

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 May 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public
with Confidential Annex A**

Public Redacted Version of “Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, ICC-01/14-01/21-308-Conf, dated 13 May 2022

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A.A. Khan QC

Mr Mame Mandiaye Niang

Counsel for Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet

Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. The Prosecution hereby requests that the Chamber introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of four crime-base witnesses—P-0358, P-1180, P-2263, and P-2295²—pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (the “Request”).

2. The Prior Recorded Testimonies are reliable, probative, and relevant to the charges. They do not reflect on the acts and conduct of Mr SAID. Instead, they pertain to the crime base of the charges against Mahamat Said Abdel Kani (“Mr SAID”). Specifically, P-1180, P-2263, and P-2295 were arbitrarily arrested, detained, and mistreated by the Seleka at the OCRB in incident (h) of the charges (the “Flyers Incident”), as confirmed by the Pre-Trial Chamber II.³ The other witness, P-0358, corroborates the detention of another victim of the Flyers Incident and provides background information and documentary evidence relevant to the chapeau elements of crimes against humanity.

3. The introduction of the Prior Recorded Testimonies would be in the interests of justice. The Prosecution estimates that it would save up to 16 hours of direct examination time. Granting the Request would accordingly enhance the expeditiousness of the proceedings and save valuable court time and resources.

4. The Introduction of the Prior Recorded Testimonies would not prejudice the rights of the Accused. They are cumulative to and corroborate the evidence of other

¹ Annex A (A1 to A12) lists the prior recorded testimonies of P-0358, P-1180, P-2263, and P-2295. This is comprised of their witness statements (at I) and associated material (at II). Where items are necessary to understand a particular witness’s prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence, those items are also referenced (at III). These materials are all hyperlinked. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² Hereinafter “Four Witnesses.”

³ Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Conf, 9 Dec. 2021 (“Confirmation Decision”), pp. 56-57 (para. 29(h) of the confirmed charges).

witnesses who will testify live at trial about the same topics, including P-1743 (who was part of the same group of “Flyers” victims) and ten other OCRB victims.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1), the Request and its annex are filed as confidential because they refer to the identity of Prosecution witnesses and confidential items of evidence. A public redacted version will be filed as soon as possible.

III. APPLICABLE LAW

6. The Prosecution relies on its previous submissions on the legal framework for the introduction of prior recorded testimony pursuant to rule 68(2)(b), as set out in its first application under rule 68(2)(b).⁴

IV. SUBMISSIONS

A. The Prior Recorded Testimonies Go to Proof of Matters Other than the Acts and Conduct of the Accused

7. None of the Prior Recorded Testimonies mention Mr SAID or any matters related to his acts and conduct. Instead, as described below, the Prior Recorded Testimonies detail the experience of victims of the alleged crimes that occurred at the OCRB in July 2013.

⁴ Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-289-Conf, 29 April 2022, paras. 7-10, 11 (fn. 8), 46-50.

B. The Prior Recorded Testimonies are Relevant and Probative

8. All the Prior Recorded Testimonies are highly relevant as they relate to the crime base of the charges against Mr SAID. Specifically, P-1180, P-2263 and P-2295 are direct victims of the charged crimes at the OCRB, while P-0358 corroborates the detention of another OCRB victim (related to the same Flyers Incident) and additionally provides background information and documentary evidence relevant to the chapeau elements of crimes against humanity. Key aspects of each witness's evidence are further highlighted below.

P-0358

9. P-0358 was [REDACTED] in BANGUI during the Seleka regime.⁵ He provides information about the influx of victims brought to the hospital from March 2013.⁶ Also, P-0358 was arrested in relation to the "Flyers incident" and was brought to *Camp de Roux* where he was interrogated and ultimately freed. P-0358 describes the detention of one hospital staff member and corroborates the detention of P-1180.⁷

10. P-0358 also describes the aftermath of the attack on a minibus in the PK9 area of BANGUI [REDACTED] when the bodies were brought to the morgue.⁸ P-0358 describes receiving [REDACTED] who told P-0358 that, [REDACTED].⁹ This information is relevant to the chapeau elements of crimes against humanity.¹⁰

11. P-0358's prior recorded testimony includes his statement and three annexes.¹¹ Two annexes comprise lists that P-0358 compiled during the events that relate to

⁵ P-0358, CAR-OTP-2043-0433 at 0435, para. 14.

⁶ P-0358, CAR-OTP-2043-0433 at 0435-0438, paras. 16-36; at 0440-0442, paras. 51-59.

⁷ P-0358, CAR-OTP-2043-0433 at 0444-0447, paras. 80-95.

⁸ P-0358, CAR-OTP-2043-0433 at 0447-0448, paras. 96-104.

⁹ P-0358, CAR-OTP-2043-0433 at 0447-0448, paras. 99-101.

¹⁰ Confirmation Decision, pp. 23-24, paras. 60-65.

¹¹ See Annex A (A1) for complete list.

victims brought to the hospital and to the morgue after the Seleka takeover in March 2013.¹² One of these lists contains the name of Oswald SANZE,¹³ an OCRB victim as confirmed by Pre-Trial Chamber II in sub-incident (j).¹⁴ That same list includes several names of victims of incidents that exemplify the Seleka's attack on the civilian population in Bangui, as confirmed by PTC Chamber II,¹⁵ including victims of the Seleka's large-scale operations in the 7th arrondissement and Boy Rabe areas in April 2013¹⁶ and victims of the July 2013 PK9 minibus incident.¹⁷

P-1180

12. P-1180 is a victim who was arrested in front of the *Hôpital Communautaire* in BANGUI by the Seleka for photocopying a flyer calling for a "*ville morte*".¹⁸ The witness was put in a Seleka vehicle and was taken to *Camp de Roux*, beaten, and interrogated.¹⁹ He was put back in the Seleka vehicle, taken back to the hospital and was present during the detention of two other hospital staff, including P-0358.²⁰ They were all taken to *Camp de Roux* and interrogated.²¹ Later, P-1180 was put once again in the Seleka vehicle and was present during the arrest of other victims and witnesses, including P-2263, who were all taken to *Camp de Roux* and detained for about 7 days.²²

¹² **P-0358**, CAR-OTP-2043-0433 at 0436, para. 22.

¹³ CAR-OTP-2043-0605 at 0607, entry #105.

¹⁴ Confirmation Decision, p. 57 (para. 29(j) of the confirmed charges).

¹⁵ Confirmation Decision, p. 23, para. 60 and p. 53 (para. 18 of the confirmed charges).

¹⁶ CAR-OTP-2043-0605 at 0605-0606, entry #33 ("BOY Bienvenu," who is an alleged 7th arrondissement victim; see **P-0312**, CAR-OTP-2039-0133 at 0141, paras. 51-54 and its Annex 7, CAR-OTP-2039-0351, at entry #6); entry #37 ("ASSANA Simon," who is an alleged victim of the Seleka's April 2013 Boy Rabe operation; see **P-0119**, CAR-OTP-2032-0753 at 0769, paras. 109-112); entry #42 ("POUNINGAOLA Sandrine," who is an alleged victim of the Seleka's April 2013 Boy Rabe operation; see **P-0119**, CAR-OTP-2032-0753 at 0769 to 0770, paras. 113-121; **HRW Report**: CAR-OTP-2001-1870 at 1896).

¹⁷ CAR-OTP-2043-0605 at 0607, entry #107 ("NAMGANA Jerome," likely referring to [REDACTED], Jerome NGOMBE; see **P-0491**, CAR-OTP-2013-0678 at 0680-0681, paras. 13-20); entry #108 ("MOKOKPALA Loic (receveur)", referring to one [REDACTED]; see **P-0529**, CAR-OTP-2051-0159 at 0163, 0167, paras. 22, 45); entry #109 ("VOMONGOMBEDE Sylvain", referring to one of [REDACTED]; see **P-0529**, CAR-OTP-2051-0159 at 0163, 0167, paras. 22, 45). See also **P-0358**, CAR-OTP-2043-0433 at 0448, para. 103; [REDACTED]: CAR-OTP-2044-0573 at 0634, entries 355-356, 360-361; **Primature Report**: CAR-OTP-2101-1549.

¹⁸ **P-1180**, CAR-OTP-2043-0483 at 0487-0488, paras. 25-33.

¹⁹ **P-1180**, CAR-OTP-2043-0483 at 0488-0490, paras. 35-48.

²⁰ **P-1180**, CAR-OTP-2043-0483 at 0490-0491, paras. 49-55.

²¹ **P-1180**, CAR-OTP-2043-0483 at 0491, paras. 53-56.

²² **P-1180**, CAR-OTP-2043-0483 at 0491-0504, paras. 57-152.

Afterwards, P-1180, along with 16 others, was transferred to the OCRB and was severely beaten upon arrival.²³ P-1180 was detained for about 7 days at the OCRB and then was transferred to the Ngaragba prison.²⁴ He was held in the prison throughout his trial and later he was declared innocent and released.²⁵

13. P-1180's prior recorded statement includes his statement and six annexes.²⁶

P-2263

14. P-2263 is a victim who was arrested, along with his friend, by the Seleka at his shop in BANGUI.²⁷ At the moment of his arrest, he was not aware of the reason for his detention.²⁸ He was put into a vehicle where he saw P-1180 and other victims and was forced to lie down on the floor.²⁹ After, he was taken to *Camp de Roux*, where he was beaten upon arrival and held together with others, first in a small cell and later in a bigger cell.³⁰

15. After a few days, P-2263, with the other detainees, was taken to the OCRB³¹ and upon arrival, the Seleka [REDACTED].³² After, P-2263 and the others had to run to the cell while being beaten with boots and batons.³³ P-2263 was held in a very small cell with no windows, cramped and hot, and received no food or medication.³⁴

²³ **P-1180**, CAR-OTP-2043-0483 at 0504-0505, paras. 153-163.

²⁴ **P-1180**, CAR-OTP-2043-0483 at 0505-0506, paras. 164-170.

²⁵ **P-1180**, CAR-OTP-2043-0483 at 0506, para. 171.

²⁶ See Annex A (A2) for complete list.

²⁷ **P-2263**, CAR-OTP-2089-1229 at 1231-1232, paras. 13-18.

²⁸ **P-2263**, CAR-OTP-2089-1229 at 1232, para. 18.

²⁹ **P-2263**, CAR-OTP-2089-1229 at 1232, paras. 20-22.

³⁰ **P-2263**, CAR-OTP-2089-1229 at 1236-1237, paras. 51-59.

³¹ **P-2263**, CAR-OTP-2091-3074 at 3077, para. 17.

³² **P-2263**, CAR-OTP-2091-3074 at 3079, para. 21.

³³ **P-2263**, CAR-OTP-2091-3074 at 3079, para. 22.

³⁴ **P-2263**, CAR-OTP-2091-3074 at 3079-3080, paras. 23, 26.

16. While being held at the OCRB, P-2263 visited the Tribunal³⁵ twice. After being held at the OCRB for 7 days, he was transferred to NGARAGBA prison where he was detained throughout his trial.³⁶ P-2263 was later released.³⁷

17. P-2263's prior recorded statement includes two statements and four annexes.³⁸

P-2295

18. P-2295 was a victim arrested by the Seleka at the Terminus bus station in BANGUI.³⁹ A boy approached him, showed him a paper about the strike people were talking about, and handed over the paper to P-2295. Then, a man in jeans asked P-2295 questions about the paper, and P-2295 was arrested and put in a Seleka vehicle.⁴⁰ P-2295 was taken to *Camp de Roux* and was put in a cell with other prisoners who were arrested in connection to the paper.⁴¹

19. After several days at *Camp de Roux*, P-2295, along with others, was transferred to the OCRB.⁴² Upon arrival, the Seleka took off P-2295's clothes, [REDACTED]. Then, the Seleka put P-2295 in a small cell with the others.⁴³ After, P-2295 was transferred to the NGARAGBA prison.⁴⁴ He was brought many times before the Tribunal and was given two months suspended sentence.⁴⁵

20. P-2295's prior recorded statement includes two statements and two annexes.⁴⁶

³⁵ The Prosecution notes that the Tribunal is the "*Tribunal de Grande Instance*." See **P-2263**, CAR-OTP-2091-3074 at 3082, paras. 33-35.

³⁶ **P-2263**, CAR-OTP-2091-3074 at 3083, para. 36; at 3083-3086, paras. 38-52.

³⁷ **P-2263**, CAR-OTP-2091-3074 at 3087, paras. 54-57.

³⁸ See Annex A (A3) for complete list.

³⁹ **P-2295**, CAR-OTP-2130-9460 at 9462-9463, paras. 12-18.

⁴⁰ **P-2295**, CAR-OTP-2130-9460 at 9462-9463, paras. 12-18.

⁴¹ **P-2295**, CAR-OTP-2130-9460 at 9464, paras. 19-20.

⁴² **P-2295**, CAR-OTP-2130-9460 at 9465, para. 25.

⁴³ **P-2295**, CAR-OTP-2130-9460 at 9465, paras. 25-26.

⁴⁴ **P-2295**, CAR-OTP-2130-9460 at 9466, para. 28.

⁴⁵ **P-2295**, CAR-OTP-2130-9460 at 9466, paras. 32-34.

⁴⁶ See Annex A (A4) for complete list.

C. The Prior Recorded Testimonies Have Sufficient Indicia of Reliability

21. The Prior Recorded Testimonies bear sufficient *indicia* of reliability for introduction into evidence. The testimonies were obtained by the Prosecution in the ordinary course of investigations. All Four Witnesses have signed their statements, attesting that their testimony was read back to them, were given voluntarily, and that their contents were true to the best of their recollection of the events.⁴⁷ Where an interpreter was used, the witnesses confirmed that they read over the statement with the interpreter and confirmed its accuracy.⁴⁸ Their statements also bear the signature of an interpreter, certifying that each witness appeared to have heard and understood the translation.⁴⁹

22. The statements of all Four Witnesses are coherent, internally consistent and are corroborative of each other.

D. The Prior Recorded Testimonies Are Cumulative to or Corroborative of Other Evidence, including that of Witnesses Who Can Be Cross-Examined by the Defence.

23. The Prior Recorded Testimonies are cumulative to or corroborative of other evidence, including the evidence of witnesses whom the Prosecution will call to testify live, whether fully *viva voce* or pursuant to the rule 68(3) procedure. Of particular note, the Prosecution plans to call P-1743, another victim of the Flyers Incident, at trial, as a fully *viva voce* witness. Witness P-1743 is considered as [REDACTED] detainees by the victims themselves. He will provide an overview of the incident and will address all

⁴⁷ **P-0358**, CAR-OTP-2043-0433 at 0452; **P-1180**, CAR-OTP-2043-0483 at 0512; **P-2263**, CAR-OTP-2089-1229 at 1240; CAR-OTP-2091-3074 at 3089; **P-2295**, CAR-OTP-2130-9460 at 9468.

⁴⁸ **P-0358**, CAR-OTP-2043-0433 at 0452; **P-1180**, CAR-OTP-2043-0483 at 0512; **P-2263**, CAR-OTP-2089-1229 at 1240; CAR-OTP-2091-3074 at 3089; **P-2295**, CAR-OTP-2130-9460 at 9468.

⁴⁹ **P-0358**, CAR-OTP-2043-0433 at 0453; **P-1180**, CAR-OTP-2043-0483 at 0513; **P-2263**, CAR-OTP-2089-1229 at 1240; CAR-OTP-2091-3074 at 3090; **P-2295**, CAR-OTP-2130-9460 at 9469.

aspects of the incident, including the arrest, the mistreatment received at the OCRB, as well as the relevant judicial proceedings. Also, the Prosecution proposes to call at least ten other OCRB victims to testify live at trial: P-0481, P-0547, P-1429, P-1762, P-2241, P-2400, P-2692, P-2931, P-3056, and P-3064.⁵⁰ All of the OCRB victims were detained by the Seleka within a five-month span between April 2013 and August 2013, and their accounts are similar in many aspects.

24. In addition to corroborating the above-mentioned witnesses, the Prior Recorded Testimonies is cumulative to and corroborates other evidence. Such evidence includes the evidence of witnesses whose testimony the Prosecution will seek to introduce through rule 68(2), public reporting, and documents produced by the government of the Central African Republic.⁵¹

E. The Prior Recorded Testimonies Refer to Matters that are not Materially Disputed

25. As noted above, the Four Witnesses are crime base witnesses who do not provide any linkage evidence to Mr SAID. The Prosecution submits that the *factual* allegations put forth by the Four Witnesses are unlikely to be materially in dispute. Rather, any matters of significant dispute will circle around the *legal significance* or characterisation of those factual allegations, and whether Mr SAID can be held criminally responsible for the alleged crimes at the OCRB, as described or corroborated by the Four Witnesses.

⁵⁰ P-3064 is a new witness [REDACTED] in the charges in incident (m) of the charges, as set out in the Confirmation Decision; his statement will be disclosed next week. P-0481 and P-1762 are witnesses whose evidence the Prosecution previously planned to request to introduce via rule 68(2)(b); *see* ICC-01/14-01/21-291-Conf-AnxA. However, the Prosecution now plans to request to introduce their prior recorded testimony via rule 68(3), which means they would be available for cross-examination. The Prosecution plans to file an updated preliminary list of witnesses next week.

⁵¹ *See, e.g.*, **TGI Register**: CAR-OTP-2008-2415 at 2501; **Report**, CAR-OTP-2034-0270 at 0286, para.83-84; **Media articles**: CAR-OTP-2074-0715 at 0719; CAR-OTP-2088-2811 at 2813; CAR-OTP-2074-0336 at 0342; **Communiqué radio**: CAR-OTP-2034-2344; **Complaints**, CAR-OTP-2005-1917; CAR-OTP-2007-0427; CAR-OTP-2034-0213; **Report**: CAR-OTP-2102-0614 at 0617.

26. The Defence will be in a position to explore any issues related to the alleged detention and mistreatment of perceived BOZIZE supporters at the OCRB during cross-examination of the many other OCRB victims who will give testimony in the courtroom about their experiences at the OCRB between April and August 2013.⁵² Furthermore, the Defence can develop its lines of argument in oral and written submissions in response to the Prosecution's case, or by calling its own witnesses.

F. The interests of justice and judicial economy would be served by introducing the Prior Recorded Testimonies

27. The interests of justice would be advanced by the introduction of the Prior Recorded Testimonies *via* rule 68(2)(b) and would foster judicial economy in reducing the estimated duration of the Prosecution's case-in-chief. The Prosecution has estimated it will require an average of 4 hours for its examination of each witness. Accordingly, granting the Request would result in a savings of approximately 16 hours of direct examination time, thereby expediting the proceedings. It would also reduce the amount of time the Chamber would spend hearing a repetition of the same type of evidence on the same topics, many aspects of which may not be in serious dispute. Furthermore, the Four Witnesses would be saved the disruption of having to travel to appear in court, and the Court would preserve valuable resources that could be used for other purposes.

⁵² As noted above at paragraph 23, the Prosecution proposes to call at least 10 OCRB victims to testify live, whether fully *viva voce* or pursuant to the rule 68(3) procedure.

G. Introduction of the Prior Recorded Testimonies is not unduly prejudicial to or inconsistent with the rights of the Accused

28. Introducing the evidence of the Four Witnesses under rule 68(2)(b) causes no unfair prejudice to the Accused. As noted above, this evidence is cumulative or corroborative of other evidence.

29. The Defence is unrestricted in its ability to call evidence to rebut the assertions of the Four Witnesses or to address any issues in the evidence in its oral or written submissions. Furthermore, as noted above, the Defence will also be able to cross-examine other Prosecution witnesses that will testify live before the Chamber about the same topics as those referred to by the Four Witnesses. These witnesses include P-1743 and at least ten other OCRB victims.

30. In these circumstances, it is unnecessary that the Four Witnesses be called to testify live and examination by the parties may be dispensed of without prejudicing the rights of the Accused.

V. RELIEF SOUGHT

31. For the above reasons, the Prosecution that requests the Chamber introduce into evidence the Prior Recorded Testimonies, as set out in Annex A to this filing, subject to the fulfilment of rules 68(2)(b)(ii) and (iii).



Karim A. A. Khan QC, Prosecutor

Dated this 24th day of May 2022
At The Hague, The Netherland