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**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane

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

**Public**

**Public Redacted Version of "Prosecution's application to amend the charges", ICC-01/14-01/21-294-Conf, dated 5 May 2022**

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Trial Chamber VI

## I. INTRODUCTION

1. The Prosecution requests Pre-Trial Chamber II (“Chamber”) to amend the charges, pursuant to article 61(9) of the Rome Statute and rule 128 of the Rules of Procedure and Evidence, by including two additional victim incidents at the OCRB that fall within the temporal scope of the confirmed charges. In particular:

- Witnesses P-1432 and P-1762 detained at the OCRB between [REDACTED] (“Incident R”); and
- Witness P-3047 detained at the OCRB from [REDACTED] (“Incident P-3047”).

2. The requested amendment of the charges would enable the effective prosecution of Mahamat Said Abdel Kani (“Mr. SAID”), while preserving his rights under the Statute, in particular, to be informed promptly of the charges against him, to have adequate time for the preparation of his defence, and to be tried without undue delay.<sup>1</sup> Amending the charges would also reflect the true scope of the victimisation in this case, as established by the evidence.

## II. CLASSIFICATION

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“Regulations”), this Application is classified as confidential as it refers to evidence from Prosecution witnesses which is not currently publicly available. A public redacted version will be filed as soon as practicable.

## III. BACKGROUND

4. On 9 December 2021, Pre-Trial Chamber II issued the Decision on the confirmation of charges against Mr SAID (“Confirmation Decision”).<sup>2</sup> The Chamber confirmed 18 out of 20 victim incidents which were presented as part of the charges for crimes alleged at the OCRB detention centre between 12 April and 30 August 2013.

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<sup>1</sup> Article 67(1)(a), (b) and (c) of the Statute.

<sup>2</sup> ICC-01/14-01/21-218-Conf (“Confirmation Decision”).

With respect to the victim incidents in the OCRB, the Chamber noted that “it understands that this list [of incidents] is meant to provide examples of the conduct underlying the charges.”<sup>3</sup> In section D of the operative part of the Confirmation Decision (“Charged Crimes”), the Chamber determined that “Mr SAID was in charge of the OCRB detention centre, and the OCRB operating there, at the times when the arrest, detention and/or mistreatment of persons occurred, including the following:..”. It then specified 18 of the 20 incidents relevant to the OCRB.<sup>4</sup> On the basis of these characterisations the Prosecution understood the Chamber to have deliberately allowed for the possibility of adding additional victim incidents to the charges in so far as these incidents fall within the temporal scope of the charges at the OCRB.

5. The Chamber did not confirm the charges with respect to Witnesses P-1432 and P-1762, which were listed at paragraph 33(r) of the Document Containing the Charges (“DCC”) because it found that these witnesses were detained at the OCRB from early September until [REDACTED] September 2012, and thus outside the period of the charges which ran from 12 April to 30 August 2013.<sup>5</sup>

6. On 18 March 2022, the Prosecution notified the Defence and the Trial Chamber that it would tender evidence with respect to the detention and mistreatment of the two Witnesses P-1432 and P-1762 within the temporal scope of the confirmed charges, namely between 12 April 2013 and 30 August 2013.<sup>6</sup> The Prosecution argued that this approach is consistent with the Court’s legal framework,<sup>7</sup> and its jurisprudence,<sup>8</sup>

<sup>3</sup> Confirmation Decision, p. 29, para. 80.

<sup>4</sup> Confirmation Decision, p. 55, para. 29 (emphasis added).

<sup>5</sup> Confirmation Decision, para. 117.

<sup>6</sup> ICC-01/14-01/21-262-Red.

<sup>7</sup> See ICC-01/14-01/21-262-Conf. A public redacted version was notified on the same date, [ICC-01/14-01/21-262-Red](#), and [ICC-01/14-01/21-271](#). See also Regulation 52 of the Regulations of the Court (regulating the content of the DCC); article 74(2) (indicating that a final decision shall not exceed the facts and circumstances described in the charges and any amendments); article 67(1)(a) of the Statute (on the accused’s right to be informed promptly and in detail of the nature, cause and content of the charge). On the right to notice: see ICC-01/04-01/06-3121-Red, para. 124 and ICC-01/04-02/06-2666-Red, para. 325 (stating that while the confirmation decision defines the parameters of the charges, further details about the charges may be provided in auxiliary documents).

<sup>8</sup> The Appeals Chamber has confirmed this approach: see ICC-01/04-02/06-2666-Red, para. 327 (“it is not necessarily inconsistent with article 74(2) of the Statute for the Prosecutor to formulate and for the pre-trial chamber to confirm charges that do not consist of an exhaustive list of individual criminal acts”); see also para. 326 (quoting ICC-01/05-01/08-3636-Anx1-Red, paras. 27-28). The Prosecution also noted the recent Decision in the Ali Muhammad Ali Abd-Al-Rahman (*Ali Kushayb*) case where Pre-Trial Chamber II had rejected the Prosecution’s request to amend the charges to include the names of additional victims on the basis that the

which allow for the charges to be described with respect to confined temporal and geographical parameters and list individual criminal acts and victims in a non-exhaustive manner.

7. On 20 April 2022, Trial Chamber VI decided that Incident R did not currently fall within the facts and circumstances described in the charges for the purpose of article 74(2) of the Statute (“Notification Decision”).<sup>9</sup> The Trial Chamber found that “it is permissible for ‘the charges to be described with respect to confined temporal and geographical parameters’ and for individual criminal acts and victims to be listed in a non-exhaustive manner in the present case”.<sup>10</sup> It also found that “the scope of the charged crimes in this case is limited to the specific criminal acts listed by the Pre-Trial Chamber in paragraph 29 of the Confirmation Decision [because] the Pre-Trial Chamber had found that Incident R falls outside the temporal scope of the charges, the Chamber finds it is not permissible for the Prosecution to introduce evidence at trial for the purpose of establishing Incident R, absent an amendment of the charges”.<sup>11</sup> However, the Trial Chamber rejected the Defence’s request to order the Prosecution not to present evidence at trial relating to Incident R because “this evidence may be relevant to and probative to other facts set out in the charges”.<sup>12</sup>

#### IV. SUBMISSIONS

8. Further to the Trial Chamber’s decision and recommendation, the Prosecution requests that the Confirmation Decision be amended pursuant to article 61(9) to include Incident R. Furthermore, the Prosecution seeks an amendment to include an additional victim incident concerning trial Witness P-3047 who was detained and

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“indication of specific figures as to the victims [...] should not be understood as limitative or restrictive” nor “definitive” and neither constituted “an upper limit of the number of victims” nor a “minimum” number. Consequently, if “other persons [...] are at a later stage found to have been murdered or raped”, and they “fall within the temporal and geographical parameters, as well as within the charged role of the accused, a trial chamber assessing the relevant evidence may include those persons in the crime as charged,” see [ICC-02/05-01/20-626](#), paras. 18; 20; 22-24. This approach is also consistent with that of the *ad hoc* tribunals: *Šainović* AJ, paras. 233-235, 558.

<sup>9</sup> [ICC-01/14-01/21-282](#).

<sup>10</sup> Notification Decision, para. 17.

<sup>11</sup> Notification Decision, para. 17 (emphasis added).

<sup>12</sup> Notification Decision, para. 18.

mistreated between [REDACTED] at the OCRB. Both victim incidents fall within the temporal scope of the charges as framed in paragraphs 25-29 of the Confirmation Decision but are not included in the list of paragraph 29. The evidence of these two additional incidents is consistent with and fall within the scope of Counts 1 (imprisonment or other severe deprivation of physical liberty as a crime against humanity), 5 (other inhumane acts as a crime against humanity), 6 (outrages upon personal dignity as a war crime) and 7 (persecution as a crime against humanity). As set out below, the amendment would consist of including the material facts of both incidents as summarised in paragraphs 22 and 28 of this Application.

9. This Chamber has previously held that amending charges pursuant to article 61(9) of the Statute is a matter of “proper balance between two concerns, namely effectiveness of the prosecution and respect for the rights of the suspect or the accused” and that “compliance with ‘standards contained in relevant human rights instruments’ would be key.”<sup>13</sup> Striking this balance requires the weighing of factors, including i) whether the request is supported and justified, ii) whether the Prosecution has acted diligently in bringing the request in a timely manner, and iii) any impact on the fairness and expeditiousness of the proceedings and the rights of the accused as well as the victims.<sup>14</sup> This approach is also consistent with the prior practice of the *ad hoc* tribunals.<sup>15</sup>

10. Through this application, the Prosecution seeks to *amend* the charges. It is not seeking to add *additional* charges or to substitute more serious charges. The application only identifies further victim incidents in relation to the *same* crimes, committed in the OCRB detention centre within the confined temporal scope of the charges (that is,

<sup>13</sup> [ICC-01/14-01/18-517](#), para. 28.

<sup>14</sup> [ICC-01/14-01/18-517](#), para. 29; [ICC-01/09-02/11-700-Corr](#), paras. 21-22; [ICC-01/09-01/11-859](#), paras. 31-32.

<sup>15</sup> See e.g. *Prosecutor v. Muvunyi*, Decision on the Prosecutor’s Motion for Leave to File an Amended Indictment, 23 February 2005, [ICTR-2000-55A-PT](#), paras. 26-27; *Prosecutor v. Turinabo et al.*, Decision on the Prosecution Motion to Amend the Indictment, 17 October 2019, [MICT-18-116-PT](#), paras. 6, 10; *Prosecutor v. Hadžić*, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011, [IT-04-75-I](#), paras. 6-7; *Prosecutor v. Tolimir*, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009, [IT-05-88/2-PT](#), paras. 19-23.

between 12 April 2013 and 30 August 2013) and while Mr SAID was *de facto* head of the OCRB.

## 1. Application to amend the charges to include Incident R

(a) *The amendment is justified*

11. The amendment is justified as the evidence demonstrates that there are substantial grounds to believe that P-1762 and P-1432 were detained at the OCRB during the time relevant to the charges while Mr SAID was the *de facto* head of the OCRB. The Prosecution set out in its Notification that Incident R falls within the temporal scope of the charges relevant to the OCRB.<sup>16</sup>

12. In the DCC, the Prosecution included Incident R related to crimes committed at the OCRB,<sup>17</sup> which reads as follows:

“On or around [REDACTED], P-1432, [REDACTED], was arrested at [REDACTED] by OCRB-Seleka. He was then tied using the arbatachar method, beaten with rifle butts, and taken to *Sapeurs Pompiers* where he was detained in a container with around 30 other people. Around the same time, P-1762, [REDACTED], was arrested on his way [REDACTED], tied arbatachar, and detained in that same container at *Sapeurs Pompiers*. Around early September<sup>18</sup> 2013, P-1432 and P-1762 were transferred to the OCRB, [REDACTED]. At the OCRB, these [REDACTED] men were detained in the underground cell in SAID’s office. The detainees received little food and water and had to urinate in a corner. They did not receive medical treatment for their injuries. After around two weeks, they were transferred to above ground cells. P-1432 and P-1762 were then sent to the Tribunal de Grande Instance to appear before a judge. [REDACTED], and they were taken back to the OCRB. A few days later, on [REDACTED] September 2013, P-1432 and P-1762 were released on conditions.”

13. Possibly due to the Prosecution’s clerical mistake which referred to “early September” in the DCC, the Pre-Trial Chamber concluded that “[s]ince the statements of Witnesses P-1432 and P-1762 reveal that both witnesses were detained at the OCRB

<sup>16</sup> ICC-01/14-01/21-144-Conf-Corr, p. 14.

<sup>17</sup> ICC-01/14-01/21-144-Conf-Corr, p. 14.

<sup>18</sup> Emphasis added.

from early September until [REDACTED] September 2013, the incident falls outside the temporal scope of the charges brought against Mr SAID.”<sup>19</sup> However, the evidence shows that both witnesses were transferred to the OCRB already around [REDACTED] August 2013 and not in early September. The accounts of Witnesses P-1432 and P-1762 in relation to their detention at the OCRB in August 2013 are corroborated by other evidence, including by other witnesses and documents.<sup>20</sup>

14. According to Witness P-1432, who is a [REDACTED], he was arrested one morning [REDACTED] in mid-August by the Seleka and brought to the camp of the Seleka base at the *Sapeurs Pompiers* in Bangui.<sup>21</sup>

15. P-1432 also states that Witness P-1762, [REDACTED], was put into the same container he was being detained after four days of P-1432’s detention.<sup>22</sup> While P-1762 does not provide any date estimation of his own, P-1762 states that upon his arrival at the base of the *Sapeurs Pompiers*, he was put into a container, along with 30 other prisoners, including [REDACTED]<sup>23</sup> [REDACTED] is the first name of P-1432.<sup>24</sup> From this moment onwards, both witnesses were together throughout the rest of their detention.

16. According to P-1762’s account<sup>25</sup> he was detained at the *Sapeurs Pompiers* site for [REDACTED] days and was transferred on the [REDACTED] day to the OCRB together with P-1432.<sup>26</sup> This transfer date is corroborated by the “*procès verbal de notification*,”<sup>27</sup> provided by P-1432, which is dated [REDACTED] August 2013. Thus,

<sup>19</sup> ICC-01/14-01/21-218-Conf, p. 38, para. 117.

<sup>20</sup> P-1432: CAR-OTP-2050-0172, CAR-OTP-2045-0996; P-1762: CAR-OTP-2130-2147; P-0547: CAR-OTP-2018-0389; P-2478: CAR-OTP-2110-0745; P-0787: CAR-OTP-2130-0893; P-0338: CAR-OTP-2130-5761; P-1967: CAR-OTP-2118-6365; Photos: CAR-OTP-2069-3221 to CAR-OTP-2069-3246; Investigator’s report: CAR-OTP-2135-2325; *Procès-verbal de notification*: CAR-OTP-2050-0189 *Mandat de dépôt*: CAR-OTP-2050-0187; *Ordonnance de mise en liberté sous contrôle judiciaire*: CAR-OTP-2050-0188; CAR-OTP-2073-0736; Investigator’s Report CAR-OTP-2130-7969.

<sup>21</sup> P-1432: CAR-OTP-2050-0172 at 0174 - 0177, paras. 17-38.

<sup>22</sup> P-1432: CAR-OTP-2050-0172 at 0177, paras. 30-35.

<sup>23</sup> P-1762: CAR-OTP-2130-2147 at 2156, para. 42. The Prosecution states that this person is Witness P-1432.

<sup>24</sup> The correct spelling of P-1432 is at the front page of his statement CAR-OTP-2050-0172.

<sup>25</sup> P-1762: CAR-OTP-2130-2147 at 2157-2158, paras. 47; 52-55.

<sup>26</sup> P-1432: CAR-OTP-2050-0172 at 0177, paras. 38-39.

<sup>27</sup> *Procès-verbal de notification*: CAR-OTP-2050-0189.

the Prosecution submits that this day is the actual transfer date of both witnesses to the OCRB.<sup>28</sup>

17. Both witnesses state that they were subsequently detained in the underground cell at the OCRB.<sup>29</sup> That their detention occurred in [REDACTED] August is also corroborated by information they provide about co-detainees.<sup>30</sup> Witness P-1432 indicated that, while in the underground cell, he saw a [REDACTED] man who worked at [REDACTED].<sup>31</sup> Witness P-1762 indicated that he saw a civilian [REDACTED].<sup>32</sup> The detainee who matches this description is P-0547. Witness P-0547 stated that he was detained in the underground cell [REDACTED] August<sup>33</sup> and that there was a [REDACTED] in the underground cell with him who had been taken to the *Camp des Sapeurs Pompiers* before he was taken to the OCRB.<sup>34</sup>

18. Witness P-2478 also corroborates the detention of P-1432 and P-1762 in late August 2013. The witness, [REDACTED], described that at a certain moment there were at least five people under the floor in Mr SAID's office at the OCRB, including [REDACTED].<sup>35</sup> P-2478 stated that one of these detainees [REDACTED].<sup>36</sup> The [REDACTED] detained at the underground cell and mentioned by Witness P-2478 was independently identified by the Prosecution as P-1432.<sup>37</sup>

19. Witnesses P-1432 and P-1762 state that they were still detained at the OCRB [REDACTED].<sup>38</sup> [REDACTED].<sup>39</sup>

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<sup>28</sup> Note that P-1432's screening indicated that once the Seleka left, the police drafted the necessary documentation for the detainees and submitted it to the tribunal; see CAR-OTP-2045-0996 at 1000.

<sup>29</sup> P-1432: CAR-OTP-2050-0172 at 0178, para. 41; P-1762: CAR-OTP-2130-2147 at 2159, para. 58.

<sup>30</sup> P-0547: CAR-OTP-2018-0389 at 0399, para. 73; P-2478: CAR-OTP-2110-0745 at 0758-0759, paras. 53-56.

<sup>31</sup> P-1432: CAR-OTP-2050-0172 at 0178, para. 45.

<sup>32</sup> P-1762: CAR-OTP-2130-2147 at 2159-2160, paras. 62-63.

<sup>33</sup> P-0547: CAR-OTP-2018-0389 at 0398, paras. 62-63.

<sup>34</sup> The Prosecution states that this person is Witness P-1762. P-0547: CAR-OTP-2018-0389 at 0399, para. 73.

<sup>35</sup> P-2478: CAR-OTP-2110-0745 at 0758-0759, paras. 53-56.

<sup>36</sup> P-2478: CAR-OTP-2110-0745 at 0758-0759, para. 56.

<sup>37</sup> Investigator's report: CAR-OTP-2135-2325.

<sup>38</sup> P-1762: CAR-OTP-2130-2147 at -2162-2163, paras.76; 80; P-1432: CAR-OTP-2050-0172 at 0179, paras. 54-55.

<sup>39</sup> P-0787: CAR-OTP-2130-0893 at 0917, para. 101; P-0338: CAR-OTP-2130-5761 at 5788-5789, paras. 150-156; P-1967: CAR-OTP-2118-6365 at 6457 in relation to P8301174 to P8301201.

20. Witness P-1967, who was working as [REDACTED], provided [REDACTED] in relation to the departure of the Seleka from the OCRB<sup>40</sup> and stated that this meeting was on 30 August 2013 when President DJOTODIA and Minister BINOUA were addressing the Seleka and asked them to leave the OCRB premises.<sup>41</sup> After the ceremony held on 30 August 2013, Witnesses P-1432 and P-1762 were still held at the OCRB. Both were released later on [REDACTED] September 2013.<sup>42</sup> This date is also corroborated by the official documents provided by the witnesses.<sup>43</sup>

21. From the above evidence, the material facts of the proposed amendment of this incident are summarised as follows:

In [REDACTED] August 2013, P-1432, [REDACTED], was arrested at [REDACTED] by OCRB-Seleka. He was then tied using the arbatachar method, beaten with rifle butts, and taken to *Sapeurs Pompiers* where he was detained in a container with around 30 other people. Around the same time, P-1762, [REDACTED], was arrested on his way to work, tied arbatachar, and detained in that same container at *Sapeurs Pompiers*. On or about [REDACTED] August 2013, P-1432 and P-1762 were transferred to the OCRB, along with [REDACTED]. At the OCRB, these [REDACTED] men were detained in the underground cell in SAID's office. The detainees received little food and water and had to urinate in a corner. They did not receive medical treatment for their injuries. After around two weeks, they were transferred to above ground cells. P-1432 and P-1762 were then sent to the Tribunal de Grande Instance to appear before a judge. [REDACTED], and they were taken back to the OCRB. A few days later, on [REDACTED] September 2013, P-1432 and P-1762 were released on conditions.

(b) *An amendment does not adversely impact the effectiveness and fairness of the proceedings*

22. Including Incident R of the charges does not impact on the fairness of the proceedings. The Defence has had access to the underlying evidence since before the disclosure deadlines leading up to the Confirmation Hearing, and was given notice of

<sup>40</sup> Photos: CAR-OTP-2069-3221 to CAR-OTP-2069-3246.

<sup>41</sup> P-1967: CAR-OTP-2118-6365 at 6457 in relation to P8301174 to P8301201.

<sup>42</sup> P-1432: CAR-OTP-2050-0172 at 0180, paras. 58-59; P-1762: CAR-OTP-2130-2147 at 2164, para. 87.

<sup>43</sup> *Mandat de dépôt*: CAR-OTP-2050-0187; *Ordonnance de mise en liberté sous contrôle judiciaire*: CAR-OTP-2050-0188; CAR-OTP-2073-0736. Note that the latter certificate relates to P-1432. Witness P-1762 at Investigator's Report CAR-OTP-2130-7969 explains that he mistakenly took P-1432 release order because they were taken together to the Tribunal.

the Prosecution's intention to include this evidence at trial.<sup>44</sup> The inclusion is also in the interest of justice as it enables the effective prosecution of Mr SAID, serves the search for truth and the rights of the victims. It would allow the Trial Chamber to effectively exercise its truth-seeking function, and to recognise the full extent of the harm caused to the victims and their families in its judgment under article 74, as well as in any potential sentence. This would preserve the rights of the victims to the truth and to receive adequate reparations if convictions are entered, and may also facilitate their participation in the proceedings.

23. Without amending the charges to reflect the full scope of the victimisation, as established by the evidence, the Trial Chamber will be constrained in exercising its truth-seeking function in this case.<sup>45</sup> Amending the charges will enable the Trial Chamber to enter convictions for imprisonment, other inhumane acts, outrages upon personal dignity and persecution in relation to all of the victims established by the evidence, which will in any event be presented at trial since their evidence is relevant and probative to other facts confirmed in the charges. This will allow the Trial Chamber to fully recognise the harm to victims and their families both in its article 74 judgment and in the sentence imposed after any conviction.<sup>46</sup>

24. Amending the charges would also potentially facilitate the victims' participation in the trial and ensure that they obtain adequate reparations following any conviction, reflecting the harm actually suffered,<sup>47</sup>. As consistently held by the Inter-American Court of Human Rights, the right of victims of serious human rights

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<sup>44</sup> [ICC-01/14-01/21-262-Red](#).

<sup>45</sup> Although article 74(2) of the Statute states that the trial judgment "shall not exceed the facts and circumstances described in the charges and any amendments to the charges", the Appeals Chamber has found that "other criminal acts not mentioned in the document containing the charges may still fall within the – broadly described – facts and circumstances of the charges". See [ICC-01/04-02/06-2666-Red](#), para. 326. See also [ICC-01/12-01/18-1562-Red](#), paras. 92-94.

<sup>46</sup> See rule 145(1)(c) of the Rules (when determining the sentence of a convicted person, the Trial Chamber must consider the extent of the damage caused, in particular the harm caused to the victims and their families).

<sup>47</sup> The Appeals Chamber has held: "A convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case." See [ICC-01/04-01/06-3129](#), para. 118.

violations to the truth is important not only for individuals but for the society as a whole, and is itself an important means of reparation.<sup>48</sup>

25. The trial of Mr SAID is set to commence on 26 September 2022.<sup>49</sup> Pursuant to article 61(9) of the Statute, the charges may only be amended before the trial has begun.<sup>50</sup> Accordingly, there is sufficient time for this application to be expeditiously resolved before the start of the trial.

26. As noted above, the Prosecution does not seek to add additional charges or to substitute more serious charges, but rather to amend the confirmed charges. The requested amendment would not expand the temporal or geographical scope of the confirmed charges, nor alter the material facts, except in relation to the persons imprisoned and abused. Therefore, in accordance with article 61(9) of the Statute, and consistent with the Court's jurisprudence,<sup>51</sup> there would be very limited to no impact on the expeditiousness of the proceedings, nor any prejudice to Mr SAID's right to be tried without undue delay.<sup>52</sup>

27. In addition, the Prosecution intends to adduce the evidence at trial in any event, since the evidence is relevant to other facts. As such, the requested amendment of the charges will not adversely impact the expeditiousness of the trial. Furthermore, pursuant to article 64 of the Statute, the Trial Chamber has the functions and powers to take any appropriate measures to ensure that the trial is expeditious, in accordance with its duty under article 67(1)(c).

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<sup>48</sup> See e.g. IACHR, *Case of Blanco-Romero et al. v. Venezuela*, "Order of the Inter-American Court of Human Rights", 28 November 2005, paras. 95-96; IACHR, *Case of the "Mapiripán Massacre" v. Colombia*, "Judgment", 15 September 2005, paras. 216, 297-298; IACHR, *Case of the Moiwana Community v. Suriname*, "Judgment", 15 June 2005, paras. 204-205.

<sup>49</sup> [ICC-01/14-01/21-243](#), p. 13.

<sup>50</sup> ICC-01/14-01/18-517, [para. 26](#); [ICC-01/09-01/11-1123](#), para. 29.

<sup>51</sup> See e.g. [ICC-01/12-01/18-608-Red-tENG](#), para. 51; ICC-01/12-01/18-767-Corr-Red, para. 6 and p. 67-70 (where Pre-Trial Chamber I added victims to charges that were already confirmed without requiring a new confirmation hearing).

<sup>52</sup> Article 67(1)(c) of the Statute.

## 2. Application to amend the charges to include Incident P-3047

### (a) *The application is justified*

28. The application to amend the charges to include Incident P-3047 is justified as there are substantial grounds to believe that P-3047 was unlawfully detained at the OCRB from [REDACTED] 2013 and subjected to dire detention conditions as well as physical mistreatment at the hands of the Seleka at the OCRB. The material facts of Incident P-3047, which are based on his witness statement and associated items,<sup>53</sup> for the purpose of the amendment are summarised as follows:

On [REDACTED] June 2013, P-3047, who is of Gbaya ethnicity and Christian, was working at [REDACTED] in Bangui, when he was called by [REDACTED] Nouradine ADAM to a meeting [REDACTED]. When the witness arrived there in company of an attorney he was questioned by ADAM [REDACTED]. [REDACTED], ADAM ordered that he be taken to the OCRB. At the OCRB, the witness was ordered to take off his clothes, and only keep his underwear. He was put in a cell close to the main building of the OCRB. The Seleka took his phone, clothes and wallet. In the cell there were around 50 other detainees, who also were not wearing any clothes. The detainees used jars to defecate and “*éveillon*” to urinate. P-3047 was dependent on his wife to bring him food. P-3047 was not informed of the reason for his arrest nor formally charged. Once, OCRB Seleka member Mahamat TAHIR caught him outside the cell and ordered the Seleka to put him back stating this was “NOURADINE’s prisoner”. ADAM interrogated P-3047 on [REDACTED] June 2013 asking if he knew why he was arrested, to which the witness replied he did not. ADAM then proceeded to [REDACTED] and told the witness he was there because he had information on BOZIZE and asked P-3047 to tell the truth. On [REDACTED] June 2013, at around 09:00am, three men from the Police Judiciaire (OJP) wanted to see him but the Seleka refused saying he was ADAM’s prisoner. On [REDACTED] June 2013, ADAM returned to the OCRB asked P-3047 if he would now tell the truth. [REDACTED]. The witness was subsequently released on [REDACTED] June 2013.

29. The evidence of P-3047 is reliable and credible. He provides a detailed statement, in which he is clear on dates and the persons involved. Further, he provides

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<sup>53</sup> P-3047: CAR-OTP-2130-6904.

associated items which are annexed to his statement that corroborate aspects of his testimony.<sup>54</sup>

30. Witness P-3047 was referred to in the DCC within paragraph 33.c. However, the Prosecution could not rely on his evidence for the Confirmation Hearing. The registration of P-3047's statement was only possible on 9 August 2021 and could not be disclosed in time for the last disclosure deadline, which had been set for 16 August 2021. The necessary protection clearance process could not be completed by that date. Thus, the witness could not be added to the Prosecution's list of evidence which also had to be submitted by 16 August 2021. However, the witness' evidence was disclosed on 13 September 2021 after the protection clearance process was completed.<sup>55</sup> Following the wording of the Confirmation Decision (see above paragraph 4), the Prosecution had anticipated that P-3047 and any other victims identified, interviewed and disclosed later than 16 August 2021 in the course of the Prosecution's ongoing investigation could be relied upon at trial as victims of the charges.

*(b) An amendment does not adversely impact the effectiveness and fairness of the proceedings*

31. As with Incident R, an amendment does not adversely impact the effectiveness and fairness of the proceedings. The statement was disclosed under the category of incriminating evidence to the Defence on 13 September 2021. The requested amendment does not add charges, substitute more serious charges, change the Prosecution's theory of its case or require any material shift in the Defence's preparation or strategy. The Prosecution intends to lead the witness' evidence at trial in any event as it is also relevant to the contextual elements of crimes against humanity. Finally, the requested amendment is limited in scope as it concerns the inclusion of one victim-incident alleged to have occurred at the OCRB during the temporal scope of the confirmed charges.

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<sup>54</sup> P-3047: CAR-OTP-2130-6904 at 6922 (Annex A: Chaine d'emails avec colleagues [REDACTED]), at 6923 (Annex B: Media article), at 6926 (Annex C: Photo of passport page with travel dates).

<sup>55</sup> His statement and associated materials were disclosed under the category of incriminating evidence on that date.

### **3. The Prosecution acted diligently in bringing the application in a timely manner**

32. The Prosecution acted diligently in bringing this application to amend the charges for both Incident R and Incident P-3047 in a timely manner.

33. While Incident R was not confirmed by the Chamber, the wording of the Confirmation Decision indicated that additional victim incidents could be added, so long as the evidence establishes that the incident falls within the relevant scope of the confirmed charges. Pursuant to the Trial Chamber's Decision, the Prosecution now seeks an amendment of the charges to add Incident R concerning victims P-1432 and P-1762.

34. Regarding Incident P-3047, the Prosecution obtained the evidence from P-3047 shortly before it filed the DCC and List of Evidence.. P-3047 could only be interviewed on 4 and 5 August 2021 and his statement was registered on 9 August 2021. As stated above at paragraph 30, the necessary security assessment, before P-3047's statement and evidence, could not be finalised before the final disclosure deadline of 16 August.<sup>56</sup> His statement could therefore not be put on the Prosecution's list of evidence and the victim incident P-3047 could not be alleged in the DCC. His statement has however been in the possession of the Defence since 13 September 2021.

35. Witness P-3047 could only be located in June 2021. As set out in previous submissions, the Prosecution's investigative capacities were severely impaired by the COVID-19 pandemic.<sup>57</sup> Thus, an interview before August 2021 was not possible. As noted by previous Chambers, this is a case where the evidence was not available to the Prosecution before this date, and/or could not have been collected by the Prosecution until this stage.<sup>58</sup>

36. The Prosecution was allowed to continue its investigation and pursue a statement from P-3047. The Appeals Chamber has held that the Prosecution must be

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<sup>56</sup> As the deadline for submitting both the French and English versions of the DCC as well as the List of Evidence was set for 16 August 2013 an inclusion of this incident was not possible anymore within this deadline.

<sup>57</sup> ICC-01/14-01/21-230-Red, paras. 23-27.

<sup>58</sup> See for example also ICC-01/12-01/18-608-Red-tENG, paras. 53-54; ICC-01/09-02/11-700-Corr, paras. 36-38.

allowed to continue its investigation beyond the confirmation hearing “if this is necessary in order to establish the truth” or if “certain circumstances [exist such that] to rule out further investigation after the confirmation hearing may deprive the Court of significant and relevant evidence”.<sup>59</sup> Such circumstances may include “situations where the ongoing nature of the conflict results in more compelling evidence becoming available for the first time after the confirmation hearing”.<sup>60</sup>

## V. RELIEF SOUGHT

37. For reasons set out above, the Prosecution requests the Chamber to amend the charges pursuant to article 61(9) to include Incident R and Incident P-3047 as set out in paragraphs 22 and 31 above.



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

Dated this 9<sup>th</sup> day of May 2022  
At The Hague, The Netherlands

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<sup>59</sup> ICC-01/04-01/06-568, paras. 52, 54; ICC-01/14-01/18-517, para. 25; ICC-01/09-02/11-700-Corr, paras. 35-36.

<sup>60</sup> ICC-01/04-01/06-568, para. 54. *See also* ICC-01/09-02/11-700-Corr, para. 39.