

**Cour  
Pénale  
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**International  
Criminal  
Court**

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

Date: **27 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 sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, ICC-01/14-01/21-328-Conf, dated 23 May 2022**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Prosecution hereby requests that the Chamber introduce into evidence the statements and associated material (“Prior Recorded Testimonies”) <sup>1</sup> of Nine Witnesses—P-0622, P-1289, P-1432, P-2172, P-2179, P-2239, P-2337, P-2519, P-3047<sup>2</sup>—pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (the “Request”).<sup>3</sup>

2. The Prior Recorded Testimonies are reliable, probative, and relevant to the charges. They do not reflect on the acts and conduct of Mahamat Said Abdel Kani (“Mr SAID”). Instead, the Nine Witnesses are all victims (or relatives of victims) of the crimes allegedly committed at the *Office Central de Répression du Banditisme* (“OCRB”).

3. The introduction of the Prior Recorded Testimonies would be in the interests of justice. The Prosecution estimates that it would save approximately 36 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 corroborative of the evidence of many other witnesses who will testify live at trial about the same topics, including over ten OCRB crime base witnesses and over ten Seleka [REDACTED].<sup>4</sup> They

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<sup>1</sup> Annex A (A1 to A9) lists the prior recorded testimonies of P-0622, P-1289, P-1432, P-2172, P-2179, P-2239, P-2337, P-2519, and P-3047. 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).

<sup>2</sup> Hereinafter, “Nine Witnesses.”

<sup>3</sup> The Prosecution was granted a page extension for this request, allowing a filing of up to 19 pages. *See* Email from Trial Chamber VI Communications, 17 May 2022, at 14:42.

<sup>4</sup> The exact numbers will likely be slightly higher than ten for both categories, but the Prosecution reserves the right to make its final decision on its witness list and proposed mode of testimony on 13 June 2022, the date it has been ordered to file its final list of witnesses. As the responses to the present motion will likely be filed after 13 June 2022, the Prosecution respectfully refers the Defence and Chamber to its final list of witnesses and witness summaries, once filed.

corroborate information about the inhumane conditions of detention and mistreatment of the detainees perceived as pro-BOZIZE.

## II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis* (1), the Request and its annex are filed as confidential because they refer to the identities 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 introduction of prior recorded testimony pursuant to rule 68(2)(b), as set out in its first and fifth applications under rule 68(2)(b).<sup>5</sup>

## 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 anything about his acts and conduct. Instead, as described below, the Prior Recorded Testimonies detail the experience of certain victims of the alleged crimes that occurred at the OCRB between April and August 2013.

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<sup>5</sup> 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; Prosecution's fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-323-Conf, 20 May 2022, para. 7 (discussing May 2022 Appeals Chamber jurisprudence relevant to the interpretation of rule 68(2)(b)).

## B. The Prior Recorded Testimonies are Relevant and Probative

8. All Nine Witnesses are direct victims of the crimes at the OCRB or otherwise can provide direct evidence relevant to the charged crimes. Key aspects of each witness's evidence are further highlighted below.

### P-0622<sup>6</sup>

9. P-0622, a Christian of Gbaya ethnicity and [REDACTED], was arrested by Seleka elements, along with five other [REDACTED].<sup>7</sup> They were brought first to [REDACTED] where Nourredine ADAM ("ADAM")<sup>8</sup> accused P-0622 and the others of being BOZIZE supporters and threatened them.<sup>9</sup> Then, ADAM ordered them to be taken to the OCRB.<sup>10</sup> Upon their arrival at the OCRB, they were harassed by Seleka elements who referred to them as "BOZIZE's people" and said they "would be sorry, and that they were going to kill [them] all."<sup>11</sup> They were detained in a small cell that contained at least 20 other people and was so crowded they could not sleep lying down.<sup>12</sup> P-0622 states that the Seleka deprived them of food and water, causing them to drink their own urine so as not to die of thirst.<sup>13</sup> During their detention, P-0622 saw two of this fellow detainees die, and their bodies were removed by Seleka elements;<sup>14</sup> P-0622 was later told that their bodies were dumped on the roadside.<sup>15</sup>

<sup>6</sup> See Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Conf, 9 Dec. 2021 ("Confirmation Decision"), p. 56, para. 29(e).

<sup>7</sup> P-0622: CAR-OTP-2022-0121-R01 at 0126-0127, paras. 33-41.

<sup>8</sup> In the interest of clarity, the Prosecution refers throughout this filing to Nourredine Adam as "ADAM," though the witnesses reference him by both his first and last names.

<sup>9</sup> P-0622: CAR-OTP-2022-0121-R01 at 0127, para. 43.

<sup>10</sup> P-0622: CAR-OTP-2022-0121-R01 at 0128, para. 51.

<sup>11</sup> P-0622: CAR-OTP-2022-0121-R01 at 0128, paras. 54.

<sup>12</sup> P-0622: CAR-OTP-2022-0121-R01 at 0129, paras. 60-61.

<sup>13</sup> P-0622: CAR-OTP-2022-0121-R01 at 0129, paras. 59, 62.

<sup>14</sup> P-0622: CAR-OTP-2022-0121-R01 at 0129-0130, paras. 63-64 and 74-75.

<sup>15</sup> P-0622: CAR-OTP-2022-0121-R01 at 0130, paras. 75-77.

10. On or around 22 August 2013, [REDACTED], Seleka elements repeatedly hit P-0622 and other detainees with the butts of their rifles.<sup>16</sup> [REDACTED] said: “*Vous, vous êtes des bêtes qui soutenez BOZIZE.*”<sup>17</sup> On another occasion, while forced to kneel, P-0622 and the other detainees were hit violently on the bottom of their bare feet with a truncheon.<sup>18</sup> P-0622 says that on the occasions when they were beaten, the detainees were asked whether they were related to BOZIZE, and if they knew where he had hidden his assets.<sup>19</sup> They were also asked whether they were FACA members or had FACA relatives.<sup>20</sup> The witness describes the various methods of torture used on him as extremely painful.<sup>21</sup> P-0622 mentions that one of the torture methods used by the Seleka at the OCRB was the *arbatachar* method.<sup>22</sup> P-0622’s prior recorded testimony consists of his witness statement and associated items including sketches of the OCRB location and buildings.<sup>23</sup>

11. To be clear, P-0622 refers at several points to a “colonel” giving orders or being in charge of the OCRB.<sup>24</sup> However, the Prosecution does not consider that the witness provides enough information for the Prosecution to assert that the colonel P-0622 refers to is Mr SAID. Therefore, the Prosecution does not rely on P-0622’s evidence in relation to this colonel as proof of the acts and conduct of Mr SAID, did not make this assertion in the document containing the charges,<sup>25</sup> and submits that consequently there is no related bar to introducing P-0622’s testimony pursuant to the rule 68(2)(b) procedure.

<sup>16</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0131, paras. 64-70.

<sup>17</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0129, para. 65.

<sup>18</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0131-0132, para. 84.

<sup>19</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0130, para. 71.

<sup>20</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0130, para. 71.

<sup>21</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0131-0132, paras. 78-81, 85 and 89.

<sup>22</sup> **P-0622:** CAR-OTP-2022-0121-R01 at 0129, 0131, para. 79.

<sup>23</sup> See Annex A (A2) for the complete list.

<sup>24</sup> See, e.g., **P-0622:** CAR-OTP-2022-0121-R01 at 0128, at 0130-0131, at 0147, paras. 52, 55, 72-74, 86, 268.

<sup>25</sup> See Confirmation Decision, p. 32, para. 92 (referencing the relevant portion of the Document Containing the Charges) and p. 56, para. 29(e) (making no mention of Mr SAID in the confirmed charges relating to P-0622).

P-1289<sup>26</sup>

12. P-1289, a [REDACTED], was arrested on 15 May 2013 by Seleka Colonel [REDACTED], who told the witness he had arrested him because he “[REDACTED].”<sup>27</sup> P-1289 was taken to the OCRB.<sup>28</sup> Upon his arrival, P-1289 states that [REDACTED] (P-1737), recognised him<sup>29</sup> and told him to do whatever the Seleka said or otherwise they would torture him.<sup>30</sup> P-1289 describes the cell in which he was detained overnight.<sup>31</sup> P-1289 states that the morning after his arrest, he was taken to [REDACTED]<sup>32</sup> [REDACTED].<sup>33</sup> P-1289 was released that day without charges.<sup>34</sup>

13. P-1289 provides other relevant details regarding the persecution of perceived BOZIZE supporters by the Seleka and the Seleka policy to attack a civilian population. Specifically, P-1289 reports that the Seleka carried out operations in [REDACTED], the 7<sup>th</sup> arrondissement, where they went door to door looking for FACA men and weapons.<sup>35</sup> During these operations, the Seleka would kidnap any men suspected of being loyal to BOZIZE and loot people’s properties.<sup>36</sup> The witness also corroborates that the Seleka attempted to kill [REDACTED].<sup>37</sup>

<sup>26</sup> Confirmation Decision, p. 55, para. 29(a).

<sup>27</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0361, para. 13, at 0364-0366, paras. 30, 37, 42-43.

<sup>28</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0367, para. 48.

<sup>29</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0367-0368, paras. 49-50.

<sup>30</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0368, para. 50. *See also* **P-1737**: CAR-OTP-2130-2086-R01 at 2100, para. 64.

<sup>31</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0368, para. 53-54.

<sup>32</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0372-0374, paras. 76-90.

<sup>33</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0374, para. 90.

<sup>34</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0375, para. 91.

<sup>35</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0363, para. 22.

<sup>36</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0363, para. 22.

<sup>37</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0363, para. 23. This detail of [REDACTED] (P-0312) being shot in the [REDACTED] by the Seleka and surviving is corroborated by witness P-0312 himself and other witnesses. *See also* **P-0312**: CAR-OTP-2039-0133-R01 at 0139, paras. 37-41; **P-0881**: CAR-OTP-2032-0682-R01 at 0692, para. 68; **P-0882**: CAR-OTP-2032-0654-R01 at 0660, para. 35.

14. P-1289's prior recorded testimony consists of his witness statement and associated items, including a sketch of the OCRB detention facility and two pages of the calendar of P-1289's brother recording the witness's arrest on 15 May 2013.<sup>38</sup>

15. The Prosecution notes that Pre-Trial Chamber II considered that Witness P-1737's statement "shows that, in May 2013, Mr Said personally brought Witness P-1289 to Witness P-1737, another OCRB-Seleka, who registered and allocated a cell to Witness P-1289."<sup>39</sup> The Prosecution does not consider that this aspect of P-1737's evidence presents any bar to the introduction of P-1289's evidence pursuant to the rule 68(2)(b) procedure. P-1289's statement does not reference Mr SAID, and it is not clear that P-1289 will remember the person who escorted him to P-1737 or be able to identify him as Mr SAID. In sum, any acts and conduct information relating to Mr SAID in relation to this specific sub-incident is provided by [REDACTED] P-1737, not by P-1289.

P-1432<sup>40</sup>

16. P-1432, [REDACTED] and [REDACTED] resident, was arbitrarily arrested by the Seleka in mid-August 2013.<sup>41</sup> He describes being beaten and tied using the *arbatachar* method, which he reports was very painful and left scars.<sup>42</sup> After his arrest, he was

<sup>38</sup> See Annex A (A3) for the complete list.

<sup>39</sup> Confirmation Decision, para. 85. The Pre-Trial Chamber appears to have been referring to para. 64 of P-1737's statement, where the witness said that P-1289 "was brought in by Colonel SAID" and that he "marked his name in the log and placed him in the cells." See **P-1737**: CAR-OTP-2055-0137 at 0149, para. 64. For his part, P-1289 says that [REDACTED] drove him into the OCRB, told him to get out, walked him into the OCRB building's main entrance steps, and asked him to remove all his clothing and possession. There, as noted above (*see supra*, para. 12), P-1289 states that P-1737 recognised him from his neighbourhood and approached him to tell him to do whatever the Seleka asked him to do or they will torture him. Then P-1289 believes that Seleka guards took his name down and placed him in cell #1. See **P-1289**: CAR-OTP-2053-0359 at 0367-0368, paras. 48-49, 53.

<sup>40</sup> The Prosecution notes that P-1432's evidence is relevant for the contextual elements of the crimes against humanity charges, regardless of whether his evidence can be lead in relation to the *actus reus* of the OCRB charges against Mr SAID. The latter issue is subject to a pending request before Pre-Trial Chamber II. See ICC-01/14-01/21-294-Conf. His evidence is also corroborative of P-0547's detention at the OCRB and torture by *arbatachar* method, as the Pre-Trial Chamber noted. See Confirmation Decision, para. 113.

<sup>41</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0174, paras. 17-25. See also ICC-01/14-01/21-294-Conf, paras. 13-14, 21

<sup>42</sup> **P-1432 Annexes 1, 2, 3 and 4**: CAR-OTP-2050-0183, CAR-OTP-2050-0184, CAR-OTP-2050-0185, and CAR-OTP-2050-0186 (photographs of scars).



taken to the Seleka base at *Sapeurs-Pompiers*, where he was detained in a container with Witness P-1762.<sup>43</sup> Afterwards, he was transferred along with P-1762 to the OCRB.<sup>44</sup> At the OCRB, the Seleka detained P-1432 and P-1762 in the underground cell, along with other men,<sup>45</sup> including P-0547.<sup>46</sup> Eventually, when authorities came to remove the Seleka from the OCRB, P-1432 was taken out of the underground cell and moved to an above ground cell along with P-1762.<sup>47</sup> On [REDACTED] September 2013, P-1432 was released from the OCRB together with P-1762.<sup>48</sup>

17. P-1432 describes the OCRB layout and inhumane conditions of detention, including not being provided with adequate food or medical care,<sup>49</sup> and watching the Seleka beat another detainee.<sup>50</sup> P-1432 also provides details relevant to the level of organisation of the Seleka armed group. For example, he observed that most Seleka wore yellow armbands and yellow ribbons on their AK-47.<sup>51</sup> He further describes coordinated action between high-ranking Seleka commanders. For instance, Seleka General MOUSSA and ADAM interrogated him on the same day at *Sapeurs-Pompiers*.<sup>52</sup>

18. P-1432's prior recorded testimony consists of his witness statement and eight annexes: (i) four photographs of scars caused by his mistreatment and the use of the

<sup>43</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0176-0177, paras. 26-39. *See also* **P-1762**: CAR-OTP-2073-0568-R01 at 0574-0578, paras. 31-56; **P-1297**: CAR-OTP-2039-0167 at 0179, para. 79 (referring to a FACA caporal called [REDACTED] who was detained and tortured by the Seleka in 2013).

<sup>44</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0177, paras. 39-40; **P-1432 Annex 8**: CAR-OTP-2050-0189 .

<sup>45</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0178-0179, paras. 41, 43, 45, 54. *See also* **P-1762**: CAR-OTP-2073-0568-R01 at 0578-0581, paras. 57-75; **P-2179**: CAR-OTP-2088-2250 at 2268, paras. 89-92.

<sup>46</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0178-0179, para. 45. *See also* Confirmation Decision, para. 113.

<sup>47</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0179, paras. 54-55 (the Prosecution believes this is on 30 August 2013 when the Seleka were ousted from the OCRB). This detail of men detained in a hole at the OCRB and liberated is corroborated by P-2478. *See* **P-2478**: CAR-OTP-2110-0745-R01 at 0758-0759, paras.53-59. *See also* **P-1762**: CAR-OTP-2073-0568-R01 at 0581 paras. 76-79.

<sup>48</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0180, para. 59; **P-1432 Annexes 6, 7 and 8**: CAR-OTP-2050-0187, CAR-OTP-2050-0188, and CAR-OTP-2050-0189. *See also* **P-1762**: CAR-OTP-2073-0568-R01 at 0583, paras. 86-87.

<sup>49</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0178-0179, paras. 46, 48, 51; **P-1432 Annex 5**: CAR-OTP-2050-0190 (sketch of the OCRB compound with the "sous sol").

<sup>50</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0179, para. 50.

<sup>51</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0175, para. 19.

<sup>52</sup> **P-1432**: CAR-OTP-2050-0172-R01 at 0176, paras. 27-29 (the Prosecution believes this is Sudanese General Moussa ASSIMEH, head of *Sapeurs-Pompiers* and Nourredine ADAM). *See also* **P-1762**: CAR-OTP-2073-0568-R01 at 0574, paras. 34-38, at 0577-0578, paras. 53-54, 56.

*arbatachar* method during his arrest; (ii) one sketch of the OCRB compound with the underground cell; and (iii) three judicial documents from his proceedings issued by the *Tribunal de Grande Instance* (TGI).<sup>53</sup>

P-2172<sup>54</sup>

19. P-2172 is a [REDACTED].<sup>55</sup> He provides information about having been summoned by Prosecutor TOLMO following a complaint about [REDACTED]. The witness states that the complaint was addressed to President DJOTODIA who then sent it to the Minister of Public Security ADAM.<sup>56</sup> On or about [REDACTED] August 2013, TOLMO interrogated him regarding an alleged *coup d'état* and then had him arrested by the Seleka.<sup>57</sup> The Seleka who arrested P-2172 took him to the OCRB where he was brought before [REDACTED] and ADAM.<sup>58</sup> ADAM accused the witness of engaging in politics and plotting a *coup d'état*.<sup>59</sup> He was released from the OCRB at 23:00 that night after the intervention of the [REDACTED].<sup>60</sup>

20. P-2172's prior recorded testimony is comprised of his witness statement.

<sup>53</sup> See Annex A (A4) for the complete list.

<sup>54</sup> Confirmation Decision, p. 56, para. 29(k).

<sup>55</sup> P-2172: CAR-OTP-2130-6313 at 6315, para. 11.

<sup>56</sup> P-2172: CAR-OTP-2130-6313 at 6316, paras. 15-17.

<sup>57</sup> P-2172: CAR-OTP-2130-6313 at 6316, para. 18. See also Confirmation Decision, para. 104.

<sup>58</sup> P-2172: CAR-OTP-2130-6313 at 6316-6317, paras. 19-21.

<sup>59</sup> P-2172: CAR-OTP-2130-6313 at 6316-6317, para. 21.

<sup>60</sup> P-2172: CAR-OTP-2130-6313 at 6317, paras. 22-23.

P-2179<sup>61</sup>

21. P-2179, [REDACTED], was arrested in his home in [REDACTED] around the time of DJOTODIA's presidential inauguration.<sup>62</sup> At the time of his arrest, he was severely beaten.<sup>63</sup> The Seleka told P-2179 that they had been ordered to arrest every FACA for their alleged involvement in the shelling of the National Assembly during the Presidential inauguration.<sup>64</sup> The witness describes being taken to *Camp de Roux* where he and his neighbour were tied up using the *arbatachar* method,<sup>65</sup> and he was struck with a machete causing him to bleed heavily.<sup>66</sup>

22. P-2179 was subsequently transferred to the OCRB where a Seleka colonel [REDACTED]<sup>67</sup> ordered his detention in the underground cell with his "military brothers."<sup>68</sup> The five FACA prisoners P-2179 found in the basement cell told him that the Seleka had used the *arbatachar* method on them for a week.<sup>69</sup> He believes that the other prisoners in the courtyard cells were civilians.<sup>70</sup> [REDACTED].<sup>71</sup> [REDACTED] a.m.<sup>72</sup> P-2179 managed to escape from the OCRB that weekend with the help of [REDACTED].<sup>73</sup>

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<sup>61</sup> Confirmation Decision.

<sup>62</sup> **P-2179**: CAR-OTP-2088-2250 at 2254-2255, paras. 24-27. The Prosecution submits this was DJOTODIA's second inaugural event, the one in August 2013.

<sup>63</sup> **P-2179**: CAR-OTP-2088-2250 at 2255, para. 30. *See also* Confirmation Decision, para. 114.

<sup>64</sup> **P-2179**: CAR-OTP-2088-2250 at 2257, para. 34.

<sup>65</sup> **P-2179**: CAR-OTP-2088-2250 at 2261, paras. 54-57.

<sup>66</sup> **P-2179**: CAR-OTP-2088-2250 at 2263, paras. 65-67; **P-2179 Annex 2**: CAR-OTP-2088-2292; CAR-OTP-2088-2293; CAR-OTP-2088-2294.

<sup>67</sup> This name is spelled "TAAR" in the witness's statement (*see* CAR-OTP-2088-2250 at 2266-2267, paras. 82-87 and at 2270, paras. 99-101), but the Prosecution submits that P-2179 is referring to the person the Prosecution refers with the spelling [REDACTED]. This is based on the identification [REDACTED] by P-2179 in two photographs shown to the witness. [REDACTED] witness **P-2105** also identified [REDACTED] in the same photographs, *see* **P-2105**: CAR-OTP-2081-0037 at 0055, paras. 105-106 (CAR-OTP-2069-3227 and CAR-OTP-2069-3228) (Fr). *See* Confirmation Decision, para. 114.

<sup>68</sup> **P-2179**: CAR-OTP-2088-2250 at 2267, para. 85. The witness uses the term "*sous-sol*."

<sup>69</sup> **P-2179**: CAR-OTP-2088-2250 at 2268, para. 90.

<sup>70</sup> **P-2179**: CAR-OTP-2088-2250 at 2268, para. 93.

<sup>71</sup> **P-2179**: CAR-OTP-2088-2250 at 2271, paras. 103-104.

<sup>72</sup> **P-2179**: CAR-OTP-2088-2250 at 2271, para. 105.

<sup>73</sup> **P-2179**: CAR-OTP-2088-2250 at 2272, paras. 106-109.

23. His prior recorded testimony consists of a statement and 12 annexes.<sup>74</sup>

P-2239<sup>75</sup>

24. P-2239, [REDACTED], was detained by the Seleka at the OCRB in August 2013 during the same incident involving P-2400 and P-2241.<sup>76</sup> At the time of his arrest, P-2239 was accused by the Seleka of calling BOZIZE's men in the DRC on the other side of the river.<sup>77</sup> He was taken to the OCRB at the same time as two other Prosecution witnesses, P-2241 and P-2400.

25. While at the OCRB, P-2239 was told by prisoners that the Seleka used the "*arbatachar*" method to tie up detainees' arms to their legs behind their backs before torturing them.<sup>78</sup> He also describes hearing the sound of beatings and screams of prisoners as they were tortured.<sup>79</sup> For example, on one specific occasion, P-2239 heard the sound of beatings and a person screaming while a Seleka accused that person of being a FACA and one of BOZIZE's nephews.<sup>80</sup> P-2239 was released on the day the Seleka were ousted from the OCRB.<sup>81</sup>

26. P-2239's prior recorded testimony is comprised of his witness statement. His evidence is cumulative to and corroborative of P-2241 and P-2400, witnesses whom the Defence will have the opportunity to cross-examine, as well as P-2337, another witness included in this rule 68(2)(b) application (see below).

<sup>74</sup> See Annex A (A5) for complete list.

<sup>75</sup> Confirmation Decision, p. 57, para. 29(q).

<sup>76</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0922, para. 21; Confirmation Decision, para. 118 & p. 57 para. 29(q).

<sup>77</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0925, para. 33.

<sup>78</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0929-0930, para. 53.

<sup>79</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0930-0931, paras. 54-57.

<sup>80</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0930, para. 56.

<sup>81</sup> **P-2239**: CAR-OTP-2104-0918-R01 at 0935-0936, para. 79.

P-2337<sup>82</sup>

27. P-2337 is a direct witness of the Seleka's arbitrary arrest of two Prosecution witnesses during the charged period. Specifically, he witnessed the Seleka arrest [REDACTED] (P-2400) and P-2241 from a bar called "Seduction 2."<sup>83</sup> The witness later went to look for [REDACTED] at the OCRB as the Seleka would take prisoners to *Camp de Roux* or the OCRB.<sup>84</sup> During that first visit, P-2337 [REDACTED] was not at the OCRB.<sup>85</sup> P-2337 left, but returned again that afternoon, at which point [REDACTED] inside the OCRB.<sup>86</sup> [REDACTED] was brought into the room, and P-2337 observed signs of torture on [REDACTED] wrists, bruises on his head, and noted that his arms looked like they were paralysed as he was not able to lift his arms.<sup>87</sup> The witness visited [REDACTED] at the OCRB twice a day for the next three days.<sup>88</sup>

28. During his visits to the OCRB, P-2337 also spoke with Prosecution Witness P-2339, who told him about being arrested together with [REDACTED] and detained with him in the underground cell.<sup>89</sup> The witness remembers that P-2239 and [REDACTED] were released on the same day, when the Seleka were removed from the OCRB.<sup>90</sup>

29. P-2337's prior recorded testimony is comprised of his witness statement. As noted above, his evidence is cumulative to and corroborative of P-2239, P-2241 and P-2400.

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<sup>82</sup> P-2337's evidence is related to the sub-incident confirmed in the Confirmation Decision at p. 57, para. 29(q).

<sup>83</sup> P-2337: CAR-OTP-2104-0411-R01 at 0414-0415, paras. 19-25.

<sup>84</sup> P-2337: CAR-OTP-2104-0411-R01 at 0417, para. 32.

<sup>85</sup> P-2337: CAR-OTP-2104-0411-R01 at 0417, paras. 32-33.

<sup>86</sup> P-2337: CAR-OTP-2104-0411-R01 at 0418, para. 34.

<sup>87</sup> P-2337: CAR-OTP-2104-0411-R01 at 0418, para. 35.

<sup>88</sup> P-2337: CAR-OTP-2104-0411-R01 at 0418-0419, paras. 37-38.

<sup>89</sup> P-2337: CAR-OTP-2104-0411-R01 at 0419, para. 38.

<sup>90</sup> P-2337: CAR-OTP-2104-0411-R01 at 0419, paras. 38, 40.

P-2519<sup>91</sup>

30. P-2519, [REDACTED], was at a bus stop in Bangui when he was arrested by the Seleka and detained at the OCRB.<sup>92</sup> The Seleka captain who registered P-2519 asked him if he was a “military man.” When P-2519 confirmed that he was, the captain stated “then you are the type of people that we are looking for.”<sup>93</sup> P-2519 describes being undressed, severely beaten, and tied up in the *arbatachar* method by the Seleka at OCRB.<sup>94</sup> The Seleka then poured water on him and beat P-2519 with horsehide whips until he passed out.<sup>95</sup>

31. When he regained consciousness, P-2519 was untied and could only manage to crawl to the ground level cell where he was detained.<sup>96</sup> He describes the cell as being so dark and small that the 17 prisoners with whom he was detained had to sit between each other’s legs.<sup>97</sup> He recalls that for the duration of his detention, a Sudanese Seleka colonel came into the cell almost every night and whipped all the prisoners.<sup>98</sup>

32. P-2519 states that there were four cells at the OCRB, including an underground cell.<sup>99</sup> A prisoner told P-2519 that he had been detained alone in the basement by the Seleka.<sup>100</sup> This prisoner had wounds on his body and told P-2519 that the Seleka beat him before bringing him to the courtyard.<sup>101</sup> Following his detention at the OCRB, P-2519 was transferred to the Ngaragba prison and then released without being charged.<sup>102</sup>

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<sup>91</sup> Confirmation Decision, p. 56, para. 29(1).

<sup>92</sup> **P-2519**: CAR-OTP-2127-9471 at 9475-9476, paras. 24-35.

<sup>93</sup> **P-2519**: CAR-OTP-2127-9471 at 9477, paras. 41-42.

<sup>94</sup> **P-2519**: CAR-OTP-2127-9471 at 9478, paras. 45-48.

<sup>95</sup> **P-2519**: CAR-OTP-2127-9471 at 9478-9479, paras. 49-51.

<sup>96</sup> **P-2519**: CAR-OTP-2127-9471 at 9479, paras. 55-58.

<sup>97</sup> **P-2519**: CAR-OTP-2127-9471 at 9479, para. 59.

<sup>98</sup> **P-2519**: CAR-OTP-2127-9471 at 9480, paras. 61-65.

<sup>99</sup> **P-2519**: CAR-OTP-2127-9471 at 9481, para. 70 and at 9483, para. 80.

<sup>100</sup> **P-2519**: CAR-OTP-2127-9471 at 9483, para. 81.

<sup>101</sup> **P-2519**: CAR-OTP-2127-9471 at 9483, para. 81.

<sup>102</sup> **P-2519**: CAR-OTP-2127-9471 at 9483-9485, paras. 85, 89-96.

33. P-2519's prior recorded testimony is comprised of his witness statement.

P-3047<sup>103</sup>

34. P-3047 lived in Boy Rabe when the Seleka invaded Bangui on 24 March 2013. He witnessed Seleka fighters including [REDACTED] committing acts of pillaging in the early days of their arrival.<sup>104</sup> On 13 June 2013, [REDACTED]. Subsequently, on ADAM's orders, he was arrested by Seleka elements and transferred to the OCRB.<sup>105</sup> At the OCRB, P-3047 was made to undress and was then detained with approximately 50 other detainees in a poorly illuminated cell close to the principal building of the OCRB.<sup>106</sup> He states that inmates had to urinate and defecate inside the cell.<sup>107</sup>

35. Over the 6 or 7 nights he spent at the OCRB, P-3047 saw detainees being beaten and mistreated by the Seleka.<sup>108</sup> P-3047 was dependent on his wife to bring him food. P-3047 was not informed of the reason for his arrest nor formally charged. Once, [REDACTED] caught him outside the cell, and he ordered the Seleka to put him back stating [REDACTED]."<sup>109</sup> He reports that he was interrogated twice by ADAM: once about BOZIZE,<sup>110</sup> and another time regarding [REDACTED].<sup>111</sup> [REDACTED].<sup>112</sup>

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<sup>103</sup> The Prosecution notes that **P-3047**'s evidence is relevant for the contextual elements of the crimes against humanity charges, regardless of whether his evidence can be lead in relation to the *actus reus* of the OCRB charges against Mr SAID. The latter issue is subject to a pending request before Pre-Trial Chamber II. See ICC-01/14-01/21-294-Conf.

<sup>104</sup> **P-3047**: CAR-OTP-2130-6904 at 6906-6907, paras. 13-16.

<sup>105</sup> **P-3047**: CAR-OTP-2130-6904 at 6909, para. 28.

<sup>106</sup> **P-3047**: CAR-OTP-2130-6904 at 6910, paras. 32-36.

<sup>107</sup> **P-3047**: CAR-OTP-2130-6904 at 6910, para. 36.

<sup>108</sup> **P-3047**: CAR-OTP-2130-6904 at 6911, para. 37.

<sup>109</sup> **P-3047**: CAR-OTP-2130-6904 at 6911, paras. 39-40.

<sup>110</sup> **P-3047**: CAR-OTP-2130-6904 at 6911-6912, para. 41.

<sup>111</sup> **P-3047**: CAR-OTP-2130-6904 at 6913, para. 46.

<sup>112</sup> **P-3047**: CAR-OTP-2130-6904 at 6913, para. 46.

36. P-3047 was released from the OCRB by TOLMO on [REDACTED].<sup>113</sup> He believes TOLMO freed him by mistake because he overheard ADAM instruct TOLMO over the phone to free [REDACTED] who were in the same cell as P-3047.<sup>114</sup>

37. P-3047's prior recorded testimony is comprised of a statement, six annexes, as well as photographs shown to the witness during the interview about which he made substantive comments.<sup>115</sup>

### C. The Prior Recorded Testimonies Have Sufficient Indicia of Reliability

38. The Prior Recorded Testimonies have the necessary indicia of reliability for introduction into evidence. All Nine Witnesses have signed their statements, attesting that their testimony was read back to them, was given voluntarily, and that their contents were true to the best of their recollection of the events.<sup>116</sup> Where an interpreter was used, the witnesses confirmed that they read over the statement with the interpreter and confirmed its accuracy.<sup>117</sup> Their statements also bear the signature of an interpreter, certifying that each witness appeared to have heard and understood the translation.<sup>118</sup>

39. The statements of all Nine Witnesses are coherent and internally consistent. Furthermore, each witness mentions events that are corroborated by other evidence.<sup>119</sup>

<sup>113</sup> **P-3047**: CAR-OTP-2130-6904 at 6913, para. 48.

<sup>114</sup> **P-3047**: CAR-OTP-2130-6904 at 6913, para. 47.

<sup>115</sup> See Annex A (A9) for complete list.

<sup>116</sup> **P-0622**: CAR-OTP-2022-0121-R01 at 0148; **P-1289**: CAR-OTP-2053-0359-R01 at 0379; **P-1432**: CAR-OTP-2050-0172-R01 at 0181; **P-2179**: CAR-OTP-2088-2250 at 2283; **P-2239**: CAR-OTP-2104-0918-R01 at 0937; **P-2337**: CAR-OTP-2104-0411-R01 at 0421; **P-2519**: CAR-OTP-2127-9471 at 9487; **P-2172**: CAR-OTP-2130-6313 at 6319; **P-3047**: CAR-OTP-2130-6904 at 6919.

<sup>117</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0379; **P-2179**: CAR-OTP-2088-2250 at 2283; **P-2239**: CAR-OTP-2104-0918-R01 at 0937; **P-2337**: CAR-OTP-2104-0411-R01 at 0421; **P-2519**: CAR-OTP-2127-9471 at 9487; **P-3047**: CAR-OTP-2130-6904 at 6919.

<sup>118</sup> **P-1289**: CAR-OTP-2053-0359-R01 at 0380; **P-2179**, CAR-OTP-2088-2250 at 2284; **P-2239**: CAR-OTP-2104-0918-R01 at 0938; **P-2337**, CAR-OTP-2104-0411-R01 at 0422; **P-2519**: CAR-OTP-2127-9471 at 9488; **P-3047**: CAR-OTP-2130-6904 at 6920.

<sup>119</sup> P-2172 is corroborated by media publications and **P-1429** and **P-0338**, who will testify live (*see Media article*: CAR-OTP-2074-0366; **P-1429**: CAR-OTP-2043-0317 at 0326, para. 68 (Fr.); **P-0338**: CAR-OTP-2068-0244 at 268 paras. 140-141 (Eng)). **P-1289** is corroborated by witnesses **P-1737**, **P-0481**, **P-0435**, **P-1167** and **P-0312**,



Each witness generally distinguishes between information about which they have direct knowledge and information that they acquired from other sources.

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

40. 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 and can speak in similar or greater detail about the pattern of criminal conduct at the OCRB. The Prosecution currently plans to call twelve other OCRB victims (or relatives of victims) to testify live at trial: P-0481, P-0547, P-1429, P-1743, P-1762, P-2241, P-2400, P-2067, P-2692, P-2931, P-3056, and P-3064.<sup>120</sup> All of the OCRB victims at issue were detained by the Seleka within a five-month span between April 2013 and August 2013, and their accounts are similar in many aspects. The Prosecution will also call live at trial P-2607, [REDACTED] an OCRB victim.

41. The Prosecution also currently plans to call twelve witnesses with important OCRB-related linkage information (“OCRB insiders”) to testify at trial. These include [REDACTED].<sup>121</sup> The evidence of the Nine Witnesses is cumulative to and

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who will testify live (*see supra*, paras. 12-14 and their footnotes). P-1432 is corroborated by witnesses who will testify live: **P-1762** and **P-2478** as well as **P-1297** and **P-2179**, witnesses whom the Prosecution proposes to submit via rule 68(2) (*see supra*, paras. 16-17 and their footnotes). The witnesses **P-2337** and **P-2339** are corroborated by three witnesses who will be called to testify live: **P-2400**, **P-2240**, and **P-2241** (*see P-2400*: CAR-OTP-2130-4712 at 4716-4726, paras. 16-63 (Fr); **P-2240**: CAR-OTP-2110-0780 at 0788-0789, para. 29 (Fr); **P-2241**: CAR-OTP-2127-9409 at 9412-9430, paras. 15-97). Furthermore, witnesses who will be called to testify live corroborate all Nine Witnesses’ accounts of dire detention conditions and lack of due process at the OCRB, *see, e.g.*, **P-0481**: CAR-OTP-2104-1024 at 1035, 1043 paras. 60, 63, 113 (crowded cell, lack of food and water); **P-1743**: CAR-OTP-2130-8362 at 8370, para. 47 (lack of medical care); **P-2692**: CAR-OTP-2125-0922 at 0929, para. 38 (ransom payments to OCRB Seleka); **P-2931**: CAR-OTP-2135-2245 at 2251, para. 41 (Fr) (crowded cells)).

<sup>120</sup> As noted above (*see supra*, para. 4, fn. 4), the Prosecution reserves the right to make modifications to its preliminary witness list and proposed mode of testimony until 13 June 2022, the date by which it has been ordered to file its final list of witnesses. As the responses to the present motion will likely be filed after 13 June 2022, the Prosecution would respectfully request that the Defence and Chamber’s assessment be informed by the final list of witnesses, once filed. Specifically, in the possible—though unlikely—circumstance that any of the mentioned witnesses do not appear on that final list of witnesses as *viva voce* or rule 68(3) witnesses, then they are no longer relevant to the argument made here.

<sup>121</sup> The same caveat as above applies.

corroborates the OCRB insiders. Indeed, the Nine Witnesses—like the OCRB insiders—provide evidence about the structure and functioning of the OCRB, the conditions of detention, and the mistreatment of detainees.

42. In addition to corroborating the above-mentioned witnesses, the Prior Recorded Testimonies are also corroborative and cumulative to (i) the evidence of other witnesses which the Prosecution has proposed be introduced via rule 68(2), such as the evidence of P-1180, P-2263, P-2295, and P-3053;<sup>122</sup> and (ii) documentary evidence such as documents produced by the governments of France<sup>123</sup> and the Central African Republic.<sup>124</sup>

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

43. As noted above, the Nine 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 Nine Witnesses are unlikely to be materially in dispute. Rather, any matters of significant dispute will relate to the *legal significance* or characterisation of those factual allegations.

44. 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 crime base witnesses who will give testimony in the courtroom.<sup>125</sup> Furthermore, the Defence can develop its lines of

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<sup>122</sup> For **P-1180**, **P-2263**, and **P-2295**, see Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-308-Conf, 13 May 2022; For P-3053, see Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, ICC-01/14-01/21-290-Conf, 29 April 2022.

<sup>123</sup> See, e.g., **Materials French Defence Ministry**: CAR-OTP-2102-0614-R01 at 0615; **Photos**: CAR-OTP-2102-0637-R01.

<sup>124</sup> See, e.g., **CAR Decree No 13.160**: CAR-OTP-2100-0372; **CAR government**: CAR-OTP-2034-3387; **Note de Service**: CAR-OTP-2034-1740.

<sup>125</sup> As noted above, the Prosecution will likely call twelve OCRB crime base witnesses to testify live, whether fully *viva voce* or pursuant to the rule 68(3) procedure.

argument in oral and written submissions in response to the Prosecution's case, or by calling its own witnesses.

**F. The interests of justice would be served by introducing the Prior Recorded Testimonies**

45. The interests of justice would be advanced by the introduction of the Prior Recorded Testimonies via rule 68(2)(b). The Prosecution has estimated it will require an average of 4 hours for its examination of each crime base witness. Accordingly, granting the Request would result in a savings of approximately 36 hours of direct examination time, thereby advancing the expeditiousness of the proceedings

46. 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 are not in serious dispute. Furthermore, the Nine Witnesses would be saved the potential stress and risk of re-traumatization related to testifying about sensitive topics as well as the disruption of having to travel to appear in court. Moreover, the Court would preserve valuable resources that could be used for other purposes.

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

47. Introducing the evidence of the Nine Witnesses under rule 68(2)(b) is not prejudicial to or inconsistent with the rights of the accused. As noted above, this evidence is cumulative or corroborative of other evidence.

48. The Defence is unrestricted in its ability to call evidence to rebut the assertions of the Nine 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 Nine Witnesses. These witnesses include at over ten OCRB crime-base witnesses and over ten OCRB insiders.

49. In these circumstances, it is unnecessary that the Nine 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

50. 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).

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a period.

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

Dated this 27<sup>th</sup> day of May 2022  
At The Hague, The Netherland