character which was
25 completely disconnected to the reality of the facts and that no one, neither

1 United Nations nor the ICRC, nor the * NGOs specialising in IHL - international
2 humanitarian law, could support.

3 The Prosecution also refers on the * footnote 31 to the decision of the confirmation of
4 charges in the case Yekatom and Ngaïssona which contradicts its position. And I
5 quote:

6 "The Chamber considers that there are substantial grounds to believe that an armed
7 conflict of a non-international character, within the meaning of lines (d) and (f) of
8 Article 8(2) of the Statute, took place in the CAR territory from September 2013 to at
9 least December 2014 at least between Seleka and the Anti-Balaka." Paragraph 72 of
10 the submissions of 18-403.

11 It is interesting to point out that the Prosecution refers in the sections devoted to
12 the Anti-Balaka in the PCB more or less to the same witnesses and evidence on which
13 the Chamber in the case Yekatom and Ngaïssona relied for its decision that the armed
14 conflict of a non-international character started only from September 2013. Why
15 should the results be and the outcome be different today?

16 Above all, the Prosecution forgets to point out that its position isn't, as far as
17 the Defence is aware, upheld by any other source which it could identify.

18 Moreover, in addition to the United Nations report, and that of the ICRC, and
19 the jurisprudence of this Court which contradicts the position of the Prosecution,
20 the Professor Casey-Malsen and Haines writing in 2018 in the "Hague Law

21 Interpreted: the conduct of hostilities under law of armed conflict" state that there are
22 strong doubts that in the CAR there's an armed conflict after March 2013. Page 54.

23 Similarly, Tilman Rodenhauser in "Organising Rebellion" in 2018, also resumes
24 the conclusions of the investigation commission of the United Nations. Page 200.

25 The annual War Report of 2013, published by Oxford University, one of the references

1 in this material points out that armed violence in CAR since April 2013 does not make
2 up an armed conflict in accordance with international law as the groups involved did
3 not fulfil the criteria of the organisation. Page 105.

4 Annyssa Bellal, who was legal adviser with the High Commissioner of the Human
5 Rights of the United Nations, writes in 2014: "with the effective disappearance of one
6 of the two parties to the conflict, IHL ceased to be applicable in CAR from 25 March
7 onwards." "With the effective disappearance of one of the two parties to
8 the conflict".

9 * Under these circumstances, it is not surprising that, in the remainder of the PCB,
10 the Prosecution has difficulties in proving its allegation, its own evidence supporting
11 the contrary.

12 Therefore, when the Prosecution asserts from paragraph 32 of the PCB and onwards,
13 and I quote:

14 "The pro-Bozizé forces maintained an efficient commanding structures, adapting to
15 the current circumstances." End of quote. It refers us to sources which confirm that,
16 one, the Anti-Balaka movement was only being organised as from the summer 2013.

17 And above all, secondly, the clashes only started from September 2013. Thereby, to
18 look at some striking examples:

19 In the report of the commission's report of the United Nations of 2014, which
20 the Prosecution refers to in the * footnote 82, it is mentioned that, and I quote:

21 "The first traces of the Anti-Balaka were seen in the town of Bossangoa
22 in September 2013. But it was only on December 5, 2013, when they attacked Bangui,
23 that the Anti-Balaka demonstrated that it had the capacity to conduct a military
24 attack." Paragraph 286. It is the exhibit 2001-7017.

25 The IPIS report, where the Prosecution makes reference on the footnote page 82, and I

1 confirm: "Around 2013 in August, these groups were set up and attacked the Seleka
2 in and around Bossangoa and Bouca in September." Exhibit 2001-5739, page 5782.

3 Final example, as regards witnesses which the Prosecution refers to, the majority do
4 not give reference to any date or only talk about the beginning of the organisations of
5 the Anti-Balaka which started only in the summer of 2013. One of the witnesses
6 which the Prosecution refers to in its PCB, P-0889, paragraph 24, describes the setting
7 up of what it calls a "self-defence group" in Bangui where the mode of action was to
8 bang pots when the Seleka arrived in their neighbourhood. One is far here from
9 reaching the criteria of an armed conflict of a non-international character.

10 I can see time is against me, but I have only one minute to conclude.

11 PRESIDING JUDGE AITALA: Please.

12 MS NAOURI: [11:00:12](Interpretation) The Prosecution is no -- is not any more
13 convincing when it says there's a continuity in the combats which took place after
14 March 2013.

15 They point out that, six months after the eviction of Bozizé, the Anti-Balaka carried
16 out coordinated attacks which were more intense against the Seleka, and Muslim
17 members of the civilian population, in the western part of CAR.

18 The *culminant* point was the offensive of 5 December 2013 in Bangui itself.

19 Paragraph 29 of the PCB. Either, therefore, in the month of September, six months
20 after the eviction of Bozizé, it was the month of September. And it continues:

21 "Because of their reorganisation, the pro-Bozizé forces (which also had FACA
22 elements who remained loyal to Bozizé) managed to carry out coordinated attacks
23 within the second part of 2013" - * paragraph 27 - conceding through this that there is
24 no evidence to support the existence of an armed conflict before summer.

25 Furthermore, the only example which the Prosecution gives before September 2013 is

1 contained in the assertion that there was an investigation of -- that there was an
2 attack on the National Assembly in Bangui. The aim was to cause disruption of the
3 second investiture of Djotodia * on 18 August 2013. Paragraph 37.

4 It suffices to read the witnesses which the Prosecution refers to, to understand that
5 what he calls "these forces" by trying to create a feeling of an enormous organisation
6 was, in reality, some, a few former FACA who had not left Bangui in March 2013 and
7 who hid in Boy-Rabe. For example, Witness 0119 talked about symbolic resistance of
8 the local FACA in Boy-Rabe. P-0019, paragraph 67.

9 In conclusion, these actions which were localised in Bangui, led by a handful of
10 individuals and -- only a handful of individuals, and these actions were sporadic
11 according to the evidence of the Prosecution themselves. There were two incidents,
12 one in April and the other in August. These actions cannot really justify
13 the existence of an armed conflict of a non-international character in the period of
14 March to September 2013.

15 Thank you, Mr President.

16 PRESIDING JUDGE AITALA: [11:03:38] Thank you very much, Madam Counsel.

17 Now you deserve some rest, as well as our excellent interpreters.

18 We'll break for half an hour.

19 Now, all being well, your time will end around 3 p.m.

20 So OTP and OPCV, be prepared for conclusions in the afternoon.

21 Okay. Well, thank you very much. We'll reconvene at 11.34.

22 Thank you very much.

23 THE COURT USHER: [11:04:12] All rise.

24 (Recess taken at 11.04 a.m.)

25 (Upon resuming in open session at 11.35 a.m.)

1 THE COURT USHER: [11:35:16] All rise.

2 Please be seated.

3 PRESIDING JUDGE AITALA: [11:35:32] Welcome back.

4 Mrs Naouri, the floor is yours.

5 MS NAOURI: [11:35:48](Interpretation) Thank you, Mr President.

6 For the next part, Mr Jacobs will be making the presentation which will bear on
7 the contextual elements of crimes against humanity * and some of the modes of
8 responsibility. Thank you.

9 PRESIDING JUDGE AITALA: [11:36:03](Overlapping speakers) Yes, please.

10 MR JACOBS: [11:36:22](Interpretation) Mr President, your Honours, as we have just
11 established, the Prosecution is unable to establish the existence of the contextual
12 elements of war crimes, particularly because it is unable to demonstrate that what it
13 refers to as "Seleka" can constitute a sufficiently structured, organised and hierarchical
14 group in the meaning of Article 8 of the Statute.

15 Prosecution arguments relating to crimes against humanity fail for these very same
16 reasons. The onus is on the Prosecution to demonstrate the existence of a policy by
17 a state or by an organisation. We must note, as we read the DCC and the PCB, that
18 the Prosecutor never establishes that.

19 On this point, Prosecutor alludes to a policy that was designed by Seleka and
20 implemented by civil servants and elements of the Seleka government. Paragraph 68
21 of the PCB.

22 Here, once again, we see that the Prosecutor takes shelter behind the monolithic
23 concept of Seleka, which does not cover any reality, and that will be our first point.

24 The Prosecutor fails to establish the existence of a policy, and that will be our second
25 point. The Prosecutor also fails to establish what this vague idea of Seleka

1 government entails, and that will be our third point. Finally, the fourth point of our
2 presentation will be one in which we draw the consequences of this lack of
3 a demonstration * on the weakness of the Prosecution argument in relation to
4 the liability of Mr Said.

5 As we have already established, Seleka never existed as a homogeneous entity,
6 neither before the arrival in Bangui, or even less so thereafter. At that time,
7 the coalition was already a heterogeneous and poorly organised body that entered
8 Bangui with the lone goal to overthrow the anti-democratic government of
9 President Bozizé, and that it was completely fragmented and splintered into small
10 groups replete with permanent power struggles and that such groups had one main
11 purpose, that is to gain pecuniary gains from the capture of Bangui.

12 The United Nations provides a perfect summary of this atmosphere of generalised
13 chaos. And I want to refer to document CAR-OTP-2034-0270 at page -- at
14 paragraph 41:

15 "Seleka emerged as being more of a composition of blocs seeking personal interests
16 and trying to find personal resources, rather than a government with a clear political
17 agenda. It appears that the only strategy of Seleka was to get Bozizé out of power
18 and that is why those former groups rallied together. Seleka is a non-homogeneous
19 organisation with soldiers taking orders from their own commanders." End of
20 quote.

21 The Secretary-General of the United Nations in May 2013 pointed out as follows, and
22 I'm referring to document 499 at paragraph 34:

23 "There was increasing dissension between the -- within the coalition and leaders had
24 difficulty controlling their members. Seleka combatants refused to be billeted. And
25 furthermore, there were persistent tensions between the various factions of the

1 coalition and each faction tried to recruit more elements, thereby increasing the risk of
2 generalised conflict between themselves." End of quote.

3 Similarly, IPIS, the International Peace Information Service, believes that, once Bangui
4 fell, the motivations of Seleka became essentially financial in nature and describes
5 a predatory conduct that was seeking long -- short-term gain through pillaging and
6 robbery. I refer you to CAR-OTP-2001-5739 at page 5781.

7 In these circumstances, therefore, it must be noted that reference to a policy decided
8 upon by Seleka does not have much meaning and that, mindful of the reality on the
9 ground at the time, all the assertions by the Prosecutor relating to this so-called
10 "policy" therefore must be understood in a completely different meaning.

11 For example, the Prosecution relies, with a view to give the impression that there was
12 a hierarchical organisation in place, relies on what they refer to as the presence of
13 "high officials of the Seleka" on the ground. And you can find this at paragraph 77 of
14 the PCB. But we have already demonstrated that the ranks that were used by
15 individuals had no significance and did not in any way reflect any global or general
16 organisation with a hierarchy in place. Each small gang leader self-proclaimed
17 themselves "general" or "colonel" and were referred to as such by the few men that
18 were under them.

19 Witness P-0234 pointed out, and I quote from his statement 2005-5407 at
20 paragraph 47:

21 "Around August 2013, there was really a problem of statehood. There were several
22 parallel command chains in place. There was no control. Almost all the Seleka
23 were colonels or generals. I can describe the situation as being one of a generalised
24 disobedience and an unchecked quest for wearing ranks." End of quote.

25 In the same manner, what the Prosecutor refers to as the orders given by these

1 self-proclaimed colonels and generals were not part of a policy or a general strategy
2 but were clearly, if one reads the witness statements themselves, they were rather part
3 of the activities of looting and violence which were part of the interests and pecuniary
4 gain that motivated these small gang leaders.

5 The example provided by the Prosecutor yesterday during the hearing is a good
6 illustration of this point. He referred to the rape of a victim following orders from
7 a military leader of Seleka. And I refer you to the real-time transcript, page 65, lines
8 17 and 18.

9 Mr President, I will quote part of the witness statement. And I am not sure there is
10 any part that might identify the witness, but just out of an abundance of caution,
11 maybe we should go into private session.

12 PRESIDING JUDGE AITALA: [11:47:28] Oh, that is fine.

13 Mr Court Officer, let's go into private session, please.

14 (Private session at 11.47 a.m.)

15 THE COURT OFFICER: [11:47:49] We're in private session, Mr President.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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19 (Open session at 11.50 a.m.)

20 THE COURT OFFICER: [11:50:48] We're back in open session, Mr President.

21 PRESIDING JUDGE AITALA: [11:50:50] Thank you very much.

22 Mr Counsel, please continue.

23 MR JACOBS: [11:50:52](Interpretation) This example points to the total absence of

24 the meaning that should be ascribed to the so-called military ranks that were

25 self-proclaimed by certain individuals, * rather than take them at face value,

1 without looking at the big picture, in the manner in which the Prosecution has done.

2 Under these circumstances, therefore, we must point out the reality that

3 the Prosecution refuses to see. The events that the Prosecutor is referring to,

4 although they may have been established, are events that speak to ordinary acts of

5 criminality characterised by pillaging within a context of total disorganisation and

6 generalised anarchy.

7 When challenged on the fact that these pillages were the events that were carried out

8 by individuals who could not be controlled and that the motive of these individuals

9 was gain and not a general policy, the Prosecutor continues to deny that reality. He

10 fails to draw the -- he continues to try to insert these facts into his imaginary general

11 policy.

12 How does he do that? By trying to transform these pillages, which we must say are

13 not covered by Article 7 of the Rome Statute, by trying to transform them, therefore,

14 into international crimes. I refer you to paragraph 89 of the PCB.

15 The Prosecutor therefore absolutely wants to transform his case which deals with

16 the prevailing common criminality in Central African Republic, he wants to transform

17 that into a case on international crimes. It is not the function of the International

18 Criminal Court to deal with common criminality.

19 The events that took place in Boy-Rabe in 2013, which the Prosecutor refers to,

20 are consonant with this idea of common criminality and pillaging or ordinary

21 criminality. Apart from this, the sporadic clashes between former FACA soldiers in

22 April and August 2013 - we have already referred to this - When one analyses

23 the Prosecutor's evidence, we see that it deals mainly with pillaging for personal gain

24 and isolated, indiscriminate acts of violence. Each Prosecution witness has described

25 how the pillaging persons took away mattresses, televisions, chairs, tables and cattle

1 and fridges. I refer you to P-0940, P-0500 and P-1524.

2 In fact, this pillaging for personal gain was at the very heart of the activities
3 undertaken by the persons in question and were simply part of a desire to meet
4 personal needs and did not flow from any particular policy or follow any instructions.
5 The contrary is that Prosecution evidence itself shows that these people did not obey
6 any orders, even from those whom the Prosecutor claims were leaders.

7 For example, P-0851 says as follows, and I quote:

8 "When we arrived at my place, the Seleka pointed their weapons at us and asked who
9 we were. Nouredine Adam introduced himself to them, but they didn't stop
10 pillaging. Nouredine Adam told them 'Do not pillage the residence'." End of
11 quote. And I refer you to statement by P-0851, CAR-OTP-2027-0194, paragraph 32.

12 Another example to illustrate this point, P-1970 talks of a Seleka which, I quote, who
13 "was killed by another Seleka member as they were fighting over looted or pillaged
14 objects." Reference, prior statement 19 -- 2070 -- 2070-0995 at paragraph 34. So we
15 see clearly here that the actions committed took place in a -- an entirely disorganised
16 and chaotic environment, so much so that the so-called Seleka elements killed each
17 other over pillaged goods. So where is the policy and where is the organisation in all
18 this?

19 In this context, it is therefore not surprising that the Prosecutor fails to establish
20 a policy targeting supporters of President Bozizé.

21 In the PCB the Prosecutor claims at paragraph 49 that "there was a policy in place
22 targeting the civilian population in Bangui who were considered to be supporters of
23 Bozizé." End of quote.

24 "This attack was committed by Seleka pursuant to the application and in furtherance
25 of a state policy which had as purpose to attack those persons based on their

1 characteristics which, according to them, demonstrated or pointed to their allegiance
2 to Bozizé." End of quote there.

3 So the Prosecutor's approach has several methodological shortcomings which we
4 must highlight here.

5 * First of all, the Prosecutor's appeal --approach, rather, suffers from what could be
6 called a « selection bias » of the various examples it relies on because those grounds
7 are based on a prioris that have not been established, namely the existence of a policy.
8 And it is a bias that operates at two levels.

9 * First of all, the Prosecutor assumes that there was a policy in place, but this has not
10 been demonstrated, and he proceeds to select only examples of persons who would
11 then validate in hindsight the existence of such a policy.

12 * We can therefore see here the limits of the exercise because, by proceeding in this
13 manner, the Prosecutor consciously excludes from his case anything that is contrary
14 or counter to his own narrative.

15 By the way, to illustrate this point, the Prosecutor simply abstains from providing any
16 figures whatsoever relating to the number of people incarcerated at the OCRB
17 throughout the period charged. The Prosecutor abstains from saying or -- that
18 the detainees at OCRB were simply common law criminals, most of whom were
19 former Seleka.

20 And this is normal for the Prosecutor to abstain from providing these figures and
21 these details, because in so doing it would provide objective, quantified,
22 unquestionable evidence of the absence of a policy and the -- and of the isolated
23 nature of the examples provided in the PCB.

24 Now, the Prosecutor starts by assuming, without demonstrating it, that a policy was
25 in place, hereby clearly proceeding or putting the cart before the horse.

1 The Prosecutor identified the characteristics of persons whom he deemed to be
2 victims of the so-called policy and then would go on to assert that, because those
3 victims were so characterised, the policy therefore must have targeted the persons
4 who had those characteristics. Once again, such a circular approach for
5 the Prosecutor has the advantage that he is not then expected to demonstrate that
6 the policy was actually a reality.

7 The holes or shortcomings of the -- in the Prosecutor's approach are not only
8 methodological but also factual. In fact, if we put together the people who,
9 according to the Prosecutor, were targeted, that would amount to the vast majority of
10 the population of the Central African Republic, because there are 90 per cent
11 Christians in the Central African Republic and the ethnic groups mentioned by
12 the Prosecution in the PCB, namely the Gbaya, the Mandja and the Banda, make up
13 about 75 per cent of the Central African Republic population. This means, in other
14 words, that statistically, and putting it simply, if someone were to die in Bangui for
15 whatever reason, it is very likely that they would belong to one of the groups that
16 the Prosecutor has referred to.

17 Consequently, to assert that the alleged victims were part of a certain group does not
18 statistically demonstrate or establish that there was a policy in place targeting that
19 particular group.

20 The Prosecutor's approach clearly therefore reflects a confusion between correlation
21 and causality, because according to the Prosecutor, anybody who would belong to
22 a certain religious group will necessarily be targeted because of their belonging to that
23 particular religious group. And once again, such a logical shortcut puts
24 the Prosecutor in a position where he does not have to establish anything.

25 On that point, it is important to point out that yesterday during the hearing it is

1 the Legal Representative of Victims who contradicted the Prosecutor's narrative when
2 she explained to us that the victims participating in this case did not have much in
3 common and that they were from diverse ethnic origins.

4 I refer to real-time transcript of yesterday, page 3, line 28 to page 4, line 1.

5 Third and last methodological bias. The Prosecutor's approach has prohibitive
6 logical jumps. Even if we were to accept the statements by Prosecution witnesses,
7 whereby during the pillaging some of the pillagers mention their
8 alleged -- the alleged allegiance of victims to François Bozizé, that in itself does not
9 demonstrate the existence of a policy. It is not because several people do the same
10 thing that they have together adopted a policy to do so, or that they received any
11 orders to do so.

12 The onus is on the Prosecutor to establish that these isolated incidents are not
13 the product of personal animosity. * So the logical jump here cannot be accepted
14 within a judicial trial, especially when it comes from the Prosecutor on whom the
15 onus lies to establish the charges and who must not try to convince the judges to take
16 as a given that which has not been established.

17 The only location in the PCB where one might have thought that the Prosecutor
18 would provide elements to demonstrate maybe the existence of a policy is the section
19 where it is stated before paragraph 78 as follows: "The Seleka publicly recognised
20 that it was conducting a policy targeting the alleged supporters of Bozizé."

21 * Once again, let us set aside the use of the generic term "Seleka" in this context.

22 When we read the examples provided by the Prosecutor, we note that, once again, we
23 are dealing with isolated cases, mostly individual cases, or Prosecution witnesses
24 alleging that their interlocutors blamed them for being -- or apparently blamed them
25 for being Bozizé supporters. One again, this does not establish a policy.

1 * The testimony of P-1289, referred to by the Prosecutor footnote 224, perfectly
2 illustrates this point. P-1289 alleges that the person who allegedly arrested him
3 blamed him, apparently, for being a Bozizé supporter. But immediately thereafter,
4 the witness adds as follows, and I quote:

5 "On the road, he confided to me that he came from Chad and that he had helped
6 Bozizé during his *coup d'état* but that Bozizé had not compensated them."

7 I refer you to prior statement 2127-7632, paragraph 42 and 43.

8 So we see here clearly that the individual who allegedly arrested P-1289 speaks not in
9 terms of a general policy but expresses a general -- a personal feeling for not having
10 been compensated for having previously supported President François Bozizé.

11 At paragraph 79 of the PCB, the Prosecutor asserts -- asserts, rather, that, and I quote:

12 "Adam and Djotodia also delivered speeches on the radio talking about Boy-Rabe and
13 its inhabitants in a manner that would raise fear and panic as regards an imminent
14 attack." End of quote.

15 One would have expected then that the Prosecutor would refer to those alleged
16 speeches, but that does not happen. That's not the case. The Prosecutor refers to
17 the testimony of a single witness who affirms that they heard a single speech on
18 the radio and who provides their personal interpretation or perception of the speech.

19 The witness I'm referring to is P-100, 0100. CAR-OTP-2118-6331, at paragraph 39.

20 So where is this speech? We do not know. Where are those public speeches that
21 the Prosecutor has referred to? They cannot be found in the case file.

22 One therefore notes that, once again, the Prosecutor makes assertions without
23 demonstrating and does not provide any evidence in support of his allegations and,
24 therefore, finally fails to demonstrate the existence of any kind of policy whatsoever.

25 I now turn to the issue of the famous or infamous Seleka government which in fact

1 does not encompass any kind of reality. We have already established, and I am not
2 going to return to that point, that there was no Seleka government in place. At the
3 time there was a national transition government in place, which was made up of
4 personalities drawn from the entire spectrum of the Central African political scene as
5 well as from civil society and which was set up after the Libreville agreement and in
6 constant cooperation with the international community.

7 Witness P-2328, for example, describes the cooperation between the transitional
8 government and the local office of the UN in billeting the Seleka elements.

9 I refer to that prior statement by P-2328, reference CAR-OTP-2099-0165, at
10 paragraph 255.

11 Now, what the Prosecutor says in relation to our conversation is that charges were
12 brought against *pilleurs* and delinquents of the Seleka movement, particularly after
13 the violence in Boy-Rabe. These cases were covered in the media.

14 * And I want to refer to documents CAR-OTP-2023-1116; 2005-5426; 2005-5422. And
15 document 428 on our list -- 498 on our list of evidence.

16 NGOs covered these prosecutions - and I refer to an FIDH report, 2001-2890 - from
17 the statements of Prosecution witnesses who were in position of authority. Let me
18 refer to Witness P-0234, for example.

19 The Prosecution is even in position of -- in possession of material, concrete and official
20 material that testifies to these prosecutions: * 24 interview reports of Central African
21 authorities relating to the 20 prosecution cases against individuals claiming to be
22 Seleka. We all have these documents, and I refer to documents 197 to 220 for this
23 purpose. So documents 197 to 220 on our list of evidentiary material.

24 All this evidence is totally set aside by the Prosecutor. And the Prosecutor,
25 whenever reality doesn't dovetail with his narrative, he simply ignores it.

1 Therefore, we must note that on this matter, as on others, there is a Prosecutor on one
2 hand -- on the one hand, who wishes that the existence of a state policy or an
3 organisation which is not established should be accepted as such. And then, on the
4 other hand, we have concrete material, documentary, tangible evidence which points
5 exactly to the opposite.

6 Therefore, from the Prosecutor's own evidence, it emerges that if there was a state
7 policy in place, it was, as could be at all, one that could deal with a chaotic situation
8 which simply aimed at disarming individuals who claimed to be Seleka and then to
9 prosecute them following judicial processes in relation to the crimes committed.

10 At this juncture, Mr President, of my presentation, I would like to say that clearly it
11 emerges that the two pillars on which the Prosecution case hinges do collapse,
12 particularly allegations pertaining to war crimes and allegations pertaining to crimes
13 against humanity. The Prosecution has failed to demonstrate that there was an
14 armed conflict of an international character and fails to establish that there was
15 a policy in place within the context of an organisation.

16 In these circumstances, and as if it were a domino effect, it is only normal, therefore,
17 for the allegations of the Prosecutor against Mr Said to also naturally collapse.

18 We have already established that, in a context where the state was disorganised,
19 the OCRB did what it could to carry out its functions of fighting against banditry and
20 delinquency. We have established that the persons detained at the OCRB were
21 persons involved in acts of common law or ordinary criminality. We established
22 that the OCRB contributed at its level to the fight against pillaging that was being
23 committed in Seleka -- by the Seleka -- by former Selekas in Bangui. And this was
24 pointed out, by the way, by the FIDH.

25 In fact, FIDH, in its report CAR-OTP-2001-2890, clearly indicates that the persons who

1 were prosecuted, that is the Seleka individuals who had pillaged in Boy-Rabe in
2 August, that those individuals were detained at the OCRB. This is at page 2933.
3 In this context, therefore, the mission of the OCRB was one of participating in
4 missions to maintain peace and order. It was, therefore, only normal for Mr Said to
5 volunteer to help Mazangue who was understaffed, as we have mentioned, and to
6 participate in the management in order to ensure that those working at OCRB would
7 have food and that they would have the necessary resources to carry out their
8 missions or their mission of maintaining peace and order. It is only normal that in so
9 doing Mr Said would have participated as a volunteer in the receiving and sorting of
10 persons who were arrested.

11 When it comes to the allegations of excesses, sometimes based on doubtful and
12 contradictory evidence, as we will point out subsequently, beyond that, let us now
13 look at what the Prosecutor's evidence itself establishes. * We are dealing with
14 isolated cases, opportunistic acts that follow no logic, that are absolutely incoherent
15 and disorganised; and also random in nature, be it between the alleged perpetrators
16 or even amongst the alleged perpetrators; the reasons for these acts of violence and
17 the frequency of the excesses. It is also frequently clear that the motivation of the
18 various actors is financial as they seek to obtain money from the family -- or for
19 the family.

20 * Therefore, from the Prosecution evidence it is clear that nothing establishes that
21 these ultimately isolated acts, taking into consideration the entire period of the
22 charges, formed part of any sort of general policy. And that is the key here at the ICC.
23 This conduct may not be desirable. Obviously not. But do they amount to
24 elements of an international crime? Once again, the answer is no.
25 Because these isolated acts clearly do not fall under a general policy, and that is why

1 the Prosecutor has failed to establish the material elements and modes of liability
2 pertaining thereto.

3 * For example, the Prosecutor, as when dealing with issues of state or organisational
4 policy, within the framework of the contextual element of crimes against humanity,
5 does not even attempt to establish that there was a common plan of which Mr Said
6 was allegedly a part. The establishment of a common plan is a condition *sine qua non*.
7 It's a key element pertaining to the modes of liability under Article 25(3)(a), which is
8 dealing with indirect co-perpetration.

9 Therefore, once again the Prosecutor relies on the same process whereby he chooses
10 not to establish anything, and is appealing to the Chamber to simply deduct that there
11 was a common plan on the basis of the crimes perpetrated. I refer to paragraph 203 of
12 the PCB. Mr President, your Honours, everything I have said a short while ago about
13 the circular nature of the Prosecutor's methodology and the policy, all of that applies
14 here as well because the Prosecutor does not demonstrate or establish anything. He
15 simply presupposes that crimes arose from a common plan, and because they were
16 crimes there was a common plan in place, but that is not established logically.

17 It is therefore very clear that the Prosecutor has failed to establish that there was
18 a policy in place, that there was an organisation in place, and quite naturally,
19 therefore, we can come to the conclusion that there was no common plan in place
20 either. * Under these circumstances, and mindful of this fundamental flaw in the
21 Prosecutor's reasoning, the absence of any initial establishment of a policy which itself
22 is the result of never having explained what the Seleka is supposed to have been,
23 there is no need, therefore, to dwell at length on each of the elements of the modes of
24 liability that have been raised by the Prosecutor. But let me make at least two quick
25 comments, particularly in response to

1 the Prosecution's statement of yesterday. First of all, we must question the general
2 status or quality of the Prosecution witnesses, particularly those whom the Prosecutor
3 calls insider witnesses.

4 And, Mr President, for purposes of dealing with this matter, I would call for a private
5 session.

6 PRESIDING JUDGE AITALA: [12:33:45] Mr Court Officer.

7 (Private session at 12.33 p.m.)

8 THE COURT OFFICER: [12:33:56] We're in private session, Mr President.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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 (Redacted)

5 (Open session at 12.36 p.m.)

6 THE COURT OFFICER: [12:36:54] We're back in open session, Mr President.

7 PRESIDING JUDGE AITALA: [12:36:56] Thank you very much.

8 You can continue, Mr Counsel.

9 MR JACOBS: [12:37:06](Interpretation) Secondly, the Chamber would note that most
10 of the allegations brought against Mr Said rely on one source and, quite often, that
11 one source provides anonymous hearsay. But the Prosecutor does not disclose that
12 fact in his PCB.

13 Let's take one example. * Yesterday during the hearing the Prosecutor mentioned that
14 Witness P-0853 said the following, and I quote: "Witness P-0853 remembered that Mr
15 Said was regularly present at, and even slept at CEDAD." End of quote. Reference,
16 real-time transcript of yesterday, 12 October 2021, page 84, line 26 and 27.

17 So one can imagine that the Prosecutor takes P-0853 to be a good witness, because in
18 a very short presentation he highlights and mentions this particular witness for us.

19 But what does the witness tell us? I refer to his prior statement, 2127 -- I am sorry,
20 let me repeat the number, 2127-9697. And I quote paragraph 21:

21 "Said was always at CEDAD. He would even spend the night there sometimes.

22 That is what I was told. That is what I was told some -- by some Seleka elements
23 who were on guard at night and who knew him."

24 It would seem to us that this is a slight deformation of a witness's statement who,
25 the witness having said that he heard and now it's being said that he remembered,

1 whereas he wasn't even present. That's the distortion.

2 By the way, at footnote 875 of the PCB, the Prosecution claims to corroborate this
3 witness whom we have talked about as providing hearsay evidence corroborating
4 that with the evidence of Witness P-839.

5 So who is this witness who can make statements on the alleged role of Mr Said at the
6 CEDAD? A witness who clearly states as follows, and I quote: "I have never gone
7 to the CEDAD myself." And I refer to his prior statement, CAR-OTP-2127-9790 -- 9780,
8 correction, paragraph 18.

9 Mr President, your Honours, this is the evidence that the Prosecutor thinks is
10 the most solid in his case file because we are talking in a hearing about a witness who
11 brings -- who provides anonymous hearsay and a witness who has never even visited
12 CEDAD.

13 Mr President, your Honours, I would like to conclude by quoting a well-known
14 phrase of Albert Camus: "If you misname an object, it is adding to the misfortune of
15 the world," as said by Albert Camus.

16 And we have seen that the PCB of the Prosecution is an accumulation of statements in
17 which they misname things: They misname Seleka. They misname
18 the government, the policies, the armed conflicts, as well as the common law crimes
19 that were perpetrated in Bangui. They also misname the role of the functioning of
20 the OCRB and CEDAD. And lastly, they misname the role -- or, rather, they
21 mischaracterise the role played by Mr Said.

22 The objective of the Prosecution is to transform the nature of the events, to transform
23 or distort the reality in order to transform their allegations into international crimes.
24 To try, by all means as the Prosecutor is trying to do, to fit common law crimes into
25 the category of international criminal justice is not only betraying the cause and

1 nature of international criminal -- of the International Criminal Court, but in the final
2 analysis it is -- what is more serious is to deny the reality of which -- of what
3 the Central African population has been living for decades within the context of
4 colonial and post-colonial violence as we have already described.

5 Thank you, Mr President.

6 MS NAOURI: [12:46:10](Interpretation) Mr President, I think we have a quarter of
7 an hour left. And we will start with the presentation of Mr Jacquemin and in that
8 way we can finish by 3 p.m. at the dot.

9 PRESIDING JUDGE AITALA: [12:46:34] Thank you very much. You are allowed
10 to do so. Thank you.

11 And thank you, Mr Jacob.

12 MR FRANÇOIS-JACQUEMIN: [12:46:55](Interpretation) No armed conflict, no
13 general policy, no common plan. And that's not all. In addition to applying
14 international criminal law to a situation that does not lend itself to it, the Prosecutor
15 bases his accusation against Mr Said on a disorganised series of events. * The
16 Prosecutor is building a fictitious narrative: that there was a hierarchy at the OCRB; a
17 hierarchy at the top of which was Mr Said. Nevertheless, there is absolutely nothing
18 in the PCB that supports such a narrative.

19 Initially, we will introduce the evidentiary weakness of the elements used to support
20 the events of which Mr Said is accused.

21 We will base ourselves almost exclusively on the elements mentioned in the PCB.

22 Then, again on the basis of evidence provided by the Prosecution, we will show you
23 that, in this chaotic Bangui of 2013, the reality of OCRB was that it was an institutional
24 vacuum, as well as a fight against delinquency and criminality.

25 In order to start, we will focus on the evidentiary weakness of the Prosecution's

1 argument.

2 As regards the OCRB, Prosecution presents 20 incidents. That's a lot. Of those 20
3 incidents, nine, nine rely on a single witness. That's also a lot. Four, four are based
4 on accounts of several witnesses who are strongly conflicting in their narrative. And
5 finally, four others report detentions carried out under judicial review.

6 As far as we are aware, no modern system of criminal law accepts basing a charge on
7 a single complaint, on a single uncorroborated testimony. The Prosecution asks you
8 to make an exception to this, to move away from the rule *testis unus, testis nullus*.

9 Nine incidents are based on a single testimony. The Prosecution asks you to
10 consider that a sum of nothing ends up making something, in this case a serious
11 accusation against Mr Said. This is a legal and contemporary adaption of "slander,
12 slander, something will always remain."

13 Incident A is based on a single testimony, that of P-1167.

14 Incident C is based on a single testimony, that of P-0481.

15 Incident D is based on a single testimony, that of P-2692.

16 Incident F is based on a single testimony, that of P-0622.

17 Incident G is also based on a single testimony, that of P-0481.

18 Incident M is based on a single testimony, that of 2519.

19 Incident O is also based on a single testimony, that of P-1737.

20 Incident Q is based on a single testimony, that of P-2179.

21 The list will end. I assure you.

22 Incident T, which collects several occurrences, but for each occurrence is only based
23 on a single testimony.

24 Beyond this astonishing lack of rigour, when different testimonies can be
25 cross-checked to verify their veracity, the Prosecutor conceals the flagrant

1 contradictions.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted) "The arrest of the soldier took place sometime before the disarmament

11 operation carried out against OCRB Damala." End of quote. However, this

12 operation of disarmament is dated April 2013 in paragraph 55 of the very same

13 statement. That's as far as this witness is concerned.

14 But Witness P-2607, as far as he is concerned, is also quite emphatic, it is on June 27,

15 2013, that this arrest took place. * This is CAR-OTP-2127-9527, paragraph 15 and 16.

16 Prior to April 2013, 27 June 2013, other inconsistencies existed between these accounts,

17 but the most troubling point of concern is the death of the soldier that was so-called

18 arrested. Therefore, according to the evidence provided by P-2607, the main witness,

19 the death of the soldier took place on 27 June 2013. This according to the death

20 certificate of 27 June 2013, with a stamp of 3 July 2013. CAR-OTP-2116-0994.

21 So what about the death certificate registered on 30 June 2013? CAR-OTP-2116-0992.

22 It is all the more difficult to decide between these two death certificates because 2607

23 concedes that he does not know any name on the death register presented by

24 the investigators. CAR-OTP-2127-9527, paragraph 32, which states,

25 CAR-OTP-2044-0631.

1 PRESIDING JUDGE AITALA: [13:00:23] Mr Jacquemin, if you can conclude on this
2 point, then I have to break. So if you have -- in a couple of minutes, if you can finish
3 your reasoning on this point, then we'll continue after the break.

4 MR FRANÇOIS-JACQUEMIN: [13:00:31](Interpretation) That's very well,
5 Mr President.

6 On this point, and finally and most importantly, what do you say about the soldier's
7 military record that talks about a death after illness of 25 November 2013?

8 CAR-OTP-2116-0995.

9 Thank you, Mr President. Thank you.

10 PRESIDING JUDGE AITALA: [13:01:06] Okay. Then, thank you very much. I
11 think you are left with some 38 minutes.

12 So now I will break for lunch and we will see each other at 2.30 in the afternoon.

13 Thank you very much.

14 THE COURT USHER: [13:01:22] All rise.

15 (Recess taken at 1.01 p.m.)

16 (Upon resuming in open session at 2.32 p.m.)

17 THE COURT USHER: [14:32:46] All rise.

18 Please be seated.

19 PRESIDING JUDGE AITALA: [14:33:04] Good afternoon. Welcome back.

20 So the floor is yours, sir, Mr Counsel. You can continue with your presentation.

21 MR FRANÇOIS-JACQUEMIN: [14:33:16](Interpretation) Thank you, Mr President.

22 * After having dealt with the events based on a single testimony, I am now turning to
23 events based on several contradictory testimonies.

24 Incident K is one of those events or incidents. It relates to the arrest and

25 detention -- sorry. It relates an attempted arrest and detention of two other

1 individuals. On the basis of accounts of indirect witnesses, the Prosecutor
2 establishes this incident to Mr Said, and here are the most salient contradictions in
3 that statement.

4 Witness P-2105 states that he was told, and I quote: "Accompanied that day by
5 career police officers." End of quote. None of the career police confirm that. But
6 on that particular day, the Seleka of OCRB shot at a fleeing FACA without succeeding
7 in arresting him and then returned to the FACA to get some members of his family.
8 And then, and I quote: "The parents of the FACA went to the OCRB the next day to
9 tell the Seleka that their son had died in the hospital." CAR-OPT-2081-0037,
10 paragraph 30. That's the first version.

11 * P-2890, as far as he's concerned, explained that he had been told that the body of
12 FACA had been taken by the Seleka along with the two arrested.

13 Regarding the body, he said that he saw that person in a mortuary with a bullet in
14 the chest. And then he said that that very same FACA died from a bullet in the head.

15 Same -- third version of the same incident, at the OCRB he was told, and I quote:

16 "The previous night, the Seleka caught three armed bandits, one of them resisted and
17 had been killed, and the two others were being held at the OCRB." End of quote.

18 CAR-OTP-2130-6871. So one incident, three versions.

19 If you put aside the incidents based solely on one testimony, well, then incident N is
20 the culmination of the lack of evidentiary rigour on the part of the Prosecutor.

21 Incident N is a cumulation of unfounded statements without taking into
22 consideration their unlikelihood or implausibility.

23 In the incident N, Prosecution relies on P-3053 and P-3056, both made after
24 the announcement of Mr Said's arrest.

25 To say that these statements diverge is an understatement.

1 P-3053 states that he was arrested by the head of the operation, Mr Said, and that he
2 was driving the pickup where he found himself with P-3056, and that the head of the
3 operation, Mr Said, and I quote, "was wearing a large white *boubous*, ankle length,
4 with loose trousers underneath and a yellow turban on his head."

5 CAR-OTP-2130-6359, paragraph 16 to 29.

6 P-3056 describes this arrest as well, and I quote: "The leader of this unit was
7 a lieutenant. On the day of my arrest, he was in civilian clothes and was wearing
8 a polo shirt and a cap. The lieutenant was driving. The other detainees and me
9 were seated in the back." CAR-OTP-2130-6639, paragraph 26 and 28.

10 Clearly, P-3053 and P-3056 agreed on their common arrest. However, they failed to
11 consult each other on the details.

12 But let's go back to their story.

13 The next morning, P-3056 met with Commandant Said, and he says, as far as this is
14 concerned, and I quote: "Mahamat Said was stout, tall, black skinned; his hair was
15 short and he had a small beard. That day, he wore a desert camouflage outfit. He
16 wore nothing on his head." End of quote. CAR-OPT-2130-6639, paragraph 34 and
17 35.

18 However, as you're going to see, in addition to changing his outfit, Mr Said changed
19 his appearance.

20 As P-3053 states, as regards the same day, and I quote: "Said introduced himself to
21 me as the director of OCRB. At that moment, I could see his face for the first time.
22 He had very long black hair and a long chest-length beard, 'pepper and salt' (black
23 and white)." CAR-OTP-2130-6359, paragraph 16 to 29; physical description,
24 paragraph 34. * That is not a problem for the Prosecution.

25 (Redacted)

1 (Redacted)

2 (Redacted) and I quote: "There were many detainees already in
3 the cell. We couldn't move at all or sit down. We were always standing."

4 CAR-OTP-2130-6359, paragraph 41 and 44.

5 P-3056 reports on the same arrival. They were first registered at the registration
6 station and then taken to the underground cell. And I quote: "I knew that this cell
7 was famous. Under President Patassé's regime, the underground cell was used."

8 End of quote. That's interesting. That is CAR-OTP-2130-6639, paragraph 37.

9 But that's not all. And this is what he says when he arrived in the underground cell.

10 According to P-3056, this underground cell measured about 4x4 metres. And I quote:

11 "When they threw us into the cell, there were only four of us, the ones that had been
12 arrested at the funeral. There was no one in the cell when we arrived."

13 CAR-OPT-2130-6639, paragraph 39 and 40.

14 So is this the Schrödinger cell, both full and empty?

15 In any case, the Prosecutor seems to have no problem with * the fact that while P-3053

16 talks about serious violence against himself and others, including P-3056, P-3056

17 states, as far as he is concerned - CAR-OTP-2130-6639, paragraph 54 - and I quote:

18 "Neither I nor the other detainees who were arrested together at the mortuary were
19 beaten in the OCRB compound. I believe that Said was not really interested in
20 the other three detainees."

21 In addition to these contradictions, the Prosecutor overlooks several detentions that
22 were real this time, probably, which were carried out under judicial supervision.

23 Therefore, incident J relates to the deprivation of liberty of P-1429 who was taken

24 there by the court -- to the court by the Prosecutor in office. 2043-0317, paragraph 48

25 and 49.

1 His detention of 21 days relied on the authority of the Prosecutor. P-1429 claims to
2 have attended the court four times. Paragraph 70 and 71.

3 In addition, in France, for example, by the way, a detainee who appeals against his
4 provisional detention and then appeals for release, which is rejected, can go to court
5 a maximum of three times in a 21-day period.

6 Incident R relates to the detention of P-1432, which, if it really took place, was carried
7 out under the orders and control of the investigating judge. CAR-OTP-2050-0187,
8 2050-0188 and 2050-0189.

9 Incident S relates to the arrival of P-2239 and P-2241 at OCRB, as well as 2400, who
10 were ordered and carried out in person by the Prosecutor. CAR-OTP-2130-4729,
11 paragraphs 42 to 45, 2127-9409, paragraphs 41 to 47.

12 The Prosecutor also interviewed P-2241 * and monitored the application of these
13 measures. And here I'm referring to 2127-9409, paragraph 88 and 2130-4729,
14 paragraphs 67 and 68.

15 (Redacted)

16 (Redacted)

17 "I received a written summons to appear before the Prosecutor. He sent
18 the summons via [the prosecutor] himself." Paragraph 17.

19 "I went to the [prosecutor's] office with my son at 3 o'clock. [...] At the end, I asked
20 [the prosecutor] if I was under arrest, and [the prosecutor] told me that I was under
21 arrest." Paragraph 18.

22 "At 5 o'clock, I was taken to the OCRB by Seleka attached to the ministry of justice.
23 [...] There were many detainees, some Muslims, but also definitely some Christians.
24 I didn't see any wounded and I did not see any detainees being beaten up."

25 Paragraph 19.

1 "At 11 o'clock in the evening, I was released." Paragraph 23.

2 Incident N, which is -- which is a war crime or crime against humanity.

3 In addition to this lack of evidentiary rigour, the Prosecutor overlooked the context of
4 the OCRB in Bangui in 2013. In this case, that of an institution that was not
5 functioning properly.

6 CAR-2130-5761, paragraph 55 and 56 relates to the disorder at the Bimbo convent
7 which illustrates the chaos that reigned in Bangui at that time. At that time, personal
8 charisma took precedence over any attempt at institutional organisation. This is
9 the description which Witness P-038 (sic) makes. And I quote:

10 "In Bangui, each Seleka warlord had its own base, such as General Arda, whose

11 elements were based at Sapeurs Pompiers. The presidential palace was occupied by

12 Chadian soldiers, under the orders of a colonel whose name I do not remember.

13 The Seleka had two bases at camp Roux, one near the military headquarters, the other

14 near the main entrance where the passport office was located. [...] The majority of

15 the Seleka which remained in camp Roux did not speak Sango, they only spoke

16 Arabic. I think they were Sudanese, because they spoke a different kind of Arabic

17 than the one that they speak in the Central African Republic. So I couldn't

18 understand what they were saying. Many former Muslim police officers, soldiers

19 and gendarmes, but also civil servants who worked for the government joined

20 the Seleka." * CAR-OTP-2130-5761, paragraphs 66 and 67.

21 * In the same way, the hierarchy at the OCRB exists only on paper. The statements on

22 which the events are based, including the PCB, reveal a multitude of chiefs. But often

23 Mr Said himself does not appear in these statements.

24 * P-1167 states, and I quote: "I saw Saleh and Damboucha taking prisoners. I don't

25 remember Said being there that time." 2127-7671, paragraph 138 to 144.

1 P-1289 states that he was arrested by Colonel Saleh and taken by him to OCRB. He
2 mentions the officer Mazangue -- the General Mazangue and the one who seems to be
3 his deputy from the Seleka who must have been originally from Chad who seemed to
4 be in his fifties, and he mentioned the name Ibrahim and Mahmoud,
5 CAR-OTP-2127-7632, paragraph 43, 46, 60, 59, 71 * paragraphs 42, 43, 46, 48, 60, 59
6 and 71. He does not mention Said. P-0481 does not mention Mr Said either. In
7 addition to Mr Adam, he refers as the one who's responsible for his fate, and I quote:
8 "Mahamat Saleh, who was Nouredine's chief of security and a member of his
9 cabinet." And I continue with my quote: "At the OCRB, it was Zakaria was really in
10 charge during my detention there. He was nicknamed 'Djamdjia-Go'. He had
11 a very distinctive moustache, thin, long and curled at the ends."
12 CAR-OTP-2104-1024, paragraph, in particular 88, 10 and 51.
13 P-2692 never mentioned Said but says about the statement *S'en fou la mort*, and I quote:
14 "I had the impression that he was higher up than the colonel of OCRB, because
15 sometimes he would come and release prisoners. *S'en fou la mort* would talk to some
16 prisoners at OCRB, and they were sometimes allowed to leave OCRB on foot. He
17 would also bring prisoners to the OCRB." End of quote. CAR-OTP-2130-6685,
18 paragraph 33.
19 Again, with all these incidents, P-0645, in addition to not naming Said in
20 the organisational chart, recounts the functioning of the OCRB as follows, and I quote
21 * CAR-OTP- 2083-033. And I will quote paragraph 99 first, then 89.
22 "There were conflicts amongst the Seleka and OCRB, where there were three leaders.
23 The commander, who had the rank of colonel and who replaced Yaya, he was the first
24 leader. The second leader came from the Chadian army. He called himself
25 a commander in rank. He was the deputy. The third was a lieutenant. His name

1 was Ibrahim or Ib and he was very influential because he had been in the rebellion on
2 the ground unlike Yaya's replacement. Nouredine was the hierarchical head of the
3 OCRB. As minister of the interior, he came very regularly to check what was going
4 on there. No two days went by without Nouredine coming to the OCRB. He
5 came about four times a week during the day but also in the evening."

6 P-0622, however, arrested on instructions from Nouredine given by General Ali
7 Mahamat, doesn't mention Said. However, and I quote: "He speaks of
8 Nouredine's younger brother whose name I forgot who managed the OCRB." End
9 of quote.

10 He also talks about Colonel Zakaria, CAR-OTP-2022-0121, paragraph 52 and 68 and
11 paragraph 51. P-0481 does not mention Mr Said but mentions Saleh, Zakaria and
12 Adam. P-2172 does not mention Said.

13 * Sorry, I forgot the previous CAR-OTP, it was 2104-1024. And for 2172 it is 2130-6313.

14 Modestri arrested 2519 and took him to the OCRB. And he says that the OCRB
15 seemed to be under the control of Colonel Abdul Kader. And I quote: "I saw him
16 there almost every day. The OCRB was a bit his base." 2130-5310, paragraph 37.

17 (Redacted)

18 (Redacted), * to illustrate the absence of any chain of

19 command. "The Chadian colonel asked me what I had done to be treated this way by
20 the other Seleka elements. He even asked me if I had killed someone and wanted to
21 know who had taken me to the OCRB. One of the elements told him that it was
22 General Bachar who had brought me to the OCRB. This Chadian colonel was not
23 happy with the treatment that I had received." End of quote. CAR-OTP-2018-0389,
24 paragraph 86 and 87.

25 He also mentions General Linguissara, * head of the Gendarmerie

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MS VON BRAUN: [15:04:09] (Interpretation) Mr President.

9 (Speaks English) Excuse me for interrupting, but the last point, I have to say, would
10 be something that we would consider be for private session. The last mentioned
11 point of evidence the learned counsel referred to, on account of witness protection
12 issues, referring to P-2179, please. I just bring this to your attention.

13 PRESIDING JUDGE AITALA: [15:04:32] Court officer, let's move into private
14 session.

15 MS NAOURI: [15:04:42](Interpretation) Mr President --

16 (Private session at 3.04 p.m.)

17 THE COURT OFFICER: (Overlapping speakers) We are in private session.

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 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Open session at 3.06 p.m.)
- 14 THE COURT OFFICER: [15:06:28] We're back in open session, Mr President.
- 15 PRESIDING JUDGE AITALA: [15:06:33] Mr Court Officer, how long is the Defence
- 16 left with?
- 17 THE COURT OFFICER: [15:06:37] The Defence has four minutes left.
- 18 PRESIDING JUDGE AITALA: [15:06:41] Okay.
- 19 Mr Counsel, please.
- 20 Well, Mr Counsel, if you have any essential point, I'm not going to -- to restrict
- 21 the Defence to this extent. If you can stay to the time. If you need a bit more, it's
- 22 not going to be a big problem, of course.
- 23 MR FRANÇOIS-JACQUEMIN: [15:07:00](Interpretation) Thank you, Mr President.
- 24 (Counsel confer)
- 25 MR FRANÇOIS-JACQUEMIN: [15:07:27](Interpretation) A small problem of

1 communication, so could we perhaps go into private session after all.

2 PRESIDING JUDGE AITALA: [15:07:39] What about, pursuant? Is it about
3 something you're about to say? Okay.

4 MR FRANÇOIS-JACQUEMIN: [15:07:44](No Interpretation) (Overlapping speakers)

5 PRESIDING JUDGE AITALA: [15:07:46] Okay.

6 Mr Court Officer, then -- well, let's return all over again into private session.

7 MR FRANÇOIS-JACQUEMIN: [15:07:50](Interpretation) My apologies.

8 (Private session at 3.07 p.m.)

9 THE COURT OFFICER: [15:07:58] We're in private session, Mr President.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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12 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Open session at 3.13 p.m.)

21 THE COURT OFFICER: [15:13:04] We're back in open session, Mr President.

22 MR FRANÇOIS-JACQUEMIN: [15:13:07](Interpretation) In summary,

23 the Prosecutor relies mainly on the testimony of one single person or on contradictory

24 accounts to base his charges against Mr Said. Among the incidents that meet

25 a minimum evidentiary requirements, the Prosecutor does not dismiss those

1 conducted under judicial review.

2 Furthermore, the Prosecution makes no mention of the overall disorganisation in
3 Bangui in 2013. The reality of a disorganised OCRB that was not headed by Mr Said,
4 either in practice or not even on paper, because since its creation the OCRB remained
5 under the leadership of General Mazangue.

6 Yet, for these incidents, and those associated with the CEDAD, which are equally
7 fragile, and only on that basis, the Prosecution requests that Mr Said should stand
8 trial.

9 PRESIDING JUDGE AITALA: [15:14:47] Thank you very much.

10 This then concludes the submissions on the merits of the Defence.

11 We will then move to conclusions and then I'll give the floor to
12 the Office of the Prosecutor for 30 minutes.

13 MS VON BRAUN: [15:15:34] Pardon, Mr President, your Honours. Part of my
14 presentation will consist of very few slides. They will be shown on evidence 2.

15 It's not a lot, just a few, but they will appear on evidence channel 2.

16 Let me start out with addressing, first, the -- some of the last points made by the last
17 speaker of the Defence team. I will then move back to the points raised by
18 my -- the previous speakers of the Defence.

19 Now, your Honours, I do not have to remind you that questions of intense scrutiny of
20 credibility of witness or chain of custody issues at this stage of the proceedings are
21 not only not persuasive, they don't necessarily belong here to the extent alleged by
22 the Defence. However, I would like to briefly state out in response to my learned
23 colleague that the assessment of the Prosecution's evidence put forward negates, with
24 respect to OCRB and the responsibility of Mr Said for crimes committed there, that
25 the Prosecution relies on nine insider witnesses, among them persons who worked for

1 the police, as well as on the Seleka side, closely with the suspect. In addition, there's
2 evidence of the crime-base witnesses.

3 Now, my learned colleague from the Defence tries to construct from the testimony of
4 these crime-base witnesses, especially in the last portion of his presentation, that there
5 was no hierarchy, no order, no organisation at the OCRB. These crime-base
6 witnesses have their perspective, their story to tell.

7 Your Honours, you have the totality of our evidence. You have the insider
8 testimony that complements the testimony of these witnesses. It has to be taken
9 together and viewed together to bring the truth to light.

10 Now, as set out in our pre-confirmation brief, the Prosecution does not negate that
11 the Prosecution of CAR and the police had access to the OCRB at the time. However,
12 the presence of police officers and the Prosecutor did not prevent the crimes from
13 occurring, as the victims tell us. And, actually, the police officers themselves. I
14 refer you especially to the testimony of P-2478 at CAR-OTP-2110-0745, page 0759,
15 related to the *sous-sol* at OCRB.

16 With regards to the OCRB, the Prosecution does not argue that it was secret, nor does
17 it negate that other prisoners were detained at OCRB partially at some point during
18 the relevant time frame. That is all out in the open.

19 In contrast to what happened later at CEDAD, which is the natural continuation of
20 what started at OCRB, the OCRB was a pre-existing institution of the CAR
21 government police that was overtaken by the Seleka coalition, Mr Said and his
22 associates at the forefront.

23 However, that there were certain other prisoners among them also, potentially Seleka
24 for theft and burglary, doesn't mean that the targeting of the prisoners didn't happen.
25 That is at the heart of the crimes charged. Their testimony lies before you.

1 The modus operandi, which began at OCRB, continued at the CEDAD. There,
2 your Honours, the crimes were taken to another level. The same persons associated
3 with and with the participation of the suspect, Mr Said, committed crimes that were
4 only concerning the targeting of certain persons perceived as Bozizé supporters.

5 The Defence here, my learned colleague Mr Jacquemin, picks two of the six insider
6 witnesses the Prosecution relies on to establish Mr Said's individual criminal
7 responsibility at CEDAD - two - and then deconstructs those two testimonies alleging
8 hearsay.

9 Now, we have set out in our PCB how the insider witnesses on his criminal
10 responsibility, their testimony are sufficient to establish substantial grounds to believe
11 his individual criminal responsibility at CEDAD. I just want to point out that there's
12 more evidence on the insider level than projected here today by the Defence.

13 Let me address the challenges to the *chapeau* elements of crimes against humanity and
14 war crimes briefly now.

15 The Defence argues that there was no ongoing armed conflict between March and
16 September 2013 as there was a cessation of hostilities.

17 Now, the Prosecution does not deny that there was a certain lull in armed hostilities
18 after the Seleka had taken over Bangui. However, such a lull does not automatically
19 render international humanitarian law inapplicable. On the contrary, requirements
20 to establish the application of the law of armed conflict do not exclude changes in
21 the composition or configuration of parties, or fluctuation in the intensity of
22 hostilities.

23 What matters is that the party to the conflict continues to exhibit characteristics
24 consistent with the capability and resolve to maintain the hostilities and that it
25 actually does so.

1 The Prosecution's evidence shows that this test is met, your Honours.

2 The Prosecution relies on several witnesses on the very inside of the circle around
3 Bozizé at the time, as well as documentary evidence. The Defence today has at
4 length cited a report by the International Commission of Inquiry which references
5 ICRC, among others. This was disclosed by the Prosecution in this case. However,
6 the Prosecution relies on evidence obtained from insider witnesses which are all
7 public -- which were never publicly available and have been cited at length in
8 the PCB.

9 The UN Commission, your Honours, openly acknowledged its own limitations,
10 referring to the difficulties it had experienced during its investigation and ending
11 with a critical caveat. And I quote at paragraph 94 of the report cited by the Defence:
12 "The Commission acknowledges that future analyses, based on more detailed
13 accounts of all the many incidents that occurred in this time frame, might lead to
14 a different conclusion."

15 Your Honours, next to insider witnesses, the Prosecution relies on documents to
16 establish that there was an ongoing armed conflict at the time.

17 I wish to draw your attention to a number of documents on the screen. At
18 evidence 1, a document should appear -- evidence 2, sorry, which is a report from
19 the Ministry of Security dated 3 June 2013. It handles ongoing confrontations. It
20 has been disclosed to the Defence and to the Chamber in these proceedings and is
21 part of the list of evidence of the Prosecution.

22 On the next slide, your Honours, displayed are two Seleka government documents
23 dated July and August 2013. These are reports on the armed activities of Olivier
24 Koudemon - already mentioned by Mr MacDonald yesterday - one of the leaders of
25 the pro-Bozizé forces.

1 The Prosecution's evidence shows that within six months of Bozizé's ouster,
2 the Anti-Balaka and pro-Bozizé forces, led by former FACA and loyalists, launched
3 a large-scale attack first on Bossangoa and its surrounding areas.

4 The witness testimony and the documents that we can provide show a continuation
5 of the armed groups and that this meets the test necessary for a non-international
6 armed conflict at the relevant time.

7 Let me turn to the Defence's assertion that the Seleka were not "the state", were
8 disorganised, divided, which impacts in their opinion on the *chapeau* elements of both
9 war crimes and crimes against humanity.

10 This argument has been brought in the opening and also is represented heavily in
11 their submissions today.

12 In contrast to the Defence arguments which is almost -- which are almost exclusively
13 based on interpretation of media reporting and reporting by scholars and research,
14 the Prosecution's evidence shows that the Seleka coalition was able to overtake
15 Bangui, form a government, usurp and control existing state institutions, coordinate
16 on large-scale military operations, such as in Boy-Rabe. But not only in Boy-Rabe, on
17 a day-to-day basis.

18 The Prosecution does not only rely on P-0776 and P-1167 for the advance on Bangui,
19 the planning and the coordination with regards to this advance. As the PCB sets out,
20 we rely on several other insider witnesses for establishing what happened during this
21 advance.

22 P-2105, P-0413, P-0349 and P-0342 are just to name a few, in addition to photographs
23 and reporting on the advance.

24 Now, I ask you, your Honours, how is a coalition that is allegedly completely
25 dysfunctional able to take a capital of a country?

1 Djotodia and the Seleka leaders established a government that began functioning at
2 the latest in April 2013. It wasn't perfect. Probably not, no. Nobody alleges that.
3 But there are strong indicia that the government was sufficiently functioning, that
4 the Seleka were sufficiently organised to commit the crimes that are alleged.
5 Contrary to the Defence assertion, Djotodia built the government from the coalition
6 appointing several of his closest allies to ministerial points. Adam, Dhaffane,
7 the others appointed were closely cooperating with the Seleka. He ruled by
8 presidential decrees and the many, many decrees were disclosed in these
9 proceedings.

10 Seleka leaders also occupied bases across Bangui. The control in these bases tended
11 to be vertical and they commanded these bases with prominent Seleka generals.

12 (Counsel confer)

13 MS VON BRAUN: [15:28:54] Your Honours, I'm being told that I should repeat the P
14 numbers for the transcript that I just said. I was too fast there. I will do that
15 quickly. I apologise for being too fast on that.

16 P-2105, P-0413, P-0349 and P-0342. I apologise once again. I will slow down now.

17 The Seleka elements were indeed loyal to their respective commanders in these bases.

18 The evidence clearly shows that. But the commanders engaged in a system of lateral
19 coordination and cooperation in order to achieve common goals. After taking power,
20 the Seleka engaged in measures to regularise the Seleka coalition. Indicia are
21 membership ID cards, trainings being organised, food distribution systems being
22 organised across bases.

23 Djotodia himself, as president, created new state institutions such as the CEDAD, as
24 well as the National Security Council. In this council, Nouredine Adam briefed
25 regularly the Seleka members on aspects of security, including when he was -- he

1 became head of the CEDAD.

2 It was all not as disorganised as the Defence is keen on wanting us to believe.

3 Your Honours, as you can see on a photograph on the next slide dated

4 31 August 2013, even when the Seleka were removed from OCRB, this was conducted

5 in a well-organised and orderly manner. You can see on the far left corner Mr Said

6 in military uniform. You can also see president -- former President Djotodia and an

7 orderly line-up of members of the OCRB.

8 There are additional strong indicia of sufficient organisation to meet the legally

9 required test. At Camp de Roux, Djotodia established his own mighty presidential

10 security that coordinated, among others, with the Seleka at OCRB and Adam at OCRB

11 and later at CEDAD.

12 The presidential decree that nominated former members of the advance on Bangui to

13 powerful positions of that security is disclosed and on the list of evidence at

14 CAR-OTP-2004-1385 at 1420 to 1422 -- 21, sorry.

15 Seleka commanders from various bases, regardless of their nationality, ethnicity or

16 political affiliation, high-ranking members of the presidential security were all

17 present and coordinated with each other during both Boy-Rabe operations.

18 The evidence on that has also been disclosed and provided to the parties.

19 Now, the Prosecution does not refute that there were deep lines of division, including

20 on ethnic as well as national borders within the coalition. However, the leaders

21 depended on each other to remain in power and acted accordingly.

22 While the evidence disclosed and summarised in the PCB shows that there was an

23 aspect of -- a security aspect to the operations in Boy-Rabe, a disarmament aspect to

24 those operations, the result was that the Seleka targeted these neighbourhoods as

25 a whole at least twice in the relevant time frame.

1 It is immaterial whether the main aim or object of an attack was to attack civilians or
2 whether the attack also served other objectives, such as to locate weapons, detain
3 fighters, or other things.

4 What is relevant is that the civilian population was actually attacked, which is the
5 case here.

6 The Defence assertion that the looting in Boy-Rabe was simply ordinary criminality
7 does not suffice to negate that this was part of the policy to target the entire
8 neighbourhood.

9 One of our witnesses describes that at least 100 Seleka were looking throughout
10 the day. Once a truck was full -- looting throughout the day, I'm sorry. Once
11 a truck was full, another would arrive in its place.

12 The testimony part is on the slide before you. It is at CAR-OTP-2079-0315,
13 paragraphs 26 and 30 of that witness's testimony.

14 These were not isolated acts during these operations. The looting itself was
15 organised, supported. And this is what this witness tells us.

16 Your Honours, the evidence before you shows that the coordinated attacks on
17 the Boy-Rabe neighbourhood involved multiple acts of violence referred to in
18 Article 7(1). Both operations resulted in murders and rapes, massive lootings of bare
19 necessities. This is based on direct evidence of witnesses, people from those
20 neighbourhoods, people who can tell, attest to the fact that that happened.

21 Likewise, the charged incidents are part of this attack. They are connected. There
22 is interlinking evidence.

23 Among those detained at OCRB and CEDAD, they could not reasonably be perceived
24 to be members of the pro-Bozizé forces. This is evident by looking at their
25 professions and the circumstances of their arrest at the time.

1 The Defence has today quoted a crime base witness, P-1289, to allege that there was
2 no such targeting. But they neglect to analyse a crucial part of his statement. At
3 CAR-OTP-2053-0359, page 0373 to 0374, paragraph 80, this witness clearly states that
4 he was himself questioned about his affiliation with Bozizé by a high-ranking Seleka
5 leader.

6 Nonetheless, the Defence argue, irrespective of all the victims that have testified so
7 far -- that have -- that have been -- that have been interviewed so far, whose evidence
8 is before you, that there was no policy to target perceived Bozizé supporters.

9 The consistent pattern of violence against certain civilians in the relevant period
10 shows otherwise.

11 The types of crimes are revealing here too, like arbitrary arrests of peaceful protesters.
12 Like attack on people for allegedly carrying or being in the possession of tee shirts
13 that are supportive of Bozizé.

14 One witness from Boy-Rabe, P-0100, brings it to a point when he states: (Redacted)
15 (Redacted) This brings it to a point, your Honours.

16 It is evident from the Prosecution's evidence that some low-level Seleka were arrested
17 and even prosecuted, but only for acts of looting, theft, destruction of property or acts
18 of disturbance of public order. The Prosecution has so far found no evidence that
19 murders, rapes and arbitrary detentions were seriously investigated or prosecuted.

20 Those looters who were prosecuted - and the evidence has been disclosed and has
21 been referenced -- that have been investigated and partly prosecuted, and

22 the evidence has been disclosed and referenced by the Defence - they seem to even
23 have gotten away. And I refer you to a report at CAR-OTP-2034-0270 at 0287 and
24 0302, as well as a UN report at CAR-OTP-2001-0329 at 0339.

25 Thus, your Honours, even though there were isolated attempts to address certain

1 criminality, and there may have been certain individuals at the time who tried to do
2 the right thing, this was not backed up by the organisation at the time. Not even for
3 those examples brought forward today by the Defence.

4 I close my submissions on that point today and thank you for your attention.

5 PRESIDING JUDGE AITALA: [15:40:32] Thank you very much.

6 (Trial Chamber confers)

7 PRESIDING JUDGE AITALA: [15:40:58] Okay, thank you very much.

8 Now would be time for the OPCV. I would like to hear from you, Madam Counsel,
9 how long do you think you will need?

10 I don't want to squeeze at all your -- your final remarks, because you haven't spoken
11 in the one hour I had given. So please let the Chamber know how long you believe
12 you would take.

13 MS PELLET: [15:41:25](Interpretation) Thank you, Mr President.

14 The circumstances in which I prepared my closing statement are such that I am not
15 able to tell you exactly how much time I will need. So I would rather present all my
16 observations in one stretch, and if it were to extend beyond 4 p.m. I would be asking
17 you to let me conclude after 4 p.m. Otherwise you could authorise me to do my
18 presentations in one stretch tomorrow morning.

19 PRESIDING JUDGE AITALA: [15:42:08] Well, look, we want victims to have their
20 say without any time constraint. So I will adjourn the hearing to tomorrow.

21 Tomorrow we will hear from you and we will hear the final statements from
22 the Defence.

23 So the hearing now is adjourned to tomorrow at 9.30.

24 I would like to thank everyone, and especially our esteemed interpreters,
25 the courtroom officers, technical staff and everyone who has made these hearings

- 1 possible.
- 2 Thank you very much and a nice afternoon and evening. Thank you.
- 3 THE COURT USHER: [15:42:48] All rise.
- 4 (The hearing ends in open session at 3.42 p.m.)