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TRIAL CHAMBER VI

Before: **Judge Miatta Maria Samba , Presiding Judge**
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godinez
Judge Keebong Paek , Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

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I. INTRODUCTION

1. On 23 September 2026, Trial Chamber VI ("the Chamber") convicted Mr Mahamat Said Abdel Kani ("Mr Said") of four counts of crimes against humanity: imprisonment or other severe deprivation of physical liberty (Count 1), torture (Count 2), other inhumane acts (Count 5), and persecution (Count 7) (the "Crimes") committed between 6 May and 30 August 2013 at the Office Central de Répression du Banditisme ("OCRB") in Bangui, Central African Republic ("CAR").[1] The Chamber found Mr Said responsible for having committed the crimes jointly with others under article 25(3)(a) of the Rome Statute ("Statute").[2] The crimes committed by Mr Said are extremely grave and are aggravated by multiple circumstances.

2. For the reasons below, the Chamber should impose a joint sentence of at least **20 years** of imprisonment. The extreme gravity of the crimes,[3] his significant role in the commission of the crimes, the aggravating circumstances and the absence of mitigating factors warrant a sentence at the highest range available under article 77(1) of the Statute.

3. The Prosecution's recommendation is based on a global assessment of Mr Said's culpability for the four counts of crimes against humanity.[4] The joint sentence proposed by the Prosecution—at least 20 years of imprisonment[5]—is proportionate

[1] Trial Judgment, ICC-01/14-01/21-1054-Red-Corr.
[2] Trial Judgment, paras. 1767-1768.
[3] *Prosecutor v. Bemba*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 21 June 2016, ("*Bemba* SJ"), para. 15; *See also Prosecutor v. Katanga*, Decision on sentence pursuant to article 76 of the Statute, ICC-01/04-01/07-3484-tENG-Corr, 23 October 2015, ("*Katanga* SJ"), para. 42. *See also Prosecutor v. Bemba, Kilolo, Mangenda, Babala & Arido*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/13-2123-Corr, 22 March 2017, ("*Bemba et al.* SJ"), para. 36.
[4] *Prosecutor v. Lubanga*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", ICC-01/04-01/06-3122, 1 December 2014, ("*Lubanga* SAJ"), para. 40 in which the Chamber stated that "Furthermore, as set out in the previous section, the Trial Chamber's main task is to weigh the relevant factors in order to determine a sentence that reflects the culpability of the convicted person. The Court's legal texts do not lay down any explicit requirements for how the factors should be balanced.The Appeals Chamber considers that the Trial Chamber has broad discretion in the determination of a sentence."
[5] *Bemba et al.* Sentencing Appeal Judgment, ICC-01/05-01/13-2276-Red, ("*Bemba et al.* SAJ"), para. 57 in which the Appeals Chamber stated ""[T]he Appeals Chamber notes that at no point did the Trial Chamber state that the joint sentence imposed on Mr Bemba ought to correspond to the highest individual sentence. No such principle otherwise exists in the legal framework of the Court. To the contrary, according to article 78 (3) of the Statute, the highest individual sentence constitutes the *minimum* possible joint sentence. Thus, any error in the determination of an individual sentence – even if not the highest one – may, in principle, have an impact on the determination of the joint sentence […]."

to the crimes for which he was convicted, and aligns with his culpability.[6] Moreover, it gives effect to the strong condemnation by the international community of the crimes committed,[7] the extensive and continuing harm and suffering caused to the victims and their family members,[8] and the Court's vital interest in deterring not only accused persons but others, from committing similar crimes in the future.[9]

4. **Section II** below briefly addresses the law applicable to sentencing. **Section III** discusses the aggravating factors relevant to Mr Said's sentence for the crimes committed, and the absence of mitigating factors. **Section IV**, concludes with the recommended sentence.

II. APPLICABLE LAW

5. Sentencing serves two primary objectives: retribution and deterrence, understood as condemnation by the international community rather than vengeance.[10] In *Al Hassan*,[11] the Chamber emphasized that torture and persecution are among the most serious crimes, warranting severe penalties. Similarly, in *Yekatom and Ngaïssona*,[12] the Chamber stressed that the discriminatory motives should be considered as aggravating factors. The Trial Chamber held: "the crimes the accused are convicted of were all committed for discriminatory motives, in that the Muslim

[6] *Lubanga* SAJ, para. 40. *See also Bemba et al.* SJ, para. 36.
[7] *Prosecutor v. Lubanga*, Decision on Sentence pursuant to article 76 of the Statute, ICC-01/04-01/06-2901, 10 July 2012, ("*Lubanga* SJ"), para. 16.
[8] *Katanga* SJ, para. 38. The Chamber stated that "When determining the sentence, the Chamber must also respond to the legitimate need for truth and justice voiced by the victims and their family members (…). It therefore considers that the role of the sentence is two-fold: on the one hand, punishment, or the expression of society's condemnation of the criminal act and of the person who committed it, which is also a way of acknowledging the harm and suffering caused to the victims; and, on the other hand, deterrence, the aim of which is to deflect those planning to commit similar crimes from their purpose […]."
[9] *Katanga* SJ, para. 37.
[10] *Bemba* SJ, para. 11; *Al Mahdi* Judgment and Sentence, ICC-01/12-01/15-171, ("*Al Mahdi* TJ"), para. 66; *Al Hassan* Sentencing Judgment, ICC-01/12-01/18-2662, ("*Al Hassan* SJ"), para. 16, *Yekatom & Ngaïssona* Judgment, ICC-01/14-01/18-2784-Red, ("*Yekatom & Ngaïssona* TJ"), para. 4398, *Ongwen* Sentencing Judgement, ICC-02/04-01/15-1819-Red ("Ongwen SJ"), para. 389; *See also Katanga* SJ, para. 38.
[11] *Al Hassan* SJ, paras. 44 and 70.
[12] *Yekatom & Ngaïssona* TJ, para. 4422 (Sentencing section).

civilian population was targeted because of its perceived religious and ethnic commonalities with the Seleka."[13]

6. Articles 76 to 78 of the Statute, and rules 145 to 147 of the Rules of Procedure and Evidence ("the Rules"), read together with the underlying objectives stated in the Preamble of the Statute, establish a comprehensive framework for sentencing.[14] As held by the Appeals Chamber,[15] when determining individual sentences, certain factors may be relevant to more than one of the categories under article 78 and rule 145.[16] What matters is that the Chamber identifies all relevant factors and attaches reasonable weight to them, without relying on the same factor more than once.[17]

7. The Chamber, guided by the facts of the case, enjoys considerable discretion in identifying and balancing all factors relevant for sentencing.[18] When determining the joint sentence, the Chamber must take into account the factual overlap between different crimes.[19] As previously held, prior sentencing practice is of limited assistance to the Chamber when determining the appropriate sentence in a given case.[20]

III. SUBMISSIONS

8. The sentence of at least 20 years of imprisonment is based on the severe gravity of the crimes, the high degree of participation and intent, numerous aggravating factors and the absence of mitigating factors.

[13] *Yekatom & Ngaïssona* TJ, para. 4422 (Sentencing section).
[14] *Lubanga* SAJ, para. 32.
[15] *Bemba et al.* SAJ, paras. 4, 112; *See also Yekatom & Ngaïssona* TJ, para. 4412; *Al Hassan* SJ, para. 19; *Ongwen* SJ, para. 56; *Ntaganda* Sentencing Judgment, ICC-01/04-02/06-2442, ("*Ntaganda* SJ"), para. 13.
[16] *Lubanga* SAJ, para. 32.
[17] *Bemba et al*. SAJ, paras. 4, 112. *See also Yekatom & Ngaïssona* TJ, para. 4412; *Al Hassan* SJ, para. 19; *Ongwen* SJ, para. 56; *Ntaganda* SJ, para. 13.
[18] , para.36; *Lubanga* SJ, para. 25-26, 36; *Lubanga* SAJ, para. 31-34.
[19] *Yekatom & Ngaïssona* TJ, para. 4414; *Al Hassan* SJ, para. 40; *Ntaganda* Sentencing Appeal Judgment, ICC-01/04-02/06-2667-Red, ("*Ntaganda* SAJ"), paras. 129-130; *Ntaganda* SJ, para. 249; *Ongwen* SJ, paras. 59, 136, 145.
[20] *Lubanga* SAJ, paras. 76-77. *See also Bemba et al.* SJ, para. 38; *Al Mahdi* TJ, para. 107.

A. Gravity of the crimes

9. The gravity of Mr Said's crimes is very high.

10. Mr Said is convicted of arresting and detaining perceived supporters of François Bozizé ("Bozizé") at the OCRB,[21] instructing OCRB-Seleka under his command to torture and mistreat detainees,[22] including by using the *arbatachar* method, and interrogating detainees violently.[23]

11. 39 Victims, were subjected on a daily basis to retributive violence for their perceived and collective complicity and/or support of Bozizé.[24] Moreover, nine detainees were held in a dark, cramped, dirty and insufficiently ventilated underground cell, right under Mr Said's office.[25]

a. Gravity of the unlawful behaviour, including the manner, time, location and the means employed

12. Each of the crimes for which Mr Said has been convicted, is inherently grave. The particular gravity of the offences perpetrated at the OCRB stems from the severe physical and/or psychological harm inflicted upon certain detainees. As the Chamber found,[26] the profound impact and enduring consequences of these crimes continue to impact numerous victims to this day.

(1) Imprisonment or other severe deprivation of physical liberty as a crime against humanity (Count 1)

13. The Chamber found Mr Said liable of imprisonment or other severe deprivation of liberty as a crime against humanity, pursuant to article 7(1)(e) of the Statute

[21] Trial Judgment, paras. 906, 1604.
[22] Trial Judgment, paras. 1113-1115, 1117, 1131-1133, 1143, 1756 .
[23] Trial Judgment, paras. 914, 1775.
[24] Trial Judgment, para 1743 which references the 39 victims of persecution and pages 676-677.
[25] Trial Judgment, paras. 909-910, 1091-1097.
[26] *Infra. paras*. 33-39.

(Count 1), in relation to 39 victims.[27] In convicting Mr Said, the Chamber concluded that the deprivation of liberty at the OCRB in incidents A,[28] B,[29] C,[30] G,[31] H,[32] I,[33] J,[34] L,[35] M,[36] N,[37] O,[38] Q,[39] and R,[40] was in violation of fundamental rules of international law and therefore unlawful.

14. Specifically, the Chamber observed that (i) there were no valid arrest warrants or judicial orders for these OCRB victims;[41] (ii) there was no objective and/or genuine justification for the arrests;[42] (iii) the victims were denied the rights that generally accompany deprivation of liberty such as the right to a lawyer;[43] (iv) in some instances, the right to inform their family that they had been taken into custody and friends and families of the OCRB victims were prevented from seeing them and/or ultimately paid to secure their release,[44] and (v) individuals were kept in dire conditions in the underground cell.[45] Detainees were arrested on an arbitrary basis, deprived of their right to prompt independent review of the basis of their detention, held in dire conditions,[46] and subjected to severe physical and/or mental mistreatment.

[27] The 39 Victims are: P-1289 (Incident A); P-0481, limited to the period from [REDACTED] (Incident B); P-2692, limited to the period from 27 June to [REDACTED] July 2013 (Incident C); [REDACTED] (Incident G); 16 persons, including P-1180, P-1743, P-2263 and P-2295 (Incident H); P-1429 and two other men (Incident I); Oswald Sanze, P-2931 and another man ([REDACTED]) (Incident J); P-2519 (Incident L); four men (P-3064, P-3056, P-3053 and another man ([REDACTED])) (Incident M); the 'baker' (Incident N); P-0547 (Incident O); four persons (P-2241, P-2400, P-2239 and [REDACTED]) (Incident Q); and two men ([REDACTED] and [REDACTED]) (Incident R). *See* Trial Judgment, page 673.
[28] Witness P-1289.
[29] Witness P-0481, limited to the period from [REDACTED].
[30] Witness P-2692, limited to the period from 27 June to [REDACTED] July 2013.
[31] [REDACTED].
[32] 16 persons, including Witnesses P-1180, P-1743, P-2263 and P-2295.
[33] Witness P-1429 and two other men.
[34] Oswald Sanze, Witness P-2931 and another man ([REDACTED]).
[35] Witness P-2519.
[36] Four men (P-3064, P-3056, P-3053 and another man ([REDACTED])).
[37] The 'baker'.
[38] Witness P-0547.
[39] Four persons (P-2241, P-2400, P-2239 and [REDACTED]).
[40] Two men ([REDACTED] and [REDACTED]).
[41] Trial Judgment, paras 1607, 1609,1611, 1614, 1616, 1625, 1629, 1634-1636, 1638, 1641, 1643, 1645 and 1648-1653.
[42] Trial Judgment, paras. 1607, 1609, 1618, 1620, 1629, 1634-1636, 1638, 1643, 1645, 1653 and 1657.
[43] Trial Judgment, paras. 1609, 1611, 1621-1623, 1629, 1634-1636, 1638, 1643 and 1657.
[44] Trial Judgment, paras. 1607, 1611 and 1632.
[45] Trial Judgment, para. 1600.
[46] *Infra. paras*. 22 and 23.

15. For instance, the Chamber recalled that one of the four detainees subject of Incident M, P-3064, was slapped with a pistol when he asked about the reason for their arrest.[47] During the Flyers incident H,[48] 16 persons including P-1180, P-1743, P-2263, and P-2295 were arbitrarily arrested and denied procedural rights.[49] There were no valid arrest warrants or judicial orders and there was no objective and/or genuine justification for any of these arrests.[50] The circumtances of their arrest show that there no lawful basis to detain thses persons.[51] Other detainees were also deprived of physical liberty in violation of fundamental rules of international law, like P-1289, P-0481, P-2692.[52] The OCRB-Seleka violently arrested Oswald Sanze ("Sanze") by shooting him and imprisoned or otherwise severely deprived him of his physical liberty in the back of a vehicle while he was still alive, until the point when he succumbed to his injuries and died.[53]

(2) Torture as a crime against humanity (Count 2)

16. Mr Said is convicted for torture as a crime against humanity, pursuant to article 7(1)(f) of the Statute (Count 2) in relation to 22 Victims.[54]

17. In *Al Hassan*,[55] the Chamber recalled that the right not to be subjected to torture is one of the most protected human rights, part of the category of the so-called 'non derogable' rights, and recognised in customary and conventional international law and as a norm of *ius cogens*. The crime of torture is generally a particularly heinous crime, 'generally of very high gravity'.[56]

[47] Trial Judgment, para. 1638.
[48] Incident H.
[49] Trial Judgment, paras. 1615-1623.
[50] Trial Judgment, para. 1616.
[51] Trial Judgment, paras. 1617-1618.
[52] Trial Judgment, paras. 1605-1612 (Incidents A, B and C).
[53] Trial Judgment, para. 1627 (Incident J).
[54] Trial Judgment, para. 1673.
[55] *See Al Hassan* SJ, para. 44.
[56] *Idem*.

18. In convicting Mr Said, the Chamber concluded that the pain or suffering meted out on the OCRB victims in incidents H, L, N, O, Q, and R[57] did not arise from, and was not inherent to or incidental to, lawful sanctions.[58] The OCRB-Seleka under Mr Said's control, physically and mentally mistreated at least 22 persons, during their arrest, transfer or detention at the OCRB.[59] Detainees were held in poor conditions,[60] with the Seleka inflicting upon them continuous severe physical and mental pain or suffering, whilst subjecting them to death or rape threats, beatings with rifle butts or burning them.[61] The OCRB-Seleka forced the detainees to run into a cell as they kicked them with their boots and beat them with batons.[62] In incident Q, an OCRB-Seleka member hit P-2400 hard and he fell on the ground, after which another struck him in his neck and threatened to kill him with a knife.[63]

(3) Other inhumane acts as a crime against humanity (Count 5)

19. Mr Said is responsible for other inhumane acts as a crime against humanity, pursuant to article 7(1)(k) of the Statute (Count 5), in relation to the 34 victims.[64] The crime against humanity of other inhumane acts is grave since it is of a similar nature and gravity to other crimes against humanity, where the perpetrator intentionally causes great suffering, or serious injury to mental or physical health.[65]

[57] The 22 Victims are: Incident H: 16 persons, including P-1180, P-1743, P-2263 and P-2295; Incident L: P-2519; Incident N: the 'baker'; Incident O: P-0547; Incident Q: P-2400; Incident R: [REDACTED] and [REDACTED]. *See* Trial Judgment, page 674.
[58] Trial Judgment, para. 1672.
[59] *See* Trial Judgment, page 674.
[60] Trial Judgment, paras. 918, 1134 and 1774.
[61] For instance, Trial Judgment, paras. 1020 and 1664 – The OCRB-Seleka (i) tied P-0547 up using the *arbatachar* method, drawing his elbows in and pulling his right leg behind him until it touched his elbow; (ii) hung P-0547 close to the barbed wire on the wall separating the OCRB from the MOOV premises and encircled him, hitting him ith rifle butts and pushing him against the wall; (iii) threatened him by cocking a Kalashnikov and pointing it at his head while P-0547 begged for his life to be spared; (iv) took out a knife to slit P-0547's throat, while another OCRB-Seleka member said he would kill P-0547 slowly.
[62] Trial Judgment, para. 1661, Incident H (the Flyer's Incident).
[63] Trial Judgment, paras. 1045, 1667 and 1668.
[64] The 34 Victims are: P-1289 (Incident A); P-0481, limited to the period from [REDACTED] (Incident B); P-2692, limited to the period from 27 June to [REDACTED] July 2013 (Incident C); 16 persons including P-1180, P-1743, P-2263 and P-2295 (Incident H); Oswald Sanze and P-2931 (Incident J); P-2519 (Incident L); four men (P-3064, P-3056, P-3053 and another man ([REDACTED])) (Incident M); the 'baker' (Incident N); P-0547 (Incident O); four persons (P-2241, P-2400, P-2239, [REDACTED]) (Incident Q); and [REDACTED] and [REDACTED] (Incident R). *See* Trial Judgment,page 675.
[65] *Prosecutor v. Ongwen*, Judgement on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgement," ICC-02/04-01/15-2022, 15 December 2022, ("*Ongwen* AJ") para. 1018. *See also* ICC Elements of Crimes, article 7(1)(k).

The Statute and the Elements of Crimes require proof of "severe physical or mental pain or suffering" for cruel treatment.[66]

20. The mistreatment of detainees at the OCRB affected the physical and mental integrity of the victims by means of coercion, threat of force or intimidation in a degrading and humiliating way, impacting their dignity.[67] For instance, the OCRB-Seleka threatened to kill, slapped and punched P-1289 in the head and kept him in his underwear untill the night.[68]

21. People perceived as Bozizé supporters were detained in deplorable conditions at the OCRB and were verbally and physically abused during interrogations, such as P-1743 and his co-detainees. P-1743 testified that the group of 16 detainees including himself were placed together in a cell that was so crowded that they had to take turns sitting down and sleeping.[69] The cell lacked basic amenities, there was a foul odour emanating from the toilets next to the cell and the detainees had to urinate in water bottles from the second day of detention.[70] P-1743 stated that the odour that the toilets gave off did not allow the detainees to "live in humane conditions", adding that the detainees were breathing "very unhealthy air".[71]

22. Other witnesses also recounted the deplorable conditions in which they were detained at the OCRB. They were held in small, dark, smelly, overcrowded cells within the courtyard in which the detainees often had to sit with open legs so as to fit inside the cell,[72] took turns lying down,[73] or sat against the cell wall while sleeping because there was no room on the floor.[74] The conditions of the underground cell were deplorable. Witnesses who were detained in them were

[66] *Ongwen* AJ, para. 1018. *See also* ICC Elements of Crimes, article 8(2)(c)(i).
[67] Trial Judgment, para. 1774 (For example, following his arrival at the OCRB, P-2400 was registered and told by Tahir to await Mr Said's instructions before Mr Said ordered the Seleka to place him (P-2400) in the underground cell); para. 1775 (Mr Said was present, along with Adoum Rakiss and Adam, when the 'baker', who had been tied arbatachar, was beaten by the OCRB Seleka and questioned as to where they could find BOZIZE's inner circle.)
[68] Trial Judgment, paras. 934 and 1676 (Incident A).
[69] Trial Judgment, paras. 129, 963.
[70] Trial Judgment, paras. 965 and 966.
[71] Trail Judgment, para. 1291.
[72] Trial Judgment, para. 994.
[73] Trial Judgment, para. 1091-1093.
[74] Trial Judgment, para. 1051.

forced to urinate and defecate inside the cell and recounted that insects crawled all over their bodies.[75] Further, witnesses such as P-0547, P-2400, and P-0481 who had several injuries from their mistreatment by the OCRB-Seleka, did not receive any medical assistance.[76]

23. P-0481 testified that during his detention he was subjected to dire conditions, including deprivation of sufficient nutrition and independent medical treatment.[77] For [REDACTED], he slept with his hands tied[78] and had to obtain assistance to relieve himself.[79] The OCRB detainees were also subjected to poor detention conditions with a lack of privacy in sanitary conditions.[80] Detainees were forced to relieve themselves in the cells in which they were held since they were not allowed to get out.[81]

24. The inhumane and deplorable detention conditions of people perceived to be Bozizé supporters, as well as the physical and verbal abuse including during interrogations, inflicted on them extreme suffering, serious injury to mental or physical health.[82]

(4) Persecution as a crime against humanity (Count 7)

25. Mr Said is responsible for persecution as a crime against humanity, pursuant to article 7(1)(h) of the Statute (Count 7), in relation to the 39 individuals.[83] In this case,

[75] Trial Judgment, para. 1097.
[76] Trial Judgment, paras. 939, 1097.
[77] Trial Judgment, paras. 939, 1213-1214.
[78] Trial Judgment, paras. 939 and 1213.
[79] Trial Judgment, paras. 939, 1213-1214.
[80] Trial Judgment, paras. 1091-1097.
[81] Trial Judgment, paras. 939, 1548 and 1690. *See also Prosecutor v. Katanga & Ngudjolo*, Decision on confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 371 in which the Chamber it *inter alia* noted that "forcing detainees to relieve bodily functions in their clothing"constituted outrages upon personal dignity.
[82] Trial Judgment, paras. 1675-1707.
[83] The 39 victims are: P-1289 (Incident A); P-0481, limited to the period from [REDACTED] (Incident B); P-2692, limited to the period from 27 June to [REDACTED] July 2013, (Incident C); [REDACTED] (Incident G); 16 persons, including P-1180, P-1743, P-2263 and P-2295 (Incident H); P-1429 and two other men (Incident I); P-2931, Oswald Sanze and another man ([REDACTED]) (Incident J); P-2519 (Incident L); four men (P-3064, P-3056, P-3053 and [REDACTED]) (Incident M); the 'baker' (Incident N); P-0547 (Incident O); four persons (P-2241, P-2400, P-2239 and [REDACTED]) (Incident Q); and two men ([REDACTED]and [REDACTED]) (Incident R). *See* Trial Judgment, pages 676-677.

persecution is the umbrella crime that encompasses the conduct described above under Counts 1, 2 and 5.

26. The prohibition of persecution as laid down in article 7(1)(h) of the Statute is intended to protect the right of all individuals not to be discriminated against on the basis of political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law. Persecution therefore constitutes, in and of itself, one of the most serious crimes against humanity, as it amounts to a denial of fundamental rights of one or more persons by virtue of their belonging to a particular group or collectivity.[84]

27. The crime of persecution under Count 7, and its underlying acts were committed with numerous intersecting discriminatory grounds: political, ethnic, religious and/or gender grounds.[85] The Chamber found that, in determining whether an individual may support Bozizé, the Seleka regarded a number of indicators and targeted Christians, people of the Gbaya, Mandja, and Banda ethnic groups, people living in certain neighbourhoods of Bangui, people who had certain professions, such as members of the FACA and former Presidential Guards.[86] The Chamber also found that the Seleka targeted men and boys perceived to be associated with François Bozizé or his regime and that women who were perceived to be associated with men in the FACA were similarly targeted and mistreated.[87] The Chamber therefore considered that the politically motivated targeting in this case had an intersectional element.[88]

28. In light of the intersectional nature of the discriminatory grounds—political, ethnic, religious, and/or gender grounds[89]—and the numerous fundamental rights affected, the gravity of the crime of persecution is particularly serious in this case.[90]

[84] *See Al Hassan* SJ, para. 70.
[85] Trial Judgment, para. 1740.
[86] Trial Judgment, para. 1720.
[87] Trial Judgment, para. 1720.
[88] Trial Judgment, para. 1721.
[89] Trial Judgment, para. 1740.
[90] *See e.g. Al Hassan* SJ, para. 76.

By doing so, Mr Said and his co-perpetrators deprived the victims of numerous fundamental rights, which contributes to the gravity of the persecution, in particular the right not to be subjected to arbitrary arrest or detention,[91] the right not to be subjected to torture,[92] the right not to be subjected to inhumane and/or degrading treatment or punishment, the right to be treated with humanity and with respect for their inherent dignity, contrary to international law.[93]

29. For instance, the OCRB-Seleka referred to P-0481 as a supporter of Bozizé while they subjected him to mistreatment.[94] The Seleka targeted 16 persons, including P-1180 (a Christian of [REDACTED] ethnicity), P-1743 (a Christian), P-2263 (a Christian) and P-2295 (a Christian of [REDACTED] ethnicity), because of their alleged involvement in the distribution of flyers in Bangui calling for a protest and because they perceived them to be against the Seleka.[95] The Seleka members suspected P-2400 of being in the military, which he denied, and accused P-2241 of being P-2400's wife and accomplice, demanding that she confirm that P-2400 was a FACA member.[96] The OCRB-Seleka members targeted all four detainees (P-3053, P-3056, P-3064 and another man ([REDACTED])) by reason of their perceived association with François Bozizé.[97]

30. The underlying acts of persecution were perpetrated as part of a pattern of arresting and detaining perceived Bozizé supporters at the OCRB and mistreating the detainees who allegedly supported Bozizé, including by using the *arbatachar* method.[98]

[91] Trial Judgment, para.1715.
[92] Trial Judgment, para.1716.
[93] Trial Judgment, para.1717.
[94] Trial Judgment, paras. 93-9407, 1723.
[95] Trial Judgment, paras. 956-963, 969, and 1726.
[96] Trial Judgment, paras. 1036 and 1736.
[97] Trial Judgment, para. 1733.
[98] *See* factual findings by the Chamber at para. 917 of the Trial Judgment: 'Benjamin Mallo frequently told Mr Said that detainees were being mistreated and, at times, tied using the *arbatachar* method. Mr Said was present when detainees who had been mistreated were brought out from the underground cell in his office. Mr Said did not do anything to stop torture occurring or address allegations of torture which were brought to his attention.'

b. The extent of the damage caused, including harm caused to victims and their families

31. The crimes committed by Mr Said had a very serious and lasting impact on the victims, their families and the entire affected communities. As explained hereinafter,[99] they caused severe physical, psychological, and material harm on the victims, a profound trauma that reverberated destructively through their families and wider communities. Those subjected to torture and other inhumane acts sustained acute, enduring injuries, leaving them to contend with chronic, long-lasting impairments to both their physical well-being and mental health.

32. The victims suffered tremendous physical, psychological and/ or material harm, which also affected their families and communities. Victims of mistreatment, in particular of the *arbatachar* method, described long-lasting physical and psychological harm suffered from the inflicted torture and other inhumane acts they suffered.[100]

33. P-2519 continues to feel pain resulting from being tied up using the *arbatachar* method. His arm was initially paralysed, and his hands are not as strong as they used to be and sometimes both his hands feel like they are paralysed and tremble. He continues to suffer physical and psychological harm as a consequence of his detention at the OCRB, including in the form of disability, recurrent pain, loss of strength, and paralysis. P-2519 also suffered material harm from being unable to resume full time work and to provide for his family.[101]

34. Similarly, P-0547 suffered severe physical, psychological and material harm as a result of his detention and mistreatment at the OCRB. He still bears wounds and scars from the *arbatachar* method used to tie him up. P-0547 could not lift his arms and lost the use of his hands, which were "almost paralysed", [REDACTED] following his escape from the OCRB. He continues to suffer from headaches,

[99] *Infra*. paras. 33-39.
[100] *Infra*. paras. 33-39.
[101] Trial Judgment, paras. 997, 1383.

insomnia, hypertension and gastric problems as a result of his mistreatment. [REDACTED],[102] [REDACTED].[103]

35. Another victim, P-2400, continues to suffer similar physical, psychological and material harm as a result of his detention at the OCRB. P-2400 was subjected to torture using the *arbatachar* method and continues to suffer from headaches due to the injuries inflicted on his head. P-2400 is much less active since these events and he has not been able to regain the strength that he had before.[104] P-2263 also suffered the physical, psychological and material consequence of his detention at the OCRB: he feels ''physically weak", often cannot sleep and lost his job which all had a negative impact on his family.[105] The *arbatachar* method was also used by the Seleka on several other victims that suffered agonizing physical harm like the 'baker', [REDACTED] and [REDACTED]. [REDACTED] testified that the 'baker' "looked ill" and in a "state of suffering"[106] while [REDACTED] testified that [REDACTED] spent a night bound in the *arbatachar* manner and was in a very weakened physical state when he was untied in the morning such that he had to be carried back to the cell.[107]

36. The Chamber found that other detainees suffered psychological and material harm as a consequence of their detention at the OCRB, for instance, P-1289,[108] P-0481,[109] P-2692,[110] [REDACTED] ([REDACTED]) family members,[111] P-2295,[112] P-2239,[113] and P-2241's [REDACTED].[114] P-0481's personal possessions were stolen.[115] P-2692 who was a [REDACTED], stated that he "lost everything that [he] had

[102] [REDACTED]. *See* Trial Judgment, paras. 1033, 1486-1487.
[103] P-0547: T-014, pp. 38-40. *See also* P-0547: T-012, pp. 29-30. *See also* P-0547: T-015, pp. 42-43; P-0547: T-016, pp. 4-5. *See* Trial Judgment, paras. 1033, 1486-1487.
[104] Trial Judgment, paras. 1054, 1566.
[105] Trial Judgment, paras. 972, 1311.
[106] [REDACTED]. *See* Trial Judgment, paras. 1440.
[107] Trial Judgment, para. 1575.
[108] Trial Judgment, paras. 936, 1204.
[109] Trial Judgment, paras. 942, 1226.
[110] Trial Judgment, paras. 948, 1244.
[111] Trial Judgment, paras. 954, 1264.
[112] Trial Judgment, paras. 972, 1311.
[113] Trial Judgment, paras. 1059, 1567.
[114] Trial Judgment, paras. 1066, 1565.
[115] Trial Judgment, paras. 942, 1226.

[REDACTED].[116] [REDACTED] family suffered the economic impact as he could not support them financially.[117] P-2295 was afraid to move around because of the suspended sentence and as a result only his wife could earn money to support their family.[118] P-2239's arrest deprived him of being with his baby [REDACTED],[119] and P-2241's [REDACTED] was traumatised at the time because [REDACTED] knew what happened to people detained by the Seleka and [REDACTED] spent a lot of money trying to ensure P-2241's release.[120]

37. The Chamber found that some detainees continue to suffer psychological and physical harm as a result of their detention at the OCRB. For instance, P-1180 continues to experience constant headaches and dizziness and psychological effects as he could not close his eyes to fall asleep as the images of the horrible things he had seen haunted him.[121] P-1743 suffered ongoing physical injuries in the aftermath of these events and remained psychologically affected.[122] P-1743 still bears scars from his mistreatment at Camp de Roux and at the OCRB.[123] P-1429 has experienced after-effects, including developing hypertension for which he is "being treated" and takes medication every day.[124] P-2931, who suffered physical and psychological harm from his detention, was very shaken by the events he experienced and the abuses he endured. P-2931 [REDACTED] and lives in fear.[125]

38. The victims suffered psychological and physical harm which resulted in severe mental struggle and difficulties in their personal relationships and family lives. For instance, P-1743's beatings in the presence of his family has had an "enormous effect upon [his] entire family" and has marked and humiliated him to such an extent that he is not respected and no longer has authority in his household.[126] P-

[116] Trial Judgment, paras. 948, 1244.
[117] Trial Judgment, paras. 954, 1264.
[118] Trial Judgment, paras. 972, 1311.
[119] Trial Judgment, paras. 1059, 1567.
[120] Trial Judgment, paras. 1066, 1565.
[121] Trial Judgment, paras. 972, 1311.
[122] Trial Judgment, paras. 972, 1311.
[123] P-1743: T-087-Conf-ENG CT, 5:13, 36:12-17, T-087-Conf-FRA CT, 5:20, 37:5-19.
[124] Trial Judgment, paras. 977, 1326.
[125] Trial Judgment, paras. 987, 1351.
[126] Trial Judgment, paras. 965, 972, 1290, 1311.

3056 felt humiliated after his experience because the underground cell "was actually a transit place for criminals who have actually committed blood crimes […] who were waiting to be executed, who were on death row" [REDACTED].[127] P-1289 has been unable to forget what he had experienced, despite his best efforts and that he was humiliated by these events.[128] P-3064 does not "even want to think about'' his detention at the OCRB and when he does think about it, he gets "very angry very easily", gets carried away by it, trembles and becomes aggressive towards people around him. P-3064 still has "great anguish" when alone and has "nightmares when [he] remember[s] how all those people suffered at that time".[129] Similarly, when P-2692 thinks about his detention, he "no longer wants to live, he never really talks about it and it makes him cry."[130] P-2519 stated that his suffering could have led to his death and his family members thought that he was going to die.[131]

39. Also, Incident H victims including P-1180, 1743, P-2263 and P-2295 recounted the physical and psychological harm they continue to suffer over a decade after their detention at the OCRB.[132]

B. Mr Said's degree of participation and intent

40. Mr Said's high degree of participation and intent support the requested sentence of at least 20 years of imprisonment. [133] He played an essential role and was personally involved in the interrogation and mistreatement at the OCRB.[134]

[127] Trial Judgment, paras. 1008, 1428.
[128] Trial Judgment, paras. 936, 1204.
[129] Trial Judgment, paras. 1008, 1427.
[130] Trial Judgment, paras. 948, 1244.
[131] Trial Judgment, para. 997, 1383.
[132] P-1180: CAR-OTP-2043-0483, at 0509, paras. 195-196; P-1743: T-087, pp. 31-32; P-2263: CAR-OTP-2091-3074, at 3088, paras 60-63; P-2263: T-058, pp. 22-24; P-2295: CAR-OTP-2130-9460, at 9467, para. 35; Trial Judgment, para. 1311.
[133] *See Yekatom & Ngaïssona* TJ, para. 4493.
[134] Trial Judgment, para. 1775.

a. Mr Said was a direct co-perpetrator

41. Mr Said is convicted under article 25(3)(a), as a direct co-perpetrator.[135] As a direct perpetrator, he not only personally carried out some of the material elements of the crimes, but also had the requisite intent and knowledge pursuant to article 30 of the Statute. When committing the crimes jointly with others, Mr Said had control over the crime by virtue of his essential contribution to it and the resulting power to frustrate the commission of the crime. In particular, the Chamber recalled that Mr Said was in charge of the OCRB, had control over the OCRB-Seleka stationed there, and issued orders in respect of the arrest, detention and mistreatment of detainees. Beyond his role as head of the OCRB, Mr Said also participated in patrols, in the interrogation and mistreatment of detainees at the OCRB and was directly involved in a number of charged incidents.[136] Mr Said was an omnipresent, hands-on, and active participant who directly drove the day-to-day mechanisms of illegal detention, interrogation, and physical abuse at the OCRB. That he also ordered and induced the commission of crimes were part of his essential contribution to the common plan.[137] The combination of these factors strengthen the gravity of his responsiblity because he combines authority and ability to influence others with direct personal involvment.

b. Mr Said exercised control over the OCRB, the OCRB-Seleka and the logistics

42. Mr Said exercised operational control over the management and premises of the OCRB serving as its *de facto* director.[138] All the OCRB-Seleka elements were under Mr Said's command and reported to him.[139] A number of Seleka identification badges bore Mr Said's initials.[140] He closely collaborated with other Seleka leaders

[135] Trial Judgment, para. 1767.
[136] Trial Judgment, para. 1777.
[137] Trial Judgment, para. 898.
[138] Trial Judgment, para. 1778.
[139] Trial Judgment, paras. 913 and 1773.
[140] Trial Judgment, paras. 1113-1119.

such as Nouradine Adam ("Adam"), Tahir Babikir ("Tahir") and Yaya Soumayele aka Soumaine ("Yaya") in committing the crimes.[141] Mr Said had access and control of the weapons, food and uniforms, that he provided to the OCRB-Seleka elements.[142] By maintaining access to and control over these essential logistical resources, Mr Said directly provisioned and sustained the OCRB-Seleka elements operating under his command.

c. Mr Said actively participated in the arrest, mistreatment and detention of detainees

43. Furthermore, Mr Said personally subjected detainees to violent interrogations and actively endorsed the abusive interrogation tactics utilized by the OCRB-Seleka. Mr Said actively participated in the preparation of planning lists concerning those to be arrested,[143] interrogated and the mistreatmentof detainees at the OCRB.[144] Far from being a hands-off commander, Mr Said was systematically informed if detainees were detained at the OCRB, or released, and he controlled access to the OCRB cells. His daily exercise of authority was characterized by direct command functions, including issuing instructions on who to detain and where.[145] For example, following his arrival at the OCRB, P-2400 was registered and told by Tahir to await Mr Said's instructions before Mr Said ordered the Seleka to place P-2400 in the underground cell.[146] Mr Said also participated in the arrest of the 'baker'.[147] Mr Said gave instructions for P-1289 to be arrested and personally participated in the arrest operation.[148]

44. In some instances, the crimes occurred with Mr Said's direct participation, for instance, Mr Said was involved in the interrogation and mistreatment of detainees

[141] Trial Judgment, paras. 1766-1767.
[142] Trial Judgment, para. 1773.
[143] Trial Judgment, para. 1776.
[144] Trial Judgment, para. 1785.
[145] Trial Judgment, para. 1774.
[146] Trial Judgment, paras. 1045 and 1774.
[147] Trial Judgment, para. 1776.
[148] Trial Judgment, para. 1776.

at the OCRB,[149] and he directly participated in patrols, interrogation and mistreatment of detainees at the OCRB.[150] Mr Said also extorted money for the release of detainees, along with Tahir and Yaya. For example, he released P-2400 after receiving money from P-2337, providing P-2400 with a release document proving his release.[151]

d. Mr Said ordered and attended the beatings and torture of detainees by the OCRB-Seleka

45. In addition to his leading role and active involvement, Mr Said gave orders for the OCRB-Seleka to beat detainees.[152] He was present when detainees were beaten and tortured by his subordinates.[153]

46. Mr Said authorized and stood over his elements as they used physical constraints, most notably the *arbatachar* method of torture. For example, Mr Said was present along with Adoum Rakiss and Adam, when the 'baker', who had been tied the *arbatachar* way, was beaten by the OCRB-Seleka and questioned as to where they could find Bozizé's inner circle.

47. By being present during these acts of torture and using his command presence to facilitate the deplorable detention conditions, Mr Said ensured the OCRB functioned as a lawless space, which further highlights the gravity of the crimes.[154]

e. Mr Said had a high degree of criminal intent

48. The Chamber found Mr Said had the required intent and knowledge for the four counts of the charged crimes.[155] Mr Said had full knowledge of the inherently

[149] Trial Judgment, paras. 917 and 1775.
[150] Trial Judgment, para. 1775.
[151] Trial Judgment, para. 1776.
[152] Trial Judgment, paras. 917, 1775.
[153] Trial Judgment, para. 1775.
[154] *See Ntaganda* SJ, paras. 66-67.
[155] Trial Judgment, para. 1787.

substandard, inhumane conditions of the cells at the OCRB[156] and shared the discriminatory intent.[157]

49. The Chamber specifically noted, taking into account Mr Said's role and functions at the OCRB and his participation in the commission of crimes there, that the only reasonable inference is that Mr Said intended to participate in the implementation of the common plan to target perceived Bozizé supporters in Bangui by committing the crimes charged at the OCRB jointly with the co-perpetrators.[158]

50. He possessed full, and unmitigated knowledge of the contextual elements surrounding his crimes. The Chamber found that his underlying criminal acts were part of an attack on the civilian population of Bangui carried out by the Seleka after the *coup d'état* of 24 March 2013.[159] In light of his appointment by Adam, the Minister of Public Security who played a leading role in the attack, and who gave Mr Said instructions, and his close cooperation with senior Seleka, Mr Said knew that his conduct was part of a widespread and systematic attack against the civilian population of Bangui perceived to be supportive of Bozizé.[160]

51. Mr Said moreover, acted with the discriminatory intent of targeting those perceived as Bozizé supporters.[161] While rule 145(2)(b)(v) of the Rules states that commission of a crime for a discriminatory motive is an aggravating circumstance, for Mr Said's responsibility as a co-perpetrator of persecution, it formed part of his intent, showing the high degree of *mens rea*.

52. Mr Said and the OCRB-Seleka acted with the intent to violently target perceived Bozizé supporters (such as Christians, people of the Gbaya, Mandja, and Banda ethnic groups; people living in certain neighbourhoods of Bangui; people who had certain professions perceived to be supportive of Bozizé, or people who had been

[156] Trial Judgment, paras. 909-901, 912, 917 and 1774.
[157] Trial Judgment, para. 1785.
[158] Trial Judgment, paras. 1779-1787.
[159] Trial Judgment, para. 1786.
[160] Trial Judgment, para. 1786.
[161] Trial Judgment, para. 1785.

employed by the Bozizé government) on political, ethnic, religious, and/or gender grounds.[162]

53. In sum, Mr Said's overall degree of participation was central, and he contributed with a high degree of intent, including the specific intent to distcriminate by reason of perceived association with Bozizé on intersecting discriminatory political, ethnic, religious, and/or gender grounds. His conduct at the OCRB was guided by the intent to persecute, detain, mistreat and torture human beings in his custody warranting a heavy sentence.

C. Aggravating factors

54. Several aggravating factors should be taken into account. In particular, abuse of power, the defencelessness and vulnerability of the victims, the particular cruelty of the crimes and Mr Said's violation of a court order.

a. Mr Said's abuse of power as head of the OCRB

55. Abuse of power is an aggravating circumstance under rule 145(2)(b) of the Rules. Mr Said was the head of the OCRB between mid to late April to 31 August 2013.[163] During this period he was in charge, he effectively used the OCRB premises as a facility detaining persons perceived to be supporters of Bozizé.[164]

56. The Chamber found that Mr Said exercised direct oversight over the OCRB, which included issuing orders regarding detainees, controlling access to cells, and extorting money from families to secure the release of prisoners.[165] Mr Said actively abused his operational capacity by supplying weapons, uniforms, food, and badges to the specialized OCRB Seleka units carrying out the physical abuses.[166] As the *de facto* head of the OCRB, Mr Said abused his position of authority to order

[162] Trial Judgment, paras. 1721, 1740.
[163] Trial Judgment, paras. 912 and 1773.
[164] Trial Judgment, para. 1082.
[165] Trial Judgment, para. 1775.
[166] Trial Judgment, paras. 1773 and 1774.

mistreatment, and he knew that detainees were being subjected to the *arbatachar*.[167] Moreover, by his own actions and conduct, Mr Said, being in charge of the OCRB, encouraged other OCRB-Seleka under him to mistreat detainees. As the head of the OCRB, Mr Said was supposed to live by example. Instead, he used his power to order and encourage crime.

b. The victims were defenceless and vulnerable

57. Rule 145(2)(b)(iii) of the Rules characterises as an aggravating circumstance the commission of a crime against a victim who is particularly defenceless. The victims in this case were in a position of complete vulnerability as they were detained, unarmed and left without any protection.

58. Their vulnerability was compounded by the coercive methods to which they were subjected and dire conditions of their confinement. Victims were subjected to the *arbatachar* method of tying victims which in itself constituted torture since it cause severe and untold pain to the victims. Victims were confined in inhumane and dire condition, characterised by the dark, cramped, dirty, and insufficiently ventilated cells. Nine detainess were kept in the underground cell with the floor covered in human waste and smell of faeces and urine.[168] They were denied adequate food, water, and regular independent medical attention.[169] As a direct consequence of these calculated acts, the victims sustained severe and enduring physical and psychological injuries.

[167] Mr Said would talk about it with P-0338, one of the Seleka elements working at the OCRB (*see* P-0338: T-018-Conf-ENG, 29:10-18; P-0338, T-018-Conf-FRA, 30:20-28). *See also*, factual findings of the Chamber at para. 917 of the Trial Judgment: 'Benjamin Mallo frequently told Mr Said that detainees were being mistreated and, at times, tied using the *arbatachar* method. Mr Said was present when detainees who had been mistreated were brought out from the underground cell in his office. Mr Said did not do anything to stop torture occurring or address allegations of torture which were brought to his attention.'
[168] Trial Judgment, paras. 910 and 1097.
[169] Trila Judgment, paras. 966 and 1292.

c. The crimes were particularly cruel

59. Rule 145(2)(b)(iv) of the Rules envisages, as an aggravating circumstance, the commission of a crime with "particular cruelty".

60. The manner and means employed by Mr Said and his co-perpetrators to commit the crimes demonstrate their particularly cruelty. The crimes were perpetrated with particular violence and brutality.

61. Witnesses recounted the violent manner in which they were arrested by the Seleka elements prior to their detention at the OCRB. For instance, P-1289 was slapped and punched in the head while being transported to the OCRB.[170] P-3064 was slapped with a pistol when he asked the OCRB Seleka the reason for his arrest.[171] Upon Mr Said's orders to retrieve Sanze "dead or alive", the OCRB Seleka broke into Sanze's home, violently arrested him and then shot him as he attempted to flee.[172] [REDACTED] was violently detained prior to his detention at the OCRB and subsequent killing.[173] P-0481 was not provided medical assistance, despite the fact that he had been beaten and burned by OCRB-Seleka.[174]

62. The crimes continued at the OCRB by the OCRB-Seleka after arrest were equally cruel. The OCRB-Seleka routinely mistreated detainees both physically and psychologically.[175] The OCRB victims were often kicked, whipped, tied up in the *arbatachar* method and in some instances beaten unconscious by Seleka elements subordinate to Mr Said.[176] P-0547 for instance, was violently slapped across the face,[177] tied up in the *arbatachar* method, hung on a wall with barbed wire and

[170] P-1289: CAR-OTP-2053-0359, at 0366, para. 42; P-1289: T-050, p. 41; Trial Judgment, paras. 934 and 1192
[171] P-3064: T-074, pp. 12, 15; Trial Judgment, paras 999, 1389 and 1638.
[172] Trial Judgment, paras. 1627 and 1629.
[173] Trial Judgment, para. 1614.
[174] Trial Judgment, paras. 939-940 and 1677.
[175] Trial Judgment, para. 1755.
[176] P-1180: CAR-OTP-2043-0483, at 0504, para. 154; P-1743: T-086, p. 43; P-1743: T-087, p. 5; P-2263: CAROTP- 2091-3074, at 3079, para. 21; P-2295: CAR-OTP-2130-9460, at 9465, para. 25; P-2692: CAR-OTP-2125-0922, at 0928, para. 33; P-1743: T-087, p. 36; P-2263: CAR-OTP-2091-3074, at 3079, para. 22; P-2519: CAR-OTP-2127-9471, at 9479, para. 55; Trial Judgment, paras 1290, 1662 and 1664.
[177] Trial Judgment, para.1013.

beaten with rifle butts and threatened with death.[178] He was later removed from the wall by the OCRB-Seleka, dragged to the underground cell of the OCRB and kicked into it.[179] In another instance, the OCRB-Seleka poured a mixture of water and sand or soil on the backs of 16 persons detained in relation to the Flyers incident, and whipped them multiple times, in the presence of their families, before kicking and beating them with batons.[180] Also, P-2931 recounted that his hands and legs were tied together in front of him such that he could not move, and he was then slapped and dragged across the ground in the rain.[181] [REDACTED] and [REDACTED]—both OCRB victims in Incident R—were bound using the *arbatachar* method and whipped several times by OCRB-Seleka subordinate to Mr Said.[182]

63. P-2519 explained how he was beaten with rifle butts and when he fell, OCRB-Seleka elements tied him using the *arbatachar* method, poured water on him, and continued to beat him. He was whipped with whips made of horsehide.[183] He passed out during the beating. P-2519 stated that both his hands sometimes still feel like they are paralysed.[184] P-0547 was tied in the manner of the *arbatachar* method.[185] After hitting his leg with a rifle butt, the OCRB-Seleka tied his arms behind his back with ropes, pulling on his shoulders.[186] They kicked and beat him with rifle butts, a stick and other instruments,[187] then tied up his legs behind him so tightly that they were touching his elbows: it was "like taking cattle to slaughter''.[188] P-0547 was severely injured and he needed assistance from fellow

[178] Trial Judgment, para. 1664.
[179] P-0547: T-013, p. 7, Trial Judgment, paras. 1020-1021, 1464, 1697.
[180] Trial Judgment, para. 1661.
[181] P-2931: CAR-OTP-2135-4093, at 4099-4100, paras 36, 43 and at 4100, paras 39-41; Trial Judgment, paras 983 and 1346.
[182] P-2105: T-024, pp. 41-42 and 45; Trial Judgment, paras. 1571 and 1575.
[183] Trial Judgment, para. 1368.
[184] Trial Judgment, para. 1383.
[185] P-0547: T-013-Conf-ENG-CT, 29:17-20; T-013-Conf-FR-CT, 30:8-12. Trial Judgment, para. 1460.
[186] P-0547: T-013-Conf-ENG -CT, 3:7-5:10; T-013-Conf-FR-CT, 3:12-5:21. Trial Judgment, para. 1460.
[187] Trial Judgment, para. 1460. P-0547: T-013-ENG-Conf-CT, 3:7-5:16; (open session); T-013-Conf-FR-CT, 3:12-6:1 (open session).
[188] P-0547: T-013- Conf-ENG-CT, 3:7-5:13; T-013-Conf-FR-CT, 3:12-5:25. Trial Judgment, para. 1460.

detainees to eat and ease himself: his hands remained paralysed for approximately nine months.[189]

64. Some of the victims were detained for days in the underground cell[190] which was located under Mr Said's office[191] and which was in a squalid and deplorable state. This underground cell was dark, cramped, dirty and insufficiently ventilated.[192] The floor was covered in waste and it smelled of faeces and urine.[193] Detainees had to urinate and defecate inside the underground cell.[194] There was no system to provide detainees in the underground cell with food or medical assistance despite having sustained severe injuries from their mistreatment at the hands of the Seleka.[195]

d. Mr Said violated a court order

65. Mr Said's direct violation of applicable contact restrictions amounts to an aggravating circumstance. He disclosed to an unauthorized person the name of a protected witness[196] and other information discussed in closed sessions. This is a serious violation of the Statute, since it endangers the safety and security of witnesses and the proceedings of the court as a whole.[197] The Prosecution submits that the gravity of this infraction is further heightened by the threats uttered during the course of the communication.

66. The Chamber ordered Mr Said "to exercise greater caution and diligence" and reminded him that 'the Court retains jurisdiction over any alleged offences pursuant to article 70 of the Statute."[198]

[189] Trial Judmgnet, para. 1664.
[190] Trial Judgment paras. 1001, 1024 and 1045.
[191] Trial Judgment para. 1094.
[192] Trial Judgment, paras. 910 and 1097.
[193] Trial Judgment, paras. 910 and 1097
[194] Trial Judgment, paras. 910 and 1097.
[195] Trial Judgment, para. 1097.
[196] The witness is [REDACTED], *see* ICC-01/14-01/21-981-Red, paras. 12-16.
[197] *Ibid.* para. 13.
[198] ICC-01/14-01/21-984.

D. Mitigating circumstances do not exist, or should be given no weight

67. Rule 145(2)(a) of the Rules identifies a non-exhaustive list of mitigating circumstances that shall be taken into account as appropriate. The Prosecution addresses below the potential mitigating factors the Defence might raise. However, they neither exist in this case, nor should be any weight given the facts, and when balanced against the aggravating factors. The Prosecution reserves the right to respond directly to specific arguments raised in the Defence sentencing submissions and, if necessary, will expand on the submissions below during the sentencing hearing.

a. The individual circumstances of Mr Said are not mitigating

68. Article 78(1) of the Statute mandates that the Chamber takes into account "the individual circumstances of the convicted person". Examples of individual circumstances are listed in rule 145(1)(c) of the Rules, and include "the age, education, social and economic condition of the convicted person." Generally, "individual circumstances" refer to factors which are not directly related to the crimes or culpable conduct of the convicted person.[199] The Chamber, "based on its intimate knowledge of the case, will have to balance all factors it considers relevant" and "consider the circumstances both of the convicted person and of the crime".[200]

(1) Mr Said's health is not a mitigating factor

69. Mr Said health cannot be considered as a mitigating circumstance.

70. The Prosecution notes that while the Chamber admitted 14 medical reports and five associated surgical photographs into the sentencing record under article 76(2)

[199] *See Bemba et al*. SJ, para. 58.
[200] *Bemba et al*. SAJ, para. 283 (emphasis in original) ("while failure to consider a mandatory factor may amount to a legal error, the identification and weighing of the relevant factors lies at the core of the Trial Chamber's exercise of discretion"); rule 145(1)(b) of the Rules.

of the Statute,[201] these documents regarding Mr Said's health between 2023 and 2024 are insufficient to diminish his sentence.

71. A convicted person's mental or physical health may be taken into account as a mitigating factor only in "rare" or "exceptional" circumstances,[202] and should normally be considered in relation to execution of the sentence.[203] The current state of a convicted person's health is not related to the conduct underlying the crimes, nor is it connected to the principal objectives of sentencing in international criminal cases, namely retribution and deterrence.[204] In this case there are no exceptional circumstances justifying any mitigation on health or medical grounds.

(2) Family situation is not a mitigating factor

72. As held in *Bemba*,[205] a convicted person's family circumstances are accorded limited, if any, weight at sentencing, unless exceptional.

73. Mr Said reportedly has two wives and 10 children, a situation common to many convicted persons. The family situation is not exceptional and does not warrant a reduction in the sentence.

74. In *Katanga*, the Chamber afforded "very limited weight" to several potentially mitigating factors, including that the accused was a father of six children, in light of the nature of the crimes for which he was convicted.[206] The Prosecution therefore submits that none of Mr Said's individual circumstances, including his family

[201] Decision on additional evidence concerning sentencing and scheduling the sentencing hearing, ICC-01/14-01/21-1073, para. 28.
[202] *Bemba et al*. SJ, para. 187 (stating that "reasons of ill health can only be considered in exceptional cases" and rejecting a poor health claim on the facts); ICTY, *Prosecutor v. Blaskic*, IT-95-14-A, Appeal Judgment, 29 July 2004, para. 696 ("Poor health is to be considered only in exceptional or rare cases."); ICTY, *Prosecutor v. Galic*, IT-98-29-A, Appeal Judgment, 30 November 2006, para 436; ICTR, *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 472-743 (recognizing that "Rutaganda is in poor health and has had to seek medical help continuously" but still deciding to impose a life sentence).
[203] *Simic* SJ, para. 98.
[204] *Bemba et al*. SJ, para. 19.
[205] *Bemba* SJ, para. 78 and fn.243 (and cases cited therein).
[206] *Katanga* SJ, para. 88 (the Trial Chamber considered his young age, that he was the father of six children, and his kindly and protective disposition towards the civilians in his community as mitigating but found that these factors could not play a determinant role considering the nature of the crimes).

situation, and supposedly kind and protective disposition towards the civilians in his community, warrants any reduction in his sentence.

(3) The 11 Defence non-evidentiary statements on the character of Mr said and his role in the community carry no probative weight

75. The Prosecution submits that while the Chamber's Decision on additional evidence concerning sentencing and scheduling the sentencing hearing[207] permits the Defence to refer to 11 defence witness statements within its non-evidentiary sentencing submissions,[208] these materials bear no probative weight and cannot satisfy the burden for mitigating circumstances under rule 145 of the Rules.

76. As the Chamber determined, these handwritten documents "merely contain a record of the witnesses' exchanges with a member of the Defence team" and lack basic, indicia of reliability, including any express attestation of truth or verification that they were read back to the signatories.[209] Hence, they are merely non-evidentiary narratives that are unsworn, unvetted by cross-examination, and shielded from objective validation cannot establish genuine mitigating context.

77. Furthermore, to the extent these statements portray Mr Said's role within his family and community as a general ground for leniency, such domestic obligations are common to many convicted persons and are eclipsed by the immense gravity of the crimes against humanity he committed.[210] The Prosecution therefore requests that the Chamber treat these non-evidentiary references as unsubstantiated assertions and accord them no weight in the final determination of the sentence.

[207] Decision on additional evidence concerning sentencing and scheduling the sentencing hearing, ICC-01/14-01/21-1073, 26 October 2026.
[208] ICC-01/14-01/21-1073, para. 55.
[209] *Ibid*. para. 53.
[210] *Al Mahdi* TJ, paras 74–75.

b. Prior detention conditions or human rights violation are not mitigating factors

78. The Defence seeks to minimize the gravity of the crimes by invoking the alleged prior poor conditions of detention and malfunctions in CAR as a "norm". In support of this normalization narrative, the Defence relies on historic human rights assessments detailing domestic infrastructure deficiencies as well as violation of human rights in CAR prior to the charged period.[211]

79. A legacy of domestic institutional fragility cannot diminish the gravity of crimes against humanity. Moreover, the OCRB did not represent a passive continuation of historic deficiencies. Instead, as detailed in the Trial Judgment,[212] Mr Said was directly involved in or ordered the detention and mistreatment, including torture, of individuals at the OCRB, as well as other criminal behaviour.

(1) The conduct of others is not mitigating

80. As recalled by the Chamber, Mr Said worked together with Adam and other OCRB-Seleka to commit crimes.[213] In addition, there are also other third parties who committed crimes before, during and after the charged period.

81. The fact that other people and entities may have also committed crimes or violated rights of detainees and were neither investigated nor prosecuted, is irrelevant to the determination of the appropriate sentence since the conduct of others is not a mitigating circumstance.[214] In this case, the Chamber has already ruled that it is not persuaded that "items, in which reported criminal conduct is attributed to third parties, could shed light on the gravity of the crimes of which Mr Said is convicted."[215]

[211] *See* reports: CAR-D33-0014-4130, CAR-D33-0014-4323 and CAR-D33-0014-4363 held admissible by the Trial Chamber in ICC-01/14-01/21-1073, para. 61.
[212] Trial Judgment, para. 1782.
[213] Trial Judgment, paras. 1759 – 1768.
[214] *Bemba* SJ, paras. 85-86.
[215] ICC-01/14-01/21-1073, para. 65.

(2) Gravity must be assessed on the specific facts

82. The gravity of a crime is determined by the specific cruelty, scale, and systematic nature of the criminal conduct as charged.[216] In particular, the gravity of the crime of imprisonment under article 7(1)(e) of the Statute must be assessed against fundamental rules of international law and not any alleged pre-existing institutional deficiency.

(3) The Seleka takeover worsened detention conditions

83. Further, and in any event, the Seleka did not just continue any pre-existing detention condition. Rather, the Chamber has explicitly found that the arrival of the Seleka upended any regular state practice. Pre-existing civil and judicial checking mechanisms were "crippled"[217] and stripped of decision-making power. The regular police force at the OCRB was reduced to a purely "observing function,"[218] and "ornamental",[219] powerless to enforce statutory monitoring or the detention limits. The Seleka operated unchecked as the absolute "lords of the city."[220]

84. Similarly, the OCRB-Seleka under Mr Said actively worsened the detention conditions at the OCRB. Benjamin Mallo testified that there was a significant difference in detention conditions and the number of detainees (overcrowding) at the OCRB before and after the Seleka takeover.[221] The detainees were denied basic hygiene, forced to live in unventilated, dark, cells within the courtyard and a waste-covered underground cell directly beneath Mr Said's office.[222]

(4) The role of Mr Said

[216] *Infra.* section on Gravity of crimes.
[217] Trial Judgment, para. 864.
[218] Trial Judgment, paras. 929-931 and 1186.
[219] Trial Judgment, paras. 931, 1600 and 1756.
[220] Trial Judgment, para. 803.
[221] Trial Judgment, para. 1090, fn. 2998.
[222] Trial Judgment, paras. 910 and 1097.

85. The crimes that Mr Said committed were based on an active, discriminatory organizational policy.[223] The conditions and physical traumas inflicted on detainees at the OCRB, including severe beatings and the usage of the painful *arbatachar* method were systematically deployed to target victims on discriminatory grounds.

86. Mr Said's conviction is not based on perpetuating structural deficiencies. He actively oversaw the OCRB and the unlawful detention as well as severe torture and mistreatment of detainees. Pre-existing issues in CAR detention facilities cannot reduce Mr Said's degree of participation or minimize the immense physical and mental harm inflicted upon the victims. The Prosecution requests the Chamber to reject the Defence "normalization" plea as a mitigating factor.

c. Mr Said's lack of prior convictions is not mitigating

87. According to the '*casier judiciaire*'[224] of Mr Said, he has no prior criminal convictions. Consistent with the Court's jurisprudence, while constituting a relevant individual circumstance to be taken into account in determining sentence,[225] the absence of prior convictions is a fairly common feature among individuals convicted by international tribunals and is not mitigating.[226]

d. Mr Said has not expressed remorse for his crimes

88. There is nothing on record to demonstrate that Mr Said expressed any remorse or acknowledgment of his unlawful participation in the crimes for which he stands convicted. Mr Said joined the Seleka and embraced the position of *de facto* head of the OCRB.

[223] Trial Judgment, para. 1774.
[224] CAR-D33-0014-3833.
[225] *Yekatom & Ngaïssona* TJ, para. 4443; *Bemba et al*. SJ, paras. 61, 89, 137, 184.
[226] *Yekatom & Ngaïssona* TJ, para. 4443, 4669; *Al Mahdi* TJ, para. 96; *Bemba et al*. SJ, paras. 61, 89, 137, 184.

e. Mr Said's behaviour in the courtroom and in detention is not mitigating

89. While the Prosecution does not dispute that Mr Said maintained appropriate courtroom decorum and co-operated with the administration of justice during the trial proceedings, proper courtroom conduct is a baseline expectation for any accused. Such comportment constitutes a mitigating factor only when it is truly exceptional in nature.[227] Since Mr Said's courtroom conduct did not deviate from standard procedural expectations, it fails to meet this threshold and warrants no mitigating weight.

90. Likewise, the Prosecution does not dispute that Mr Said has behaved well whilst in detention. However, good behaviour in detention is expected of any accused or convicted person and does not constitute a mitigating circumstance unless exceptional.[228] Although the accused's behaviour was described as "exemplary", the Trial Chamber *in Ntaganda* considered the weight to be attributed to this factor to be "too limited to impact on the individual and overall sentences" in light of the overall gravity and aggravating circumstances of the crimes.[229] Similarly, in *Al Mahdi*, the Trial Chamber attributed only "limited weight" to the accused's "irreproachable" behaviour in detention despite being deprived of family visits for one year.[230] If anything, Mr Said's violation of the Court's orders and his disclosure of confidential information[231] show that no mitigation for "good behaviour" is warranted.

[227] *Yekatom & Ngaïssona* TJ, paras. 4458, 4680; *Al Hassan* SJ, para. 124; *Ntaganda* SAJ, paras. 6, 260; *Ntaganda* SJ, paras. 229-230; *Bemba* SJ, para. 81; *Katanga* SJ, paras. 127-128; *Bemba et al*. SJ, paras. 88, 136, 186.
[228] *Yekatom & Ngaïssona* TJ, paras. 4457-4458; *Bemba et al*. SJ, paras. 88, 136, 186; *Ntaganda* SJ, para. 22, citing to *Bemba* SJ, para. 81.
[229] *Ntaganda* SJ, paras. 234-235.
[230] *Al Mahdi* TJ, paras. 97 and 109. The Prosecution notes that the Chamber gave limited weight to the accused's "irreproachable" behaviour despite being deprived of family visits for one year, rather than to the behaviour alone. Contra Defence Additional Evidence Request, para. 30.
[231] *Infra*, *para*. 79.

IV. CONCLUSION

91. The crimes committed by Mr Said are of severe gravity, and the profound harm he inflicted on the victims, their families as well as their communities remain to date. In light of the serious gravity of these offences, the substantial aggravating circumstances, and the absence of mitigating factors, the Prosecution respectfully submits that a joint sentence of at least 20 years of imprisonment is the only penalty that appropriately reflects the full extent of Mr Said's culpability and the severe suffering endured by the victims.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 6th day of November 2026
At The Hague, The Netherlands