

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**

Date: **24 May 2022**

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 second request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, ICC-01/14-01/21-307-Conf, dated 13 May 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

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. The Prosecution hereby requests that the Chamber introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of Seven Witnesses—P-0491, P-0510, P-0529, P-0662, P-0882, P-1808, and P-2386²—pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Request”).

2. The Prior Recorded Testimonies are reliable, probative, and relevant to the charges. They do not reflect on the acts and conduct of of the Accused Mahamat Said Abdel Kani (“Mr SAID”). Instead, they pertain to certain events the Prosecution relies upon to prove the chapeau elements of war crimes and crimes against humanity.

3. Introduction of the Prior Recorded Testimonies would be in the interests of justice. The Prosecution estimates that it would save up to 28 hours of direct examination time. Granting the Request would accordingly enhance the expeditiousness of the proceedings and save valuable court time and resources. It would also ensure that the focus of the live testimony at trial remains on the core of the case, namely Mr SAID’s acts and conduct and the events at the OCRB.

4. Introduction of the Prior Recorded Testimonies would not prejudice the rights of Mr SAID. They are cumulative to and corroborate the evidence of many other witnesses, including witnesses who will testify live at trial about the same topics.

¹ Annex A (A1 to A7) lists the prior recorded testimonies of P-0491, P-0510, P-0529, P-0662, P-0882, P-1808, and P-2386, which comprise their witness statements (at I) and associated material (at II). Where items are necessary to understand a particular witness’s prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence, those items are also referenced (at III). These materials are all hyperlinked. See Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² Hereinafter (“Seven Witnesses”).

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1), the Request and its annexes are filed as confidential because they refer to the identity of Prosecution witnesses and confidential items of evidence. A public redacted version will be filed as soon as possible.

III. APPLICABLE LAW

6. The Prosecution relies on its previous submissions about the legal framework for introduction of prior recorded testimony pursuant to rule 68(2)(b), as set out in its first application under rule 68(2)(b).³

IV. SUBMISSIONS

A. The Prior Recorded Testimonies Go to Proof of Matters Other than the Acts and Conduct of the Accused

7. None of the Prior Recorded Testimonies mention Mr SAID or his acts and conduct. Instead, as described below, the Prior Recorded Testimonies are relevant to the chapeau elements of the charges in this case.

B. The Prior Recorded Testimonies are Relevant and Probative

8. All the Prior Recorded Testimonies relate to events that occurred in Bangui between March and December 2013. They are relevant to the chapeau elements of the war crimes charges because their information reflects on the organisation of the Seleka armed group, including the Seleka's ability to coordinate significant operations. They are also relevant to the chapeau elements of the crimes against

³ Prosecution's first request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-289-Conf, 29 April 2022, paras. 7-10, 11 (fn. 8), 46-50.

humanity charges. This is because the crimes committed at the OCRB were part of a larger attack on the civilian population in Bangui perceived to support BOZIZE which were committed from at least April 2013 to at least November 2013,⁴ and the Prior Recorded Testimonies relate to other incidents that exemplify this larger attack.⁵ Specifically, they are relevant to:

- (i) the 13 April 2013 attack on the 7th arrondissement area of Bangui (“7th Arrondissement Attack”);⁶
- (ii) the attack on minibus passengers arbitrarily arrested at a checkpoint in the PK9 area of Bangui, on or around 13 July 2013 (“PK Minibus Incident”);⁷ and
- (iii) the crimes committed at the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* (Extraordinary Committee for the Defence of Democratic Achievements, “CEDAD”) (“CEDAD Incident”).⁸

9. All of the Seven Witnesses are victims of these three incidents or otherwise can provide direct evidence about them.⁹ Key aspects of each witness’s evidence are further highlighted below.

⁴ Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Red, 9 Dec. 2021 (“Confirmation Decision”), paras. 60-65 (confirming this assertion to the required threshold for confirmation).

⁵ Confirmation Decision, para. 60.

⁶ See Confirmation Decision, para. 60.

⁷ See Confirmation Decision, para. 60.

⁸ See, e.g., Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), ICC-01/14-01/21-282, 20 Apr. 2022, para. 18 (confirming that evidence on non-confirmed charged incidents may be relevant to and probative of other facts set out in the charges, and therefore rejecting the Defence’s request to order the Prosecution not to present evidence at trial relating to Incident R); *Ongwen*, Decision on the Legal Representative Request for Reconsideration of the Decision on Witnesses to be Called by the Victims Representatives, ICC-02/04-01/15-1210, 26 Mar. 2018, para. 10 (holding that evidence that is not squarely part of the facts and circumstances described in the charges could still be relevant to other parts of the case, such as the contextual elements of the charges).

⁹ P-0491 (PK9 Minibus Incident), P-0510 (PK9 Minibus Incident); P-0529 (PK9 Minibus Incident); P-0662 (CEDAD); P-0882 (7th Arrondissement Incident); P-1808 (7th Arrondissement and PK9 Minibus Incidents); and P-2386 (7th Arrondissement Incident).

P-0491

10. P-0491 is [REDACTED] of Jerome NGOMBE.¹⁰ The Prosecution submits that NGOMBE was one of the minibus passengers who was arbitrarily arrested, tortured, and murdered by the Seleka on or around 13 July 2013 during the PK9 Minibus Incident.¹¹ At the time of his death, NGOMBE was the accountant for a non-governmental organisation, the Association of Female Lawyers in Central African Republic.¹²

11. In his statement, P-0491 describes: (i) [REDACTED] disappearing on 13 July 2013 while on his way to MBAIKI;¹³ (ii) hearing reports that dead bodies had washed up on the banks of river OUBANGI after an incident at the PK9 checkpoint;¹⁴ (iii) deciding to go look for [REDACTED] at the morgue;¹⁵ and (iv) identifying the body of [REDACTED] at the morgue.¹⁶ P-0491 states that a forensic doctor conducted a medical examination of [REDACTED] at the morgue.¹⁷ P-0491 provided a copy of this forensic medical report, which notes that NGOMBE's eyes had been punctured, and that he had been shot in the head.¹⁸

12. P-0491 was not present when the minibus passengers were arrested by the Seleka, but he relates the contemporaneous information he received about the PK9 Minibus Incident over the radio¹⁹ and from [REDACTED] (P-0529).²⁰ His account is

¹⁰ **P-0491**, CAR-OTP-2013-0678 at 0680, para. 13.

¹¹ *See, e.g.*, Pre-Confirmation Brief, ICC-01/14-01/21-155-Conf, 30 Aug. 2021, para. 64; **P-0491**, Annex 3, CAR-OTP-2013-0689 (official death certificate, recording that Jerome NGOMBE died on 13 July 2013); **Primature Report**: CAR-OTP-2101-1549.

¹² **P-0491**, CAR-OTP-2013-0678 at 0682, para. 28.

¹³ **P-0491**, CAR-OTP-2013-0678 at 0680-0681, paras. 13-15.

¹⁴ **P-0491**, CAR-OTP-2013-0678 at 0680-0681, paras. 14, 16.

¹⁵ **P-0491**, CAR-OTP-2013-0678 at 0681, para. 17.

¹⁶ **P-0491**, CAR-OTP-2013-0678 at 0681, para. 17.

¹⁷ **P-0491**, CAR-OTP-2013-0678 at 0681, para. 18.

¹⁸ **P-0491** (Annex 3 – forensic medical report), CAR-OTP-2013-0688.

¹⁹ **P-0491**, CAR-OTP-2013-0678 at 0681, para. 14.

²⁰ *See* **P-0491**, CAR-OTP-2013-0678 at 0680, para. 21.

consistent with that of other witnesses who recall that key details of the PK9 minibus incident were quickly reported over the radio.²¹

13. P-0491's prior recorded testimony consists of a single witness statement and its 9 annexes, all of which pertain directly to NGOMBE's death.²²

P-0510

14. P-0510 is [REDACTED] in the Central African Republic. In 2013, he was managing [REDACTED].²³ In July 2013, he sent [REDACTED] to the Oubangui river to take photographs of bodies that had been discovered floating there.²⁴ Four of these photographs are annexed to his statement, and they depict bodies floating in the river, with their feet clearly tied together and their arms apparently tied behind their back.²⁵ Two of the photographs show Catholic Archbishop NZAPALAINGA on the river bank near the floating bodies.²⁶ The witness believes that the floating bodies in the photographs were victims of the PK9 Minibus Incident.²⁷

15. The witness also annexed copies of some of [REDACTED] newspaper's articles from 2013. Of particular note are the articles from the latter part of 2013, reporting on allegations that the Seleka were imprisoning and mistreating people at the CEDAD.²⁸

²¹ See **P-0529**, CAR-OTP-2051-0159 at 0166, para. 43 (referring to radio reports about the discovery of bodies in the river); **P-0358**, CAR-OTP-2043-0433 at 0447, paras. 96-97 (referring to hearing radio reports about the arrest of minibus passengers for having BOZIZE shirts on-board; a few days later, bodies recovered from the Oubangui river arrived at the morgue).

²² See Annex A (A1) for the complete list.

²³ **P-0510**, CAR-OTP-2017-0835 at 0837, para. 12.

²⁴ **P-0510**, CAR-OTP-2017-0835 at 0852, para. 54 (Exhibit 15).

²⁵ **P-0510**, CAR-OTP-2017-0835 at 0852-0853, para. 54 (Exhibits 15-18); CAR-OTP-2017-0919; CAR-OTP-2017-0921.

²⁶ **P-0510**, CAR-OTP-2017-0835 at 0852, para. 54 (Exhibit 15); CAR-OTP-2017-0919; CAR-OTP-2017-0920; CAR-OTP-2017-0921; CAR-OTP-2017-0922.

²⁷ **P-0510**, CAR-OTP-2017-0835 at 0852-0853, para. 54 (Exhibits 15-18). P-0510's conclusion is supported by P-1808's evidence that the Archbishop was present on the day when bodies of PK9 minibus victims were removed from the Oubangui river. See *infra*, para. 27.

²⁸ **P-0510**, Annexes 4-6 (CAR-OTP-2017-0880, CAR-OTP-2017-0888, CAR-OTP-2017-0896).

This public reporting is relevant to the chapeau elements of the crimes against humanity charges in this case.

16. P-0510's prior recorded testimony consists of a single witness statement and certain annexes to his statement, including the above-described photographs of the floating bodies.²⁹

P-0529

17. P-0529, [REDACTED], is a witness relevant for the PK9 Minibus Incident. He was [REDACTED] of the minibus in question, and [REDACTED] were operating the minibus that day.³⁰ P-0529 identified the dead bodies of [REDACTED] at the morgue.³¹

18. In addition to his direct knowledge, P-0529 gathered real-time information about the PK9 Minibus Incident from many sources,³² ultimately giving him a [REDACTED]like perspective on the incident. Of particular note, P-0529 reports that: (i) on the day in question, [REDACTED] minibus was stopped and searched at the PK9 checkpoint;³³ (ii) during the search, the Seleka discovered a sack containing BOZIZE t-shirts;³⁴ (iii) the Seleka then decided to detain all the male passengers of the minibus—including [REDACTED];³⁵ and (iv) the detained men (a group of 8) were tortured³⁶ and eventually thrown into the river, where their dead bodies were eventually discovered by fishermen.³⁷

²⁹ See Annex A (A2) for the complete list.

³⁰ **P-0529**, CAR-OTP-2051-0159 at 0163, para. 22.

³¹ **P-0529**, CAR-OTP-2051-0159 at 0167, paras. 45-46.

³² P-0529 was not present during this incident, but he received contemporaneous information from eyewitnesses, including from people who saw the passengers tied up at the *gendarmie* near the PK9 checkpoint, and from Seleka commanders. **P-0529**, CAR-OTP-2051-0159 at 0163-0167, paras. 20-46, especially paras. 24, 28, 31-32, 34-38, 40-41, 43-45.

³³ **P-0529**, CAR-OTP-2051-0159 at 0164, para. 24.

³⁴ **P-0529**, CAR-OTP-2051-0159 at 0164, para. 24.

³⁵ **P-0529**, CAR-OTP-2051-0159 at 0164, para. 25.

³⁶ **P-0529**, CAR-OTP-2051-0159 at 0164, para. 25.

³⁷ **P-0529**, CAR-OTP-2051-0159 at 0167, para. 46.

19. P-0529's prior recorded testimony consists of his single witness statement.³⁸

P-0662

20. P-0662, a resident of [REDACTED],³⁹ is one of a number of victims of the CEDAD Incident. In mid-September 2013, while walking with his friends in Bangui, he was arrested by the Seleka and forcibly put in a Seleka vehicle.⁴⁰ From inside the vehicle, P-0662 saw Nouradine ADAM giving the Seleka a big bundle of hoods.⁴¹ The witness recognized ADAM straight away⁴² because he had previously seen ADAM, including during the Seleka's attacks on [REDACTED].⁴³ The Seleka who received the hoods from ADAM then placed them over the head of the witness and drove him to a place that he later learned was called the CEDAD.⁴⁴ Inside the cell in the CEDAD, the witness saw many detainees, including [REDACTED] (P-0664), whom the Prosecution proposes to call to testify *viva voce*.⁴⁵

21. Of particular note, P-0662 describes (i) the *modus operandi* of the Seleka's arrest operation, including the use of hoods and disorienting the detainees about the location of the CEDAD;⁴⁶ (ii) the deplorable detention conditions and beatings by the Seleka at the CEDAD;⁴⁷ (iii) the names and identities of his inmates and the estimated number of detainees in the cell;⁴⁸ and (iv) the detail of the interrogations by the Seleka, which is pertinent to the Seleka's policy to attack a civilian population in Bangui perceived to be BOZIZE supporters.⁴⁹

³⁸ See Annex A (A3).

³⁹ P-0662, CAR-OTP-2099-0336 at 0338, para. 15.

⁴⁰ P-0662, CAR-OTP-2099-0336 at 0343-0344, paras. 29-30.

⁴¹ P-0662, CAR-OTP-2099-0336 at 0345, para. 32.

⁴² P-0662, CAR-OTP-2099-0336 at 0345, para. 32.

⁴³ P-0662, CAR-OTP-2099-0336 at 0338-0343, paras. 15-27.

⁴⁴ P-0662, CAR-OTP-2099-0336 at 0345, 0350, paras. 33-34, 52.

⁴⁵ P-0662, CAR-OTP-2099-0336 at 0346, para. 37.

⁴⁶ P-0662, CAR-OTP-2099-0336 at 0345, paras. 33-34.

⁴⁷ P-0662, CAR-OTP-2099-0336 at 0345-0348, paras. 35-39, 43.

⁴⁸ P-0662, CAR-OTP-2099-0336 at 0346-0347, 0349-0350, paras. 37-39, 45-51.

⁴⁹ P-0662, CAR-OTP-2099-0336 at 0348-0349, paras. 42-44.

22. P-0662's prior recorded testimony is comprised of his single statement.⁵⁰

P-0882

23. P-0882 is [REDACTED] in the 7th arrondissement of Bangui.⁵¹ He describes the Seleka's attack on the 7th arrondissement on 13 April 2013.⁵² Of particular note, he (i) eye-witnessed the Seleka's killing of two civilians, one of whom was called "Michel;"⁵³ (ii) heard about the Seleka's attempt to murder P-0312⁵⁴ (a witness whom the Prosecution proposes to call to testify *viva voce*); and (iii) heard about their shooting of various other civilians.⁵⁵ He also provides general information about the Seleka's targeting of FACA and their family members in the 7th arrondissement,⁵⁶ which is relevant to the Seleka's policy of targeting a civilian population.

24. P-0882's prior recorded testimony consists of his single witness statement.⁵⁷

P-1808

25. P-1808 was a civilian resident of [REDACTED]t of Bangui,⁵⁸ who provides information about the Seleka's large scale attack on the 7th arrondissement in mid-April 2013.⁵⁹ P-1808 identifies several people who were killed by the Seleka during the attack; this included a professor and [REDACTED], whose bodies he later helped bury.⁶⁰

⁵⁰ See Annex A (A4) for the complete list.

⁵¹ **P-0882**, CAR-OTP-2032-0654 at 0657, para. 16.

⁵² **P-0882**, CAR-OTP-2032-0654 at 0660-0661, paras. 33-43.

⁵³ **P-0882**, CAR-OTP-2032-0654 at 0661, para. 38-40.

⁵⁴ **P-0882**, CAR-OTP-2032-0654 at 0660-0661, paras. 35-36.

⁵⁵ **P-0882**, CAR-OTP-2032-0654 at 0660-0661, paras. 34, 36, 42-43.

⁵⁶ **P-0882**, CAR-OTP-2032-0654 at 0659, para. 30.

⁵⁷ See Annex A (A5).

⁵⁸ **P-1808**, CAR-OTP-2135-2185 at 2187, para. 11.

⁵⁹ **P-1808**, CAR-OTP-2135-2185 at 2187-2188, paras. 12-15.

⁶⁰ **P-1808**, CAR-OTP-2135-2185 at 2187, para. 14.

26. P-1808 describes generally the *modus operandi* of the attack during which the Seleka conducted a door-to-door operation purportedly looking for FACA, while pillaging everything they could.⁶¹ P-1808 reports that the Seleka came to his house and fired threatening shots, insisting that he was a FACA and that he must identify the houses of FACA in the area.⁶² The Seleka elements left him alone only after his female neighbours and wife pleaded for his life, insisting that he was not a soldier and offering money to the Seleka to let him live.⁶³

27. P-1808's evidence is also relevant to the PK9 Minibus incident. The witness recalls an occasion on which he helped retrieve six human bodies found in the river [REDACTED], the Oubangui hotel.⁶⁴ The mother of one of the victims was present at the time, and explained to P-1808 that the Seleka had killed these people in relation to an incident where BOZIZE t-shirts were found in a vehicle.⁶⁵ According to P-1808, at least one body was tied *arbatachar* style and another had a bag on his head.⁶⁶ P-1808 states that [REDACTED] called Archbishop NZAPALAINGA to come to the scene.⁶⁷ According to him, after NZAPALAINGA had arrived, a Seleka vehicle from Camp de Roux also arrived. [REDACTED] these Seleka transport the bodies to the *Hôpital Communautaire*.⁶⁸

⁶¹ P-1808, CAR-OTP-2135-2185 at 2187, para. 13.

⁶² P-1808, CAR-OTP-2135-2185 at 2187-2188, para. 15.

⁶³ P-1808, CAR-OTP-2135-2185 at 2188, para. 15.

⁶⁴ P-1808, CAR-OTP-2135-2185 at 2189-2190, paras. 25-32.

⁶⁵ P-1808, CAR-OTP-2135-2185 at 2189-2190, paras. 27, 30.

⁶⁶ P-1808, CAR-OTP-2135-2185 at 2189, para. 27-28. This is consistent with the account of Seleka insider P-2573, who says he saw some of the PK9 Minibus Incident victims pushed into the Oubangui river with bags over their heads. See P-2573, CAR-OTP-2119-0532 at 0549, para. 71.

⁶⁷ P-1808, CAR-OTP-2135-2185 at 2189, paras. 26. This is consistent with the pictures provided by P-0510, which he believes were also linked to the PK9 incident, and which depict bodies floating in the river with Archbishop NZAPALAINGA and others in the frame. See *supra*, para. 14.

⁶⁸ P-1808, CAR-OTP-2135-2185 at 2190, para. 31. This is consistent with the accounts of P-0529 that [REDACTED]' bodies ended up at the morgue of this hospital, and *Hôpital Communautaire* morgue ledgers. See P-0529, CAR-OTP-2051-0159 at 0167, paras. 45 (referring to finding [REDACTED] at the morgue of the community hospital); CAR-OTP-2044-0573 (*Hôpital Communautaire* morgue ledger including the name of [REDACTED] at entry #359 along with other PK9 minibus victims); P-0491, Annex 3 (forensic medical report conducted on the corpse of [REDACTED] at the *Hôpital Communautaire*).

28. P-1808's prior recorded testimony is comprised of his single statement.⁶⁹

P-2386

29. P-2386 was [REDACTED] living in Bangui when the Seleka attacked the 7th arrondissement of Bangui in 2013.⁷⁰ P-2386 details the Seleka's attack on the 7th arrondissement on 13 April 2013.⁷¹ He saw the Seleka blocking a main road away from Bangui with armed Seleka and BG75 vehicles,⁷² suggesting a substantial level of coordination. He witnessed the Seleka killing his friend [REDACTED] by shooting him in the back,⁷³ saw an apparent mass execution of civilians,⁷⁴ heard about the Seleka's attempt to kill P-0312,⁷⁵ and reports hearing about the killing of four other men and a woman from his neighbourhood.⁷⁶

30. P-2386's prior recorded testimony includes his statement and four annexes.⁷⁷ One annex is a photograph taken during the funeral of [REDACTED].⁷⁸

C. The Prior Recorded Testimonies Have Sufficient Indicia of Reliability

31. The Prior Recorded Testimonies have the necessary indicia of reliability for introduction into evidence. All Seven Witnesses have signed their statements, attesting that their testimony was read back to them, was given voluntarily, and that

⁶⁹ See Annex A (A6).

⁷⁰ **P-2386**, CAR-OTP-2135-2792 at 2794, paras. 13-15.

⁷¹ **P-2386**, CAR-OTP-2135-2792 at 2798-2801, paras. 36-58.

⁷² **P-2386**, CAR-OTP-2135-2792 at 2798, para. 37.

⁷³ **P-2386**, CAR-OTP-2135-2792 at 2799-2800, paras. 42-50. P-2386's account of the killing of [REDACTED] is confirmed by two other witnesses, P-0312 and P-0882, and a complaint of his death filed with an NGO by [REDACTED] family member. See **P-0882**, CAR-OTP-2032-0654 at 0661, para. 38-40; **P-0312, Annex 7** at CAR-OTP-2039-0351 (No.12), **Annex 8** at CAR-OTP-2039-0353 (No. 13) and **Annex 10** at CAR-OTP-2039-0355 (No. 3); **NGO complaint**: CAR-OTP-2002-3562.

⁷⁴ **P-2386**, CAR-OTP-2135-2792 at 2799, paras. 38-41. On this point, see also the Human Rights Watch press release at CAR-OTP-2001-1759 at 1763 (referring to the Seleka's killing of approximately 18 persons on a bridge in the 7th arrondissement on 13 April 2013).

⁷⁵ **P-2386**, CAR-OTP-2135-2792 at 2801, paras. 57.

⁷⁶ **P-2386**, CAR-OTP-2135-2792 at 2800-2801, paras. 51-58.

⁷⁷ See Annex A (A7) for the complete list.

⁷⁸ CAR-OTP-2135-2818.

their contents were true to the best of their recollection of the events.⁷⁹ Where an interpreter was used, the witnesses confirmed that they read over the statement with the interpreter and confirmed its accuracy.⁸⁰ Their statements also bear the signature of an interpreter, certifying that each witness appeared to have heard and understood the translation.⁸¹

32. The statements of all Seven Witnesses are coherent and internally consistent. Furthermore, each witness mentions events that are corroborated by other evidence. Each witness generally distinguishes between information about which they have direct knowledge and information that they acquired from other sources. While there are small variations in the witnesses' recollection of the exact dates of certain incidents,⁸² such minor variations are to be expected given the circumstances and do not detract from the *prima facie* reliability of the witnesses' statements.

D. The Prior Recorded Testimonies Largely Relate to Background Information

33. The Prior Recorded Testimonies exclusively relate to background information that does not reflect on the central issues in this case. In particular, they pertain to background information relevant to the chapeau elements of the charges. They do not relate to Mr SAID specifically or the events at the OCRB, the core issue in this case. As such, they are especially appropriate for introduction in writing.

⁷⁹ **P-0491**, CAR-OTP-2013-0678 at 0684; **P-0510**, CAR-OTP-2017-0835 at 0858; **P-0529**, CAR-OTP-2041-0031 at 0042; **P-0662**, CAR-OTP-2099-0336 at 0357; **P-0882**, CAR-OTP-2032-0654 at 0673; **P-1808**, CAR-OTP-2135-2185 at 2192; **P-2386**, CAR-OTP-2135-2792 at 2804.

⁸⁰ **P-0491**, CAR-OTP-2013-0678 at 0684; **P-0510**, CAR-OTP-2017-0835 at 0858; **P-0662**, CAR-OTP-2099-0336 at 0357; **P-0882**, CAR-OTP-2032-0654 at 0673; **P-1808**, CAR-OTP-2135-2185 at 2192; **P-2386**, CAR-OTP-2135-2792 at 2804.

⁸¹ **P-0491**, CAR-OTP-2013-0678 at 0685; **P-0510**, CAR-OTP-2017-0835 at 0859; **P-0662**, CAR-OTP-2099-0336 at 0357; **P-0882**, CAR-OTP-2032-0654 at 0674; **P-1808**, CAR-OTP-2135-2185 at 2192; **P-2386**, CAR-OTP-2135-2792 at 2805.

⁸² For example, P-0529 believes that [REDACTED] and [REDACTED] minibus went missing on 12 July 2013 rather than 13 July 2013 (as most other sources indicate), while P-1808 recalls the 7th arrondissement attack occurring on 14 April 2013 rather than 13 April 2013 (as most other sources indicate).

E. The Prior Recorded Testimonies Are Cumulative to or Corroborative of Other Evidence, including that of Live Witnesses Who Can Be Cross-Examined by the Defence

34. The Prior Recorded Testimonies are cumulative to or corroborative of other evidence that will be given by witnesses who will testify live and can be cross-examined by the Defence. Of particular note, the Prosecution has selected witnesses to testify live specifically because of their evidence about one or more of the above-mentioned “additional incidents.” Specifically, the Prosecution proposes that the following witnesses testify live, in an abundance of caution, and despite their absence of information about Mr SAID or the OCRB, in order to remove any doubt that the Defence will have a sufficient opportunity to explore its themes in cross-examination.

- *For the 7th Arrondissement Attack (as a proposed full viva voce witness):* P-0312 [REDACTED] and an attempted murder victim during the 7th Arrondissement Attack);
- *For the CEDAD Incident (as a proposed full viva voce witness):* P-0664 (a victim of the Seleka crimes at the CEDAD who was detained for many weeks and identifies many of the other victims, including P-0662); and
- *For the PK9 Minibus Incident (as a proposed rule 68(3) witness):* P-2573 [REDACTED] who witnessed key parts of the PK9 Minibus Incident).

35. Other witnesses corroborate to some degree the information P-0662 gives about the CEDAD Incident and will be available to be cross-examined, including P-0291, P-0338, P-1167, P-2105, and P-2240.

36. The Prior Recorded Testimonies also corroborate the evidence of other witnesses whose evidence the Prosecution seeks to introduce via rule 68, including P-0881 (7th

arrondissement incident), P-0358 (PK9 minibus incident), P-0435 (CEDAD), P-1004 (CEDAD), P-0100 (CEDAD), and P-1420 (CEDAD). They also corroborate and are cumulative to other documentary evidence, including public reporting, complaints submitted by victims or their family members to NGOs, and documents produced by the government of the Central African Republic.⁸³

F. The Prior Recorded Testimonies Refer to Matters that are not Materially Disputed

37. As noted above, the Seven Witnesses are crime base witnesses who do not provide any linkage evidence to Mr SAID. The Prosecution submits that the *factual* allegations put forth by the Seven Witnesses are unlikely to be materially in dispute. Rather, any matters of significant dispute will circle around the *legal significance* or characterisation of those factual allegations, considered in the entirety of the evidence.

38. The Defence can explore its themes in this regard during cross-examination of the many other Prosecution witnesses who will give testimony live about the Seleka's attack on the civilian population perceived to support BOZIZE between at least April 2013 and at least November 2013. Furthermore, the Defence can develop this line of legal argument in its oral and written submissions in response to the Prosecution's case, or by calling its own witnesses.

⁸³ For PK9 Minibus Incident, *see, e.g.*, **UN report**: CAR-OTP-2055-1987 at 2114; **French intelligence notes**: CAR-OTP-2102-0614 at 0623-0624; **Morgue records**: CAR-OTP-2044-0573 at 0634 (listing the names of at least five victims); **CAR Primature report**: CAR-OTP-2101-1549; **Media article**: CAR-OTP-2008-0002; **Media article**: CAR-OTP-2001-3996; [REDACTED]: CAR-OTP-2005-0612 (complaint submitted by [REDACTED] about NGOMBE's death); **Victim Complaint from Relative**: CAR-OTP-2002-2105 (complaint submitted by NGOMBE's [REDACTED]); **CMDE**: CAR-OTP-2005-0949. For the 7th Arrondissement Incident, *see, e.g.*, **HRW Report**: CAR-OTP-2001-1759; **Media Article**: CAR-OTP-2088-2964; For the CEDAD Incident, *see, e.g.*, **Media Article**: CAR-OTP-2088-2689; **Media Article**: CAR-OTP-2088-2693; **UNCOI Report**: CAR-OTP-2053-0460.

G. The interests of justice would be served by introducing the Prior Recorded Testimonies

39. The introduction of the Prior Recorded Testimonies via rule 68(2)(b) also serves the interests of justice. The Prosecution has estimated it will require an average of 4 hours for its examination of each crime base or chapeau-related witness. Accordingly, granting the Request would result in a savings of approximately 28 hours of direct examination time, thereby expediting the proceedings.

40. Granting the Request would also reduce cumulative in-court testimony about the three chapeau-related incidents, which are relevant but not the central focus of the case. This would streamline the presentation of the evidence and ensure that the focus of the trial remains on the events at the OCRB. Furthermore, the Seven Witnesses would be saved the risk of potential re-traumatization related to revisiting difficult experiences,⁸⁴ and relieved of the disruption of having to travel to appear in court. Finally, the Court would save valuable resources that could be used for other purposes.

H. Introduction of the Prior Recorded Testimonies is not prejudicial to or inconsistent with the rights of the accused

41. Introducing the evidence of the Seven Witnesses under rule 68(2)(b) is not prejudicial to or inconsistent with the rights of Mr SAID. As noted above, this evidence

⁸⁴ See *Abd-al-Rahman*, First Decision on the Prosecution's request to introduce prior recorded testimonies under rule 68(3), ICC-02/05-01/20-559-Red, 20 Jan. 2022, para. 15 (referencing the factor of "prevent[ing] potential re-traumatisation of a vulnerable witness" when considering whether to allow the introduction of prior recorded testimony via rule 68(3); logically, the consideration is similarly applicable in relation to applications for the introduction of prior recorded testimony via rule 68(2)(b)).

is cumulative or corroborative of other evidence, and it provides background information that is relevant but not central to the core of the case.⁸⁵

42. The Defence is unrestricted in its ability to call evidence to rebut the assertions of the Seven Witnesses or to address any issues in the evidence in its oral or written submissions. Furthermore, as noted above, the Defence will also be able to cross-examine other Prosecution witnesses that will testify live before the Chamber about the same topics or incidents as those referred to by the Seven Witnesses.

43. In these circumstances, it is unnecessary that the Seven Witnesses be called to testify live, and examination by the parties may be dispensed of without prejudicing the rights of Mr SAID.

V. RELIEF SOUGHT

44. For the above reasons, the Prosecution requests the Chamber introduce into evidence the Prior Recorded Testimonies, as set out in Annex A to this filing, subject to the fulfilment of rules 68(2)(b)(ii) and (iii).



Karim A. A. Khan QC, Prosecutor

Dated this 24th day of May 2022

At The Hague, The Netherland

⁸⁵ *Al Hassan*, Decision on the introduction into evidence of P-0570's prior recorded testimony pursuant to rule 68(2)(c) of the Rules, ICC-01/12-01/18-1588-Red, 13 July 2021, para. 10 (noting factors that a Chamber may take into account in assessing potential impact on the Accused, including "whether the evidence provides background information or is central to core issues in the case" and "whether the evidence is cumulative or corroborative of other evidence").