



Original: **English**

No.: **ICC-01/14-01/18**

Date: **26 March 2021**

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 “Corrigendum to the “Prosecution’s Sixth Request for
the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”
(ICC-01/14-01/18-802-Conf-Corr), 11 January 2021**

Source: Office of the Prosecutor

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 Witnesses¹, 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 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 contextual elements for War Crimes and Crimes against Humanity; in particular, the

¹ These comprise witnesses P-0365, P-2671, P-0505, P-2133, P-1442, P-0567, and P-1503 (“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. 107, 111.

⁴ ICC-01/14-01/18-685.

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

5. The relevance and probative value of each of the 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, paras. 45, 48 (observing that "several non-confirmed incidents fall within the 'facts and circumstances' of the case", and that the facts concerning crimes allegedly committed by the Anti-Balaka in Yaloké, Gaga, Zawa, 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. 107, 111; 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 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 Seven Witnesses' statements provide quintessentially "crime-base" evidence going broadly to the contextual elements — exactly the type of evidence for which rule 68(2)(b) was

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

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

primarily intended to address. They concern the background of the charged 5 December 2013 attacks on BANGUI and BOSSANGO, but do not purport to link the Accused in any manner to the attacks. The witnesses' accounts relate to: (i) the time, nature and duration of these attacks; (ii) the targeting of the Muslim population; (iii) the commission of acts and crimes against the Muslim population in BANGUI, and BOSSANGO; and (iv) the displacement of Muslims in the aftermath of the 5 December 2013 attacks.

- 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-0365 – Child Soldiers*

13. The Prosecution tenders for formal submission P-0365's statement of 11 September 2020, totalling approximately seven 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-0365's witness statement.

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

- P-0365 [REDACTED].
- [REDACTED].
- Finally, the witness provides clarifications regarding [REDACTED].

15. P-0365's proposed evidence regarding [REDACTED]. P-0365 is corroborated by, and cumulative to: (i) the prospective live testimony of P-2620 [REDACTED]; and (ii) the proposed rule 68(2)(b) evidence of P-2671.¹¹

16. Finally, the Prosecution tenders one associated exhibit, as set out at *Confidential* Annex A. This comprises [REDACTED].

ii. P-2671 – Child Soldiers

17. The Prosecution tenders for formal submission P-2671's statement of 9 February 2020, totalling approximately five pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the P-2671's witness statement.

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

- P-2671 is the [REDACTED].
- The witness describes P-2620's background.
- Finally, she clarifies [REDACTED].

¹¹ See below, para. 18.

19. P-2671's proposed evidence regarding [REDACTED]. is corroborated by, and cumulative to: (i) the prospective live testimony of P-2620; and (ii) the proposed rule 68(2)(b) evidence of P-0365.¹²

iii. P-0505 – Contextual Elements – Article 7 and Article 8, BANGUI and BOSSANGO

20. The Prosecution tenders for formal submission P-0505's statement of 16 September 2015, 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-0505's statement.

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

- P-0505 is [REDACTED] during the relevant period.
- [REDACTED].
- He describes the Anti-Balaka attack on BANGUI on 5 December 2013.
- Finally, P-0505 describes seeing about 30 bodies at the Ali BABOLO Mosque in PK5 in the aftermath of the 5 December 2013 attack.

22. P-0505's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the displacement of Muslims from BOSSANGO including: (i) P-2220, [REDACTED];¹³ (ii) P-2049, a Muslim resident

¹² See above, para. 14.

¹³ CAR-OTP-2088-2146, at 2155, 2158, paras. 44, 64.

[REDACTED];¹⁴ (iii) P-2462, a Muslim resident [REDACTED];¹⁵ and (iv) P-0314, [REDACTED].¹⁶

23. His evidence regarding the 5 December 2013 attack on BANGUI is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-0888, [REDACTED];¹⁷ (ii) P-1521, an Anti-Balaka member [REDACTED];¹⁸ and (iii) P-1847, [REDACTED].¹⁹

24. His evidence regarding the transfer of bodies to the Ali BABOLO Mosque is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-2682, a Muslim trader;²⁰ and (ii) P-2354, a Muslim resident [REDACTED].²¹

iv. P-2133 – Contextual Elements – Article 7 and Article 8, BOSSANGO and BERBERATI

25. The Prosecution tenders for formal submission P-2133's statement of 22 October 2018, totalling approximately 29 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-2133's statement.

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

- P-2133 [REDACTED].

¹⁴ CAR-OTP-2088-2173, at 2188, paras. 77-78.

¹⁵ CAR-OTP-2111-0452, at 0460, para. 42.

¹⁶ CAR-OTP-2008-1188, at 1206, paras. 85-86.

¹⁷ CAR-OTP-2031-0217, at 0222, paras. 30-31.

¹⁸ CAR-OTP-2046-0603, at 0611-0612, para. 48.

¹⁹ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

²⁰ CAR-OTP-2126-0205, at 0214, 0217, paras. 53-54, 71.

²¹ CAR-OTP-2105-0991, at 0996, para. 29.

- He describes hearing about the emergence of the Anti-Balaka rebellion in the bush outside BOSSANGO A at the end of September 2013.
- The witness describes the roles of Anti-Balaka members 'KEMA' (aka Florent KEMA), 'Atakoli' (aka Bertin NAMDOKA), and Alexis MANDAGO (aka 'Sol-Sol').
- He describes the Anti-Balaka attack on BOSSANGO A on 5 December 2013, and the resulting evacuation of the Muslim population from BOSSANGO A to CHAD in its aftermath.
- He describes hearing about the Anti-Balaka's targeting of the Muslim population in BERBERATI, through the commission of acts and crimes comprising the killings of civilians, pillaging, and the destruction of property.
- Finally, he describes the role of Anti-Balaka members in BERBERATI, in particular [REDACTED] and Nestor NGOUMBOU.

27. P-2133's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the roles of KEMA, Atakoli, and MANDAGO, including: (i) P-0966, an Anti-Balaka member [REDACTED];²² (ii) P-2049;²³ (iii) P-1521;²⁴ and (iv) P-2232, an Anti-Balaka member.²⁵

²² CAR-OTP-2031-0241, at 0247, 0251, paras. 36, 61.

²³ CAR-OTP-2088-2173, at 2192, para. 103.

²⁴ CAR-OTP-2046-0603, at 0609, para. 35.

²⁵ CAR-OTP-2090-0561, at 0575, para. 89.

28. His evidence regarding the 5 December attack on BOSSANGO is corroborated by and cumulative to witnesses who will testify at trial, namely: (i) P-0966;²⁶ (ii) P-2200;²⁷ (iii) P-2049;²⁸ and (iv) P-2269, an Anti-Balaka member.²⁹

29. His evidence regarding the evacuation of the Muslim population from BOSSANGO to CHAD is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-2220;³⁰ (ii) P-2049;³¹ (iii) P-2462;³² and (iv) P-2453, a Muslim resident [REDACTED].³³

30. His evidence regarding the Anti-Balaka leadership in BERBERATI is corroborated by, and cumulative to: (i) the prospective live testimony of P-1077, an Anti-Balaka [REDACTED];³⁴ (ii) [REDACTED];³⁵ and (iii) [REDACTED].

v. P-1442³⁶ – Contextual Elements – Article 7 and Article 8, and BANGUI

31. The Prosecution tenders for formal submission P-1442's statement of 21 November 2016, 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-1442's statement.

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

²⁶ CAR-OTP-2031-0241, at 0251-0252, paras. 59-61.

²⁷ CAR-OTP-2088-2146, at 2155, para. 44.

²⁸ CAR-OTP-2088-2173, at 2187-2188, paras. 75-77, 79.

²⁹ CAR-OTP-2111-0336, at 0344, para. 58.

³⁰ CAR-OTP-2088-2146, at 2160, paras. 76-80.

³¹ CAR-OTP-2088-2173, at 2194, paras. 115-116.

³² CAR-OTP-2111-0452, at 0468-0469, paras. 83-85.

³³ CAR-OTP-2111-0415, at 0435, paras. 95-99.

³⁴ CAR-OTP-2107-3428, at 3436, l. 265-284.

³⁵ CAR-OTP-2030-2280, from [00:00:00] to [00:01:05].

³⁶ At this stage, the Prosecution considers that, with certain excisions, the testimony of P-1442 may be more appropriately be presented pursuant to rule 68(2), having previously indicated the intention to present the witness pursuant to rule 68(3), ICC-01/14-01/18-724-Conf-AnxA.

- P-1442 is a Muslim civilian who lived in BANGUI during the relevant period.
- He describes the Anti-Balaka attack on BANGUI on 5 December 2013. He describes the Anti-Balaka's targeting of the Muslim population, through the commission of acts and crimes comprising killings of civilians, and the destruction of property.
- He describes the Anti-Balaka's attack on BOEING market on 5 December 2013 and the killings of Muslim traders including, [REDACTED] and having seen about 70 bodies at the Ali BABOLO Mosque in the aftermath of the 5 December 2013 attack, [REDACTED].
- He describes the Anti-Balaka base in YAMWARA.
- The witness describes the Anti-Balaka attacks in CATTIN, FATIMA, BOEING, KPETENE and YAKITE between 20 December 2013 and 30 January 2014.
- P-1442 describes the Anti-Balaka's destruction of two mosques in BOEING and in other districts of BANGUI.
- He describes the displacement of Muslim civilians from BOEING as a result of Anti-Balaka attacks.
- [REDACTED].

33. P-1442's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the 5 December 2013 attack on BANGUI,

and the Anti-Balaka's commission of acts and crimes against the Muslim population of BANGUI, including: (i) P-0888;³⁷ (ii) P-1521;³⁸ and (iii) P-1847.³⁹

34. His evidence regarding the Anti-Balaka's attack on BOEING market is cumulative to, and corroborated by witnesses who will testify at trial, namely: (i) P-1528, [REDACTED];⁴⁰ (ii) P-1416, a Christian resident [REDACTED];⁴¹ (iii) P-2475, a child soldier in YEKATOM's group; (iv) P-2682;⁴² and (v) P-2233, an Anti-Balaka member.⁴³

35. His evidence regarding the transfer of bodies to the Ali BABOLO Mosque is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-2682;⁴⁴ and (ii) P-2354.⁴⁵

36. The witness's evidence regarding the destruction of mosque in BOEING is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-1339, an Anti-Balaka [REDACTED].;⁴⁶ (ii) P-1437, a Muslim resident [REDACTED];⁴⁷ and (iii) P-2682.⁴⁸

37. His evidence regarding the displacement of Muslim civilians from BOEING is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-

³⁷ CAR-OTP-2031-0217, at 0222, paras. 30-31.

³⁸ CAR-OTP-2046-0603, at 0611-0612, para. 48.

³⁹ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

⁴⁰ CAR-OTP-2048-0757, at 0762, para. 27.

⁴¹ CAR-OTP-2045-0150, at 0159, paras 74-77.

⁴² CAR-OTP-2126-0205 at 0214-0215, para. 54.

⁴³ CAR-OTP-2118-6014, at 6020-6029, 6032, l. 181-508, 616-625.

⁴⁴ CAR-OTP-2126-0205, at 0214, 0217, paras. 53-54, 71.

⁴⁵ CAR-OTP-2105-0991, at 0996, para. 29.

⁴⁶ CAR-OTP-2041-0741, at 0749, paras. 53-54.

⁴⁷ CAR-OTP-2047-0257, at 0267, para. 73.

⁴⁸ CAR-OTP-2126-0205, at 0215, para. 56.

1339;⁴⁹ (ii) P-1528;⁵⁰ (iii) P-1839, an Anti-Balaka member;⁵¹ and (iv) P-1490, [REDACTED].⁵²

vi. P-0567 – Contextual Elements – Article 7 and Article 8, BANGUI, and BOSSANGO

38. The Prosecution tenders for formal submission P-0567's statement of 21 November 2016, 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-0567's statement.

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

- P-0567 [REDACTED] during the relevant period.
- He describes the Anti-Balaka attack on BOSSANGO in September 2013, and the group's attack on BANGUI on 5 December 2013.
- He describes the targeting of the Muslim community by the Anti-Balaka, and its commission of acts and crimes against the Muslim population of BANGUI, comprising killings, pillaging, and the destruction of property.
- [REDACTED].
- Finally, he describes, the evacuation of the majority of the Muslim population in BOSSANGO to neighbouring countries by April 2014.

⁴⁹ CAR-OTP-2041-0741, at 0752, para. 74.

⁵⁰ CAR-OTP-2048-0757, at 0764, 0765, paras. 39.

⁵¹ CAR-OTP-2072-0578, at 0584, l. 183-218.

⁵² CAR-OTP-2121-2788, at 2792-2793, paras. 29-36.

40. P-0567's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Anti-Balaka attack on BOSSANGO in September 2013, including: (i) P-2200;⁵³ (ii) P-2049;⁵⁴ (iii) P-2453;⁵⁵ and (iv) P-2462.⁵⁶

41. His evidence regarding the 5 December 2013 attack on BANGUI, and the Anti-Balaka's commission of acts and crimes against the Muslim population of BANGUI, is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-0888;⁵⁷ (ii) P-1521;⁵⁸ and (iii) P-1847.⁵⁹

42. His evidence regarding the displacement of Muslim civilians from BOSSANGO is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-2200;⁶⁰ (ii) P-2049;⁶¹ (iii) P-2453;⁶² and (iv) P-2658, a Muslim resident [REDACTED].⁶³

vii. P-1503 – Contextual Elements – Article 7 and Article 8, and PK9

43. The Prosecution tenders for formal submission P-1503's statement of 22 January 2017, totalling approximately 13 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-1503's statement.

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

⁵³ CAR-OTP-2088-2146, at 2151-2153, paras. 29-38.

⁵⁴ CAR-OTP-2088-2173, at 2183-2185, paras. 54-61.

⁵⁵ CAR-OTP-2111-0415, at 0426, paras. 49-51.

⁵⁶ CAR-OTP-2111-0452, at 0457-0459, paras. 27-34.

⁵⁷ CAR-OTP-2031-0217, at 0222, paras. 30-31.

⁵⁸ CAR-OTP-2046-0603, at 0611-0612, para. 48.

⁵⁹ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

⁶⁰ CAR-OTP-2088-2146, at 2160, paras. 76-80.

⁶¹ CAR-OTP-2088-2173, at 2194, paras. 115-116.

⁶² CAR-OTP-2111-0415, at 0435, paras. 95-99.

⁶³ CAR-OTP-2126-0012, at 0035-0036, paras. 151, 153-154.

- P-1503 [REDACTED] during the relevant period.
- P-1503 [REDACTED].
- [REDACTED]. He describes the Anti-Balaka elements attacking a gendarmerie post in PK9.
- He describes the Anti-Balaka base in SEKIA village.⁶⁴
- Finally, the witness describes the roles of the Anti-Balaka members, in particular, 'SATAN' (aka Espoir FEIBONAZOUI), 'Coeur de Lion' (aka Freddy OUANDJIO) and 'ANDJILO' (aka Rodrigue NGAIBONA).

45. P-1503's proposed evidence is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the Anti-Balaka base in SEKIA village, including: (i) P-0954, an Anti-Balaka [REDACTED];⁶⁵ (ii) P-1647, an Anti-Balaka member [REDACTED];⁶⁶ (iii) P-1839;⁶⁷ and (iv) P-2475.⁶⁸

46. His evidence regarding the 5 December 2013 attack on BANGUI and the Anti-Balaka's commission of acts and crimes against Muslims is corroborated by, and cumulative to the evidence of witnesses who will testify before the Chamber, including: (i) P-0888;⁶⁹ (ii) P-1521;⁷⁰ and (iii) P-1847.⁷¹

⁶⁴ SEKIA village is located about 6 km west of the PK9 Bridge at the intersection of CAR's central road between BANGUI and MBAIKI and the road between BANGUI and MONGOUMBA. *See also*, P-1647: CAR-OTP-2050-0654, at 0659-0660, paras. 37-39; P-1558: CAR-OTP-2105-0195, at 0207, paras. 76-79; CAR-OTP-2094-7618 from [00:09:45] to [00:11:50] and its transcript and translation CAR-OTP-2118-4284, at 4288, l.125-130 and CAR-OTP-2118-4260, at 4266-4267, l. 183-214.

⁶⁵ CAR-OTP-2048-0171, at 0184-0185, para. 79.

⁶⁶ CAR-OTP-2050-0654, at 0659-0660, paras. 37-39.

⁶⁷ CAR-OTP-2072-0521, at 0528, l. 272-297.

⁶⁸ CAR-OTP-2110-0556, at 0578, para. 151.

⁶⁹ CAR-OTP-2031-0217, at 0222, paras. 30-31.

⁷⁰ CAR-OTP-2046-0603, at 0611-0612, para. 48.

⁷¹ CAR-OTP-2061-1534, at 1562, 1564, paras. 180-183, 189-191.

47. His evidence regarding the roles of the Anti-Balaka members is corroborated by, and cumulative to witnesses who will testify at trial, namely: (i) P-1962, [REDACTED];⁷² and (ii) P-1521.⁷³

48. Finally, the Prosecution tenders one associated exhibit, as set out at Confidential Annex A. This comprises of a video of an interview of [REDACTED] (Annex A to P-1503's statement).

E. Balance of interests

49. The Prosecution incorporates its previous submissions concerning the balance of interests as set out at paragraphs 47 to 49 in its First Rule 68 Request⁷⁴ and Second Request for the Formal Submission of Prior Testimony pursuant to Rule 68(2)(b).⁷⁵

50. 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.⁷⁶

⁷² CAR-OTP-2068-0037, at 0044, paras. 27-32.

⁷³ CAR-OTP-2046-0603, at 0608-0609, 0618-0619, 0025, paras. 34, 91-93, 128.

⁷⁴ ICC-01/14-01/18-710-Conf.

⁷⁵ ICC-01/14-01/18-744-Conf, paras. 37-40.

⁷⁶ ICC-01/09-01/11-1938-Red-Corr, para. 27.

IV. CONCLUSION

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

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 26th day of March 2021
At The Hague, The Netherlands