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TRIAL CHAMBER VI

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

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

**Public
with Confidential Annexes A and B**

**Public Redacted Version of “Prosecution Request under Rule 68(2)(c) to Introduce
the Prior Recorded Testimony of Six Witnesses”, ICC-01/14-01/21-290-Conf, dated 29
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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to introduce into evidence the prior recorded testimony of Witnesses P-0881, P-1004, P-1297, P-1313, P-1420, and P-3053 pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Application”). The Prosecution provides in Confidential Annex A, the list of material it seeks to be received as formally submitted for each witness (hereinafter “Documents”).

2. The Documents can be introduced pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”) as these six witnesses are deceased and therefore unavailable to testify before the Court. Their prior recorded testimony is relevant, probative, and bears sufficient indicia of reliability. In all cases, the need for article 56 measures could not have been anticipated. Finally, the introduction of this evidence is not prejudicial to or inconsistent with the rights of the Accused Mahamat Said Abdel Kani (“Mr SAID”).

3. The evidence of four of the witnesses, namely P-0881, P-1297, P-1313, and P-1420, relates entirely to aspects of the contextual elements of war crimes and crimes against humanity. It is also cumulative to and corroborates the evidence of other witnesses, including witnesses who will testify at trial. The evidence of Witnesses P-1004 and P-3053 additionally refers to the acts and conduct of Mr SAID. Their evidence is also cumulative to and corroborates the evidence of other witnesses, which also includes witnesses who will testify at trial. The Defence will have the opportunity during the course of the trial to challenge and refute the evidence of these six witnesses, including by the cross-examination of witnesses who will testify in court on overlapping facts and evidence.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission confidential because it contains evidence of Prosecution witnesses, which is not currently publicly available. A public redacted version will be filed as soon as practicable.

III. APPLICABLE LAW

5. In its Directions on the Conduct of Proceedings (“Directions”),¹ the Chamber determined that the Prosecution may file applications for the admission of prior recorded testimony pursuant to rule 68(2) of the Rules. Pursuant to rule 68(2)(c) of the Rules, the Chamber may allow the introduction of the previously recorded testimony of a witness who is not present before it when the following three requirements are met: (i) the prior recorded testimony comes from a person who has died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally; (ii) the necessity of measures under article 56 could not be anticipated; and (iii) the prior recorded testimony has sufficient indicia of reliability.² In its assessment of indicia of reliability which is considered preliminary at this stage,³ the Chamber is not obliged to consider factors beyond formal requirements, but may do so if they consider it to be appropriate in a particular case.⁴

6. Rule 68(2)(c)(ii) does not prevent the introduction of material that goes to the acts and conduct of the accused, though it may be a factor against its introduction, or part of it.⁵ The expression “acts and conduct of the accused” within the meaning of rule 68(2) of the Rules refers to “the personal actions and omissions of the accused as

¹ ICC-01/14-01/21-251, para. 38.

² *Gicheru*, ICC-01/09-01/20-235-Red, para. 8.

³ *Gicheru*, ICC-01/09-01/20-235-Red, para. 20; *Bemba*, ICC-01/05-01/13-1481-Red, para. 20; *Gbagbo*, ICC-02/11-01/15-744 OA 8, paras. 3, 72, 104.

⁴ *Gicheru*, ICC-01/09-01/20-235-Red, para. 20; *Gbagbo*, ICC-02/11-01/15-744 OA 8, paras. 3, 103-104; *Al Hassan*, ICC-01/12-01/18-1588-Red, para. 28; *Al Hassan*, ICC-01/12-01/18-1413, para 15.

⁵ *Gicheru*, ICC-01/09-01/20-235-Red, para. 28.

opposed to the acts and conduct of other persons which could be attributed to the accused by reason of the mode of liability charged.”⁶

IV. SUBMISSIONS

7. For each witness the prerequisites of rule 68(2)(c) of the Rules are met because (i) they are unavailable to testify because they are deceased; (ii) their evidence is relevant, reliable and probative; and (iii) article 56 measures could not be anticipated. These requirements are set out in section A of this Application. Thereafter, in section B, the Prosecution sets out that the rights of Mr SAID are not prejudiced.

A. Unavailability, relevance and reliability, and anticipation of article 56 measures

1. Witness P-0881

(i) The witness is unable to testify as he is deceased

8. On 12 May 2021, the Prosecution learned from the son of P-0881 that the witness had passed away three months before from [REDACTED]. Proof of his death consists of a death certificate dated [REDACTED] June 2021, which declared P-0881’s death on [REDACTED] February 2021 at [REDACTED] hours.⁷ Further, a *Jugement d’homologation en matière de succession*, issued by the Central African authorities confirms that P-0881 died on [REDACTED] February 2021.⁸ Additionally, the statement of P-0881’s nephew, [REDACTED] (P-3098), explains that P-0881 died on [REDACTED] February 2021 at the *Hôpital communautaire* of Bangui.⁹

(ii) P-0881’s prior recorded testimony is relevant, reliable and has probative value

9. Witness P-0881’s prior recorded testimony consists of his statement,¹⁰ which was taken in 2016, and is to be relied upon to establish aspects of the contextual elements

⁶ *Gicheru*, ICC-01/09-01/20-235-Red, para. 9 (citing jurisprudence).

⁷ **P-3098 Annex: CAR-OTP-2135-2547** (*Acte de décès*).

⁸ **P-3098 Annex: CAR-OTP-2135-2548-R01** (*Jugement d’homologation*).

⁹ **P-3098: CAR-OTP-2135-2542-R01** at 2544, para. 12.

¹⁰ See Confidential Annex A (A.1).

of crimes against humanity and war crimes. P-0881 provides evidence about an attack on the 7th *arrondissement* in Bangui on 13 April 2013, which is one of the additional incidents that the Prosecution alleges formed part of the attack directed against the civilian population by the Seleka.¹¹

10. P-0881 was a [REDACTED] in Bangui. He describes the layout of the 7th *arrondissement*, the arrival of the Seleka forces on 24 March 2013, the crimes committed by the Seleka in the 7th *arrondissement* and in particular the attack and crimes committed by Seleka forces on 13 April 2013. P-0881 describes killings, kidnappings and looting. P-0881 further describes how the Seleka arbitrarily arrested many young men and minors, including fourteen-year-olds and persons who were hiding under their beds at home.¹² When [REDACTED] reported these arrests to DJOTODIA, he gave them money to pay the ransoms for their release, which suggests DJOTODIA's belief that these detentions were arbitrary. However, DJOTODIA failed to give an order or send anyone to release the youths.¹³

11. P-0881's statement is *prima facie* probative, reliable and was voluntarily provided.¹⁴ P-0881 further attested that he understood his statement could be used in judicial proceedings before the Court and that he could be called to testify as a witness.¹⁵ His statement was taken in compliance with rule 111 of the Rules.¹⁶ The statement was given in French, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.¹⁷ P-0881 initialled each page and signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.¹⁸

¹¹ See Pre-Confirmation Brief, ICC-01/14-01/21-155-Red ("Pre-Confirmation Brief"), paras. 54-55.

¹² P-0881: [CAR-OTP-2032-0682-R01](#) at 0691-0693, paras. 61-71 (Eng).

¹³ P-0881: [CAR-OTP-2032-0682-R01](#) at 0694, para. 83 (Eng).

¹⁴ P-0881: [CAR-OTP-2032-0682-R01](#) at 0684, paras. 4-6, at 0685, paras. 11-13, at 0701 (witness acknowledgment).

¹⁵ P-0881: [CAR-OTP-2032-0682-R01](#) at 0684, paras. 7-9, at 0701 (witness acknowledgment).

¹⁶ P-0881: [CAR-OTP-2032-0682-R01](#) at 0682-0683 (dates, times and places of, and all persons present during the questioning).

¹⁷ P-0881: [CAR-OTP-2032-0682-R01](#) at 0684, para. 5, at 0701, paras. 135-139 (interpreter certification).

¹⁸ P-0881: [CAR-OTP-2032-0682-R01](#) at 0701 (witness acknowledgment).

12. The statement of P-0881 provides a detailed account of what happened to him and what he witnessed. He describes the events in a coherent and consistent manner. P-0881's evidence is also reliable and truthful because it is cumulative to and corroborates other evidence, including that of Witness P-0312 who will testify, as well as Witnesses P-0882, P-2386, and P-1808,¹⁹ whose evidence will be requested to be submitted under rule 68(2)(b) of the Rules.²⁰

(iii) The necessity of article 56 measures could not be anticipated

13. P-0881 was interviewed by the Prosecution on 24 and 25 June 2016. The witness was born in 1942 and was 74 years when he gave his witness statement. At the time, he reported having only minor health issues such as [REDACTED]. No further ailments were reported since then even though the Prosecution was in contact with the witness. On 12 May 2021, the Prosecution then learned that P-0881 had passed away three months earlier from [REDACTED]. Prior to being informed of P-0881's death, the Prosecution had no reason to suspect or believe that the witness was anything but reasonably healthy. Under such circumstances, the Prosecution had no information in its possession to justifiably seek measures under article 56 of the Rome Statute ("Statute").

2. Witness P-1004

(i) The witness is unable to testify as he is deceased

14. On [REDACTED] January 2017, the Prosecution learnt from his brother that Witness P-1004 had passed away the night before.²¹ Three Prosecution Witnesses—P-

¹⁹ **P-0881:** [CAR-OTP-2032-0682-R01](#) at 0691-0693, paras. 61-76; **P-0312:** [CAR-OTP-2039-0133-R01](#) at 0139, paras. 37-42; **P-0882:** [CAR-OTP-2032-0654-R01](#) at 0660-0661, paras. 34-43; **P-2386:** [CAR-OTP-2135-2792-R01](#); **P-1808:** [CAR-OTP-2135-2185-R01](#).

²⁰ **P-0312:** [CAR-OTP-2039-0133-R01](#) at 0139, paras. 37-42; **P-0882:** [CAR-OTP-2032-0654-R01](#) at 0660-0661, paras. 34-43; **P-2386:** [CAR-OTP-2135-2792-R01](#).

²¹ **Investigation report:** [CAR-OTP-2130-7829-R01](#).

2143, P-1167, and P-2563—confirm that P-1004 is deceased. Of particular note, P-2143 saw P-1004's dead body at the *Hôpital de l'Amitié* in Bangui in 2017 and states that P-1004 was then buried in [REDACTED].²²

(ii) P-1004's prior recorded testimony is relevant, reliable and has probative value

15. P-1004's prior recorded testimony consists of his witness statement and its annex.²³ P-1004's evidence is relevant to the acts and conduct of Mr SAID and other co-perpetrators of the charged crimes as well as for aspects of the contextual elements of crimes against humanity and war crimes. P-1004 provides information about Mr SAID's role and activities at the OCRB. He describes him as the top-ranking Seleka at the OCRB,²⁴ who reported directly to Nouradine ADAM,²⁵ and organised the Seleka elements stationed at the OCRB.²⁶ P-1004 also provides general information about the structure and hierarchy of the Seleka at the OCRB and the relationship with the police officers stationed there.²⁷

16. P-1004 also provides information relevant to the Seleka policy of targeting the civilian population perceived as pro-BOZIZE. For instance, P-1004 states that persons of the Christian faith were specifically targeted as perceived BOZIZE supporters.²⁸

²² **P-2143:** [CAR-OTP-2125-0896-R01](#) at 0905-0906, para. 53 (Eng). *See also* **P-1167:** [CAR-OTP-2094-0002-R01](#) at 0037, para. 196 (Eng); **P-2563:** [CAR-OTP-2118-9341-R01](#) at 9348 (Eng).

²³ *See* Confidential Annex A (A.2). The annex is a sketch of the CEDAD premises, which he described during his interview.

²⁴ **P-1004:** [CAR-OTP-2043-0536-R01](#), at 0540, para. 33. *See also* **P-0787:** [CAR-OTP-2130-0893-R01](#) at 0902, para. 41 (Fr); **FIDH report:** [CAR-OTP-2001-2890](#) at 2933-2934, p. 44-45; **P-1429:** [CAR-OTP-2043-0317-R01](#) at 0324, para. 48; **P-0547:** [CAR-OTP-2018-0389-R01](#) at 0408, para. 137; **P-2105:** [CAR-OTP-2081-0037-R01](#) at 0043, para. 31 (Fr); **P-1167:** [CAR-OTP-2127-7671-R01](#) at 7685, para. 76 (Fr); **List of OCRB Seleka:** [CAR-OTP-2082-0458](#).

²⁵ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0540, para. 33. *See also* **P-0338:** [CAR-OTP-2130-5761-R01](#) at 5774-5775, paras. 65, 71; **P-2105:** [CAR-OTP-2081-0037-R01](#) at 0042-0043, paras. 27, 31 (Fr).

²⁶ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0540, paras. 32, 35.

²⁷ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0540-0542, 0547-0549, paras. 32-40, 51, 54-55, 81-82, 84-91, 94, 96-97, 101.

²⁸ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0546, para. 73.

17. P-1004's statement is *prima facie* probative, reliable and was voluntarily provided.²⁹ P-1004 further attested that he understood his statement could be used in judicial proceedings before the Court and that he could be called to testify as a witness.³⁰ His statement was taken in compliance with rule 111 of the Rules.³¹ The statement was given in French, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.³² P-1004 initialled each page and signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.³³

18. The statement P-1004 provided is a detailed account of what happened to him and what he witnessed, describing the events outlined above in a coherent and consistent manner. P-1004's evidence is also reliable and truthful because it corroborates other evidence, including the testimony of [REDACTED] who will testify, such as P-0338, P-0787, P-1167, P-1737, P-2105, P-2161, P-2478, P-2563, and P-2504.³⁴

(iii) The necessity of article 56 measures could not be anticipated

19. P-1004 was interviewed by the Prosecution on 3, 4 and 6 December 2016. P-1004 was born in 1984 and was 32 years when he gave his witness statement. At that time, he stated that he had [REDACTED]. The Prosecution called the witness on [REDACTED] January 2017 and learnt that he had died the day before, apparently from tuberculosis.³⁵ In other words, P-1004 died only a month or so after his interview,

²⁹ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0537-0538, paras. 4-6 and 8-10, at 0550 (witness acknowledgment).

³⁰ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0537, para. 6, at 0550 (witness acknowledgment).

³¹ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0536 (dates, times and places of, and all persons present during the questioning).

³² **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0551, paras. 1-5 (interpreter certification).

³³ **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0550 (witness acknowledgment).

³⁴ **P-0338:** [CAR-OTP-2130-5761-R01](#) (Fr); **P-2105:** [CAR-OTP-2081-0037-R01](#) (Fr); **P-1167:** [CAR-OTP-2127-7671-R01](#) (Fr); **P-2161:** [CAR-OTP-2127-9323-R01](#) (Fr); **P-2478:** [CAR-OTP-2110-0745-R01](#) (Fr); **P-0787:** [CAR-OTP-2130-0893-R01](#) (Fr); **P-1737:** [CAR-OTP-2130-2086-R01](#) (Fr); **P-2504:** [CAR-OTP-2107-8430-R01](#) (Fr); **P-2563:** [CAR-OTP-2130-4911-R01](#) at 4927, lns. 490- 514 (Fr).

³⁵ **Investigation report:** [CAR-OTP-2130-7829-R01](#).

on [REDACTED] January 2017.³⁶ In his witness statement dated 2-3 April 2021, P-2143 corroborated that P-1004 died in 2017 and that it was “unexpected”.³⁷ P-1004’s death was sudden, unexpected and could not have been anticipated. Under such circumstances, the Prosecution had no information in its possession to seek measures under article 56 of the Statute.

3. Witness P-1297

(i) The witness is unable to testify as he is deceased

20. On 28 January 2022, the Prosecution learned from his son, [REDACTED] (P-3102) that P-1297 had passed away on [REDACTED] July 2021 at the *Hôpital de l’Amitié* in Bangui due to complications with [REDACTED].³⁸ On 2 February 2022, P-1297’s son and widow (P-3103) also provided as proof of his death, photographs of his body taken at the funeral.³⁹ Attempts by the Prosecution to acquire a death certificate from the *Hôpital de l’Amitié* were unsuccessful as no such record was available in their records.⁴⁰

(ii) P-1297’s prior recorded testimony is relevant, reliable and has probative value

21. P-1297’s prior recorded testimony consists of his witness statement, its four annexes, and an associated item.⁴¹ P-1297’s evidence is relevant to the chapeau elements of war crimes and crimes against humanity, particularly the Seleka’s attacks on the Boy Rabe neighbourhood of Bangui on 20-24 August 2013, which is one of the additional incidents that formed part of the attack directed against a civilian population by the Seleka.⁴²

³⁶ Investigation report: [CAR-OTP-2130-7829-R01](#).

³⁷ P-2143: [CAR-OTP-2125-0896-R01](#) at 0905-0906, paras. 53-56.

³⁸ Investigator report: [CAR-OTP-2135-2670-R01](#) at 2670, para. 1, at 2674, paras. 7-8.

³⁹ Investigator report: [CAR-OTP-2135-2670-R01](#) at 2670, para. 2, at 2671-2673, at 2674, para. 7.

⁴⁰ Investigator report: [CAR-OTP-2135-2670-R01](#) at 2670.

⁴¹ See Confidential Annex A (A.3).

⁴² See Pre-Confirmation Brief, paras. 60-64.

22. In 2013, Witness P-1297 was [REDACTED] in Bangui. He provided excerpts from the notebooks he maintained during this time period, which detail the August 2013 Boy Rabe operation, including the murder of P-1523's husband [REDACTED] by the Seleka.⁴³ He provided a list with the names of certain [REDACTED] residents who were killed by the Seleka,⁴⁴ which was compiled contemporaneously in 2013 and 2014 by the local community "judge".⁴⁵ Further, P-1297 joined a complaint of several victims filed on 20 May 2015 because his own house had been looted during the August 2013 operation.⁴⁶ His complaint letter recounts, *inter alia*, the events of 20 August 2013 when the Seleka surrounded the 4th *arrondissement* and committed crimes for two consecutive days such as pillaging and killings.⁴⁷ These items are relevant and probative to the August 2013 attack on the Boy Rabe neighbourhood and thus to the elements of the attack directed against a civilian population by the Seleka. P-1297's evidence further supports the testimony of other witnesses in relation to the leaders of the pro-BOZIZE forces⁴⁸, the April 2013 attack on Boy Rabe,⁴⁹ and the 5 December 2013 attack on Bangui.⁵⁰

23. P-1297's statement is *prima facie* probative, reliable and was voluntarily provided.⁵¹ P-1297 further attested that he understood his statement could be used in judicial proceedings before the Court and that he could be called to testify as a witness.⁵² His statement was taken in compliance with rule 111 of the Rules.⁵³ The

⁴³ **P-1297 Annex 1:** [CAR-OTP-2039-0184-R01](#) at 0193 (Notebook).

⁴⁴ **P-1297 Annex 2:** [CAR-OTP-2039-0213-R01](#) (List).

⁴⁵ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0171, para. 26.

⁴⁶ **P-1297 Annex 3:** [CAR-OTP-2016-0485](#) at 0510 (OJED complaint for pillaging relayed to CMDE). *See* **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0172, para. 37.

⁴⁷ **P-1297 Annex 4:** [CAR-OTP-2039-0216-R01](#) (Complaint letter).

⁴⁸ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0179-0180, para. 85.

⁴⁹ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0171, para. 29, at 0172, para. 36, at 1381, para. 96. Here P-1297 provides corroboration of **P-0119:** [CAR-OTP-2107-1295-R01](#) at 1314, 1325, paras. 113, 192 (Fr); **P-0100:** [CAR-OTP-2118-6331-R01](#) at 6342, para. 53 (Fr); **P-1524:** [CAR-OTP-2062-0468-R01](#) at 0476-077, 0485, paras. 40, 85 (Eng).

⁵⁰ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0176-0177, paras. 61-66.

⁵¹ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0168-0169, paras. 4-7 and 9-10, at 0183 (witness acknowledgement).

⁵² **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0168, para. 6, at 0183 (witness acknowledgement).

⁵³ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0167 (dates, times and places of, and all persons present during the questioning).

statement was given in French, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.⁵⁴ P-1297 initialled each page and signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.⁵⁵

24. The statement P-1297 provided is a detailed account of what happened to him and what he witnessed, describing the events outlined above in a coherent and consistent manner. As a further demonstration of its reliability and truthfulness, P-1297's evidence is also cumulative to and corroborated by other witnesses who will testify about the events in Boy Rabe in 2013 during the trial, such as Witnesses P-0119, P-1263, P-1264⁵⁶ and also by witness evidence the Prosecution seeks to introduce via rule 68(2)(b) of the Rules, including that of P-0100 and P-1524.⁵⁷

(iii) The necessity of article 56 measures could not be anticipated

25. P-1297 was interviewed by the Prosecution on 12-13 and 20 September 2016. P-1297 was born in 1963 and was 53 years when he gave his witness statement. Prior to being informed of P-1297's death, the Prosecution had no reason to suspect or believe that the witness was facing risk of imminent death.

26. On 10 September 2018, P-1297 informed the Prosecution that he had recently been diagnosed with [REDACTED]. On 10 October 2018, P-1297 provided some medical documents dated from 2012 to 5 October 2018, including blood test results and prescriptions. On 13 June 2019, the Prosecution submitted [REDACTED]. On 6 October 2020, the Prosecution spoke with the witness, and he indicated he was well. He made reference to his [REDACTED], and requested additional support. On 27 January 2021, the Prosecution contacted P-1297 for an update and the witness reported

⁵⁴ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0168, para. 4, at 0183, paras. 1-5 (interpreter certification).

⁵⁵ **P-1297:** [CAR-OTP-2039-0167-R01](#) at 0183 (witness acknowledgement).

⁵⁶ **P-0119:** [CAR-OTP-2107-1295-R01](#) (Fr); **P-1263:** [CAR-OTP-2045-0805-R01](#) (Fr); **P-1264:** [CAR-OTP-2036-0065-R01](#) (Eng).

⁵⁷ **P-0100:** [CAR-OTP-2118-6331-R01](#) (Fr); **P-1524:** [CAR-OTP-2062-0468-R01](#) (Eng).

he was better physically and psychologically. He was told to contact the Prosecution should he need anything. On 6 May 2021, P-1297 was contacted and he reported he had problems with his leg [REDACTED] so that he had to stay home. On 28 January 2022, the Prosecution learnt that P-1297 had passed away on 20 July 2021 from complications due to [REDACTED].⁵⁸ The witness had health issues which were being monitored and addressed as best as possible. The witness had also been advised to contact the Prosecution should he need further medical support. In the circumstances, without further information in its possession, the Prosecution could not have filed a request under article 56 of the Statute to preserve the evidence of Witness P-1297.

4. Witness P-1313

(i) The witness is unable to testify as she is deceased

27. On 1 July 2021, the Prosecution learnt that P-1313, who had been interviewed in 2016, had passed away about three months earlier after her health had deteriorated. On 10 July 2021, P-1313's sister, [REDACTED] (P-3099) confirmed the death of P-1313. P-3099 also provided a photograph of P-1313's burial ceremony and relevant medical records.⁵⁹ P-3099 stated that P-1313 died on [REDACTED] March 2021 in their father's house due to a [REDACTED]. She was present when her sister passed away and when her sister was buried four days later.⁶⁰

(ii) P-1313's prior recorded testimony is relevant, reliable and has probative value

28. P-1313's prior recorded testimony consists of her witness statement and its three annexes comprising eleven documents.⁶¹ Annexes 1 and 2 are nine scanned copies of

⁵⁸ Investigation report: [CAR-OTP-2135-2670-R01](#) at 2670, para. 1, at 2674, paras. 7-8.

⁵⁹ Investigation report: [CAR-OTP-2135-0032-R01](#) at 0033-0039.

⁶⁰ P-3099: [CAR-OTP-2135-2564-R01](#) at 2566-2567, paras. 11-23.

⁶¹ See Confidential Annex A (A.4).

her medical records⁶² and one related consent form.⁶³ The photograph of P-1313's brother killed by the Anti-Balaka is Annex 3 to her witness statement.⁶⁴

29. P-1313's evidence is relevant to the chapeau elements of crimes against humanity, particularly that the attack was carried out according to a State or organisational policy. She describes how she was repeatedly raped by Seleka officers during the April 2013 Boy Rabe operation, and how she saw ADAM and DJOTODIA in the street during that attack. The Seleka who gang-raped P-1313 in Boy Rabe clearly explained their discriminatory reason for targeting her, telling her "you people of Boy Rabe are the women of the soldiers. You are stubborn and now that your husbands have gone, you will pay."⁶⁵ P-1313 is one of the witnesses who provide direct evidence of rape during this attack.⁶⁶

30. P-1313's statement is *prima facie* probative, reliable and was voluntarily provided.⁶⁷ P-1313 further attested that she understood her statement could be used in judicial proceedings before the Court and that she could be called to testify as a witness.⁶⁸ Her statement was taken in compliance with rule 111 of the Rules.⁶⁹ The statement was given in Sango, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.⁷⁰ P-1313 initialled each page and

⁶² **P-1313 Annexe 1:** [CAR-OTP-2038-0122](#); [CAR-OTP-2038-0123](#); [CAR-OTP-2038-0124](#); [CAR-OTP-2038-0125](#); [CAR-OTP-2038-0126](#); [CAR-OTP-2038-0127](#); [CAR-OTP-2038-0128](#); [CAR-OTP-2038-0129](#); and [CAR-OTP-2038-0130](#) (medical records).

⁶³ **P-1313 Annexe 2:** [CAR-OTP-2038-0110-R01](#) (*Autorisation de communiquer des renseignements*).

⁶⁴ **P-1313 Annexe 3:** [CAR-OTP-2038-0131](#) (Photograph of [REDACTED]).

⁶⁵ **P-1313:** CAR-OTP-2038-0098-R01 at 0103, para. 34 (Eng).

⁶⁶ **P-1313:** CAR-OTP-2038-0098-R01 at 0103, paras. 35-40, at 0105, paras. 54-56 (Eng). See also **P-1264:** CAR-OTP-2036-0065-R01 at 0068, paras. 23-27 (Eng); **P-0834:** CAR-OTP-2029-0248-R01 at 0253-0254, paras. 33-37 (Fr); *see also* **P-0100:** CAR-OTP-2118-6331-R01 at 6343, paras. 56-57 (Fr); **P-1524:** CAR-OTP-2062-0468-R01 at 0483, paras. 76-78 (Eng); **P-1524 Annexe 3:** CAR-OTP-2062-0495; **P-0119:** CAR-OTP-2107-1295-R01 at 1311, para. 95, at 1323, para. 117 (Fr); **P-1825:** CAR-OTP-2130-2169-R01 at 2177, para. 37, at 2179, para. 48 (Fr); **OHCHR mission report:** CAR-OTP-2034-0270 at 0298, para. 143; **HRW Report:** CAR-OTP-2001-1870 at 1940-1941.

⁶⁷ **P-1313:** CAR-OTP-2038-0098-R01 at 0099-0100, paras. 4-6 and 8-10, at 0107 (witness acknowledgment).

⁶⁸ **P-1313:** CAR-OTP-2038-0098-R01 at 0107 (witness acknowledgment).

⁶⁹ **P-1313:** CAR-OTP-2038-0098-R01 at 0098 (dates, times and places of, and all persons present during the questioning).

⁷⁰ **P-1313:** CAR-OTP-2038-0098-R01 at 0099, para. 4, at 0108, paras. 1-5 (interpreter certification).

signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.⁷¹

31. The statement P-1313 provided is a detailed, coherent, and consistent account of what happened to her and what she witnessed. The reliability and truthfulness of her evidence is further demonstrated since it is cumulative to and corroborated by other evidence, such as P-1264 and P-0119 who will be called to testify,⁷² as well as witnesses P-0834, P-0100, P-1524, and P-1825 whose evidence the Prosecution will request to be submitted pursuant to rule 68(2)(b) of the Rules.⁷³

(iii) The necessity of article 56 measures could not be anticipated

32. P-1313 was interviewed by the Prosecution on 23 to 25 September 2016. P-1313 was born in 1974 and was 42 years when she gave her witness statement. In her statement, P-1313 reported of not always feeling well physically and mentally with [REDACTED] and other symptoms since her rape. At the time of the interview, she further reported a medical condition that she had, [REDACTED], and indicated that she should undergo surgery, but that she had no financial means to do so. The psycho-social expert present at the time of her interview, reported that the witness had [REDACTED]. It was recommended that [REDACTED]. However, the Prosecution had no information that the witness was facing any risk of imminent death.

33. On 7 May 2021, the Prosecution attempted to contact P-1313 but was only able to reach the assistant of the *chef de quartier*. On 1 July 2021, the Prosecution learned that P-1313 had passed away about three months earlier. The Prosecution enquired further with the sister of P-1313 (P-3099) who stated that P-1313 died on [REDACTED] March 2021 due to a [REDACTED].⁷⁴ P-3099 revealed that P-1313 had been ill for a long

⁷¹ **P-1313**: CAR-OTP-2038-0098-R01 at 0107 (witness acknowledgment).

⁷² **P-1264**: CAR-OTP-2036-0065-R01 (Eng); **P-0119**: CAR-OTP-2107-1295-R01 (Fr).

⁷³ **P-0834**: CAR-OTP-2029-0248-R01 at 0253-0254, paras. 33-37 (Fr); **P-0100**: CAR-OTP-2118-6331-R01 (Fr); **P-1524**: CAR-OTP-2062-0468-R01 (Eng); **P-1825**: CAR-OTP-2130-2169-R01 (Fr).

⁷⁴ **P-3099**: [CAR-OTP-2135-2564-R01](#) at 2566-2567, paras. 11-23.

period and had sought care at many hospitals.⁷⁵ The Prosecution was not aware of the seriousness of P-1313's medical condition. Under the circumstances, the Prosecution had no information in its possession to justify a request under article 56 of the Statute.

5. Witness P-1420

(i) The witness is unable to testify as he is deceased

34. On 13 May 2017, the Prosecution learned from P-1420's neighbour that P-1420 had passed away from illness ten days to two weeks earlier.⁷⁶ Proof of his death consists of a (1) *Déclaration de décès* from the *Hôpital de l'Amitié*, which declared P-1420's death on [REDACTED] April 2017 due to [REDACTED];⁷⁷ (2) a statement from P-1420's nephew (P-3100), who similarly stated that P-1420 died at the *Hôpital de l'Amitié* in Bangui on [REDACTED] April 2017 due to [REDACTED];⁷⁸ and (3) a *Jugement d'homologation en matière de succession* issued by the Central African authorities confirming that P-1420 died on [REDACTED] April 2017.⁷⁹

(ii) P-1420's prior recorded testimony is relevant, reliable and has probative value

35. P-1420's prior recorded testimony consists of his witness statement and its three annexes.⁸⁰ Witness 1420's evidence is relevant to the chapeau elements of crimes against humanity, particularly the element that the acts comprising the attack was pursuant to or in furtherance of a State or organizational policy to commit such an attack, as well as the chapeau elements of war crimes. P-1420 corroborates other witnesses (as set out below), who will be called to testify.⁸¹

⁷⁵ **Investigation report:** [CAR-OTP-2135-0032-R01](#) at 0034-0039 (miscellaneous medical records of P-1313 including medical booklet at *Centre Sante Saint Luc* in Boy Rabe, medical documents from *Hopital Communautaire* in Bangui, medical tests and prescriptions).

⁷⁶ **Investigation report:** [CAR-OTP-2130-6891-R01](#).

⁷⁷ **P-3100 Annex:** [CAR-OTP-2135-2615](#) (*Déclaration de decés*).

⁷⁸ **P-3100:** [CAR-OTP-2135-2611-R01](#) at 2613, paras. 11-15.

⁷⁹ **P-3100 Annex:** [CAR-OTP-2135-2616-R01](#) (*Jugement d'homologation*).

⁸⁰ See Confidential Annex A (A.5).

⁸¹ See below, para. 40.

36. P-1420 was a Presidential Guard under President Francois BOZIZE.⁸² P-1420 explains that most of the persons on a list of appointed persons he provided are Muslims who helped BOZIZE seize power but that “many of these names are the same people who defected in January 2013 and joined DJOTODIA’s Seleka rebellion to overthrow BOZIZE”.⁸³ He then also joined the Seleka.⁸⁴ That is why he is able to provide reliable information about the composition of the Seleka forces, the bases Seleka commanders controlled,⁸⁵ the system of food-distribution⁸⁶ and the check-points established by the Seleka.⁸⁷

37. P-1420 explains that the Gbaya, Mandja or Banda were perceived by the Seleka as supporting BOZIZE,⁸⁸ and also that the neighbourhood of Boy Rabe was perceived as aligned with the pro-BOZIZE forces.⁸⁹ P-1420 participated in the attack on the Boy Rabe neighbourhood in August 2013 and provides the names of the Seleka leaders who participated along with their subordinates.⁹⁰ Throughout the attack, the Seleka took steps to ensure that their criminal actions would target perceived BOZIZE supporters in Bangui, and not people perceived to support the Seleka, such as

⁸² **P-1420 Annex 1:** [CAR-OTP-2040-0839](#) (Decision).

⁸³ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0814, para. 17 (Eng).

⁸⁴ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0815, para. 25, at 0818, paras. 41-42 (Eng).

⁸⁵ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1839-1840, paras. 60-61 (Fr) - Camp BSS, headed by General ALKHATIM; at 1833, paras. 28-29 (Fr) - *Section de Recherches et d'Investigations / Section d'Enquête de Recherche* et de Documentation Section for Research and Investigation / Investigation Section, Research and Documentation (“SRI”), headed by Abdelkarim Moussa.

⁸⁶ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1842-1843, paras. 79-82, 86 (Fr); **P-1167:** [CAR-OTP-2127-7671-R01](#) at 7687, para. 87 (Fr).

⁸⁷ **P-2328:** [CAR-OTP-2099-0165-R01](#) at 0222, para. 307 (Fr); **P-0834:** [CAR-OTP-2048-0310-R01](#) at 0323-0324, paras. 87-95 (Eng); **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1837, paras. 45-46 (Fr); **CAR Document:** [CAR-OTP-2034-2207](#).

⁸⁸ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1848, para. 116 (Fr). See also **P-0119:** [CAR-OTP-2107-1295-R01](#) at 1317, paras. 135, 137 (Fr); **P-0100:** [CAR-OTP-2118-6331-R01](#) at 6335-6336, paras. 18, 20 (Fr); **P-1524:** [CAR-OTP-2062-0468-R01](#) at 0471, paras. 20, 22 (Eng); **P-2042:** [CAR-OTP-2130-5296-R01](#) at 5302, para. 23 (Fr); **P-0787:** [CAR-OTP-2130-0893-R01](#) at 0900, para. 31 (Fr); **P-2232:** [CAR-OTP-2107-6147-R01](#) at 6157, 6163, paras. 58, 91 (Fr); **P-0884:** [CAR-OTP-2072-1913-R01](#) at 1943, 1946-1947, lns. 1049-1050, 1143-1193 (Eng/Fr); **P-2027:** [CAR-OTP-2118-0965-R01](#) at 0970-0971, para. 30 (Fr); **P-0435:** [CAR-OTP-2104-0954-R01](#) at 0985, para. 174 (Fr).

⁸⁹ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1848, para. 116 (Fr). See also **P-0119:** [CAR-OTP-2107-1295-R01](#) at 1302-1307, 1323-1325, paras. 35-37, 66-74, 180, 192; **P-0100:** [CAR-OTP-2118-6331-R01](#) at 6338, para. 29 (Fr); **P-1313:** [CAR-OTP-2038-0098-R01](#) at 0100-0101, para. 17 (Eng).

⁹⁰ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1848-1849, paras. 113, 118-121 (Fr); See also **P-0547:** [CAR-OTP-2018-0389-R01](#) at 0393, para. 25; **P-0435:** [CAR-OTP-2104-0954-R01](#) at 0981, para. 147 (Fr).

Muslims. For example, P-1420 states that during the Seleka's incursions into certain neighbourhoods of Bangui, the Seleka arranged for members of the local population, known as *indicateurs*, to identify the houses of perceived BOZIZE supporters, and then targeted the residents of those houses.⁹¹

38. P-1420 also corroborates P-2105, who will testify, and P-1004, that the Seleka under Mr SAID's command at the OCRB were transferred to the CEDAD after the Seleka were removed from the OCRB.⁹²

39. P-1420's statement is *prima facie* probative, reliable and was voluntarily provided.⁹³ P-1420 further attested that he understood his statement could be used in judicial proceedings before the Court and that he could be called to testify as a witness.⁹⁴ His statement was taken in compliance with rule 111 of the Rules.⁹⁵ The statement was given in French, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.⁹⁶ P-1420 initialled each page and signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.⁹⁷

40. The statement P-1420 provided is a detailed account of what happened to him and what he witnessed, describing the events in a coherent and consistent manner. P-1420's evidence is cumulative to and corroborates other evidence, including about the structure and organisation of the Seleka and the pro-BOZIZE forces. He also

⁹¹ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0831, para. 125 (Eng). *See also* **P-0119:** [CAR-OTP-2032-0753-R01](#) at 0767, para. 96 (Fr); **P-0100:** [CAR-OTP-2118-6331-R01](#) at 6348, para. 73 (Fr); **P-1313:** [CAR-OTP-2038-0098-R01](#) at 0104, para. 44 (Eng); **P-1825:** [CAR-OTP-2079-0315-R01](#) at 0320, para. 29 (Eng).

⁹² **P-1420:** [CAR-OTP-2130-1827-R01](#), at 1844-1845, paras. 94-95 (mentioning WOUYA who is P-1004); **P-1004:** [CAR-OTP-2043-0536-R01](#) at 0540-0542, 0547-0549, paras. 32-33, 54-55, 81-82, 84-91, 94, 96-97, 101 (Fr); **P-2105:** [CAR-OTP-2078-0003-R01](#) at 0024, para. 128 (Fr); **P-2105:** [CAR-OTP-2081-0037-R01](#) at 0047 para. 60 (Fr).

⁹³ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0812-0813, paras. 4-6 and 8-10, at 0837 (witness acknowledgment).

⁹⁴ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0812, para. 6, at 0837 (witness acknowledgment).

⁹⁵ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0811 (dates, times and places of, and all persons present during the questioning).

⁹⁶ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0812, para. 4, at 0838, paras. 1-5 (interpreter certification).

⁹⁷ **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0837 (witness acknowledgment).

corroborates witnesses in relation to the Boy Rabe attacks.⁹⁸ Further, P-1420 is also corroborated by P-2328, P-0834 and P-1167 regarding his descriptions of the structure of the Seleka forces.⁹⁹ Other aspects of his testimony related to the pro-BOZIZE forces also corroborate Witnesses P-1521, P-2328, and P-1339.¹⁰⁰ Of these witnesses that P-1420 corroborates, several will be called to testify, namely P-2105, P-0547, P-1263, P-0119, P-2573, and P-0435. Further, P-1420 also corroborates P-1004 whose evidence is submitted under this Application.¹⁰¹ Additionally, P-1420 was able to draw accurate sketches of the CEDAD compound¹⁰² and of the Camp de Roux base during his interview further demonstrating his reliability.¹⁰³ He also provided a copy of the 2004 Decision whereby BOZIZE appointed him and others as Presidential Guards thereby corroborating this aspect of his evidence.¹⁰⁴

(iii) Article 56 measures could not be anticipated

41. P-1420 was interviewed by the Prosecution on 9-12 and 14 November 2016. P-1420 was born in 1961 and was 55 years when he gave his witness statement. At the time, P-1420 indicated that he had undergone surgery for [REDACTED] in 2014 and [REDACTED] medication every day.¹⁰⁵ On 22 November 2016, the Prosecution met with P-1420 and noticed his health condition had worsened. P-1420 mentioned that he suffered from [REDACTED] and needed treatment. Afterwards, no further information was provided to the Prosecution. On 13 May 2017, the Prosecution was informed by a neighbour that P-1420 had passed away ten days to two weeks earlier

⁹⁸ See P-1263, P-1523, P-0547, P-1427, P-2087, P-1825, P-2042, P-1297, P-0100, P-0119, P-2573, P-2179, and P-0435, *see in particular* Pre-Confirmation Brief, fn. 130, 154, 176, 220.

⁹⁹ **P-2328:** [CAR-OTP-2099-0165-R01](#) at 0222, para. 307 (Fr); **P-0834:** [CAR-OTP-2048-0310-R01](#) at 0323-0324, paras. 87-95 (Eng); **CAR Document:** [CAR-OTP-2034-2207](#).); **P-1167:** [CAR-OTP-2127-7671-R01](#) at 7687, para. 87 (Fr).

¹⁰⁰ **P-1420:** [CAR-OTP-2130-1827-R01](#) at 1841-1842, paras. 25, 42, 75-78 (Fr). *See also* **P-1521:** [CAR-OTP-2046-0603-R01](#) at 0607, paras. 18, 25-26 (Eng); **P-2328:** [CAR-OTP-2099-0165-R01](#) at 0173-0174, paras. 44-46 (Fr); **P-1339:** [CAR-OTP-2041-0741-R01](#) at 0745-0747, paras. 29, 37-42 (Eng).

¹⁰¹ *See* **P-1420:** [CAR-OTP-2040-0811-R01](#) at 0826, paras. 94-95 (He speaks of a man named [REDACTED]); **P-1004:** [CAR-OTP-2043-0536-R01](#).

¹⁰² **P-1420 Annex 2:** [CAR-OTP-2040-0841](#) (Diagram of the CEDAD).

¹⁰³ **P-1420 Annex 3:** [CAR-OTP-2040-0842](#) (Diagram of the Camp de Roux).

¹⁰⁴ **P-1420 Annex 1:** [CAR-OTP-2040-0839](#) (Decision).

¹⁰⁵ **Investigation report:** [CAR-OTP-2130-6891-R01](#).

from illness.¹⁰⁶ P-3100 corroborated that his uncle P-1420 died at the *Hôpital de l'Amitié* in Bangui on [REDACTED] April 2017 due to [REDACTED].¹⁰⁷ P-1420's death was sudden, unexpected and could not have been anticipated less than six months after his interview. Under the circumstances, the Prosecution had no information in its possession to justify the submission of a request under article 56 of the Statute.

6. Witness P-3053

(i) The witness is unable to testify as she is deceased

42. On 5 October 2021, the Prosecution learned from P-3053's cousin, [REDACTED] (P-3056) that P-3053 had passed away about two months earlier at the *Hôpital de l'Amitié*. P-3053's proof of death is established by a death certificate dated [REDACTED] October 2021 issued by the *Mairie* of Bangui which declared P-3053's death on [REDACTED] August 2021.¹⁰⁸ It was provided by P-3053's mother.¹⁰⁹

(ii) The evidence is relevant, reliable and probative

43. P-3053's prior recorded testimony consists of his witness statement, its three annexes, and four photographs identified by the witness, the latter of which are "associated items" that constitute part of his prior recorded testimony.¹¹⁰ Witness P-3053 states that he was detained at the OCRB by Mr SAID and Seleka elements under his command in mid-August 2013.¹¹¹ P-3053 corroborates the testimony of P-3056 who will be called to testify.¹¹²

44. P-3053's statement is *prima facie* probative, reliable and was voluntarily provided.¹¹³ P-3053 further attested that he understood his statement could be used in

¹⁰⁶ Investigation report: [CAR-OTP-2130-6891-R01](#).

¹⁰⁷ P-3100: [CAR-OTP-2135-2611-R01](#) at 2613, paras. 11-15.

¹⁰⁸ [CAR-OTP-2134-1594-R01](#) (*Acte de decès*).

¹⁰⁹ Investigation report: [CAR-OTP-2134-1593-R01](#).

¹¹⁰ See Confidential Annex A (A.6).

¹¹¹ See Document Containing the Charges, para. 33(n).

¹¹² P-3056: [CAR-OTP-2130-6639-R01](#) at 6643-6651, paras. 20-65; P-3056 Annex C: [CAR-OTP-2130-6657-R01](#).

¹¹³ P-3053: [CAR-OTP-2130-6359-R01](#) at 6360, paras. 4-6 and 8-10, at 6374 (witness acknowledgment).

judicial proceedings before the Court and that he could be called to testify as a witness.¹¹⁴ His statement was taken in compliance with rule 111 of the Rules.¹¹⁵ The statement was given in Sango, a language the witness fully spoke and understood, translated and certified by a qualified interpreter.¹¹⁶ P-3053 initialled each page and signed an attestation confirming the veracity and authenticity of the content of his statement in the presence of the Prosecution investigators.¹¹⁷

45. The witness statement P-3053 provided is a detailed account of what happened to him and what he witnessed in a coherent and consistent manner. P-3053's evidence is also cumulative to and corroborates other evidence, including—as mentioned above—the evidence of P-3056 who will testify.¹¹⁸

46. Two documents annexed to P-3053's statement are photographs of his injuries.¹¹⁹ The third Annex is a photograph of a man identified by P-3053 as COMMANDO during his interview.¹²⁰ Finally, P-3053 identified additional documents and photographs of persons shown by the investigators during his interview.¹²¹ They are: DJOTODIA,¹²² former military TAIZONE, General ABOU, younger brother of DJOTODIA and *aide-de-camp* of P-3053's older brother [REDACTED], and Colonel NARKOYO who killed one of P-3053's relative, [REDACTED]. These seven associated documents also further demonstrate that his statement is reliable, relevant and probative.

¹¹⁴ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6360, para. 6, at 6374 (witness acknowledgment).

¹¹⁵ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6359 (dates, times and places of, and all persons present during the questioning).

¹¹⁶ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6360, para. 4, at 6375, paras. 1-5 (interpreter certification).

¹¹⁷ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6374 (witness acknowledgment).

¹¹⁸ **P-3056:** [CAR-OTP-2130-6639-R01](#).

¹¹⁹ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6376-6377 (Annexes A-B).

¹²⁰ **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6378 (Annex C).

¹²¹ **Photographs:** [CAR-OTP-2069-2452](#) (dated 7 August 2013), [CAR-OTP-2069-3226](#) (dated 30 August 2013), [CAR-OTP-2069-3227](#) (dated 30 August 2013) and [CAR-OTP-2114-0323](#) (dated 06 April 2013). See **P-3053:** [CAR-OTP-2130-6359-R01](#) at 6372-6373, paras. 79-81, 84-85.

¹²² The Prosecution believes this is Michel DJOTODIA AM NONDROKO (P-1019).

(iii) Article 56 measures could not be anticipated

47. P-3053 was interviewed by the Prosecution on 30-31 July and 01-02 August 2021. P-3053 was born in 1986 and was 35 years when he gave his witness statement. P-3053 passed away shortly after his interview on 25 August 2021.

48. On 18 July 2021, P-3053 was screened by telephone after he stated that he was too ill to leave his home. After the screening, the Prosecution made arrangements for P-3053 to see a doctor. On 21 July 2021, the witness confirmed that while he was ill, he was recovering. An appointment with a doctor [REDACTED] was scheduled for 22 July 2021. During his interview, P-3053 informed the Prosecution that he had [REDACTED]. After a series of cancelled medical appointments, P-3053 was medically examined on 7 August 2021. On 9 August 2021, the witness reported that he had met with the doctor [REDACTED]. He had given P-3053 a medical note to be provided to his personal doctor. He also told P-3053 to come back to see him on 10 August 2021 for a follow-up examination. On 20 August 2021, P-3053 informed the Prosecution that he was hospitalised at the *Hôpital de l'Amitié*. The Prosecution assumed he was receiving the necessary care.

49. On 30 September 2021, the Prosecution followed up with the doctor again, who stated that P-3053's health condition was serious and that he had recommended that the witness be examined by a specialist [REDACTED]. However, as P-3053 had not kept the follow-up appointment scheduled for 10 August 2021, he had no further information regarding the witness. On 5 October 2021, the Prosecution learned from P-3056 that P-3053 had passed away in the *Hôpital de l'Amitié*. His death was later confirmed by his mother.¹²³

50. The Prosecution facilitated medical care as the witness was ill. However, the Prosecution had no reason to suspect or believe that the witness was facing the risk of

¹²³ Investigation report: [CAR-OTP-2134-1593-R01](#); Acte de Deces: [CAR-OTP-2134-1594-R01](#).

imminent death. The witness passed away three weeks after the completion of his interview. In such a short time, the Prosecution would not have had time to initiate article 56 proceedings.

B. The introduction of the requested material is not prejudicial to or inconsistent with the rights of Mr SAID

51. Introducing the evidence of the six witnesses under rule 68(2)(c) of the Rules causes no undue prejudice to Mr SAID. The evidence is cumulative to or corroborates other evidence to be presented at trial.¹²⁴

52. Further, the evidence of four of the six witnesses does not go to central issues of the events at the OCRB or the acts and conduct of Mr SAID. Instead, the evidence of Witnesses P-0881, P-1297, P-1313, and P-1420 pertains only to background information and events relevant to the chapeau elements of crimes against humanity and war crimes.

53. The evidence of P-1004 and P-3053 does relate to the acts and conduct of Mr SAID, but its introduction under rule 68(2)(c) is permissible and appropriate in these circumstances. Other Chambers of this Court have admitted prior recorded testimony which relates to the acts and conduct of the accused, particularly where, as here, it related to “live and important issues in the case.”¹²⁵

54. Furthermore, the evidence of P-1004 and P-3053 is also cumulative to and corroborates other evidence that the Prosecution will present at trial. The evidence of P-1004 and P-3053 will not form “the sole or decisive basis”¹²⁶ for any future conviction

¹²⁴ ICC-01/12-01/18-1588-Red, para. 10 (noting factors that a Chamber may take into account in assessing potential impact on the Accused, including “whether the evidence provides background information or is central to core issues in the case” and “whether the evidence is cumulative or corroborative of other evidence”).

¹²⁵ *Gicheru*, ICC-01/09-01/20-235-Red, para. 28 (citing *Al Hassan*, ICC-01/12-01/18-1413, para. 21; *Ntaganda*, ICC-01/04-02/06-1802-Red, paras. 26-31).

¹²⁶ *Ntaganda*, ICC-01/04-02/06-2666-Red, paras. 16, 630. See also *Gicheru*, ICC-01/09-01/20-235-Red, para. 30 (mentioning this consideration and the related jurisprudence).

of Mr SAID. The Prosecution's case against Mr SAID is supported by multiple witnesses, including [REDACTED] mentioned above, as well as official documentation and other documentary material.

55. The Defence will have the opportunity to cross-examine the Prosecution witnesses that will testify before the Chamber about the same topics or incidents as those referred to by the six witnesses, including the witnesses identified as being corroborated. The Defence will also have the opportunity to rebut the evidence of all six witnesses, by presenting its own evidence.

56. The Chamber will make its final assessment as to the authenticity, relevance, probative value and prejudicial effect based on the entire record at the end of the case.¹²⁷ Only by then will the Chamber determine the proper weight to be given to each piece of evidence submitted on the record and, as appropriate, pursuant to which mode it was submitted.

V. RELIEF SOUGHT

57. For the above reasons, the Prosecution requests the Chamber to accept as formally submitted into evidence the prior recorded testimony of Witnesses P-0881, P-1004, P-1297, P-1313, P-1420, P-3053, and associated documentation, as set out in Annex A to this filing.



Karim A. A. Khan QC, Prosecutor

Dated this 9th day of May 2022

At The Hague, The Netherland

¹²⁷ *Ntaganda*, ICC-01/04-02/06-1802-Conf, para. 30; *Ntaganda*, ICC-01/04-02/06-1653, para. 23 (referring to *Ntaganda*, ICC-01/04-02/06-1029, para. 27 and *Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, paras. 60, 81, 111 and 128).