



Original: **English**

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

Date: **30 May 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Single 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 Annexes A and B**

Public Redacted Version of "Prosecution's Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)", ICC-01/14-01/21-325-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. Pursuant to the Decision Setting the Commencement Date of the Trial and Related Deadlines (“Scheduling Order”),¹ the Directions on the Conduct of Proceedings (“Directions”)² and in accordance with articles 64(9)(a) and 69(2)-(4), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to recognise as formally submitted 153 items of evidence from the bar table.³ These items, which are set out in Annexes A and B, are comprised of items such as United Nations reports, decrees, journals, victim complaints, registers, audio/video recordings and media articles, which support either aspects of the contextual elements of war crimes and crimes against humanity or certain charges (hereinafter “Supporting Evidence”).

2. These items *prima facie* satisfy the criteria for submission. They are relevant to material issues at trial, probative, and bear sufficient indicia of reliability. They are also cumulative to or corroborative of other Prosecution evidence. Their submission would assist the Chamber to determine the truth and contribute to an expeditious trial.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission confidential because it contains confidential information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Supporting Evidence is relevant to issues at trial, has significant probative value, and does not prejudice the rights of the Accused Mahamat Said Abdel Kani

¹ ICC-01/14-01/21-243.

² ICC-01/14-01/21-251.

³ The words “Items of evidence” and “Documents” are used interchangeably in this Request.

(“Mr SAID”). The relevance and probative value of the items are summarised below and set out in detail in Annexes A and B.

5. Annex A includes Supporting Evidence in the categories of Audio/Videos (including transcriptions and translations), media articles, United Nations reports, reports by non-governmental organisations (NGO), victims’ complaints, and maps.

6. Annex B includes Supporting Evidence in the categories of CAR laws/Decrees/Journals/Communiqués, documents from the *Bureau National de la Documentation* (BND), register of the *Tribunal de Grande Instance*, register of the *Section de Recherches et d’Investigations / Section d’Enquête de Recherche* et de Documentation Section for Research and Investigation / Investigation Section, Research and Documentation (SRI), hospital records, victims’ complaints and documents provided by the French authorities.

7. On 19 and 20 May 2022, and following the Chamber’s Directions, the Prosecution has inquired whether the Defence consents or objects to the submission of the items in Annex A.⁴ Due to the judicial deadline of 23 May 2013, the Prosecution was only able to provide the Defence with a short period to give their position as opposed to an average of a week provided in the past. On 20 May 2022, the Defence therefore responded that they will not be able to take a position on the items listed in the Annexes as the time to comment was too short.⁵ Thus, the Prosecution would not oppose a request by the Defence for an extension of time to respond to this motion if a reasonable amount of days is requested.

⁴ Prosecution E-mail of 19 May 2022 at 17:24 hrs.

⁵ Defence E-Mail of 20 May 2022 at 08:04 hrs.

A. Background to the evidence

8. The Supporting Evidence was collected in the course of the Prosecution's investigation from various sources as set out in Annexes A and B. The 153 items have been disclosed and will be included on the Prosecution's List of Evidence.

B. The evidence is relevant to material issues at trial

I. Contextual elements of war crimes

9. The Supporting Evidence is relevant to the contextual elements of war crimes as it supports other evidence the Prosecution relies on regarding the organisation of the armed groups and the ongoing armed hostilities in the time relevant to the charges. The items of Supporting Evidence relevant to the contextual elements of war crimes are in particular:

- *Bureau National de la Documentation* (BND): Annex B, Items 30 and 31.
- *Audio/Videos*: Annex A, Items 1, 11, 15, 17, 20 and 23.
- *Report on Anti-balaka meetings*: Annex A, Item 26.
- *Media articles*: Annex A, Items 31, 35, 37, 38, 41, 44, 45, 46, 47, 49 and 52.
- *United Nations documents*: Annex A, Items 54, 56, 58, 59, 60, 61, 63, 64, 67 and 68.
- *NGO Reports*: Annex A, Items 73, 75, 76, 77, 79 and 80.
- *Map*: Annex A, Item 84.
- *CAR Laws/Decrees/Journals/Communiqués*: Annex B, Items 3, 10, 14 and 20.

10. The Supporting Evidence is cumulative to and corroborative of Prosecution witnesses, such as P-0291, P-2563, P-2105, P-0510, P-0312, P-1420, P-0349, P-2328, P-0966, P-0884, P-0342, P-1167, P-1967, P-1339 and P-2232.⁶ In addition, the Prosecution has already requested formal submission of other relevant documentary evidence

⁶ See ICC-01/14-01/21-155-Conf ("Pre-Confirmation Brief"), paras. 8-48.

from the collections of the Ministry of Security, the Primature archives, the B2 Office, and Yahoo email accounts.⁷

II. Contextual elements of crimes against humanity

11. The Supporting Evidence is relevant to the contextual elements of crimes against humanity, as it corroborates witness testimony and other evidence on aspects of the attack against a civilian population in Bangui at the relevant time. The Supporting Evidence includes in particular items relevant to the disarmament operations of the Seleka in the Boy Rabe neighbourhood in April and August 2013, an attack on the 7th *arrondissement* in April 2013, and the killing of several men who rode a minibus on or around 13 July 2013 (“PK-9 Minibus Incident”).

12. For the Seleka operation in Boy Rabe in April 2013, the following items support the evidence of witnesses such as P-0119, P-1524, P-1420, P-0100, P-1264, P-1970, P-1825, P-0342, P-1297, P-1263, and P-1313:⁸

- *Audio/Videos*: Annex A, Items 9 and 13.
- *Media article*: Annex A, Item 27.
- *United Nations documents*: Annex A, Items 62 and 71.
- *NGO report*: Annex A, Item 73.
- *CAR Laws/Decrees/Journals/Communiqués*: Annex B, Items 4 and 5.
- *Medical certificates/Victims’ complaints*: Annex A, Items 81 and 83; Annex B, Items 37, 43, 51, 52, 53, 54, 59, 60 and 64.

⁷ ICC-01/14-01/21-279-Conf, paras. 10-14, 15-17 (Ministry of Public Security); ICC-01/14-01/21-285-Conf, paras. 8-18 (Primature archives); ICC-01/14-01/21-286-Conf, paras. 8-13, 14 (B2 Office); ICC-01/14-01/21-312-Conf, paras. 8-25 (Yahoo email accounts).

⁸ Pre-Confirmation Brief, paras. 56-59.

13. For the Seleka operation in Boy Rabe on 20-24 August 2013, the following items support the evidence of trial witnesses, in particular P-1263, P-1424, P-1427, P-2087, P-1825, P-2042, P-1297, and P-1523:⁹

- *Media articles*: Annex A, Items 39, 40, 42 and 43.
- *NGO reports/ Research Institutes*: Annex A, Items 73 and 76.
- *Victims' complaints*: Annex B, Items 49, 52, 56 and 62.

14. The following Supporting Evidence is relevant to the attack on the 7th *arrondissement*, which occurred on 13 April 2013:

- *Audio/Video*: Annex A, Item 5.
- *Media Article*: Annex A, Item 29.
- *CAR Laws /Decrees/Journals/Communiqués*: Annex B, Items 4, 5 and 6.
- *Victims' complaints*: Annex B, Items 38, 39, 40, 41, 42 and 57.

15. The Supporting Evidence on the 7th *arrondissement* incident corroborates the accounts of witnesses, in particular P-0312, P-0881, P-0882, P-1808, and P-2386.¹⁰

16. The following Supporting Evidence is relevant to the PK-9 Minibus Incident, which occurred on or about 13 July 2013 and is relevant to the contextual elements of crimes against humanity:

- *Media articles*: Annex A, Items 34 and 50.
- *United Nations documents*: Annex A, Items 55, 68 and 70.
- *NGO Reports/ Research Institutes*: Annex A, Item 72.
- *Victim's Complaint*: Annex B, Item 45.

⁹ Pre-Confirmation Brief, paras. 60-63.

¹⁰ See Prosecution's second request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-307-Conf, 13 May 2022, paras. 23-30 (discussion P-0312, P-0882, P-1808, and P-2386); Prosecution's 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, paras. 9-12; Pre-Confirmation Brief, paras. 54-55.

- *Document provided by the French authorities: Annex B, Item 66.*

17. The Supporting Evidence on the PK-9 Minibus Incident is corroborative and cumulative to the testimony of witnesses, most notably P-2573 and P-0529.¹¹

III. Charges

18. Several items of the Supporting Evidence are directly relevant to material facts underlying the charged crimes as set out in paragraph 29 of the Charges in the Confirmation Decision.¹²

19. The following items are relevant to para. 29 (d) of the Charges, which relates to the arrest and detention of P-0645 at the OCRB in July 2013:

- *Media article: Annex A, item 53.*
- *United Nations report: Annex A, item 69.*

20. The following items are relevant to para. 29 (h) of the Charges, which deals with the so called “Flyers Incident” in July 2013:

- *Media articles: Annex A, Items 32, 33 and 36.*
- *United Nations report: Annex A, Item 71.*
- *Tribunal de Grande Instance: Annex B, Item 32.*
- *Victim’s Complaint : Annex B, Item 48.*

¹¹ Pre-Confirmation Brief, para. 64 ; *see also* Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-307-Conf, 13 May 2022, paras. 10-19, 25-28 (discussing PK-9 Minibus Incident witnesses P-0491, P-0510, P-0529, and P-1808).

¹² ICC-01/14-01/21-218-Conf, p. 55, para. 29 (Charges).

21. The following items are relevant to para. 29 (j) of the Charges, which deals with the arrest and killing of Oswald SANZE and two other men, including [REDACTED]:

- *Media articles*: Annex A, Item 51.
- *Hospital Records*: Annex B, Item 35.
- *Victim's Complaints*: Annex B, Item 46.

C. The evidence is reliable and authentic

22. The items of evidence are reliable and authentic. To assess the *prima facie* evidentiary reliability of an item, the Chamber may evaluate the factors relevant to its authenticity, such as: its origin, the context in which it was created, the method with which the information contained therein was compiled, and the nature and availability of corroborative evidence.¹³

23. The items were obtained from objective primary sources as set out in Annexes A and B. The items themselves provide the necessary *indicia* of authenticity and reliability. With respect to the chain of custody of the items, they were collected and submitted for registration according to the OTP standard procedures.

D. Submission of the evidence does not cause prejudice

24. The Prosecution's Request and the itemised assessment of relevance and probative value in Annexes A and B, provide sufficient notice as to which items of this evidence are of importance to the charges. Thus, the timely submission of the evidence is not prejudicial to or inconsistent with the rights of the Defence. Mr SAID will have ample opportunity to address the evidence during the course of the trial. The Defence

¹³ ICC-01/04-01/06-1399, paras. 36-40; *see also* ICC-01/04-01/07-1665-Corr, para. 98.

is also free to call its own witnesses or introduce other evidence to rebut the content of the items.

IV. RELIEF SOUGHT

25. For the above reasons and the analysis set out at Annexes A and B, the Prosecution requests that the Chamber recognise the formal submission of the Supporting Evidence.

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

Karim A. A. Khan QC, Prosecutor

Dated this 30th day of May 2022
At The Hague, The Netherland