

**Cour
Pénale
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**International
Criminal
Court**

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Date: **12 May 2022**

TRIAL CHAMBER VI

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

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

**Public
with Confidential Annex A**

Public Redacted Version of "Prosecution's Third Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)", ICC-01/14-01/21-286-Conf, dated 26 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 35 items of evidence from the bar table.³ These items, which are set out in Annex A, comprise material obtained from the B2, which is an archive of the *Deuxième Bureau du service de renseignement militaire* situated at the Camp de Roux military base in Bangui (“B2 Office”) 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 submission would assist the Chamber to determine the truth and contribute to an expeditious trial.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(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 contain 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 B2 Office 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 14 April 2022, and following the Chamber’s Directions, the Prosecution has inquired whether the Defence consents or objects to the submission of the items in Annex A.⁴ On 25 April 2022, the Defence indicated that they currently cannot take a position on the items listed in the Annex for reasons to be further developed in their response to this Application.⁵

A. Background to the B2 office items of evidence

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 an investigation report.⁷

6. The 35 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 B2 Office items of evidence are relevant to material issues at trial

7. The B2 Office documents are directly relevant to issues at trial, namely (1) the organisation of the parties to the conflict and existence of ongoing armed hostilities, and (2) the structure and functioning of the Seleka armed group in the period relevant to the charges.

⁴ Prosecution E-mail of 14 April 2022 at 15:27.

⁵ Defence E-Mail of 25 April 2022 at 15:39 hours.

⁶ OTP/CAR2/CAF-109/TL/JCCD-cdpt.

⁷ CAR-OTP-2127-8222.

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 Prosecution further alleges that the pro-BOZIZE forces, later known as the Anti-Balaka, carried out coordinated military attacks.⁹ The B2 documents include intelligence reports, which deal with the reorganisation, rearming and also the armed activities of the pro-BOZIZE forces from June to October 2013. They give an inside view of the Seleka military intelligence's surveillance of these forces, including missions and recommendations to DJOTODIA's government on how to counter them.

9. A *Compte rendu du Réunion de Baboua*, which is dated 6 June 2013, reveals that a meeting was held to prepare a "rebellion," which was presided over by Olivier KOUDEMON with Presidential guards of the former regime as well as *ex-libérateurs*.¹⁰ A *Fiche d'information* dated 5 July 2013 informs that there is a base of armed pro-BOZIZE men below the *Colline* in Boy Rabe, who have been causing "problems" in Gobongo, Fouh, Ouango and Kassai neighborhoods. It also highlights that there are pro-BOZIZE forces plotting to overthrow the Seleka government in Zongo, DRC.¹¹ A report entitled *Événement du 24 juin survenue dans la localité de Bouali-Poste* dated 7 July 2013 deals with attacks of an armed group against Peuhls as well as the recruitment of Rwandese and Congolese elements by Francois BOZIZE.¹² A report entitled *situation d'urgence* dated 10 July 2013 concerns the issue of youth from Boy Rabe joining the resistance in the provinces.¹³ A *Fiche d'information* dated 21 July 2013 again

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

⁹ Pre-Confirmation Brief, paras. 41- 46.

¹⁰ Item 6.

¹¹ Item 5.

¹² Item 7.

¹³ Item 8.

deals with the re-grouping of pro-BOZIZE forces in Zongo, DRC. A *Fiche d'information* dated 11 July 2013 concerns the formation of the pro-BOZIZE forces in Bertoua and Touboro by former officers of the BOZIZE regime, namely Captain Olivier KOUDEMON alias GBANGOUMA, Captain Papy BOZIZE, Captain GBADORA as well as Francis BOZIZE and others.¹⁴

10. The intelligence reports continue in August 2013, with two relating to the disruption of the inauguration ceremony of President DJOTODIA.¹⁵ A *Fiche spéciale* dated 20 August 2013 concerns reporting on Captain NGAIKOSSET and 62 elements leaving a town named ONATRA for BANGUI while those who are seen to have been involved in the disruption of the ceremony remained at a base near the village KALA. Also, armed men were seen to have entered BANGUI on 17 August 2013¹⁶

11. A *Fiche d'information* dated 7 September 2013 describes that pro-BOZIZE forces recovered a container with weapons allegedly hidden there, took these weapons and destroyed a bridge at the entrance to BOSSANGO. ¹⁷ A *compte rendu de réunion de synthèse* includes the information that former Presidential Guards of BOZIZE rebels recruited 500 youths.¹⁸ Several additional reports dated mid-September 2013 concern the organisation of pro-BOZIZE forces and armed hostilities in and around BOSSANGO.¹⁹ One item dated 18 September 2013 concerns an attack on a village by forces now referred to as the Anti-Balaka.²⁰ A *Fiche Spéciale* dated 19 September 2013 mentions that 1323 rebels are fighting in BOSSANGO and BOUCA divided into six groups. On the same day, the rebels from Paoua provided weapons to the new forces in Paoua.²¹

¹⁴ Item 11.

¹⁵ Item 13 and 14.

¹⁶ Item 15.

¹⁷ Item 17.

¹⁸ Item 18.

¹⁹ Items 19, 20 and 21.

²⁰ Item 22.

²¹ Item 23.

12. Reporting continues in October 2013 with a *Fiche Spéciale* dealing with further armed activities by the *forces nouvelles*.²² A further *Fiche Spéciale* dated 5 October 2013 states that nine Muslims were killed by the Anti-Balaka 26 km from BOSSANGO. Further documents illustrate ongoing armed activities throughout the territory of CAR between Seleka and pro-BOZIZE forces.²³

13. The above noted documents have stand-alone value but are also cumulative to and corroborative of other evidence the Prosecution intends to rely on at trial, including the testimony of Witnesses P-0291, P-0349, P-0884, P-0966, P-0975, P-1339,²⁴ P-1521,²⁵ P-2232,²⁶ P-2328, P-2251, and reporting by the UN.²⁷ The Prosecution intends to call at least six of the above-mentioned witnesses to testify *viva voce*.

2. Structure and functioning of the Seleka regime

14. The Prosecution alleges that the existence of a policy to attack the civilian population is demonstrated by the fact (among others) that senior Seleka coordinated the policy and participated in its execution.²⁸ As set out in Annex A, some of the documents demonstrate the structure and functioning of the Seleka government. For example, several relate to the establishment of a National Security Council by DJOTODIA at which certain ministers and leaders tasked with national security issues took part regularly.²⁹ Further, Item 16 relates to training of Seleka forces.

²² Item 25.

²³ Items 27, 28, 29, 32 and 33 (Anti-Balaka attack on base in BOUAR).

²⁴ **P-1339**: CAR-OTP-2041-0741-R01 at 0745, paras. 29-31, at 0742, para. 42 (Eng); CAR-OTP-2102-0105-R01 at 0111-0112, paras. 29-31, at 0113-0114, para. 42 (Fr).

²⁵ **P-1521**: CAR-OTP-2046-0603-R01 at 0607-0609, paras. 25-26, 30-35 (Eng).

²⁶ **P-2232**: CAR-OTP-2090-0561-R01 at 0566-0567, paras. 37, 43 (Eng); **P-2328**: CAR-OTP-2099-0165-R01 at 0179, para.73 (Fr).

²⁷ **UN Mapping Project Report**: CAR-OTP-2055-1987 at 2121.

²⁸ Pre-Confirmation Brief, para. 69, paras. 76 – 78.

²⁹ Items 2, 30, 31 and 34.

C. The B2 Office documents are reliable and authentic

15. The B2 Office 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.³⁰

16. The documents were obtained from an objective primary source, the B2 Office at Camp de Roux, which is the custodian.

17. The documents themselves provide further indicia of authenticity and reliability which are noted for each item in Annex A. The documents have official headers, registration numbers and stamps. Some are addressed to the *Directeur General* or "*Monsieur le General*" of the B2 Office.

18. With respect to the chain of custody³¹ of the B2 documents, they were stored in the B2 Office since the period relevant to the charges and then reviewed by the Prosecution. [REDACTED].

D. Submission of the evidence does not cause prejudice

19. 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. As noted above at paragraph 13, the Prosecution intends to call *viva voce* at least six witnesses who are well-positioned to

³⁰ ICC-01/04-01/06-1399, paras 36-40; *see also* ICC-01/04-01/07-1665-Corr, para.98.

³¹ See Item 1.

speak to the matters at issue in these documents. The Defence is also free to call its own witnesses or introduce other evidence to rebut the content of the documents.

IV. RELIEF SOUGHT

20. For the above reasons and the analysis set out at Annex A, the Prosecution requests that the Chamber recognise the formal submission of the B2 Office documents.



Karim A. A. Khan QC, Prosecutor

Dated this 12th day May 2022

At The Hague, The Netherland