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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**

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public  
with Confidential Annex 1**

**Public Redacted Version of the ‘Defence Response to the “Prosecution’s Sixth  
Application for the Submission of Evidence from the Bar Table”  
(ICC-01/14-01/18-1942), filed 22 June 2023**

**Source:      Defence of Patrice-Edouard Ngaïssona**

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

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## I. INTRODUCTION

1. The Defence of Mr Patrice-Edouard Ngaïssona (“Defence”) hereby responds to the “Prosecution’s Sixth Application for the Submission of Evidence from the Bar Table” (“Application”).<sup>1</sup>
2. The Defence will not provide item-by-item objections to the totality of the 271 documents the Prosecution wishes to submit before the Chamber. Rather, the Defence will unveil and illustrate with examples some of the unacceptable, yet too common methods used by the Prosecution in its approach to the alleged relevance and significance of the items sought to be submitted. The Defence will also provide item-by-item objections, as set out in Annex 1, to certain items which lack *prima facie* reliability and/or authenticity. These objections will not be repeated in the present core submissions. This does not at all mean that the Defence concedes to the arguments of admissibility provided by the Prosecution for the items not specifically addressed in Annex 1. The Defence reserves its right to make further submissions on the evidentiary weight of these documents at a later stage.
3. The Defence makes these objections pursuant to rule 64(1) of the Rules of Procedure and Evidence (“Rules”), which are intended to assist the Chamber in its holistic assessment of the evidence during the deliberation of the judgement.<sup>2</sup>

## II. CONFIDENTIALITY

4. In accordance with regulation 23bis(1) of the Regulations of the Court, this response and its annex are filed confidentially as they respond to documents of the same classification and contain confidential information. A public redacted version will be filed in due course.

## III. APPLICABLE LAW

5. The Defence incorporates by reference its previous submissions with respect to the applicable law regarding the adjudication of Bar Table motions.<sup>3</sup>

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<sup>1</sup> ICC-01/14-01/18-1868 together with confidential Annexes A and B.

<sup>2</sup> ICC-01/14-01/18-631, para. 62 (« Initial Directions »). As per the Initial Directions, the Defence already provided the Prosecution with its view as to the submission of the items sought to be submitted.

<sup>3</sup> ICC-01/14-01/18-1278, paras 6-9.

## IV. SUBMISSIONS

### A. Preliminary remarks

6. An additional number of 82 items has been included in Annex A to the Application “*to reinforce the relevance of the (other) Submitted Items*”,<sup>4</sup> thereby ignoring the Defence’s former *inter partes* request to exclude such items from any forthcoming Bar Table motion.<sup>5</sup> These items have already been submitted through an alternative mode of submission, namely through email, and their relevance and probative value have already been discussed at trial and by email pursuant to paragraphs 61 and 63 of the Initial Directions. As will be developed below, a submission regime and, thus, the Chamber’s holistic approach of the evaluation of the evidence does not spare the Prosecution from a rigorous demonstration of the relevance and probative value of each item sought to be submitted. By merely and exclusively relying upon items already submitted to support its most incriminating allegations, the Prosecution seems to have lost sight of this requirement. Most of the sought items, when taken individually, are not probative of a particular proposition and the inference asked to be drawn to prove a particular point cannot be made either due to the item’s lack of relevance or a complete lack of reliability. The misuse of the Application as a vehicle to artificially construct relevance of items sought to be submitted, through the exclusive use of items already submitted, which relevance is also questionable, is a vain method to camouflage the weakness of the proposed evidence.<sup>6</sup>
7. In light thereof, the Defence respectfully requests the Chamber to exclude the Prosecution’s submissions on the items already recognised as formally submitted from the scope of its deliberations and limit its assessment to the Prosecution’s submissions made in relation to the sought items. To the extent that the Chamber decides to consider the Prosecution’s reasoning in respect of submitted items, the Defence will present a few observations thereon but stresses that it reserves its right to supplement its response and contest these allegations of the Prosecution at any appropriate later stage of the proceedings.

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<sup>4</sup> Application, para. 4.

<sup>5</sup> Defence’s email to the Prosecution dated 31 January 2023 at 18:15 that the Defence can provide to the Chamber if so required.

<sup>6</sup> See e.g. Application, paras, 18,21,23,28.

## B. Lack of relevance

### a. Defending BOZIZE's regime against the Seleka prior to the *Coup*

8. *First*, the method consisting of using the Application in order to develop extensive legal conclusions, without citing in the main submissions any specific items, as to (i) whether Mr Ngaïssona and other political and civil society actors were part of Bozizé's "*inner circle*" and (ii) the alleged "*defamatory*" nature of the language used by François Bozizé's alleged inner circle is completely inappropriate in the context of a request under paragraphs 61-62 of the Initial Directions and is prejudicial to Mr Ngaïssona. These submissions amount to a Trial Brief supplement and should only be raised in the Prosecution's closing brief.
9. While certain items of evidence might be relevant to showing varying levels of political support to François Bozizé's government or his political party prior to 24 March 2013 from different Central African political and civil society actors, the allegation that these items are relevant to the existence of an "*inner circle*" which these actors would be part of, is a different proposition.<sup>7</sup> For instance, Mr Ngaïssona's 2011 election as a Member of Parliament representing the KNK or his presence, as member of the government, at the ceremony for the 10<sup>th</sup> anniversary of François Bozizé's presidency on 15 March 2013, has no bearing on the allegation that François Bozizé would have relied on him to allegedly contribute to committing crimes, as part of his so-called "*inner circle*".<sup>8</sup> Moreover, the unfounded accusations of the then Minister of Justice under the Djotodia regime against alleged economic crimes of Mr Ngaïssona at the time François Bozizé was the President of the Central African Republic ("CAR") does not show, contrary to the Prosecution's submissions, that "*Ngaïssona was part of Bozizé's inner circle*".<sup>9</sup>
10. In the same vein, the allegation that all the public statements made before 24 March 2013 were *defamatory* in that they "*portrayed*" the Seleka as, *inter alia*, foreigners or being financed or armed by foreigners,<sup>10</sup> is a legal conclusion which requires the demonstration

<sup>7</sup> See e.g., Application, para. 8; Annex A to the Application, item #1.

<sup>8</sup> Annex A to the Application, items #1, #15.

<sup>9</sup> Annex A to the Application, item #130.

<sup>10</sup> Application, para. 11.

that these statements were intentionally false. Yet, the Prosecution fails to adduce any evidence in relation thereto.

11. *Second*, in a great number of instances, the relevance of an excerpt does not lie in the role of François Bozizé and his alleged inner circle in a campaign of legitimization of violence but in the underlying facts reported in the relevant excerpts, which describe a reality on the ground. The Prosecution alleges that the fear in the population was “*created*” or “*ingrain[ed]*” to then instrumentalize the youth to François Bozizé’ advantage, thereby suggesting that the fear of the population was somewhat artificial or unfounded, when evidence shows that several months before 24 March 2013, the Seleka had already gained control of an important part of the territory and were fast approaching Bangui, being at the verge of starting an assault to conquer the capital.<sup>11</sup> The fact that an armed group posed an active threat to the Bozizé regime may have gone a long way in explaining the different actors’ statements at the time. Yet, the Prosecution seems not to be willing to attach any relevance and significance to these elements in the formulation of its narrative and even undermines the threat the Seleka were to the population by qualifying them of “*so-called enemy*” (emphasis added).<sup>12</sup>

12. For instance, the relevance of the radio broadcast of 28 December 2012 does not lie in “*the use of defamatory language vis-à-vis the Seleka*” or the alleged request that “*the civilian population stand up and fight the so-called enemy*”,<sup>13</sup> but in the report that the towns of Bambari, Kaga-Bandoro and Sibut had been taken over by the Seleka and that the CAR military was attempting to take them back. This excerpt’s relevance also lies in showing the acts of violence committed by the Seleka against a bishop.<sup>14</sup> Similarly, the Prosecution chooses to attach no relevance to Mr Ngaïssona’s report, in a radio broadcast dated 6 January 2013, that the whole administrative apparatus of the towns of Ouaka and Bambari have been destroyed and that the reason a march was being organised was because the country was being attacked by an armed group.<sup>15</sup> One would think that this part of this excerpt would have been identified as relevant by the Prosecution. Instead, the Prosecution

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<sup>11</sup> Application, para. 9.

<sup>12</sup> Application, para. 10 and title III., A., (1), (iii).

<sup>13</sup> Annex A to Application, item #14, referring to CAR-OTP-2000-0665. In this excerpt, Levy Yakété only asks the Central Africans to support their army and to pray, and reiterates that the country refuses blood being shed and wants peace and democracy.

<sup>14</sup> See French translation of CAR-OTP-2000-0665: CAR-OTP-2087-9844, at 9846.

<sup>15</sup> See French translation of CAR-OTP-2042-2132: CAR-OTP-2127-7401, at 7406.

chooses to refer to another speech, not even from Mr Ngaïssona, but from Javon Zama Papa, allegedly linking the organisation of the march to the Seleka's attempt to impose sharia law, to erroneously substantiate how Mr Ngaïssona's statement in this radio broadcast of 6 January 2013 is relevant to the case.<sup>16</sup>

13. *Third*, there are numerous examples where the substantiation of the relevance does not match the very content of the excerpt, but portrays a mere interpretation by the Prosecution. When purged of such elements of interpretation, an important number of excerpts are in fact irrelevant as proof of a particular proposition.
14. For instance, contrary to the Prosecution's submissions, the items sought to be submitted are not relevant to showing how the audience acted upon following the different speeches in question. Yet the Prosecution asserts that these speakers "*pushed their audience in a divisive, nationalistic, and a "us versus them" logic*".<sup>17</sup> The items sought to be submitted do not make more or less probable the way the audience perceived these speeches and acted upon them. Neither do they make more or less probable the allegation according to which the respective speeches from François Bozizé and Mr Ngaïssona "*demonis[ed] [...] the Central African Muslims in general*".<sup>18</sup> For instance, in the radio broadcast dated 14 January 2013, François Bozizé nowhere suggests that the "*'real' Central African population*" would be Christian. This submission is dangerously misleading.<sup>19</sup>
15. Moreover, certain elements of interpretation presented by the Prosecution introduce (i) a bias in the appreciation of the document's relevance or (ii) misleading information that is inconsistent with the truth finding mission of the Chamber. For instance, the Prosecution uses a radio broadcast of 6 January 2013 issued by the alleged COAC coordinator Steve Yambété to show "*the close link between YAMBETE and NGAISSONA*".<sup>20</sup> According to the Prosecution, Steve Yambété in this press release "*invites all people of 8 Arrondissement of BANGUI and the peripheral areas namely BEGOUA and BIMBO to participate in an organised march on Thursday 10 January 2013, which is organised by NGAISSONA*".<sup>21</sup> This is unacceptably misleading as the press release in question does not

<sup>16</sup> See reference to CAR-OTP-2000-0680 in item #46 of Annex A to the Application (as well as item #44).

<sup>17</sup> Application, para. 9.

<sup>18</sup> Application, para. 12.

<sup>19</sup> See Prosecution's comment in item #92 of Annex A to the Application analysing CAR-OTP-2042-0263.

<sup>20</sup> Annex A to the Application, item #51 analysing CAR-OTPP-2000-0688.

<sup>21</sup> *Ibid.*

suggest in any way that the big march which Steve Yambété was inviting the population to was organized by Mr Ngaïssona. In fact, Mr Yambété does not even allude to Mr Ngaïssona in this press release.<sup>22</sup>

16. Also, the fact that Javon Zama Papa calls upon the Central African population, on behalf of Mr Ngaïssona in his capacity as deputy, to join a peace demonstration on 9 January 2013 is not relevant to showing that Mr Ngaïssona portrays the Seleka as individuals who want to impose sharia law.<sup>23</sup> These are the statements of Javon Zama Papa, not Mr Ngaïssona's. Furthermore, Mr Papa's statement is inclusive of all religious backgrounds, as shown by the reference to the prayers of Muslims and pastors alike, having been heard. The fact that the Prosecution quotes the words of Mr Papa as being Mr Ngaïssona's in the core text of its Application, without any further explanation and without even mentioning Mr Papa, is particularly misleading.<sup>24</sup>

17. Again, the Prosecution is plainly incorrect in alleging that the items sought to be submitted show that Mr Ngaïssona, among others, called the population "*in no uncertain terms and unambiguously, to take up weapons against the so-called enemy*".<sup>25</sup> These alleged unambiguous speeches are simply absent from the sought items. In contrast, the Prosecution omits to mention that Mr Ngaïssona's speeches, for instance on 6 and 11 January 2013, are relevant to showing their inclusive nature, calling for all political parties to join forces and stand behind the President of the Republic elected democratically ("*investi par le peuple*"), saying 'no' to the civil war and 'yes' to dialogue and national reconciliation.<sup>26</sup> Also, importantly, the fact that Mr Ngaïssona presents himself as Coordinator of Combatants for Peace is not relevant to showing that he would have mobilised the COCORA members, as the Prosecution fails to substantiate how these two organisations are related.<sup>27</sup>

18. Furthermore, even assuming, for the sake of the argument, that Steve Yambété would have indeed delivered a public message on behalf of Mr Ngaïssona on 22 March 2013, and that this message would have been read *in extenso*, which the Prosecution fails to demonstrate,

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<sup>22</sup> *Ibid.*

<sup>23</sup> Annex A to the Application, item #36, referring to CAR-OTP-2000-0680.

<sup>24</sup> Application, para. 13.

<sup>25</sup> Application, para. 14.

<sup>26</sup> CAR-OTP-2042-0976 (transcript: CAR-OTP-2107-1473); CAR-OTP-2042-2144.

<sup>27</sup> See Prosecution's submissions in Annex A to the Application, item #44.

Mr Yambété's message was a call for calm.<sup>28</sup> Therefore, it is not relevant to showing that "*Mr Ngaïssona authorise[d] the Youth to use violence upon his signal*".<sup>29</sup> Rather, the relevance lies in Mr Yambété's actual call for calm in a context where the fast approaching Seleka were creating a state of panic in the Bangui population, as mentioned by the journalist of the broadcast.<sup>30</sup>

19. Also, in an announcement of Levi Yakété dated 25 December 2012 inviting the population to the first public assembly of the COCORA, the Prosecution omits to mention how Levi Yakété insisted on engaging into pacifist actions ("*sans prendre les armes*" or "*[j]e vous assure que les êtres humains sont plus forts que les armes*").<sup>31</sup> While this piece of information is highly relevant, it has been ignored resulting in a misleading version of events.
20. Finally, the Prosecution alleges that "[t]he Submitted Items show that Ngaïssona assisted in the mobilisation, funding, and arming of both militias".<sup>32</sup> While not citing any document in support thereof in its main submissions, it is apparent that the only item in Annex A containing similar allegations is CAR-OTP-2088-1574.<sup>33</sup> Yet, the reliability of this item is seriously impugned for the reasons invoked in Annex 1 hereto. Therefore, this item should be disregarded for *prima facie* lack of reliability and authenticity.<sup>34</sup> Moreover, a list of chronological criminal cases from 15 March 2003 to 24 March 2014 provided by the Court of Appeal of Bangui to the Prosecution shows that criminal proceedings were initiated against Messrs Yakété and Yambété for their alleged involvement in the COCORA and COAC, including the alleged distribution of weapons. Contrary to Messrs Yakété and Yambété, Mr Ngaïssona is not cited in this document for these charges. This shows if

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<sup>28</sup> The Defence will also establish that at the time of this speech, Mr Ngaïssona was [REDACTED]. Therefore, the Prosecution's theory on this point does not stand. Moreover, the Defence notes that when asked about the fact that Steve Yambété would have allegedly delivered this message on behalf of Mr Ngaïssona, P-1847 testified that the two men did not have a very close relationship, that Steve Yambété was very close to François Bozizé and that if he had something to say to him, he would not go through a Minister such as Mr Ngaïssona to communicate. See P-1847, ICC-01/14-01/18-T-023-CONF-ENG CT, pages 12-13.

<sup>29</sup> Annex A to the Application, item #121.

<sup>30</sup> CAR-OTP-2042-1783, at 1783.

<sup>31</sup> CAR-OTP-2000-0683 and CAR-OTP-2087-9867.

<sup>32</sup> Application, para. 16.

<sup>33</sup> For the reasons elaborated in Annex 1 to this response, item #135, the Defence also disregards the reference to Mr Ngaïssona's alleged role in COCORA in document CAR-OTP-2074-0411.

<sup>34</sup> The only other item mentioning such an allegation is an after-the-facts media article from *Jeune Afrique* dated 4 March 2014, which reports that Mr Ngaïssona *would* have participated to the radicalisation of the youth, by distributing weapons to COCORA members. This journalist does not cite any source and seems to focus on Mr Ngaïssona's reputation rather than verified facts. See CAR-OTP-2001-4359.

anything, that Mr Ngaïssona was not suspected by the CAR judicial authorities of having contributed to these organisations.<sup>35</sup> Finally, the Prosecution's allegation that Mr Ngaïssona mobilised specifically the COCORA members during his speech of 6 January 2013 is plainly inaccurate. Mr Ngaïssona does not mention COCORA in this radio broadcast but rather all Central Africans.<sup>36</sup>

21. In conclusion, the fundamental flaws identified above cast serious doubt as to the relevance of the items sought to be submitted to showing the alleged involvement of Mr Ngaïssona, as part of the so-called inner circle, in alleged hate speeches, calls for civilians to take up weapons against the enemy and in the alleged organisation, funding and arming of the youth groups COCORA and COAC.

#### **b. Fighting the Seleka regime after the *Coup***

22. Regarding alleged meetings in Cameroon, again, the Prosecution is plainly incorrect in stating that the media article dated 20 June 2013 is relevant to showing that Bozizé and his inner circle, including Ngaïssona “*are meeting and concerting with Bozizé in view of getting back to power*”. This media article simply does not say that but only mentions Mr Ngaïssona as a political refugee in Cameroon, close to Bozizé.<sup>37</sup>
23. The Prosecution has not substantiated that the FROCCA was established to continue spreading fear and hatred of the Muslim population so as to encourage the youth to fight their “so-called” enemies.<sup>38</sup> Rather than bolstering this narrative, the items demonstrate that FROCCA was put in place to denounce the Seleka crimes to the international community. Moreover, none of the items demonstrate that Mr Ngaïssona was one of the creators of FROCCA. The only item which refers to the creation of FROCCA and Mr Ngaïssona's alleged role therein is an email exchange which has already been submitted through Witness P-0808.<sup>39</sup> [REDACTED] The Prosecution has led no evidence through P-0808, who received this email, on the extent of Mr Ngaïssona's involvement in the

<sup>35</sup> CAR-OTP-2101-3292, at 3294-3295. *See also* [REDACTED].

<sup>36</sup> *See* transcript of audio CAR-OTP-2042-0976 and related Prosecution's comments in item #44.

<sup>37</sup> CAR-OTP-2074-0487, at 0497.

<sup>38</sup> Application, para 18-19.

<sup>39</sup> The Defence notes that the items CAR-OTP-2130-3296; CAR-OTP-2130-3298 CAR-OTP-2130-3300 in Annex A are all part of the same exchange which has been submitted. *See* P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 15, lns 3-8; pages 20-24; page 32, lns 17-25. *See also* P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 12, lines 16-23.

creation of the organization. Resubmitting this material is again a waste of Defence resources and is contrary to judicial economy.

24. There are only two documents out of the total of 353 items that name Mr Ngaïssona as the “*responsable des Affaires Intérieures et des Associations*”.<sup>40</sup> Upon being shown the documents,<sup>41</sup> Witness P-2625 [REDACTED] demonstrated a lack of knowledge with respect to what this alleged role of Mr Ngaïssona entailed.<sup>42</sup> Moreover, [REDACTED], P-2625 did not know how these roles were attributed.<sup>43</sup> Finally, none of the items sought for submission show any act Mr Ngaïssona would have taken in this role.
25. Similarly, the Prosecution who references a strategic plan that has already been submitted<sup>44</sup> fails to show how and whether the plan was adopted by FROCCA. It seems unlikely given P-2625 [REDACTED], had never seen the document before.<sup>45</sup> The Prosecution also ignores the content of the document when it states without any substantiation that the document set the tone for promoting fear and hatred. The very same document specifically denounces hate speech.<sup>46</sup>
26. Contrary to the Prosecution’s submissions, none of the items qualify as “*speeches*”. The Prosecution labels items which amount to written posts, statements and press releases as speeches. Quite notably none have been made by Mr Ngaïssona or in his name.
27. It appears from the Annex A of the Application that FROCCA only made 8 press releases and a few statements.<sup>47</sup> While these items communicate a matter of urgency with respect to the Seleka crimes, the Prosecution has not shown that these crimes were invented as a pretext to attack the Muslim population in CAR. Indeed, the Prosecution stipulated in its Trial Brief that the Seleka for several months after the coup “*subjected civilians (mainly non-Muslims) in these regions to brutal attacks and atrocities*”.<sup>48</sup> Similarly, the

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<sup>40</sup> CAR-OTP-2124-0002; CAR-OTP-2124-0852.

<sup>41</sup> While document CAR-OTP-2124-0002 has not been submitted, it was shown to Witness P-2625 who commented on it. ICC-01/14-01/18-T-189-CONF-FRA ET pages 26-27.

<sup>42</sup> See ICC-01/14-01/18-T-189-CONF-FRA ET, pages 26-27.

<sup>43</sup> ICC-01/14-01/18-T-189-CONF-FRA ET, pages 26-27.

<sup>44</sup> CAR-OTP-2124-0852.

<sup>45</sup> ICC-01/14-01/18-T-189-CONF-FRA ET, page 55.

<sup>46</sup> CAR-OTP-2124-0852, page 0855 (*par conséquent ; il est très fondamental d’éviter des déclarations frisant la haine, la vengeance et la division*).

<sup>47</sup> CAR-OTP-2094-0387; CAR-OTP-2091-1717; CAR-OTP-2091-0443; CAR-OTP-2091-1737; CAR-OTP-2091-0446; CAR-OTP-2091-1714; CAR-OTP-2091-1722; CAR-OTP-2091-1732; CAR-OTP-2091-1739.

<sup>48</sup> Trial Brief, para 65.

Prosecution ignores that there was a real risk of partition of the country according to religious lines.<sup>49</sup> Given this reality, what can be distilled from these items is FROCCA's primary stated goal which was to alert the international community as to the atrocities of the Seleka. These items also distinguish between civilian Muslims and the fighters responsible for the Seleka crimes, many of whom were from Chad and Soudan.<sup>50</sup>

28. Therefore, on 9 October 2013, FROCCA did not blame Muslim civilians for the Seleka crimes as advanced by the Prosecution.<sup>51</sup> First, there is only one statement which makes any reference to the figure of 10% and how it relates to those Central Africans of Muslim faith.<sup>52</sup> A more likely and plausible interpretation of that statement is that 10% of CAR's population supports the Seleka and they are of Muslim faith.<sup>53</sup> Such a reading does not equate all Muslims in CAR as supporters of the Seleka. This interpretation is internally consistent with the rest of the text, which calls on a democratic and secular country, and with other FROCCA statements, such as the ones that implore Central Africans to not fall prey to an inter religious war.<sup>54</sup>

29. The Prosecution has not shown the *prima facie* relevance of FROCCA calling on Central Africans to rise up and chase out the Islamists and Jihadists out of CAR. Driving out the Seleka is not a criminal plot, and none of the FROCCA items expressly or indirectly call on the targeting of Muslim civilians. More importantly, the Prosecution has not shown whether any of the alleged perpetrators of the crimes ever came in contact with any of FROCCA's statements whether made through Facebook, distributed as leaflets, or through

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<sup>49</sup> P-0446, ICC-01/14-01/18-T-098-ENG ET, pages 50- 53 ; P-0876, ICC-01/14-01/18-T-086-CONF-ENG, page 9 ; CC-01/14-01/18-T-123-ENG ET, page 71 ; P-1521, ICC-01/14-01/18-T-083-CONF-ENG CT, page 76.

<sup>50</sup> See for example CAR-OTP-2094-0387 (stating that the Seleka must be driven out by all legal means); CAR-OTP-2091-1717(warning that the armed rebels want to plunge the country in a religious war and specifically not mentioning Muslims in general but rather the members of the Seleka armed rebellion); CAR-OTP-2130-3303 (stating CAR was a secular country where Muslims and Christians were able to live together until the Seleka armed rebellion toppled the government in March 2013 with mercenaries from Chad and Soudan); CAR-OTP-0075-2041 (while calling on the return to constitutional order also stating the obligation to have a secular and sovereign county that has been put into chaos by the Seleka rebellion); CAR-OTP-2091-1739 (distinguishing between Chadians who have become combatants and the people of Chad who are their brothers).

<sup>51</sup> Application, para 21.

<sup>52</sup> The Prosecution can only use the term plural since the communiqué was produced in different media. *Déclaration du FROCCA N 1* contained in CAR-OTP-2091-1737; CAR-OTP-0075-2041, page 2055.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*; CAR-OTP-2091-1717.

newspapers. Indeed, it seems highly unlikely since most of the alleged Anti-Balaka fighters were illiterate.<sup>55</sup>

30. Not a single item shows that the individuals discussed or cited for their anti-Muslim animus, including the group allegedly connected to Mr Yekatom, had any contact with FROCCA's actions, leaflets, and declarations and statements. Therefore, the only connection between the FROCCA items and these alleged individuals expressing anti-Muslim animus is the Prosecution's unfounded narrative, which does not constitute evidence.
31. Further, the Prosecution has not shown the relevance of the items to Mr Ngaïssona allegedly repeating, reenforcing and advocating an alleged rhetoric that would have had an effect on a vague and undefined group such as "*the Youth*". First, the Prosecution does not indicate which items relate to Mr Ngaïssona, repeating, advocating or reinforcing any alleged rhetoric by FROCCA. When conducting an analysis of the items, the Defence submits that almost all the evidence related to Mr Ngaïssona's involvement in FROCCA has already been submitted and discussed at trial.<sup>56</sup> Therefore, the Prosecution again wastes trial resources by reintroducing them. Second, there is only one item in which Mr Ngaïssona made a comment as to the content of FROCCA's statements, in which he requested that the Seleka crimes should be focused on.<sup>57</sup> Given the reality of these crimes, the Prosecution has failed to establish the relevance of the items.
32. While the Prosecution again references material that has already been submitted to state that FROCCA claimed to be the political head of the Anti-balaka,<sup>58</sup> it does not provide what Lin Banoukepa meant by this comment. The witnesses who were shown this declaration did not receive any information before the 5 December attack that FROCCA was allegedly involved.<sup>59</sup> Indeed, the 353 items presented in the annex do not support the

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<sup>55</sup> P-0965, ICC-01/14-01/18-T-062-CONF-FRA, page 43 (« [REDACTED] ») ; P-808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 58 (« *So most of the Anti-Balaka members were illiterate, as you may know* ») ; P-2084, ICC-01/14-01/18-T-235-CONF-ENG, page 26 (« *if you take 100 people from our country, 67 will be illiterate* ») ; P-2556, ICC-01/14-01/18-T-146-CONF-ENG CT, page 19 (« *And you know that "in the Anti-Balaka movement, as I said yesterday, there were illiterate people... most of them were illiterate"* »).

<sup>56</sup> CAR-OTP-2130-3303; CAR-OTP-2130-3301; CAR-OTP-2124-0007; CAR-OTP-2130-3305; CAR-OTP-2130-3306; CAR-OTP-2124-0789; CAR-OTP-2124-0823; CAR-OTP-2124-0851; CAR-OTP-2124-0852; CAR-OTP-2124-0867; CAR-OTP-2124-0861; CAR-OTP-2084-1323; CAR-OTP-2051-1036.

<sup>57</sup> CAR-OTP-2130-3305.

<sup>58</sup> CAR-OTP-2088-2034.

<sup>59</sup> P-801, ICC-01/14-01/18-T-034-FRA ET, pages 47-48. P-2625, ICC-01/14-01/18-T-190-FRA, page 28.

allegation that FROCCA assimilated its military capacity with the Anti-Balaka; it is an unsubstantiated assumption the Prosecution makes on the basis of its one-sided interpretation of the strategic plan mentioning “*all human means*” to achieve the objective of restoring constitutional order.<sup>60</sup> There are only a few items that could potentially be relevant to the allegation that FROCCA participated in the 5 December attacks.<sup>61</sup> However, they are so unreliable and prejudicial to Mr Ngaïssona’s fair trial rights that the Chamber should not assign any evidentiary weight to them.<sup>62</sup>

33. Further, the Prosecution is misleading when it states that the attacks on BOUCA and BOSSANGO were done under the patronage of FROCCA in September 2013. The materials in Annex A to the Application all relate to Mr Yakété referencing the former FACA participating in these alleged attacks.<sup>63</sup> The Prosecution attempts to show that the Anti-balaka was a well-structured organization where different groups adhered to FROCCA to become a single organization and that subsequently this group was replaced by the CLPC and the MRPRC, in a neat and clean evolution. However, the Prosecution willingly disregards other evidence that it has led which directly contradicts such a notion. Witness P-2625, when asked about different groups such as MOREPOL and FDPC rallying FROCCA, stated that this was not actually true.<sup>64</sup> Further, the Prosecution undermines its theory on the evolution of the FROCCA into these two groups, namely CLPC and MRPC, when it also submits that the CLPC began being used in October of 2013 when FROCCA was still active.<sup>65</sup> Therefore, the CLPC could not have grown out of FROCCA members finding the organization to be outdated as submitted by the Prosecution.

34. None of the items sought to be submitted demonstrate that Mr Bozizé and his so-called inner circle, including Mr Ngaïssona, coordinated the Anti-Balakas “*from inception*”.<sup>66</sup> Dieudonné Houronti, in his interview dated 10 October 2014, explains that due to the Seleka’s persecution against them, certain FACA fled Bangui and created the Anti-Balaka

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<sup>60</sup> CAR-OTP-2124-0852.

<sup>61</sup> CAR-OTP-2091-0455; CAR-OTP-2091-0457; CAR-OTP-2114-0550; CAR-OTP-2054-1440; CAR-OTP-2051-1036.

<sup>62</sup> The Defence substantiates this argument in the probative value and prejudice section of this response.

<sup>63</sup> CAR-OTP-2061-1428; CAR-OTP-2122-9926; CAR-OTP-2001-4170.

<sup>64</sup> P-2625, ICC-01/14-01/18-T-190-FRA CT, page 8.

<sup>65</sup> CAR-OTP-2102-9329 (The Prosecution submits this item to show that the CLPC was in existence from October 2013).

<sup>66</sup> Application, para. 27.

in the bush with the population of Bossangoa. He further explains that the counteroffensives conducted against the Seleka, out of revenge for their killings, were organised by 16 military elements, with no one backing them. He later emphasizes that all the bases across CAR were autonomous. He also insists that no one had given them money.<sup>67</sup> Contrary to the Prosecution's submissions, and after careful analysis of this interview, he does not suggest that Mr Ngaïssona or François Bozizé were coordinating them from inception, including from "*their decent from Gohéré to Bangui for the 5 December 2013 attack*".<sup>68</sup> Indeed, he explains, likely referring to January 2014, that the Anti-Balaka chose Mr Ngaïssona only to represent them in front of the politicians but that the Anti-Balaka were not involved in politics and that their only goal was to drive out the mercenaries.

35. As for Mr Ngaïssona's speech on 20 November 2014, it does not show Anti-Muslim animus as submitted by the Prosecution; nowhere in his speech does Mr Ngaïssona conflate the Seleka and Muslims. Mr Ngaïssona does not refer to "*churches*" as misleadingly stated by the Prosecution, but to "*places of worship*".<sup>69</sup> It does not show either that the 5 December attack was coordinated, let alone by François Bozizé's so-called inner circle, but shows spontaneous resistance.<sup>70</sup> Finally, Mr Ngaïssona does not say that he should have been given a position but that people foreign to the movement have been offered positions to act on behalf of the Anti-Balaka.<sup>71</sup>

36. The email exchanges from July and September 2013, for which the Prosecution does not provide any reference,<sup>72</sup> assuming it relates to the email exchange between Mr Ngaïssona and Mr Ngaya,<sup>73</sup> recognized as already submitted through the former Yahoo email Bar Table Motion, is not relevant to showing that Mr Ngaïssona requested and/or obtained financial means from Mr Bozizé to mobilize the youth in Bangui or that he was involved in the planning of military operations. The Defence has already developed detailed

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<sup>67</sup> CAR-OTP-2084-1271.

<sup>68</sup> Application, para. 27.

<sup>69</sup> Compare CAR-OTP-2107-1516, at 1517 with Prosecution's description of item #350.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> Application, para. 28.

<sup>73</sup> CAR-OTP-2130-3288, CAR-OTP-2130-3291, CAR-OTP-2130-3294, CAR-OTP-2130-3296. See also CAR-OTP-2124-0004; CAR-OTP-2124-0823, CAR-OTP-2124-0844.

submissions in relation thereof in its response dated 15 August 2022 and will not repeat them here.<sup>74</sup>

37. The Defence will also not repeat its lengthy submissions in respect of emails purportedly exchanged between [REDACTED] and Mr Ngaïssona in October 2013<sup>75</sup> but takes issue with the Prosecution's allegation that these emails would have been somehow sent *in response* to Mr Ngaïssona's previous contacts with alleged "*key Anti-Balaka members in Bangui*" to finance the youth, including to acquire weapons and ammunitions for them.<sup>76</sup> The allegation that Mr Ngaïssona would have contacted Mr Ngaya or other alleged Anti-Balaka members to acquire weapons and ammunitions is completely unfounded and by extension, the alleged causal link between Mr Ngaïssona's supposed attempt and [REDACTED]'s alleged expression of needs is all the more so. Moreover, this whole allegation is based *entirely* on documents that are not sought to be submitted pursuant to the Application. The Prosecution is not pointing to any items among the "Submitted Items" that would allegedly be relevant to this allegation, therefore artificially hiding the plain absence of relevance of the items sought to be submitted for this particular proposition under the façade of a system of circumstantial evidence that could only be assessed as a whole, without demonstrating any link between the disparate and individual factual elements. Such an exercise is an abuse of the submission regime and contrary to judicial economy.

38. None of the items sought to be submitted are relevant to showing that "*NGAISSONA was an Anti-Balaka leader before his return to Bangui on 14 January 2014*".<sup>77</sup> While relying on an open source report mentioning that Mr Ngaïssona claimed to be the Anti-Balaka coordinator since December 2013, the Prosecution has led no evidence in relation to these alleged claims.<sup>78</sup> If Mr Ngaïssona had been claiming to be the Anti-Balaka coordinator as early as December 2013, surely statements from Mr Ngaïssona in this sense would have been made. Moreover, the emails from Mr Ngaya to him on 28 December 2013 and 13 January 2014, together with their purported attachments, make no mention, contrary to the Prosecution's submissions, of Mr Ngaïssona role as one of the alleged leaders of the

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<sup>74</sup> ICC-01/14-01/18-1546-Conf, paras 31-33, 36-39.

<sup>75</sup> ICC-01/14-01/18-1546-Conf, paras 69-74.

<sup>76</sup> Application, para. 28.

<sup>77</sup> Annex A to Application, item #313.

<sup>78</sup> CAR-OTP-2123-0285.

CLPC.<sup>79</sup> P-0808 was very clear during his testimony that Mr Ngaïssona did not have a role within the CLPC.<sup>80</sup> P-0446 explained in court that Maxime Mokom was the one who, from Zongo, initiated the creation of the CLPC. P-0446 does not involve Mr Ngaïssona within this movement in any way.<sup>81</sup>

### C. Lack of probative value

#### a. Media articles

39. A considerable proportion of the evidence sought to be submitted by the Prosecution through media articles is anonymous hearsay and opinion evidence or, when the source is identified, allegations for which information regarding the reliability and credibility of the original source is entirely lacking.<sup>82</sup> Additionally, the Prosecution has failed to adduce any information about the background and qualifications of the relevant journalists or bloggers, leaving the Chamber in the dark as to their objectivity and professionalism. For instance, the director of publications and editor-in-chief of the internet newspaper called Centrafrique presse, on which the Prosecution relies extensively in support of its most incriminating allegations, is well-known for his dissemination, through this media, of toxic rumors against the former Bozizé regime to which he is blatantly and viscerally opposed.<sup>83</sup> It is well established that as a result of Mr Bozizé's coup in 2002, Mr Ndouba lost his governmental role as spokesman of President Patassé and claims having been held hostage for several weeks by Mr Bozizé's men.<sup>84</sup> As if by pure chance, he was also named by presidential decree communication counsellor and spokesperson of President Djotodia on

<sup>79</sup> CAR-OTP-2124-0995.

<sup>80</sup> See Defence submissions in ICC-01/14-01/18-1546-Conf, para. 42, referring to P-0808, ICC-01/14-01/18-T-069-CONF-ENG ET, page 47.

<sup>81</sup> P-0446, ICC-01/14-01/18-T-096-CONF-ENG ET, page 33.

<sup>82</sup> See, e.g., compilation of so-called media articles gathered by unknown source and collected from open source such as CAR-OTP-2014-0729, CAR-OTP-2074-0411.

<sup>83</sup> Regarding Mr Ndouba's function at Centrafrique Presse: ICC-01/05-01/08-T-246-Red2-ENG WT, page 54, lns 13-15; <http://centrafrique-presse.over-blog.com/article-message-de-la-redaction-de-centrafrique-presse-113782435.html>; <http://centrafrique-presse.over-blog.com/2013/12/voeux-de-prosper-n-douba-pour-2014.html>. Regarding Mr Ndouba's bias against Mr Bozizé and his regime: ICC-01/05-01/08-T-258-Red2-FRA CT, page 43, ln. 18 until page 44, ln. 6; <http://centrafrique-presse.over-blog.com/2019/01/temoignage-de-prosper-n-douba-en-hommage-a-hugues-dobozendi.html>; <https://www.refworld.org/docid/46e69135c.html>. See also <https://www.refworld.org/docid/46e69135c.html>. He was also suspected of having supported the rebellion group having formed in the North: [https://www.files.ethz.ch/isn/50168/136\\_republique\\_centrafricaine.pdf](https://www.files.ethz.ch/isn/50168/136_republique_centrafricaine.pdf).

<sup>84</sup> ICC-01/05-01/08-T-258-Red2-FRA CT, page 43, ln. 18 to page 44, ln. 6; <http://centrafrique-presse.over-blog.com/2019/01/temoignage-de-prosper-n-douba-en-hommage-a-hugues-dobozendi.html>.

24 April 2013.<sup>85</sup> This begs the question what probative value can be reasonably given to information relayed by this internet blog, when taken for the truth of its content. As detailed in Annex 1 to this response, it can be easily established that certain pieces of information provided by this blog are simply false. Therefore, the Defence requests that all articles from this website be considered inadmissible when relied upon for the truth of their content.<sup>86</sup>

40. Finally, based on the date of certain press articles sought to be submitted, it cannot be said as the Prosecution alleges that they are contemporaneous as the fact that the information reported was obtained right or shortly after the events is not demonstrated.<sup>87</sup>

### **b. Reports**

41. Contrary to the Prosecution's submissions, the proposed evidence in this category does not only concern reports generated by well-known organisations with a global presence. For instance, the report provided by P-2625 consist of unsourced opinion evidence from an unknown author, [REDACTED], which is likely to be a pseudonym.<sup>88</sup> Also, while this report was used by the Prosecution with P-2625, the Prosecution failed to address the reliability issues pertaining to these reports with him. Therefore, the reliability of its content is seriously impugned and should be disregarded.<sup>89</sup>
42. The reports issued by group of experts mandated by the UN or other non-governmental organisations mostly present allegations lacking a minimum factual substantiation. For these reports specifically, as the authors were not called by the Prosecution, the Defence did not have an opportunity to challenge their methodology and to question the content of the reports. Moreover, most of the time, the sources of the information provided is not revealed with sufficient details to assess the reliability of the reports' content.<sup>90</sup>

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<sup>85</sup> <https://www.sangonet.com/afriqg/PAFF/Dic/actuC/ActuC12/Neris-Massi-et-Prosper-Ndouba-nommes-Seleka.html>.

<sup>86</sup> The Defence refers to its detailed submissions regarding CAR-OTP-2008-2036, CAR-OTP-2079-0574 and CAR-OTP-2113-0664 (together with Prosecution's submissions in Annex A to the Application, item #105).

<sup>87</sup> See, e.g., CAR-OTP-2001-4359, CAR-OTP-2123-0285.

<sup>88</sup> See Annex A to the Application, item #123.

<sup>89</sup> See also e.g. the Defence's submissions regarding CAR-OTP-2014-0729 and CAR-OTP-2001-1341 in Annex 1 to this response.

<sup>90</sup> See for instance CAR-OTP-2088-1574.

43. Finally, as will be elaborated by the Defence in an upcoming response to the Prosecution's Bar Table motion relating to documents obtained from national authorities that include CAR government documents, the Chamber should be mindful of the general lack of reliability of intelligence reports, which according to P-0876, "[REDACTED]".<sup>91</sup>
44. In light thereof, these reports as detailed in the Annex 1 to this response should not be admitted into evidence.

#### **c. Email correspondence**

45. The Defence refers to the submissions it made in its response to the Bar Table Motion in relation to Yahoo emails, and in particular on the lack of sufficient preservation of the integrity of the items (*i.e.*, the content and completeness of the messages).<sup>92</sup>

#### **d. Social Media Evidence**

46. The Prosecution's submissions regarding the reliability of social media evidence ignores the very unreliable nature of such evidence when used for the truth of its content. A very clear example is the Prosecution's blind reliance on BANGUI FROCCA's posts allegedly showing FROCCA members encircling BANGUI weeks prior to the attack. A google image search of these images show that these posts are patently false. The images relied on from BANGUI FROCCA come from Côte d'Ivoire and were in existence in 2011, two years prior to the 5 December 2013 attack.<sup>93</sup> This is a striking example of the Prosecution taking social media evidence at its face value and using the criterion of it aligning with its narrative rather than conducting a due diligence analysis of the items' probative value.

#### **e. Other materials**

47. In respect of the other categories of materials that the Prosecution seeks to submit, the Defence currently takes no general position as to the reliability of such and such category, but presented individual objections, when deemed necessary, in Annex 1 to this response,

<sup>91</sup> P-0876, T-088-CONF-ENG-CT, page 42, lns 12-20. *See also* P-0291, ICC-01/14-01/18-T-053-FRA from [10:08:47] to [10:13:19]).

<sup>92</sup> *See* ICC-01/14-01/18-1546-Conf, paras 6 and seq.

<sup>93</sup> CAR-OTP-2091-0455 and CAR-OTP-2114-0550 consist of the same image and can be found in media articles relating to the Ivorian post-electoral crisis in 2011. <https://www.jeuneafrique.com/181646/politique/c-te-d-ivoire-les-forces-r-publicaines-repartent-l-assaut-des-bastions-de-gbagbo> ; CAR-OTP-2091-0457 is also an image from the Ivorian post electoral crisis in 2011. <https://www.reuters.com/article/idINIndia-56071320110403>.

and reserves its right to present further objections to the related individual items or the category of items should the Prosecution make further submissions regarding admissibility pursuant to Rule 64(1) of the Rules.

#### **D. Prejudice to Mr Ngaïssona**

48. Reliance on certain documents in respect to central aspects of the charges or highly contentious issues, such as the alleged contribution of Mr. Ngaïssona to the alleged charges or the alleged inner circle, may result in prejudice to Mr Ngaïssona outweighing any *prima facie* probative value to be found in those documents. This is especially the case when such probative value is limited by reason of the document in question being vague, unclear or containing merely opinion evidence, unsubstantiated allegations rather than an account of events having actually occurred, or the items consist of anonymous hearsay. For example, the Prosecution relies on a media article CAR-OTP-2051-1036, in order to prove not only a key aspect that alleged Anti-Balaka fighters were fighting for FROCCA's mandate but also to show that Mr Ngaïssona allegedly financed them. The article's source is an anonymous witness, relying on his account would deprive Mr Ngaïssona's fundamental right under Article 67 to confront the witnesses against him. Additionally, given the anonymity, the Chamber has no way by which to assess the veracity of the witness account. For these reasons, the media article should not be relied on for these allegations.

49. The Defence respectfully requests the Chamber to consider this important safeguard when assessing the admissibility of the items sought to be submitted.

#### **V. RELIEF SOUGHT**

50. The Defence respectfully requests the Chamber to **TAKE INTO ACCOUNT** the Defence's objections contained in the present response and its annex when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgement.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized 'N' or similar character, followed by a horizontal line.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 8 November 2023

At The Hague, the Netherlands.