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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 Seventh Request for the Formal
Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”,
ICC-01/14-01/18-808-Conf, 11 January 2021**

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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 five Prosecution Witnesses,¹ pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).

2. The prior recorded testimony of the Five 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 (the “Relevant Period”) in the western Central African Republic (“CAR”), as set out in the Pre-Trial Chamber’s Decision on Confirmation of Charges,³ as well as regarding the methodology of collection, form, and content of relevant call data records (“CDR”).⁴ The proposed evidence is relevant, probative, reliable, and suitable for formal submission in written form.

3. The formal submission of the Five 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.⁵ 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.

¹ These comprise witnesses P-1576, P-1739, P-1530, P-1932, and P-2973 (“Five 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 On the relevance of the CDR see ICC-01/14-01/18-376-Conf-Corr, paras. 91-94.

⁵ ICC-01/14-01/18-685.

4. As submitted, the proposed prior statements do not concern the acts or conduct of the Accused. They are limited to evidence of (i) the crime base forming a part of the 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,⁶ and (ii) the provenance of documentary evidence.

5. The relevance and probative value of each of the Five 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 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information

⁶ 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").

concerning witnesses which should not be made public. A “Public Redacted” version of the Request will be filed as soon as practicable.

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.⁷

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).⁸ 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.⁹

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

9. The proposed evidence of the Five Witnesses may be formally submitted under rule 68(2)(b). The evidence primarily goes to proof of the crime-base, particularly the

⁷ See ICC-01/14-01/18-710-Conf (“First Rule 68(2) Request”).

⁸ 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.

⁹ Rule 68(2)(b)(i).

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 7 and 8, respectively. Specifically, the evidence of the Five 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.¹⁰ The evidence further goes to proof of the authenticity and reliability of CDR evidence the Prosecution intends to introduce at trial.

C. Formal Submission of the Five 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 Five Witnesses was obtained by the Prosecution in the ordinary course of its investigation.¹¹ All of the witnesses' factual accounts, but one (P-1932), were signed in accordance with rule 111, having had their statements interpreted in a language which they fully understood, as necessary. Each signed 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. Although P-1932 did not sign his statement, it was obtained through the ordinary application of rule 111, in the course of an interview conducted remotely through electronic means. The statement includes the date, time and place of, and all persons present. In any case, the

¹⁰ 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).

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

Prosecution considers that this does not constitute an impediment to the formal submission of P-1932's statement, upon the satisfaction of the rule 68(2)(b) criteria.

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 Five Witnesses' statements provide quintessentially "crime-base" evidence going broadly to the contextual elements, as well as to the provenance of peripheral evidence — 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 Five Witnesses' Prior Recorded Testimony

- i. P-1576– Contextual Elements – Article 7 and Article 8, BOSSANGO, BANGUI*

13. The Prosecution tenders for formal submission P-1576's statement of 11 September 2017, totalling approximately 11 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-1576's witness statement.

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

- P-1576 is a [REDACTED] who travelled to the following locations in CAR during the Relevant Period: (i) BANGUI and BOSSANGO [REDACTED]; (ii) BANGUI, YALOE, BOALI, BOZOU, BOSSEMPTELE and ZAWA, [REDACTED]; and (iii) to the enclaves of BANGUI (Central Mosque, Mosque of BEGOUA in PK12, and PK5), BODA, BAMBARI, YALOE and CARNOT [REDACTED].
- The witness [REDACTED] Anti-Balaka members and victims of Anti-Balaka crimes in BANGUI and the provinces, including killings of Muslim civilians, displacement, forcible transfer, deportation, imprisonment and other forms of severe deprivation of physical liberty, and inhuman treatment.
- P-1576 describes the Anti-Balaka, [REDACTED], approaching BANGUI on 4 December 2013, and announcing their intention to attack the city. He also describes, *inter alia*, seeing 58 bodies in the Ali BABOLO Mosque in PK5 on 6 December 2013.

- Finally, the witness describes [REDACTED].

15. P-1576's evidence regarding the Anti-Balaka coming down from the provinces to BANGUI for the 5 December 2013 attack is corroborated by, and cumulative to, the evidence of witnesses who will testify before the Chamber, including: (i) P-1521, [REDACTED];¹² (ii) P-0808, [REDACTED];¹³ (iii) P-0975, [REDACTED];¹⁴ and (iv) P-1847, [REDACTED].¹⁵ It is further corroborated by, and cumulative to documentary evidence to be submitted.¹⁶

16. His evidence regarding the Anti-Balaka's commission of acts and crimes against Muslims in BANGUI, including killings and the transfer of the bodies at the Ali BABOLO Mosque in BANGUI, is corroborated by, and cumulative to the evidence of witnesses who will testify before the Chamber, including: (i) P-2354, [REDACTED];¹⁷ and (ii) P-2682, [REDACTED].¹⁸ It is further corroborated by, and cumulative to the proposed rule 68(2)(b) evidence of (i) P-1442, [REDACTED];¹⁹ (ii) P-1676 [REDACTED];²⁰ (iii) P-2472, [REDACTED];²¹ and (iv) P-0505, [REDACTED],²² as well as to documentary evidence to be submitted.²³

17. His evidence regarding the Anti-Balaka's commission of acts and crimes against Muslims, causing their displacement and the creation of enclaves in BANGUI and in

¹² CAR-OTP-2046-0603, at 0608-0610, paras. 32, 34, 37, 41- 44.

¹³ CAR-OTP-2025-0324, at 0331-0332, paras. 50-53.

¹⁴ CAR-OTP-2033-7885, at 7889-7891, paras. 30-31, 36-38.

¹⁵ CAR-OTP-2061-1534, at 1560, paras. 165-167.

¹⁶ CAR-OTP-2030-0255, at 0256; CAR-OTP-2025-0362, at 0364; CAR-OTP-2025-0372, at 0374; CAR-OTP-2025-0396, at 0398.

¹⁷ CAR-OTP-2105-0991, at 0996, paras. 29-30.

¹⁸ CAR-OTP-2126-0205, at 0214-0215, 0217, paras. 53-54, 71.

¹⁹ CAR-OTP-2077-0520, at 0526-0527, paras. 35-38, 41-42, 45.

²⁰ CAR-OTP-2066-0105, at 0109-0110, 0113, paras. 26-28, 47-50.

²¹ CAR-OTP-2110-0355, at 0358-0361, paras. 19-29.

²² CAR-OTP-2014-0129, at 0136, para. 39.

²³ **P-0505**: CAR-OTP-2096-2489 from [00:00:00] to [00:00:32] and its transcript and translation CAR-OTP-2127-4526 and CAR-OTP-2127-4620, CAR-OTP-2096-2493 from [00:00:00] to [00:00:40] and its transcript and translation CAR-OTP-2130-0331 and CAR-OTP-2130-0378, CAR-OTP-2096-2494 from [00:00:00] to [00:00:39] and its transcript and translation CAR-OTP-2122-9551 and CAR-OTP-2122-9579 – see commentary provided by P-0505 on these videos at CAR-OTP-2014-0129, at 0135, para.39.

the provinces, *inter alia* in BOSSANGO, ZAWA, YALOE, BODA, CARNOT is corroborated by, and cumulative to, including: (i) the prospective live testimony of P-2328, [REDACTED];²⁴ (ii) the prospective live testimony of P-1577, [REDACTED];²⁵ (iii) the proposed rule 68(2)(b) evidence of P-0289, [REDACTED];²⁶ (iv) the proposed rule 68(2)(b) evidence of P-1871, [REDACTED],²⁷ as well as to documentary evidence to be submitted.²⁸

18. Finally, the Prosecution tenders 39 associated exhibits, as set out at Confidential Annex A. These comprise: [REDACTED].

ii. P-1530 – Contextual Elements – Article 7 and Article 8

19. The Prosecution tenders for formal submission P-1530's statement of 20 May 2017, totalling approximately 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-1530's witness statement.

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

- P-1530 is a Christian of Gbaya ethnicity. In the Relevant Period, he was a trader [REDACTED].
- He describes the targeting of the Muslim community by the Anti-Balaka during the 5 December 2013 attack on BANGUI and its aftermath. He describes the commission of acts and crimes against the Muslim population

²⁴ CAR-OTP-2099-0165, at 0197-0199, paras. 174-185.

²⁵ CAR-OTP-2081-0769, at 0787, 0791, 0823-0825.

²⁶ CAR-OTP-2024-0288, at 0293-0294, 0296, 0302, paras. 31-33, 44, 47, 77-79.

²⁷ CAR-OTP-2064-0884, at 0888-0889, paras. 20-24.

²⁸ For BOSSANGO, see: **P-1577**: CAR-OTP-2085-4492, CAR-OTP-2085-4502; For YALOE, see: **P-1577**: CAR-OTP-2087-4262, CAR-OTP-2087-4342; For BODA, see: CAR-OTP-2087-9680, from [00:03:25] to [00:03:48] and its transcript and translation CAR-OTP-2127-6269 and CAR-OTP-2127-6392, at 6395-6396, l.68-86; For CARNOT, see: CAR-OTP-2012-0477, from [00:00:08] to [00:03:30], and its transcript and translation CAR-OTP-2107-6886, at 6887-6888, l.4-75 CAR-OTP-2107-7010, at 7012-713, l.4-75.

[REDACTED], comprising pillaging, displacement, forcible transfer, and deportation.

- The witness describes the roles of the Anti-Balaka members NAMSIO, '12 Puissances' (aka Theirry LEBENE), 'ANDJILO' (aka Rodrigue NGAIBONA) and *lieutenant* Yvon KONATE within the group, [REDACTED].
- Finally, P-1530 describes several Anti-Balaka bases within BANGUI, their chiefs, and their areas of control.

21. P-1530's proposed evidence on the targeting of the Muslim community by the Anti-Balaka during the 5 December 2013 attack on BANGUI and its aftermath, is cumulative to, and corroborated by, witnesses who will testify at trial, including: (i) P-1528, [REDACTED];²⁹ (ii) P-0808;³⁰ (iii) P-2419, [REDACTED].³¹ It is further corroborated by, and cumulative to the proposed rule 68(2) evidence of (i) P-0460, [REDACTED];³² (ii) P-0461, [REDACTED];³³ (iii) P-0567, [REDACTED];³⁴ and (iv) P-1990, [REDACTED],³⁵ as well as to documentary evidence to be submitted.³⁶

22. His evidence regarding the capture of civilians by the Anti-Balaka in BANGUI is corroborated by, and cumulative to, *inter alia*, the evidence of witnesses who will testify before the Chamber, including: (i) P-1528;³⁷ and (ii) P-0808.³⁸

²⁹ CAR-OTP-2048-0757, at 0764-0765, paras. 41-49.

³⁰ CAR-OTP-2093-0010, at 0018, paras. 40-41.

³¹ CAR-OTP-2112-0036, at 0040, para. 22.

³² CAR-OTP-2013-0536, at 0543, para. 35.

³³ CAR-OTP-2031-0190, at 0195, paras. 27-28.

³⁴ CAR-OTP-2059-0084, at 0102-0103, paras. 119-127.

³⁵ CAR-OTP-2124-0247, at 0252-0253, para. 24.

³⁶ CAR-OTP-2001-4446, at 4447.

³⁷ CAR-OTP-2048-0757, at 0764-0765, paras. 41-48.

³⁸ CAR-OTP-2093-0010, at 0018, paras. 40-41.

23. His evidence regarding the Anti-Balaka bases within BANGUI and their chiefs is corroborated by, and cumulative to, the evidence of witnesses who will testify before the Chamber, including P-0966, [REDACTED],³⁹ as well as documentary evidence.⁴⁰

24. Finally, the Prosecution tenders two associated exhibit, as set out at Confidential Annex A. These comprise: (1) a sketch of the Anti-Balaka base [REDACTED] (Annex A to P-1530's statement); and (2) a sketch of various Anti-Balaka bases in BANGUI (Annex B to P-1530's statement).

iii. P-1739 – Contextual Elements – Article 7 and Article 8, BOSSANGO

25. The Prosecution tenders for formal submission P-1739's statement of 24 May 2017, totalling approximately 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-1739's witness statement.

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

- P-1739, a [REDACTED].
- P-1739 describes [REDACTED] the commission of crimes by the Anti-Balaka against the Peuhls, and the Muslim population generally in 2013-2014, in the prefectures of OMBELLA-MPOKO (including the sub-prefecture of YALOKÉ), LOBAYE (including the sub-prefecture of BODA), the MAMBERE-KADEI (including the sub-prefectures of GADZI and CARNOT), OUHAM-PENDE (including the sub-prefecture of BOSSEMPTELE), OUHAM (including the sub-prefectures of BOSSANGO

³⁹ CAR-OTP-2031-0241, at 0254-0255, paras. 72-77.

⁴⁰ CAR-OTP-2025-0372, at 0376-0377.

and BOUCA), the prefectures of SANGANBAIRE, NANA-MAMBERE, and OUAKA.

- P-1739 recounts that the Anti-Balaka attacks in and around BOSSANGO started as early as July 2013 and continued until January 2014. He further recounts the forcible displacement of the Peuhl and Muslim population as a result of Anti-Balaka crimes, *inter alia*, that more than 6000 Peuhls were forced to take refuge at the church in BOSSANGO.
- Finally, P-1739 describes the background of the armed conflict more generally and the historical targeting of the Mbororo Peuhls.

27. P-1739's proposed evidence regarding the commission of crimes by the Anti-Balaka against the Peuhls in 2013-2014 is cumulative to, and corroborated by, *inter alia*: (i) the prospective live testimony of P-0884, [REDACTED];⁴¹ (ii) the prospective live testimony of P-2328;⁴² (iii) the proposed rule 68(2)(b) evidence of P-2486, [REDACTED];⁴³ (iv) the proposed rule 68(2)(b) evidence of P-2416, a Muslim civilian who lived in YALOKÉ in the Relevant Period;⁴⁴ (v) the proposed rule 68(2)(b) evidence of P-2546, [REDACTED] who lived in YALOKÉ in the Relevant Period,⁴⁵ as well as documentary evidence to be submitted.⁴⁶

28. Finally, the Prosecution tenders four associated exhibits, as set out at Confidential Annex A. These comprise (1) [REDACTED] (Annex A to P-1739's statement); (2) a correspondence [REDACTED] addressed to the [REDACTED] Representative in CAMEROON, dated of 29 September 2014 (Annex B to P-1739's

⁴¹ CAR-OTP-2072-1881, at 1908-1909, l. 935-976.

⁴² CAR-OTP-2099-0165, at 0199, 0202-0204, paras. 185, 201, 212.

⁴³ CAR-OTP-2116-0281, at 0286-0288, paras. 22-30.

⁴⁴ CAR-OTP-2106-0489, at 0531, para. 109.

⁴⁵ CAR-OTP-2114-0402, at 0430-0432, 0434-0435, paras. 99-103, 109-110, 115.

⁴⁶ CAR-OTP-2092-1998, at 1998; CAR-OTP-2101-3040, at 3040; CAR-OTP-2049-0141, from [00:00:37] to [00:01:22] and its transcript and translation CAR-OTP-2074-1954 and CAR-OTP-2074-1958, at 1960, l.18-35.

statement); (3) a Memorandum to the Governments of Cameroon and Chad, the humanitarian agencies and the international community (Annex D to P-1739's statement);⁴⁷ and (4) [REDACTED] report titled "*Les Peuhls de Centrafrique une communauté qui souffre*" of June 2015, [REDACTED].⁴⁸

iv. P-2973 – CDR evidence

29. The Prosecution tenders for formal submission P-2973's statement of 27 October 2020, totalling approximately 6 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-2973's statement.

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

- P-2973 is [REDACTED].
- P-2973 describes the process for generating, preserving and producing CDRs. He also explains the reach of [REDACTED] cell towers within CAR.
- Finally, P-2973 describes the basic contents of [REDACTED] CDR and the terminology used. He explains, *inter alia*, which columns contain: (i) the phone numbers of the participants to the communication; (ii) the direction of the communication (incoming or outgoing); (iii) the date and time of the communication; as well as (iv) the location of the antenna capturing the communication, and the possibility to establish the geolocation of the user.

⁴⁷ This Memorandum was proposed as an associate exhibit for P-0520 in the Prosecution's Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) ("Fifth Rule 68(2)(b) Request"), see ICC-01/14-01/18-795-Conf, para. 16.

⁴⁸ This report was proposed as an associate exhibit for P-0520 in the Fifth Rule 68(2)(b) Request, see ICC-01/14-01/18-795-Conf, para. 16.

31. His evidence on [REDACTED] automated process of generating, preserving, and producing CDR is relevant to the integrity and reliability of the CDR [REDACTED], as well as the Prosecution's larger CDR collection. The contact data contained in that collection is cumulative to, and corroborated by witnesses who will testify at trial about the fact of telephone communications between different Anti-Balaka members, including: (i) P-2232,⁴⁹ [REDACTED];⁵⁰ and (ii) P-0889;⁵¹ P-1521;⁵² and P-0458,⁵³ [REDACTED].⁵⁴

32. His evidence on the functioning of cell sites and the generation of cell site data in general is also relevant to the Prosecution's larger CDR collection. Cell site data in that collection is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial as to the whereabouts of individuals at relevant times. For example, P-2602 – [REDACTED] who participated in the BOSSANGO attack on 5 December 2013⁵⁵ – [REDACTED].⁵⁶

33. P-2973's proposed evidence is also cumulative to and corroborated by, *inter alia*, the proposed rule 68(2)(b) evidence of P-1932, [REDACTED],⁵⁷ as well as by CDR evidence to be submitted.

34. Finally, the Prosecution tenders four associated exhibits, as set out at Confidential Annex A. These comprise: (1) a list of CDR data types (Annex B to P-2973's Statement); (2) a map of CAR indicating the cities with [REDACTED] coverage

⁴⁹ CAR-OTP-2100-2569, at 2578, para. 45.

⁵⁰ [REDACTED].

⁵¹ CAR-OTP-2027-2290, at 2295-2296, paras. 30-34.

⁵² CAR-OTP-2046-0603, at 0610, para. 43.

⁵³ CAR-OTP-2118-5081, at 5089, l.245-254.

⁵⁴ [REDACTED].

⁵⁵ CAR-OTP-2118-9560, at 9573-9574, l.420-481, and at 9578, l.592-620; CAR-OTP-2118-9579, at 9580, l.7-28.

⁵⁶ [REDACTED].

⁵⁷ CAR-OTP-2122-9950.

(Annex C to P-2973's statement); (3) [REDACTED] (Annex D to P-2973's statement); and (4) a CDR example discussed within the statement.

v. P-1932 – CDR evidence

35. The Prosecution tenders for formal submission P-1932's as yet unsigned statement of 22 October 2020, 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-1932's statement. Subject to the fulfilment of the remaining criteria under article 68(2), there is no impediment to the Chamber provisionally receiving P-1932's statement as formally submitted. The Prosecution considers that P-1932's accompanying declaration under rule 68(2)(b)(ii) certifying that the contents of his statement are true and correct to the best of his knowledge and belief is sufficient, notwithstanding the absence of P-1932's signature on his statement at the time of the interview.⁵⁸

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

- P-1932 is [REDACTED].
- The witness describes [REDACTED] automatic process for generating, preserving and producing CDRs. P-1932 also describes [REDACTED].
- P-1932 reports on the functioning and reach of [REDACTED] cell towers within CAR in the Relevant Period.

⁵⁸ ICC-01/09-01/11-1938-Red-Corr, paras. 28, 30-33. *Contra*, ICC-01/09-01/11-1938-Anx-Red, paras. 19-25.

- P-1932 describes the basic contents of [REDACTED] CDR, including the terminology used therein. On several CDR examples, P-1932 provides explanations to specific questions [REDACTED].
- Finally, P-1932 describes [REDACTED].

37. His evidence on [REDACTED] automated process of generating, preserving and producing CDR is relevant to the integrity and reliability of CDR [REDACTED], as well as the Prosecution's larger CDR collection. The contact data contained in CDR [REDACTED] is cumulative to, and corroborated by witnesses who will testify at trial about the fact of telephone communications between different Anti-Balaka members, including: (i) P-2232,⁵⁹ [REDACTED];⁶⁰ and (ii) P-0889;⁶¹ P-1521;⁶² and P-0458,⁶³ [REDACTED].⁶⁴

38. P-1932's proposed evidence is also cumulative to and corroborated by, *inter alia*, the proposed rule 68(2)(b) evidence of P-2973, [REDACTED],⁶⁵ as well as by CDR evidence to be submitted.

39. Finally, the Prosecution tenders seven associated exhibits, as set out at Confidential Annex A. These comprise seven examples of CDRs, on which P-1932 provides explanations in his statement.

E. Balance of interests

⁵⁹ CAR-OTP-2100-2569, at 2578, para. 45.

⁶⁰ [REDACTED].

⁶¹ CAR-OTP-2027-2290, at 2295-2296, paras. 30-34.

⁶² CAR-OTP-2046-0603, at 0610, para. 43.

⁶³ CAR-OTP-2118-5081, at 5089, l.245-254.

⁶⁴ [REDACTED].

⁶⁵ CAR-OTP-2122-9874.

40. The Prosecution incorporates its previous submissions concerning the balance of interests as set out at paragraphs 47 to 49 in its First Rule 68(2) Request⁶⁶ and Second Request for the Formal Submission of Prior Testimony pursuant to rule 68(2)(b),⁶⁷ contemporaneously.

41. Thus, dispensing with the Five 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.⁶⁸

IV. CONCLUSION

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



James Stewart, Deputy Prosecutor

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

⁶⁶ ICC-01/14-01/18-710-Conf.

⁶⁷ ICC-01/14-01/18-744-Conf, paras. 37-40.

⁶⁸ ICC-01/09-01/11-1938-Red-Corr, para. 27.