

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **27 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 Fifth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)" ICC-01/14-01/21-321-Conf, dated 20 May 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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**REGISTRY**

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**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”),<sup>1</sup> the Directions on the Conduct of Proceedings (“Directions”)<sup>2</sup> 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 156 items of evidence from the bar table.<sup>3</sup> These items, which are set out in Annex A<sup>4</sup>, comprise material produced by the Forensic Services Section (“FSS”) of the Prosecution during two crime scene examinations of the OCRB and the CEDAD compound in Bangui, 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 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission confidential because it contains confidential information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

4. The items produced by FSS related to the crime scene examinations of the OCRB and the CEDAD compounds (“FSS OCRB evidence” and “FSS CEDAD evidence”

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<sup>1</sup> ICC-01/14-01/21-243.

<sup>2</sup> ICC-01/14-01/21-251.

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

<sup>4</sup> The Prosecution has not filed a request for page extension in this case as the relevance and probative value of the items is only set out in the cover filing, which does not exceed 12 pages.

respectively) 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 17 May 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.<sup>5</sup> On 19 May 2022, the Defence informed that they oppose the submission of this evidence at this point and will be in a position to develop the reasons for this position when they respond to the Prosecution’s submission.<sup>6</sup>

### **A. Background to the evidence**

5. The FSS OCRB evidence was produced as part of a crime scene examination on [REDACTED]. The scope of the mission was to describe the OCRB building and immediate vicinity, produce scans using a laser scanner, ground based video footage, and photographic images. Furthermore, the crime scene of the OCRB building and immediate vicinity was to be examined.<sup>7</sup>

6. The FSS CEDAD evidence was produced as part of a crime scene examination of the former CEDAD building and immediate vicinity which was conducted [REDACTED]. The scope of the mission was to describe the former CEDAD building and immediate vicinity, produce scans using a laser scanner, ground based video footage, and photographic images. Furthermore, the crime scene of the former CEDAD building and immediate vicinity was to be examined.<sup>8</sup>

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<sup>5</sup> Prosecution E-mail of 17 May 2022 at 10:16hrs.

<sup>6</sup> Defence E-Mail of 19 May 2022 at 14:16hrs.

<sup>7</sup> **FSS Report OCRB**: CAR-OTP-2118-3740 at 3749 (Eng); CAR-OTP-2062-0743 at 0751(Fr).

<sup>8</sup> **FSS Report CEDAD**: CAR-OTP-2118-3978 at 3988 (Eng); CAR-OTP-2058-0264 at 0274 (Fr).

7. The 156 items chosen from these above mentioned crime scene examinations are photos and videos, which have been disclosed and will be included on the Prosecution's List of Evidence.

## **B. The evidence is relevant to material issues at trial**

### *1. The FSS OCRB evidence*

8. The FSS OCRB evidence is directly relevant to issues at trial.<sup>9</sup> The photos and videos provide the Chamber and the Defence with a detailed view of the OCRB compound, including the main building<sup>10</sup>, the cells<sup>11</sup> and the entrances<sup>12</sup>. Thus, they are relevant to proving where the crimes were committed.

9. The photos and videos also corroborate the accounts of Prosecution witnesses such as P-0338, P-0787, P-1737, P-2161, P-2105, P-1167, P-2478, P-2563, P-0481 and P-0547, who will testify as to the layout of the compound, where Mr SAID's office was located, and what the cells looked like in 2013.

10. Finally, the images taken of the entrance to and the interior of the underground cell (or "hole")<sup>13</sup> are corroborative of the anticipated testimony of victims, who were detained therein by Mr SAID and his Seleka elements in 2013 (for example P-0547, P-2179, P-2400 and P-3064).

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<sup>9</sup> Items 1 to 108.

<sup>10</sup> Items 5, 24, 25, 26, 27, 46, 47, 48, 49, 50, 51, 52, 54, 55 to 62.

<sup>11</sup> Items 6 to 23, 29 to 45 and 70.

<sup>12</sup> Items 1, 2 and 4.

<sup>13</sup> Items 28, 29, 24, 28, 29, 67, 72, 73, 75, 78 and 79.

## 2. The FSS CEDAD evidence

11. The FSS CEDAD evidence is directly relevant to issues at trial. The photos provide the Chamber and the Defence with a full picture of the former CEDAD compound, including the cells<sup>14</sup> and the surrounding walls and entrance.<sup>15</sup>

12. While the CEDAD charges have not been confirmed, the Prosecution intends to rely on evidence regarding the creation and functioning of the CEDAD, including the arbitrary arrests and detentions at the compound from mid-September 2013 onwards, to prove that the charged crimes were committed as part of a widespread and systematic attack against a civilian population in Bangui at the time relevant to the charges. Evidence of attacks or criminal conduct can be put forward to support facts and circumstances in the charged time period, such as to establish contextual elements.<sup>16</sup> As such, the FSS CEDAD evidence has relevance to the confirmed charges.

13. The FSS CEDAD evidence also corroborates the anticipated testimony of Prosecution Witnesses P-2105, P-0664, and P-0662.

### C. The evidence is reliable and authentic

14. The 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.<sup>17</sup>

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<sup>14</sup> Items 113 to 128.

<sup>15</sup> Items 109 to 112.

<sup>16</sup> See ICC-02/04-01/15-T-85, pp. 7-8; ICC-02/04-01/15-1210, para. 10. See also ICC-11/04-02/06-968, paras 13-16.

<sup>17</sup> ICC-01/04-01/06-1399, paras 36-40; see also ICC-01/04-01/07-1665-Corr, para.98.

15. The items were obtained from an objective primary source, the FSS of the Prosecution. The items themselves provide the necessary *indicia* of authenticity and reliability. With respect to the chain of custody of the items, the images and videos were saved on digital carriers,<sup>18</sup> saved in a hard disk and submitted for registration by the FSS according to standard OTP procedure.

#### **D. Submission of the evidence does not cause prejudice**

16. 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. The Defence is also free to call its own witnesses or introduce other evidence to rebut the content of the items.

#### **IV. RELIEF SOUGHT**

17. For the above reasons and the analysis set out in Annex A, the Prosecution requests that the Chamber recognise the formal submission of the FSS OCRB and FSS CEDAD evidence.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 27<sup>th</sup> day of May 2022  
At The Hague, The Netherland

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<sup>18</sup> **FSS Report OCRB**, CAR-OTP-2118-3740 at 3763 (Eng); CAR-OTP-2062-0743 at 0765 (Fr); **FSS Report CEDAD**, CAR-OTP-2118-3978 at 3998; 4000 (Eng); CAR-OTP-2058-0274 at 0284-0285 (Fr).