

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Miatta Maria Samba, Judge María del Socorro Flores Liera and
6 Judge Sergio Gerardo Ugalde Godínez
7 Trial Hearing - Courtroom 1
8 Tuesday, 27 September 2022
9 (The hearing starts in open session at 9.30 a.m.)
10 THE COURT USHER: [9:30:50] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SAMBA: [9:31:20] Good morning, everyone.
14 Madam Court Officer, can you kindly mention the case.
15 THE COURT OFFICER: [9:31:27] Good morning, Madam President, your Honours.
16 This is the situation in the Central African Republic II, in the case of The Prosecutor
17 versus Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SAMBA: [9:31:46] Thank you very much.
20 Can I get representation, please.
21 Counsel, Prosecution.
22 MS MAKWAIA: [9:31:53] May it please the Court, appearing for the Prosecutor this
23 morning, myself, Holo Makwaia, senior trial attorney; Leonie von Braun, trial
24 attorney; Andreina Rodriguez, Brunhild Le Bailly, Lise Tamm, Vanessa Hernández,
25 Yuichiro Omori and Ramu Bittaye, they are all Prosecution counsels. Thank you.

1 PRESIDING JUDGE SAMBA: [9:32:17] Thank you very much.

2 Victims representative, please.

3 MS PELLET: [9:32:24] (Interpretation) Thank you very much, your Honour. The
4 victims are represented by Adeline Bedoucha, Tars Van Litsenborgh and myself,
5 Sarah Pellet, counsel, Office of Public Counsel for Victims.

6 PRESIDING JUDGE SAMBA: [9:32:42] Thank you very much.

7 Ms Naouri, your team, please. You and your team.

8 MS NAOURI: [9:32:48] (Interpretation) Thank you, your Honour. Beside me,
9 Professor Jacobs, Manon Lanselle, Mr Florian François-Jacquemin, and myself, I am
10 Jennifer Naouri, lead counsel representing Mr Said.

11 PRESIDING JUDGE SAMBA: [9:33:06] Thank you very much, Ms Naouri.

12 We're here today to listen to the opening speech by Defence counsel.

13 Ms Naouri, if you can be on your legs, please. I wish to remind you, Ms Naouri, that,
14 you know, you talk with less speed so that we help the interpreters and for us to get
15 an accurate record. Thank you very much.

16 You may start your speech, please.

17 MS NAOURI: [9:33:44] (Interpretation) Thank you, your Honour.

18 Madam President, your Honours, the guiding principle of international criminal
19 justice is the search for truth, the truth for all those who are affected by -- concerned
20 by the proceedings before this Court today, the people of the Central African
21 Republic. This duty of searching out the truth is -- lies first with the Prosecution, on
22 the basis of a narrative, that must be discussed fully and in an adversarial fashion
23 during the trial.

24 In this particular case, we still are asking the question, the question being: What is
25 this search for the truth?

1 In actual fact, the Prosecution trial brief just rehashes the pre-confirmation brief and
2 provides no answers, no responses to the shortcomings of its case.

3 The opening remarks of the Prosecution are a misrepresentation of their evidence and
4 they are attempting to cover up the weaknesses of their case.

5 The trial that begins today should be the opportunity to discuss the Prosecution's
6 vision in depth. In actual fact, never has the reality of what the Seleka covered been
7 discussed during an international trial. The existence or, more specifically, the
8 absence of an armed conflict between March and September 2013 has never
9 been -- has never been debated as part of an international trial. The operations of the
10 state in the Central African Republic under President Djotodia's transitional
11 government has never been discussed. The chaos and the criminality that prevailed
12 in the Central African Republic between March and September 2013 has never been
13 analysed.

14 And yet, Madam President, your Honours, when we review the Prosecution's case,
15 we must -- it is evident that it will not be possible to address these crucial issues
16 during the trial. And why is that?

17 Because the Prosecution has built its case on a biased and sketchy narrative, very far
18 from the reality of what actually happened in the Central African Republic at the
19 time.

20 Because the Prosecution is bringing before this Chamber incomplete evidence,
21 evidence that has not been corroborated, evidence full of hearsay, evidence that has
22 not been authenticated and that is lacking in reliability, evidence that has come out of
23 a poor investigation. In one word, weak evidence.

24 The Prosecution will not be calling witnesses who could tell us more and allow us to
25 come to decisions about these issues. The Prosecution has knowingly decided not to

1 call the people who are in a position to shed light on what happened for the Chamber.
2 The Prosecution has chosen not to call the relevant witnesses to avoid their thesis
3 being contradicted because the Prosecution is trying to ensure that its evidence is not
4 subjected to the adversarial process by requesting that more than 80 per cent of their
5 witnesses not be subjected to true questioning and cross-examination during a
6 hearing.

7 As I listened to the Prosecution yesterday, I had the impression that they seemed to
8 be in denial, denial of what their evidence truly covers, misrepresenting it and trying
9 to make the evidence say what it does not say.

10 One example: Witness P-0547 - this witness was mentioned several times by the
11 Prosecution - said the contrary of what you heard yesterday in previous statements
12 regarding the fact that detainees were not provided due process. P-0547 explained
13 that he was presented to the prosecutor of the republic at the time of his arrest and
14 that it was the prosecutor of the republic who ordered that he be released.

15 The Prosecution has told us that the order was apparently given not to inform his
16 friends or families, not to tell them where he was. Throughout all of his previous
17 statements, the witness has said that he did have contact with his family and he
18 received several visitors.

19 This same witness will also explain that he received care during his detention and he
20 had access to medication, contrary to what the Prosecution has told you.

21 The witness shall contradict what you have been told about the location about the
22 supposed underground cell because he did not at all say that it was under the alleged
23 office of Mr Said. As for the fact that there is no trace of the witness's recording, the
24 witness -- rather, the registration of the witness, the witness himself described his
25 arrival at the OCRB and being registered at that time.

1 These examples illustrate the Prosecution's approach. They are willing to twist the
2 words of their own witnesses for the requirements of their case.

3 But things are not as simple as all that, and this is what the trial shall demonstrate.

4 If one looks at the true case of the Prosecution, not the twisted, misrepresented,
5 simplistic version that they presented to you yesterday, we will realise that we have
6 made no progress today in comparison to yesterday, and thus, we will be no further
7 ahead once the trial comes to a close.

8 During the trial we shall demonstrate that the Prosecution's theses are very far from
9 the reality of the Central African Republic and their entire -- their entire case is built
10 on sand, on false premises, on preconceived notions and on historical, cultural and
11 political, how shall I put this, lumping things together that -- comparing apples and
12 oranges.

13 The demonstration of the Prosecution is based on two postulates. First of all, the
14 affirmation that the Seleka exists as an organised, hierarchical and structured group
15 able to respond to a chain of command. Furthermore, on the other hand, that
16 President Djotodia's transitional government was, in actual fact, a structure according
17 to it, Seleka -- and this was in purpose that -- and that they deliberately entertain this
18 confusion between what the Seleka was and what the government allegedly was.

19 On the basis of these two postulates, the Prosecution claims that a non-international
20 armed conflict raged in the Central African Republic between March and
21 September 2013, opposing an organised and hierarchical Seleka against the so-called
22 pro-Bozize forces.

23 Secondly, the Prosecution claims that all state structures, including the OCRB, were
24 bases for the Seleka and thus instruments of a so-called Seleka policy. We shall
25 demonstrate during the trial to what extent the Prosecution has taken the easy way

1 out, they have simplified things, thus misinterpreting the events they have discussed.
2 We shall also show how the Prosecution has ignored the context in which a number of
3 political civilian armed groups came together to form ephemeral groups and this has
4 led the Prosecution into error.

5 For all specialists, experts who are knowledgeable about the CAR, the creation of
6 these civilian/political armed groups ever since the early -- the beginning of the years
7 2000, the creation of these groups was motivated, above all, by local economic
8 interests. These were opportunistic groups that gradually came to be considered by
9 observers as rebellions and in the year 2012 ultimately formed a temporary coalition.

10 What has the Prosecution told us about these groups? Nothing. Today the
11 Prosecution, as was the case during the confirmation of charges hearing, has merely
12 said in a very inaccurate fashion, and I quote from its brief, paragraph 14, "Appearing
13 between mid 2012 and late 2012, the Seleka is a coalition bringing together several
14 political factions and armed groups that up until now were not coordinating their
15 activities." Then they specify the three main groups.

16 Then the Prosecution takes a sudden inexplicable jump in time, in the following
17 paragraph, suddenly situating the arrival of some of these groups in Bangui in
18 March 2013. This is a glaring shortcoming of their case. No demonstration in their
19 pre-confirmation brief, no demonstration during the confirmation of charges hearings
20 and still no demonstration today.

21 What did the Prosecution do yesterday? They attempt to cover up this lack of
22 demonstration and the lack of evidence by showing you four photographs, four
23 photographs of people wearing camouflage uniforms and a pickup truck. All of
24 these photos are open source and we have no idea what the actual source of these
25 photographs was. This means that the Prosecution has provided no information that

1 would allow us to date these photos or even caption them. Above all, these
2 photographs are the only way that the Prosecution can demonstrate the existence of a
3 coalition before March 2013.

4 This is not serious. Showing a photograph of a few jeeps and some people wearing
5 military camo uniforms, this cannot replace a true factual and legal demonstration
6 before the International Criminal Court.

7 Yesterday, we heard mention of the anti-Bozize forces and the Anti-Balaka. The
8 Prosecution gave a long presentation concerning these armed groups. Yet this is not
9 the Yekatom and Ngaïssona trial. Why did they not explain who the Seleka might
10 have been? Why did the Prosecution not even attempt to discuss the creation of the
11 Seleka? Why has the Prosecution been so quiet, so low key when it comes to
12 explaining which groups apparently made up the Seleka? Why did the Prosecution
13 not explain what the structure of the group was, the command structure? How were
14 orders passed down? To whom? How did the chains of command work?

15 By choosing to ignore these elements, the Prosecution can ignore the large number of
16 groups, the internal power struggles within these groups and does not need to be
17 confronted with the fact that these groups were at the very best a nebula of
18 malcontents from President Bozize's government. Thus, to sidestep this barrier, the
19 Prosecution has thought it better to presuppose the existence of the coalition.

20 But before these irrefutable facts, the entire demonstration of the Prosecution shall
21 crumble during the trial. The supposed or presupposed Seleka did not exist as an
22 organised and structured group. It was not an organised or structured group and
23 thus it cannot have been a party to an armed conflict, and it could not have
24 transformed itself into a state structure.

25 During the confirmation of charges hearing, we have already demonstrated that there

1 was no armed conflict between March and September 2013. The literature is
2 unanimous, the reports from the experts are quite clear. The armed conflict in the
3 Central African Republic started, at the very best, as of September 2013.
4 Before that date, there were internal disturbances and internal tension within the CAR
5 that occasionally gave rise to isolated and sporadic acts of violence.
6 And what is the Prosecution now doing? They continue to ignore all these sources
7 and they are sticking to a position that no one, not the UN, not the International
8 Committee of the Red Cross, not the NGOs, not experts in international humanitarian
9 law, they are sticking to a position that no one held in 2013 and which no one holds
10 today, nearly 10 years later.
11 Facts are stubborn things and during the trial it shall be demonstrated that nothing
12 allows one to describe the events as a non-international armed conflict. By ignoring
13 this unanimous view from all those who have examined the situation and concluded
14 that there was no non-international armed conflict in the Central African Republic in
15 March 2013, the Prosecution is saying that Mr Said should have known that there was
16 a CANI, C-A-N-I, at that time. That makes no sense, trying to attribute to Mr Said
17 the knowledge of a conflict that no one had identified at the time and not up until
18 now either.
19 Furthermore, as we listened to the Prosecution yesterday, we remarked that the only
20 date that has been specified when it comes to the armed conflict is September 2013.
21 In the absence of an armed conflict between March and September 2013, the period of
22 the charges, there simply was no war crime during that period. All allegations of
23 war crimes against Mr Said must thus be dismissed.
24 And now let us turn to the allegation of crimes against humanity being committed.
25 In this regard, it is necessary to take a look at the transitional government of

1 President Djotodia. It should be noted that in an incomprehensible effort by the
2 Prosecution to attempt to prove that there was a policy allegedly set by the Seleka and
3 carried out by the Seleka, both the Seleka and state structures, the Prosecution relies
4 on this notion that the Seleka was apparently the state. The proof, according to the
5 Prosecution, is the order of appointment from President Djotodia, which speaks to the
6 appointment of former Seleka members to ministerial positions, thus strengthening
7 the position of former Seleka leaders, who, according to the Prosecution, were
8 devoted and listened to his orders. Yet the Prosecution has decided not to call the
9 senior officials who could shed light on what really happened.

10 The Prosecution is unable to demonstrate that the Seleka coalition continued and the
11 Prosecution is even less capable of showing that this former coalition was absorbed
12 into the structure of the state.

13 On the contrary, what we see from the Prosecution's evidence is that there has -- that
14 there was an attempt to establish a national unity government made up of 34
15 ministers, only 9 of whom were officially affiliated to the Seleka.

16 On the contrary, the Prosecution's evidence demonstrates that there was a situation of
17 criminality, extreme criminality and there was a state that could not deal with the
18 situation, they did not have the necessary resources, yet all the same, the state
19 attempted to operate. That is the framework within which the OCRB was
20 attempting to operate, as a state structure.

21 First and foremost, the OCRB was a police station that had to take action during a
22 period of time marked by high levels of crime and delinquency. This office was
23 extremely short-staffed. The OCRB was created with the help of French cooperation
24 in the 1980s and has been part of the state since then. Furthermore, right from the
25 very beginning, Commissioner Mazangue was in charge of it.

1 But what has the Prosecution said? They are saying that the OCRB was a torture
2 centre that was designed as such to propagate terror and suffering. And I'm quoting
3 from page 21 of the French transcript.

4 But this is completely disassociated from reality. This office is a building built by the
5 French to shelter a police station. This was a police station, a place where police
6 officers work and where they carry out their duties, namely, ensuring public order,
7 enforcing the law. This means that usually in all countries within a police station,
8 one finds offices for the staff, police vehicles, provisional detention centres,
9 questioning rooms and rooms where records are kept.

10 So the places that were shown to you in the photographs, these places, this is a police
11 station. This is a place where there were cells, places for supplies, equipment and so
12 on and so forth. We should remember that these photographs that we saw were not
13 taken in 2013 and are not representative of the building in 2013, but they are indeed
14 the kind of photographs you would expect to see of a police station.

15 Just imagine in the city where you live, the police station is completely open without
16 any cells, without any guards, a place where people being held could escape at any
17 time. And yet this is what the Prosecution has said yesterday, they were surprised
18 that there were walls around a police station to keep detained people from getting
19 away. They were surprised that there were guards.

20 It's also just as surprising to hear the Prosecution say that the OCRB was a place that
21 was shut off from the exterior world, yet the information at their disposal shows the
22 contrary. The accounts given by the witnesses show that families could visit them.
23 The accounts of the witnessed mention that they received care. The accounts of the
24 witnesses also show that the prosecutor of the republic regularly went to the OCRB.
25 And we should recall that the prosecutor of the republic of the day is now the

1 prosecutor of the Special Criminal Court in Bangui, the court that the Prosecution
2 boasted it was cooperating with within the framework of complementarity. So why
3 not call the prosecutor?

4 Furthermore, the evidence reveals as well, well, the evidence of the Prosecution that
5 they have in their possession and choose not to use is that the OCRB was an open
6 place and representatives of the Red Cross regularly went there, as well as
7 representatives of French authorities.

8 For example, one French soldier said, and I quote: "Most of the time the detainees
9 were free within the enclosure. Only the very dangerous people were detained. I
10 rarely saw people shut up in these places that were used as cells."

11 One Prosecution witness, P-1737, shall also say this, and I quote: "From time to time,
12 the French, the representatives of the European Union, the Red Cross or human rights
13 organisations came to the OCRB to monitor their operations and see how the
14 prisoners were. They wanted to see how they could come and help us. We were
15 not well-equipped, for instance, we had no computer." End of quote. And this is
16 from paragraph 34 of the witness's earlier statement.

17 The Prosecution witnesses themselves have indicated that in the OCRB it was usual
18 practice to know what the offences and the crimes were and that the detainees were
19 common law criminals and people who claimed to be Seleka members, they claimed
20 that they were part of the Seleka who had been arrested by OCRB elements. The
21 Prosecution has not said a single word about that. Once again, a misrepresentation
22 of the evidence has been put to you.

23 Why postulate that anyone who has gone to a police station is a victim? The
24 evidence reveals that the OCRB was a state organisation under the authority of the
25 police directorate and the department of security that respected the jurisdictional

1 process and was overseen by the prosecutor of the republic.

2 The documents that exist appointing Mazangue and then Mallo to the position of the
3 director, they exist, but not a word from the Prosecution. The Prosecution sees the
4 existence of volunteers, such as Mr Said, at the OCRB, who cooperated with
5 Mazangue, the director of the OCRB, as proof that it was a Seleka base. But this is
6 not a revelation. Senior officials of the state said that there was an extreme shortage
7 of staff and the FACA and other qualified people had fled and it was not until
8 August 2013 before some of them came back and took up their duties again. That is
9 why it was necessary to be realistic and accept the help of volunteers to try to do
10 something about the growing crime in Bangui, while at the same time hoping to train
11 these people. This realistic attitude allows us to understand the structural problems
12 that the OCRB faced.

13 And the Prosecution's problem is a simple one. The Prosecution cannot prove that
14 the OCRB was a so-called Seleka base with a hierarchical structure in which Mr Said
15 played a role. The Prosecution cannot prove that there was any organisation, so they
16 tried to sidestep this problem. And how did they do that? First of all, by focusing
17 on the excesses that allegedly occurred at the OCRB and, secondly, by presupposing
18 that Mr Said played a leadership role so as to -- with a view to covering up the lack of
19 proof concerning Mr Said's responsibility.

20 But the Prosecution's case will not hold up during the trial because the Prosecution's
21 evidence shows that the OCRB was a dysfunctional place without any structure, and
22 thus, it cannot be presupposed that Mr Said was on a *de facto* basis responsible for
23 everything that happened there, particularly since the evidence reveals that many
24 people were there taking action on a personal basis. Many witnesses have said that
25 it was not possible to determine who was in charge at the OCRB.

1 But the Prosecution preferred to drop one particular witness, P-0234, someone who
2 was in a very good position and fully in a position to know. He said this: "Ask me
3 who was in charge of the OCRB. That's difficult to say, because it was always
4 changing."

5 The reality is that the OCRB was completely disorganised. No one could be
6 identified as being in charge. And it was impossible for Mr Said, a volunteer, trying
7 to help Mazangue, it's impossible to hold him responsible for what other people may
8 have done.

9 If you allow, one word about the state policy.

10 The Prosecution has not attempted at any time to establish that there was a state
11 policy, and yet, one cannot look at the events that occurred at the OCRB within the
12 framework of the legal characterisation of a crime against humanity unless the
13 Prosecution has previously established that there was a state policy, a state policy
14 within which the OCRB operated.

15 Did the Prosecution have useful information to determine whether or not there was a
16 state policy? The Prosecution certainly did. In actual fact, at the confirmation of
17 charges hearing the representatives of the Prosecution said in open court in response
18 to a query from the Defence, who made a comment about the shortcomings of the
19 Prosecution's investigations, particularly the fact that certain key witnesses were
20 lacking to understand the crisis, their answer was this, and I quote: "The other
21 witnesses referred to by the Defence were also interviewed and included in the
22 broader context of the conflict."

23 In other words, the Prosecution publicly conceded that they questioned some key
24 witnesses to understand the crisis, but they did not draw the appropriate conclusions.
25 Today the Prosecution has gone even further, dropping the few witnesses that would

1 have been in a position to shed light on what really happened during the crisis:

2 P-0234, P-0964 and Witness P-0413.

3 Why is the Prosecution not using this information at trial? To continue ignoring the
4 parts of the statements that allow one to come to a true decision about the whole issue
5 of a state policy.

6 Why set aside the relevant and actually crucial testimony of certain witnesses who
7 were met with, such as P-1019? As we have already said back in October, these
8 witnesses were supposed to have been part of the state policy, a policy that should
9 have -- that allowed the Prosecution to establish a crime against humanity on the part
10 of Mr Said. If that was the case, those witnesses were then players within this
11 government policy and should be brought to justice.

12 Despite the requests from -- the request made publicly in October, the Prosecution
13 maintains its position that the statements given by leading players during the crisis
14 were not sufficient to support Prosecution since none of them was worried, with the
15 exception of Nouradine Adam, for whom there is a public arrest warrant.

16 So now we ask this: What about the others? Why not call the senior officials?

17 Would it be a way of avoiding an erroneous account of recent history of the CAR,
18 thus avoiding validation of this narrative of those who are still in power or who are
19 working for the new government? In other words, there is not enough information
20 to establish a state policy in this case, our case.

21 And as for the allegation of a crime against humanity by Mr Said, this allegation
22 drops by the wayside because the events that he has been charged with must be part
23 of the state policy during the presidency of Michel Djotodia. If these witnesses are
24 not concerned, then Mr Said should be even less concerned.

25 The Defence said in public in October 2021, and this is still true today, the Prosecution

1 must be consistent. They cannot argue one thing, the existence of a crime against
2 humanity that supposed the existence of a state policy, and then argue the contrary,
3 that it is not necessary to take into consideration the statements or testimony from
4 senior political officials to establish a state policy.

5 In the absence of a Seleka structure after March 2013 and in the absence of a Seleka
6 policy or a state policy, any and all allegations of crimes against humanity on the part
7 of Mr Said must fall by the wayside.

8 Your Honours, Madam President, will the Prosecution's case bring us closer to the
9 truth? Obviously, no. In actual fact, we are farther away from the reality because
10 what you are being told is nothing but a fantasy. The account of the Prosecution
11 hides the complexity of the society of the Central African Republic. The Central
12 African Republic is a country about which African specialists say that its destiny was
13 stolen. Today it is your task to understand the events that the Prosecution is asking
14 you to rely upon.

15 The history of the country is essential because this is a history of people who have
16 been left to their own devices, left to make it on their own in a country where the state
17 seems to have lost its institutional capacities, ever since the 1980s, thus keeping it
18 from being functional and ensuring safety on its territory.

19 So what does this mean for the administration of the Central African Republic? One
20 must understand that contrary to the presupposition of the Prosecution that there is a
21 government in the Central African Republic that administers the entire land, in actual
22 fact, in the CAR there is no unified territory.

23 In actual fact, the Central African Republic is fragmented. It is fragmented because
24 of the existence of a capital, Bangui, where all the resources of the country are
25 centralised and where successive leaders attempt to govern by what seems similar to

1 attempts to establish state administrative structures. And then we have the existence
2 of the hinterland, which is prey to bandits throughout the region, throughout the
3 entire region and where constant danger prevails.

4 This is the reality of the hinterland in the Central African Republic. This is the key to
5 understand the events that occurred during the period of charges between 2012 and
6 the late 2013.

7 The hinterland, the victim of bandits of the subregion, left to its own devices, this is
8 where the various groups emerged that were fighting for access to resources.

9 Gradually, and we have seen this since the beginning of the years 2000, more and
10 more of these groups emerged led by people who became more and more well known,
11 hoping to take part in various negotiations with government officials and thus
12 making a place for themselves politically. These groups constantly quarrelled.

13 Some would sporadically rally with the armed forces, others would clash, others
14 would oppose the government.

15 When one listens to the Prosecution, it is impossible to understand the context within
16 which the events occurred, the events that they are asking you, the Chamber, to rule
17 upon. They have not said a single word about the difficulties that the CAR has had
18 in its attempt to build a functional state.

19 Not a single word about the ten years of Francois Bozize's presidency marked by
20 serious human rights violations.

21 Not a single word about the difficulties about the people living in the hinterland, left
22 to their own devices, facing the consequences of conflicts in neighbouring countries,
23 Chad, Sudan, and victims of all kinds of common law crime.

24 Not a single word about the reasons leading to the creation of self-defence groups in
25 the hinterland.

1 Not a single word about the composition of these groups, not a single word about
2 internal power struggles within these groups and how they evolved within the
3 political landscape of the Central African Republic.
4 Not a single word about the alliances within these groups, the breakups within these
5 groups that kept any kind of structure, hierarchy, organisation from emerging.
6 Not a single word about the reasons why these groups would temporarily come
7 together and form an alliance.
8 Not a single word about how these groups went down to Bangui in March 2013.
9 Not a word about how these groups splintered when they got to Bangui.
10 Not a single word about the attempt to establish a national unity government with the
11 support of the international community, particularly the United Nations Security
12 Council.
13 Not a word about the chaos that reigned in Bangui and the rise in common law crime
14 as of March 2013.
15 And not a word about attempts to establish a functional government that could try to
16 stem the growing wave of crime.
17 How can one understand the events and how they unfolded when the Prosecution
18 says nothing about the origins of the main protagonists, about the true context?
19 How can you come to a decision about the responsibility of the protagonists if no
20 information is provided to you?
21 And this particular specific point of view of a country divided between the capital
22 and the hinterland, a country dealing with external and internal forces that made it
23 impossible to build a functional state that would fulfil the state functions that it must
24 fulfil, how can one understand the reality that we hear about in the accounts of the
25 witnesses who shall come to share their experiences with you?

1 How can one understand the Central African Republic, its ins and outs, without
2 having an in-depth look at the true reasons for the crisis? This is really
3 counterproductive to justice.

4 The reality is there right before us and it is the noble and essential task of the
5 Chamber to reveal it.

6 What proves the complexity of the events is what has been in the past 20 years in the
7 CAR, the many existing judicial proceedings under way concerning the events that
8 occurred, in particular, the creation of a special criminal court and the large number
9 of cases that have come before the ICC regarding the situation.

10 Thus, it is our task, in a complex context, to make a clear distinction between events
11 that are within the jurisdiction of international criminal courts and those who fall
12 within the realm of common law.

13 It is our task to give the people of the Central African Republic the opportunity to
14 take control of their destiny. And the trial is a procedural moment to refuse to
15 follow the Prosecution which is attempting to prosecute events, crimes that do not fall
16 within their jurisdiction of international criminal courts.

17 It is up to you, Madam President, your Honours, it is your task to remind everyone
18 that there can be no justice without the truth. The burden of proof reposes upon the
19 shoulders of the Prosecution, not the Defence. The Prosecution talks. We look at
20 the facts, the facts that stem from the reality, and the reality is there before you. Take
21 this into account, come to the appropriate consequences and at the end of this trial,
22 recognise the innocence of Mr Said.

23 Thank you very much, Madam President, for your attention, and the Defence will
24 continue its presentation with a presentation by Professor Jacobs. Thank you.

25 PRESIDING JUDGE SAMBA: [10:23:27] Thank you very much, Ms Naouri.

1 Professor Jacobs, please.

2 MR JACOBS: [10:24:26] (Interpretation) Madam President, your Honours, what this
3 trial is going to show and what we're going to prove in the present is that the
4 Prosecution has constructed their case on two fragile and inadequate columns. The
5 first is a narrative construction which is far removed from the reality as regards what
6 happened in the Central African Republic in 2012 and '13. The Prosecution has put
7 forward postulates and presumptions which it shows as acquired but never proves.
8 This starting point is factually incorrect and has the consequence that all the narrative
9 construction of the Prosecution will collapse as a domino effect. And we're going to
10 show this in our opening statement.

11 Before that, allow me to highlight this second inadequate column of the case of the
12 Prosecution, that is the weakness of their evidence. The Prosecution, despite years of
13 investigation, disclosed to the Defence that it's going to put before the Chamber
14 indirect evidence, evidence made up of hearsay, evidence filled with
15 non-corroborated affirmations, evidence where the Prosecution never bothered to
16 check the authenticity and reliability during an inadequate investigation. And that
17 is what we are going to argue now.

18 Let us start with the investigation of the Prosecution. Firstly, we have noticed that,
19 despite the large volume of evidence disclosed by the Prosecution, they did not obtain
20 all the useful elements of important protagonists relating to the crisis who were there
21 present at the moment of the facts and who should have crucial information in order
22 to fully understand what happened in Bangui in 2012 and '13.

23 Furthermore, despite eight years of investigations, Prosecution will only present to
24 the Chamber very few elements of evidence coming from the Central African
25 authorities, and this despite the fact that the Prosecution alleges that there was a state

1 policy that was carried out for over a year between 2012 and '13. We will note that
2 not a single document, not a single document proves the existence of a state policy as
3 is alleged by the Prosecution. It is important to understand fully from right now
4 what this implies. The Prosecution does not have any documentary evidence
5 coming from the state to support its allegations. And there is a continual discussion
6 against its own evidence by trying to make it enter in its imaginary vision of reality.
7 Similarly, the Prosecution only presents scant evidence to make you understand the
8 role of France during the period in question. Yet, even if the Prosecution doesn't talk
9 about it once, not even once in its submissions, you should just look at the file for five
10 minutes to realise that to understand the role of France is vital to assess the events
11 that are contained in the charges. In particular, because the OCRB was set up by the
12 French authorities and during this period in question, official French representatives,
13 namely the gendarme, frequently interacted with civilian and military representatives
14 of Central African Republic.
15 Similarly, despite the continuous presence of different United Nations organisations
16 in CAR, there is the absence of evidence in the submissions which is startling. Yet,
17 you can see from the file that the United Nations bodies also interacted with civilian
18 and military officials of the Central African Republic of all grades or all rankings.
19 In these conditions, we note that the case of the Prosecution is incomplete and
20 fragmented because there are many evidence that are not there and are vital for
21 counting what happened during the crisis. To have a trial on a file that is so lacking
22 means that you will not be able to see the essential and thereby draw conclusions on
23 the basis of incomplete and biased information which is not sufficiently serious
24 because of the investigations of the Prosecution.
25 Of two things, one, either these elements of evidence exist and the Prosecution should

1 never have started the trial without using them because it is in their -- it is an
2 incomplete file, or this evidence does not exist and the Prosecution should never have
3 started this trial without having the evidence to prove its allegations.

4 Now, as regards the investigation, the Prosecution, during its investigations, obtained
5 a volume of evidence. Yet, despite this volume, when looking at it and analysing it,
6 the following is quite clear: The Prosecution did not follow its basic requirements to
7 be neutral and independent to determine the reliability and authenticity of
8 information it obtained.

9 To prove this point, let me use the following example, the mission by the
10 investigators with the authorities in the Central African Republic. What was the
11 outcome of these missions and the investigation report -- the Prosecution almost
12 quasi-systematically relied on these spokesmen from the Central African Republic for
13 the selection of the relevant documents.

14 The reports show that the investigators looked at the same spokespeople without
15 carrying out an independent inquiry. They did this blindly, having faith in the
16 spokesman in the country to select their people that they would investigate. They
17 sometimes sent investigators, sometimes didn't even speak French, to collect
18 documents which they couldn't even read or understand. How can you have
19 investigators who don't speak French? How could they proceed to have
20 independent, autonomous inquiries on documents which they simply did not
21 understand?

22 Similarly, it often appeared that the investigators didn't have access, direct access to
23 the archives and contented themselves to accept the documents that had been
24 preselected by the people on the ground.

25 The reports also don't say anything about the authors of the documents. It is never

1 indicated that the investigators spoke to the spokesmen on the ground about the
2 content of the document in order to know the conditions of their creations, et cetera.
3 There again, it seems that the investigators believed the word of the local spokesmen
4 as regards the authenticity of the document without carrying out any further tests.
5 What you also don't find in the investigation is useful information as how the
6 document was physically stored between 2013 and the moment when they were
7 collected. Here, this is crucial information, especially since the Prosecution's
8 evidence show that there was a lot of looting of those institutions that took place in
9 that vital period, which means there's the possibility not only that several documents
10 had been destroyed, but also manipulation of those very documents and the
11 possibility of creating fraudulent or false documents.
12 The approach of the Prosecution is inadequate because of the procedure used to
13 document the various steps undertaken during the mission. Therefore, we note that
14 the majority of the investigation reports are written months, even years after the visits,
15 three, four, six, even seven years after the mission.
16 The Prosecution has not explained why so much time was passed between the
17 missions and the reports.
18 It's not possible to correct years later the parts that were forgotten by the OTP which
19 was drafted by contemporary colleagues because their investigation was in a position
20 to justify in a particular context, for example, that of a trial, the way in which the
21 mission of collecting the information took about and was therefore in a position to
22 answer to the expectations created by this exercise, which has a direct impact on the
23 scope of the report. To be clear, a report drafted many years later which took place
24 in a different phase of the procedure, for example, when a trial is already under way,
25 creates the risk that the report is drafted for the needs of that particular cause, which

1 could create a bias as regards the sincerity of the context -- of the content.

2 I move to the next point which relates to corroboration or lack of corroboration.

3 It is a cardinal principle of all legal demonstrations, "*testis unus, testis nullus*". In

4 other words, a single witness is not enough to show anything and even less to

5 condemn an individual. This principle is not a new one. It finds its origin in the

6 Old Testament.

7 There cannot be a condemnation in a system and a fair equitable justice without

8 having evidence corroborated. Yet, what this trial has showed is this laxist approach

9 adopted by the Prosecution in the field of corroboration. We have noticed that

10 several allegations, a large number of allegations of the -- of the Prosecution have not

11 been corroborated, which once again, raises serious questions on the solidity of the

12 case put forward by the Prosecution.

13 For example, 536 footnotes on the page of the Prosecution submissions, that is to say

14 almost half, are only from one source, be it documentary or testimonial. What does

15 this mean? That means 536 footnotes are linked to as many affirmations in the

16 Prosecution's submissions and that they have not been corroborated; 536 affirmations

17 where the Prosecution could only find a single source despite the years of

18 investigation.

19 Another striking example, more than a quarter of the alleged incidents in the OCRB

20 are based on the declarations of a single witness. In other words, the methods used

21 by the Prosecution based its arguments on the narrative of a single witness concerned

22 by the incident which, according to him, was the alleged victim. Such an approach is

23 very revealing of the weakness of the evidence provided by the Prosecution who are

24 not in a position to corroborate the witness's statement with other evidence. More

25 specifically for the incidents (c), (e), (f), (l) and (n).

1 The Prosecution only refers to a single witness or testimony of the person concerned.
2 For other incidents, the Prosecution refers quasi-exclusively to the declarations or
3 statements made by a single witness and only refers to other witnesses for accessory
4 questions without link to the incident itself.
5 For example, relating to incident (p), Prosecution refers almost exclusively to the
6 declarations of P-2179, alleged victim of the incident. And if they mention to
7 other -- or one, sorry, single other witness, it's for an ancillary element which has
8 nothing to do with the incident itself.
9 Another example which shows the weakness of this exercise, 0481 is the single
10 witness for incident (f) where, according to him, he was responsible for the harm and
11 death of three individuals, without other evidence upholding these statements. On
12 this point, it is interesting to note that the Prosecution, aware of the weakness of their
13 evidence, indicated in a footnote in its pre-trial brief as regards the non-corroborated
14 elements of P-481, and I quote, and this is the footnote of the page of the trial brief:
15 "This event is not the subject of accusation of murder which is -- which constitutes a
16 war crime and crime against humanity because no human remains proved that they
17 really -- that they really passed away have been discovered. The names of the
18 victims is still unknown to this day. It's not reasonable, envisageable or possible that
19 an in-depth inquiry takes place on this fact which would allow us to have further
20 evidence." This is what the Prosecution states in the footnote 344 -- 364.
21 But if, according to the Prosecution itself, the witness can't believe as regards the
22 alleged death of these three individuals, how can we believe the words as regards all
23 the other elements stated by that witness as regards what happened to them?
24 In some cases not only the Prosecution relies on a single witness, but still they do not
25 wish to call them to appear before you. That is the case, for example, of P-0622 and

1 P-2519, single witnesses of the incidents (e) and (l).

2 Another example relating to incident (a): The Prosecution refers to the statements of
3 two witnesses, P-1737 and P-2105, and that of the alleged victim 1289, and didn't call
4 them, didn't call the people directly involved. There again, the Prosecution hopes
5 that they will not be tested, and they are the principal witnesses who could account
6 what happened or give an account of what happened.

7 Yet, legal logic, only those who have been tested before the judges in a judicial
8 process can be regarded as corroborative. It is not because the Prosecution uses
9 different elements, different evidence that the rendition allows them to formulate
10 whatever. It is only each time that each evidence has individually been tested in
11 court through cross-examination that the Chamber will be in a position to assess
12 reality and the corroboration, the alleged corroboration of the events.

13 These examples show that the Prosecution built its accusations, sometimes called for
14 its case, on affirmations which only in reality have a single source and therefore are
15 not corroborated, going even further by hoping that this only non-corroborative
16 evidence will not be tested in court.

17 Following the Prosecution, it means that there is no need for any form of
18 corroboration to take place. According to the Prosecution, it will -- there should be
19 no cross-examination. According to the Prosecution, there will be no real trial on
20 questions which are core to the case.

21 This lack of corroboration is problematic in the context where the Prosecution must
22 have a vigorous and high standard of proof, of demonstration, a standard which goes
23 beyond reasonable doubt in order to respect the presumption of innocence. And this
24 absence of corroboration in reality shows the demonstrative weakness of the case put
25 forward by the Prosecution. So in order to save this case, the Prosecution

1 continually states during the trial that it has no legal obligations to corroborate the
2 allegations.

3 But the Prosecution cannot explain the quasi-permanent absence of corroborations by
4 hiding behind the fact that the Statute does not oblige them to corroborate their
5 allegations. That the drafters of the Statute did not talk about the necessity of
6 corroboration a legal obligation for the Prosecution, does not mean that the
7 Prosecution are discharged to prove beyond all reasonable doubt in the most
8 comprehensive way what they are putting forward in their case. Because once again,
9 what are the elements of evidence which need to be corroborated? In other words,
10 such evidence has poor value, much lower than that which is required by the normal
11 standard of evidence.

12 Final point, Madam President, your Honours, on this question of corroboration and
13 on the use of -- this dubious use of corroboration.

14 Sometimes the Prosecution says or believes that these elements are corroborated, but
15 after close analysis, it appears the majority of time that in reality there is no
16 corroboration, either because the witnesses are not speaking about the same thing, in
17 reality, or simply because they contradict each other.

18 In particular, it often happened that the Prosecution claims that two witnesses are
19 corroborating their information, but the other is simply repeating what the other has
20 said. Logically, you cannot talk about corroboration when there's only a single
21 source. When a witness tells another witness something and that as the single
22 source is that particular witness, the Prosecution cannot say that the two witnesses are
23 corroborating the information because there's only a single story of the first witness.
24 I'm going to conclude with a striking example, as far as this is concerned, that of a
25 witness used for the alleged attack of the minibus in PK9. The Prosecution tells us

1 that P-0491 and P-0529 corroborate, but already neither P-0491 nor 0529 are not direct
2 eyewitnesses of the alleged incidents because both of them are relying on hearsay.

3 And particularly, as regards corroboration, we learn that 0529 and 0491 learnt about
4 the existence of the alleged incident, the same problem. So we have two hearsays
5 from a single source, which cannot be decently qualified as corroboration.

6 But even more, it doesn't stop here because when reading the statement of P-0529, we
7 learn that P-0529 learned about the existence of the alleged incident by telephone of a
8 person that the Prosecution questioned, 1640, but which they didn't keep on their list
9 of witnesses. And if we go even further, if you read the statement of P-1640, he's not
10 a witness for the alleged incident.

11 So this is how the Prosecution put forward its case: A first witness, not kept by the
12 Prosecution, learns by hearsay about the existence of an alleged incident. He calls a
13 second witness to tell him and he tells a third witness. And by magic, a single
14 hearsay anonymous witness passes on the information from one to another and
15 miraculously becomes corroborated fact. Such procedure will not advance and is
16 empty of any meaning and empties any judicial procedure of meaning.

17 Madam President, I see that time is running and I'm going to move on to the next
18 point, so this might be a useful moment to have a break.

19 PRESIDING JUDGE SAMBA: [10:55:37] Yes, it is a good point to break for this
20 session. I wish to thank you very much, Professor Jacobs.

21 At this point, I'll ask that we adjourn and come back at 11.30, just a 30-minutes break,
22 and continue with your opening statement.

23 THE COURT USHER: [10:56:02] All rise.

24 (Recess taken at 10.56 a.m.)

25 (Upon resuming in open session at 11.31 a.m.)

1 THE COURT USHER: [11:31:46] All rise.

2 Please be seated.

3 PRESIDING JUDGE SAMBA: [11:32:16] Good morning again.

4 Counsel, Mr Jacobs, you may want to continue, please. Thank you.

5 MR JACOBS: [11:32:31] (Interpretation) Thank you, your Honour.

6 I'd now like to move to the next point, namely our analysis of the weakness of the

7 Prosecution's case, namely the massive use of hearsay.

8 The analysis under way of the Prosecution's case reveals that a great deal of their

9 allegations are based on witnesses who are merely reporting hearsay, often

10 anonymous in nature. In particular, in our responses to applications from

11 the -- from the Prosecution for -- under Rule 68, that all of the witnesses for which the

12 Prosecution has asked -- for which the Prosecution has asked that previous statements

13 be admitted, these witnesses are relating hearsay, mostly in relation to important

14 elements of their testimony.

15 Here is quite a striking example, namely the alleged incident involving a minibus at

16 PK9. For this particular incident, the Prosecution claims that it is relying upon eight

17 witnesses. Yet, an analysis of the previous statement of these witnesses shows that,

18 in actual fact, none of them were present during the alleged incident and all of them

19 are reporting hearsay.

20 In addition, for the first two witnesses, P-0491 and P-0529, we have demonstrated

21 before the break that their statements were based entirely on hearsay coming from

22 third persons, who in turn were reporting more hearsay.

23 As for the third witness, the statement given by P-0510 is also made up of several

24 items of hearsay, especially, in particular, I have to stress that he never was present

25 when the alleged incident occurred. He merely provided the Prosecution with a

1 number of photographs, saying that they were photographs of alleged victims of the
2 alleged incident. P-0510 did not even take the photographs himself. None of the
3 photographs are dated and we have no metadata in relation to these photographs.
4 In the case of one photograph, it actually is specified that the metadata indicate that
5 the photograph was altered on 16 July 2013 at 11.26. Finally, the only link between
6 these photographs and the minibus incident is the witness himself, who was not
7 present when the incident occurred, nor who took photographs. He says that the
8 bodies were apparently those of people who apparently died during the said incident,
9 the so-called PK9 minibus incident.

10 These are the photographs that were shown during yesterday's hearing by the
11 Prosecution to say that -- saying that they were photographs of the alleged victims of
12 the minibus incident, whereas, in actual fact, they have no knowledge about any such
13 thing because they have not investigated.

14 Moving on to the fourth witness, P-1808, this witness also relies on anonymous
15 hearsay. Quote: "That's what people were saying", unquote, says the witness.
16 Quote: "People from the neighbourhood told me about that", unquote. Quote:
17 "She told me this story", unquote, according to the witness.

18 The fifth witness, P-0358, was not a direct witness of the incident either. P-0358
19 actually stated that he heard about the incident on the radio.

20 The sixth witness, the Prosecution makes reference back to the previous statement of
21 P-2573. Once again, the witness was not present when the alleged incident occurred
22 but, on the contrary, heard about it from another person.

23 As for the seventh witness, P-0834, this person relies exclusively upon an element of
24 hearsay. That is the only information that he provides, something that someone else
25 gave to him.

1 Finally, the eighth witness, P-0291, in his previous statement he never speaks of the
2 alleged incident.

3 The Prosecution's procedures during -- is as follows when it comes to the alleged
4 minibus incident: Since, in actual fact, there are no direct witnesses of the alleged
5 incident, the Prosecution has hearsay, often anonymous in nature, which it uses to
6 corroborate information with new hearsay, often coming from the same
7 forces -- sources. Yet, the accumulation of evidence with little probative value does
8 not -- if you put it all together, that does not magically turn it into a solid piece of
9 evidence.

10 Surely to cover up all this hearsay, the Prosecution never says in their brief that an
11 allegation was based on hearsay, for example, by using the conditional tense in
12 French. The Prosecution always presents hearsay as the absolute truth. If the
13 Prosecution brief were to be rewritten using the conditional tense for hearsay, this
14 brief would be very -- for the most part, written in the conditional tense. In any
15 event, once again, this is not how allegations are proven beyond reasonable doubt.
16 I'd now like to move on to the next point, namely the lack of forensic evidence.

17 Of the 52 Prosecution witnesses who are being brought to court as crime base
18 witnesses, we see that only seven of them will be providing forensic information. In
19 other words, the Prosecution does not have forensic evidence for 87 per cent of their
20 crime base witnesses, no forensic evidence contemporary with the alleged events, no
21 subsequent forensic evidence established after the alleged events, thus, no forensic
22 evidence to attest to the alleged injuries suffered by the witness at the time of the
23 events.

24 THE INTERPRETER: [11:42:19] Correction: Injuries allegedly suffered by these
25 witnesses, in the plural.

1 MR JACOBS: [11:42:26] (Interpretation) For a number of witnesses, the Prosecution
2 has merely taken photographs of scars. All the same, it's crystal clear that a
3 photograph taken years after the alleged events proves absolutely nothing. The
4 injury could very well have been the outcome of another event before or after 2013,
5 and there's nothing to say otherwise.

6 Similarly, administrative documents such as a civil status act, nationality certificate, a
7 copy of an ID card or a voter's card, such documents cannot be considered forensic
8 evidence and cannot be considered to be sufficient evidence to demonstrate the reality
9 of a death or injury or even less their cause.

10 Finally, it is interesting to note that at no time the Prosecution bothered to question
11 the person who issued or signed such documents in order to authenticate the
12 certificate or the -- or understand its scope. So the Prosecution did not carry out its
13 duty to investigate and has not provided the Defence or the Chamber with any
14 information that would allow one to authenticate the forensic information that they
15 have presented.

16 Under these conditions, it must be observed that the Prosecution has made no effort
17 to demonstrate, on the basis of solid, reliable forensic evidence, the very reality of the
18 alleged injuries allegedly suffered by the witnesses, even though such a
19 demonstration should be the -- even though this should be the starting point of its
20 demonstration. The Prosecution has forgotten its duty to investigate independently,
21 autonomously about what actually happened. And the Prosecution, rather,
22 preferred to take their witnesses at face value. And now the Prosecution is asking
23 the Chamber to believe what they are saying at face value. This being the case, the
24 Prosecution has not met its obligation to prove its case beyond all -- beyond
25 reasonable doubt.

1 I'd now like to move on to the next point, namely, the insider witnesses.

2 Yesterday during the hearing the Prosecution told the Court that they intended to rely
3 on several insider witnesses. Yet, one merely has to read these witnesses' previous
4 statements to see that they could have all kinds of reasons for not being entirely
5 honest during their testimony. In particular, they may attempt to hide their own
6 role or they may misrepresent their role. Be it people who claim that they were part
7 of the Seleka at the time or people who continued to play a role within the state after
8 December 2013.

9 If we look beyond this credibility problem, it's important to realise that by making
10 mention of insider witnesses, the Prosecution is trying to give the impression that
11 they have firsthand information from the inside about key issues, such as the
12 existence of a state policy or organisation or the operations of state institutions at the
13 time.

14 But nothing could be further from the truth.

15 By the end of the trial, it will be simple to observe that the so-called insider witnesses
16 are, in actual fact, low-level junior people who are relating hearsay and who are
17 absolutely not in any position to provide the slightest amount of useful information to
18 support the Prosecution's allegations. For example, regarding policy, prima facie
19 analysis of the Prosecution's case shows that the Prosecution will not be providing
20 testimonial evidence that will allow the Court to examine the existence of a policy.

21 In fact, if the Prosecution wanted to demonstrate the existence of a state policy or an
22 organisation, the Prosecution should provide testimony from those who, because they
23 held important positions at the time, they should bring to the Chamber people who
24 are actually able to shed light on the reality of what happened in Bangui in 2013.

25 Yet, the Prosecution has not decided to bring forward such evidence because the

1 Prosecution has decided only to call crime base witnesses who, by definition, cannot
2 provide any potentially relevant information about the design or implementation of a
3 possible policy at the highest level of the state or an organisation, or insider witnesses
4 who, in actual fact, for the most part, are people who held a lower position within the
5 hierarchy and did not have access to relevant information.

6 The weakness of the Prosecution's testimonial evidence is particularly striking
7 because, as we pointed out earlier, the Prosecution does have previous statements
8 that could truly shed light upon these issues for the Chamber about what really
9 happened at the time. But the Prosecution decided not to call these people or to
10 drop other ones between now and the time of the confirmation of charges.

11 What happened to P-0238, a witness who logically was chosen for the confirmation of
12 charges hearings because of his direct knowledge of several matters in connection
13 with the allegations of the Prosecution concerning the OCRB? But he's been
14 dropped.

15 Whatever happened to P-0413, a witness who, logically enough, was chosen for the
16 confirmation of charges hearing because of his unique position to comment upon the
17 disorganisation of the Seleka? This witness has been dropped now.

18 What about P-0964, a witness who was also in an ideal position to express his views
19 on matters relating to the OCRB? Logically, that witness was chosen for the
20 confirmation of charges hearings but now has been withdrawn without any reason,
21 taken off the Prosecution's list of witnesses.

22 And where is P-1019 to be found, who was in a good position to provide unique
23 information about matters at the very heart of the Prosecution's allegations because of
24 the role that he played at the time of the events?

25 Why are those witnesses not there? Merely because they contradict the Prosecution's

1 narrative at each stage.

2 Here are two examples.

3 In his previous statement, P-1019 mentions that the so-called Seleka coalition was
4 very disorganised, even before it entered Bangui in March 2010. He said that there
5 was no coordination and that there were disagreements between the various groups
6 that made up the coalition. He mentioned the security situation in the Central
7 African Republic in 2013. He mentions the support provided by the international
8 community on 22 March 2013. He mentioned the day-to-day criminality that
9 prevailed in Bangui in 2013. He mentioned the actions taken against the various
10 groups that made up the Seleka coalition and its members, for example, the billeting
11 of its former group members who made up the coalition to avoid problems related to
12 crime. These are all issues that should be examined during the trial.

13 Let us now turn to P-0234, who provided crucial information about people who
14 claimed to be part of the so-called Seleka coalition in the CAR at the time of the events
15 and crucial information about certain incidents that allegedly occurred at the OCRB.
16 Just because witnesses provide information that counter -- contradict the narrative of
17 the Prosecution, just because of that, it does have an -- the Prosecution does have an
18 obligation to bring to the Chamber all useful elements to establish the truth, as set out
19 in Article 54(1) of the Statute. If the Prosecution decides to prosecute a person, they
20 must do so after a full investigation with a clear vision of what happened; thus, being
21 in a position to identify the people, the perpetrators without having to manipulate
22 facts or not saying anything about certain events. Otherwise, the Prosecution would
23 be making the choice to present the Chamber with a misrepresentation of the events
24 which will necessarily have an impact on the search for truth and the work of the
25 Court.

1 The probative weakness of the Prosecution's case is surely the reason for the
2 Prosecution, ever since the beginning of the trial, engaging in multiple procedural
3 approaches that, if followed, could make the trial opaque and incomprehensible.
4 The Prosecution has asked that 60 per cent of its evidence not be discussed in open
5 court with the witnesses, so it will not be possible to have a true debate about the
6 relevance of this evidence. The Prosecution has also asked that half of their
7 witnesses not even come before the Court, not even appear. In other words, the
8 Prosecution is merely asking for their previous statement to be taken at face value,
9 which is the very negation of a judicial process. As for witnesses who will appear,
10 the Prosecution would like 60 per cent of them not to be subjected to true
11 cross-examination.

12 In addition to these requests, the Prosecution does not want these witnesses to be
13 heard in proper conditions. They have obtained an agreement that the few
14 witnesses who will be heard in a hearing, 75 per cent of them will be heard over video
15 link and not in person, even though many of them can actually appear in person.
16 And 80 per cent will benefit from protective measures that will hide their identity and
17 make them anonymous.

18 Thus, the Prosecution is hoping to hide the weakness of its evidence by holding an
19 opaque trial, impossible for external observers to follow, a trial in which evidence is
20 taken at face value and their witnesses will be taken at face value. They will be
21 believed. No adversarial debate. They will testify from the shadows. Weak
22 evidence, not verified, not authenticated, not corroborated, full of non-verified
23 hearsay, evidence that often was not even the outcome of a true investigation,
24 incomplete evidence because the Prosecution did not obtain the useful information
25 from the most important protagonists of the crisis. The evidence is also incomplete

1 because the Prosecution has deliberately decided not to call the witnesses who are in
2 the best position to tell the Chamber about crucial aspects of their case.

3 The Prosecution has decided to go to trial with this unsatisfactory case and is
4 asking -- and it will be your task to come to the appropriate conclusions at the
5 outcome of the trial. The case does not allow you in any way -- correction, in no way
6 is it possible to demonstrate the charges beyond reasonable doubt. Thank you.

7 PRESIDING JUDGE SAMBA: [12:00:27] Thank you very much, Mr Jacobs.

8 Yes, Ms Naouri.

9 MS NAOURI: [12:00:32] (Interpretation) Thank you, Mrs President.

10 So now we're going to talk about the quality of evidence brought forward by the
11 Prosecution and we are going to look at the narrative which supports the evidence
12 put forward.

13 Reading the Prosecution's brief, we note that the Prosecution's narrative has not
14 changed. They have not failed to close the gaping holes in their narrative which is
15 supposed to allow us to understand the charges and to contextualise the narrative of
16 the witnesses.

17 Why was the Prosecution not able to close these gaps in a way in which they could
18 respect their reality since the confirmation of the charges hearing? Because on
19 analysis, the reality does not fit with its accusations, because they can no longer take a
20 step backwards because it is too advanced, too exposed, so the Prosecution no longer
21 has a choice. And it's the reason why the Prosecution persists in ignoring decisive
22 facts and leaving temporal and factual holes in its memory, in its brief.

23 When I'm talking about "memory", I'm talking about brief, not, not sort of the
24 memory of something that you recall.

25 Aware of the inadequacy of the brief, the Prosecution looks at the vagueness between

1 the different events and the protagonists.

2 Aware of the inadequacy of evidence, the Prosecution also maintains the vagueness
3 between what happens with the Seleka and the others and the state.

4 Why? Because it is not possible to demonstrate the functioning of one or the other.

5 It's therefore up to us to deal with these issues today, to qualify the situation on the

6 ground between April and September 2013 in the Central African Republic and to

7 understand the role of the state during that very same period, because the legal

8 consequence emanating from the situation which occurred between April and

9 September 2013 are important as regards the basis for the charges brought forward by

10 the Prosecution, be it war crimes or crimes against humanity.

11 The Prosecution in its brief postulates that, one, the Seleka exists as a clear,

12 hierarchical and structural group - paragraph 19 - capable of conducting coordinated

13 operations - paragraph 20.

14 And secondly, this structure of Seleka is the one that would become the state,

15 paragraph 22 to 29.

16 In reality, as the name suggests, the Seleka is a simple coalition, which means that it is

17 a temporary alliance of individuals or groups to give voice to their discontent against

18 President Bozize. This alliance does not mean in any case that each of its

19 participants agrees on how to resolve this discontent. Therefore, the coalition does

20 not postulate an organisation.

21 We know that the various groups that make up the coalition were created in reaction

22 to the power in place, to allow the existence of a real democratic opposition. The

23 number of groups and therefore leaders multiplied from the outset in -- in the

24 years 2000.

25 The Prosecution in presenting its brief put forward a simplistic view of a group that

1 will form a circumstantial alliance and does not have the specificities or leadership
2 problems.

3 We do not have the time today to develop all the internal struggles and all the
4 contradictions between those claiming the paternity of these different groups since
5 the sagas are complex, convoluted and numerous. We will show during the trial
6 debate how different these groups are and that the reality of what these groups cover
7 is constantly changing as the context changes, whether it be political or security.
8 Today we will pick out some examples that reveal the lack of cohesion and
9 homogeneity within these groups.

10 Firstly, the creation of the Democratic Front of the Central African people, the FDPC.
11 The first president of the FDPC was Abdoulaye Miskine. Abdoulaye Miskine
12 created the FDPC on 5 June 2004 and signed a ceasefire with Bozize government on
13 2 February 2007.

14 From that moment onwards, the fate of the FDPC fluctuated. Firstly, as the peace
15 agreement, which was not respected by President Bozize, the FDPC launched an
16 attack against FACA, which led to a new agreement on 3 July 2009. Then the
17 enemies of yesterday became friends of today because in January 2012, Abdoulaye
18 Miskine will fight alongside FACA, the forces of President Bozize, against the RPF,
19 the movement of general Baba Ladde. This does not, following on from this, prevent
20 Abdoulaye Miskine from participating in a meeting in Niamey in 2012 in the presence
21 of Michel Djotodia and Joachim Kokate, who are members of the CPJP.

22 In the -- after Niamey, Abdoulaye Miskine, Michel Djotodia and Joachim Kokate set
23 up FROCCA, the United Front for the Renaissance of the Central African Republic,
24 another alliance to fight against President Bozize, which took place in 15 March 2012.
25 Yet, Joachim Kokate, who -- left the alliance directly to join President Bozize.

1 Later, in autumn 2012, Abdoulaye Miskine participated as the UFDR, the
2 CPJP-Fondamentale and the CPSK in the creation of the Seleka. It is interesting to
3 note that in March 2013, Abdoulaye Miskine left the Seleka to fight against it. And
4 that in a communique of September 10, 2013, Abdoulaye Miskine announced that his
5 party, the FDPC, joined the FROCCA, Front for the Return to Constitutional Order in
6 the Central African Republic, which is a movement associated with President Bozize.
7 Here we have the perfect example of the opportunism which guided the different
8 factions. Abdoulaye Miskine changed alliances according to the development of the
9 situation in the Central African Republic.

10 Another example: The UFR, the Union of Republican Forces, Florian Ndjadder,
11 presented himself as the leader of UFR, which he created after having been tortured
12 by President Bozize. He signed the peace agreement of 15 December 2008 on behalf
13 of the UFR.

14 PRESIDING JUDGE SAMBA: [12:10:45] Ms Naouri, if you can slow down a bit,
15 please, so that the interpreters will get your words. Thank you.

16 MS NAOURI: [12:10:50] (Interpretation) I'll start again.

17 As regards the republican forces and on Florian Ndjadder, who presented himself as
18 the leader of the UFR, which was set up after being arrested and tortured by
19 President Bozize. He signed the global peace agreement in December 2008 on behalf
20 of the UFR. However, the evidence of group is very scant. And the representatives
21 of the DDR, those are the programme of disarmament, has recognised that this group
22 never really existed.

23 It is a perfect example of an existing group existing only by name and symbolism and
24 therefore, above all else, it is an attempt by the leader to be recognised in the political
25 landscape.

1 It is interesting to note that we have -- as regards the UFR, we have contradictory
2 information or evidence. Some witnesses, like P-1019, that the UFR was not part of
3 the Seleka, whereas other sources say that the circumstantial coalition had benefitted
4 from intermittent support of the UFR.

5 Another example: The UFDR, the creation of the Union of Democratic Forces. The
6 UFDR is one of the most emblematic groups and would participate in the coalition,
7 but also one of the groups where there are numerous contradictions. The UFDR,
8 U-F-D-R, is disorganised as regards the paternity of the group and as regards the
9 members who are always fighting with each other.

10 Let's take an example. A witness, P-0413, said that the UFDR was set up by Djotodia
11 and Damane Zacharia in 2006. Other well-informed sources explain that originally
12 the groups composing this union were -- was made up of armed men from rural and
13 non-centralised areas forging flexible alliances before becoming rebels.

14 Because of the monetary interests, clashes between different groups took place, which
15 led in 2005, 2005, the leader of the Goula, Damane Zacharia, made an alliance with
16 Abakar Sabone, a former liberator who turned against President Bozize. However,
17 as Abakar Sabone is in Cotonou, in fact, it seems that Damane Zacharia is the leader
18 of the UFDR.

19 Again, other sources indicate that the UFDR was led by the famous Florian Ndjadder
20 who claimed responsibility for attacks that took place in 2005 and 2007.

21 It is interesting to note that while Michel Djotodia was imprisoned with Abakar
22 Sabone in Benin, Damane Zacharia signed a peace agreement with Bangui in April
23 2007. Following this, Damane Zacharia was appointed to the government of
24 President Bozize, which Michel Djotodia disapproved of and which led to clashes
25 between rival factions of the UFDR.

1 Michel Djotodia struck Damane Zacharia off the roll in May 2008 and replaced him
2 with Younous Oumar and Joseph Zoundeko.

3 It is also interesting to note that shortly after June 2008, Abakar Sabone left the UFDR,
4 of which he was the spokesperson, to take over the MLCJ in 2008 and then continued
5 to change camps or sides many times.

6 These elements clearly demonstrate that within the same group, there are strong
7 disagreements and it's almost impossible to establish who was leading the group.

8 The accession to the position of power was remunerative and so was the purpose of
9 accession.

10 Another example, and the last one we'll do for today, and equally important, it's the
11 penultimate: The creation of the Convention of Patriots for Justice and Peace, the
12 CPJP.

13 The CPJP was never unanimous and its internal functioning was the centre of
14 constant power struggles. P-0413, in its unique position, states that in 2008, it was
15 Dhaffane who would have created the Convention of Patriots for Justice and Peace,
16 the CJ -- CPJP, with Nouradine Adam. More specifically, the CPJP was created by
17 Dhaffane and Issa Bourma, the uncle of Nouradine Adam.

18 So Dhaffane would have been the political head of the CPJP, but was not aware that
19 Nouradine and Ali Mahamat Daba and Al-Bachar Fadoul, whose father is the uncle of
20 Dhaffane's mother, were organising fighters on the ground.

21 Other well-informed witnesses indicated the CPJP was created by Nouradine Adam
22 and Abdoulaye Hissene and that it was between these two men that there was a
23 disagreement, such a disagreement that had led to two wings of the CPJP.

24 And it was only after the death of Charles Massi that Abdoulaye Hissene and

25 Nouradine Adam would come into conflict to be the head of the CPJP. For others,

1 the CPJP would have been created by Charles Massi, after having been minister under
2 President Bozize.

3 As for Abdoulaye Hissene, he would remain in the CPJP to ally himself with
4 President Bozize to fight the Seleka.

5 It is interesting to note that there are indications that the UFDR and the CPJP,
6 although temporarily allied with the Seleka, had long clashes against ethnic tensions
7 between the Goula and Runga for control of territory and resources.

8 Finally, who is Abdoulaye Hissene, Nouradine Adam, Charles Massi, Mahamat
9 Zakaria would have founded CPJP and who was the head of it? Who had the
10 capacity to sign agreements on behalf of the CPJP? It's impossible to determine that.

11 Final example: The convention -- or the creation of the Patriotic Convention of the
12 Salvation of the Kodro, the CPSK. It is Dhaffane who founded the CPSK in
13 June 2012 after being part of the CPJP.

14 However, others show, particularly P-1019, Dhaffane was a member personally, his
15 group and the CPSK never existed. This means that Dhaffane simply was the
16 founder of the CPSK, although others say that he never set up the CPSK and that in
17 his personal capacity created the UFDR. For others, Dhaffane simply coordinated
18 the actions that form the companions of Bozize who were fleeing and the UFDR.

19 Be it as it may, the internal power struggle between Mohamed Moussa Dhaffane,
20 Michel Djotodia, Nouradine Adam, Abdoulaye Hissene, Mahamat Zakaria,
21 Charles Massi and more created strange and amusing situations difficult to follow
22 that continue even after March 2013 and the dissolution of the Seleka. The
23 Prosecution says as if the different groups were clearly defined and had the capability
24 of coordinating themselves, but nothing is further away from the truth.

25 Why does the Prosecution not mention that the CPJP was created separately from the

1 UFDR and, from the outset, there were struggles to be head of that group?

2 On analysis, it appears that these groups are disparate and that there is a

3 different -- differences between the different groups so that they don't coexist

4 peacefully, internally and externally. And in addition to that, there is the struggle

5 for the legitimacy of being recognised as a legitimate opponent to the government in

6 place, preventing thereby any form of coordination.

7 The only cause that brings them together in an ephemeral way is their dissatisfaction

8 vis-à-vis President Bozize. It's a randomly made-up coalition, sometimes regarded

9 as a regional movement.

10 For example, Roland Marchal, researcher of the CERI-Sciences Po, a specialist

11 recognised in France, specialist in Central African Republic, says that the Seleka was

12 nothing else but a "federation of armed groups, themselves weakly structured

13 without a real chain of command."

14 Therefore, there's no hierarchy between the groups. The elements composing the

15 different groups are scattered in different areas or indeed in different movements and

16 are insufficient in number.

17 It appears that in reality the coalition was created only to participate in the Libreville

18 summit in January 2013. Why? Because it was a way of fighting against the

19 government of President Bozize. In February 2013, one month before the Libreville

20 agreement, President Bozize announced, during a ceremony to celebrate his ten years

21 in power, that he would be a new candidate for the future elections, which is a breach

22 of the Libreville agreement.

23 Furthermore, the Prosecution puts forward as a postulate that what they call Seleka

24 managed to get to Bangui, this would be evidence that the Seleka would be able to

25 organise itself.

1 This attempt at explanation a posteriori does not stand up to analysis. The evidence
2 to which the Prosecution has access shows that nothing in the arrival in Bangui was
3 coordinated, nor organised, nor planned.

4 The evidence is clear. Those who are supposed, according to the Prosecution, to be
5 the thinking heads of the Seleka and to be those giving orders who were taken
6 hostage in Bambari by the elements of the UFDR. In the days preceding the dissent
7 to Bangui, this thinking head was kept incommunicado and the so-called
8 commanders learned on the radio that groups making up the Seleka were heading
9 towards the red line and therefore they were heading towards Bangui. It is not clear
10 who would have given any orders or commands.

11 A well-informed witness, 1019, says clearly: "what happened between the
12 international community and the Seleka, only God knows what happened."

13 In such a context, which is difficult to imagine what sort of chain of command could
14 really exist. P-1019 said that President Djotodia was not aware of the military chain
15 of command because he only arrived in Bangui, only the groups composing of the
16 Seleka alliance had arrived there, and he was not aware of what happened before he
17 entered Bangui.

18 The Prosecution prefers to ignore the testimony, although from well-informed
19 sources, and states in its brief that the capture of Bangui in March 2013 was carefully
20 planned by high-ranking Seleka commanders, including Djotodia and Adam -
21 paragraph 21 - by basing on footnotes of insiders, who, in reality, are only
22 subordinates based on hearsay and therefore not in a position to give any useful
23 evidence for such a statement.

24 Once the groups making up the Seleka arrived in Bangui, that is when Michel
25 Djotodia finally went from Sibut to Bangui in the afternoon of 23 March 2013.

1 It's important to note that the day before, Michel Djotodia received support from
2 international stakeholders, including support from the French ambassador, who even
3 found a residence for him.

4 On 24 March 2013, Michel Djotodia proclaimed himself to be president of the republic,
5 and the situation quickly became official and led to the creation of the National
6 Transition Council on 13 April 2013.

7 By 31 March 2013, President Djotodia had appointed a national unity government.
8 This national unity government was made up of 34 ministers. And we make
9 reference to CAR-OTP-2004-1597, this is the official decree. Of these 34 ministers,
10 only nine were officially affiliated with the Seleka. And yet the Prosecution focuses
11 only on the appointment of these members from this old alliance known as the Seleka.
12 Yet, if we analyse the elements that the Prosecution themselves have provided to
13 support this statement, it clearly appears that this is a national unity government that
14 was constituted in compliance with the constitution and the Libreville agreements of
15 11 January 2013 with Nicolas Tiangaye as prime minister.

16 P-0291, a Prosecution witness, has stated that, quote: "All the groups that took part
17 in the Libreville summit were represented within the transitional government,
18 including ministers from the former Bozize regime."

19 In accordance with the presidential decree, a number of prominent people with the
20 profile of experts in their field were also part of the government, as well as several
21 representatives from civil society. For example, Arsene Sendé, a judge who became
22 minister of justice; Charles Armel Doubane, the former ambassador of the Central
23 African Republic to the United Nations, who became minister of foreign affairs.

24 Under these circumstances, talking about a so-called Seleka government in no way
25 corresponds to the reality.

1 As for the national security council mentioned yesterday, once again, the Prosecution
2 is doing the same thing. They only mention Nouradine Adam and other Seleka
3 commanders, that's all they talk about, but they omit to mention that presidential
4 decree 13.185 found in its brief that this council, this national council of security was
5 made up of numerous ministers representing people from various groups or of
6 various affiliations. Of these 13 positions, only three were held by former Seleka
7 members.

8 What the Prosecution is not telling you is that the Comforce of the FOMAC, the
9 defence attaché of the French embassy, and the representative, mediator responsible
10 for resolution of the crisis in Central African Republic also were on this committee on
11 an advisory basis as if -- this is as if the Prosecution is disregarding the security
12 context that existed in Bangui when this council was established and during the entire
13 Presidency of Michel Djotodia.

14 And now a few words about the council of ministers.

15 President Djotodia never denied the security council -- context, rather, that prevailed
16 in March 2013. He never denied that the situation was difficult, and as soon as he
17 accepted his duties, he began to deal with the bandits.

18 Similarly, both President Djotodia and Prime Minister Tiangaye spoke publicly,
19 saying that the elements who said that they were part of the former Seleka should
20 be -- should be put in one area or restrained so as to avoid problems of crime.

21 It should be noted as well that often people said that they were part of the former
22 Seleka, hoping to gain some benefit from their membership. So the prime
23 minister -- or, rather, the prime minister said to those bandits: "Come and stay in
24 this area. We will avoid problems of crime."

25 In some cases, people passed themselves off as members of the Seleka, people who

1 actually were looters, and the government tried to restrain them to one area, keep
2 them in one area so as to halt these elements who suddenly said, all of a sudden, that
3 they were members of the Seleka.

4 As P-0234 said, a witness dropped by the Prosecution, people would -- people
5 who -- well, these people who were no-goods, thugs, would come together and claim
6 that they were Seleka members.

7 President Djotodia decided to attempt to disarm the elements of the Seleka coalition.

8 Once a national transitional government was established, it was the government, I
9 stress, it was the government that took measures to deal with the danger prevailing
10 and adopted a strategy to ensure the security and safety of the Central African

11 Republic, which involved, and I quote: "Disarm the elements of the Seleka
12 coalition." And I am quoting from CAR-OTP-2034-2193 at page 2194.

13 This same document -- this same document indicates that several radio bulletins,
14 bulletins broadcast over the radio calling the former Seleka rebels to order and asking
15 them to identify themselves for possible sending to barracks, to be possibly sent to
16 barracks, these calls were made by the minister of security, immigration, emigration
17 and public order.

18 For example, in a press release dated 3 April 2012, the minister of state responsible for
19 security, Nouradine Adam, was issued, and he requested, and I quote: "Officially
20 and on an urgent basis, I call upon all Seleka elements, without any exception, to
21 return to their various camps chosen for their restriction to barracks, without delay."

22 He made this request formally, officially.

23 Upon the threat of punishment, the minister of security formally recommended, and I
24 quote, he said: "To other elements who are out of control, people who had weapons,
25 profiteers and people who were taking advantage of the situation and still engaging

1 in looting, vandalism and other acts of violence and abuse, to immediately stop doing
2 so throughout the entire territory of the Central African Republic." End of quote.

3 P-2328 has described the cooperation between the transitional government and the
4 local UN office to keep Seleka elements in one area, and I quote: "But with the local
5 UN office, we made suggestions to restrict Seleka elements to one area because at
6 this -- because at this time, in the Central African Republic, there was only Seleka
7 members and FACA members. Thus, we grouped the new Seleka recruits in Beringo,
8 in Beal camp, in Camp Rdot and towards PK12. We grouped them in these various
9 areas so that we could do a census of them, but it was very difficult work."

10 In May 2013, the prime minister announced that a number of combatants who were
11 *en divagation*, be they from the Seleka or former FACA members, were not authorised
12 to hold weapons and were to hand them over as quickly as possible before being
13 barracked outside of Bangui.

14 In August 2013, in August, President Djotodia met with neighbourhood leaders to
15 organise disarmament in the various arrondissements of Bangui and to condemn the
16 violence and the lack of security.

17 In particular, the Prosecution ignores that the looters and -- the Seleka looters and
18 delinquents were being prosecuted, particularly for the events in Boy-Rabe.

19 These -- this prosecution was covered by the media and documented by NGOs and
20 also are mentioned in the statements of former Prosecution witnesses who were -- in
21 particular P-0234.

22 In actual fact, the Prosecution has material, concrete and official elements that attest to
23 these proceedings, 24 statements that yet have been completely ignored by the
24 Prosecution. Each time that the reality does not square with its account, the
25 Prosecution merely ignores it.

1 So the state had no impact on the various groups in Bangui. No impact.
2 More specifically, an expert who was commissioned by the Prosecution in the
3 Yekatom and Ngaïssona case said, and I quote: "The Seleka was a coalition brought
4 together by circumstances, a coalition of armed groups, the reality of power was not
5 to be found in the government of Michel Djotodia/Nicolas Tiangaye but rather
6 amongst -- the power was with the commanders. Amongst them, the hierarchy and
7 discipline were almost non-existent. On the one hand, the Seleka was impossible to
8 govern because of its lack of internal discipline; on the other hand, it was not able to
9 govern because of the armed groups that made up the Seleka had only one goal,
10 namely to bring down President Bozize, and did not have capable managers who
11 could run the country. Barely functional, the government did not have authority
12 over Seleka commanders. Even the political representatives of the Seleka had no
13 influence over commanders, and amongst themselves, they barely obeyed one
14 another. The various armed groups only recognised -- recognised only the authority
15 of their direct leaders." And this is evidence from the Prosecution,
16 CAR-OTP-2127-4289.
17 Roland Marchal, who was mentioned today, has explained this about the Seleka,
18 quote: "There never was any true control of the political level. It was rather a
19 federation of armed groups who themselves were poorly structured without a true
20 chain of command." End of quote.
21 Similarly Clotaire Saulet Surungba has said clearly, and I quote: "On the other hand,
22 it is an easy matter to say forcefully that between 24 March 2013, the Seleka warlords
23 and the president of the republic, Michel Djotodia, lost control over their men, both in
24 Bangui and within the interior of the country." End of quote.
25 He also explained that the so-called ranks of the various people were self-attributed.

1 And I quote what he said: "Seleka combatants did not recognise any hierarchical
2 authority and their" - quote - "military culture" - unquote - "was such that they
3 preferred ranks such as captain, colonel and general, which they would grant to one
4 another." He also told us: "And just imagine this, you might see a colonel sitting
5 behind in the back of a pickup with a captain who is sitting comfortably in the
6 passenger's seat and the vehicle is actually being driven by a general."

7 Witness P-0234, witness in the know, dropped by the Prosecution, said this, quote:
8 "Around August 2013, there really was a government problem. There were several
9 parallel chains of command. There was no control. Nearly all the Seleka were
10 colonels or generals. I can describe the situation as a kind of widespread form of
11 disobedience with a strong taste for military stripes."

12 Giving testimony before the American congress, one expert said, and I quote: "There
13 has never been much internal cohesion within the Seleka movement. The Seleka was
14 born of a coalition of combatants from rebel groups that had existed for a long time
15 and that historically were opposed to one another. The coalition was always full of
16 conflict. There were only troops loyal to individual commanders with a very weak
17 hierarchy. There was no agenda, no ideology, no consistent political platform
18 behind the Seleka movement with the exception of a general feeling that the north of
19 the country had historically been neglected."

20 Prosecution Witness P-0291 himself said that the prime minister himself stated that
21 President Djotodia was not capable of controlling the country or the situation, the
22 security situation. The various Seleka groups listened only to their own leaders.
23 The UN summed up the general situation quite well, this atmosphere of widespread
24 chaos, and I quote: "The Seleka has revealed itself to be more of a composition of
25 blocks, looking out for their individual interests, trying to find personal resources

1 rather than a government with a clear political agenda. Getting Bozize out of power
2 seems to be the only strategy that unified the former rebel groups. The Seleka
3 remains a non-homogenous entity with soldiers who take instructions from their own
4 commanders."

5 Finally, the Secretary-General of the United Nations noted in May 2013 that "dissent
6 has increased within the coalition and the leaders are having difficulty controlling
7 their own elements." There was no control over the Seleka elements. He continued
8 on and said this: "The Seleka combatants refuse to be restricted to one area.

9 Furthermore, the tension amongst the various factions within the coalition continues
10 and each person is trying to recruit more elements, which increases the risk of a
11 widespread confrontation amongst themselves."

12 Now just a word or two about the -- about the CME -- correction, the OCRB.

13 THE INTERPRETER: [12:53:39] Apologies from the interpreter.

14 MS NAOURI: [12:53:42] (Interpretation) The Prosecution has said that the OCRB
15 was apparently a Seleka base. What we see from the available information is that the
16 OCRB is an office that existed before the government of President Djotodia. It was
17 part of the state structure and it continued to fight crime, despite the difficult
18 circumstances.

19 This morning, we reminded the Chamber that ever since 18 April 2013, the OCRB was
20 led by General Louis Mazangue, as we see in memorandum number 135. And later,
21 this gentleman was replaced on 8 July 2013 by Benjamin Mallo.

22 The OCRB was put under the authority of the Central African police directorate,
23 which in turn was part of the ministry of security. The OCRB was first and foremost
24 a police station that was part of the state structure, a police station that had to
25 continue its operations during a period of high crime and delinquency. Furthermore,

1 the memoranda and the decrees published in the official journals show that the
2 various appointments of officials showed that the state continued its attempts to
3 operate.

4 I can see that the time is fleeting. I am about to move on to another topic. Perhaps
5 this would be the right time to have our lunch break.

6 PRESIDING JUDGE SAMBA: [12:55:52] The right time, indeed. Well, we'll break
7 off for now and come back at 2.30, Ms Naouri, so that you can continue and hopefully
8 finish off.

9 Thank you very much.

10 Madam Court Officer, we'll go away and come back at 2.30, please. Thank you.

11 THE COURT USHER: [12:56:15] All rise.

12 (Recess taken at 12.56 p.m.)

13 (Upon resuming in open session at 2.30 a.m.)

14 THE COURT USHER: [14:30:53] All rise.

15 Please be seated.

16 PRESIDING JUDGE SAMBA: [14:31:28] Good afternoon. Welcome again to this
17 afternoon session.

18 Ms Naouri, you may continue your opening statement, please.

19 MS NAOURI: [14:31:43](Interpretation) Thank you, your Honour.

20 Just a word on the internal functioning of the OCRB since 2000 -- March 2013. It

21 must be recalled that at the beginning of the transition power, almost all

22 FACA -- FACA or police had fled, and there was a severe shortage of staff.

23 The OCRB was understaffed, and this is precisely why the position of the transition

24 government was that, even though if the police officers came back to work, the other

25 elements who were present were to remain as enforcements. So this is what P-1019

1 explains. Consequently, the people working at the OCRB under Mazangue's
2 leadership were not Seleka but volunteers who helped him out in a situation of chaos
3 and banditry that was constantly on the rise.

4 P-1019 also explains that the Seleka returned in March, and the government had sent
5 500 of its Seleka to the police for training and 500 to the gendarmerie because the two
6 structures, the police and the gendarmerie, were understaffed. So you had to
7 support these two structures.

8 P-1019 said that, "This was rather an extraordinary situation, so we had to fill in the
9 gap." And it's this situation that created a problem at the OCRB where it was
10 impossible to determine who had leadership. Without a reporting line, there was
11 only individuals who carry out acts in the fight against banditry.

12 Indeed, the rejected witness, P-0234, makes it clear that, "You asked me who's at the
13 head of the OCRB. It's hard to say as it changed all the time."

14 Over and above the structural functioning problems, it is important to note that, in
15 spite of the limited resources of the OCRB, the members at the OCRB worked with the
16 prosecutor, and the arrests and the detentions were object of judicial control.

17 Several arrest warrants were issued against civilians and people affiliated to the
18 Seleka. And there was a trial opened against 24 detainees, members of the Seleka,
19 who were accused of looting, destruction of property, disturbance of public order,
20 and acts committed during the killings in Boy-Rabe on 20 August 2013.

21 P-2239 states: "Most of the other prisoners were all young Seleka delinquents
22 accused of burglary, drug trafficking and theft."

23 P-08885, again, a witness rejected by the Prosecution, states, and I'm quoting here:
24 "The Seleka who committed crimes were taken to the OCRB. And if a Seleka
25 member was arrested, he was taken to the SRI or to the OCRB. There were

1 policemen and gendarmes on the premises. The local population would call us to
2 report these crimes."

3 P-2563 explained in response to the question, "Could you give us an example of the
4 type of offence that the Seleka had to commit to be imprisoned at the OCRB, if you
5 have any?": "Most of the time, they took people's things away, and they took drugs
6 and they drank alcohol."

7 Conclusion: It is, therefore, difficult to understand on what basis the Prosecution
8 considers that the OCRB is a Seleka base where -- whilst it's a place where delinquents
9 and criminals claiming to be Seleka are imprisoned.

10 This is a strange Seleka base whose function is to imprison ex-Seleka or looters
11 claiming to be Seleka, and to subject them to normal judicial proceedings, since they
12 are presented to the public prosecutor.

13 The Prosecution, under the guise of the generic term of the Seleka, cannot get around
14 the truth, that between March and September 2013, there was no organised group
15 capable of conducting military operations.

16 In fact, 0234, a witness rejected by the Prosecution, says the following, I quote: "You
17 were asking me to elaborate on the chain of command of the Seleka. That's funny.

18 What chain of command? I must refer you to Djotodia to ask him to clarify this.

19 There were several nationalities within the Seleka, like Chadians, Sudanese, et cetera.
20 Each of the commanders had their own men, and we cannot speak of deregulation of
21 the chain of command."

22 Since the Prosecution has not succeeded in establishing the existence of an organised
23 armed group, nor the existence of a Seleka government, nor even the existence of a
24 fully operational government, and since it appears from its evidence during the
25 period of the charges that there is a government of national unity which is trying to

1 function, but despite an extremely complex security context in which the different
2 types of banditry mixed together, any allegation of war crimes and crimes against
3 humanity falls.

4 Now with regards to this legal characterisation of the situation between March and
5 September 2013. First of all, the Conflict of a Non-International Character, CANI,
6 the Prosecution case is that this should have -- would have begun in December 2012
7 and continued uninterrupted throughout the period, at least till 10 January 2014,
8 between what it calls Seleka, on the one hand, and the pro-Bozizé reconstituted as the
9 Anti-Balaka on the other. Paragraph 9 and 10 of the briefs.

10 Once we said, the Prosecution case is no more convincing today than it was at the
11 confirmation of charges hearing. The Prosecution persists in making allegations that
12 are not in fact even supported by its own evidence.

13 The Prosecution's position on this issue is so untenable that the Prosecution's own
14 brief demonstrates on a plain reading that, up till at least September 2013, any
15 existence of the very -- any discussion of the very existence of CANI had no factual
16 basis.

17 Let's take an example, paragraph 32. The Prosecution states, and I'm quoting: "In
18 the six months that followed the ousting of Bozizé, the Anti-Balaka carried out
19 increasing number of coordinated attacks against the Seleka" -- in brackets -- "(and
20 mostly members of the civilian population in the western CAR) culminating in an
21 assault on Bangui on 5 December 2013."

22 In support of his argument, the Prosecution refers to paragraph 40, 41, 48 and 49 of its
23 submission. However, after analysis -- in the footnote 40, 41 and 49 of the brief.
24 However, after an analysis, it appears that none of these paragraphs refer to the
25 existence of alleged coordinated attacks against the Seleka in the first six months

1 following Bozizé's ousting. That is, between 24 March and September 2013.

2 Paragraph 40 -- paragraph 40 of the Prosecution's brief states that, "Initially, until the
3 fall of Bangui on 24 March 2013, the FACA were forced to defend themselves against
4 the advance of the Seleka." This paragraph clearly refers to the period before
5 24 March 2013. This does not in any way support the Prosecution's claim.

6 Paragraph 41 of the Prosecution's trial brief states that, and I'm quoting:

7 "Subsequently, the reorganisation of the pro-Bozizé forces, including some elements
8 of the FACA who remained to Bozizé, enabled them to carry out coordinated attacks
9 in the second half of 2013. In particular, they launched a rocket at the National
10 Assembly building in Bangui with the aim of disrupting Djotodia's second
11 inauguration ceremony that was held on 18 August 2013."

12 Already, we note the jump in time of the Prosecution that goes directly to the second
13 half of 2013 without giving the slightest information on the period from March to
14 August 2013.

15 Above all, it is easy to see from the brief that in fact the only example the Prosecution
16 has before September 2013 is the alleged incident against the national assembly in
17 August 2013, an incident on which the Prosecution does not provide any evidence
18 from an independent investigation on its perpetrators in its organisation or in its
19 course, an incident for which it is clear from the Prosecution's evidence that it actually
20 involved some former FACA who allegedly did not leave Bangui in March 2013 but
21 hid in Boy-Rabe, an obviously isolated incident that cannot be taken as evidence of
22 the existence of an armed conflict, and certainly not between March and September
23 2013.

24 Paragraph 48, the Prosecution states: "From September 2013, the Anti-Balaka groups
25 began to engage in more intense fighting against the Seleka in the western CAR."

1 We are now, in the words of the Prosecution itself, in September 2013. Still nothing
2 about the period March to September.

3 Finally, paragraph 49, the Prosecution states, and I'm quoting: "The 5 December
4 attack on Bangui was not an immediate success, but it triggered weeks of escalating
5 violence."

6 Again, there is still nothing, no information on the period from March to September
7 2013. Thus, the Prosecution's own brief does not appear to support the Prosecution's
8 claim that anything relevant happened between March and September 2013.

9 In the end, the Prosecutor himself limits, by his own assertions, the period during
10 which it is impossible, simply impossible to speak factually of CANI. The only
11 example of an attack that he attributes to the Seleka coalition is the seizure of Bangui
12 in 2013, which we've already seen was not a fact -- was not in fact organised, and then
13 nothing more.

14 Then the Prosecution's evidence on the Anti-Balaka only mentions events that could
15 have any relevance from September 2013 onwards.

16 Surely well aware of the weakness of its arguments and the complete disconnection of
17 its possession from the reality that prevailed on the ground, the Prosecution attempts
18 to in evacuate the difficulty of the temporal scope of the armed conflict right from the
19 first paragraph of its brief, as it begins by explaining why the report of the UN
20 International Commission of Inquiry on the Central African Republic, having
21 concluded there was no CANI between March and September 2013 was -- would be
22 wrong.

23 In this report, the UN experts, after a careful and factual analysis of the situation
24 found that -- now I'm quoting: "The level of hostilities between March 2013 and
25 early December did not reach the level required to conclude that an armed conflict

1 existed."

2 The Prosecution's presents this report as if it was an isolated document or position,
3 forgetting to point out that the legal conclusion of the commission of inquiry is based
4 above all on an analysis of the ICRC statements.

5 Indeed, the UN report highlights a change of the legal characterisation of the situation
6 in CAR between 2013 and -- 2011 and 2013. In 2012, a CANI had been identified;
7 whereas, in 2013, the ICRC does not identify any armed conflict and now refers to the
8 presence in CAR, not of combatants but of weapon bearers whom the ICRC calls on to
9 respect their human rights obligations, thus not mentioning the existence of
10 obligation in terms of international humanitarian law, which would have been the
11 case if there were a CANI.

12 The Prosecution quotes the report as saying, "Future analysis based on more detailed
13 accounts of all the many events that occurred in this time frame may lead to a
14 different conclusion." Footnote 32, paragraph 13 of the Prosecution brief. But the
15 reality is that no one has changed their mind. And this is normal because this is not
16 reality.

17 The Prosecution today does not follow the UN advice and still tries in its brief to
18 assert that there was a CANI in 2013, which is completely disconnected from the
19 reality and from facts. And nobody, the UN, the ICRC, the NGOs and neither
20 International Human Rights humanitarian laws specialist support.

21 The Prosecution fails to indicate today that its position, to the best of Defence's
22 knowledge, is not supported by any source that has been able to identify. Thus, in
23 addition to the UN report, the ICRC report contradicts the Prosecution's position.
24 Professors Casey Malsen and Haines write in 2018, in -- I'm going to speak in English
25 because the title is in English. So they write in English: (Speaks English) "Hague

1 law interpreted: The conduct of hostilities under the law of armed conflict."
2 (Interpretation) End of quote. That there are strong doubts in -- that an armed
3 conflict existed in CAR after March 2013. So this is 2018 we are talking about.
4 Again, in 2018, Tilman Rodenhauser, in -- "Organising Rebellion", end of quote, in
5 2018, echoes the findings of the UN commission of inquiry.
6 The Annual World Report -- the 2013 Annual World Report published by Oxford
7 University, one of the leading authorities in the subject, states that the armed violence
8 in CAR, since April 2013, does not constitute armed conflict under international law
9 as the groups involved did not meet the criterion of organisation.
10 Annyssa Bellal, who had been legal adviser to the office of the United Nations High
11 Commission for Human Rights, wrote in 2014 that, with the effective disappearance
12 of one of the two parties to the conflict, international humanitarian law ceased to
13 apply in CAR as of 25 March.
14 The Central African Republic from conflict to chaos, back again.
15 The IPIS report to which the Prosecutor refers to several times in his submission
16 confirmed that, around August 2014, the first of these groups reformed attacking the
17 Seleka in and around Bossangoa and Bouca in September.
18 The 2014 UN Commission of Enquiry report states that, and I'm quoting: "The first
19 traces of the Anti-Balaka were seen in the town of Bossangoa in September 2013, but it
20 was only on 5 December 2013, when they attacked Bangui, that the Anti-Balaka
21 demonstrated that they had the capacity to carry out a military attack." Page 286 of
22 the report.
23 Lastly, the UN Mapping Report, which is a 400-page report, long dating to 2017,
24 drafted by the MINUSCA, the UN Development Programme, the Office of the High
25 Commissioner for Human Rights, and the Office of the Special Representative of the

1 Secretary-General on Sexual Violence and Conflict, covering the period from 2003 to
2 2015, consistently finds no significant activity by the so-called Anti-Balaka before
3 September 2013. And, more importantly, this report concludes that, between March
4 and September 2013, the Seleka did not face coordinated military opposition, making
5 the existence of an armed conflict during this period unlikely. Exhibit
6 CAR-OTP-2055-1987, page 2232.

7 Where are these elements addressed in the Prosecution's brief? Nowhere.

8 The Prosecution insists on only criticising the 2014 UN Commission of Enquiry report
9 and pretends that no one has been interested in this issue ever since, which completes
10 the Prosecution's denial of reality on this issue.

11 One final point, your Honours, in the trial brief the Prosecution asserts that, and I'm
12 quoting: "At the time of the events, Said had knowledge of the factual circumstances
13 establishing the existence of an armed conflict." Paragraph 51 of the trial brief.

14 On this specific point, it should be recalled that the knowledge -- that the knowledge
15 within the meaning of the Article 30 of the staff regulations must be determined at the
16 time of the facts, at the time of the facts.

17 In other words, in order for the mental element, the intangible element, that is
18 knowledge, to be established, the person concerned must necessarily have been aware
19 of the facts of the situation at the time of their commission or existence.

20 Therefore, in order to establish Mr Said's knowledge of the factual circumstances
21 establishing the alleged existence of an armed conflict, it must be demonstrated that
22 Mr Said had the knowledge of them during the period concerned by the alleged
23 armed conflict.

24 However, in 2013, as we've just demonstrated, the existence of an armed conflict of a
25 non-international nature in CAR was not at all established. On the contrary, the

1 various reports showed that the existence of an armed conflict was widely discussed,
2 even refuted at the time of the events. This position has persisted for a long time to
3 the extent that, to this day, the Prosecution is still unable to present any evidence
4 to -- that anyone - UN, NGOs, international humanitarian law specialist - consider
5 that there was a CANI in 2013 in the CAR.

6 So how could Mr Said have had the knowledge of an alleged existence of a
7 non-international armed conflict when organisations like the UN or the ICRC, whose
8 researchers are constantly working on the subject themselves, did not know about it?
9 Thus it is obvious that Mr Said could not have the knowledge of the factual
10 circumstances establishing the existence of an armed conflict as the Prosecution
11 claims.

12 In any event, the Prosecution, which, moreover, dispatches the subject by devoting
13 only one paragraph to it, does not demonstrate in any way the knowledge that
14 Mr Said could have had on the alleged situation of the armed conflict at that time of
15 the events in 2013.

16 The Prosecution asserts that, and I'm quoting: "Throughout this period, the activities
17 of the pro-Bozizé and Anti-Balaka forces, and the class exchange of fire that was
18 widely reported in the press articles and radio broadcast to which Said had access."
19 Paragraph 21 of the trial brief.

20 Beyond the fact that the Prosecution's argument seems to suggest that the Prosecution
21 considers that the content of a press article, a source of limited probative value in
22 international criminal proceedings, should be taken as face value by its reader, which
23 raises questions on the Prosecution's general approach to its evidence.

24 An analysis of the footnote references shows, once again, that the press articles
25 referred to do not support the Prosecution's assertions, as the Prosecution refers to

1 footnotes, to press articles and radio broadcasts, which are either irrelevant or, again,
2 dated from second half of 2013.

3 CAR-OTP-2001-4641, this is an interview of Francois Bozizé by France in August 2013,
4 contrary to the affirmations of the Prosecution. It's mentioned in this article that,
5 "Francois Bozizé" - and I quote - "knows that for the moment he doesn't
6 benefit -- doesn't enjoy any base in the region." This is page 4147, which contradicts
7 the idea of any organisation of the Anti-Balaka.

8 Furthermore, Francois Bozizé, when asked the question, and I quote: "Do you think
9 you'll take up arms, launch a guerilla?

10 And the answer: "I don't forbid myself anything, but that is not actuality. It's not
11 something of today."

12 So it's difficult in these conditions in reading this article that there is an awareness of
13 the existence of a non-international armed conflict in the Central African Republic at
14 that time. The circle has gone full round, Madam President, your Honours.

15 Regardless of the angle you take, and despite all efforts, the Prosecution has nothing
16 to submit to you. They cannot give you anything during the trial which will show
17 you the existence of a non-armed -- non-international armed conflict in the Central
18 African Republic between March and September 2013.

19 And now we have the crimes against humanity, and I -- these two points will be given
20 to Professor Jacobs to finish our opening statements. Thank you, your Honours.

21 PRESIDING JUDGE SAMBA: [15:03:07] Thank you very much, Ms Naouri.

22 Mr Jacobs, please.

23 MR JACOBS: [15:03:45](Interpretation) Your Honours, as we've just shown you, the
24 Prosecution is incapable of showing the existence of the contextual elements of war
25 crimes, principally because it's incapable of proving that what they call the Seleka

1 could make up a group that's sufficiently structured, organised and hierarchical
2 within Article 8 of the Statute.

3 The arguments put forward by the Prosecution dealing with crimes against humanity
4 fail for precisely the same reasons. In fact, the Prosecution needs to prove, in
5 accordance with Article 72 of the Rome Statute, the existence of a policy or a state of
6 organisation. And we will see this throughout the process, that the Prosecution will
7 never be able to show or prove this. This lack, this flaw is in the narrative and is
8 also -- has no probative value.

9 The flaws of the Prosecution in its narrative and also in the area of the evidence.

10 And I'm going to look in these two points right now.

11 Firstly, as regards the narrative, as we have already shown you, the Seleka never
12 existed as a homogeneous entity, neither before arrival in Bangui, neither after its
13 arrival there. At that time, the heterogeneous coalition and not organised coalition
14 which entered in Bangui with the sole aim to make the antidemocratic government of
15 President Bozizé collapse was so fragmented and dissolute that they had little groups
16 without -- who were permanently fighting and struggling within each other, but they
17 met in order to get the pecuniary fruits by capturing Bangui.

18 As previously mentioned - but this is a key question, and I come back to it - the
19 United Nations sums up this atmosphere perfectly well, this atmosphere of
20 generalised chaos. The United Nations said, the Seleka was a composition of blocks
21 looking for individual interests, trying to find personal resources rather than a
22 government with a clear political agenda.

23 The Seleka remained a non-homogeneous unit and was not able to take -- they only
24 took instructions -- the soldiers only took instructions from their own commanders.

25 The mission adds that they could obtain -- could not obtain a list of deployment

1 which broke down the functioning and structure of the Seleka and the establishment
2 of a command line.

3 In these circumstances, we are forced to say that a policy that was decided by the
4 Seleka does not make much sense, and that one of the realities that prevails at that
5 time, all the affirmations of the Prosecution relating to this policy assumes a
6 completely different meaning.

7 We should note here, and we will do this during the trial, that the reality that the
8 Prosecution refuses to see is this: The events which the Prosecution talks about
9 and/or as they are established relate to common criminality, which is seen through
10 looting, through a framework of complete disorganisation and generalised anarchy.
11 Confronted to the fact that this looting constituted the essential of the activities of
12 individuals who could not be control and that the engine of these individuals was a
13 loss of gain and not a general policy, the Prosecution continues denying the reality.
14 And rather than drawing the consequences, logical consequences, and recognise the
15 common criminal character of what is happening, the Prosecution insists, regardless
16 of the cost of this, to introduce this reality in its imagination of a general and
17 structured policy.

18 How? By trying to change these lootings practices, which are not targeted in the
19 Statute of Rome, in -- by making it a criminal action under criminal law, which falls
20 under the framework of Article 7.

21 The Prosecution wants to change at all costs this file which shows the common
22 criminality in the Central African Republic and make this an international crime file,
23 but that is not the function of the ICC, to look into the common law criminality.

24 The events of Boy-Rabe during 2013, which the Prosecution talks, is within this
25 logicity of pillaging, looting and ordinary criminality. What becomes apparent

1 from the analysis of the Prosecution is the looting for individual gain and random acts
2 of violence.

3 Each witness describes how looters took goods; mattresses, televisions, chairs, tables,
4 fridges. The fact that these lootings were for personal gain is the core of the activity
5 for the individuals in question and shows the need to satisfy for personal gains
6 without any political construction -- considerations or instructions.

7 On the contrary, the evidence of the Prosecution shows that these persons didn't obey
8 orders, even those coming from what the Prosecution call the leaders.

9 For example, P-0851 says, and I quote: "When I arrived near me, the Seleka pointed
10 their weapons to us and asked who we were. Nouradine Adam introduced himself,
11 but they didn't stop looting. Nouradine Adam told them, 'Stop looting.'

12 Nouradine said, 'Don't loot this dwelling.' The Seleka elements who were looting
13 the dwelling seemed to belong to another faction of the Seleka group. This
14 movement was in fact very dispersed." End of quote.

15 This witness is illuminating, and that perhaps explains why the Prosecution is not
16 going to call upon this witness.

17 Another example which reflects this reality, P-1970 says about the Seleka that he was
18 killed by another Seleka where there was an argument about the objects looted. End
19 of quote.

20 Here you can see the disorganised and chaotic character of these actions because the
21 Seleka killed each other for objects that had been looted. Where is the policy and the
22 organisation in all of this?

23 The Prosecution refuses to see the reality of the common crimes which was rampant
24 and does not convince us of the existence of a so-called policy aiming or targeting the
25 supporters of President Bozizé. Within the framework of this discussion as regards

1 the contextual elements, the Prosecution states that the persons who were taken as
2 target by the so-called Seleka, that's to say, the Christians, the ethnic Gbaya and
3 Mandja, the inhabitants of certain areas of Bangui, or who carried out certain
4 professions who were regarded as favourable to Francois Bozizé, such as the
5 members of the FACA, the members of the former presidential guard of Francois
6 Bozizé, and people who were close to him, and, finally, officers who were employed
7 by the government of Francois Bozizé. Yet, reading the trial of the Prosecution -- the
8 brief of the Prosecution, we notice that there is a methodological bias, which means
9 that in reality the Prosecution will never be able to show the policies which will aim at
10 these people that have been mentioned.

11 Firstly, the approach of the Prosecution doesn't -- has bias in the selection of an
12 example which has a bias which is presupposed on the existence of a political plan.
13 The Prosecution says as an acquisition that there is a policy and chooses its examples
14 accordingly.

15 In effect, because the Prosecution presupposes that there is a policy, it only looks for
16 examples relating to individuals who they see as victims of that policy and uses this
17 to validate -- to prove that this policy does exist.

18 Once that the existence of the policy is presupposed, the Prosecution chooses victims
19 who validate this. They choose Christians, Gbaya, et cetera, and only concentrate on
20 these victims, look at only those victims in the group. And you can see the problem
21 in this.

22 The problem here is that if they proceed in this way, the Prosecution doesn't take into
23 account anything that isn't in line with their narrative.

24 Furthermore, during this process, the Prosecution doesn't give any numbers on the
25 police activities of Bangui during this period. Without this information, we cannot

1 show that the incidents which are alleged are isolated or that they are part of an
2 overall policy.

3 In the same vein, the Prosecution has not made any effort during their investigation
4 to obtain any figures on the inmates in the OCRB during the entire period covered by
5 these charges.

6 There again, without figures of the inmates, how can we start to say that there was a
7 plan which suffered from these incidents alleged? How do we know that these are
8 not isolated? What is the factual basis for this? And this is something that the
9 Prosecution hasn't dealt with.

10 I state, this is an original problem. This is the starting basis which has not been
11 addressed by the Prosecution. So, as from today, given the Prosecution's
12 submissions, this problem cannot be resolved. We do not have figures. We do not
13 have useful data. So it's impossible on this basis to affirm that there was a general
14 policy.

15 Furthermore, as we said previously, we have witnesses who say that the inmates of
16 the OCRB were made up of common criminals and people from -- who went to the
17 Seleka because they were subject of criminality and looting.

18 The flaws are not only in method but also in facts. If you put together all the
19 population, which according to the Prosecution were targeted, then they would cover
20 the majority of the Central African population as a whole. Because 90 per cent are
21 Christians in CAR, and the three ethnic groups mentioned by the Prosecution in its
22 brief make up 75 per cent of the Central African population. In other words,
23 statistically, if a person dies, regardless of the reason why, it is likely that he is
24 one -- part of the groups which the Prosecution mentions.

25 To be clear, the alleged victims would be part of this group. Statistically, it doesn't

1 prove anything on the existence of a policy held within that group.

2 The final method used in the arguments put forward by the Prosecution are -- is the
3 logic that is used by them. In fact, even if you have to accept for the need of the
4 discussion some of the witness statements who confirmed that during the looting,
5 some looters talked about their allegiance to Francois Bozizé, it still doesn't prove that
6 there was a general overall policy.

7 It is the Prosecution to prove that these isolated incidents are not the fruit of
8 animosity of a personal nature and that it cannot be accepted like that within a legal
9 trial from the Prosecution, which means that burden of proof is on them to prove their
10 case.

11 Once again, there is a lack of logic, because in each case, it is not personal animosity
12 that might be the one that is fuelling the looter.

13 The only place in the brief where you could see that the Prosecution has given
14 evidence that would prove some sort of existence of a policy is the section that says
15 that the Seleka publicly announced its policy where it took states that it would use as
16 target supporters of Bozizé. Paragraph 91.

17 Now let's move on to the generic term "Seleka". What do we notice when reading
18 the examples given by the Prosecution at the bottom of the page and in its text?

19 There again, these are isolated cases and individual cases of witnesses which have
20 been reproached as being supporters of Bozizé. And, once again, this logic doesn't
21 show that there is a general policy.

22 Again within this framework, in paragraph 93, it says, Adam and Djotodia also made
23 radio broadcasts where they mentioned Boy-Rabe and the residence in such a way
24 that it gave rise to panic.

25 As regards the imminent attack, this is paragraph 93 of the brief, when reading

1 through this, the Prosecution, one would suppose that it would give you the speeches
2 so that you could read through the speeches to fully understand them, but that's not
3 the case.

4 The Prosecution refers to the witness -- doesn't refer to one single witness who heard
5 any discussions or broadcast on the radio and gives their views on the discussion that
6 took place on the broadcast.

7 A speech.

8 THE INTERPRETER: [15:24:27] So the interpreter corrects: It's not a discussion but
9 a speech.

10 MR JACOBS: [15:24:31](Interpretation) So one would expect the Prosecution to put
11 before the Chamber these speeches so that we could analyse them and discuss them.
12 There is no witness to do so. And so we remain with this perception, which is very
13 subjective, on behalf of the witness.

14 Where are these broadcasts? We don't know.

15 Where are all these speeches, public speeches, which the Prosecution talks about?

16 We can't find them anywhere in the file.

17 How can the Prosecution make such a generic allegation on the existence of a public
18 broadcast on the basis of a single witness without doing anything to verify what the
19 witness was saying? This example is a perfect illustration of the weak evidence in
20 this file, and this is the consequence of a flawed method used, which means that they
21 consistently believed what the witness was saying, took his word for it.

22 To be -- I'm going to repeat the last sentence for the sake of clarification. This
23 example which I've just given is a perfect illustration that the weak evidence in
24 this case is the reality of the consequence of a flawed investigation where the

25 Prosecution has believed the witness and took him at his word without systematically

1 examining it.

2 So we can actually see that the Prosecution is not providing any proof to support his
3 statements, and he hasn't actually demonstrated the existence of any policy. The
4 flawed nature of the statement is rather -- when you analyse the proof provided by
5 the Prosecution, when you analyse the proof or the evidence provided by the
6 Prosecution to support the contextual elements of a crime against humanity, we feel
7 very quickly that the Prosecution is only contenting with lesser evidence in its case,
8 and yet the Prosecution is unable to demonstrate contextual information that
9 constitute the charges. And it's not because its contextual elements that the
10 Prosecution can be vague, or less specific, or draw on elements of a lesser value.
11 In this context, it is striking to observe that the Prosecution is referring on its part
12 to -- is referring to certain NGO reports - FIDH, IPIS, UN documents, Human Rights
13 Watch - that have been -- evoked about a dozen of times.

14 However, an NGO or UN report necessarily has less probative value since these
15 reports are generally based on anonymous hearsay, and hence cannot be verified by
16 the parties or by the Chamber. And these are reports that cannot logically provide
17 any basis for corroboration.

18 Indeed, how can the Prosecution claim any corroboration when it is unable to
19 determine whether it has at least two different sources?

20 Furthermore, the Prosecution relies here, as it has throughout the case, heavily and
21 anonymously relied on hearsay for each of the incidents discussed. I talked about
22 the minibus incident on eight witnesses based exclusively on hearsay, but the same
23 can be demonstrated for the other incidents provided by the Prosecution to support
24 the contextual elements.

25 Lastly, most of the witnesses on which the Prosecution is relying for contextual

1 elements are not called to bear witness. For instance, with regards to the incidents
2 related to the 7th arrondissement in Bangui, the Prosecution relies on six witnesses,
3 and only one has been called in here for the hearing. And this approach is rather
4 surprising because the only witness, P-0302, says that he remained in his place during
5 the time of the alleged events.

6 At this stage of demonstration, your Honours, it is clearly evident that the two pillars
7 on which the Prosecution relies completely collapse. The allegations of crimes
8 against war and crimes against humanity, the Prosecution cannot demonstrate the
9 existence of a non-conflict of an international nature or any organised group.

10 So, in these circumstances, there is a domino effect, and it is normal that the
11 accusation against Mr Said made by the Prosecution collapses. Especially, we can
12 note the absence of any demonstration at all on the existence of a so-called Common
13 Plan, which is central on the mode of liability for -- on Article 25(3)(a).

14 Thus, the Prosecution asserts that in paragraph 329 in its brief: "This agreement can
15 be inferred from the commission of the crimes, from the actions of the co-perpetrators,
16 in particular of Said, and from the subsequent conduct of co-perpetrators at CEDAD,
17 in particular Adam, Tahir and Damboucha, namely, the continuation of the same
18 pattern of the criminal behaviour but in a more clandestine manner, covering the
19 heads of the detainees in order to disorient them." End of quote.

20 I've got several quick remarks to make. Firstly, by inviting the Judges to deduce the
21 so-called Common Plan from the alleged commissions of the crime, which is circular,
22 and you've agreed to that, the Prosecution in fact concedes that it has no direct
23 evidence of the existence of the so-called Common Plan.

24 The Prosecution is reduced to asking the Chamber to infer the existence of the
25 Common Plan from circumstantial evidence. It is important to understand what this

1 means. It means there is no direct evidence of a Common Plan implemented by
2 several so-called Seleka leaders. Whilst the Prosecution is investigating the CAR II
3 situation for eight years and has interviewed key actors, and it has tried not to retain
4 some of them and has obtained the cooperation of Central African authorities, the
5 Prosecution has simply not found any evidence of what it alleges, which casts a
6 shadow on the strength of its overall case.

7 In relation to the approach that Judges should make inferences from circumstantial
8 evidence, it is interesting to note the position of Justice Eboe-Osuji in the Ruto case,
9 who noted that the presumption of innocence should play a role in protecting against
10 any inferences to the detriment of the accused, especially when relying on
11 circumstantial evidence.

12 Secondly, the failure of the Prosecution to prove anything, for example, from
13 paragraph 326 of the Prosecution brief, and I'm quoting: "It appears from the
14 evidence that Said and Adam, Tahir, Damboucha, Yaya, Nioro, Sallet, Rakiss, and
15 Al-Bachar, as well as other Seleka are named from the OCRB who carried out the
16 material elements of the crimes charged with, shared a common plan or agreement to
17 target alleged Bozizé supporters in Bangui by committing in the OCRB the crimes
18 alleged in Counts 1-7, and in doing so, made an essential contribution to the Common
19 Plan."

20 So we can see here the circular nature of the Prosecution's reasoning because there are
21 alleged crimes, there is a Common Plan, which resulted in the commission of crimes,
22 which constitutes a contribution to the Common Plan, which resulted in the
23 commission of the crimes, which demonstrates the existence of a Common Plan, and
24 so and on and henceforth, without the Prosecution actually proving anything
25 whatsoever.

1 Thirdly, the reference to the subsequent conduct of the co-perpetrators at CEDAD.

2 Now, this reference is intended to reintroduce the arguments related to the alleged
3 events at CEDAD, even though the Pre-Trial Chamber found that the Prosecution had
4 not proved that there was a link between Mr Said and CEDAD.

5 In the confirmation of charges hearing, the Pre-Trial Chamber concluded that, after a
6 detailed analysis of the evidence given by the Prosecution, that the Prosecution failed
7 to prove any link between Mr Said and CEDAD, whether in relation to the events that
8 allegedly took place or in relation to the more general organisation of CEDAD.

9 There is absolutely no mention of CEDAD in the operative part of the confirmation of
10 charges and no mention of liability or crimes against humanity.

11 Logically, if there is no link between Mr Said and CEDAD, how can the Prosecution
12 refer to CEDAD in order to prove a plan of which Mr Said was a co-perpetrator? It
13 doesn't make sense.

14 How can the alleged conduct of certain individuals at CEDAD be of any relevance in
15 demonstrating any alleged Common Plan at the OCRB, given that the Pre-Trial
16 Chamber has clearly found that there is no link between Mr Said and CEDAD?

17 Ultimately, the Prosecution cannot demonstrate a Common Plan because there is
18 simply no Common Plan.

19 As we've already seen in the context of state disorganisation, the OCRB carried out as
20 best as it could its functions in fighting banditry and delinquency. We've shown that
21 the people detained at the OCRB, and we will continue to do so, that the people
22 detained were common criminals. And the OCRB was contributing at its level to
23 fight looting committed by former Seleka in Bangui.

24 As for the allegations of outburst, apart from being based on sometimes dubious and
25 contradictory evidence, as we shall see throughout the trial, let us look at what the

1 Prosecutor's own evidence show us when outbursts against detainees are mentioned.
2 These are isolated cases, opportunistic acts that do not follow any logic. They reveal
3 an absolute lack of consistency or organisation. They are random in nature. The
4 alleged perpetrators of the violence, the reasons for the violence, the frequency of the
5 violence. It is also common to find that the perpetrators' motives are purely
6 financial, in order to obtain money.

7 It is not -- if you look into the entire period of charges, nothing shows that these are
8 part of any general policy, and it is because these are isolated acts and they do -- they
9 are not part of a general policy, and this is precisely why the Prosecutor cannot
10 determine the -- cannot demonstrate the existence of the elements constituting the
11 modes of liability.

12 Your Honours, at the confirmation hearing, I quoted a very well-known sentence by
13 Albert Camus: "To misname an object is to add to the misfortune of the world."
14 Since the Prosecution has not changed a line in its narrative, this quote even remains
15 relevant today.

16 Indeed, as we've seen and we will continue to see so during the entire trial, the
17 Prosecution's case is an accumulation of statements that misname things: The Seleka,
18 the government, the politics, the armed conflict, the common crimes that occurred in
19 Bangui, the role and functioning of the OCRB and, finally, the role of Mr Said.

20 What is the objective of the Prosecution? It's to transform the nature of events, to
21 transform reality, to change its allegations into international crimes, to want it at all
22 cost, as the Prosecution does, to fit this common law crime into the boxes of
23 international criminal justice. It is not only to be of disservice to the cause and
24 nature of the International Criminal Court, but, ultimately, this has -- it is more
25 serious. It is to deny reality of what the Central African Republicans have been

1 experiencing for decades in the context of colonial and postcolonial violence that
2 we've already described to you.

3 Your Honours, in the end, this is the case of the Prosecution, two failing pillars. One
4 narrative, the other evidential, on which it is not possible to build anything solid at all.
5 These two pillars are flawed without which the Prosecution's allegations will be
6 revealed for what they are, unfounded speculation due to poor and inadmissible
7 evidence, and a narrative that has no roots in reality of what actually happened in the
8 Central African Republic at that point of time.

9 These two defective pillars -- and you cannot build any kind of demonstration that
10 will allow the Prosecution to fulfil its obligation to prove the charges beyond any
11 reasonable doubt, which should naturally and logically lead at the end of the trial to
12 the recognition of Mr Said's innocence and his acquittal.

13 Thank you so much, your Honour.

14 MS NAOURI: [15:44:24](Interpretation) This concludes the opening statements of
15 the Defence. Thank you so much.

16 PRESIDING JUDGE SAMBA: [15:44:32] Thank you very much, Ms Naouri. Thank
17 you very much, Mr Jacobs.

18 This brings us to the end of today's session. As you all received an email, we meet
19 here again on Thursday to start with the first Prosecution witness. I suppose that's
20 P-0547.

21 Can you confirm that, Madam Prosecutor.

22 MS MAKWAIA: [15:45:03] That's correct, Madam President.

23 PRESIDING JUDGE SAMBA: [15:45:05] Thank you very much.

24 So I'll adjourn this matter till we meet again on Thursday at 9.30 in the morning.

25 The Court stands adjourned, please.

- 1 THE COURT USHER: [15:45:17] All rise.
- 2 (The hearing ends in open session at 3.45 p.m.)