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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Third Request for the Formal Submission
of Prior Recorded Testimony pursuant to Rule 68(2)(b)”
27 November 2020, (ICC-01/14-01/18-745-Conf)**

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of six Prosecution Witnesses¹, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).

2. The prior recorded testimony of the Six Witnesses comprises their Witness Statements and associated exhibits.² It provides evidence concerning the nature and extent of the widespread Anti-Balaka attack carried out between September 2013 and December 2014 in the western Central African Republic (“CAR”), as set out in the Pre-Trial Chamber’s Decision on Confirmation of Charges.³ The proposed evidence is relevant, probative, reliable, and suitable for formal submission in written form.

3. The formal submission of the Six Witnesses’ prior statements pursuant to rule 68(2)(b) will expedite the proceedings, obviate the witnesses’ unnecessary appearance, save valuable court time, and would not unfairly prejudice the Accused. The Prosecution has taken note of the Chamber’s guidance, and carefully assessed the prior statements tendered, to provide the Chamber with the necessary information to conduct a case-by-case assessment of each application.⁴ Further, in doing so, it has sought to narrowly identify the portions of the statements on which it intends to rely where appropriate, in order to reduce the overall volume of material.

4. As submitted, the proposed prior statements do not concern the acts or conduct of the Accused. They are limited to evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the

¹ These comprise witnesses P-0595, P-0732, P-0811, P-1598, P-1964, and P-2205 (“Six Witnesses”).

² See ICC-01/05-01/08-1386, OA5 OA6, paras. 79-81, confirming that written witness statements can be introduced as “previously recorded testimony”. See also ICC-01/09-01/11-1938-Red-Corr, paras. 30-33, analysing the term “previously recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para. 136; ICC-01/05-01/08-886, para. 6; ICC-01/04-01/06-1603, para. 18; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362.

³ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq*, and pp. 111, 107.

⁴ ICC-01/14-01/18-685.

Anti-Balaka's engagement in an armed conflict throughout the relevant period and the group's course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population of western CAR, including the pattern and intensity of their mistreatment, pursuant to a criminal organisational policy.⁵

5. The relevance and probative value of each of the Six Witnesses' proposed evidence is explained below. For each, a brief summary of the salient issues in their statement is set out, along with the associated exhibits or documents, and the source of other evidence which corroborates the witness's account. *Confidential* Annex A (a Summary Chart) lists the relevant statement(s), the paragraphs on which the Prosecution does not rely, and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which each witness's evidence relates and, where applicable, any charged incidents the witness discusses. *Confidential* Annex B contains the statements and transcript excerpts being tendered. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information concerning witnesses which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

⁵ See ICC-01/14-01/18-703-Conf, para. 45, 48 (observing that "several non-confirmed incidents fall within the 'facts and circumstances' of the case", and that the facts concerning crimes allegedly committed by the Anti-Balaka in Yaloké, Gaga, Zawa, Bossempaté, Boda, Carnot, Berbérati and Guen "pertain to the contextual elements of the charged crimes and form part of the 'facts and circumstances' of the case"); see also article 7(2); ICC-01/04-02/06-309, para. 23; See ICC-01/14-01/18-403-Conf-Corr, paras. 64,70, *et seq.*, and pp. 111, 107; see para. 164 (noting that the perpetrator groups committing acts and crimes as part of the article 7(1) attack lasting from September 2013 to December 2014 "were formally and politically under the umbrella of the National Coordination").

III. SUBMISSIONS

A. Applicable Law

7. The Prosecution incorporates by reference its prior submissions on recorded testimony, associated exhibits, and the relevant procedural safeguards relative to the use of rule 68(2), set out at paragraphs 7 to 12 of its previous request for the formal submission of prior recorded testimony.⁶

8. As previously noted, the Chamber is vested with discretion in determining whether to admit prior statements and dispense with the witness's appearance at trial upon satisfaction of the requirements of rule 68(2)(b).⁷ Thus, in exercising its discretion, rule 68(2)(b)(i) sets out a *non-exhaustive* list of factors to be considered on a case-by-case basis, including whether the prior recorded testimony: (i) relates to issues that are not materially in dispute; (ii) is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts; (iii) relates to background information; (iv) is such that the interests of justice are best served by its introduction; and (v) has sufficient indicia of reliability.⁸

B. The Prior Recorded Testimony Fulfils all Requirements of Rule 68(2)(b)

9. The proposed evidence of the Six Witnesses may be formally submitted under rule 68(2)(b). The evidence primarily goes to proof of the crime-base, particularly the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population between September 2013 and December 2014, as a part of the contextual elements of Crimes against Humanity and War Crimes, under articles

⁶ See ICC-01/14-01/18-710-Conf ("First Rule 68(2) Request").

⁷ See e.g., ICC-02/04-01/15-596-Red, para. 6, 20 (noting that the enumerated factors "all respond, from different angles, to the same consideration, namely to identify situations in which the prior recorded testimony provided by a witness is – also in light of its relative importance in the system of evidence expected to be presented at trial – of such nature that it is unnecessary that the witness be called to testify live, and examination by the parties may rather be dispensed of without prejudicing the rights of the accused"); ICC-01/05-01/13-1478-Red-Corr, para. 95.

⁸ Rule 68(2)(b)(i).

7 and 8, respectively. Specifically, the evidence of the Six Witnesses concerns the campaign of retributive violence committed by the Anti-Balaka against Muslim civilians in specific towns and villages in western CAR, pursuant to a criminal organisational policy, as confirmed.⁹

C. Formal Submission of the Six Witnesses' Evidence is Warranted

i. The tendered evidence is reliable and does not relate to the acts or conduct of the Accused

10. *First*, the tendered evidence bears sufficient indicia of reliability and is relevant to and probative of matters at issue in the case. The statement of each of the Six Witnesses was obtained by the Prosecution in the ordinary course of its investigation.¹⁰ The witnesses' factual accounts were signed in accordance with rule 111, having had their statements interpreted in a language which they fully understood, as necessary. Each statement further contains an express acknowledgement attesting to its voluntariness and the truth of its contents, to the best of the witness's knowledge. Further, the statements are internally consistent, and sufficiently corroborated by other evidence in the case.

11. *Second*, the proposed statements do not relate to the acts or conduct of the Accused. The evidence does not establish that the accused participated in, or shared the intent of the perpetrator or perpetrator group concerning the charged crimes. It does not suggest or imply any action of the Accused going to any mode of liability under article 25, or to their participation in the charged crimes. Moreover, the proposed statements do not concern matters that are materially in dispute. Instead, the Six Witnesses' statements provide quintessentially "crime-base" evidence going

⁹ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* at pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

¹⁰ See ICC-01/09-01/11-1938-Red-Corr, para. 66.

broadly to the contextual elements — exactly the type of evidence for which rule 68(2)(b) was primarily intended to address.

- ii. *The associated exhibits are integral to the witnesses' evidence and should be admitted*

12. The associated exhibits for which the Prosecution seeks formal submission were discussed in, and are an inseparable and indispensable part of, each proposed witness statement. Their exclusion would render this written evidence either less comprehensible, or of less probative value. As tendered, the associated exhibits avoid flooding the Parties, Participants, and the Chamber with material that is superfluous or tangential to the import of the witness's testimony, while assisting the Chamber in its assessment of the relevant evidence in its article 74 decision.

D. Analysis of the Six Witnesses' Prior Recorded Testimony

a) GUEN

- i. *P-0595 – Contextual Elements – Article 7 and Article 8*

13. The Prosecution tenders for formal submission P-0595's statement of 28 November 2015, totalling 16 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-0595's statement.

14. The witness's proposed testimony establishes the following:

- P-0595 is a Muslim [REDACTED].
- He recounts the arrival of the Anti-Balaka in GUEN on 1 February 2014, about 3 to 5 days after the Seleka had departed, and their attack of the

Muslim civilian population, during which at least 22 Muslim men were killed and Muslim properties pillaged.

- He provides evidence concerning the leadership of the Anti-Balaka elements present in GUEN from 1 February 2014, stating that their overall leader was BEINA and his deputy MATURIN (aka Mathurin KOMBO).
- [REDACTED].
- Finally, P-0595 provides evidence of the forced displacement of the Muslim population of GUEN, and his own flight to [REDACTED].

15. P-0595's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-2328¹¹ and P-1042,¹² who will testify at trial, the proposed rule 68(2)(b) testimony of other crime-base witnesses, namely, P-0732,¹³ P-1598,¹⁴ and P-1964,¹⁵ as well as by documentary evidence included in the Prosecution's List of Evidence,¹⁶ in relation to: (i) the arrival of the Anti-Balaka in GUEN on 1 February 2014; (ii) the Anti-Balaka's sustained attack of the Muslim population of GUEN from 1 February 2014, through killings, pillaging and the destruction of properties; (iii) the forcible displacement of the Muslim population of GUEN as part of that attack; and (iv) the Anti-Balaka leadership in GUEN, in particular the role of BEINA.

16. Finally, the Prosecution tenders six associated exhibits, as set out at Confidential Annex A. These comprise: (1) [REDACTED] (Annex 1 to P-0595's statement); (2) [REDACTED] (Annex 2 to P-0595's statement); (3) [REDACTED] (Annex 3 to P-0595's statement); (4) a video shown to P-0595 in the course of his interview and commented

¹¹ CAR-OTP-2099-0165, at 0201-0202, paras. 193-195, 198, at 0205, paras. 214-215.

¹² CAR-OTP-2107-0591, at 0620-0621, 1.982-986 (corroboration only regarding the forcible displacement of Muslim residents of GUEN to CARNOT).

¹³ See para. 18.

¹⁴ See para. 23.

¹⁵ See para. 27.

¹⁶ CAR-OTP-2001-0835, at 0979-0980; CAR-OTP-2001-2299, at 2299-2304; CAR-OTP-2001-4330, at 4330-4331; CAR-OTP-2055-1987, at 2167-2168; CAR-OTP-2019-1230 (video), from [00:00:41] to [00:03:21], and its transcript and translation, CAR-OTP-2082-0278, and CAR-OTP-2082-0285, at 0287-0289, 1.12-77; CAR-OTP-2019-1231 (video), from [00:01:23] to [00:01:57]; CAR-OTP-2099-0593 (video), from [00:00:00] to [00:02:35], and its transcript and translation, CAR-OTP-2127-6286, at 6287, and CAR-OTP-2127-6416, at 6418-6419.

on his statement,¹⁷ which contains footage of GUEN, of the location where the 22 victims killed on 1 February 2014 were buried, of the place where the execution carried out on 5 February 2014 took place, the audio recording of a phone interview with BEINA in relation to this execution, and footage of displaced Muslims from GUEN in CARNOT; (5) a screenshot of the beginning of this video, mentioning its title, its duration and its source (Annex 4 to P-0595's statement); (6) [REDACTED] (Annex 5 to P-0595's statement); (7) a technical document, showing two types of automatic weapons (Annex 6 to P-0595's statement); and (8) a sketch identifying different locations mentioned in the witness's statement (Annex 7 to P-0595's statement).

ii. P-0732 – Contextual Elements – Article 7 and Article 8

17. The Prosecution tenders for formal submission P-0732's statement of 10 September 2017, totalling 19 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-0732's witness statement.

18. The witness's proposed testimony establishes the following:

- P-0732 was a Muslim resident of GUEN in the relevant period.
- She recounts the arrival of the Anti-Balaka in GUEN, and their attack of the Muslim civilian population beginning the same day, killing 22 people and pillaging properties.
- She describes BEINA's and his Anti-Balaka elements' execution of 43 men a few days later, and subsequent killings perpetrated by the Anti-Balaka in the village.
- [REDACTED].

¹⁷ CAR-OTP-2018-0761, at 0772-0774, paras. 69-82.

- She provides evidence of BEINA's overall leadership of the Anti-Balaka in GUEN.
- Finally, P-0732 reports on the forced displacement of the Muslim population from the village.

19. P-0732's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-2328¹⁸ and P-1042¹⁹ who will testify at trial, the proposed rule 68(2)(b) evidence of other crime-base witnesses, namely, P-0595,²⁰ P-1598,²¹ and P-1964,²² as well as by documentary evidence included in the Prosecution's List of Evidence,²³ in relation to: (i) the arrival of the Anti-Balaka in GUEN on 1 February 2014; (ii) the Anti-Balaka's attack of the Muslim population of GUEN from 1 February 2014, through killings, pillaging and the destruction of properties; (iii) the forcible displacement of the Muslim population of GUEN; and (iv) the Anti-Balaka leadership in GUEN, in particular the role of BEINA.

20. [REDACTED].

21. Finally, the Prosecution tenders an associated exhibit, as set out at Confidential Annex A: [REDACTED].

iii. P-1598 – Contextual Elements – Article 7 and Article 8

22. The Prosecution tenders for formal submission P-1598's statement of 16 July 2017, totalling approximately 16 pages. There are no agreements as to facts contained

¹⁸ CAR-OTP-2099-0165, at 0201-0202, paras. 193-195, 198, at 0205, paras. 214-215.

¹⁹ CAR-OTP-2107-0591, at 0620-0621, 1.982-986 (corroboration only regarding the forcible displacement of Muslim residents of GUEN to CARNOT).

²⁰ See para. 14.

²¹ See para. 23.

²² See para. 27.

²³ CAR-OTP-2001-0835, at 0979-0980; CAR-OTP-2001-2299, at 2299-2304; CAR-OTP-2001-4330, at 4330-4331; CAR-OTP-2055-1987, at 2167-2168; CAR-OTP-2019-1230 (video), from [00:00:41] to [00:03:21], and its transcript and translation, CAR-OTP-2082-0278, and CAR-OTP-2082-0285, at 0287-0289, 1.12-77; CAR-OTP-2019-1231 (video), from [00:01:23] to [00:01:57]; CAR-OTP-2099-0593 (video), from [00:00:00] to [00:02:35], and its transcript and translation, CAR-OTP-2127-6286, at 6287, and CAR-OTP-2127-6416, at 6418-6419.

in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-1598's witness statement.

23. The witness's proposed testimony establishes the following:

- [REDACTED].
- He provides evidence of the arrival of the Anti-Balaka in GUEN on 1 February 2014, following the departure of the Seleka from the village, and of their commission of exactions on that day, killing 26 people and injuring 13.
- He describes the Anti-Balaka leadership in GUEN.
- He recounts the execution of 43 Muslims by the Anti-Balaka on 4 February.
- He provides evidence of the forcible displacement of the Muslim population from GUEN to DJOMO, CARNOT, BERBERATI, and KENZOU in Cameroon.
- Finally, P-1598 reports the killing of 6 Muslim civilians by Anti-Balaka elements of BEINA's group in NGABOYA.

24. P-1598's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-2328²⁴ and P-1042,²⁵ who will testify at trial, the proposed rule 68(2)(b) evidence of other crime-base witnesses, namely, P-0595,²⁶ P-0732,²⁷ and P-1964,²⁸ as well as by documentary evidence included in the Prosecution's List of Evidence,²⁹ in relation to: (i) the arrival of the Anti-Balaka in GUEN on 1 February 2014; (ii) the Anti-

²⁴ CAR-OTP-2099-0165, at 0201-0202, paras. 193-195, 198, at 0205, paras. 214-215.

²⁵ CAR-OTP-2107-0591, at 0620-0621, 1.982-986 (corroboration only regarding the forcible displacement of Muslim residents of GUEN to CARNOT).

²⁶ See para. 14.

²⁷ See para. 18.

²⁸ See para. 27.

²⁹ CAR-OTP-2001-0835, at 0979-0980; CAR-OTP-2001-2299, at 2299-2304; CAR-OTP-2001-4330, at 4330-4331; CAR-OTP-2055-1987, at 2167-2168; CAR-OTP-2019-1230 (video), from [00:00:41] to [00:03:21], and its transcript and translation, CAR-OTP-2082-0278, and CAR-OTP-2082-0285, at 0287-0289, 1.12-77; CAR-OTP-2019-1231 (video), from [00:01:23] to [00:01:57]; CAR-OTP-2099-0593 (video), from [00:00:00] to [00:02:35], and its transcript and translation, CAR-OTP-2127-6286, at 6287, and CAR-OTP-2127-6416, at 6418-6419.

Balaka's attack of the Muslim population of GUEN from 1 February 2014, through killings; (iii) the forcible displacement of the Muslim population of GUEN; and (iv) the Anti-Balaka leadership in GUEN, in particular the role of BEINA.

25. Finally, the Prosecution tenders five associated exhibits, as set out at Confidential Annex A. These comprise: (1) [REDACTED] (Annex A to P-1598's statement) ; (2) [REDACTED] (Annex B to P-1598's statement); (3) a sketch of GUEN (Annex C to P-1598's statement); (4) a photograph of a leader of the Anti-Balaka in GUEN, identified by P-1598 as either ARMAND or MATHURIN (Annex D to P-1598's statement).

iv. P-1964 – Contextual Elements – Article 7 and Article 8

26. The Prosecution tenders for formal submission P-1964's statement of 6 December 2018, totalling 14 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-1964's witness statement.

27. The witness's proposed testimony establishes the following:

- P-1964 [REDACTED] in GUEN in the relevant period.
- He describes the arrival of the Anti-Balaka in GUEN (on 1 February 2012 according to the witness, DJOTODIA being President at the time), and their attack of the Muslim civilian population on that day, killing and injuring people, and pillaging and destroying properties. [REDACTED].
- He provides evidence of BEINA's leadership over the Anti-Balaka in GUEN
- He recounts the execution by BEINA and his Anti-Balaka elements of Muslim men [REDACTED], and other killings perpetrated by the Anti-Balaka in GUEN.

- Finally the witness provides evidence of the pillaging and destruction of Muslim properties by the Anti-Balaka in the village.

28. P-1964's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-2328³⁰ and P-1042,³¹ who will testify at trial, the proposed rule 68(2)(b) evidence of other crime-base witnesses, namely, P-0595,³² P-0732,³³ and P-1598,³⁴ as well as by documentary evidence included in the Prosecution's List of Evidence,³⁵ in relation to: (i) the arrival of the Anti-Balaka in GUEN on 1 February 2014; (ii) the attack by the Anti-Balaka of the Muslim population of GUEN from 1 February 2014, through killings, pillaging and the destruction of properties; and (iii) the Anti-Balaka leadership in GUEN, in particular the role of BEINA.

29. Finally, the Prosecution tenders two associated exhibits, as set out at Confidential Annex A. These comprise: (1) a sketch depicting the main road of GUEN, [REDACTED] and BEINA's Anti-Balaka base (Annex A to P-1964's statement); and (2) the photograph of a man identified by P-1964 as being one of BEINA's Anti-Balaka elements named MATHURIN (Annex B to P-1964's statement).

b) BOSSEMPTELE

v. P-0811 – Contextual Elements – Article 7 and Article 8

30. The Prosecution tenders for formal submission P-0811's statement of 2 March 2016, totalling 18 pages. There are no agreements as to facts contained in the charges,

³⁰ CAR-OTP-2099-0165, at 0201-0202, paras. 193-195, 198, at 0205, paras. 214-215.

³¹ CAR-OTP-2107-0591, at 0620-0621, 1.982-986 (corroboration only regarding the forcible displacement of Muslim residents of GUEN to CARNOT).

³² See para. 14.

³³ See para. 18.

³⁴ See para. 23.

³⁵ CAR-OTP-2001-0835, at 0979-0980; CAR-OTP-2001-2299, at 2299-2304; CAR-OTP-2001-4330, at 4330-4331; CAR-OTP-2055-1987, at 2167-2168; CAR-OTP-2019-1230 (video), from [00:00:41] to [00:03:21], and its transcript and translation, CAR-OTP-2082-0278, and CAR-OTP-2082-0285, at 0287-0289, 1.12-77; CAR-OTP-2019-1231 (video), from [00:01:23] to [00:01:57]; CAR-OTP-2099-0593 (video), from [00:00:00] to [00:02:35], and its transcript and translation, CAR-OTP-2127-6286, at 6287, and CAR-OTP-2127-6416, at 6418-6419.

documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-0811's statement.

31. The witness's proposed testimony establishes the following:

- P-0811 is a Muslim [REDACTED].
- The witness provides evidence of the attack of BOSSEMPTELE by the Anti-Balaka on 18 January 2014. He estimates that 100 to 200 persons died as a result of the attack.
- He identifies the Anti-Balaka leaders involved in the attack, including the Anti-Balaka ComZone Gervain LA GUERRE.
- He provides evidence of the forcible displacement of the Muslim population of BOSSEMPTELE, especially to Cameroon, and describes the Muslim population of the town decreasing drastically in consequence, [REDACTED].
- Finally, he reports the destruction of the Central Mosque of BOSSEMPTELE by Anti-Balaka ComZone Gervain LA GUERRE, who removed and sold the iron sheets of the roof.

32. P-0811's proposed evidence is cumulative to, and corroborated by, *inter alia*, P-1962,³⁶ who will testify at trial, the rule 68(2)(b) evidence of P-2138³⁷ and P-2205,³⁸ as well as by documentary evidence included in the Prosecution's List of Evidence,³⁹ in relation to: (i) the arrival of the Anti-Balaka in BOSSEMPTELE on 18 January 2014; (ii) their attack of the Muslim population of BOSSEMPTELE; (iii) the destruction of a

³⁶ CAR-OTP-2068-0037, at 0066, para. 150.

³⁷ CAR-OTP-2092-3976, at 3995-3999, l. 695-851, CAR-OTP-2092-4048, at 4056, l. 275-287.

³⁸ See para. 35.

³⁹ CAR-OTP-2001-2203, at 2211-2213; CAR-OTP-2001-5305, at 5317-5321, 5326-5329, 5337-5338; CAR-OTP-0083-1246, at 1272, 1274; CAR-OTP-2001-2252, at 2253-2254; CAR-OTP-2001-7017, at 7092; CAR-OTP-2045-0287, at 0287; CAR-OTP-2045-0536, at 0536; CAR-OTP-2045-0559, at 0559; CAR-OTP-2045-0561, at 0561-0562; CAR-OTP-2045-0563, at 0563; CAR-OTP-2045-0569, at 0569; CAR-OTP-2045-0581, at 0581-0582; CAR-OTP-2048-0109, at 0109-0110; CAR-OTP-2055-1987, at 2163, 2165; CAR-OTP-2088-1230, at 1277, 1279, 1312; CAR-OTP-2088-1493, at 1496, 1499, 1500, 1502, 1504, 1506, 1508-1509.

mosque by the Anti-Balaka; (iv) the forcible displacement of the Muslim population of BOSSEMPTELE; and (v) the Anti-Balaka leadership in BOSSEMPTELE.

33. Finally, the Prosecution tenders six associated exhibits, as set out at Confidential Annex A. These comprise: (1) [REDACTED] (Annex A to P-0811's statement); (2) [REDACTED] (Annex B to P-0811's statement); (3) a sketch of BOSSEMPTELE's city centre (annex C to P-0811's statement); (4) [REDACTED] (Annex D to P-0811's statement); (5) [REDACTED]; and (6) [REDACTED].

vi. P-2205 – Contextual Elements – Article 7 and Article 8

34. The Prosecution tenders for formal submission P-2205's statement of 30 April 2019, totalling approximately 40 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-2205's statement.

35. The witness's proposed testimony establishes the following:

- [REDACTED].
- He recounts the forming of anti-Seleka self-defence groups in the bush from June or July 2013; those later took the name "Anti-Balaka".
- He describes the Anti-Balaka's attack of BOSSEMPTELE on 18 January 2014, one day after the departure of the Seleka from the town, and their targeting of the Muslim population and its properties through killings, pillaging, and destructions. The Anti-Balaka attack on the Muslim population of the town, and its properties, continued after 18 January: [REDACTED].
- He provides evidence of the forcible displacement of the Muslim population of BOSSEMPTELE, describing the gathering of Muslim refugees at the Catholic Mission, where they remained enclaved until their evacuation to Cameroon.

- He provides evidence of the Anti-Balaka leadership in BOSSEMPTELE, [REDACTED].
- Finally, P-2205 reports the presence of Anti-Balaka child soldiers in BOSSEMPTELE, some of them aged below 15.

36. P-2205's proposed evidence is cumulative to, and corroborated by, *inter alia*, P-1962,⁴⁰ who will testify at trial, the rule 68(2)(b) evidence of P-0811⁴¹ and P-2138,⁴² as well as by documentary evidence included in the Prosecution's List of Evidence,⁴³ in relation to: (i) the arrival of the Anti-Balaka in BOSSEMPTELE on 18 January 2014; (ii) the attack by the Anti-Balaka of the Muslim population of BOSSEMPTELE through killings, looting, and the destruction of properties; (iii) the gathering of Muslim civilians at the Catholic Mission in BOSSEMPTELE as a result of the crimes committed by the Anti-Balaka, where they remained enclaved until their evacuation; (iv) the forcible displacement of the Muslim population of BOSSEMPTELE; and (v) the Anti-Balaka leadership in BOSSEMPTELE.

37. Finally, the Prosecution tenders five associated exhibits, as set out at Confidential Annex A. [REDACTED].

E. Balance of interests

38. The Prosecution incorporates its previous submissions concerning the balance of interests as set out at paragraphs 47 to 49 in its First Rule 68 Request⁴⁴ and Second

⁴⁰ CAR-OTP-2068-0037, at 0066, para. 150.

⁴¹ See para. 31.

⁴² CAR-OTP-2092-3976, at 3995-3999, l. 695-851, CAR-OTP-2092-4048, at 4056, l. 275-288.

⁴³ CAR-OTP-2001-2203, at 2211-2213; CAR-OTP-2001-5305, at 5317-5321, 5326-5329, 5337-5338; CAR-OTP-0083-1246, at 1272, 1274; CAR-OTP-2001-2252, at 2253-2254; CAR-OTP-2001-7017, at 7092; CAR-OTP-2045-0287, at 0287; CAR-OTP-2045-0536, at 0536; CAR-OTP-2045-0559, at 0559; CAR-OTP-2045-0561, at 0561-0562; CAR-OTP-2045-0563, at 0563; CAR-OTP-2045-0569, at 0569; CAR-OTP-2045-0581, at 0581-0582; CAR-OTP-2048-0109, at 0109-0110; CAR-OTP-2055-1987, at 2163, 2165; CAR-OTP-2088-1230, at 1277, 1279, 1312; CAR-OTP-2088-1493, at 1496, 1499, 1500, 1502, 1504, 1506, 1508-1509.

⁴⁴ ICC-01/14-01/18-710-Conf.

Request for the Formal Submission of Prior Testimony pursuant to Rule 68(2)(b),⁴⁵ contemporaneously.

39. Thus, dispensing with the Six Witnesses' live testimony would appropriately expedite these proceedings. Their evidence is manifestly relevant to the proper adjudication of salient issues in this case, and their formal submission does not occasion any unfair prejudice to the Accused either in respect of the nature of rule 68(2) itself, or as applied in these circumstances.⁴⁶

IV. CONCLUSION

40. For the above reasons, the Prosecution requests that the Chamber admit the proposed prior recorded testimony of the Six Witnesses *in lieu* of their *viva voce* testimony, as set out at Annex A.



James Stewart, Deputy Prosecutor

Dated this 22nd day of February 2021
At The Hague, The Netherlands

⁴⁵ ICC-01/14-01/18-744-Conf, paras.37-40.

⁴⁶ ICC-01/09-01/11-1938-Red-Corr, para. 27.