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**No. ICC-01/14-01/21
Date: 9 December 2021**

PRE-TRIAL CHAMBER II

**Before: Judge Rosario Salvatore Aitala, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane**

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

Public redacted version of

Decision on the confirmation of charges against Mahamat Said Abdel Kani

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:**The Office of the Prosecutor**

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PRE-TRIAL CHAMBER II of the International Criminal Court (the ‘Chamber’ and the ‘Court’, respectively) issues, pursuant to article 61(7) of the Rome Statute (the ‘Statute’), this ‘Decision on the confirmation of charges against Mr Mahamat Said Abdel Kani’ (‘Mr Said’), a national of the Central African Republic (‘CAR’), born on 25 February 1970 in Bria, Ndele Province, the CAR, currently detained at the seat of the Court.

1. The full text of the charges on which the Office of the Prosecutor (the ‘Prosecution’) seeks that Mr Said be committed for trial is available in the ‘Document Containing the Charges’ (the ‘DCC’) filed by the Prosecution on 16 August 2021,¹ to be read in conjunction with the ‘Pre-Confirmation Brief’ (the ‘PCB’) filed on 30 August 2021.²

2. In accordance with article 19 of the Statute, the Court shall satisfy itself that it has jurisdiction in any case brought before it. In this respect, the Chamber observes that the Prosecution charges Mr Said with crimes against humanity under article 7 and war crimes under article 8 of the Statute (jurisdiction *ratione materiae*) allegedly committed at the *Office Central de Répression du Banditisme* (Central Office for the Repression of Banditry) (the ‘OCRB’) and at the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* (Extraordinary Committee for the Defence of Democratic Achievements) (the ‘CEDAD’) in Bangui, CAR (jurisdiction *ratione loci*), respectively between 12 April 2013 and 30 August 2013 and between mid-September 2013 and 8 November 2013 (jurisdiction *ratione temporis*). Therefore, the Chamber is satisfied that the Court has jurisdiction over the present case.

¹ ICC-01/14-01/21-144-Conf (public redacted version and its corrected version notified, respectively, on 16 August 2021 (ICC-01/14-01/21-144-Red) and 27 October 2021 (ICC-01/14-01/21-144-Red-Corr); corrected confidential version and its public redacted version notified, respectively, on 26 October 2021 (ICC-01/14-01/21-144-Conf-Corr) and 1 December 2021 ([ICC-01/14-01/21-144-Corr-Red](#))), with confidential annexes A and B (corrected confidential version of annex B notified on 20 August 2021 (ICC-01/14-01/21-144-Conf-AnxB-Corr); corrected confidential and public redacted versions of annex A notified on 27 October 2021 (ICC-01/14-01/21-144-Conf-AnxA-Corr; [ICC-01/14-01/21-144-AnxA-Red-Corr](#))).

² ICC-01/14-01/21-155-Conf (first and second public redacted versions notified, respectively, on 21 September 2021 ([ICC-01/14-01/21-155-Red](#)) and 9 December 2021 ([ICC-01/14-01/21-155-Red3](#))), with confidential annexes A-D (public redacted version of annex A notified on 22 September 2021 ([ICC-01/14-01/21-155-AnxA-Red](#)) and 9 December 2021 (ICC-01/14-01/21-155-AnxA-Red3); corrected version of annex B notified on 26 October 2021 (ICC-01/14-01/21-155-Conf-AnxB-Corr)).

I. BACKGROUND AND PROCEDURAL HISTORY

3. On 30 May 2014, the Government of the CAR referred to the Prosecution a second situation in the CAR, concerning crimes under the jurisdiction of the Court that may have been committed since 1 August 2012.³

4. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued the ‘Warrant of arrest for Mahamat Said Abdel Kani’.⁴

5. On 24 January 2021, Mr Said was surrendered to the Court. He arrived at the Court’s Detention Centre on 25 January 2021.⁵

6. On 25 January 2021, Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.⁶

7. On 29 January 2021, in accordance with the Single Judge’s decision dated 26 January 2021⁷ and his further instructions dated 28 January 2021,⁸ Mr Said appeared before the Single Judge pursuant to article 60(1) of the Statute and rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’).⁹ On that day, the Single Judge scheduled the confirmation hearing to commence on 5 October 2021.¹⁰

8. On 7 April 2021, the Single Judge¹¹ issued the ‘Order on disclosure and related matters’ adopting, *inter alia*, (i) the ‘Unified Technical protocol for the provision of

³ See Presidency, [Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II](#), 18 June 2014, ICC-01/14-1. On 21 December 2004, the Government of the CAR referred to the Prosecution a first situation in the CAR for crimes under the jurisdiction of the Court that may have been committed since 1 July 2002 (*see* Presidency, [Decision Assigning the Situation in the Central African Republic to Pre-Trial Chamber III](#), 19 January 2005, ICC-01/05-1).

⁴ ICC-01/14-01/21-2-US-Exp (public redacted version notified on 17 February 2021 ([ICC-01/14-01/21-2-Red2](#))).

⁵ Registry, Report of the Registry on the Arrest and Surrender of Mr Mahamat Said Abdel Kani and Request for Guidance, 27 January 2021, ICC-01/14-01/21-6-US-Exp (first confidential redacted *ex parte* version notified on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); second confidential redacted *ex parte* version notified on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)).

⁶ [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-3, p. 3.

⁷ [Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani](#), ICC-01/14-01/21-4.

⁸ Transcript of hearing, 28 January 2021, [ICC-01/14-01/21-T-001-ENG](#), p. 4, line 20 to p. 5, line 4.

⁹ Transcript of hearing, 29 January 2021, [ICC-01/14-01/21-T-002-ENG](#).

¹⁰ Transcript of hearing, 29 January 2021, [ICC-01/14-01/21-T-002-ENG](#), p. 11, lines 11-12.

¹¹ On 17 March 2021, following the recomposition of the Chambers by the Presidency, Judge Rosario Salvatore Aitala was designated by the Pre-Trial Chamber II as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided; *see* [Decision assigning judges](#)

evidence, witness and victims information in electronic form’ and, *mutatis mutandis*, the redaction regime as applied in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*; and (ii) the ‘Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant’ as annexed to the Chambers Practice Manual.¹²

9. On 16 April 2021, the Single Judge issued the ‘Decision establishing the principles applicable to victims’ applications for participation’.¹³

10. On 1 June 2021, the Single Judge issued the ‘Second Decision on matters related to translation’, ordering *inter alia* that all statements of the Prosecution’s witnesses, as well as the DCC and the PCB, be translated into French.¹⁴

11. On 30 June 2021, the Single Judge issued the ‘Second order on disclosure and postponement of the confirmation hearing’, postponing the date of the commencement of the confirmation hearing to 12 October 2021 and adopting time limits for the submission of the DCC, the PCB and the Prosecution’s list of evidence.¹⁵

12. On 9 July 2021, the Single Judge issued the ‘Decision on legal representation of victims and related matters’, in which the Office of Public Counsel for Victims (the

[to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40; [Decision on the designation of a Single Judge](#), 17 March 2021, ICC-01/14-01/21-42.

¹² ICC-01/14-01/21-50-Conf (public redacted version notified on 12 May 2021 ([ICC-01/14-01/21-50-Red](#))), pp. 19-20. See Annex to [Chambers Practice Manual](#), 29 November 2019.

¹³ [ICC-01/14-01/21-56](#). On 21 May 2021, the Single Judge granted the Defence’s request for leave to appeal the ‘Decision establishing the principles applicable to victims’ applications for participation’ with respect to the issue whether the adopted system for the transmission and admission of victims’ applications was in compliance with the statutory framework, in particular rule 89 of the Rules, and rejected the remainder of the request (see [Demande d’autorisation d’interjeter appel de la « Decision establishing the principles applicable to victims’ applications for participation » \(ICC-01/14-01/21-56\)](#), 26 April 2021, ICC-01/14-01/21-63; [Decision on the Defence’s request for leave to appeal the ‘Decision establishing the principles applicable to victims’ applications for participation](#), 21 May 2021, ICC-01/14-01/21-79, para. 21, p. 8). On 14 September 2021, the Appeals Chamber confirmed the ‘Decision establishing the principles applicable to victims’ applications for participation’ (see [Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled “Decision establishing the principles applicable to victims’ applications for participation”](#), 14 September 2021, ICC-01/14-01/21-171 (OA2), para. 84).

¹⁴ [ICC-01/14-01/21-86](#). See also Decision on matters related to translation, 23 April 2021, ICC-01/14-01/21-58-Conf (public redacted version notified on 18 May 2021 ([ICC-01/14-01/21-58-Red](#))); [Order to conduct French and Sango language proficiency assessments of Mahamat Said Abdel Kani](#), 7 May 2021, ICC-01/14-01/21-73.

¹⁵ [ICC-01/14-01/21-112](#), pp. 9-10.

‘OPCV’) was assigned to represent the collective interests of applicant victims, on a temporary and provisional basis.¹⁶

13. On 16 August 2021, the Prosecution filed the DCC and its list of evidence¹⁷ and, on 30 August 2021, the PCB.

14. On 8 September 2021, pursuant to the Single Judge’s instructions,¹⁸ the Prosecution, the Defence and the OPCV submitted observations on the conduct of the confirmation hearing.¹⁹

15. On 14 September 2021, the Chamber issued the ‘Order setting the schedule for the confirmation hearing’.²⁰ On 23 September 2021, the Defence filed a request in which it sought, *inter alia*, a postponement of the confirmation hearing to at least 22 November 2021 (the ‘Defence Postponement Request’).²¹

16. On 1 October 2021, the Defence filed the ‘*Notification des thèmes que la Défense pourrait aborder à l’ouverture de l’audience de confirmation des charges en vertu de la Règle 122(3) du Règlement de procédure et de preuve*’.²²

¹⁶ [ICC-01/14-01/21-119](#), p. 12.

¹⁷ ICC-01/14-01/21-144-Conf-AnxB (corrected version notified on 20 August 2021 (ICC-01/14-01/21-144-Conf-AnxB-Corr)).

¹⁸ Email from the Chamber, 2 September 2021, at 15:31.

¹⁹ [Prosecution’s submissions regarding the conduct of the confirmation hearing](#), ICC-01/14-01/21-162; [OPCV Observations on the conduct of the confirmation of charges hearing](#), ICC-01/14-01/21-163; *Observations de la Défense portant sur l’organisation de l’audience de confirmation des charges*, ICC-01/14-01/21-164-Conf (corrected and public redacted versions notified, respectively, on 9 September 2021 (ICC-01/14-01/21-164-Conf-Corr) and 10 September 2021 ([ICC-01/14-01/21-164-Corr-Red](#))).

²⁰ [ICC-01/14-01/21-172](#). See also [Demande d’autorisation d’interjeter appel de l’« Order setting the schedule for the confirmation of charges hearing » \(ICC-01/14-01/21-172\)](#), 20 September 2021, ICC-01/14-01/21-173; [Prosecution Response to Defence Request for Leave to Appeal the Order Setting the Schedule for the Confirmation of Charges Hearing](#), 23 September 2021 (notified 24 September 2021), ICC-01/14-01/21-177; [Decision on the Defence’s request for leave to appeal the ‘Order setting the schedule for the confirmation of charges hearing’](#), 29 September 2021, ICC-01/14-01/21-188, rejecting the Defence’s request.

²¹ *Demande déposée en vertu de la Règle 121(7) du Règlement de procédure et de preuve afin d’assurer le respect du droit fondamental de la Défense à disposer du temps et des facilités nécessaires à la préparation de l’audience de confirmation des charges pour pouvoir y contester les charges et les éléments de preuve présentés par l’Accusation*, ICC-01/14-01/21-175-Conf-Exp (confidential redacted version notified on the same day (ICC-01/14-01/21-175-Conf-Red); public redacted version notified on 27 September 2021 ([ICC-01/14-01/21-175-Red2](#))), with confidential annexes 1 and 2.

²² [ICC-01/14-01/21-190](#).

17. On 4 October 2021, the Chamber issued the ‘Decision on the Defence’s request for postponement of the confirmation hearing’, rejecting the Defence Postponement Request (the ‘Postponement Decision’).²³
18. On the same day, pursuant to the Single Judge’s order,²⁴ the Defence filed its list of evidence.²⁵
19. On 6 October 2021, the Single Judge issued the ‘Decision on victim applications for participation in the proceedings and on legal representation of victims’.²⁶
20. On 11 October 2021, the Defence filed the ‘*Demande d’autorisation d’interjeter appel de la « Decision on the Defence’s request for postponement of the confirmation hearing » (ICC-01/14-01/21-196)*’ (the ‘Defence Request for Leave to Appeal the Postponement Decision’).²⁷
21. The confirmation hearing was held from 12 to 14 October 2021.²⁸ On the first day of the hearing, after the Prosecution and the OPCV had orally responded,²⁹ the

²³ [ICC-01/14-01/21-196](#).

²⁴ *Requête urgente aux fins de prorogation du délai donné par la Chambre à la Défense pour lui notifier sa liste d’éléments de preuve pour l’audience de confirmation des charges*, 23 September 2021, ICC-01/14-01/21-176-Conf (public redacted version notified on 8 December 2021 (ICC-01/14-01/21-176-Red)); email from the Chamber, 24 September 2021, at 14:35, granting the Defence’s request and instructing the Defence to file its list of evidence by no later than 4 October 2021.

²⁵ *Inventaire des éléments de preuve que la Défense entend présenter, en vertu du paragraphe 6 de l’article 61 du Statut, à l’audience de confirmation des charges*, ICC-01/14-01/21-194, with confidential annex 1; *Inventaire amendé des éléments de preuve que la Défense entend présenter, en vertu du paragraphe 6 de l’article 61 du Statut, à l’audience de confirmation des charges*, ICC-01/14-01/21-202, with confidential annex 1.

²⁶ [ICC-01/14-01/21-199](#). See also Registry, [First Registry Transmission of Group A Applications for Victim Participation \[...\] in Pre-Trial Proceedings](#), 27 August 2021, ICC-01/14-01/21-151, with 13 confidential *ex parte* annexes; [First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 27 August 2021, ICC-01/14-01/21-152, with one confidential annex; First Registry Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings, 13 September 2021, ICC-01/14-01/21-167-Conf (public redacted version notified on 20 September 2021 (ICC-01/14-01/21-167-Red)), with 13 confidential *ex parte* annexes; Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings, 13 September 2021, ICC-01/14-01/21-168-Conf (public redacted version notified on 20 September 2021 (ICC-01/14-01/21-168-Red)), with one confidential annex; [Registry’s Second Transmission of Group A and First Transmission of Group B Victim Applications for Participation in Pre-Trial Proceedings](#), 27 September 2021, ICC-01/14-01/21-183, with 17 confidential *ex parte* annexes; [Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 27 September 2021, ICC-01/14-01/21-184, with confidential annex 1 and confidential *ex parte* annex 2.

²⁷ [ICC-01/14-01/21-201](#).

²⁸ Transcript of hearing, 12 October 2021, ICC-01/14-01/21-T-004-CONF-ENG (public redacted version [ICC-01/14-01/21-T-004-Red2-ENG](#)); Transcript of hearing, 13 October 2021, ICC-01/14-01/21-T-005-CONF-ENG (public redacted version [ICC-01/14-01/21-T-005-Red2-ENG](#)); Transcript of hearing, 14 October 2021, [ICC-01/14-01/21-T-006-ENG](#).

²⁹ [ICC-01/14-01/21-T-004-Red2-ENG](#), p. 3, line 7 to p. 6, line 4.

Chamber issued an oral decision rejecting the Defence Request for Leave to Appeal the Postponement Decision.³⁰

II. OBJECTIONS AND OBSERVATIONS PURSUANT TO RULE 122(3) OF THE RULES

22. Pursuant to rule 122(3) of the Rules, at the beginning of the confirmation hearing and before the Chamber hears the matter on the merits, the Prosecution and the person charged may ‘raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing’. At the beginning of the confirmation hearing on 12 October 2021, the Defence presented three sets of observations under rule 122(3) of the Rules,³¹ to which the Prosecution responded.³²

A. Observations concerning the DCC and the PCB

23. The Defence submits that the DCC and the PCB do not satisfy a ‘minimum requirement of clarity’ (*‘exigences minimums de clarté’*) and that, as a result, Mr Said would not have been properly put on notice of the charges brought against him. More specifically, the Defence avers that (i) by failing to mention the content of the relevant evidence or witness statements supporting each of its allegations in the PCB, the Prosecution would have ‘deprive[d] the Defence and the Chamber of essential tools with which to assess its case’; (ii) as a matter of narrative, ‘the manner in which the charges are pleaded cumulatively does not allow the Defence or Chamber to fully understand what the Prosecutor encompasses in each of these charges’, particularly because ‘the Prosecutor never explains incident by incident why such-and-such an incident is characterised in one way rather than in another, and, even less so, how the incident as described dovetails with the narrative on a war crime or a crime against humanity’; and, (iii) in relation to the crimes under article 7(1)(k) of the Statute charged in Counts 5 and 12, the Prosecution ‘succinctly outlines a number of legal criteria and then goes on to outline a series of factual disjointed allegations without making any effort to determine how these allegations meet the legal requirements’ of that provision, which would call for Counts 5 and 12 to be dismissed *in limine*.

³⁰ [ICC-01/14-01/21-T-004-Red2-ENG](#), p. 6, line 15 to p. 7, line 16.

³¹ [ICC-01/14-01/21-T-004-Red2-ENG](#), p. 34, line 4 to p. 45, line 21.

³² [ICC-01/14-01/21-T-004-Red2-ENG](#), p. 47, line 3 to p. 48, line 20 and p. 49, line 16 to p. 53, line 2.

24. The Chamber recalls that, for the purposes of informing the suspect promptly and in detail of the nature, cause and content of the charges and having adequate time and facilities for the preparation of his or her defence, rule 121(3) of the Rules states that the Prosecution ‘shall provide [...] a detailed description of the charges together with a list of the evidence’; regulation 52 of the Regulations of the Court (the ‘Regulations’) further clarifies that the DCC shall include, *inter alia*, a ‘statement of the facts’ and a ‘legal characterisation of the facts to accord both with the crimes under articles 6, 7 or 8 and the precise form of participation under articles 25 and 28’ of the Statute.

25. The Defence’s observations on the lack of clarity of the DCC and PCB are broad and general. The Defence fails to specifically substantiate how the DCC would not meet the requirements set by regulation 52 of the Regulations. In the view of the Chamber, the DCC sets out both the material facts underpinning the alleged crimes and the modes of responsibility charged against Mr Said with sufficient clarity, including as to how such facts would qualify as war crimes and crimes against humanity. Regarding the alleged defects of the PCB, the Chamber notes that the document complies with its instructions to include each statement of fact in the PCB with ‘a corresponding footnote referring specifically, with hyperlinks, to the most probative supporting evidence, duly explaining which evidence is believed to support each charge and the reason why that would be the case’.³³

26. With regard to the Defence’s request to dismiss *in limine* Counts 5 and 12, the Chamber considers that the DCC provides sufficient information on the material facts and circumstances relevant to the crimes charged under article 7(1)(k) of the Statute, as well as on their legal characterisation. Similarly, the PCB specifies, at paragraphs 179 to 184 for Count 5 and at paragraphs 305 to 312 for Count 12, the legal elements of the charged crimes as well as the relevant material facts, with reference to the evidence upon which the Prosecution relies in support of its allegations.

27. The Chamber therefore considers that the DCC and the PCB sufficiently informed Mr Said of the nature, cause and content of the charges brought against him and allowed for the adequate preparation of his defence, within the meaning and for the purposes of article 67(1)(a)-(b) of the Statute.

³³ [Second order on disclosure and postponement of the confirmation hearing](#), 30 June 2021, ICC-01/14-01/21-112, para. 20.

B. Observations concerning matters relating to the modalities of the Prosecution's evidence disclosure and investigation

28. The Defence takes issue with the manner in which the Prosecution has disclosed its evidence throughout the proceedings and, more broadly, has investigated the case, alleging a violation of the Office's obligations under article 54 of the Statute. In particular, the Defence submits that (i) while having disclosed a 'significant volume' of evidentiary material, the Prosecution cited only a minimal part of it in the PCB in support of its allegations, thereby placing the Defence in the position of having to 'second-guess' how the remaining items were to be analysed; (ii) despite the large amount of evidence disclosed, 'the case file of the Prosecutor is incomplete and fragmentary because it is lacking most of the useful elements from actors who were in fact important in the [Central African] crisis'; and (iii) the Prosecution 'did not investigate in a neutral manner to establish responsibilities and prosecute [...] the ones most responsible for the alleged crimes'.

29. The Chamber concurs with the Defence that the inclusion of a considerable volume of evidence in the Prosecution's list of evidence not specifically relied upon in the PCB may potentially be prejudicial to the right of the Defence to have adequate time and facilities for its preparation. However, the Chamber notes that it never ordered the Prosecution to provide a detailed explanation as to the relevance of each individual item of evidence. Since the PCB was filed on time in accordance with rule 121(3) of the Rules and did not refer to an inordinate number of items of evidence, the Chamber notes that the Prosecution's strategy allowed the Defence to focus on the evidence the Prosecution considers as most relevant to the scope of the charges while not being deprived of a full overview of the case.

30. Furthermore, the Defence has not demonstrated how the Prosecution would have violated its obligations as regards the conduct of the investigation under article 54 of the Statute, nor did it explain how the Defence would have been prejudiced as a result of it.

C. Observations concerning the overall fairness of the pre-confirmation proceedings

31. The Defence submits that it is permissible for it to reiterate under rule 122(3) of the Rules issues which have already been raised before and addressed by the Chamber

in the course of the pre-trial proceedings, such as those relating to the adequacy of the time available to the Defence for its preparation or allocated to the Defence to present its oral submissions at the confirmation hearing, to the extent that those issues have not been the subject of a final determination by the Appeals Chamber.

32. In the view of the Chamber, these observations do not go beyond expressing the desirability that the Appeals Chamber address all issues that may arise during the (pre-trial) proceedings. In so doing, they misconstrue the system of appellate review as established by the Court's statutory framework. The Appeals Chamber has since long clarified that 'decisions that are subject to appeal are enumerated in articles 81 and 82 of the Statute' and that, accordingly, no 'right to appeal arises except as provided thereunder': these provisions constitute exhaustive lists in which 'the legislator specified distinctly decisions liable to or subject to appeal'.³⁴ The only additional avenue for the Appeals Chamber to review a decision is set out at article 82(1)(d) of the Statute relating to interlocutory appeals, which constitute an exceptional remedy of a restrictive character and, as such, may proceed only when the Chamber that has issued the decision to be appealed has granted a request for leave to appeal under that provision.

33. The Chamber recalls that, in the present case, the matters evoked in the Defence's observations were extensively considered by the Chamber at various stages,³⁵ in

³⁴ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal](#), 13 July 2006, ICC-01/04-168, para. 35. *See also* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the "Urgent Request for Directions" of the Kingdom of the Netherlands of 17 August 2011](#), 26 August 2011, ICC-01/04-01/06-2799, para. 7; Appeals Chamber, *The Prosecutor v. Germain Katanga*, [Decision on the admissibility of the appeal against the "Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRCD02-P0228 and DRC-D02-P0350"](#), 20 January 2014, ICC-01/04-01/07-3424, para. 28.

³⁵ [Order setting the schedule for the confirmation of charges hearing](#), 14 September 2019, ICC-01/14-01/21-172, para. 20; [Demande déposée en vertu de la Règle 121\(7\) du Règlement de procédure et de preuve afin d'assurer le respect du droit fondamental de la Défense à disposer du temps et des facilités nécessaires à la préparation de l'audience de confirmation des charges pour pouvoir y contester les charges et les éléments de preuve présentés par l'Accusation](#), 23 September 2021, ICC-01/14-01/21-175-Conf-Exp (confidential and public redacted versions notified, respectively, on 23 September 2021 (ICC-01/14-01/21-175-Conf-Red) and 26 September 2021 ([ICC-01/14-01/21-175-Red2](#))), with confidential annexes 1 and 2; [Postponement decision](#), paras 21, 23-27.

particular in the context of adjudicating requests for leave to appeal under article 82(1)(d) of the Statute.³⁶

III. THE CHAMBER'S APPROACH

A. Nature and purpose of the present decision

34. In the present decision, the Chamber renders its determination under article 61(7) of the Statute as to whether there is sufficient evidence to establish substantial grounds to believe that Mr Said committed the crimes with which he is charged.

35. The purpose of the pre-trial proceedings, and specifically of the confirmation hearing, is to determine whether the case as presented by the Prosecution is sufficiently established to warrant a full trial. The Statute mandates that this is decided by answering the question of whether there are substantial grounds to believe that the person committed the crimes charged. Therefore, the confirmation of charges procedure protects the suspect from wrongful and unfounded accusations, by ensuring that only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought are committed for trial.

36. The confirmation of charges procedure also ensures that the parameters of the case are set for trial and that the charges are clear and not deficient in form, and resolves possible procedural issues in order that such issues do not taint trial proceedings.

37. Therefore, the purpose of the pre-trial proceedings is to ensure that only charges which are sufficiently supported by the available evidence and which are clear and properly formulated, in their factual and legal aspects, are submitted to a Trial Chamber for its determination.

38. The evidentiary standard applicable at this stage of the proceedings requires the existence of substantial grounds to believe that the person committed the crimes charged. This is a lower standard than that required at trial, and is met as soon as the

³⁶ [Decision on the Defence's request for leave to appeal the 'Order setting the schedule for the confirmation of charges hearing'](#), 29 September 2021, ICC-01/14-01/21-188; Transcript of hearing, 12 October 2021, [ICC-01/14-01/21-T-004-Red2-ENG](#), p. 6, line 15 to p. 7, line 16. *See also* [Demande d'autorisation d'interjeter appel de l'« Order setting the schedule for the confirmation of charges hearing » \(ICC-01/14-01/21-172\)](#), 20 September 2021, ICC-01/14-01/21-173; [Defence Request for Leave to Appeal the Postponement Decision](#).

Prosecution offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the specific allegations. The Appeals Chamber held that

[i]n determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.³⁷

39. At the same time, the Pre-Trial Chamber, by the very design of the pre-trial proceedings, is not in a position to conclusively determine issues relating to the probative value of evidence, including with respect to the credibility of witnesses, whose declarations are, as a rule, brought before it only in written form. Indeed, as indicated by the Appeals Chamber, ‘the Pre-Trial Chamber’s determinations will necessarily be presumptive’, and the Pre-Trial Chamber ‘should take great care in finding that a witness is or is not credible’;³⁸ the credibility of witnesses can only be properly addressed at trial, where they will be called to testify and their evidence properly tested.

40. The Chamber has analysed the material disclosed by the Prosecution against the relevant evidentiary standard. The Chamber’s assessment of the evidence included all items of evidence enumerated in the Prosecution’s list of evidence and the Defence’s list of evidence (particularly, the statements and transcripts of interviews of witnesses upon which the parties relied for the purposes of these confirmation proceedings). However, in light of the limited and specific scope and purpose of this stage of the proceedings, and in order to avoid any pre-determination of issues or pre-adjudication regarding the probative value of evidence, this decision only addresses what the Chamber considers necessary and sufficient for its determination on the charges – namely, whether there is sufficient evidence to establish substantial grounds to believe that Mr Said committed the crimes charged and therefore that the case brought by the Prosecution warrants a trial.

³⁷ *The Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’, 30 May 2012, ICC-01/04-01/10-514 (OA4) (the ‘[Mbarushimana OA4 Judgment](#)’), para. 46.

³⁸ [Mbarushimana OA4 Judgment](#), para. 48.

41. Whilst having carefully considered all of the arguments advanced by the parties and participants as part of its determination, the Chamber will only refer in this decision to those elements (i.e., submissions and items of evidence) which it considers necessary to show the line of reasoning underpinning its conclusions. The Chamber must engage in an overall assessment of the entire evidentiary basis relied upon by the Prosecution, including with a view to detecting inconsistencies, ambiguities, contradictions or other weaknesses which would result in the allegations not being supported to the required standard.³⁹

42. Furthermore, the Chamber is persuaded that the specific and limited function of the confirmation proceedings also calls for a style and structure of the decision under article 61(7) of the Statute which is as simple and straightforward as possible; this also with a view to meaningfully implementing the principle that the confirmation hearing is not, nor should be seen or become, a ‘mini-trial’ or ‘a trial before the trial’.⁴⁰ The adequacy of the reasoning is to be assessed against the specificity, the rigour and the clarity of the formulation of the findings made by the Chamber. While article 74(5) of the Statute provides that the decision of the Trial Chamber of acquittal or conviction ‘shall be in writing and shall contain a full and reasoned statement of the Trial Chamber’s findings on the evidence and conclusions’, the statutory texts do not contain a similar provision in respect of the decision on the confirmation of the charges. By providing, throughout its reasoning, detailed and specific references to the content of the evidence retained as instrumental to its findings, as well as to all the factual and legal elements relevant to its conclusions, the Chamber believes having fully met its duty to provide adequate reasoning for its determination on the charges brought by the Prosecution.

³⁹ Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on the confirmation of charges](#), 16 December 2011, ICC-01/04-01/10-465-Red, paras 45-47; [Mbarushimana OA4 Judgment](#), paras 37-49.

⁴⁰ Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the confirmation of charges](#), dated 30 September 2008 and registered on 1 October 2008, ICC-01/04-01/07-717, para. 64; Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, [Decision on the Confirmation of Charges](#), 8 February 2010, ICC-02/05-02/09-243-Red, para. 39.

B. Individual criminal responsibility

43. With regard to the crimes allegedly committed at the OCRB, the Prosecution requests the Chamber to confirm the charges brought against Mr Said under the modes of liability pursuant to, alternatively, article 25(3)(a) (direct co-perpetration), 25(3)(b) (ordering and/or inducing), 25(3)(c) (aiding, abetting or otherwise assisting) or 25(3)(d) (common purpose liability) of the Statute.⁴¹ As for the crimes allegedly committed at the CEDAD, the Prosecution alleges that Mr Said is responsible, alternatively, under article 25(3)(c) (aiding, abetting or otherwise assisting) or 25(3)(d) (common purpose liability) of the Statute.⁴²

44. In particular as regards the crimes allegedly committed at the OCRB (Counts 1 to 7), the Chamber notes that the Prosecution charges Mr Said with direct co-perpetration pursuant to article 25(3)(a) of the Statute based upon the allegations that he, (i) together with other members of the OCRB-Seleka, ‘shared a common plan or agreement to target perceived BOZIZE supporters in Bangui by committing the crimes charged [...] at the OCRB’; (ii) ‘made an essential contribution to the OCRB Common Plan’; and (iii) possessed the required intent and knowledge.⁴³ The Prosecution alleges that the ‘OCRB Common Plan’ came into existence ‘as soon as 12 April 2013 [...] until 30 August 2013’ with the objective of targeting ‘perceived BOZIZE supporters in Bangui’ by the commission of the crimes of imprisonment or other severe deprivation of physical liberty, torture, cruel treatment, other inhumane acts, outrages upon personal dignity and persecution. Mr Said and his co-perpetrators, such as top-ranking Seleka at OCRB and ‘Seleka not directly stationed at OCRB but aligned with the OCRB and coordinating regularly with [Mr Said] and ADAM’, shared this common plan.⁴⁴

45. The Chamber believes that it is conceptually and methodologically appropriate to address the issue of the individual criminal responsibility of the suspect by looking at his alleged contributions in respect of each of the charged crimes and at the evidence cited in support of those allegations. Furthermore, since the purpose of the pre-trial procedure consists of determining whether an individual should be sent to trial, the

⁴¹ [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 27, 37-49.

⁴² [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 28, 68-74.

⁴³ [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 37-40; [PCB](#), ICC-01/14-01/21-155-Red2, paras 201-209, 237-242.

⁴⁴ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 37; [PCB](#), ICC-01/14-01/21-155-Red2, paras 202-208.

Chamber considers it critical for such purposes to be in a position to establish a link between the events as charged and the alleged perpetrator(s) as identified by the Prosecution.

46. The notion of a common plan as a vehicle for imputing individual responsibility for the charged crimes has been a recurrent feature of the cases brought before the Chambers since the Court's early days, in line with the jurisprudence of the *ad hoc* tribunals. Here, the Prosecution relies on this notion, alleging the existence of the 'OCRB Common Plan': the Chamber is mindful of the jurisprudence of the Appeals Chamber to the effect that the common plan may be one of the shapes taken by a criminal agreement,⁴⁵ and that, despite its apparent ubiquity, the very compatibility of the notion of a common plan with the statutory framework and its usefulness *vis-à-vis* article 25 of the Statute is far from being a foregone conclusion.⁴⁶

47. Being aware of the limited and specific purpose of the confirmation of charges stage of the proceedings, the Chamber does not consider it necessary or appropriate, for the purposes of the present decision, to determine or otherwise address the extent to which the notion of a common plan is compatible with the statutory framework. Nevertheless, the Chamber notes that the Appeals Chamber held that there is no formal requirement that certain terminology, particularly labels used by the Prosecution such as 'common plan' and 'essential contribution', be used by a Pre-Trial Chamber, as that would be tantamount to favouring form over substance.⁴⁷ Departing from the model of the *ad hoc* tribunals, the Statute lists in article 25 different modes of liability, thus making it a comprehensive provision, suitable to encompass any and all possible forms and manners of contribution to a crime.

48. Accordingly, with regard to both the charges relating to crimes allegedly committed at the OCRB as well as those concerning the crimes allegedly committed at

⁴⁵ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction](#), 1 December 2014, ICC-01/04-01/06-3121-Red (A5), para. 445.

⁴⁶ See *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Corrected version of 'Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman \('Ali Kushayb'\)'](#), 9 July 2021, ICC-02/05-01/20-433, 23 November 2021, ICC-02/05-01/20-433-Corr, para. 44.

⁴⁷ Appeals Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Judgment on the appeal of Mr Alfred Yekatom against the decision of Trial Chamber V of 29 October 2020 entitled 'Decision on motions on the Scope of the Charges and the Scope of Evidence at Trial', 5 February 2021, ICC-01/14-01/18-874 (OA5), paras 58-60 (the '[Yekatom and Ngaïssona OA5 Judgment](#)').

the CEDAD, the Chamber will assess the evidence in light of the elements of each of the modes of liability listed in that provision, in line with the Appeals Chamber's jurisprudence to the effect that, for the requirement of sufficient notice to be met, it suffices that the charges 'set out the exact sub-provision applicable in article 25 of the Statute and the specific form of participation within that sub-provision', and notify the suspect 'of the material facts associated with his or her particular form of participation'.⁴⁸ As a result of this assessment, the Chamber will confirm all those modes of liability charged by the Prosecution which it will find adequately supported by the evidence before it. As the Prosecution pleads alternative modes of liability, each of them will be considered in light of the allegations and the supporting evidence; when more than one mode of liability is mentioned in the charges as confirmed, linked by the conjunction 'and', this is the result of the Chamber having considered and being satisfied that each of those modes is supported by a specific, distinct factual allegation relating to the conduct underlying that particular charge and that the standard applicable at confirmation is met for each of those modes. This is of course without prejudice to the power of the Trial Chamber to come to a different determination, in light of its own assessment and analysis of the evidentiary basis of the case.

49. Finally, the Chamber also believes that, whenever the evidence submitted by the Prosecution does not allow for the establishment of a link between the charged events and the suspect, 'due to its being flimsy, inconsistent or otherwise inadequate', not only is the Pre-Trial Chamber under a duty to decline to confirm the charges, but it is also advisable 'to refrain from delving into the legal analysis of the fact, including the correspondence between the objective features of the fact, on the one hand, and the objective and subjective elements of a given crime, on the other'.⁴⁹ The Prosecution's failure 'in establishing a proper connection between a given event and a given individual results in making the analysis of the presence of the objective and subjective

⁴⁸ [Yekatom and Ngaiisona OA5 Judgment](#), para. 43.

⁴⁹ See Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaiisona', 14 May 2020, ICC-01/14-01/18-403-Corr-Red (confidential version issued on 11 December 2019, ICC-01/14-01/18-403-Conf), para. 59 ('[Yekatom and Ngaiisona Confirmation Decision](#)') quoting Pre-Trial Chamber I, *The Prosecutor v. Bahr Idriss Abu Garda*, Separate Opinion of Judge Cuno Tarfusser, para. 4 in [Decision on the Confirmation of Charges](#), 8 February 2010, ICC-02/05-02/09-243-Red, pp. 99-100.

elements of criminal responsibility a matter of academic debate’. This exercise is not only contrary to the principle of judicial economy, but also possibly results ‘in unduly prejudicing, by way of pre-determination, legal issues which may be of relevance for future cases relating to the same event which might be brought before this or another Chamber at a subsequent stage’.⁵⁰ Considering the breadth and complexity of the situation in the CAR, it indeed cannot be excluded that this or another Chamber of the Court will be called in the future to adjudicate the facts or some of the facts underlying the charges in this case in respect of other suspects. Accordingly, the Chamber will enter no factual findings in respect of the events for which the evidence submitted allegedly supporting the link to the suspect is either missing or otherwise unsuitable to meet the relevant evidentiary threshold.

IV. THE CHAMBER’S FINDINGS ON THE CONTEXTUAL ELEMENTS

A. Contextual elements of war crimes

50. The evidence shows that a coalition of armed groups by the name of ‘Seleka’ – meaning ‘coalition’ or ‘alliance’ in Sango language – emerged around August 2012. This Seleka coalition consisted of several armed movements, including the *Union des Forces Démocratiques pour le Rassemblement*, the *Convention des Patriotes pour la Justice et la Paix-Fondamentale* and the *Convention Patriotique pour le Salut du Kodro*. In December 2012, the Seleka first attacked, and took control over, several northern towns of the CAR, then advanced southwards towards the capital Bangui. On 11 January 2013, former President Bozizé’s Government and the Seleka concluded the Libreville peace agreement. This agreement proved tenuous and was violated by both parties to the conflict. Specifically, on 24 March 2013, the Seleka attacked and took control over Bangui, and Michel Djotodia (‘Mr Djotodia’) proclaimed himself President of the CAR. Former President François Bozizé (‘Mr Bozizé’) fled by helicopter to Cameroon. He nonetheless managed to hold an emergency reunion at the *Palais de la Renaissance* in Bangui the day before, on 23 March 2013, ordering his officers to take arms and ammunition with them when retreating to specific locations,

⁵⁰ See [Yekatom and Ngaïssona Confirmation Decision](#), para. 59 quoting Pre-Trial Chamber I, *The Prosecutor v. Bahr Idriss Abu Garda*, Separate Opinion of Judge Cuno Tarfusser, para. 7 in [Decision on the Confirmation of Charges](#), 8 February 2010, ICC-02/05-02/09-243-Red, pp. 101-102.

including to Zongo in the Democratic Republic of the Congo (the ‘DRC’) and Yaoundé in Cameroon.

51. Following the 24 March 2013 Seleka coup d’état, Mr Bozizé and forces loyal to him, including former members of the *Forces Armées Centrafricaines* (the ‘FACA’) and former members of Mr Bozizé’s Presidential Guard (jointly, the ‘Pro-Bozizé Forces’), rapidly started to re-organise, substantially benefitting from the organisational structures and hierarchies existing within and available to the FACA. The Pro-Bozizé Forces began planning a response to the Seleka offensive while continuing to display armed resistance. The Pro-Bozizé Forces and the Seleka engaged in some armed confrontations in the months following the 24 March 2013 coup d’état, albeit to a lesser intensity. Internal documents from the CAR’s Ministry of Defence, signed by [REDACTED], and a correspondence letter from Mahamat Nouradine Adam (‘Mr Adam’), the [REDACTED] Seleka [REDACTED] and Minister of Security from the *Ministère de la Sécurité, de l’Émigration-Immigration et de l’Ordre Public* (the ‘Ministry of Security’), addressed to the [REDACTED], reveal that from mid-2013 onwards attacks seeking to oust or destabilise the regime under Mr Djotodia were expected and the Seleka strengthened their security efforts. The number of Seleka elements reportedly increased from approximately 5,000 to 15,000-20,000.

52. From June 2013 onwards, the Pro-Bozizé Forces merged with pre-existing and new self-defence groups into a new armed group coalition, which became known as ‘Anti-Balaka’. They gathered, *inter alia*, in Gobere (near Bossangoa) where (i) the men were organised into companies, each containing hundreds of members, further divided into sections; (ii) new recruits were registered and assigned to a company; (iii) a command structure was set up, with Maxime Mokom as coordinator of operations; (iv) recruits received training from former FACA members and were provided with fetishes, known as *gris-gris*. From at least September 2013 onwards, the Anti-Balaka engaged in attacks against the Seleka with the aim of removing President Djotodia from power and ousting the Seleka from the CAR. The armed hostilities between the Anti-Balaka and the Seleka culminated on 5 December 2013 in a coordinated attack on Bangui. On 10 January 2014, Mr Djotodia resigned and a transitional government under interim President Catherine Samba-Panza took office shortly thereafter.

53. At the confirmation hearing, the Defence submitted, with regard to the contextual elements of war crimes, that (i) the Seleka were not sufficiently organised to constitute an organised armed group; (ii) the Seleka were not the State, as there was a government of national unity, and the CAR was merely a shadow State; (iii) the Pro-Bozizé Forces were not sufficiently organised; and (iv) the intensity threshold for an armed conflict not of an international character was not met at all times relevant to the charges, namely from March until at least September 2013. Therefore, according to the Defence, there was no armed conflict from March to September 2013.

54. The evidence does not support the Defence's submissions. First, in assessing whether the Seleka and the Pro-Bozizé Forces constituted organised armed groups at the relevant time, the Chamber notes that a variety of factors and indicators must be considered: most significantly, the military (operational) capacity and the logistical capacity of the armed groups, as revealed, *inter alia*, by the existence of a supply chain for military equipment, as well as by the groups' ability to move troops around and to recruit and train personnel.⁵¹

55. In this regard, the Chamber finds that the evidence establishes that the Seleka were able to (i) take control of several northern towns when starting to advance towards Bangui in late 2012; (ii) oust Mr Bozizé and take control of the capital within two days and maintain political and territorial control following the 24 March 2013 coup d'état, revealing the ability to launch major military operations; (iii) establish food and weapons distribution systems, and equip their elements with heavy weaponry; (iv) recruit new members; and (v) create its own Seleka identity cards, showing the section a Seleka element belonged to, during the relevant time period. Therefore, the Chamber finds that there are substantial grounds to believe that the Seleka were sufficiently organised to constitute an 'organized armed group' within the meaning of article 8(2)(f) of the Statute.

56. Turning to the organisation of the Pro-Bozizé Forces, the Chamber notes the following: (i) Mr Bozizé's order, to forces loyal to him, to retreat with weapons and ammunitions, which was implemented; (ii) the Pro-Bozizé Forces' armed resistance, as

⁵¹ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Trial Judgment](#), 4 February 2021, ICC-02/04-01/15-1762-Red, para. 2685; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, [Judgment](#), 8 July 2019, ICC-01/04-02/06-2359, para. 704. *See also* Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment pursuant to Article 74 of the Statute](#), 14 March 2012, ICC-01/04-01/06-2842, para. 537.

shown in April 2013 when Mr Djotodia's convoy was attacked in the surroundings of the National Assembly; (iii) their recruitment and training process, which was formalised by June 2013 at the latest; and (iv) the attack in August 2013, seeking to disrupt Mr Djotodia's investiture ceremony, which was planned and financed as early as April 2013 and looked to eye-witnesses as if 'they were starting a coup d'État'. The Chamber further recalls its finding to the effect that the Pro-Bozizé Forces initially mainly consisted of former FACA and Presidential Guard members and therefore benefitted from the former hierarchies and structure of the military. Although the level of organisation of the Pro-Bozizé Forces appears to have been lower in the immediate aftermath of the 24 March 2013 coup d'état, it rapidly increased. Specifically, the Chamber points out that the Pro-Bozizé Forces set up formal command structures and gained the ability to launch major military strikes within months after the 24 March 2013 coup d'état, which suggests an adequate level of organisation. Therefore, the Chamber considers that there is sufficient evidence to indicate that the Pro-Bozizé Forces – and later Anti-Balaka – were organised within the meaning and for the purposes of article 8(2)(f) of the Statute within the timeframe of this case.

57. With regard to the intensity level of the armed hostilities, the Chamber finds that the above-mentioned armed confrontations between the Pro-Bozizé Forces and the Seleka were of such a degree as to exceed mere internal disturbances and tensions, such as riots or isolated or sporadic acts of violence. In the months following the 24 March 2013 coup d'état, armed confrontations gradually increased in intensity; from at least September 2013 onwards, the armed hostilities between the Seleka and the Anti-Balaka were happening on a larger scale. The Chamber also recalls that it is not required that the violence be continuous and uninterrupted.⁵² In light of this, the Chamber finds that there are substantial grounds to believe that the required threshold of intensity of the armed hostilities was met throughout the period relevant to the charges.

58. Concerning the Defence's argument that '[i]t is not possible to use the word "Seleka" to refer to the [S]tate', the Chamber notes that, for the finding that a conflict not of an international character occurred, it is not determinative whether the Seleka were the *State* party to the armed conflict.

⁵² Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Trial Judgment](#), 4 February 2021, ICC-02/04-01/15-1762-Red, para. 2684.

59. Accordingly, the Chamber considers that there are substantial grounds to believe that an armed conflict not of an international character was ongoing in the territory of the CAR at all times relevant to the charges. Furthermore the Chamber is satisfied, to the required threshold, that the conduct underlying the charges of war crimes confirmed by the Chamber took place in the context of and was associated with the above-mentioned armed conflict not of an international character.

B. Contextual elements of crimes against humanity

60. The evidence supports that the Seleka attacked the civilian population in Bangui, CAR. Notably, the Seleka conducted attacks on: (i) the 7th arrondissement area of Bangui, on 13 April 2013; (ii) the Boy Rabe neighbourhood of Bangui, on 14-16 April 2013; (iii) the Boy Rabe neighbourhood, starting on 20 August 2013; and (iv) the passengers of a minibus in the PK9 area of Bangui, on or around 13 July 2013. The evidence further supports that Mr Said, a senior Seleka member, was involved in or at least present during both the above-mentioned attacks on Boy Rabe. The Seleka specifically targeted (i) people of Christian faith; (ii) people of Gbaya, Mandja or Banda ethnicities; (iii) civilians close to former members of the FACA or Presidential Guard; (iv) former civilian employees of the Bozizé Government; and (v) residents of areas within Bangui, traditionally associated with support for Mr Bozizé, in particular Boy Rabe. These attacks resulted in a large number of victims.

61. The evidence further shows that the conduct underlying the charges of crimes against humanity was not committed at random. It was executed according to a consistent pattern, not only consistently targeting perceived Bozizé supporters but also involving a similar *modus operandi*, and was committed over an extended period of time, from at least April 2013 to at least November 2013.

62. At the confirmation hearing, the Defence challenged the existence of a State or organisational policy. In this regard, the Defence submitted that the Seleka were never a homogeneous entity and that, rather than following a policy, Seleka elements were acting in pursuance of financial gains and other personal motives.

63. The evidence supports that there was a Seleka organisational policy to target individuals perceived to support Mr Bozizé. Specifically, the evidence shows that (i) Christians, people of Gbaya, Banda and Mandja ethnicities, civilians close to former FACA, Presidential Guard members and former government employees under Mr

Bozizé's regime, as well as residents of areas perceived to support Mr Bozizé, were repeatedly victimised by the Seleka over the period relevant to the charges; and (ii) some Seleka elements and senior Seleka leaders explicitly stated, on several occasions, that these individuals were targeted due to their (perceived) support for Mr Bozizé.

64. Furthermore, the Chamber is not persuaded by the Defence's submissions that 'the Prosecutor assumes that there was a policy in place, but this has not been demonstrated, and he proceeds to select only examples of persons who would then validate in hindsight the existence of such a policy'. In this regard, the Chamber recalls that 'it is relatively rare [...] that a State or organisation seeking to encourage an attack against a civilian population might adopt and disseminate a pre-established design or plan to that effect' and that, therefore, '[i]n most cases, the existence of such a State or organisational policy can [...] be inferred by discernment of, *inter alia*, repeated actions occurring according to a same sequence'.⁵³

65. Accordingly, the Chamber finds that there are substantial grounds to believe that, during the relevant time period, there was a widespread and systematic attack against the civilian population in Bangui pursuant to, and in furtherance of, an organisational or State policy by the Seleka targeting people perceived to be Mr Bozizé's supporters (the 'Seleka Policy'). Furthermore, the Chamber is satisfied to the required threshold that the conduct underlying the charges of crimes against humanity was committed as part of that widespread and systematic attack against the civilian population, in light of the targeted victims and the aims pursued.

V. THE CHAMBER'S FINDINGS REGARDING THE OCRB

66. The Prosecution submits that Mr Said is responsible for the crimes of imprisonment or other severe deprivation of physical liberty, torture, cruel treatment, other inhumane acts, outrages upon personal dignity and persecution allegedly committed at the OCRB in Bangui, CAR (Counts 1 to 7). According to the Prosecution, '[b]etween 12 April 2013 and 30 August 2013, SAID together with the OCRB-Seleka, targeted perceived BOZIZE supporters by arresting, detaining and mistreating them at the OCRB'. The Prosecution further submits that (i) '[d]uring the relevant timeframe, at least 31 were detained in a small, hot, and over-crowded underground cell in SAID's

⁵³ Trial Chamber II, *The Prosecutor v. Germain Katanga*, [Judgment pursuant to article 74 of the Statute](#), 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 1109.

office’; and (ii) ‘[a]t least 16 men were inflicted with severe physical and psychological pain and suffering by having their hands, elbows and feet tied together tightly behind their backs, in a method called “*arbatachar*”’.⁵⁴

67. The Prosecution further alleges that Mr Said made an essential contribution to the charged crimes by (i) ‘[o]rdering the arrest of, and arresting and detaining, perceived BOZIZE supporters at the OCRB – including the detention of victims in an underground cell situated under his office in the OCRB’; (ii) ‘[i]nstructing OCRB-Seleka to mistreat detainees who allegedly supported BOZIZE, including by tying them up using the painful *arbatachar* method’; (iii) ‘[s]upplying the OCRB-Seleka with weapons, food, vehicles and uniforms, and ID cards’; (iv) ‘[i]nterrogating detainees violently and supporting such interrogation methods by OCRB-Seleka’; (v) ‘[o]verseeing the overall functioning of the OCRB detention centre, including the detention conditions, by giving instructions and orders to the police officers and OCRB-Seleka, deciding who would get access to the judiciary and by reporting to ADAM’; and (vi) ‘[c]reating an atmosphere conducive to the crimes charged’.⁵⁵

68. The Chamber’s findings in relation to the crimes allegedly committed at the OCRB are based on the evidence relied upon by the Prosecution as referenced in the relevant sections of the PCB, and particularly on the statements and transcripts of interviews of Witnesses P-0338, P-0342, P-0349, P-0358, P-0384, P-0435, P-0481, P-0547, P-0622, P-0787, P-0839, P-0923, P-0964, P-1004, P-1167, P-1180, P-1289, P-1429, P-1432, P-1675, P-1737, P-1762, P-1885, P-2069, P-2105, P-2161, P-2172, P-2179, P-2239, P-2240, P-2241, P-2253, P-2257, P-2263, P-2279, P-2293, P-2294, P-2337, P-2400, P-2478, P-2504, P-2519, P-2607, P-2563, P-2607, P-2692, P-3053 and P-3056.

A. Mr Said’s role at the time relevant for the charges

69. The evidence supports that, throughout the period relevant to the charges, Mr Said was a senior member of the Seleka and had a leading role at the OCRB. The OCRB was a pre-existing detention facility and subunit of the CAR’s national police that had been created under Mr Bozizé’s regime. Whereas, under the latter regime, there were

⁵⁴ [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 31-32. *See also* [PCB](#), ICC-01/14-01/21-155-Red2, paras 163, 168.

⁵⁵ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 38; [PCB](#), ICC-01/14-01/21-155-Red2, paras 209-236.

at least five ‘antennas’ or sub-facilities, including the OCRB Central, this one remained the main antenna or facility following the arrival of the Seleka. The OCRB Central was located opposite the police headquarters, near the Presidential Palace and was administratively under the authority of the Ministry of Security. When Mr Adam became the Minister for Security on 31 March 2013, he thus gained *de jure* authority over the OCRB. Mr Adam, while appointing Mr Mazangue as *de jure* Director of the OCRB on 18 April 2013, put Mr Said effectively in charge of the OCRB as its *de facto* Director.

70. More specifically, the Seleka elements at the OCRB were under the command of Mr Said. He had authority over all OCRB detainees, and directly reported to, and received instructions from, Mr Adam, [REDACTED] who remained the top-ranking Seleka commander. While there were some career police officers working at OCRB, under the supervision of the *de jure* Director of the OCRB, neither the *de jure* Director himself, nor his career police officer subordinates had any real power or authority. Mr Said, on the other hand, was known and referred to by various titles, such as ‘head’, ‘Colonel’, ‘commander’, ‘chief’, or ‘director’ of the OCRB, all of which confirm that he held a position of authority. Mr Said was also escorted and saluted by his elements and his orders were always followed. Furthermore, Mr Said introduced himself as ‘appointed Head of the OCRB’ or ‘*Directeur de l’OCRB Central*’. Therefore, Mr Said was at the top of the OCRB hierarchy, subordinated only to Mr Adam.

71. Mr Said was present on a daily basis at the OCRB. He would arrive in the mornings and was always present when the detainees were checked. Mr Said had his own office inside the OCRB main building, in which he also slept from time to time.

72. Moreover, in his capacity as *de facto* OCRB Director, Mr Said took up additional responsibilities, such as recruiting new elements and providing the OCRB Seleka with food, money, uniforms, weapons and ammunition, and/or ID cards that indicated the section of the individual in question (the acronym ‘CMSAK’ would refer to the section of ‘Colonel Mahamat Said Abdel Kani’).

B. Mr Said's contribution

73. Pursuant to the Seleka Policy,⁵⁶ the majority of detainees at the OCRB were targeted by the OCRB-Seleka as perceived Bozizé supporters. The OCRB-Seleka carried out arrest operations in and around Bangui throughout the relevant period: individuals were arrested (and often beaten) by groups of armed Seleka elements, who were moving in pick-up trucks and brought them to the OCRB. The evidence shows that, in some instances, Mr Said personally participated in and/or conducted arrests and brought detainees to the OCRB.

74. In the majority of cases, individuals were not given reasons for their arrest, informed of their rights or about the location they were being brought to. On several occasions individuals were arrested violently. Moreover, the majority of detainees were not sent before the competent authorities; the few who were did not receive any legal assistance.

75. In addition, as part of his authority over detainees at the OCRB,⁵⁷ Mr Said: (i) neglected to keep a register of all detainees; (ii) decided whether new detainees, who were systematically brought before him upon their arrival at the OCRB, would be detained and in which cell; (iii) decided whether detainees should be released and, in some cases, whether personally or through his subordinates, asked detainees or their families for ransom in exchange for their release.

76. The evidence shows that the detainees were kept in dire conditions. The OCRB cells were small and overcrowded to the point that it was impossible for the detainees to lie down, if not in turns. The cells were dark and hot due to the absence of windows and air holes, and they would constantly be kept closed, thus denying the detainees the possibility to go out even only for short periods of time. The OCRB-Seleka would provide little or no drinking water and food and the detainees could only count on visiting relatives to bring food and other basic necessities to them; some drank their own urine out of thirst. Some detainees were not granted access to hygienic facilities and had to use plastic buckets and bottles to relieve themselves. Due to his position and presence at the OCRB, Mr Said was responsible for these detention conditions.

⁵⁶ See above paras 63-65.

⁵⁷ See above para. 70.

77. Directly by Mr Said's office, underneath the floor, there was a basement with a hole in the floor as an entrance, covered with planks, which was used as an underground cell. The detainees in the underground cell were mainly individuals alleged to have had links with Mr Bozizé's regime, thus considered as dangerous and held in dreadful conditions. This cell was dark and so small that detainees were prevented from lying down, with the floor covered with waste, faeces and urine due to the absence of access to hygienic facilities. Some detainees were left bleeding with their hands tied. The evidence shows that Mr Said decided which detainees would be placed in the underground cell and issued orders to this effect.

78. The evidence also supports the Prosecution's allegations regarding detainees being systematically mistreated at the OCRB. Some detainees were mistreated as soon as they arrived, others throughout the entire duration of their detention. Detainees were mistreated in various forms, including by (i) being undressed, made to lie on the floor and being covered in water and sand; (ii) being slapped, beaten, whipped and/or struck with sticks, iron bars or rifle butts. Often with the specific aim of extorting confessions, some detainees were inflicted physical and psychological pain by being tied with the '*arbatachar*' method, consisting in binding the hands, elbows and legs behind the back of the detainee, with the legs touching the elbows: sometimes, water was poured on the ropes, so as to further tighten them. The OCRB-Seleka would then inflict additional pain to the detainees by stretching their shoulders and beating and/or flogging them, including with ropes, belts and whips. Mistreated detainees were severely harmed and would often be left with open wounds that caused them to bleed profusely, as well as infections. Some detainees, in particular those having been tied with the '*arbatachar*' method, had their arms and legs paralysed, discoloured or rotten. The OCRB-Seleka provided no medical treatment or access to medical facilities to the detainees, who could only count on relatives bringing them medicines and humanitarian organisations offering limited medical assistance.

79. The Chamber notes that three Prosecution witnesses (P-2241, P-2161 and P-1737) state that Mr Said never brought prisoners to the OCRB, nor beat or ordered the beatings of the detainees; furthermore, on two separate occasions, Mr Said would have ordered another OCRB-Seleka to stop beating a detainee and instructed to provide two prisoners with medical help. Nevertheless, the Chamber considers this limited evidence insufficient to disturb its conclusion that the evidence adduced by the Prosecution

overwhelmingly demonstrates that Mr Said (i) was often present during the detainees' mistreatments; (ii) oversaw the OCRB-Seleka when detainees were being mistreated; and (iii) instructed OCRB-Seleka to mistreat detainees. He also personally participated in the mistreatment of a detainee held in the underground cell by beating, whipping and hitting him on his head with the butt of his rifle, and in the violent interrogation of another. Moreover, when another OCRB-Seleka expressed his concerns about the use of the '*arbatachar*' method, Mr Said stated that it was the most effective way to obtain confessions; on one instance, he told a person accompanying a detainee's relative that he had ordered the beating of that detainee.

80. In order to further illustrate the above-mentioned facts and conduct in connection with the charged crimes at the OCRB, the Prosecution summarises 20 specific incidents at paragraph 33 of the DCC. The Chamber understands that this list is meant to provide examples of the conduct underlying the charges. The Chamber notes that the Prosecution also formulates allegations regarding crimes allegedly committed in non-charged locations, such as Camp *Sapeurs Pompiers*, Camp de Roux and Camp Kassai in Bangui, CAR.⁵⁸ The Chamber observes, however, that the Prosecution did not charge Mr Said for crimes allegedly committed at those locations; therefore, the Chamber will only address those allegations raised in relation to the incidents listed at paragraph 33 of the DCC that concern events having allegedly taken place at the OCRB and that fall within the relevant period.

81. At the confirmation hearing, the Defence challenged the evidence supporting the incidents set out at paragraphs 33(a), (c), (d), (f), (g), (m), (o), (q) and (t) of the DCC on the ground that each of these incidents was exclusively based on the evidence provided by only one witness. The Defence further challenged the credibility of the witnesses' statements relied upon by the Prosecution in connection with the incidents set out in the DCC at paragraphs 33(h), (j), (k), (l), (n), (r) and (s). As recalled above, the issue of the credibility of witnesses is a matter that can only be properly addressed at trial. Moreover, the fact that some incidents are based exclusively on the evidence provided by only one witness does not *per se* prevent the Chamber from finding that

⁵⁸ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 33(d), (i), (j), (q), (r), (s).

the relevant allegations are proven to the required standard, subject to the inherent quality and coherence of such evidence.

82. At paragraph 33(a) of the DCC, the Prosecution alleges that:

[s]ometime in April 2013, SALLET, DAMBOUCHA, and four other OCRB-Seleka took two men from a cell in the OCRB, tied them up using the *arbatachar* method, threw them in the back of SALLET's pick-up truck, and drove them in the direction of the river.

83. The Prosecution relies on the statement of Witness P-1167, who [REDACTED] from around the end of March 2013 until around the end of April 2013. The Prosecution has failed to provide sufficient evidence on the identities of the alleged victims or whether they were targeted as perceived Bozizé supporters.

84. At paragraph 33(b) of the DCC, the Prosecution alleges that:

[o]n [REDACTED] May 2013, P-1289, a Christian [REDACTED], was arrested and detained for one night at the OCRB by SALLET. [REDACTED] interrogated and threatened to kill P-1289 if he continued to support BOZIZE. P-1289 was released without charges.

85. The Prosecution relies on the statements of Witnesses P-1289 and P-1737. The statement of Witness P-1737 shows that, in May 2013, Mr Said personally brought Witness P-1289 to Witness P-1737, [REDACTED] a cell to Witness P-1289. The statement of Witness P-1289 shows that he was detained in a small cell in dire conditions, was interrogated and threatened by a high-ranking Seleka that he would be killed if he continued to support Mr Bozizé.

86. At paragraph 33(c) of the DCC, the Prosecution alleges that:

[o]n or around [REDACTED] June 2013, SALLET and other OCRB-Seleka arrested and detained P-0481 at the OCRB in one of the cells above ground. P-0481 was deprived of food and water for ten days and was unable to contact his family. Some days after his arrest, [REDACTED] interrogated him about weapons allegedly hidden by BOZIZE. During a break in the interrogation, OCRB-Seleka forced the witness [REDACTED]. P-0481 was then beaten on his bare stomach as he was stretched backwards. The beating lasted around 20 minutes. The Seleka elements put [REDACTED], from which he still bears the scars. [REDACTED]. During his detention, P-0481, along with other perceived BOZIZE supporters like P-3047, was deprived of sufficient nutrition and independent medical treatment. He was not informed of the reasons for his arrest or formally charged. [REDACTED], he was interviewed by General Prosecutor TOLMO without counsel. [REDACTED] to the OCRB Seleka in exchange

for his release, P-0481 was transferred to the *Tribunal de Grande Instance* but [REDACTED].

87. The Prosecution relies on the statement of Witness P-0481, which shows that he was detained in a cell at the OCRB for several weeks from June to [REDACTED] 2013, was severely mistreated, deprived of food and water, and was not informed of the reasons for his arrest or formally charged. The Chamber notes that Witness P-3047 is not on the Prosecution's list of evidence.

88. At paragraph 33(d) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] June 2013, P-2692, a [REDACTED], was arrested by the Seleka and brought to Camp Kassai where he was tied up using the *arbatachar* method. One day later, P-2692 was transferred to the OCRB with other detainees. The Seleka elements blamed them for being Christians who had ruled the country for 50 years. SAID asked P-2692 to [REDACTED]. [REDACTED]. P-2692 was released to get medical treatment. A week after his release, P-2692 was arrested again as SAID believed him to be [REDACTED] and brought to the OCRB, where he was put into a crowded cell. P-2692 was detained for several weeks, and he was questioned and threatened nearly every day by SAID and his men. P-2692 was released after his family paid another ransom.

89. The Prosecution relies on the statement of Witness P-2692. Witness P-2692 reports having been detained at the OCRB twice (first in June 2013 for [REDACTED] and, then, from about a week later until his release in [REDACTED] 2013) in an overcrowded cell, questioned and threatened nearly every day by an 'OCRB Colonel' and his men; his release from the OCRB was made dependent on the payment of a ransom to this 'OCRB Colonel'. The Chamber notes that a release slip was signed as 'CMSAK' and that, according to Witnesses P-1737 and P-1167, the initials 'CMSAK' stood for 'Colonel Mahamat Said Abdel Kani'.

90. At paragraph 33(e) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] July 2013, Seleka elements arrested P-0645, [REDACTED], and brought him to the OCRB, where [REDACTED] accused him of assisting BOZIZE. P-0645 was detained for up to six weeks at the OCRB.

91. The Prosecution relies on the statements of Witnesses P-0481 and P-1429 as well as documentary evidence. The statements of Witnesses P-0481 and P-1429 demonstrate that, following Mr Said's orders, Witness P-0645 was detained at the OCRB in the same cell as Witnesses P-0481 and P-1429. Witness P-0645 was detained for several weeks,

from July 2013 to [REDACTED] 2013, because he was perceived as a Bozizé supporter.

92. At paragraph 33(f) of the DCC, the Prosecution alleges that:

[d]uring the detention of P-0481, P-0622, who is Christian [REDACTED], was arrested by Seleka elements, with [REDACTED] other colleagues, named [REDACTED]. They were brought [REDACTED] and then to the OCRB. They were detained in a small cell which already held at least 20 other people. The Seleka deprived them of food and water, causing them to drink their own urine so as not to die of thirst. During their detention, two detainees died in the cell, and their bodies were removed by OCRB-Seleka. On or around [REDACTED] August 2013, on [REDACTED] orders and in his presence, Seleka elements repeatedly hit P-0622 and other detainees with the butts of their rifles. The detainees were asked whether they were related to BOZIZE, and if they knew where he had hidden his assets. [REDACTED]. During P-0622's detention, some detainees, including an [REDACTED], were tied up using the *arbatachar* method. Later, P-0622 and his [REDACTED] colleagues were transferred to the *Camp de Roux* military base and further detained.

93. The Prosecution relies on the statement of Witness P-0622. Witness P-0622 reports that he and his colleagues were detained at the OCRB in August 2013. Contrary to the Prosecution's allegation, the arrest of Witness P-0622 and his colleagues did not occur during Witness P-0481's detention. Witness P-0622 further reports that he and his colleagues were detained under dire conditions and deprived of food and water and mistreated by OCRB-Seleka; one of them was tied up using the *arbatachar* method and two of his co-detainees died in front of his eyes in the cell.

94. At paragraph 33(g) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] or [REDACTED] June 2013, at around midnight, three detainees perceived to be BOZIZE supporters were taken from the underground cell at the OCRB, in their underwear, and tied using the *arbatachar* method. They were accompanied by at least six Seleka elements, armed with AK-47s that had bayonets attached. The Seleka elements put rags in the prisoners' mouths and stabbed each of the detainees on both sides of the neck and killed them.

95. The Prosecution relies on the statement of Witness P-0481. Witness P-0481 reports that in June 2013 he saw the three alleged victims being taken out of the underground cell by Mr Said's office and tied with the *arbatachar* method by OCRB-Seleka elements; he learned that they were Bozizé supporters from a co-detainee translating the discussion between the OCRB-Seleka while the event was taking place.

96. At paragraph 33(h) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] June 2013, SAID jointly with Seleka under his control arrested [REDACTED]. They arrested him at [REDACTED] in the *Combattant* neighbourhood of Bangui and brought him to the OCRB. At the OCRB, SAID ordered that [REDACTED] be placed into Cell C. Within a day, OCRB-Seleka elements had shot [REDACTED], including to the head, killing him.

97. The Prosecution relies on the statements of Witnesses P-2504 and P-2607, which show that Mr Said personally arrested the alleged victim, [REDACTED], who was no longer working [REDACTED] in 2013 and brought him to the OCRB to be detained.

98. At paragraph 33(i) of the DCC, the Prosecution alleges that:

[o]n [REDACTED] July 2013, a group of [REDACTED] detainees who had been arrested on 4 July 2013 and detained at *Camp de Roux* were transferred to the OCRB. The Presidential Security had violently arrested them for allegedly distributing a paper or flyer calling for a “*ville morte*,” a term which referred to a peaceful protest against the Seleka regime and an end to DJOTODIA’s rule. Upon their arrival at the OCRB, the Seleka ordered them to remove their clothes and to lie face down. A Seleka named Daoud poured water and threw sand on the detainees’ bare backs, and then flogged the men repeatedly until their backs bled. Seleka elements also kicked them and made them run towards the entrance of the cell while being beaten with police batons. After five weeks of detention, these detainees were brought before the *Tribunal de Grande Instance* and charged with “acts that compromise public security.” The detainees were not fully informed of the charges nor of their rights upon arrival at the OCRB, nor given access to legal counsel during their detention or trial.

99. The Prosecution, in support of its allegations, relies on the statements of Witnesses P-0358, P-0923, P-1180, P-1675, P-2253, P-2257, P-2263, P-2279, P-2293, the statement of Witness P-2069 and documentary evidence. Witnesses P-1180, P-1675, P-2257, P-2279, and P-2293 refer to a ‘colonel’ or a ‘chief’ as being in charge of the OCRB at the time of their detention in July 2013, who ordered the OCRB-Seleka elements operating there to mistreat them upon their arrival at the OCRB. More specifically, they report they were made to lie down in the courtyard, had sand thrown and water poured on their backs and were beaten extensively by OCRB-Seleka; they were detained in a small cell and never informed of their rights nor given access to legal counsel.

100. At paragraph 33(j) of the DCC, the Prosecution alleges that:

[i]n mid-July 2013, P-1429, a [REDACTED], was detained together with [REDACTED] at the *Sapeurs Pompiers* base, controlled at the time by the Seleka General Moussa ASSIMEH. ASSIMEH ordered the witness and [REDACTED], to be locked into cattle lorry containers for three days. On the third day, [REDACTED] (a subordinate of SAID at the OCRB), ASSIMEH, and the Chief of Military Intelligence decided that the [REDACTED] men were to be transferred to the OCRB. The [REDACTED] detainees were driven to the OCRB in a convoy accompanied by [REDACTED]. When they arrived, they were handed over to SAID and detained in dire conditions. SAID issued orders about where the men should be detained. Even though the allegations of public unrest against the [REDACTED] men were baseless, prosecutions were launched against them. They were brought before the *Tribunal de Grande Instance* for the first time after a week of detention and were released in mid-August 2013 after 21 days of detention. During this time, they were not provided access to legal counsel.

101. The Prosecution relies on the statements of Witnesses P-1429 and P-0787. Witness P-1429 reports that Mr Said was present at the OCRB during his and the other alleged victims' detention in July 2013 and that Mr Said personally assigned him to a cell. Witness P-0787, [REDACTED] at the relevant time, reports that, although Witness P-1429 and the other alleged victims were brought twice before a tribunal during their detention at the OCRB, their detention was based on false accusations. It also emerges from the evidence that Witness P-1429 and the other victims were not provided access to legal counsel during their detention and that Witness P-1429 was arrested and detained due to his relationship with a [REDACTED].

102. At paragraph 33(k) of the DCC, the Prosecution alleges that:

[o]n the evening of [REDACTED] July 2013, SAID sent OCRB-Seleka to arrest and detain Oswald SANZE, a FACA member, as he was suspected of being a BOZIZE supporter. The OCRB-Seleka shot and killed SANZE, and [REDACTED] two men who were subsequently held at the OCRB in dire conditions and released on [REDACTED] July 2013 without being formally charged.

103. The Prosecution, in support of its allegations, relies on the statements of Witnesses P-2105 and P-1885, the screening notes from Witnesses P-2931 and P-2890, as well as a complaint by the [REDACTED] and a hospital report. The only evidence supporting the allegation that Mr Said ordered the arrest of Sanze and of two civilians is Witness P-2105's statement, a relevant portion of which is hearsay. However, the statement is based on the account of an OCRB-Seleka who was directly involved in Sanze's attempted arrest.

104. At paragraph 33(l) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] August 2013, Seleka arrested P-2172, a [REDACTED], because he had criticised the Seleka [REDACTED]. He was detained for a few hours at the OCRB and only released upon the [REDACTED].

105. The Prosecution relies, in support of its allegations, on the statement of Witness P-2172, [REDACTED], who states having been arrested and detained at the OCRB for criticising the Seleka. Witness P-0338 reports that Mr Said failed to justify this arrest and discarded his advice not to detain the victim.

106. At paragraph 33(m) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] August 2013, P-2519, a [REDACTED], was arrested by a Seleka colonel and four elements at a bus stop in Bangui and taken to the OCRB. There, a Seleka captain asked him if [REDACTED]. When the witness confirmed that he was, the [REDACTED] stated: “Then you are the type of people that we are looking for.” P-2519 was registered and made to take off his clothes. Seleka elements beat him with rifle butts. When he fell, they tied him using the *arbatachar* method, poured water on him, and continued to beat him. The Seleka also whipped him with whips made of horsehide. When the Seleka untied him, he could not walk and had to crawl to a cell. During his detention, P-2519 was whipped almost every evening by a [REDACTED]. P-2519 was not read his rights and did not have access to legal counsel. P-2519 did not receive independent medical care for his injuries. [REDACTED] at the OCRB, P-2519 was transferred to [REDACTED] and then released without being charged.

107. The Prosecution relies on the statement of Witness P-2519, a [REDACTED], who, at the time of his arrest, was [REDACTED] and waiting for a bus. He was subsequently detained at the OCRB, where he was severely mistreated without receiving any medical care for the injuries he had been inflicted and without being informed of the reasons for his arrest.

108. At paragraph 33(n) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] August 2013, **SAID, YAYA** and other Seleka elements arrested P-3053, P-3056, [REDACTED], [REDACTED]. SAID told P-3053 that they were arrested because they were from the same ethnic group as BOZIZE and because **SAID** needed ransom money. **SAID** and his elements took the four men to the OCRB where they were detained in the underground cell on **SAID**'s orders. That same day, on orders from **SAID**, P-3053 and the others were beaten badly by Seleka elements. P-3053 stayed in the underground cell [REDACTED].

109. The Prosecution relies on the evidence of Witnesses P-3053 and P-3056. The witnesses recount having been arrested together with other individuals, [REDACTED]. Witness P-3053 reports having been told by Mr Said that they were arrested since they shared Bozizé's ethnicity and because Mr Said needed money to pay his elements; Witness P-3056 further specifies that, upon their arrival at the OCRB, Seleka elements searched them in the presence of Mr Said, took his money and gave it to Mr Said. The evidence further shows that Mr Said ordered the detention of these individuals in the underground cell located by his office and that OCRB-Seleka elements took Witness P-3053 out of the underground cell and beat him severely.

110. At paragraph 33(o) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] August 2013, SAID and RAKISS arrested a young Christian [REDACTED] and brought him to the OCRB because they believed him to support BOZIZE. [REDACTED] ordered his beating and subsequently ordered SAID to detain the [REDACTED] in the underground cell of the OCRB. The [REDACTED] was released after two days in the underground cell.

111. The Prosecution relies on the statement of Witness P-1737, according to whom Mr Said, together with Mr Rakiss (an OCRB-Seleka) arrested and brought a young civilian to the OCRB, where the victim was mistreated and detained in the underground cell by Mr Said's office. The victim was detained and mistreated because he was accused of financially supporting Bozizé.

112. At paragraph 33(p) of the DCC, the Prosecution alleges that:

[o]n or about [REDACTED] August 2013, AL-BACHAR arrested P-0547, [REDACTED] and brought him to the OCRB. While slapping him, AL-BACHAR stated: "You, BOZIZE's mercenaries, we're going to kill you, one by one" and accused him of gathering intelligence for BOZIZE and Levi YAKETE. Other OCRB-Seleka started to beat P-0547 with their rifle butts. Later, OCRB-Seleka—on the orders of SAID's deputy, YAYA—tied P-0547 using the *arbatachar* method and [REDACTED]. From the OCRB, P-0547 was driven to *Camp de Roux* with other detainees and [REDACTED], who was asking prisoners about their ethnicity and hitting them with a hammer. From there, he was taken back to the OCRB and subsequently detained in the underground cell by SAID until [REDACTED] August 2013 when he was released. P-0547 was detained in the underground cell with other men, including a man named [REDACTED]. There was also a dead body in the underground cell at one point.

113. The Prosecution relies on the statements of Witnesses P-0338, P-0547, P-0787, P-1432, P-1762, P-3053 and P-3056, as well as on documentary evidence. Witness P-0547 recounts having been detained in August 2013 in the underground cell by Mr Said's office together with other men and alongside a dead body that remained there for some days and to have been severely beaten and tied with the *arbatachar* method by OCRB-Seleka.

114. At paragraph 33(q) of the DCC, the Prosecution alleges that:

[o]n or around [REDACTED] August 2013, P-2179, a [REDACTED], was arrested in his family home in the [REDACTED] neighbourhood [REDACTED]. Seleka elements took him to Camp de Roux, where he joined other arrested [REDACTED]. While some of these FACA members were killed at *Camp de Roux*, P-2179 was transferred to SAID's deputy TAHIR at the OCRB. He was detained in the underground cell, together with five other [REDACTED] and had been tied in the *arbatachar* way during their first week at OCRB. P-2179 was also subjected to the *arbatachar* method. One morning, [REDACTED] interrogated him. Shortly thereafter, P-2179, fearing for his life, managed to escape from the OCRB with the help of a Seleka element.

115. The Prosecution relies on the statement of Witness P-2179. Witness P-2179 recounts having been detained in the underground cell by Mr Said's office with other [REDACTED] and having been subjected to the *arbatachar* method.

116. At paragraph 33(r) of the DCC, the Prosecution alleges that:

[o]n or around [REDACTED] August 2013, P-1432, a [REDACTED], was arrested at [REDACTED] by OCRB-Seleka. He was then tied using the *arbatachar* method, beaten with rifle butts, and taken to *Sapeurs Pompiers* where he was detained in a container with around 30 other people. Around the same time, P-1762, also [REDACTED], was arrested on his way [REDACTED], tied *arbatachar*, and detained in that same container at *Sapeurs Pompiers*. Around early September 2013, P-1432 and P-1762 were transferred to the OCRB, [REDACTED]. At the OCRB, these [REDACTED] men were detained in the underground cell in SAID's office. The detainees received little food and water and had to urinate in a corner. They did not receive medical treatment for their injuries. After around two weeks, they were transferred to above ground cells. P-1432 and P-1762 were then sent to the *Tribunal de Grande Instance* to appear before a judge. [REDACTED], and they were taken back to the OCRB. A few days later, on [REDACTED] September 2013, P-1432 and P-1762 were released on conditions.

117. Since the statements of Witnesses P-1432 and P-1762 reveal that both witnesses were detained at the OCRB from early September until [REDACTED] September

2013, the incident falls outside the temporal scope of the charges brought against Mr Said.

118. At paragraph 33(s) of the DCC, the Prosecution alleges that:

[a]round mid-August 2013, Seleka elements arrested two [REDACTED]—P-2400, [REDACTED], and P-2241, [REDACTED]—[REDACTED]. After beating P-2400 with rifle butts, the Seleka elements brought them to *Camp de Roux*, where P-2400 was again beaten. At that point, P-2239—a [REDACTED]—heard about the arrest of [REDACTED], P-2241, and went to check on [REDACTED]. The Seleka then arrested P-2239, along with a friend of his, a man named [REDACTED]. P-2400, P-2241, P-2239, and [REDACTED] were then transferred to the OCRB, accompanied [REDACTED]. Upon his arrival at the OCRB, P-2400 was beaten several times by the Seleka, after which **SAID** ordered his detention in the underground cell. In that cell, there were already four other male detainees, who said they had been arrested while attending [REDACTED]. Eventually, after P-2400's family paid ransom, P-2400 was brought to an above-ground cell. There, on one occasion, he saw Seleka elements severely beating a detainee, on **SAID**'s order. After one week and five days of detention, P-2400 was released. Upon arrival, P-2239 and his friend [REDACTED] were ordered to strip down to their underpants and taken to an overcrowded cell. After a few days, P-2239 was interrogated, during which he denied the Seleka's accusations that he was [REDACTED]. Around this time, OCRB-Seleka also tied an older man, who was detained in the underground cell, using the *arbatachar* method and beat him severely. P-2239 was released after [REDACTED] days of detention when the Seleka vacated the OCRB. About [REDACTED] days after P-2241's arrival at the OCRB, **SAID** drove P-2241 and [REDACTED] detainees to the Prosecutor's office. The Prosecutor released the other [REDACTED] detainees, but not P-2241, [REDACTED]. **SAID** then took P-2241 back to the OCRB. [REDACTED].

119. The Prosecution relies on the statements of Witnesses P-2239, P-2240, P-2241, P-2337 and P-2400, as well as on documentary evidence. Witness P-2400 states that, upon his arrival at the OCRB, he was beaten by OCRB-Seleka; furthermore, Mr Said ordered that he be detained in the underground cell located by his office, a circumstance also mentioned by Witness P-2241, who was detained at the OCRB at the same time. Witness P-2400 further recounts to have seen Mr Said ordering the beating of an unnamed detainee at the OCRB.

120. At paragraph 33(t) of the DCC, the Prosecution alleges that:

[a]t an unknown time when **SAID** was in control of the OCRB, he detained various other men in the underground cell. One [REDACTED]. The OCRB-Seleka tied him up using the *arbatachar* method, and they struck

and beat him on several occasions. Another detainee was [REDACTED], who was one of [REDACTED]. Another was a man from [REDACTED] called [REDACTED]. Another was a man named [REDACTED], the [REDACTED], who had been arrested by [REDACTED] and accused of [REDACTED].

121. The Prosecution relies on the statements of Witnesses P-2105, P-2240 and P-2563. The statements of these witnesses show that the four named individuals were detained in the underground cell by Mr Said's office and that one of them was severely mistreated. In addition, according to Witness P-2105, Mr Said was always present when detainees were being mistreated at the OCRB.

122. In light of the above, the Chamber is satisfied that only the incidents described at paragraph 33(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (s) and (t) of the DCC are proven to the required standard.

C. Mr Said's individual criminal responsibility

123. In light of the above, the Chamber considers that the objective elements of the following crimes are sufficiently established to the required standard: (i) imprisonment or other severe deprivation of physical liberty as a crime against humanity pursuant to article 7(1)(e) of the Statute (Count 1); (ii) torture as a crime against humanity and as a war crime pursuant to articles 7(1)(f) and 8(2)(c)(i)-4 of the Statute (Counts 2-3); (iii) cruel treatment as a war crime pursuant to article 8(2)(c)(i)-3 of the Statute (Count 4); (iv) other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (Count 5); (v) outrages upon personal dignity as a war crime pursuant to article 8(2)(c)(ii) of the Statute (Count 6); and (vi) persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (Count 7).

124. As regards the individual criminal responsibility of Mr Said, the Chamber considers that there are substantial grounds to believe that Mr Said's contribution to the above-mentioned crimes may be legally qualified under article 25(3)(a) and 25(3)(b) of the Statute. The Chamber is further satisfied that Mr Said's conduct establishes that (i) he had intent and knowledge in relation to the above-mentioned crimes under article 30 of the Statute; and (ii) he fulfilled the specific *mens rea* elements pertaining to these crimes: Mr Said, as a senior leader of the Seleka, was aware of the factual circumstances establishing the existence of an armed conflict and knew that his conduct was part of,

or intended for his conduct to be part of the widespread and systematic attack against the civilian population.

VI. THE CHAMBER'S FINDINGS REGARDING THE CEDAD

125. The Prosecution submits that Mr Said is responsible for the crimes of imprisonment and other severe deprivation of physical liberty, torture, cruel treatment, other inhumane acts, outrages upon personal dignity and persecution allegedly committed at the CEDAD compound in Bangui, 'an intelligence service' created on 25 May 2013 by presidential decree and 'used as a Seleka base and secret detention centre'.⁵⁹ According to the Prosecution, '[b]etween mid-September 2013 and 8 November 2013, CEDAD-Seleka arrested and detained at least 33 perceived BOZIZE supporters, including one woman, at the CEDAD compound, where they were interrogated and mistreated, often severely'.⁶⁰ The Prosecution lists and summarises 15 specific incidents in connection with the crimes allegedly committed at the CEDAD at paragraph 64 of the DCC; the evidence adduced by the Prosecution with regard to each of them is set out at paragraphs 257 to 273 of the PCB.

126. In the Prosecution's submission, Mr Said is liable under article 25(3)(c) or (d) of the Statute for the commission of the charged crimes at the CEDAD compound because he would have contributed to them by (i) '[r]ecruiting Seleka elements for the arrest patrols of the CEDAD-Seleka'; (ii) '[a]cting as the "operations commander", overseeing the Seleka colonels at CEDAD with approximately 20 Seleka elements in each arrest patrol which brought the prisoners to the CEDAD compound'; (iii) '[o]rganising the security of the CEDAD compound with Seleka'; (iv) '[j]ointly, with ADAM, instructing the beatings of detainees on the pretext that they were perceived BOZIZE supporters'; (v) '[p]ersonally going on operations to detain and harm people and assisting in interrogations of the CEDAD compound detainees on at least two occasions'; and (vi) '[b]eing present at the CEDAD compound regularly and influencing CEDAD-Seleka by way of his authority'.⁶¹

⁵⁹ [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 50-51; *see also* [PCB](#), ICC-01/14-01/21-155-Red2, paras 110-117.

⁶⁰ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 55; *see also* [PCB](#), ICC-01/14-01/21-155-Red2, para. 256.

⁶¹ [DCC](#), ICC-01/14-01/21-144-Corr-Red, paras 28, 68-74.

A. Mr Said's role at the time relevant for the charges

127. At the outset, the Chamber observes that the Prosecution's allegations regarding 14⁶² out of the 15 incidents are primarily based on the statements of the direct victims. However, as acknowledged by the Prosecution,⁶³ none of them mentions Mr Said, whether by name or by otherwise referring to him. In contrast, other Seleka leaders and elements are named by some of these victims as those having arrested, detained, interrogated and/or mistreated them, such as, for instance, 'Nouradine Adam', 'Fadoul Al-Bachar', 'Mahamat Tahir Babikir' and 'Mahamat Sallet Adoum Kette', consistently with the Prosecution's own narrative regarding these incidents.

128. Mention of or reference to Mr Said is only to be found in other witness statements and/or documentary evidence presented by the Prosecution in support of two of the listed incidents, i.e. those regarding Witness P-0665⁶⁴ and the '[a]bduction and torture of 10 unknown detainees'.⁶⁵ Nonetheless, the evidence upon which these two incidents are based is insufficient and inadequate for the Chamber to establish a sufficient link between the alleged facts and Mr Said.

129. With regard to the incident relating to Witness P-0665, the Prosecution's allegation that Mr Said was involved in the arrest, detention and mistreatment of this witness primarily relies on the statements of Witnesses P-1007 and P-2105. According to the Prosecution, 'P-1007 [...] states that SAID also took part in the arrest of P-0665. The Prosecution adds that 'P-2105 remembers that SAID escorted the detainee P-0665 to his interrogation'.⁶⁶

130. The Chamber observes that Witness P-0665, the direct victim of the alleged facts, does not mention or refer to Mr Said; rather, this witness identifies Mr Adam as one of the Seleka who interrogated him, as well as 'Lieutenant ABDALLAH' and 'Colonel Mahamat TAHER' as being part of the Seleka patrol having arrested him. Witness P-1007 recounts that he talked with Mr Said about a [REDACTED], whom Mr Said said

⁶² [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 64(a)-(n); [PCB](#), ICC-01/14-01/21-155-Red2, paras 258-271.

⁶³ [PCB](#), ICC-01/14-01/21-155-Red2, para. 334 ('[w]hile none of the detainees interviewed who were held at the CEDAD compound mention SAID's name, they are able to report some names of Seleka elements guarding them').

⁶⁴ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 64(e); [PCB](#), ICC-01/14-01/21-155-Red2, para. 262.

⁶⁵ [DCC](#), ICC-01/14-01/21-144-Corr-Red, para. 64(o); [PCB](#), ICC-01/14-01/21-155-Red2, para. 272.

⁶⁶ [PCB](#), ICC-01/14-01/21-155-Red2, paras 262, 331-332.

he would have personally arrested. However, (i) no identifying information is provided by Witness P-1007 that would allow to support the conclusion that this [REDACTED] is Witness P-0665, as affirmed by the Prosecution; and (ii) the Prosecution's allegation to the effect that Mr Said took part in the operation to arrest Witness P-0665 is grounded in a mere inference drawn from the words that were spoken to Witness P-1007 by Mr Said, which provide no sufficiently precise information as to his alleged role. Witness P-2105 states having seen that, at the CEDAD compound, Mr Said made Witness P-0665 exit his cell to go to the courtyard before Mr Adam. While the supporting evidence indeed mirrors the Prosecution's allegation, Mr Said's conduct is unsuitable to be qualified as criminal and/or render Mr Said responsible for the alleged crimes concerning Witness P-0665.

131. As to the incident concerning the '[a]bduction and torture of 10 unknown detainees', the Prosecution alleges (i) that Witness P-3029 'saw the Seleka bring about ten male prisoners into the CEDAD premises'; (ii) that he 'recognises SAID as having seen him twice on the same day in the *white* vehicle that brought the prisoners to CEDAD' (emphasis added); and (iii) that Witness P-1007 states that Mr Said brought in a group of prisoners.⁶⁷

132. First, the Chamber notes that the evidence relied upon in support of these allegations is ambiguous. Whereas P-3029 refers to at least 'about ten male prisoners' being brought at the CEDAD compound in several vehicles and over a period of four days, Witness P-1007 refers to a group of five or six detainees interrogated at the CEDAD compound. In the absence of further identifying information, in particular as to the time when those detainees were allegedly brought to and detained at the CEDAD compound, it is impossible for the Chamber to conclude that Witnesses P-3029 and P-1007 refer to the same detainees.

133. Furthermore, Witness P-3029's first-hand experience as regards events at the CEDAD is limited, [REDACTED]. In his statement, this witness avers having seen vehicles bringing in detainees on all of these four days: specifically, on the first day he saw a *blue* vehicle that came and went a number of times and brought in about ten male detainees; on the other days, the vehicle was *white* and Witness P-3029 gives no

⁶⁷ [PCB](#), ICC-01/14-01/21-155-Red2, para. 272.

estimates about the number of detainees that it brought to the CEDAD. In addition, Witness P-3029 describes the person in charge of the operation as an Arabic speaking Seleka in military uniform, tall and well-built with bushy hair. Witness P-3029 also recognises on a picture shown to him by the Prosecution a man who was sitting in the *white* vehicle (i.e., not the one who brought in the ‘10 unknown detainees’) next to the man with the bushy hair: however, he never mentions Mr Said and the Prosecution’s allegation to the effect that Witness P-3029 ‘recognises SAID as having seen him twice on the same day in the white vehicle that brought the prisoners to CEDAD’ is solely based on the Prosecution’s unproven assumption that the man portrayed on the picture shown to the witness is indeed Mr Said.

134. Witness P-1007 reports having talked with Mr Said about a group of five or six persons [REDACTED] at the CEDAD compound, and that Mr Said would have said that he had taken them. In this witness’ understanding, Mr Said meant that he personally caught the detainees. The Prosecution’s allegation that ‘P-1007 describes SAID bringing in a group of prisoners’ is therefore solely based on this witness’ inference.

135. Having assessed the evidence adduced in relation to each of the incidents listed at paragraph 64 of the DCC, the Chamber concludes that the Prosecution has failed to identify any discernible link between the alleged facts and Mr Said.

B. Mr Said’s contribution

136. With regard to Mr Said’s alleged participation in the recruitment of the CEDAD-Seleka, the Prosecution relies on the evidence of Witnesses P-2105 and P-1004 to state that ‘SAID and other Seleka colonels were already selecting some of their soldiers at the OCRB with a view to appointing them to CEDAD’ and that ‘SAID transferred together with some of his former elements from the OCRB to the CEDAD, whom he recruited for ADAM from Camp BEAL’.⁶⁸ Witness P-2105’s statement confirms the Prosecution’s allegations, clarifying that when the Seleka soldiers left the OCRB they were quartered at Camp Béal. Soon after, the CEDAD Seleka colonels came to that location and took some men with them. Witness P-2105 affirms that Mr Said was present and in charge of the operation, because he (i) had the list of men who were to be transferred to the CEDAD; and (ii) promised to provide the Seleka elements with

⁶⁸ [PCB](#), ICC-01/14-01/21-155-Red2, paras 321-322.

training, new uniforms and vehicles. Witness P-1004 states that, while he was staying at Camp Béal, Mr Said telephoned and asked him to report to duty at the CEDAD. The witness adds that Mr Said picked him up from Camp Béal and took him to the CEDAD compound. While the above-mentioned evidence does confirm some of the Prosecution's allegations, the Chamber notes that this happened *before* the alleged commission of the charged crimes at the CEDAD compound and that there is no information allowing to conclude that the CEDAD-Seleka that were recruited with Mr Said's help eventually became the direct perpetrators of the charged crimes and/or remained under Mr Said's authority.

137. As regards the suspect's role within the hierarchical structure at the CEDAD, the Prosecution claims that Mr Said acted as the 'operations commander' and 'was in charge of the Seleka colonels and elements who were part of the arrest patrols and the security shifts at the CEDAD location'; more specifically, five Seleka colonels were under Mr Said's command and Mr Said was overall in charge of the security at the CEDAD compound.⁶⁹

138. The Chamber notes that the only item of evidence potentially indicating that Mr Said was part of the CEDAD-Seleka is a document provided by Witness P-0789: as described by the Prosecution, this item is as an 'alphabetical list with staff members of CEDAD, which is dated 28 October 2013 and has ADAM's name and title on the last page'.⁷⁰ While at row 32 of this '*Liste des éléments Comité Extraordinaire pour la Défense des Acquis Démocratiques (CEDAD) identifiés*' the name of 'Mahamat Saïd Abdelkani' appears, he is merely indicated in the relevant field as an '*officier*'. As such, the evidence tendered by the Prosecution does not support any of the above-mentioned allegations. That the suspect did not have an official and/or specific role at the CEDAD is also confirmed by the fact that no mention of Mr Said is to be found in the presidential decrees constituting and organising the CEDAD, including those appointing its Director-General, Deputy Director-General and other officials to fill the functions of the different CEDAD sections.

139. The evidence of the five witnesses additionally relied upon by the Prosecution in support of the allegations relating to Mr Said's position at the CEDAD (namely,

⁶⁹ [PCB](#), ICC-01/14-01/21-155-Red2, paras 323-327.

⁷⁰ [PCB](#), ICC-01/14-01/21-155-Red2, para. 324.

Witnesses P-1004, P-1167, P-0853, P-1007 and P-2105) is likewise insufficient to substantiate them to the required standard.

140. Witness P-1004's statement is cited in support of the allegation that '[i]n terms of chain of command, SAID was subordinate to ADAM but in charge of the Seleka colonels and their men'. However, Witness P-1004 merely recounts that, when he stopped reporting to the CEDAD, he received a call from Mr Adam and Mr Said asking him the reasons for his absence, requesting his return and, upon the Witness's refusal, calling him a traitor. Nothing in Witness P-1004's statement would thus indicate what the Prosecution alleges.

141. To support the allegations that Mr Said would be subordinate to Mr Adam but superior to the other Seleka colonels, as well as that he 'was also overall in charge of security at the CEDAD compound and the planning of operations, including in deciding who would go on the operations',⁷¹ the Prosecution refers to the statements of Witnesses P-1167 and P-0853. The Chamber observes that both statements are based on anonymous hearsay: (i) Witness P-1167 affirms that he only visited the CEDAD twice and reports information that he was told by [REDACTED]; and (ii) Witness P-0853 avers that his sources of information are the CEDAD-Seleka elements involved in the operations, whom he is unable to name. As such, the evidence adduced by the Prosecution is unsuitable to substantiate the above-mentioned allegations to the required standard.

142. As to Witness P-1007, the Prosecution cites his evidence to prove the allegation that '[w]hen the Seleka were ousted from OCRB on 30 August 2013, SAID became ADAM's "operations commander", with authority over the Seleka at the CEDAD'.⁷² Witness P-1007 recounts having asked Mr Said whether he was the '*chargé des opérations*', to which Mr Said would have replied '*[m]oi, y compris les autres*' (emphasis added). It is thus only from these words allegedly spoken to him by Mr Said that Witness P-1007 infers that he was '*chargé des opérations*'.

143. Finally, the Prosecution extensively relies on the statement of Witness P-2105, who affirms, in particular, that: (i) Mr Said was the 'right-hand man' ('*bras droit*') of Mr Adam and the 'operations commander' ('*commandant des opérations*') of the

⁷¹ [PCB](#), ICC-01/14-01/21-155-Red2, paras 326-327.

⁷² [PCB](#), ICC-01/14-01/21-155-Red2, para. 109.

CEDAD; (ii) five CEDAD Seleka colonels were under Mr Said's command; (iii) Mr Said was always present at the CEDAD compound, while his subordinate Seleka colonels carried out operations in the field; and (iv) Mr Said would act upon Mr Adam's orders, report all activities to him and pass on his orders to the Seleka colonels. The Chamber however observes that Witness P-2105 recognises not being familiar with the events taking place at the CEDAD and having obtained all the information he reports from other CEDAD-Seleka, which renders his statement based on mere anonymous hearsay and, as such, inconclusive as regards Mr Said's role and responsibility at the CEDAD.

144. The Prosecution also alleges that Mr Said was 'present regularly' at the CEDAD compound and 'even slept there',⁷³ based on four witness statements. The evidence provided by Witnesses P-2105 and P-1004, however, does not support the Prosecution's allegation: as to the former, he explains the role that Mr Said would have had at the OCRB (under the heading '*Le commandement de l'OCRB*'), and not at the CEDAD; as to the latter, he does not refer to Mr Said but rather to Mr Adam. As to the statements of Witnesses P-0853 and P-0839, they are both based on anonymous hearsay: while the former concedes that he heard the information he reports from some CEDAD-Seleka elements, the latter indicates that he had never been to the CEDAD compound himself.

145. Concerning Mr Said's alleged role in connection with the CEDAD-Seleka arrest operations, the Prosecution states that 'the abductions of the victims of the CEDAD [...] were carried out by patrols commanded and organised by SAID consisting of armed Seleka elements', adding that '[t]he abducted persons were hooded and then driven in circles around Bangui by the Seleka arrest patrols under SAID's command'.⁷⁴ As explained above, however, none of the specific incidents listed by the Prosecution can be linked to Mr Said and/or CEDAD-Seleka that would have been under his command and responsibility. In addition, the evidence cited in support of these specific allegations does not relate to Mr Said's alleged command over the CEDAD-Seleka, but rather relates to the allegations that the Seleka elements were armed and that their victims were hooded and driven around to be disoriented.

⁷³ [PCB](#), ICC-01/14-01/21-155-Red2, paras 285, 327.

⁷⁴ [PCB](#), ICC-01/14-01/21-155-Red2, paras 276, 280.

146. The Prosecution also states that Mr Said would have contributed to the charged crimes by coordinating the transportation of Seleka elements, thus ‘[f]urthering the secrecy of CEDAD operations by transporting Seleka elements in civilian clothes to the CEDAD compound’.⁷⁵ To prove this allegation, the Prosecution exclusively relies on the statement of Witness P-2105, to the effect that CEDAD-Seleka elements in civilian clothing would gather at Mr Said’s home in Bangui, from where he would transport them to the CEDAD compound. As explained above, the statement of Witness P-2105 is based on mere anonymous hearsay and, as such, unsuitable to allow a determination regarding Mr Said’s role and responsibility at the CEDAD.

147. The Prosecution alleges that Mr Said would also have contributed to the charged crimes by ‘[p]ersonally going on operations to detain and harm people’, citing the evidence of five witnesses, each of whom reports about specific arrest operations.⁷⁶

148. Witness P-0853 merely states remembering an arrest operation in which Mr Said would have participated. The information provided is too succinct and based on anonymous hearsay, since this witness admits reporting what he heard from the ‘elements involved’, and as such insufficient for the Chamber to reach a conclusion as regards Mr Said’s role.

149. Witness P-1004’s statement is cited in support of the allegation that ‘SAID led the arrest of a man from BIMBO who was alleged to be a BOZIZE supporter, and brought him back to the CEDAD compound where he was detained and interrogated’. In addition, the Prosecution states that ‘P-1004 was ordered by SAID to participate in this arrest operation’.⁷⁷ However, Witness P-1004 merely mentions that Mr Said would have asked him to accompany the CEDAD-Seleka arrest patrol on that operation and that he would have informed the patrol as to the contacts that the man to be arrested would have entertained with ousted President Bozizé. The evidence adduced by the Prosecution thus does not indicate that Mr Said would have led an arrest operation, nor brought a prisoner back to the CEDAD.

150. The Prosecution also refers to witness statements that relate to the two specific incidents analysed above (namely, the statements of Witnesses P-1007 and P-2105 with

⁷⁵ [PCB](#), ICC-01/14-01/21-155-Red2, para. 328.

⁷⁶ [PCB](#), ICC-01/14-01/21-155-Red2, paras 330-334.

⁷⁷ [PCB](#), ICC-01/14-01/21-155-Red2, para. 331.

regard to the incident involving Witness P-0665 – paragraph 64(e) of the DCC –, and that of Witness P-3029 for the incident regarding the ‘abduction and torture of 10 unknown detainees’ – paragraph 64(o) of the DCC). The Chamber recalls its above finding that it is impossible to identify any discernible link between the facts and Mr Said in connection with the incidents that allegedly took place at the CEDAD compound.

151. As regards the Prosecution’s allegation to the effect that Mr Said would have been ‘assisting in interrogations’ at the CEDAD, the only evidence cited in support is the statement of Witness P-1007, who, according to the Prosecution, ‘describes that he witnessed SAID bringing detainees, who were hooded and tied, to interrogations into the CEDAD offices on two occasions’. The Chamber observes that this witness explicitly denies that Mr Said would bring detainees to interrogations: rather, he indicates that two Seleka elements would do so, while Mr Said would only arrive shortly thereafter and leave before the commencement of the interrogation.

152. Finally, on Mr Said’s alleged role in connection with the mistreatments carried out by Seleka elements at the CEDAD compound, the Prosecution alleges that Mr Said, jointly with Mr Adam, ordered the beatings of detainees on the pretext that they were ‘BOZIZE’s men’.⁷⁸ Witness P-1004, whose statement is the sole evidence adduced in support of this allegation, merely states that, on several occasions, he would have witnessed Mr Adam and Mr Said ordering the beating of detainees. In the view of the Chamber, the information provided by this witness is not sufficient and detailed enough so as to allow establishing whether and how Mr Said would have been involved in the alleged mistreatment of detainees at the CEDAD compound.

153. In light of the above, the Chamber finds that the Prosecution has not proven to the required threshold that a link exists between Mr Said and the crimes allegedly committed at the CEDAD compound in Bangui, CAR, between mid-September and 8 November 2013. Accordingly, the Chamber concludes that the Prosecution failed to establish substantial grounds to believe that Mr Said is individually criminally responsible in connection with the charges brought under Counts 8 to 14.

⁷⁸ [PCB](#), ICC-01/14-01/21-155-Red2, para. 329.

VII. TIME LIMIT FOR REQUESTING LEAVE TO APPEAL THIS DECISION AND TRANSFER OF THE CASE RECORD TO THE PRESIDENCY

154. The Chamber recalls that, for the purposes of these proceedings, the language that Mr Said understands and speaks is Sango and the language he reads is French. The Chamber underlines the importance of the decision on the confirmation of the charges, one of the few the translation of which in the language of the accused is mandated by the Court's statutory regime, and finds that, in line with the established practice of the Court, Counsel must be able to rely on his client's contribution to properly assess the advisability and feasibility of applying for leave to appeal under article 82(1)(d) of the Statute. Accordingly, with a view to enhancing the efficiency of the proceedings, the Chamber finds it necessary to decide *proprio motu* that the time limit for filing an application for leave to appeal shall be suspended until the translation of this decision into French is submitted by the Registry in the record of the case.

155. By the same token, the Chamber believes that Mr Said's right to receive the decision on the confirmation of the charges against him in a language that he perfectly understands and reads (including, as the case may be, for the purposes of deciding whether to apply for leave to appeal it pursuant to article 82(1)(d) of the Statute) does not constitute an obstacle to the transmission of the record to the Presidency pursuant to rule 129 of the Rules. Rather, this immediate transmission will allow the Presidency to proceed without any delay to constitute the Trial Chamber, thus expediting the beginning of the preparation for the trial; as such, it will be directly instrumental and materially contribute to Mr Said's right to have his case adjudicated as expeditiously as possible.

VIII. THE CONFIRMED CHARGES

156. The Chamber finds it appropriate to include the charges as confirmed in the operative part of the decision. The charges are based on the DCC, from which the Chamber has deleted factual allegations which it did not consider sufficiently supported by the evidence. However, it should be stressed that the content and formulation of the charges has not been altered as this remains within the Prosecution's responsibility.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence’s request to dismiss Counts 5 and 12 *in limine*;

CONFIRMS the charges against Mr Said as follows:

I. THE ACCUSED

1. Mahamat Said Abdel Kani (‘Mr SAID’) was born on 25 February 1970 in Bria, Central African Republic (‘CAR’). He is a CAR national. Between March 2013 and at least 10 January 2014, Mr SAID was a senior member of the Seleka coalition.

II. THE CHARGES

A. Contextual Elements of War Crimes (Article 8)

2. At all times material to these charges, including from at least March 2013 until at least January 2014, there was an armed conflict not of an international character on the territory of CAR.

3. The parties to this non-international armed conflict were distinguished from one another by factors including their affiliation or opposition to François BOZIZE (‘Mr BOZIZE’) (President of CAR from 2003 until 24 March 2013)—even though their outward appearance, military organisation, and tactics significantly adapted as time passed and according to the vicissitudes of war.

4. Thus, forces loyal to Mr BOZIZE initially included the CAR armed forces (the *Forces Armées Centrafricaines* or ‘FACA’), and later the coalition known as the Anti-Balaka, and forces opposed to Mr BOZIZE formed a coalition known as the ‘Seleka’, led by Michel DJOTODIA (‘Mr DJOTODIA’).

5. Later, after the Seleka temporarily assumed control over the CAR, pro-BOZIZE forces—including FACA members and former Presidential Guards under Mr BOZIZE—re-grouped, re-armed and re-organised themselves as a broader insurgency that became known as the ‘Anti-Balaka’. While the intensity of hostilities between the pro-BOZIZE forces and the Seleka varied, at no point in this period was the conflict resolved by a peaceful settlement, such as the complete obliteration of one of the parties or a lasting absence of armed confrontation between them.

6. The conduct that forms the basis of the charges in Counts 3-4, and 6 took place in the context of and was associated with this armed conflict. At all material times, the perpetrators of the charged acts, including Mr SAID, were aware of the factual circumstances establishing the existence of the armed conflict.

1. Intensity of the armed conflict

7. The armed hostilities in the CAR between the pro-BOZIZE forces and the Seleka were protracted, exceeding the level of internal disturbances and tensions (such as riots, isolated and sporadic acts of violence or other acts of a similar nature), and sufficient to establish a non-international armed conflict.

8. Specifically, in late 2012, the Seleka launched a military offensive in northern CAR, occupying major towns and advancing southward towards

Bangui, the capital of CAR. The FACA and other forces loyal to Mr BOZIZE were unsuccessful in resisting their advance. By 24 March 2013, the Seleka were in a position to assault Bangui, and drove Mr BOZIZE into exile. Mr DJOTODIA proclaimed himself the new President of the CAR.

9. From 24 March 2013, Mr BOZIZE and his allies rapidly re-grouped, re-armed, and re-organised to strike back against the Seleka. This led to the formation of the Anti-Balaka coalition, which combined elements of the FACA and the Presidential Guard with pre-existing and new self-defence groups in the CAR. By September 2013, within six months, these forces resumed significant combat operations against the Seleka. By 5 December 2013, they were in a position to launch a large-scale attack on Bangui in a coordinated attempt to oust the Seleka. While this was unsuccessful, further intense conflict followed. This led to the resignation of DJOTODIA on 10 January 2014, the retreat of the Seleka to the north and east of CAR, and the installation (under international pressure) of a non-aligned transitional government led by interim President Catherine Samba-Panza.

2. *Organisation of the parties to the armed conflict*

10. At all material times, the parties to the conflict were sufficiently organised so as to establish the existence of a non-international armed conflict.

11. The Seleka were a coalition of several previously uncoordinated political factions and armed groups, including: (1) the *Union des Forces Démocratiques pour le Rassemblement* ('UFDR'); (2) the *Convention des Patriotes pour la Justice et la Paix-Fondamentale* ('CPJP-F'); and (3) the *Convention Patriotique pour le Salut du Kodro* ('CPSK'). The Seleka exhibited sufficient characteristics to establish that it was an organised armed group, including possessing an ability to carry out military operations, and to take and hold territory, and having significant logistical capacity.

12. Likewise, for as long as they constituted the State armed forces (while Mr BOZIZE was President), the FACA comprised a key part of the pro-BOZIZE forces, and enjoyed a legal presumption of sufficient organisation. While Mr BOZIZE's ouster from Bangui was a significant setback, it did not interrupt the effective functioning of his inner circle, and persons loyal to them.

13. The pro-BOZIZE forces (including elements of the FACA who remained loyal to Mr BOZIZE) were re-organised to include pre-existing or new self-defence groups, which came to be known as the Anti-Balaka. To any extent required, and at all times, they were sufficiently organised, as demonstrated by their maintenance of an effective command structure; their ability to carry out complex military operations; and their development of an effective logistical capacity, including to recruit new fighters.

B. Contextual Elements of Crimes against Humanity (Article 7)

14. From at least April 2013 until at least November 2013, the Seleka committed a widespread and systematic attack against the civilian population in Bangui perceived to be BOZIZE supporters.

15. The Seleka engaged in a course of conduct that involved the multiple commission of article 7(1) acts, including multiple acts of murder, rape,

torture, imprisonment, persecution, and other inhumane acts. This attack was committed pursuant to, and in furtherance of a State or organisational policy to commit such an attack against the civilian population in Bangui perceived to be BOZIZE supporters.

16. The Seleka perceived civilians with certain affiliations to be BOZIZE supporters, including (1) Christians; (2) people from the ethnic tribes of the Gbaya, Mandja or Banda; (3) people living in certain neighbourhoods of Bangui; (4) people who had certain professions perceived to be supportive of BOZIZE, such as members of the FACA, former Presidential Guards who had served under Mr BOZIZE, and people close to them; and (5) people who had been employed by the BOZIZE government.

17. The attack included the multiple acts which took place at the detention facility in Bangui referred to as the *Office Central de Répression du Banditisme* (Central Office for the Repression of Banditry, ‘OCRB’).

18. The attack further involved non-charged article 7(1) acts that took place during other incidents in Bangui, such as:

- a) an assault on 13 April 2013 on the 7th *arrondissement* of Bangui;
- b) a 14-16 April 2013 operation in the Boy Rabe neighbourhood of Bangui;
- c) an operation in Boy Rabe starting on 20 August 2013; and
- d) an attack on at least six passengers taken from a minibus at the PK9 checkpoint in Bangui, on or around 13 July 2013.

19. The attack was systematic. The crimes comprising the attack were not committed at random. The crimes at the OCRB were (1) planned, coordinated, and overseen by Seleka commanders; (2) committed by the Seleka on a regular basis over a substantial period of time; and (3) executed by the Seleka according to a consistent pattern.

20. The attack was widespread. The attack was directed against a civilian population living in densely populated neighbourhoods in Bangui, the country’s largest city. The attack resulted in a large number of victims.

21. The article 7 acts in Counts 1-2, 5, 7 of these Charges were committed as part of this widespread and systematic attack. As a senior leader of the Seleka, and an individual who was often present at the location of the charged crimes, Mr SAID knew and intended for his conduct to be part of the widespread and systematic attack against the civilian population in Bangui perceived to be BOZIZE supporters, pursuant to, and in furtherance of, the State or organisational policy.

C. Common elements of modes of individual criminal responsibility

1. SAID’s position of authority

22. At all material times relevant to the crimes charged in Counts 1–7 committed between 12 April and 30 August 2013, Mr SAID was a senior Seleka colonel operating in Bangui. After the Seleka’s military advance and takeover of Bangui, Mr SAID was a direct subordinate of Nouradine ADAM (‘Mr ADAM’), who was the Minister of Public Security until 22 August

2013. Mr ADAM appointed Mr SAID as the *de facto* head of the OCRB, effectively putting him in charge of this police unit, including all Seleka who were stationed there. In this position, Mr SAID had full authority over the Seleka elements ('OCRB Seleka') stationed there.

23. In this role, Mr SAID oversaw the functioning and conditions of the OCRB detention centre. Mr SAID exercised control over the OCRB-Seleka stationed at OCRB, who complied with his instructions. Mr SAID provided them with supplies and ordered the arrest, detention and mistreatment of persons targeted on political, ethnic, religious, and/or gender grounds by OCRB-Seleka. He personally participated in arrests and interrogations.

2. *Overview of Mr SAID's Individual Criminal Responsibility*

24. Mr SAID is individually criminally responsible for the crimes charged in Counts 1-7 committed at the OCRB between 12 April 2013 and 30 August 2013 for:

- Committing those crimes jointly with others (article 25(3)(a)); and
- Ordering or inducing those crimes (article 25(3)(b)).

D. **The Charged Crimes**

25. Between 12 April 2013 and 30 August 2013, Mr SAID together with the OCRB-Seleka, targeted perceived BOZIZE supporters by arresting, detaining and mistreating them at the OCRB. The targeted victims were (1) predominantly Christians; (2) predominantly belonged to the Gbaya, Mandja or Banda ethnicity; (3) predominantly males; and (4) predominantly from certain neighbourhoods in Bangui, like Boy Rabe, perceived as supportive of BOZIZE. These victims were targeted for arrest on political, ethnic, religious, and/or gender grounds. Mr SAID and the OCRB-Seleka severely deprived, contrary to international law, these persons of fundamental rights, including the rights to life, bodily integrity, private property, freedom of movement, and freedom from torture or cruel, inhumane or degrading treatment.

26. The OCRB-Seleka violently arrested these victims, often at night, and beat and hooded them. At the OCRB—which was an enclosed compound, not publicly accessible, surrounded by high walls, and guarded by armed OCRB-Seleka—the perceived BOZIZE supporters who were arrested were detained in small cells. Overall, the detention conditions were dire as the detainees were held in dark, hot, cramped cells, and not provided with adequate food, water or regular independent medical attention.

27. During the charged period, the OCRB-Seleka arbitrarily detained persons, who were predominantly male, at the OCRB. They deprived them of fundamental rights contrary to international humanitarian and human rights law, including having access to prompt independent review of the basis of their detention and humane treatment. While some detainees learned during their interrogations that they may have been suspected of being a fighter or a spy for Mr BOZIZE, others were merely accused of protesting the Seleka regime, supporting Mr BOZIZE politically, or being from the Gbaya, Mandja, or Banda

ethnic groups. During the relevant timeframe, individuals were detained in a small and over-crowded underground cell by Mr SAID's office.

28. The OCRB-Seleka under Mr SAID's control, and with his support, mistreated detainees on an almost daily basis. Mr SAID oversaw the detention of men who were beaten with rifle butts, or slapped violently and threatened with death. Others were whipped with horsehide whips or sticks with metal wires; beaten with truncheons on their feet while kneeling, or with rifle butts; burnt; or had their ears pulled with pliers and partially ripped off. Some men were inflicted with severe physical and psychological pain and suffering by having their hands, elbows and feet tied together tightly behind their backs, in a method called "*arbatachar*".

29. Mr SAID was in charge of the OCRB detention centre, and the OCRB-Seleka operating there, at the times when the arrest, detention and/or mistreatment of persons occurred, including the following:

- a. On [REDACTED] May 2013, P-1289, a Christian [REDACTED], was arrested and detained for one night at the OCRB by SALLET. [REDACTED] interrogated and threatened to kill P-1289 if he continued to support Mr BOZIZE. P-1289 was released without charges.
- b. On or around [REDACTED] June 2013, SALLET and other OCRB-Seleka arrested and detained P-0481 at the OCRB in one of the cells above ground. P-0481 was deprived of food and water for ten days and was unable to contact his family. Some days after his arrest, [REDACTED] interrogated him about weapons allegedly hidden by Mr BOZIZE. During a break in the interrogation, OCRB-Seleka forced the witness [REDACTED]. P-0481 was then beaten on his bare stomach as he was stretched backwards. The beating lasted around 20 minutes. The Seleka elements put [REDACTED], from which he still bears the scars. [REDACTED]. During his detention, P-0481, along with other perceived BOZIZE supporters, was deprived of sufficient nutrition and independent medical treatment. He was not informed of the reasons for his arrest or formally charged. [REDACTED], he was interviewed by General Prosecutor TOLMO without counsel. [REDACTED] to the OCRB-Seleka in exchange for his release, P-0481 was transferred to the *Tribunal de Grande Instance* but [REDACTED].
- c. On or about [REDACTED] June 2013, P-2692, a [REDACTED], was arrested by the Seleka. One day later, P-2692 was transferred to the OCRB with other detainees. The Seleka elements blamed them for being Christians who had ruled the country for 50 years. Mr SAID asked P-2692 to [REDACTED]. [REDACTED]. P-2692 was released to get medical treatment. A week after his release, P-2692 was arrested again as Mr SAID believed him to be [REDACTED] and brought to the OCRB, where he was put into a crowded cell. P-2692 was detained for several weeks, and he was questioned and threatened nearly every day by Mr SAID and his men. P-2692 was released after his family paid another ransom.
- d. On or about [REDACTED] July 2013, Seleka elements arrested P-0645, [REDACTED], and brought him to the OCRB, where [REDACTED]

accused him of assisting Mr BOZIZE. P-0645 was detained for up to six weeks at the OCRB.

- e. P-0622, who is Christian [REDACTED], was arrested by Seleka elements, with [REDACTED] other colleagues, named [REDACTED]. They were brought [REDACTED] and then to the OCRB. They were detained in a small cell which already held at least 20 other people. The Seleka deprived them of food and water, causing them to drink their own urine so as not to die of thirst. During their detention, two detainees died in the cell, and their bodies were removed by OCRB-Seleka. On or around [REDACTED] August 2013, on [REDACTED] orders and in his presence, Seleka elements repeatedly hit P-0622 and other detainees with the butts of their rifles. The detainees were asked whether they were related to Mr BOZIZE, and if they knew where he had hidden his assets. [REDACTED]. During P-0622's detention, some detainees, including an [REDACTED], were tied up using the *arbatachar* method.
- f. On or about [REDACTED] or [REDACTED] June 2013, at around midnight, three detainees perceived to be BOZIZE supporters were taken from the underground cell at the OCRB, in their underwear, and tied using the *arbatachar* method. They were accompanied by at least six Seleka elements, armed with AK-47s that had bayonets attached. The Seleka elements put rags in the prisoners' mouths and stabbed each of the detainees on both sides of the neck and killed them.
- g. On or about [REDACTED] June 2013, Mr SAID jointly with Seleka under his control arrested [REDACTED]. They arrested him at [REDACTED] in the *Combattant* neighbourhood of Bangui and brought him to the OCRB. At the OCRB, Mr SAID ordered that [REDACTED] be placed into Cell C. Within a day, OCRB-Seleka elements had shot [REDACTED], including to the head, killing him.
- h. On [REDACTED] July 2013, a group of [REDACTED] detainees who had been arrested on 4 July 2013 were transferred to the OCRB. The Presidential Security had violently arrested them for allegedly distributing a paper or flyer calling for a '*ville morte*', a term which referred to a peaceful protest against the Seleka regime and an end to Mr DJOTODIA's rule. Upon their arrival at the OCRB, the Seleka ordered them to remove their clothes and to lie face down. A Seleka named Daoud poured water and threw sand on the detainees' bare backs, and then flogged the men repeatedly until their backs bled. Seleka elements also kicked them and made them run towards the entrance of the cell while being beaten with police batons. After five weeks of detention, these detainees were brought before the *Tribunal de Grande Instance* and charged with 'acts that compromise public security'. The detainees were not fully informed of the charges nor of their rights upon arrival at the OCRB, nor given access to legal counsel during their detention or trial.
- i. In mid-July 2013, P-1429, a [REDACTED], together with [REDACTED] were driven to the OCRB in a convoy accompanied by [REDACTED]. When they arrived, they were handed over to Mr SAID

and detained in dire conditions. Mr **SAID** issued orders about where the men should be detained. Even though the allegations of public unrest against the [REDACTED] men were baseless, prosecutions were launched against them. They were brought before the *Tribunal de Grande Instance* for the first time after a week of detention and were released in mid-August 2013 after 21 days of detention. During this time, they were not provided access to legal counsel.

- j. On the evening of [REDACTED] July 2013, Mr **SAID** sent OCRB-Seleka to arrest and detain Oswald SANZE, a FACA member, as he was suspected of being a BOZIZE supporter. The OCRB-Seleka shot and killed SANZE, and [REDACTED], two men who were subsequently held at the OCRB in dire conditions and released on [REDACTED] July 2013 without being formally charged.
- k. On or about [REDACTED] August 2013, Seleka arrested P-2172, a [REDACTED], because he had criticised the Seleka [REDACTED]. He was detained for a few hours at the OCRB and only released upon the [REDACTED].
- l. On or about [REDACTED] August 2013, P-2519, a [REDACTED], was arrested by a Seleka colonel and four elements at a bus stop in Bangui and taken to the OCRB. There, a Seleka captain asked him if [REDACTED]. When the witness confirmed that he was, the [REDACTED] stated: ‘Then you are the type of people that we are looking for’. P-2519 was registered and made to take off his clothes. Seleka elements beat him with rifle butts. When he fell, they tied him using the *arbatachar* method, poured water on him, and continued to beat him. The Seleka also whipped him with whips made of horsehide. When the Seleka untied him, he could not walk and had to crawl to a cell. During his detention, P-2519 was whipped almost every evening by a [REDACTED]. P-2519 was not read his rights and did not have access to legal counsel. P-2519 did not receive independent medical care for his injuries. [REDACTED] at the OCRB, P-2519 was transferred to [REDACTED] and then released without being charged.
- m. On or about [REDACTED] August 2013, Mr **SAID**, YAYA and other Seleka elements arrested P-3053, P-3056, [REDACTED]. Mr **SAID** told P-3053 that they were arrested because they were from the same ethnic group as Mr BOZIZE and because Mr **SAID** needed ransom money. Mr **SAID** and his elements took the four men to the OCRB where they were detained in the underground cell on Mr **SAID**’s orders. That same day, on orders from Mr **SAID**, P-3053 and the others were beaten badly by Seleka elements. P-3053 stayed in the underground cell [REDACTED].
- n. On or about [REDACTED] August 2013, Mr **SAID** and RAKISS arrested a young Christian [REDACTED] and brought him to the OCRB because they believed him to support Mr BOZIZE. [REDACTED] ordered his beating and subsequently ordered Mr **SAID** to detain the [REDACTED] in the underground cell of the OCRB. The [REDACTED] was released after two days in the underground cell.

- o. On or about [REDACTED] August 2013, AL-BACHAR arrested P-0547, [REDACTED] and brought him to the OCRB. While slapping him, AL-BACHAR stated: ‘You, BOZIZE’s mercenaries, we’re going to kill you, one by one’ and accused him of gathering intelligence for Mr BOZIZE and Levi YAKETE. Other OCRB-Seleka started to beat P-0547 with their rifle butts. Later, OCRB-Seleka—on the orders of Mr SAID’s deputy, YAYA—tied P-0547 using the *arbatachar* method and [REDACTED]. P-0547 was subsequently detained in the underground cell by Mr SAID until [REDACTED] August 2013 when he was released. P-0547 was detained in the underground cell with other men, including a man named [REDACTED]. There was also a dead body in the underground cell at one point.
- p. On or around [REDACTED] August 2013, P-2179, a [REDACTED], was arrested in his family home in the [REDACTED] neighbourhood [REDACTED]. P-2179 was transferred to Mr SAID’s deputy TAHIR at the OCRB. He was detained in the underground cell, together with five other [REDACTED] and had been tied in the *arbatachar* way during their first week at OCRB. P-2179 was also subjected to the *arbatachar* method. One morning, [REDACTED] interrogated him. Shortly thereafter, P-2179, fearing for his life, managed to escape from the OCRB with the help of a Seleka element.
- q. Around mid-August 2013, Seleka elements arrested two [REDACTED]—P-2400, [REDACTED], and P-2241, [REDACTED]—[REDACTED]. P-2400 was beaten with rifle butts. P-2239—a [REDACTED]—heard about the arrest of [REDACTED], P-2241, and went to check on [REDACTED]. The Seleka then arrested P-2239, along with a friend of his, a man named [REDACTED]. P-2400, P-2241, P-2239, and [REDACTED] were then transferred to the OCRB, accompanied by [REDACTED]. Upon his arrival at the OCRB, P-2400 was beaten several times by the Seleka, after which Mr SAID ordered his detention in the underground cell. In that cell, there were already four other male detainees, who said they had been arrested while attending [REDACTED]. Eventually, after P-2400’s family paid ransom, P-2400 was brought to an above-ground cell. There, on one occasion, he saw Seleka elements severely beating a detainee, on Mr SAID’s order. After one week and five days of detention, P-2400 was released. Upon arrival, P-2239 and his friend [REDACTED] were ordered to strip down to their underpants and taken to an overcrowded cell. After a few days, P-2239 was interrogated, during which he denied the Seleka’s accusations that he was [REDACTED]. Around this time, OCRB- Seleka also tied an older man, who was detained in the underground cell, using the *arbatachar* method and beat him severely. P-2239 was released after [REDACTED] days of detention when the Seleka vacated the OCRB. About [REDACTED] days after P-2241’s arrival at the OCRB, Mr SAID drove P-2241 and [REDACTED] detainees to the Prosecutor’s office. The Prosecutor released the other [REDACTED] detainees, but not P-2241, [REDACTED]. Mr SAID then took P-2241 back to the OCRB. [REDACTED].

- r. At an unknown time when Mr **SAID** was in control of the OCRB, he detained various other men in the underground cell. One [REDACTED]. The OCRB-Seleka tied him up using the *arbatachar* method, and they struck and beat him on several occasions. Another detainee was [REDACTED], who was one of [REDACTED]. Another was a man from [REDACTED] called [REDACTED]. Another was a man named [REDACTED], the [REDACTED], who had been arrested by [REDACTED] and accused of [REDACTED].
30. The facts above, constituting the factual basis for Counts 1 to 6, also form the underlying conduct of the crime of persecution (Count 7). This conduct was committed in connection with these crimes. At the material times, Mr **SAID** and the other perpetrators targeted the victims, who they perceived as BOZIZE supporters as described in paragraph 25, on political, ethnic, religious, and/or gender grounds.
31. Mr **SAID** was aware of the factual circumstances that established the gravity of the conduct, such that it violated fundamental rules of international law, as charged in Count 1. Mr **SAID** knew that 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, and subjected to severe physical and/or mental treatment.
32. Mr **SAID** knew that the perpetrators inflicted the pain or suffering on detainees at the OCRB for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind (Count 3). Mr **SAID** was also aware that the persons detained at the OCRB were civilians or persons *hors de combat* (Counts 4 and 6). Mr **SAID** was further aware of the factual circumstances that established the character of the acts as charged in Count 5 as acts similar to other acts referred to in article 7(1) of the Statute.

E. Mr SAID's Individual Criminal Responsibility

1. Under art. 25(3)(a) for directly co-perpetrating crimes at the OCRB

33. Mr **SAID** and Mr ADAM, TAHIR Babikir, Hissene DAMBOUCHA, YAYA Soumayele, Mahamat SALLET Adoum Kette, Adoum RAKISS, Fadoul AL-BACHAR, and other members of the OCRB-Seleka shared a common plan or agreement to target perceived BOZIZE supporters in Bangui by committing the crimes charged in Counts 1–7 at the OCRB (the ‘OCRB Common Plan’). The crimes charged in Counts 1–7 were committed by the co-perpetrators, including Mr **SAID**, and occurred within the framework, and resulted from the implementation of the OCRB Common Plan. The OCRB Common Plan came into existence, as soon as 12 April 2013.
34. Mr **SAID** made an essential contribution to the Common Plan until 30 August 2013 by:
- a. Arresting and detaining, perceived BOZIZE supporters at the OCRB—including the detention of victims in an underground cell situated by his office in the OCRB;

- b. Instructing OCRB-Seleka to mistreat detainees who allegedly supported Mr BOZIZE, including by tying them up using the painful *arbatachar* method;
- c. Supplying the OCRB-Seleka with weapons, food, uniforms, and ID cards;
- d. Interrogating detainees violently and supporting such interrogation methods by OCRB-Seleka; and
- e. Overseeing the overall functioning of the OCRB detention centre, including the detention conditions, by giving instructions and orders to the OCRB-Seleka, deciding who would get access to the judiciary and by reporting to Mr ADAM.

35. Mr SAID meant to engage in the conduct described above and intended to bring about the objective elements of crimes charged in Counts 1–7. He was also aware that the implementation of the OCRB Common Plan would, in the ordinary course of events, result in the commission of the type of crimes charged in Counts 1–7.

36. Mr SAID was aware that the OCRB Common Plan involved an element of criminality. He was also aware of his essential role in the OCRB Common Plan, the essential nature of his contributions, as set out above, and of his ability, jointly with other co-perpetrators, to control the commission of the crimes.

2. *Under article 25(3)(b) for ordering crimes at the OCRB*

37. Mr SAID ordered members of the OCRB-Seleka, over whom he had a position of authority, to commit the crimes charged in Counts 1–7. Mr SAID gave instructions to his subordinates to use the *arbatachar* method, praising this method as the best way to extract confessions. He supported other forms of severe mistreatment. Mr SAID gave instructions to his subordinates to detain men in the small, dark and overcrowded underground cell by his office, where they were provided little food and water and no access to independent review of their detention.

38. Mr SAID meant to engage in this conduct and was aware of his position of authority over the physical perpetrators of the crimes. Mr SAID meant for the OCRB-Seleka to commit these crimes and/or was aware that, in the ordinary course of events, they would commit the crimes, and was aware that his conduct would contribute to their commission.

3. *Under article 25(3)(b) for inducing crimes at the OCRB*

39. Through the conduct described above at paragraph 34, Mr SAID induced the OCRB-Seleka to commit the charged crimes. Mr SAID exerted influence over the OCRB- Seleka, prompting them to commit the charged crimes.

40. Mr SAID meant to engage in the conduct described above. Mr SAID meant for the OCRB-Seleka to commit these crimes and/or was aware that, in

the ordinary course of events, they would commit the crimes, and was aware that his conduct would contribute to their commission.

F. Legal characterisation of facts for the crimes at the OCRB (Counts 1-7)

Mr SAID is criminally responsible for:

COUNT 1: Imprisonment or other severe deprivation of physical liberty as a crime against humanity at the OCRB of persons perceived to be BOZIZE supporters between 12 April 2013 and 30 August 2013, including as summarised in paragraphs 29.a-r, punishable under article 7(1)(e) and pursuant to articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 2: torture as a crime against humanity of people perceived to be BOZIZE supporters, who were tied using the *arbatachar* method, between 12 April 2013 and 30 August 2013, as well as other detainees who were severely mistreated, including as summarised in paragraphs 29.b, 29.e, 29.h, 29.m, and 29.q, punishable under article 7(1)(f) and articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 3: torture as a war crime of people perceived to be BOZIZE supporters, who were tied using the *arbatachar* method, between 12 April 2013 and 30 August 2013, as well as other detainees who were severely mistreated, including as summarised in paragraphs 29.b, 29.e, 29.h, 29.m, and 29.q, punishable under article 8(2)(c)(i)-4 and pursuant to articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 4: cruel treatment as a war crime, of people perceived to be BOZIZE supporters, who were tied using the *arbatachar* method, between 12 April 2013 and 30 August 2013, as well as other detainees who were severely mistreated, including as summarised in paragraphs 29.b, 29.e, 29.h, 29.m, and 29.q and detained under dire conditions at the OCRB, punishable pursuant to article 8(2)(c)(i)-3 and articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 5: other inhumane acts as a crime against humanity of people perceived to be BOZIZE supporters, who were detained in deplorable conditions at the OCRB, and who were verbally and physically abused, including during interrogations, between 12 April 2013 and 30 August 2013, including as summarised in paragraphs 29.a-r, punishable under article 7(1)(k) and articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 6: outrages upon personal dignity as a war crime of people perceived to be BOZIZE supporters, who were detained in deplorable conditions at the OCRB and/or were tied using the *arbatachar* method, and/or were verbally and physically abused, including as summarised in paragraphs 29.a-r, between 12 April 2013 and 30 August 2013, punishable under article 8(2)(c)(ii) and articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

COUNT 7: persecution as a crime against humanity on political, ethnic, religious, and/or gender grounds, concerning the people detained at OCRB,

based on the facts underlying Counts 1-6, including as summarised in paragraphs 29.a-r, and punishable under article 7(1)(h), and articles 25(3)(a) (direct co-perpetration) and 25(3)(b) (ordering or inducing) of the Rome Statute.

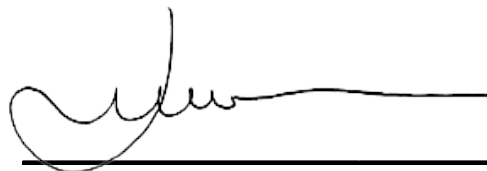
COMMITTS Mr Said to a Trial Chamber for trial on the charges as confirmed;

DECIDES that the time limit for filing an application for leave to appeal this decision shall be suspended until its translation into French is notified by the Registry;

ORDERS the Registry to make appropriate arrangements so as to ensure that the translation is completed without delay; and

ORDERS the Registrar to transmit this decision on the confirmation of charges and the record of these proceedings to the Presidency.

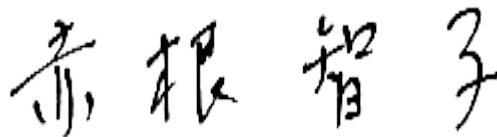
Done in both English and French, the English version being authoritative.



**Judge Rosario Salvatore Aitala,
Presiding**



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Thursday, 9 December 2021

At The Hague, The Netherlands