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No.: ICC-01/14-01/21

Date: **20 January 2023****TRIAL CHAMBER VI**

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Public Redacted Version of “Prosecution’s eighth request to introduce prior recorded testimony pursuant to rule 68(3) and to include 22 items relating to P-1339 to the List of Evidence”, ICC-01/14-01/21-582-Conf, dated 13 January 2023

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A.A. Khan KC
Mr Mame Mandiaye Niang
Ms Holo Makwaia

Counsel for Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet
Mr Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. The Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence the statement, transcripts of oral testimony, and associated material (“Prior Recorded Testimony”) of P-1339 (“Witness”),¹ pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”).

2. The Prior Recorded Testimony of the Witness is relevant, reliable, probative, and corroborated by other evidence. The Prosecution principally relies on the evidence of the Witness as proof of the chapeau elements of article 8 of the Rome Statute (“Statute”), with focus on the organisation and activities of one of the parties to the non-international armed conflict in the Central African Republic (“CAR”) in and around 2013, namely, the pro-BOZIZE forces which are later known as the Anti-Balaka (“Anti-Balaka”).²

3. Granting the Request will enhance the expeditiousness of the proceedings by reducing the estimated length of the Witness’s direct examination from 8 hours to 1 hour, thus saving an estimated 7 hours of court time. Moreover, introducing the Prior Recorded Testimony of the Witness is not prejudicial to or inconsistent with the rights of the Accused as the Witness will be fully available for cross-examination and any further questioning by the Chamber.

4. Should the Chamber grant the Request, the Prosecution further requests leave to conduct a streamlined supplementary examination of the Witness to clarify certain points and elaborate on specific issues highly relevant to this case.

¹ Annex A lists the Prior Recorded Testimony of P-1339. This is comprised of his witness statement and transcripts of his oral testimony in the case of *Yekatom and Ngaïssona* (at I), associated material (at II) and items which are necessary to understand his prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence (at III). These materials are all hyperlinked (with exceptions as detailed in Annex A marked by *). *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

² Prosecution’s Trial Brief, ICC-01/14-01/21-359-Conf, 13 June 2022 (“TB”), para. 3-4, 14-43.

5. The Prosecution also requests the Chamber to authorise the addition of 22 items, as identified in Annex A, to its List of Evidence (“LoE”). These items are the transcripts of P-1339’s testimony in the *Yekatom and Ngaïssona* case in September 2022 and corrections he made to his statement in advance of that testimony. The Prosecution had no possibility of adding these items to its LoE before 13 June 2022 since P-1339 did not testify until September 2022, and the full set of edited trial transcripts was not available until December 2022.

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis* (1) of the Regulations of the Court (“Regulations”), the Request and its annex are filed as confidential because they refer to the identity of a Prosecution witness and confidential items of evidence. A public redacted version will be filed as soon as practical.

III. BACKGROUND

7. On 11 May 2022, the Chamber extended the time limit for the submission of rule 68 applications pertaining to three Prosecution witnesses, including P-1339, to 20 days after completion of their respective testimony in the *Yekatom and Ngaïssona* case.³

8. On 25 May 2022, the Prosecution filed a request with Trial Chamber V for authorisation to disclose materials relating to the testimony of various witnesses in the *Yekatom and Ngaïssona* case.⁴ In this request, *inter alia*, the Prosecution asked for advance authorisation to disclose the future trial transcripts of P-1339 to the SAID Defence.⁵

³ Decision on Requests to Vary the Time Limits pertaining to the Introduction of Prior Recorded Testimony of Witnesses pursuant to Rule 68, ICC-01/14-01/21-305, 11 May 2022, p. 9.

⁴ ICC-01/14-01/18-1358.

⁵ ICC-01/14-01/18-1358, para. 3, fn. 2.

9. On 17 June 2022, Trial Chamber V rejected the Prosecution's request for advance authorisation to disclose trial transcripts of witnesses who had yet to testify (including those of P-1339) to the SAID Defence, reasoning that it could not rule on a request for authorisation to disclose to another accused a trial transcript where the transcript in question did not yet exist.⁶ Trial Chamber V noted that its decision was without prejudice to a new request pursuant to regulation 42(2) of the Regulations, once the witnesses in question (such as P-1339) had testified.⁷

10. From 1 to 14 September 2022, P-1339 testified in the *Yekatom and Ngaïssona* case.⁸

11. From late September to December 2022, the Prosecution periodically requested by email an extension of the time limit to file its rule 68 application relating to P-1339, given that the complete set of P-1339's edited trial transcripts from the *Yekatom and Ngaïssona* case remained unavailable.⁹ The Chamber granted these extension requests, most recently allowing an extension of the filing deadline until 13 January 2023.¹⁰

12. In an order issued on 7 September 2022, the Chamber specified that "in the event that there is a document or documents which requires Trial Chamber V's disclosure as a result of P-1339's oral testimony, the Defence's and Common Legal Representative's timeline for responding to any rule 68 motion in respect of P-1339 will only begin to run on the date the Prosecution confirms by email that such document(s) have been made available to all the Parties and Participants in the present proceedings."¹¹

⁶ ICC-01/14-01/18-1448, para. 8.

⁷ *Id.*

⁸ See ICC-01/14-01/18-T-151 to ICC-01/14-01/18-T-160.

⁹ Email from Prosecution to Trial Chamber VI Communications, 30 Sept. 2022, at 17:03pm; Email from Prosecution to Trial Chamber VI Communications, 15 Nov. 2022, at 16:12pm; Email from Prosecution to Trial Chamber VI Communications, 5 Dec. 2022, at 13:09pm.

¹⁰ Email from Trial Chamber VI Communications, 6 December 2022, at 10:46am.

¹¹ Email from Trial Chamber V Communications, 7 September 2022, at 09:35am.

13. On 10 January 2023, after confirming that the edited version of all English and French trial transcripts were now available, the Prosecution requested Trial Chamber V's urgent authorisation to disclose to the SAID Defence the confidential trial transcripts and materials used during P-1339's testimony in the *Yekatom and Ngaïssona* case.¹²

14. The Defence and Common Legal Representative do not have access to the confidential trial transcripts of P-1339 in the *Yekatom and Ngaïssona* case. Pending Trial Chamber V's order authorising disclosure, the Prosecution notes that the deadline for the Defence and Common Legal Representative to file a response will start running once it confirms by email that the relevant items have been made available to all the Parties and Participants in the present proceedings.¹³

IV. APPLICABLE LAW

15. The Prosecution refers to the Chamber's findings on applicable law made in its first rule 68(3) decision.¹⁴ The Prosecution also relies on its previous submissions on the legal framework for the introduction of prior recorded testimony pursuant to rule 68(3).¹⁵

V. SUBMISSIONS

A. The Prior Recorded Testimony should be conditionally introduced into evidence pursuant to rule 68(3)

¹² Prosecution's Request for Authorisation to Disclose Transcripts of and Materials used in the Testimony of Witness P-1339 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-1718, 10 January 2023.

¹³ *See supra*, para. 12.

¹⁴ Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-3108, P-2400, P-2240, P-2478 and P-0787, ICC-01/14-01/21-571-Conf, 12 Dec. 2022 ("First Rule 68(3) Decision").

¹⁵ Prosecution's first request to introduce prior recorded testimony pursuant to rule 68(3), ICC-01/14-01/21-322-Conf, 23 May 2022, para. 5-12; Prosecution's seventh request to introduce prior recorded testimony pursuant to rule 68(3), in relation to P-0291, P-0349, P-0884, P-2232, P-2251, and P-2328, ICC-01/14-01/21-376-Conf, 27 June 2022, para. 7.

16. The Prior Recorded Testimony should be conditionally introduced into evidence pursuant to rule 68(3), subject to the fulfilment of the further conditions of rule 68(3) of the Rules. It is relevant, probative, reliable, and corroborative of other evidence.

(i) *The Prior Recorded Testimony is Relevant and Probative*

17. The Prior Recorded Testimony is highly relevant and probative to the present case as it relates to the chapeau elements of article 8 of the Statute, in relation to which the Prosecution bears the burden of proof. Specifically, P-1339 is an Anti-Balaka insider [REDACTED]. Key aspects of the Witness's evidence are further highlighted below.

18. P-1339 is an Anti-Balaka insider [REDACTED].¹⁶ [REDACTED]¹⁷ during which time he heard certain FACA and other pro-BOZIZE forces discuss their plan to fight back against the Seleka.¹⁸ He then moved [REDACTED] and joined the Anti-Balaka group there in mid-2013.¹⁹ He took part in the Anti-Balaka's attack on Bangui on 5 December 2013.²⁰

19. Specifically, P-1339's evidence covers: (i) pro-BOZIZE forces' preparations [REDACTED] with the aim to fight back against the Seleka;²¹ (ii) the emergence of the Anti-Balaka group [REDACTED] in light of the plan set in motion [REDACTED] in mid-2013;²² (iii) the structure of the Anti-Balaka group [REDACTED];²³ (iv) military

¹⁶ **P-1339**, CAR-OTP-2041-0741-R02 at 0749-0750, para. 58-60; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 38, lines 5-8, p. 42, ln. 12 – p. 44, ln. 3.

¹⁷ **P-1339**, CAR-OTP-2041-0741-R02 at 0745, para. 29-30; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 18, ln. 11 – p. 24, ln. 11; ICC-01/14-01/18-T-157-CONF-ENG ET, p. 62, ln. 2 – p. 66, ln. 22.

¹⁸ **P-1339**, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 23, ln. 4 – p. 24, ln. 11.

¹⁹ **P-1339**, CAR-OTP-2041-0741-R02 at 0745-0746, para. 32-33; **Annex B**, CAR-OTP-2041-0765; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 23, ln. 14 – p. 37, ln. 11; ICC-01/14-01/18-T-158-CONF-ENG ET, p. 6, lines 9-25.

²⁰ **P-1339**, CAR-OTP-2041-0741-R02 at 0750-0752, para. 66-79.

²¹ **P-1339**, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 23, ln. 4 – p. 24, ln. 11.

²² **P-1339**, CAR-OTP-2041-0741-R02 at 0746, para. 32, 35, 37; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 8, lines 18-20, p. 23, ln. 4 – p. 37, ln. 11.

²³ **P-1339**, CAR-OTP-2041-0741-R02 at 0746, 0750, para. 36, 63-64; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 40, ln. 25 – p. 42, ln. 8, p. 43, ln. 25 – p. 45, ln. 19; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 28, ln. 10 – p.

trainings [REDACTED] including the use of firearms;²⁴ (v) the purchase of weapons and firearms from various places on multiple occasions, including from [REDACTED];²⁵ (vi) the recruitment of soldiers by the Anti-Balaka, the number of which increased up to over 3,000 members;²⁶ (vii) the preparation for the attack on Bangui on 5 December 2013 by the Anti-Balaka group [REDACTED];²⁷ (viii) the joining of the Anti-Balaka group [REDACTED] for the attack on Bangui;²⁸ (ix) the Anti-Balaka's 5 December 2013 attack on Bangui, [REDACTED].²⁹

20. P-1339's Prior Recorded Testimony includes his statement, transcripts of his oral testimony in the case of *Yekatom and Ngaïssona*, and associated material.³⁰

(ii) Granting the Request Would Advance the Expeditionness of the Proceedings

21. The Prosecution estimates that a full direct examination would take at least 8 hours for P-1339.³¹ If the Request is granted, the Prosecution would seek only 1 hour

31, ln. 25 [REDACTED]. See also ICC-01/14-01/18-T-155-CONF-ENG ET, p. 27, lines 3-17; ICC-01/14-01/18-T-156-CONF-ENG ET, p. 4, lines 20-25, p. 5, ln. 20 – p. 12, ln. 9, p. 13, lines 20-21, p. 14, lines 14-15; ICC-01/14-01/18-T-158-CONF-ENG ET, p. 6, lines 9-25.

²⁴ **P-1339**, CAR-OTP-2041-0741-R02 at 0746, para. 34-39; **Annex C**, CAR-OTP-2041-0766; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 47, ln. 3 – p. 50; ICC-01/14-01/18-T-155-CONF-ENG ET, 49, ln.21 – p. 54, ln. 14. (commenting on a video depicting one of the places where trainings took place at CAR-OTP-2065-0951)

²⁵ **P-1339**, CAR-OTP-2041-0741-R02 at 0746-0748, para. 39, 41-50; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 21, lines 17-22; ICC-01/14-01/18-T-158-CONF-ENG ET, p. 38, lines 5-25, p. 43, ln. 1 – p. 64, ln. 15; ICC-01/14-01/18-T-159-CONF-ENG ET, p. 4, ln. 9 – p. 21, ln. 8.

²⁶ **P-1339**, CAR-OTP-2041-0741-R02 at 0747, 0749-0750, para. 44, 58, 60; ICC-01/14-01/18-T-151-CONF-ENG ET, p. 38, lines 1-19, p. 42, lines 3-4, p. 43, ln. 19 – 44, ln. 3. See also ICC-01/14-01/18-T-155-CONF-ENG ET, p. 80, ln. 17 - p. 81, ln. 15.

²⁷ **P-1339**, CAR-OTP-2041-0741-R02 at 0748-0749, para. 51, 58; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 18, lines 2-10, p. 36, ln. 17 – p. 39, ln. 12

²⁸ **P-1339**, CAR-OTP-2041-0741-R02 at 0746, 0751, para. 35, 67; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 19, lines 2-10, p. 40, lines 18-22; ICC-01/14-01/18-T-155-CONF-ENG ET, p. 82, ln. 25 – p. 84, ln. 3, p. 90, ln. 16.

²⁹ **P-1339**, CAR-OTP-2041-0741-R02 at 0750-0752, para. 66-79; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 38, ln. 19 – p. 59, ln. 24, p. 69, ln. 19 – p. 70, ln. 19; ICC-01/14-01/18-T-155-CONF-ENG ET, p. 5, ln. 22 – p. 25, ln. 15, p. 95, ln. 21 – p. 96, ln. 1; ICC-01/14-01/18-T-156-CONF-ENG ET, p. 12, ln. 14 – p. 16, ln. 13.

³⁰ See Annex A for the complete list.

³¹ Notably, P-1339 testified on direct for over four full days in the *Yekatom and Ngaïssona* case. See ICC-01/14-01/18-T-151 to ICC-01/14-01/18-T-155. The Prosecution in this case would explore events in a more limited time period but would require at least two days of Court time.

for a supplementary examination. Thus, if the Request is granted, the Prosecution estimates saving at least 7 hours of court time for the examination in chief.

(iii) *The Prior Recorded Testimony Bears Sufficient Indicia of Reliability for Introduction into Evidence*

22. The Prior Recorded Testimony has the necessary indicia of reliability for introduction into evidence. The Witness has signed his statement, attesting that his testimony was read back to him, was given voluntarily, and that its content was true to the best of his recollection of the events.³² The Witness confirmed that he had the statement read over to him with an interpreter and confirmed its accuracy.³³ The Witness's statement also bears the signature of an interpreter, certifying that the Witness appeared to have heard and understood the translation.³⁴ During his oral testimony in the case of *Yekatom and Ngaïssona*, after making limited corrections and additions,³⁵ the Witness reconfirmed the accuracy and voluntary nature of his statement made with the assistant of the interpreter at the time.³⁶ His statement is further coherent and internally consistent.

23. The transcripts of the Witness's in-court testimony in the *Yekatom and Ngaïssona* case equally bear sufficient indicia of reliability. The Witness testified under oath,³⁷ and the Witness was examined by the Parties and Participants under the supervision of Trial Chamber V. Specifically, P-1339's evidence was put to the test over more than 3 days of cross-examination, including on the issues and events in the period around

³² P-1339, CAR-OTP-2041-0741-R02 at 0761.

³³ P-1339, CAR-OTP-2041-0741-R02 at 0761.

³⁴ P-1339, CAR-OTP-2041-0741-R02 at 0762.

³⁵ P-1339, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 11, lines 16-22; CAR-OTP-00000014; CAR-OTP-00000015.

³⁶ P-1339, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 10, ln. 6 – p. 15, ln. 20.

³⁷ P-1339, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 4, ln. 23 – p. 5, ln. 7.

2013,³⁸ covering matters pertinent also to the present case. The Witness generally adhered to his own recollection of the events which he experienced without speculating on matters outside his realm of knowledge.³⁹ For example, the Witness admitted when he was unsure and could not answer because he did not know or could not recall.⁴⁰ Similarly, when he was shown documents which he did not author, had not seen before or could recognize, he testified as such candidly.⁴¹ The Witness further distinguished the facts he saw from those he heard,⁴² and provided clarifications to his testimony voluntarily during the examination.⁴³ The Witness's evidence and interactions during his testimony are recorded verbatim, allowing the Parties, Participants and the Chamber to assess his evidence fully. P-1339's oral testimony is further coherent and internally consistent, and in conformity with his statement.

24. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witnesses whose testimony the Prosecution seeks to introduce into evidence through rule 68(2)(b) or 68(3)—such as P-0966, P-0975, P-0884, P-2232, P-2251, P-2269, and P-2328—all of whom describe events relevant to the formation, structure, and activities of the Anti-Balaka in 2013.⁴⁴ It also includes documentary and visual evidence.⁴⁵

³⁸ **P-1339**, ICC-01/14-01/18-T-157-CONF-ENG ET, p. 7, ln. 2 – p.76, ln. 24; ICC-01/14-01/18-T-158-CONF-ENG ET, p. 3, ln 10 – p. 75, ln. 3; ICC-01/14-01/18-T-159-CONF-ENG ET, p. 3, ln. 1 – p. 92, ln. 8; ICC-01/14-01/18-T-160-CONF-ENG ET, p. 4, ln. 20 – p. 49, ln. 16.

³⁹ *See, e.g.*, **P-1339**, ICC-01/14-01/18-T-154-CONF-ENG ET, p. 9, lines 22-25, p. 22, ln. 23 – p. 23, ln. 6.

⁴⁰ *See, e.g.*, **P-1339**, ICC-01/14-01/18-T-151-CONF-ENG ET, p. 16, lines 23-25; ICC-01/14-01/18-T-154-CONF-ENG ET, p. 14, lines 14-17; p. 37, ln. 21 – p. 38, ln. 24, p. 71, ln. 20 - p. 73, ln. 1; ICC-01/14-01/18-T-155-CONF-ENG ET, p. 22 lines 1-17.

⁴¹ *See, e.g.*, **P-1339**, ICC-01/14-01/18-T-154-CONF-ENG ET, p. 29, ln. 15 – p. 30, ln. 10, p. 33, ln. 3 – p. 36, ln. 3; ICC-01/14-01/18-T-155-CONF-ENG ET, p. 24, lines 4-8, p. 55, ln. 18 – p. 56, ln. 14, p. 85, lines 1-13; ICC-01/14-01/18-T-156-CONF-ENG ET, p. 23, lines 10 – p. 25, ln. 10.

⁴² *See, e.g.*, **P-1339**, ICC-01/14-01/18-T-155-CONF-ENG ET, p. 37, ln. 12 – p. 38, ln. 10.

⁴³ *See, e.g.*, **P-1339**, ICC-01/14-01/18-T-154-CONF-ENG ET, p. 3, ln. 22 – p.6, ln. 21; ICC-01/14-01/18-T-155-CONF-ENG ET, p. 21, lines 13-18.

⁴⁴ *See especially* **P-0884**, ICC-01/14-01/18-T-055-CONF-ENG, p. 73, lines 5-9, p. 78, lines 9-11; **P-2269**, CAR-OTP-2111-0336 at 0343-0344, para. 56.

⁴⁵ *See, e.g.*, [REDACTED].

(iv) Introduction of the Prior Recorded Testimony is not Prejudicial To or Inconsistent with the Rights of the Accused

25. The introduction of the Prior Recorded Testimony into evidence would not prejudice the Accused. P-1339's evidence does not specifically relate to the OCRB or the acts and conduct of the Accused. Most significantly, as recently observed by this Chamber, the Defence's right "to cross-examine a witness, including to address any issues of credibility or probative value and matters of an exculpatory nature, remains unaffected by the use of rule 68(3) of the Rules."⁴⁶

26. The Defence will also have plenty of time to prepare and conduct its cross-examination. The Defence has had P-1339's written statements and its annexes in its possession since before the confirmation hearing,⁴⁷ and the transcripts and documents used during his testimony in *Yekatom and Ngaïssona* case will be disclosed to the Defence once Trial Chamber V authorises disclosure. The Prosecution has also highlighted the Witness's evidence in the Pre-Confirmation Brief dated 30 August 2021⁴⁸ and in the Trial Brief dated 13 June 2022.⁴⁹ The Defence was further notified on 29 April 2022 of the Prosecution's intention to introduce the Prior Recorded Testimony of the Witness pursuant to rule 68(3).⁵⁰

27. Furthermore, the Witnesses has already testified in the *Yekatom and Ngaïssona* case, covering issues pertinent to the present case.⁵¹ The Prosecution has conducted a full direct-examination of the Witness in the *Yekatom and Ngaïssona* case before the judges of Trial Chamber V, for over four full days,⁵² and it is recorded verbatim. It would be contrary to judicial economy and well-being of the Witness if P-1339 was

⁴⁶ First Rule 68(3) Decision, para. 17.

⁴⁷ Pre-Confirmation INCRIM package 002 14 April 2021; Pre-Confirmation INCRIM package 003 23 April 2021.

⁴⁸ Pre-Confirmation Brief, ICC-01/14-01/21-155-Conf, 30 August 2021, para. 28, 34-35, 38, 44, 46.

⁴⁹ Trial Brief, ICC-01/14-01/21-359-Conf, 13 June 2022, para. 16, 31, 37-38, 41-42, 47-49.

⁵⁰ ICC-01/14-01/21-291, para. 11.

⁵¹ See *supra*, para. 18-19.

⁵² See ICC-01/14-01/18-T-151 (1 September 2022) to ICC-01/14-01/18-T-156 (8 September 2022).

subjected to a full direct-examination again by the Prosecution to testify about the same facts multiple times before the Court.

B. The Prosecution should be allowed to conduct a focused supplementary examination of the Witness

28. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Witness. In this regard, the Prosecution seeks only 1 hour for the supplementary examination of the Witness and would use the time to make any necessary clarifications to his statement and oral testimony in the *Yekatom and Ngaïssona* case, with the focus on the Anti-Balaka's activities in 2013. The Prosecution will endeavour to keep the supplementary examination focused and efficient.

C. Request to include 22 items to the List of Evidence

29. The Prosecution requests the Chamber to grant leave to add 22 items as identified in the Annex A to its LoE. These items comprised of the Witness's corrections to his witness statement and transcripts of his oral testimony in the *Yekatom and Ngaïssona* case, which were all produced after the Prosecution filed its LoE on 13 June 2022.

30. The items are relevant and have significant probative value. They form part of the Witness's prior recorded testimony and have been tested before the judges of Trial Chamber V. These items will assist the Chamber, Parties and Participants to fully understand the Witness's evidence.

31. Reliance on these 22 additional documents causes no undue prejudice to the Defence. On the contrary, they allow the Defence to have a full overview of P-1339's evidence. Furthermore, this request is made promptly after the evidence became

available, and it is well in advance of P-1339's anticipated testimony in the present proceedings, which is proposed to occur toward the end of the Prosecution's case.⁵³

VI. RELIEF SOUGHT

32. For the above reasons, the Prosecution requests that the Chamber:

- (a) Introduce into evidence the Prior Recorded Testimony, as set out in Annex A to this filing, subject to the fulfilment of the further conditions of rules 68(3);
- (b) Grant leave for the Prosecution to conduct a limited supplementary examination of no more than 1 hour for P-1339; and
- (c) Grant leave to the Prosecution to add 22 items as identified in Annex A to the Prosecution's List of Evidence.



Karim A. A. Khan KC, Prosecutor

Dated this 20th day of January 2023

At The Hague, The Netherlands

⁵³See, e.g., Proposed Order of Appearance – Prosecution Witnesses, 10 June 2022, ICC-01/14-01/21-35-Conf-AnxB (listing P-1339 as number 39 out of 44 witnesses).