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TRIAL CHAMBER VI

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

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

**Public
with Confidential Annex A**

Public Redacted Version of “Prosecution’s First Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, ICC-01/14-01/21-279-Conf, dated 14 April 2022

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A.A. Khan QC

Mr Mame Mandiaye Niang

Mr Eric MacDonald

Counsel for Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet

Tars Van Litsenborgh

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. Pursuant to the Decision Setting the Commencement Date of the Trial and Related Deadlines (“Scheduling Order”),¹ the Directions on the Conduct of Proceedings (“Directions”)² and in accordance with articles 64(9)(a) and 69(2)-(4), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to recognise as formally submitted 148 items of evidence from the bar table.³ These items, which are set out in Annex A, comprise material obtained from the *Ministère de la Sécurité, de l’émigration-immigration et de l’ordre public* (“MoPS”) of the Central African Republic (“CAR”) in Bangui.

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

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission confidential because it contains information of the same nature regarding Prosecution evidence, refers to confidential filings and contain details of *inter partes* communications. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The documents collected from the MoPS are relevant to issues at trial, have significant probative value, and do not unfairly prejudice the Accused Mahamat Said

¹ ICC-01/14-01/21-243.

² ICC-01/14-01/21-251.

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

Abdel Kani (“Mr SAID”). The relevance and probative value of the items are summarised below and set out for each item in Annex A.

5. On 29 March 2022, and following the Chamber’s Directions, the Prosecution inquired whether the Defence consented or objected to the submission of the items as described in Annex A.⁴ On 12 April, the Defence responded that it would be premature for them to take a position as to the admissibility, authenticity and probative value of the items included in Annex A at this stage of the proceedings. That is because, among others, the Defence is yet to receive the Prosecution’s Trial Brief which would allow it to determine exactly to which factual and/or legal proposition a given item is sought to be submitted.⁵ The Defence also indicated that it will further develop its position once they have been notified of the Prosecution’s Request and arguments.

6. The Prosecution takes note of the Defence’s position. However, “in order to streamline the trial preparations”,⁶ the Prosecution seeks the submission of the items listed in Annex A.⁷

A. Background to the MOPS items of evidence

7. The documents were obtained following an official Prosecution Request for Assistance (“RFA”) made to the competent CAR authorities.⁸ The details of the collection process are set out in two investigation reports.⁹

⁴ Prosecution E-mail of 31 March 2022 at 17:48 hours.

⁵ E-mail by Defence of 12 April 2022 at 13:21 hours.

⁶ Scheduling Order, para. 29.

⁷ See further reference to column “Defence Position” in Annex A.

⁸ OTP/CAR2/CAF-28/TL/JCCD, 24 July 2015.

⁹ CAR-OTP-2122-4152 and CAR-OTP-2135-2461.

8. The 148 items have been disclosed and will be included on the Prosecution's List of Evidence along with the relevant information as to their chain of custody.

B. The MoPS items of evidence are relevant to material issues at trial

9. The MoPS documents are directly relevant to issues at trial, namely (1) the role and authority of Nouradine ADAM ("ADAM") as Minister of Public Security, (2) the organisation of the parties to the conflict and the existence of ongoing armed hostilities, as well as (3) the structure and functioning of the Seleka armed group in the period relevant to the charges.

1. Role and authority of ADAM

10. Several items set out in Annex A are relevant to the role and authority of ADAM between April and late August 2013 as Minister of Public Security in the Seleka government, with authority over the OCRB¹⁰ and the intelligence apparatus.¹¹ The documents demonstrate that ADAM was Minister of Public Security and was vested with the necessary authority in practice aligned with this formal position. The evidence relating to the role and authority of ADAM is directly relevant to establishing both the individual criminal responsibility of Mr SAID (as summarised below) as well as material facts relevant to the chapeau elements of war crimes and crimes against humanity.

11. The MoPS items corroborate other evidence held by the Prosecution with regard to ADAM. These are set out in the Prosecution's Pre-Confirmation Brief. ADAM was appointed Minister of Public Security by President DJOTODIA¹² and acted as Mr

¹⁰ Items 4, 5, 7 and 8, 9, 10, 11, 12, 17, 19, 21, 25, 27, 28, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 44, 51, 52, 54, 55, 56, 60, 61, 62, 63, 71, 72, 77, 78, 80, 81, 98, 99, 103, 111, 119, 120, 121, 123, 134, 138, 139, 141, 143, 144, 145.

¹¹ Item 137.

¹² **Decree 13.009**: CAR-OTP-2005-0404 at 0404.

SAID's superior.¹³ From 31 March 2013, when ADAM was appointed Minister of Security, the OCRB – which was part of the Police – fell within ADAM's official authority.¹⁴ ADAM's *de jure* control over the OCRB lasted for at least as long as the duration of his tenure as Minister of Security from 31 March to 21 August 2013. However, the MoPS documents show that ADAM continued to exercise his official functions as Minister of Security beyond this date.¹⁵ ADAM maintained *de facto* control of the OCRB until at least 30 August 2013 when the new Minister of Security BINOUA asked the Seleka to leave the OCRB premises.¹⁶

12. The Prosecution further alleges that Mr SAID operated jointly with other Seleka leaders and elements at the relevant time. Specific documents listed in Annex A also demonstrate links between ADAM and co-perpetrators of the charged crimes such as Adoum RAKISS¹⁷ and Mahamat TAHIR.¹⁸

2. Parties to the conflict and armed hostilities

13. The Prosecution alleges that from at least late 2012 until at least January 2014, an armed conflict not of an international character was ongoing on the territory of CAR and that in March 2013, the Seleka took over CAR and its leaders assumed functions

¹³ Pre-Confirmation Brief, paras. 102-103.

¹⁴ **P-0435**: CAR-OTP-2104-0954-R01 at 0959, paras. 21-22 (Fr); **P-1737**: CAR-OTP-2130-2086-R01 at 2090, 2095-2096, para. 19, 44 (Fr); **P-0338**: CAR-OTP-2130-5761-R01 at 5773, para. 64 (Fr). *See also* **CAR Government document**: CAR-OTP-2034-2392; **CAR Government document**: CAR-OTP-2034-2407 at 2409-2410; **CAR Government document**: CAR-OTP-2034-2974; **CAR Government document**: CAR-OTP-2034-3083; and **Internal communication**: CAR-OTP-2034-3653 at 3654 (internal structure of the Ministry of Public Security denoted at the top left of the document); **CAR Government document**: CAR-OTP-2034-4649; **P-0338**: CAR-OTP-2130-5761-R01 at 5779-5780, paras. 97-98 (Fr); **P-0435**: CAR-OTP-2104-0954-R01 at 0972, para. 104 (Fr), and Annex G at CAR-OTP-2017-0084.

¹⁵ ADAM continued to issue official documents as Minister of Security from 22 August until 27 August 2013: *see* CAR-OTP-2034-2878; CAR-OTP-2034-4155; CAR-OTP-2034-2446; CAR-OTP-2034-2927; CAR-OTP-2034-2347; CAR-OTP-2034-3567; CAR-OTP-2034-4647; CAR-OTP-2034-2876; CAR-OTP-2034-2879; CAR-OTP-2034-4652; CAR-OTP-2034-4653; CAR-OTP-2034-4651; CAR-OTP-2017-0088. Of these documents: CAR-OTP-2034-2876 and CAR-OTP-2034-4649 concern the OCRB.

¹⁶ Item 50; *see also* **P-0787**: CAR-OTP-2130-0893-R01 at 0917, para. 101 (Fr); **P-0338**: CAR-OTP-2130-5761-R01 at 5788-5789, paras. 150-156; **P-1737**: CAR-OTP-2130-2086-R01 at 2101, para. 70. Witness estimates of the date of this meeting vary, but photographs taken at the meeting by P-1967 indicate a date-stamp of 30 August 2013: **P-1967**: CAR-OTP-2118-6365-R01 at 6457-6458 (referencing P8301174 to P8301201 which are CAR-OTP-2069-3221 to CAR-OTP-2069-3246).

¹⁷ Item 48, 57, 58.

¹⁸ Item 142.

within the government.¹⁹ The MoPS documents included in Annex A also demonstrate that the Seleka led and controlled the institutions relevant to maintaining security and public order in the CAR government for the relevant period of the charges.²⁰ The documents not only show that ADAM remained at the helm of the MoPS until the end of August 2013 but that a transition to BINOUA including structural changes²¹ were facilitated by President DJOTODIA and the Ministry continued to function. Some documents demonstrate that ADAM's power extended to all aspects of the Seleka security apparatus with the exception of the Presidential Security, which was under DJOTODIA's personal control.²²

14. The Prosecution further alleges that the pro-BOZIZE forces carried out coordinated military attacks.²³ Some of the identified items set out in Annex A relate to hostility related activities, which involve planning, reforming, regrouping and rearming, such as by members of pro-BOZIZE forces in ZONGO in DRC. The relevant MoPS items identified relate to missions, which were authorised by ADAM personally for security staff members to be deployed to Zongo in the Democratic Republic of the Congo in reaction to the evolving security threat.²⁴ There are also items which demonstrate that the Seleka government acted on reports of armed hostilities in and around Bossangoa or that such armed hostilities were an issue at the time.²⁵ Further items demonstrate that Seleka reacted to ongoing security issues in other areas of CAR at the time relevant to the charges as well.²⁶

¹⁹ Pre-Confirmation Brief, paras. 2, 14.

²⁰ All items in Annex A.

²¹ Items 107, 116.

²² Items 59, 123, 137 (ANRS).

²³ Pre-Confirmation Brief, paras 41- 46.

²⁴ Items 68, 69, 102, 104, 117.

²⁵ Items 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 113, 115.

²⁶ Items 91, 92, 93, 94, 97, 100, 101, 106, 114, 118, 129, 140.

3. Structure and functioning of the Seleka regime

15. The Prosecution alleges that the existence of a policy to attack the civilian population is demonstrated by the fact (among others) that senior Seleka leaders like ADAM coordinated the policy and participated in its execution.²⁷ Overall, the MoPS documents demonstrate that high-ranking Seleka members like ADAM took over government institutions and managed them in the relevant period, which is relevant to structure and organisation of the Seleka regime between 23 March until 10 January 2014.

16. As set out in Annex A, ADAM issued administrative directions, mission orders, staff permissions and other day-to-day documents relevant to upholding the functioning of the MoPS and thus the Seleka government.²⁸ The role and authority of Henri Wanzet-LINGUISSARA²⁹ as General Director of the CAR Police, BINOUA³⁰ who was appointed ADAM's successor, as well as DJOTODIA³¹ as President are also shown through these documents. Some of the documents relate to the establishment of a National Security Council by DJOTODIA at which the ministers and leaders tasked with national security issues took part regularly.³²

17. The MoPS documents which reference the CEDAD,³³ radio communiqués issued in June and July 2013³⁴ as well as documents relevant to the inauguration of DJOTODIA on 18 August 2013³⁵ are further evidence regarding ADAM's role as well as the Seleka regime's involvement in executing the alleged policy.³⁶

²⁷ Pre-Confirmation Brief, para. 69, paras. 76 – 78.

²⁸ See fn. 10 and 11.

²⁹ Items 49, 75, 76, 85, 86, 110, 122, 124, 125, 126, 127, 128, 130, 131, 132, 133, 135, 136,

³⁰ Items 46, 70.

³¹ Item 47.

³² Item 113,

³³ Items 38, 45.

³⁴ Items 53 and 29.

³⁵ Items 65, 66, 67.

³⁶ Item 108.

C. The MoPS documents are reliable and authentic

18. The MoPS items of evidence are reliable and authentic. To assess the *prima facie* evidentiary reliability of an item, the Chamber may evaluate the factors relevant to its authenticity, such as: its origin, the context in which it was created, the method with which the information contained therein was compiled, and the nature and availability of corroborative evidence.³⁷

19. The documents were obtained from an objective primary source, the Ministry of Public Security of the CAR government. While some documents from the period relevant to the charges may have been destroyed or lost, the collection process retrieved all available documents and the correspondence registers for the year 2013.³⁸

20. The documents themselves provide further indicia of authenticity and reliability which are noted for each item in Annex A. Outgoing documents include the official header of the MoPS. They are usually signed by persons who had a function in the Ministry in 2013, such as ADAM himself. Furthermore, on some documents there are official stamps and sequence numbering including dates. The documents themselves relate to activities typical of a government institution responsible for interior affairs and security, including governing the police. For example, they include *ordres de mission*, *notes de service*, radio communiqués, official communiqués, and ministerial instructions. The CAR authorities also provided a list of abbreviations used in the correspondence.³⁹

³⁷ ICC-01/04-01/06-1399, paras 36-40; *see also* ICC-01/04-01/07-1665-Corr, para.98.

³⁸ CAR-OTP-2122-4152 at 4154.

³⁹ *Ibid*, p. 6-7.

21. With respect to the chain of custody⁴⁰ of the MoPS documents, they were stored in the Ministry since the period relevant to the charges and then turned over to the Prosecution. [REDACTED].⁴¹

D. Submission of the evidence does not cause prejudice

22. The Prosecution's Request and the itemised assessment of relevance and probative value in Annex A, provide sufficient notice as to which items of this evidence are of importance to the charges. Thus, the timely submission of the evidence does not cause any unfair prejudice. Mr SAID will have ample opportunity to address the evidence during the course of the trial, including with Prosecution Witness P-0435 who will speak to the authenticity of the documents, as well as other Prosecution witnesses who will give evidence on topics relevant to Seleka organisation, including Seleka insiders and government officials like P-2105, P-1167, P-0338, P-0787, P-2161, P-2563, P-2478, P-2240, P-0349, P-2328, and P-0291. The Defence is also free to call its own witnesses or introduce other evidence to rebut the content of the documents.

IV. RELIEF SOUGHT

23. For the above reasons and the analysis set out at Annex A, the Prosecution requests that the Chamber recognise the formal submission of the MoPS documents.



Karim A. A. Khan QC, Prosecutor

Dated this 21st day of April 2022

At The Hague, The Netherlands

⁴⁰ See Items 2, 3, 146, 147, 148.

⁴¹ CAR-OTP-2034-2214 (CAR-OTP-2034-2216 to CAR-OTP-2034-2251); CAR-OTP-2034-2805 (CAR-OTP-2034-2807 to CAR-OTP-2034-2844); CAR-OTP-2034-3559 (CAR-OTP-2034-3561 to CAR-OTP-2034-3573).