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Date: **26 April 2022**

TRIAL CHAMBER VI

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

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

**Public
with Confidential Annex A**

Public Redacted Version of “Prosecution’s Second Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, ICC-01/14-01/21-285-Conf, dated 25 April 2022

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Pursuant to the Decision Setting the Commencement Date of the Trial and Related Deadlines (“Scheduling Order”),¹ the Directions on the Conduct of Proceedings (“Directions”)² and in accordance with articles 64(9)(a) and 69(2)-(4), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to recognise as formally submitted 61 items of evidence from the bar table.³ These items, which are set out in Annex A, comprise material obtained from the *Primature*, which is the Office of the Prime Minister of CAR (“*Primature* archives”) 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 confidential information regarding Prosecution evidence, refers to confidential filings and contains details of *inter partes* communications. A public redacted version will be filed as soon as practicable.

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.

III. SUBMISSIONS

4. The documents collected from the *Primature* archives are relevant to issues at trial, have significant probative value and do not unfairly prejudice the Accused Mahamat Said Abdel Kani (“Mr SAID”). The relevance and probative value of the items are summarised below and set out in detail in Annex A. On 6 April 2022, and following the Chamber’s Directions, the Prosecution inquired whether the Defence consented or objected to the submission of the items in Annex A.⁴ The Defence agrees to the submission of 16 documents as identified in Annex A to this submission. However, the Defence stipulates that [REDACTED].⁵

A. Background to the items of evidence from the *Primature* archives

5. The documents were obtained following an official Prosecution Request for Assistance (“RFA”) made to the competent CAR authorities.⁶ The details of the collection process are set out in two investigation reports.⁷

6. The 61 items have been disclosed and will be included on the Prosecution’s List of Evidence for trial along with the relevant information as to their chain of custody.

B. The *Primature* archives items of evidence are relevant to material issues at trial

7. The *Primature* archives documents are directly relevant to the following issues to be discussed at trial, namely (1) the organisation of the parties to the conflict and the existence of ongoing armed hostilities, (2) the structure and functioning of the Seleka armed group in the period relevant to the charges, (3) targeting of members of the FACA, (4) targeting of certain neighbourhoods in Bangui, like Boy Rabe, and other

⁴ Prosecution E-mail of 6 April 2022 at 10:20 hours.

⁵ Defence E-Mail of 22 April 2022 at 15:59 hours.

⁶ OTP/CAR2/CAF-132/TL/JCCD-cdpt.

⁷ CAR-OTP-2100-0289 and CAR-OTP-2118-8568.

additional incidents relevant for the chapeau elements of crimes against humanity, and finally (5) provide further information related to the role and conduct of Mr SAID after the time relevant to the charges.

1. Parties to the conflict and armed hostilities

8. 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 on 24 March 2013, the Seleka coalition took over CAR and its leaders subsequently assumed functions within the government.⁸ The *Primature* archives documents included in Annex A demonstrate that the Seleka led and controlled the government institutions during the relevant period of the charges.⁹ There is also a list of the members of the government of Prime Minister TIANGAYE which illustrates that Seleka leaders were appointed to senior positions.¹⁰

9. Several documents demonstrate the composition of the Seleka coalition, i.e. the inclusion of elements of Chadian and Sudanese origin,¹¹ the involvement of former *libérateurs*,¹² and drawn from several rebel groups.¹³ There are also items which demonstrate that there were armed hostilities between the forces of the Seleka coalition and the BOZIZE government forces as well as attempts at negotiations to end hostilities.¹⁴

10. Items set out in Annex A also demonstrate and corroborate other evidence,¹⁵ that the pro-BOZIZE forces carried out coordinated military attacks.¹⁶ There is also an item

⁸ Pre-Confirmation Brief, paras. 2 and 14.

⁹ Items 3, 21, 26 and 47.

¹⁰ Item 56.

¹¹ Items 5, 6, 34, 3 and, 37.

¹² Items 6 and 9.

¹³ Items 8, 19 (relevant to DHAFFANE, P-0413), 27, 28, 29, 30, 32, 38, 39, 40 and 55.

¹⁴ Items 16, 18, 20, 31, 33, 36, 41 and 52.

¹⁵ Items 23 and 42.

¹⁶ Pre-Confirmation Brief, paras. 41- 46.

which notes ongoing armed hostilities in and around Bossangoa in November 2013.¹⁷ One additional item is relevant to the structure and functioning of the pro-BOZIZE forces as it shows the connection between Steve YAMBETE and Francois BOZIZE in December 2012.¹⁸

2. Structure and functioning of the Seleka regime

11. The Prosecution alleges that the existence of a policy to attack the civilian population is demonstrated (among others) by the fact that senior Seleka members coordinated the policy and participated in its execution.¹⁹ As set out in Annex A, some of the documents demonstrate the structure and functioning of the Seleka government. For example, several items relate to the establishment of a National Security Council by DJOTODIA. These items also demonstrate that certain Ministers and leaders took part regularly in this National Security Council and that they were responsible for national security related issues.²⁰ Minutes from a meeting between the European Union and the CAR authorities note that in July 2013 there were 744 police agents, 2600 gendarmes, 4800 FACA and 4802 quartered Seleka members.²¹ While one item shows that the Seleka were disbanded officially by President DJOTODIA, on 12 September 2013,²² several other documents actually demonstrate that Seleka elements were not excluded but instead integrated into the FACA *en masse*.²³

3. Targeting of members of the FACA

12. The Prosecution alleges that members of the FACA, especially from certain neighbourhoods, were perceived as BOZIZE supporters and thus targeted by the

¹⁷ Item 61.

¹⁸ Item 7.

¹⁹ Pre-Confirmation Brief, para. 69, paras. 76 – 78.

²⁰ Items 50, 51, 53, 57, 58 and 59.

²¹ Item 17.

²² Item 60.

²³ Items 11, 12, 13 and 14.

Seleka pursuant to an organisational policy.²⁴ Item 4 is a Press Communiqué dated 26 June 2012 by residents of the 4th *arrondissement* sent to the Prime Minister. It alleges that FACA from the neighbourhood are being searched for, abducted and killed.

4. Attack on Boy Rabe and other additional incidents

13. The Prosecution alleges that the conduct of the Seleka involved the commission of multiple acts of violence referred to in article 7(1) directed against the civilian population, beyond the charged acts. For that purpose, the Prosecution refers to additional incidents that exemplify the attack against a civilian population.²⁵ There are several items which support the propositions made by the Prosecution in relation to some of these incidents.

14. In relation to the August 2013 attack on the Boy Rabe neighbourhood, documents include a report by a non-governmental organisation,²⁶ a statement by the Prime Minister TIANGAYE²⁷ and a speech by the Prime Minister TIANGAYE about measures taken in the aftermath of the attack.²⁸

15. Another additional incident relates to the arbitrary arrest and killing between six and eight male passengers of a minibus.²⁹ A letter from a division of the *Primature* addressed to the Prime Minister, dated 20 August 2013, provides information about the families of three victims of this incident.³⁰ Another item is a statement by the Prime Minister given in relation to the security situation in Bangui where it is noted that five bodies were discovered in the Oubangui river.³¹ The Prime Minister also requested

²⁴ Pre-Confirmation Brief, para. 49.

²⁵ Pre-Confirmation Brief, paras. 49-65.

²⁶ Item 15.

²⁷ Item 25.

²⁸ Item 45.

²⁹ Pre-Confirmation Brief, para. 65.

³⁰ Item 44.

³¹ Item 24.

the Justice Minister to open an investigation to identify those responsible. Despite this appeal those responsible were not identified or brought to justice.³²

16. The Decree No. 13.337 notifies of the creation of “*une unité mobile de police judiciaire*” in September 2013 which was to form part of *the police judiciaire* and was mandated to apply the code of criminal procedure . This unit replaced the intervention units of the Seleka based at the OCRB and that were in operation until they were ousted at the end of August 2013.³³

17. The arbitrary arrests and detentions committed at the CEDAD from mid-September 2013 onwards are also relevant to the contextual elements of crimes against humanity. The acts committed at the CEDAD are relevant to demonstrate the existence of the attack against a civilian population and evidence relevant to these acts will be presented at trial. One item collected from the *Primature* archives contains a budget request sent by Nouradine ADAM to the Office of the Prime Minister.³⁴ It includes a handwritten note that the CEDAD falls under the responsibility of the Presidency, which is corroborated by other evidence the Prosecution will rely on at trial.³⁵

5. Evidence on the acts and conduct of Mr SAID

18. Finally, the *Primature* archives include two items which are relevant to the acts and conduct of the Mr SAID *after* the period charges.³⁶ The first is dated 13 August 2016 and the second 6 October 2017. These items relate to Mr SAID’s continuous involvement and ties with armed groups affiliated with the former Seleka coalition.

³² Pre-Confirmation Brief, para. 65.

³³ Item 46.

³⁴ Item 48.

³⁵ See **Investigation Report**: CAR-OTP-2008-0566-R01; CAR **Decree No. 13.118**: CAR-OTP-2004-1385 at 1417-1419; CAR **Decree No. 13.390**: CAR-OTP-2010-0547; CAR **Decree No. 13.335**: CAR-OTP-2004-1086 at 1099; CAR **Decree**: CAR-OTP-2004-1086 at 1124; **P-2240**: CAR-OTP-2110-0780-R01 at 0793, para. 44 (Fr).

³⁶ Items 22 and 49.

They provide circumstantial evidence of his former role in the Seleka coalition at the time relevant to the charges.

C. The *Primature* documents are reliable and authentic

19. The items of evidence listed in Annex A 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

20. The documents were obtained from an objective primary source, the CAR Prime Minister's Office, which was also the custodian.

21. 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 *Primature*. The incoming correspondence to the *Primature* includes the official headings of the different international and governmental institutions they originate from, such as : the Presidency, the Ministry of Defence, the *Ministère chargé du Secrétariat Général du Gouvernement et de ses relations avec les institutions*, the *Ministère de la Santé Publique*, the African Union, and usually include the stamp of *courier arrivée* from the *Primature*, including a registration number and a date. Moreover, these documents also have a registration number and a date from the emanating entity and are signed by persons who held a function in the government. Several documents are related to typical activities that the Office of the Prime Minister would perform, including the creation of institutions and appointments of governmental members as well as matters of policy. Also, documents include information that the *Primature* would typically receive, including letters from different organisations such as *l'Union*

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

pour la Renaissance et le développement (URD), *l'Union des forces Républicaines* (UFR), the *Coalition des actions citoyennes* (COAC), or the *Force multinationale de l'Afrique centrale* (FOMAC) as well as reports and invitations from the National Security Council.

22. With respect to the chain of custody of the *Primature* archives documents,³⁸ they were stored in the *Primature* office since the period relevant to the charges and then reviewed by the Prosecution. [REDACTED].

D. Submission of the evidence does not cause unfair prejudice

23. The Prosecution's Application and the itemised assessment of relevance and probative value in Annex A, provide sufficient notice as to which items of 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, [REDACTED]. The Defence is also free to call its own witnesses or introduce other evidence to rebut the content of the documents.

IV. RELIEF SOUGHT

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



Karim A. A. Khan QC, Prosecutor

Dated this 26th day of April 2022
At The Hague, The Netherland

³⁸ See Items 1 and 2.