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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

Lesser redacted version of "Public redacted version of "Prosecution's Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)",
21 December 2020,
(ICC-01/14-01/18-795-Conf)", 22 February 2021, ICC-01/14-01/18-795-Red

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I. INTRODUCTION

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

2. The prior recorded testimony of the Six Witnesses comprises their Witness Statements and associated exhibits.² It provides evidence concerning the nature and extent of the widespread Anti-Balaka attack carried out between September 2013 and December 2014 (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 The proposed evidence is relevant, probative, reliable, and suitable for formal submission in written form.

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

4. As submitted, the proposed prior statements do not concern the acts or conduct of the Accused. They are limited to evidence of the crime base forming a part of the

¹ These comprise witnesses P-0520, P-0589, P-1584, P-1676, P-1865, and P-2377 (“Six Witnesses”).

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

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

⁴ ICC-01/14-01/18-685.

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

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(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, Berbéati and Guen "pertain to the contextual elements of the charged crimes and form part of the 'facts and circumstances' of the case"); see also article 7(2); ICC-01/04-02/06-309, para. 23; See ICC-01/14-01/18-403-Conf-Corr, paras. 64,70, *et seq.*, and pp. 111, 107; see para. 164 (noting that the perpetrator groups committing acts and crimes as part of the article 7(1) attack lasting from September 2013 to December 2014 "were formally and politically under the umbrella of the National Coordination").

III. SUBMISSIONS

A. Applicable Law

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

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

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

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

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

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

⁸ Rule 68(2)(b)(i).

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

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

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

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

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

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

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

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

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

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

D. Analysis of the Six Witnesses' Prior Recorded Testimony

- i. P-0520 – Contextual Elements – Article 7 and Article 8*

13. The Prosecution tenders for formal submission P-0520's statement of 9 April 2017, 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-0520's statement.

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

- P-0520 is a Muslim [REDACTED].
- He reports on BOZIZE's speech at the Stadium in BANGUI on 15 March 2013, in which he called upon Central Africans to use their machetes and defend the Republic.

- He describes the creation of 'KOKORA' (COCORA) by Lévy YAKETE in the same period; and YAKETE's and YAMBETE's coordination of the distribution of money for the purchase of machetes.
- P-0520 recounts the Anti-Balaka's attack of BANGUI on 5 December 2013 and their targeting of the Muslim population from that day throughout 2014. He describes the forcible displacement of the Muslim population, which mostly took refuge in the Km5 (or "PK5") district and the evacuation of Chadian nationals by Chadian forces. [REDACTED].
- Finally, he reports on the systematic targeting of [REDACTED] population by the Anti-Balaka in CAR, and their forcible displacement mainly to Cameroon and Chad. [REDACTED].

15. P-0520's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,¹¹ P-0876,¹² P-1437,¹³ P-1847,¹⁴ P-2200,¹⁵ and P-2232¹⁶, who will testify at trial, as well as by the audio recording of BOZIZE's 27 December 2012 and 15 March 2013¹⁷ speeches, bearing on anti-Muslim propaganda, and the creation and activities of COCORA prior to the Seleka coup. His evidence in relation to the Anti-Balaka's 5 December 2013 BANGUI attack, targeting of the Muslim population, and their forcible displacement, is cumulative to, and corroborated by, *inter alia*, the evidence of P-

¹¹ CAR-OTP-2025-0324, at 0349, para. 152.

¹² CAR-OTP-2046-0295, at 0309-0310, l.493-509, 517-526, CAR-OTP-2046-0370, at 0375-0378, l.180-291, CAR-OTP-2046-0380, at 0381, 0385-0386, l.12-43, 156-199.

¹³ CAR-OTP-2047-0257, at 0260, para. 22.

¹⁴ CAR-OTP-2061-1534, at 1573-1574, paras. 250-253.

¹⁵ CAR-OTP-2088-2146, at 2149, para. 19.

¹⁶ CAR-OTP-2090-0561, at 0564, para. 24, CAR-OTP-2100-2569, at 2571-2572, paras. 7-10.

¹⁷ CAR-OTP-2000-0655, from [00:43:35] to [01:03:00], and its transcript and translation, CAR-OTP-2130-1069 and CAR-OTP-2130-1099, at 1110-1114, l.-412-581, in particular at 1111, l.449-457, 482-488, at 1112-1113, l.519-548, at 1114, l.575-581; CAR-OTP-2000-0630, from [00:00:00] to [00:34:55], and its transcript and translation CAR-OTP-2060-0623 and CAR-OTP-2060-0678, at 0682-0692, in particular at 0685, l.200-208, at 0691, l.459-461.

0808,¹⁸ P-2354,¹⁹ P-2389,²⁰ P-2419,²¹ and P-2682,²² who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,²³ P-0567,²⁴ P-0589,²⁵ P-1584,²⁶ P-1676,²⁷ P-1921,²⁸ P-2377,²⁹ and P-2652,³⁰ as well as by documentary evidence included in the Prosecution's List of Evidence.³¹

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

ii. P-0589 – Contextual Elements – Article 7 and Article 8

17. The Prosecution tenders for formal submission P-0589's statement of 11 May 2016 ("First Statement"), totalling approximately 14 pages, and P-0589's statement of [REDACTED] 2017 ("Second Statement"), totalling four 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-0589's witness statements.

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

- P-0589 is a Muslim [REDACTED].

¹⁸ CAR-OTP-2093-0010, at 0018, paras. 40-41.

¹⁹ CAR-OTP-2105-0991, at 0996, paras. 29-30.

²⁰ CAR-OTP-2104-0033, at 0038, para. 32.

²¹ CAR-OTP-2112-0036, at 0040, para. 22.

²² CAR-OTP-2126-0205, at 0213-0215, paras. 45-57.

²³ CAR-OTP-2116-0216, at 0261, paras. 281-282.

²⁴ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

²⁵ See para. 18.

²⁶ See para. 22.

²⁷ See para. 25.

²⁸ CAR-OTP-2081-0072, at 0080, paras. 42-44.

²⁹ See para. 34.

³⁰ CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

³¹ 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.

- He provides evidence of BOZIZE's anti-Muslim propaganda in the months preceding the Seleka coup, and describes a February 2013 BOZIZE speech (likely March 2013) at PK0, stating that the Muslims were willing to take power and urging the Central Africans to resist. Following that speech, the witness notes that self-defence groups coordinated by YAKETE erected barriers and started to arrest and monitor Muslims.
- He provides information on the circumstances of the Seleka coup, and the subsequent commission of crimes by the Seleka.
- He recounts the Anti-Balaka's targeting of Muslims in BANGUI in December 2013, through killings and the destruction of houses [REDACTED].
- He provides evidence of the forcible displacement of the Muslim population of BANGUI due to the Anti-Balaka's violence. The witness and his family took refuge in the PK5 which, although defended, was under repeated Anti-Balaka attacks. He described that [REDACTED] the Muslim population left "*en masse*" to foreign countries such as Cameroon, Chad, Nigeria, and Sudan.
- Finally he provides information about some Anti-Balaka leaders.

19. P-0589's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,³² P-0876,³³ P-1437,³⁴ P-1847,³⁵ P-2200,³⁶ and P-2232³⁷, who will testify at trial, as well as by the audio recording BOZIZE's 27 December 2012 and 15 March

³² CAR-OTP-2025-0324, at 0349, para. 152.

³³ CAR-OTP-2046-0295, at 0309-0310, 1.493-509, 517-526, CAR-OTP-2046-0370, at 0375-0378, 1.180-291, CAR-OTP-2046-0380, at 0381, 0385-0386, 1.12-43, 156-199.

³⁴ CAR-OTP-2047-0257, at 0260, para. 22.

³⁵ CAR-OTP-2061-1534, at 1573-1574, paras. 250-253.

³⁶ CAR-OTP-2088-2146, at 2149, para. 19.

³⁷ CAR-OTP-2090-0561, at 0564, para. 24, CAR-OTP-2100-2569, at 2571-2572, paras. 7-10.

2013 speeches,³⁸ reflecting anti-Muslim propaganda, and bearing on the creation and activities of COCORA and COAC prior to the Seleka coup. His evidence in relation to the Anti-Balaka's 5 December 2013 BANGUI attack, the targeting of the Muslim population, and their forcible displacement, is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,³⁹ P-2354,⁴⁰ P-2389,⁴¹ P-2419,⁴² and P-2682,⁴³ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,⁴⁴ P-0520,⁴⁵ P-0567,⁴⁶ P-1584,⁴⁷ P-1676,⁴⁸ P-1921,⁴⁹ P-2377,⁵⁰ and P-2652,⁵¹ as well as by documentary evidence included in the Prosecution's List of Evidence.⁵²

20. Finally, the Prosecution tenders two associated exhibits, as set out at Confidential Annex A. These comprise: (1) [REDACTED]; and (2) a photograph of the dead body of [REDACTED] who was killed by Anti-Balaka [REDACTED].

iii. P-1584 – Contextual Elements – Article 7 and Article 8

21. The Prosecution tenders for formal submission P-1584's statement of 14 July 2017, totalling approximately 24 pages. There are no agreements as to facts contained

³⁸ CAR-OTP-2000-0655, from [00:43:35] to [01:03:00], and its transcript and translation, CAR-OTP-2130-1069 and CAR-OTP-2130-1099, at 1110-1114, l.-412-581, in particular at 1111, l.449-457, 482-488, at 1112-1113, l.519-548, at 1114, l.575-581; CAR-OTP-2000-0630, from [00:00:00] to [00:34:55], and its transcript and translation CAR-OTP-2060-0623 and CAR-OTP-2060-0678, at 0682-0692, in particular at 0685, l.200-208, at 0691, l.459-461.

³⁹ CAR-OTP-2093-0010, at 0018, paras. 40-41.

⁴⁰ CAR-OTP-2105-0991, at 0996, paras. 29-30.

⁴¹ CAR-OTP-2104-0033, at 0038, para. 32.

⁴² CAR-OTP-2112-0036, at 0040, para. 22.

⁴³ CAR-OTP-2126-0205, at 0213-0215, paras. 45-57.

⁴⁴ CAR-OTP-2116-0216, at 0261, paras. 281-282.

⁴⁵ See para.14.

⁴⁶ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

⁴⁷ See para. 22.

⁴⁸ See para. 25.

⁴⁹ CAR-OTP-2081-0072, at 0080, paras. 42-44.

⁵⁰ See para. 34.

⁵¹ CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

⁵² 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.

in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-1584's witness statement.

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

- P-1584 is a Muslim [REDACTED].
- He reports BOZIZE's speech at the Stadium in BANGUI, about 1 month and a half prior to the arrival of the Seleka in the capital, telling the Youth to monitor the people wearing "grands boubous" and their compounds. He describes the creation of "KOKORA sections" (i.e., COCORA), the provision of machetes by Lévy YAKETE and Steve YAMBETE to their elements, and how they erected roadblocks in BANGUI to stop, search and control Muslims.
- He recounts the arrival of the Seleka in BANGUI on 24 March 2013 and their subsequent commission of crimes on the civilian population.
- He describes the Anti-Balaka's 5 December 2013 BANGUI attack and their targeting of the Muslim civilian population, notably through killings. He provides in particular evidence of killings of Muslim civilians by the Anti-Balaka in BOEING on 5 December 2013.
- His evidence establishes that the Christian population was informed in advance that the Anti-Balaka were to attack BANGUI, and was advised by them to put palm tree branches in front of their houses to distinguish them from those of Muslims.
- Finally, he provides evidence of the forcible displacement of the Muslim population in BANGUI. [REDACTED].

23. P-1584's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,⁵³ P-0876,⁵⁴ P-1437,⁵⁵ P-1847,⁵⁶ P-2200,⁵⁷ and P-2232⁵⁸, who will testify at trial, as well as by the audio recording of BOZIZE's 27 December 2012 and 15 March 2013⁵⁹ speeches evidencing anti-Muslim propaganda, and bearing on the creation and anti-Muslim activities of COCORA prior to the Seleka coup. His evidence in relation to the 5 December 2013 Anti-Balaka's BANGUI attack and the forcible displacement of the Muslim population, is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,⁶⁰ P-2354,⁶¹ P-2389,⁶² P-2419,⁶³ and P-2682,⁶⁴ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,⁶⁵ P-0520,⁶⁶ P-0567,⁶⁷ P-0589,⁶⁸ P-1676,⁶⁹ P-1921,⁷⁰ P-2377,⁷¹ and P-2652,⁷² as well as by documentary evidence included in the Prosecution's List of Evidence.⁷³

⁵³ CAR-OTP-2025-0324, at 0349, para. 152.

⁵⁴ CAR-OTP-2046-0295, at 0309-0310, 1.493-509, 517-526, CAR-OTP-2046-0370, at 0375-0378, 1.180-291, CAR-OTP-2046-0380, at 0381, 0385-0386, 1.12-43, 156-199.

⁵⁵ CAR-OTP-2047-0257, at 0260, para. 22.

⁵⁶ CAR-OTP-2061-1534, at 1573-1574, paras. 250-253.

⁵⁷ CAR-OTP-2088-2146, at 2149, para. 19.

⁵⁸ CAR-OTP-2090-0561, at 0564, para. 24, CAR-OTP-2100-2569, at 2571-2572, paras. 7-10.

⁵⁹ CAR-OTP-2000-0655, from [00:43:35] to [01:03:00], and its transcript and translation, CAR-OTP-2130-1069 and CAR-OTP-2130-1099, at 1110-1114, 1.412-581, in particular at 1111, 1.449-457, 482-488, at 1112-1113, 1.519-548, at 1114, 1.575-581; CAR-OTP-2000-0630, from [00:00:00] to [00:34:55], and its transcript and translation CAR-OTP-2060-0623 and CAR-OTP-2060-0678, at 0682-0692, in particular at 0685, 1.200-208, at 0691, 1.459-461.

⁶⁰ CAR-OTP-2093-0010, at 0018, paras. 40-41.

⁶¹ CAR-OTP-2105-0991, at 0996, paras. 29-30.

⁶² CAR-OTP-2104-0033, at 0038, para. 32.

⁶³ CAR-OTP-2112-0036, at 0040, para. 22.

⁶⁴ CAR-OTP-2126-0205, at 0213-0215, paras. 45-57.

⁶⁵ CAR-OTP-2116-0216, at 0261, paras. 281-282.

⁶⁶ See para. 14.

⁶⁷ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

⁶⁸ See para. 18.

⁶⁹ See para. 25.

⁷⁰ CAR-OTP-2081-0072, at 0080, paras. 42-44.

⁷¹ See para. 34.

⁷² CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

⁷³ 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.

iv. P-1676 – Contextual Elements – Article 7 and Article 8

24. The Prosecution tenders for formal submission P-1676's statement of 27 November 2017, 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-1676's witness statement.

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

- P-1676 is a Muslim [REDACTED].
- He recounts the Anti-Balaka's 5 December 2013 BANGUI attack, and their systematic targeting of the Muslim population. Bodies of Muslim victims were transported to the Ali Babolo Mosque [REDACTED]. [REDACTED] bodies were brought to the Mosque on 5 December, [REDACTED].
- He reports that the bodies could not be buried at the Muslim cemetery, which was blocked by Anti-Balaka based in BOEING.
- Finally, P-1676 provides evidence of the forcible displacement of the Muslim population of BANGUI. Because the Anti-Balaka were killing the Muslims systematically, many took refuge in the PK5. Some Muslims fled BANGUI by plane, [REDACTED].

26. P-1676's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,⁷⁴ P-2354,⁷⁵ P-2389,⁷⁶ P-2419,⁷⁷ and P-2682,⁷⁸ who will testify at trial,

⁷⁴ CAR-OTP-2093-0010, at 0018, paras. 40-41.

⁷⁵ CAR-OTP-2105-0991, at 0996, paras. 29-30.

⁷⁶ CAR-OTP-2104-0033, at 0038, para. 32.

⁷⁷ CAR-OTP-2112-0036, at 0040, para. 22.

⁷⁸ CAR-OTP-2126-0205, at 0213-0215, paras. 45-57.

the proposed rule 68(2)(b) evidence of P-0342,⁷⁹ P-0520,⁸⁰ P-0567,⁸¹ P-0589,⁸² P-1584,⁸³ P-1921,⁸⁴ P-2377,⁸⁵ and P-2652,⁸⁶ as well as by documentary evidence included in the Prosecution's List of Evidence,⁸⁷ in relation to the Anti-Balaka's 5 December 2013 BANGUI attack, the targeting of the Muslim population, and their forcible displacement.

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

v. P-1865 – Contextual Elements – Article 7 and Article 8

28. The Prosecution tenders for formal submission P-1865's statement of 30 November 2017, totalling 14 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-1865's statement.

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

- P-1865 is a Muslim woman [REDACTED]. She was a resident of [REDACTED] in the Relevant Period.
- She recounts the Anti-Balaka's arrival in [REDACTED] and their targeting of the Muslim population, through killings and pillaging.

⁷⁹ CAR-OTP-2116-0216, at 0261, paras. 281-282.

⁸⁰ See para.14.

⁸¹ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

⁸² See para. 18.

⁸³ See para. 22.

⁸⁴ CAR-OTP-2081-0072, at 0080, paras. 42-44.

⁸⁵ See para. 34.

⁸⁶ CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

⁸⁷ 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.

- She recounts that the day after their arrival, Anti-Balaka elements wearing *gris-gris* came to her house. [REDACTED], she was raped [REDACTED].
- Finally P-1865 provides evidence of the forcible displacement of the Muslim population from BANGUI and in the Provinces: the witness fled [REDACTED] out of fear of the Anti-Balaka, and took refuge at the Central Mosque in the PK5 district of BANGUI. Muslims had gathered there in large numbers, coming from BANGUI and other locations. The living conditions were difficult. She reports the departure of Muslims notably to Cameroon, and the attack of a convoy of Muslim refugees by Anti-Balaka in the GOBONGO district of BANGUI. [REDACTED].

30. P-1865's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-1577,⁸⁸ P-2682,⁸⁹ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0342,⁹⁰ P-0567,⁹¹ P-0589,⁹² P-1584,⁹³ P-1921,⁹⁴ P-1990,⁹⁵ P-2377,⁹⁶ P-2472,⁹⁷ and P-2652,⁹⁸ as well as by documentary evidence included in the Prosecution's List of Evidence,⁹⁹ in relation to the forcible displacement of the Muslim population of BANGUI, enclaved at PK5, and the evacuation of Muslims in large numbers from BANGUI.

31. The interests of justice are also served by the introduction of P-1865's prior recorded testimony as it would spare her the burden of appearing, recounting her

⁸⁸ CAR-OTP-2081-0769, at 0814-0815.

⁸⁹ CAR-OTP-2126-0205, at 0213, para. 45.

⁹⁰ CAR-OTP-2116-0216, at 0261, paras. 281-282.

⁹¹ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

⁹² See para. 18.

⁹³ See para. 22.

⁹⁴ CAR-OTP-2081-0072, at 0080, paras. 42-44.

⁹⁵ CAR-OTP-2124-0247, at 0252, para. 24.

⁹⁶ See para. 34.

⁹⁷ CAR-OTP-2110-0355, at 0362-0363, paras. 39-43.

⁹⁸ CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

⁹⁹ CAR-OTP-2001-2139, at 2142; CAR-OTP-2001-2203, at 2210, 2218; CAR-OTP-2001-4446, at 4446-4448; CAR-OTP-2001-7017, at 7105, para. 421.

painful experience regarding her rape, and being potentially re-traumatised. This is also in line with the Chambers' duty to take appropriate measures to protect the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses, according to article 68(1).

32. Finally, the Prosecution tenders two associated exhibits, as set out at Confidential Annex A. These comprise the sketches of a male and a female body, used by P-1865 to recount her rape.

vi. P-2377 – Contextual Elements – Article 7 and Article 8

33. The Prosecution tenders for formal submission P-2377's statement of 14 May 2019, 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-2377's statement.

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

- P-2377 is a [REDACTED] journalist [REDACTED].
- He travelled to BOSSANGO [REDACTED] from BANGUI, [REDACTED]. He saw Anti-Balaka elements wearing *gris-gris*, protecting their villages. In BOSSANGO, he saw several Peuhl children who had machete injuries, [REDACTED].
- Finally, he recounts the Anti-Balaka's 5 December 2013 BANGUI attack and targeting of the Muslim population, through killings. [REDACTED].

35. P-2377's proposed evidence is cumulative to, and corroborated by, *inter alia*, the evidence of P-0808,¹⁰⁰ P-2354,¹⁰¹ P-2389,¹⁰² P-2419,¹⁰³ and P-2682,¹⁰⁴ who will testify at trial, the proposed rule 68(2)(b) evidence of P-0520,¹⁰⁵ P-0567,¹⁰⁶ P-0589,¹⁰⁷ P-1584,¹⁰⁸ P-1676,¹⁰⁹ and P-2652,¹¹⁰ as well as by documentary evidence included in the Prosecution's List of Evidence,¹¹¹ in relation to the Anti-Balaka's 5 December 2013 BANGUI attack and targeting of the Muslim population.

36. Finally, the Prosecution tenders seventy associated exhibits, as set out at Confidential Annex A. These comprise: (1) a press article [REDACTED], titled [REDACTED], dated [REDACTED]; (2) a video reportage dated 4 December 2013, containing footage of a Peuhl victim of an Anti-Balaka attack in BOALI; (3) a video reportage, dated [REDACTED]; (4) a video containing footage of BOSSANGO and its Central Mosque; (5) a video containing footage of a woman and her wounded daughter, [REDACTED] in BOSSANGO (the woman reports that Anti-Balaka killed people in her village and wounded her daughter; she then fled to BOSSANGO); (6) a video of an interview of a [REDACTED] at the [REDACTED] in BANGUI, recorded on 4 December 2013 (the [REDACTED], who was attacked by Anti-Balaka in the Province, and indicates that many victims of similar attacks are [REDACTED]); (7) nine videos, [REDACTED] prior to 5 December 2013, containing footage of [REDACTED] in BANGUI; (8) seven videos containing footage of bodies of Muslim victims, recorded on 5 December 2013 at the Ali Babolo Mosque; (9) three videos containing interviews

¹⁰⁰ CAR-OTP-2093-0010, at 0018, paras. 40-41.

¹⁰¹ CAR-OTP-2105-0991, at 0996, para. 29.

¹⁰² CAR-OTP-2104-0033, at 0038, para. 32.

¹⁰³ CAR-OTP-2112-0036, at 0040, para. 22.

¹⁰⁴ CAR-OTP-2126-0205, at 0213-0215, paras. 45-57.

¹⁰⁵ See para. 14.

¹⁰⁶ CAR-OTP-2059-0084, at 0102-0103, paras. 119-123, at 0106, paras. 144-145.

¹⁰⁷ See para. 18.

¹⁰⁸ See para. 22.

¹⁰⁹ See para. 25.

¹¹⁰ CAR-OTP-2126-0175, at 0184-0185, paras. 49-53.

¹¹¹ 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.

of Muslims [REDACTED] (about the killing of Muslims in BANGUI in the course of the Anti-Balaka attack); (10) a video of the interview of a Muslim woman, made on 5 December 2013 in BANGUI (she reports that she and her relatives were attacked by individuals who had their face painted, “things sewn on them”, machetes, sticks and weapons; they stabbed her, killed her brother and two other persons, looted their belongings, and destroyed everything, including the Mosque; they also took her sister, saying that they would kill her, and her sister’s baby); (11) a video of the interview of a Muslim in BANGUI, recorded on 5 December 2013 (the interviewee mentions notably the attack of Muslims and the destruction of mosques in the FOUH neighbourhood, and says that the ex-FACA and ex-GPs (Presidential Guards) are responsible; (12) a video of the interview of two Muslims in the PK5 on 9 December 2013 (they discuss Anti-Balaka crimes; one of them fled and took refuge in PK5); (13) a video of an interview made, on 9 December 2013 of the guard of a Mosque who escaped the Anti-Balaka, explaining having been threatened by them at the FOUH market, and stating that they destroyed the Mosque); (14) the transcription and translation of the above mentioned video documents, as specified in Annex A

E. Balance of interests

37. The Prosecution incorporates its previous submissions concerning the balance of interests as set out at paragraphs 47 to 49 in its First Rule 68 Request¹¹² and Second Request for the Formal Submission of Prior Testimony pursuant to Rule 68(2)(b),¹¹³ contemporaneously.

38. Thus, dispensing with the Six Witnesses’ live testimony would appropriately expedite these proceedings. Their evidence is manifestly relevant to the proper adjudication of salient issues in this case, and their formal submission does not

¹¹² ICC-01/14-01/18-710-Conf.

¹¹³ 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.¹¹⁴

IV. CONCLUSION

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

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 11th day of April 2023
At The Hague, The Netherlands

¹¹⁴ ICC-01/09-01/11-1938-Red-Corr, para. 27.