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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 Fourth Request for the Formal
Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”,
(ICC-01/14-01/18-794-Conf), 21 December 2020**

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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 the formal submission of the prior recorded testimony of 10 Prosecution Witnesses,¹ pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).

2. The prior recorded testimony of the 10 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 10 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

¹ These comprise witnesses P-0460, P-0461, P-1143, P-1721, P-2472, P-2698, P-1172, P-0974, P-0473 and P-1990 (“10 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.

contextual elements for war crimes and crimes against humanity; in particular, the 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 10 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, paras. 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, Bossemtélé, Boda, Carnot, Berbérali 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 10 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, paras. 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 10 Witnesses concerns the campaign of retributive violence committed by the Anti-Balaka against Muslim civilians in BANGUI, pursuant to a criminal organisational policy, as confirmed.⁹

C. Formal Submission of the 10 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 10 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 10 Witnesses' statements provide quintessentially "crime-base" evidence going broadly to the contextual elements — exactly the type of evidence for which rule 68(2)(b) was primarily intended to address. They concern the background of the charged 5

⁹ See ICC-01/14-01/18-403-Conf-Corr, para. 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.

December 2013 attack on BANGUI, but do not purport to link the Accused to the attack through their acts or conduct. The witnesses' accounts relate to: (i) the time, nature and duration of the attack; (ii) the targeting of the Muslim population; (iii) the commission of acts and crimes against the Muslim population in BOEING and CATTIN; and (iv) the displacement of Muslims in the aftermath of the 5 December 2013 attack. The proposed statements further provide background information of the Anti-Balaka base at the YAMWARA School.

- 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 10 Witnesses' Prior Recorded Testimony

- i. *P-0460 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING*

13. The Prosecution tenders for formal submission P-0460's statement of 31 August 2015, totalling approximately 13 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-0460's statement.

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

- P-0460 was a Muslim [REDACTED] who lived in BANGUI during the relevant period.
- The witness describes listening to President François BOZIZE's speech on 12 November 2013 in the Football Stadium in BANGUI. She recalls BOZIZE encouraging the people to rise up in Sango..
- P-0460 describes hearing about the Anti-Balaka attack on BOUCA on 25 November 2013. She describes the targeting of the Muslim community by the Anti-Balaka, and its commission of acts and crimes against the Muslim population.
- She describes the 5 December 2013 Anti-Balaka attack on BANGUI. She describes the targeting of the Muslim community by the Anti-Balaka, and its commission of acts and crimes against the Muslim population of the PK5 neighbourhood, comprising killings, pillaging, and the destruction of property. [REDACTED]. She describes fleeing to the mosque in PK 5 and seeing 85 bodies there.
- [REDACTED].
- Finally, P-0460 provides evidence of sexual violence committed by the Anti-Balaka in the COMBATTANTS and PK12 neighbourhoods, [REDACTED].

15. P-0460's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Anti-Balaka attack on BOUCA,

including: (i) P-0966, [REDACTED];¹¹ (ii) P-2041, [REDACTED];¹² and (iii) P-0992 [REDACTED].¹³

16. Her evidence regarding the 5 December 2013 attack on BANGUI and the Anti-Balaka's commission of acts and crimes against Muslims is corroborated by, and cumulative to the evidence of witnesses who will testify before the Chamber, including: (i) P-0888, [REDACTED];¹⁴ (ii) P-1521, an Anti-Balaka member, [REDACTED];¹⁵ and (iii) P-1847, [REDACTED].¹⁶

17. Her evidence regarding the transfer of bodies of those killed to the mosque in PK5 is corroborated by, and cumulative to the evidence of witnesses who will testify at trial, namely: (i) P-1442, a Muslim resident of BANGUI;¹⁷ (ii) P-2682, a Muslim [REDACTED];¹⁸ and (iii) P-2354, a Muslim resident of MBAIKI.¹⁹ It is further corroborated by, and cumulative to the proposed rule 68(2)(b) evidence of P-2698²⁰ and P-2472.²¹

18. P-0460's evidence on the perpetration of sexual violence by the Anti-Balaka is relevant to and supports: (i) the live testimony of P-2657, a Muslim [REDACTED];²² and (ii) the proposed rule 68(2) evidence of P-2138, an Anti-Balaka element, and P-1864, a Muslim civilian from BODA.

19. The interests of justice are also served by the introduction of P-0460's prior recorded testimony [REDACTED]. This is also in line with the Chambers' duty to take

¹¹ CAR-OTP-2031-0241, at 0248, para. 42.

¹² CAR-OTP-2104-0003, at 0007, paras. 25-30.

¹³ CAR-OTP-2122-6499, at 6515, para. 100.

¹⁴ CAR-OTP-2031-0217, at 0222, paras. 30-31.

¹⁵ CAR-OTP-2046-0603, at 0611-0612, para. 48.

¹⁶ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

¹⁷ CAR-OTP-2077-0520, at 0526-0527, paras. 35, 38, 42.

¹⁸ CAR-OTP-2126-0205, at 0214, 0217, paras. 53-54, 71.

¹⁹ CAR-OTP-2105-0991, at 0996, para. 29.

²⁰ See below, para. 47.

²¹ See below, para. 41.

²² CAR-OTP-2126-0058, at 0066, para. 52.

appropriate measures to protect the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses, according to article 68(1).

20. Finally, the Prosecution tenders one associated exhibit, as set out at Confidential Annex A. This comprises of a sketch of PK5 neighbourhood and the mosque where the bodies were brought to (Annex I to P-0460's statement).

ii. P-0461 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING

21. The Prosecution tenders for formal submission P-0461's statement of 20 June 2016, totalling approximately 12 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-0461's witness statement.

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

- P-0461 is a Muslim civilian who lived in BANGUI during the relevant period.
- He describes President François BOZIZE's seminal speech to his supporters at BANGUI's PK0.
- The witness describes the arrival of the Seleka in BANGUI in March 2013.
- He describes the formation of self-defence groups which became known as Anti-Balaka, in BOSSANGO and BOUCA prior to December 2013. He describes a large number of BOZIZE's Presidential Guards joining the Anti-Balaka in the provinces when BOZIZE was overthrown.
- The witness describes the 5 December 2013 Anti-Balaka attack on BANGUI. He describes the Anti-Balaka's targeting of the Muslim community, through the

commission of acts and crimes, comprising killings, pillaging, and the destruction of property.

- The witness describes the roles of Anti-Balaka members, in particular, [REDACTED].
- P-0461 describes the Anti-Balaka executing anyone suspected to be a Muslim, Seleka, or a traitor at [REDACTED],²³ in early January 2014.
- The witness describes having heard about the Anti-Balaka killings of Muslim civilians in GOBONGO in 2014.
- [REDACTED].

23. P-0461's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Presidential Guards joining the Anti-Balaka, namely: (i) P-0966;²⁴ (ii) P-1339, [REDACTED];²⁵ and (iii) P-1847.²⁶

24. His evidence regarding the 5 December 2013 attack on BANGUI, and the Anti-Balaka's commission of acts and crimes against the Muslims is corroborated by, and cumulative to the evidence of witnesses who will testify before the Chamber, including: (i) P-0888;²⁷ (ii) P-1521;²⁸ and (iii) P-1847.²⁹

²³ [REDACTED]. *See also*, CAR-OTP-2058-0531(Annex D to P-0461's statement).

²⁴ CAR-OTP-2031-0241, at 0246, para. 28.

²⁵ CAR-OTP-2041-0741 at 0750, paras. 66-67.

²⁶ CAR-OTP-2061-1534, at 1555-1556, paras. 136-140.

²⁷ CAR-OTP-2031-0217, at 0222, paras. 30-31.

²⁸ CAR-OTP-2046-0603, at 0611-0612, para. 48.

²⁹ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

25. His evidence regarding the roles of [REDACTED], KONATE, [REDACTED] is cumulative to, and corroborated by the evidence of witnesses who will testify at trial, namely: (i) P-0889, [REDACTED];³⁰ (ii) P-0884, [REDACTED];³¹ and (iii) P-1521.³²

26. Finally, the Prosecution tenders five associated exhibits, as set out at Confidential Annex A. These comprise: (1) a sketch of the Anti-Balaka base [REDACTED] (Annex A to P-0461's Statement); (2) a sketch [REDACTED] (Annex B to P-0461's Statement); (3) a satellite image [REDACTED] (Annex D to P-0461's Statement); (4) [REDACTED] (Annex E to P-0461's Statement); and (5) a photograph of a deceased Muslim civilian who was killed by an Anti-Balaka element (Annex F to P-0461's Statement).

iii. P-1143 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING

27. The Prosecution tenders for formal submission P-1143's statement of 20 July 2017, totalling approximately 15 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 the on P-1143's witness statement.

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

- P-1143 was [REDACTED] during the relevant period.
- The witness describes President François BOZIZE's seminal speech to his supporters at BANGUI's PK0.

³⁰ CAR-OTP-2027-2290, at 2295-2296, paras. 30-34.

³¹ CAR-OTP-2072-1849, at 1850-1864, 1866-1869, 1.20-1.515, 582-667.

³² CAR-OTP-2046-0603, at 0608-0609, paras. 30-34.

- The witness describes the creation of self-defence groups in BANGUI by BOZIZE's *Kwa Na Kwa* ("KNK") party prior to the Seleka's arrival in BANGUI.
- The witness describes the Anti-Balaka's attack on BANGUI on 5 December 2013, [REDACTED] between the Seleka and the Anti-Balaka. He describes the Anti-Balaka's targeting of the Muslim population through the commission of acts and crimes, comprising killings, pillaging, and the destruction of property.
- P-1143 describes the forced displacement of the Muslim population to PK5 and MISKINE in the aftermath of the 5 December 2013 attack.
- He describes the roles of Anti-Balaka leaders, *commandant* Guy MAZIMBELE ("MAZIMBELE") and 'ANDJILO' (aka Rodrigue NGAIBONA).
- Finally, the witness describes [REDACTED].

29. P-1143's proposed evidence regarding the creation of self-defence groups in BANGUI by BOZIZE's KNK party is cumulative to, and corroborated by the live testimony of P-1847.³³ His evidence regarding the 5 December 2013 attack on BANGUI, and the Anti-Balaka's commission of acts and crimes against Muslims is corroborated by, and cumulative to the evidence of witnesses who will testify before the Chamber, including: (i) P-0888;³⁴ (ii) P-1521;³⁵ and (iii) P-1847.³⁶

30. His evidence regarding the forcible displacement of Muslims to PK5 during the 5 December 2013 Anti-Balaka attack is cumulative to, and corroborated by: (i) the live

³³ CAR-OTP-2122-8251, at 8270-8271, paras. 176-182.

³⁴ CAR-OTP-2031-0217, at 0222, paras. 30-31.

³⁵ CAR-OTP-2046-0603, at 0611-0612, para. 48.

³⁶ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

testimony of P-1339;³⁷ and (ii) the proposed rule 68(2)(b) evidence of P-2472,³⁸ and P-1990.³⁹

31. His evidence regarding the roles of Anti-Balaka leaders, MAZIMBELE and ANDJILO is cumulative to, and corroborated by: (i) P-0458, a member of the Anti-Balaka group [REDACTED];⁴⁰ and (ii) P-1521.⁴¹

32. Finally, the Prosecution tenders four associated exhibits, as set out at Confidential Annex A. These comprise: (1) [REDACTED] (Annex A to P-1143's Statement); (2) [REDACTED] (Annex B to P-1143's Statement); (3) [REDACTED] (Annex C to P-1143's Statement); and (4) a sketch of Dedengue 2, indicating the location of the mosque where some Muslims were killed by the Anti-Balaka (Annex D to P-1143's Statement).

iv. P-1721 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), BOEING, and YAMWARA School Base

33. The Prosecution tenders for formal submission P-1721's statement of 11 September 2013, totalling approximately 12 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-2416's statement.

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

- P-1721 is a Christian civilian [REDACTED] with his family during the relevant period.

³⁷ CAR-OTP-2041-0741, at 0752, para. 74.

³⁸ See below para. 41.

³⁹ See below para. 68.

⁴⁰ CAR-OTP-2118-5048, at 5056, l.254-269.

⁴¹ CAR-OTP-2046-0603, at 0608-0609, 0618-0619, 0025, paras. 34, 91-93, 128.

- The witness describes the arrival of the Seleka in BANGUI on 24 March 2013, and the crimes committed by the Seleka, including the looting of Francis BOZIZE's house.
- He describes the Anti-Balaka attack on BANGUI on 5 December 2013.
- P-1721 describes the Anti-Balaka base in YAMWARA School. He describes seeing the Anti-Balaka elements from YAMWARA pillaging and destroying the homes of Muslims in [REDACTED], as well as their destruction of mosques there and in BOEING.

35. [REDACTED].

36. P-1721's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the 5 December 2013 attack on BANGUI, including: (i) P-0888;⁴² (ii) P-1521;⁴³ and (iii) P-1847.⁴⁴

37. His evidence regarding the Anti-Balaka base in YAMWARA is corroborated by, and cumulative to the evidence of witnesses who will testify at trial, namely: (i) P-1647, a former member of the 'Forces Armées Centrafricaines' ("FACA") and an Anti-Balaka member [REDACTED];⁴⁵ (ii) P-1839, a [REDACTED];⁴⁶ (iii) P-0954, [REDACTED];⁴⁷ (iv) P-1339;⁴⁸ (iv) P-2475, [REDACTED];⁴⁹ (v) P-1786, a former FACA

⁴² CAR-OTP-2031-0217, at 0222, paras. 30-31.

⁴³ CAR-OTP-2046-0603, at 0611-0612, para. 48.

⁴⁴ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

⁴⁵ CAR-OTP-2050-0654, at 0658, para. 28.

⁴⁶ CAR-OTP-2072-0789, at 0814, 1.880-913.

⁴⁷ CAR-OTP-2048-0171, at 0176-0177, para. 36.

⁴⁸ CAR-OTP-2041-0741, at 0753, para. 85.

⁴⁹ CAR-OTP-2110-0556, at 0572-0573.

member and an Anti-Balaka member [REDACTED];⁵⁰ (vi) P-1558, a journalist [REDACTED];⁵¹ (vii) P-2587, [REDACTED];⁵² and (viii) P-1819, a journalist.⁵³

38. His evidence regarding the Anti-Balaka's destruction of mosques is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-1339;⁵⁴ (ii) P-1437, a Muslim resident [REDACTED];⁵⁵ and (iii) P-2682.⁵⁶

39. His evidence regarding the evacuation of the Muslim population from BANGUI to neighbouring countries is corroborated by, and cumulative to witnesses who will testify at trial namely: (i) P-2328, [REDACTED];⁵⁷ and (ii) P-2587.⁵⁸

v. P-2472 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING

40. The Prosecution tenders for formal submission P-2472's statement of 9 May 2019, totalling approximately 17 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-1779's statement.

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

- P-2472 is a Muslim civilian and a [REDACTED].
- The witness describes the Anti-Balaka's coordinated attack on BANGUI on 5 December 2013. He describes the Anti-Balaka's targeting of the Muslim

⁵⁰ CAR-OTP-2058-0200, at 0203, para. 19.

⁵¹ CAR-OTP-2105-0195, at 0200, para. 25.

⁵² CAR-OTP-2120-0211, at 0219, para. 43.

⁵³ CAR-OTP-2065-0003, at 0012, para. 45.

⁵⁴ CAR-OTP-2041-0741, at 0749, paras. 53-54.

⁵⁵ CAR-OTP-2047-0257, at 0267, para. 73.

⁵⁶ CAR-OTP-2126-0205, at 0215, para. 56.

⁵⁷ CAR-OTP-2099-0165, at 0186, para. 105.

⁵⁸ CAR-OTP-2120-0211, at 0220, para. 49.

population, through the commission of acts and crimes comprising killings of Muslim civilians, and the destruction of property. He describes seeing about 70 bodies at the Ali BABOLO mosque in PK5 in the aftermath of the 5 December 2013 attack.

- P-2472 describes the forcible displacement of the Muslim population from BOEING to PK5 in the aftermath of the 5 December 2013 attack.
- The witness describes the circumstances regarding the creation and perpetuation of their enclaving in PK5, and their continued subjection to maltreatment by the Anti-Balaka over a protracted period. He recounts the dire living conditions in the PK5 enclave.
- P-2472 provides evidence of the evacuation of the Muslim population from BANGUI to neighbouring countries such as CHAD.
- [REDACTED].

42. P-2472's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Anti-Balaka's coordinated attack on BANGUI on 5 December including: (i) P-1074, [REDACTED];⁵⁹ and (ii) P-0889.⁶⁰ His evidence regarding the transfer of bodies of those killed by the Anti-Balaka to the Ali BABOLO mosque is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-1442;⁶¹ (ii) P-2682;⁶² and (iii) P-2354.⁶³ It is further corroborated by, and cumulative to the proposed rule 68(2)(b) evidence of P-2698⁶⁴ and P-0460.⁶⁵

⁵⁹ CAR-OTP-2094-0228, at 0239-0240, paras. 63-64.

⁶⁰ CAR-OTP-2027-2290, at 2297, paras. 41-42.

⁶¹ CAR-OTP-2077-0520, at 0526-0527, paras. 35, 38, 42.

⁶² CAR-OTP-2126-0205, at 0214, 0217, paras. 53-54, 71.

⁶³ CAR-OTP-2105-0991, at 0996, para. 29.

⁶⁴ See below, para. 47.

⁶⁵ See above, para. 14.

43. His evidence regarding the creation of the PK5 enclave is corroborated by, and cumulative to: (i) the live testimony of P-2328;⁶⁶ and (ii) the proposed rule 68(2)(b) evidence of P-2698.⁶⁷ His evidence regarding the forcible displacement of Muslims to PK5 due to the 5 December 2013 Anti-Balaka attack is cumulative to, and corroborated by: (i) the live testimony of P-1339;⁶⁸ and (ii) the proposed rule 68(2)(b) evidence of P-1143,⁶⁹ and P-1990.⁷⁰

44. His evidence regarding the evacuation of the Muslim population from BANGUI to neighbouring countries is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-2328;⁷¹ and (ii) P-2587.⁷²

45. Finally, the Prosecution tenders 11 associated exhibits, as set out at Confidential Annex A. These comprise: [REDACTED].

vi. P-2698 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), BOEING, and YAMWARA School Base

46. The Prosecution tenders for formal submission P-2698's statement of 19 February 2020, totalling approximately 13 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-2698's statement.

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

- P-2698 is [REDACTED].

⁶⁶ CAR-OTP-2099-0165 at 0781, para. 174.

⁶⁷ See below, para. 47.

⁶⁸ CAR-OTP-2041-0741, at 0752, para. 74.

⁶⁹ See above, para. 28.

⁷⁰ See below, para. 68.

⁷¹ CAR-OTP-2099-0165, at 0186, para. 105.

⁷² CAR-OTP-2120-0211, at 0220, para. 49.

- The witness describes Christians in PK5 placing palm leaves in front of their houses so that the Anti-Balaka would know these were Christian houses and not attack them.
- P-2698 describes the Anti-Balaka's coordinated attack on BANGUI and BOEING on 5 December 2013. He describes the Anti-Balaka's commission of crimes, including the killing of civilians. He further describes bodies of those killed being brought to the Ali BABOLO mosque in PK5.
- P-2698 describes the crimes committed by YEKATOM's elements in KAPOU in late 2013.
- The witness describes the forced displacement of Muslims from BANGUI after the Anti-Balaka's attack on 5 December 2013. He describes the majority of Muslims fleeing attack from PK5 to neighbouring countries such as CAMEROON and CHAD by 20 December 2013 and the remaining Muslims being confined in the PK5 enclave.
- Finally, he describes the Anti-Balaka base in YAMWARA School.

48. P-2698's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding Christians placing palm leaves in front of their houses including: (i) P-1528, [REDACTED];⁷³ and (ii) P-1442.⁷⁴ His evidence regarding the Anti-Balaka's coordinated attack on BANGUI and BOEING on 5 December 2013 is cumulative to, and corroborated by, the evidence of witnesses who will testify at trial, namely: (i) P-1074;⁷⁵ and (ii) P-0889.⁷⁶

⁷³ CAR-OTP-2048-0757, at 0763, para. 33.

⁷⁴ CAR-OTP-2077-0520, at 0530, para. 60.

⁷⁵ CAR-OTP-2094-0228, at 0239-0240, paras. 63-64.

⁷⁶ CAR-OTP-2027-2290, at 2297, paras. 41-42.

49. His evidence regarding the evacuation of the Muslim population from BANGUI to neighbouring countries is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-2328;⁷⁷ and (ii) P-2587.⁷⁸ His evidence regarding the forced displacement of Muslims from PK5 and the creation of the PK5 enclave is corroborated by, and cumulative to: (i) the live testimony of P-2328;⁷⁹ and (ii) the proposed rule 68(2)(b) evidence of P-2472.⁸⁰

50. His evidence regarding the transfer of bodies of those killed by the Anti-Balaka to the Ali BABOLO mosque is corroborated by, and cumulative to the evidence of witnesses who will testify at trial, namely: (i) P-1442;⁸¹ (ii) P-2682;⁸² and (iii) P-2354.⁸³ It is further corroborated by, and cumulative to the proposed rule 68(2)(b) evidence of P-2472⁸⁴ and P-0460.⁸⁵

51. His evidence regarding the Anti-Balaka base in YAMWARA is corroborated by, and cumulative to the evidence of witnesses who will testify at trial, namely: (i) P-1647;⁸⁶ (ii) P-1839;⁸⁷ (iii) P-0954;⁸⁸ (iv) P-1339;⁸⁹ (v) P-2475;⁹⁰ (vi) P-1786;⁹¹ (vii) P-1558;⁹² (viii) P-2587;⁹³ and (ix) P-1819.⁹⁴

⁷⁷ CAR-OTP-2099-0165, at 0186, para. 105.

⁷⁸ CAR-OTP-2120-0211, at 0220, para. 49.

⁷⁹ CAR-OTP-2099-0165 at 0781, para. 174.

⁸⁰ *See above*, para. 41.

⁸¹ CAR-OTP-2077-0520, at 0526-0527, paras. 35, 38, 42.

⁸² CAR-OTP-2126-0205, at 0214, 0217, paras. 53-54, 71.

⁸³ CAR-OTP-2105-0991, at 0996, para. 29.

⁸⁴ *See above*, para. 41.

⁸⁵ *See above*, para. 14.

⁸⁶ CAR-OTP-2050-0654, at 0658, para. 28.

⁸⁷ CAR-OTP-2072-0789, at 0814, 1.880-913.

⁸⁸ CAR-OTP-2048-0171, at 0176-0177, para. 36.

⁸⁹ CAR-OTP-2041-0741, at 0753, para. 85.

⁹⁰ CAR-OTP-2110-0556, at 0572-0573.

⁹¹ CAR-OTP-2058-0200, at 0203, para. 19.

⁹² CAR-OTP-2105-0195, at 0200, para. 25.

⁹³ CAR-OTP-2120-0211, at 0219, para. 43.

⁹⁴ CAR-OTP-2065-0003, at 0012, para. 45.

vii. *P-1172 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING*

52. The Prosecution tenders for formal submission P-1172's statement of 24 July 2018, totalling approximately 15 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-1172's statement.

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

- P-1172 is [REDACTED].
- He describes the Seleka attacks in March 2013 and their crimes, [REDACTED].
- P-1172 [REDACTED].
- The witness provides evidence of the formation of Anti-Balaka in the provinces, including at BOSSANGO, BOUCA, SIBUT, and BOKANGOLO, as a response to Seleka forces.
- He describes MOKOM's contact and coordination from ZONGO with leaders of Anti-Balaka groups in the provinces, including ANDJILO, 'KEMBA' (aka Florent KEMA) and '12 Puissances' (aka Thierry LEBENE). He further describes MOKOM's recruitment of former FACA from BANGUI, including KONATE, to assist these groups.
- P-1172 [REDACTED]
- P-1172 [REDACTED]
- P-1172 [REDACTED].

- Finally, he describes the roles of Anti-Balaka leaders Aimé Abel DENAMGANAI (“DENAMGANAI”), Sylvestre YAGOUZOU (“YAGOUZOU”), and Charles NGREMANGO (“NGREMANGO”).

54. P-1172’s proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the formation of Anti-Balaka in the provinces including: (i) P-0808 [REDACTED];⁹⁵ (ii) P-0905, an Anti-Balaka member;⁹⁶ and (iii) P-1521.⁹⁷ It is further, corroborated by, and cumulative to: (i) the proposed rule 68(2)(b) evidence of P-0974.⁹⁸

55. His evidence regarding MOKOM’s contact and coordination from ZONGO with leaders of Anti-Balaka groups in the provinces is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-1521;⁹⁹ (ii) P-2027, [REDACTED];¹⁰⁰ and (iii) P-0458.¹⁰¹

56. His evidence regarding the roles of Anti-Balaka leaders DENAMGANAI, YAGOUZOU, and NGREMANGO is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-1521;¹⁰² and (ii) P-0954.¹⁰³

viii. P-0974 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING

57. The Prosecution tenders for formal submission P-0974’s statement of 19 July 2017, totalling approximately 17 pages. There are no agreements as to facts contained

⁹⁵ CAR-OTP-2025-0324, at 0331-0332, paras. 50-53.

⁹⁶ CAR-OTP-2033-7885, at 7889-7891, paras. 30-31, 37-38.

⁹⁷ CAR-OTP-2046-0603, at 0608-0610, paras. 30-35, 43.

⁹⁸ See below, para. 58.

⁹⁹ CAR-OTP-2046-0603, at 0610, para. 43.

¹⁰⁰ CAR-OTP-2078-0059, at 0076, para. 100.

¹⁰¹ CAR-OTP-2118-5081, at 5089, l.245-254.

¹⁰² CAR-OTP-2046-0603, at 0610, para. 41.

¹⁰³ CAR-OTP-2048-0171, at 0177-0179, paras. 37.

in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-0974's statement.

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

- P-0974 is [REDACTED] in the relevant period.
- He describes the arrival of the Seleka in BOUAR in April 2013 and the commission of crimes by the Seleka forces.
- The witness describes the 5 December 2013 attack on BANGUI by the Anti-Balaka.
- P-0974 [REDACTED].
- The witness provides evidence of the formation of Anti-Balaka in the provinces, including OUHEM PENDE prefecture, CARNOT, BERBERATI, and BOUR as a response to Seleka forces.
- P-0974 [REDACTED]
- The witness describes seeing displaced Muslims in MABIKI from neighbouring areas [REDACTED].
- Finally, P-0974 describes the roles of Anti-Balaka members such as 'ANDJILO', Joachim KOKATE, KONATE and '12 Puissances'.

59. P-0974's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the 5 December 2013 attack on BANGUI,

including: (i) P-0888;¹⁰⁴ (ii) P-1521;¹⁰⁵ and (iii) P-1847.¹⁰⁶ His evidence regarding the displacement of Muslims to MBAIKI is cumulative to and corroborated by witnesses who will testify at trial namely, (i) P-1666, a resident of MBAIKI;¹⁰⁷ (ii) P-1823 the [REDACTED]; and (iii) P-1813 [REDACTED].¹⁰⁸

60. His evidence regarding the formation of Anti-Balaka in the provinces is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely: (i) P-0808;¹⁰⁹ (ii) P-0905;¹¹⁰ and (iii) P-1521.¹¹¹ It is further , corroborated by, and cumulative to: (i) the proposed rule 68(2)(b) evidence of P-1172.¹¹²

61. His evidence regarding the roles of Anti-Balaka members such as ANDJILO, KOKATE, KONATE, and 12 Puissances is corroborated by, and cumulative to the evidence of witnesses who will testify at trial namely (i) P-0458;¹¹³ (ii) P-1521;¹¹⁴ (iii) P-2232, [REDACTED];¹¹⁵ and (iv) P-2328.¹¹⁶

62. Finally, the Prosecution tenders two associated exhibits, as set out at Confidential Annex A. These comprise: (i)[REDACTED].

ix. P-0473 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), and BOEING

63. The Prosecution tenders for formal submission P-0473's statement of 25 January 2020, totalling approximately 13 pages. There are no agreements as to facts contained

¹⁰⁴ CAR-OTP-2031-0217, at 0222, paras. 30-31.

¹⁰⁵ CAR-OTP-2046-0603, at 0611-0612, para. 48.

¹⁰⁶ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

¹⁰⁷ CAR-OTP-2059-0361, at 0363, 0374 and 0376-0377, paras. 13, 69, 80.

¹⁰⁸ CAR-OTP-2069-0035, at 0040-0041, paras. 34, 37.

¹⁰⁹ CAR-OTP-2025-0324, at 0331-0332, paras. 50-53.

¹¹⁰ CAR-OTP-2033-7885, at 7889-7891, paras. 30-31, 37-38.

¹¹¹ CAR-OTP-2046-0603, at 0608-0610, paras. 30-35, 43.

¹¹² See above, para. 53.

¹¹³ CAR-OTP-2118-5048, at 5056, 1.254-269.

¹¹⁴ CAR-OTP-2046-0603, at 0608-0609, 0618-0619, 0025, paras.34, 91-93, 128.

¹¹⁵ CAR-OTP-2100-2569, at 2576, 2593, paras. 38, 140.

¹¹⁶ CAR-OTP-2099-0165, at 0176-0178 ,0185, paras. 60, 66, 68-69, 98.

in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-0473's statement.

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

- P-0473 is a Muslim [REDACTED]
- The witness describes President François BOZIZE's seminal speech to his supporters at BANGUI's PK0 and his reference to Muslims colluding with the rebels.
- P-0473 describes the targeting and killing of Muslims in GOBONGO, PK13, and PK11 between January and March 2013 by the Presidential Guards.
- He describes the creation of the COCORA militia as a response to Seleka's advancement through the country and the role of its leader Levy YAKETE ("YAKETE"). He further describes COCORA erecting checkpoints in every neighbourhood and its members detaining and capturing foreigners. He describes COCORA members joining the Anti-Balaka when the Anti-Balaka arrived in BANGUI on 5 December 2013.
- The witness describes the 5 December 2013 attack on BANGUI, the targeting of the Muslim population through the Anti-Balaka's commission of acts and crimes, including killings in BANGUI.

65. P-0473's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the creation of COCORA and its activities, namely: (i) P-1847;¹¹⁷ (ii) P-2232;¹¹⁸ and (iii) P-0808.¹¹⁹

66. His evidence regarding the 5 December 2013 attack on BANGUI, and the Anti-Balaka's commission of acts and crimes comprising killings in BANGUI is corroborated by, and cumulative to evidence of witnesses who will testify before the Chamber, including: (i) P-0888;¹²⁰ (ii) P-1521;¹²¹ and (iii) P-1847.¹²²

x. P-1990 – Contextual Elements – Article 7 and Article 8, BANGUI (including CATTIN), BOEING, and YAMWARA School Base

67. The Prosecution tenders for formal submission P-1990's statement of 21 January 2020, totalling approximately 13 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-1990's statement.

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

- P-1990 was [REDACTED] during the relevant period.
- P-1990 describes the Anti-Balaka attack on BANGUI on 5 December 2013, [REDACTED] and the flight of Muslim families also fleeing the attack.
- P-1990[REDACTED].

¹¹⁷ CAR-OTP-2122-8251, at 8270-8271, paras. 176-182.

¹¹⁸ CAR-OTP-2090-0561, at 0564, para. 24.

¹¹⁹ CAR-OTP-2025-0324, at 0349, paras. 152-153.

¹²⁰ CAR-OTP-2031-0217, at 0222, paras. 30-31.

¹²¹ CAR-OTP-2046-0603, at 0611-0612, para. 48.

¹²² CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

- The witness describes the roles of Anti-Balaka leaders ‘Coeur de Lion’ (aka Freddy OUANDJIO) and *lieutenant* Yvon DONOH.
- The witness provides evidence of two checkpoints established by the Anti-Balaka on the main roads around YAMWARA School and describes how the Anti-Balaka used these checkpoints to identify and target anyone who had Muslim contacts in their mobile phones.
- P-1990 describes the crimes committed by the Anti-Balaka based in YAMWARA School, driving out the Muslim population from the surrounding neighbourhood .
- Finally, P-1990 describes the departure of the Anti-Balaka from YAMWARA School after the resignation of Michel DJOTODIA.

69. P-1990’s proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Anti-Balaka base in YAMWARA, namely: (i) P-1647;¹²³ (ii) P-1839;¹²⁴ (iii) P-0954;¹²⁵ (iv) P-1339;¹²⁶ (v) P-2475;¹²⁷ (vi) P-1786;¹²⁸ (vii) P-1558;¹²⁹ (viii) P-2587¹³⁰ and (ix) P-1819.¹³¹

70. His evidence regarding the forcible displacement of Muslims to PK5 due to the 5 December 2013 Anti-Balaka attack is cumulative to, and corroborated by: (i) P-1339;¹³² and (ii) the proposed rule 68(2)(b) evidence of P-1143,¹³³ and P-2472.¹³⁴

¹²³ CAR-OTP-2050-0654, at 0658, para. 28.

¹²⁴ CAR-OTP-2072-0789, at 0814, l.880-913.

¹²⁵ CAR-OTP-2048-0171, at 0176-0177, para. 36.

¹²⁶ CAR-OTP-2041-0741, at 0753, para. 85.

¹²⁷ CAR-OTP-2110-0556, at 0572-0573.

¹²⁸ CAR-OTP-2058-0200, at 0203, para. 19.

¹²⁹ CAR-OTP-2105-0195, at 0200, para. 25.

¹³⁰ CAR-OTP-2120-0211, at 0219, para. 43.

¹³¹ CAR-OTP-2065-0003, at 0012, para. 45.

¹³² CAR-OTP-2041-0741, at 0752, para. 74.

¹³³ See above, para. 28.

¹³⁴ See above, para. 41.

71. His evidence regarding the Anti-Balaka leadership in YAMWARA is cumulative to, and corroborated by witnesses who will testify at trial, namely: (i) P-1339;¹³⁵ (ii) P-1962, [REDACTED];¹³⁶ and (iii) P-1786.¹³⁷ It is further corroborated by [REDACTED]¹³⁸

72. His evidence regarding the establishment of checkpoints by the Anti-Balaka is cumulative to, and corroborated by witnesses who will testify at trial, namely; (i) P-2328;¹³⁹ and (ii) P-1813.¹⁴⁰

73. Finally, the Prosecution tenders four associated exhibit, as set out at Confidential Annex A. These comprise (1) a satellite image of YAMWARA School indicating the locations of the houses occupied by Coeur de Lion [REDACTED] (Annex A to P-1990's statement). (2) a photograph of the surroundings of the YAMWARA School (Annex B to P-1990's statement); (3) a photograph of the surroundings of the YAMWARA School (Annex C to P-1990's statement; (4) a photograph of the surroundings of the YAMWARA School (Annex D to P-1990's statement).

E. Balance of interests

74. The Prosecution incorporates its previous submissions concerning the balance of interests as set out at paragraphs 47 to 49 in its First Rule 68 Request¹⁴¹ and Second Request for the Formal Submission of Prior Testimony pursuant to Rule 68(2)(b).¹⁴²

75. Thus, dispensing with the 10 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

¹³⁵ CAR-OTP-2041-0741, at 0750, paras. 60, 63

¹³⁶ CAR-OTP-2068-0037, at 0044, paras. 27-32.

¹³⁷ CAR-OTP-2058-0200, at 0205, paras. 26-27.

¹³⁸ CAR-OTP-2030-0445 at 0449.

¹³⁹ CAR-OTP-2099-0165, at 0187, para. 112.

¹⁴⁰ CAR-OTP-2069-0035, at 0046, para. 74.

¹⁴¹ ICC-01/14-01/18-710-Conf.

¹⁴² ICC-01/14-01/18-744-Conf, paras. 37-40.

occasion any unfair prejudice to the Accused either in respect of the nature of rule 68(2) itself, or as applied in these circumstances.¹⁴³

IV. CONCLUSION

76. For the above reasons, the Prosecution requests that the Chamber deem the proposed prior recorded testimony of the 10 Witnesses *in lieu* of their *viva voce* testimony formally submitted, as set out at Annex A.



James Stewart, Deputy Prosecutor

Dated this 31st day of March 2021
At The Hague, The Netherlands

¹⁴³ ICC-01/09-01/11-1938-Red-Corr, para. 27.