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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 Eighth Request for the Formal
Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”
11 January 2021, ICC-01/14-01/18-812-Conf**

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

2. The prior recorded testimony of the Seven 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 (“Relevant Period”) 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 Seven 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-0342, P-1921, P-2050, P-2138, P-2432, P-2467, and P-2652 (“Seven 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 Seven 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 Seven 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 Seven 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 Seven 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 Seven Witnesses was obtained by the Prosecution in the ordinary course of its investigation.¹⁰ P-0342, P-1921, P-2050, P-2432, P-2467, and P-2652's factual accounts were signed in accordance with rule 111, having had their statements interpreted in a language which they fully understood, as necessary. Their statements further contain an express acknowledgement attesting to their voluntariness and the truth of their content, to the best of the witness's knowledge. [REDACTED]. 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 Seven Witnesses' statements provide quintessentially "crime-base" evidence

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.

going 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 Seven Witnesses' Prior Recorded Testimony

- i. *P-0342 – Contextual Elements – Article 7 and Article 8*

13. The Prosecution tenders for formal submission P-0342's statements of 29 May 2015 ("First Statement") and 6 September 2019 ("Second Statement"), totalling approximately 16 and 49 pages, respectively. 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-0342's statement.

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

- P-0342 was [REDACTED] in the Relevant Period.
- He provides information about the Seleka coup and its circumstances, and reports on the subsequent commission of crimes by the Seleka, notably in BANGUI and in the area of BOSSANGO.

- The witness describes the presence of Anti-Balaka elements in the area of BOSSANGO in [REDACTED] 2013, their attacks there and at nearby villages in this period, and their commission of crimes against the Muslim population.
- He recounts the Anti-Balaka's attack of BANGUI on 5 December 2013, and their targeting of the Muslim population from that day through killings, [REDACTED].
- P-0342 provides evidence of the forcible displacement of the Muslim population of BANGUI as a consequence of the Anti-Balaka's crimes, including the situation of the Muslim population, enclaved by the Anti-Balaka in PK5.
- Finally, he provides information about Anti-Balaka leaders, including 12 PUISSANCES, CHOCOLAT, ANDJILO, and Emotion NAMSIO.

15. P-0342's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-1577,¹¹ and P-2682,¹² who will testify at trial, the proposed rule 68(2)(b) evidence of P-0567,¹³ P-1584,¹⁴ P-1921,¹⁵ P-1990,¹⁶ P-2377,¹⁷ P-2432,¹⁸ P-2472,¹⁹ and P-2652,²⁰ as well as by documentary evidence to be submitted²¹ in relation to the Anti-Balaka's targeting of the Muslim population of BANGUI.

16. Finally, the Prosecution tenders six associated exhibits, as set out at *Confidential* Annex A. [REDACTED].

¹¹ CAR-OTP-2081-0769, at 0814-0815.

¹² CAR-OTP-2126-0205, at 0213, paras. 45-46.

¹³ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

¹⁴ CAR-OTP-2056-0447, at 0459, paras. 76-79, at 0460, paras. 82, 84, at 0462, paras. 95-99.

¹⁵ See para. 18.

¹⁶ CAR-OTP-2124-0247, at 0252, para. 24.

¹⁷ CAR-OTP-2108-0609, at 0618-0619, paras. 46-49.

¹⁸ See para. 30.

¹⁹ CAR-OTP-2110-0355, at 0362-0363, paras. 39-43.

²⁰ See para. 38.

²¹ CAR-OTP-2001-2139, at 2142; CAR-OTP-2001-2203, at 2210, 2218-2219; CAR-OTP-2001-4446, at 4446-4448.

ii. *P-1921 – Contextual Elements – Article 7 and Article 8*

17. The Prosecution tenders for formal submission P-1921's statement of 4 July 2018, totalling approximately 18 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-1921's statement.

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

- [REDACTED].
- She provides evidence of the Anti-Balaka's targeting of the Muslim population of BANGUI, notably through killings. [REDACTED].
- She describes the situation of the Muslims enclaved by the Anti-Balaka in PK5 and PK12, observing that they could not go out without risking their lives.
- The witness provides evidence of the forcible displacement of Muslims from the Provinces to BANGUI, and from BANGUI to Cameroon, as a result of Anti-Balaka violence.
- P-1921 describes the situation [REDACTED] of the Muslim population enclaved by the Anti-Balaka in BOSSANGO.
- [REDACTED]²² [REDACTED].
- She describes the dire humanitarian conditions facing the Muslim population enclaved by the Anti-Balaka in BODA.
- Finally, P-1921 provides evidence of the presence of child soldiers under 15 within the Anti-Balaka's ranks, [REDACTED].

²² [REDACTED].

19. P-1921's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-1577,²³ P-2049,²⁴ and P-2682,²⁵ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0567,²⁶ P-1584,²⁷ P-1990,²⁸ P-2377,²⁹ P-2432,³⁰ P-2472,³¹ and P-2652,³² as well as by documentary evidence to be submitted³³ in relation to the Anti-Balaka's targeting of the Muslim population of BANGUI from their attack of the town on 5 December 2013, the PK5 and PK12 enclaves, and the forcible displacement of the Muslim population from BANGUI. Her evidence regarding the BOSSANGOA enclave is cumulative to, and corroborated by, *inter alia*, the evidence of P-1577,³⁴ and P-2200,³⁵ who will testify at trial, the proposed rule 68(2)(b) evidence of P-2652,³⁶ as well as by documentary evidence to be submitted.³⁷ Last, her evidence in relation to the BODA enclave is cumulative to, and corroborated by, *inter alia*, the evidence of P-0952,³⁸ P-1577,³⁹ P-1962,⁴⁰ and P-2328,⁴¹ who will testify at trial, and by documentary evidence to be submitted.⁴²

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

²³ CAR-OTP-2081-0769, at 0814-0815.

²⁴ CAR-OTP-2088-2173, at 2193, paras. 111-112.

²⁵ CAR-OTP-2126-0205, at 0213, paras. 45-46.

²⁶ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

²⁷ CAR-OTP-2056-0447, at 0459, paras. 76-79, at 0460, paras. 82, 84, at 0462, paras. 95-99.

²⁸ CAR-OTP-2124-0247, at 0252, para. 24.

²⁹ CAR-OTP-2108-0609, at 0618-0619, paras. 46-49.

³⁰ See para. 30.

³¹ CAR-OTP-2110-0355, at 0362-0363, paras. 39-43.

³² See para. 38.

³³ CAR-OTP-2001-2139, at 2142; CAR-OTP-2001-2203, at 2210, 2218-2219; CAR-OTP-2001-4446, at 4446-4448; CAR-OTP-2001-2769, at 2778-2780; CAR-OTP-2001-4825, at 4825; CAR-OTP-2055-1987, at 2141.

³⁴ CAR-OTP-2081-0769, at 0791.

³⁵ CAR-OTP-2088-2146, at 2158-2159, paras. 68-74.

³⁶ See para. 38.

³⁷ CAR-OTP-2079-0678, at 0678; CAR-OTP-2079-1141, at 1141; CAR-OTP-2079-1159, at 1159.

³⁸ CAR-OTP-2107-0819, at 0821, l. 51-58; CAR-OTP-2107-0897, at 0906, l. 315-334.

³⁹ CAR-OTP-2081-0769, at 0810-0811.

⁴⁰ CAR-OTP-2068-0037, at 0056, para. 94.

⁴¹ CAR-OTP-2099-0165, at 0198-0200, paras. 181, 187-188.

⁴² CAR-OTP-2001-2769, at 2791; CAR-OTP-2055-1987, at 2159-2160; CAR-OTP-2020-0019, at 0035, para. 59; CAR-OTP-2001-2252, at 2254.

iii. P-2050 – Contextual Elements – Article 7 and Article 8

21. The Prosecution tenders for formal submission P-2050's statement of 11 May 2018, totalling approximately 20 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-2050's statement.

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

- [REDACTED].
- [REDACTED]⁴³ [REDACTED]⁴⁴ [REDACTED].
- Finally, P-2050 provides evidence of widespread Anti-Balaka crimes against the Muslim population. For instance, she describes the destruction she saw in SIBUT, [REDACTED]. There, Muslim houses and a Mosque had been destroyed by the Anti-Balaka, while the population had to remain under the protection of MISCA.

23. P-2050's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-2232,⁴⁵ and P-2251,⁴⁶ who will testify at trial, and the proposed rule 68(2)(b) evidence of P-1921, [REDACTED].⁴⁷ Her evidence in relation to the Anti-Balaka's attack on the Muslim population in SIBUT, and its enclaving, is cumulative to and corroborated by, *inter alia*, the evidence of P-1719,⁴⁸ who will testify at trial, and by documentary evidence to be submitted.⁴⁹

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ CAR-OTP-2100-2569, at 2580, para. 57.

⁴⁶ CAR-OTP-2093-0045, at 0062-0063, paras. 111-113.

⁴⁷ See para. 18.

⁴⁸ CAR-OTP-2062-0039, at 0046, para. 44.

⁴⁹ CAR-OTP-2001-2769, at 2779.

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

iv. P-2138 – Contextual Elements – Article 7 and Article 8

25. The Prosecution tenders for formal submission P-2138's [REDACTED] statement of [REDACTED] 2018, [REDACTED]. 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-2138's statement.

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

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].⁵⁰
- He provides evidence of the Anti-Balaka's targeting of the Muslim population in BODA through killings, sexual crimes, and pillaging, and on the situation of the Muslim population in the enclave. This included the killing of Muslims who attempted to leave the enclave, the erecting of barricades, and impeding the provision of humanitarian assistance.
- [REDACTED].
- [REDACTED].

⁵⁰ [REDACTED].

27. P-2138's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0458,⁵¹ P-1074,⁵² P-1577,⁵³ P-1786,⁵⁴ P-2353,⁵⁵ P-2389,⁵⁶ and P-2476⁵⁷ who will testify at trial, the proposed rule 68(2)(b) evidence of P-1576,⁵⁸ P-1773,⁵⁹ P-1962,⁶⁰ and P-2432,⁶¹ as well as by documentary evidence to be submitted⁶² in relation to the Anti-Balaka's attack of BODA, the commission of crimes against the Muslim population there, and the circumstances of their enslaving.

28. Finally, the Prosecution tenders three associated exhibits, as set out at *Confidential* Annex A. These comprise: (1) a map of CAR marked by P-2138 indicating different locations (Annex A to P-2138's statement); (2) [REDACTED],⁶³ [REDACTED] (Annex B to P-2138's statement); and (3) [REDACTED].

v. P-2432 – Contextual Elements – Article 7 and Article 8

29. The Prosecution tenders for formal submission P-2432's statement of 30 September 2019, totalling 22 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-2432's witness statement.

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

- [REDACTED].

⁵¹ CAR-OTP-2118-5154, at 5173-5174, l. 632-657, at 5175-5176, l. 693-724, at 5177-5178, l. 755-784.

⁵² CAR-OTP-2094-0228, at 0244-0247, paras. 91-93, 100, 103, 108, 115.

⁵³ CAR-OTP-2081-0769, at 0810-0812, at 0817, para. 60.

⁵⁴ CAR-OTP-2058-0200, at 0209, paras. 49-50.

⁵⁵ CAR-OTP-2100-0226, at 0236, para. 56.

⁵⁶ CAR-OTP-2104-0033, at 0044, para. 61.

⁵⁷ CAR-OTP-2114-0149, at 0155, paras. 37-38.

⁵⁸ CAR-OTP-2060-0280, at 0285-0286, paras. 35-36.

⁵⁹ CAR-OTP-2064-0063, at 0070, paras. 37-38, 40-42, at 0073-0076, paras. 55-65, 68-75.

⁶⁰ CAR-OTP-2068-0037, at 0046-0048, paras. 39-51.

⁶¹ See para. 30.

⁶² CAR-OTP-2001-2769, at 2791; CAR-OTP-2001-0835, at 0954-0955, CAR-OTP-2064-1013, at 1013-1014; CAR-OTP-2001-2308, at 2343; CAR-OTP-2001-0463, at 0463; CAR-OTP-2001-5386, at 5566; CAR-OTP-2088-0733.

⁶³ [REDACTED].

- [REDACTED].
- [REDACTED].
- The witness provides evidence of the forcible displacement of the Muslim population from BANGUI to Chad and Cameroon, and on the commission of crimes by the Anti-Balaka in BODA.
- She also provides evidence on the forcible displacement of the Muslim population in MBAIKI, where she travelled in [REDACTED] 2014, and on Deputy Mayor Dido SALEH.
- Finally, P-2432 provides evidence concerning the situation of the Muslim population enclaved by the Anti-Balaka at the compound of the Bishop's residence in BERBERATI, where she travelled in [REDACTED] 2014. She notes particularly that around 10 or 15 Muslims had reportedly been killed by the Anti-Balaka there.

31. P-2432's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-1074,⁶⁴ and P-1577,⁶⁵ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,⁶⁶ and P-1576,⁶⁷ as well as by documentary evidence to be submitted⁶⁸ in relation to the forcible displacement of the Muslim population of BANGUI. Her evidence regarding the destruction of Muslim properties by the Anti-Balaka in BODA is cumulative to, and corroborated by, *inter alia*, the evidence of P-1339,⁶⁹ and P-1577,⁷⁰ who will testify at trial. Similarly, her evidence on the forcible displacement of the Muslim population of MBAIKI as a consequence of the Anti-Balaka violence is cumulative to, and corroborated by, *inter alia*, the evidence of P-

⁶⁴ CAR-OTP-2094-0228, at 0263-0264, paras. 200-201, 203.

⁶⁵ CAR-OTP-2081-0769, at 0814-0815, at 0817, para. 62.

⁶⁶ See para. 14.

⁶⁷ CAR-OTP-2060-0280, at 0285, para. 33.

⁶⁸ CAR-OTP-2001-4429, at 4429; CAR-OTP-2083-0437, at 0474; CAR-OTP-2083-0433, at 0434.

⁶⁹ CAR-OTP-2041-0741, at 0758, paras. 112-113.

⁷⁰ CAR-OTP-2081-0769, at 0811; CAR-OTP-2085-6725; CAR-OTP-2085-6755.

1813,⁷¹ P-2196,⁷² and P-2353⁷³, who will testify at trial, and by documentary evidence to be submitted.⁷⁴ Last, her evidence in relation to the Anti-Balaka's targeting of the Muslim population in BERBERATI and their enslaving, is cumulative to, and corroborated by, *inter alia*, the evidence of P-1074,⁷⁵ who will testify at trial, the proposed rule 68(2)(b) evidence of P-2133,⁷⁶ and P-2325,⁷⁷ as well as by documentary evidence to be submitted.⁷⁸

32. Finally, the Prosecution tenders ten associated exhibits, as set out at *Confidential* Annex A. [REDACTED].

vi. P-2467 – Contextual Elements – Article 7 and Article 8

33. The Prosecution tenders for formal submission P-2467's statement of 17 May 2019, totalling 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-2467's witness statement.

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

- [REDACTED].
- The witness [REDACTED] provides evidence concerning the forcible displacement of about [REDACTED] Muslims from various locations as a

⁷¹ CAR-OTP-2069-0035, at 0044, para. 59.

⁷² CAR-OTP-2112-0065 at 0071, paras. 35-38.

⁷³ CAR-OTP-2100-0226, at 0237, para. 61.

⁷⁴ CAR-OTP-2001-2707, at 2728; CAR-OTP-2001-2308, at 2316, 2344; CAR-OTP-2055-1987, at 2159; CAR-OTP-2001-4422, at 4422.

⁷⁵ CAR-OTP-2094-0228, at 0253, para. 145.

⁷⁶ CAR-OTP-2093-0267, at 0284, para. 117.

⁷⁷ CAR-OTP-2100-2386, at 2394-2395, paras. 34-38.

⁷⁸ CAR-OTP-2001-0329, at 0329; CAR-OTP-2001-1075, at 1095, paras. 90-92; CAR-OTP-2001-2139, at 2139-2142; CAR-OTP-2001-2769, at 2776, at 2799-2800; CAR-OTP-2001-2203, at 2210; CAR-OTP-2001-4446, at 4446-4448; CAR-OTP-2001-7017, at 7089-7090.

result of Anti-Balaka violence, including [REDACTED] and [REDACTED], forced to take refuge in a school and court building in BOSSANGO.

- The witness discusses the large scale commission of crimes by the Anti-Balaka against the Muslim population in CAR.

35. P-2467's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0314,⁷⁹ P-2453,⁸⁰ and P-2462,⁸¹ who will testify at trial, and the proposed rule 68(2)(b) evidence of P-1576⁸², and P-2652,⁸³ in relation to the presence in BOSSANGO of Muslims forcibly displaced from nearby villages as a consequence of Anti-Balaka attacks in [REDACTED] 2013.

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

vii. P-2652 – Contextual Elements – Article 7 and Article 8

37. The Prosecution tenders for formal submission P-2652's statement of 21 February 2020, totalling 18 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-2652's witness statement.

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

- P-2652 was [REDACTED] in BOSSANGO in the Relevant Period.
- He was [REDACTED], and provides evidence of the forcible displacement of the Muslim population as a consequence of the Anti-Balaka violence.

⁷⁹ CAR-OTP-2008-1188, at 1206, para. 85.

⁸⁰ CAR-OTP-2111-0415, at 0425, para. 48.

⁸¹ CAR-OTP-2111-0452, at 0456, para. 23.

⁸² CAR-OTP-2060-0280, at 0282, para. 15.

⁸³ See para. 38.

- The witness also recounts the Anti-Balaka's attack of BOSSANGO on 5 December 2013, their targeting of the Muslim population through, *inter alia*, killings, and describes their condition and flight from nearby villages to BOSSANGO. He discusses their enclaving by the Anti-Balaka in *École de la liberté* following the 5 December 2013 attack, and explains the difficult humanitarian conditions there, and how Muslims could not leave the site without risking attack by the Anti-Balaka.
- He also describes the evacuation of displaced Muslims at *École de la liberté* to Chad, in March or April 2014.
- Finally, P-2652 provides information on the Anti-Balaka's leadership in BOSSANGO, and on the location of some of the Anti-Balaka bases.

39. P-2652's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,⁸⁴ P-2354,⁸⁵ and P-2682,⁸⁶ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,⁸⁷ and P-2377,⁸⁸ as well as by documentary evidence to be submitted,⁸⁹ in relation to the Anti-Balaka's targeting of the Muslim population in the course of the [REDACTED], and its forcible displacement as a consequence of the Anti-Balaka violence. His evidence relating to the 5 December 2013 Anti-Balaka attack of BOSSANGO, the targeting of the Muslim population, their enclaving, and forcible displacement within and from BOSSANGO, is cumulative to, and corroborated by, *inter alia*, the evidence of P-1577,⁹⁰ P-2049,⁹¹ P-2200,⁹² and P-2462,⁹³ who will testify at

⁸⁴ CAR-OTP-2093-0010, at 0018, paras. 40-41.

⁸⁵ CAR-OTP-2105-0991, at 0996, paras. 29-30.

⁸⁶ CAR-OTP-2126-0205, at 0213, paras. 45-46.

⁸⁷ See para. 14.

⁸⁸ CAR-OTP-2108-0609, at 0618-0619, paras. 46-49.

⁸⁹ CAR-OTP-2001-0329, at 0329; CAR-OTP-2001-1075, at 1095, paras. 90-92; CAR-OTP-2001-2139, at 2139-2142; CAR-OTP-2001-2769, at 2776, at 2799-2800; CAR-OTP-2001-2203, at 2210; CAR-OTP-2001-4446, at 4446-4448; CAR-OTP-2001-7017, at 7089-7090.

⁹⁰ CAR-OTP-2081-0769, at 0791; CAR-OTP-2085-4492; CAR-OTP-2085-4502; CAR-OTP-2085-4562.

⁹¹ CAR-OTP-2088-2173, at 2188, paras. 77-78, at 2189-2190, paras. 81-90, at 2194, paras. 115-116, at 2196, para. 125.

⁹² CAR-OTP-2088-2146, at 2155-2156, paras. 44-59, at 2158, para. 64, at 2160, paras. 76-80.

⁹³ CAR-OTP-2111-0452, at 0468-0469, paras. 82-85.

trial, the proposed rule 68(2)(b) evidence of P-1921,⁹⁴ and documentary evidence to be submitted.⁹⁵

E. Balance of interests

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 Request⁹⁶ and Second Request for the Formal Submission of Prior Testimony pursuant to Rule 68(2)(b),⁹⁷ contemporaneously.

41. Thus, dispensing with the Seven 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.⁹⁸

IV. CONCLUSION

42. For the above reasons, the Prosecution requests that the Chamber admit the proposed prior recorded testimony of the Seven 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

⁹⁴ See para. 18.

⁹⁵ CAR-OTP-2001-0835, at 0885-0889; CAR-OTP-2055-1987, at 2151; CAR-OTP-2001-2237, at 2242-2243; CAR-OTP-2001-2252, at 2253-2254.

⁹⁶ ICC-01/14-01/18-710-Conf.

⁹⁷ ICC-01/14-01/18-744-Conf, paras. 37-40.

⁹⁸ ICC-01/09-01/11-1938-Red-Corr, para. 27.