PUBLIC REDACTED VERSION OF THE CORRECTED VERSION OF

ANNEX A

**

NGAÏSSONA DEFENCE CLOSING BRIEF

I. INTRODUCTION

> "*What I can say, on the solemn undertaking that I have sworn before this Court, is that I never heard Ngaïssona, not even one day, talk about vengeance or decide that any community -- any community should be attacked…. He did not want that*".[1]

1. This testimony comes from witness P-1521 who played a key role in the Anti-Balaka movement from its inception. P-1521's evidence echoed that of so many of the Prosecution's hand-picked witnesses who knew Mr Patrice Edouard NGAÏSSONA ('Mr NGAÏSSONA') and closely and unequivocally testified that Mr NGAÏSSONA either did not or could not have played a role in the 5 December 2013 attacks and their aftermath in BANGUI, BOSSANGOA, YAMWARA school and PK9-MBAÏKI axis. One throughline emerged from their accounts – Mr NGAÏSSONA's sole objective was for peace to return to CAR, his country. This goal animated all his actions, from when he was forced to flee CAR in March 2013 because of his well-founded fear of being killed on account of his political beliefs and ethnicity to when he returned in January 2014 and became the National Coordinator of the Anti-Balaka.

2. After a trial lasting over three years, two things are certain: the theory put forward by the Prosecution is not faithful to the truth of the 2013-2014 events in CAR, and Mr NGAÏSSONA is not responsible for the crimes charged. The search for the truth is at the heart of the Trial Chamber's function and must guide it through the evaluation of the evidence before it. The truth steadily emerged in these proceedings and witness after witness, the Prosecution case eroded to the point of collapse.

3. The Office of the Prosecutor's ('Prosecution') theory is nothing more than a house of cards, flimsy and unstable, with doubt creeping in through every crack. Its flaws are simply too great to be ignored in the context of a criminal trial, where the presumption of innocence, and its corollary, the *in dubio pro reo* principle, mean that any doubt must benefit the accused.

4. The Prosecution cannot rely on speculation to fill the evidentiary gaps in its case. The evidence detailed in the present Closing Brief ('Brief') concretely demonstrates how the Prosecution has failed to prove that Mr NGAÏSSONA is guilty beyond a reasonable doubt under Article 66 of the Rome Statute ('Statute'). This failure must lead the Chamber to acquit Mr NGAÏSSONA on all counts.

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[1] **P-1521**: T-083-CONF-ENG CT, p. 78, lns 17-20.

II. THE PROSECUTION'S CASE IS BASED ON UNRELIABLE, CONTAMINATED AND OVERABUNDANT NON-PROBATIVE EVIDENCE

A. The Prosecution excessively relied on circumstantial evidence

5. Most of the evidence against Mr NGAÏSSONA, in particular with respect to his alleged contributions to the charged crimes, is circumstantial. The Prosecution flooded the case record with CDR, private Facebook conversations, press articles, and decontextualised CAR government documents.

6. In order to convict, the beyond a reasonable doubt standard requires that an inference must be the only reasonable inference that can be drawn from a primary fact.[2] Moreover, an inference suggesting guilt in a circumstantial case "must depend on other solid evidence independent of the primary fact upon which the inference is based".[3] Speculation should never fill critical gaps in the Prosecution's evidence.[4]

7. Despite this evidentiary standard, the Prosecution relied on vast amounts of indirect and hearsay evidence, which should be given minimal weight.[5] No weight should be given to anonymous hearsay, such as press articles, unsourced NGO reports, and witness evidence based on anonymous sources.[6] Judge Henderson opined that the potential weakness of circumstantial evidence is that "wrong inferences may be drawn from a set of entirely true circumstantial facts or from facts which may have been mischaracterized".[7] As a safeguard, Trial Chamber V's ('Chamber') holistic evaluation of the evidence encompasses a duty to apply a "careful and rigorous analysis of the individual bits and pieces of evidence and the inferences that the Chamber has been invited to draw therefrom".[8] The Prosecution also lacked rigour and showed selectiveness in the testimonial evidence it submitted, relying excessively on prior recorded

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[2] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 51. *See also* Ruto and Sang Judgment of Acquittal (Reasons of Judge Fremr), para. 23; Al Bashir Arrest Warrant AJ, paras 32-33; Bemba et al. AJ, para. 868; Bemba AJ, para. 42.
[3] Ruto and Sang Judgment of Acquittal (Reasons of Judge Eboe-Osuji), para. 85; Said Confirmation Decision, paras 130, 134-135.
[4] Ruto and Sang Judgment of Acquittal (Reasons of Judge Eboe-Osuji), para. 79.
[5] *E.g.* the Prosecution relies extensively on P-2625's evidence to argue Mr NGAÏSSONA alleged coordination and financing of the Anti-Balaka from Cameroon, as well as about his alleged membership in the so-called inner circle, despite P-2625's evidence being for the most part based on hearsay and speculation, *See below* II.B.3.3. POUSSOU (P-2625).
[6] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 43 ("No probative value can be ascribed to such evidence, in my view. This is because no responsible adjudicator can base factual findings on evidence without having good reasons to accept that the source of the information is sufficiently trustworthy. In the case of anonymous hearsay, this is simply impossible because the source of the information is unknown and can therefore, by definition, not be evaluated.")
[7] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 51.
[8] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 31; *see also* Bemba AJ Separate Opinion, para. 67.

statements of witnesses who do not hold direct knowledge of Mr NGAÏSSONA's alleged individual criminal responsibility and the charged crimes, many of which have not been examined by the Defence for Mr NGAÏSSONA ('Defence').

B. The Prosecution excessively relied on uncorroborated insider evidence, prior recorded statements and impugned witnesses

1. Uncorroborated insider evidence

8. The Prosecution excessively relied on uncorroborated insider evidence. For example, Joachim KOKATÉ – P-0801 ('KOKATÉ') and Adrien POUSSOU – P-2625 ('POUSSOU') often provide singular and inconsistent evidence on Mr NGAÏSSONA's alleged role in coordinating, financing, and liaising with the Anti-Balaka and participating in meetings with members of the alleged "inner circle". Despite testifying about similar topics, their evidence is not mutually corroborative or corroborated by other evidence, and therefore cannot support conclusions of guilt.[9] Corroboration may only occur when two items of evidence independently confirm the same fact.[10] Greater caution is mandated when weighing the probative value of statements made by insider witnesses, who may well have a motive to assign responsibility for their actions to others.[11] Insiders, by virtue of their alleged proximity to the charged crimes, may have ulterior motives to testify against Mr NGAÏSSONA, whether to deflect their own responsibility, to gain an advantage, or for other personal reasons, especially if they have a grudge or shown enmity towards the accused.[12]

2. Rule 68(2) and 68(3) prior record statements

9. The Prosecution relied excessively on Rule 68(3) and Rule 68(2) statements, for which there is no presumption of reliability and credibility.[13] For Rule 68(3), despite witnesses having been asked to confirm their statements at the start of their testimony, several changed their evidence significantly during examination.[14] Out of the 112 Prosecution witnesses, 40 were not subject

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[9] *See below* II.B.3.3. POUSSOU and III.B.3.4. KOKATÉ; Gbagbo and Blé Goudé Judge Henderson's Reasons, paras 49-50.
[10] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 47; Katanga TJ, Minority Opinion of Judge Christine Van den Wyngaert, paras 157-160.
[11] Abd-Al-Rahman Second Rule 68(2)(c) Decision, para. 14; Katanga TJ Minority Opinion of Judge Christine Van den Wyngaert, paras 156-173; Boškoski and Tarčulovski TJ, para. 13; Kordić and Čerkez TJ, para. 629; Ntagerura et al. AJ, paras 203-206; Krajišnik AJ, para. 146; ECtHR Adamčo v Slovakia, paras 61-62.
[12] Evidence shows that the TOUADÉRA government promised advantages to Prosecution witnesses for their testimony against Mr NGAÏSSONA , *see below* II.C. The Prosecution relied on contaminated testimonies of key witnesses.
[13] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 39.
[14] *See e.g.,* P-0876, P-0965, P-0954; Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 39.

to proper examination by the Defence because their prior recorded testimonies were introduced in the case record via Rule 68(2).[15]

10. When issuing an Article 74 judgment, trial chambers need to determine whether these prior recorded testimonies are corroborated by and are consistent with other evidence, especially oral testimony which the accused had the opportunity to challenge. Reliance on such evidence should not be prejudicial to or inconsistent with the rights of the accused.[16] Importantly, "a conviction may not rest solely, or in a decisive manner, on the evidence of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial".[17]

11. The extent to which a prior recorded statement is corroborated by other evidence is also important in determining the weight to be accorded to it, and it must be carefully assessed in the light of the full evidentiary record and in relation to the issue(s) to be determined.[18] In *Ongwen*, Trial Chamber IX repeatedly specified that Rule 68(2) statements were relied upon where they were coherent with the other evidence on record.[19] It also rejected Rule 68(2) evidence where it was contradicted by more reliable evidence.[20]

12. In the present case, the Rule 68(2) statements are riddled with information which is either uncorroborated, or inconsistent with more reliable evidence.[21] Such unreliable statements cannot serve as sole or main basis for conviction. Moreover, the general unreliability of the Prosecution's key witnesses pervaded the entire proceedings, as will be demonstrated below.

3. Impugned key witnesses [22]

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[15] The prior recorded testimonies of 29 witnesses were submitted under Rule 68(2)(b), ten under Rule 68(2)(c) and one under Rule 68(2)(d). *Compare with Ongwen*, where 40 out of the 116 witnesses were introduced under Rule 68(2); *Al Hassan*, where 19 of the 69 witnesses were introduced under Rule 68(2) and *Ntaganda*, where 16 out of 80 witnesses were introduced under Rule 68(2).
[16] Ntaganda AJ, paras 629-630.
[17] Ntaganda AJ, para. 16; Karadžić AJ, para. 449; Popović et al. AJ, para. 96; Đorđević AJ, para. 807; Haraqija and Morina AJ, para. 61; ECtHR Bocos-Cuesta v. The Netherlands, paras 67-70; ECtHR Solakov v. FYROM, para. 57.
[18] Ntaganda AJ, para. 630.
[19] Ongwen TJ, paras 255, 264, 292, 297, 440, 451, 454, 456, 464, 466, 481, 483, 490, 494, 495, 499, 506, 526, 528, 552, 553, 585. *See* paras 256-258 for other non-exhaustive factors considered by the *Ongwen* Trial Chamber to determine the probatory weight of a testimony.
[20] Ongwen TJ, paras 263, 477, 510.
[21] *E.g.* key aspects of P-2269 and P-2602's evidence are uncorroborated, as well as internally and externally inconsistent: *See below* III.B.2.3.2 The 'GOBÉRÉ group' was not 'deployed', fn. 753; III.C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks, fn. 786; *see also* ICC-01/14-01/18-1986-Conf, paras 19-30 and ICC-01/14-01/18-1987-Conf, paras 21-30.
[22] Due to the space constraints, the present Brief only addresses a few selected witnesses. This should not be interpreted as an admission that other Prosecution witnesses were entirely credible.

3.1. P-0306

13. A reliable body of evidence indicates that P-0306 was [REDACTED].[23] Calling him as a witness demonstrates the Prosecution's complete disregard for the truth in its drive to convict Mr NGAÏSSONA at all costs. P-0306's reasons to incriminate Mr NGAÏSSONA were clearly to: (1) [REDACTED][24] [REDACTED];[25] (2) [REDACTED] [REDACTED];[26] and (3) settle scores with Mr NGAÏSSONA, [REDACTED].[27]

14. P-0306's testimony was riddled with inconsistencies on key aspects, such as [REDACTED][28] and his alleged [REDACTED].[29] Furthermore, P-0306 made several unique and uncorroborated allegations, some of which he raised for the first time during his testimony.[30] Indeed, the witness' account changed considerably, evolving from no mention of Mr NGAÏSSONA in 2018, to heavily incriminating him in 2019. The witness' explanation that Mr NGAÏSSONA [REDACTED] between his 2018 and 2019 interviews[31] is entirely uncorroborated and illogical, since such [REDACTED] would have led him to exonerate Mr NGAÏSSONA, rather than incriminate him. Besides, P-0306's evidence on these supposed [REDACTED] was replete with inconsistencies.[32]

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[23] *See* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[24] **P-0306**: T-064-CONF-ENG ET, p. 74, ln. 16 to p. 25, ln. 4.
[25] **P-0306**: T-065-CONF-ENG ET, p. 56, lns 5-7.
[26] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[27] **P-0306**: T-065-CONF-ENG ET, p. 55, lns 23-24; T-068-CONF-ENG CT, p. 38, ln. 7 to p. 39, ln. 1.
[28] *See e.g.,* P-0306's contrasting accounts of when he first heard mentions of [REDACTED] and [REDACTED], **P-0306**: T-064-CONF-ENG ET, p. 59, ln. 18 to p. 60, ln. 4, p. 62 ln. 23 to p. 63, ln. 14; T-067-CONF-ENG CT, p. 57, ln. 8 to p. 63, ln. 4, stating that he first met [REDACTED]*Compare with* CAR-OTP-2120-0598 and T-065-CONF-ENG ET, p. 13, ln. 15 to p. 18, ln. 9, where P-0306 unequivocally asserted that [REDACTED], especially p. 14, lns 3-4 ("[REDACTED]").
[29] *See below* VI.B.3. Mr NGAÏSSONA did not assist Anti-Balaka and FACA elements in GOBÉRÉ.
[30] According to P-0306, Mr NGAÏSSONA would have: (1) personally gave the name "Anti-Balaka" to the movement upon his return to BANGUI (**P-0306**: T-064-CONF-ENG ET, p. 34, lns 3-8); P-0306 made no such allegation in his 2018 statement (**P-0306**: T-067-CONF-ENG CT, p. 76, lns 17-25). Countless items of evidence establish that the name "Anti-Balaka" existed well before Mr NGAÏSSONA returned to BANGUI (*see i.a.* CAR-OTP-2001-0329, at 0329; CAR-OTP-2001-2123, at 2126; CAR-OTP-2001-3302, at 3303-3304; CAR-OTP-2079-1940, at 1940); (2) [REDACTED]. This new allegation was never mentioned in P-0306's three prior interviews, despite having mentioned specifically the content of [REDACTED] (**P-0306**: T-067-CONF-ENG CT, p. 71, ln. 17 to p. 76, ln. 6). *Contra* **P-1521**: T-083-CONF-ENG CT, p. 11, lns 13-15; **P-0889**: T-109-CONF-ENG CT2, p. 50, ln. 20 to p. 51, ln. 1, p. 82, lns 15-23; **P-0888**: T-123-ENG CT2, p. 41, ln. 11 to p. 42, ln. 20; **P-1193**: T-125-CONF-ENG CT2, p. 15, ln. 22 to p. 16, ln. 8; **P-0966**: T-116-CONF-ENG CT, p. 55, ln. 7 to p. 61, ln. 25; **P-2232**: T-077-CONF-ENG CT, p. 7, lns 3-19; and (3) [REDACTED](**P-0306**: T-065-CONF-ENG ET, p. 50, ln. 2 to p. 53, ln. 15). *Contra* **P-0888**: T-123-ENG ET, p. 43, ln. 13 to p. 46, ln. 10 (qualifying P-0306's allegation as "pure lies"); **P-0889**: T-109-CONF-ENG CT2, p. 85, lns 5-8. [REDACTED]. [REDACTED]; [REDACTED].
[31] [REDACTED].
[32] [REDACTED].

15. Against this backdrop, it appears P-0306 was coached to incriminate Mr NGAÏSSONA, as evidenced by P-0306's provision of four documents that summarised the key points of his prospective testimony.[33] P-0306 was generally evasive when confronted with the inauthenticity of these documents,[34] and his explanations are either implausible or unclear. First, CAR-OTP-2120-0598 includes details on events, which had yet to take place at the time of its supposed drafting[35] − an impossibility which the witness was unable to address in any coherent way.[36] Second, P-0306's testimony on the author of the documents was unconvincing and replete with inconsistencies. P-0306's initial account was that [REDACTED] drafted CAR-OTP-2120-0598, while another [REDACTED] drafted CAR-OTP-2120-0599. Confronted with the same handwriting in three of the documents, P-0306's provided further inconsistent evidence, claiming that [REDACTED] when the documents were drafted.[37] Yet, P-0306 stated that [REDACTED], well before P-0306's [REDACTED][38] and that [REDACTED] in 2016, making it impossible for him to have drafted the documents mentioning proceedings against Mr NGAÏSSONA in 2018.[39] These flagrant discrepancies further undermine P-0306's insistence on being truthful when confronted with them.[40]

16. [REDACTED],[41] P-0306 would have had no benefit from these notes on his prospective testimony. Other indicators on the documents similarly confirm P-0306's fabrication of evidence against Mr NGAÏSSONA.[42] The only reasonable conclusion is that external actors were coaching P-0306, and P-0306 lied about the circumstances of their drafting to obscure this fact.[43]

3.2. P-0965

17. P-0965 is an impostor who depicted himself as a valuable insider witness with important information about the organisation and arming of the Anti-Balaka in advance of the 5 December 2013 attack. P-0965 lied on the stand on several key facts, such that he cannot be relied upon.

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[33] [REDACTED].
[34] [REDACTED].
[35] [REDACTED]. *See* [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[36] **P-0306**: T-066-CONF-ENG CT, p. 64, ln. 10 to p. 65, ln. 16.
[37] [REDACTED]. [REDACTED].
[38] **P-0306**: T-067-CONF-ENG CT, p. 23, ln. 18 to p. 24, ln. 14, p. 26, lns 15-23.
[39] **P-0306**: T-067-CONF-ENG CT, p. 26, ln. 15 to p. 27, ln. 19.
[40] **P-0306**: T-067-CONF-ENG CT, p. 26, ln. 18 to p. 27, ln. 19.
[41] [REDACTED].[REDACTED]
[42] [REDACTED]; [REDACTED].
[43] [REDACTED].

18. The witness stated that he had joined P-0306's elements about a week before 5 December 2013[44] and immediately became P-0306's [REDACTED].[45] This role allegedly provided him with a unique vantage point on several, uncorroborated events, notably: (i) [REDACTED];[46] (ii) [REDACTED];[47] and (iii) [REDACTED].[48] On the stand, P-0965 stated he became P-0306's [REDACTED] after the 5 December attack,[49] which casts substantial doubts on the veracity of his account. Confronted with these inconsistencies, P-0965 tried to save face and dismissed them as interpretation issues.[50] Playing him back the audio of his Rule 68(3) statement only confirmed his insincerity.[51] P-0965 began refusing to answer certain questions unless he was reminded of his prior statement,[52] fearing being exposed as not credible.

19. Nothing in the case record supports that P-0965 was P-0306's [REDACTED]. This uncertainty about the foundation of all P-0965's knowledge means his testimony should be disregarded in its entirety. Strikingly, P-0306 identified someone else as his [REDACTED], and he did not even recognize P-0965's name.[53] Other witnesses close to P-0306, or who took part in coordination meetings, did not know recognize P-0965's name either.[54] In fact, not a single witness had heard of him.

3.3. POUSSOU (P-2625)

20. POUSSOU's testimony must be rejected in full, as his evidence is irreparably impugned[55] by his: (i) clear bias against Mr NGAÏSSONA and the Defence; (ii) non-cooperation with the Court and (iii) contradictory claims and overall demeanour.

21. First, POUSSOU's bias against Mr NGAÏSSONA and the Defence is evident. POUSSOU attempted to incriminate Mr NGAÏSSONA at all costs, even when he clearly lacked knowledge on a topic.[56] He also demonstrated a hostile, obstructive and aggressive demeanour during the

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[44] **P-0965**: CAR-OTP-2046-0134-R01, at 0141-0142, lns 255-279.
[45] [REDACTED].
[46] [REDACTED].
[47] [REDACTED].
[48] [REDACTED]; [REDACTED].
[49] **P-0965**: T-062-CONF-ENG CT, p. 44, ln. 17 to p. 45, ln. 18.
[50] **P-0965**: T-062-CONF-ENG CT, p. 44, ln. 17 to p. 68, ln. 14.
[51] **P-0965**: T-063-CONF-ENG CT, p. 45, ln. 11 to p. 52, ln. 1.
[52] **P-0965**: T-062-CONF-ENG CT, p. 44, ln. 17 to p. 68, ln. 14, p. 69, lns 13-21.
[53] **P-0306**: T-066-CONF-ENG CT, p. 11, ln. 4 to p. 12, ln. 7. *See also* CAR-OTP-2032-0179, at 0278-0279, a document prepared by the CAR authorities and detailing P-0306's entourage, which identifies someone else as P-0306's secretary.
[54] **P-1521**: T-081-CONF-ENG ET, p. 58, lns 23-24; **P-0446**: T-097-CONF-ENG CT2, p. 64, lns 10-17.
[55] Ngudjolo AJ, para. 168.
[56] *See e.g.,* **P-2625**: T-192-ENG CT, p. 4, ln. 16 to p. 13, ln. 7, p. 20 lns 4-16, p. 24, ln. 21 to p. 25, ln. 18; T-193-CONF ENG CT2, p. 26, lns 18-19.

Defence's examination.[57] POUSSOU often refused to answer Defence questions,[58] made inappropriate and disparaging remarks,[59] raised his voice at times in anger,[60] and used violent language.[61]

22. Second, ample evidence shows that POUSSOU aimed to secure personal gain from his cooperation with the Court. He did so by fabricating so-called "[REDACTED]" allegedly containing key incriminating evidence against Mr NGAÏSSONA, which he never produced.[62] POUSSOU provided countless different versions of the status of his "[REDACTED]".[63] When it became apparent that he could not personally benefit from his testimony before the Court, POUSSOU abruptly withdrew his cooperation, providing ever-shifting reasons for it, leading to his summons.[64] Moreover, POUSSOU's obstructive conduct before the Court is consistent with evidence showing a constant pattern of deceit and opportunism in POUSSOU's personal and professional life.[65]

23. Third, POUSSOU contradicted himself on several aspects of his testimony further impugning his overall credibility, and when pressed for the basis of his alleged knowledge, he often could not provide it.[66] Confronted with information tending to contradict his claims, POUSSOU

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[57] P-2625 was "demonstrably more aggressive towards the Defence than the Prosecution"; Ongwen TJ, para. 556.
[58] **P-2625**: T-192-ENG CT, p. 61, ln. 14, p. 64, lns 12-24; T-193-CONF-ENG CT2, p. 8, lns 3-5, p. 9, lns 12-13, p. 18, lns 20-23, p. 98, lns 23-24.
[59] **P-2625**: T-192-ENG CT, p. 14, lns 12-22, p. 39, lns 16-18, p. 45, lns 24-25, p. 47, lns 4-8, p. 59, lns 15-22, p. 67, ln. 24, to p. 68, ln. 9, p. 70, lns 15-19, p. 72, lns 2-3 (exhibiting inappropriate physical demeanour), p. 75, lns 22-25; T-193-CONF-ENG CT2, p. 4, ln. 22 to p. 5, ln. 2, p. 10, lns 5-9, p. 14, ln. 18, p. 15, lns 2-3, p. 19, lns 18-21, p. 21, lns 13-14, p. 27, lns 17-22, p. 29, lns 22-25, p. 33, lns 5-10, p. 51, lns 5-7, lns 21-22, p. 53, ln. 1, lns 13-15 ("I don't have to answer you with a yes or no. I'm not Mr Ngaïssona's wife, to know where he is"), p. 56, lns 7-13, p. 61, lns 2-4, p. 63, lns 13-25, p. 64, lns 17-19, p. 67, ln. 21, p. 72, lns 16-19, p. 107, lns 23-24. The Presiding Judge had to intervene on several occasions, **P-2625**: T-192-ENG CT, p. 40, ln. 19 to p. 41, ln. 19, p. 76, lns 11-13; T-193-CONF-ENG CT2, p. 8, lns 7-16, p. 9, lns 12-17, p. 15, ln. 24 to p. 16, ln. 6, p. 18, ln. 24 to p. 19, ln. 4, p. 22, lns 3-7, p. 58, lns 12-14, p. 61, lns 6-10, p. 66, lns 3-6, p. 73, lns 4-13.
[60] **P-2625**: T-192-ENG CT, p. 40, lns 16-20, p. 61, lns 5-8; T-193-CONF-ENG CT2, p. 58, lns 14-18.
[61] **P-2625**: T-193-CONF-ENG CT2, p. 98, lns 5-8 ("I would prefer to have my throat slit than coming back tomorrow").
[62] [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[63] [REDACTED]; [REDACTED].
[64] **P-2625**: T-192-ENG-CT, p. 31, ln. 17 to p. 33, ln. 7. As argued by the Prosecution, P-2625's "continuing absence and unresponsiveness are calculated and designed to avoid the judicial process to secure his testimony before this Court", ICC-01/14-01/18-1519-Conf-Red, para. 20. *See also* [REDACTED]; ICC-01/14-01/18-1694-Conf, para. 15 (as held by the Chamber, P-2625 "changed his mind on multiple occasions as regards his cooperation with the Prosecution and provided various reasons for his non-cooperation, including the Search Operation"). *See also* ICC-01/14-01/18-1640-Conf-Exp, para. 22; ICC-01/14-01/18-739-Conf-Red, para. 27; ICC-01/14-01/18-804-Conf, para. 20; ICC-01/14-01/18-1519-Conf-Red, paras 3, 6 ("P-2625 has a history of non-cooperation with the Court").
[65] ICC-01/14-01/18-1519-Conf-Red, para. 12; ICC-01/14-01/18-1640-Conf-Exp, paras 20-22; CAR-OTP-2134-0218; CAR-OTP-2134-0248-R01; CAR-OTP-2134-0179-R01; CAR-OTP-2134-0300; P-2625 was also cited in the *Bemba et al* case as having facilitated the first contact between KOKATÉ and KILOLO, *see below* II.B.3.4. KOKATÉ (P-0801) and II.C.2.3. KOKATÉ (P-0801).
[66] *See e.g.,* **P-2625**: T-191-ENG ET, p. 54, ln. 22 to p. 55, ln. 12; T-192-ENG CT, p. 49, lns 3-25.

lacked readiness to admit to not knowing something, was evasive, and resorted to speculation.[67] Key portions of POUSSOU's evidence is based on (anonymous) hearsay.[68] The Prosecution described POUSSOU's evidence as "unique".[69] This is due to significant portions of his evidence lacking corroboration and being inconsistent with other evidence, rather than possessing privileged knowledge on Mr NGAÏSSONA or the charged crimes.[70]

3.4. KOKATÉ (P-0801)

24. The Chamber cannot reasonably rely on KOKATÉ's testimony in adjudicating the charges against Mr NGAÏSSONA. Besides KOKATÉ's proven role in corrupting at least 14 witnesses in the *Bemba* case,[71] and reputation as a person who tends to lie,[72] KOKATÉ's testimony is replete with contradictions, impugning his credibility to such an extent that it cannot serve as a basis to convict Mr NGAÏSSONA.[73]

25. First, KOKATÉ gave contradictory statements with respect to core allegations, for instance on his alleged participation in meetings in Cameroon and on Mr NGAÏSSONA's purported attendance in those meetings.[74] KOKATÉ also provided inconsistent accounts with respect to Mr NGAÏSSONA allegedly financing the Anti-Balaka movement.[75] Even when confronted with contrary evidence, KOKATÉ deceived the Chamber by minimising his involvement in the 5 December attack,[76] and the several attempts to destabilise and overthrow the CAR

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[67] S*ee e.g.,* **P-2625**: T-192-ENG CT, p. 4, ln. 16 to p. 13, ln. 8, p. 20, lns 4-16, p. 24, ln. 21 to p. 25, ln. 19, p. 34, lns 15-21; T-193-CONF ENG CT2, p. 26, lns 18-19, p. 63, lns 9-25; Ongwen TJ, paras 298, 343.
[68] Gbagbo and Blé Goudé Judge Henderson's Reasons, paras 42-45 ("when the only evidence in relation to a particular proposition is based primarily on anonymous hearsay or hearsay without adequate information about the reliability and credibility of the source, the Chamber must conclude that such a proposition is unsupported").
[69] ICC-01/14-01/18-1640-Conf-Exp, paras 13-16; ICC-01/14-01/18-1519-Conf-Red, para. 29. *See also* ICC-01/14-01/18-739-Conf-Red, para. 2.
[70] ICC-01/14-01/18-1640-Conf-Exp, paras 19-32.
[71] ICC-01/14-01/18-807-Conf; ICC-01/14-01/18-964-Conf, para. 19; Bemba et al. TJ, paras 131, 148, 162, 327, 334, 342, 420, 428-431, 433-434, 472 513 (Trial Chamber VII confirmed, *i.a.* that KOKATÉ (i) acted in concert with Mr Arido to identify and approach potential witnesses with the suggestion that they testify in favour of Mr Bemba to the effect of 'recruiting' them; (ii) promised money, reparations from the Court, and possible relocation to Europe to certain witnesses in exchange for their false testimony, including in relation to their – false – military status (iii) coached witnesses ahead of their testimony, (iv) instructed witnesses not to reveal to the Court his role in the facilitation of contact between the, and the Bemba Defence, and (v) effectively paid witnesses).
[72] **P-2625**: T-192-ENG CT, p. 50, ln. 3 to p. 51, ln 1.
[73] *See* ICC-01/14-01/18-807-Conf; ICC-01/14-01/18-920-Conf.
[74] *See below* III. B. 2.2.1 The so-called 'Cameroon group' and VI.A.5.1. Alleged meetings at the Hilton Hotel.
[75] **P-0801**: T-037-CONF-ENG CT, p. 79, ln. 17 to p. 86, ln. 15.
[76] **P-0801**: T-035-CONF-ENG CT, p. 3, ln. 19 to p. 12, ln. 21; T-037-CONF ENG CT, p. 87, ln. 3 to p. 90, ln. 12; T-38-CONF-ENG CT, p. 18, lns 5-11 (with reference to CAR-OTP-2101-6143, at 6144-6145), p. 37, ln. 18 to p. 19, ln. 14 (with reference to CAR-OTP-2088-2934 at 2938); T-38-CONF-ENG CT, p. 56, ln. 4 to p. 57, ln. 21 (referencing document CAR-D30-0006-0022); T-39-CONF-ENG CT, p. 15, ln. 3 to p. 16, ln. 18 (with reference to document CAR-OTP-2084-1229); CAR-OTP-2084-1222. Prosecution witnesses testified that KOKATÉ was involved in military operations in 2013, which KOKATÉ denied, **P-2841**: CAR-OTP-2127-4238-R01, at 4265,

government.[77] KOKATÉ misrepresented his military background and rank.[78] At times, even the Prosecution questioned the veracity of KOKATÉ's evidence, which was convoluted and implausible.[79]

26. Second, KOKATÉ's prior involvement in witness tampering in the *Bemba* case further impugns his overall credibility, as it demonstrates a pattern of deceit before the Court.[80] When confronted with Trial Chamber VII's legal findings with respect to his involvement in the *Bemba* case, KOKATÉ at first denied engagement,[81] while later opting to remain silent.[82] Third, KOKATÉ's overall demeanour during testimony, exhibiting defensiveness, evasiveness and visible unrest, further reinforces his unreliability as a witness.[83]

3.5. P-1847

27. The Chamber should attribute minimal weight to P-1847's prior recorded statements[84] for the following two reasons. First, it is impossible to reconcile P-1847's prior recorded statements

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para. 154; T-30-CONF-ENG CT2, p. 22, lns 18-20; **P-2328**: T-047-CONF-ENG CT, p. 4, ln. 10 to p. 5, ln. 2. Several Facebook conversations suggest KOKATÉ's potential involvement in military operations in CAR, which KOKATÉ denied systematically, *see* **P-0801**: T-038-CONF-ENG CT, p. 37, ln. 15 to p. 38, ln. 20 (with reference to CAR-OTP-2101-9735 at 9806, indicating "*c'est Kokaté qui gère les operations militaires*"), p. 39, lns 1-22 (with reference to CAR-OTP-2102-3203 at 3371), p. 39, ln. 23 to p. 40, ln. 10 (with reference to CAR-OTP-2102-2520 at 2631), p. 40, ln. 13 to p. 41, ln. 25 (with reference to CAR-OTP-2101-8599 at 8648, 8719), p. 41, lns 6-25 (with reference to CAR-OTP-2101-6315, at 6327), p. 43, ln. 14 to p. 44, ln. 8 (with reference to CAR-OTP-2102-2520, at 2698), p. 44, ln. 9 to p. 45, ln. 4 (with reference to CAR-OTP-2102-2520, at 2722), p. 45, ln. 5 to p. 47, ln. 1 (with reference to CAR-OTP-2100-6685 at 6742-6744), p. 47, ln. 2 to p. 48, ln. 18 (with reference to CAR-OTP-2102-6699, at 6856, 7074), p. 51, ln. 9 to p. 52, ln. 18 (with reference to CAR-OTP-2101-7114 at 7123-7128). *See also* CAR-OTP-2065-0175, from [00:01:29] to [00:02:27], CAR-D29-0006-0054, at 0054-0055, lns 25-8 (KOKATÉ indicates "*nous avons attaqué la ville de Bangui*").

[77] **P-0801**: T-038-CONF-ENG CT, p. 78, ln. 17 to p. 85, ln. 17 (with reference to CAR-OTP-2100-1773, CAR-OTP-2100-1778); **P-0889**: CAR-OTP-2027-2290-R02 at 2304, para. 88; **P-1521**: T-083-CONF-ENG CT, p. 24, lns 23-25, p. 26, lns 17-19 (describing KOKATÉ as an "opportunist who used the Anti-Balaka movement to earn profit from the authorities", and "who would play on both sides in order to earn his daily bread. And he continues to do so even to this day"). *See also* CAR-D30-0006-0010, at 0012.

[78] **P-0801**: T-033-ENG CT, p. 8, lns 21-22; T-39-CONF-ENG CT, p. 5, lns 1-19, p. 7, ln. 17 to p. 11, ln. 16; CAR-D30-0006-0019; CAR-D30-0006-0016; CAR-OTP-2089-0936.

[79] **P-0801**: T-034-ENG CT, p. 75, lns 3- 11 ("Well, Mr Kokaté that strikes me as a sort of an odd thing. The reason why is it, it seems, strange to me that Mr Ngaïssona who's perfectly capable of speaking for himself would ask you to speak for him or for the group. So, why you?"); T-035-CONF-ENG CT, p. 12, lns 1-21 ("it strikes me as somewhat odd that you would not have any indication of those attacks until, in the case of the 5 December attack, the day of the attack itself."); Ongwen TJ, paras 279, 285, 384, 542.

[80] Bemba et al. TJ, paras 125, 420, 428-431, 434, 472.

[81] **P-0801**: T-033-ENG CT, p. 19, ln. 4 to p. 20, ln 15 ("I totally stand by my statement."); T-039-CONF-ENG CT, p. 14, ln. 4 to p. 16, ln. 18.

[82] *See e.g.,* **P-0801**: T-038-CONF-ENG CT, p. 85, ln. 18 to p. 86, ln. 5.

[83] *See e.g.,* **P-0801**: T-037-CONF-ENG CT, p. 81, ln. 5 to p. 82, ln. 16; T-038-CONF-ENG CT, p. 13, lns 18-19 ("I'm not able to answer that question. He was in Cameroon. I was in France. So I think my -- my answer has been really quite, quite clear"), p. 38, lns 6-7, p. 42, ln. 17 to p. 43, ln. 6; T-039-CONF-ENG CT, p. 5, ln. 20 to p. 7, ln. 9 (prompting the intervention of the Chamber), p. 10, lns 7-22, p. 11, ln. 14 ("I was clear and I answered your question already."), p. 14, lns 12-13 ("Sir, when I say -- when I don't know, I don't know. Stop asking me."); Ongwen TJ, paras 313, 383, 458, 544.

[84] First Statement, CAR-OTP-2061-1534; Second Statement, CAR-OTP-2122-8251.

with his live testimony. While the Chamber found that P-1847 testimony was influenced by interference,[85] it made no findings on P-1847 changing his testimony at the behest of Mr NGAÏSSONA or someone close to him.[86] Moreover, there is no evidence indicating P-1847 intended to assist Mr NGAÏSSONA by recanting his prior recorded statements whereas there is evidence of P-1847's prior involvement in a scheme to incriminate Mr NGAÏSSONA.[87] Given this lack of evidence on P-1847's motives for recanting, it cannot be inferred beyond a reasonable doubt that P-1847's prior recorded statements are true whereas his live testimony is false. P-1847's live testimony on this issue does not assist in determining the truth. He never acknowledged that his prior recorded testimony was in complete contradiction with his testimony before the Chamber; rather, he untruthfully stated that his prior recorded statement only contained minor errors.[88]

28. Second, as will be demonstrated throughout the present Brief, P-1847's prior recorded statements consist of allegations that (1) are internally inconsistent, (2) amount to hearsay, (3) are largely uncorroborated, and (4) contradicted by other direct evidence. Given these severe deficiencies in the statements' reliability, the Chamber should attribute minimal evidentiary weight to them, especially where the statements and P-1847's live testimony are completely inconsistent with respect to Mr NGAÏSSONA's alleged acts and conduct.[89]

3.6. P-0487

29. P-0487's testimony was unclear, inconsistent and at times entirely incredible.[90] His sole objective was to minimize his own role in the Anti-Balaka, by depicting himself as weak and powerless, having no choice but to get involved for his own safety.[91] However, a large body of evidence reveals the depth of P-0487's dishonesty and demonstrates that he was a key figure in the Anti-Balaka.[92] The witness' strenuous denials diminished his credibility with each of his

[85] ICC-01/14-01/18-2126-Conf, para. 69.
[86] *Ibid*., paras 70, 83, 90.
[87] *See below* II.C.2.2. P-1847.
[88] *Ibid*., paras 49-50.
[89] ICC-01/14-01/18-2126-Conf, para. 48 (enumerating seven specific contradictions between P-1847's statements and his live testimony, of which six relate directly to Mr NGAÏSSONA's alleged individual criminal responsibility).
[90] *See also* submissions on the lack of coherence and overall credibility of P-0487's prior-recorded statement in ICC-01/14-01/18-1620-Conf. The Chamber made explicit reference to these arguments when detailing the grounds warranting rejection of the Prosecution's request for the submission of P-0487's prior-recorded testimony (ICC-01/14-01/18-1661-Conf, paras 89-92).
[91] **P-0487**: T-201-CONF-ENG CT, p. 25, lns 1-13; T-202-CONF-ENG CT, p. 47, ln. 21 to p. 48, ln. 13.
[92] [REDACTED]; [REDACTED]; [REDACTED].

implausible explanations.[93] In particular, P-0487's claim that [REDACTED]l[94] is irreconcilable with P-0487's self-serving testimony on his marginal role in the movement.[95]

30. P-0487's narrative on Mr NGAÏSSONA's supposed efforts to return BOZIZÉ to power is refuted by a wealth of evidence that demonstrates Mr NGAÏSSONA's commitment to the end of hostilities.[96] The witness' insinuation that Mr NGAÏSSONA had a "secret agenda"[97] is based, at best, on speculation and hearsay, as the witness admitted to never discussing it with Mr NGAÏSSONA[98] and [REDACTED].[99] While P-0487 claimed [REDACTED][100] told him of Mr NGAÏSSONA's supposed plan to destabilise the transition,[101] there is consistent evidence that does not corroborate this information and indicates that [REDACTED] was close to Maxime MOKOM ('MOKOM').[102] Lastly, it is implausible that P-0487 refused to join meetings organised by Mr NGAÏSSONA when he also claimed he had a [REDACTED] [REDACTED].[103]

31. P-0487 alluded to [REDACTED]. His evidence on Mr NGAÏSSONA's [REDACTED][104] are uncorroborated and consist of hearsay and his own speculation.[105] At times, the witness' narrative on this issue presented important inconsistencies with his previous statements, which he could not coherently explain.[106] Moreover, the witness's overall timeline is inconsistent with his account regarding [REDACTED]. P-0487 specifically and with no reservations stated he left [REDACTED].[107] This means P-0487 would have received several visits from

[93] [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[94] **P-0487**: T-202-CONF-ENG CT, p. 34, lns 9-24.
[95] **P-0487**: T-202-CONF-ENG CT, p. 47, lns 4-19.
[96] *See i.a.* CAR-OTP-2084-0146; CAR-OTP-2076-0815, from [00:09:30] to [00:10:33], CAR-D29-0006-0721, at 0726, lns 10-28 (Mr NGAÏSSONA stating that he did not work for BOZIZÉ); CAR-OTP-2101-3225, at 3226; CAR-OTP-2025-0362; CAR-OTP-2025-0372; CAR-OTP-2042-2467, from [00:25:00] to [00:27:00], CAR-OTP-2107-1489, at 1490, lns 3-36. Also note that P-0487 conceded taking part in a meeting with SAMBA-PANZA in January 2014, alongside Mr NGAÏSSONA, who expressed his support for a ceasefire, *see* T-208-CONF-ENG CT, p. 11, ln. 14 to p. 12, ln. 5. *See below* VI.F.2. After 5 December 2013.
[97] **P-0487**: T-208-CONF-ENG CT, p. 34, ln. 13 to p. 35, ln. 5.
[98] **P-0487**: T-208-CONF-ENG CT, p. 10, ln. 8 to p. 11, ln. 4.
[99] [REDACTED].
[100] [REDACTED].
[101] **P-0487**: T-202-CONF-ENG CT, p. 18, ln. 23 to p. 19, ln. 4, p. 49, lns 18-22.
[102] [REDACTED]; [REDACTED] [REDACTED]; [REDACTED]; [REDACTED] [REDACTED].
[103] [REDACTED].
[104] [REDACTED]; [REDACTED]. [REDACTED]; [REDACTED].
[105] P-**0487**: T-202-CONF-ENG CT, p. 27, lns 1-5.
[106] [REDACTED]. *Compare* [REDACTED]. [REDACTED]. [REDACTED].
[107] [REDACTED].

individuals[108] [REDACTED],[109] given Mr NGAÏSSONA returned to BANGUI on 14 January 2014.[110] Such a timeline could not have occurred.

32. P-0487's flagrant evidentiary shortcomings are so pervasive as to impugn the entirety of his testimony. P-0487 also repeatedly reported suffering from memory loss,[111] making him unreliable. Lastly, numerous witnesses reported that in 2014, P-0487 [REDACTED] [REDACTED], indicating a personal bias against Mr NGAÏSSONA.[112]

3.7. DEMAFOUTH (P-2328)

33. The Chamber should exercise caution when assessing the reliability of Jean-Jacques DEMAFOUTH's – P-2328 ('DEMAFOUTH') evidence. Throughout his testimony, DEMAFOUTH exhibited an obvious bias against BOZIZÉ,[113] whom he blames for hindering his Presidential ambitions,[114] having him arrested,[115] as well as other misfortunes.[116] This bias is consistent with his certainty that BOZIZÉ was behind the creation of the Anti-Balaka.[117] However, his evidence was largely based on anonymous hearsay, as the witness consistently failed to identify his sources[118] and resorted to speculation,[119] expecting the Chamber to believe him because of his supposed "expertise" in security and defence issues.[120]

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[108] [REDACTED]; similarly in [REDACTED].
[109] [REDACTED].
[110] *See below* VI.C. The Prosecution failed to prove that Mr NGAÏSSONA's appointment as political coordinator was planned prior to his return to BANGUI.
[111] **P-0487**: T-201-CONF-ENG CT, p. 23, lns 2-6; T-204-CONF-ENG ET, p. 60, ln. 6 ("I said that I forget often"); T-206-CONF-ENG CT, p. 81, lns 2-3; T-208-CONF-ENG CT, p. 37, ln. 22 to p. 38, ln. 2.
[112] [REDACTED]; [REDACTED].
[113] *See i.a.* **P-2328**: T-046-CONF-ENG CT, p. 20, lns 1-7, expressing disappointment that BOZIZÉ's responsibility had not been "really highlighted" in the trial against BEMBA at the ICC; T-049-CONF-ENG CT, p. 92, ln. 13 ("leaders like François Bozizé who were pillaging and destroying").
[114] **P-2328**: T-046-CONF-ENG CT, p. 11, ln. 14 to p. 12, ln. 11, p. 45, lns 13-25; T-049-CONF-ENG CT, p. 83, lns 8-25, insisting that it is BOZIZÉ who invalidated the witness' candidacy in 2005, contrary to article CAR-D30-0007-0161 that rather suggests it was the constitutional court.
[115] **P-2328**: T-046-CONF-ENG CT, p. 13, ln. 22 to p. 14, ln. 1, p. 31, lns 5-17.
[116] On a criminal case concerning the murder of some members of the army, which was allegedly initiated by BOZIZÉ to "settle scores" with the witness, *see* **P-2328**: T-049-CONF-ENG CT, p. 83, ln. 8 to p. 84, ln. 8, p. 91, lns 4-8. On an accusation to have embezzled DDR funds, *see* **P-2328**: T-048-CONF-ENG CT, p. 81, ln. 24 to p. 85, ln. 25. On an alleged attempt to arrest P-2328 in 2013, *see* **P-2328**: T-046-CONF-ENG CT, p. 49, lns 14-16; T-049-CONF-ENG CT, p. 72, lns 9-14.
[117] **P-2328**: T-046-CONF-ENG CT, p. 77, ln. 15 to p. 79, ln. 6, p. 84, lns 12-22, p. 86, ln. 15 to p. 87, ln. 23, p. 89, lns 7-25.
[118] **P-2328**: T-046-CONF-ENG CT, p. 77, ln. 15 to p. 79, ln. 6 (unidentified individuals at MPOKO camp), p. 80, lns 5-10 (unidentified "informants"), p. 83, ln. 11 to p. 84, ln. 12 (members of the intelligence services); T-047-CONF-ENG CT, p. 5, lns 3-15 (claiming that while he was not charged with the security of the country, he would exchange information every day with an unidentified "colleague" who was in charge of intelligence), p. 60, lns 6-7 ("I had some informants in Cameroon").
[119] **P-2328**: T-046-CONF-ENG CT, p. 84, ln. 5-10; T-047-CONF-ENG CT, p. 36, lns 7-16, p. 41, lns 1-14.
[120] **P-2328**: T-046-CONF-ENG CT, p. 80, lns 13-15; p. 88, ln. 17 to p. 89, ln. 3.

34. DEMAFOUTH also expressed a strong bias against the Anti-Balaka movement[121] and by extension, against Mr NGAÏSSONA − whom he painted as nothing more than BOZIZÉ's militant arm.[122] His explanations on Mr NGAÏSSONA seeking to destabilise the transition were convoluted[123] and in stark contrast with the wide amount of evidence demonstrating Mr NGAÏSSONA's consistent commitment to peace, both in public addresses and official correspondence.[124] DEMAFOUTH's claims that he had no knowledge of any of these documents[125] and that he did not remember hearing about any calls for peace[126] is hardly credible, especially in light of the witness's claim of having had daily dealings with the Anti-Balaka movement.[127] Similarly, the witness's claim that he had not seen Mr NGAÏSSONA "even begin to implement good will *vis-à-vis* the DDR"[128] is in stark contrast with a wealth of other documentary and testimonial evidence demonstrating it.[129] The witness adopted incoherent positions throughout his testimony, such as claiming that it was difficult for the transitional government to deal with the fragmented Anti-Balaka,[130] whilst at the same time arguing that there were no difficulties in identifying or attributing crimes to the Anti-Balaka.[131] These remarks further highlight his bias.

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[121] **P-2328**: T-049-CONF-ENG CT, p. 9, lns 23-25 ("you had… a horde of people with all sorts of arms of all types, machetes, weapons, who were in the town. In the name of whom? Who raped, looted, did whatever they wanted").
[122] *See i.a.* **P-2328**: T-047-CONF-ENG CT, p. 24, lns 3-5, p. 42, lns 6-12, p. 59, lns 19-23.
[123] **P-2328**: T-047-CONF-ENG CT, p. 36, ln. 7 to p. 37, ln. 14, p. 39, lns 5-23.
[124] CAR-OTP-2084-0146; CAR-OTP-2025-0396; CAR-OTP-2023-2447, CAR-OTP-2107-1511, at 1512-1513; CAR-OTP-2005-0095, CAR-OTP-2122-9368, at 9369-9373; CAR-D30-0003-0001. *See below* VII.D. Mr NGAÏSSONA's words and actions in 2014 prove he never harboured any criminal intent.
[125] **P-2328**: T-048-CONF-ENG CT, p. 17, lns 7-24, p. 22, ln. 25 to p. 23, ln. 9, p. 25, ln. 7 to p. 34, ln. 15, p. 50, ln. 22 to p. 57, ln. 2, p. 64, ln. 21 to p. 67, ln. 25, p. 70, ln. 5 to p. 71, ln. 23.
[126] **P-2328**: T-048-CONF-ENG CT, p. 38, lns 16-18.
[127] *Ibid.*
[128] **P-2328**: T-047-CONF-ENG CT, p. 46, ln. 24.
[129] CAR-OTP-2025-0362; CAR-OTP-2025-0372; CAR-OTP-2025-0408. *See below* VII.D.7. Billeting and DDRR.
[130] **P-2328**: T-048-CONF-ENG CT, p. 41, ln. 18 to p. 42, ln. 8 (explaining that the Anti-Balaka were not subject to trust-building measures because it was impossible to distinguish who was and who was not an Anti-Balaka), p. 46, ln. 21 to p. 47, ln. 2 (arguing that nothing could be done for the demobilisation of the Anti-Balaka as they were completely mixed up with the population); T-049-CONF-ENG CT, p. 51, lns 1-3 (stating it was difficult for him to deal with the Anti-Balaka as they were a nebulous and complex organisation).
[131] **P-2328**: T-048-CONF-ENG CT, p. 46, lns 1-11 (arguing that it was not difficult to attribute crimes to the Anti-Balaka); T-049-CONF-ENG CT, p. 21, ln. 22 to p. 22, ln. 11 (arguing that the fragmentation of the Anti-Balaka did not impede their identification and attribution of crimes as "they were all Anti-Balaka"), p. 22, lns 13-21 (stressing that the claim that there existed fake Anti-Balaka came from the movement's leaders, implying that he was sceptical about it); T-047-CONF-ENG CT, p. 73, lns 1-6 (denying he was aware of a "rift" between Mr NGAÏSSONA and Mr YEKATOM's groups).

35. DEMAFOUTH's claims of being the saviour of the country and the protector of the transition do not withstand even the slightest scrutiny.[132] The witness appears to have been involved in numerous attempts to destabilise CAR over a span of 20 years,[133] including during the transition.[134] Witnesses described him as a "specialist in manipulating people",[135] "a very controversial individual",[136] and "a troublemaker".[137] DEMAFOUTH's actions were always driven by personal gain and political ambitions and his testimony was no exception. Therefore, the Chamber should exercise the utmost caution when assessing DEMAFOUTH's incriminatory evidence.

3.8. P-2673

36. No weight should be afforded to P-2673's account of the alleged events for the following three reasons. First, as an [REDACTED],[138] the witness admitted that both [REDACTED] and people in BANGUI did not trust him since they considered him a traitor.[139] Second, the witness testified that while in [REDACTED], where he allegedly gathered incriminating information on Mr NGAÏSSONA, his contacts stopped sharing information with him.[140] Third, P-2673 admitted that certain people, who knew he worked in [REDACTED], might have had a motive to give him false or misleading information.[141] P-2673's participation in a scheme to incriminate Mr NGAÏSSONA explains how, despite being an untrustworthy and ostracized

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[132] **P-2328**: T-047-CONF-ENG CT, p. 14, lns 14-19 ("fortunately there was some people like myself and others who provided intelligence and information to the international forces so that we could have the transitional system that continued until elections could take place"), p. 51, lns 8-24; T-049-CONF-ENG CT, p. 91, lns 21-22 ("in my country there are people who do not like people like myself who work in all integrity and who want peace").
[133] **P-2328**: T-046-CONF-ENG CT, p. 13, lns 2-22 (relating to his position as leader of the APRD, a rebel movement against BOZIZÉ). *See also* CAR-D30-0007-0161; CAR-D30-0007-0187, at 0197 (noting that the criminal court received evidence of a further destabilisation attempt); CAR-D30-0007-0022; CAR-OTP-2099-0232-R02; **P-0291**: T-052-ENG ET, p. 23, ln. 19 to p. 24, ln. 20.
[134] **P-0801**: T-037-CONF-ENG CT, p. 22, lns 2-10, p. 39, lns 3-12 ("he had one ambition […] to become head of state by all means possible"); **P-2926**: T-031-CONF-ENG CT, p. 68, lns 15-18, there were rumours in BANGUI that P-2328 used R&J to destabilise the transition; **P-2841**: T-030-CONF-ENG CT2, p. 46, ln. 25 to p. 47, ln. 8; CAR-OTP-2101-3413, at 3417 confirms he was heard by the Prosecutor of the Republic for the events in FATIMA; CAR-OTP-2093-0159 (Anti-Balaka press communiqué lamenting P-2328's decision to arm some FACA elements to attack the Anti-Balaka); CAR-OTP-2100-8151, at 8159; CAR-OTP-2102-5471, at 5730; CAR-OTP-2102-6699, at 7319; CAR-OTP-2100-8342, at 8358-8359; CAR-OTP-2101-8129, at 8158; CAR-OTP-2099-7606, at 7708.
[135] **P-0801**: T-037-CONF-ENG CT, p. 23, lns 14-15; *see* also **P-0884**: T-057-CONF-ENG ET, p. 62, ln. 25 (the word « *manipulative* » was wrongly translated as "manipulated", *see* T-057-CONF-FRA ET, p. 63, lns 2-3); **P-0992**: T-093-CONF-ENG ET, p. 8, lns 2-10.
[136] **P-0291**: T-052-ENG ET, p. 23, lns 22-23.
[137] **P-0888**: T-123-ENG CT2, p. 69, ln. 11.
[138] [REDACTED].
[139] [REDACTED].
[140] **P-2673**: T-042-CONF-ENG CT, p. 66, lns 3-7.
[141] **P-2673**: T-042-CONF-ENG CT, p. 66, lns 17-23

member of his community, the Prosecution was able to lead extensive incriminatory evidence through him.[142]

37. P-2673's active role in a witness coaching scheme is consistent with P-2673's questionable character and morals. The witness, confronted with his statement, admitted he lied to [REDACTED] [REDACTED][143] and [REDACTED][144] to obtain money, despite initially denying it.[145] His attempts to convince the Chamber of his truthfulness on the stand,[146] cannot be taken at face value given his clear propensity for deceit. As such, any hearsay information gathered and shared by the witness cannot be reasonably relied upon since it appears to be fabricated to serve his own interests, *i.e.* [REDACTED], [REDACTED].[147]

3.9. P-2926

38. P-2926's evidence should be afforded limited probative value.[148] P-2926 was called as an overview expert, which both Defence teams challenged.[149] P-2926's testimony did not strengthen the probative value of his report, which remains in large part hearsay and the witness' opinion of the CAR situation. As a result, the report's conclusions, especially regarding Mr NGAÏSSONA, should have the same probative value as an NGO report.

39. The Presiding Judge clarified that the worth of an expert opinion depends on the underlying sources.[150] P-2926's examination failed to bolster the reliability of his sources. P-2926's evidence is replete with unsupported inferences,[151] or sources whose anonymity and vagueness precludes verification and thereby insulates them from challenge.[152] This includes examples

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[142] *See below* II.C. The Prosecution relied on contaminated testimonies of key witnesses.
[143] [REDACTED].
[144] [REDACTED].
[145] **P-2673**: T-042-CONF-ENG CT, p. 71, ln. 17 to p. 73, ln. 10, referring to CAR-OTP-2127-6435-R01, at 6452-6453, paras 111-116.
[146] **P-2673**: T-042-CONF-ENG CT, p. 76, ln. 22 to p. 77, ln. 23.
[147] *See below* II.C. The Prosecution relied on contaminated testimonies of key witnesses; [REDACTED]; Annex A.04 links between OTP witnesses, pp. 1-2.
[148] *See* T-012-ENG ET, p. 45, lns 21-25, the Presiding Judge remark on the quality of evidence provided by "classical witnesses" *versus* "so-called experts who […] come from the West".
[149] *See* ICC-01/14-01/18-780-Conf; ICC-01/14-01/18-897-Conf.
[150] **P-2926**: T-031-CONF-ENG CT, p. 22, ln. 15 to p. 23, ln. 4.
[151] **P-2926**: T-031-CONF-ENG CT, p. 41, lns 2-19 (linking COAC and COCORA to BOZIZÉ), lns 20-24 (linking COAC and COCORA to the Ministry of Youth and Sports under BOZIZÉ), p. 47, lns 17-20 (making a sweeping statement that all BOZIZÉ supporters adopted the rhetoric that Seleka are foreign Muslims with ties to jihad). P-2926 also did confirm that there were 148 footnotes in the report, meaning that 25% of the report is unsourced or that P-2926's own reports constitute the sources, *see* **P-2926**: T-031-CONF-ENG CT, p. 83, lns 15-24, p. 84, lns 4-9, p. 85, ln. 2 to p. 86, ln. 6.
[152] **P-2926**: T-031-CONF-ENG CT, p. 46, lns 4-9; T-032-CONF-ENG CT3, p. 56, ln. 6 to p. 57, ln. 2.

such as "*Entretien avec le responsable de WWF pour la RCA, Bangui, 2014*",[153] "*Entretiens de l'auteur avec des membres de la société civile et les autorités locales, Bangassou, 2017*"[154] and "*[…] l'auteur lors d'une mission de recherche dans la zone de Berbérati en 2016*",[155] "*Recherches de l'équipe de Crisis Group au Cameroun auprès de journalistes et des services de sécurité*".[156] The witness conceded that not all of his sources appear in the report[157] and confirmed the difficulty in verifying the information at trial.[158]

40. Similarly, references to Mr NGAÏSSONA should not be given any probative value. In some cases, incriminating allegations about Mr NGAÏSSONA are not supported by any source,[159] or only from vague and potentially biased sources.[160] Moreover, additions in the draft report were made upon Prosecution's request,[161] leading to an increase of mentions of Mr NGAÏSSONA from 18 to 41 between the first and the last version of the report, thereby diminishing their probative value.[162]

41. Finally, P-2926 copied an entire paragraph from Roland Marchal's report "*Brève histoire d'une transition singulière. La République centrafricaine de janvier 2014 à mars 2016*",[163] without mentioning the source in his report. This calls into question the integrity, ethical conduct and

[153] P-2926 does not specify, who this "*responsable*" or what exact role they played in the WWF, *see* **P-2926**: CAR-OTP-2127-4289, at 4302, fn. 47.
[154] **P-2926**: CAR-OTP-2127-4289, at 4302, fn. 50.
[155] **P-2926**: CAR-OTP-2127-4289, at 4312, fn. 96.
[156] **P-2926**: CAR-OTP-2127-4289, at 4325, fn. 146; T-032-CONF-ENG CT3, p. 7, lns 10-18, p. 9. ln. 7 to p. 10, ln. 7.
[157] **P-2926**: T-032-CONF-ENG CT3, p. 31, lns 3-13, p. 35, lns 2-9, p. 41, lns 11-24.
[158] **P-2926**: T-032-CONF-ENG CT3, p. 12, ln. 24 to p. 13, ln. 8.
[159] **P-2926**: T-032-CONF-ENG CT3, p. 15, ln. 21 to p. 16, ln. 1, in relation to CAR-OTP-2127-7981, at 7989.
[160] On Mr NGAÏSSONA keeping the money from the Brazzaville forum, P-2926 was uncertain of his source which was either "Sébastien Wenezoui or another, but it was a source from the Anti-Balaka themselves", *see* **P-2926**: T-032-CONF-ENG CT3, p. 85, ln. 21 to p. 86, ln. 5.
[161] *See e.g.,* **P-2926**: T-032-CONF-ENG CT3, p. 18, ln. 6 to p. 20, ln. 13. For an example of Prosecution instructions that led to the suppression of exculpatory evidence (i.e. a comment on the unstructured nature of the Anti-Balaka group), *see* **P-2926**: T-032-CONF-ENG CT3, p. 20, ln. 15 to p. 22, ln. 10. For examples on Prosecution instructions leading to the addition of incriminating information against Mr NGAÏSSONA, *see* **P-2926**: T-032-CONF-ENG CT3, p. 81, ln. 21 to p. 82, ln. 14, p. 88, ln. 14 to p. 89, ln. 5; CAR-OTP-2127-7981, at 8007. For the chronology of the drafts, *see* CAR-OTP-2127-7856 (1st version, dated July 2020, 25 pages long); CAR-OTP-2127-8094 (2nd version, dated 5 August based on the report's chain of custody, 26 pages long); CAR-OTP-2127-8023 (3rd version, dated 14 September 2020 based on the report's chain of custody, 34 pages long); CAR-OTP-2127-7981 (4th version, dated 12 October 2020 based on the report's chain of custody, 36 pages long); CAR-OTP-2127-4289 (Final version, dated 22 October 2020 based on the report's chain of custody, 38 pages long).
[162] **P-2926**: T-032-CONF-ENG CT3, p. 90, lns 14-23.
[163] *See* annex A.05. The only minimal differences are "*En outre*" and "*une ethnie viviant le long du fleuve Oubangui*" which were added upon the Prosecution requests, *see* CAR-OTP-2127-7981, at 7997. The phrase "*et Patrice-Edouard Ngaïssona avait nié le droit de Léopold Bara de representer le movement anti-balaka*" only appeared as of the 3rd version, *see* CAR-OTP-2127-8023, at 8038.

methodology of P-2926 and further diminishes the probative value to be attributed to his evidence.

C. The Prosecution relied on contaminated testimonies of key witnesses

1. Evidence shows a pattern of interference

42. An analysis of the evidence on the record uncovers a pattern of interference in the proceedings on behalf of the current CAR government, which contaminated the testimonies of key Prosecution witnesses, impugning their credibility.

43. The plan to incriminate Mr NGAÏSSONA included coaching witnesses and preparing a smear campaign. Defence witnesses testified about a group of people organising or participating in meetings meant to coach witnesses with respect to their testimonies against Mr NGAÏSSONA, in exchange for money and governmental positions.[164] First, shortly after Mr NGAÏSSONA's arrest, P-2673 organised meetings and gave money to witnesses so that they would testify against Mr NGAÏSSONA.[165] Everyone had their role: [REDACTED], [REDACTED] [REDACTED] would give money to [REDACTED], who acted as a middleman between [REDACTED].[166] In turn, P-2673 was tasked to "carry out the census" among the prospective witnesses and pay them in two instalments, one before testifying and one after the end of their testimony.[167] Judges, lawyers and prosecutors from CAR, present during those meetings, instructed and guided the prospective witnesses to construct a narrative that would incriminate Mr NGAÏSSONA.[168]

44. Second, [REDACTED] organised a meeting at Lycée Boganda and tried to turn certain Anti-Balaka from MOKOM's group against Mr NGAÏSSONA so that they would testify that Mr NGAÏSSONA was financing them and was their leader.[169] Third, in December 2018, [REDACTED] held a meeting at Hotel Azimut and offered money to youth leaders for them to convince others to testify that Mr NGAÏSSONA was responsible for the crimes committed by

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[164] The motive behind this was to remove Mr NGAÏSSONA from CAR's political scene, as he was viewed as one of TOUADÉRA's political opponents, *see* **P-0291**: T-053-ENG CT, p. 29, ln. 20 to p. 30, ln. 4; **P-1521**: T-083-CONF-ENG CT, p. 91, lns 9-16; [REDACTED]. Thus, Mr NGAÏSSONA had to be arrested abroad and be transferred to the Court, *see* [REDACTED]. [REDACTED] [REDACTED]("So all of those individuals came to testify, and I promise you that these are witnesses who have been prepped, just for them to be able to fill their wallets.").
[165] [REDACTED]; [REDACTED]. [REDACTED]; [REDACTED].
[166] [REDACTED]. [REDACTED].
[167] [REDACTED].
[168] [REDACTED].
[169] [REDACTED].

the Anti-Balaka.[170] KOKATÉ also [REDACTED].[171] [REDACTED] promised money and jobs to the youth in exchange for demonstrations against Mr NGAÏSSONA, however these youth refused to do so.[172] Lastly, [REDACTED] gave money directly to P-1048,[173] who was charged with rallying people in BOSSANGOA to testify against Mr NGAÏSSONA.[174]

45. [REDACTED] also launched a smear campaign against Mr NGAÏSSONA to incriminate him.[175] [REDACTED] strategy was to choose people who would falsely testify that Mr NGAÏSSONA was financing Anti-Balaka's activities and [REDACTED].[176] Additionally, around the same time, [REDACTED],[177] to further undermine Mr NGAÏSSONA.

46. As a result of the scheme, potential witnesses were threatened,[178] lost their jobs[179] and, to this day, are targeted by groups affiliated with the government.[180] Several witnesses were either part of the scheme or closely associated with those active in it, as will be demonstrated below.

2. Key involved witnesses

2.1. P-2673

47. P-2673 played a central role in the scheme to bribe and coach witnesses to testify against Mr NGAÏSSONA.[181] As part of this scheme, he testified against Mr NGAÏSSONA and was rewarded for his contribution.[182] Indeed, this would not be the first time P-2673 lied for money.[183]

48. P-2673's demeanour when testifying before the Chamber was unnatural and rehearsed.[184] To avoid contradicting himself, P-2673 repeatedly referred to his statement when answering questions even when that was not necessary or when there was no reference to his statement whatsoever, as if he was following a script, instead of answering organically.[185] Even when

[170] [REDACTED].
[171] [REDACTED].
[172] [REDACTED].
[173] [REDACTED].
[174] [REDACTED].
[175] **D30-4197**: T-278-CONF-ENG CT, p. 26, ln. 16 to p. 27, ln. 21, [REDACTED].
[176] [REDACTED]; [REDACTED].
[177] [REDACTED].
[178] [REDACTED]; [REDACTED].
[179] [REDACTED].
[180] [REDACTED]; ICC-01/14-01/18-2395-Conf, paras 11-15, 21-22.
[181] *See* Annex A.04, pp. 1-2.
[182] *See* Annex A.04, p. 2.
[183] *See above* II.B.3.8. P-2673.
[184] Ongwen TJ, para. 350.
[185] For a list of all instance P-2673 unnecessarily referred to his statement *see* Annex A.06. On testimony lacking spontaneity *see* Ongwen TJ, paras 537-539.

questioned on things he said earlier in his in-court testimony, he kept referring to his statement, never treading outside of its strict confines.[186]

49. This behaviour is consistent with P-2673's involvement in the scheme to influence and coach witnesses against Mr NGAÏSSONA and effectively confirms that he is among the witnesses who lied under oath and manipulated others for his own personal benefit,[187] diminishing any value his account might hold.

2.2. P-1847

50. P-1847 is described as an easily manipulated person,[188] [REDACTED] and other people implicated in the scheme to incriminate Mr NGAÏSSONA, such as [REDACTED][189] and [REDACTED].[190] [REDACTED] [REDACTED][191] and appears to have political ambitions.[192] According to [REDACTED], P-1847 would find people in BOSSANGOA and ask them to testify before the Court.[193]

51. P-1847's account of Mr NGAÏSSONA alleged contribution to the Anti-Balaka movement, riddled with inconsistencies,[194] should be examined in light of P-1847's close relationship to [REDACTED] [REDACTED][195] as well as of [REDACTED] involvement in the plot to bribe witnesses against Mr NGAÏSSONA.

52. First, pressure on behalf of the government appears to have been exerted on the witness prior to his testimony before the Court. Indeed, the Chamber viewed the [REDACTED], [REDACTED],[196] as an indirect form of interference.[197] Second, [REDACTED],[198] who disliked Mr NGAÏSSONA and is a member of the plot against him.[199] Lastly, [REDACTED],

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[186] S*ee* Annex A.06. *See also* **P-2673**: T-042-CONF-ENG CT, p. 48, ln 25 to p. 49, ln. 25, where the witness kept referring to his statement instead of clarifying what he previously said. The Prosecution tellingly tried to assist the witness, while he was examined by the Defence, to which Counsel for the Defence commented "Mr President, we can all read and the Prosecution is not able to assist the witness" when the latter's lack of candidness was exposed during examination by the Defence.
[187] *See* Annex A.04, p. 2
[188] **D30-4914**: CAR-D30-0024-0001-R01, at 0022, lns 884-891.
[189] *See* Annex A.04, pp. 1, 4.
[190] [REDACTED].
[191] [REDACTED].
[192] [REDACTED].
[193] [REDACTED].
[194] *See below VI.B.3.* Mr Ngaïssona did not assist Anti-Balaka and FACA elements in GOBÉRÉ, para. 454; VI.D.3.1.2. GOBÉRÉ, para. 494.
[195] *See* Annex A.04, p. 1, 4.
[196] ICC-01/14-01/18-1971-Conf, para. 29; ICC-01/14-01/18-2026-Conf, para. 22.
[197] ICC-01/14-01/18-2126-Conf, para. 69.
[198] ICC-01/14-01/18-1971-Conf, para. 53.
[199] [REDACTED], *See* Annex A.04, pp. 1, 4.

P-1847 confessed to having [REDACTED], [REDACTED] [REDACTED].[200] It is clear the witness alluded to the [REDACTED], [REDACTED][201] [REDACTED].

53. Therefore, it is likely that P-1847's evidence was contaminated in the context of the scheme to bribe and coach witnesses to testify against Mr NGAÏSSONA, which casts further doubt on his reliability as a witness.

2.3. KOKATÉ (P-0801)

54. Many Prosecution witnesses commented on KOKATÉ's character, painting a picture of an unscrupulous individual who tends to lie[202] and who changes sides depending on which one best serves his interest,[203] someone who would corrupt the Comzones[204] and try to buy people's vote in exchange for money to become the Anti-Balaka coordinator.[205] He is also described as an opportunist, whose goal was to become a minister.[206]

55. KOKATÉ is plagued by serious credibility issues.[207] In addition, KOKATÉ was present [REDACTED].[208] One cannot exclude the reasonable possibility that considering his known propensity to exploit crises in CAR,[209] KOKATÉ used the present case as a new opportunity to obtain a favourable position in the government.[210]

2.4. P-1719

56. Like [REDACTED] KOKATÉ,[211] P-1719 is a volatile individual, easy to manipulate and to corrupt.[212] When there was an instrumentalization of the Anti-Balaka for political purposes, P-1719 "*a pris goût aux tentations qui viennent de partout*" and would use his close friendship

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[200] CAR-OTP-00001661-R01, at 000006, lns 145-150.
[201] *See* ICC-01/14-01/18-2239-Conf-Anx, paras 27, 29-33 reporting on the increasingly stronger relations between Russia and CAR through the presence of the [REDACTED] in BANGUI. *See also* ICC-01/14-01/18-2063-Conf-Anx, paras 26, 32-34; ICC-01/14-01/18-1889-Conf-Anx, paras 21-23.
[202] **P-2625**: T-192-ENG CT, p. 50, ln. 3 to p. 51, ln 1.
[203] [REDACTED]; [REDACTED].
[204] **P-0966**: T-116-CONF-ENG CT, p. 63, lns 19-22.
[205] **P-0966**: T-118-CONF-ENG CT, p. 44, lns 1-14.
[206] **P-1193**: T-125-CONF-ENG ET, p. 58, ln. 16 to p. 59, ln. 4.
[207] *See above* II.B.3.4. KOKATÉ (P-0801).
[208] [REDACTED]. KOKATÉ is also linked to other Prosecution witnesses who are among those that were part of the scheme to incriminate Mr NGAÏSSONA, *see* Annex A.04, pp. 1, 4.
[209] *See e.g.*, **P-0889**: CAR-OTP-2027-2290-R02, at 2304, para. 88, who mentions that KOKATÉ wanted to organise a *coup d'état* and overthrow President SAMBA-PANZA.
[210] According to KOKATÉ, he was appointed *ministre délégué, conseiller spécial à la Présidence de la République* in March 2019, *see* **P-0801**: T-033-ENG CT, p. 7, lns 8-12. This appointment took place 13 months after he was interviewed by the Prosecution, in February 2018, *see e.g.*, CAR-OTP-2074-2722-R01.
[211] [REDACTED].
[212] [REDACTED]; [REDACTED].

with the [REDACTED] to fabricate stories about the Anti-Balaka.[213] Not only did he lie [REDACTED] for his own benefit,[214] but alongside [REDACTED][215] he falsely stated to the Prosecution that Mr NGAÏSSONA and BOZIZÉ were financing the Anti-Balaka.[216] Besides these connections, P-1719 is also closely linked to key players in the scheme to incriminate Mr NGAÏSSONA.[217]

57. P-1719's demeanour when responding to questions was also revealing. On the one hand, the witness repeatedly chose not to elaborate on his answers, limiting himself to referring to his statement.[218] On the other hand, P-1719 mentioned new, crucial information for the first time on the stand.[219] When questioned on this discrepancy, the witness failed to give a convincing answer[220] as to why information of crucial relevance was omitted from his 2017 statement. These considerations taken together cast considerable doubt on the veracity of his account and his overall credibility.

2.5. P-0884

58. According to information circulating in BANGUI in October 2018 among high-ranking officials, P-0884 was being pressured by the government. [221] The timeline should not go unnoticed. Two months before Mr NGAÏSSONA's arrest and while the scheme to incriminate him was starting to materialise, this [REDACTED] and Prosecution witness, [REDACTED],[222] was being pressured by the authorities.

59. P-0884 obviously denied being pressured.[223] P-0884 would have a reason to incriminate Mr NGAÏSSONA since [REDACTED],[224] and due to the [REDACTED].[225]

D. The Prosecution's excessive use of the submission regime has unduly burdened the Defence with an excessive quantity of non-probative evidence

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[213] [REDACTED].
[214] [REDACTED].
[215] [REDACTED].
[216] **D30-4914**: CAR-D30-0024-0001-R01, at 0025, lns 997-1018; T-303-CONF-ENG ET, p. 51, ln. 16 to p. 52, ln. 9.
[217] *See* Annex A.04, pp. 1, 4; [REDACTED].
[218] In total, the witness stopped himself from further elaborating on an answer twenty-five times, s*ee e.g.*, **P-1719**: T-142-CONF-ENG CT, p. 54, ln. 6 p. 56, ln. 16; T-143-CONF-ENG CT, p. 4, ln. 2, ln. 8. P-1719 was not a Rule 68(3) witness.
[219] [REDACTED]; [REDACTED]. *See* [REDACTED].
[220] **P-1719**: T-143-CONF-ENG ET, p. 20, ln. 1 to p. 22, ln. 4.
[221] **P-0884**: T-058-CONF-FRA CT, p. 80, lns 1-7, where the witness was presented with a message from Yves DÉPIT to Mr NGAÏSSONA, stating [REDACTED].
[222] **P-0884**: T-054-CONF-ENG ET, p. 11, lns 13-14.
[223] **P-0884**: T-058-CONF-FRA CT, p. 80, lns 11-17.
[224] *See below* VI.F.1.4 Mr NGAÏSSONA did not liaise with Mr YEKATOM, paras 544-545.
[225] **P-1521**: T-082-CONF-ENG CT, p. 20, lns 13-19.

60. The so-called "Submission Approach" adopted by the Chamber[226] had serious consequences for the evidentiary position of the Defence.[227] While under the jurisprudence of the Court, a submission regime is permissible, this nonetheless might have evidentiary consequences for the case. As Judge Henderson pointed out "[w]hat may be permissible is not, solely by virtue of it so being, necessarily appropriate".[228] In the instant case, this approach resulted in a case record crowded with evidence of inferior quality.[229]

61. First, irrelevant evidence has become part of the case file. For example, much of the 19,575 formally submitted items concern events that are well outside the scope of the charges but that were submitted over contemporaneous Defence objections.[230] This resulted in a casefile that is not focused on the charges against Mr NGAÏSSONA. Another striking example relates to phone attributions. The PTB initially alleged only a limited number of phone attributions, focusing on specific alleged calls between these numbers. However, during the trial, the Prosecution constantly sought to supplement its case with a flurry of new attributions and new phone numbers without ever clarifying their relevance. In doing so, the Prosecution has impermissibly moulded its case during the trial as the evidence unfolded in a way that made it impossible for the Defence to anticipate and adequately prepare. The ICTR Appeals Chamber determined that:

> [p]re-trial submissions and disclosure are not adequate substitutes for a properly pleaded indictment, which is the only accusatory instrument mentioned in the Statute and the Rules. The indictment must plead all material facts. *The Trial Chamber and the accused should not be required to sift through voluminous disclosures, witness statements, and written or oral submissions in order to determine what facts may form the basis of the accused's alleged crimes*, in particular, because some of this material is not made available until the eve of trial.[231]

This is precisely the situation that the Defence finds itself in at the end of trial, having to make sense and determine the relevance and reliability of several millions CDR entries, as well as thousands of Facebook messages, without a roadmap to the Prosecution's full intentions. As

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[226] ICC-01/14-01/18-631, para. 53.
[227] *See* ICC-01/14-01/18-521-Conf, paras 14-28.
[228] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 22.
[229] Bemba AJ Separate Opinion, para. 18.
[230] *See e.g.,* **P-0808**: T-069-CONF-ENG CT, p. 77, lns 3-5, relating to document CAR-OTP-2101-2039 which was recognised as formally submitted, despite the Defence's objection. *See also* **P-0801**: T-035-CONF-ENG CT, p. 64, ln. 22 to p. 66, ln. 3 (relating to document CAR-OTP-2001-6105 which was recognised as formally submitted); **P-0475**: T-090-CONF-ENG CT3, p. 50, ln. 6 to p. 52, ln. 23 (relating to video CAR-OTP-2023-0376 which was recognised as formally submitted).
[231] Emphasis added. Ntagerura et al. AJ, para. 64, citing Ntagerura et al. TJ, para. 66 (endorsed by Trial Chamber II in *Katanga* relying on the *Kupreskic* Judgement, which in turn cites the *Ntagerura* precedent, ICC-01/04-01/07-1547-tENG, para. 23).

elaborated below, this should lead to an exclusion of this evidence and it should not play any role in the determination of this case.

62. Second, this approach led to several duplicate items being submitted. For example, the exact same Anti-Balaka *communiqué de presse* and the exact same FIDH report were recognised as formally submitted on two different occasions.[232] Evidently, the case record is overflowed to the point that it has become unmanageable even for the Chamber itself to keep track of the submitted items.

63. Beyond duplicates, the Prosecution flooded the case record with media/press articles even though the Presiding Judge opined that such items had low probative value.[233] Press articles have also been shown to misquote or misinterpret the facts they purport to describe.[234] Other examples of categories of evidence burdening the case record are CDR evidence,[235] Facebook messages[236] and Yahoo emails. As will be developed in detail below in relation to Facebook material and CDR evidence, despite outstanding issues of authenticity and reliability,[237] the Defence is in the dark as to how the Chamber will deal with these issues and what impact this will have on its assessment of the evidence and what is given weight.

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[232] *See* metadata of CAR-OTP-2084-0164 and CAR-OTP-2001-2769 (submitted in June 2021) and metadata of CAR-OTP-2084-0172 and CAR-OTP-2124-0605 (submitted in October 2022).
[233] *See* **P-0808**: T-069-CONF-ENG CT, p. 76, ln. 19 to p. 77, ln. 1 ("PRESIDING JUDGE SCHMITT: And may I shortly. Please move on because this is -- the witness is perfectly right when he says this is a newspaper article, this is an opinion. You can ask a witness what he wants to say to an opinion, but to comment on some opinion of a journalist, okay, what kind of, yeah, of proof might that be, yeah, and how well might that proof be. So the newspaper article, as such, is perhaps -- has not such a high probative value, to put it this way. And the witness has clearly stated that he thinks this is biased. So we have really to move on from there. It doesn't make sense to -- to indulge in these kinds of documents further" referring to CAR-OTP-2100-0507 which was recognised as formally submitted through witness P-0808); **P-1193**: T-127-CONF-ENG ET, p. 28, lns 21-25 (referring to CAR-OTP-2001-3811 which had already been submitted through witness P-0801).
[234] *See* **P-0808**: T-069-CONF-ENG CT, p. 60, ln. 1 to p. 61 ln. 1, where the Prosecution read to the witness an article where he is allegedly quoted, and P-0808 explained that this was not a credible article as he never said those things. Later on, the Prosecution played the video of the alleged interview which proved that the witness was misquoted in the article, with the Presiding Judge remarking "And it's -- I may say, perhaps comment, it's indeed something different if you have the original, so to speak, and if you have it seen through the lens of a journalist", *see* **P-0808**: T-069-CONF-ENG CT, p. 83, ln. 5 to p. 86, ln. 14. On articles not being credible, *see* **P-0808**: T-069-CONF-ENG CT, p. 75, lns 1-10. [REDACTED]. [REDACTED]; CAR-OTP-2001-3068, at 3073, paras 31-32, reporting on the lack of professionalism in the production of news and information content by CAR journalists, as well as the lack of credibility.
[235] *See below* II.F. The call data material should be dismissed as a matter of law.
[236] *See below* II.E The extensive Facebook material should be given little to no evidentiary weight**.**
[237] ICC-01/14-01/18-973-Conf, paras 10-12.

64. As a result, the Defence is, on the one hand, forced to take into account large amounts of irrelevant or dubious evidence, but on the other hand, not given a meaningful opportunity to do so in the confines of this Brief.[238]

E. The extensive Facebook material should be given little to no evidentiary weight

65. There are approximately 870 Facebook items on the trial record, totalling around 27,687 pages. This material should be given little to no weight by the Chamber since it lacks authentication and reliability or is unduly prejudicial. As a body of technical evidence, the Facebook material shares deficiencies similar to those in the CDR material, as discussed below.[239]

1. The Facebook material is not self-authenticating as 'business records'

66. The Prosecution is incorrect in law and fact when it effectively argues[240] that the Chamber should not examine the way the Facebook conversations were generated and introduced into the proceedings. The Prosecution plays fast and loose with the legal concept of 'business records' which it does not explain, but nonetheless uses to argue that the records are self-authenticating.

67. First, the Prosecution's claim that the records were created "in the regular course of business"[241] appears partly inaccurate. The Prosecution explained in an *in partes* communication that "certain material" obtained from Facebook "was in PDF and/or HTML format" and "was processed through Analysis software (Axiom) to facilitate the presentation" and that "no forensic report exists concerning this process".[242] What is before the Chamber might be 'Facebook material' or may be properly characterised as derivative copies assembled by the Prosecution. The Prosecution claims that the substance is identical; however, the Chamber cannot verify that this was done competently. Even if the 'best evidence rule' is not a principle of international criminal law which generally applies,[243] where an item is conceded to be a copy and its resemblance to the original is unknown, this should preclude self-authentication.

[238] It is virtually impossible for the Defence to address all of the evidence in a 250-page brief. At the same time, the simultaneous filing of the Prosecution's brief means that the Defence is also prevented from addressing the specific evidence relied upon by the Prosecution and challenging its reliability and probative value.
[239] *See* II.F.1 The CDRs are not self-authenticating.
[240] *See* ICC-01/14-01/18-1874-Conf, para. 51; ICC-01/14-01/18-1956-Conf, para. 24.
[241] *See* ICC-01/14-01/18-1874-Conf, para. 51; ICC-01/14-01/18-1956-Conf, para. 24.
[242] Email of 11 November 2024 at 18:29, *see* Annex A.07.
[243] *See* Bemba et al. Defence Disclosure Decision, para. 10.

Self-authentication implies that a document's reliability is sufficiently established as to do away with *any* need for extrinsic evidence due to the degree of certainty about it.[244]

68. Second, the issue of the admissibility and authentication of alleged private Facebook conversations directly obtained from Facebook has not yet been ruled upon by the Court, meaning that there is no precedent on whether they can be qualified as business documents, and thus treated differently than general documentary evidence.

69. Third, there is no demarcated set of criteria for automatically qualifying documentary evidence from private sources as authentic and reliable. The *Katanga* Chamber did not elaborate on what could constitute self-authenticating evidence, but the examples it provided emphasize public availability and verifiability[245] or documents from public and official sources.[246] It singled out material from private sources as requiring more extrinsic assurances.[247] Therefore, the Prosecution's suggestion that a document that originated from a business is self-authenticating asks the Chamber to bypass its obligation to scrutinize material, and more generally runs counter to the system of evidence and practice of the Court. The Prosecution has also not established any factual foundation for its argument that "compilation and maintenance of accurate and complete records is undertaken in the regular course of business".[248]

70. Fourth, the Facebook material was created for a criminal prosecution which precludes self-authentication. The STL Chamber in *Ayyash et al* did not accept that material prepared from electronic source for criminal prosecutions was self-authenticating.[249] Similarly, domestic

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[244] *See* for example Advisory Notes on Rule 902 of US Federal Rules of Evidence ("Case law and statutes have, over the years, developed a substantial body of instances in which authenticity is taken as sufficiently established for purposes of admissibility without extrinsic evidence to that effect, sometimes for reasons of policy but perhaps more often because practical considerations reduce the possibility of unauthenticity to a very small dimension."). Note however that the Canadian Supreme Court observed in 1988 that "One of the hallmarks of the common law of evidence is that it relies on witnesses as the means by which evidence is produced in court. As a general rule, nothing can be admitted as evidence before the court unless it is vouched for *viva voce* by a witness. Even real evidence, which exists independently of any statement by any witness, cannot be considered by the court unless a witness identifies it and establishes its connection to the events under consideration. Unlike other legal systems, the common law does not usually provide for self-authenticating documentary evidence." (*R. v. Schwartz*, p. 476 at g).
[245] Katanga BTM Decision, para. 24(a).
[246] *Ibid.*, para. 24(b).
[247] *Ibid.*, para. 24(c) ("Private documents whose authenticity is dependent upon a connection with a third person or organisation must be authenticated by independent evidence. Such evidence must provide proof of authorship or adoption and integrity. If the date of the document cannot be inferred from the document itself, evidence of it should also be provided. Clearly, any form of authentication by the alleged author of the document is preferable.").
[248] *See* ICC-01/14-01/18-1874-Conf, para. 51; ICC-01/14-01/18-1956-Conf, para. 24.
[249] *See below* para. 103 concerning the need to authenticate CDRs. *See* Ayyash First Call Sequence Tables Decision, paras 113, 115 (on the decision on admissibility of the call sequence tables being deferred until the calling of witnesses who could provide information on, *i.a.* the provenance of the underlying CDR material, as

common-law systems typically require that documents created specifically for litigation are not self-authenticating as they either provide specific requirements for such materials or require testimony, certificates, or explanations in any case.[250] Several hundred Facebook records have the header "FACEBOOK MESSENGER MESSAGES (WARRANT RETURN)".[251] If this header was added by Facebook, then this shows the items were prepared for criminal proceedings and are not day-to-day business records. Even if these items are precisely what was provided to the Prosecution pursuant to an [REDACTED] judicial authorisation,[252] the Chamber does not have information before it concerning the domestic court processes and whether the materials were altered in any way. If, on the other hand, these are copies or assemblages created by the Prosecution,[253] then this header is an indicator that the documents are not the underlying un-touched business records. Moreover, 33 other items have a header that reads "Facebook Business Record"[254] and have a similar appearance to the warrant return items. The near verbatim reference to the business records rule[255] and a striking similarity to the Prosecution submission argument[256] suggests that they were not created "in the regular course of business" and instead may have been created for the purposes of criminal proceedings which precludes self-authentication.

71. Fifth, the Prosecution did not submit any material that could authenticate the Facebook material let alone assist the Chamber to understand what was received in response to the RFAs. These documents do not have the appearance of Facebook conversations the way users see them, thus how they relate to the day-to-day business of Facebook is not obvious. The two letters from the [REDACTED] authorities that appear to be related to the provision of some of the material to the Prosecution do not provide an explanation of the variety of electronic documents received from Facebook, that comprise conversations but also other more technical information.[257] Thus, these short letters are inadequate to authenticate the material the Prosecution has submitted. They do not explain the contents of what they conveyed and thus cannot provide

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well as its gathering, retrieval and storage), 119 (on said witnesses having to be made available for cross-examination); *see also* Ayyash Second Call Sequence Tables Decision, para. 88.

[250] *See below* paras 72-74.

[251] *E.g.* CAR-OTP-2099-7478.

[252] Which is also indicated by one of the two accompanying letters CAR-OTP-2099-1340 at 1340 referring to a search warrant under "Section 51 of the International Criminal Court Act 2006".

[253] *See above* para. 67.

[254] For example, CAR-OTP-2066-1510.

[255] *See below* para. 72.

[256] *See* ICC-01/14-01/18-1874-Conf, para. 51; ICC-01/14-01/18-1956-Conf, para. 24.

[257] CAR-OTP-2130-0409 refers to "information provided by Facebook" and CAR-OTP-2099-1340 makes no reference to Facebook.

the Chamber assurances of the reliability of the material or mitigate the prejudice described below.

72. Sixth, the so-called 'business document exception' evolved to circumvent the common-law prohibition on hearsay evidence,[258] by allowing varieties of routine business information to be admitted in documentary form. The rule typically has more application within private law while it is more circumscribed when it comes to criminal law.[259] What constitutes a business document is given a broad interpretation in some national jurisdictions;[260] however, authenticating evidence or testimony about how the records are compiled as part of the business are often required.[261] Thus, even if the Facebook items before the Chamber were before a domestic judge, the business record exception would not remove the need for authentication and fulfilment of procedural burdens, or live testimony.

73. Seventh, applying this doctrine as the Prosecution implicitly suggests could overlook essential safeguards present in common-law countries. In this way, the Prosecution's invocation of the exception is instructive. In both the United Kingdom[262] and Canada,[263] for example, courts and legislation have added criteria to the rule to ensure trial fairness. National practice might require statements from the provider of business records in the case of criminal trials[264] or proof that an individual who is implicated in the content of the business record is not available for testimony.[265]

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[258] Because information contained in a business document may be characterised as an out-of-court statement which is being offered in court for the truth of what was asserted. The process of reform in the UK is described in brief in Mason and Sang, Electronic Evidence and Electronic Signatures, chapter 'Hearsay', para. 3.33.
[259] In the UK, hearsay is permitted if there is advance notice (s. 2(1) of the Civil Evidence Act 1995). Exceptions to notice exist for various documents including business documents (s. 9(1) Civil Evidence Act 1995); however a certificate must still be provided to benefit from this rule s. (9)(2). In contrast, there are more stringent requirements for the admission of business documents in criminal matters (s. 117 UK Criminal Justice Act 2003).
[260] For example s. 117(2) of the UK Criminal Justice Act 2003: "(a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office, (b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with, and (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office".
[261] *See* next paragraph.
[262] *See* s. 117 of the UK Criminal Justice Act 2003 and the UK Crown Prosecution Service explanation of s. 117 of UK Criminal Justice Act.
[263] Canada Evidence Act, s. 30.
[264] Where the document "was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation", s. 117(4)(a), UK Criminal Justice Act 2003.
[265] Owing to the origin of the business record exception in the law of hearsay, information contained within a record is considered to be a statement, thus "a statement not made in oral evidence in the proceedings is admissible […] if […] (a) that the relevant person is dead; (b) that the relevant person is unfit to be a witness because of his

74. Eighth, common-law systems often identify a specific type of business records as 'electronic documents' that may impose additional obligations on the submitting party.[266] In Canada for example "[a]ny person seeking to admit an electronic document as evidence has the burden of proving its authenticity."[267] Canadian criminal law, specifies that if the digital material "by reason of its having been kept in a form that requires explanation" is to be admitted, then it should be "accompanied by a document that sets out the person's qualifications to make the explanation, [that] attests to the accuracy of the explanation".[268] To the extent that qualification document is required to be admitted, it could be seen as a specific authentication requirement.

2. The absence of testimony from a Facebook employee or technical expert limits the evidentiary weight of the material

75. No Facebook employee or representative testified, or explained the material generated by Facebook. Absent this, the material has not been authenticated and should be given little to no weight. Domestic legal systems are instructive in this regard.[269] In the case of electronic materials, authentication often includes: how the material was generated, the reliability of the process, and the accuracy of the storage systems.[270] The fact that none of this information is

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bodily or mental condition; (c)that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance; (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken; (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence" s. 116(2) via s. 117(5)(a), UK Criminal Justice Act 2003.

[266] Canada Evidence Act, s 31.8 defines these as "data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, print out or other output of that data.".

[267] Canada Evidence Act, s. 31.1.

[268] Canada Evidence Act, s. 30.4: "Where record kept in form requiring explanation".

[269] *See* the rejection of the admissibility of Facebook conversations due to a lack of authentication in *R. v. Donaldson*, paras 9-10 ("The Crown can gain admissibility from the documents by [among other ways] proving that the electronic document system was functioning properly. In order to do that, they require questioning of witnesses to show the nature of the electronic document system that was utilised to secure the message, and evidence about the historical successful use of that system." or *proof* "that the documents are third-party business records"), para. 13 ("The documents here are not proved to even be electronic documents. […]"), and para. 22 ("If you have a case that is important enough to take the court's time for two days, and you have evidence that is significant enough that it should be put before a court, then the resources and attention to demonstrate the admissibility of that evidence should be committed, both at the investigative stage and at the prosecutorial stage"). *See* Annex A.08, p. 2.

[270] *E.g.*, although bankruptcy proceedings, the US 9th Circuit of Appeal *In re Vee Vinhnee* at 446 approved the following 11 step foundation process for authenticating computer records: 1. The business uses a computer; 2. The computer is reliable; 3. The business has developed a procedure for inserting data into the computer; 4. The procedure has built-in safeguards to ensure accuracy and identify errors; 5. The business keeps the computer in a good state of repair; 6. The witness had the computer readout certain data; 7. The witness used the proper procedures to obtain the readout; 8. The computer was in working order at the time the witness obtained the readout; 9. The witness recognises the exhibit as the readout; 10. The witness explains how he or she recognises the readout; and 11. If the readout contains strange symbols or terms, the witness explains the meaning of the symbols or terms for the trier of fact. *See* Annex A.08, p. 7.

present before the Chamber indicates that the Prosecution's presentation of Facebook material is fatally deficient.

76. The Prosecution's own arguments for submission beg for such testimony. The Prosecution wrongly claims that the "profile ID number"[271] is an indicia of reliability yet neither the evidence on record, nor the Facebook material explains what a profile ID is. Only a Facebook employee familiar with the technical internal workings of Facebook systems could explain this and provide the Chamber with necessary insights. Similarly, the Prosecution is incorrect when it states, "the registration IP or IP logs, provide further indicia of reliability and authenticity".[272] Without testimony from an internal Facebook technician, the Chamber cannot evaluate whether the IP address information is robust, complete, or informative.

77. Formally speaking, the Chamber has no information before it, that it can consider concerning IP addresses or IP logs from Facebook. For this reason, it is also misleading of the Prosecution to describe IP addresses as "objective" data. The Prosecution's claim is not clear as to what the address objectively represents and therefore how it confers reliability to the record. IP addresses are not like phone numbers (*i.e.* they are not uniquely allocated to an individual), they do not confirm an individual's location, given the existence of 'VPN'[273] and differing network typologies, like 'NAT'.[274] VPNs create an encrypted tunnel for information from one point on a network[275] to another, such that activity appears to come from another destination. With NAT, potentially many devices share a single public IP address.[276] Thus, the presence of an IP address may also only be an objective indication of the use of a Wi-Fi or local network as a device may have an internal and external IP address that differ.[277]

78. There is no accompanying statement, glossary of terms for the technical jargon, or explanation as to other material that was disclosed alongside the conversations, and which may add to or diminish its probative value. For example, among the 33 items labelled as "business records",[278] there is a field that refers to 'NCMEC Cybertips'. The Chamber has no information about how these 33 records relate to the business practices of Facebook.

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[271] ICC-01/14-01/18-1874-Conf, para. 52 and ICC-01/14-01/18-1956-Conf, para. 25.
[272] ICC-01/14-01/18-1874-Conf, para. 52 and ICC-01/14-01/18-1956-Conf, para. 25.
[273] *I.e.* VPNs, *see* Virtual private network – Wikipedia, available online.
[274] *I.e.* NAT, *see* Network address translation – Wikipedia, available online.
[275] Including across the internet.
[276] NAT was developed for among other reasons to give a work around to the scarcity of public internet IP addresses.
[277] *See* IPv4 addresses – Wikipedia, available online.
[278] *See e.g.,* CAR-OTP-2131-1038-R01 at 1038.

79. Finally, the absence of expert or technical testimony is relevant to the reliability of the material beyond authentication. For example, only a Facebook technician with experience about Facebook's practices in 2013-2014 can provide information about whether safeguards at Facebook could have prevented multiple users from accessing the same accounts.[279] Particularly with the group accounts, having this information is necessary to conclude that the same individual is likely writing each time.[280]

3. The Facebook conversations have little to no probative value

80. The defence phase of the proceedings reinforced prior submissions arguing the extremely limited probative value of the Facebook conversations.[281] The Prosecution dedicated little time to testing the Facebook conversations and their alleged interpretations. In contrast, the Defence made an effort to provide context by calling witnesses that could speak to them. Several witnesses underscored that un-contextualised Facebook conversations cannot be taken at face value. Relevant witness testimony highlighted the following six issues that show the conversations are too unreliable to be used in a conviction.

81. First, the conversations often feature persons sharing un-verified information. Didier OUEBIO – D30-4679 ('OUEBIO') explained that he "didn't have the possibility to check or verify the source" of the information he shared.[282] The Defence's examination of P-2841 illustrated that within four minutes of P-2841 asking [REDACTED] a question,[283] [REDACTED] was portraying the content of P-2841's question as a fact in another conversation.[284] D30-4848 identified no less than ten excerpts of his conversations as rumours or fake-news.[285] Such testimony impacts the Chamber's evaluation of allegations about the locations of

[279] *See* ICC-01/14-01/18-1999-Conf, para. 15, where the Defence addresses a separate yet related objection to self-authentication of Facebook material citing United States Criminal Appeals courts jurisprudence that address issues focused upon the issues concerning concluding that a unique or attributed user is sending the messages.
[280] *See i.a.* examples of seemingly group accounts: "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]".
[281] ICC-01/14-01/18-1999-Conf, paras 8-16, ICC-01/14-01/18-2065-Conf, paras 8-10, ICC-01/14-01/18-2115-Conf, paras 8-9. Throughout this brief where Facebook messages are cited, the Defence does not concede that the name corresponds to the author unless indicated. The username is referred to for simplicity of reference.
[282] **D30-4679**: T-300-ENG-CONF-ENG ET, p. 6, lns 23-24. *See also e.g.* **P-2841**: T-030-CONF-ENG CT2, p. 9, lns 22-23 ("Given the speed by which - or with which information was being shared, a lot of the information was not always verified.").
[283] **P-2841**: T-030-CONF-ENG CT2, p. 8, ln. 11 to p. 9, ln. 2.
[284] CAR-OTP-2101-8342, at 8352-8353.
[285] [REDACTED]; [REDACTED].

individuals,[286] what people apparently said,[287] or the role of an Anti-Balaka group in a given incident.[288]

82. Testimony also confirmed that individuals stated their opinion in a way that suggests it is a fact but may be speculation or wishful thinking. For example, OUEBIO explained that he did not hear or have any direct knowledge of Mr NGAÏSSONA being involved in military deployments and was simply offering an opinion on a rumour even though a Facebook conversation would suggest he did.[289] In the Facebook messages, the conversation partner does not always follow up with a question as to how they know something. In fact, they may even share their same opinion or agree with them despite having no factual basis.[290]

83. Consequently, multiple separate conversations on the same topic do not necessarily corroborate any given fact.[291] Reliability does not increase if the original source was unreliable and, in most examples, identifying the source may be impossible or forgotten.[292] The Chamber must start from a presumption that all messages are misinformation unless proven otherwise, given that individuals will often present unreliable information as fact.

84. Second, testimony and evidence highlighted that information that appears to be private information was in fact circulating in public or was a fact of public knowledge. Mistaking knowledge of public information for private might lead the Chamber to erroneously conclude that a given individual had a more insider status than they did, which may in turn lead the Chamber to attribute weight to otherwise implausible knowledge. For example, several Facebook posts suggested that the imminency of the 5 December attack was public and widely known.[293] This is a clear example where evidence suggests OUEBIO did not necessarily have access to secret information, but absent the extra context, could be mistaken to have greater knowledge than he did.

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[286] *See below* para. 516, footnote 1840; [REDACTED].
[287] *I.e.* double hearsay since the conversations contain out of court statements about what someone not in the conversation apparently said. *See e.g.*, CAR-OTP-2133-7159, at 7172 ("[REDACTED]").
[288] **D30-4848**: T-297-CONF-ENG, p. 23, ln. 23 to p. 24, ln. 22 (referring to CAR-OTP-2102-5471, at 5609).
[289] **D30-4679**: T-299-CONF-ENG, p. 81, ln. 4 to p. 82, ln 11 (referring to CAR-OTP-2100-2994, at 3027).
[290] The potential to mistake opinion for factual knowledge or direct evidence in these conversations is simply an elaboration of why hearsay should be given limited weight or found unreliable and broadly speaking is prohibited in common-law based criminal law systems. *See above* para. 7.
[291] *E.g*, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[292] [REDACTED].
[293] [REDACTED].

85. Third, OUEBIO's testimony revealed the existence of disinformation campaigns in 2013.[294] Unlike misinformation, disinformation involves deliberate attempts by politically driven groups to spread false information about events or political figures. In several Facebook conversations, OUEBIO was asked about instances of incorrect information that a close friend [REDACTED] was asking him about.[295] One of these he described at the time as "intox" which he explained was false information.[296] A notable example of confusing information being circulated includes rumours about BOZIZÉ's whereabouts and intentions.[297] Such information warfare often results in accidentally misleading statements, making them un-detectable. Therefore, the Chamber should be particularly cautious when considering Facebook conversations as evidence, especially without solid corroboration. Annex A.03 presents a non-exhaustive list of Facebook messages that are refuted by other items of evidence, demonstrating that this material cannot be relied upon for the truth of its content.

86. Fourth, testimony confirmed that the meanings of jargons, slang and nicknames are often unproven, shifting, or different from what the Prosecution alleges. The Chamber must be particularly scrupulous when seeking to interpret slang related to labels or roles that could be understood as relating to power. As was recognised by the Presiding Judge during the testimony of OUEBIO, the phrase "the boss" can refer to many different individuals.[298] Similarly, OUEBIO could not recall what "the top" referred to in a message, even though he understood the Facebook message as someone giving an order.[299] Similarly, [REDACTED].[300] This is another title that is not specific to a single person even though the Prosecution claimed it refers to Mr NGAÏSSONA in several instances.[301] Two other similar examples of this are "the authority"[302] and the "old man" or "old men".[303] In each instance where a message refers to people without a clear name,[304] and a factual conclusion depends upon the interpretation, then the Chamber must individually be persuaded beyond a reasonable doubt that the identification or attribution is correct.

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[294] [REDACTED] [REDACTED] [REDACTED]. [REDACTED].
[295] [REDACTED].
[296] **D30-4679**: T-300-ENG ET, p. 53, lns. 4-5, referring to CAR-OTP-2132-4240 at 4270.
[297] *See* [REDACTED]. [REDACTED]. [REDACTED].
[298] **D30-4679**: T-300-ENG ET, p. 28, lns 1-12.
[299] **D30-4679**: T-301-ENG ET, p. 70, ln. 20 to p. 71, ln. 15.
[300] [REDACTED]. [REDACTED].
[301] ICC-01/14-01/18-1956-Conf, para. 13. In relation to emails, *see* ICC-01/14-01/18-1450-Red, paras 15, 20, 28, 32.
[302] *I.e.* "*authorité*" or "*authoriter*".
[303] *I.e.* "*le vieux*" or "*les vieux*".
[304] However, the Defence does not concede that all uses of names are accurate identifiers.

87. Fifth, the Chamber should consider the informal and unique linguistic culture of these private conversations when assessing their reliability and interpretation.[305] How prone a given person is to exaggerate,[306] speak figuratively, or in hyperbolic ways cannot be easily assessed without hearing from the writer of a message. A notable example from OUEBIO's testimony involved a message interpreted by the Prosecution as demonstrating "the prevalence of anti-Muslim animus within the Anti-Balaka", [307] which testimony showed to be harmless banter about a card game.[308] This example shows that the Chamber must scrutinise each of the Prosecution's linguistic interpretations as many claims are simply assertions, which are either not supported by any cited evidence, not a reasonable inference or at least, not the only one.[309] The Prosecution arguments have overly simplified the linguistic conflation between the term '*Musulmans*' and 'Seleka' in 2013-2014,[310] which was partly born out of necessity to protect oneself against Seleka's informants.[311] Many witnesses testified that the word referred to Chadian mercenaries or the Seleka, not the Muslim population of CAR. Thus, the Chamber cannot presume a fixed meaning to this word and this conflation should not be used by the Prosecution to infer an anti-Muslim animus at the time of the conflict.

88. Sixth, many conversations, being private are just inherently ambiguous. A subtle example of this are messages that contain the phrase "our men" or "our guys". OUEBIO explained that he used this phrase to refer to "those who were not the Seleka" and "were there to drive out the Seleka"[312] and summarised this as a "spiritual position".[313] His explanation is as intelligible as a news commentator using the same phrase – assuming a formal link to military actions would be unreasonable.

4. The use of the Facebook material is overly prejudicial

89. First, the late submission of approximately 27,687 pages of Facebook material, after all but four Prosecution fact witnesses had testified, adversely impacted the Defence ability to

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[305] The Defence has previously noted some individuals are prone to exaggerate.
[306] *E.g.* [REDACTED]. [REDACTED].
[307] ICC-01/14-01/18-2062-Conf, para. 36, fn. 114; ICC-01/14-01/18-2062-Conf-AnxA, p. 62, [REDACTED].
[308] **D30-4679**: T-300-ENG, p. 12, ln. 23 to p. 14, ln. 18.
[309] *E.g.* in ICC-01/14-01/18-1874, para. 24, the Prosecution alleges that the Facebook conversations show "the anti-Muslim mind-set and thirst for revenge was evident and prevalent within the group" and then states in fn. 79 and in ICC-01/14-01/18-1874-Conf-Anx, pp. 62-63, item 302 "[REDACTED]", referring to CAR-OTP-2101-9073, at 9078-9079.
[310] *See e.g.,* **P-0889**: T-111-CONF-ENG CT, p. 22, ln. 17 to p. 26, ln. 15; **P-1042**: T-163-CONF-ENG CT2, p. 48, lns 12-18; **P-1077**: T-149-ENG CT, p. 55, ln. 17.
[311] *See e.g.,* **P-0889**: T-111-CONF-ENG CT, p. 26, ln. 21 to p. 27, ln. 7, p. 30, lns 17-24.
[312] **D30-4679**: T-300-ENG ET, p. 64, lns 6-24.
[313] **D30-4679**: T-300-ENG ET, p. 64, ln. 23.

effectively prepare. This timing meant that, when examining witnesses, the Defence did not have full notice of the specific factual allegations that the Prosecution would seek to support with its bar-table motions.[314]

90. Second, the thousands of pages of Facebook material are barely touched upon through oral testimony. Only a small percentage of individuals relevant to the myriad Facebook accounts and conversations testified, and those who did provided insight into only a fraction of their messages. For example, OUEBIO was asked about 51 messages, only because the Defence made the extensive efforts to hear his testimony, yet the Prosecution submitted 182 pages of messages for OUEBIO.[315] As noted above and in Defence responses to bar-table motions, when live testimony did occur, the explanations provided often dramatically altered the perceived meanings of the messages, highlighting the importance of heightened scrutiny.[316] The prejudice caused by the manner that the Facebook material flowed through the procedure should outweigh any minimal probative value it may have.

91. Third, there is a significant quantity of hearsay evidence in the Facebook messages. Many of the reliability issues mentioned above are implications of the common-law concept of hearsay. At times, these statements are double hearsay[317] and anonymous hearsay.[318] The Presiding Judge himself noted that especially when people are talking about a third person which is not present the Facebook conversations should be treated with caution and the judges must be aware of the limits.[319] Unless a witness discussed their conversation, a message submitted for the truth of its content is properly characterised as documentary hearsay. The prejudice of this is referred to above,[320] but in balancing probative value against prejudice, should lead the Chamber to not give the Facebook conversations any weight.

92. Lastly, as discussed, it is puzzling that the Prosecution failed to bring an expert, submit forensic reports, or call a representative from Facebook. These omissions and choices have resulted in

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[314] The OTP 7th (ICC-01/14-01/18-1874-Conf), 10th (ICC-01/14-01/18-1956-Conf), and 17th (ICC-01/14-01/18-2062-Conf) BTM Requests were filed on 17 May 2023, 3 July 2023, and 25 August 2023 respectively. [REDACTED]. The Trial Chamber and the accused should not be required to sift through voluminous disclosures, witness statements, and written or oral submissions in order to determine what facts may form the basis of the accused's alleged crimes, in particular, because some of this material is not made available until the eve of trial, *see* Ntagerura et al. AJ, para. 64, citing Judgement Ntagerura et al. TJ, para. 66.
[315] There are a total of 187 pages of Facebook conversations in the Prosecution's list of materials for D30-4679.
[316] ICC-01/14-01/18-1999-Conf, paras 9-12, para. 22; ICC-01/14-01/18-2065-Conf, para. 33, paras 40-43; ICC-01/14-01/18-2115-Conf, paras 14-16, para. 25.
[317] *I.e.* They involved un-tested out of court statements about what other people said.
[318] *I.e.* They involved un-tested out of court statements about what an unidentified person said.
[319] **P-2328**: T-049-CONF-ENG CT, p. 42, lns 6-10.
[320] *See above* para. 7.

a lack of essential information, causing prejudice. In the absence of basic information, the Chamber should avoid drawing unsupported conclusions and instead consider how the Prosecution's systematic gaps have altered the overall understanding of the case.

F. The call data material should be dismissed as a matter of law

93. The CDRs are unreliable and should not be relied upon by the Chamber. The Prosecution flooded the trial record with CDRs without establishing their authenticity, reliability and relevance. For private documents such as CDRs, "whose authenticity is dependent upon a connection with a third person or organisation", there must be authentication by independent evidence, providing proof of authorship or adoption and integrity.[321] The CDRs should be entirely disregarded for the reasons set out below.

1. The CDRs are not self-authenticating

94. CDR material is not self-authenticating.[322] Evidence can only be deemed self-authenticating when it meets specific criteria. CDRs neither share the qualities of other self-authenticating evidence, nor has the Court's jurisprudence carved out a specific exception for them. This means that it was incumbent upon the Prosecution to submit evidence allowing the Chamber to ascertain that they are authentic and reliable.[323] It failed to do so.

95. The CDR evidence is not self-authenticating for five main reasons. These reasons also speak to the absence of authentication and in any case relate to the unreliability of the CDRs.

96. First, with three exceptions,[324] no CDRs provide an intrinsic indication of their source company, who created them,[325] and for what end they were created. They do not 'speak for themselves' like judgments and official proclamations do.[326]

97. Second, the Prosecution has not made the effort of taking each variety of items labelled as CDRs and explain why, considered individually, they are self-authenticating. The collection of

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[321] ICC-01/04-01/07-2635, para. 24(c). Indeed, in this case, the CDRs cannot "readily be authenticated by the party against whom they are tendered" and therefore cannot be presumed authentic.
[322] *Contra* ICC-01/14-01/18-1296, para. 21. *See also* ICC-01/14-01/18-1409-Conf, paras 14-21, hereby incorporated by reference.
[323] ICC-01/04-01/07-2635, para. 22.
[324] CAR-OTP-2019-1361; CAR-OTP-2019-1362; CAR-OTP-2103-0675, all contain a company logo.
[325] Several names appear in the metadata of the few .xls and .xlsx files, but the Prosecution has not sought to contextualise these or explain what role they played.
[326] *See* ICC-01/04-01/07-2635, para. 24(b) ("Official documents that are not publicly available from official sources […] are not self-authenticating and must be certified by the relevant authority.").

CDRs is varied in terms of types of documents. The visible disparities in file-format,[327] formatting[328] and content[329] among the submitted CDRs show that they are neither standardised nor automatically produced documents like receipts or invoices,[330] contrary to the Prosecution's claims.[331]

98. Third, and closely related to the last, for most CDRs, identifying the author[332] or their qualifications is impossible, though there are likely 16 to 17 authors among the submitted CDRs.[333] The broader corpus of the MOOV CDR shows multiple authorship,[334] and Hugues Ghislain N'DOUBA – P-2973 ('N'DOUBA') lacked knowledge to clarify this.[335] Anonymously authored, highly technical material like CDRs should not be considered self-authenticating let alone authentic or reliable without extrinsic guarantees.[336] At the STL, the trial chamber required proof that individuals providing CDRs were sufficiently competent, necessitating some proof of qualifications.[337] Proof of professional competence is required in many areas, and such information is reasonable to expect for evidence used in a criminal trial. This is important because: "the reliability and usability of CDR Extracts depends on the careful definition of what data should be extracted and the operators' staff performing the extraction queries consistently".[338] The Chamber cannot assess the reliability of CDRs without knowing specifically why a CDR was produced, who produced it, and whether they had the necessary

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[327] *I.e.* .csv, .pdf, .xsl, and .xlsx. *See* Annex A.09; CAR-D30-0011-0007.
[328] *See* CAR-D30-0011-0007*;* Annex A.09. BROWN confirmed that these are different formats of CDR, *see* **D30-4864**: T-270-ENG ET, p. 29, lns 5-6. Ideally all CDRs "should" be accompanied by a PDF file to ensure integrity, **D30-4864**: T-270-ENG ET, p. 11, ln. 15 to p. 12, ln. 5, p. 27, lns 10-14. The file-type does not appear in the Nuix view, the 'native file' must be downloaded from Nuix.
[329] Among the 39 CDRs submitted in the CDR BTM Annex A (ICC-01/14-01/18-1296-Conf-AnxA-Corr), there are 14 different types of CDR. From Orange, of the 30 CDRs, there are 9 variations; of the four Telecel CDRs, there are two variations; of the two CDRs that have a source indicated as the Government of CAR, there are two variations; and there is one CDR from MOOV. For an overview of all types of submitted CDRs and to see the distinguishing features *see* Annex A.09.
[330] **P-2973**: T-242-ENG CT, p. 9, lns 8-12, p. 10, lns 15-17, p. 27, lns 15-18, p. 40, lns 8-10, lns 21-23; CAR-OTP-2122-9874-R01, at 9878, para. 32.
[331] ICC-01/14-01/18-1296, para. 7 ("CDR are *generated* and maintained by communications service providers ("CSP") regarding mobile and fixed telephone communications") (emphasis added).
[332] Most of the CDRs are .csv files. There is no way to identify the author of the CDR from such files. In comparison, it is possible in some cases to identify the author of Excel files, *see* online.
[333] Common sense suggests that it is reasonable to conclude that CDRs with different selections of information (*i.e.* column headers), text colour, and table heading colours were produced by different individuals or alternatively disorganised and inconsistent individuals.
[334] **P-2973**: T-242-ENG CT, p. 7, ln. 15 to p. 8, ln. 21, *see* the discussion of Mr ZOAKOUMA. Another individual called "[REDACTED]" also appears in the metadata of another CDR from MOOV, *see* CAR-OTP-2010-0565.
[335] **P-2973**: T-242-ENG CT, p. 8, lns 1-2 (He did not "even know whether [Mr ZOAKOUMA] was working within the information service under Mr Kopati.").
[336] **D30-4864**: CAR-D30-0018-0001, at 0003, paras 1, 2, 4 ("[T]he reliability and usability of CDR Extracts depends on […] staff performing the extraction queries consistently").
[337] Ayyash et al. TJ, para. 1807.
[338] **D30-4864**: CAR-D30-0018-0001, at 0003, para. 1.2.4.

skills or were consistent.[339] The variety of formats from Orange alone illustrates that this process was not consistent. [340]

99. Fourth, explaining the purpose for creating a CDR extract and whether it is in fact a CDR is part of whether a document has its authenticity proven, especially absent this, a document cannot be self-authenticating. Legally speaking,[341] there is no basis to conclude that most submitted CDRs are accurate or even genuine CDRs. In *Bemba et al*, the Prosecution presented an independent forensic examination.[342] Similarly at the STL, the Prosecution conducted various audits to ensure the integrity of the CDRs it presented[343] and presented testimony on the creation, storage, and retrieval of the CDRs as well as the provenance, accuracy, integrity, and authenticity of the CDRs and CSTs.[344] As noted by the Prosecution, "CDR are collected for a variety of purposes"[345] which affects the information they contain. Duncan BROWN – D30-4864's ('BROWN') report identified an item labelled as a CDR[346] that was not standard.[347] In BROWN's testimony he noted that in his experience there are many documents that resemble CDRs but are not[348] and stressed the need for "some form of statement of origin"[349] to be certain. There are various ways to request information that may lead to different forensic pictures.[350] Thus, simply claiming CDRs were provided in response to an RFA[351] is insufficient to establish their identity and thus their authenticity and reliability, especially since the Prosecution failed to match the CDRs to their various RFAs.[352] Moreover, disclosed but unsubmitted CDRs show even further variations, challenging the CDRs' supposed consistency

[339] D30-4864 noted that "because each network stores and manages its data in different ways it would have to be somebody who […] understood what they were doing" and "a degree of competence would be required to produce all the evidence, all the information requested", **D30-4864**: T-271-ENG ET, p. 14, lns 22-25.
[340] *See* Annex A.09.
[341] The Chamber twice rejected the Rule 68 submission of a representative from Orange. D30-4864 viewed a very limited number of CDRs for his report and during testimony, **D30-4864**: T-270-ENG ET to T-273-ENG-ET.
[342] *See e.g.,* ICC-01/05-01/13-T-016-Red2-ENG, p. 66, lns 14-22.
[343] *See i.a.* that the CSTs were peer reviewed by the Prosecution, Ayyash et al. TJ, para. 1634.
[344] Ayyash et al. TJ, para. 1608.
[345] ICC-01/14-01/18-714-Conf-Red, para. 12.
[346] The 'Document Type' metadata of CAR-OTP-2046-0766 in Nuix indicates "Call Data Record Records (CDR)".
[347] CAR-D30-0018-0001, at 0022, para. 5.2.13.
[348] **D30-4864**: T-271-ENG ET, p. 4, lns 13-14.
[349] **D30-4864**: T-271-ENG ET, p. 3, lns 18-19.
[350] **D30-4864**: CAR-D30-0018-0001, at 0024, paras 5.3.5-5.3.6 (*e.g.* a query may be made against a telephone number, an IMEI, or IMSI).
[351] ICC-01/14-01/18-1296, para. 15.
[352] A clear indication of what CDR corresponds to what request is the starting point for beginning to authenticate these items, since this goes to establishing whether a CDR is exhaustive.

and reliability as a collective category.[353] The Prosecution failed to demonstrate how disparate material compares to justify blanket self-authentication or reliability.

100. Fifth, CDRs are not business records nor automatically produced. This cannot be a basis for permitting their self-authentication. CDRs are derivative of the actual information and are created *sui generis* upon request.[354] The Chamber cannot presuppose that they are routine items with an obvious purpose or identity from a glance. N'DOUBA's testimony[355] and BROWN's report explain this: law enforcement agencies often request CDRs, resulting in 'CDR Extracts'.[356] Due to digital information's intangible nature, assuming that CDRs are contemporaneous records misrepresents forensic and factual issues, as they are usually created at a later point in time. Their creation involves transforming underlying data through various digital processes and into other file formats.[357] Thus the claim that "the compilation […] of records is undertaken by [communications service providers] in the regular course of business and in accordance with domestic laws […] alone imbues them with sufficient indicia of reliability"[358] is unconvincing. For the Chamber to assess the evidence effectively, witnesses testimony on the general process of producing these so-called 'business records' is essential.[359] N'DOUBA clarified that single target CDRs do not meet the lay understanding of 'business records', because they are crafted for criminal investigation purposes, not regular business operations.[360] Thus, the argument that the CDRs comprise "multiple individual target

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[353] ICC-01/14-01/18-1296, para. 21.
[354] **D30-4864**: T-271-ENG ET, p. 20, lns 17-18 ("A CDR *is a product* combining these two sources of data") (emphasis added).
[355] **P-2973**: T-242-ENG CT, p. 9, lns 10-11 (the bills are assembled by hand), p. 10, lns 15-17 (the CDRs of a "legal nature" are formatted differently from the bills), p. 11, ln. 23 (material provided in Excel as opposed to the binary format can be altered), p. 40, lns 8-10 (the precision of the CDR depends upon the precision of the law enforcement request), p. 11, lns 11-12 (the binary format is not what is given to the client), p. 19, ln. 14 (N'DOUBA was not sure which database the CDRs were taken from, p. 40, lns 19-23 (the billing documents are different form the litigation CDRs).
[356] **D30-4864**: CAR-D30-0018-0001, at 0010, para. 4.1.5, at 0024, para. 5.3.5 ("CDRs are normally generated for a single target mobile number").
[357] BROWN noted that "a degree of competence would be required *to produce* all the evidence, all the information requested" (emphasis added), **D30-4864**: T-271-ENG ET, p. 14, lns 21-25. BROWN noted in response to a question that what is included depends upon "the individual who created the query of the database, as to whether they included all possibilities" and this might be because they "they weren't asked to include it", **D30-4864**: T-271-ENG ET, p. 26, lns 12-16.
[358] ICC-01/14-01/18-1296, para. 21.
[359] Ayyash et al. TJ, para. 360.
[360] **P-2973**: T-242-ENG CT, p. 9, lns 8-12 (bills are not systematically provided to individuals), p. 10, lns 15-17 (the bills are formatted differently than CDRs), p. 10, lns 21-22 (CDRs are only produced in relation to legal matters), p. 11, ln. 23 (material provided in Excel can be altered), p. 27, lns 15-18 (the CDRs are not what was produced for invoicing purposes), p. 40, lns 8-10 (the precision of the CDR depends upon the precision of the law enforcement request), p. 40, lns 21-23 (the CDR contains a multitude of information that the client cannot even understand or would have no interest in knowing), CAR-OTP-2122-9874-R01 at 9878, para. 32.

numbers"[361] further underscores why they are not self-authenticating. Also, as discussed above,[362] the Prosecution's reliance on the business rule exception is misguided, as this exception typically addresses inadmissible hearsay issues, not authenticity. Further, mere compliance with law is no guarantee of the reliability of the information contained in the CDRs since this depends upon the precise requirements and quality of the laws themselves.

101. Authentication of CDR evidence can be provided by a combination of, *inter alia*, (1) expert examination and verification; (2) testimonial evidence from telecommunication company representative who has knowledge of the process and "technical expertise";[363] and by a combination of relevant *indicia* of authenticity. In *Bemba et al.*, Trial Chamber VII relied on several such *indicia*, including the presence of corporate watermarks of the telecommunication provider on the tendered CDRs,[364] the recording of recognizable voices which in combination with call logs allowed for the attribution of phone numbers,[365] testimonial evidence of a highly qualified expert whose testimony was largely uncontested,[366] as well as "further information confirming the authenticity and chain of custody of these communications and logs".[367] Taken together, these factors led Trial Chamber VII to find that the call data records in that case were reliable. These *indicia* are mostly absent from the trial record in the present case.

2. The Prosecution failed to authenticate the Orange, Telecel or [REDACTED] CDRs

102. The Prosecution failed to bring evidence to authenticate the CDR obtained from Orange, Telecel and [REDACTED]. Where evidence is not self-authenticating, as is the case here, the burden to provide contextual evidence on the provenance of the CDRs lies squarely on the Prosecution.[368] There is no evidence on the record to allow the Chamber to satisfy itself that the CDRs are what they purport to be. This is mainly due to the Prosecution's failure to call expert evidence and/or competent witnesses representing the individual communication service providers, and because the CDRs present several anomalies which cast a doubt as to the accuracy of their content. These failures are fatal to the reliability and probative value of the CDRs, as detailed below.

[361] ICC-01/14-01/18-1296, para. 21.
[362] *See* II. E.1 The Facebook material is not self-authenticating as 'business records'.
[363] Ayyash et al. TJ, paras 360-361.
[364] Bemba et al. TJ, para. 219.
[365] *Ibid*., para. 220.
[366] *Ibid*., para. 221.
[367] *Ibid*., para. 222.
[368] Ayyash First Call Sequence Tables Decision, para. 113.

103. First, the Prosecution failed to call witnesses who by merit of their positions in the company[369] have knowledge of the process[370] and "technical expertise"[371] which would allow them to explain how the CDRs were created and ascertain the accuracy of their content. Part of the Prosecution's burden of proof[372] is to show why this material is authentic and can be relied upon. This basic step would have assisted the Chamber to interpret the CDR, explain anomalies, provide any information concerning retention claimed by the Prosecution,[373] and provide assurances about the competence of the persons who extracted the CDRs. Their private nature means that CDRs cannot *be* independently verified or tested.[374] A "golden copy"[375] of each CDR has not been provided. This is a practice described by BROWN of providing a PDF file at the time of creation of the CDR to be able to later ensure integrity.[376] Perversely, the only PDF CDR that was submitted in fact raises serious questions of data integrity.[377] Moreover, the Chamber has not received information that the compilation and maintenance of accurate and complete records was undertaken by Orange, [REDACTED], or Telecel in the regular course of business and in accordance with domestic laws and N'DOUBA's testimony should not be given much weight given his absence of knowledge of the actual CDR creation.[378]

104. Actual *viva voce* authentication is not a mere formality. Its absence makes a difference as to whether the Chamber can conclude it knows what it is looking at. For example, among the CDRs received from Orange, there are no less than nine different variants of CDRs that cover four file formats.[379] These CDRs were received on at least eight separate occasions[380] and the number of people who produced them is unknown. The CDRs do not contain indicia of reliability such as company logos (*i.e.* corporate watermark) and most have nothing resembling

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[369] Ayyash et al. TJ, para. 361.
[370] *Ibid*., para. 360.
[371] *Ibid.,* para. 361.
[372] Ayyash CDR Inspection Decision, para. 93 (It "is the Prosecution's responsibility to attest to the validity of the materials […]. It is not for the Defence […] to search for and identify anomalies").
[373] ICC-01/14-01/18-1296, para. 21 ("The compilation and maintenance of accurate and complete records is undertaken by CSP in the regular course of business and in accordance with domestic laws. This alone imbues them with sufficient indicia of reliability").
[374] ICC-01/04-01/07-2635, para. 27(e).
[375] **D30-4864**: T-270-ENG ET, p. 27, lns 7-14, CAR-D30-0018-0001 at 0012, para. 4.4.2.
[376] *Ibid.,* p. 31, lns 3-6 ("I do use those PDF copies to check any queries I have on the data").
[377] *See below* para. 128 and Annex A.09.
[378] *See above* paras 116-117.
[379] *See* Confidential Annex A.09.
[380] The chain of custody for the material explicitly received from Orange have the following unique dates (further stages of the chain of custody omitted): 2015-11-19 From: ORANGE To: A.4 – 0025, 2016-01-13 From: ORANGE To: A.4 – 0020, 2017-06-15 From: ORANGE To: A.4 – 0003, 2017-07-12 From: ORANGE To: Philippe Oberknezev, 2017-07-13 From: ORANGE To: A.4 – 0010, 2018-09-26 From: ORANGE To: A.4 – 0006, 2018-10-30 From: ORANGE To: A.4 – 0006, and 2019-07-03 From: ORANGE To: A.4 – 0006.

a letterhead or date. There is limited to no information concerning the authors and no certification of the qualification of the person who prepared the material. Additionally, there is no information on the record concerning the methodology used to prepare the CDRs.

105. Second, the Prosecution failed to produce expert evidence to authenticate the CDRs. This basic issue of authenticity has ramifications for their reliability and probative value. CDR files contain highly technical digital information that can be easily misinterpreted without specialised assistance,[381] potentially causing the Chamber to mistakenly draw conclusions that impact upon substantive *factual* allegations. Putting aside issues of the correct attribution or actual caller at the time, if the Chamber misinterprets who initiated the call,[382] the duration of a call,[383] the location of the call,[384] or the number of calls[385] this can dramatically impact upon Prosecution factual allegations.[386]

106. The failure to present expert examination of Prosecution CDRs also invites another kind of misinterpretation: missing red flags that – to an untrained observer – appear innocuous,[387] but which should have weight when evaluating the reliability and integrity of a CDR. Among the most dramatic variety of errors that a Chamber could make is mistaking the very nature of the document or information in question. As noted above "many different things that look vaguely like a CDR but are not a standard CDR".[388] However, other indications that should prompt greater scrutiny that a Chamber may miss are more subtle. For example, BROWN noted "it

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[381] **D30-4864**: T-270-ENG ET, p. 20, lns 9-15 (it is easy to misinterpret what the CDRs are saying), p. 20, lns 14-15 (there are issues which might be impossible for a court to consider without assistance), p. 25, ln. 21 (every network operator produces CDRs with different formats), p. 21, lns 21-22 (less experienced people working with multi-target CDRs may miss errors), p. 24, lns 12-14 (non-experts can corrupt Excel files if they are not careful), p. 26, lns 1-5 (combining CDRs of different formats can introduce errors), p. 26, ln. 14 (without expert assistance, depending upon the issue, there are risks for a lay audience to combine CDRs from different telecommunication providers), p. 28, ln. 10 (there are "inherent risk[s]" associated with combining data from multiple file formats); T-271-ENG ET, p. 25, lns 1-4 (it is possible to "corrupt" or "muddle" the data when combining multiple sources); CAR-D30-0001-0018, at 0016, paras 4.9.6-4.9.7 (non-experts can draw incorrect conclusions about phone location), at 0018, paras 4.10.5-4.10.6 (using one attributed phone to try to attribute another requires several considerations), at 0020, para. 5.2.7 (some CDR columns are not 'unusual' to a lay person), at 0022, para. 5.2.10 (timing errors in cell company equipment may give an impression of more calls occurring than occurred), at 0023, para. 5.2.14 (an expert may be required to identify which CDRs can be compared with each other). In relation to cell-site information and CDRs the Scientific Working Group on Digital Evidence ('SWGDE') paper on historic cell-site location data states that in general courts require an expert to present this information and that part of this involves presenting a CV that thoroughly details their knowledge and experience, CAR-D30-0018-0104, at 0122, section 12.
[382] **D30-4864**: T-270-ENG ET, p. 20, lns 19-20.
[383] **D30-4864**: T-271-ENG ET, p. 28, lns 11-14.
[384] **D30-4864**: T-270-ENG ET, p. 20, lns 20-21.
[385] **D30-4864**: T-272-ENG ET, p. 17, ln. 6 to p. 18, ln. 6.
[386] *See e.g.* fn. 765.
[387] **D30-4864**: T-272-ENG ET, p. 7, lns 6-8.
[388] **D30-4864**: T-271-ENG ET, p. 4, lns 13-14.

can be seen in the exhibit that column A is headed as the connection end time. In my experience it is highly unusual for the CDR to contain the end time rather than the start time".[389] A casual and lay observer would not identify such an anomaly.

107. The presumption of innocence means that the Chamber must *presume* that technical issues concerning the reliability of incriminatory evidence are consequential and this must lead to the material being given no weight. BROWN explained that:

> part of my reading of the raw CDR, is to understand whether the work that has been done by somebody to the CDR renders it of less value or not. Very occasionally I get to the point of saying I simply don't want to use it because I don't trust it. *So it depends on what explanations can be provided to me* about why it looks the way it does.[390]

108. The Chamber must consider whether it can disregard anomalies as it seeks to make sense of the CDRs since the CDRs are riddled with them. For example, CAR-OTP-2068-0034 has an identical record[391] (*i.e.* line) for each alleged contact referred to in CST 21[392] that is made by 'VENTE DISTRIBUTEUR' yet the initiating caller is reversed.[393] The Chamber does not have a basis to determine who was the initiating caller. It would be tempting for the Chamber to conclude that a call occurred whatever the case,[394] but the objective indication in the CDR is an impossibility which the Chamber cannot lightly brush aside if it aims to be guided by the evidence.[395] The Chamber lacks the expert background to set aside this contradiction in the material and this is therefore another reason that the Chamber should not use the CDR.

109. The absence of authentication and its impact upon the reliability and probative value of CDRs is also exemplified by item CAR-OTP-2103-0675, which apparently originates from the [REDACTED]. The Prosecution has not produced an RFA for the item and there is no indication of its author. The item is replete with anomalies that suggest its integrity cannot be assured, or that it is simply too unreliable. Thousands of records are inexplicably missing the 'Site Name', 'Town', and 'Region' information. Moreover, hundreds of records appear to have

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[389] **D30-4864**: CAR-D30-0018-0001, at 0020, para. 5.2.7.
[390] **D30-4864**: T-270-ENG ET, p. 34, lns 21-25 (emphasis added).
[391] *I.e.* Identical end-time, duration, and phone numbers. The Prosecution has not included these in its CST.
[392] ICC-01/14-01/18-1296-Conf-AnxA-Corr, pp. 804-805.
[393] *See e.g.,* CAR-OTP-2068-0034, row 44804-44805. The headers of the CDR are "*Numéro d'origine*" and "*Numéro de destination*". These rows have the column "Type de CDR [Ref]" as "OC" and "TC".
[394] BROWN noted that the most common error legal professionals make is who initiated the call, *see* **D30-4864**: T-270-ENG ET, p. 20, lns 19-20.
[395] The Prosecution presented other rows of the same CDR to BROWN who was not able to confirm whether the calls were duplicate without further examinations, *see* **D30-4864**: T-273-ENG ET, p. 19, ln. 23 to p. 22, ln. 25, examining rows 19089 and 19090 which unlike rows 44804-44805 indicate the "Type de CDR [Ref]" as "OC" and "OC". Rows 19106 to 19108 are three rows with the exact same end of call and duration all indicated as "TC".

been corrupted.[396] In place of phone numbers are jumbles of text such as 'D4AA314AD4FA1C' and '9DC0'.[397] Also, the 'Traffic Type' column, which normally indicates the direction of a call, is either incomplete or contains data that requires further explaining, such as "Roaming call forward".[398] Finally, a mislabelled column that appears to contain the IMEI number,[399] does not contain valid IMEI numbers.[400]

110. The above examples are some of many anomalies that cannot be explained, and for which the Chamber should reject the admission of the material.

3. The testimony from a MOOV representative cannot authenticate CDRs from other CSPs

111. It is forensically wrong to suggest that an employee of one telecommunication provider (*i.e.* N'DOUBA from MOOV) can provide information that would enable the Chamber to authenticate CDRs from another telecommunication provider such as Orange, Telecel, or [REDACTED], one of which is even from another country.[401]

112. Differences from one network to the other means that the employee of one cannot testify credibly on the systems of another. Testimony in this case from the employee himself makes this clear: N'DOUBA even expressed uncertainty answering questions about *his own company* because the infrastructure had changed between 2013 and 2020.[402] This was because there is a "difference of technology"[403] and he was unsure as to whether the cell towers were of the prior generation (*i.e.* 2G) as opposed to 3G.[404] N'DOUBA also testified that it would be difficult to

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[396] *See* Annex A.10, section A, pp. 2-5.
[397] *Ibid.*, pp. 6-12.
[398] *Ibid.*, pp. 14-16.
[399] Listed as "EMEI", *See* Annex A.10, section A, p. 13 – this terminology is not French which uses the same acronym as English. The Defence has been unable to find any reference to this acronym on the internet. The IMEI is a number that identifies a unique phone, *see* **D30-4864**: CAR-D30-0018-0028, at 0037.
[400] The last digit of an IMEI number provides a 'check digit'. *See* **D30-4864**: T-272-ENG ET, p. 26, lns 15-25. A simple calculation can be done with the other 14 digits. The last digit can then confirm whether the IMEI number is "valid". The IMEI number for the target number in CAR-OTP-2103-0675 is 354214052098360. The last digit should be four
(*see* https://en.wikipedia.org/wiki/International_Mobile_Equipment_Identity#Check_digit_computation for the simple formula). Moreover, the first eight digits of an IMEI number identify the Type Allocation Code ("TAC", *see* Type Allocation Code – Wikipedia, available online) which identifies the type of device. The Defence has been unable to find any indication that a device with TAC "35421405" existed. Other submitted CDRs also have invalid IMEI numbers.
[401] [REDACTED].
[402] Emphasis added. **P-2973**: T-241-ENG CT, p. 42, ln. 20 to p. 43, ln. 1.
[403] **P-2973**: T-241-ENG CT, p. 42, ln. 25. *E.g.* "each operator chooses what data to retain and how long to retain" it within the Mobile Switching Center (MSC), *see* **D30-4864**: CAR-D30-0018-0001, at 0012, para. 4.3.4.
[404] The 3G network was installed in 2018 according to him, **P-2973**: CAR-OTP-2122-9874-R01, at 9877, para. 24. *See also* **D30-4864**: CAR-D30-0018-0028, at 0038.

comment upon the processes of competitors.[405] Following this the Presiding Judge himself[406] recognised that it is incorrect to try to draw conclusions about a company's system with information from someone familiar with another system owned by another company.

113. The conclusion that reasoning about material from one provider by reference to another is incorrect was also confirmed by an expert. BROWN noted that information about CDRs from providers are not, 'without more', transposable to CDRs from another provider and noted that: "because they can be so different in their structure and formatting, care must be taken as to how those are then utilised, particularly if they are going to be combined in some way".[407] Part of the explanation for this was that communication service providers "all record slightly different information for their databases. It seems they all do it slightly differently, so each operator tends to have CDRs that look different, you know, have their own style and structure for that network".[408] BROWN similarly noted that these differences can also be attributed to "software, equipment and telecom infrastructure" used by each provider.[409] One example he noted was that a typical way of recording cell-tower information "may not be the same for all networks".[410] Thus the Chamber cannot take N'DOUBA's testimony and transpose it to material allegedly concerning Orange's cell towers.

114. The Chamber also has a wealth of information before it that supports the conclusion that telecommunication providers are too different to transpose information from N'DOUBA to the Orange, Telecel, and [REDACTED] CDRs. The Chamber has heard that different antenna networks have different maximum ranges[411] that impacts upon whether CDR record can lead to the hypothesis that a phone was close or distant. It has also heard that providers adjust the transmitting power and reception properties of individual towers.[412] The longevity and manner

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[405] **P-2973**: T-241-ENG CT, p. 27, lns 9-12.
[406] **P-2973**: T-241-ENG CT, p. 27, lns 9-18 ("A. Okay. Well, what I can say already -- I can't guarantee what my colleagues from Orange do exactly on the network, but in light of the information that was shown here, I would say that it's possible that the subscriber remained in the same spot and was using the two different cells. It's possible. Under what condition? Well, what it means is that in the case I was explaining earlier, within the Moov network, when the conditions – when the terrain and the weather conditions allow, the signal that is sent out by a particular antenna can go very far. In this particular case, it's quite possible. PRESIDING JUDGE SCHMITT: Thank you. I think we cannot expect more from the witness.").
[407] **D30-4864**: T-271-ENG ET, p. 30, lns 10-12.
[408] **D30-4864**: T-271-ENG ET, p. 24, lns 6-9.
[409] *Ibid.,* lns 10-13. *See also* **P-2973**: T-241-ENG CT, p. 27, lns 9-12.
[410] **D30-4864**: CAR-D30-0018-0001, at 0025, para. 5.3.14.
[411] **P-2973**: T-241-ENG CT, p. 42, lns 20-21 ("it depends upon the technology, the technology that's adopted on the network that's used").
[412] **P-2973**: T-241-ENG CT, p. 30, lns 13-14 (The transmitting power of different base stations differs), p. 32, lns 20-25 ("In the configuration of cells, there are many parameters to be taken into account, like the transmitting

in which information is transmitted and stored can differ.[413] The information can be displayed differently in CDRs[414] and may involve different criteria or definitions.[415] This is in part because each network offers different services[416] which may or may not be reflected in the CDRs.[417] The way that each company manages all these moving parts differs[418] and it is reasonable to assume is influenced by different internal policies, training, strategies, and procedures.

115. Given N'DOUBA and BROWN's testimony and the numerous elements just mentioned that provide greater depth, the Chamber cannot use information from one provider to reason about material from another or assure itself of the authenticity or reliability of the Orange, MOOV, Telecel, and [REDACTED] CDRs by reference to the testimony of N'DOUBA.

4. N'DOUBA failed to establish the reliability of the MOOV CDRs

116. N'DOUBA's testimony was insufficient to establish the reliability of the single MOOV CDR submitted in the record.[419] N'DOUBA could not offer direct testimony concerning the production or chain of custody of the MOOV CDR.[420]

117. N'DOUBA was not involved in the preparation or verification of MOOV CDRs. He had no idea who worked on them and was not sure if the person referred to in his Rule 68(3) statement was actually working with MOOV at the time.[421] He conceded not having had "a direct role in

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power of the antennas and what is defined as the neighbourhood relation with the other cells around"), CAR-OTP-2122-9874 at 9879, para. 44 (The range of antennas are individually adjusted). *See* **P-2973**: T-241-ENG CT, p. 40, ln. 9 ("we tune the network differently" in different areas).

[413] "[E]ach operator chooses what data to retain and how long to retain" it within the Mobile Switching Center (MSC), *see* **D30-4864**: CAR-D30-0018-0001, at 0012, para. 4.3.4.

[414] *See e.g.*, that different CSPs provide different types of records, **D30-4864**: T-271-ENG ET, p. 26, ln. 17 to p. 27, ln. 8, p. 13, lns 16-17 ("Data can be presented very differently by different networks").

[415] CAR-D30-0018-0104, at 0115, para. 7.1 ("It is important to properly interpret the information and recognize the differences in key terms from the various cellular providers. A CDR reference document, also known as a "carrier key," should be requested from each cellular provider when legal process is served.").

[416] Network data ("GPRS"), **D30-4864**: CAR-D30-0018-0001, at 0015, para. 4.8.1; calling line identification and masked numbers, **D30-4864**: CAR-D30-0018-0001, at 0019, para. 5.2.2; call forwarding and diverting, **D30-4864**: T-271-ENG ET, p. 26, ln. 3 ("all the networks do it differently"; sometimes "it might not be so obvious" if the information is included at all, T-271-ENG ET, p. 27, ln. 7) and **P-2973**: CAR-OTP-2122-9874-R01, at 9880, para. 53; and number portability, at 9880, para. 57; T-241-ENG CT, p. 17, ln. 14 to p. 18, ln. 9.

[417] **D30-4864**: T-271-ENG ET, p. 24, lns 6-9. Even from the same CSP this may be the case. Of the list of 44 column headings (*i.e.* types of data) that P-2973 provided, only three are included in the eight columns in CAR-OTP-2112-1395-R01. *See* Annex A.09, p.4.

[418] See e.g., the recognition of how different a network can be setup in N'DOUBA's answer, **P-2973**: T-241-ENG CT, p. 27, lns 9-10 ("I can't guarantee what my colleagues from Orange do exactly on [their] network").

[419] **P-2973**: T-242-ENG CT, p. 4, ln. 20, p. 28, ln. 22 to p. 29, ln. 1.

[420] *Ibid*.

[421] He was not sure if Mr KOPATI "at that time, was in service", **P-2973**: T-242-ENG CT, p. 7, ln. 24 to p. 8, ln. 2, and he was not sure how long he had worked at MOOV, **P-2973**: T-241-ENG CT, p. 11, lns. 1-4, and he did not

the procedure" of providing the CDRs to the government and ultimately to the Prosecution,[422] and not seeing the requests from the Prosecution at any stage.[423] As such, N'DOUBA was the wrong individual to provide assurances that the MOOV CDR is what it purports to be.

118. The MOOV CDR contains issues impacting its integrity.[424] First, the CDR is filled with records that do not appear in chronological sequence.[425] The Prosecution's argument concerning the reliability of the CDRs is premised on the idea that they are created automatically,[426] and thus sequentially. As such, the records should appear in chronological order and since they do not, this suggests either (a) the CDR or CDR database was subject to data corruption, (b) the CDR was edited and changed by a person, or (c) it has been assembled by hand[427] and arguably in a careless manner.

119. Second, the submitted MOOV CDR also does not have letterhead that identifies it as originating from MOOV. N'DOUBA did not view CAR-OTP-2112-1395-R01 to confirm that it resembled CDRs that originate from MOOV with which he was familiar. CAR-OTP-2112-1395-R01 is different to the CDR that is discussed in N'DOUBA's statement.[428] The Excel sheets (*i.e.* tabs) of CAR-OTP-2018-0622 are organised by year and has green columns whereas CAR-OTP-2112-1395-R01 is organised by phone number and has no formatting.

"even know whether [Mr Zoakouma] was working within the information service under Mr Kopati", p. 7, ln. 25 to p. 8, ln. 1. *Contra* CAR-OTP-2122-9874-R01, at 9878, para. 32 ("*Elles sont ensuite aiguillées vers Monsieur KOPATI qui extrait les données, imprime le CDR et le remet au DG qui le remet ensuite à qui de droit. Dans le cas où le demandeur souhaite avoir une version numérisé Monsieur KOPATI enregistre des données sur un support numérique mis à disposition par le demandeur*.").

[422] **P-2973**: T-242-ENG CT, p. 4, ln. 20.

[423] **P-2973**: T-242-ENG CT, p. 28, ln. 22 to p. 29, ln. 1 ("No. I myself have not seen this request and the reason for that is simple. In the process for responding to such requests, once the request has been received by the headquarters, it is sent on to the IT department that processes the request. So there's no really intermediaries, so to speak, to ensure secrecy. So I do not have any knowledge of this document."). *See also* CAR-OTP-2122-9874-R01, at 9878, para. 32.

[424] *See below* para. 127.

[425] One example concerns the phone number [REDACTED] which the Prosecution attributes to Mr NGAÏSSONA and has used as part of CST 11 and 21, *see* ICC-01/14-01/18-1296-Conf-AnxA-Corr, p. 305, p. 804. In CAR-OTP-2112-1395-R01 sheet '[REDACTED]' rows 10 through 20 are out of chronological order with the rows that precede them. The column "DateAppel" row nine has "2013-10-15 09:32:00" the next ten records are 2013-10-09 08:46:00, 2013-10-09 10:56:00, 2013-10-13 19:08:00, 2013-10-09 08:47:00, 2013-10-09 09:07:00, 2013-09-17 12:12:00, 2013-10-12 15:05:00, 2013-10-08 20:37:00, 2013-10-10 22:09:00, 2013-09-17 12:05:00, and 2013-10-13 20:03:00. Row 21 contains "2014-04-16 10:05:00" and continues chronologically (decimal points on seconds appear in the CDR but have removed here for clarity).

[426] ICC-01/14-01/18-1296, para. 21. *See also* Annex A.11.

[427] **D30-4864**: CAR-D30-0018-0001 at 0021, para. 5.2.8.

[428] **P-2973**: CAR-OTP-2122-9874-R01, at 9879-9880, paras 50-56.

120. Additionally, most of the headings in the CDR do not match[429] the "*liste des champs de données enregistrées dans les CDR*"[430] provided by N'DOUBA and even between Excel sheets (*i.e.* tabs) in the same CDR have differences.[431] Several possible inferences that could be drawn from this are (a) N'DOUBA had inaccurate or incomplete information about MOOV's data-storage, (b) the columns inexplicably indicate different information despite appearing to otherwise contain the same information, or (c) the CDR was edited by hand prior or during its transmission to the Prosecution.

5. The Call Sequence Tables ('CST') are unreliable

121. First, any CST tendered in evidence must be "accompanied by witness statements or testimony explaining who prepared them and in what manner, to enable [the Chamber] to review the methodology and thus evaluate their *prima facie* reliability and probative value".[432] Without this contextual information, it is not "properly" possible to evaluate the integrity, value, and authenticity of CSTs,[433] since the preparation of CSTs requires specialised knowledge and skill.[434] By the practice of other tribunals, submitted CSTs should be "thoroughly"[435] scrutinised.[436] As was illustrated during BROWN's testimony, a perfunctory examination of some of them by a CDR expert revealed potential issues of selectivity and inaccuracy.[437] On several occasions he emphasised that analytic work should be repeatable[438] and when in doubt he would examine "suitable witness statements" that "defined the processing techniques

[429] *See* Annex A.09, p. 4.
[430] **P-2973**: CAR-OTP-2122-9874-R01, at 9881, para. 67; CAR-OTP-2122-9884-R01.
[431] *See* Annex A.09, p. 4. *E.g.* N'DOUBA's list includes "Duration", the sheet "REDACT 1" has "ca_call_duration", and the sheet "REDACT 2" in the same CDR (CAR-OTP-2112-1395-R01) has "DureeSeconde".
[432] Ayyash et al. TJ, para. 379. In the context of cell-site geolocation, *see* CAR-D30-0018-0104 at 0121, section 11: "those conducting the analysis should be able to explain how the software or tool works and be able to validate the accuracy of the final results by mapping manually. Completed analysis should undergo technical review to ensure an accurate result. Analytic approaches should be well documented and reproducible."
[433] Ayyash First Call Sequence Tables Decision, para. 115.
[434] Ayyash Second Call Sequence Tables Decision, para. 88 (STL Prosecution analysts described the process of creating the CSTs from the CDRs, including the method used, the peer review process, and the correction of errors in the CSTs; and a Prosecution administrator testified about receiving, storing, and processing raw call data and the design, implementation, maintenance, and repair of a database used for the analysis of the CDRs).
[435] Ayyash et al. TJ, para. 380.
[436] *See* ICC-01/14-01/18-1409-Conf, para. 12-13 ("Prosecution Annex A [*i.e.* the CSTs] cannot be qualified as evidence").
[437] **D30-4864** confirmed duplicate records in the Prosecution CSTs, T-272-ENG ET, p. 17, lns 6-20. The Prosecution may have mis-assessed duplicate calls, and it is unclear what duration or criteria the Prosecution used to assess duplicate records, p. 64, lns 18-23; BROWN identified another possible duplicate call in a Prosecution CST as well as possibly "some other issue", p. 63, lns 1-6. The CSTs indicate "voice" as opposed to "incoming" or "outgoing" call which can be misleading, p. 63, ln. 23 to p. 64, ln. 3. Further possible duplicate calls, p. 64, lns 14-23; the inclusion of possible "failed calls" portrayed as calls, p. 65, lns 7-14, lns 19-23.
[438] **D30-4864**: CAR-D30-0018-0001 at 0004, para. 1.2.5; T-270-ENG ET, p. 23, ln. 25 to p. 26, ln. 6; T-273-ENG ET, p. 40, lns 1-12.

used".[439] This has not occurred during the trial and thus the four CSTs[440] submitted in evidence do not fulfil the admissibility criteria of Article 69(4). Moreover, as discussed in the Defence email objections to the CSTs that were submitted – even a cursory review by non-experts readily uncovered numerous inaccuracies.

122. Second, BROWN's testimony presented the many risks of non-experts interpreting[441] CDR/CST material as well as combining[442] CDRs to produce CSTs as a non-expert. Though the principles were discussed in testimony, as demonstrated by the errors contained in the Prosecution's CSTs,[443] creating these tables goes beyond mere knowledge and requires practical experience to avoid errors and expert knowledge may be necessary to identify non-obvious issues. For this reason, the Chamber should not build its own CSTs from the body of submitted CDR evidence.

123. Third, the Prosecution's presentation of its theory through CSTs is too general while giving the impression of precision. By cherry picking lines from millions of rows of information and producing CSTs, the Prosecution has created the appearance of narrative that obscures crucial details. An example is in the Prosecution's first CST which presents two alleged phone numbers of Mr NGAÏSSONA[444] being in touch with a phone number attributed to MOKOM in the lead

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[439] **D30-4864**: CAR-D30-0018-0001, at 0013, para 4.5.1.
[440] Email, 'Decision on Submitted Materials for D30-4679' sent 23 August 2024 16:02 (CAR-OTP-00036769); email, 'D30 Submission of Evidence Following the Testimony of CAR-D30-P-4608' 9 September 2024 16:51 (CAR-OTP-00036594); email, subject: 'Decision on Submitted Materials for D30-4848' sent 10 September 2024 09:46 (CAR-OTP-00036624 and CAR-OTP-00036627). The vast majority of CSTs were not submitted. *See* ICC-01/14-01/18-1296-Conf-AnxA-Corr (23 CSTs) and ICC-01/14-01/18-1296-Conf-AnxC (4 CSTs).
[441] *See above* footnotes 437, 442. *See also*, international calls may be incorrectly sequenced due to a failure to indicate the time-zone, **D30-4864**: T-271-ENG ET, p. 62, lns 12-16. Depending upon the CPS, failed calls may appear as calls, p. 63, lns 15-22 (the way this is counted is "not consistent certainly across all networks"); a person may listen to a voice mail message only to hangup yet this may be counted as a call, p. 64, lns 2-5 (to know whether it was a voice call connection or message being left "would require further analysis").
[442] **D30-4864**: T-271-ENG ET, p. 30, lns 10-12 ("care must be taken as to how [CDRs from different CSPs] are then utilised, particularly if they are going to be combined in some way"). It is possible to over-count the number of calls when combining multiple CDRs, p. 57, ln. 13 to p. 58, ln. 5; SMS messages may be over-counted, p. 60, lns 3-12, p. 61, lns 6-12; lines may appear in CDRs for each attempt to deliver an SMS, p. 62, lns 5-8; BROWN cautioned "because data can be presented very differently by different networks, if you try to combine the data from two different networks, then very quickly you could have the originating number not being in the correct column, but being in the destination column, or the duration being presented in the time column – some other mix-up of the data", p. 13, lns 16-20; the creation of CSTs must not mix up date formats or combine CDRs using start and end-times and thereby "muddle the data", p. 25, lns 1-4; combining start and end times would be "invisible", p. 15, lns 14-18, but this would create an "obvious problem", **D30-4864**: CAR-D30-0018-0001, at 0020, para. 5.2.7. When using multiple file formats there are "more inherent risks in processing the data", **D30-4864**: T-270-ENG ET, p. 28, lns 9-16. There are multiple file formats *see* Annex A.09, pp. 2-3.
[443] Email from D30, to TCV, 22 May 2024, at 17:46; email from D30 to TCV, 25 June 2024, at 15:24; email from D30, to TCV, 12 July 2024, at 14:30; email from D30, to TCV, 22 July 2024, at 21:32.
[444] [REDACTED] and [REDACTED].

up to the 5 December attack.[445] However, one of the two alleged NGAÏSSONA numbers appears to begin a call a minute before the other alleged number completes a call in a close time-frame to the CST.[446] This raises doubts as to the accuracy of the alleged attributions or whether Mr NGAÏSSONA is the primary, or the sole user of the two phone numbers. Yet this detail is lost when the Prosecution simplifies the picture and presents the phone number contacts with MOKOM in isolation. Finding such details is painstaking but given the breadth and time-frame of the Prosecution's allegations, it cannot be excluded that others exist.

124. Finally, it is not the Defence's role to provide all the instructions to the Chamber on how to robustly create CSTs. The YEKATOM Defence's examination aimed at verifying its own CSTs[447] should correctly be seen as an indication of the Prosecution's failure to correctly do the same exercise for its CSTs. Given the Prosecution's failure to fulfil the minimum requirements set out by the practice of international tribunals,[448] the Chamber should not rely upon any of the CSTs.

6. The CDRs are fundamentally deficient

125. The CDR evidence is fundamentally deficient. Should the Chamber not deem that the lack of authentication is fatal, it should alternatively afford them negligible probative value. "If an item of evidence is deemed insufficiently reliable, it can hardly be considered to prove anything"[449] even if it would otherwise perhaps be considered probative.

126. First, the "key factors"[450] identified by the jurisprudence that should "normally" be considered[451] when evaluating the indicia of reliability point to excluding the CDR's use for any part of a conviction.

127. Second, without testimony of the person who produced the CDRs or someone with otherwise compelling knowledge of the process, the Chamber has no reliable basis to draw seemingly simple conclusions. For example, there is no intrinsic indication of the time-zone used for the CDRs, thus the Chamber has no reasonable basis to conclude that times indicated in one CDR

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[445] ICC-01/14-01/18-1296-Conf-AnxA-Corr, p. 1.
[446] *See e.g.*, Annex A.12. *See also* BROWN tasked to evaluate patterns of use (T-270 ET, p. 9, ln 22 to p. 10 ln 7).
[447] *See* starting at **D30-4864**: T-272-ENG ET, p. 18, ln. 8.
[448] Ayyash et al. TJ, para. 379 ("the Trial Chamber required that call sequence tables, when tendered, were accompanied by witness statements or testimony explaining who prepared them and in what manner, to enable it to review the methodology and thus evaluate their *prima facie* reliability and probative value").
[449] ICC-01/04-01/07-2635, para. 28.
[450] *Ibid*., para. 27.
[451] *Ibid*.

are aligned with times present in another CDR.[452] The Chamber will also find, that often upon closer inspection, assessing which phone number is calling which has no objective basis that can be discerned from the CDR.

128. Third, throughout the CDR corpus, there are indications that the CDRs were prepared haphazardly, have corrupted data or other anomalous features, raising questions about the author's expertise. Notable issues include (a) unusual data choices, like recording the end time of a call instead of the beginning;[453] (b) considerable data corruption[454] in CDRs from [REDACTED], Telecel and Orange, with numerous records containing garbled or non-numeric characters;[455](c) multi-target CDRs[456] "assembled by hand" for several of the large CDRs;[457] (d) column headings mixing French and English.[458] These issues make the competence of the operators a legitimate concern and far from speculative.

129. Fourth, an example of a less immediately obvious issue can be found in CAR-OTP-2054-1482, in which an anomaly provides an illustration of the complexity that the Chamber should not seek to resolve and implicates the item's reliability. Section D of A.10 shows records associated with the phone numbers [REDACTED], [REDACTED] and [REDACTED] sorted chronologically and colour coded to assist reading. This chart shows that there is no consistent relationship between IMSI, IMEI, "*Numéro d'origine*", "*Numéro de destination*", and "*Nom utilisateur*" fields. Between 2 May and 23 June 2014, the origin phone number [REDACTED] appears to be associated with four IMSI numbers[459] and four IMEI numbers.[460] In a very short periods of time the "*Nom utilisateur*" changes despite the IMSI and IMEI values staying the

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[452] CAR-D30-0018-0104, at 0114 ("time zones may be reported in various ways, and it is imperative that the appropriate time zone is determined for the location of the device") and at 0115 ("Caution must be taken when analyzing CDRs in preparation for converting listed times to local times, if required").
[453] BROWN noted that "it is highly unusual for the CDR to contain the end time rather than the start time", **D30-4864**: CAR-D30-0018-0001, at 0020, para. 5.2.7.
[454] *See* generally **D30-4864**: T-271-ENG ET, p. 7, ln. 20 to p. 11, ln. 22. On questions of forensic integrity BROWN agreed that it is necessary to have a witness statement from the person who produced the CDRs or do a verification himself, **D30-4864**: T-271-ENG ET, p. 16, lns 21-25.
[455] For [REDACTED], *see* Annex A.10, section A; Telecel *see* Annex A.10, section C; Orange, *see* Annex A.10, section Annex B.
[456] BROWN confirmed the existence of multi-target CDRs in the corpus. He stated that CDR CAR-OTP-2054-1479 was "likely [created] by somebody later combining the individual CDRs of the mobiles" but in any case, "combines the CDRs of multiple mobile phones", **D30-4864**: CAR-D30-0018-0001, at 0020, para. 5.2.6.
[457] **D30-4864**: CAR-D30-0018-0001, at 0020, para. 5.2.6.
[458] *See*, for example, "Reference Line" and "Date et heure de fin" in CAR-OTP-2112-1427, CAR-OTP-2112-1431, CAR-OTP-2112-1432, CAR-OTP-2112-1435, CAR-OTP-2112-1439, CAR-OTP-2112-1443, CAR-OTP-2112-1449, CAR-OTP-2112-1468, CAR-OTP-2112-1513, CAR-OTP-2112-1517, CAR-OTP-2112-1518, CAR-OTP-2112-1534, CAR-OTP-2112-1538, CAR-OTP-2112-1539, CAR-OTP-2112-1550, and CAR-OTP-2112-1551.
[459] Or four different SIM cards, *see* **D30-4864**: CAR-D30-0018-0028, at 0037; *see also*, Annex A.10, Section D.6.
[460] Or four different phones, *see* **D30-4864**: CAR-D30-0018-0028, at 0037; *see also*, Annex A.10, Section D.6.

same.[461] The "*Nom utilisateur*" does not consistently pair with either the IMSI and IMEI numbers it stays the same but the "*Numéro de destination*", IMSI, and IMEI values change.[462] Similarly, multiple IMSI and IMEI numbers are associated with the "*Nom utilisateur*" for "[REDACTED]".

130. The Chamber does not have the information required to properly assess this anomaly. If in fact this reflects an error in the creation of the CDR or another kind of unidentified error, the Chamber is then also not able to verify whether a systemic issue cuts across the entire CDR or is specific to these two phone numbers and associated names, IMSI, and IMEI numbers.

G. The Prosecution cannot apply double standards to evidence

131. The Prosecution wrongly labelled evidence as "incriminating", whereby the same evidence was disclosed as exculpatory in the *Mokom* case. The Prosecution, a unitary organ,[463] should not be given a pass to misrepresent the nature of the evidence in this case, for the sake of obtaining a conviction at all costs.

132. Excerpts taken from 425 documents, including statements and transcripts of witnesses[464] who testified on key points of the Prosecution's theory in the present case,[465] have been disclosed as "PEXO" to the MOKOM Defence. This means that the Prosecution gave a diametrically different characterisation on the same evidence in the two cases, despite their considerable factual and evidentiary overlap. Such double standards have no place in criminal proceedings.

133. Evidently, the Prosecution evidence has not stood up to the test of the present trial. If evidence is exculpatory for MOKOM, it is even more so for Mr NGAÏSSONA, against whom the Prosecution's case was always tenuous, at best.

134. The Chamber should assess the evidence in the present trial in light of its recategorization as exculpatory in the *Mokom* case and reject the Prosecution's hypocritical approach.

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[461] "[REDACTED]" has an IMSI of "[REDACTED]" and IMEI of "[REDACTED]" for three records between 7-13 May 2014. Between 10-6 June 2014, "ART" has those IMSI and IMEI numbers. *See* Annex A.10, Section D.7. Same phenomenon in Annex A.10, Section D.6.
[462] For two records on 14 May 2014 and 9 June 2014, "[REDACTED]" has "[REDACTED]" and "[REDACTED]" as IMSI and IMEI numbers respectably. After "[REDACTED]" possessing "[REDACTED]" and IMEI of "[REDACTED]" between 10-6 June 2014, the same name holds between 10-6 June 2014 when the phone number and IMSI and IMEI change, but for three calls between 20-23 June 2014, "[REDACTED]" holds the same phone number and IMSI and IMEI number as on 14 and 9 June 2014. *See* Annex A10, Section D.6.
[463] ICC-01/14-01/18-156, para. 37.
[464] Mokom Defence Submissions on Exonerating Evidence, ICC-01/14-01/22-260-Red, para. 21.
[465] For a better overview of the witnesses, as well as the excerpts identified as exonerating by the Prosecution, *see* Annex A.13.

H. The Prosecution abused the process regarding Article 70 of the Statute

135. Legal issues related to an investigation pursuant to Article 70 of the Statute must be determined in a separate case so to avoid impacting the case against the accused ('Main Case').[466] However, in the present situation, the Prosecution unjustly exploited the Article 70 investigation ('Investigation'), by frivolously introducing unfounded accusations against the Defence, suggesting it tampered with witness statements and evidence. This prosecutorial behaviour amounts to abuse of process which requires the Chamber to dismiss any reference by the Prosecution to such allegations.

136. Despite having had over three years and ample resources at its disposal to conclude the Investigation, the Prosecution failed to advance materially on its Article 70 allegations. Instead, the Investigation became a tactic to unnecessarily burden the Defence with combatting frivolous allegations at the expense of its limited resources. Under the guise of protecting the Investigation, information was withheld only to be used later in the Main Case.[467] A prime example was the Prosecution's recent failed attempt to introduce into the Main Case, through rebuttal, Investigation materials collected during the Prosecution's evidence presentation,[468] unconvincingly arguing that earlier disclosure would have undermined the Investigation.[469]

137. Ultimately, the Investigation evolved into a smear campaign against the Defence, meant to undermine its case, not through evidence but via unfounded allegations against the Defence team. Defence witnesses faced improper questioning about their interactions with the Defence,[470] filled with insinuations of undue influence on their testimonies. People associated with Mr NGAÏSSONA were scrutinised in an effort to link him to the alleged interference, creating a misleading narrative for the Chamber right before the deliberation phase.[471] This was

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[466] ICC-01/14-01/18-1063-Conf, para. 11. *See also* Ntaganda Decision on Restrictions, para. 22.
[467] *See e.g.*, ICC-01/14-01/18-1971-Conf, where the Prosecution used previously undisclosed evidence collected during the Investigation to substantiate its request for the formal submission of P-1847's prior recorded testimony under Rule 68(2)(d). The Chamber granted the Prosecution's request while finding that [REDACTED], were "inconclusive for the purposes of determining whether the Witness's failure to give evidence with respect to material aspects in his Prior Recorded Testimony was materially influenced by improper interference", *see* ICC-01/14-01/18-2126-Conf, para. 58.
[468] ICC-01/14-01/18-2657-Conf.
[469] ICC-01/14-01/18-2694-Conf, paras 9-10.
[470] **D30-4496**: T-290-ENG ET, p. 10, lns 9-12; **D30-4504**: T-287-CONF-ENG ET, p. 11, ln. 25 to p. 12, ln. 3; **D30-4679**: T-301-ENG ET, p. 6, lns 9-22, p. 7, lns 8-11; **D30-4848**: T-298-CONF-ENG ET, p. 5, ln. 10 to p. 6, ln. 14; **D30-4720**: T-281-CONF-ENG ET, p. 52, ln. 14 to p. 56, ln. 19.
[471] *See also* ICC-01/14-01/18-2670-Conf, paras 42-44.

a blatant abuse of process, in particular: the abuse of the object and purpose of the Article 70 proceedings.[472]

138. Although the Single Judge initially requested the Prosecution to expedite its Investigation, assess prejudice risks, and ensure timely disclosure to the Defence,[473] the Chamber did not take any measures to enforce its orders. As a result, the Investigation enabled the Prosecution to withhold information for later tactical misuse in the Main Case. Meanwhile, the opacity surrounding the Prosecution's access to Defence's privileged communications put the latter at a significant disadvantage,[474] violating the principle of equality of arms[475] and Mr NGAÏSSONA's fair trial rights.[476] Although the Defence argued that the prolonged Investigation was an abuse of the Article 70 proceedings,[477] the Chamber rejected its request to halt it,[478] enabling the Prosecution to continue its witch-hunt without a defined endpoint. Lastly, the Chamber took no position on the unfounded allegations alluding to Mr NGAÏSSONA's consciousness of guilt and tarnishing the Defence's professional reputation.[479]

139. The Prosecution's abuse of process severely compromised Mr NGAÏSSONA's fair trial rights. The abuse was of such magnitude that the Chamber should ignore the Prosecution's claims of witness interference by the Defence when assessing the evidence, in order to safeguard the Main Case even at this late stage.

III. THE PROSECUTION FAILED TO PROVE THE CONTEXT OF THE CHARGED CRIMES AGAINST HUMANITY AND WAR CRIMES

A. The background of the conflict does not support the existence of an organizational policy

1. Origin of the Seleka

[472] Barasa Arrest Warrant, para. 20 ("the provision of article 70 of the Statute appears aimed at preserving the integrity of judicial proceedings before the Court"). *See also* Milošević AJ on Contempt Proceedings, para. 21.
[473] ICC-01/14-01/18-1063-Conf, para. 11.
[474] ICC-01/14-01/18-1881-Conf, para. 29.
[475] Ntaganda Decision on Stay of Proceedings, para. 42 where Trial Chamber I found that having access to information relevant to defence strategy, including names of individuals who could have provided information for the Defence and potential witnesses, "is prejudicial to the accused as it places the Prosecution in an unduly advantageous position *vis-à-vis* the Defence".
[476] According to Article 67(1)(b) of the Statute, the accused is entitled "[t]o have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence".
[477] ICC-01/14-01/18-2100-Conf, paras 8-11.
[478] ICC-01/14-01/18-2243-Conf, p. 7.
[479] ICC-01/14-01/18-2694-Conf, para. 13.

140. Despite its history of successive coups and chronic political instability,[480] CAR's Muslim minority and non-Muslim majority lived in harmony until the Seleka coalition seized power on 24 March 2013.[481] This harmony had continually persisted despite the north's isolation from the rest of the country. For several months each year, the north, which has a Muslim majority, is cut off from the rest of CAR because of weather conditions causing the area to be inaccessible.[482] Moreover, the north is further isolated due to its rich natural resources and minerals, which historically the government and local armed groups in CAR, Chad and Sudan compete to control.[483]

141. In August 2012, several armed groups in the north of CAR coalesced around one idea: to overthrow President BOZIZÉ.[484] Despite their divergent and competing interests, they formed a coalition called 'Seleka', which means alliance in Sango.[485] The alleged irregularities of the 2011 elections and the non-implementation of certain peace accords signed in 2008 were merely a pretext for the Seleka to forcefully remove BOZIZÉ from power.[486] The Seleka had no interest in democracy, as was highlighted by Nicolas TIANGAYE – P-0291 ('TIANGAYE'), the Prime Minister under the Seleka regime who testified that they "had no democratic culture, they could not accept that institutions function normally because the only language they knew was the language of force."[487]

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[480] **P-2328**: T-046-CONF-ENG CT, p. 18, ln. 13 to p. 19, ln. 2, p. 32, lns 17-24; **P-0884**: T-054-CONF-ENG ET, p. 22, lns 12-19.
[481] Both witnesses identifying as Muslim and Non-Muslim testified to intercommunal violence not being an issue until the Seleka seized power in 2013, *see e.g.*, **P-0808**: T-070-CONF-ENG CT2, p. 14, ln. 16 to p. 15, ln. 1; T-071-CONF-ENG CT2, p. 80, lns 16-18; **P-1666**: T-230-CONF-ENG CT2, p. 31, lns 4-8; **P-0291**: T-051-CONF-ENG ET, p. 73, lns 15-16; **P-0475**: T-090-CONF-ENG CT3, p. 19, lns 11-12, p. 23, lns 16-19, p. 88, lns 11-14; **P-2462**: T-059-CONF-ENG ET, p. 10, lns 3-6; **P-0801**: T-036-CONF-ENG CT, p. 77, ln. 24 to p. 78, ln. 2; **P-2232**: T-076-CONF-ENG ET, p. 17, lns 5-6; **D30-4608**: T-291-CONF-ENG CT, p. 11, ln. 20 to p. 12, ln. 6; **D30-4720**: T-280-CONF-ENG ET, p. 14, lns 15-19.
[482] **P-2050**: T-240-CONF-ENG ET, p. 50, ln. 21 to p. 51, ln. 5, p. 52, lns 3-7; **D30-4720**: T-279-CONF-ENG ET, p. 26, ln. 13 to p. 27, ln. 3.
[483] **P-0884**: T-054-CONF-ENG ET, p. 22, lns 4-19; CAR-OTP-2001-1976, at 1989; **P-0291**: CAR-OTP-2024-0036-R05, at 0041, para. 26, at 0045, para. 53; **P-2050**: CAR-OTP-2076-0911, at 0924, para. 76; CAR-OTP-2001-2564, at 2571.
[484] **P-2328**: T-049-CONF-ENG CT, p. 66, lns 15-24; **P-0801**: T-033-ENG CT, p. 42, lns 6-23; CAR-OTP-2001-2890, at 2897; CAR-OTP-2001-2769, at 2831; **P-2012**: T-025-ENG CT, p. 27, lns 11-17; **P-2926**: CAR-OTP-2127-4289, at 4293, para. 10, at 4294, para. 12.
[485] CAR-OTP-2001-2769, at 2831.
[486] **P-0884**: T-054-CONF-ENG ET, p. 29, lns 13-15; **P-2328**: T-046-CONF-ENG CT, p. 42, ln. 16 to p. 43, ln. 8. The Constitutional Court also confirmed BOZIZÉ won the 2011 presidential election, **P-2328**: T-046-CONF-ENG CT, p. 43, lns 13-18; **P-2926**: T-032-CONF-ENG CT3, p. 48, lns 12-15. Further the UN and the African Union condemned the Seleka attacks as early as December 2012, CAR-D30-0004-0097; CAR-D30-0004-0098. When the Seleka did succeed in overthrowing BOZIZÉ on 24 March 2013, the UN qualified the act as "unconstitutional", and the African Union refused to recognize DJOTODIA as President of CAR, CAR-D30-0004-0102, at 0105; CAR-D29-0012-0001, at 0003.
[487] **P-0291**: T-053-ENG-CONF CT2, p. 8, lns 9-11.

142. To achieve its goal of overthrowing the elected President BOZIZÉ, the Seleka not only included Sudanese and Chadian mercenaries into its ranks, rather, these mercenaries formed the backbone of its forces. The Seleka's leader, Michel DJOTODIA ('DJOTODIA') and second in command Noureddine ADAM had deeply rooted and close ties with the governments of Sudan and Chad, as well as rebel groups in the two countries.[488] Many of the Seleka's elements were led by known Chadian and Sudanese rebel fighters.[489] Such leaders included General Moussa ASSIMEH, a ruthless high-ranking Janjaweed militia leader.[490] They supplied the Seleka with foreign combatants and heavy weapons in exchange for access to looting.[491] The foreign fighters swelled the Seleka's ranks to the point that the overwhelming majority of the Seleka's forces consisted of mercenaries.[492]

143. On 12 December 2012, the Seleka took over the city of NDÉLÉ and then rapidly advanced throughout the north and centre of the country towards BANGUI.[493] The Seleka, despite being met with little resistance, showed brutal force against the civilian population as it advanced towards BANGUI.[494] Alarmed by the growing security crisis, the ECCAS intervened and oversaw peace talks between the government and the Seleka, resulting in the signing of peace agreements on 13 January 2013 in LIBREVILLE.[495]

144. The LIBREVILLE agreements established the government of national unity.[496] Under their terms, BOZIZÉ was to finish his term as president; TIANGAYE, representing the democratic

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[488] **P-0801**: T-033-ENG-CONF CT, p. 42, ln. 12 to p. 43, ln. 7; **P-2926**: CAR-OTP-2127-4289, at 4295; CAR-OTP-2001-2769, at 2833; **P-2050**: CAR-OTP-2076-0911, at 0924, para. 74.
[489] **D30-4914**: T-302-CONF-ENG ET, p. 27, lns 1-7; **P-2625**: T-188-CONF-ENG CT, p. 29, lns 9-13, describing how he saw on the eve of the Seleka coup more Chadian and Sudanese people around President DJOTODIA than people from CAR; **P-2926**: CAR-OTP-2127-4289, at 4294; CAR-OTP-2001-2769, at 2835-2836, 2839.
[490] **P-2926**: CAR-OTP-2127-4289, at 4292-4293; **P-2926**: T-032-CONF-ENG CT3, p. 76, lns 4-10, testifying that he met with General Moussa ASSIMEH in BANGUI shortly after it fell and he had his contingent with him; **P-2328**: T-046-CONF-ENG CT, p. 53, lns 12-17; CAR-OTP-2001-2564, at 2577; CAR-OTP-2001-2769, at 2835.
[491] CAR-OTP-2001-2564, at 2573, 2576. *See also* **P-2926**: T-032-CONF-ENG CT3, p. 75, ln. 9 to p. 76, ln. 3; CAR-OTP-2001-1976, at 1990 ("many Sudanese, mainly from Darfur, and Chadians joined the Seleka in the hope of benefitting from the financial gains of the rebellion"). For evidence on the Seleka's heavy weaponry, *see e.g.,* **P-0291**: T-052-ENG, p. 9, lns 1-2; **P-2328**: T-046-CONF ENG CT, p. 53, lns 15-17; T-048-CONF-ENG CT, p. 43, lns 8-10; **P-1521**: T-084-CONF-ENG ET, p. 13, lns 14-21.
[492] **P-0884**: T-054-CONF-ENG ET, p. 23, lns 10-11; **P-0475**: T-090-CONF-ENG CT3, p. 18, lns 17-24, describing how as the Seleka advanced from BIRAO to BANGUI their ranks swelled with Chadian rebels; T-091-CONF-ENG CT, p. 31, lns 16-22; **P-0475**: CAR-OTP-2104-0116, at 0121, para. 35; CAR-D30-0004-0102, at 0106; CAR-OTP-2001-1102, at 1104; CAR-OTP-2001-2769, at 2772; CAR-OTP-2001-1976, at 1990.
[493] **P-2926**: CAR-OTP-2127-4289, at 4292; **P-2328**: T-049-CONF-ENG CT, p. 79, lns 5-8.
[494] **P-0291**: T-052-ENG-ET, p. 50, lns 8-10 ("wherever the Séléka were, there were crimes committed against […] the civilian population, that's absolutely uncontestable"); **P-0808**: T-072-ENG-CONF CT, p. 5, lns 3-7; **P-2926**: CAR-OTP-2127-4289, at 4292; **P-1847**: T-022-CONF-ENG CT, p. 29, lns 12-15, p. 33, lns 2-5; CAR-OTP-2001-2769, at 2775; CAR-D30-0004-0102, at 0106.
[495] **P-0291**: CAR-OTP-2024-0036, at 0045-0046, paras 53, 59; CAR-D30-0004-0102, at 0102; CAR-OTP-2054-1342; CAR-OTP-2054-1346.
[496] CAR-OTP-2054-1346, at 1347.

opposition, was to be Prime Minister; and DJOTODIA was to be the Minister of Defence.[497] BOZIZÉ complied with these terms and established a new government, which included Mr NGAÏSSONA, who was appointed the Minister of Youth, Sports, Art and Culture.[498] The UN characterized the LIBREVILLE agreements as "the linchpin of any effort to re-establish stability".[499] It was within the government created under them that Mr NGAÏSSONA, for the first time in his life, served as a government minister, demonstrating his commitment to peace in CAR.

145. The Seleka never intended to uphold its commitments under the LIBREVILLE agreements.[500] Seizing upon Chad's and more generally the international community's waning support of BOZIZÉ,[501] the Seleka attacked DAMARA in flagrant violation of the agreements and ultimately seized power in BANGUI on 24 March 2013[502] and immediately suspended the constitution.[503] The consequences were catastrophic. The Seleka's forces plunged the country into a state of unprecedented violence and chaos that preceded the creation of the Anti-Balaka movement through:

(1) systemically and methodically attacking FACA members, GBAYA people, and BOZIZÉ supporters;[504]

(2) attacking state institutions[505] to the point where a functioning state was replaced by the arbitrary rule of the Seleka's self-proclaimed generals whose elements engaged in

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[497] **P-0291**: CAR-OTP-2024-0036, at 0046, para. 59; **P-0884**: T-054-CONF-ENG ET, p. 26, lns 12-17.
[498] CAR-OTP-2004-1530, at 1533.
[499] CAR-D30-0004-0102, at 0103.
[500] CAR-OTP-2001-1976, at 1990, describing how Noureddine ADAM the Seleka's second in command refused to sign the LIBREVILLE agreements; **P-2328**: T-046-CONF-ENG CT, p. 67, lns 1-6.
[501] **P-2328**: T-046-CONF-ENG CT, p. 67, lns 4-6; **P-2926**: T-032-CONF-ENG CT3, p. 68, lns 22-25, p. 73, lns 10-13; **P-2926**: CAR-OTP-2127-4289, at 4294; CAR-OTP-2001-2564, at 2566-2567.
[502] **P-0291**: CAR-OTP-2024-0036, at 0047, paras 66-67; **P-0808**: T-070-ENG CT2, p. 12, lns 1-2; **P-2926**: CAR-OTP-2127-4289, at 4298.
[503] **P-0808**: T-070-ENG CT2, p. 17, lns 1-11; **P-0952**: T-251-ENG CT, p. 114, lns 7-8; **P-0291**: T-051-CONF-ENG ET, p. 8, lns 10-20; CAR-D30-0004-0102, at 0103.
[504] **P-0808**: T-069-CONF-ENG CT, p. 44, lns 12-25; T-070-ENG CT2, p. 18, lns 1-13, p. 33, lns 3-5; **P-0884**: T-054-CONF-ENG ET, p. 52, lns 6-23; **P-2050**: CAR-OTP-2076-0911, at 0918, para. 42; **D30-4914**: T-302-CONF-ENG CT, p. 19, lns 7-11; **P-1847**: T-022-CONF-ENG CT, p. 70, lns 3-5; **D30-4720**: T-280-CONF-ENG ET, p. 40, lns 5-13. Mr NGAÏSSONA was personally targeted due to his GBAYA ethnicity and perceived association with BOZIZÉ, *see* **P-2050**: CAR-OTP-2076-0911, at 0918, para. 42, at 0919-0920, paras 45-46, 48 (giving a first-hand account of the destruction and daily looting of the Boy Rabe neighbourhood including the plundering and destruction of Mr NGAÏSSONA's house and warehouse); **P-0884**: T-054-CONF-ENG ET, p. 46, lns 2-9; **P-0808**: T-070-ENG CT2, p. 13, lns 2-5; **D30-4756**: T-268-CONF-ENG CT, p. 25, lns 20-23; **D30-4914**: T-302-CONF-ENG CT, p. 18, ln. 20 to p. 19, ln. 25; **D30-4848**: T-296-CONF-ENG CT, p. 21, ln. 1 to p. 22, ln. 6.
[505] **P-1666**: T-230-CONF-ENG CT2, p. 32, lns 5-12; **P-0475**: CAR-OTP-2104-0116, at 0119, para. 19; **P-0884**: T-054-CONF-ENG ET, p. 27, lns 14-17; **P-0291**: T-052-ENG ET, p. 7, ln. 16 to p. 8, ln. 2; **P-2050**: CAR-OTP-2076-0911, at 0919, para. 49; **P-0808**: T-072-ENG CT, p. 27, lns 9-12; **P-0801**: T-036-ENG CT, p. 71, lns 6-23; **P-1823**: CAR-OTP-2063-0369-R01, at 0373, para. 21; **D30-4608**: CAR-D30-0017-0004, at 0007 para. 19; **D30-4608**: T-291-CONF-ENG CT, p. 13, lns 6-15.

widespread looting, wanton killing, sexual violence, and other serious war crimes and crimes against humanity;[506]

(3) showing favour to the Muslim population by: (a) allowing Muslims to pay for their protection whereas non-Muslims were continuously subjected to attacks and looting particularly of religious buildings and clergy,[507] (b) looting non-Muslims' property and distributing it to Muslim neighbourhoods or transporting it abroad,[508] (c) recruiting and arming Muslims who had previously lived in peace with their neighbours and using such local recruits to target the non-Muslim population.[509]

146. This deliberate pitting of Muslim CAR residents against non-Muslim CAR residents was unprecedented in the country's long history of government overthrows.[510] Similarly, while Chadian fighters had been used in 2003 when BOZIZÉ seized power, the scale hardly compared to the massive influx of foreign fighters that invaded CAR in late 2012 early 2013.[511] These seeds of religious discord sowed by the Seleka eventually grew into plans of secession of the

[506] **P-0884**: T-057-CONF-ENG ET, p. 24, ln. 19 to p. 25, ln. 15; **P-0291**: T-051-CONF-ENG, p. 71, ln. 24 to p. 72, ln. 2; T-052-ENG ET, p. 4, ln. 24 to p. 5, ln. 6, p. 9, lns 8-19; **P-2050**: CAR-OTP-2076-0911, at 0923, para. 67; **D30-4848**: T-296-CONF-ENG CT, p. 22, ln. 7 to p. 23, ln. 7; **D30-4914**: T-302-CONF-ENG CT, p. 24, ln. 11 to p. 25, ln. 7; **D30-4608**: T-291-CONF-ENG CT, p. 23, ln. 20 to p. 24, ln. 13; CAR-D29-0012-0001, at 0003-0004; CAR-D30-0004-0102 at 0106, 0108-0111; CAR-OTP-2001-2769, at 2793.

[507] **P-0475**: T-090-CONF-ENG CT3, p. 16, lns 1-8; **P-0475**: CAR-OTP-2104-0116, at 0118, para 22; **P-0291**: T-052-ENG ET, p. 7, lns 7-13; **P-0808**: T-072-ENG CT, p. 5, lns 8-12; **P-0801**: T-034-ENG CT, p. 21, lns 9-14; T-036-ENG CT, p. 76, lns 19-25; CAR-D30-0004-0102, at 0106, 0112; CAR-OTP-2001-2769, at 2812-2813.

[508] **P-0808**: CAR-OTP-2025-0324, at 0330, para. 41; **D30-4608**: T-291-CONF-ENG CT, p. 34, lns 10-16. *See also* **P-2926**: CAR-OTP-2127-4289, at 4293; **P-1823**: CAR-OTP-2063-0369, at 0373, paras 19-20.

[509] **P-0884**: T-058-CONF-ENG ET, p. 26, lns 12-20; **P-1823**: CAR-OTP-2063-0369, at 0373, paras 19-20; **P-0974:** T-243-CONF-ENG CT, p. 38, lns 13-20, p. 39, ln. 17 to p. 40, ln. 5; **P-0801**: T-036-ENG CT, p. 68, lns 14-21; **P-0475**: T-091-CONF-ENG CT, p. 17, ln. 4 to p. 18, ln. 16; **P-0876**: T-086-CONF-ENG CT, p. 25, lns 4-24; **P-1521**: T-084-CONF-ENG ET, p. 13, ln. 22 to p. 14, ln. 12; **P-0291**: T-051-CONF-ENG ET, p. 73, lns 13-15. For evidence relating to the swelling of the Seleka's forces from December 2012 to March 2013 and beyond, *see* **P-0291**: T-051-CONF-ENG ET, p. 75, lns 8-16; **P-2926**: CAR-OTP-2127-4289, at 4292; **P-2328**: T-046-CONF-ENG CT, p. 51, lns 1-8; **P-2050**: T-240-CONF-ENG ET, p. 14, lns 1-7; **D30-4608**: T-291-CONF-ENG CT, p. 35, lns 17-19; CAR-OTP-2001-2564, at 2573.

[510] P-0884 [REDACTED], testified that the religious ideology made this *coup* different than those of the past, *see* **P-0884**: T-058-CONF-ENG ET, p. 25, lns 17-21; DEMAFOUTH, who was responsible for DDR under the Seleka regime, confirmed that requests to incorporate Islam into the state were made and that the Seleka's number two leader Noureddine ADAM and certain Seleka chiefs were close to Islamic groups, **P-2328**: T-046-CONF-ENG CT, p. 54, lns 16-25.

[511] **P-0884**: T-054-CONF-ENG ET, p. 23, lns 10-11; T-058-CONF-ENG ET, p. 12, ln. 6 to p. 13, ln. 12; **P-0475**: T-090-CONF-ENG CT3, p. 18, lns 17-24, describing how as the Seleka advanced from BIRAO to BANGUI their ranks swelled with Chadian rebels; T-091-CONF-ENG CT, p. 31, lns 16-22; **P-0475**: CAR-OTP-2104-0116, at 0121, para. 35; CAR-D30-0004-0102, at 0106; CAR-OTP-2001-1102, at 1104; CAR-OTP-2001-2769, at 2772; CAR-OTP-2001-1976, at 1990.

north of CAR,[512] that were eventually thwarted by the signing of the BRAZZAVILLE accords in which Mr NGAÏSSONA was instrumental.[513]

147. The dire security situation caused by the Seleka's daily violence, including arbitrary arrests, murder, and sexual violence coupled with the lack of a functioning state, provided the fertile ground upon which a spirit of resistance grew within CAR's civilian population.[514] Their urge to resist the Seleka was further fuelled by international forces, which did nothing to prevent the violence, and even participated in it.[515] The Prime Minister under the Seleka regime testified that "they were committing so many crimes against civilians that people felt they had no choice. I agree it's a historical fact, when people are oppressed, martyred manhandled, there is a resistance that takes place."[516] This was the context which gave rise to the Anti-Balaka movement. It had no connection whatsoever to an alleged organizational policy that would have been implemented by BOZIZÉ's alleged inner circle, including Mr NGAÏSSONA, as will be demonstrated below.

2. The Prosecution failed to prove an early development of an organizational policy

148. The Prosecution has failed to prove the existence of a criminal policy prior to the 24 March 2013 coup. First, BOZIZÉ's so-called "inner circle" – whose contours are undefined and ever-shifting – is merely a nebulous group of individuals conveniently constructed to fit the Prosecution's narrative on the existence of a common policy.[517] Second, there is no evidence of a plan, design, pattern, or coordinated collective mobilisation against the Muslim population that may be inferred from the public statements made by BOZIZÉ, Mr NGAÏSSONA,[518] and

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[512] **P-0884**: T-058-CONF-ENG ET, p. 22, lns 3-15; **P-2050**: T-240-CONF-ENG ET, p. 52, lns 3-6; CAR-OTP-2001-2769, at 2837.
[513] **P-1193**: T-125-CONF-ENG CT2, p. 64, lns 4-24.
[514] **P-0884**: T-054-CONF-ENG ET, p. 14, lns 16-18; **P-0808**: T-072-ENG CT, p. 5, lns 16-21; **P-0291**: T-052-ENG ET, p. 39, lns 9-18; **P-2050**: T-240-CONF-ENG ET, p. 38, lns 7-10; **P-0475**: CAR-OTP-2104-0116-R01, at 0119, para. 23, at 0130, para. 115; **D30-4914**: T-302-CONF-ENG CT, p. 24, ln. 16 to p. 25, ln. 7; **P-0287**: T-020-CONF-ENG CT, p. 27, lns 14-23; CAR-D30-0004-0102, at 0107.
[515] **P-0808**: T-070-ENG CT2, p. 20, lns 15-23; **P-2843**: T-074-CONF-ENG ET, p. 15, lns 16-25; **P-2841**: T-029-CONF-ENG CT, p. 66, lns 22-25; **D30-4914**: T-302-CONF-ENG ET, p. 59, lns 11-13. For evidence on the Chadian FOMAC contingent collaborating with the Seleka, *see* **P-0808**: T-070-ENG CT2, p. 31, lns 2-9; **P-0884**: T-057-CONF-ENG ET, p. 22, lns 4-13; **P-2926**: CAR-OTP-2127-4289, at 4294; **D30-4608**: T-291-CONF-ENG CT, p. 19, lns 2-23; **D30-4608**: CAR-D30-0017-0001, at 0004, paras 21-22.
[516] **P-0291**: T-053-ENG CT2, p. 9, lns 8-15.
[517] On the lack of evidence on Mr NGAÏSSONA's alleged membership in BOZIZÉ's so-called inner circle, *see below* VI.A. The Prosecution failed to prove that Mr NGAÏSSONA was part of BOZIZÉ's so-called inner circle. On the lack of clarity and continuity as to the composition of the so-called inner circle, *see below*, III.B.2.1. Lack of specificity regarding the "inner circle".
[518] For an analysis of Mr NGAÏSSONA's public statements, *see below* VI.A.4. Mr NGAÏSSONA never expressed anti-Muslim sentiment or sow division within the CAR population, para. 413.

others prior to the coup.[519] Rather, these statements convey concern for the peace and security of CAR, in response to the Seleka invasion unfolding on its territory.[520]

149. A close reading of BOZIZÉ's 27 December 2012 PK0 speech reveals that BOZIZÉ did not incite to hatred or violence against the Muslim population, nor did he even reference Muslims, religion, or Islam;[521] to the contrary, he continuously called for peace and discouraged violence.[522] BOZIZÉ accurately described the Seleka as a predominantly foreign invading force.[523] The record is replete with evidence that the Seleka was primarily composed of foreign militia hailing from Chad, Sudan, Niger, and Mali[524] who did not speak Sango or French.[525]

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[519] Ongwen TJ, para. 2679. On the lack of evidence on Mr NGAÏSSONA's alleged membership in BOZIZÉ's so-called inner circle, and that he did not express anti-Muslim animus, *see below* and VI.A.2. Mr NGAÏSSONA's alleged membership in a so-called inner circle or alleged proximity to BOZIZÉ cannot be inferred from shared ethnicity and VI.A.4. Mr NGAÏSSONA never expressed anti-Muslim sentiment or sow division within the CAR population.

[520] On the self-serving nature of the Prosecution's interpretations of various public speeches at the time, *see* ICC-01/14-01/18-1942-Conf, paras 8-21.

[521] CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678; **P-2232**: T-079-CONF-ENG ET, p. 8, lns 10-18 ("A. During his speech he did not mention the Muslims. He simply asked people to be vigilant in relation to people in fenced compounds. He even talked about Toro Boro and Janjaweeds who came to the CAR to harm the Central Africans. So he asked the young people to be vigilant, and that if they discovered any suspicious individual, the person should be handed over to the police. He should not be harmed. That is what happened. He also asked that there should be checkpoints and controls. Bozizé did not talk about Muslims. He was talking about the Seleka and those who were working with the Seleka."); **P-0889**: T-108-CONF-ENG CT2, p. 56, lns 20-21 ("Yes, I agree with you that in this speech, Bozizé has nothing against Central African Muslims"). [REDACTED], **P-0876**: CAR-OTP-2046-0473-R01, at 0482-0483, lns 358-381. P-0461 and P-2200's Rule 68(2) statements inaccurately recall and portray BOZIZÉ's speeches, *see* **P-0461**: CAR-OTP-2031-0190-R01, at 0193, para. 20; **P-2200**: CAR-OTP-2088-2146-R02, at 2149, para. 19.

[522] CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, at 0683, lns 111-121 ("*Nous sommes également pour la paix; nous voulons la paix. Mais nous ne voulons pas être maltraités par qui que ce soit. Nous ne voulons pas qu'on vienne nous asservir gratuitement et intentionnellement, ce n'est pas bien. Je vous exhorte […] à continuer manifester […] Mais au cours de vos manifestations, ne frappez pas les gens, ne lapidez pas les gens; ça, ce n'est pas juste. Notre pays est un pays des droits de l'homme. Si quelqu'un se comporte mal, allez-y, parlez-lui. Si vous voulez vous adresser à quelqu'un, allez-vous adresser à la personne mais faites-le à travers une délégation. Mais ce n'est pas pour aller lancer des pierres sur les gens, casser des voitures, les vitres des voitures ou tout autre acte, ce n'est pas bien]*").

[523] **P-0808**: T-070-ENG-CT2, p. 16, lns 13-25; ICC-01/14-01/18-1942-Conf, paras 10-11.

[524] **D30-4720**: T-280-CONF-ENG CT, p. 11, lns 5-18; **P-2926**: T-032-CONF-ENG CT3, p. 76, lns 4-10; **D30-4914**: T-302-CONF ENG CT, p. 24, lns 2-6, p. 26, ln. 25 to p. 27, ln. 4, p. 32, lns 20-23; **P-2012**: T-025-ENG CT, p. 27, lns 3-10; **P-0889**: T-108-CONF-ENG CT2, p. 60, lns 5-17; **D30-4756:** T-268-CONF-ENG CT, p. 11, lns 17-18; **P-0475**: T-091-CONF-ENG CT, p. 31, ln. 17 to p. 32, ln. 2; **P-2841**: T-029-CONF-ENG CT, p. 63, ln. 19 to p. 64, ln. 7; CAR-OTP-2081-0496, at 0551.

[525] **P-0889**: T-108-CONF-ENG CT2, p. 59, lns 7-10; **P-0808**: T-070-ENG CT2, p. 13, lns 15-22; **D30-4914**: T-302-CONF ENG CT, p. 19, lns 14-17, p. 28, lns 5-6; **D30-4720**: T-280-CONF-ENG CT, p. 11, lns 9-18; **D30-4756**: T-268-CONF-ENG CT, p. 9, lns 2-3, p. 11, lns 10-11.

Among its ranks were Janjaweed (*e.g.* General Moussa ASSIMEH)[526] and Toroboro mercenaries.[527]

150. It is unsurprising that BOZIZÉ and others publicly addressed the Seleka's ongoing offensive and the prevailing insecurity at the time.[528] By December 2012, the Seleka had gained control over a significant part of the territory, targeting CAR's security apparatus[529] and was preparing its imminent assault on BANGUI. The UN reported that at the time, the Seleka was committing "indiscriminate and often targeted killings, rampant rape, assaults on the innocent population, the flagrant recruitment of children as soldiers, the looting of homes".[530] It noted that CAR "appears to have become a safe haven for different *foreign rebel forces* seeking to exploit the natural resources".[531] Faced with a mounting security crisis, the CAR population, civil society actors, the CAR government, FACA, and the international community were rightfully alarmed.[532] As head of State, BOZIZÉ was privy to further information on the infiltration by foreigners in CAR who had come to destabilise the country and commit crimes.[533] Rather than appeal to violence, BOZIZÉ enjoined the population to be vigilant and to call on the

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[526] **P-2926**: T-032-CONF-ENG CT3, p. 76, lns 4-10, CAR-OTP-2127-4289, at 4293; **P-2012**: T-025-ENG CT, p. 27, lns 3-10, p. 37, lns 4-6; **P-1521**: T-082-CONF-ENG CT, p. 53, lns 1-5; **P-0287**: T-021-CONF-ENG CT, p. 72, ln. 18 to p. 73, ln. 5; CAR-OTP-2001-2564, at 2577; CAR-OTP-2081-0496, at 0551; CAR-OTP-2001-5739, at 5807; CAR-OTP-2001-2769, at 2835 ("General Moussa Assimeh, former colonel in the Sudanese army, head of the Janjaweed militia of the Arab nomadic tribe, the Rezeigat, who for years wreaked havoc in Darfur and is accused of numerous killings, was among the mercenaries and warlords working as part of the Seleka. His presence among the Seleka tends to show the role of Sudan in supporting the Seleka, especially by supplying equipment (weapons and vehicles)").

[527] BOZIZÉ's reference to "Janjaweed" in his speeches alludes to the Seleka, *see e.g.*, CAR-OTP-2000-0632, CAR-OTP-2060-0631, CAR-OTP-2060-0693, at 0697, lns 109-110 ("[…] les politico-militaires de la SELEKA; la SELEKA des JANJAOUID"); **P-1847**: T-024-CONF-ENG CT, p. 6, lns 1-10; **P-0808**: T-070-ENG-CT2, p. 16, lns 13-25; **P-0446**: T-099-ENG ET, p. 8, lns 15-18, p. 14, ln. 3; **P-1193**: T-127-CONF-ENG ET, p. 14, ln. 23 to p. 15 ln. 7. Janjaweed and Toroboro are Sudanese militia who were allied with the Chadian government, CAR-OTP-2089-0143, at 0147. On the uncontrollable nature of the Seleka, *see* **P-2843**: T-074-CONF-ENG ET, p. 5, lns 19-25.

[528] CAR-D29-0012-0001, at 0002 ("Les dirigeants de la région se sont fortement mobilisés pour combler le vide sécuritaire créé par la rébellion et tenter d'endiguer la situation en République centrafricaine, car le pays semble être devenu un sanctuaire pour différents groupes rebelles étrangers cherchant à exploiter les ressources naturelles pour lesquelles est connue la République centrafricaine.").

[529] *See e.g.*, **D30-4914**: T-302-CONF-ENG CT, p. 25, lns 5-13; CAR-D29-0012-0001, at 0002-0003; *see above* III. A. 1. Origin of the Seleka.

[530] CAR-D29-0012-0001, at 0002. Translation based on the official English translation of the UN document, *see* Security Council Sixty-eighth year 6967th meeting Wednesday, 15 May 2013, 11 a.m. New York, S/PV.6967, available online.

[531] *Ibid*. Emphasis added.

[532] **P-2841**: T-029-CONF-ENG CT, p. 63, lns 15-18; CAR-D29-0012-0001. The purpose of the PK0 gathering was for the CAR population of all religion and ethnicities to show to the international community that they rejected violence, **P-0889**: CAR-OTP-2122-7517-R01, at 7538, lns 843-848.

[533] **D30-4720**: T-280-CONF-ENG CT, p. 11, 7-12.

gendarmerie if it encountered suspected Seleka members, which he reiterated in his 15 March 2013 speech.[534]

151. BOZIZÉ did not conflate the Seleka with CAR Muslims.[535] BOZIZÉ's mention of "fenced houses" referred to gated compounds, owned by Christians and Muslims alike, where weapons could be stored.[536] BOZIZÉ's reference to "vigilance" in specific neighbourhoods such as Damala, Boeing, 8th *arrondissement* and Mboko, referred to BANGUI's borders, where the Seleka threatened to enter, and not to predominantly Muslim neighbourhoods.[537] In his speeches, BOZIZÉ raised awareness to the plight and the human rights abuses perpetrated by the Seleka in the Northern regions of CAR bordering with Chad and Sudan, with large concentrations of Muslim civilians.[538]

152. In his New Year's speech, BOZIZÉ reiterated his commitment to peace,[539] to respecting the CAR constitution,[540] and to the LIBREVILLE peace process.[541] On 15 March 2013, days before the Seleka attack on BANGUI, BOZIZÉ continued to denounce the Seleka's threat to peace and stability in CAR, while condemning the human rights violations in Ouaka, Basse-Kotto, Bamingui-Bangora, Vakaga, where the Seleka held power.[542] If tensions among the

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[534] CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, at 0685, ln. 211; CAR-OTP-2000-0656, CAR-OTP-2060-0653, CAR-OTP-2060-0740, at 0745, lns 145-147; **P-2232**: T-079-CONF-ENG ET, p. 6, lns 20-22 ("In his speech, he appealed for vigilance. He asked the population to hand over suspicious individuals to the police. He did not ask the population to maltreat or harm those people"); **P-1847**: T-022-CONF-ENG CT, p. 58, lns 9-19 (Q. […] should be taken to the gendarmerie by who, regular people or by other law enforcement? A. No, he told the population: 'If you find anybody suspects, you have to call the police so that they can come and collect the suspects'.").

[535] **D30-4720**: T-280-CONF-ENG CT, p. 24, ln. 22 to p. 25, ln. 20; **P-0475**: T-090-CONF-ENG CT, p. 25, lns 9-16 ("those statements by Bozizé which were further propagated by his supporters were to the effect that those who came from elsewhere were the invaders, invaders. The jihadists from Sudan or from Chad were invaders. But they did not refer to the Central Africans themselves as invaders.").

[536] CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, at 0685, lns 204-208; **D30-4720**: T-280-CONF-ENG CT, p. 12, lns 2-23 ("But all Central Africans actually had erected these fences around their properties; it wasn't just Muslims who built walls or fences around their property. So I also know that there were many properties that were gated, where there were warehouses inside, and then there's the bushes and there's grass growing […]. And there's a lot of that in Bangui, and so that's what I think the president was alluding to, because if a car drives into such a property, we don't know what brings them in, we don't know what they're going out with, we don't really know"); **P-0889**: T-108-CONF-ENG CT2, p. 57, ln. 14 to p. 58, ln. 6, p. 58, ln. 24 to p. 59, ln. 19 (explaining that Christians and Muslims alike lived in fenced compounds). On members of the Muslim civilian population being armed, *see* **D30-4756**: T-268-CONF ENG CT, p. 12, lns 16-19.

[537] CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, at 0685, lns 209-210; **D30-4720**: T-280-CONF-ENG CT, p. 11, lns 19-25; **P-0889**: T-108-CONF-ENG CT2, p. 60, ln. 23 to p. 61, ln. 5; **P-0475**: T-091-CONF-ENG CT, p. 34, lns 12-21; **P-1847**: T-024-CONF-ENG CT, p. 5, lns 4-23.

[538] CAR-OTP-2000-0656, CAR-OTP-0653, CAR-OTP-2060-0740, at 0744, lns 120-123; **D30-4496**: T-289 ENG CT, p. 10, lns 1-17.

[539] CAR-OTP-2000-0632, CAR-OTP-2060-0631, CAR-OTP-2060-0693, at 0697, lns 116-120.

[540] CAR-OTP-2000-0632, CAR-OTP-2060-0631, CAR-OTP-2060-0693, at 0696, lns 72-77.

[541] CAR-OTP-2000-0632, CAR-OTP-2060-0631, CAR-OTP-2060-0693, at 0696, lns 53-68.

[542] CAR-OTP-2000-0656, CAR-OTP-2060-0653, CAR-OTP-2060-0740, at 0744, lns 118-122.

population grew around December 2012, it was due to the mounting threat of Seleka crimes and the Seleka's rapid advance towards BANGUI, rather than to BOZIZÉ's or other leaders' public speeches. As explained by one Muslim witness, Muslims in CAR "absolutely" did not feel threatened by Christians in late 2012 and early 2013.[543]

153. During the broadcast of the 27 December 2013 "*yeso alingbi ti inga*" radio show on Radio Centrafrique, the host condemns Seleka crimes, while encouraging dialogue and discouraging violence.[544] Again, there is no reference to Muslims, Islam or religion.[545] POUSSOU's claim that the *yeso alingbi ti inga* hosts would "openly attack our fellow citizens of the Muslims (sic) faith" is uncorroborated and not reflected in the evidence.[546]

154. Similarly, in a 9 March 2013 speech, Steve YAMBÉTÉ ('YAMBÉTÉ') specifically condemned the violation by the Seleka of the LIBREVILLE accords, and enjoined the BOZIZÉ government to do everything in its power to promote and restore peace in CAR, while inviting the international community to support the LIBREVILLE process.[547] Likewise, YAKÉTÉ's speeches, while expressing concern and defiance towards the Seleka invasion of CAR, did not mention Muslims or incite hatred against this community.[548]

155. Third, there is no credible evidence of BOZIZÉ's involvement in the civil society movements COCORA and COAC, or in the erection of barricades in BANGUI.[549] YAKÉTÉ made it clear that he did not create COCORA in concertation with BOZIZÉ, nor to defend BOZIZÉ.[550] Mere membership in the KNK is insufficient to support membership in the so-called inner circle.

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[543] **D30-4720**: T-279-CONF-ENG ET, p. 28, lns 5-8; **P-2328**: T-046-CONF-ENG CT, p. 61, lns 2-5 (explaining that in BANGUI Muslims were not being targeted in late 2012 and early 2013).
[544] CAR-OTP-2000-0724, CAR-OTP-2127-7019, CAR-OTP-2127-7044, at 7049, lns 141-145.
[545] The hosts clearly describe the crimes committed by the Seleka, for instance on the SUCAF, TELECEL, ECOBANK, BINUCA and various NGOs, which have been widely reported as Seleka crimes, CAR-OTP-2000-0724, CAR-OTP-2127-7019, CAR-OTP-2127-7044, at 7046, lns 34-43. One of the radio hosts, Severin Vele FAIMIDI was himself a Muslim hailing from NDÉLÉ, **D30-4720**: T-279-CONF-ENG ET, p. 28, lns 12-15.
[546] **P-2625**: T-188-CONF-ENG CT, p. 35, lns 17-23. On the lack of credibility of P-2625, *see above* II.B.3.3. POUSSOU (P-2625); **D30-4720**: T-0279-CONG ENG ET, p. 28, ln. 9 to p. 29, ln.5; ICC-01/14-01/18-1942-Conf, para. 12.
[547] CAR-OTP-2000-0686, CAR-OTP-2130-1172, CAR-OTP-2130-1290, at 1292, lns 16-22.
[548] CAR-OTP-2000-0683, CAR-OTP-2087-9791, CAR-OTP-2087-9867, at 9869, lns 31-41 (on 25 December 2012, YAKÉTÉ publicly invited the population to engage in pacifist actions, "*sans prendre les armes*" and *"[j]e vous assure que les êtres humains sont plus forts que les armes*").
[549] **P-0876**: CAR-OTP-2046-0380-R01, at 0381, lns 17-20 ("*j'ai bien compris que c'est pas le Président BOZIZÉ qui a demandé d'ériger des ... des barrières ... Personne entendue : Non.*"). On the lack of credibility of the CAR press, *see e.g.*, CAR-OTP-2001-3068, at 3073. On the role of youth, who were unarmed and who came from everywhere, in protecting the neighbourhoods from looting, **D30-4720**: T-280-CONF-ENG CT, p. 35, ln. 13 to p. 37, ln. 3.
[550] CAR-OTP-2101-7105, at 7112; *see* ICC-01/14-01/18-1999-Conf, paras 17-18; *see also* **P-2232**: T-075-CONF-ENG CT, p. 21, ln. 1 to p. 22, ln. 7; T-078-CONF-ENG CT, p. 19, lns 11-14.

There is also no evidence that COCORA and COAC would have excluded Muslims or propagated anti-Muslim animus.[551] Moreover, according to the evidence, the alleged distribution of machetes donated by China was a rumour which circulated in BANGUI; it is unsupported by any credible evidence.[552]

B. The Prosecution failed to prove the conception and implementation of an organisational policy

1. Failure to prove that BOZIZÉ's intent was to reclaim power at all costs

156. The Prosecution failed to establish that BOZIZÉ's intent was to reclaim power at all costs. The evidence regarding the meetings held by BOZIZÉ, whether in Cameroon[553] or in France[554] do not support the inference that they had a criminal purpose. Additionally, the Prosecution failed to establish that BOZIZÉ was involved in the Anti-Balaka movement whether by creating, organising or financing it.[555]

157. [REDACTED][556] [REDACTED].[557] [REDACTED].[558]

158. OUEBIO, BOZIZÉ's former pilot, lived with him in the Hilton Hotel and later in the Golf residence until BOZIZÉ's departure from Cameroon. OUEBIO did not confirm that BOZIZÉ intended to take back power.[559] In fact, when OUEBIO was contacted by a friend on Facebook, Pedro BARROSO, who proposed his help to get power back via military means, BOZIZÉ refused the offer.[560] Pedro BARROSO's proposition to take back the power via military means never materialized.[561] This is consistent with a 6 June 2014 interview BOZIZÉ gave to Aurélien

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[551] *See below* VI.A.3. Mr NGAÏSSONA did not participate in "youth mobilisation".
[552] *See below* VI.A.3. Mr NGAÏSSONA did not participate in "youth mobilisation"; *see also* **P-0876**: CAR-OTP-2046-0380-R01, at 0381-0382, lns 38-41 ("*Tout le monde dans BANGUI […] ils disaient*"). During his testimony, P-2625 admitted that this information was "going about" and that he obtained it from the CAR press and hearsay, **P-2625**: T-188-CONF-ENG CT, p. 44, lns 2-18, p. 46, lns 5-16; T-192-ENG CT, p. 18, ln. 2 to p. 22, ln. 6. Although unclear, the sources of the information contained in CAR-OTP-2088-1574, at 1597 also appear to be based on CAR local press articles.
[553] *See below* III.B.2.2.1. The so-called "Cameroon group".
[554] *See below* III.B.2.2.2. FROCCA.
[555] *See below* III.B.2.2.3. The 'GOBÉRÉ' group. P-2328's allegation that BOZIZÉ was behind the Anti-Balaka from the outset should be disregarded, as it relies on anonymous hearsay and originates from a witness who has a demonstrated, long-standing bias against BOZIZÉ, *see* **P-2328**: T-046-CONF-ENG CT, p. 77, ln. 18 to p. 78, ln. 16, p. 84, lns 11-22, p. 87, lns 13-15; *see above* II.B.3.7. DEMAFOUTH (P-2328).
[556] **D30-4720**: T-280-CONF-ENG CT, p. 77, ln. 17 to p. 78, ln. 6, p. 79, lns 3-16.
[557] **D30-4720**: T-280-CONF-ENG CT, p. 57, lns 5-13.
[558] **D30-4720**: T-280-CONF-ENG CT, p. 63, ln. 20 to p. 65, ln. 3.
[559] **D30-4679**: T-301-ENG CT, p. 43, ln. 21 to p. 44, ln. 2.
[560] **D30-4679**: T-300-ENG ET, p. 15, ln. 14 to p. 16, ln. 11.
[561] **D30-4679**: T-300-ENG ET, p. 21, lns 7-9. *See also* T-300-ENG ET, p. 21, ln. 19 to p. 22, ln. 9 (regarding Facebook message CAR-OTP-2131-3310, at 3428).

LLORCA – P-0287 ('LLORCA') in which he denied having any involvement in the Anti-Balaka movement.[562] LLORCA believed this to be true.[563]

159. Similarly, BOZIZÉ's involvement in the Anti-Balaka cannot be inferred from the audio recording of a call with a person believed to be KONATÉ[564] which took place after the 5 December attack.[565] The audio is not probative of BOZIZÉ giving instructions to the Anti-Balaka. First, the person allegedly identified as BOZIZÉ refers to "you", "your elements", "your Anti-Balaka", and never to "us", suggesting that he is speaking from an outsider's perspective. Second, there is no indication of instruction given to Anti-Balaka during this call. The main speaker limits himself to giving advice and encourages cooperation with the international forces present in CAR.[566] Finally, in an interview with LLORCA, BOZIZÉ admitted calling KONATÉ on behalf of the US State Department to prevent further violence.[567] This evidence is consistent with BOZIZÉ's advice during the call.

160. Facebook evidence relating to BOZIZÉ's involvement in the Anti-Balaka is patently unreliable as was highlighted by both P-2841 and OUEBIO. P-2841 testified that BOZIZÉ's name motivated people opposing the Seleka regime, therefore it was continuously circulating.[568] P-2841 and OUEBIO testified people would transmit information without verifying its accuracy.[569] This created a snowball effect of false or unreliable information constantly circulating on Facebook, which while disseminated widely, should be attributed no probative value.[570] For example, P-2841 testified that the following instances of BOZIZÉ's involvement

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[562] **P-0287**: CAR-OTP-2115-0239-R01, at 0258, paras 87-89, at 0259, para. 93.
[563] **P-0287**: CAR-OTP-2115-0239-R01, at 0260, para. 95.
[564] CAR-OTP-2000-0603, CAR-OTP-2060-0616, CAR-OTP-2060-0663.
[565] **P-1521**: T-082-CONF-ENG CT, p. 75, ln. 24 to p. 76, ln. 7. The audio was initially dated 26 February 2014 by the Prosecution. The Prosecution unilaterally modified the date to indicate December 2013, which was in contradiction with statements of witnesses P-1951, P-0291 and P-2328, *see* email from D30, to TCV, 29 July 2021, at 09:37.
[566] CAR-OTP-2000-0603, CAR-OTP-2060-0616, CAR-OTP-2060-0663, at 0665-0667, lns 16-17, lns 62-64, lns 93-96.
[567] **P-0287**: CAR-OTP-2115-0239-R01, at 0259, para. 92.
[568] **P-2841**: CAR-OTP-2127-4238, at 4251, para. 75; T-030-CONF-ENG CT2, p. 4, lns 10-19.
[569] **P-2841**: CAR-OTP-2127-4238, at 4252-4253, paras 82-83; T-030-CONF-ENG CT2, p. 5, ln. 13 to p. 6, ln. 1; **D30-4679**: T-299-CONF-ENG CT, p. 82, lns 4-11, p. 88, lns 6-11; T-300-ENG ET, p. 6, lns 19-24; p. 24, lns 14-23, in particular T-300-ENG ET, p. 26, lns 6-14 ("If you would allow me, with a lot of hindsight, I took a lot of risk to answer in the place of the president, whereas in reality, we weren't speaking any more - almost not - and do you know why? Every time I spoke with assurance and confidence, I don't know why at the time, but now, with him as my superior, I can see I acted wrongly. […] I confirmed things that I didn't know, whereas in reality it wasn't good and, unfortunately, I answered in this way. […] In no case did I have exchanges with the president to reply like this, but he would tell me things to confirm, but unfortunately, at the time, I wrote it like this, unfortunately. That's it").
[570] **P-2841**: T-030-CONF-ENG CT2, p. 4, ln. 20 to p. 5, ln. 10 (regarding CAR-OTP-2101-9735, at 9784; CAR-OTP-2102-3799, at 3839-3840), p. 6, lns 2-11 (regarding CAR-OTP-2101-9735, at 9798), p. 8, ln. 2 to p. 9, ln. 2

in the Anti-Balaka, which he disseminated, were completely false: (1) BOZIZÉ engaging with South Sudan in June 2013 to obtain weapons and ammunitions,[571] (2) BOZIZÉ leading the September 2013 operations in BOSSANGOA,[572] and (3) BOZIZÉ engaging with South Africans to obtain weapons in November 2013.[573]

161. Other documentary evidence of BOZIZÉ's involvement in the Anti-Balaka movement is similarly devoid of probative value. For example, the documents TIANGAYE provided to the Prosecution regarding BOZIZÉ's alleged financing of the Anti-Balaka[574] consist of anonymous hearsay,[575] and TIANGAYE could not attest to their accuracy. SAMBA-PANZA equally clarified that she was provided with intelligence reports on the alleged coordination of the Anti-Balaka by BOZIZÉ and his sons, but that she received no evidence in support of these allegations.[576] In any event, TIANGAYE testified that intelligence reports are not reliable documents.[577]

162. While there is evidence that some Anti-Balaka such as MOKOM[578] supported BOZIZÉ's return to power, it is not the only reasonable inference that they did so on the behest of BOZIZÉ.[579] For example, [REDACTED].[580]

163. While the Prosecution tries to portray the Anti-Balaka as a top-down organisation, such a conclusion cannot be drawn from the evidence. The Anti-Balaka is a myriad of self-defence groups that spontaneously rose out of the Seleka's heinous and continuous crimes against the

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(regarding CAR-OTP-2101-9735, at 9864, CAR-OTP-2101-8342, at 8353). On "snowballing" information, *see also* **P-2841**: T-030-CONF-ENG CT2, p. 6, ln. 12 to p. 7, ln. 8 (about Facebook conversations CAR-OTP-2101-9735, at 9804, CAR-OTP-2101-8599, at 8687; CAR-OTP-2100-3674, at 3762); *see also* Annex A.03.

[571] **P-2841**: T-029-CONF-ENG CT, p. 80, ln. 8 to p. 81, ln. 8 (regarding CAR-OTP-2101-9735, at 9747-9748).

[572] **P-2841**: T-030-CONF-ENG CT2, p. 4, ln. 20 to p. 5, ln. 10 (regarding CAR-OTP-2101-9735, at 9784).

[573] **P-2841**: T-030-CONF-ENG CT2, p. 8, ln. 2 to p. 9, ln. 2 (regarding CAR-OTP-2101-9735, at 9864; CAR-OTP-2101-8342, at 8353).

[574] CAR-OTP-2045-0696, at 0697.

[575] **P-0291**: T-051-CONF-ENG-ET, p. 62, ln. 22 to p. 63, ln. 14 (about his statement to the International Commission of Inquiry on the Central African Republic, CAR-OTP-2045-0696, at 0697).

[576] **P-0952**: T-251-ENG CT, p. 88, ln. 24 to p. 89, ln. 11.

[577] **P-0291**: T-053-ENG CT2, p. 14, ln. 17 to p. 15, ln. 5 ("this was mentioned several times and many incorrect notes caused a lot of harm to Central Africans. Q. […] was there a major problem of inaccurate reports in 2013? A. Not only in 2013, even today people falsify reports so as to settle personal scores or to benefit from funds that are allocated, so they have to submit these reports or notes to prove that they have done the work. And many of them, the vast majority, are inaccurate"); **P-0876**: T-088-CONF-ENG CT, p. 42, lns 13-20. *See* Defence's submissions on the unreliability and lack or probative value of intelligence reports, ICC-01/14-01/18-2131-Conf-Corr, paras 35-42.

[578] **P-0889**: T-108-CONF-ENG CT2, p. 35, lns 5-10.

[579] **P-0889**: T-109-CONF-ENG CT2, p. 20, ln. 17 to p. 21, ln. 2 ([REDACTED])

[580] **P-0889**: T-108-CONF-ENG CT2, p. 48, lns 19-24, about CAR-OTP-2132-7226, at 7235.

civilian population following the 24 March coup.[581] Any attempt to pinpoint the creation or instrumentalization of the Anti-Balaka onto a single individual or group of persons such as the so-called inner circle is flawed and contradicted by the evidence, as will be demonstrated in subsequent sections of the present Brief.

2. Failure to prove a coordination of the alleged criminal policy at the alleged inner circle level

164. While there need not be a meeting of minds between the designers of the criminal policy and those who implement it on the ground, there must be a minimal level of coordination among those who control the relevant alleged organisation.[582] The Prosecution failed to demonstrate that this was the case.

2.1. Lack of specificity regarding the "inner circle"

165. Aside from Mr NGAÏSSONA, MOKOM and Bernard MOKOM, the other alleged members of the so-called inner circle are not identified.[583] Individuals such as KOKATÉ, POUSSOU, Louis OGUÉRÉ NGAÏKOUMON ('OGUÉRÉ'), YAKÉTÉ and David GBANGA ('GBANGA'), despite being projected by the Prosecution as central to the alleged discussions held in Cameroon on BOZIZÉ's return to power through any means, including violence, are merely categorized as BOZIZÉ's close entourage, not as members of his inner circle.[584] This lack of specificity means that the minimal level of coordination cannot be established. Moreover, these individuals' closeness with BOZIZÉ or their ongoing involvement in coordinating the alleged criminal policy has not been established. POUSSOU and KOKATÉ testified that they were not part of the alleged inner circle and were considered untrustworthy.[585] POUSSOU is not familiar with Bernard MOKOM and denies having attended any meetings where he was present.[586] The Prosecution's reliance on these witnesses to demonstrate the existence of a criminal policy reveals the absence of a credible case and the dearth of probative evidence.

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[581] **P-2012**: T-025-ENG CT, p. 43, ln. 24 to p. 45, ln. 8; **P-0889**: T-109-CONF-ENG CT2, p. 12, ln. 7 to p. 13, ln. 24; **P-0808**: T-070-ENG CT2, p. 30, ln. 12 to p. 31, ln. 18; **P-0876**: T-088-CONF-ENG CT, p. 17, lns 6-20; **P-0487**: T-203-CONF-ENG ET, p. 71, ln. 25 to p. 72, ln. 20; **P-0801**: T-036-ENG CT, p. 75, ln. 22 to p. 76, ln. 25. *See above*, III.~~3.~~A.1. Origin of the Seleka.
[582] Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 97.
[583] *See* PTB, paras 64, 96, 219.
[584] PTB, para. 67.
[585] **P-0801**: T-034-ENG CT, p. 31, lns 14-21, p. 67, lns 2-4; T-035-ENG CT, p. 8, lns 14-17, p. 12, lns 18-21; **P-2625**: T-189-CONF-ENG CT, p. 5, lns 4-8.
[586] **P-2625**: T-192-ENG CT, p. 27, lns 7-10.

2.2. Insufficient level of coordination within each alleged geographical group

166. The Prosecution failed to prove that the alleged masterminds behind each of the so-called Cameroon, PARIS, and GOBÉRÉ groups respectively elaborated and implemented the alleged criminal policy.

2.2.1. The so-called 'Cameroon group'

167. The evidence fails to establish beyond reasonable doubt that any "anti-Muslim" rhetoric was expressed and endorsed by the so-called inner circle during the alleged meetings in Cameroon.

168. The evidence on the alleged Hilton meetings rests solely on the testimony of POUSSOU, who is contradicted by KOKATÉ and P-1847. KOKATÉ recalled that BOZIZÉ was concerned with the political implications of the non-respect of the LIBREVILLE agreement.[587] BOZIZÉ's plan to reach out to the ECCAS heads of state "to implement the Libreville agreement and bring him back to power to complete his term"[588] was unanimously supported by those in the room,[589] while no other options were discussed that day.[590] P-1847 mentioned in general terms that the meeting's aim was to organise a response against Seleka's exactions and discuss BOZIZÉ's return to power.[591] However, P-1847's proposed hearsay evidence fails to substantiate that the discussions pertained to a criminal policy.

169. There is also no credible evidence for the allegations that specific roles were assigned to Hilton meetings attendees. KOKATÉ could not confirm that such appointments were made,[592] contradicting the indirect evidence of P-2841[593] and of P-1847. Interestingly, according to the latter, Gina SANZE, presumably also present, would have been promised the position of interim head of the KNK,[594] a nomination which is wholly irrelevant to the alleged criminal policy. Given the lack of consistency in the evidence, the Chamber cannot conclude beyond reasonable doubt that specific assignments were made during alleged meetings in Cameroon, with a view to further a criminal policy.

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[587] **P-0801**: T-034-ENG CT, p. 7, ln. 25 to p. 8, ln. 2.
[588] **P-0801**: T-034-ENG CT, p. 8, lns 3-4, p. 10, lns 18-21.
[589] **P-0801**: T-034-ENG CT, p. 8, lns 14-20, p. 11, lns 2-5, p. 11, ln. 24 to p. 12, ln. 5. KOKATÉ was not certain that Mr NGAÏSSONA was among those present during that meeting, *see* **P-0801**: T-034-ENG CT, p. 6, lns 18-20.
[590] **P-0801**: T-034-ENG CT, p. 9, lns 13-14.
[591] **P-1847**: CAR-OTP-2061-1534-R01, at 1540, para. 35; T-023-CONF-ENG CT, p. 14, ln. 13 to p. 15, ln. 21.
[592] **P-0801**: T-034-ENG CT, p. 12, lns 11-19.
[593] **P-2841**: CAR-OTP-2127-4238-R01, at 4257, para. 113.
[594] **P-1847**: T-022-CONF-ENG CT, p. 82, lns 7-24, p. 85, ln. 8. *See also* **P-0889**: CAR-OTP-2027-2290-R02, at 2304, para. 85; CAR-D30-0006-0093, at 0305-0306; [REDACTED]; *see* CAR-OTP-2100-6329, at 6335, in which YAKÉTÉ confirms the various interim appointments within the political party.

170. According to KOKATÉ, the other participants did not express specific reasons for attending the Hilton meeting, other than regret and sadness over the coup and the Seleka's atrocities.[595] POUSSOU corroborated this in part, stating that BOZIZÉ intended to travel to N'DJAMENA for a ECCAS summit to "plead his cause",[596] and that during an alleged meeting at the *Hôtel des Députés*, POUSSOU, YAKÉTÉ and GBANGA reportedly drafted a memorandum for African heads of state, in anticipation of this summit, which was then transformed into a letter addressed to the French Minister of Foreign Affairs during an alleged subsequent meeting at the Hilton.[597] The memorandum's purpose, according to POUSSOU, was to elaborate on the country's situation, acts of violence and solutions to resolve this crisis.[598] This suggests that BOZIZÉ was focused on diplomacy. Interestingly, KOKATÉ does not mention any follow-up meetings at the *Hôtel des Députés* or Hilton Hotel, contrary to POUSSOU's assertions of KOKATÉ's involvement. Also, POUSSOU's ultimate conclusion that BOZIZÉ and his so-called supporters were committed to using armed violence merely amounts to speculation.[599] Therefore, given the inconsistency of the evidence, the Chamber cannot conclude beyond reasonable doubt that a criminal policy was expressed and endorsed during these alleged meetings.

171. There is also no evidence of a criminal policy stemming out of an alleged subsequent meeting at the CAR Embassy. Rather, the discussions pertained to the desecration of BOZIZÉ's mother's grave by the Seleka,[600] and the general discontent among participants regarding the Seleka's reprehensible actions in CAR. Notably, KOKATÉ did not confirm any agreement on criminal actions.[601] Similarly, in the alleged meeting at Mr NGAÏSSONA's alleged villa in YAOUNDÉ,[602] which only KOKATÉ mentions, there were reportedly no assignments of tasks, and discussions mirrored those at the Embassy meeting.[603]

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[595] **P-0801**: T-034-CONF-ENG CT, p. 16, lns 7-12, lns 16-22.
[596] **P-2625**: T-189-CONF-ENG CT, p. 4, ln. 25 to p. 5, ln. 5.
[597] **P-2625**: T-189-CONF-ENG CT, p. 9, lns 4-5, p. 11, lns 14-22.
[598] **P-2625**: T-189-CONF-ENG CT, p. 9, lns 2-8.
[599] **P-2625**: T-189-CONF-ENG CT, p. 13, lns 2-7; *see above* III.B.1. Failure to prove that BOZIZÉ's intent was to reclaim power at all costs.
[600] However, *see* CAR-OTP-2102-5471, at 5492; CAR-OTP-2102-6098, at 6102, which shows that this profanation took place in August 2013.
[601] **P-0801**: T-034-ENG CT, p. 21, ln. 4 to p. 26, ln. 6.
[602] **P-0801**: T-037-CONF-ENG CT, p. 73, lns 16-17.
[603] **P-0801**: T-034-ENG CT, p. 29, lns 18-21.

172. P-2232's account that Mr NGAÏSSONA, [REDACTED].[604] Also, rather than corroborating any evidence of a criminal policy, [REDACTED].[605] Furthermore, [REDACTED].[606] [REDACTED].[607]

173. Finally, the alleged meetings at the Golf residence are based solely on the indirect evidence of P-1847,[608] whose credibility is minimal.[609] The evidence of P-2673 and P-1719 is also too indirect and unreliable to substantiate claims about what was discussed in those alleged meetings,[610] let alone to prove the existence of a criminal policy.

174. Based on the evidence discussed above, it is more than likely that BOZIZÉ was surrounded by a group of persons who supported his frustration to have been overthrown by the Seleka in obvious violation of the LIBREVILLE agreement. Given BOZIZÉ's position, there is nothing extraordinary about the fact that he would have political supporters, especially since all CAR nationals in Cameroon were forced to exile because of this coup. However, the Prosecution attributes, without foundation, criminal motives to this group of people and this is where the evidence is much less persuasive and much too ambiguous to conclude that this group of individuals described above shared BOZIZÉ's intent to reclaim power at all costs, by violently targeting the Muslim civilian population in Western CAR who would have been perceived as collectively responsible for the Seleka.

2.2.2. FROCCA

175. In the summer of 2013, members of the Central African diaspora,[611] including [REDACTED] and KOKATÉ, met at a public gathering in a hotel in Châtelet-les-Halles in PARIS ('first FROCCA meeting'). The attendees, who were not informed of the agenda beforehand,[612]

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[604] **P-2232**: T-076-CONF-ENG ET, p. 9, lns 6-15.
[605] **P-2232**: T-076-CONF-ENG ET, p. 18, lns 12-25.
[606] **D30-4914**: T-303-CONF-ENG CT, p. 20, lns 2-16; CAR-D30-0024-0001-R01, at 0008-0009.
[607] **D30-4914**: T-303-CONF-ENG ET, p. 20, lns 2-16.
[608] **P-1847**: CAR-OTP-2061-1534-R01, at 1546-1547, paras 84-87, at 1551, para. 112.
[609] *See below* VI.A.5.5. Alleged meetings at the GOLF residence.
[610] **P-2673**: CAR-OTP-2127-6435-R01, at 6442, paras 44, 47, at 6443, para. 52; **P-1719**: T-141-CONF-ENG CT, p. 36, ln. 5 to p. 40, ln. 5, mentioning a fight between Mr NGAÏSSONA and Levy YAKÉTÉ, which would have prompted the latter to leave Cameroon and distance himself from the group.
[611] **P-2625**: T-189-CONF-ENG CT, p. 25, lns 4-6 ("It was President François Bozizé who personally chaired the meeting, since this meeting had been presented as a meeting between President Bozizé and the Central Africans, the Central Africans of the diaspora"); **D30-4720**, T-280-CONF-ENG CT, p. 67, ln. 25 to p. 70, ln. 5.
[612] [REDACTED]; **P-0801**: T-034-ENG CT, p. 32, ln. 16 to p. 33, ln. 4.

resolved during that meeting to create a structure called FROCCA,[613] which was announced publicly by BOZIZÉ in an interview given to RFI and published on 10 August 2013.[614]

176. The evidence shows that FROCCA never reached the stage of a cogent structure. Although further meetings took place in France, none of them led to any concrete action.[615] BOZIZÉ withdrew from those gatherings after being assaulted by a CAR citizen in PARIS[616] in August 2013.[617] Subsequent meetings also lacked sufficient participation to lead to concrete discussions or actions and eventually, the FROCCA meetings ceased altogether.[618]

2.2.2.1. *FROCCA was not a pro-BOZIZÉ structure and never set up a bureau*

177. Labelling participants in the FROCCA meetings as BOZIZÉ supporters or members of BOZIZÉ's inner circle is a mischaracterisation. For example, KOKATÉ, alleged participant in BOZIZÉ's meetings, denied having had any role in FROCCA.[619] Similarly, Bernard MOKOM and YAMBÉTÉ were absent from the meetings. Also, not all participants were affiliated with the KNK:[620] Jean-Serge WAFIO ('WAFIO') was the President of the PDCA,[621] KOKATÉ was part of BOZIZÉ's opposition,[622] Lin BANOUKEPA ('BANOUKEPA') led his own party, the PDI, and Thierry BONGOLO, Guillaume NGOBO and POUSSOU were not members of the KNK.[623] [REDACTED] described subsequent FROCCA meetings which brought together individuals who were neither at the first FROCCA meeting, such as Christian Guenebem DEDIZOUM ('DEDIZOUM'), also not an alleged member of the so-called inner circle.[624] Conversely, [REDACTED], WAFIO, Pierre-Marie FRANCK, Salomon KOTRO and Sylvie MAZONGO, with no ties to the alleged inner circle, attended some of the FROCCA meetings.[625]

2.2.2.2. *FROCCA was never formalised*

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[613] [REDACTED].
[614] CAR-OTP-2091-1804.
[615] [REDACTED].
[616] [REDACTED].
[617] CAR-OTP-2102-4833, at 4913.
[618] [REDACTED].
[619] **P-0801**: T-033-ENG CT, p. 10, ln. 17 to p. 11, ln. 1; T-034-ENG CT, p. 46, lns 17-18.
[620] **P-0801**: T-034-ENG CT, p. 34, lns 20-24; **D30-4720**: T-280-CONF-ENG CT, p. 67, ln. 25 to p. 70, ln. 5.
[621] [REDACTED].
[622] **P-0801**: T-033-ENG CT, p. 27, lns 20-23.
[623] [REDACTED].
[624] [REDACTED].
[625] **D30-4720**: T-280-CONF-ENG CT, p. 68, ln. 16 to p. 69, ln. 4.

178. FROCCA was never formalised. Only two documents refer to a tentative bureau,[626] but neither is an official FROCCA document. One is a draft which is unknown to any relevant witness[627] and there is no evidence that it was ever published.[628] The second document is an email sent to a certain "Namsbona" by Edouard SEREFIO ('SEREFIO')[629] outlining a structure that was never formalised.[630]

179. [REDACTED] testified that during the first Montreuil meeting, the participants discussed (i) a budget which was never formally set up,[631] and (ii) acquiring phone credit which was also never obtained.[632] In a Facebook exchange, [REDACTED] announced to YAKÉTÉ that he set up a website for FROCCA[633] but there is no evidence that it was ever launched. The meetings fell flat after BOZIZÉ's withdrawal. No actions were taken by FROCCA as a group.

180. There is also no evidence suggesting FROCCA shared inflammatory rhetoric.[634] [REDACTED] testified never hearing anti-Muslim rhetoric in FROCCA meetings,[635] which contradicts POUSSOU's claim that the discussions during the first FROCCA meeting contained vindictive content.[636] Although BANOUKEPA's press releases communicate a matter of urgency with respect to Seleka crimes, it has not been established that these communications had any impact on the organisation of self-defence groups across CAR.[637] To the contrary, key witnesses like P-1521 and Alfred NGAYA – P-0808 ('NGAYA') explained that FROCCA was understood as a political structure[638] and that it did not exist at an operational level;[639] rather, it shared fake news to intimidate the Seleka.[640]

2.2.2.3. *BOZIZÉ's return to power was an option, rather than an objective*

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[626] CAR-OTP-2124-0852; CAR-OTP-2124-0002-R03.
[627] [REDACTED]; **P-2625**: T-189-CONF-ENG CT, p. 55, lns 10-14; **P-0801**: T-034-ENG CT, p. 36, lns 19-21.
[628] CAR-OTP-2124-0852; CAR-OTP-2124-0851 ("*voici les projets en question*").
[629] CAR-OTP-2124-0002-R03.
[630] [REDACTED]. P-2625's evidence is inconclusive, *see* **P-2625**: T-189-CONF-ENG CT, p. 26, ln. 4 to p. 27, ln. 3.
[631] [REDACTED].
[632] [REDACTED].
[633] CAR-OTP-2100-4217, at 4220.
[634] ICC-01/14-01/18-1942-Conf, paras 27-30.
[635] [REDACTED].
[636] **P-2625**: T-189-CONF-ENG CT, p. 63, ln. 6 to p. 64, ln. 1.
[637] ICC-01/14-01/18-1942-Conf, paras 27-30.
[638] **P-0808**: T-069-CONF-ENG CT, p. 22, lns 10-15.
[639] **P-1521**: T-080-CONF-ENG ET, p. 65, lns 12-19, p. 67, lns 14-20 ("The FROCCA group that I'm familiar with on the operational point of view does not exist"), p. 68, lns 16-21.
[640] **P-1521**: T-080-CONF-ENG ET, p. 65, lns 12-19, p. 67, lns 14-20, p. 68, lns 16-21.

181. BOZIZÉ's return to power was only one of several alternatives, as stated in his interview with Ghislaine DUPONT, during which he explained that FROCCA's objectives were diplomatic.[641] When asked about his intentions to regain power, BOZIZÉ described it as a mere possibility rather than a set objective.[642] [REDACTED] confirmed that this reflects the objectives discussed during the FROCCA meetings she participated in.[643]

182. Importantly, support for BOZIZÉ's reinstatement was far from unanimous among the supporters of a return to the constitutional order participating in these meetings. For example, upon DJOTODIA's resignation, WAFIO proposed his own candidacy for President of the Transitional Government,[644] while Mr NGAÏSSONA, expressed his lack of support to BOZIZÉ's return to power.[645] Calls for a return to the constitutional order were voiced by individuals both within and outside the FROCCA framework and did not inherently imply support to BOZIZÉ. For instance, NGAYA's prime reason for demanding a return to the constitutional order was to address the Seleka suspension of the Constitution after the coup.[646]

2.2.2.4. *FROCCA's objectives were non-violent*

183. Evidence indicates that FROCCA's objectives were diplomatic rather than military.[647] BOZIZÉ clarified in an interview that his aim was to raise awareness on the suffering in CAR.[648] Testimonial evidence establishes that the first FROCCA meeting focused on this objective and that no military or armed option was discussed at the meeting.[649] [REDACTED], who participated in five FROCCA meetings, unequivocally stated that only diplomatic goals were

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[641] CAR-OTP-00036359, CAR-OTP-00036817, at 0002; CAR-OTP-2091-1804, at 1804 ("*L'objectif de notre structure, c'est suivre de près et dénoncer tout ce qui se passe au pays, afin d'informer l'ensemble de la communauté internationale qui semble n'être pas encore pénétrée de la grave crise, du drame qui se construit en République centrafricaine"), ("Par la voie politique ou la voie des armes ? La voie politique puisque la voie des armes ne vient que lorsque la solution politique n'est pas trouvée. Ça a été toujours comme cela*").
[642] CAR-OTP-00036359, CAR-OTP-00036817, at 0002; CAR-OTP-2091-1804, at 1804-1805 ("*Oui reprendre le pouvoir. Si l'occasion se présente, je le ferai […] Je suis démocrate. […] si le peuple me rejette, je me plierai à la volonté du peuple. Mais la démarche n'est pas une démarche brutale, c'est de voir les voies et les moyens qui peuvent nous permettre de sauver ce peuple, ce pays, qui a trop souffert*").
[643] [REDACTED].
[644] CAR-OTP-2124-0519.
[645] CAR-OTP-2001-2769, at 2830.
[646] **P-0808**: T-070-ENG CT2, p. 17, lns 1-12.
[647] [REDACTED]; **P-0808**: CAR-OTP-2025-0324-R05, at 0348-0349, para. 151.
[648] CAR-OTP-2001-4146, at 4148 ("*Comptez-vous reprendre les armes? Lancer une guérilla? Je ne m'interdis rien, mais ce n'est pas d'actualité. Je veux sensibiliser la communauté internationale aux souffrances de mon peuple*").
[649] [REDACTED]; **P-2625**: T-189-CONF-ENG CT, p. 27, ln. 4 to p. 28, ln. 14, p. 29, ln. 25 to p. 30, ln. 9. P-0801's evidence that BOZIZÉ's reference to using all means is a reference to military means is mere speculation. *See* **P-0801**: T-034-ENG CT, p. 34, lns 10-19, p. 37, lns 14-19.

ever considered,[650] such as mobilising people, organising demonstrations, and leading diplomatic actions from France.[651] LLORCA testified that during an interview with BOZIZÉ, the latter confirmed that he was in PARIS in July 2013 to try and meet with the French advisor on Africa, further supporting his diplomatic agenda.[652] In the same interview, he also denied any involvement with the Anti-Balaka or the events happening in CAR.[653] This aligns with what BOZIZÉ told POUSSOU in YAOUNDÉ,[654] and POUSSOU's own understanding of FROCCA's objective, *i.e.* to go back to the LIBREVILLE agreements.[655]

184. POUSSOU's claims that other topics could have been discussed during *"asides"* between BOZIZÉ and other FROCCA meetings participants,[656] and that the military option was privileged over a political one,[657] are mere conjectures,[658] contradicted by [REDACTED]'s direct evidence.[659] Even assuming such side conversations took place, POUSSOU was not privy to their content. Furthermore, POUSSOU confirms that there was no formal link between a military branch and FROCCA.[660]

185. While POUSSOU describes another meeting at the Champs-Élysées during which military operations were allegedly evoked,[661] KOKATÉ's recollection of that meeting significantly differs. According to KOKATÉ, the meeting was about sending a delegation to New-York.[662]

186. The three draft documents[663] allegedly sent by WAFIO to Mr NGAÏSSONA,[664] do not support the allegation that FROCCA's strategic plan included a military strategy to bring BOZIZÉ back to power.[665] To the contrary, they show that FROCCA was only working on a diplomatic level,

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[650] For the first FROCCA meeting, [REDACTED]. For the second meeting, [REDACTED]. For the third meeting, [REDACTED]. For the fourth meeting, [REDACTED]. For the fifth meeting, [REDACTED].
[651] [REDACTED].
[652] **P-0287**: CAR-OTP-2115-0239-R01, at 0258-0259, para. 89.
[653] **P-0287**: CAR-OTP-2115-0239-R01, at 0258-0259, paras 87-89.
[654] **P-2625**: T-189-CONF-ENG CT, p. 28, lns 11-14.
[655] **P-2625**: T-189-CONF-ENG ET, p. 29, ln. 25 to p. 30, ln. 6.
[656] **P-2625**: T-189-CONF-ENG CT, p. 31, lns 9-21.
[657] **P-2625**: T-189-CONF-ENG CT, p. 32, lns 11-15.
[658] **P-2625**: T-189-CONF-FRA ET, p. 27, ln. 25 to p. 28, ln. 6.
[659] [REDACTED].
[660] **P-2625**: T-192-FRA CT, p. 71, lns 11-17 (English version not accurate, T-192-ENG CT, p. 69, lns 20-25); T-189-CONF-ENG CT, p. 39, lns 19-21.
[661] **P-2625**: T-189-CONF-ENG ET, p. 34, lns 10-19.
[662] **P-0801**: T-034-ENG CT, p. 35, lns 7-10.
[663] CAR-OTP-2124-0852; CAR-OTP-2124-0861; CAR-OTP-2124-0876; CAR-OTP-2124-0851 ("*Voici les projets en question; j'ai juste arrêté les idées forces que je vais développer par la suite*").
[664] CAR-OTP-2124-0851. For the attribution of the email ndikissi2008@yahoo.fr to Jean-Serge WAFIO *see* CAR-OTP-2124-0519; CAR-OTP-2124-0939; CAR-OTP-2124-0533 (and its attachment CAR-OTP-2124-0534).
[665] PTB, paras 98-100; ICC-01/14-01/18-1868-Conf, para. 18 (the Prosecution's terminology is inaccurate and suggests that CAR-OTP-2124-0852 refers to "enlisting" disillusioned elements while the exact reference is to "*faire adhérer*" which translates to "make them adhere to").

and was mindful to avoid divisive rhetoric.[666] The mere mention of Thurayas is insufficient to prove a military plan.[667] In any case, these documents should be given little weight as they are undated, lack context, and have not been authenticated by any relevant witnesses.[668] Two other attachments outline a roadmap and activities, including organising a "*Journée plaidoyer*", again with no reference to military actions.[669]

2.2.2.5. *FROCCA Facebook accounts are not attributable to FROCCA members*

187. The evidence does not establish that the Facebook accounts supposedly related to FROCCA[670] were created at the instigation of so-called FROCCA members. While P-1719 genuinely believed the Facebook page "Apcs Frocca" belonged to YAKÉTÉ,[671] it was created at the initiative of Vidal Max NGAISSIO, with no indication of any involvement on the part of YAKÉTÉ.[672] Similarly, profiles like "Bangui FROCCA" and "E ZINGO SIRIRI" were created and used by Igor LAMAKA, who did not participate in any FROCCA meetings in PARIS.[673] Other similar groups emerged on their own initiative, independently claiming to uphold FROCCA's objective of returning to constitutional order.[674] Importantly, there is no evidence of military actions conducted on behalf of those groups. To the contrary, they promoted peaceful initiatives like demonstrations[675] or misinformation campaigns,[676] as described by P-

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[666] CAR-OTP-2124-0852, at 0855 ("*Il est très impérieux d'avoir une stratégie communicationnelle reposant sur la perspicacité, la cohérence des propos, la constance dans les prises de position et l'attachement aux objectifs autour desquels le FROCC est mobilisé. Par conséquent, il est très fondamental d'éviter des déclarations frisant la haine, la vengeance et la division*").
[667] [REDACTED]; **P-0808**: T-069-CONF-ENG CT, p. 33, lns 13-19 (explaining the need to remain discreet because that it was dangerous to oppose the Seleka regime).
[668] **P-0801**: T-034-ENG CT, p. 36, lns 19-21; **P-2625**: T-189-CONF-ENG CT, p. 55, lns 10-11, p. 56, lns 8-10; [REDACTED].
[669] CAR-OTP-2124-0852, at 0863-0864 ("FICHE 1" attachment details *inter alia* a "*Journée plaidoyer*", for which the stated intention was to invite representatives of the French government, ambassadors from various countries and the European Union and the African Union, NGOs and representatives of different confessions including the Imam of Paris. The document also details how the budget should be distributed for example for the booking of a conference room or for the organisation of a cocktail after the conference; CAR-OTP-2124-0867 (the second attachment called "*FICHE 2 : Le Programme d'Actions de FROCCA*", appears to be the detailed program for a political transition).
[670] Bangui Frocca; Apcs Frocca; E Zingo Siriri; Frocca Maroc.
[671] **P-1719**: T-141-CONF-ENG CT, p. 65, lns 16-19; T-144-CONF-ENG CT, p. 28, lns 23-25, p. 30, lns 24-25.
[672] CAR-OTP-2100-8499, at 8499.
[673] CAR-OTP-2100-7886, at 7908; CAR-OTP-2101-8230, at 8231; CAR-OTP-2100-6289, at 6289; CAR-OTP-2102-9171, at 9174.
[674] CAR-OTP-2130-3423; CAR-OTP-2081-1414; CAR-OTP-2081-1435. For the absence of links between Jeunesse du Frocca and YAKÉTÉ, *see* CAR-OTP-2100-8929, at 8941.
[675] CAR-OTP-2081-1418; CAR-OTP-2081-1432; CAR-OTP-2100-8923, at 8923; CAR-OTP-2102-8556, at 8559.
[676] CAR-OTP-2100-8499, at 8504; CAR-OTP-2102-5343, at 5354 ("*la guerre de media*").

1521 and NGAYA.[677] Furthermore, the sources of information of these accounts are unknown and unreliable.[678] This is illustrated by instances where images of fighters from unrelated conflicts, like the Ivorian post-electoral crisis of 2011, were falsely portrayed as FROCCA combatants.[679]

2.2.2.6. *BANOUKEPA worked alone*

188. Following the announcement of FROCCA and the failed subsequent meetings, FROCCA existed only for one individual: BANOUKEPA. According to [REDACTED], BANOUKEPA started acting on his own soon after the creation of FROCCA.[680] It is telling that his publications or statements on FROCCA's behalf were unknown to [REDACTED].[681] NGAYA's email dated 15 August 2013 to Mr NGAÏSSONA corroborates that BANOUKEPA was working alone.[682] No evidence shows that BANOUKEPA received instructions or coordinated with other supposed FROCCA members for press releases.[683]

189. In this context, the theory that FROCCA helped define a criminal policy that led to the 5 December 2013 attack is unconvincing, as it rests solely on BANOUKEPA's radio statement.[684] In any event, the wording of the statement highlights that FROCCA was a political, rather than a military structure, as corroborated by D30-4720.[685] Moreover, none of the relevant witnesses confirmed having had any information regarding FROCCA's role in the 5 December attack.[686] Finally, P-0876's alleged call with BANOUKEPA prior to the 5 December attack where the later intimated to P-0876 to let the "children" continue the fight instead of engaging in a dialogue, is wholly uncorroborated.[687]

2.2.2.7. *FROCCA had no military capacity*

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[677] *See above* III.B.2.2.2.2. FROCCA was never formalised, para. 180. **P-1521**: T-080-CONF-ENG ET, p. 65, lns 12-22; p. 67, lns 14-20, p. 68, lns 11-21; **P-0808**: T-069-CONF-ENG CT, p. 22, lns 8-15.
[678] *See e.g.,* CAR-OTP-2100-9951, at 9978. *See* Annex A.03
[679] CAR-OTP-2114-0550; CAR-OTP-2091-0457; CAR-OTP-2091-0455; ICC-01/14-01/18-1942-Conf, para. 46.
[680] [REDACTED].
[681] [REDACTED].
[682] CAR-OTP-2130-3306, at 3306 ([REDACTED]); *see also* CAR-OTP-2102-9800, at 9822-9823; CAR-OTP-2132-1004, at 1019-1020; CAR-OTP-2101-6924, at 6964.
[683] P-2625's suggestion that the press releases were communicated by email before their publication is unsupported by the evidence on the record, **P-2625**: T-189-CONF-FRA ET, p. 67, lns 18-24 (English version not accurate, T-189-CONF-ENG CT, p. 67, lns 8-13).
[684] CAR-OTP-2088-2034, CAR-OTP-2107-1596. *See also* CAR-OTP-2101-6924, at 6964.
[685] [REDACTED].
[686] *See e.g.*, **P-2625**: T-190-ENG CT, p. 26, lns 21-25.
[687] There is no CDR evidence in support of a call between P-0876 and Lin BANOUKEPA prior to 5 December 2013.

190. There is no probative evidence that FROCCA had, or intended to have, military capacity including through the Anti-Balaka.[688] The testimonies of POUSSOU and P-2673 failed to substantiate any link between FROCCA and the Anti-Balaka, as both resort to speculation.[689] P-2673's evidence on FROCCA allegedly sending individuals to the border is uncorroborated and unreliable given his overall lack of credibility, unreliable sources and the fact that he admitted lying to obtain money and information.[690] His incapacity to substantiate his claim that there was a link between FROCCA and the Anti-Balaka is telling not only of his wish to craft unfounded incriminating evidence but also of his lack of knowledge on the topic.[691] In contrast, [REDACTED] was categorical that the use of force was never evoked by any of the FROCCA meetings participants, not even by Francis BOZIZÉ.[692]

191. SEREFIO's email to POUSSOU mentioning the possibility that a military entity was being discussed during an alleged FROCCA meeting is speculative on its face, since it reveals that SEREFIO was not present at this alleged meeting.[693] POUSSOU, who unlike SEREFIO, claimed he was present during the second FROCCA meeting, denied that the creation of a military entity was discussed[694] and did not remember his response to this email.[695] KOKATÉ testified that he participated in only one meeting at the Champs-Élysées, during which the only issue discussed was the travel of POUSSOU and Yvon SONGUET to New York, to lobby at the UN.[696] No reference to a military entity was made. KOKATÉ was not even able to remember whether he knew SEREFIO.[697]

192. The existence of any actual links between FROCCA and any alleged armed groups was not proven. The evidence shows that these groups were either empty shells[698] or used as a tool in

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[688] P-2625's information that the Anti-Balaka were joined by Presidential Guards who were close to BOZIZÉ was obtained in the press, **P-2625**: T-189-CONF-ENG CT, p. 33, ln. 18 to p. 34, ln. 5.
[689] **P-2625**: T-190-EN CT, p. 16, lns 7-15; **P-2673**: T-041-CONF-ENG ET, p. 26, ln. 18 to p. 27, ln. 9.
[690] **P-2673**: CAR-OTP-2127-6435-R01, at 6443, paras 50-51, at 6450-6451, 98-99, at 6451, para. 106. *See below* VI.D.2. Mr NGAÏSSONA did not provide equipment and transportation prior to 5 December 2013; *see above* II.B.3.8. P-2673.
[691] **P-2673**: T-041-CONF-ENG ET, p. 26, ln. 18 to p. 27, ln. 9.
[692] [REDACTED].
[693] CAR-OTP-2124-0002. This email was not presented to P-0801 during his testimony despite him being named in it.
[694] **P-2625**: T-189-CONF-ENG CT, p. 30, lns 20-25 ("A. This email was sent by Mr Serefio long after the first meeting. And this was a follow-up. It followed up on a second meeting that took place in a hotel near the Champs-Élysées. During that meeting, allusions were made to military activities on the ground, that were being carried out on the ground. So someone had to have told Mr Serefio that this meeting's goal was to set up a military organisation. But to my knowledge, that was not the case").
[695] **P-2625**: T-189-CONF-ENG CT, p. 31, lns 3-4.
[696] **P-0801**: T-034-ENG CT, p. 35, lns 3-15; **P-2625**: T-189-CONF-ENG CT, p. 38, ln. 24 to p. 39, ln.7.
[697] **P-0801**: T-034-FRA ET, p. 37, lns 22-25 (English version not accurate, T-034-ENG CT, p. 39, lns 7-12).
[698] **P-2625**: T-190-ENG CT, p.7, ln. 25 to p. 8, ln. 5; T-192-ENG CT, p. 53, lns 11-22.

the media war conducted by BANOUKEPA.[699] Equally, Facebook evidence is speculative,[700] and in any event, not corroborative of FROCCA being a military entity.[701]

193. There is no evidence that so-called armed groups published adhesion papers at the instigation of FROCCA and that FROCCA had control over them.[702] For example, POUSSOU mentioned that the *Collectif des officiers libres* had only one member, KOKATÉ himself,[703] while KOKATÉ testified that he did not draft the *communiqué d'adhésion*.[704] Moreover, KOKATÉ clarified that there was no gathering of officers following the Seleka coup.[705] Therefore, irrespective of the composition of the *Collectif des officiers libres*, no evidence shows that the group had any links or led any action on behalf of FROCCA. Similarly, when questioned about the MOREPOL, POUSSOU clarified that, like other so-called armed groups, it only existed on paper. POUSSOU aptly remarked that FROCCA wanted to make it look like it was important, to influence public opinion.[706] Finally, [REDACTED] testified that [REDACTED] never heard about the FDPC of Abdoulaye MISKINE joining FROCCA in September 2013.[707]

194. When questioned about the "operational plan" of FROCCA, P-1521 stated that the Prosecution was conflating FROCCA and the Anti-Balaka, which did not correspond to the reality on the ground.[708] [REDACTED].[709]

2.2.2.8. *FROCCA did not finance the Anti-Balaka*

195. There is no probative evidence that money was sent to the Anti-Balaka by FROCCA members. POUSSOU's vague allegation that he saw Western Union mandates from BOZIZÉ's family

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[699] *See above* III.B.2.2.2.2. FROCCA was never formalised, para. 180.
[700] CAR-OTP-2102-6699, at 6765-6766, [REDACTED]'s message on 08/09/2013 at 12:50:17 suggests that BOZIZÉ is not behind the attacks; CAR-OTP-2102-6348, at 6372.
[701] CAR-OTP-2100-6685; CAR-OTP-2101-6105; CAR-OTP-2101-6862 (no military reference); CAR-OTP-2101-8129, at 8130 (FROCCA described as "[REDACTED]" which lacks the requisite clarity to support a conclusive determination).
[702] CAR-OTP-2100-6170, at 6187 (YAKÉTÉ clarifies that he only reported fighters' words).
[703] **P-2625**: T-192-ENG CT, p. 52, lns 14-17.
[704] CAR-OTP-2084-1163; **P-0801**: T-034-ENG CT, p. 42, ln. 16 to p. 43, ln. 3.
[705] **P-0801**: T-033-FRA ET, p. 71, ln. 10 to p. 72, ln. 1 (English version is not accurate, T-033-ENG CT, p. 71, ln. 17 to p. 72, ln. 5). P-1847's evidence that P-0801 was gathering officers on behalf of FROCCA should be discarded, since his source of knowledge is unclear, and he is contradicted by more reliable evidence, *see* **P-1847**: T-023-CONF-FRA ET, p. 60, ln. 21 to p. 61, ln. 7 (English version is not accurate, T-023-CONF-ENG CT, p. 59, ln. 25 to p. 60, ln. 8).
[706] **P-2625**: T-192-ENG CT, p. 53, lns 11-22.
[707] [REDACTED]. *See also* Facebook conversation about Miskine's FDPC joinder to FROCCA being a fake information, CAR-OTP-2102-8518, at 8525, 8529.
[708] **P-1521**: T-080-CONF-ENG ET, p. 67, ln. 14 to p. 68, ln. 21, in particular p. 68, lns 11-21. *See also* ICC-01/14-01/18-1942-Conf, paras 33-34.
[709] [REDACTED].

does not meet the requisite burden.[710] No names of senders or recipients were provided, and crucially, there is no trace of these mandates in the case record which casts an irremediable doubt as to their very existence.

196. For these reasons, the alleged role of FROCCA in the so-called criminal policy has not been established.

2.2.3. The 'GOBÉRÉ group'

197. First, all GOBÉRÉ witnesses categorically denied the existence of a concerted effort to restore former President BOZIZÉ to power. Jo-Brice OUABIRO-DANA ('OUABIRO-DANA') firmly stated that BOZIZÉ was not behind his group's operations, highlighting that "if [BOZIZÉ] had supported our actions, we would not have had to suffer that much to survive, get ammunitions and medicine".[711] P-2251 gave very similar evidence[712] asserting that "no political party or politician" influenced the Anti-Balaka's actions.[713] In particular, P-2251 discredited a press article linking the so-called GOBÉRÉ group's initiatives to BOZIZÉ's alleged political agenda.[714] P-2602 made no mention of having received assistance from former President BOZIZÉ either. While the account of P-2269 is wholly unreliable,[715] it is noteworthy that he corroborates the fact that the group received no assistance from BOZIZÉ.[716]

198. P-1847's claim that BOZIZÉ was in touch with the Anti-Balaka in CAR [REDACTED], is speculative and uncorroborated.[717] P-1847 is the only witness to identify [REDACTED] as Danboy DEDANE's ('DEDANE') deputy, with others suggesting that Thierry LEBENE, alias 12 PUISSANCES ('LEBENE') had this role.[718] In any event, P-1847 admitted having limited knowledge of events in GOBÉRÉ.[719] Similarly, Facebook messages suggesting BOZIZÉ's

[710] **P-2625**: T-189-CONF-ENG CT, p. 40, lns 14-22.
[711] **P-0966**: CAR-OTP-2031-0241, at 0247, para. 32.
[712] **P-2251**: T-044-CONF-ENG CT2, p. 36, lns 13-20.
[713] **P-2251**: CAR-OTP-2093-0045-R01, at 0068, paras. 146-147.
[714] **P-2251**: T-043-CONF-ENG CT, p. 22 (referring to CAR-OTP-2091-1707).
[715] *See below* III.B.2.3.2 The 'GOBÉRÉ group' was not deployed, fn. 753; III.C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks, fn. 786; *see also* ICC-01/14-01/18-1986-Conf, paras 19-30 and ICC-01/14-01/18-1987-Conf, paras 21-30.
[716] **P-2269**: CAR-OTP-2111-0336-R01, at 0350, para. 103.
[717] **P-1847**: CAR-OTP-2061-1534-R01, at 1558, paras 151-152, 155.
[718] **P-0966**: CAR-OTP-2031-0241, at 0247, para. 33. According to P-2602, LEBENE was part of DEDANE's staff, *see* **P-2602**: CAR-OTP-2118-9641-R01, at 9643, lns 47-48.
[719] **P-1847**: CAR-OTP-2122-8251-R01, at 8254, para. 21.

contact with elements in the BOSSANGOA area[720] lack corroboration and suffer from the overall flaws of Facebook evidence submitted in this case.[721]

199. Second, the evidence illustrates that the Anti-Balaka in GOBÉRÉ did not "actively promote or encourage" an attack against the Muslim civilian population in CAR. To the contrary, several witnesses testified that to ensure full protection by their *gris-gris*, they were prohibited from and cautioned against attacking civilians.[722] GOBÉRÉ witnesses categorically denied having attacked Muslim civilians. OUABIRO-DANA stated:

> we did not think that all Muslims were Seleka, the religion was not linked to the Seleka. We had Muslims living among us. They had opposed the Seleka crimes and would even inform us of Seleka movements and crimes.[723]

200. The conflict was not "a matter of Muslims versus Christians".[724] OUABIRO-DANA even recalled that his group sheltered the imam in BENZAMBÉ and handed him over to a Church representative.[725] P-2602 and P-2251 further insisted that their group's objective was not to target Muslim civilians.[726] These testimonies refute P-2269's unsupported claim that "everyone" within the Anti-Balaka movement conflated Muslim civilians and Seleka members.[727] Similarly, P-2658's claim that the Anti-Balaka told him that "they killed all the Muslims they came across",[728] was immediately contradicted by him recalling [REDACTED][729] and being subsequently entrusted with several tasks, [REDACTED].[730] Not only does P-2658's overall account lack credibility, it also fails to demonstrate anti-Muslim animus on the part of the 'GOBÉRÉ group's' alleged leadership. Other witnesses have also testified that DEDANE was against the commission of crimes against civilians.[731]

2.3. Insufficient level of coordination between the different alleged geographical groups

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[720] CAR-OTP-2102-8207, at 8218-8219.
[721] *See above* II.E. The extensive Facebook material should be given little to no weight; *See* Annex A.03.
[722] **P-0966**: CAR-OTP-2031-0241-R03, at 0247, para. 35, at 0248, para. 38; **P-2251**: T-043-CONF-ENG CT, p. 36, lns 1-3; CAR-OTP-2093-0045-R01, at 0052, para. 46; **P-2602**: CAR-OTP-2118-9525-R01, at 9537, lns 387-398; **P-0975**: CAR-OTP-2033-7885-R02, at 7889, para. 27.
[723] **P-0966**: CAR-OTP-2031-0241, at 0249, para. 46.
[724] **P-0966**: T-117-ENG CT, p. 12, lns 16-17.
[725] **P-0966**: T-117-ENG CT, p. 45, ln. 8 to p. 46, ln. 16; **P-2602**: CAR-OTP-2118-9500-R01, at 9521, lns 708-723 (corroborates the handing over of an imam and his family to the bishop of BOSSANGOA).
[726] **P-2251**: T-044-CONF-ENG CT2, p. 6, lns 2-11; **P-2602**: CAR-OTP-2118-9560-R01, at 9578, lns 607-609.
[727] **P-2269**: CAR-OTP-2111-0336-R01, at 0367-0368, para. 161.
[728] **P-2658**: T-134-CONF-ENG CT, p. 20, lns 18-22.
[729] **P-2658**: T-134-CONF-ENG CT, p. 16, lns 9-11.
[730] **P-2658**: T-134-CONF-ENG CT, p. 17, lns 20-21, lns 11-18 ([REDACTED]).
[731] **P-2027**: T-040-CONF-ENG CT2, p. 11, lns 7-14; **P-2602**: CAR-OTP-2122-5211-R01, at 5223, lns 360-382.

2.3.1. MOKOM was not organising Mr YEKATOM's group

201. The evidence on record is insufficient to show a minimum level of contact between MOKOM and Alfred YEKATOM ('Mr YEKATOM'), let alone to show that MOKOM was exercising any alleged control over Mr YEKATOM's group.

202. P-2232's claims about contacts between the two individuals both while in ZONGO and after they left the area, are either inconsistent,[732] based on speculation or second-hand information.[733] Similarly, P-2027 explained that contrary to what he said in his prior statement,[734] he was in fact not certain that MOKOM was controlling Mr YEKATOM's group.[735]

203. While it appears that MOKOM and Mr YEKATOM knew each other and were in ZONGO at the same time,[736] evidence shows that MOKOM and Mr YEKATOM were not in contact and that their relationship was strained due to Mr YEKATOM not wanting to follow MOKOM's orders.[737] P-0876 corroborated this account and explained that there was no alignment between MOKOM's and Mr YEKATOM's alleged groups.[738] Vivien BEINA – P-0888 ('BEINA') stated that Mr YEKATOM and Habib BEINA felt betrayed by MOKOM.[739] Other witnesses corroborated the lack of contact,[740] while P-0446 had no knowledge of contact between them.[741]

2.3.2. The 'GOBÉRÉ group' was not 'deployed'

204. First, evidence suggesting that the 'GOBÉRÉ group' coordinated with individuals in Cameroon, notably Mr NGAÏSSONA, is inconsistent and often amounts to hearsay and speculation.[742] The same is true of evidence relating to the alleged issuance of orders by Mr

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[732] *Compare* **P-2232**: T-075-CONF-ENG CT, p. 36, lns 5-14 ([REDACTED]) *with* T-079-CONF-ENG ET, p. 15, lns 15-17. ([REDACTED]).
[733] **P-2232**: T-075-CONF-ENG CT, p. 39, ln. 13 to p. 40, ln. 7.
[734] **P-2027**: CAR-OTP-2078-0059-R03, at 0076-0077, paras 103-104.
[735] **P-2027**: T-040-CONF-ENG CT2, p. 57, lns 11-21.
[736] **P-0884**: T-055-CONF-ENG ET, p. 78, lns 6-11; **P-2269**: CAR-OTP-2111-0336-R01, at 0340, paras 26-27.
[737] **P-0889**: CAR-OTP-2122-7626-R02, at 7630-7631, lns 153-205; CAR-OTP-2122-8002-R02, at 8033, lns 1141-1142. *See also* **P-0884**: T-055-CONF-ENG ET, p. 77, ln. 14 to p. 78, ln. 1 (attesting to a "great misunderstanding" between MOKOM and Mr YEKATOM).
[738] **P-0876**: T-086-CONF-ENG CT, p. 43, lns 6-11. *See* **P-1786**: T-197-CONF-ENG ET, p. 58, ln. 16 to p. 59, ln. 3.
[739] **P-0888**: T-121-ENG CT, p. 17, ln. 15 to p. 18, ln. 11.
[740] **P-1172**: CAR-OTP-2082-1058-R03, at 1070, para. 73.
[741] **P-0446**: T-096-CONF-ENG CT2, p. 46, ln. 20 to p. 47, ln. 4.
[742] *See below* VI.B.3. Mr NGAÏSSONA did not assist Anti-Balaka and FACA elements in GOBÉRÉ.

NGAÏSSONA to the 'GOBÉRÉ group', which lacks credibility.[743] P-0884's allegation that Bernard MOKOM and Mr NGAÏSSONA were engaged in the organisation of the Anti-Balaka who were advancing towards BANGUI[744] was nullified when the witness had to concede that he "[could not] say how things were exactly"[745] and that he "didn't know exactly what was going on within this organisation".[746] In the same vein, P-0884's allegation that Mr NGAÏSSONA told him that "his children" were advancing towards BANGUI[747] does not prove that Mr NGAÏSSONA had contact or was coordinating the Anti-Balaka, given that information on their movements was widely rumoured from September 2013 onwards, and that the witness unequivocally stated that Mr NGAÏSSONA and him never discussed the Anti-Balaka movement and operations.[748]

205. Second, evidence on MOKOM's alleged interactions and role *vis-à-vis* the 'GOBÉRÉ group' is inconclusive. P-1521 simply speculated that MOKOM had contact with elements in GOBÉRÉ.[749] OUABIRO-DANA's claim that DEDANE coordinated with MOKOM by phone is based on hearsay.[750] P-2602 stated that MOKOM had no role in the movement, only calling them once.[751] P-2269's claim that he reported to MOKOM who was in ZONGO[752] is meaningless since the witness was not a member of the 'GOBÉRÉ group'.[753] In addition, P-0884's evidence about MOKOM's involvement with the 'GOBÉRÉ group' is incoherent,[754] which is unsurprising given P-0884's limited knowledge of how events unfolded in GOBÉRÉ.[755]

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[743] *See below* VI.E.4. Insufficient evidence to prove that Mr NGAÏSSONA provided instructions to the Anti Balaka in CAR relating to attacks, including the 5 December attack, paras 526-527.
[744] **P-0884**: T-055-CONF-ENG ET, p. 49, lns 4-19.
[745] **P-0884**: T-055-CONF-ENG ET, p. 69, lns 4-14.
[746] **P-0884**: T-055-CONF-ENG ET, p. 46, ln. 5 to p. 47, ln. 1.
[747] **P-0884**: T-055-CONF-ENG ET, p. 71, lns 13-21.
[748] **P-0884**: T-055-CONF-ENG ET, p. 21, lns 9-16, p. 48, lns 14-18.
[749] **P-1521**: T-081-CONF-ENG ET, p. 39, ln. 9 to p. 40, ln. 25 (who "had information" that DANGBA was in touch with MOKOM); T-082-CONF-ENG CT, p. 76, ln. 25 to p. 77, ln. 2 ("I do not know with certainty what was hapening, but I know that MOKOM on the other side was placing calls to […] a number of leaders.").
[750] **P-0966**: CAR-OTP-2031-0241, at 0247, para. 34.
[751] **P-2602**: CAR-OTP-2118-9737-R01, at 9746-9748, lns 294-372.
[752] **P-2269**: CAR-OTP-2111-0336-R01, at 0347, para. 79.
[753] *See below* III.C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks, fn. 786; **P-2232**: T-076-CONF-ENG ET, p. 22, lns 9-15 ([REDACTED]). *See also* ICC-01/14-01/18-1986-Conf.
[754] *Compare* **P-0884**: T-055-CONF-ENG ET, p. 17, ln. 13 to p. 18, ln. 5 (the witness states that MOKOM called him in late August or September, inquiring whether P-0884 had a role in coordinating the Anti-balaka movement) *with* T-055-CONF-ENG ET, p. 21, ln. 21 to p. 22, ln. 1, p. 32, lns 8-20 ([REDACTED]).
[755] P-0884's limited knowledge is evidenced by a number of remarks, *inter alia*: (1) he does not know if BEJOUANE, and ANDJILO were in GOBÉRÉ (**P-0884**: T-055-CONF-ENG ET, p. 25, lns 8-20), while evidence generally establishes that they were (on BEJOUANE *see* **P-2602**: CAR-OTP-2118-9641-R01, at 9649-9651, lns

206. P-0889's claims that MOKOM contacted the Anti-Balaka in the provinces through [REDACTED] and that it is MOKOM who ensured the incorporation of FACA elements into the Anti-Balaka[756] are contradicted by GOBÉRÉ witnesses on several key aspects, including the timing of FACA involvement,[757] the circumstances of various individuals joining the group[758] and the alleged role of [REDACTED] in the liaising process.[759] With respect to [REDACTED]'s role, while witnesses[760] and Facebook conversations[761] claim that he led elements in the BOSSANGOA area, there is no information on the record concerning the identities of these elements and how [REDACTED] would have supposedly led them, given that other evidence places him in Cameroon during the charged period.[762] Furthermore, [REDACTED] is not mentioned at all by witnesses who were part of the 'GOBÉRÉ group'. OUABIRO-DANA even stated specifically that he did not fight with them, and that he only joined the movement when the National Coordination had already been set up.[763] Therefore, vague references to [REDACTED]'s liaising with his "elements on the ground" do not assist in establishing that there was some form of coordination between Cameroon and Anti-Balaka elements in the BOSSANGOA and GOBÉRÉ areas.

207. CDR evidence cannot compensate for the lack of probative testimonial evidence, due to its limited reliability and intrinsic limitations, which provides no insights as to the content of the

245-316; **P-0889**: T-109-CONF-ENG CT2, p. 16, ln. 13 to p. 19, ln. 23; **P-1521**: T-081-CONF-ENG ET, p. 25, ln. 19 to p. 27, ln. 2, p. 35, ln. 8 to p. 36, ln. 24 (referring to CAR-OTP-2046-0628); **P-2232**: T-076-CONF-ENG ET, p. 3, lns 19-24. On ANDJILO *see above* II.B.3.1. P-0306); (2) he is not sure whether KONATÉ was in GOBÉRÉ (**P-0884**: T-055-CONF-ENG ET, p. 30, lns 16-23), while evidence generally establishes he was not (*see* **P-0966**: CAR-OTP-2031-0241, at 0260, para. 108; T-116-CONF-ENG CT, p. 10, lns 15-16; **P-2602**: CAR-OTP-2118-9617-R01, at 9624, lns 223-237; **P-1521**: T-081-CONF-ENG ET, p. 23, ln. 19 to p. 24, ln. 4; **P-2027**: CAR-OTP-2078-0059-R03, at 0078, para. 115); (3) he claims GOBÉRÉ was a village (**P-0884**: T-055-CONF-ENG ET, p. 23, lns 24-25), while evidence rather establishes that it was a location in the bush (*see below* III.C. The GOBÉRÉ group did not have the required means and capacity to carry out the alleged attacks para 211).

[756] **P-0889**: T-109-CONF-ENG CT2, p. 18, ln. 11 to p. 19, ln. 23.

[757] **P-0889**: CAR-OTP-2122-8112-R02, at 8117, lns 139-171 ([REDACTED] *see below* III.C. The GOBÉRÉ group did not have the required means and capacity to carry out the alleged attacks para 212).

[758] *Compare e.g.* [REDACTED] **P-0889**: T-109-CONF-ENG CT2, p. 18, ln. 23 to p. 19, ln. 8, *with contra* **P-2602**: CAR-OTP-2118-9641-R01, at 9642-9643, lns 30-44, **P-2269**: CAR-OTP-2111-0336-R01, at 0342, para. 46, at 0343, para. 53.

[759] P-0889 places him in the BOSSANGOA region, while a number of witnesses place him in Cameroon, *see below* fn. 762.

[760] **P-2673**: CAR-OTP-2127-6435-R01, at 6454, para. 125; **P-1847**: CAR-OTP-2061-1534-R01, at 1550, para. 103.

[761] CAR-OTP-2101-6366, at 6371; CAR-OTP-2101-9451, at 9465.

[762] **P-1847**: CAR-OTP-2122-8251-R01, at 8253, para. 15; **P-0966**: T-116-CONF-ENG CT, p. 12, lns 9-12. *See also* **P-2049**: T-100-CONF-ENG CT, p. 15, ln. 17 to p. 16, ln. 7; CAR-D30-0007-0729.

[763] **P-0966**: T-116-CONF-ENG CT, p. 12, ln. 9 to p. 13, ln. 25.

alleged communications.[764] Moreover, the attribution of telephone numbers to key individuals is far from settled,[765] further impugning the probative value of CDR evidence.

208. The reliance on the expression "our men" utilised by Facebook users in Cameroon to draw a connection between them and the Anti-Balaka leading attacks in the BOSSANGOA region, ignores testimonial evidence which suggests that this expression referred to all those fighting against the Seleka,[766] regardless of any affiliation with the Facebook users. Furthermore, several Facebook conversations reveal a complete ignorance of the identities of the actors on the ground, undermining the Prosecution's theory that there was a form of coordination between the 'GOBÉRÉ group' and Facebook users in Cameroon.[767] In one Facebook conversation attributed to [REDACTED], the latter reacted with total surprise to the Anti-Balaka's arrival at the outskirts of BANGUI in early December,[768] which refutes the allegations on [REDACTED] coordinating role.

209. Similarly, the information on the progression of Anti-Balaka elements in the Ouham region was not kept secret and was widely available, and as such, does not show coordination.[769] Instead, close scrutiny of Facebook exchanges reveals a lack of direct communication between

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[764] *See* ICC-01/14-01/18-1409-Conf. *See also* II.F. The call data material should be dismissed as a matter of law.
[765] Phone number [REDACTED], which is used to demonstrate contact between KEMA and, *i.a.* MOKOM (ICC-01/14-01/18-1296-Conf-AnxA-Corr, CSTs number 8, 19 and 20) was actually registered by the telephone provider as belonging to [REDACTED] (*see* CAR-OTP-2008-0483, ln. 3003). The Prosecution's attribution is based on a single, unreliable supporting document (*see* ICC-01/14-01/18-1409-Conf-AnxC, p. 15). Phone number [REDACTED], which is used to demonstrate contact between P-2602 and, *i.a.*, MOKOM (ICC-01/14-01/18-1296-Conf-AnxA-Corr, CST number 10) was actually registered by the telephone provider as belonging to [REDACTED] (*see* CAR-OTP-2008-0483, ln. 3231). The Prosecution's attribution is only based on two supporting documents, lacking reliability (*see* ICC-01/14-01/18-1409-Conf-AnxC, p. 41).
[766] **P-2841**: T-029-CONF-ENG CT, p. 29, lns 1-10; **D30-4679**: T-300-ENG ET, p. 64, lns 6-23 ("When I say "our men", it is those who were not the Seleka").
[767] *See e.g.,* CAR-OTP-2101-9451, at 9497 (where [REDACTED] details the movements of what appears to be the GOBÉRÉ group (7 September: they have surrounded BOSSANGOA and earlier they were in BENZAMBÉ, ZÉRÉ, LÉRÉ, GBADE) whilst at the same time wondering who are the persons who are operating in that area). *See also* CAR-OTP-2101-9735, at 9782 (where, on 10 September, user [REDACTED] asks what is going on in BOSSANGOA and BOUCA and user [REDACTED] answers that he has heard from a friend who works for the UN that combat has already begun there and ask him to verify the information); CAR-OTP-2099-7606, at 7615-7616 (where user Épervier Voltigeur shares the status of user Djotodia Doit Partir, detailing how, on 17 September 2013, BOSSANGOA would have been taken over by an "unidentified" armed group); CAR-OTP-2101-6260, at 6263 (where user [REDACTED] (whom at 6260 claims to be [REDACTED]) states that he has gone to BOSSANGOA thinking that he would find the men "au vieux", but it was not the case).
[768] CAR-OTP-2066-3003, at 3019.
[769] *See e.g.,* **P-0884**: T-055-CONF-ENG ET, p. 40, ln. 9 to p. 41, ln. 2 (indicating "all Central Africans were aware of Anti-Balaka attacks in the provincial towns of BOSSANGOA and others" and confirmed knowing about a number of attacks attributed to the Anti-Balaka in the lead up to 5 December 2013. He stressed that this information was circulated in the printed press and the radio); CAR-OTP-2100-2860, at 2868-2869 (on 10 September 2013, user [REDACTED] shares an RFI article concerning fighting in BOSSANGOA); CAR-OTP-2100-2994, at 3026 (on 12 September 2013, user Épervier Voltigeur shares an article concerning the presence of self-defence groups in OUHAM and fighting in BOSSANGOA and BOUCA); CAR-OTP-2082-0793 (20 September article reporting on the Anti-Balaka's presence in villages around BOSSANGOA).

Cameroon Facebook users and Anti-Balaka elements in the BOSSANGOA region, seeing how frequently erroneous information was circulated on Facebook, highlighting a disconnect.[770] In the same vein, the circulation of hearsay information on Facebook concerning the alleged provision of weapons and ammunition to the Anti-Balaka in the BOSSANGOA region[771] does not confirm that the Facebook users were involved in this alleged provision. For example, [REDACTED].[772]

C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks

210. Despite the apparent centrality of events in GOBÉRÉ to the charges, the Prosecution has failed to present coherent and corroborative evidence on its location, the group's organization and composition, and subsequent movements. Importantly, evidence does not allow to establish that the Anti-Balaka who gathered in GOBÉRÉ fulfilled the requirements necessary to qualify as an "organization" pursuant to Articles 7(2) and 8(2)(f) of the Statute.[773] Namely, evidence is inconsistent or inexistent with respect to the so-called GOBÉRÉ group's: (i) "headquarters"; (ii) internal hierarchy; (iii) military capacity; (iv) command structure and composition and (v) logistical capacity.

211. Information on the location of GOBÉRÉ camp is confusing and inconsistent. P-2602 placed it to the north-east of NANA-BAKASSA,[774] while P-2251 placed it considerably further, to the south-east of BOSSANGOA.[775] P-2658 drew a sketch placing GOBÉRÉ to the west of the

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[770] *E.g.* on 18 September 2013, [REDACTED] claimed that BOSSANGOA had been taken over (CAR-OTP-2102-3799, at 3840). However, witnesses who were on the ground confirmed that the 17 September attack in BOSSANGOA did not succeed, even for a day (**P-0966**: CAR-OTP-2031-0241-R01, at 0250, para. 54, detailing how the group retreated; **P-2453**: CAR-OTP-2111-0415-R02, at 0426, para. 49, stating that the attack did not last longer than one hour); *see* Annex A.03.
[771] CAR-OTP-2102-2520, at 2581; CAR-OTP-2131-7091, at 7167-7168; CAR-OTP-2102-3203, at 3297; CAR-OTP-2133-7723, at 7750-7751; CAR-OTP-2101-9735, at 9798, 9801; CAR-OTP-2101-8599, at 8681.
[772] **P-2841**: T-029-CONF-ENG CT, p. 29, ln. 11 to p. 30, ln. 3.
[773] Katanga TJ, para. 1119, considering that an organization qualifies as such for the purpose of Article 7(2) when it has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in Article 7(2)(a) of the Statute; Al Hassan TJ, para. 1096, considering the following factors when assessing whether an "organization" qualifies as such for the purpose of Article 8(2)(f): "(i) the existence of a command structure, the existence of headquarters, the issuing of political statements, the use of official spokespersons, and the group's internal hierarchy; (ii) the military (operational) capacity of the armed group; (iii) the logistical capacity of the armed group; (iv) the existence of an internal disciplinary system and the ability to implement international humanitarian law; and (v) the group's ability to speak with one voice.
[774] CAR-OTP-2120-0261; for the witness placing GOBÉRÉ on the map refer to his statement **P-2602**: CAR-OTP-2118-9579-R01, at 9588-9591, lns 309-389. For a comparative analysis of the location of GOBÉRÉ according to Prosecution witnesses, *see* Annex A.14.
[775] CAR-OTP-2093-0083.

BOSSANGOA-BENZAMBÉ axis,[776] while OUABIRO-DANA placed it to the east of the same axis.[777] The Prosecution placed it tentatively on a CAR map, at a location which does not appear to have any basis in the evidence.[778] The descriptions of the site provided by witnesses who claim to have been in GOBÉRÉ are not consistent with one another. Some witnesses agree that it was a location within the bush,[779] P-2658 described it as a flat area where one could see in the distance,[780] while OUABIRO-DANA located it in a mountainous area.[781] Other witnesses, among which P-2269 who claimed to be a key figure in GOBÉRÉ, described it instead as a village.[782]

212. Evidence is further inconclusive when it comes to the origins of the 'GOBÉRÉ group'. While several individuals claim to have been the initiators of the movement, their evidence does not coincide on crucial points. P-2602's narrative on his and other FACA's route to GOBÉRÉ does not match the one provided by an individual qualified as Dieudonné HOURONTI in video CAR-OTP-2084-1263.[783] These inconsistencies are particularly concerning, given that P-2602 claims that him and Dieudonné HOURONTI ('HOURONTI') were [REDACTED][784] and that they [REDACTED].[785] P-2602's evidence also contrasts with that of P-2269. While both claim to have initiated the movement, they do not mention each other in their Rule 68(2) statements and their narratives concerning their route to GOBÉRÉ with other alleged Anti-Balaka leaders do not corroborate one another.[786] Other witnesses did little to clarify information on the origins

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[776] CAR-REG-0001-0007. *See also* **P-2658**: T-134-CONF-ENG CT, p. 32, ln. 12 to p. 43, ln. 4; T-135-CONF-ENG ET, p. 32, ln. 19 to p. 37, ln. 25, referring to CAR-D30-0011-0001, CAR-D30-0011-0006.
[777] CAR-OTP-2031-0267-R01.
[778] In the CAR map annexed to the DCC, GOBÉRÉ was vaguely placed in the wider area between BOSSANGOA and BOUCA, ICC-01/14-01/18-282-Conf-Anx F1.
[779] **P-1521**: T-081-CONF-ENG ET, p. 11, lns 17-20; **P-2658**: T-135-CONF-ENG ET p. 32, lns 4-6, p. 38, lns 24-25; **P-0966**: CAR-OTP-2031-0241, at 0244, para. 26. On a similar note, P-0975 described it as a "remote place of refuge", **P-0975**: CAR-OTP-2033-7885-R02, at 7889, paras 26, 28.
[780] **P-2658**: T-135-CONF-ENG ET p. 32, lns 4-6, p. 38, lns 24-25.
[781] **P-0966**: CAR-OTP-2031-0241, at 0244, para. 26.
[782] **P-2269**: CAR-OTP-2111-0336, at 0343, para. 53, describing GOBÉRÉ as "a large village". While they were not in GOBÉRÉ themselves, P-2232 and P-2673 agreed with this description: **P-2232**: T-076-CONF-ENG ET, p. 3, lns 15-18; **P-2673**: CAR-OTP-2127-6435-R01, at 6456-6457, para. 139.
[783] *Compare* **P-2602**: CAR-OTP-2118-9579-R01, at 9581, lns 42-67, at 9583, ln. 138, at 9596, lns 572-588 ([REDACTED]), *with* CAR-OTP-2084-1263, CAR-OTP-2107-1565 (where the person identified as HOURONTI (although he does not confirm his identity on video) describes his walk to BOSSANGOA with two other military colleagues. He claims the GOBÉRÉ base was "created" following the stopover in BOSSANGOA, where he met other military colleagues. P-2602 claims to have arrived first in GOBÉRÉ without having passed by BOSSANGOA, **P-2602**: CAR-OTP-2118-9579-R01, at 9594, lns 493-500; CAR-OTP-2120-0261 ([REDACTED]).
[784] **P-2602**: CAR-OTP-2118-9579-R01, at 9581-9582, lns 61-77.
[785] **P-2602**: CAR-OTP-2118-9579-R01, at 9592, lns 427-450.
[786] *Compare* **P-2269**: CAR-OTP-2111-0336, at 0342, para. 46 (claiming a meet up took place in BOUCA), *with* CAR-OTP-2120-0261 (indicating P-2602's route from BANGUI to GOBÉRÉ, with no mention of a passage in

of the movement, and rather added to the confusion of the record.[787] This lack of a coherent narrative affects the credibility of the relevant witnesses and complicates attempts to understand the connections and logistics involved in the events being examined.

213. The Prosecution has also failed to present corroborative evidence concerning the organization of the 'GOBÉRÉ group'. While witnesses claim the group was divided in smaller sub-groups, their evidence does not match on the denomination and size of these sub-groups.[788] Such inconsistencies are difficult to reconcile, especially as they appear in the accounts of witnesses who claim belonging to the same sub-group.[789] At the very least, the inconsistencies in the witnesses' accounts of the GOBÉRÉ sub-group structures confirm that such formations were not static, but rather in a constant state of flux. This comports with the evidence of P-1521, who noted, when joining the group around DAMARA, that the structure of the movement was fluid, that the various "companies" were not organised in a military-like fashion[790] and that there was movement between the groups.[791] This lack of structure was also confirmed by P-2251.[792]

214. Furthermore, Prosecution witnesses do not corroborate each other with respect to the occurrence, as well as the nature, of alleged training in GOBÉRÉ. According to OUABIRO-DANA, the elements trained with sticks;[793] according to P-2602, they trained with automatic weapons;[794] according to P-0975, the elements trained on self-defence techniques, as well as the use and assembling of weapons.[795] In contrast, P-2251 made it clear that he did not witness, nor receive any training.[796] Therefore, there is no evidence that training was provided

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BOUCA); *Compare* **P-2269**: CAR-OTP-2111-0336, at 0343, para. 53 ([REDACTED]) *with* **P-2602**: CAR-OTP-2118-9641-R01, at 9642-9643, lns 30-44, at 9591, lns 391-398 ([REDACTED]). *See also* ICC-01/14-01/18-1986.
[787] **P-2027**: CAR-OTP-2078-0059-R03, at 0076, para. 100 ([REDACTED]); **P-2232**: T-076-CONF-ENG ET, p. 22, lns 9-15, [REDACTED].
[788] **P-0966**: CAR-OTP-2031-0241, at 0246, para. 29, at 0248, para. 39 (14 companies, each with 500/1000 elements, in turn divided in four sectors/sections (which would make each sector roughly 100-250 elements large); **P-2602**: CAR-OTP-2118-9598-R01, at 9610, lns 414-423, CAR-OTP-2118-9617-R01, at 9618-9619, lns 26-52 (11 camps or companies, each divided into sections. The witness takes the example of his company, which would have comprised of 207 elements, who were divided in 11 sections, (which would make each section about 20 elements large)); **P-0975**: CAR-OTP-2033-7885-R02, at 7889, para. 29 (group was divided in sections, totalling about 20-30 men each and battalions, each totalling about 40-60 men).
[789] **P-0966**: T-116-CONF-ENG CT, p. 37, lns 10-14 (claiming to have been part of the eighth company under P-2602).
[790] **P-1521**: T-082-CONF-ENG CT, p. 68, lns 4-13.
[791] **P-1521**: T-081-CONF-ENG ET, p. 30, lns 15-18.
[792] **P-225**1: T-044-CONF-ENG CT2, p. 33, lns 8-24.
[793] **P-0966**: T-116-CONF-ENG ET, p. 27, lns 8-9.
[794] **P-2602**: CAR-OTP-2118-9598-R01, at 9607, lns 287-308.
[795] **P-0975**: CAR-OTP-2033-7885-R02, at 7889, paras 26, 28.
[796] **P-2251**: CAR-OTP-2093-0045-R01, at 0052, para. 41; T-043-CONF-ENG CT, p. 18, ln. 16 to p. 19, ln. 10.

systematically to all of the elements on site.[797] This tends to confirm witnesses' accounts that they went to GOBÉRÉ to seek refuge and later engaged in military operations as they were forced out of the area.[798] This evidence raises serious doubts on the so-called GOBÉRÉ group's military capacity, which are confirmed by the group's subsequent and repeated defeats on the field.[799]

215. The witnesses similarly fail to unequivocally identify the leaders of the 'GOBÉRÉ group',[800] and do not confirm the claim that FACA elements "assumed or shared command over self-defence groups".[801] The evidence does not allow to establish that the group had an effective chain of command; instead, it suggests that decisions were made by consensus among all leaders.[802] Furthermore, witnesses do not agree on DEDANE's role: while some claim he was the group's overall leader,[803] others do not assign him any particular role,[804] indicate a different overall leader,[805] or claim not to know him at all.[806] Evidence does not allow to establish that Sylvestre YAGOUZOU was part of the 'GOBÉRÉ leadership' either.[807] Against this backdrop,

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[797] **P-1521**: T-081-CONF-ENG ET, p. 44, ln. 18 to p. 45, ln. 6.
[798] **P-2251**: T-043-CONF-ENG CT, p. 22, lns 4-7, 20-21; **P-1521**: T-081-CONF-ENG ET, p. 48, lns 1-7.
[799] *See below* V.A.1 The 'BOSSANGOA group' did not target the civilian population during the 5 December attack on BOSSANGOA; **P-2251**: CAR-OTP-2093-0045-R01, at 0060-0061, paras 95, 101-103; T-044-CONF-ENG CT2, p. 10, ln. 16 to p. 12, ln. 3; **P-1521**: T-081-CONF-ENG ET, p. 69, lns 3-6; T-082-CONF-ENG CT, p. 81, ln. 22 to p. 82, ln. 2; **P-0975**: CAR-OTP-2033-7885-R02, at 7891, para. 41.
[800] *Compare* **P-2602**: CAR-OTP-2118-9598-R01, at 9611-9612, lns 438-480 ([REDACTED]); **P-0966**: T-118-CONF-ENG CT, p. 19, lns 5-8 (stating KEMA only became a leader before the second BOSSANGOA attack); **P-2251**: CAR-OTP-2093-0045-R01, at 0050-0051, para. 35 ([REDACTED]); **P-2232**: T-076-CONF-ENG ET, p. 3, lns 19-24 (according to whom the individuals who originally gathered in GOBÉRÉ are DEDANE, MAURI, AZZOUNOU, MARABOUT, RICHARD BEJOUANE, and INGA).
[801] PTB, para. 91; *see* **P-0966**: CAR-OTP-2031-0241, at 0246, para. 28 (the FACA were not originally in command of the movement); **P-2251**: T-044-CONF-ENG CT2, p. 30, ln. 25 to p. 31, ln. 2, p. 32, lns 1-12 (leaders were often civilians and FACA did not manage the movement); **P-1521**: T-081-CONF-ENG ET, p. 9, lns 16-22 (most of the leaders of the group were civilians).
[802] **P-1521**: T-081-CONF-ENG ET, p. 51, lns 17-22; **P-2602**: CAR-OTP-2118-9641-R01, at 9654-9655, lns 430-470.
[803] **P-0966**: CAR-OTP-2031-0241, at 0246, para. 31; T-117-ENG CT, p. 51, lns 3-8; **P-2602**: CAR-OTP-2118-9500-R01, at 9522-9523, lns 765-773.
[804] **P-2251**: CAR-OTP-2093-0045-R01, at 0077, para. 210; **P-2269**: CAR-OTP-2111-0336-R01, at 0346, para. 76.
[805] **P-2251**: CAR-OTP-2093-0045-R01, at 0051, para. 36 ([REDACTED]); T-043-CONF-ENG CT, p. 14, lns 16-18 (KONATÉ). *Contra* KONATÉ in GOBÉRÉ: **P-0966**: CAR-OTP-2031-0241, at 0260, para. 108; T-116-CONF-ENG ET, p. 10, lns 15-16; **P-2602**: CAR-OTP-2118-9617-R01, at 9624, lns 223-237; **P-1521**: T-081-CONF-ENG ET, p. 23, ln. 19 to p. 24, ln. 4; **P-2027**: CAR-OTP-2078-0059-R03, at 0078, para. 115
[806] **P-0306**: T-068-CONF-ENG CT, p. 29, lns 1-2.
[807] While an individual qualified as YAGOUZOU stated "nous on vient de GOBERE" in an interview (at CAR-OTP-2065-5470, transcript CAR-OTP-2107-1559, at 1560, ln. 17), no evidence on the record corroborates his presence, suggesting that the use of "nous" might have been a rhetorical device. Several witnesses stated with certainty that YAGOUZOU was not in GOBÉRÉ: **P-2602**: CAR-OTP-2118-9641-R01, at 9646, lns 146-174; **P-0884**: T-055-CONF-ENG ET, p. 39, lns 13-19; **P-0966**: T-116-CONF-ENG CT, p. 25, lns 7-14.

the Prosecution failed to substantiate the existence of an effective command structure and internal hierarchy within the 'GOBÉRÉ group'.[808]

216. The evidence is similarly inconclusive regarding the identities of the group members. None of the lists allegedly showing the 2013 GOBÉRÉ elements accurately reflect the group's composition in GOBÉRÉ, while they were produced much later in time.[809] The alleged [REDACTED][810] holds no probative value, as [REDACTED] lacks overall credibility.[811] The witness' evidence concerning the circumstances of the drafting of this document was confused and inconsistent.[812] Furthermore, the [REDACTED] is riddled with spelling errors and incorrect names, which are hardly reconcilable with the witness' claim of accurately transcribing [REDACTED].[813] This document is nothing more than a fabrication by [REDACTED] to bolster his alleged role [REDACTED]. [REDACTED] nearly confessed as much, stating he handed the [REDACTED] to the Prosecution to avoid questions on the validity of his testimony or statement, admitting "[REDACTED]"[814] As to the handwritten list provided by P-2269,[815] it fails to corroborate other evidence and to provide an overall picture of the elements present in GOBÉRÉ.

217. The evidence on record also highlights the alleged GOBÉRÉ group's very limited logistical capacity, with no access to funding and weapons. Most witnesses who were part of the group described a challenging existence, where elements often relied on survival tactics in the bush and struggled at times with basic sustenance.[816] In light of this, P-2658's evidence that five cows were killed daily to feed the group[817] is not credible and, as OUABIRO-DANA put it, indicative that "that person never set foot in Gobere".[818] The evidence shows that the group

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[808] Al Hassan TJ, para. 1096.
[809] On CAR-OTP-2041-0783, *see* **P-0966**: T-116-CONF-ENG CT, p. 21, ln. 9 to p. 23, ln. 5; **P-1339**: T-155-CONF-ENG CT, p. 84, ln. 16 to p. 87, ln. 23 ([REDACTED]). On CAR-OTP-2041-0802, *see* **P-0966**: T-116-CONF-ENG CT, p. 24, ln. 17 to p. 25, ln. 14; **P-1339**: T-155-CONF-ENG CT, p. 89, ln. 8 to p. 92, ln. 3 ([REDACTED]). On CAR-OTP-2068-0118, *see* **P-0966**: T-116-CONF-ENG CT, p. 28, ln. 17 to p. 29, ln. 9; **P-2602**: CAR-OTP-2118-9617-R01, at 9623-9625; **P-1521**: T-081-CONF-ENG ET, p. 19, ln. 3 to p. 25, ln. 4 (P-1521 stated that it was drawn up by the coordination after the BRAZZAVILLE talks).
[810] **P-0965**: T-061-CONF-ENG ET, p. 51, ln. 25 to p. 52, ln. 10; CAR-OTP-2033-8065.
[811] *See above* II.B.3.2. P-0965.
[812] [REDACTED]. However, Prosecution reports CAR-OTP-2122-9351 and CAR-OTP-2130-0235 indicated the witness having stated that [REDACTED].
[813] [REDACTED].
[814] [REDACTED].
[815] CAR-OTP-2111-0367.
[816] **P-2251**: CAR-OTP-2093-0045-R01, at 0050, para. 33; **P-0975**: CAR-OTP-2033-7885-R02, at 7889, para. 30; **P-0966**: T-117-ENG CT, p. 13, ln. 22 to p. 14, ln. 3.
[817] **P-2658**: T-135-CONF-ENG ET p. 52, lns 8-12.
[818] **P-0966**: T-117-ENG CT, p. 13, lns 22-25.

struggled for survival and sought sustenance via its own members' contributions,[819] the sale of fetishes[820] and assistance from the local community.[821]

218. Access to heavy weapons in GOBÉRÉ was limited,[822] the main source coming through attacks on the Seleka.[823] Some elements were armed with hunting rifles and artisanal weapons, typical for hunting in CAR.[824] P-2251 further recounted using kitchen utensils during attacks to mimic weapon sounds and hide the Anti-Balaka's limited fire power.[825] This underscores the 'GOBÉRÉ group's' logistical limitations and aligns with testimonies confirming the lack of weapon or ammunition supplies.[826]

219. Against this backdrop, the evidence of witnesses who claim the group received weapons and ammunition is riddled with inconsistencies, remains uncorroborated, or amounts to hearsay. [REDACTED].[827] The witness' attempt to justify this significant inconsistency by claiming that these were two separate events is unconvincing.[828] Furthermore, while OUABIRO-DANA claims his group received weapons and ammunition in BOSSEMBÉLÉ and then walked back to BOSSANGOA,[829] P-2602 rather seems to suggest that [REDACTED].[830] P-2269 and P-2232 described obtaining weapons from a person named [REDACTED] in BANGUI,[831] yet the discrepancies in their account of these transactions are so pronounced that the two narratives are irreconcilable.[832] OUABIRO-DANA referred to LEBENE and DEDANE

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[819] **P-2251**: CAR-OTP-2093-0045-R01, at 0051, para. 35.
[820] **P-0966**: T-117-ENG CT, p. 11, lns 18-23.
[821] **P-2602**: CAR-OTP-2118-9579-R01, at 9593, lns 468-472; **P-0966**: T-117-CONF-ENG CT, p. 44, ln. 24 to p. 45, ln. 2.
[822] **P-2602**: CAR-OTP-2118-9598-R01, at 9607, lns 295-296; **P-0966**: CAR-OTP-2031-0241-R03, at 0245, para. 24, at 0248, para. 41; T-117-CONF-ENG CT, p. 5, lns 2-12; **P-2251**: T-043-CONF-ENG CT, p. 20, lns 12-15; **P-0975**: CAR-OTP-2033-7885, at 7889, para. 28.
[823] **P-2251**: T-043-CONF-ENG CT, p. 25, lns 9-22; **P-0306**: T-064-CONF-ENG ET, p. 24, lns 8-10, 23-24; **P-2602**: CAR-OTP-2118-9525-R01, at 9540, lns 509-511.
[824] **P-2251**: T-043-CONF-ENG CT, p. 20, ln. 23 to p. 21, ln. 6; **P-2602**: CAR-OTP-2118-9598-R01, at 9601, lns 87-93.
[825] **P-2251**: T-043-CONF-ENG CT, p. 31, lns 2-5, corroborated by Muslim civilian, **P-2453**: CAR-OTP-2111-0415-R02, para. 49.
[826] **P-2251**: T-043-CONF-ENG CT, p. 31, lns 10-14; **P-0306**: T-064-CONF-ENG ET, p. 73, ln. 15 to p. 74, ln. 13.
[827] **P-2602**: CAR-OTP-2118-9525-R01, at 9538-9540, lns 434-508; CAR-OTP-2118-9714-R01, at 9718-9720, lns 110-183.
[828] *Compare* P-2602's movements in **P-2602**: CAR-OTP-2118-9525-R01, at 9538-9542, CAR-OTP-2118-9641-R01, at 9656-9658 ([REDACTED]). *See also* **P-2602**: CAR-OTP-2118-9641-R01, at 9657, lns 546-548 ([REDACTED]). *Compare with* **P-2602**: CAR-OTP-2118-9714-R01, at 9719-9720, lns 163-176 ([REDACTED]).
[829] **P-0966**: T-117-ENG CT, p. 8, lns 2-10.
[830] **P-2602**: CAR-OTP-2118-9641-R01, at 9658-9660, lns 581-653.
[831] **P-2269**: CAR-OTP-2111-0336-R01, at 0345, paras 68-69. While P-2232 did not name "[REDACTED]" in his live testimony, he had done so in its prior statement. *See* ICC-01/14-01/18-1986, para. 27.
[832] *Compare* **P-2269**: CAR-OTP-2111-0336-R01, at 0345, paras 68-69 (claiming to know [REDACTED] well and having called him about the weapons, which had been hidden at [REDACTED] when the Seleka took power) *with*

picking up ammunition for hunting rifles in BOSSANGOA, which he assumed came from ZONGO.[833] P-1847 and P-2232 both mentioned ammunition provided by a woman, however, one claimed that it was delivered in BOSSANGOA,[834] while the other claimed it was picked up by an emissary in BANGUI.[835] A Facebook exchange also mentioned the delivery of ammunition by a woman named [REDACTED], but fails to provide any other details regarding the recipient, date and circumstances of this alleged delivery.[836] Similar shortcomings affect Facebook exchanges on the alleged "parachuting" of men, weapons and ammunition to BENZAMBÉ,[837] which are not supported by any witness testimony.[838] The evidence, even at its highest, fails to establish that the 'GOBÉRÉ group' had a logistical capacity for systematically providing weapons and ammunition.[839]

220. Evidence is also inconsistent on the group's progression out of GOBÉRÉ and subsequent attacks in the region. Both P-2602 and OUABIRO-DANA do not corroborate each other on the villages allegedly attacked before the first BOSSANGOA attack.[840] Further contrast arises with P-2251's testimony, who claims that GOBÉRÉ leaders attacked BOSSANGOA first, only moving to other locations, including BOUCA, afterwards.[841] [REDACTED] narrative on the BOUCA attack, which numerous witnesses claim [REDACTED],[842] also diverges from other witnesses' accounts concerning the timing and circumstances of the onset of fighting.[843]

P-2232: T-076-CONF-ENG ET, p. 6, ln. 18 to p. 7, ln. 2 (claiming that he personally tricked a friend who was close to the Seleka into giving him the weapons).

[833] **P-0966**: CAR-OTP-2031-0241, at 0250, para. 51; T-117-ENG CT, p. 53, ln. 20 to p. 54, ln. 15.

[834] **P-1847**: CAR-OTP-2122-8251-R01, at 8256, para. 45.

[835] **P-2232**: T-075-CONF-ENG CT, p. 63, ln. 24 to p. 64, ln. 2.

[836] CAR-OTP-2101-9451, at 9497.

[837] CAR-OTP-2101-9735, at 9761.

[838] Evidence concerning the alleged burial of weapons in BENZAMBÉ before the crisis is not corroborative of the suggestion that supplies were "parachuted" later. **P-2133**: CAR-OTP-2093-0267-R02, at 0278-0279, paras 85-86 (the witness admitted that the burial of weapons in BENZAMBÉ was purely his supposition); **P-2556**: CAR-OTP-2112-1300-R01, at 1313, para. 101; T-146-CONF-ENG CT2, p. 39, ln. 11 to p. 42, ln. 5 (this is hearsay evidence that the witness claims to have heard about from an unidentified old woman who sold fetishes in BENZAMBÉ and from unidentified local Anti-Balaka, months after the alleged events). *Contra* the "parachuting" of weapons, *see also* **P-1847**: CAR-OTP-2122-8251, at 8258, para. 60 ([REDACTED]).

[839] Al Hassan TJ, para. 1096.

[840] **P-0966**: CAR-OTP-2031-0241-R03, at 0248, para. 42 (where P-0966 mentioned attacks on LERE and another one between GBADE and DADAKOUTA, which were not mentioned by P-2602); CAR-OTP-2031-0266-R01; **P-2602**: CAR-OTP-2118-9525-R01, at 9532; CAR-OTP-2118-9617-R01, at 9635, lns 578-601.

[841] *Compare* **P-2251**: CAR-OTP-2093-0045-R01, at 0052, paras 43-44, at 0053, paras 51-52 with **P-2602**: CAR-OTP-2118-9525-R01, at 9532-9535, lns 215-338; **P-0966**: CAR-OTP-2031-0241-R03, at 0250, para. 54 and T-117-ENG CT, p. 38, claiming that there was a strategy to attack small villages before moving to BOSSANGOA. Also, note that P-2251's evidence is inconsistent with P-0966's claim that his group attacked BOSSANGOA alone: CAR-OTP-2031-0241, at 0250, para. 54.

[842] **P-0966**: T-117-ENG CT, p. 38, lns 4-5; **P-2602**: CAR-OTP-2118-9617-R01, at 9636, lns 617-633; **P-2251**: CAR-OTP-2093-0045-R01, at 0053, paras 51-52.

[843] *Compare* [REDACTED] *with* **P-1521**: T-081-CONF-ENG ET, p. 13, ln. 17 to p. 18, ln. 5; **P-0966**: T-117-ENG CT, p. 38, lns 4-8; **P-2251**: CAR-OTP-2093-0045-R01, at 0052, para. 43.

Witnesses' accounts are also inconsistent on the circumstances surrounding the group's decision to move towards BANGUI.[844]

221. In light of the above, the Prosecution failed to present evidence beyond reasonable doubt demonstrating that the 'GOBÉRÉ group' fulfilled the necessary requirements to qualify as an "organization" pursuant to Articles 7(2) and 8(2)(f) of the Statute.

IV. THE PROSECUTION FAILED TO PROVE THE ALLEGED EXISTENCE OF A COMMON CRIMINAL PURPOSE

222. The Prosecution attempts to create a storyline in which the Anti-Balaka is a homogenous group that would have shared a common objective to violently target "the Muslim civilian population in western CAR whom, based on their religious, national or ethnic affiliation, were perceived as collectively responsible for, complicit with, and/or supportive of, the Seleka, resulting in the commission of the charged crimes" throughout the *entire period of the charges* and *across the country*.[845] This is a fundamentally flawed narrative.

A. The common criminal purpose is impermissibly broad and vague

223. The alleged common criminal purpose as confirmed by Pre-Trial Chamber II ('Pre-Trial Chamber') is impermissibly vague, due to the Prosecution's failure to establish the existence of a group of persons "driven by and acting with a common purpose".[846] As such, Mr NGAÏSSONA's right to be informed in detail of the nature of the crimes he is charged with pursuant to Article 67(1)(a) of the Statute, which includes the contours and specificities of the common purpose and its implementation, was violated.[847]

224. The existence of a criminal policy is not a requirement to trigger criminal responsibility under Article 25(3)(d), but rather a contextual element under Article 7 of the Statute. Therefore, "criminal policy" and "common purpose" cannot be used interchangeably, without creating confusion between the requirements for the contextual elements of Article 7 and the required common purpose for individual criminal responsibility under Article 25(3)(d). Here, the confusion is such that the Prosecution is not able to define the common purpose without the criminal policy, although the latter does not need to be central for the former to exist.[848] The

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[844] *Compare* **P-2251**: CAR-OTP-2093-0045-R01, at 0056, paras 71-72 *with* **P-2602**: CAR-OTP-2118-9525-R01, at 9536-9537, lns 349-389.
[845] PTB, para. 6.
[846] Katanga TJ, para. 1624.
[847] Lubanga AJ, para. 123. The brief description given in PTB, para. 6 is insufficient and fails to distinguish between "Criminal Policy" and "Common Purpose".
[848] Katanga TJ, para. 1627.

existence of a criminal policy, if any, cannot relieve the Prosecution of its obligation to establish first and foremost the existence and the contour of the common purpose for criminal liability under Article 25(3)(d) of the Statute.

225. The Prosecution did not sufficiently define the temporal or geographical scope of the alleged criminal purpose, nor the identity of the members of the group who share it.[849]

226. The direct consequence of this lack of specificity is a lack of notice regarding the nature, cause and content of the charges brought against Mr NGAÏSSONA, resulting in the inability to adequately respond to the Prosecution's allegations. Consequently, the sole remedy for this lack of adequate notice is to not consider Mr NGAÏSSONA's alleged liability under Article 25(3)(d).[850]

227. However, should the Chamber find that the Prosecution adequately defined the common purpose for which Mr NGAÏSSONA is charged, the Prosecution failed to establish the essential elements composing this alleged common purpose.

B. There is no identifiable 'group of persons' within the meaning of Article 25(3)(d) of the Statute

228. In the fall of 2013, Anti-Balaka groups emerged spontaneously as a popular uprising, amidst the context of violence created by the Seleka and in reaction to their crimes against the civilian population.[851] As elaborated below, some civilians took up arms and organised themselves by spontaneously joining self-defence groups; others, taking advantage of the chaos, pretended to be Anti-Balaka to commit crimes, or used that label as a symbol of resistance. The Seleka failed to make the distinction, treating all civilians as if they were Anti-Balaka, regardless of their actual affiliation to the movement.

229. But the 'Anti-Balaka' was never a clearly demarcated group, even after Mr NGAÏSSONA's appointment as National Coordinator in 2014. They were fragmented and fluid groups that never acted under a consolidated chain of command, or in unison.[852] Their composition as well

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[849] Katanga TJ, para. 1626.
[850] Ntagerura et al. TJ, para. 67; Semanza TJ, paras 52, 61 ("The Chamber finds that paragraphs 3.7, 3.8, 3.9, 3.15 and 3.16 of the Indictment are impermissibly vague and that for this reason they prejudiced the Accused's ability to prepare his defence. The Chamber therefore will not consider these paragraphs in its factual or legal finding"); Krnojelac, AJ, para. 144 ("the Appeals Chamber holds that, in view of the persistent ambiguity surrounding the issue of what exactly the Prosecution argument was, the Trial Chamber had good grounds for refusing, in all fairness, to consider an extended form of liability with respect to Krnojelac.").
[851] *See above* III.3.A.1. Origin of the Seleka; **P-2012**: T-025-ENG CT, p. 43, ln. 24 to p. 44, ln. 13.
[852] **P-2012**: T-025-ENG CT, p. 47, ln. 12 to p. 48, ln. 1, p. 52, lns. 17-23; **P-0884**: T-057-CONF-ENG ET, p. 10, lns 14-23.

as their dynamics differed depending on the timeframe and the geographic location. As such, the distinction between the 'real Anti-Balaka' and the civilian population was difficult, and this is the intricate reality that lays all the complexity of demarcating a group acting pursuant to a common criminal purpose in this case.

230. Under Article 25(3)(d) of the Statute, it is imperative to prove the existence of a defined group of persons driven by and acting with a common purpose.[853] Although it is not necessary to identify each member of the group by name, the identity of members of the group must be known in a general sense.[854] This has not been proven beyond a reasonable doubt in the case at hand.

1. The Anti-Balaka is not one group

231. The Anti-Balaka is a popular resistance movement[855] which emergence and development were spontaneous, gradual and sporadic. By its very nature, this movement was diffuse, often indistinguishable from the general population, and fundamentally elusive due to its constantly fluctuating expansion and evolution.

232. Large swaths of the population considered themselves as Anti-Balaka.[856] After the 5 December attack, non-Muslim youths also claimed to belong to the Anti-Balaka given the prestige associated to the movement,[857] whose members were seen as liberators.[858] The Anti-Balaka was a name for everybody,[859] a melting pot of all types of people,[860] rather than just a "group belonging to one person".[861] Kasper AGGER – P-2012 ('AGGER'), an NGO worker who published reports on the CAR situation,[862] gave a credible and nuanced statement.[863] He

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[853] Al Hassan Confirmation Decision, para. 940.
[854] Katanga TJ, para. 1626, citing Brđanin AJ, para. 430.
[855] **P-1077**: CAR-OTP-2107-3530-R01, at 3548-3549, lns 669-694; **P-0884**: T-057-CONF-ENG-ET, p. 4, ln. 20 to p. 5, ln. 6; **P-1521**: T-082-CONF-ENG-CT, p. 56, ln. 18 to p. 57, ln. 3.
[856] **P-0876**: T-086-CONF-ENG-CT, p. 13, ln. 23 to p. 15, ln. 15; **P-0291**: T-052-ENG-ET, p. 50, lns 16-24; **P-1576**: T-239-CONF-ENG CT2, p. 43, lns 11-23, p. 67, ln. 15 to p. 68, ln. 3. *See also* CAR-D29-0008-0007, from [00:01:39] to [00:01:49], CAR-D29-0006-1090, lns 19-21 ("*Mais les Balakas là c'est qui les Balaka ? C'est nous qui sont là là ! Les Balaka c'est la population ! Voilà ! S'il démission on va déposer les Balakas, voilà !*"); CAR-OTP-2030-0203 from [00:00:26] to [00:00:33], CAR-OTP-2104-0915, at 0916, lns 7-10.
[857] **P-1576**: T-239-CONF-ENG-CT2, p. 67, ln. 15 to p. 68, ln. 3.
[858] *See e.g.*, **P-0889**: T-111-CONF-ENG CT, p. 13, ln. 25 to p. 14, ln. 4; CAR-OTP-2001-0835, at 0845, para. 29; CAR-OTP-2001-2043, at 2051; CAR-OTP-2001-7145, at 7149; **P-0289**: CAR-OTP-2024-0288-R01, at 0295, para. 39; CAR-OTP-2087-8944, at 8957, lns 458-459; CAR-OTP-2088-2034, from [00:00:33] to [00:0047], CAR-OTP-2107-1596, at 1597, lns 15-16; **P-2082:** CAR-OTP-2109-0452-R01, at 2109, para. 26; CAR-OTP-2023-1812, from [00:17:31] to [00:17:38], CAR-OTP-2107-2960, CAR-OTP-2118-5597, at 5601, lns 127-128.
[859] **P-0876**: T-086-CONF-ENG CT, p. 13, ln. 1 to p. 14, ln. 16.
[860] **P-2328**: T-048-CONF-ENG CT, p. 42, ln. 6.
[861] **P-1077**: T-150-ENG CT, p. 34, lns 1-2.
[862] CAR-OTP-2001-2564; CAR-OTP-2091-0202; CAR-OTP-2001-0566.
[863] CAR-OTP-2091-0202.

explained how the Anti-Balaka was a loose organisation, without anyone deciding who belonged to the group and which, sometimes, was joined spontaneously by civilians.[864] While civilians were joining the group, it was "a fluent process or a fluent distinction. It [was] difficult to pinpoint exactly".[865] Chrysostome Berba YAPÉLÉ – P-1077 ('YAPÉLÉ') perfectly summed up the dynamic explaining it was difficult for him to pinpoint the number of elements he had in his group because they were "volunteers who had screwed up their courage to join […] Some people revolted, others didn't. So one person might have joined one day and then the next day say no […]".[866] People would simply join the Anti-Balaka, "one way or another" without any recruitment process,[867] so long as they were willing to fight.[868]

233. One of the reasons for the distinction between the Anti-Balaka and civilians to be practically impossible to make[869] was that "[t]he Anti-Balaka didn't have uniforms. They weren't like soldiers or gendarmes. The Anti-Balaka were members of the population".[870] It became even more challenging to draw a distinction after 5 December 2013, when the youth joined *en masse* the Anti-Balaka in BANGUI[871] and outside the city,[872] as they did not always wear distinctive signs.[873] Catherine SAMBA-PANZA – P-0952 ('SAMBA-PANZA') testified that some Anti-Balaka were wearing amulets around their necks, but other were normal people, normal youths and they could not be identified.[874] Some Anti-Balaka would wear the amulet when in the bush, but not when in the city.[875] Conversely, it was not because some civilians were armed, that they

[864] **P-2012**: T-026-ENG ET, p. 31, lns 4-16. *See also* **D30-4914**: CAR-D30-0024-0001-R01, at 0010, lns 350-1367.
[865] **P-2012**: T-026-ENG ET, p. 31, lns 4-16.
[866] **P-1077**: T-149-ENG CT, p. 44, lns 8-16. The witness also explained that at some point "everyone would decide whether they become Anti-Balakas", T-149-ENG CT, p. 40, lns 1-2; *See also* **P-1576**: T-239-CONF-ENG CT2, p. 67, lns 15-22 ("[s]ome were Anti-Balaka from time to time; some claimed to be Anti-Balaka but weren't; some weren't but didn't want to say so"); **P-0876**: T-086-CONF-ENG CT, p. 14, lns 15-16 ("All the Central Africans in villages and towns had been tyrannized, were Anti-Balakas, each to a different extent.").
[867] **D30-4914**: CAR-D30-0024-0001-R01, at 0010, lns 350-1367.
[868] *See e.g.*, CAR-OTP-2101-6260, at 6263.
[869] *See e.g.*, **P-1576**: T-239-CONF-ENG CT2, p. 43, lns 11-23, p. 67, ln. 15 to p. 68, ln. 3. **D30-4608**: CAR-D30-0017-0004-R01, at 0011, para. 54; **P-1077**: CAR-OTP-2107-3530-R01, at 3548-3549, lns 669-694; **P-2926**: T-032-CONF-ENG CT3, p. 80, ln. 10 to p. 81, ln. 4. *See also* **P-0446**: T-098-ENG CT, p. 91, lns 10-13.
[870] **P-1077**: T-149-ENG CT, p. 45, lns 3-5.
[871] **P-1521**: T-082-CONF-ENG CT, p. 75, ln. 9 to p. 76, ln. 7.
[872] *See e.g.*, **P-0884**: T-057-CONF-ENG ET, p. 4, ln. 20 to p. 5, ln. 6.
[873] **P-1077**: CAR-OTP-2107-3530-R01, at 3548-3549, lns 669-694; T-150-ENG CT, p. 33, lns 5-25.
[874] **P-0952**: T-251-ENG CT, p. 20, lns 10-15; T-252-ENG CT, p. 30, ln. 24 to p. 31, ln. 18; T-252-FRA CT, p. 33, ln. 20 to p. 34, ln. 7 ("*Ces civils-là pouvaient aussi... être des Anti-balaka aussi, ces civils-là. On pouvait pas distinguer, c'est pas tous les Anti-balaka qui portaient des amulettes. Ça pouvait être également des Anti-balaka.*") (English version not accurate, T-252-ENG CT, p. 31, lns 3-5).
[875] **P-1042:** T-164-CONF-ENG CT, p. 43, ln. 21 to p. 44, ln. 7.

were necessarily members of the Anti-Balaka.[876] Further, there was a general erroneous perception that being Christian meant being an Anti-Balaka.[877]

2. The existence of fake Anti-Balaka

234. The 'fake Anti-Balaka' further impeded the effective demarcation of the Anti-Balaka groups. Many witnesses testified to this matter, including expert, overview and insider witnesses.[878]

235. AGGER explained that fake Anti-Balaka were loosely connected individuals and criminals who were self-identifying as Anti-Balaka.[879] P-2926 also reported that the notion of 'fake Anti-Balaka' was circulating in BANGUI, and that it was complicating the determination of who was and who was not an Anti-Balaka.[880] These fake Anti-Balaka made the situation confusing even to Anti-Balaka elements, such that it was "not possible to know who was whom".[881] When Anti-Balaka elements were asked to explain the difference between the real and the fake Anti-Balaka, they provided no distinguishable physical attributes but explained only that they were distinguishable by their criminal conducts.[882] While some Anti-Balaka, but not all,[883] were identifiable by their *gris-gris*, the youths and other civilians fabricated and wore misleading fake *gris-gris*.[884] Although there is an alleged difference between the real *gris-gris* and the fake ones in terms of characteristics,[885] the difference was not visible to the naked eye, and it was thus impossible to distinguish between the real and the 'fake'.[886]

236. Evidence also shows that prisons were destroyed in 2013-2014, allowing criminals to escape and to take advantage of the chaos around the popular uprising, once more contributing to the

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[876] **P-0952**: T-252-FRA CT, p. 33, ln. 20 to p. 34, ln. 7 (English version not accurate, T-252-ENG CT, p. 30, ln. 24 to p. 31, ln. 5).
[877] *See e.g.,* **P-1193** : T-126-CONF-ENG CT2, p. 33, lns 3-13.
[878] *See e.g.*, **P-2012**: CAR-OTP-2091-0202, at 0215; **P-2926**: T-032-CONF-ENG CT3, p. 79, ln. 19 to p. 81, ln. 4; **P-0992**: CAR-OTP-2102-0078-R01, at 0096, paras 82-83; T-092-CONF-ENG ET, p. 74, lns 9-21; **P-1077**: T-150-ENG CT, p. 14, lns 1-24; **P-1858**: T-187-CONF-ENG ET, p. 7, ln. 23 to p. 9, ln. 7; **P-0884**: T-057-CONF-ENG ET, p. 5, ln. 24 to p. 6, ln. 13; **P-0446**: T-096-CONF-ENG CT2, p. 82, ln. 11 to p. 83, ln. 3; **P-0889**: T-109-CONF-ENG CT2, p. 27, lns 11-24; **P-2251**: T-044-CONF-ENG CT2, p. 9, ln. 13 to p. 10, ln. 15; **P-0808**: T-069-CONF-ENG CT, p. 57, lns 11-24; **P-1193**: T-125-CONF-ENG CT2, p. 13, lns 4-25; **P-0952**: T-251-ENG CT, p. 20, lns 6-22, p. 21, lns 16-20, p. 49, lns 9-12.
[879] **P-2012**: T-025-ENG CT, p. 42, lns 13-20.
[880] **P-2926**: T-032-CONF-ENG CT3, p. 79, ln. 19 to p. 81, ln. 8.
[881] *See e.g.,* **P-1521**: T-083-CONF-ENG CT, p. 65, lns 11-14; **P-2926**: T-032-CONF-ENG CT3, p. 79, ln. 19 to p. 81, ln. 8.
[882] CAR-OTP-2076-1083, from [00:02:17] to [00:03:55], CAR-OTP-2087-8960, at 8961-8962, lns 26-43; **P-1858**: T-187-CONF-ENG ET, p. 8, ln. 6 to p. 15, ln. 1.
[883] *See e.g.,* **P-4756** : T-269-CONF-ENG CT, p. 27, lns 12-20.
[884] *See e.g.,* **P-1521** : T-082-CONF-ENG CT, p. 84, ln. 1; **P-1858**: T-187-CONF-ENG ET, p. 8, lns 1-3.
[885] **P-0889**: T-109-CONF-ENG CT2, p. 27, ln. 11 to p. 28, ln. 25; **P-0889**: T-110-CONF-ENG CT, p. 28, lns 6-25, p. 30, ln. 5 to p. 31, ln. 5; **P-1521**: T-083-CONF-ENG CT, p. 4, ln. 20 to p. 6, ln. 15.
[886] *See e.g.,* **P-1521**: T-083-CONF-ENG CT, p. 5, lns 1-14.

general confusion. Some of those criminals, including ex-convicts, thieves and robbers, were even wearing *gris-gris* like the members of the Anti-Balaka, but were not members of the groups.[887]

237. There is a fundamental distinction to make between being associated – albeit mistakenly by others – with the group and actually being involved in the group. It is this distinction that makes impossible to know who allegedly committed crimes and if those crimes were committed as opportunistic acts, or within the alleged shared intent of the group.

C. The Prosecution failed to prove that the alleged crimes were committed by members of Anti-Balaka groups

238. In the absence of specific information about the identity of the bulk of the alleged perpetrators, it is impossible to establish beyond a reasonable doubt that the alleged crimes were committed by Anti-Balaka elements sharing a common criminal purpose. Countless items of evidence support that civilians (i) were taking advantage of the chaos to commit crimes out of vengeance or for personal gain, without displaying any distinctive signs; or (ii) were pretending to be Anti-Balaka to commit crimes that were unjustly attributed to the 'real' Anti-Balaka.

239. The perpetrators of the alleged crimes must belong to the group and share the common purpose.[888] The group must harbour the same intent to commit crimes and "[s]uch shared intent may be established by, *inter alia*, the group's collective decisions and action, or its omissions."[889] It follows that "[c]rimes ensuing solely from opportunistic acts by members of the group, and which fall outwith the common purpose cannot be attributed to the group's concerted action."[890] The *Al Hassan* Trial Chamber emphasised that although the group does not need to have an agreement between the perpetrators to commit crimes, contrary to criminal liability under Article 25(3)(a), the members of the group nevertheless need to be *linked* by a common purpose.[891] Under Article 25(3)(d) – which is a residual mode of liability – there is no reciprocal imputation of the acts of the members of the group.[892]

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[887] *See e.g.*, **P-1521**: T-082-CONF-ENG CT, p. 83, ln. 23 to p. 83, ln. 11; T-084-CONF-ENG ET, p. 19, lns 6-13, p.26, ln. 22 to p. 28, ln. 18, commenting on CAR-OTP-2005-0084, from [00:06:00] to [00:06:46], CAR-OTP-2127-6903, at 6906-6907, lns 115-123, p. 28, lns 20-24, p. 29, lns 19-22, commenting on CAR-OTP-2073-1297, from [00:13:29] to [00:14:37], CAR-D29-0006-0631, at 0640, lns 1-18; **P-0884**: T-057-CONF-ENG ET, p. 4, lns 7-11, p. 6, ln. 24 to p. 7, ln. 13.
[888] Al Hassan TJ, para 1234; Katanga, TJ, para. 1624.
[889] Katanga TJ, para. 1627; Mbarushimana Confirmation Decision, para. 271.
[890] Katanga TJ, para. 1630.
[891] Al Hassan TJ, para. 1236.
[892] Al Hassan TJ, para. 1236.

240. Resentment against the Muslim population was rising in the context of the Seleka violence and some among the non-Muslim population started to take revenge against other civilians.[893] Some committed crimes on their own volition, whether to settle scores or purely out of opportunism or to obtain individual gain.[894] P-0889 testified that civilians took advantage of the chaos to take revenge because they suffered under the Seleka.[895] It had become common practice for angry Christian civilians[896] to attack Muslims and loot their properties,[897] or destroy civilian houses and mosques.[898] For instance, in the case of the murder of Djido SALEH, witnesses testified that youths were angry and it was impossible to tell who was responsible for the killing. P-2476, who was nearby at the time of the incident, testified that the killing was not the action of the Anti-Balaka, but, rather, the civilians.[899] The same is true for the incident that took place in the Boeing market and the Boeing mosque.[900] Most of the witnesses otherwise did not see themselves the events unfold and only heard that crimes were allegedly committed by Anti-Balaka.[901]

241. P-1576, [REDACTED], witnessed and photographed civilians committing such crimes and testified to this effect.[902] P-2050, [REDACTED] in BANGUI during the alleged widespread Anti-Balaka attack on Western CAR from September 2013 to December 2014 ('Relevant Period'), also witnessed and photographed civilians, who were not wearing any *gris-gris*, breaking down civilian houses in February 2014.[903]

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[893] *See e.g.,* **P-1962**: T-140-CONF-ENG CT2, p. 48, lns 13-17; **P-2556**: T-146-CONF-ENG CT2, p. 7, lns 5-15; CAR-OTP-2001-4118, at 4119; **P-2602**: CAR-OTP-2118-9705, at 9712, lns 218-226; **D30-4496**: T-290-ENG CT, p. 24, ln. 25 to p. 25, ln. 4; **D30-4608**: CAR-D30-0017-0004, para. 69; T-291-CONF-ENG CT, p. 62, lns 3-5.
[894] **P-1077**: T-150-ENG CT, p. 37, lns. 14-19 ("[…] And some are benefiting from the absence of the Muslims. They took their homes and were sleeping in their homes, and they -- they, let's say, were not wanting them to come back. They wanted to kick them out. There were many examples like this. There was the chef of the neighbourhood. There were many who did not want the Muslims to come back. So to tell the truth, they camouflaged truth and then just called this the Anti-Balakas who refused the return of the Muslims.").
[895] **P-0889**: T-109-CONF-ENG CT2, p. 27, ln. 11 to p. 28, ln. 25.
[896] CAR-OTP-2012-0523, from [00:32:30] to [00:33:24], CAR-OTP-2118-5547, at 5573-5574, lns 830-844.
[897] CAR-OTP-2001-4684; **P-0446**: T-097-CONF-ENG CT2, p. 83, lns 4-8; CAR-D29-0008-0005, CAR-D29-0006-1172; **P-1193**: T-126-CONF-ENG CT2, p. 21, ln. 18 to p. 22, ln. 2; **D30-4756**: T-269-CONF-ENG CT, p. 26, lns 14-25; **P-1576**: T-239-CONF-ENG CT2, p. 63, ln. 17 to p. 64, ln. 15.
[898] CAR-OTP-2074-0075, from [00:00:01] to [00:00:17], at CAR-D29-0006-0001, at 0001, lns 1-7; **P-2050**: CAR-OTP-2107-2884-R01, at 2903, para. 91; **P-1339**: T-152-CONF-ENG CT2, p. 71, ln. 20 to p. 72, ln. 5, p. 74, lns 10-20; **P-1576**: T-239-CONF-ENG CT2, p. 62, lns 2-18; **D30-4756**: T-269-CONF-ENG CT, p. 27, lns 1-9.
[899] **P-2476**: T-213-CONF-ENG CT, p. 32, lns 1-14, p. 34, ln 25 to p. 35, ln 4. *See also* **P-1595**: T-107-ENG CT, p. 7, ln 9 to p. 8, ln 7.
[900] **P-1339**: T-152-CONF-ENG CT2, p. 74, lns 10-20 ([REDACTED]). *See also* civilians destroying the mosque in the Gobongo neighbourhood of BANGUI, CAR-OTP-2021-0505, [00:06:34] to [00:06:55], CAR-D29-0006-0799, at 0802, lns 18-21.
[901] *See e.g.*, **P-2682:** T-017-CONF-ENG CT, p. 25, ln. 21 to p. 27, ln. 10; **D30-4496**: T-290-ENG CT, p. 15, ln. 22 to p. 16, ln. 3; **D29-5014**: T-258-CONF-ENG CT, p. 22, lns 2-11.
[902] CAR-OTP-2061-4496; CAR-OTP-2061-4497; **P-1576**: T-239-CONF-ENG CT2, p. 62, lns 2-18.
[903] **P-2050**: CAR-OTP-2076-0911, at 0928, para. 91.

242. AGGER also wrote that "[c]riminal gangs and unemployed youth continue to unite and form new Anti-Balaka groups that loot and kill civilians, known as Faux Anti-Balaka."[904] They used the term Anti-Balaka to cover their actions.[905] AGGER confirmed that fake Anti-Balaka existed and were criminals whose crimes would be wrongly attributed to the Anti-Balaka.[906]

243. Witnesses such as P-0884, P-0889, Émotion NAMSIO – P-0446 ('NAMSIO'), BEINA and P-2251 testified to the same effect.[907] NGAYA also explained that many Anti-Balaka groups had been infiltrated with thieves and young thugs who, given the lack of state authorities and the general chaos, were stealing, racketeering and committed all types of attacks against the population,[908] which crimes were then blamed on the Anti-Balaka.[909] There were civilians, FACA, bandits and ex-convicts who took advantage of the general chaos to commit crimes under the banner of Anti-Balaka all the while not being an Anti-Balaka. As a consequence, the Anti-Balaka would be blamed for attacks and violence committed by civilians, simply because the Anti-Balaka group was in the area.[910] Such opportunistic crimes do not fall within the ambit of a criminal common purpose in the sense of Article 25(3)(d) of the Statute.

244. The present case is fundamentally different from the *Ntaganda* case, where the Trial Chamber found that Hema civilians participated in military operations "under the direction of the FPLC military command" and attributed their crimes to Mr Ntaganda.[911] First, Mr Ntaganda was charged under Article 25(3)(a) and (b), as opposed to Mr NGAÏSSONA who is charged under residual accessorial forms of responsibility under the Statute. Second, in the present case, the

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[904] CAR-OTP-2091-0202, at p. 2579.
[905] **P-2012**: T-025-ENG, p. 43, lns 10-15, p. 45, ln. 13 to p. 45, ln. 1.
[906] **P-2012**: T-025-ENG, p. 43, lns 10-15, p. 45, ln. 13 to p. 45, ln. 1. *See also* **P-1858**: T-187-CONF-ENG ET, p. 7, ln. 23 to p. 9, ln. 7; **P-1521**: T-082-CONF-ENG CT, p. 83, ln. 23 to p. 84, ln. 19.
[907] CAR-OTP-2076-0825, from [00:02:40] to [00:03:22], CAR-OTP-2122-7403, at 7404-7405, lns 38-46; **P-0884**: T-057-CONF-ENG ET, p. 5, ln. 24 to p. 6, ln. 13; **P-0889**: T-109-CONF-ENG CT2, p. 27, ln. 11 to p. 28, ln. 25; **P-2251**: T-044-CONF-ENG CT2, p. 9, ln. 13 to p. 10, ln. 15; **P-0446**: T-096-CONF-ENG CT2, p. 82, ln. 11, to p. 83, ln. 3; **P-0888**: T-123-ENG CT2, p. 12, lns 6-14, p. 13, ln. 7 to p. 14, ln. 4.
[908] **P-0808**: T-071-ENG CT2, p. 11, ln. 19 to p. 12, ln. 24.
[909] *See e.g.,* CAR-OTP-2076-1083, from [00:01:54] to [00:02:16], from [00:03:05] to [00:04:37], from [00:06:50] to [00:07:05], CAR-OTP-2087-8960, at 8961, lns 23-25, at 8962, lns 35-55, at 8963, lns 88-92; **P-1521**: T-083-CONF-ENG CT, p. 65, lns 14-15; CAR-OTP-2084-0147; **P-0808**: T-071-ENG CT2, p. 36, ln. 22 to p. 37, ln. 11; CAR-OTP-2001-3332, at 3336; **P-0446**: T-098-ENG CT, p. 89, ln. 16 to p. 90, ln. 2, p. 90, lns 6-9, p. 91, lns 10-17; **P-1042**: T-163-CONF-ENG CT2, p. 74, ln. 24 to p. 75, ln. 8; **P-1077**: CAR-OTP-2107-3500-R01, at 3538; T-150-ENG CT, p. 32, ln. 2 to p. 33, ln. 11, p. 33, lns 13-17; CAR-OTP- CAR-OTP-2023-1845, from [00:02:28] to [00:04:26], CAR-OTP-2107-1504, at 1505-1506, lns 34-64; **P-1858**: T-185-CONF-ENG ET, p. 63, lns 15-25, commenting on CAR-OTP-2012-0523, from [00:32:30] to [00:33:24], CAR-OTP-2118-5547, at 5573-5574, lns 830-844; **P-0992**: CAR-OTP-2110-0048-R05, at 0055, para. 37, at 0067, para. 107; **P-2251**: T-044-CONF-ENG CT2, p. 13, ln. 14 to p. 14, ln. 2.
[910] *See e.g.,* **P-0954**: T-167-CONF-ENG CT2, p. 28, lns 5-15; **P-1077**: T-149-ENG CT, p. 34, lns 20-24, p. 45, ln. 2; **P-0808**: T-071-ENG CT2, p. 11, ln. 19 to p. 12, ln. 24.
[911] Ntaganda TJ, paras 333, 822-824.

civilian population acted on its own, without enrolling in any organized group or receiving any orders from Anti-Balaka groups, or commanders.[912] P-1521 testified that "civilians who pretended to be Anti-Balaka […] did not have a chief. Their chief was themselves".[913] The real Anti-Balaka do not commit crimes against the civilians, the fake Anti-Balaka do.[914]

245. To the best of their capacities, some Anti-Balaka were trying to track fake Anti-Balaka who were committing crimes against the civilian population.[915] This is one of the reasons why the badge system was implemented, in an attempt to distinguish between combatants that were following the ideology and wrongdoers.[916]

246. There is therefore insufficient evidence that the crimes were committed by a group pursuant to a defined common purpose.

D. The Anti-Balaka groups never shared a common purpose to commit crimes against the Muslim civilian population

247. Under Article 25(3)(d), the common purpose must encompass an element of criminality.[917] No agreement is required between perpetrators, but members of the group must all share the same intent, same common aim or goal.[918]

248. Different elements can be taken into consideration to infer that a group is acting pursuant to a common purpose such as: meetings during which group members agree upon aspects of a plan;[919] relations and interaction between members of the groups;[920] public statements showing

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[912] CAR-OTP-2074-0075, from [00:00:00] to [00:00:28], CAR-D29-0006-0001, at 0001, lns 1-9. *See also* on this video, **P-0291**: T-052-ENG, p. 38, ln. 11 to p. 39, ln. 19; **P-1521**: T-082-CONF-ENG CT, p. 75, ln. 25 to p. 76, ln. 3.
[913] **P-1521**: T-187-CONF-ENG ET, p. 8, lns 6-9.
[914] CAR-OTP-2076-1083, from [00:02:17] to [00:03:55], CAR-OTP-2087-8960, at 8961-8962, lns 26-43.
[915] *See e.g.,* CAR-OTP-2076-0825, from [00:02:51] to [00:03:47], CAR-OTP-2122-7403, at 7404-7405, lns 40-51. *E.g* a group of fake Anti-Balaka had established one of their headquarters in a BANGUI neighbourhood, which real Anti-Balaka had to dismantle, *see* **P-0992**: CAR-OTP-2102-0078-R01, at 0096, paras 82-83; T-093-CONF-ENG ET, p. 40, lns 5-15. *See also below* VII.D.3. Military police.
[916] *See below*, VII.D.1. Badges. *See also* **P-0808**: T-071-ENG CT2, p. 11, ln. 19 to p. 12, ln. 24.
[917] Katanga TJ, para. 1627; Al Hassan TJ, para. 1237; Bemba et al. AJ, para. 133; Mbarushimana Confirmation Decision, para. 271.
[918] Katanga TJ, para. 1627; Al Hassan TJ, para. 1236. While the *Al Hassan* majority ruled (at para. 1645) that it can also be sufficient to demonstrate that the common purpose involved the commission of a crime whether with an explicit intention or with "an awareness that the crime will occur in the ordinary course of events", Judge Akane dissented, rightly pointing out that the *Al Hassan* Majority conflated "the standard applicable in relation to the mental element under Article 30(2)(b) and that applicable to the common purpose, the latter being an objective requirement for the mode of liability under Article 25(3)(d) of the Statute." (Akane Dissent, para. 26). *See also* Mbarushimana Confirmation Decision, para. 69; Ruto et al. Confirmation Decision, para. 351; Muthaura et al. Summons Decision, para. 47. *See also* Katanga TJ, para. 1617.
[919] Ruto et al. Confirmation Decision, paras 302-303.
[920] Blé Goudé Confirmation Decision, para. 175.

a common objective;[921] evidence of organisation and preparation of the commission of violence;[922] evidence of the intention of key group members reflecting the intentions of the entire group.[923]

1. *No common purpose to target the Muslim civilian population*

249. The Prosecution failed to prove that the Anti-Balaka groups acted in concert with the intention to commit crimes against Muslim civilians, and/or that they organised, planned, issued public statements and acted towards this goal.

250. In reality, the different groups were autonomous, and rivalries as well as disagreements prevailed amongst the different fractions of the Anti-Balaka.[924] There is no evidence that the groups were acting in one voice, and that this voice was calling to target Muslim civilians.

2. *No Anti-Muslim animus established at the outset of the conflict*

251. As elaborated above, there is no evidence of a pattern or coordinated collective mobilisation against the Muslim population that may be inferred from the public statements made by BOZIZÉ, Mr NGAÏSSONA, and others at the outset of the conflict. Rather, these statements convey concern for the peace and security of CAR, in response to the Seleka invasion unfolding on its territory.[925] Similarly, there is no credible evidence that the alleged meetings held in Cameroon or PARIS were about the elaboration and dissemination of an Anti-Muslim animus.[926]

3. *No Anti-Muslim animus shared by groups located in the provinces*

252. Although some of the evidence tends to show a growing frustration and resentment of the population and the Anti-Balaka against Muslims who cooperated with the Seleka,[927] there was no shared common purpose among the Anti-Balaka to commit crimes against the Muslim civilian population.

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[921] Gbagbo Confirmation Decision, para. 254.
[922] Gbagbo Confirmation Decision, para. 254.
[923] Ruto et al. Confirmation Decision, para. 352. *See also* Cupido, Chapter Group Acting with a Common Purpose, pp. 332-333, para. 71, *see* Annex A.15.
[924] *See e.g.*, **P-0808**: T-070-ENG CT2, p. 43, lns 13-16, p. 46, ln. 19 to p. 47, ln. 16, p. 74, lns 12-22; T-072-ENG CT, p. 19, lns 21-23; **P-1962**: T-141-CONF-ENG CT, p. 11, lns 2-5.
[925] *See above* III.A.2. The Prosecution failed to prove an early development of an organisational policy.
[926] *See below* VI.A. The Prosecution failed to prove that Mr NGAÏSSONA was part of BOZIZÉ's so-called inner circle ; *See above* III.B.2.2.2. FROCCA.
[927] *See e.g.*, CAR-OTP-2001-5739, at 5797; CAR-OTP-2001-4118, at 4119; **P-2602**: CAR-OTP-2118-9705-R01, at 9712, lns 218-226; **D30-4496**: T-290-CONF-ENG CT, p. 24, ln. 25 to p. 25, ln. 4.

253. The so-called Anti-Balaka movement was a deeply fractured one. First, and as discussed above, the leadership and membership of the 'GOBÉRÉ group', was confused and fluctuating.[928] In any event, the evidence shows that the purpose of the 'GOBÉRÉ group' was to chase out the Seleka, not to attack Muslim civilians.[929]

254. Second, the BOSSANGOA group also did not set to attack the Muslim civilian population. To the contrary, the 5 December attack was a lawful attack targeting only Seleka combatants and other persons actively participating in hostilities as demonstrated below.[930] The evidence rather tends to show that civilians and/or 'fake' Anti-Balaka were the ones committing the alleged crimes against Muslim civilians out of revenge, after having highly suffered from the Seleka control.[931]

255. Third, evidence shows that groups near the Cameroonian border were acting in an autonomous manner.[932] More specifically, the BOUAR and BELOKO groups did not cooperate with each other.[933] The BELOKO group acted independently, without having received any instructions from the Cameroon or other alleged groups.[934] D30-4914, [REDACTED],[935] was very clear that [REDACTED] was abiding by the rules, and was not acting pursuant to a common purpose to target the Muslim population,[936] but it was difficult to control the entire population which had a lot of resentment and was acting on its own.[937]

256. Fourth, [REDACTED][938] testified that the Anti-Balaka in BERBÉRATI did not want to kill the Muslims, but rather the Seleka only.[939] YAPÉLÉ explained that it is not that the Anti-Balaka were not distinguishing Muslims from the Seleka but that some Anti-Balaka elements did not know, for lack of education, the difference between the Seleka and the Muslims.[940] YAPÉLÉ

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[928] *See above* III.C. The 'GOBÉRÉ group' did not have the required means and capacity, para. 213.
[929] **P-0884**: T-055-CONF-ENG ET, p. 32, ln. 12 to p. 33, ln. 1.
[930] *See below* V.A.1. The 'BOSSANGOA group' did not target the civilian population during the 5 December attack on BOSSANGOA, in particular, paras 292, 295-296, 299.
[931] *See below* V.A.2.2. The 'BOSSANGOA group' did not pillage and destroy the Muslim homes during and after the attack (Counts 33 and 34), paras 344-345.
[932] **D30-4914**: T-303-CONF-ENG CT, p. 13, ln. 1 to p. 14, ln. 1; p. 87, lns 2-13; CAR-D30-0024-0001-R01, p. 14, ln. 542.
[933] **D30-4914**: T-303-CONF-ENG CT, p. 13, ln. 23 to p. 14, ln. 1; p. 87, lns 2-13.
[934] **D30-4914**: T-302-CONF-ENG CT, p. 72, lns. 12- 18; T-303-CONF-ENG, p. 7, lns 2-13.
[935] **D30-4914**: T-302-CONG-ENG CT, p. 62, ln. 24 to p. 64, ln. 10.
[936] **D30-4914** :T-303-CONF-ENG, p. 15, lns 21-24.
[937] **D30-4914**: T-303-CONF-ENG CT, p. 15, ln. 15 to p. 16, ln. 6; **D30-4914**: T-303-CONF-ENG CT, p. 16, lns 7-25; **P-1077**: T-149-ENG-CT, p. 44, ln. 20 to p. 45, ln. 5.
[938] **P-1077**: CAR-OTP-2107-3428-R01, at 3449, lns 788-795, at 3450, lns 810-814; CAR-OTP-2107-3554-R01, at 3759, lns 918-923; T-149-ENG CT, p. 6, lns 13-19.
[939] **P-1077**: T-149-ENG CT, p. 23, lns 3-10.
[940] **P-1077**: T-149-ENG CT, p. 24, lns 1-5.

took the initiative to explain to them the difference between the Seleka and Muslim civilians so as to avoid the commission of crimes based on uneducated confusion.[941] This nuance highlights that harming Muslim civilians was by no means a collective intent; rather, it was an outcome born of individual misunderstanding and ignorance.

257. Fifth, the groups in BOUCA and BOGANGOLO were in disagreement in relation to harming the civilians who did not associate with the Seleka. [REDACTED].[942] [REDACTED].[943]

258. Sixth, in BODA, P-1962 did not share the same mindset as [REDACTED].[944] P-1962 explained that words and actions of Anti-Balaka in BODA, [REDACTED], did not reflect the views of other Anti-Balaka in the region and that of the coordination.[945] Indeed, while some sought peace and reconciliation, others were still harbouring hatred towards Muslims.[946]

259. Seventh, Facebook conversations also reveal internal feuds between groups, the uncontrolled actions of certain members and civilians, and that certain individuals are distinct from and should not be associated with the Anti-Balaka.[947]

260. Finally, evidence established that the so-called 'Anti-Balaka of the South' and the 'Anti-Balaka of the North' were operating entirely separately from the outset, and until at least June 2014.[948] BEINA testified that there was no collaboration between Mr YEKATOM and Mr NGAÏSSONA prior to and in preparation of the 5 December attack.[949]

261. Overall, the Anti-Balaka were not united or acting in concert,[950] but rather a fractured movement, where differences prevailed even within a same locality.[951] The lack of (i) an official policy against the Muslim civilian population, (ii) hate speeches, (iii) coordination between Anti-Balaka groups across the country and throughout the Relevant Period, as well as the

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[941] **P-1077**: T-149-ENG CT, p. 34, ln. 22 to p. 35, ln. 4.
[942] **P-2251**: CAR-OTP-2093-0045-R01, at 0055, paras 67-68; T-043-CONF-ENG CT, p. 26, lns 9-17; T-044-CONF-ENG CT2, p. 45, lns 8-16.
[943] **P-2251**: T-044-CONF-ENG CT2, p. 47, lns 10-19.
[944] *See e.g.,* **P-0446**: CAR-OTP-2105-0462-R02, at 0479, lns 564-576; **P-1962**: T-138-CONF-ENG CT, p. 71, ln. 23 to p. 72, ln. 6; T-139-CONF-ENG CT, p. 18, lns 7-17, p. 50, ln. 17 to p. 51, ln. 6.
[945] **P-1962**: T-139-CONF-ENG CT, p. 53, ln. 17 to p. 54, ln. 17.
[946] CAR-OTP-2001-6708; **P-1962**: T-139-CONF-ENG CT, p. 58, lns 6-24.
[947] *See* Facebook Annex A.03, section 4.
[948] **P-0808**: T-070-ENG CT, p. 45, lns 10-11, p. 53, lns 5-13; **P-1193**: T-124-CONF-ENG CT3, p. 59, lns 4-9; **P-0876**: T-086-CONF-ENG CT, p. 81, ln. 21 to p. 82, ln. 8. *See also* CAR-OTP-2084-1319; CAR-OTP-2023-0032, at 0184, para. 2.
[949] **P-0888**: T-121-ENG CT, p. 77, ln. 14 to p. 79, ln. 2.
[950] CAR-OTP-2001-5739, at 5797; CAR-OTP-2084-1319, from [00:01:45] to [00:02:02], CAR-OTP-2107-1577, at 1578, lns 13-18.
[951] **P-0446**: CAR-OTP-2105-0462-R02, at 0479, lns 564-576; **P-1962**: T-138-CONF-ENG CT, p. 71, ln. 23 to p. 72, ln. 6; T-139-CONF-ENG CT, p. 50, ln. 17 to p. 51, ln. 6.

positive actions of some Anti-Balaka to prevent crimes against Muslim civilians, make it impossible for a reasonable trial chamber to infer any common purpose to target Muslim civilians.

262. In light of the above, the Prosecution failed to demonstrate the required shared intent to target the Muslim population among key figures of the different factions of the Anti-Balaka groups.[952]

4. *The objective of ousting the Seleka was legitimate*

263. The Anti-Balaka generally shared one legitimate objective: ousting the criminal Seleka regime and liberating the CAR population from its oppression,[953] not to attack the Muslim civilian population.[954]

264. This objective was made clear in the early stages of the movement in GOBÉRÉ, where a clear distinction was drawn between the Seleka and the Muslim population.[955] New recruits were cautioned against targeting the civilian population.[956] While Muslim civilians may have been targeted, it is highly significant that under DJOTODIA, many Muslim civilians turned on their non-Muslim neighbours by denouncing them to the Seleka,[957] joining the Seleka[958] or assisting

[952] CAR-OTP-0080-0821.
[953] *See e.g.*, CAR-OTP-2023-2227, from [00:00:31] to [00:00:42], CAR-D29-0006-0985, at 0985, lns 10-13; **P-1077**: T-149-ENG CT, p. 12, lns 7-15, p. 12, lns 22-24, p. 23, lns 3-10, p. 36, lns 3-8; T-150-ENG CT, p. 33, lns 17-25; **P-0876**: T-086-CONF-ENG CT, p. 14, lns 1-4; **P-0291**: T-052-ENG ET, p. 39, lns 7-14, p. 50, lns 11-24; **D30-4608**: CAR-D30-0017-0004-R01, at 0011, para. 54; **P-1521**: T-082-CONF-ENG CT, p. 56, ln. 18 to p. 57, ln. 3; CAR-OTP-2135-0915, at 0916, lns 24-26; **P-0446**: T-096-CONF-ENG CT2, p. 37, ln. 14 to p. 38, ln. 4; **P-0884**: T-057-CONF-ENG ET, p. 4, lns 1-11.
[954] CAR-OTP-2118-4151, from [00:02:15] to [00:03:16], CAR-OTP-2135-0915, at 0916, lns 24-38; **P-1962**: T-139-CONF-ENG CT, p. 68, lns 8-12; **P-1077**: T-149-ENG CT, p. 12, lns 7-15, p. 23, lns 3-10.
[955] *See above* III.B.2.2.3. The 'GOBÉRÉ group', paras 199-200.; *See also* P-**0966**: CAR-OTP-2031-0241-R03, at 0249, para. 46 ("[…] we did not think that all Muslims were Seleka, the religion was not linked to the Seleka […]"); T-117-ENG CT, p. 12, lns 16-25; **P-2602**: CAR-OTP-2118-9560-R01, at 9578, lns 607-609; **P-2251**: T-044-CONF-ENG CT2, p. 6, lns 2-11.
[956] *See* **P-0966**: CAR-OTP-2031-0241, at 0247, para. 28, at 0248, para. 38 ("Once people wanted to join our Anti-Balaka group, we would register their names, assign them to a company and tell them the rules: "don't kill or steal; don't touch the Muslim women. And if the Seleka attack, you can defend yourself.").
[957] *See above*, III.A.1. Origins of the Seleka; **D30-4608**: T-291-CONF-ENG CT, p. 35, lns 17-19.
[958] *See e.g.*, **P-0974**: CAR-OTP-2058-0165-R01, at 0168, para. 20; **P-2232**: T-075-CONF-ENG CT, p. 61, lns 4-9; **P-1521**: T-084-CONF-ENG ET, p.8, ln. 6 to p. 10, ln. 22; **P-2027**: T-040-CONF-FRA, p. 43, ln. 23, to p. 44, ln. 5 (English version not accurate, T-040-CONF-ENG CT2, p. 42, lns 20-25); **P-1962**: CAR-OTP-2068-0037-R04, at 0043, para. 17; T-140-CONF-ENG CT2, p. 37, lns 1-9; **P-1042**: T-163-CONF-ENG CT2, p. 66, ln. 17 to p. 68, ln. 1; CAR-OTP-2100-4709, at 4710; **P-1077**: T-150-ENG CT, p. 38, ln. 21 to p. 39, ln. 3; **D30-4068**: T-291-CONF-ENG CT, p. 33, lns 12-15.

them in the commission of crimes.[959] Muslim civilians were not only armed[960] but were even given uniforms by the Seleka.[961] This considerably muddles the water around the qualification of civilians versus combatants,[962] as there are numerous examples of behaviour amounting to direct participation in hostilities,[963] through a sufficient causal relationship.[964] In the context of international criminal trials, the burden falls on the Prosecution to establish the status of the victims,[965] which it failed to systematically do in the present case. As such, it cannot be excluded that acts were committed against Muslims who acted in a similar way to the Seleka. In spite of that, the Prosecution is wrong in asserting that Anti-Balaka perceived the Muslim population to be "collectively responsible for, complicit with, and/or supportive of, the Seleka".[966]

265. As the groups evolved, the official position of the Anti-Balaka was circulated and was clearly to target the Seleka with the aim of ousting DJOTODIA only.[967] Harming the Muslim civilian population was considered by Léopold-Narcisse BARA ('BARA') and NAMSIO as adopting the behaviour of the Seleka, the same that triggered the popular resistance and was counterproductive to the Anti-Balaka's objectives.[968]

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[959] *See e.g.*, **P-0446**: T-098-ENG CT, p. 74, ln. 23 to p. 77, ln. 23, p. 84, ln. 24 to p. 85, ln. 12; **P-1858**: CAR-OTP-2063-0050-R04, at 0053, paras 18-20; T-185-CONF-ENG ET, p. 56, ln. 16 to p. 57, ln. 16, p. 59, ln. 5 to p. 60, ln. 13; **P-1962**: CAR-OTP-2068-0037-R04, at 0042, paras 16-17; **D30-4608**: T-291-CON-ENG CT, p. 35, lns 17-23; **P-0876**: T-086-CONF-ENG CT, p. 25, lns 12-15.
[960] *See e.g.*, **P-0974**: CAR-OTP-2058-0165-R01, at 0174, para. 55; **P-2232**: T-075-CONF-ENG CT, p. 64, lns 18-20; **P-2027**: T-040-CONF-ENG CT2, p. 43, ln. 13 to p. 44, ln. 13, p. 46, lns 22-23; **D30-4756**: T-268-CONF-ENG CT, p. 37, lns 22-25; **D30-4608**: T-291-CONF-ENG CT, p. 51, ln. 12 to p. 52, ln. 12.
[961] *See e.g.*, **P-1858**: CAR-OTP-2063-0050-R04, at 0053, paras 19-20; T-185-CONF-ENG ET, p. 56, lns 16-24; **P-1042**: T-163-CONF-ENG CT2, p. 66, ln. 22 to p. 67, ln. 1.
[962] Abu Garda Confirmation Decision, para. 78; AP II, Article 13 (3).
[963] Strugar AJ, para. 177; Bemba TJ, para. 94 ("the Chamber shall consider the relevant facts and specific situation of the victims at the relevant time, including the location of the murders, whether the victims were carrying weapons, and the clothing, age, and gender of the victims").
[964] Abu Garda Confirmation Decision, para. 80; Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1987), para. 4787 ("sufficient causal relationship between the act of participation and its immediate consequences").
[965] Bemba TJ, para. 94.
[966] OTP PTB, para.6.
[967] **P-0446**: T-098-ENG CT, p. 8, lns 4-6, p. 53, lns 11-13; CAR-OTP-2023-1845, from [00:04:34] to [00:04:46], CAR-OTP-2107-1504, at 1506, lns 62-64; CAR-OTP-2107-1191 from [00:00:00] to [00:01:28], CAR-D29-0006-0933, lns 10-12; **P-1521**: T-082-CONF-ENG CT, p. 82, lns 3-25; T-083-CONF-ENG CT, p. 4, lns 6-8; **P-2251**: CAR-OTP-2093-0045-R01, at 0052, para. 46; T-044-CONF-ENG CT2, p. 6, lns 2-11; CAR-OTP-2076-1083, from [00:01:06] to [00:01:45], from [00:06:16] to [00:06:40], from [00:08:08] to [00:08:33], CAR-OTP-2087-8960, at 8961, 8963 lns 17-21, lns 84-87, lns 115-116; **P-1077**: T-149-ENG CT, p. 12, lns 7-15, p. 23, lns 3-10.
[968] CAR-OTP-2084-1319, from [00:02:43:00] to [00:03:30:00], CAR-OTP-2107-1577, at 1578, lns 22-33; **P-0446**: T-097-CONF-ENG CT2, p. 28, lns 19-21.

266. After the departure of the Seleka, clashes among the civilian population continued.[969] The Anti-Balaka's objective was then to take control of an area to avoid violence,[970] including by taking steps to explain to the non-Muslim civilians that they had to accept their Muslim brothers, and to ensure that the youths and local fighters understood that the population should not be terrorised.[971] The coordination considered the killings of the Muslim population unacceptable,[972] and launched a reconciliation project across the country between the Muslim and Christian communities to halt and prevent the commission of exactions amongst the civilian population.[973] NAMSIO, as the spokesperson of the Anti-Balaka,[974] mentioned that no one wanted the Muslims' exodus.[975]

267. Rogue, uncontrollable elements, including Adamou NDALE ('NDALE'), Rodrigue NGAÏBONA, alias ANDJILO ('ANDJILO'), Guy MAZIMBELET ('MAZIMBELET'), LEPAM and Aimé BLAISE ('BLAISE'), acting on their own behalf, disregarded the advice of the National Coordination to lay down their weapons.[976] However, these individuals did not embody the view of all Anti-Balaka[977] and certainly not that of the National Coordination.

268. In light of the above, the Prosecution failed to prove that (i) the crimes were committed by the Anti-Balaka (ii) against Muslims who were civilians at the time of the commission of the crimes and that (ii) the Anti-Balaka had a common purpose other than to oust the Seleka. There is no convincing evidence establishing that the Anti-Balaka deliberately and wilfully acted together with the goal to commit crimes against the Muslim civilian population in Western CAR. To the contrary, the evidence shows that the various Anti-Balaka groups acted pursuant to legitimate and lawful goals and did not agree to target the Muslim civilian population.

E. The crime of rape was not part of the common purpose

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[969] *See*., *e.g.*, **P-1962**: CAR-OTP-2068-0037-R04, at 0042, paras 15, 19 (BODA); **D29-5014**: T-258-CONF-ENG-CT, p. 23, lns 13-19 (BANGUI).
[970] *See e.g.*, **P-0954**: T-167-CONF-ENG CT2, p. 31, lns 13-17.
[971] *See e.g.*, **P-0808**: CAR-OTP-2093-0010-R02, at 0030, para. 112.
[972] *See e.g.,* CAR-OTP-2076-0825, from [00:04:53] to [00:05:20], CAR-OTP-2122-7403, at 7405, lns 67-72; CAR-OTP-2066-1601 at 1635.
[973] CAR-OTP-2076-0825, from [00:05:20] to [00:06:15], CAR-OTP-2122-7403, at 7405, lns 73-84; **P-1042**: T-164-CONF-ENG CT, p. 26, lns 5-12.
[974] *See e.g.*, **P-0446**: T-098-ENG CT, p. 53, lns 19-20.
[975] **P-0446**: T-096-CONF-ENG CT2, p. 83, lns 13-21.
[976] *See e.g.*, **P-1962**: T-138-CONF-ENG CT, p. 72, lns 11-14, 19-21; T-139-CONF-ENG CT, p. 51, ln. 16 to p. 53, ln. 16; **P-1193**: T-124-CONF-ENG CT3, p. 69, lns 19-20; **P-1077**: T-149-ENG CT, p. 45, lns 23-25; T-150-ENG CT, p. 12, lns 6-9, 17-19. *See e.g.*, **P-1042**: T-164-CONF-ENG CT, p. 9, ln. 23 to p. 10, ln. 12, p. 13, lns 1-16, p. 13, ln. 17 to p. 18, ln. 18; **P-0954**: T-169-CONF-ENG CT, p. 37, ln. 20 to p. 38, ln. 7; **P-2251**: T-044-CONF-ENG CT2, p. 45, ln. 8 to p. 46, ln. 11; **P-0808**: T-070-ENG CT2, p. 74, lns 7-22.
[977] See *e.g.*, **P-1077**: T-149-ENG CT, p. 44, ln. 24.

269. At the outset, the only incident of rape for which Mr NGAÏSSONA is charged has not been established beyond reasonable doubt.[978] Therefore, regardless of whether the alleged common purpose of the Anti-Balaka encompasses such crime of rape, Mr NGAÏSSONA cannot be found liable of Counts 40 and 41 under Article 25(3)(d) of the Statute.

270. Regardless, the Prosecution failed to prove that rape was part of the common purpose within the meaning of Article 25(3)(d) of the Statute. In the *Al Hassan* case, Judge Akane explained that "a careful analysis must be carried out with respect to each of the charged crimes, having due regard to actions taken over the course of time".[46] Not every crime necessarily falls within the common purpose, and a careful analysis is warranted for any conviction pursuant to Article 25(3)(d).[979]

1. No evidence that the common purpose encompassed acts of rape or SGBV

271. Abuse committed by a particular individual, albeit allegedly part of a group, does not automatically reflect the views and aim of that entire group.[980] In carrying out the assessment of whether a crime is part of the common purpose of a group, a careful analysis of the link between the individual crimes and the common purpose should be conducted,[981] looking *inter alia* at the possible motive of the perpetrators of the crimes, and exclude any unrelated or opportunistic acts.[982] While motive to commit a crime is not a legal requirement, it can assist in understanding why the crime was committed, and if it was with a shared intent.[983] As will be demonstrated below, alleged SGBV in the present case were random acts committed by individuals, in the absence of identifiable patterns between these alleged acts and specific motive, and the rest of the group.[984]

272. First, the Prosecution failed to demonstrate any pattern of SGBV amongst the alleged crimes imputed to the Anti-Balaka. The single charged incident of rape is insufficient to find that there was a pattern of rapes carried out by the Anti-Balaka, and the little evidence available otherwise fails to reach that threshold. The International Commission of Inquiry on the Central African Republic concluded similarly that "it was not able to reach a more broad-ranging conclusion

[978] *See below* V.A.2.4.5. The alleged rape of P-2462 was not proven (Counts 40 and 41).
[979] Mbarushimana Confirmation Decision, para. 941.
[980] See Al Hassan TJ, Opinion of Judge Akane, para. 20.
[981] Al Hassan TJ, para. 1237.
[982] Al Hassan TJ, Opinion of Judge Akane, para. 27.
[983] Al Hassan TJ, Opinion of Judge Akane, para. 27.
[984] *See* Al Hassan TJ, para. 1651; Al Hassan, Opinion of Judge Akane, para. 31.

as to whether these crimes [rape] were widespread or systematic".[985] Identically, the FIDH found that "although some rapes by anti-balaka fighters have also been reported […]" it "was unable to confirm information on the level of sexual violence experienced by the Muslim population".[986] While there is no numeric threshold to show a pattern, a high number of incidents is a relevant indicia. However, in the present case, the number of reported instances of SGBV is unspecific, and in any event significantly low and marginal.

273. Second, there is no evidence establishing that the alleged perpetrators of the charged rape, or of other alleged acts of SGBV in the uncharged locations, committed such acts because they saw the victims as complicit of the Seleka. The evidence on uncharged incidents of alleged rape reported by Rule 68(2) witnesses fails to show that these alleged acts were committed as a form of retributive punishment for their perceived collaboration with the Seleka. To the contrary, the only discernible semblance of a motive seemed to be the fulfilment of personal sexual desires.[987] Similarly, the Prosecution never introduced evidence on the motive or the intent behind P-2462's alleged rape.

274. The absence of an established pattern, as well as the absence of evidence on the perpetrators' motive, foreclose any finding that these alleged rapes or other acts of SGBV were the result of a concerted action across the Anti-Balaka, rather than the result of opportunistic actions taken individually.

275. Third, there is no evidence suggesting that rape or other forms of SGBV were committed to further the common purpose. To the contrary, evidence shows that violence against civilians, including rape, was prohibited and punished.[988] Indeed, "[m]any witnesses say that the original anti-balaka, the *feticheurs*, are bound by oath never to steal, rape or commit other sorts of violence for fear of losing their supernatural powers, and therefore do not engage in such acts."[989] Witnesses such as BEINA and Odette NAMSONA – D30-4496 ('NAMSONA') confirmed that traditional rituals which the Anti-Balaka underwent – including wearing *gris-gris* – imposed a general prohibition on sexual intercourse, and that engaging in it nullified the protective effects those rituals were meant to provide.[990] In addition to being a ritual

[985] CAR-OTP-2001-7017, at 7118, para. 482.
[986] CAR-OTP-2001-2769, at 2811.
[987] [REDACTED], **P-0732:** CAR-OTP-2061-0003-R02, at 0014, 0015, paras 77-79, 85-86; **P-1871**: CAR-OTP-2064-0884-R02, at 0891, paras 35-38.
[988] *See above* III.B.2.2.3. The 'GOBÉRÉ group', paras 199-200; *see e.g.*, CAR-OTP-2085-2953, at [00:12:00] to [00:12:37], CAR-OTP-2107-6989, at 6997, lns 245-252.
[989] CAR-OTP-2001-2769, at 2826.
[990] **D30-4496**: CAR-D30-0022-0001-R03, at 0007, para. 40; **P-0888**: T-122-CONF-ENG CT2, p. 75, lns 3-6.

proscription, rape was among the strict prohibitions issued by the various Anti-Balaka groups to new recruits, who were informed accordingly.[991]

276. Considering the above, there is no evidence demonstrating either a plan or intent from the Anti-Balaka, as a group, to rape or commit any other form of SGBV against Muslim civilians in retribution for the Seleka's crimes or for their perceived collaboration with the Seleka.

2. *Insufficient evidence on the alleged perpetrators of rape or SGBV acts*

277. The evidence adduced by the Prosecution, notably the items contained in its Bar Table application on SGBV,[992] is too vague and fails to show which individuals and/or which associated group were responsible for the SGBV, including rape.

278. First, the evidence available mostly relates to acts of SGBV committed by the Seleka or relates in general terms to the prevalence of conflict-related SGBV in CAR.[993] No inference from conflict-related SGBV, nor from the Seleka's documented systemic use of sexual crimes, can safely be made to conclude that the Anti-Balaka engaged in similar conducts, and with similar pervasiveness against the Muslim population. Any argument that Anti-Balaka members might have committed such crimes because they were aware of the Seleka's commission of SGBV is unfounded and speculative.[994]

279. Second, the Anti-Balaka membership of the alleged perpetrator of the charged incident of rape is not established beyond a reasonable doubt.[995] Indeed, P-2462 provided a description of the alleged perpetrator that closely mirrored those given by victims of Seleka's SGBV.[996]

280. Third, the Anti-Balaka membership of the alleged perpetrators of one uncharged incident of alleged rape is also not established. While P-2657 testified that "[REDACTED]"[997] was one of the individuals who raped her on 5 December 2013, there is only circumstantial evidence tying him to the Anti-Balaka;[998] in addition to evidence that suggests he was dead prior to December

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[991] *See* reasoning in Al Hassan TJ, Opinion of Judge Akane, para. 28.
[992] ICC-01/14-01/18-1233-Conf-Anx-Corr.
[993] *See* ICC-01/14-01/18-1278-Conf-Anx2; *see e.g.*, CAR-OTP-2001-0275, at 0280, para. 23; CAR-OTP-2001-0987, at 0994, para. 34; CAR-OTP-2001-1341, at 1359, 1362 to 1364; CAR-OTP-2001-1767, at 1792 to 1794.
[994] ICC-01/14-01/18- 1278 and ICC-01/14-01/18-1278-Conf-Anx1.
[995] *See below* V.A.2.4.5.2. The identity of the alleged perpetrator was not established.
[996] **P-2462**: T-060-CONF-ENG CT, p. 35 ln. 18 to p. 40 ln. 17; CAR-OTP-2088-1749-R01, at 1751, 1752, and 1754; *See below* V.A.2.4.5.2. The identity of the alleged perpetrator was not established.
[997] **P-2657**: T-104-CONF-ENG CT3, p. 20, lns 11-19.
[998] The witness is speculating on [REDACTED] being a Anti-Balaka based on circumstances, **P-2657**: T-105-CONF-ENG CT2, p. 27 ln. 10 to p. 28 ln. 1 ("If he had not been part of the Anti-Balaka, why would he have attacked me in the way he did?" or "Q. […] you had no information on him whereby he was part of the Anti-Balaka movement. Would that be a proper understanding? A. No. Before I was not aware").

2013.[999] Therefore, the Chamber cannot safely conclude that it was an Anti-Balaka named [REDACTED] who allegedly raped P-2657. In addition, beyond the fact that their proposed evidence is untested in court and relates to uncharged locations, most of Rule 68(2) witnesses who alleged the commission of rapes by Anti-Balaka elements were equally unable to identify the alleged perpetrators or the groups to which they were purportedly affiliated.[1000]

281. Based on the above, the Chamber cannot conclude that the alleged perpetrators of acts of the conflict-related SGBV, including the charged and uncharged incidents of rape, were members of the Anti-Balaka. As such, it cannot be concluded that the crime of rape or other SGBV were committed by a group of persons (*viz*. the Anti-Balaka) acting with a common purpose.

3. No evidence that Mr NGAÏSSONA contributed to and was aware of the alleged commission of SGBV by the Anti-Balaka

282. The Prosecution failed to show that Mr NGAÏSSONA contributed to and/or was aware of the alleged commission of SGBV by the Anti-Balaka, including the single charged incident of rape in BOSSANGOA.

283. There is no evidence to conclude that Mr NGAÏSSONA made a contribution linking him with the commission of the crime of rape in BOSSANGOA. There is no evidence that any Anti-Balaka leader encouraged or tolerated the perpetration of sexual violence, and in any event, there is no probative evidence that Mr NGAÏSSONA discussed this issue or any other related issue with these alleged leaders.[1001]

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[999] ICC-01/14-01/18-2300-Conf, para. 5.

[1000] **P-1871**: CAR-OTP-2064-0884-R02, at 0890 to 0891, paras. 31-40. From the witness' description, her alleged attackers could reasonably have been civilians or Seleka ("[…] They were dressed in jean shorts and vests. They had some stuff, like medicines, called "gris-gris" tied around their upper arms and were wearing head bands. They both had hunting rifles and machetes […] They were dressed in strange clothes. Some of them also wore vests and jean shorts; others wore torn trousers. I have never seen these men before. [...] He was tall with a dark complexion and of medium built. He had hairy arms and chest. He was clean shaven except for a small patch of hair (beard) under his lower lip. He had gris-gris tied around his upper arms. I have never seen him before […] He wore a purple and brown coloured shirt and trousers […] I have never seen him before. He was slim and was wearing a shirt and an orange pullover[…]"); **P-1865**: CAR-OTP-2066-0134-R01, at 0138, paras 22-25. From the witness' description, it cannot be ascertained that her attackers were Anti-Balaka elements ("[…] Je dis qu'ils étaient des Anti-Balakas parce que j'entendais qu'ils disaient "il faut les tuer, il faut les tuer" en sango. […] Je ne les connaissais pas. Je ne sais pas d'où ils venaient, Je ne peux pas décrire ces trois Anti-Balaka plus en details […] je ne pense pas que je pourrai les reconnaitre si je les revoyais. […] Je ne sais pas qui étaient les Anti-Balaka qui étaient à BOGANDA. Je ne connais pas leurs noms, ni le nom de leurs chefs […]."). **P-2422** : CAR-OTP-2110-0801-R02, at 0833, para. 99 ("[…] During this time though I did not see those Anti-Balaka that raped [REDACTED]").

[1001] *See below*, VI.F.1.6. Mr NGAÏSSONA did not liaise with the alleged leaders of the "BOSSANGOA group".

284. Furthermore, there is no evidence that Mr NGAÏSSONA possessed the requisite mental intent with regard to rape. Indeed, under Article 25(3)(d) of the Statute, the accused person must have knowledge of the commission of the specific crime to engage his criminal liability.[1002]

285. In *Bemba*, the Trial Chamber found that the accused had knowledge of his elements committing crimes because he had been made aware of FIDH reports and media articles. By contrast, in the present case, the Pre-Trial Chamber, while applying a significantly lower standard of proof, still found that media reports were insufficient to demonstrate that Mr NGAÏSSONA knew of the crimes committed by Anti-Balaka, since no evidence was led to establish that the reports reached Mr NGAÏSSONA.[1003]

286. The trial did not fill this gap. Evidence does not show that Mr NGAÏSSONA was made aware of the alleged crimes, including SGBV crimes, detailed in the various reports or media articles. But even if some did reach him, the FIDH itself "was unable to confirm information on the level of sexual violence experienced by the Muslim population".[1004] It is therefore unreasonable to expect Mr NGAÏSSONA to be aware of the alleged level of sexual violence committed by the Anti-Balaka against the Muslim population. Additionally, available reports mentioning the commission of rape or other SGBV crimes imputable to the Anti-Balaka date after 5 December 2013,[1005] and/or were not disseminated at the time of the events.[1006] As such, the Chamber cannot safely find that Mr NGAÏSSONA was aware of the commission of rapes and other acts of SGBV before the charged incident of P-2462's alleged rape. Thus, the Prosecution has not discharged its burden of proof with respect to Mr NGAÏSSONA's knowledge and *mens rea*.

V. THE PROSECUTION FAILED TO PROVE THE CHARGED CRIMES IN BOSSANGOA

287. The Prosecution failed to prove beyond a reasonable doubt the commission of the crimes charged in BOSSANGOA. It also failed to prove any contribution by Mr NGAÏSSONA to the alleged crimes, and any intention on his part to commit these crimes. Consequently, Mr NGAÏSSONA should be acquitted under Counts 30 to 42.

[1002] Katanga TJ, para. 1645.
[1003] CoC Decision, para. 181.
[1004] CAR-OTP-2001-2769, at 2811.
[1005] CAR-OTP-2001-5386; CAR-OTP-2002-0039-R01; CAR-OTP-2022-0375; CAR-OTP-2031-0157; CAR-OTP-2001-4909; CAR-OTP-2001-4967; CAR-OTP-2073-0893; CAR-OTP-2057-0911-R01; CAR-OTP-2092-2739; CAR-OTP-2092-2846; CAR-OTP-2001-0835; CAR-OTP-2001-3138; CAR-OTP-2001-3444; CAR-OTP-2001-6437; CAR-OTP-2001-7017; CAR-OTP-2008-1165; CAR-OTP-2055-1987; CAR-OTP-2061-1592; CAR-OTP-2110-0967; CAR-OTP-2025-0115; CAR-OTP-2092-1261; CAR-OTP-2092-1200.
[1006] CAR-OTP-2110-0915; CAR-OTP-2092-1200.

A. The war crime of directing attacks against the civilian population (Count 30) and the alleged underlying crimes have not been proven (Counts 31-33, 35, 37 and 39-42)[1007]

288. The Court's legal instruments do not provide a definition of the term 'attack'. The *Ntaganda* Trial Chamber noted that:

> […] the crime as described in Article 8(2)(e)(i) of the Statute is based on Article 13(2) of Additional Protocol II. This protocol does not define attacks, but Additional Protocol I does, and the term is considered to have the same meaning in Additional Protocol II. 'Attack' must therefore be understood within the meaning of Article 49 of Additional Protocol I as 'acts of violence against the adversary, whether in offence or defence'.[1008]

289. An attack is only lawful when directed against military objectives.[1009] For an attack to amount to a crime under Article 8(2)(e)(i) of the Statute, the object of the attack has to "be either a 'civilian population', in other words, a group of civilians, or individual civilians not taking a direct part in hostilities."[1010] The war crime of attacking civilians pursuant to Article 8(2)(e)(i) of the Statute supposes either that the civilian population is the sole and exclusive target of the attack or that the civilian population was the simultaneous target of the attack with a military objective.[1011]

290. The *Ntaganda* Trial Chamber similarly explained that "[t]he crime under Article 8(2)(e)(i) of the Statute may encompass attacks that are carried out in an indiscriminate manner, that is by targeting an area, as opposed to specific objects, or not targeting specific military objects or persons taking a direct part in hostilities, so long as the perpetrator was aware of the presence of civilians in the relevant area."[1012]

[1007] Pre-Trial Chamber II has confirmed the charge of war crime of directing attacks against the civilian population on the basis of several counts of war crimes (Counts 32, 33, 35 and 41) and crimes against humanity (Counts 31, 37, 39, 40 and 42). Given this overlap, Counts 30 to 42 are developed altogether and irrespective of their legal distinction under Articles 7 and 8 of the Statute.
[1008] Ntaganda TJ, para. 916; Ongwen TJ, para. 2758; Katanga TJ, paras 797-798.
[1009] Médecins Sans Frontières, The Practical Guide to Humanitarian Law, available online.
[1010] Ntaganda TJ, para. 921.
[1011] Mbarushimana Confirmation Decision, para. 142. *See also* Katanga TJ, para. 802 ("[…] indiscriminate attacks – proscribed by a rule of custom − may qualify as intentional attacks against the civilian population or individual civilians, especially where the damage caused to civilians is so great that it appears to the Chamber that the perpetrator meant to target civilian objectives. Use of weaponry that has indiscriminate effects may, *inter alia*, show that the attack was directed at the civilian population or individual civilians. The Chamber notes in this regard that an indiscriminate attack does not, however, automatically constitute an attack against the civilian population under article 8(2)(e)(i) […].").
[1012] Ntaganda TJ, para. 921.

291. As will be detailed below, the Anti-Balaka carried out the 5 December attack on BOSSANGOA lawfully, with the sole aim of targeting military objectives and objects, or anyone who actively took part in the hostilities.

1. The 'BOSSANGOA group' did not target the civilian population during the 5 December attack on BOSSANGOA

292. The Prosecution failed to prove that the so-called 'BOSSANGOA group' of the Anti-Balaka attacked the Muslim civilian population of BOSSANGOA on 5 December 2013 and in the aftermath. On 5 December 2013, the Anti-Balaka entered BOSSANGOA from the north and north-east and charged south along the main road and from behind the Radio Maria.[1013] The Anti-Balaka first engaged with a Seleka advanced post by the Kafa cemetery,[1014] in the north of the town.[1015] After overcoming this first Seleka base, the 'Bossangoa group' advanced towards the stream at the edge of the Boro and Sembe neighbourhoods, south of the Boro market.[1016] The battle was fierce near the mosque and the Imam's compound,[1017] and reached its climax south of the stream with a heavy confrontation between the Anti-Balaka and the Seleka reinforcement,[1018] supported by the FOMAC.[1019] The Anti-Balaka sustained heavy fire from both the Seleka and the FOMAC[1020] at the edge of the Boro neighbourhood, and were ultimately compelled to retreat into the bushes, fleeing as far as BENZAMBÉ,[1021] where they

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[1013] CAR-OTP-2118-9140; CAR-REG-0001-0004; **P-0966**: T-118-CONF-ENG CT, p. 4, ln. 1 to p. 8, ln. 14; **P-2602**: CAR-OTP-2118-9664-R01, at 9676-9677, lns 406-417, at 9680, lns 542-551; CAR-OTP-2118-9683, at 9699, lns 528-529; **P-2652**: CAR-OTP-2126-0175-R01, at 0186, para. 60.
[1014] Also called 'Kaba', *see e.g.,* **P-2049**: T-101-CONF-ENG CT, p. 30, ln. 18; T-103-CONF-ENG CT, p. 54, lns 16-17; **D30-4496**: T-289-ENG CT, p. 22, lns 22-23; **D30-4608**: T-292-CONF-ENG CT, p. 28, lns 19-20.
[1015] On the location of the cemetery, **D30-4608**: T-292-CONF-ENG CT, p. 28, lns 19-20. On the location of the Seleka advanced post and the armed confrontation, **P-0966**: T-118-CONF-ENG CT, p. 4, lns 4-7; **P-2602**, CAR-OTP-2118-9664-R01, at 9676-9677, lns 414-424, referring to CAR-OTP-2120-0262; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32.
[1016] CAR-OTP-2118-9140; CAR-REG-0001-0004; **P-0966**: T-118-CONF-ENG CT, p. 8, lns 9-10; **P-2652**: CAR-OTP-2126-0175-R01, at 0186, paras 59-61; **P-2602**: CAR-OTP-2118-9664-R01, at 9678, lns 457-466.
[1017] **P-2602**: CAR-OTP-2118-9705-R01, at 9709, lns 109-121; *see also* CAR-OTP-2001-7145, at 7156 ("as we return to the Imam's house just after noon, heavily armed Seleka fighters arrive, and we find ourselves in the midst of a gun battle, when anti-balaka fighters enter Bossangoa.").
[1018] **P-2602**: CAR-OTP-2118-9664-R01, at 9678, lns 460-462; **P-0966**: T-118-CONF-ENG CT, p. 5, lns 2-7; **P-1577**: T-027-CONF-ENG CT, p. 37, lns 2-25.
[1019] *See e.g.*, **P-2602**: CAR-OTP-2118-9683-R01, at 9685, lns 44-59; **P-1577**: T-027-CONF-ENG CT, p. 42, lns 1-2.
[1020] **P-2602**: CAR-OTP-2118-9664-R01, at 9678, lns 460-461; at 9679, lns 502-505 (the witness appears to refer to CEMAC and FOMAC indistinctively. The present Brief refers to the "FOMAC" hereinafter).
[1021] **P-0966**: T-117-ENG CT, p. 64, lns 1-15; T-118-CONF-ENG CT, p. 8, lns 1-3, lns 9-16, p. 62, lns 14-16; **P-2602**: CAR-OTP-2118-9683-R01, at 9685, lns 64-99; **P-2453**: CAR-OTP-2111-0415-R04, at 0429, para. 67 ("the SELEKA who had remained in the base got organised and managed to fight back; they stopped the progression of the Anti-Balaka and took the BORO neighbourhood back. The Anti-Balaka retreated near the bush at the entrance of BOSSANGOA, on the side of the BORO neighbourhood").

attended to their wounded and stayed for several weeks.[1022] After the attack, the Seleka announced their victory.[1023]

1.1. The 'BOSSANGOA group' did not attack indiscriminately on 5 December 2013

293. In carrying out the 5 December attack on BOSSANGOA, the Anti-Balaka did not engage indiscriminately but instead took precautionary measures to prevent a disproportionate attack.

294. Attacks carried out in a non-international armed conflict are subject to conventional and customary international law and governed by the duties of distinction, precaution and proportionality. Article 48 of the Protocol I to the Geneva Conventions stipulates that "[p]arties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives".[1024] The MICT Appeals Chamber further defined indiscriminate attacks as "attacks which are of a nature to strike military objectives *and* civilians or civilian objects without distinction" (emphasis added).[1025]

295. The Anti-Balaka appropriately distinguished between Seleka forces and Muslim civilians before and during the 5 December attack, as they were advised in GOBÉRÉ.[1026] Evidence shows that the 'BOSSANGOA group' fought against the Seleka and their bases, not against civilians.[1027]

296. Such distinction was applied throughout the 5 December attack, during which the Anti-Balaka solely engaged with the Seleka, or any other persons bearing arms.[1028] Members of the 'BOSSANGOA group' considered that it was their duty to protect civilians,[1029] recognised *École Liberté* as a refuge for them,[1030] and did not go after them there.[1031]

[1022] **P-0966**: T-117-ENG CT, p. 28, lns 8-9; T-118-ENG CT, p. 10, lns 17-20, where the witness further explained that the Anti-Balaka established posts in BOSSANGOA after DJOTODIA left power.
[1023] **P-2652**: CAR-OTP-2126-0175-R01, at 0186, para. 56.
[1024] AP I., Art. 48.
[1025] Karadžić AJ, para. 488; Articles 51(4) and (5) of AP I provide examples as to what types of attacks are to be considered as indiscriminate.
[1026] *See e.g.*, **P-0966**: CAR-OTP-2031-0241-R03, at 0247, para. 35, at 0248, para. 38; **P-2602**: CAR-OTP-2118-9617-R01, at 9620, lns 78-82. *See above*, III. B. 2.2.3 The 'GOBÉRÉ group', paras 199-200.
[1027] **P-0966**: CAR-OTP-2031-0241-R03, at 0251, para. 64; T-117-ENG CT, p. 43, lns 15-18, p. 55, lns 19-20; **P-2602**: CAR-OTP-2118-9664-R01, at 9679, ln. 502, at 9680, lns 531-534; CAR-OTP-2118-9683, at 9696, ln. 445.
[1028] **P-0966**: T-117-ENG CT, p. 57 lns 3-5; **P-2602**: CAR-OTP-2118-9664-R01, at 9679, ln. 502, at 9680, lns 531-534; CAR-OTP-2118-9683, at 9696, ln. 445; CAR-OTP-2118-9785, at 9806, lns 692-711.
[1029] **P-0966**: T-117-ENG CT, p. 12, lns 19-25; **P-2602**: CAR-OTP-2118-9664-R01, at 9679, ln. 502, at 9680, lns 531-534.
[1030] **P-0966**: CAR-OTP-2031-0241-R03, at 0252, para. 64.
[1031] *Ibid*.

1.2. The 'BOSSANGOA group' took precautionary measures to not target the civilians

297. The 'BOSSANGOA group' took all precautionary measures to protect the civilian population[1032] when it engaged against the Seleka on 5 December 2013. It took the "necessary precautions […] to avoid injury, loss or damage to civilian populations"[1033] and "endeavour[ed] to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives".[1034]

298. As evidenced by the testimony of the sole Anti-Balaka element that both took part to the attack and testified in court about it, the 'BOSSANGOA group' "put women and children in the 'Liberte' (*sic*) neighbourhood of BOSSANGOA" while engaging against the Seleka.[1035] OUABIRO-DANA testified that it was important to protect the civilians and that they grouped them together as they were moving, to allow the civilians to wait for the assistance that would be arriving,[1036] thereby removing them from the vicinity of military objectives.

1.3. The civilian population was not the target of the 'BOSSANGOA group'

299. While civilians may have been impacted by the 5 December attack on BOSSANGOA, there is no evidence establishing beyond reasonable doubt that the attack was directed against the civilian population as such. To the contrary, the 'BOSSANGOA group' directed its offensive solely against the Seleka and their bases, or against individuals who actively took part in hostilities.

1.3.1. The 'BOSSANGOA group' targeted legitimate military objectives

300. Military objectives are "limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage".[1037] Seleka bases, checkpoints, elements, and other persons actively taking part in hostilities constitute legitimate military objectives.

[1032] Hague Convention (IX), Art. 2(3); AP II., Art. 13(1); Amended Protocol II to the Convention on Certain Conventional Weapons, Art. 3(10).
[1033] UN Res. 2675 (XXV).
[1034] AP I., Art. 58. Although the general principle of precaution is not expressly envisaged in the instruments governing non-international armed conflict, it is recognised as customary international law in non-international armed conflicts.
[1035] **P-0966**: CAR-OTP-2031-0241-R03, at 0251, para. 63.
[1036] **P-0966**: T-116-CONF-ENG CT, p. 36, lns 3-11; T-117-ENG CT, p. 12, lns 16-25.
[1037] AP I., Art. 52(2).

301. In addition to checkpoints set up at the north and south entrances of town,[1038] the Seleka strategically located their bases around the Muslims neighbourhoods of BOSSANGOA such as Boro,[1039] and in the centre of town. Indeed, during the Relevant Period, the Seleka had established their bases at the residences of the *Préfet*[1040] and *sous-Préfet*,[1041] at the *Direction des inspections du travail*,[1042] at the Town Hall or the Mayor's Office,[1043] at the Police Station,[1044] at the FNEC,[1045] at the President's residence,[1046] at the SOCOCA[1047] and close to UNICEF.[1048] In addition to the administrative buildings, the Seleka settled in all the large houses in the Boro neighbourhood[1049] and established a base at *École Boro*.[1050] The town was effectively engulfed in Seleka bases. Meanwhile, Seleka elements had settled in the homes of local Muslims, living with and around them.[1051]

302. Moreover, a large number of these bases were in close proximity to *École Liberté*, where Seleka elements provided security,[1052] and were present on the day of the attack.[1053] Armed Seleka elements can also be seen in the background of one of P-1577's photographs[1054] taken at *École Liberté* on 6 December 2013.[1055] Given that Seleka elements often wore plain civilian

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[1038] Respectively called Kafa and Katanga.
[1039] **P-2652**: CAR-OTP-2126-0175-R01, at 0186, paras 59-60.
[1040] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-292-CONF-ENG CT, p. 29, ln. 14; **P-2049**: T-102-CONF-ENG-CT, p. 15, lns 12-14.
[1041] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-292-CONF-ENG CT, p. 29, lns 13-14.
[1042] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-292-CONF-ENG CT, p. 29, ln. 15; **D30-4514**: CAR-D30-0025-0001-R01, at 0011, lns 319-321.
[1043] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-292-CONF-ENG CT, p. 29, ln. 15; **P-2049**: T-102-CONF-ENG CT, p. 15, lns 15-16; **D30-4514**: CAR-D30-0025-0001-R01, at 0011, lns 319-321; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 58; **P-2652**: CAR-OTP-2126-0175-R01, at 0187, para. 64.
[1044] **D30-4608**: T-292-CONF-ENG CT, p. 29, lns 11-12; **P-2049**: T-102-CONF-ENG CT, p. 15, lns 15-18; **D30-4514**: CAR-D30-0025-0001-R01, at 0011, lns 319-321; **P-2200**: CAR-OTP-2088-2146-R04, at 2150, para. 24; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 54.
[1045] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-291-CONF-ENG CT, p. 21, lns 10-21; **P-2049**: T-102-CONF-ENG CT, p. 15, ln. 17; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 58.
[1046] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; T-291-CONF-ENG CT, p. 21, ln. 24 to p. 22, ln. 2.
[1047] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 32; **P-2049**: T-102-CONF-ENG CT, p. 19, lns 12-13; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 58.
[1048] **P-2049**: T-102-CONF-ENG CT, p. 18, lns 10-13; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 57.
[1049] **D30-4608**: T-291-CONF-ENG CT, p. 23, ln. 23 to p. 24, ln. 13, p. 25, lns 4-10, p. 29, lns 8-14; **D30-4496**: T-289-ENG CT, p. 15, lns 1-2, p. 66, lns 22-24; **P-2133**: CAR-OTP-2093-0267-R02, at 0274, para. 58.
[1050] **P-2049**: T-102-CONF-ENG CT, p. 18, ln. 21 to p. 19, ln. 5; **D30-4496**: T-289-ENG CT, p. 17, lns 6-20.
[1051] **D30-4496**: T-289-FRA CT, p. 15, ln. 28 to p. 16, ln. 25 (English version not accurate, T-289-ENG CT, p. 16, ln. 17 to p. 17, ln. 20); **D30-4608**: T-291-CONF-ENG CT, p. 24, lns 6-13.
[1052] CAR-OTP-2118-9140; CAR-REG-0001-0003.
[1053] **P-2602**: CAR-OTP-2118-9664-R01, at 9676, lns 408-410, at 9680-9681, lns 549-560; CAR-OTP-2118-9683, at 9684, lns 9-11; **P-2652**: CAR-OTP-2126-0175-R01, at 0187, para. 64; **P-2658**: CAR-OTP-2126-0012-R02, at 0034, para. 140.
[1054] CAR-OTP-2085-5082; *See* Annex A.16.
[1055] **P-1577**: T-027-CONF-ENG CT, p. 64, ln. 19 to p. 65, ln. 3; **P-2049**: T-101-CONF-ENG CT, p. 16, ln. 13 to p. 17, ln. 5; **D30-4608**: T-292-CONF-ENG CT, p. 60, lns 5-9; CAR-OTP-2085-5082; CAR-OTP-2085-5083; CAR-OTP-2085-6315.

clothes,[1056] it cannot be excluded that other non-identifiable elements were present in residential areas or at *École Liberté*.

303. To have any chance to meet the objective of the 5 December attack, which was to dislodge the Seleka,[1057] the Anti-Balaka, having entered BOSSANGOA from the north, had to cross the Boro neighbourhood to reach the main Seleka bases in the town centre.[1058]

1.3.2. A large proportion of Muslim civilians actively participated in hostilities on 5 December 2013

304. Evidence shows that a substantial number of individuals in the Muslim population in BOSSANGOA had joined the ranks of the Seleka[1059] or collaborated with them, for example, by acting as informants.[1060] Individuals such as Aladji ADO,[1061] Adjaro GARA,[1062] Koursi MAHAMAT[1063] and Mahamat ABDELKARIM (nicknamed "222")[1064] were seen bearing weapons or are known to have acted as intelligence officers after the arrival of the Seleka in the Ouham region. Other civilians, including a woman called ADJOUSS,[1065] and her son RAMAZANI,[1066] were also armed and known to have engaged in fighting alongside the Seleka.[1067]

[1056] **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 17; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40; **P-2657**: T-105-CONF-ENG CT2, p. 12, lns 2-6.
[1057] **P-0966**: T-118-CONF-ENG CT, p. 7, lns 1-10; **P-2602**: CAR-OTP-2118-9641-R01, at 9651, lns 336-339; CAR-OTP-2118-9560-R01, at 9578, lns 607-609; **D30-4608**: CAR-D30-0017-0004-R01, at 0011, para. 52, at 0013, para. 69; **D30-4514**: CAR-D30-0025-0001-R01, at 0031, lns 1006-1013.
[1058] **P-0966**: T-118-CONF-ENG CT, p. 6, lns 12-21.
[1059] **D30-4496**: CAR-D30-0022-0001-R03, at 0005, para. 29, at 0008, para. 46; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, paras 25-26, at 0009, para. 40; **P-2133**: CAR-OTP-2093-0267-R02, at 0280, para. 92; **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 426-441.
[1060] **D30-4496**: CAR-D30-0022-0001-R03, at 0005, para. 29, at 0008, para. 46; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 39; **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 426-441; CAR-OTP-2001-2043, at 2059.
[1061] **D30-4496**: CAR-D30-0022-0001-R03, at 0008, para. 46.
[1062] CAR-OTP-2078-0132-R02, at 0134, ("Hadjaro GARA, who was born in 1987, was part of the Muslim auto-defence group and was killed in combat"). *See also below* V.B.1. The [REDACTED]'s relatives and their acquaintances are not credible, at para. 393.
[1063] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, paras 22-23; T-289-ENG CT, p. 19, lns 11-12, p. 52, lns 2-3; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 26, at 0016, para. 92; T-291-CONF-ENG CT, p. 55, lns 7-25; **D30-4514**: CAR-D30-0025-0001-R01, at 0036-0037, lns 1199-1205.
[1064] **D30-4496**: CAR-D30-0022-0001-R03, at 0008, para. 46; **D30-4608**: CAR-D30-0017-0004-R01, at 0016, para. 92.
[1065] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 21; T-289-ENG CT, p. 55, ln. 24 to p. 56, ln. 1; **P-2652**: CAR-OTP-2126-0175-R01, at 0187, para. 61; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 26; T-291-CONF-ENF CT, p. 51, ln. 24 to p. 52, ln. 4; **D30-4514**: CAR-D30-0025-0001-R01, at 0015, lns 463-480.
[1066] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 26; T-291-CONF-FRA ET, p. 49, lns 3-8 (English version not accurate, T-291-CONF-ENG CT, p. 51, lns 12-16); **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 21; T-289-ENG-CT, p. 44, lns 10-16; **D30-4514**: CAR-D30-0025-0001-R01, at 0036, lns 1187-1198.
[1067] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 22; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 25; **P-2652**: CAR-OTP-2126-0175-R01, at 0181, para. 32, at 0186, paras 60-61; **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 442-448.

305. There is also overwhelming evidence that Muslim civilians were bearing arms in the months leading to the 5 December attack,[1068] and that they were mixing up with the Seleka.[1069] The Peuhls were also bearing arms,[1070] as were Muslim women.[1071] Seleka members' varied types of attire, including civilian clothing, made it difficult to distinguish them from the local Muslim population.[1072] Prominent members of the Muslim community, including Khadidja ADJARO,[1073] Iné GARA,[1074] Fadil GARA [REDACTED],[1075] and BICHARA,[1076] were known to collaborate closely with the Seleka.[1077] [REDACTED] himself recognised, during a press interview, that the Muslim community had closely associated with the Seleka.[1078] Even Islamic institutions were associated with the Seleka as weapons were stored at the mosque[1079] and looted goods from the *Cellule Cotton* were brought the Imam's house.[1080]

306. Armed Muslim civilians repeatedly led attacks against non-Muslims in the months preceding the 5 December attack, often assisted by Seleka troops. NAMSONA recounted events in the autumn of 2013, when Muslim youths armed with machetes invaded the neighbourhoods and started violently attacking Christian civilians, including her own brother, the hospital chief and

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[1068] **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 442-448; CAR-OTP-2101-5003, at 5009-5010 ("[REDACTED]"); CAR-OTP-2088-1673-R01, at 1701 ("[REDACTED]"); CAR-OTP-2110-1015, at 1017; CAR-OTP-2001-4118, at 4119; CAR-OTP-2110-1010, at 1011; **P-2652**: CAR-OTP-2126-0175-R01, at 0186-0187, para. 61.
[1069] **D30-4608**: CAR-D30-0017-0004-R01, at 0007, para. 19; T-291-CONF-ENG CT, p. 12, lns 13-24; **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 15; T-289-ENG-CT, p. 10, ln. 23 to p. 25, ln. 9; **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 426-441; **P-2652**: CAR-OTP-2126-0175-R01, at 0181, para. 32; CAR-OTP-2001-2707, at 2733 ("Armed Muslim civilians and armed Peulh cattle herders in some occasions acted independently or joined the Séléka in attacking Christian civilians in many parts of CAR").
[1070] **P-2602**: CAR-OTP-2118-9705-R01, at 9707, lns 45-52; CAR-OTP-2084-1275, from [00:03:32] to [00:03:43], CAR-OTP-2107-6973, CAR-OTP-2122-2351, at 2355, lns 88-90, in which [REDACTED] talks about attacks in Ouham on 6 September; CAR-OTP-2087-9530.
[1071] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 25; T-291-CONF-ENG CT-, p. 51, ln. 24 to p. 52, ln. 2; T-292-CONF-ENG CT, p. 80, lns 4-9; **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 21; T-289-ENG CT, p. 55, ln. 24 to p. 56, ln. 1; **P-2652**: CAR-OTP-2126-0175-R01, at 0186-0187, para. 61.
[1072] **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 17; T-289-ENG CT, p. 15, lns 15-21; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40; **P-2453**: T-137-CONF-ENG ET, p. 10, lns 2-7.
[1073] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 21; T-289-ENG CT, p. 42, ln. 22 to p. 43, ln. 7.
[1074] **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 15; T-289-ENG CT, p. 16, lns 17-23, p. 45, ln. 12 to p. 46, ln. 6.
[1075] **D30-4496**: CAR-D30-0022-0001-R03, at 0005, para. 28; T-289-ENG CT, p. 52, ln. 13 to p. 54, ln. 10.
[1076] **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 15, at 0005, para. 28, at 0006, para. 32; T-289-ENG CT, p. 11, ln. 24 to p. 12, ln. 16, p. 16, lns 19-24, p. 17, lns 5-6, p. 26, lns 11-13, p. 45, ln. 23 to p. 45, ln. 2, p. 56, lns 5-9.
[1077] Several other Muslim civilians were armed and/or cooperating with the Seleka, *see i.a.* **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 26; T-291-CONF-ENG CT, p. 50, lns 13-21, p. 51, lns 21-23, p. 54, lns 4-23; **D30-4496**: CAR-D30-0022-0001-R03, at 0008, para. 46; T-289-ENG CT, p. 46, lns 8-13, p. 47, lns 7-12; **D30-4514**: CAR-D30-0025-0001-R01, at 0037, lns 1206-1215, 1231-1235; **D30-4551**: CAR-D30-0021-0001-R01, at 0002, para. 8.
[1078] CAR-D30-0008-0092, p. 0095.
[1079] **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 25; T-291-CONF-ENG CT, p. 52, ln. 30 to p. 53, ln. 3.
[1080] **D30-4608**: CAR-D30-0017-0004-R01, at 0010, para. 47; T-291-CONF-ENG CT, p. 60, ln. 16 to p. 61, ln. 2.

a young teacher.[1081] P-2602 testified that later, on 5 December 2013, he only saw one civilian running to *École Liberté*, and he was armed with a gun.[1082]

307. While there is no definition of what constitutes direct participation in hostilities,[1083] the ICRC posits that "if carried out with a view to the execution of a specific hostile act, all of the following would almost certainly constitute preparatory measures amounting to direct participation in hostilities: equipment, instruction, and transport of personnel; gathering of intelligence; and preparation, transport, and positioning of weapons and equipment".[1084] Other examples of acts constituting direct participation in hostilities, include serving as guards, intelligence agents or lookouts on behalf of military forces, acting as spies, couriers or lookouts.[1085] "Direct participation in hostilities must be judged on a case-by-case basis. Combatants in the field must make an honest determination as to whether a particular civilian is or is not subject to deliberate attack based on the person's behavior, location and attire, and other information available at the time".[1086] Civilians lose their protection from attack when and for such time as they actively participate in hostilities.

308. While it is not possible to precisely assess the extent to which Muslim civilians participated in hostilities on 5 December 2013, direct and circumstantial evidence concord and confirm that a number of them did.[1087] This, coupled with the pattern of violence committed by Muslim civilians in the months leading to the attack, raises a reasonable doubt as to the status of the alleged Muslim victims during the attack.

1.4. The 5 December attack was proportionate

309. The very low number of alleged victims, compared to the large number of persons who made it safely to a place of shelter, demonstrates that the 5 December attack was proportional, and did not target civilians. Even if the figure of 28 casualties[1088] could be established beyond

[1081] **D30-4496:** CAR-D30-0022-0001-R03, at 0006, paras 32-34, at 0007, paras 36-37; T-289-ENG CT, p. 11, ln. 20 to p. 14, ln. 7, p. 20, ln. 19 to p. 21, ln. 6. *See also* CAR-OTP-2088-1673-R01, at 1701.
[1082] **P-2602**: CAR-OTP-2118-9785-R01, at 9806, lns 692-711.
[1083] Mbarushimana Confirmation Decision, para. 148.
[1084] ICRC, Interpretive guidance on the notion of Direct participation in hostilities under international humanitarian law, p. 66, available online.
[1085] ICRC, Customary International Humanitarian Law Study, Rule 6, available online.
[1086] ICRC, Customary International Humanitarian Law Study, Rule 6, available online.
[1087] Katanga TJ, Minority Opinion of Judge Christine Van den Wyngaert, para. 185 ("Whether or not one believes the testimony of D02-148 that the majority of inhabitants of Bogoro were armed, the fact remains that civilians were involved in the so-called *autodéfense*, i.e. civilians taking part in the defence of their village.").
[1088] CoC Decision, para. 106.

reasonable doubt, which is not the case,[1089] this would mean that the death toll of the attack amounted to less than 0.4% of the local Muslim population, which was approximately 8000 members.[1090]

310. Until 5 December 2013, and unlike the Christian population, most Muslim civilians from BOSSANGOA were still living in their homes.[1091] While some may have left shortly ahead of the attack,[1092] most of them were in their neighbourhoods when the attack started, and only decided to flee while it was raging.[1093] Yet, about 7,000 of them made it safely to a place of shelter,[1094] while at most 28 lost their lives. These figures cast serious doubt on the proposition that civilians were the explicit target of the attackers. Had the Anti-Balaka intended to target civilians, the death toll of the attack would have been considerably higher.[1095]

311. Considering the above, it is evident that the 'BOSSANGOA group' "concentrated their lethal efforts"[1096] on the Seleka and not on the Muslim civilians. Consequently, the attack on BOSSANGOA was lawful and conducted in full respect of the principles of distinction, precaution and proportionality, as the 'BOSSANGOA group' did not target the Muslim population as such, and took precautionary measures to limit the effect of the attack on civilians.

2. The Prosecution failed to prove beyond reasonable doubt the commission of the charged crimes (Counts 31-33, 35, 37, 39-42) by the 'BOSSANGOA group'

2.1. The alleged murder of 28 unarmed Muslim civilians on 5 December 2013 has not been established (Counts 31 and 32)

312. The Prosecution failed to prove beyond a reasonable doubt that 28 unarmed Muslim civilians were murdered by Anti-Balaka elements on 5 December 2013. First, the death of all 28

[1089] *See below* V.A.2.1 The alleged murder of 28 unarmed Muslim civilians on 5 December 2013 has not been established (Counts 31 and 32)
[1090] CAR-OTP-2055-1987, at 2151.
[1091] **P-1577**: CAR-OTP-2081-0769-R01, at 0788 ("[REDACTED]"); **P-2049**: T-103-CONF-ENG CT, p. 10, lns 12-14; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, paras 34, 39; **D30-4496**: T-289-ENG CT, p. 44, lns 6-7.
[1092] *See below* V.A.2.4.1 Muslim civilians left their homes as a result of a lawful attack and for their own security, para. 356.
[1093] *See e.g.*, **P-2049**: T-103-CONF-ENG CT, p. 10, lns 11-13; **P-2453:** T-136-CONF-ENG ET, p. 82, lns 7-9.
[1094] **P-2049**: T-101-CONF-ENG CT, p. 45, lns 7-11; CAR-OTP-2001-2043, at 2062 ("The number of displaced in Boro dramatically increased when over 7,000 local Muslims residents sought emergency shelter and protection at the school which was heavily protected by African Union troops and the ex-Seleka fighters at the time."). An unspecified number of Muslim civilians from BOSSANGOA and surrounding villages were already living at *École Liberté* before the attack.
[1095] *See* reasoning in Katanga TJ, Minority Opinion of Judge Christine Van den Wyngaert, para. 181.
[1096] Katanga TJ, Minority Opinion of Judge Christine Van den Wyngaert, para. 181.

individuals was not demonstrated; second, the identity of the perpetrator(s) is not established; third, there is credible evidence that the alleged victims were taking active part in hostilities; and finally, the Prosecution failed to show that Anti-Balaka elements intended to murder Muslim civilians.

2.1.1. The Prosecution did not show that all 28 individuals were killed

313. The trial record does not support the allegation that 28 individuals lost their lives during the attack on 5 December 2013.[1097] Some individuals have been counted multiple times, while the evidence is insufficient to establish the deaths of others. On that basis alone, and as detailed below, 19 individuals should be removed from the alleged death toll of the BOSSANGOA attack.

314. The crime of murder is only proven beyond a reasonable doubt where a person is killed.[1098] The Prosecution need not prove that the body of the dead person has been recovered, however, a victim's death may only be proven by circumstantial evidence where it is the only reasonable inference that can be drawn from the evidence.[1099] In *Ongwen*, the death of each victim was thoroughly examined and only established after Trial Chamber IX ascertained either that the bodies of the victims had been seen, or failing that, that their deaths were corroborated by other evidence.[1100] In this regard, "[it] is equally desirable, where practicable, to make as many factual findings as possible − in particular, forensic findings which are often crucial to the identification of victims − expeditiously and at the *loci in quo*".[1101]

315. In the present case, the absence of forensic evidence around the alleged killings of 28 individuals in BOSSANGOA is only offset by testimonial evidence, which fails to establish the number and identification of the victims. Some individuals listed in the CoC Decision are known by two or more names and have been counted more than once in the alleged death toll.

[1097] CoC Decision, para. 106, fn. 252: ("The Chamber finds that this evidence demonstrates that the following persons were murdered: [REDACTED]."). The PTB is less specific, and only mentions the death of "at least 18 fleeing Muslim civilians, including [REDACTED] and her sons-in-law [REDACTED] and [REDACTED]; Koursi Abdulrahim MAHAMAT; [REDACTED]; a taxi driver [REDACTED]; [REDACTED]and his mother, a Peuhl wounded earlier by the Anti-Balaka; [REDACTED]; [REDACTED]; [REDACTED]; and a certain [REDACTED] and [REDACTED].", *see* PTB, para. 421. Meanwhile, the number given by Prosecution witnesses diverges between 19 (P-2049), 18 (P-2657, P-2200), 16 (P-2462), and 12 victims (P-2453). For the purposes of the present Brief, all 28 individuals specified in the CoC Decision will be addressed.
[1098] Elements of crimes, Article 7(1)(a), para. 1; Article 8, Article 8(2)(c)(i)-1, para. 1.
[1099] Ntaganda TJ, para. 862.
[1100] Ongwen TJ, paras 1313-1352 (Pajule camp); paras 1505-1550 (Odek camp); paras 1754-1779 (Lukodi camp); paras 1947-1958 (Abok camp).
[1101] Katanga TJ, para. 61.

The following ten names in fact refer to only four persons: (1) Koursi ABDELRAHIM and Koursi MAHAMAT;[1102] (2) Adaye ABAKAR, "Abdaye", "Abakar" and Adef MAHAMAT;[1103] (3) Atahir ABOU and Atahir MAHAMAT;[1104] (4) Abakar MOUSSA and "C-17" MOUSSA.[1105] For this reason alone, six names should be removed from the alleged victims' list.

316. In addition, for 12 individuals,[1106] witnesses provided only their names, and occasionally their occupation, ethnicity or how they were allegedly killed, but failed to specify their source of knowledge about how they died, or whether they saw the bodies. The evidence adduced is also uncorroborated, and therefore insufficient to prove that these individuals were indeed killed on 5 December 2013.

317. First, the alleged murders of: Ila ADJI, Sali ADJI, Hamid ALI, Ahamat ZAKARIA, Mahamat ADAM, Abdasamat MOUNIN and Ibrahim HASSAN rest solely on P-2049's anonymous hearsay evidence.[1107] Thus, this aspect of his testimony should not be relied upon.[1108] Moreover, these individuals' names were not given in court by the witness himself, but were instead read back to him from his statement, casting further doubt on the witness' reliability.[1109] Also, no details whatsoever were elicited on how these people allegedly died, and whether P-2049 saw their bodies.

318. In addition, P-2049's credibility on these alleged deaths is impeded by his untruthful testimony regarding other alleged deaths, notably in ZÉRÉ and BENZAMBÉ. Regarding ZÉRÉ, P-2049

[1102] **P-2462**: T-059-CONF-ENG ET, p. 29, lns 21-22; PTB, para. 421, which refers to this individual as "Koursi Abdulrahim MAHAMAT"; **P-2049**: T-101-ENG CT, p. 60, lns 15-21, the witness alleges that the two Koursis are different people, but even if this is correct, he alleges that Koursi MAHAMAT was killed in ZÉRÉ, meaning he was not a victim of the 5 December 2013 attack.
[1103] **P-2657:** T-104-CONF-ENG CT3, p. 40, lns 12-17, the witness first referred to the name 'Abdel Abakar', then, she confirmed that this person was also known as 'Adef' and 'Abdaye', *see* T-105-CONF-ENG CT2, p. 23, lns 10-13, p. 24, lns 7-15; **P-2200:** CAR-OTP-2088-2146-R04, at 2156, para. 54, the witness referred to 'Abdaye' without further specifics; **P-2453**: CAR-OTP-2111-0415-R01, 0430, para. 67, the witness referred to both Abakar and Adaye ABAKAR, but in the absence of any supporting information, there is not enough evidence to establish that the two names refer to two distinct individuals.
[1104] While most witnesses refer to this person as "Atahir Abou" and specify that he is the younger brother of Adaye ABAKAR (ie Adef), the only reference to the name "Atahir MAHAMAT" can be found in the statement of P-2462 (not in evidence) which refers to him as the brother of Adef.
[1105] [REDACTED] indicates that C-17's name is probably Abakar MOUSSA. There is no other relevant information on the record to establish that these are two distinct individuals.
[1106] Ila ADJI, Sali ADJI, Hamid ALI, Ahamat ZAKARIA, Mahamat ADAM, Abdasamat MOUNIN, Ibrahim HASSAN, Abdallah MAHAMAT, Mariam YAWHA, Amadou OUMAROU, ABDELKHADIR, Ismael MADJI.
[1107] **P-2049**: T-101-CONF-ENG CT, p. 6, lns 20-24, p. 7, lns 24-25. Should the Chamber not be satisfied that the names C-17 Moussa and Abakar Moussa refer to one person only, the submissions at paragraphs 316 to 324 also apply to Abakar Moussa.
[1108] Regarding P-2049's low credibility, *see below* V.B.1 The [REDACTED]'s relatives and their acquaintances are not credible, paras 392-393, and Annex A.17.
[1109] **P-2049**: T-101-CONF-ENG CT, p. 6, lns 17-24.

erroneously stated that 90 Muslim civilians were killed,[1110] a claim that was contradicted by more credible evidence.[1111] P-2049 also stated that a video depicting a man on fire had been taken in ZÉRÉ in September 2013,[1112] a claim debunked by the metadata of the video, which demonstrates that it was in fact recorded in March 2011.[1113]

319. P-2049's claims regarding certain persons' deaths during the BENZAMBÉ attack[1114] have also been contradicted by Nestor WIABONA, a BENZAMBÉ resident, who testified that Abou KHIRESS, Yaya ZAKARIA, Ibrahim ADEY, Yaya DJITO, Naga ADAMOU, Salma IDRISSA, Harouna DOUKA, Seidou DÉRÉ and DOLÉ were not killed during that attack.[1115]

320. P-2049 was also untruthful when presenting item CAR-OTP-2088-2207 as a picture of the victims of 5 December 2013, taken the next day at the so-called 'Kolingba house' in BOSSANGOA,[1116] while other items of evidence show it was taken at the Ali Babolo Mosque in BANGUI.[1117] A side-by-side visual of the items is contained in Annex A.18 to the present Brief. The metadata of CAR-OTP-2088-2207 also shows that this video is likely to have been downloaded from an online forum in 2015.[1118] The multiple falsehoods uttered by P-2049 while under oath cast a doubt on his evidence as a whole, and particularly on the number and identity of the alleged victims of the 5 December 2013 attack. For this reason, the deaths of Ila ADJI, Sali ADJI, Hamid ALI, Ahamat ZAKARIA, Mahamat ADAM, Abdasamat MOUNIN and Ibrahim HASSAN have not been established beyond a reasonable doubt.

321. Second, the alleged killings of [REDACTED], [REDACTED], [REDACTED]and [REDACTED] are mentioned solely in the Rule 68(2) statement of P-2200.[1119] There is no other reference to these individuals in connection to BOSSANGOA in the trial record, let alone the circumstances surrounding their alleged deaths. Untested and uncorroborated, the evidence

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[1110] **P-2049**: T-100-CONF-ENG CT, p. 39, ln. 9 to p. 40, ln. 5.
[1111] **D30-4608**: CAR-D30-0017-0004-R01, at 0012, para. 57; T-291-CONF-ENG CT p. 46, ln. 21 to p. 47, ln. 4; CAR-OTP-2078-0132-R02, at 0134; CAR-OTP-2088-1673, at 1704.
[1112] **P-2049**: T-100-CONF-ENG CT, p. 35, lns 23-25, p. 40, lns 1-3.
[1113] CAR-D30-0008-0087. *See also* **P-2049**: T-102-CONF-ENG CT, p. 40, ln. 6 to p. 41, ln. 7.
[1114] **P-2049**: T-100-CONF-ENG CT, p. 40, ln. 16 to p. 41, ln. 17; T-102-CONF-ENG CT, p. 47, ln. 25 to p. 51 ln. 2.
[1115] **D30-4953**: CAR-D30-0026-0001-R01, at 0005-0006, paras 41-47; **D30-4496**: T-289-ENG CT, p. 68, ln. 14 to p. 69, ln. 2, the witness also confirmed that Dolé is still alive today.
[1116] **P-2049**: T-101-CONF-ENG CT, p. 12, ln. 10 to p. 14, ln. 15. *See also* T-101-CONF-ENG CT, p. 11, ln. 14 to p. 12, ln. 5, the fact that P-2049 insisted that this photo be only discussed in private session is also revealing of the fact that he was aware that his testimony was false.
[1117] CAR-OTP-00002245, from [00:00:47] to [00:01:03], from [00:00:00] to [00:00:04], it is indicated that this footage was indeed filmed in BANGUI. *See also* CAR-OTP-2100-1914, from [00:00:00] to [00:00:05], CAR-OTP-2118-0012; CAR-OTP-2125-0521, at 0523, lns 1-4.
[1118] CAR-D30-0005-0178; ICC-01/14-01/18-2662-Conf, pp. 7-9, ICC-01/14-01/18-2662-Conf-AnxII, row 1.
[1119] **P-2200**: CAR-OTP-2088-2146-R04, at 2155-2156, paras 49-52.

on [REDACTED], [REDACTED], [REDACTED] and [REDACTED] is insufficient to prove their alleged deaths beyond the reasonable doubt threshold.[1120] Moreover, doubt around [REDACTED]'s alleged death is heightened by the fact that one '[REDACTED]' safely sought shelter at the *Évêché* of BOSSANGOA,[1121] and is thus likely to have survived the 5 December attack.

322. Third, the alleged death of [REDACTED] is only mentioned in the statement of P-2453, who obtained this information through anonymous hearsay.[1122] There is no indication that P-2453 saw the body of [REDACTED], nor that he was able to confirm the death by any other means.

323. Finally, the alleged death of [REDACTED] has not been established, as no witness referred to this person. While P-2049 spoke about "Ismael AMAT"[1123] and P-2453 listed an "[REDACTED]",[1124] these allegations solely rest on anonymous hearsay.

324. As a result of the above, there is insufficient evidence to establish beyond a reasonable doubt that 19 individuals, out of the 28 persons identified in the CoC Decision, actually died on 5 December 2013.

2.1.2. There is credible evidence that the alleged victims actively participated in the hostilities at the time of their death

325. Evidence in relation to the remaining nine alleged murder victims[1125] raises a reasonable doubt that they actively participated in the hostilities on 5 December 2013.[1126]

326. The *Bemba* Trial Chamber found that "[i]n determining whether victims were taking an active part in hostilities, the Chamber shall consider the relevant facts and specific situation of the victims at the relevant time, including the location of the murders, whether the victims were carrying weapons, and the clothing, age, and gender of the victims."[1127] In the context of a criminal trial, "the burden is on the Prosecution to establish the status of the victim as someone taking no active part in the hostilities."[1128]

[1120] *See above* II.B.2. Rule 68(2) and 68(3) prior record statements.
[1121] CAR-D30-0017-0002, ln. 31. *See also* **D30-4608**: T-291-CONF-ENG CT, p. 78, ln. 1 to p. 79, ln. 3.
[1122] **P-2453**: CAR-OTP-2111-0415-R04, at 0431-0430, para. 67.
[1123] **P-2049**: T-101-CONF-ENG CT, p. 6, ln. 23 to p. 7, ln. 1.
[1124] **P-2453**: CAR-OTP-2111-0415-R04, at 0431-0430, para. 67.
[1125] Khadidja ADJARO, Adaye ABAKAR, Atahir ABOU, Atahir DJIME, Halima HISSEINI, Amadou BOUBA, Salamatou MADJI, Koursi ABDELRAHIM, C-17 (Abakar MOUSSA).
[1126] Elements of crimes, Article 8(2)(c)(i)-1, para. 2.
[1127] Bemba TJ, para. 94; Ntaganda TJ, para. 884.
[1128] Ntaganda TJ, para. 883.

327. In *Ntaganda*, Trial Chamber VI, having noted that during an attack, the UPC/FPLC faced resistance from a self-defence group (the Lendu fighters), and that the individuals fighting against them, including women and children, were not uniformly dressed,[1129] found that "neither age or gender, nor the clothing worn constituted an indicator of a person's status as a civilian or as a Lendu fighter."[1130] Consequently, the *Ntaganda* Trial Chamber found that those killed during the attack "may have comprised both Lendu fighters and civilians, and that some of these civilians may have been actively engaged in the hostilities",[1131] concluding, in the absence of specific evidence on the circumstances leading to the death of these individuals, that the elements of the crime of murder had not been fulfilled.

328. On 5 December, the Anti-Balaka faced resistance and engaged in combat with the Seleka in the Boro district, around the Imam's house and the mosque.[1132] On that day, Muslim civilians gathered with the Seleka,[1133] which provided them with weapons.[1134] Muslim civilians, including women, were armed and supported the Seleka in the fight against the Anti-Balaka.[1135]

329. Of the nine alleged murder victims, the evidence demonstrates that four were together in a group.[1136] Evidence shows that [REDACTED], who was openly bearing arms during the Seleka regime[1137] and gave weapons to at least one other person,[1138] was part of this group. Evidence further shows that prior to his death on 5 December 2013, Koursi ABDELRAHIM had attacked young men[1139] and that his wives also bore weapons that day.[1140]

[1129] Ntaganda TJ, para. 885.
[1130] Ntaganda TJ, para. 885.
[1131] Ntaganda TJ, para. 885. *See also* para. 886, where the Chamber found that in the absence of "any evidence as to whether these persons may have been armed *at the time* when they were killed, the Chamber considers that without contemporaneous information about the circumstances in which these persons were killed, the Chamber cannot exclude the reasonable possibility that these persons were armed and actively taking part in the hostilities at the moment when the killings occurred.".
[1132] **P-1577**: CAR-OTP-2081-0769-R01, at 0784-0785; **P-2602**: CAR-OTP-2118-9705, at 9708, ln. 93, at 9709, lns 109-119; **P-0966**: T-118-CONF-ENG CT, p. 7, lns 23-25, p. 8, lns 9-14.
[1133] **P-2652**: CAR-OTP-2126-0175-R01, at 0186, paras 60-61; **P-1577**: CAR-OTP-2081-0769-R01, at 0785 ("[REDACTED]"); CAR-OTP-2001-2308, at 2389 ("[REDACTED].").
[1134] **P-2200**: CAR-OTP-2088-2146-R04, at 2156, para. 57; **P-2652**: CAR-OTP-2126-0175-R01, at 0186, para. 60.
[1135] **P-2652**: CAR-OTP-2126-0175-R01, at 0186-0187, para. 61. *See also* **P-2602**: CAR-OTP-2118-9785-R01, at 9806, lns 704-707; CAR-OTP-2118-9705-R01, at 9707, lns 55-61.
[1136] [REDACTED], [REDACTED], [REDACTED], and [REDACTED], *see* **P-2462**: T-059-CONF-ENG ET, p. 29, lns 13-19.
[1137] **D30-4496**: T-289-ENG CT, p. 19, lns 8-12. *See also above* V.A.1.3.2 A large proportion of Muslim civilians actively participated in hostilities on 5 December 2013, para. 304.
[1138] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, paras 22-23; T-289-ENG CT, p. 47, ln. 24 to p. 48, ln. 13.
[1139] **D30-4496**: T-289-ENG CT, p. 51, lns 11-18.
[1140] **D30-4496**: T-289-ENG CT, p. 52, lns 3-12.

330. While witnesses speculated that the alleged victims were not bearing arms at the time of their death, none of them actually saw the moment when the alleged victims were killed.[1141] P-2049 had already fled to *École Liberté* and admitted not seeing any Anti-Balaka, or any fighting on that day.[1142] P-2462 did not see the alleged victims' bodies but was told how they died by her mother, while it is unclear whether the mother witnessed the alleged events herself.[1143] As for P-2657, she did not see any of the alleged victims being attacked.[1144]

331. In light of the extensive evidence related to the arming of Muslim civilians,[1145] given that Koursi ABDELRAHIM and at least some women around him were armed during the 5 December attack, and lacking any eyewitness, the Chamber cannot reasonably exclude the possibility that the alleged victims might have been actively participating in hostilities at the time of their death.

332. In addition, while the death of Amadou BOUBA is listed by two witnesses without any further details,[1146] Faustin NGAMESSE – D30-4514 ('NGAMESSE') indicated that this person had rallied the Seleka in BOSSANGOA,[1147] introducing the possibility that he may have actively participated in hostilities at the time of his death.

333. Finally, no information was presented in relation to the circumstances surrounding the death of Atahir DJIME,[1148] Halima HISSEINI,[1149] Salamatou MADJI,[1150] and 'C-17' (Abakar

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[1141] **P-2200**: CAR-OTP-2088-2146-R04, at 2156, para. 58 ("Je n'ai pas vu moi-même les Anti-Balaka tuer ces victimes"); **P-2453**: CAR-OTP-2111-0415-R04, at 0428, para. 61 ("On 5 December I was living in the school *Ecole Liberté*, I was not in the neighbourhood so I did not witness the course of the attack […]"); T-138-CONF-ENG CT, p. 33, lns 3-4, ln. 11; **P-2658**: T-135-CONF-ENG ET, p. 12, ln. 22 to p. 23, ln. 3; **P-2652**: CAR-OTP-2126-0175-R01, at 0184, para. 49, the witness was in BANGUI on 5 December 2013.
[1142] **P-2049**: T-103-CONF-ENG CT, p. 65, lns 2-9, p. 68, lns 3-10, p. 69, lns 20-24.
[1143] **P-2462**: T-059-CONF-ENG ET, p. 34, lns 14-21.
[1144] **P-2657**: T-105-CONF-ENG CT2, p. 26, ln. 23 to p. 27, ln. 3, p. 27, ln. 10-19, p. 30, lns 6-12.
[1145] *See above* V.A.1.3.2. A large proportion of Muslim civilians actively participated in hostilities on 5 December 2013.
[1146] The alleged death of Amadou (or Hamadou) BOUBA is only listed by P-2049 and P-2453, *see* **P-2049**: T-101-CONF-ENG CT, p. 6, lns 22-23; **P-2453**: CAR-OTP-2111-0415-R04, at 0430, para. 67.
[1147] **D30-4514**: CAR-D30-0025-0001-R01, at 0037, lns 1231-1233.
[1148] The alleged death of Atahir DJIME is listed by P-2049, P-2453 and P-2200, *see* **P-2049**: T-101-CONF-ENG CT, p. 6, ln. 21; **P-2453**: CAR-OTP-2111-0415-R04, at 0430, para. 67; **P-2200**: CAR-OTP-2088-2146-R04, at 2156, para. 53. *See also* CAR-OTP-2001-2043, at 2056.
[1149] The alleged death of Halima HISSEINI is listed by P-2049 and P-2453, *see* **P-2049**: T-101-CONF-ENG CT, p. 6, ln. 21-22; **P-2453**: CAR-OTP-2111-0415-R04, at 0430, para. 67. *See also* **P-2657:** T-104-CONF-ENG-CT3, p. 41, ln. 7-12**,** the witness alleges having seen the body of a woman named "Halime" but it is unclear whether this is the same person.
[1150] The alleged death of Salamatou MADJI is listed by P-2049 and possibly P-2453, *see* **P-2049**: T-101-CONF-ENG CT, p. 6, ln. 23; **P-2453**: CAR-OTP-2111-0415-R04, at 0430, para. 67, who calls him only "Salamatou".

MOUSSA).[1151] Without any contemporaneous evidence on the circumstances in which these persons were killed and whether they may have been armed *at the time*, the Chamber cannot exclude, in light of the circumstantial evidence on the arming of Muslim civilians, that these persons were armed and actively taking part in the hostilities at the time the alleged killings occurred.[1152]

2.1.3. The identity and mens rea of the perpetrator(s) are not established

334. Although witnesses speculated that the alleged murders, for which, as stated above, there is not a single eyewitness,[1153] were committed by Anti-Balaka elements, the evidence on the record does not support this version of events.

335. The evidence instead shows that it was difficult to identify and distinguish between Seleka and Anti-Balaka members. In fact, none of the witnesses called by the Prosecution were able to distinguish between the members of the two groups, and when showed pictures, some readily admitted that they could not do so.[1154] In this context, it is impossible to discount the possibility that the alleged victims might have been unfortunately killed in cross or friendly fire[1155] as they approached *École Liberté* or the Imam's house, where the fighting was particularly intense.[1156] There is not a shred of evidence that the Anti-Balaka were "indiscriminately shooting on

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[1151] The alleged death of a person nicknamed C-17 is mentioned by P-2049 and P-2453, *see* **P-2049:** T-101-CONF-ENG CT, p. 6, ln. 21; **P-2453**: CAR-OTP-2111-0415-R04, at 0429, para. 66. While P-2453's statement appears to indicate that the witness saw 'C-17' being shot, in his examination, it became clear that he in fact did not see any of the alleged events of that day, *see* T-136-CONF-ENG ET, p. 81, ln. 24 to p. 82, ln. 9; T-138-CONF-ENG CT, p. 39, ln. 25 to p. 40, ln. 10, p. 42, lns 14-19.
[1152] Ntaganda TJ, para. 886.
[1153] *See above*, para. 330.
[1154] CAR-OTP-2112-1385, from [00:00:00] to [00:00:50], CAR-OTP-2127-7074, CAR-OTP-2127-7120; **P-2049**: T-103-CONF-ENG CT, p. 77, ln. 14 to p. 78, ln. 4; **P-2657**: T-105-CONF-ENG CT2, p. 33, lns 20-22; **D30-4496**: T-289-ENG CT, p. 71, lns 4-7; **P-2462**: T-060-CONF-ENG CT, p. 35, ln. 9 to p. 36, ln. 1 (in reference to CAR-OTP-2085-9425), p. 38, lns 4-14, p. 39, ln. 16 to p. 40, ln. 17; **P-2453**: T-138-CONF-ENG CT, p. 53, ln. 12 to p. 54, ln. 22.
[1155] In *Ongwen*, the Trial Chamber defined crossfire as "the killing of civilians in crossfire to mean the death of civilians in an exchange of gunfire between government soldiers and LRA fighters in which it is not possible to ascertain which party actually shot the victim", *see* Ongwen TJ, para. 1476. P-2049 conceded that this might have happened, at least in the context of the alleged 17 September attack on BOSSANGOA, *see* **P-2049**: T-103-CONF-ENG, p. 25, lns 14-18.
[1156] *See also above* paras 300-301, on the location of Seleka bases.

Muslim civilians".[1157] As ultimately conceded by Prosecution witnesses, they did not see anything on 5 December, and are unable to ascertain who was shooting at whom.[1158]

336. Therefore, the Chamber must find Mr NGAÏSSONA not guilty under Counts 31 and 32.

2.2. The 'BOSSANGOA group' did not pillage and destroy the Muslim homes during and after the attack (Counts 33 and 34)[1159]

337. While evidence shows that property was destroyed or pillaged, in the absence of any eyewitnesses to these acts, and in light of contradicting evidence, the identity of the perpetrators as the Anti-Balaka cannot be established to the requisite standard.

338. First, as detailed above,[1160] the goal of the BOSSANGOA attack was to dislodge Seleka forces. Looting and pillaging were prohibited by the *gris-gris* worn by Anti-Balaka elements and the traditional rituals and practices they followed.[1161]

339. Second, the evidence shows that the Anti-Balaka were not in a position to loot, pillage or destroy civilian property during the 5 December attack. P-2602 explained that there was no opportunity or time for the Anti-Balaka to start dismantling houses and carry looted goods.[1162] This is consistent with the evidence that heavy combat was taking place against the better equipped, and more numerous Seleka.[1163] OUABIRO-DANA, who also participated in the

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[1157] *See above* section V.A.1. The 'BOSSANGOA group' did not target the civilian population during the 5 December attack on BOSSANGOA regarding the respect by the BOSSANGOA group of the principles of distinction, necessity and proportionality and regarding the legitimate aim of the 5 December attack.
[1158] **P-2453**: T-138-CONF-ENG CT, p. 43, lns 23-24 ("Whether it was the Seleka or the Anti-Balaka, I can't know. I wasn't an eyewitness. I didn't see it for myself."), p. 44, lns 8-14; **P-2049**: T-103-CONF-ENG CT, p. 65, lns 2-9; **P-2658**: T-135-CONF-ENG ET, p. 13, lns 11-12; P-2462 alleged that she saw Anti-balaka elements shooting, but described them as wearing military attire or civilian clothes, and turbans, *see* **P-2462**: T-060-CONF-ENG CT, p. 30, ln. 23 to p. 32, ln. 3. This description appears to describe Seleka elements more accurately than Anti-Balaka. In any event, as detailed at paras 384-387 *below*, P-2462 admitted being unable to distinguish between members of different armed groups.
[1159] Although Counts 33 and 34 are addressed together, contrary to Count 33, Count 34 (pillaging) does not constitute a basis for the war crime of directing attacks against the civilian population in BOSSANGOA on 5 December 2013 (Count 30), as per the Pre-Trial Chamber II's finding in its CoC Decision.
[1160] *See above* paras 301-303.
[1161] **P-2602**: CAR-OTP-2118-9705-R01, at 9710, lns 172-173. *See also* above, para. 199.
[1162] **P-2602**: CAR-OTP-2118-9785-R01, at 9803, lns 606-608 ("It takes time to remove the ... the roof or the metal sheet of the roof for someone and then take it away. The ANTI-BALAKA when he fights, he continues"); CAR-OTP-2118-9705-R01, at 9709, lns 136-137 ("During the war, the fighter cannot leave the fight and to go and break shops and to carry goods."), at 9710, lns 167-169 ("An ANTI-BALAKA, when he fights, he knows that he has to advance, he has to progress. But how can he, carrying goods and at the same time to move with it *[phon.]*, in order to go and fight?").
[1163] CAR-OTP-2001-2890, at 2908; CAR-OTP-2001-2564, at 2566; **P-0966**: CAR-OTP-2031-0241-R03, at 0250, para. 54; **D30-4496**: T-289-ENG CT, p. 15, ln. 23 to p. 16, ln. 6; **D30-4608**: CAR-D30-0017-0004-R01, at 0007, para. 22; T-291-CONF-ENG CT, p. 21, lns 4-9; **P-1577**: T-027-CONF-ENG CT, p. 37, lns 2-6; **P-2049**: T-102-CONF-ENG CT, p. 20, ln. 19 to p. 21, ln.4; **P-2602**: CAR-OTP-2118-9598-R01, at 9601, lns 78-86.

battle on 5 December, explained that the houses remained intact.[1164] There is no evidence that houses were destroyed or burned by the Anti-Balaka during the attack, and no evidence of any intention to do so.

340. Third, the Prosecution's theory that the 'BOSSANGOA group' destroyed and pillaged houses after the attack fails at the first hurdle, because the Anti-Balaka did not take control of BOSSANGOA following the 5 December attack.[1165] Witnesses who were circulating in BOSSANGOA in the days following the attack did not see any Anti-Balaka in town.[1166] Rather, the Seleka continued to maintain control over the town after 5 December,[1167] operate the checkpoints[1168] and remained in town for several months after the attack.[1169] Evidence to the contrary is based on second-hand information provided by individuals who never left *École Liberté* after the attack.[1170]

341. None of the witnesses in fact saw by who and when the pillage and destruction occurred.[1171] In this context, their speculative testimony regarding the role of Anti-Balaka elements in these

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[1164] **P-0966**: T-118-CONF-ENG CT, p. 9, lns 1-6, lns 18-24.
[1165] *See above*, para. 292. *See also*, **D30-4608**: CAR-D30-0017-0004-R01, at 0013, para. 70; The Prosecution's use of CAR-OTP-2101-3653, at 3657 and CAR-OTP-2042-2930, from [00:15:00] to [00:19:17], CAR-OTP-2107-3008, CAR-OTP-2118-5629, at 5631-5632, lns 3-55, to support the contrary should be carefully considered as they are respectively dated September 2014 and June 2014.
[1166] **P-1577**: T-027-CONF-ENG CT, p. 50, lns 7-12.
[1167] **P-2133**: CAR-OTP-2093-0267-R02, at 0283, para. 115.
[1168] **D30-4608**: T-292-CONF-ENG CT, p. 28, ln. 17 to p. 29, ln. 19.
[1169] **D30-4608**: T-292-CONG-ENG CT, p. 23, lns 1-8.
[1170] **P-2462**: T-059-CONF-ENG ET, p. 43, lns 9-12 ("From the point in time when we went there and set up home there, that was 5 December, and we went to Chad on 2 or 3 April. So that was about four months. You can calculate it out. We did not return home in the interim."); **P-2658**: T-135-CONF-ENG ET, p. 12, ln. 22 to p. 13, ln. 3; **P-2453**: CAR-OTP-2111-0415-R04, at 0432, para. 80; T-136-CONF-ENG ET, p. 90, lns 10-20; **P-2049**: T-101-CONF-ENG CT, p. 15, lns 19-20 ("I think on 5 December, I was -- I was at the school until we left to go to the refugee camp."); T-103-CONF-ENG CT, p. 27, lns 13-15 ("After 5 December, all the Muslims were at the École de Liberté. There were no Muslims in the neighbourhood."); **P-2657**: T-104-CONF-ENG CT3, p. 37, lns 12-13 ("We were enclaved in the *École de Liberté*. It was almost like a prison.").
[1171] **P-2462**: T-060-CONF-ENG CT, p. 17, lns 3-5 ("There were houses that were burnt down, and those houses that were burnt, were the civilians or the Anti-Balaka, I don't know who did the burning."); **P-2453**: T-136-CONF-ENG ET, p. 91, lns 2-6 ("I -- personally I didn't leave because I was working and I didn't have the permission of my boss. Those who left to check their houses came and told us that our houses had been looted. Our houses had been burnt down and all that remained was the foundation; that no house was standing properly. And that is what they told us in the camp."); **P-2200**: CAR-OTP-2088-2146-R04, at 2158, para. 65 ("Au moment où ces destructions ont eu lieu, je me trouvais à l'école."). *See also* Asta Moussa (**V44-P-0001**): T-267-CONF-ENG CT2, p. 45, ln. 13-24; **P-0287**: CAR-OTP-2115-0239-R01, at 0263-0264, paras 116-119, indicating that he visited Bossangoa only on 30 April 2014 when the destruction had already taken place, but was 'recent'; **P-2133**: CAR-OTP-2093-0267-R02, at 0280, para. 97, where it is unclear whether the witness saw the events or not, and in the latter case, what it the source of his information.

events lacks any probative value. P-2453's claim that only Muslim neighbourhoods were damaged[1172] is also contradicted by a wealth of evidence.[1173]

342. Only P-2049 alleges having seen Anti-Balaka elements pillaging.[1174] However, his account is implausible and riddled with inconsistencies. When asked whether he knew or had heard that Anti-Balaka elements were involved in pillage during or after the attack, P-2049 started by saying that he indeed 'heard' about it,[1175] to then claim having walked from the Town hall to an unspecified location where he could see "people" carrying stolen good behind the Boro Mosque and over a small river.[1176] A cursory look at the BOSSANGOA map[1177] is sufficient to dispel this story as the view from the stream to the mosque is obstructed by several buildings,[1178] while the distance from the mosque to the school is relatively far, and there are hills in between the two.[1179] In any event, the witness did not identify the looters as Anti-Balaka.

343. P-2049's claim of seeing Anti-Balaka elements near the BOSSANGOA stadium,[1180] carrying stolen goods while passing by the *Évêché*, is geographically impossible, as these two places are not even remotely close to one another,[1181] and lacks credibility.[1182] In addition, D30-4608 denied that Anti-Balaka pillaged Muslim houses and brought back their loot to the *Évêché*.[1183]

344. While there is little doubt that a number of houses were destroyed or burned at some point after 5 December, there is no clear evidence in relation to the identity of the perpetrators.[1184] Notably, Colonel SALEH and his men were burning houses in the Boro neighbourhood, in the days

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[1172] **P-2453**: CAR-OTP-2111-0415-R04, at 0432, para. 81.
[1173] **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 38; T-291-CONF-ENG CT, p. 29, lns 16-19; **P-2420**: CAR-OTP-2105-0028-R01, at 0030 ("Afterwards, the SELEKA and some Muslims started to burn down the houses of Christians; about 600 houses were burnt"); **P-2049**: T-103-CONF-ENG CT, p. 27, lns 9-10; CAR-OTP-2001-0391, at 0394, para. 10; **D30-4514**: CAR-D30-0025-0001-R01, at 0018, lns 553-562; **D30-4496**: CAR-D30-0022-0001-R03, at 0006, para. 34, at 0007, para. 38; T-289-ENG CT, p. 24, ln. 12 to p. 25, ln. 21, p. 33, lns 2-11.
[1174] **P-2049**: T-101-CONF-ENG CT, p. 42, ln. 20 to p. 43, ln. 25.
[1175] **P-2049**: T-101-CONF-ENG CT, p. 42, lns 11-12.
[1176] **P-2049**: T-101-CONF-ENG CT, p. 42, lns 12-24.
[1177] CAR-OTP-2118-9140.
[1178] CAR-OTP-2001-5350; CAR-OTP-2079-0671, satellite images provided by P-2193 showing the numbers of buildings and houses between the Town Hall and the central mosque.
[1179] **P-2049**: T-103-CONF-ENG CT, p. 64, lns 9-15.
[1180] **P-2049**: T-101-CONF-ENG CT, p. 43, lns 18-19 ("When we got to the stadium, we saw people who were carrying property on their head, and they were passing by the bishopric").
[1181] CAR-OTP-2118-9140, not only are these two locations remote from each other, but there are constructions in between, which would not allow a person at the stadium to see movement by the *Évêché*.
[1182] **P-2049**: T-101-CONF-ENG CT, p. 42, ln. 25 to p. 43, ln. 25, the witness's narrative about a Christian girl arrested by the Anti-Balaka, and who came to ask for the Imam's help is non-sensical and appears entirely fictional.
[1183] **D30-4608**: T-292-CONF-ENG CT, p. 24, lns 21-24.
[1184] *Contra* PTB, para. 422.

following the 5 December 2013 attack,[1185] and while the Seleka accused the Anti-Balaka of the arson, others rather stated that civilians coming out of the *Évêché* had done it.[1186] NAMSONA stated that it was "the youth" who burned Muslim houses.[1187] P-2602 similarly stated that the houses were destroyed by an angered Christian civilian population, after the Anti-Balaka had retreated outside of the town.[1188] Evidence relied by the Prosecution to prove otherwise is inconclusive for lack of contemporaneousness.[1189]

345. In the absence of credible eyewitnesses,[1190] the Chamber cannot exclude the reasonable possibility that Christian civilian population or *fake* Anti-Balaka,[1191] acting independently from the 'BOSSANGOA group' and out of revenge,[1192] may have been responsible for the alleged pillage, looting, and burning of Muslim property after 5 December 2013. Evidence shows that in 2013, the Seleka and the local Muslims were particularly close, living and eating together.[1193] Marriages between Seleka elements and the local Muslim population were organised and blessed by the local Muslim clerics.[1194] The Muslim population was circulating freely around BOSSANGOA and benefited from the Seleka's protection.[1195] Under the Seleka, and emboldened by the regime and the lack of State authorities,[1196] some local Muslim youths

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[1185] **D30-4608**: T-292-CONF-ENG CT, p. 19, lns 5-17.
[1186] **D30-4608**: T-292-CONF-ENG CT, p. 89, lns 8-16. *See also* T-292-CONF-ENG CT, p. 25, lns 7-9, where the witness stated that he did not have any specific information regarding the burning of Muslim houses by the Anti-Balaka.
[1187] **D30-4496**: T-289-ENG CT, p. 52, lns 9-12, throughout her testimony NAMSONA made a clear distinction between 'the youth' on the one hand, and the 'Anti-Balaka' on the other hand. *See also* **D30-4514**: CAR-D30-0025-0001-R01, at 0032, lns 1049-1055 ("Les maisons des Musulmans ont été pillées par des voleurs – des civils – après leur départ de BOSSANGOA.").
[1188] **P-2602**: CAR-OTP-2118-9785, at 9802, lns 582-583 ("Those buildings were destroyed by the population who were hurt by the SELEKA. And when the ANTI-BALAKA and the SELEKA left they got angry and destroyed those buildings."); CAR-OTP-2118-9705-R01, at 9712, lns 221-226 ("What happened is that when the ANTI-BALAKA fought with the SELEKA and they left, they continued their way, the population, when they remember what the SELEKA did to them. now they were ... during the fight with the SELEKA, they were helpless *[phon.]*. They didn't have the strength to fight back. But now that they have left, the population took the anger, the hatred of what happened to them. And that's why they went and burnt the mosques and some houses."), at 9709, lns 139-140 ("It's when their fighters have run that other people come now to break it. Different people who come to break shops in order to carry merchandise, goods.").
[1189] *See* PTB, para. 422, fn. 1081, referring to CAR-OTP-2001-0835, at 0886-0889, a report based on a site-visit dated 30 April 2014, almost five months after the attack, thereby leaving multiple possibilities open as to the identity of those who destroyed the buildings, and of those who inscribed 'Anti-Balaka' on the rubble.
[1190] The reasons why P-2049's testimony is devoid of any credibility are developed at paras 391-393 *below*.
[1191] **P-2602**: CAR-OTP-2118-9705-R01, at 9711, lns 181-189.
[1192] **D30-4496**: T-290-CONF-ENG CT, p. 24, ln. 25 to p. 25, ln. 4; **P-2602**: CAR-OTP-2118-9705-R01, at 9712, lns 218-226.
[1193] **D30-4496**: CAR-D30-0022-0001-R03, at 0003, para. 15; **P-2652**: CAR-OTP-2126-0175-R01, at 0181, para. 32.
[1194] **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 21.
[1195] CAR-OTP-2105-0028-R01, at 0030; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, para. 25, at 0009, paras 35, 39; **P-2652**: CAR-OTP-2126-0175-R01, at 0183, para. 42; CAR-OTP-2001-3307, at 3308.
[1196] CAR-OTP-2105-0028-R01, at 0031; **D30-4496**: CAR-D30-0022-0001-R03, at 0004, para. 20, at 0005, para. 25; **D30-4608**: CAR-D30-0017-0004-R01, at 0008, paras 28-31.

targeted and attacked the local Christian population and their properties, either with the support of, or independently from the Seleka.[1197] The Christian population was persecuted[1198] after the arrival of the Seleka in March 2013,[1199] such that they were forced to seek refuge and live at the *Évêché* in deplorable conditions.[1200] Inevitably, resentment grew[1201] and pushed the local Christian population to act violently towards the Muslim population[1202] and their properties once the Seleka left town. Such reactions were also widespread elsewhere in CAR, in particular in BANGUI, where similar instances of pillage by civilians were observed.[1203]

346. Thus, the Chamber must find Mr NGAÏSSONA not guilty under Counts 33 and 34.

2.3. There is no evidence that the Anti-Balaka destroyed the central mosque of BOSSANGOA (Count 35)[1204]

347. While the evidence demonstrates that the BOSSANGOA central mosque, also called Boro Mosque, was damaged in the aftermath of the 5 December 2013 attack, there is not a single eyewitness to the destruction. Prosecution witnesses speculated that it was Anti-Balaka elements who destroyed the mosque,[1205] and about the timing of the destruction,[1206] but failed to support their claim with any tangible evidence, as none of them saw the events.[1207] In fact, most Prosecution witnesses conceded that they did not leave the site of *École Liberté* after

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[1197] **D30-4496**: CAR-D30-0022-0001-R03, at 0007, para. 36; **D30-4608**: T-291-CONF-ENG CT, p. 29, ln. 8 to p. 31, ln. 3. *See also* above, para. 306.
[1198] **D30-4496**: CAR-D30-0022-0001-R03, at 0006-0007, paras 32-38; **D30-4608**: CAR-D30-0017-0004-R01, at 0006, para. 14, at 0008, para. 28, at 0009, paras 35-38, at 0010, para. 48; T-291-CONF-ENG CT, p. 40, lns 11-21, p. 41, ln. 6 to p. 43, ln. 19; **P-1577**: CAR-OTP-2081-0769-R01, at 0773, para. 21; CAR-D30-0011-0017, CAR-D30-0011-0092; CAR-OTP-2001-3307, at 3308; CAR-OTP-2073-1299, from [00:15:24] to [00:16:04, CAR-D30-0002-0008, at 0022, lns 55-64.
[1199] CAR-OTP-2001-5739, at 5759; CAR-OTP-2087-9530; **D30-4608**: CAR-D30-0017-0004-R01, at 0006, para. 17; **P-2453**: CAR-OTP-2111-0415-R04, at 0418, para. 18; **P-2652**: CAR-OTP-2126-0175-R01, at 0178, para. 15; **P-2658**: CAR-OTP-2126-0012-R02, at 0015, para. 15.
[1200] **D30-4496**: CAR-D30-0022-0001-R03, at 0006, para 31; CAR-D30-0011-0100, CAR-D30-0011-0479; CAR-OTP-2073-1329, from [00:10:20] to [00:11:25], CAR-OTP-2127-6548, at 6552, lns 125-135; CAR-OTP-2073-1299, from [00:12:53] to [00:13:56], CAR-D30-0002-0008, at 0009, lns 24-36.
[1201] CAR-OTP-2001-4118, at 4119; **P-2602**: CAR-OTP-2118-9705-R01, at 9712, lns 218-226; **D30-4496**: T-290-CONF-ENG CT, p. 24, ln. 25 to p. 25, ln. 4.
[1202] **D30-4496**: T-290-CONF-ENG CT, p. 25, lns 7-13; **D29-5013**: T-286-CONF-ENG CT2, p. 12, lns 6-13.
[1203] **P-1576**: T-239-CONF-ENG CT2, p. 61, ln. 8 to 62, ln 18, p. 64, ln 2 to p. 65, ln 7, in reference to CAR-OTP-2075-0074, at 0175, 0181-0187, 0189, 0196-0198, 0243-0246, 0260-0263, 0268-0279. *See above*, paras 240-241.
[1204] While the Prosecution alleges in its PTB that the Anti-Balaka destroyed several mosques, the CoC Decision only charges Mr NGAÏSSONA for the destruction of the Bossangoa central mosque. The CoC Decision also strictly confines this destruction in time, stipulating it took place "one week" from the attack. *See* CoC decision, p. 109 ("[…] the destruction of the central mosque of Bossangoa, in the context of the attack on Bossangoa on 5 December 2013 and in *the week* following the attack […]") (emphasis added).
[1205] **P-2200**: CAR-OTP-2088-2146-R04, at 2158, para. 67; **P-2049**: T-101-CONG-ENG CT, p. 24, lns 2-9.
[1206] **P-2049**: T-101-CONF-ENG CT, p. 24, lns 4-5.
[1207] *See* CAR-OTP-2088-2204, the item fails to support the allegation that it was the Anti-Balaka who destroyed the mosque. At most, the video shows that the mosque was damaged at an unspecified moment in time.

5 December 2013,[1208] thereby implicitly admitting their lack of knowledge regarding the destruction of the mosque. P-2462, P-2453 and P-2133 admitted that they had no idea who destroyed the mosque,[1209] while P-2652 did not give any indication as to the identity of the perpetrators.[1210]

348. Against this backdrop, both NGAMESSE and NAMSONA stated it was Christian civilians who destroyed the mosque. While they did not see the events, they heard it from the mouth of the perpetrators themselves.[1211] The same version of events was provided by P-2602.[1212]

349. This version is consistent with evidence showing that the Anti-Balaka left BOSSANGOA on 5 December 2013 after being defeated while the Seleka remained in control of the town.[1213] The mosque could not have been destroyed by the Anti-Balaka as it was only destroyed later.[1214]

350. In addition, the evidence of P-1577 suggests that the mosque was still intact on 8 December 2013.[1215] Satellite imagery confirms that no building along the main road in the Boro neighbourhood was destroyed before 22 January 2014.[1216] As such, there is reliable evidence that the mosque, being on the main road,[1217] was not destroyed within the week following the attack, but most probably only several weeks later.

351. In the absence of any evidence supporting the Prosecution's claim that the mosque was destroyed by Anti-Balaka elements in the context of the 5 December attack or in the week

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[1208] *See above*, fn. 1170.
[1209] **P-2462**: T-059-CONF-ENG ET, p. 41, ln. 9 to p. 42, ln. 6; **P-2453**: CAR-OTP-2111-0415-R04, at 0432, para. 82; **P-2133**: CAR-OTP-2093-0267, at 0283, para. 114. P-2133 dates the destruction of the central mosque back to when he arrived in Bossangoa in September or early October 2013, *see* **P-2133**: CAR-OTP-2093-0267, at 0273, para. 48.
[1210] **P-2652**: CAR-OTP-2126-0175-R01, at 0188, para. 70.
[1211] **D30-4514**: CAR-D30-0025-0001-R01, at 0032, lns 1047-1055; **D30-4496**: T-289-ENG CT, p. 67, ln. 1 to p. 68, ln. 5; *See also* **P-2602**: CAR-OTP-2118-9705, at 9712, lns 221-226, 234-235. *See also above* paras 344-345, and more generally, *see also* Section IV.C The Prosecution failed to prove that the alleged crimes were committed by members of Anti-Balaka groups.
[1212] **P-2602**: CAR-OTP-2118-9705, at 9712, lns 234-235.
[1213] *See* above, para. 292.
[1214] **D30-4608**: CAR-D30-0017-0004-R01, at 0015, para. 82; T-292-CONF-ENG CT, p. 25, ln. 22 to p. 26, ln. 4; **P-2602**: CAR-OTP-2118-9705, 9711, lns 184-189 ("When we fought ... when we fought ... we continued to BANGUI. The mosque was destroyed after. By then, the ANTI-BALAKA had left. It was those who were in the town who destroyed the mosque."). *See* Annex A.19.
[1215] *See* **P-1577**: CAR-OTP-2081-0769-R01, at 0789. The pictures and their metadata provides the date, i.e., 8 December 2013, *see* CAR-OTP-2085-3122, CAR-OTP-2085-3123, CAR-OTP-2085-3392, CAR-OTP-2085-3393.
[1216] CAR-OTP-2001-5350; CAR-OTP-2079-0671; *See* Annex A.19.
[1217] CAR-OTP-2088-2204, from [00:04:15] to [00:04:30], [00:05:23] to [00:05:33]; CAR-OTP-2118-9140.

following, it cannot be excluded that the mosque was destroyed by civilians, and much later than 12 December 2013.

352. In any event, the destruction of the mosque does not amount to the war crime prohibited by Article 8(2)(e)(iv) of the Statute. The *Ntaganda* Trial Chamber held that "the crime of attacking protected objects belongs to the category of offences committed *during* the actual conduct of hostilities".[1218] Based on this reasoning, it found that "the attack on the church in Sayo took place sometime after the assault, and therefore not during the actual conduct of hostilities" and, as such, "the first element of Article 8(2)(e)(iv) of the Statute is not met".[1219] In the present case, whether the term "attack" used in Article 8(2)(e)(iv) of the Statute means "combat action"[1220] or includes "the immediate aftermath thereof"[1221] is a matter of distinction without difference. Indeed, the 5 December attack on BOSSANGOA took place "approximately from 13:00 to between 17:00 and 18:30".[1222] Meanwhile, P-1577 personally witnessed that the mosque was still intact on 8 December 2013.[1223] It follows that the attack on the mosque would have occurred after the conduct of hostilities, and largely beyond their immediate aftermath. Therefore, even if the mosque was destroyed by Anti-Balaka elements sometime between 8 and 12 December 2013, such destruction does not constitute an "attack against buildings dedicated to religion" within the meaning of Article 8(2)(e)(iv) of the Statute.

353. Considering the above, the Chamber must find Mr NGAÏSSONA not guilty under Count 35.

2.4. There is no evidence that the Anti-Balaka imprisoned, displaced, or forcibly transferred the Muslim population (Counts 37, 38 and 39)

354. There is no credible evidence that Anti-Balaka elements created conditions such that Muslim civilians were forcibly displaced to *École Liberté*, and then evacuated to other locations in the context of the 5 December attack and in the following days. The Prosecution also failed to prove that Anti-Balaka elements severely deprived Muslim civilians of their liberty, by maintaining them at *École Liberté* and preventing them from leaving.

[1218] Emphasis added. Ntaganda TJ, para. 1136.
[1219] Ntaganda TJ, para. 1142. This finding was upheld on appeal, *see* Ntaganda AJ, para. 1169.
[1220] Ntaganda AJ, para. 1164; *see also*, Ntaganda AJ, Separate opinion of Judge Morrison and Judge Hofmański, para. 43.
[1221] Ntaganda AJ, para. 1168; *see also* Ntaganda AJ, Opinion of Judge Eboe-Osuji, paras 130-132; Ntaganda AJ, Opinion of Judge Bossa, para. 8.
[1222] CoC Decision, p. 107.
[1223] **P-1577**: CAR-OTP-2081-0769-R01, at 0789. The pictures and their metadata provide the date, i.e., 8 December 2013, *see* CAR-OTP-2085-3122, CAR-OTP-2085-3123, CAR-OTP-2085-3392, CAR-OTP-2085-3393.

2.4.1. Muslim civilians left their homes as a result of a lawful attack and for their own security

355. The 5 December 2013 attack on BOSSANGOA was lawful. In the context of a non-international armed conflict, it is not illegal for an armed group to attack the positions and elements of another. As established above, the attack on BOSSANGOA was not targeting the civilian population, but rather, the Seleka checkpoints and bases, as well as armed elements and collaborators.[1224] ICC caselaw stipulates that "incidental displacement as a result of an entirely lawful attack, or collateral consequences of a lawful attack, would not amount to forcible transfer or displacement".[1225] This was indeed the case on 5 December 2013.

356. In addition, while a large number of Muslim civilians took refuge at *École Liberté* on 5 December 2013, the evidence is inconsistent regarding the exact timing and reasons for leaving their homes. For example, P-2602 stated they had prepared their move by emptying the shops and carrying merchandise at *École Liberté*,[1226] which suggests that they decided to leave of their own volition *ahead* of the attack, rather than as a consequence of it.

357. Some of those fleeing during the attack were carrying weapons,[1227] suggesting they were most likely actively participating in hostilities.

358. Others were brought to *École Liberté* for their own safety. OUABIRO-DANA explained how he grouped women and children and brought them to safety at *École Liberté*.[1228] This is consistent with the principle of precaution in IHL, requiring that all necessary measures should be taken to minimise the impact of hostilities on the civilian population.[1229] The withdrawal of

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[1224] *See above* V.A.1. The 'BOSSANGOA group' did not target the civilian population during the 5 December attack on BOSSANGOA
[1225] Ntaganda TJ, para. 1056.
[1226] **P-2602**: CAR-OTP-2118-9705-R01, at 9709, lns 105-106.
[1227] **P-2602**: CAR-OTP-2118-9705-R01, at 9707, lns 55-69; CAR-OTP-2118-9785-R01, at 9806, lns 704-707.
[1228] **P-0966**: T-117-ENG CT, p. 12, lns 16-21 ("You know, the conflict was not a matter of Muslims versus Christians. We were all people of the Central African Republic. During this conflict, you must realise that there were Muslims amongst us and Christians too. If we went to a place where there were Muslims, those who were not fighting, they would be together and it was our duty to protect them, and so on and so forth. We protected them as we were moving forward. That was our role."). *See also* **P-0966:** T-116-CONF-ENG CT, p. 34, ln. 25 to p. 35, ln. 4 ("For example, if we attacked a village and in the village there were women who were afraid. They were afraid, so they had to be put in a safe place. So that is how it came to be that the women, the ones who did not fight, were brought together and the international organisations would come help them and give them food as they waited for calm to be re-established.").
[1229] ICRC, Customary International Humanitarian Law Study, Rule 15, available online.

the civilian population to safe places, as illustrated by OUABIRO-DANA's explanations,[1230] is an example of such measures.[1231]

359. As such, the displacement of Muslim civilians to *École Liberté* on 5 December 2013 was not only allowed under IHL,[1232] but arguably required by it.[1233]

2.4.2. The departure of Muslim civilians for Chad was entirely voluntary

360. The departure of Muslim civilians for Chad is not attributable to the Anti-Balaka. As developed above, the Anti-Balaka lost the 5 December 2013 battle and immediately retreated outside of BOSSANGOA, while the Seleka remained in charge of BOSSANGOA for several months after the attack.[1234] D30-4608, who regularly circulated in town after 5 December stated that he did not see Anti-Balaka elements.[1235]

361. First, and while the crime of deportation or forcible transfer is an open-conduct crime,[1236] the alleged killings, or destruction and pillage of homes in Boro cannot be used as evidence of forcible transfer or deportation because, as argued above,[1237] they cannot safely be attributed to the Anti-Balaka. In *Ruto*, the Pre-Trial Chamber considered killing, looting, burning and destruction of property as the coercive acts through which the displacement occurred. But in

[1230] **P-0966**: T-116-CONF-ENG CT, p. 36, lns 3-11 ("When we attack a village, once we enter we try to protect the women […] for us what was important was to protect the civilians, because those -- for example, the owner of the weapon wasn't there, but what was important for us was to take care of the health of those who were still there. […] We were moving forward and the residents of the villages would be grouped together because some of them didn't speak the Sango language properly. That's why we put them together, await -- so -- and they would wait for the assistance that would be arriving. That is why we had put them together.").
[1231] ICRC, Customary International Humanitarian Law Study, Rule 22, available online.
[1232] Therefore, the relevant elements of the crimes under Article 7 and 8 of the Statute are not met. *See* Elements of Crimes, Article 8(2)(e)(viii), para. 2 ("Such order was not justified by the security of the civilians involved or by military necessity"), Article 7(1)(d), para. 1 ("The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.").
[1233] *See i.a.* ICRC, Customary International Humanitarian Law Study, Rule 24, available online. *See also* ICTY, Karadžić TJ, para. 492 ("International law recognises certain grounds permitting forced removals, such as the evacuation of: (i) a civilian population for its security or for imperative military reasons; and (ii) prisoners of war out of combat zones and into internment facilities, subject to the conditions set out therein. If an act of forced removal is carried out on such bases, that act cannot constitute the *actus reus* of deportation or forcible transfer. Evacuation is an exceptional measure which is permitted to protect the civilian population.").
[1234] *See above,* para. 292.
[1235] **D30-4608**: T-292-CONF-ENG CT, p. 23, lns 15-18.
[1236] Ruto et al. Confirmation Decision, para. 244.
[1237] *See above* V.A.2.1.3 The identity and *mens rea* of the perpetrator(s) are not established, and V.A.2.2 The 'BOSSANGOA group' did not pillage and destroy the Muslim homes during and after the attack (Counts 33 and 34).

that case, these crimes were directly attributable to the alleged perpetrators of the acts of deportation.[1238] This is in stark contrast to the present case.

362. Second, the Muslim community had a genuine choice in their departure for Chad.[1239] As was the case before the attack,[1240] several mediations took place after 5 December 2013 with a view to foster reconciliation between the communities within BOSSANGOA and allow the reopening of the central market.[1241] While tensions were high in the immediate aftermath of the attack, [REDACTED] managed to visit the Imam to discuss ways forward.[1242] The market had been closed due to crimes and threats by the Seleka; this meant that the Muslim traders and grocers no longer had Christian clients,[1243] and had no other source of revenue.

363. A meeting was convened at *Hôtel de Chasse* in January 2014, with representatives of the different communities, the armed groups and the international community.[1244] Discussions centred around the reopening of the central market were held, despite the lack of genuine engagement from the Imam [REDACTED].[1245]

364. A later mediation initiated by then-Archbishop NZAPALAINGA and involving Imam KOBINE was held at *École Liberté*.[1246] The objective was to bring back social cohesion, and the religious leaders of both Christian and Muslim faith urged the population not to fall into the 'trap' of a religious interpretation of the conflict. However, [REDACTED] and his entourage refused to engage and resorted to insulting Archbishop NZAPALAINGA and Imam KOBINE, before asking to be evacuated to Chad.[1247]

365. More efforts towards reconciliation were undertaken with the creation of a 'security council' sometime after the *Hôtel de Chasse* meeting.[1248] [REDACTED] initially came to the weekly

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[1238] Ruto et al Confirmation Decision, paras 251, 255, 260-261, 265-266, 277.
[1239] Ntaganda TJ, para. 1056 ("[w]hile individuals may agree, or even request, to be removed from an area, 'consent must be real in the sense that it is given voluntarily and as a result of the individual's free will'").
[1240] **D30-4608**: T-291-CONF-ENG CT, p. 68, lns 14-25, according to D30-4608, at least ten mediation meetings took place before 5 December 2013.
[1241] **D30-4608**: T-292-CONF-ENG CT, p. 30, ln. 20 to p. 31, ln. 1.
[1242] [REDACTED].
[1243] **D30-4608**: T-292-CONF-FRA ET, p. 34, lns 12-14 ("[…] Donc, l'attitude des Séléka ont fait que les gens ne pouvaient plus repartir au marché. Et donc eux, ils avaient, les musulmans, leur marchandise en main, ils pouvaient plus les écouler.") (English version not accurate, T-292-CONF-ENG CT, p. 35, lns 8-10).
[1244] **D30-4608**: CAR-D30-0017-0004-R01, at 0011, para. 49; T-292-CONF-ENG CT, p. 32, lns 7-11; CAR-OTP-2088-2206; **P-2049**: T-100-CONF-ENG CT, p. 19, ln. 1, P-2049 stated that [REDACTED], but this is contradicted by D30-4608.
[1245] **D30-4608**: T-292-CONF-ENG CT, p. 31, lns 11-17 ("[REDACTED]").
[1246] **D30-4608**: CAR-D30-0017-0004-R01, para. 50; T-292-CONF-ENG CT, p. 33, lns 6-8, D30-4608 specified that this meeting was held a long time after the one at *Hôtel de Chasse*.
[1247] **D30-4608**: T-292-CONF-ENG CT, p. 32, ln. 17 to p. 33, ln. 5.
[1248] **D30-4608**: CAR-D30-0017-0004-R01, para. 51; T-292-CONF-ENG CT, p. 33, lns 9-15.

meetings, but eventually stopped. D30-4608 later learned that [REDACTED] was under pressure because his community no longer wanted to live with "these people"; rather, their motivation was to leave.[1249]

366. [REDACTED]'s failure to meaningfully engage in dialogue, coupled with the aborted reopening of the market[1250] resulted in a feeling that "life was blocked".[1251] While some in the Christian community were still harbouring resentment towards Muslims and wanted them to leave,[1252] there is no credible evidence that Anti-Balaka elements were representing an actual threat to Muslim civilians,[1253] especially with the Seleka still in charge of BOSSANGOA. Despite the lack of any risk for them to come out of *École Liberté*, and while peace was slowly returning, NGAMESSE explained that Muslim civilians nonetheless decided to leave town and resettle in Chad.[1254] Therefore, evidence shows that the departure of Muslim civilians was not only unrelated to any concrete Anti-Balaka threats, it was also an informed and voluntary choice on the part of their leaders, including [REDACTED].

2.4.3. There was no order to displace the Muslim civilians

367. The charge of displacement as a war crime fails at the first hurdle due to the lack of any evidence that an order to displace the BOSSANGOA Muslim civilian population, or to perform an act or omission as a result of which such a displacement would occur, was given at any relevant time, either by Mr NGAÏSSONA or someone under his authority "who was in a position to effect such displacement by giving such order".[1255]

368. OUABIRO-DANA was categorical that the orders he received were to attack Seleka positions and never to attack indiscriminately in a way that would disturb Muslim or Peulh civilians.[1256]

[1249] **D30-4608**: T-292-CONF-ENG CT, p. 33, ln. 20 to p. 34, ln. 8.
[1250] **D30-4608**: CAR-D30-0017-0004-R01, at 0014, para. 81.
[1251] **D30-4608**: T-292-CONF-ENG CT, p. 36, lns 3-16 ("[REDACTED]").
[1252] **D30-4608**: CAR-D30-0017-0004-R01, at 0013, para. 69.
[1253] **D30-4608**: T-292-CONF-ENG CT, p. 61, lns 19-23, where D30-4608 recounted how P-2200 told him of his community's unfounded fear of the Anti-Balaka.
[1254] **D30-4514**: CAR-D30-0025-0001-R01, at 0033-0034, lns 1086-1105.
[1255] Ntaganda TJ, para. 1080 ("[…]the war crime of ordering the displacement of civilians, in contrast to the crime against humanity of forcible transfer of population […], requires establishing the existence of an *order* to displace, and not of the resulting displacement as such"), para. 1081 ("The order itself needs only to instruct another person in any form to: (i) displace a civilian population; or (ii) perform an act or omission as a result of which such a displacement would occur"), para.1082. *See also* Elements of Crimes, Article 8(2)(e)(viii), para. 1.
[1256] **P-0966**: T-117-ENG CT, p. 43, ln. 15 to p. 44, ln. 1 ("We attacked the villages or the localities where there was checkpoints or Seleka bases. We never attacked villages where there were only civilians. […] But we wouldn't attack in any way to disturb the civilian population or the Muslims or the Peuhls. No, that's something we never did. The attacks were targeted to get rid of the Seleka and to chase them from their posts. […] But we never attacked at random or gratuitously a village. We attacked military objectives where there were Seleka bases").

This is corroborated by P-2602, who confirmed that the Anti-Balaka only attacked Seleka positions.[1257] There is not a shred of evidence on any alleged order to displace the population given prior to or during the 5 December attack, nor in relation to the Muslims' departure for Chad.

2.4.4. Anti-Balaka elements did not force Muslim civilians to remain at École Liberté

369. There is no credible evidence that Anti-Balaka elements severely restricted the physical liberty of Muslim civilians by forcing them to remain at *École Liberté*. First, Muslim civilians were not detained as they had the possibility to leave the school premises. Second, there is no evidence that Anti-Balaka elements were the reason why they remained in the school.

370. Although Muslim civilians lived in difficult circumstances within the confines of the school, and insecurity reigned in BOSSANGOA in the aftermath of the 5 December attack, there is ample evidence that the town was still ruled by heavily armed Seleka elements, and that there was no significant Anti-Balaka presence for several months.[1258]

371. D30-4608 denied that Muslim civilians could not access their cemetery, and confirmed that its location towards Boro, which was occupied by Seleka, meant that no one could have prevented them for accessing it.[1259] By contrast, going to the 'Kafa' Christian cemetery north of Boro involved going through Seleka checkpoints during which Seleka elements humiliated the deceased and forced the opening of coffins.[1260]

372. While P-2049 initially alleged that he stayed at *École Liberté* the whole time between 5 December 2013 and his departure for Chad in early 2014, he then changed course and recalled venturing out of the school a number of times.[1261] At one point, P-2049 had a telling slip-up, admitting that when based at *École Liberté*, he and others would regularly get out and sit

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[1257] **P-2602**: CAR-OTP-2118-9683-R01, at 9698, ln. 505 ("we were only attacking where there are mercenaries"); CAR-OTP-2118-9705-R01, at 9710, lns 172-173 ("A real ANTI-BALAKA who has gone through tradition right *[phon.]* does not steal. And he does not take someone's property and he does not fire on ... someone who is not armed.").
[1258] *See above,* para. 292.
[1259] **D30-4608**: T-292-CONF-FRA ET, p. 27, lns 7-11 ("[REDACTED]") (English version not accurate, T-292-CONF-ENG CT, p. 27, lns 17-22).
[1260] **D30-4608**: T-292-CONF-ENG CT, p. 28, ln. 17 to p. 29, ln. 18 ("[REDACTED]").
[1261] *See e.g.*, **P-2049**: T-101-CONF-ENG CT, p. 21, lns 2-3 ("[…] imam and myself went to the Hotel de Chasse and the tourism."), p. 42, lns 14-16 ("And you see, in Bossangoa, you have mango trees along the roads and so sometimes in the morning, we would cross the road and seek rest under the mango trees"), p. 43, lns 24-25 ("So what I can say is that I saw with my own eyes armed Anti-Balaka carrying property on their heads. Some of them were carrying items, while others were not.").

underneath mango trees on the other side of the road to rest in the mornings.[1262] From there, he felt comfortable enough to venture on a path going from the town hall to an unspecified area near Boro neighbourhood.[1263]

373. This is consistent with CAR-OTP-2088-2204, a video that was taken on 29 January 2014,[1264] lasting over 12 minutes, in which several people can be seen walking in what appears to be the Boro district of BOSSANGOA, seemingly unarmed and unescorted.[1265] No Anti-Balaka are seen or heard in this video. The individuals pictured appear calm and circulate freely without any apparent danger.

374. The ICTY Appeals Chamber found that deprivation of physical liberty may occur even where the alleged victims have some freedom of movement,[1266] but in such cases, there must be additional factors to show that the living conditions indeed amount to imprisonment. In *Kordić & Cerkez*, Muslim civilians were kept in barracks by the HVO (*i.e.* the Croatian forces), beaten, kept short of food and made to dig trenches.[1267] Others were kept captive after the HVO took control of a village, preventing the victims to leave by stationing HVO snipers on the surrounding hillsides.[1268] The deprivation of liberty was thus directly caused by the perpetrators who were controlling the detention locations and every aspect of the victims' lives, by recruiting them into forced labour, humiliating and beating them, and keeping them at gunpoint.[1269]

[1262] **P-2049**: T-101-CONF-ENG CT, p. 42 lns 12-16 ("You see, at the *École de Liberté*, while we were there, it happened from time to time that we would cross the road. And you see, in Bossangoa, you have mango trees along the roads and so sometimes in the morning, we would cross the road and seek rest under the mango trees.").
[1263] *See above* para. 342.
[1264] *See* Annex A.20.
[1265] CAR-OTP-2088-2204.
[1266] Prlić et al. AJ, para. 473.
[1267] Kordić and Čerkez TJ, paras 790-791.
[1268] Kordić and Čerkez TJ, paras 792-793.
[1269] This was confirmed on appeal, *see* Kordić and Čerkez AJ, paras 639-640. *See also* Prlić et al AJ, para. 476, where the Appeals Chamber noted that while the victims "retained a certain freedom of movement", the HVO "arrested and separated them", HVO soldiers guarded the locations where they were detained, and "HVO soldiers armed with rifles and stationed in the neighbouring house frequently made rounds"; Situation in the Republic of Burundi Article 15 Decision, paras 69-90, where the arrests and detention of alleged victims is clearly and directly committed by the alleged perpetrators, i.e. the Burundian security forces.

375. This crucial element of control is missing in the present case. Evidence shows that Muslim civilians at *École Liberté* were under the protection of FOMAC forces and Seleka elements.[1270] Indeed, both can be seen, bearing weapons, in a picture taken at *École Liberté*.[1271]

376. The Seleka were also patrolling through town.[1272] They were still present in administrative buildings, and had bases across BOSSANGOA,[1273] while the Anti-Balaka retreated from BOSSANGOA on 5 December 2013. Even months later, when groups of Anti-Balaka came back to BOSSANGOA, they could not freely circulate in town and rather stayed confined to the *Évêché* neighbourhood.[1274] As such, they could not have posed a direct threat or exercised any control over Muslims civilians at *École Liberté*.[1275] Sangaris Captain GUEGUEN confirmed this, telling the Muslim civilians that they should feel safe, and that "people could leave and go about their normal business, their normal activities."[1276]

377. Some witnesses referred to an instance where a young Muslim ventured out of the school and was killed. While they assumed Anti-Balaka elements were to blame, no one actually saw the young man being killed,[1277] and any risk outside of the walls of *École Liberté* would have been posed by Christian civilians harbouring resentment.[1278] The pressure created by the anger and feeling of betrayal in the non-Muslim civilian population cannot be imputed to the Anti-Balaka.

[1270] **D30-4608**: CAR-D30-0017-0004-R01, at 0014, para. 79; **P-2602**: CAR-OTP-2118-9683-R01, at 9684, lns 9-25; CAR-OTP-2118-9785, at 9804, lns 641-646; **P-2049**: T-100-CONF-ENG CT, p. 67, ln. 25 to p. 68, ln. 5; T-101-CONF-ENG CT, p. 46, lns 4-5; **D30-4496**: T-290-ENG CT, p. 25, lns 20-24; **P-2657**: T-104-CONF-ENG, p. 28, lns 10-11; **P-2462**: T-059-CONF-ENG, p. 42, lns 11-13 ; **P-2453**: T-136-CONF-ENG, p. 90, lns 11-12; **P-2200**: CAR-OTP-2088-2146-R04, at 2159, paras 69, 71.
[1271] CAR-OTP-2085-5082; *See* Annex A.16.
[1272] **D30-4608**: CAR-D30-0017-0004-R01, at 0014, para. 80.
[1273] **D30-4514**: CAR-D30-0025-0001-R01, at 0032, lns 1058-1064; **D30-4608**: T-292-CONF-ENG CT, p. 29, lns 10-18 ("As I said yesterday, the houses, the villas, the administrative houses were occupied by each leader of the Seleka. At the gendarmerie, there were Selekas already. When you arrived at the post, there were Seleka. The building of public works also had Seleka. There's the prefecture -- the sub-prefecture residence had Seleka. The prefecture also had Seleka. The office of the prefecture was Seleka. The town hall, Seleka again. The inspection of works had Seleka et cetera, et cetera. So all these dwellings were the residences of the chiefs, the leaders. But the entrance and the exit of the town had checkpoints managed by the Seleka; so they controlled who was coming and going.").
[1274] **P-0966**: T-118-CONF-ENG CT, p. 12, ln. 19 to p. 13, ln. 3.
[1275] **P-2652:** CAR-OTP-2126-0175-R01, at 2125-2126, para. 66. P-2652's statement that Muslims were attacked by Anti-Balaka is broad and lacks specificity, and as such, has low probative value.
[1276] **P-2453**: T-136-CONF-ENG ET, p. 90, lns 19-20.
[1277] **P-2049**: T-101-CONF-ENG CT, p. 46, lns 10-19; **P-2453**: CAR-OTP-2111-0415-R01, at 0434, para. 94; **P-2462**: T-059-CONF-ENG ET, p. 45, lns 15-22.
[1278] **P-2602**: CAR-OTP-2118-9785-R01, at 9805, lns 667-686. *See also* **D30-4496**: T-290-ENG CT, p. 24, ln. 22 to p. 25, ln. 4, where the witness first concedes that she cannot know for sure because she was not present, but that it is 'the young people' who sought revenge against the Muslims. *See also above*, paras 344-345, 348.

378. For these reasons, the Prosecution failed to prove beyond a reasonable doubt that Anti-Balaka elements caused the displacement and/or deportation, and the severe deprivation of liberty of Muslim civilians on and after 5 December 2013.

2.4.5. The alleged rape of P-2462 was not proven (Counts 40 and 41)

379. There is no credible evidence that P-2462 was raped by an Anti-Balaka on 5 December 2013.

2.4.5.1. The alleged rape did not occur

380. The account of P-2462 is implausible, riddled with inconsistencies and lacks any credible supporting evidence submitted at trial.[1279]

381. There is significant confusion as to how the alleged events unfolded. P-2462 initially stated that alleged Anti-Balaka members found her [REDACTED] where she had taken shelter,[1280] but later rectified to say she was actually outside when she met them.[1281] She alleged that she was blindfolded and led to [REDACTED], implying that five Anti-Balaka members would have abandoned their fighting positions and walked the relatively long distance from the Foulbé neighbourhood[1282] to the [REDACTED][1283] in the middle of combat. This proposition is implausible in light of the evidence that the Anti-Balaka were outnumbered and faced with heavily armed Seleka[1284] and Muslim civilians engaged in combat in the Boro district.[1285] P-2462's testimony that she remained alone [REDACTED] until the next morning is also contradicted by the evidence of P-2657, who stated that she saw P-2462 at the [REDACTED] house on the evening of the attack.[1286]

[1279] To the extent that the allegations of rape brought forward by P-2657 could be considered corroborative, they are addressed at para. 395 *below*.
[1280] **P-2462**: T-059-CONF-ENG ET, p. 23, ln. 23 to p. 24, ln. 1.
[1281] **P-2462**: T-060-CONF-ENG CT, p. 30, lns 5-13.
[1282] **P-2462**: T-059-CONF-ENG ET, p. 8, lns 9-10, p. 23, ln. 19 to p. 24, ln. 21, [REDACTED]; **P-2200**: CAR-OTP-2088-2146-R04, at 2155, para. 44, the Imam's house is located in the Arabe neighbourhood.
[1283] CAR-OTP-2118-9140.
[1284] *See e.g.*, CAR-OTP-2001-2890, at 2908; **P-0966**: CAR-OTP-2031-0241-R01, at 0250, para. 54; **D30-4496**: T-289-ENG CT, p. 15, ln. 23 to p. 16, ln. 6; **D30-4608**: CAR-D30-0017-0004-R01, at 0007, para. 22; T-291-CONF-ENG CT, p. 21, lns 4-10; **P-1577**: T-027-CONF-ENG CT, p. 37, lns 2-6. cross-reference
[1285] *See e.g.*, **P-0966**: T-118-CONF-ENG CT, p. 8, lns 9-10; **P-2652**: CAR-OTP-2126-0175-R01, at 0186, paras 59-61; **P-2602**: CAR-OTP-2118-9664-R01, at 9678, lns 457-466; CAR-OTP-2118-9705-R01, at 9709, lns 109-121; *See also* **P-1577**: CAR-OTP-2001-7145, at 7156 ("[…] as we return to the Imam's house just after noon, heavily armed Seleka fighters arrive, and we find ourselves in the midst of a gun battle, when anti-balaka fighters enter Bossangoa.").
[1286] **P-2657**: T-104-CONF-ENG CT3, p. 20, ln. 2. P-2462 was widely known as [REDACTED], *see* **P-2462**: T-059-CONF-ENG ET, p. 7, lns 13-18.

382. In addition, the alleged medical reports[1287] lack authenticity and are not probative of the events they purport to demonstrate.[1288] First, neither document contains the name of the alleged patient, nor that of the doctor, making it impossible to ascertain whether they indeed refer to P-2462. Second, the first report's mention that the alleged rape was committed by an Anti-Balaka is highly unusual for a medical document, since the doctor preparing it could not have attested to the identity of the alleged perpetrator. Third, the reports are drafted on stained, lined and ripped pieces of paper that do not show the header of the MSF clinic P-2462 claims provided them, while P-2453, who worked at the same clinic[1289] stated that all medical reports issued there featured the MSF header.[1290] Importantly, [REDACTED].[1291] [REDACTED].[1292] Finally, when asked to confirm whether the content of the reports was a correct description of what happened to her, the witness failed to confirm the veracity of the reports, merely stating instead that the document was drafted by a doctor.[1293] For these reasons, the alleged medical reports should be afforded no weight by the Chamber.

2.4.5.2. The identity of the alleged perpetrator was not established

383. Even if the Chamber was to find that P-2462 was raped on 5 December 2013, the Prosecution failed to prove the identity of the alleged perpetrator.

384. It appears that the man P-2462 identified as the alleged perpetrator, "[REDACTED]" (or [REDACTED]), a butcher at the Boro market,[1294] was in fact murdered by the Seleka prior to 5 December 2013.[1295] D30-4608 recounted how he heard about [REDACTED]'s murder from the latter's wife, who saw [REDACTED] being arrested and placed in the container at the townhall.[1296] D30-4608 stated that the whole of BOSSANGOA mourned [REDACTED] when he died,[1297] as he was a nice man appreciated by all.[1298] He was the only [REDACTED] called

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[1287] CAR-OTP-2127-9467, CAR-OTP-2127-9468.
[1288] Email from D30, to the TCV, 1 September 2021, at 17:51.
[1289] CAR-OTP-2111-0439; **P-2454**: T-136-CONF-ENG ET, p. 83, lns 13-16.
[1290] **P-2453**: T-138-CONF-ENG CT, p. 46, ln. 25 to p. 47, ln.1 ("Q. So that logo could be seen on medical reports, am I correct? A. Yes. I believe that all the documents had the MSF header.").
[1291] CAR-OTP-2130-6350-R01, at 6351; ICC-01/14-01/18-1844-Conf-Exp, ICC-01/14-01/18-1844-Conf-Exp-AnxA, ICC-01/14-01/18-1844-Conf-Exp-AnxB, ICC-01/14-01/18-1844-Conf-Exp-AnxC.
[1292] CAR-OTP-2130-6350-R01, at 6351.
[1293] **P-2462**: T-059-CONF-ENG ET, p. 28, lns 1-6.
[1294] **P-2462**: T-059-CONF-ENG ET, p. 25, lns 9-15.
[1295] **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 36; T-291-CONF-ENG CT, p. 38, lns 7-13.
[1296] **D30-4608**: T-291-CONF-ENG CT, p. 36, ln. 23 to p. 37, ln. 20.
[1297] **D30-4608**: T-291-CONF-ENG CT, p. 38, lns 18-20.
[1298] **D30-4608**: T-292-CONF-ENG CT, p. 57, ln. 25 to p. 58, ln. 1.

[REDACTED],[1299] and he was not an Anti-Balaka.[1300] Any evidence to the contrary is anonymous hearsay evidence based on second-hand information,[1301] speculative,[1302] otherwise untested in court,[1303] and should be afforded little to no weight. In any event, D30-4608's detailed and unequivocal testimony on the death of [REDACTED] prior to 5 December 2013[1304] coupled with P-2602's allegation that '[REDACTED]' did not participate in the BOSSANGOA attack,[1305] cast serious doubt as to the accuracy of P-2462's account.

385. P-2462's confusion on her alleged rapist's identity goes further. She described [REDACTED] and his men as wearing red turbans that hid their faces,[1306] draped around their heads like depicted on exhibit CAR-OTP-2085-9425,[1307] which shows a group of alleged Chadian forces.[1308] When asked why she thought the men who attacked her were Anti-Balaka, P-2462 generically answered that the man who raped her was tall and black, but that she didn't know his age.[1309] She added that the five men were armed, had *gris-gris*, firearms and military clothes, and on this basis, she thought they were Anti-Balaka.[1310]

386. P-2462's description of the men she alleges attacked her is overly vague and could describe Seleka members as much as Anti-Balaka. There is ample evidence that Seleka members wore

[1299] **D30-4608**: T-291-CONF-ENG CT, p. 36, ln. 23 to p. 37, ln. 1, p. 55, lns 3-9, the fact that [REDACTED] might have been a nickname does not negate that he was the only one known by that name at the time.
[1300] **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 36.
[1301] **P-2658**: CAR-OTP-2126-0012-R02, at 0038, para. 169; T-135-CONF-ENG ET, p. 14, lns 11-12.
[1302] P-2462 herself conceded that she had no information about how or when '[REDACTED]' would have joined the Anti-Balaka, *see* **P-2462**: T-060-CONF-ENG CT, p. 32, lns 6-8.
[1303] Rule 68(2)(c) statement of P-2602 mentions that a man called '[REDACTED]' was in GOBÉRÉ but corroborates the evidence of D30-4608 in that he died and did not take part in the attack on Bossangoa, *see* **P-2602**: CAR-OTP-2118-9683-R01, at 9688, lns 141-167.
[1304] **D30-4608**: T-291-CONF-ENG CT, p. 38, lns 7-13 ("Q. Mr Witness, in your statement you said that the death of [REDACTED] occurred before December 2013, beforehand. Are you quite sure of that? Was it before? A. I'm sure that it was before, [REDACTED].").
[1305] **P-2602**: CAR-OTP-2118-9683-R01, at 9688, lns 160-167.
[1306] **P-2462**: T-060-CONF-ENG CT, p. 31, lns 14-16.
[1307] **P-2462**: T-060-CONF-ENG CT, p. 35, lns 2-13.
[1308] CAR-OTP-2130-4425, at 4444; **P-1577**: CAR-OTP-2081-0769, at 0814-0815; T-027-CONF-ENG CT, p. 76, ln. 25 to p. 77, ln. 14.
[1309] **P-2462**: T-060-CONF-ENG CT, p. 35, ln 9 to p. 36, ln. 1 (in reference to CAR-OTP-2085-9425), p. 38, lns 4-14.
[1310] **P-2462**: T-060-CONF-ENG CT, p. 38, lns 4-14. The witness also indicated that she could not differentiate between the *gris-gris* worn by the Seleka and those of the Anti-Balaka, *see* T-060-CONF-ENG CT, p. 40, lns 12-17).

gris-gris,[1311] firearms,[1312] military clothes[1313] as well as turbans.[1314] There is also evidence that some Seleka members included Central African men, among which Christians who spoke Sango,[1315] contrary to P-2462's assertion that the only way to differentiate between Seleka and Anti-Balaka members is that only the latter spoke Sango.[1316] The commission of rape and sexual violence by the Seleka, is also well established by the evidence in the case.[1317] In contrast, several witnesses recounted how Anti-Balaka members were prohibited from sexual intercourse by the rites they observed,[1318] and have testified that no rape was committed by the Anti-Balaka.[1319]

387. In any event, P-2462 was incapable of distinguishing between members of different armed groups. When showed footage of local young men, she stated that she could not say who was Anti-Balaka or Seleka by simply looking at them.[1320] Consequently, P-2462's identification of the five men as Anti-Balaka cannot be relied upon.

388. Considering the above, the Chamber must find Mr NGAÏSSONA not guilty under Counts 40 and 41.

2.4.6. Due to its failure to prove the underlying crimes, the Prosecution failed to prove the crime of persecution (Count 42)

389. The Prosecution's failure to prove the charges under Counts 30 to 41, means that it also failed to prove the commission of the crime of persecution on political, ethnic and/or religious

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[1311] **P-2462**: T-060-CONF-ENG CT, p. 40, ln. 12 to p. 41, ln. 7; **P-2049**: T-102-CONF-ENG CT, p. 12, lns 20-21; **P-2657**: T-105-CONF-ENG CT2, p. 12, lns 15-16; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40.
[1312] **P-2049**: T-102-CONF-ENG CT, p. 20, lns 15-18; **P-2657**: T-105-CONF-ENG CT2, p. 34, lns 14-15; **D30-4608**: CAR-D30-0017-0004-R01, at 0007, para. 22; **D30-4514**: CAR-D30-0025-0001-R01, at 0011-0012, lns 332-347; **P-2453**: T-137-CONF-ENG ET, p. 10, lns 4-7.
[1313] **P-2462**: T-060-CONF-ENG CT, p. 8, lns 10-21; **P-2657**: T-105-CONF-ENG CT2, p. 12, lns 2-3; **P-2049**: T-102-CONF-ENG CT, p. 12, lns 5-15; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40; **D30-4514**: CAR-D30-0025-0001-R01, at 0011-0012, lns 332-347; **P-2453**: T-137-CONF-ENG ET, p. 10, lns 4-7.
[1314] **P-2657**: T-105-CONF-ENG CT2, p. 12, lns 2-3; **P-2049**: T-102-CONF-ENG CT, p. 12, lns 5-15; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40; **D30-4514**: CAR-D30-0025-0001-R01, at 0011-0012, lns 332-347; **P-2453**: T-137-CONF-ENG ET, p. 10, lns 4-7.
[1315] **P-2049**: T-102-CONF-ENG CT, p. 13, lns 1-13; **P-2200**: CAR-OTP-2088-2146-R04, at 2151, para. 25; **D30-4608**: CAR-D30-0017-0004-R01, at 0009, para. 40; **D30-4514**: CAR-D30-0025-0001-R01, at 0014, lns 426-439.
[1316] **P-2462**: T-060-CONF-ENG CT, p. 41, lns 3-7.
[1317] CAR-OTP-2088-1749-R01, at 1751-1752, 1754; CAR-OTP-2001-0275, at 0280, para. 23; CAR-OTP-2001-0987, at 0994, para. 34; CAR-OTP-2001-1341, at 1359, 1362-1364; CAR-OTP-2001-1767, at 1792-1794. *See also* ICC-01/14-01/18-1278-Conf-Anx2.
[1318] **D30-4496**: CAR-D30-0022-0001-R03, at 0007, para. 40; **P-0966**: T-117-ENG CT, p. 58, ln. 23 to p. 59, ln. 13; **P-2251**: T-043-CONF-ENG CT, p. 38, lns 18-23; **P-0888**: T-122-CONF-ENG CT2, p. 59, lns 19-25.
[1319] **D30-4608**: CAR-D30-0017-0004-R01, at 0014, para. 74; **D30-4514**: CAR-D30-0025-0001-R01, at 0031, lns 1014-1021; **D30-4496**: CAR-D30-0022-0001-R03, at 0007, para. 40.
[1320] **P-2462**: T-060-CONF-ENG CT, p. 26, lns 16-17 ("So how you can ascertain by somebody's voice whether they are Anti-Balaka or Seleka, well, it's something difficult to ascertain.").

grounds as charged in the CoC Decision.[1321] This alone renders a conviction under Count 42 impossible.

390. Alternatively, even if the Chamber was satisfied that the Anti-Balaka members committed part of the underlying crimes, the required discriminatory intent remains unproven.[1322] The very low number of alleged civilian casualties, compared to the large amount of people who were safely evacuated away from the hostilities[1323] is probative of an attack that did not target civilians based on their ethnicity, religion or political affiliations. As such, neither the general behaviour of the alleged perpetrators nor the circumstances surrounding the commission of the alleged crime can allow the Chamber to infer a discriminatory intent.[1324]

B. The evidence related to events in BOSSANGOA is plagued by credibility issues

391. The evidence in relation to the BOSSANGOA crime base is plagued by several issues undermining its reliability. First, the bulk of the evidence in relation to BOSSANGOA emanates from four witnesses from one family,[1325] and two of their acquaintances.[1326] Consequently, the Prosecution's case theory is skewed, constrained to what essentially amounts a single and partial perspective. Second, the remaining witnesses[1327] were either absent from BOSSANGOA at crucial times or lack direct source of knowledge, while documentary evidence such as NGO reports or press articles are not sufficiently probative to compensate for the flaws of testimonial evidence.

1. The [REDACTED]'s relatives and their acquaintances are not credible

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[1321] Bangladesh/Myanmar Article 19(3) Decision, para. 75: Persecution "must be 'committed in connection with any other crime within the jurisdiction of the Court', […] provided that such acts are committed pursuant to any of the grounds mentioned in article 7(1)(h) of the Statute".
[1322] *See* Elements of Crimes, Article 7(1)(h), paras 2-3.
[1323] *See above* V.A.1.4 The 5 December attack was proportionate.
[1324] Ongwen TJ, para. 2739. *See also above* IV.D.2 No Anti-Muslim animus established at the outset of the conflict and IV.D.3 No Anti-Muslim animus shared by groups located in the provinces.
[1325] On P-2049 and P-2657 [REDACTED], *see* **P-2049**: T-100-CONF-ENG CT, p. 7, ln. 6; **P-2657**: T-104-CONF-ENG CT3, p. 14, lns 20-22; T-105-CONF-ENG CT2, p. 4, lns 17-19; **P-2462**: T-060-CONF-ENG CT, p. 4, lns 12-15; **P-2453**: CAR-OTP-2111-0415-R04, at 0430, para. 70; T-138-CONF-ENG CT, p. 30, lns 7-8. On P-2049 and P-2462 [REDACTED], *see* **P-2049**: T-101-CONF-ENG CT, p. 56, lns 3-11; **P-2462**: T-060-CONF-ENG CT, p. 4, lns 6-9; **P-2657**: T-105-CONF-ENG CT2, p. 26, lns 1-4. On P-2200 being P-2049's [REDACTED], *see* **P-2049**: T-101-CONF-ENG CT, p. 55, ln. 16 to p. 56, ln. 1; **P-2200**: CAR-OTP-2088-2146-R04, at 2155, paras 46, 91; **P-2657**: T-105-CONF-ENG CT2, p. 4, lns 20-23. On P-2200 being P-2462's [REDACTED], *see* **P-2462**: T-060-CONF-ENG CT, p. 4, lns 21-25. Asta MOUSSA (V44-0001) is also related to the same family, **V44-0001**: T-267-CONF-ENG CT2 p. 39, ln. 1 to p. 40, ln. 5.
[1326] P-2453; P-2658.
[1327] P-1577; P-2652; P-1976; P-0475; P-2133; P-2269; P-2251; P-0966; P-2453; P-1576; P-2602; P-0567; P-2467.

392. The Prosecution's main witness on BOSSANGOA was arguably P-2049. Yet, his testimony revealed a complete lack of objectivity and a tendency to deflect when confronted with his own contradictions. P-2049 alleged being aware of everything when it suited him,[1328] but nothing when it did not,[1329] while extensively resorting to hearsay.[1330] In contrast with his portray of himself as an innocent Anti-Balaka victim, Defence witnesses exposed him as a Seleka collaborator, carrying weapons[1331] and exerted pressure on the Imam to keep a hard line during peace mediations.[1332] P-2049 was caught in several outward or partial lies in his eagerness to blame the Anti-Balaka at all costs while repeatedly referring back to his prior statement to avoid contradicting himself.[1333] P-2049's lack of sincerity was apparent throughout his testimony, during which he evaded questions[1334] and ostensibly contradicted his prior statement on crucial aspects.[1335] He mispresented at least two items of evidence,[1336] visibly held a grudge and conceded looking for retribution and compensation for the 2013 events.[1337] He also made several incriminating, yet unsubstantiated claims against Mr NGAÏSSONA.[1338]

393. P-2049 was concerned about concealing the real extent of his family's association with the Seleka. This was particularly evident when he (i) denied that [REDACTED] benefited from the protection of the Seleka despite evidence to the contrary,[1339] (ii) could no longer remember whether he was with his wife and kids on the morning of the 17 September attack,[1340] or (iii) was presented with an account from [REDACTED] asserting that [REDACTED] died in combat while fighting for a Muslim self-defence group.[1341] Interestingly, [REDACTED] was

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[1328] Annex A.17, Section 1.
[1329] Annex A.17, Section 1.
[1330] *See e.g.*, on the early creation of the Anti-Balaka in 2012, **P-2049**: T-100-CONF-ENG CT, p. 11, ln 18 to p. 17, ln. 8. On his evidence in relation to the ZÉRÉ, BOWAYE and BENZAMBÉ attacks, **P-2049**: T-100-CONF-ENG CT, p. 28, ln. 21 to p. 28, ln 10, p. 35, lns 20-22, p. 51, lns 14-20; T-102-CONF-ENG CT, p. 32, lns 11-17, p. 34, lns 16-25, p. 35, lns 8-12, p. 36, lns 16-17, p. 44, lns 4-7, p. 51, lns 9-10.
[1331] [REDACTED]; *See* Annex A.21.
[1332] **D30-4608**: T-291-CONF-ENG CT, p. 59, ln. 2 to p. 60, ln. 6.
[1333] Annex A.17, Sections 2, 3 and 5.
[1334] Annex A.17, Section 4.
[1335] Annex A.17, Section 2.
[1336] *See above*, paras 318, 320. **P-2049**: T-102-CONF-ENG CT, p. 40, ln. 6 to p. 42, ln. 7; CAR-OTP-2088-2205 (not submitted) and its metadata CAR-D30-0008-0087 (submitted). *See also* Annex A.18
[1337] Annex A.17, Section 5.
[1338] Annex A.17, Section 6.
[1339] [REDACTED] [REDACTED].
[1340] The witness first alleged that he was with [REDACTED] and children that morning and then became confused and could not remember whether [REDACTED] and children were sheltered with him at [REDACTED], **P-2049**: T-103-CONF-ENG CT, p. 9, lns 21-25, p. 12, ln. 6 to p. 13, ln. 7. His wife contradicted this account, **P-2657**: T-105-CONF-ENG CT2, p. 13, lns 9-24.
[1341] CAR-OTP-2078-0132-R01; **P-2049**: T-103-CONF-ENG CT, p. 16, ln. 10 to p. 23, ln. 13; P-2049 seemed particularly concerned that [REDACTED] did not tell him having spoken to the Office of the Prosecutor. T-103-CONF-ENG CT, p. 17, lns 9-10 ("[REDACTED]."), p. 20, lns 1-2 ("[REDACTED]"), p. 22, ln. 15 to p. 23, ln. 2 ("[REDACTED]").

described as everything from a student,[1342] a trader who sold manioc and[1343] a trainee teacher,[1344] to a driver.[1345] Evidence is equally inconsistent on where he was and what he did on the morning on 17 September.[1346] Taken together, these discrepancies suggest an effort by the Prosecution witnesses to hide the truth: that [REDACTED] was fighting alongside the Seleka and that their family as a whole was closely associated with them.[1347]

394. P-2462 and P-2657's accounts equally lack probative value. These witnesses have limited first-hand knowledge of 2013 events in BOSSANGOA and the Ouham region. They also contradict each other on several important aspects. For example, while they both allege having fled together with [REDACTED], [REDACTED] and [REDACTED] (aka [REDACTED]) [REDACTED], P-2657 pretends not having seen P-2462 there.[1348] Their respective versions of the alleged medical examination of P-2657 are also irreconcilable,[1349] while P-2657 misleadingly stated that she barely knew P-2462 and only got to know her at *École Liberté*,[1350] before having to recognise that P-2462 was in fact [REDACTED].[1351] P-2462 was equally not

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[1342] **P-2049**: T-101-CONF-ENG CT, p. 56, lns 21-23.
[1343] **P-2657**: T-105-CONF-ENG CT2, p. 17, lns 12-14.
[1344] **P-2200**: CAR-OTP-2088-2146-R01, at 2153, para. 35.
[1345] **P-2453**: T-138-CONF-ENG CT, p. 12, lns 21-23.
[1346] According to P-2462, [REDACTED] was unwell the night before the 17 September attack and was helped out of his house, from which P-2462 and others had already fled, by a neighbour called [REDACTED], **P-2462**: T-059-CONF-ENG ET, p. 16, lns 12-19; p. 17, lns 9-12. P-2657 said she never heard P-2462's version and rather stated that he was behind the mosque, far away, at the house of a GBAYA girl where he had spent the night, **P-2657**: T-105-CONF-ENG CT2, p. 15, lns 4-5, 16-19, 23-25, p. 17, lns 1-5.
[1347] **D30-4496** : CAR-D30-0022-0001-R03, at 0004, para. 21; T-289-ENG CT, p. 42, ln. 8 to p. 43, ln. 7; CAR-D30-0008-0092, at 0095, on [REDACTED], *see e.g.*, CAR-OTP-2078-0132-R02, at 0134.
[1348] **P-2657**: T-104-CONF-ENG CT3, p. 18, ln. 24 to p.19, ln. 1 ("[REDACTED]"). *Compare* with **P-2462**: T-059-CONF-ENG ET, p. 28, lns 21-22, p. 29, lns 6-10 ("[REDACTED] is one of the women who fled with me when I went to the camp […] Q. […] When -- when you responded to my question about how you know [REDACTED], you said - and I see it in the transcript - that you fled to -- fled -- she fled with you when you went to the camp. Are you talking about the 5 December attack? A. Yes, it covers the attack of 5 December."). *Compare* with **P-2462**: T-059-CONF-ENG ET, p. 29, ln. 13 to p. 30, ln. 2.
[1349] **P-2657**: T-104-CONF-ENG CT3, p. 24, lns 17-22 ("[REDACTED]"), T-105-CONF-ENG CT2, p. 31, ln. 24 to p. 32, ln. 9 ("[REDACTED]"). *Compare* with **P-2462**: T-060-CONF-ENG CT, p. 33, ln. 12 to p. 34, ln. 12 ("[REDACTED]").
[1350] **P-2657**: T-104-CONF-ENG CT3, p. 24, lns 11-15 ("Q. Do you know someone by the name of [REDACTED]? A. Yes, I think I knew such a person, but not in any detail. Not specifically. Q. How did you know her? A. It was when -- at the *École Liberté* that I met her."); T-105-CONF-ENG CT2, p. 25, lns 20-25 (Q. Madam, yesterday you told us that you knew someone known as [REDACTED], but that you didn't know her specifically, as you got to know her at the école Liberté and that you got to also see her later on at the hospital. Am I to understand that you had never met this person before, madam? A. If I had known her before, I would have told you. If I had seen her, I would have told you.").
[1351] **P-2657**: T-105-CONF-ENG CT2, p. 26, lns 1-6 ("Q. Information available to the Court is that, madam, [REDACTED], and is alleged to have fled in the same group as yourself with [REDACTED]. Do you remember that, madam? A. It's -- she is [REDACTED]. But quite honestly - and this is the truth - when we got to the compound, I did not see [REDACTED], she had left before we arrived.").

forthcoming to acknowledge [REDACTED] with P-2657.[1352] Taken together, these discrepancies demonstrate that the witnesses lacked candidness and were trying to hide all or part of the truth.

395. In addition, P-2657's account of having been raped by Anti-Balaka elements is not credible. P-2657's husband, [REDACTED], [REDACTED] never mentioned the alleged rape suffered by his wife. Like P-2462, P-2657 conveniently pointed the finger at someone who appeared to have passed away before the 5 December 2013 attack,[1353] and has no medical document to support her claim.[1354] Her claim that no less than seven Anti-Balaka left combat and started discussing the possibility of taking her to "their leader Ngaïssona"[1355] is not plausible, first because Mr NGAÏSSONA was not yet the Anti-Balaka coordinator at the time, and second, because he was based in DOUALA, over 1,200 km away from BOSSANGOA. The mention of Mr NGAÏSSONA in this context appears to have been planted to falsely incriminate him and secure victim status for P-2657.

396. P-2453 and P-2658, for their part, gave no probative evidence regarding the 5 December attack, which neither of them eye-witnessed.[1356] Their accounts of events prior to 5 December 2013 are riddled with inconsistencies and are generally not reliable. For instance, P-2453's claim that his vehicle was attacked near BOWAYE when he was headed to a weekly market, is contradicted by D30-4608 and NAMSONA, who testified that the weekly markets had ceased to operate in the second half of 2013.[1357] D30-4608 did hear of an attack around BOWAYE against drivers who were known to transport looted goods towards Chad.[1358] This appears to refer to the same attack[1359] and demonstrates that P-2453 was arguably aiding and abetting the looting of Christian civilians' property by the Seleka.

[1352] **P-2462**: T-059-CONF-ENG ET, p. 28, ln. 23 to p. 29, ln. 1 ("Q. And how do you know each other? A. We were in the same town and we were also in Bossangoa together. She was married to a man who was in the same neighbourhood, even if it was a bit further away.").
[1353] P-2462, *see above*, para. 384; P-2657, *see* ICC-01/14-01/18-2300-Conf; CAR-OTP-00001982-R01, at 000005, para. 34. Although the Chamber requested that the relevant witness statement (**P-3177**: CAR-OTP-00001982) be submitted in evidence, the required Rule 68(2) certification was never obtained. The statement is therefore not in evidence.
[1354] CAR-OTP-2130-6350-R01, at 6351.
[1355] **P-2657**: T-104-CONF-ENG CT3, p. 19, lns 12-20.
[1356] **P-2453**: CAR-OTP-2111-0415-R01, at 0428, para. 61; **P-2658**: T-135-CONF-ENG ET, p. 12, ln. 22 to p. 13, ln. 3.
[1357] **D30-4608**: T-291-CONF-ENG CT, p. 48, ln. 24 to p. 49, ln. 3; **D30-4496**: T-289-ENG CT, p. 46, lns 14-19.
[1358] **D30-4608**: CAR-D30-0017-0004-R01, at 0009, paras 38, 59; T-291-CONF-ENG CT, p. 49, lns 4-10. *See also* **D30-4514**: CAR-D30-0025-0001-R01, at 0012-0013, lns 376-387; **D30-4496**: T-289-ENG CT, p. 31, lns 4-15."
[1359] Only one BOWAYE attack finds support in the record. It included at least P-2453 and Asta MOUSSA's husband, Mahamat ABDELKARIM, nicknamed "222" (See **P-2453:** CAR-OTP-2111-0415, at 0421, para. 30).

2. The additional evidence fails to offset testimonial flaws

397. The remaining Prosecution witnesses had limited and partial knowledge of the events that unfolded in BOSSANGOA and cannot compensate for main witnesses' shortcomings. P-2652,[1360] P-1576,[1361] P-0505[1362] and P-0475[1363] were not present in BOSSANGOA on 5 December 2013 while the evidence of P-2133 and P-1577 is devoid of any specific detail of the attack.[1364]

398. Other items of evidence such as press articles and NGO reports only have limited weight when not corroborated by credible testimonial evidence and the Chamber should exercise caution when assessing the probative value of such evidence.

VI. THE PROSECUTION FAILED TO PROVE THAT MR NGAÏSSONA CONTRIBUTED TO THE COMMISSION OF ANY CRIMES

399. Under Article 25(3)(c) of the Statute, the Prosecution must demonstrate that the accessory has "furthered, advanced or facilitated the commission of the offence".[1365] It is not sufficient to show, in the abstract, that the accessory has provided a general assistance to a "common plan" or an "overall strategy"; rather, a causal link must be shown between the accessory's actions and the commission of the crimes.[1366]

400. Although the Appeals Chamber held that "the text of [article 25(3)(c)] only requires that the assistance in the commission (or attempted commission) of the crime be provided for the

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This is consistent with the evidence of D30-4608 regarding an attack against trucks near BOWAYE, and with his recollection of "222" (see **D30-4608:** CAR-OTP-0017-0004, at 0012, paras 58 ("J'ai entendu parler de l'attaque menée contre les camions près de BOWAYE mais je n'ai pas plus d'informations à ce sujet. Ces camions partaient pour le TCHAD avec tout ce qui avait été pillé de la ville, et les jeunes ont attaqué les camions pour récupérer ce que les Séléka avaient volé aux parents"), 92 ("« 2 2 2 »: J'ai entendu le « 222 ». Avant la rébellion, il assurait la transportation [*sic*] des commerçants d'une ville à l'autre. Après l'arrivée des Séléka, il travaillait pour eux […] les Anti-Balaka ont été mis au courant et il a été tué lors d'une attaque. »).

[1360] **P-2652**: CAR-OTP-2126-0175-R01, at 0184-0185, paras 49-50.

[1361] **P-1576**: CAR-OTP-2060-0280-R01, at 0283-0284, paras 19-21.

[1362] **P-0505**: CAR-OTP-2014-0129-R01, at 0135, para. 35.

[1363] **P-0475**: CAR-OTP-2104-0116-R01, at 0123, para. 47.

[1364] **P-2133**: CAR-OTP-2093-0267-R01, at 0280, para. 96; **P-1577**: CAR-OTP-2081-0769-R01, at 0785 ("We were told by the FOMAC, [REDACTED], that the attackers were the Anti-Balaka"), at 0786 ("[REDACTED] a girl who had been injured during the battle. I am not sure by who.", "These are individuals from the FOMAC contingent showing respect for a fallen soldier, who we were told was killed by Anti-Balaka."), at 0787 ("I do not know which of these individuals had been injured by the Anti-Balaka."), at 0789 ("I spoke with individuals who claimed to have witnessed the events that took place in this area, including with friends of the individual depicted in photograph_12A4224.cr.2. They told us that the blood stains were from a massacre of Muslims by the Anti-Balaka."), at 0790 ("I believe children were among the individuals who were killed. I don't remember where I heard this information.").

[1365] Bemba et al. TJ, para. 94.

[1366] Bemba et al. TJ, paras 865, 874-878, 883. *See also* Gbagbo and Blé Goudé Judge Henderson's Reasons, paras 2019-2020; Tadić TJ, para. 688; Tadić AJ, para. 229.

purpose of facilitating such commission without indicating whether the conduct must have also had an effect on the commission of the offence",[1367] it emphasized that "[w]hether a certain conduct amounts to "assistance in the commission of the crime" within the meaning of article 25(3)(c) of the Statute *even without the showing of such an effect* can only be determined in light of the facts of each case".[1368]

401. The Appeals Chamber did not provide clarity on the facts that would make the showing of an effect on the commission of the crimes unnecessary.[1369] However, a plain reading of the above *obiter dictum* supports the argument that the causal requirement remains the norm, given that, as conceded by the Appeals Chamber, "the showing of […] an effect indicates that the person indeed assisted in [the] commission [of the crime]".[1370] This is reflected in the recent *Al Hassan* judgment, in which Trial Chamber IX, while citing the Appeals Chamber, found some form of causal link between the accused's conduct and the commission of each crime he was convicted of pursuant to Article 25(3)(c).[1371]

402. Moreover, the facts of this case provide no justification for exempting the Prosecution from showing that Mr NGAÏSSONA's alleged assistance had an effect on the commission of the crimes. To the contrary, the showing of such an effect is particularly warranted in the present case, because Mr NGAÏSSONA's alleged contributions are so removed in time and location from the commission of the crimes that his assistance to their commission cannot simply be presumed.[1372]

403. Another distinguishing factor should be the level of assistance to the commission of the crimes an individual is accused of having facilitated. Although Article 25(3)(c) does not require a minimum threshold,[1373] it is difficult to see how the Chamber could presume that the limited support Mr NGAÏSSONA is alleged to have provided, aided, abetted or otherwise assisted in

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[1367] Bemba et al. AJ, para. 1327.
[1368] Bemba et al. AJ, para. 1327 (emphasis added).
[1369] *Ibid*.
[1370] *Ibid*.
[1371] Al Hassan TJ, paras 1593-1594, 1598-1600, 1606-1613.
[1372] Perisić AJ, para. 40 ("in discussing aiding and abetting liability, […] significant temporal distance between the actions of an accused individual and the crime he or she allegedly assisted decreases the likelihood of a connection between that crime and the accused individual's actions. The same rationale applies, by analogy, to other factors separating the acts of an individual accused of aiding and abetting from the crimes he or she is alleged to have facilitated. Such factors may include, but are not limited to, geographic distance"); Kupreskić et al. AJ, para. 277 (finding that the length of time between the accused's unloading of weapons and the attack at issue diminished the likelihood that the weapons were intended to be used to attack the local Muslim population); Bemba et al. TJ, para. 239 (the temporal proximity between the money transfer and the witness' testimony […] clearly indicates a link between the payment and the witness' imminent testimony.").
[1373] Bemba et al. TJ, para. 93; Bemba et al. AJ, para. 1328.

the commission of the crimes, without first finding that Mr NGAÏSSONA's alleged conduct had some tangible effect on the commission of the charged crimes. This consideration is particularly warranted in the present case given the circumstantial nature of the supporting evidence. Without such a demonstration, the risk is to endorse the construction of a wholly artificial narrative.[1374] In the *Taylor* case, the SCSL Appeals Chamber went beyond merely stating that the accused's contributions bolstered the armed movement's operational and military capacity. Rather, based on a robust body of evidence,[1375] it thoroughly examined how these contributions, particularly in supplying arms and ammunition, were deemed "critical".[1376]

404. Lastly, establishing a tangible link between Mr NGAÏSSONA's alleged contribution and the commission of crimes is particularly warranted in light of the fragmented nature of the Anti-Balaka movement. Given the difficulties in establishing membership to the group, as well as connections between the various sub-groups alleged by the Prosecution,[1377] it must be shown that Mr NGAÏSSONA's alleged contributions to given individuals indeed resulted into facilitating or assisting the commission of crimes by the Anti-Balaka. The provision of assistance to individuals or groups who did not, directly or indirectly, demonstrably contribute to the commission of crimes should not engage Mr NGAÏSSONA's criminal responsibility under Article 25(3)(c).

405. Adopting a narrow interpretation of Article 25(3)(c)'s actus reus in this case is essential to uphold legal certainty and justice. Requiring a clear demonstration of an effect on the commission of the crimes ensures that accessory liability is applied with precision and fairness. This approach prevents the dilution of legal standards, protecting individuals from accusations based on tenuous links. It will also offer clear guidelines for future judicial processes before this Court, fostering greater consistency and predictability.

406. As developed below, apart from claiming, without credible evidentiary support, that Mr NGAÏSSONA facilitated the integration of self-defence groups, FACA, former PG and other BOZIZÉ loyalists into the Anti-Balaka, which ultimately "fortified the group's capacity to carry on attacks",[1378] the Prosecution offers no explanation on how these alleged generic

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[1374] *See* Šainović TJ, para. 92 ("liability for aiding and abetting under the Statute *cannot be inchoate*: the accused cannot be held responsible under Article 7(1) for aiding and abetting if a crime or underlying offence is never actually carried out with his assistance, encouragement, or moral support" (emphasis added)).
[1375] *See* Taylor TJ, paras 3622-3666, 4805-4845, 5294-5329.
[1376] Taylor AJ, paras 517, 520.
[1377] *See above* IV. The Prosecution failed to prove the alleged existence of a common criminal purpose.
[1378] PTB, paras 253, 257, 281.

contributions can be linked to the specific crimes. The evidence in respect of Mr NGAÏSSONA's alleged contributions is based primarily on hearsay, which has been submitted on a prodigious scale in this case.[1379] Even if the Chamber did find that Mr NGAÏSSONA provided some form of assistance to the Anti-Balaka or BOZIZÉ, it would not amount to "assistance in the commission of the crime" within the meaning of Article 25(3)(c) as the Prosecution failed to show any nexus with the commission of the charged crimes or that Mr NGAÏSSONA had the required intent.[1380]

407. Finally, in the absence of sufficient evidence in relation to the existence of a group acting with a common purpose,[1381] it is not strictly necessary to discuss the question whether Mr NGAÏSSONA made a relevant contribution to any of the charged crimes under Article 25(3)(d) of the Statute. Nevertheless, the Prosecution failed to articulate how Mr NGAÏSSONA's alleged contributions extended beyond any contribution to the alleged common purpose and instead were made towards the commission of each of the crimes he is charged with under Article 25(3)(d).[1382]

A. The Prosecution failed to prove that Mr NGAÏSSONA was part of BOZIZÉ's so-called inner circle

1. Mr NGAÏSSONA did not follow BOZIZÉ to Cameroon, regularly visit him or live at his residence

408. There is no evidence that Mr NGAÏSSONA chose Cameroon as his place of exile to join BOZIZÉ.[1383] The evidence proposed by P-2232, who claimed that Mr NGAÏSSONA went to Cameroon to join Bernard MOKOM and certain officers,[1384] is based on anonymous hearsay.[1385] As for P-2841, while his prior statement mentions that Bernard MOKOM and Mr NGAÏSSONA were in exile in Cameroon and were close to BOZIZÉ,[1386] he did not elaborate

[1379] *See below* II.A. The Prosecution excessively relied on circumstantial evidence; Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 45.
[1380] *See below* VII. The Prosecution failed to prove that Mr NGAÏSSONA had the required intent and knowledge.
[1381] *See above* IV. The Prosecution failed to prove the alleged existence of a common criminal purpose.
[1382] Al Hassan TJ, para. 1244; Katanga TJ, paras 1619, 1632; Al Hassan TJ, Opinion of Judge Akane, para. 50.
[1383] The evidence demonstrates at best that Mr NGAÏSSONA, Bernard MOKOM and BOZIZÉ respectively took refuge in Cameroon after the takeover of the SELEKA.
[1384] **P-2232**: T-075-CONF-ENG CT, p. 57, lns 9-12.
[1385] **P-2232**: T-076-CONF-ENG ET, p. 9, lns 14-15 [REDACTED].
[1386] **P-2841**: CAR-OTP-2127-4238-R01, at 4250, para. 69.

on his source of knowledge during his testimony and clarified he had no contact with Mr NGAÏSSONA during his exile.[1387]

409. Evidence shows that Mr NGAÏSSONA was ill and receiving traditional treatment in the Lobaye when the Seleka entered BANGUI, prompting him to flee directly from his treatment location.[1388] Several witnesses confirmed that Mr NGAÏSSONA was not in good health when they first saw him in Cameroon.[1389] From Lobaye, Mr NGAÏSSONA and his family initially tried to seek refuge in Congo-Brazzaville, to finally chose Cameroon as their refuge destination.[1390]

410. Mr NGAÏSSONA's place of residence during exile was DOUALA, not YAOUNDÉ.[1391] DOUALA was a logical choice as Mr NGAÏSSONA used to conduct business there.[1392] He spent a few weeks at the *Hôtel Lumière* with part of his family upon arrival,[1393] before ultimately renting two houses in DOUALA, with the help of his business partner D30-4777:[1394] one in Ndokotti,[1395] where he lived with part of his family, and another in Deido[1396] to accommodate the rest of his extended family.[1397]

411. He also spent a few weeks in YAOUNDÉ, where he rented an apartment with his wife in the Bastos area,[1398] to organise the football match, CAR vs. South Africa, that took place on 8 June 2013.[1399] After the match, Mr NGAÏSSONA settled in DOUALA for good,[1400] while regularly

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[1387] **P-2841**: T-030-CONF-ENG CT2, p. 12, lns 16-18.
[1388] **P-0808**: T-070-CONF-ENG CT2, p. 42, lns 10-12. *See also* **P-2232**: T-075- CONF-ENG CT, p. 23, lns 6-12.
[1389] **D30-4848**: T-296-CONF-ENG ET, p. 37, lns 4-16; **D30-4679**: T-299-CONF-ENG ET, p. 65, lns 9-13; **D30-4756**: T-268-CONF-ENG CT, p. 49, lns 3-8; **D30-4504**: CAR-D30-0023-0001-R01, at 0003, para. 18; *see also* **P-0992**: CAR-OTP-2128-0288-R01, at 0304, para. 103.
[1390] **P-0801**: T-033-CONF-ENG CT, p. 70, ln. 12 to p. 71, ln. 11.
[1391] **D30-4848**: T-296-CONF-ENG CT, p. 33, ln. 11 to p. 34, ln. 2; **P-0446**: CAR-OTP-2105-0572-R01, at 0590, lns 600-602; CAR-OTP-2105-0593-R01, at 0594-0595, lns 36-51. *See also* **P-2027**: CAR-OTP-2078-0059-R02, at 0070, para. 63; **D30-4504**: T-283-CONF-ENG CT, p. 22, ln. 4 to p. 25, ln. 9; **D30-4756**: T-268-CONF-ENG CT, p. 47, lns 12-17.
[1392] **D30-4777**: CAR-D30-0019-0001, at 0003, para. 11. On DOUALA being a common place of business for CAR nationals, *see* **D30-4848**: T-296-CONF-ENG CT, p. 29, lns 8-13.
[1393] **D30-4777**: CAR-D30-0019-0001, at 0003-0004, para. 12, 16-19; **P-0884**: T-054-CONF-ENG ET, p. 54, lns 3-5, p. 59, lns 1-10.
[1394] **D30-4777**: CAR-D30-0019-0001, at 0004, para. 21.
[1395] CAR-D30-0011-0103; CAR-D30-0011-0104.
[1396] CAR-D30-0005-0020.
[1397] **D30-4777**: CAR-D30-0019-0001, at 0004, paras 20-22; **D30-4756**: T-268-CONF-ENG CT, p. 47, lns 16-17; T-269-CONF-ENG CT, p. 5, ln, 9 to p. 6, ln, 25.
[1398] **P-2027**: T-040-CONF-ENG, p. 20, ln. 22 to p. 21, ln. 25; **P-0884**: T-054-CONF-ENG ET, p. 53, ln. 25 to p. 54, ln. 10. [REDACTED].
[1399] **D30-4680**: CAR-D30-0016-0001, at 0006-0007, paras 30, 32; **D30-4848**: T-296-CONF-ENG ET, p. 36, lns 14-21; **D30-4504**: T-283-ENG ET, p. 20, lns 20-25.
[1400] **P-2027**: CAR-OTP-2078-0059-R02, at 0070, para. 63; T-040-CONF-ENG, p. 20, ln. 7 to p. 21, ln. 11.

travelling abroad for his football federation activities.[1401] Mr NGAÏSSONA's alleged closeness with BOZIZÉ cannot be inferred from the mere fact that Mr NGAÏSSONA and his family took refuge in Cameroon, like thousands of other CAR nationals fleeing the Seleka.[1402]

412. Second, the Prosecution failed to establish that BOZIZÉ and Mr NGAÏSSONA ever lived together.[1403] The only witness having lived with BOZIZÉ during the latter's entire stay in YAOUNDÉ[1404] refuted that Mr NGAÏSSONA ever lived with them, be it either at the Hilton hotel or at the Golf residence.[1405] OUEBIO never saw Mr NGAÏSSONA at either location during BOZIZÉ's stay in YAOUNDÉ and never heard about any visit of Mr NGAÏSSONA to the former President.[1406] He never saw or heard that Bernard MOKOM ever visited BOZIZÉ either.[1407]

413. Third, had Mr NGAÏSSONA "regularly visited"[1408] BOZIZÉ either at the Hilton or at the Golf residence, which the Prosecution fails to demonstrate,[1409] OUEBIO would have necessarily heard about it, given that he was in constant contact with BOZIZÉ's aide de camp and cook.[1410] Also, P-1847 subsequently refuted in court having seen Mr NGAÏSSONA at the Golf residence during BOZIZÉ's stay.[1411]

2. Mr NGAÏSSONA's alleged membership in a so-called inner circle or alleged proximity to BOZIZÉ cannot be inferred from shared ethnicity

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[1401] CAR-OTP-2124-0715; CAR-OTP-2124-0790; CAR-OTP-2124-0796; CAR-OTP-2124-0813; CAR-OTP-2124-0825. *See also* **P-2027**: CAR-OTP-2078-0059-R02, at 0069-0070, paras 62-63; **P-0884**: T-054-CONF-ENG ET, p. 56, lns 23-25.
[1402] **P-0884**: T-054-CONF-ENG ET, p. 54, ln. 2 to p. 55, ln. 7.
[1403] P-2673's claim in his statement (**P-2673**: CAR-OTP-2127-6435-R01, at 6450, para. 92) is anonymous hearsay. **P-1847**: CAR-OTP-2122-8251, at 8254; para. 24. However, *see also* **P-1847**: T-023-CONF-ENG CT, p. 22, lns 1-3, p. 24, lns 14-21, p. 26, ln. 9 to p. 27, ln. 5, p. 48, ln. 12 to p. 49, ln. 13.
[1404] Evidence shows that BOZIZÉ stayed two months in total in Cameroon, in YAOUNDÉ, **D30-4679**: T-299-CONF-ENG, p. 55, lns 16-22; CAR-OTP-2131-3585, at 3652; CAR-OTP-2132-7664, at 7736-7737; CAR-OTP-2132-5849, at 5864.
[1405] Regarding the Hilton hotel, **D30-4679**: T-299-CONF-ENG CT, p. 30, ln. 1 to p. 32, ln. 20, p. 44, lns 2-3. Regarding the Golf residence, **D30-4679**: T-299-CONF-ENG CT, p. 46, ln. 8 to p. 48, ln. 15, p. 53, lns 2-3.
[1406] **D30-4679**: T-299-CONF-ENG ET, p. 53, lns 2-3.
[1407] **D30-4679**: T-299-CONF-ENG ET, p. 53, lns 4-5.
[1408] **P-1847**: CAR-OTP-2061-1534-R01, at 1552, para. 114.
[1409] The Rule 68(2)(d) evidence of P-1847 is uncorroborated, based on hearsay and discredited by D30-4679's who denied having seen P-1847 at the Golf or knowing his alleged source of information, *i.e.* [REDACTED]. *See* **D30-4679**: T-299-CONF-ENG CT, p. 70, lns 24-25, p. 47, lns 5-11.
[1410] **D30-4679**: T-299-CONF-ENG CT, p. 40, ln. 21 to p. 41, ln. 8, p. 46, lns 8-19, p. 57, lns 4-12; T-301-ENG CT, p. 16, ln. 25 to p. 17, ln. 10.
[1411] **P-1847**: T-023-CONF-ENG CT, p. 48, ln. 12 to p. 49, ln. 13.

414. The Prosecution failed to substantiate any relationship between Mr NGAÏSSONA and BOZIZÉ beyond a professional one. Mr NGAÏSSONA and Mr BOZIZÉ are neither related,[1412] nor are they from the same region,[1413] nor were they close.[1414] By asking the Chamber to infer Mr NGAÏSSONA's membership in the inner circle based on shared ethnicity, the Prosecution perpetuates a reductionist narrative of ethnicity in CAR, which is unsupported by the evidence.[1415] This harmful myth was perpetuated by the Seleka to justify targeting civilian GBAYAs and FACA members.[1416] There is also no credible evidence that Mr NGAÏSSONA's nomination as Minister of Youth "came as a reward for his involvement" in COCORA or COAC, rather than on skill and qualification given his long-standing career in the sports world.[1417] POUSSOU's unreasonable persistence, even upon being confronted with official nomination decrees, that Mr NGAÏSSONA's appointment preceded that of YAMBÉTÉ, reveals his clear bias.[1418]

3. Mr NGAÏSSONA did not participate in "youth mobilisation"

415. There is no evidence that Mr NGAÏSSONA mobilised the "youth" – an elusive group representing half the CAR population[1419] – who would later participate in the 5 December 2013 attack on BANGUI, as early as December 2012. First, Mr NGAÏSSONA played no role whatsoever in COCORA. Evidence shows that COCORA was little more than a short-lived[1420]

[1412] **D30-4720**: T-279-CONF-ENG ET, p. 22, lns 18-19; **P-0801**: T-034-ENG CT, p. 31, lns 22-24.
[1413] **P-0992**: T-092-CONF-ENG ET, p. 47, lns 1-2.
[1414] **P-1193**: T-125-CONF ENG CT2, p. 55, ln. 1-6; **D30-4720**: T-279-CONF-ENG CT, p. 18, lns 8-15 (D30-4720 explained that Mr NGAÏSSONA did not contribute financially to the KNK nor did he participate in KNK meetings).
[1415] **P-0884**: T-058-CONF-ENG CT, p. 80, lns 9-13; **P-0876**: T-086-CONF-ENG CT, p. 28, lns 1-7; *see* also **D30-4720**: T-279-CONF-ENG ET, p. 13, lns 8-20. Two private Facebook conversations cited to support the contention that BOZIZÉ favoured advice and opinions of GBAYAS over that of others (CAR-OTP-2101-7763, at 7766, CAR-OTP-2100-7713, at 7742-7743) merely suggest that [REDACTED]'s advice to BOZIZÉ to cancel the 15 March 2013 celebrations was not followed and that BOZIZÉ would have allegedly favoured the opinions of YAMBÉTÉ and Mr NGAÏSSONA on this topic. There is no mention of ethnicity as a factor in BOZIZÉ's decision making.
[1416] **P-0884**: T-058-CONF-ENG CT, p. 80, lns 9-13; **P-0808**: T-069-CONF-ENG CT, p. 44, ln. 11 to p. 45, ln. 6; **P-0889**: T-108-CONF-ENG CT2, p. 72, lns 3-10; T-110-CONF-ENG CT, p. 74, ln. 8 to p. 75, ln. 13; **P-0876:** T-086-CONF-ENG CT, p. 28, lns 1-7; **D30-4914**: T-302-CONF-ENG ET, p. 16, ln. 25 to p. 17, ln. 3, p. 19, lns 2-23.
[1417] On Mr NGAÏSSONA's qualifications as President of the Football Federation, *see* **P-2843**: T-074-CONF-ENG ET, p. 24, lns 7-25, p. 19 3 to p. 20, ln. 9; **D30-4720**: T-280-CONF-ENG CT, p. 20, lns 6-10, p. 20; P-2625's testimony that Mr NGAÏSSONA was nominated in the government "in order to defend the interests of the regime" is anonymous hearsay and lacks credibility, *see* **P-2625**: T-188-CONF-ENG CT, p. 51, lns 20-25.
[1418] **P-2625**: T-192-ENG CT, p. 24 ln. 13 to p. 25 ln. 20; *See above* II.B.3.3. (POUSSOU).
[1419] Nearly half of the population of CAR consists of "youth", *see* **P-2232**, T-075-CONF-ENG CT, p. 19, lns 19-20; **P-0808**: CAR-OTP-2093-0010-R01, para. 18; CAR-OTP-2000-0655, CAR-OTP-2006-0661, at 0665, lns 168-169.
[1420] COCORA was created around 22 December 2012 and dissolved at the latest on 24 March 2013, **P-0884**: T-054-CONF-ENG ET, p. 36, lns 2-3; **P-0889**: CAR-OTP-2122-7517-R01, at 7543, lns 1045-1046; T-108-CONF-ENG CT2, p. 63, ln. 23 to p. 64, ln. 2; **P-1847**: T-022-CONF-ENG CT, p. 40, lns 1-3.

project led solely by Levy YAKÉTÉ.[1421] Its aim was to protest and protect the population through peaceful means in reaction to the security threat posed by the Seleka towards the end of 2012, which culminated in the violent *coup d'état* of 24 March 2013.[1422] There is no evidence that Mr NGAÏSSONA funded COCORA, COAC, or any other movement at the time,[1423] nor that he would have armed COCORA activists. The hearsay testimony of POUSSOU in this regard is uncorroborated and discredited by other witnesses.[1424] POUSSOU conceded that his

[1421] **P-0884**: T-054-CONF-ENG ET, p. 33, ln. 25 to p. 34 ln. 2, p. 36, lns 4-15 (Yakété, he was the only one running this group", "Yes, he was the only boss of COCORA and this was public knowledge"); **P-0876**: T-085-CONF-ENG CT2, p. 16, lns 10-12; **P-2328**: T-046-CONF-ENG CT, p. 56, lns 9-11; **P-2232**: T-075-CONF-ENG CT, p. 16, lns 24-25; **P-0889**: CAR-OTP-2122-7517-R01, at 7543, lns 1045-1046; **P-2926**: CAR-OTP-2127-4289, at 4296, para. 17; CAR-OTP-2101-7105, at 7112; **P-1847**: CAR-OTP-2122-8251-R01, para. 178 (Mr NGAÏSSONA is not cited as a member of COCORA); CAR-OTP-2100-2667; CAR-OTP-2129-2677. According to the evidence, Mr NGAÏSSONA and YAKÉTÉ did not know each other before the Seleka *coup d'état*, **P-1847**: T-022-CONF-ENG CT, p. 49, lns 1-10; *see also* ICC-01/14-01/18-1999-Conf, paras 8, 18.

[1422] On the aims of COCORA *see* **P-0808**: CAR-OTP-2025-0324-R03, at 0349, paras 152-153; **P-2232**: T-075-CONF-ENG CT, p. 12, lns 6-12, p. 18, lns 20-25; T-078-CONF-ENG CT, p. 14, ln. 24 to p. 15, ln. 3; CAR-OTP-2129-1677. On COCORA's stated aim to achieve their goals through peaceful means, *see* **P-1847**: T-022-CONF-ENG CT, p. 39, lns 19-20 ("COCORA group is a movement within civil society"); ICC-01/14-01/18-2026-Conf, para. 13; ICC-01/14-01/18-1942-Conf, para. 19; CAR-OTP-2042-2201, CAR-OTP-2127-4006, at 4010, lns 158-161; CAR-OTP-2100-2667; CAR-OTP-2000-0683, CAR-OTP-2087-9791, CAR-OTP-2087-9867, at 9869, lns 31-41 ("*Si nous nous levons comme un seul homme, sans prendre les armes, en faisant le sacrifice de nos vies (…) Je vous assure que les êtres humains sont plus forts que les armes*"); *see also* ICC-01/14-01/18-1942-Conf, ICC-01/14-01/18-1942-Conf-Anx1 (Defence submissions as to the lack of reliability and authenticity of documents CAR-OTP-2001-1341, CAR-OTP-2123-0437, CAR-OTP-2025-0563, CAR-OTP-2088-1574, CAR-OTP-2042-2217, CAR-OTP-2104-1137, CAR-OTP-2008-2036, CAR-OTP-2113-0664). On COCORA members including both Christians and Muslims, *see* CAR-OTP-2129-1677, at 1679. On the need for increased security based on the real threat and fear of the CAR population brought by the advancement of the Seleka rebellion towards BANGUI, *see* **P-2841**: T-029-CONF-ENG CT, p. 63, lns 15-19.

[1423] On the lack of involvement of Mr NGAÏSSONA in COCORA, *see* **P-2843**: T-074-CONF-ENG ET, p. 28, ln. 17 to p. 29, ln. 10; **P-0291**: T-051-CONF-ENG ET, p. 25 lns 10-1. On the lack of funding by Mr NGAÏSSONA, *see* **P-2232**: T-075-CONF-ENG CT, p. 16, ln. 12-13; **P-2926**: T-032-CONF-ENG CT3, p. 83, lns 13-19; **P-1847**: T-022-CONF-ENG CT, p. 48. On Mr NGAÏSSONA's prolonged absence from CAR during the time COCORA and COAC was active, *see* CAR-D30-0001-0036; CAR-D30-0001-0034; CAR-OTP-2098-0293; CAR-D30-0001-0039; **D30-4720**: T-280-CONF-ENG ET, p. 22, lns 8-10. On COCORA's general lack of resources of funding: **P-1847**: T-022-CONF-ENG CT, p. 48, lns 13-16; **P-2232:** T-075-CONF-ENG CT, p. 16, lns 6-16. On YAKÉTÉ being targeted by sanctions for his involvement in COCORA, and not Mr NGAÏSSONA *see* CAR-D30-0004-0001; CAR-OTP-2001-0984; CAR-D30-0004-0075); *see also* arrest warrant against Mr Ngaïssona dated 8 April 2014 for crimes allegedly committed between 2003 and 2014 which makes no mention of Mr Ngaïssona's involvement with COCORA or COAC: CAR-OTP-0080-0718; CAR-OTP-2101-3292, at 3294-3295.

[1424] On Mr NGAÏSSONA's lack of involvement in COCORA, *see* **P-2232**: T-075-CONF-ENG CT, p. 16, lns 6-16, p. 21, ln. 22 to p. 22, ln. 11; T-078-CONF-ENG CT, p. 19, lns 8-24. On the alleged arming of COCORA, **P-1847**: T-023-CONF-ENG CT, p. 6, lns 2 to p. 8, ln. 8 (P-1847 denied having any knowledge of machetes being distributed to COCORA or to COCORA being armed, despite the Prosecution's zealous insistence on this point during its examination-in-chief); CAR-OTP-2122-8251, paras 183-184; *see also* ICC-01/14-01/18-2026-Conf, para. 13; **P-0291**: T-051-CONF-ENG ET, p. 14, lns 3-4 (P-0291 testified that machetes allegedly diverted from the agricultural sector were "not used to commit any unlawful acts" and he does not implicate Mr NGAÏSSONA in their alleged distribution); ICC-01/14-01/18-1999-Conf, Anx2 (excerpt Facebook conversation CAR-OTP-2101-6840, in which [REDACTED] denies having distributed weapons to COCORA); any reference to CAR-OTP-2088-1574, at 1597 should be disregarded for lack of authenticity and reliability, *see* ICC-01/14-01/18-1942-Conf, para. 20; **D30-4720**: T-280-CONF-ENG CT, p. 22, lns 8-10.

claim that Mr NGAÏSSONA distributed machetes to COCORA was based on speculation,[1425] anonymous hearsay,[1426] and the CAR press, which has little to no probative value.[1427] Moreover, evidence shows that GBAYAS were wrongfully and "systematically suspected of belonging to COCORA and members of [COAC]", including Mr NGAÏSSONA.[1428]

416. Second, the Prosecution failed to demonstrate that Mr NGAÏSSONA participated in any way in COAC, a short-lived[1429] and little-known[1430] movement led by YAMBÉTÉ.[1431] The Prosecution unsuccessfully attempted to draw a link between Mr NGAÏSSONA and COAC by virtue of Mr NGAÏSSONA and YAMBÉTÉ's brief overlap within the Ministry of Youth.[1432] Contrary to the Prosecution's erroneous suggestion,[1433] YAMBÉTÉ was appointed by BOZIZÉ as a *chargé spécial de mission* months prior to Mr NGAÏSSONA's nomination as Minister.[1434]

[1425] **P-2625**: T-192-ENG CT, p. 20, lns 9-15, p. 21, lns 3-14 ("Now, since in my mind the COAC belonged to both Yambete and Ngaïssona, even if I am telling this Chamber that Gazikolguet had reported to me that an official or some officials of the COAC were distributing weapons in the 4th arrondissement, automatically, well, in any event, I didn't ask him to specify which official it was. I think he was referring to both Yambete and Ngaïssona").
[1426] **P-2625**: T-192-ENG CT, p. 20, ln. 9 to p. 21, ln. 14, p. 18, ln. 10 to p. 20, ln. 15; **P-0889**: T-109-CONF-ENG CT2, p. 13, lns 3-6 (P-0889 testified that everyone in CAR has a machete, thus rendering it nearly impossible to determine whether alleged COCORA machete-holders already possessed them or received them).
[1427] **P-2625**: T-192-ENG CT, p. 21, lns 9-10, p. 18, lns 7-12. On the lack of probative value of press articles, in particular the CAR press *see* **P-0808**: T-069-CONF-ENG ET, p. 76, ln. 19 to p. 77, ln. 1 ("PRESIDING JUDGE SCHMITT: […] So the newspaper article, as such, is perhaps -- has not such a high probative value, to put it this way. And the witness has clearly stated that he thinks this is biased. So we have really to move on from there. It doesn't make sense to -- to indulge in these kinds of documents further"); **P-0952**: T-250-ENG CT, p. 31, lns 15-22; **P-1193**: T-127-CONF-ENG ET, p. 28, lns 23-25; **P-1813**: T-182-ENG ET, p. 25, lns 3-11; **P-2926**: T-031-CONF-ENG CT, p. 22, ln. 23 to p. 23, ln. 4; **D30-4720**: T-281-CONF-ENG ET, p. 36, lns 18-22; *see also* CAR-OTP-2006-0671, at 0672.
[1428] On persons being targeted based on an erroneous association made between persons of GBAYA ethnicity, KNK and COCORA and COAC members, *see* **P-0876**: T-086-CONF-ENG-CT, p. 28, lns 1-7.
[1429] It appears that COAC was created around 6 January 2013 following a general assembly CAR-OTP-2000-0688, CAR-OTP-2107-6884, CAR-OTP-2122-2243, at 2245-2246.
[1430] **P-1521**: T-080-CONF-ENG ET, p. 44, lns 13-15; **P-0801**: T-033-ENG CT, p. 57, lns 22-24; **P-1847**: T-022-CONF-ENG CT, p. 46, lns 1-8.
[1431] CAR-OTP-2042-2137, CAR-OTP-2107-1481, at 1482 (YAMBÉTÉ explains the reasons for the creation of COAC and firmly denounces and condemns those persons who use the youth movements in order to commit racketeering. He explains that COAC's goal is to help the gendarmerie and police); *see also* CAR-OTP-2000-0686, CAR-OTP-2130-1290 (press communiqué by YAMBÉTÉ where he denounces the crimes committed by the Seleka and urges the government and the international community to support the ongoing peace process); *see also* CAR-OTP-2042-0262, CAR-OTP-2118-0003, CAR-OTP-2125-0466, at 0469 (in which YAMBÉTÉ reaffirms the use of peaceful means in the face of the Seleka threat); **D30-4720**: T-280-CONF-ENG ET, p. 22, lns 8-10.
[1432] **P-1847**: T-023-CONF-ENG CT, p. 12, lns 2-13; **P-2926**: T-031-CONF-ENG CT, p. 41, lns 20-25 (P-2926 did not know anything further on this alleged relationship between the Ministry of Youth and COCORA and COAC).
[1433] **P-0884**: T-054-CONF-ENG ET, p. 38, lns 12-16 (referring to CAR-OTP-2113-0664, a press article which misleadingly states that Mr NGAÏSSONA "recruited" YAMBÉTÉ in the Ministry); *see also* **P-2625**: T-192-ENG CT, p. 23, ln. 21 to p. 25, ln. 19 and p. 26, lns 1-20 (showing P-2625's bias against Mr NGAÏSSONA).
[1434] CAR-D30-0007-0728; CAR-OTP-2004-1530; **P-0884**: T-054-CONF-ENG ET, p. 38, lns 7-11; **D30-4720**: T-280-CONF-ENG CT, p. 20, lns 6-10 ("Q. We had a witness here last year who said that it was public knowledge that Mr Ngaïssona had become minister in February 2013 following his collaboration with Steve Yambete and the COAC. Have you heard this before? A. No, I've never heard this. Never."); **P-2232**: T-078-CONF-ENG CT, p. 17, lns 18-24.

In this role, YAMBÉTÉ did not report to Mr NGAÏSSONA. Rather, he bypassed the administrative hierarchy and reported directly to BOZIZÉ, as a Lieutenant.[1435] There is no evidence that Mr NGAÏSSONA instructed YAMBÉTÉ, described by one witness as an "opportunist",[1436] to address the population on his behalf during his 22 March 2013 radio address, while this is contradicted by more probative credible evidence.[1437] In any event, YAMBÉTÉ's 22 March 2013 radio address was a call for appeasement and not violence.[1438]

417. Third, the Prosecution has not established the existence of so-called "youth coordinators" in the KNK. P-2232 testified that although there were youth groups in the provincial towns who organised artistic, football and cultural activities, he never heard of those youth groups being mobilised "to create disturbances", let alone join the Anti-Balaka.[1439] Evidence shows that the Conseil National de la Jeunesse ('CNJ') is an apolitical institution, composed of Christians and Muslims alike, with no ties to COCORA, COAC or to the Anti-Balaka.[1440] According to the evidence, there is no continuity between COCORA, COAC and the Anti-Balaka.[1441]

4. Mr NGAÏSSONA never expressed anti-Muslim sentiment or sow division within the CAR population

418. The Prosecution failed to show the existence of an "anti-Muslim" rhetoric expressed or endorsed by Mr NGAÏSSONA, or members of the so-called inner circle, starting as early as December 2012. As shown below, the Prosecution misrepresents Mr NGAÏSSONA's public speeches in order to fit its narrative.[1442]

419. Mr NGAÏSSONA's words speak for themselves. A plain reading of Mr NGAÏSSONA's public addresses reveals a consistent message for peace and unity.[1443] They are inclusive towards all

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[1435] **P-1847**: T-023-CONF-ENG CT, p. 12, ln. 13 to p. 13, ln. 18.
[1436] **D30-4720**: T-280-CONF-ENG ET, p. 20, ln. 11 to p. 21, ln. 10; *see also* **D30-4914**: CAR-D30-0024-0001-R01, at 0009, lns 314-335.
[1437] **P-1847**: T-023-CONF-ENG CT, p. 12, lns 2-13. On Mr NGAÏSSONA's medical treatment in the Lobaye, **P-0808**: T-070-CONF-ENG CT2, p. 42, lns 10-12. *See also* **P-2232**: T-075-CONF-ENG CT, p. 23, lns 6-12.
[1438] CAR-OTP-2042-1783, CAR-OTP-2107-1475, lns 9-16 ("*Au moment où je te parle, sois sereine. Ton pays n'est pas inquiété […] reste tranquille là où tu es*"); ICC-01/14-01/18-1942-Conf, para. 18.
[1439] **P-2232**: T-075-CONF-ENG CT, p. 10, lns 6-16 (P-2232 did not confirm that such groups were necessarily affiliated to the KNK. He states that generally "in Africa", "most youth associations support the party in power"); *see also* **P-0808**: CAR-OTP-2093-0010-R01, paras 17-18 (P-0808 did not know whether youth leaders helped mobilise the youth to join the Anti-Balaka).
[1440] **P-0889**: T-108-CONF-ENG CT2, p. 62, ln. 25 to p. 63, ln. 19, p. 64, ln. 22; **P-0808**: CAR-OTP-2093-0010-R01, at 0013, para. 17; *see also* **D30-4720**: T-279-CONF-ENG ET, p. 13, lns 17-20.
[1441] **P-0889**: T-108-CONF-ENG CT2, p. 64, lns 6-22; **P-1847:** T-022-CONF-ENG CT, p. 45, lns 21-25.
[1442] PTB, paras 61-62, 219.
[1443] *See e.g.* CAR-OTP-2042-2144, CAR-OTP-2107-1483, lns 10-12, lns 14-17 ("*Cela appelle tous les Centrafricains, parce que quelle que soit ton origine, quel que soit là où tu es, tu dois dire que le pays, la*

political parties,[1444] faiths and ethnicities,[1445] sex,[1446] or age groups.[1447] In a 6 January 2013 speech, Mr NGAÏSSONA invited the population to a peaceful march to support the official delegation participating in the internationally-mediated LIBREVILLE peace talks.[1448] In his public addresses of 6 and 11 January, Mr NGAÏSSONA categorically rejected violence and war, while promoting dialogue and inclusivity.[1449] Mr NGAÏSSONA's call for all political parties to join forces during an unprecedented time of crisis, by standing behind the democratically elected President BOZIZÉ and CAR's official institutions,[1450] and by inviting the BOZIZÉ government to work towards the construction of a better future for CAR,[1451] can hardly be interpreted as suggesting anti-Muslim animus on Mr NGAÏSSONA's part. In his 13 March address in MARKOUNDA near the Chadian border, Mr NGAÏSSONA reiterated his calls for peace and tolerance.[1452] The Prosecution also misrepresents Mr NGAÏSSONA's 15

RÉPUBLIQUE CENTRAFRICAINE, c'est ton pays, le peuple centrafricain est un et indivisible"); CAR-OTP-2042-0976, CAR-OTP-2107-1473, lns 12-18.

[1444] CAR-OTP-2042-0976, CAR-OTP-2107-1473, lns 12-15 ("*on doit soutenir le dialogue inclusif, on ne doit pas se déchirer, et dire non à la guerre civile, oui au dialogue, oui à la réconciliation nationale, et que on interpelle également les opposants. Que tu sois RDC, MLPC, UFDR ... la patrie nous interpelle tous*").

[1445] CAR-OTP-2042-0976, CAR-OTP-2107-1473, lns 4-10 ("*Ça interpelle tous les Centrafricains, de l'Est à l'Ouest, du Nord au Sud*"; *"Je suis venu à la radio et à la télévision lancer un appel à tous les peuples centrafricains, que ça soit jeunes, vieilles, vieux, la patrie nous interpelle tous*").

[1446] CAR-OTP-2042-0976, CAR-OTP-2107-1473, lns 17-18 ("*pour cette grande marche qui va mobiliser tous les Centrafricains de (sic) deux sexes*").

[1447] CAR-OTP-2042-2132, CAR-OTP-2127-7401, lns 103-106 ("*Je veux inviter les papas, les mamans, les jeunes gens, à se lever comme une seule personne*"); CAR-OTP-2042-0976, CAR-OTP-2107-1473, lns 4-6.

[1448] CAR-OTP-2042-2132, CAR-OTP-2127-7401, lns 103-106. On the peaceful nature of the march, *see also* CAR-OTP-2042-2144, CAR-OTP-2107-1483, in particular lns 4-6, 11-15 ("*après la grande marche d'hier organisée par l'honorable député de NANA-BAKASSA, Patrice Édouard NGAÏSSONA, à travers la capitale BANGUI, dans le seul but de ramener la paix, rien que la paix en CENTRAFRIQUE […] hier, le peuple centrafricain s'est levé comme un seul homme pour dire : non, non, non à la guerre civile, non au bain de sang*").

[1449] CAR-OTP-2042-2132, CAR-OTP-2127-7401, at 7406, lns 117-119 ("*Ce que nous voulons: nous sommes d'accord pour le dialogue, mais nous disons un non catégorique à la guerre civile, nous acceptons que cette discussion entre les Centrafricains ait lieu à LIBREVILLE*."); CAR-OTP-2042-2144, CAR-OTP-2107-1483, lns 14-17; *see also* ICC-01/14-01/18-1942-Conf, para. 17.

[1450] CAR-OTP-2042-2144, CAR-OTP-2107-1483, at 1484, lns 13-17 ("*Aujourd'hui, l'on barre [phon.] la route aux malfaiteurs de ce pays-là, raison pour laquelle, hier, le peuple centrafricain s'est levé comme un seul homme pour dire: « Non, non, non à la guerre civile, non au bain de sang ». Je remercie ce peuple-là qui a su répondre massivement pour soutenir le président de la République, soutenir le ... l'action du gouvernement et soutenir les institutions de la République, apporter leur soutien moral aux forces armées centrafricaines*"); CAR-OTP-2042-0976, CAR-OTP-2107-1473, at 1474, lns 12-19 ("*on doit soutenir le dialogue inclusif, on ne doit pas se déchirer, et dire non à la guerre civile, oui au dialogue, oui à la réconciliation nationale, et que on interpelle également les opposants. Que tu sois RDC, MLPC, UFDR ... la patrie nous interpelle tous*").

[1451] CAR-OTP-2000-0658, CAR-OTP-2006-0661, at 0655 lns 175-178.

[1452] CAR-OTP-2098-0131, at 0134 ("*Nous devons être optimistes, même si les démons de la guerre et de la division continuent encore de hanter certains de nos compatriotes. Nous devons être convaincus que le Dieu suprême est un Dieu de paix, et Il veut la paix tous les hommes qu'il a créés à son image et à sa ressemblance. […] Vous devez donc saisir cette occasion pour promouvoir une culture de paix, de tolérance, de travail, de progrès et de développement*").

March 2013 address in which he referred to the "*patrie en danger*".[1453] In addition, the Prosecution has not established that Mr NGAÏSSONA actually endorsed Javon ZAMA PAPA's address of 4 January 2013.[1454] In any event, Javon ZAMA PAPA's address, in which he condemns the Seleka's destructions in CAR, distinguishes between "certain people who want to use Islam to destroy the country" – which contextually can be understood as a reference to the foreign armed presence in CAR – and the Muslims of CAR, whom he says have been praying alongside Christians for peace.[1455] With respect to the rally held at PK0 on 27 December 2012, Mr NGAÏSSONA was not present, nor was he in any way associated with the event.[1456]

420. There is also no evidence that Mr NGAÏSSONA mobilised the youth for any purpose other than a peaceful demonstration in January 2013, or that there is any link between this demonstration and the 5 December 2013 attack on BANGUI.[1457]

5. Mr NGAÏSSONA did not participate in meetings with BOZIZÉ in Cameroon

421. There is no credible evidence that as part of BOZIZÉ's so-called inner circle, Mr NGAÏSSONA participated in meetings in Cameroon to conceive and implement a strategy to forcibly remove the Seleka regime and reinstall BOZIZÉ through military means.

422. First, the evidence in relation thereto rests mainly on POUSSOU and KOKATÉ, whom are themselves close relatives since childhood, have been in regular contact during the events,[1458] and whose credibility has been at issue from the beginning of the proceedings, notably for their collusion in the *Bemba et al.* case.[1459]

[1453] PTB, para. 62, the Prosecution wrongly states that: "[...] on 15 March 2013, NGAÏSSONA publicly reaffirmed the youth's allegiance to BOZIZE and commitment to *his defence*" (emphasis added); CAR-OTP-2000-0658, CAR-OTP-2006-0739, lns 171-173 ("*C'est pourquoi elle n'a jamais ménagé ses efforts pour se mobiliser lorsqu'il s'agit de défendre la patrie en danger*" (emphasis added)).
[1454] ICC-01/14-01/18-382-Conf-Corr, para. 45.
[1455] CAR-OTP-2000-0680, CAR-OTP-2087-9863, at 9865, lns 12-21: "*Certaines personnes veulent utiliser l'islamisme pour détruire le pays, pour saccager toutes les bonnes initiatives prises par le gouvernement pour le bien-être de nos concitoyens, […] rappelez-vous que les musulmans se sont rassemblés pour prier pour la paix dans notre pays; rappelez-vous que les pasteurs et les femmes ont supplié Dieu avec des prières, les larmes aux yeux. Voilà maintenant Dieu a exaucé leurs prières; c'est pourquoi la crise qui frappe notre pays a cessé un peu*" (emphasis added); *see also* ICC-01/14-01/18-382-Conf-Corr, paras 56-60.
[1456] CAR-D30-0001-0034, at 0035; CAR-D30-0001-0036; CAR-D30-0001-0039; CAR-OTP-2098-0293 at 0303 (showing Mr NGAÏSSONA was travelling that day); POUSSOU's – who was not present at the rally – credibility was discredited on this point, **P-2625**: T-192-ENG CT, p. 7 lns 2-14, p. 11, ln. 12 to p. 15, ln. 25; *See above* III.A.2.The Prosecution failed to prove an early development of an organizational policy, para 149.
[1457] *See* ICC-01/14-01/18-382-Conf-Corr, paras 62-70.
[1458] **P-2625**: T-192-ENG CT, p. 49, ln. 15 to p. 50, ln. 2.
[1459] **P-2625**: T-192-ENG CT, pp. 50-51; *See above* II.B.3.3. POUSSOU (P-2625) and II.B.3.4. KOKATÉ (P-0801).

423. Second, the testimonies of POUSSOU and KOKATÉ are not mutually corroborative regarding the number and locations of these alleged meetings, the identity of the attendees, and the subject-matter of these meetings. POUSSOU claims that Mr NGAÏSSONA participated in three meetings: (i) two at the Hilton hotel with BOZIZÉ and (ii) one at the *Hôtel des Députés* without BOZIZÉ.[1460] In contrast, KOKATÉ claims that there were three to four meetings involving Mr NGAÏSSONA: (i) one at the Hilton hotel, (ii) one or two at the CAR embassy and (iii) one at Mr NGAÏSSONA's alleged villa in YAOUNDÉ.[1461]

424. Third, even if Mr NGAÏSSONA attended any of these alleged meetings, this does not prove that he was part of BOZIZÉ's so-called inner circle or even close to him. For example, POUSSOU, who alleges he attended meetings, has consistently indicated that he was not close to the former President,[1462] nor to the other alleged attendees.[1463] Likewise, KOKATÉ admitted that he did not have a good relationship with BOZIZÉ.[1464] Given this long-standing opposition to his regime, it is highly unlikely that BOZIZÉ would have called KOKATÉ to a meeting in Cameroon.[1465]

425. Fourth, there is no credible evidence that Mr NGAÏSSONA's alleged attendance at any of these alleged meetings contributed to the structuring of the Anti-Balaka movement or the planning of BOZIZÉ's return to power, in a way that assisted with the commission of crimes allegedly committed by Mr YEKATOM's group and BOSSANGOA Anti-Balaka leaders. As detailed above,[1466] POUSSOU's evidence is not only uncorroborated and contradicted, but also unconvincing regarding the timeframe the Anti-Balaka would have been created/become a fighting force and in any event, insufficient to establish that Mr NGAÏSSONA contributed to the charged crimes in these alleged meetings.

426. Mr NGAÏSSONA is not being charged as a co-perpetrator but as an accessory.[1467] For accessory liability to be established, it is not sufficient to merely contribute to the common plan. There

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[1460] **P-2625**: T-189-CONF-ENG CT, p. 3, ln. 10 to p. 4, ln. 25.
[1461] **P-0801**: T-034-ENG CT, p. 17, lns 18-24, p. 27, ln. 6 to p. 30, ln. 7; T-038-CONF-ENG CT, p. 23, lns 13-19, p. 29, lns 1-22.
[1462] **P-2625**: T-192-ENG CT, p. 26, lns 17-18 ("May I repeat that I am not close to Yambété and even less close to Mr Bozizé"), p. 27, lns 4-5 ("I'm not one of the people in the inner circle of Mr Ngaïssona").
[1463] **P-2625**: T-192-ENG ET, p. 27, lns 7-10 ("Q. Did you hear or see that Mr Ngaïssona was living at that time with an individual with the name of Bernard Mokom? A. Counsel, I have absolutely no idea. These are not people with whom I'm close.").
[1464] In fact, P-0801 opposed the BOZIZÉ government from 2005-2012, *see* **P-0801**: T-033-ENG CT, p. 27, ln. 20 to p. 29, ln. 18, p. 74, lns 17-20; T-038-CONF-ENG CT, p. 45, ln. 21.
[1465] *See below* sections VI.A.5.1 to VI.A.5.4. on the alleged meetings involving KOKATÉ.
[1466] *See above* III.B.2.2.1. The so-called "Cameroon group".
[1467] CoC Decision, paras 103, 104.

must be evidence demonstrating an actual link between the accessory's conduct and the commission of the crime. Therefore, alleged attendance to meetings is insufficient to trigger Mr NGAÏSSONA's criminal responsibility, which can only be established based on assistance to specific crimes.[1468] For the same reasons, the Prosecution's use of the term "inner circle" to infer Mr NGAÏSSONA's proximity to BOZIZÉ is misplaced.

5.1. Alleged meetings at the Hilton Hotel

427. KOKATÉ is inconsistent on whether Mr NGAÏSSONA attended meetings at the Hilton with former President BOZIZÉ. Initially, KOKATÉ asserted that he was received by BOZIZÉ in his hotel suite without mentioning the presence of other individuals, implying he was alone.[1469] KOKATÉ also stated that after the meeting, he saw Mr NGAÏSSONA and many others at the hotel bar on the ground floor.[1470] He clarified that only a few days later, a meeting was held at the CAR embassy in YAOUNDÉ with different individuals, including Mr NGAÏSSONA.[1471] Later in his testimony, despite not recalling specific details,[1472] KOKATÉ changed course and stated that some individuals he named as being in the hotel lobby *could* have been at the meeting.[1473] When confronted with his contradictions, KOKATÉ provided unclear explanations, yet he consistently affirmed having seen Mr NGAÏSSONA *in the lobby*.[1474]

428. POUSSOU contends that both Mr NGAÏSSONA and KOKATÉ were present at *two* meetings at the Hilton.[1475] In contrast, P-1847, who was not at these alleged meetings, claims that two meetings took place at the Hilton hotel with BOZIZÉ[1476] one of which included KOKATÉ, but does not include Mr NGAÏSSONA or POUSSOU as participants in either meeting. Casting further doubt on these allegations, KOKATÉ is unsure whether Mr NGAÏSSONA was in fact present in the meeting he attended.[1477]

5.2. Alleged meeting at Hôtel des Députés

[1468] Bemba et al. TJ, paras 874-876; Tadić AJ, para. 229.
[1469] This is corroborated by D30-4679 who saw P-0801 enter the presidential suite alone. *See* **D30-4679**: T-299-CONF-ENG CT, p. 43, lns 13-20.
[1470] **P-0801**: T-034-ENG CT, p. 5, lns 7-17, p. 6, ln. 9 to p. 7, ln. 7; T-037-CONF-ENG CT, p. 69, ln. 23 to p. 70, ln. 2, p. 72, lns 14-20.
[1471] **P-0801**: T-033-ENG CT, p. 67, lns 17-20, p. 72, ln. 16 to p. 73, ln. 13; T-034-ENG CT, p. 5, ln. 7 to p. 6, ln. 20.
[1472] **P-0801**: T-034-ENG CT, p. 7, lns 12-13.
[1473] **P-0801**: T-034-ENG CT, p. 6, ln. 14 to p. 7, ln. 13.
[1474] **P-0801**: T-037-CONF-ENG CT, p. 69, ln. 13 to p. 70, ln. 19, p. 72, lns 14-21.
[1475] **P-2625**: T-189-CONF-ENG CT, p. 3, ln. 24 to p. 4, ln. 22, p. 11, ln. 23 to p. 12, ln. 10.
[1476] **P-1847**: T-023-CONF-ENG CT, p. 16, ln. 24 to p. 17, ln. 15, p. 37, lns 21-23; CAR-OTP-2061-1534-R01, at 1540, para. 34.
[1477] **P-0801**: T-034-ENG CT, p. 7, lns 12-13.

429. POUSSOU is the sole witness claiming that a meeting occurred at *Hôtel des Députés* with Mr NGAÏSSONA in attendance. KOKATÉ, also purportedly present according to POUSSOU,[1478] does not validate this event. Furthermore, documentation from *Hôtel des Députés* refutes that POUSSOU stayed at the hotel in the relevant period.[1479] POUSSOU's assertion that Mr NGAÏSSONA reiterated his ability to mobilise people for combat during this second meeting at *Hôtel des Députés* is not corroborated by any other evidence on record.[1480] POUSSOU could not explain the reason why this alleged meeting was not discussed when he met the Prosecution investigations in 2019, but only conveniently resurfaced during his in-court testimony.[1481]

5.3. Alleged meeting(s) at the CAR embassy in YAOUNDÉ

430. There is no credible evidence that Mr NGAÏSSONA participated in meetings at the CAR embassy in YAOUNDÉ alongside, among others, BOZIZÉ, OGUÉRÉ and POUSSOU. KOKATÉ is the only witness supporting such a claim. Moreover, his account of events does not align with other evidence in this case. First, while KOKATÉ confirms POUSSOU's attendance at a meeting at the CAR embassy,[1482] POUSSOU does not mention this meeting among those he participated in. Second, KOKATÉ explained that during this meeting at the CAR embassy, which allegedly took place in April/May 2013,[1483] BOZIZÉ received a phone call informing him that his mother's grave had been desecrated.[1484] However, evidence shows that the body of BOZIZÉ's mother was exhumed in August 2013,[1485] *i.e.* months after BOZIZÉ and OGUÉRÉ had left Cameroon.[1486]

431. Finally, the blog article from *Centrafrique-Presse* alleging that a meeting took place with Mr NGAÏSSONA at the embassy on 11 May 2013, has no probative value.[1487] D30-4848 also [REDACTED],[1488] and [REDACTED].[1489]

5.4. Alleged meeting at Mr NGAÏSSONA's alleged villa in YAOUNDÉ

[1478] **P-2625**: T-189-CONF-ENG CT, p. 8, lns 3-13.
[1479] CAR-D30-0003-0211.
[1480] **P-2625**: T-189-CONF-ENG CT, p. 10, lns 20-22.
[1481] **P-2625**: T-192-CONF-ENG CT, p. 44, lns 10-17.
[1482] **P-0801**: T-034-ENG CT, p. 19, lns 8-11.
[1483] **P-0801**: T-034-ENG CT, p. 18, lns 18-24; T-038-CONF-ENG CT, p. 23, lns 13-21.
[1484] **P-0801**: T-034-ENG CT, p. 20, ln. 16 to p. 21, ln. 14.
[1485] CAR-OTP-2102-5471, at 5492; CAR-OTP-2102-6098, at 6102.
[1486] **D30-4679**: T-299-CONF-ENG CT, p. 55, ln. 16 to p. 56, ln. 24. *See also* **P-0801**: T-038-CONF-ENG ET, p. 29, lns 1-7; CAR-D30-0006-0004.
[1487] *See* ICC-01/14-01/18-1942-Conf-Anx1, item #105.
[1488] **D30-4848**: T-296-CONF-ENG CT, p. 55, ln. 12 to p. 56, ln. 16.
[1489] **D30-4848**: T-296-CONF-ENG CT, p. 52, ln. 6 to p. 54, ln. 7. *See also* CAR-D30-0003-0029.

432. Following the purported meeting(s) at the CAR embassy, KOKATÉ claims that a third or fourth meeting occurred at Mr NGAÏSSONA's residence in YAOUNDÉ, with BOZIZÉ in attendance. KOKATÉ contends that the meeting was relocated to Mr NGAÏSSONA's house because it could no longer be held at the CAR embassy after the ambassador was dismissed.[1490] However, KOKATÉ is unable to specify the exact time and location of this meeting[1491] and gives vague descriptions of the attendees.[1492] More critically, KOKATÉ denies that any specific tasks, instructions or directions were issued during the alleged meeting,[1493] implying that this meeting, assuming it ever took place, was inconsequential.

5.5. Alleged meetings at the Golf residence

433. The Prosecution also failed to show that Mr NGAÏSSONA participated in meetings at the Golf residence in the presence of BOZIZÉ. The hearsay evidence of P-1847's prior statement, which is uncorroborated, should not reasonably be relied upon.[1494] First, P-1847 asserted the meeting took place in July 2013, when BOZIZÉ had already departed Cameroon. Second, P-1847's contention that he was in the backyard of the residence during the meeting and that YAKÉTÉ reported back to him immediately after it ended[1495] is contradicted by OUEBIO, who was spending his entire time in the backyard at the time of BOZIZÉ's stay at the residence[1496] and did not see P-1847[1497] or YAKÉTÉ there.[1498] Third, OUEBIO never saw or heard of any meetings involving the individuals mentioned by P-1847 in his statement.[1499] Fourth, P-1847 claimed that Vincent WAPOUNABA ('WAPOUNABA') participated in the meeting[1500] which again, is inconsistent with OUEBIO's testimony that WAPOUNABA never participated in meetings and was always with him and the other employees in the backyard when BOZIZÉ

[1490] **P-0801**: T-038-CONF-ENG CT, p. 29, lns 16-19.
[1491] **P-0801**: T-034-ENG CT, p. 27, ln. 15 to p. 28, ln. 1.
[1492] **P-0801**: T-034-ENG CT, p. 28, lns 8-9 ("President Bozizé was there, Ngaissona was there, I was there, and there were people there too.").
[1493] **P-0801**: T-034-ENG CT, p. 29, lns 15-20. *See also* p. 28, lns 2-13 (where P-0801 provides minimal details, mentioning only a follow-up on diplomatic measures with various heads of state and discussions about the situation of CAR and incidents in BOZIZÉ's village).
[1494] **P-1847**: CAR-OTP-2061-1534, at 1546-1547, paras 84-85. ICC-01/14-01/18-2501-Red, para. 103 (referring to ICC-01/14-01/18-2126-Red, para. 104: "in the context of its deliberations on the judgment pursuant to Article 74 of the Statute, the Chamber will weigh the probative value and reliability of the Prior Recorded Testimony, considering […] whether the evidence contained in the Prior Recorded Testimony is corroborated by any other evidence submitted before the Chamber"); *see above* II.B. 3.5. P-1847.
[1495] *Ibid.*
[1496] **D30-4679**: T-301-ENG CT, p. 12, ln. 23 to p. 13, ln. 9.
[1497] **D30-4679**: [REDACTED].
[1498] **D30-4679**: T-299-CONF-ENG CT, p. 53, lns 6-8. D30-4679 stated that Levy YAKÉTÉ is a family relation, *see* p. 44, lns 10-15.
[1499] **D30-4679**: T-299-CONF-ENG CT, p. 49, lns 8-22, p. 67, lns 14-18.
[1500] **P-1847**: T-023-CONF-ENG CT, p. 28, lns 2-8.

had visitors.[1501] Finally, P-1847 changed his version during testimony, claiming that Mr NGAÏSSONA only participated in meetings at the Golf residence after BOZIZÉ left.[1502] He specified that "the team [BOZIZÉ] came with, those who remained with him" were there too,[1503] suggesting he saw OUEBIO, which is challenged by the latter as detailed above.

434. Even if the Chamber was to attribute any evidentiary weight to P-1847's prior statement, it does not assist in demonstrating that Mr NGAÏSSONA was assigned any strategic role, contrary to Bernard MOKOM, who was allegedly designated to contact the Anti-Balaka inside the country and KOKATÉ, purportedly designated to deal with the diplomatic aspects.[1504]

B. The Prosecution failed to prove that Mr NGAÏSSONA took steps to structure the Anti-Balaka and FACA pre-January 2014

1. Mr NGAÏSSONA did not assist the Anti-Balaka and FACA through FROCCA

435. There is no credible evidence that Mr NGAÏSSONA took steps to structure the Anti-Balaka and FACA pursuant to FROCCA's alleged *Plan Stratégique*.

436. First, the Prosecution failed to demonstrate that Mr NGAÏSSONA played any role in the creation of FROCCA.[1505] The mere presence of Mr NGAÏSSONA during the first FROCCA meeting is not probative of his role as a creator of the group. Attendees to the first meeting, including Mr NGAÏSSONA, were not informed of the agenda ahead of the meeting.[1506] The mention of Mr NGAÏSSONA as *Responsable des affaires intérieures et des associations*[1507] is equally not probative of his active involvement.[1508] [REDACTED][1509] [REDACTED].[1510] POUSSOU asserted that he was unaware of this alleged role despite being present at the first

[1501] **D30-4679**: T-299-CONF-ENG CT, p. 51, lns 5-11.
[1502] **P-1847**: T-023-CONF-ENG CT, p. 21, ln. 15 to p. 22, ln. 3, p. 28, lns 2-16.
[1503] **P-1847**: T-023-CONF-ENG CT, p. 24, lns 6-11.
[1504] **P-1847**: CAR-OTP-2061-1534, at 1547, para. 85. *Compare with* **P-1847**: T-023-CONF-ENG CT, p. 23, lns 19-23: "Kokaté was supposed to contact former soldiers and the officers at the border who were on the other side of the Central African Republic and to organise them".
[1505] *See* ICC-01/14-01/18-1942-Conf, paras 23-24.
[1506] *See above* III.B.2.2.2. FROCCA.
[1507] CAR-OTP-2124-0852, at 0859; CAR-OTP-2124-0002-R03, at 0003.
[1508] *See* ICC-01/14-01/18-1942-Conf, para. 24.
[1509] **D30-4720:** T-281-CONF-ENG ET, p. 24, ln. 19 to p. 25, ln. 5.
[1510] **D30-4720:** T-280-CONF-ENG CT, p. 74, ln. 21 to p. 75, ln. 3.

meeting.[1511] [REDACTED].[1512] Finally, the evidence does not establish that Mr NGAÏSSONA supported the return of BOZIZÉ to power during these meetings.[1513]

437. Second, there is no evidence that Mr NGAÏSSONA endorsed BANOUKEPA's press releases. POUSSOU's claim that Mr NGAÏSSONA read the first press release during the first meeting[1514] [REDACTED].[1515] While POUSSOU testified that BANOUKEPA was distributing his drafts to FROCCA members prior to publication, the Prosecution failed to provide any confirmation from Mr NGAÏSSONA, or anyone, confirming receipt thereof. POUSSOU's reliance on the silence of meeting participants to presume consent[1516] is merely his personal interpretation. In addition, despite POUSSOU's evident bias, he admitted that Mr NGAÏSSONA never openly supported BANOUKEPA's press releases.[1517]

438. Third, of all the witnesses who testified about FROCCA, only POUSSOU alleged links between Mr NGAÏSSONA, FROCCA and activities in the field.[1518] Yet, POUSSOU was unable to confirm that Mr NGAÏSSONA was structuring the Anti-Balaka,[1519] and [REDACTED].[1520]

439. Furthermore, Mr NGAÏSSONA's email exchanges with [REDACTED], NGAYA or [REDACTED] are not indicative of any action by Mr NGAÏSSONA to further a so-called military *Plan Stratégique*. At best, the evidence shows that Mr NGAÏSSONA was supportive of civil disobedience actions such as demonstrations, "tapage médiatique", or leaflet preparations.[1521] No armed actions were ever considered. In any event, Mr NGAÏSSONA did not respond to the 17 November 2013 email from [REDACTED], complaining about Mr

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[1511] **P-2625:** T-192-ENG CT, p. 72, ln. 25 to p. 73, ln. 5.
[1512] **D30-4720:** T-280-CONF-ENG-CT p. 81, lns 7-23, p. 83, lns 16-23, p. 84, lns 11-13; T-281-CONF-ENG ET, p. 10 lns 18-19, p. 14, lns 8-9.
[1513] CAR-OTP-2076-0815, from [00:09:30] to [00:10:33], CAR-D29-0006-0721, at 0726, lns 10-28; on Mr NGAÏSSONA not being a pro-BOZIZÉ, *see below* para. 441. *See also* CAR-OTP-2001-2769, at 2830; **P-0884:** T-058-CONF-ENG CT, p. 80, lns 14-16.
[1514] **P-2625:** T-193-CONF-ENG CT2, p. 24, lns 14-18.
[1515] **D30-4720:** T-280-CONF-ENG CT, p. 78, lns 15-17; T-281-CONF-ENG ET, p. 5, lns 10-16 ; T-282-CONF-ENG ET, p. 24, lns 24-25 (commenting on CAR-OTP-2001-4048).
[1516] **P-2625:** T-193-CONF-ENG CT2, p. 26, lns 2-19.
[1517] **P-2625:** T-193-CONF-ENG CT2, p. 24, lns 1-9.
[1518] *See e.g.* **P-1847:** T-023-CONF-FRA ET, p. 55, lns 9-13 (English version incomplete, T-023-CONF-ENG CT, p. 54, lns 5-9) (« *En ce qui concerne le point qui consiste à procurer « tous les moyens humains, matériels et financiers pour l'atteinte de ces objectifs », est-ce que M. Ngaïssona était impliqué dans des actions se rapportant à toutes... tous ces moyens, lorsqu'il était à Douala ou lorsqu'il était à Yaoundé ou à Bangui ? R. Bon, j'ai pas... j'ai pas été informé de ça.* »).
[1519] **P-2625:** T-189-CONF-ENG CT, p. 35, ln. 25 to p. 36, ln. 4.
[1520] **D30-4720:** T-280-CONF-ENG CT p. 74, ln. 21 to p. 75, ln. 3.
[1521] CAR-OTP-2130-3490 (and its attachment CAR-OTP-2130-3406).

NGAÏSSONA's prolonged silence,[1522] further supporting Mr NGAÏSSONA's lack of contribution.

440. Equally, Mr NGAÏSSONA's email exchanges with NGAYA do not prove Mr NGAÏSSONA's coordination with association leaders on behalf of FROCCA.[1523] NGAYA became involved in pacific resistance against the Seleka long before the creation of FROCCA.[1524] He was not part of FROCCA, and was only sharing FROCCA's objectives, namely, the return of constitutional order.[1525] NGAYA clarified that when he heard about the creation of FROCCA, he reached out to Mr NGAÏSSONA in the hope that something would be done to trigger a military operation from the international community.[1526] NGAYA merely contacted Mr NGAÏSSONA to share a leaflet he drafted and wanted to spread in BANGUI.[1527]

441. Also, Facebook evidence, even taken at its highest, cannot prove that Mr NGAÏSSONA coordinated FROCCA actions in BANGUI through his contacts. The only evidence referring to such actions is speculative and based on hearsay.[1528] Following Mr NGAÏSSONA's return to CAR in January 2014, he did not support BOZIZÉ's return to power, as stated on RFI.[1529] The return to constitutional order was no longer a topic of debate, as confirmed by several witnesses who worked closely with him,[1530] ultimately leading MOKOM to create his own movement.[1531]

2. Mr NGAÏSSONA did not assist the Anti-Balaka and FACA located at the border with Cameroon

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[1522] CAR-OTP-2124-0935.
[1523] ICC-01/14-01/18-1546-Conf, paras 35-39.
[1524] CAR-OTP-2130-3288.
[1525] **P-0808:** T-069-CONF-ENG CT, p. 20, ln. 23 to p. 21, ln. 7; CAR-OTP-2130-3298.
[1526] **P-0808:** T-069-CONF-ENG CT, p. 13, ln. 16 to p. 15, ln. 8. No further discussions were had with Mr NGAÏSSONA about these military operations, **P-0808:** T-069-CONF-ENG CT, p. 15, lns 15-23 (commenting on CAR-OTP-2130-3297).
[1527] CAR-OTP-2124-0788; CAR-OTP-2124-0789; CAR-OTP-2124-0823; CAR-OTP-2124-0842; CAR-OTP-2124-0844; CAR-OTP-2130-3301; CAR-OTP-2130-3305; CAR-OTP-2130-3306.
[1528] CAR-OTP-2101-8599, at 8641-8642, and in particular at 8641, [10:52:44] ("*Apparemment c'est venu du vieux lui-même par le biais de Ngaïssona*"), while there is no further evidence of instruction provided by Mr NGAÏSSONA for an action on 18 August 2013. *See also* CAR-OTP-2101-9735, at 9773-9774, specifically at 9774 [19:03:16]: [REDACTED] simply relays the information to [REDACTED] while using the conditional form.
[1529] CAR-OTP-2076-0815, from [00:09:30] to [00:10:33], CAR-D29-0006-0721, at 0726, lns 10-28; CAR-OTP-2001-4818, at 4819; CAR-OTP-2001-2769, at 2830.
[1530] **P-0888:** T-123-ENG CT2, p. 9, lns 11-15; **P-0889:** T-109-CONF-ENG CT, p. 43, lns 14-21 and p. 64, lns 19-24 ; T-110-CONF-ENG ET, p. 75, lns 4-8; **P-0952:** T-251-ENG CT, p. 114, lns 20-23; **P-0966:** T-118-CONF-ENG CT, p. 37, lns 3-19; **P-1193:** T-125-CONF-ENG CT2, p. 53, lns 21-23; **P-0446:** T-097-CONF-ENG-CT, p. 74, lns 17-22.
[1531] **P-0889:** CAR-OTP-2034-0463-R02, at 0473, para. 54, at 0475, para. 65; **P-2269:** CAR-OTP-2111-0336-R01, at 0351-0352, para. 119.

442. There is no credible evidence that Mr NGAÏSSONA travelled to the border area to personally meet, support and encourage elements from BERTOUA, GAROUA-BOULAI and BOUAR to prepare and execute attacks against Seleka positions.

443. First, the political and security context at the border in the fall of 2013 does not support the allegations that regular movements from perceived BOZIZÉ supporters could have taken place between Cameroon and CAR. D30-4914 recounted that a couple of months after the Seleka took power, DJOTODIA realised that the main way out for those seeking exile was Cameroon, so the new regime decided to close all the borders and put in place a watertight surveillance system, particularly around GARAM-BOULAÏ.[1532] Border guards on the Cameroonian side were CAR nationals who were hired, trained and incentivized by the Cameroonian authorities.[1533]

444. Second, D30-4914 [REDACTED],[1534] [REDACTED].[1535] D30-4914 clarified that Central Africans who did not have the "right profile", such as perceived supporters of the BOZIZÉ regime, were treated as enemies if they were to cross from Cameroon.[1536] Based on the witness' information, crossing over to BOUAR would have been impossible for Mr NGAÏSSONA and Bernard MOKOM.[1537] [REDACTED].[1538] Against this backdrop, the Prosecution presents little more than Facebook conversations and the indirect evidence of two witnesses: P-1847, whose second-hand information comes from [REDACTED] and P-2673, who relies on [REDACTED].[1539] Neither source is reliable. As to [REDACTED],[1540] assuming he was a reliable source of information based on P-1847's claim that he [REDACTED][1541] would be misguided, as D30-4914 never saw [REDACTED] or heard of his presence in [REDACTED] during the Relevant Period.[1542] A broader examination of P-1847's evidence in relation to the border area reveals that his knowledge was often approximative and incorrect on uncontested facts. For instance, while evidence shows that the BOUAR group was led by NDALE and the

[1532] **D30-4914:** T-302-CONF-ENG CT, p. 30, lns 5-20, p. 32, ln. 17 to p. 33, ln. 11.
[1533] **D30-4914:** T-302-CONF-ENG CT, p. 35, ln. 8 to p. 36, ln. 8.
[1534] **D30-4914:** T-303-CONF-ENG CT, p. 65, lns 15-18.
[1535] **D30-4914:** T-302-CONF-ENG CT, p. 44, ln. 25 to p. 45, ln. 6.
[1536] **D30-4914:** T-302-CONF-ENG CT, p. 36, lns 17-21.
[1537] **D30-4914:** T-302-CONF-ENG CT, p. 47, ln. 18 to p. 48, ln. 1.
[1538] **D30-4914:** T-302-CONF-ENG CT, p. 45, lns 1-3. In relation to BOUAR, *see* p. 26, lns 16-23, p. 27, lns 12-13, p. 39, lns 9-19, p. 46, lns 9-13.
[1539] **P-1847:** CAR-OTP-2122-8251-R01, at 8254, para. 25; **P-2673:** T-041-CONF-ENG ET, p. 31, lns 10-17.
[1540] **P-1847:** CAR-OTP-2122-8251-R01, at 8255, para. 31; CAR-OTP-2061-1534, at 1551, paras 109-110.
[1541] **P-1847:** CAR-OTP-2061-1534, at 1558-1559, para. 156; CAR-OTP-2122-8251-R01, at 8254, para. 25.
[1542] **D30-4914:** [REDACTED].

BELOKO group by [REDACTED], P-1847 claims that NDALE led both groups.[1543] Also, he testified that [REDACTED] led the attack on BELOKO, a claim refuted by [REDACTED],[1544] including by [REDACTED].[1545] Finally, P-1847's claim that Mr NGAÏSSONA always travelled to the border in a grey Mercedes driven by his brother,[1546] is uncorroborated and lacks credibility given NGAÏSSONA family's financial situation at the time[1547] and the security risks for a former dignitary to travel along the border.[1548]

445. Third, [REDACTED] unequivocally refuted that members of the BOUAR group would have come to the border to meet with Mr NGAÏSSONA and Bernard MOKOM.[1549] [REDACTED].[1550] P-2673's claims that Mr NGAÏSSONA and Bernard MOKOM met the chiefs of the archers in BERTOUA,[1551] is weakened by a contemporaneous Facebook conversation, in which he wrote that [REDACTED], clearly indicating that this was not verified.[1552] Likewise, when asked to comment a Facebook conversation dated [REDACTED],[1553] P-2673 only mentioned having been told by [REDACTED] over the phone that [REDACTED], without any mention of Mr NGAÏSSONA.[1554] In addition, when asked to contextualise his Facebook conversation of September 2013 in which [REDACTED] told him that Mr NGAÏSSONA and Bernard MOKOM went to BERTOUA and GAROUA-BOULAÏ "for the archers of BOUAR",[1555] P-2841 explained that he understood it to mean that they were at the border to recruit the archers from BOUAR to help with the resistance.[1556] However, during his testimony, P-2841 clarified that when he spoke of the archers, he was in fact referring to MOKOM, not Mr NGAÏSSONA.[1557] Based on the available evidence, it is therefore unreasonable to infer that the archers from BOUAR would have crossed the border around 12 October 2013 to meet Mr NGAÏSSONA and Bernard MOKOM, as well as [REDACTED].[1558] In addition, individuals conversing on Facebook are by definition less reliable than those who

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[1543] **P-1847:** CAR-OTP-2122-8251-R01, at 8255, para. 35.
[1544] [REDACTED].
[1545] [REDACTED].
[1546] **P-1847:** CAR-OTP-2122-8251-R01, at 8264, para. 119.
[1547] *See below* VI.D.1. Mr Ngaïssona struggled financially while in Cameroon.
[1548] *See* para 443 above.
[1549] [REDACTED].
[1550] [REDACTED].
[1551] **P-2673:** CAR-OTP-2127-6435-R01, at 6459, para. 155.
[1552] CAR-OTP-2100-3030, at 3041.
[1553] CAR-OTP-2102-5143, at 5169.
[1554] **P-2673:** CAR-OTP-2127-6435-R01, at 6455, paras 127-128.
[1555] PTB, fn 170, referring to CAR-OTP-2101-9735, at 9780.
[1556] **P-2841:** CAR-OTP-2127-4238-R01, at 4250, paras 68-69.
[1557] **P-2841:** T-030-CONF-ENG CT2, p. 13, lns 9-25.
[1558] CAR-OTP-2101-8524, at 8535, at [09:41:20].

were actually on the ground. The content of Facebook communications shows that the information which was circulating cannot be trusted.[1559]

446. Finally, P-1847 and P-2673's allegation that Mr NGAÏSSONA and Bernard MOKOM liaised with Anti-Balaka elements at the border from the Golf residence[1560] is contradicted by the direct evidence of: (i) OUEBIO, who lived there and refuted the organization of any sort of resistance from the Golf residence[1561] and (ii) D30-4914, who [REDACTED],[1562] [REDACTED].[1563] D30-4914 clarified that there was no FACA "based" in BELOKO prior to the 5 December attack: they were either disseminated in Cameroon's main cities or hiding in the bushes in CAR.[1564] Also, P-2673's allegation that NDALE and GODONAM travelled to YAOUNDÉ to meet with Mr NGAÏSSONA rests solely on assumptions. Since he allegedly never entered the Golf residence, he could not confirm they actually met, or if they did, the content of their discussions.[1565]

3. Mr NGAÏSSONA did not assist Anti-Balaka and FACA elements in GOBÉRÉ

447. The Prosecution has presented no evidence to support the claim that Mr NGAÏSSONA visited elements "in the area of BOSSANGOA, including […] BENZAMBE as well as GOBERE" in 2013. The evidence further dispels the allegation that Mr NGAÏSSONA liaised with Anti-Balaka elements in the area.

448. Several alleged leaders and elements of the 'GOBÉRÉ group' stated that they were not aware of any involvement of Mr NGAÏSSONA with the Anti-Balaka movement when they were in the bush. P-2602, who claims to have been [REDACTED] in the 'GOBÉRÉ group', had no information about Mr NGAÏSSONA's involvement at the time, and said that he was later surprised to learn that he had become National Coordinator.[1566] P-0975, another alleged element in the 'GOBÉRÉ group', heard no mention of Mr NGAÏSSONA before he arrived in

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[1559] *See e.g.* **P-2673:** CAR-OTP-2127-6435-R01, at 6460, paras 159-160 commenting on CAR-OTP-2100-3030, at 3040. P-2673 initially reported having been told by [REDACTED] that [REDACTED], to later admit being surprised to see him come back. *See also* CAR-OTP-2101-9735, at 9817. *See finally* **D30-4848:** T-297-CONF-ENG ET, p. 10, lns 1-21 commenting on CAR-OTP-2103-4757, at 4765-4767 and unequivocally refuting [REDACTED].
[1560] **P-1847:** CAR-OTP-2122-8251-R01, at 8254, para. 24 and at 8256, para. 40; **P-2673:** CAR-OTP-2127-6435-R01, at 6455-6456, para. 132.
[1561] **D30-4679:** T-299-CONF-ENG CT, p. 71, p. 73, ln. 13 to p. 74, lns 3, 19-23.
[1562] **D30-4914:** T-302-CONF-ENG CT, p. 55, ln. 19.
[1563] **D30-4914:** T-302-CONF-ENG CT, p. 73, lns 12-18.
[1564] **D30-4914:** T-302-CONF-FRA ET, p. 33, lns 6-16, p. 34, ln. 20 to p. 35, ln. 4, p. 63, lns 9-14.
[1565] **P-2673:** CAR-OTP-2127-6435-R01, at 6456, para. 134; T-041-CONF-ENG ET, p. 11, lns 10-13.
[1566] **P-2602:** CAR-OTP-2118-9764-R01, at 9770-9771, lns 179-230.

BANGUI.[1567] P-2251, also member of the 'GOBÉRÉ group', did not know Mr NGAÏSSONA until after he returned from exile.[1568] P-0884 testified that the Anti-Balaka from the 'GOBÉRÉ group' he discussed with stated having been in contact with MOKOM, but did not mention any contact with Mr NGAÏSSONA.[1569]

449. Against this backdrop, the accounts of the few witnesses who have alleged that Mr NGAÏSSONA liaised with members of the 'GOBÉRÉ group' are either vague and amount to anonymous hearsay, or are convoluted and unbelievable. P-2658 "thought" that Mr NGAÏSSONA was in communication with DEDANE through KEMA, YONGO and CHARLY,[1570] but could not indicate how he made the link between Mr NGAÏSSONA and these individuals whom he claims were in touch with DEDANE. While he claimed he had heard Mr NGAÏSSONA's name from [REDACTED], he could not identify which elements and was evasive.[1571]

450. P-0306, whom allegedly was part of the 'GOBÉRÉ group',[1572] claimed that Mr NGAÏSSONA [REDACTED]. However, P-0306's evidence lacks credibility and should be set aside entirely.[1573] P-0306's testimony was repetitive, giving the impression of a pre-rehearsed narrative.[1574] His answers concerning the alleged exchanges with [REDACTED] lacked the details and nuances expected of a witness who actually lived through the events he described. For example, when asked about the alleged contacts he observed between Mr NGAÏSSONA and [REDACTED], the witness gave a vague answer, merely reporting irrelevant details.[1575]

451. Furthermore, the witness was unable to explain why he ultimately decided to [REDACTED]. His mere assertion that Mr NGAÏSSONA was an "authority" fails to convince.[1576] During his testimony, the witness was positive that [REDACTED] only mentioned Mr NGAÏSSONA and no other leader. Yet, reminded of his previous declaration to the effect that MOKOM and

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[1567] **P-0975**: CAR-OTP-2033-7885-R02, at 7892, para. 52.
[1568] **P-2251:** T-043-CONF-ENG CT, p. 42, lns 3-6.
[1569] **P-0884:** T-055-CONF-ENG ET, p. 38, lns 8-16.
[1570] **P-2658:** CAR-OTP-2126-0012-R02, at 0037, para. 164; CAR-OTP-2135-3476-R01, at 3488-3489.
[1571] **P-2658:** T-134-CONF-ENG CT, p. 60, lns 12-18 ("[REDACTED]").
[1572] *See e.g.* **P-2602:** CAR-OTP-2118-9617-R01, at 9636, lns 624-626; **P-0975:** CAR-OTP-2033-7885-R02, at 7889, para. 29.
[1573] *See above* II.B. 3.1. P-0306.
[1574] **P-0306:** T-064-CONF-ENG ET, *see and compare* p. 29, lns 5-13, p. 30, lns 11-21, p. 44, ln. 20 to p. 45, ln. 14. *See* p. 54, lns 9-10, where the Presiding Judge also remarked the repetition in the witness' answer. *See also* p. 65, lns 1-13 (when asked a specific question on [REDACTED], P-0306 repeated once more his 10-lines story). *See* p. 61, ln. 24 to p. 62, ln. 1 (betraying the witness' inability to provide more detail on the alleged events he described, as well as his readiness to confirm his prior statement ("i'm not sure but if I am mistaken about some of the details, please can you kindly refresh my memory so that I can confirm them")) (emphasis added).
[1575] **P-0306:** T-067-CONF-ENG CT, p. 33, lns 6-13 ("[REDACTED]").
[1576] **P-0306:** T-064-CONF-ENG ET, p. 33, lns 11-17.

Charles NGREMANGOU ('NGREMANGOU') had also been mentioned, he immediately subscribed to his previous account, without being able to provide any details about the circumstances in which he heard about those individuals.[1577]

452. In any event, other witnesses refute P-0306's account of events concerning [REDACTED]. [REDACTED];[1578] P-2602 said that [REDACTED] was never in GOBÉRÉ and only met the group at about 120 km from BANGUI,[1579] while [REDACTED]. This is corroborated by P-1521, who [REDACTED] and who labelled P-0306's narrative concerning [REDACTED] as "absolutely false".[1580] P-0889, [REDACTED], claimed that it is MOKOM who [REDACTED].[1581]

453. P-2673 also made vague allegations that Mr NGAÏSSONA was in contact with several Anti-Balaka chiefs such as ANDJILO, the chiefs in BOSSANGOA and others. However, the allegation amounts to anonymous hearsay, as the witness refused to reveal his alleged source to Prosecution investigators.[1582] Furthermore, neither [REDACTED] nor [REDACTED] confirmed this allegation. While remarkably leading questions led to P-2673 confirming that the individuals who took BOUCA in September 2013 and the elements located in BOSSANGOA worked for Mr NGAÏSSONA, his source of knowledge was never specified.[1583] P-2673's version of events is also irreconcilable with that of [REDACTED],[1584] neither being credible.

454. P-1847 claimed that he heard from [REDACTED] that BOZIZÉ used to call KEMA to give him directives, either via Mr NGAÏSSONA or via Bernard MOKOM,[1585] but was unclear on the timeframe.[1586] He further alleged that Mr NGAÏSSONA, along with Bernard MOKOM, contacted individuals such as GODONAM[1587] and [REDACTED],[1588] however, his source of

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[1577] **P-0306:** T-064-CONF-ENG ET, p. 59, ln. 15 to p. 60, ln. 4, p. 62 ln. 23 to p. 63, ln. 14; T-067-CONF-ENG CT, p. 33, ln. 18 to p. 37, ln. 2.
[1578] **P-0966:** [REDACTED].
[1579] **P-2602:** CAR-OTP-2118-9617-R01, at 9624, lns 223-237.
[1580] **P-1521:** T-082-CONF-ENG CT2, p. 66, ln. 13 to p. 67, ln. 7.
[1581] **P-0889:** [REDACTED].
[1582] **P-2673:** CAR-OTP-2127-6435-R01, at 6455-6456, para. 132.
[1583] **P-2673:** T-041-CONF-ENG ET, p. 12, ln. 11 to p. 13, ln. 24, p. 14, ln. 24 to p. 15, ln. 5.
[1584] [REDACTED].
[1585] **P-1847:** CAR-OTP-2061-1534-R01, at 1558, para. 152.
[1586] **P-1847:** T-023-CONF-ENG CT, p. 46, ln. 15 to p. 47, ln. 11 (where the witness clarifies this took place after 2014.) This is also confirmed by the subsequent paragraph of P-1847's prior-recorded statement; *see* CAR-OTP-2061-1534-R01, at 1558, para. 153 ("*Cela s'est passé début 2014*"), despite the Prosecution having labelled these paragraphs as relating to "subversive actions before 5 December 2013" in the prior-recorded statement.
[1587] **P-1847:** CAR-OTP-2061-1534-R01, at 1558-1559, para. 156.
[1588] **P-1847:** CAR-OTP-2122-8251-R01, at 8254, para. 28.

knowledge is unclear. While the witness claimed in his 2017 statement to have had [REDACTED],[1589] he changed his story in his 2020 statement,[1590] and failed to confirm it during his live testimony. P-1847 was vague with respect to GODONAM's alleged role in the Anti-Balaka. While he stated that GODONAM went to Cameroon following the coup,[1591] he also claimed that GODONAM often communicated with "elements" in CAR. Yet, he failed to provide any details on GODONAM's alleged collaboration with these CAR elements, whom he also failed to identify, with the exception of the well-known [REDACTED].[1592] This, and P-1847's candid remark that he does not have any knowledge of the events that took place in GOBÉRÉ,[1593] betrays the witness' limited knowledge and speculation on the issue of alleged contacts between Mr NGAÏSSONA and elements in CAR. Indeed, on this subject specifically, the witness speculated that he "believes" that Mr NGAÏSSONA had the capacity to follow the operations in the Ouham region and that he "must have" been informed of attacks in the region.[1594] This weak evidence must be disregarded.

4. Mr NGAÏSSONA did not assist Anti-Balaka based in BANGUI

455. Mr NGAÏSSONA's alleged mobilisation of the "youth" in BANGUI during his exile rests on (i) his alleged email communications with NGAYA and (ii) two Facebook conversations involving [REDACTED]. First, notwithstanding grave irregularities in the emails extracted from user [REDACTED] affecting the reliability of this evidence,[1595] contemporaneous emails suggest that NGAYA and Mr NGAÏSSONA communicated in relation to the organisation of civil society initiatives, such as the organisation of a "*concert de casserole*" around August 2013 to raise awareness to the plight of the CAR civilian population under the Seleka.[1596] There is no nexus between Mr NGAÏSSONA's purported role in organising grassroots civil society initiatives in BANGUI, and the charged crimes. NGAYA's contextualisation of his alleged email exchanges with Mr NGAÏSSONA rebuts the Prosecution's theory that Mr NGAÏSSONA structured the Anti-Balaka in BANGUI from Cameroon.[1597] Second, the Facebook

[1589] **P-1847:** CAR-OTP-2061-1534-R01, at 1568, para. 165, at 1570, para. 227.
[1590] **P-1847:** CAR-OTP-2122-8251-R01, at 8254, para. 28.
[1591] **P-1847:** CAR-OTP-2122-8251-R01, at 8253, para. 15.
[1592] **P-1847:** CAR-OTP-2122-8251-R01, at 8253, para. 17.
[1593] **P-1847:** CAR-OTP-2122-8251-R01, at 8254, para. 21.
[1594] **P-1847:** CAR-OTP-2122-8251-R01, at 8264-8265, para. 125.
[1595] ICC-01/14-01/18-1546-Conf.
[1596] **P-0808:** CAR-OTP-2093-0010-R01, at 0020-0021, para. 58; T-069-CONF-ENG CT, p. 34, lns 8-11; CAR-OTP-2124-0844, at 0844; **P-0889:** T-108-CONF-ENG CT2, p. 68, lns 12-16; *see below* VI.F.1.5. Mr NGAÏSSONA did not liaise and coordinate with alleged Anti-Balaka leaders in BANGUI.
[1597] *See below* VI.F.1.5. Mr NGAÏSSONA did not liaise and coordinate with alleged Anti-Balaka leaders in BANGUI.; *see* **P-0884:** T-058-CONF-ENG CT, p. 18, lns 1-9 ("[REDACTED]") (emphasis added).

conversations lack evidentiary value.[1598] On 19 August 2013, [REDACTED] tells [REDACTED] that "apparently" Mr NGAÏSSONA would have coordinated the "*concerts de casserole*" with his "BOY-RABE network",[1599] which [REDACTED] then repeats two days later to [REDACTED].[1600] This is speculation, and at best, hearsay.[1601] In any event, there is no nexus between Mr NGAÏSSONA's alleged assistance in organising a civil protest in BANGUI, and his alleged structuring of the Anti-Balaka from Cameroon.

5. Mr NGAÏSSONA did not assist Anti-Balaka and FACA in Zongo

456. The Prosecution has failed to present evidence that even remotely supports its allegation that Mr NGAÏSSONA took steps to structure the Anti-Balaka and FACA in the ZONGO area.

C. The Prosecution failed to prove that Mr NGAÏSSONA's appointment as political coordinator was planned prior to his return to BANGUI

457. It is only upon his return to BANGUI on 14 January 2014 that Mr NGAÏSSONA stepped into the role of Coordinator of the Anti-Balaka,[1602] a position made official by an Anti-Balaka press release dated 21 January 2014.[1603] Far from being self-proclaimed, Mr NGAÏSSONA was chosen by part of the Anti-Balaka,[1604] due to his well-known status from his football activities and to his generosity.[1605] The evidence does not establish that Mr NGAÏSSONA was acting as the General Coordinator prior to his return to BANGUI and that his appointment was pre-arranged.[1606] The choice of Mr NGAÏSSONA as a National Coordinator was not a unanimous

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[1598] *See above* II.E. The extensive Facebook material should be given little to no evidentiary weight; Annex A.03.
[1599] CAR-OTP-2101-8599, at 8641-8642 [10:51:47-10:59:50]; for further context and evidence on "*concert de casseroles*", *see below* VI.F.1.5. Mr NGAÏSSONA did not liaise and coordinate with alleged Anti-Balaka leaders in BANGUI.
[1600] CAR-OTP-2101-9735, at 9773-9774 [18:59:28-19:08:12]; *see also* Annex A.03.
[1601] *See above* II.E. The extensive Facebook material should be given little to no evidentiary weight; Annex A.03.
[1602] **P-0884:** T-055-CONF-ENG ET, p. 32, lns 2-5 and p. 44, lns 14-15 ("No, no. Ngaïssona became the coordinator of the Anti-Balaka after the month of December and, specifically, the month of January'); **P-0808:** T-070-ENG CT2, p. 40, ln. 24 to p. 41, ln. 4; **P-0889:** T-109-CONF-ENG CT2, p. 32, ln. 3 to p. 33, ln. 10; **P-0446:** CAR-OTP-2118-6278-R02, p. 6290, ln. 492 to p. 6291, ln. 506; **P-1521:** T-082-CONF-ENG CT, p. 8, lns 1-17.
[1603] CAR-OTP-2084-0146.
[1604] **P-0884:** T-056-CONF-ENG CT, p. 46, lns 15-25; **P-0889:** T-109-CONF-ENG CT2, p. 33, lns 2-10; **P-1521:** T-082-CONF-ENG CT2, p. 12, lns 8-16; **P-0808:** CAR-OTP-2025-0324-R01, at 0337, para. 87; T-070-ENG CT2, p. 45, ln. 22 to p. 46, ln. 3; **P-0446:** T-097-CONF-ENG CT2, p. 30, lns 11-19; **P-2269:** CAR-OTP-2111-0336-R01, at 0350, paras 102-104.
[1605] **P-0889:** T-109-CONF-ENG CT2, p. 32, ln. 17 to p. 33, ln. 6; **P-0808:** CAR-OTP-2025-0324-R01, at 0337, para. 87; T-070-ENG CT2, p. 45, lns 22-24; **D30-4914:** T-303-CONF-ENG CT, p. 33, lns 7-20; **P-0446:** CAR-OTP-2118-6278-R02, p. 6291-6292, lns 534-546.
[1606] **D30-4914:** CAR-D30-0024-0001, at 0010, lns 337-349; T-303-CONF-ENG CT, p. 33, lns 10-16; **P-0446:** CAR-OTP-2118-6278-R02, p. 6290, lns 484-490; T-096-CONF-ENG CT2, p. 41, ln. 15 to p. 42, ln. 7; **P-0889:** T-109-CONF-ENG CT2, p. 30, lns 17-22. P-0801's uncorroborated evidence that Mr NGAÏSSONA returned at the request of President BOZIZÉ is unreliable as it comes from an unknown source and is contradicted by more reliable evidence, *see* **P-0801:** T-035-CONF-ENG CT, p. 23, lns 12-19.

decision; notable dissension came from Anti-Balaka members, such as MOKOM, who rejected Mr NGAÏSSONA's leadership on the basis that he was not there since the beginning of the movement.[1607] MOKOM even developed an alternative organizational structure of the Anti-Balaka coordination, positioning himself as the National Coordinator.[1608] Mr NGAÏSSONA himself expressed surprise at his appointment[1609] and accepted only because the Anti-Balaka needed a spokesperson, a political coordinator able to represent them before the CAR authorities and the international community.[1610]

D. The Prosecution failed to prove that Mr NGAÏSSONA financed the Anti-Balaka for the commission of the Charged Crimes, including through the purchase and distribution of weapons and other equipment

458. The Prosecution failed to show that Mr NGAÏSSONA financed the Anti-Balaka as an encouragement to carry out attacks. There is no credible evidence that the Anti-Balaka were financed at all, or that Mr NGAÏSSONA was involved in any financing scheme. Even taken at its highest, the flimsy and inconsistent hearsay evidence supporting Mr NGAÏSSONA's nominal financial assistance aligns more with humanitarian assistance than with the financing of an armed struggle.[1611] Even if the Chamber did find that Mr NGAÏSSONA's alleged financial aid was provided for the purpose of facilitating the commission of the charged crimes, the Prosecution failed to adduce any evidence that such financial assistance had any effect on the commission of the charged crimes, let alone that it was connected to the commission of each of those crimes, specifically.

1. Mr NGAÏSSONA struggled financially while in Cameroon

[1607] **P-0888:** T-121-ENG ET, p. 78, lns 4-10; T-123-ENG CT2, p. 14, ln. 19 to p. 15, ln. 4; **P-0889:** T-109-CONF-ENG CT2, p. 33, lns 14-21, p. 37, ln. 13 to p. 38, ln. 6; **P-0808:** T-070-ENG CT2, p. 45, lns 5-24.
[1608] CAR-OTP-2030-0280; **P-0889:** T-109-CONF-ENG CT2, p. 46, lns 8-17. This organigram was never implemented, *see* **P-0889:** T-109-CONF-ENG CT2, p. 47, lns 7-15; **P-1521:** T-083-CONF-ENG CT, p. 16, ln. 10 to p. 17, ln. 10. Tellingly, this organigram is unknown to all the witnesses it was shown to, *see* **P-1521:** T-081-CONF-ENG ET, p. 84, lns 4-13; T-082-CONF-ENG CT, p. 5, lns 11-23; **P-0801:** T-034-ENG CT, p. 79, lns 24-25; **P-0808:** T-070-ENG CT2, p. 44, lns 12-17; **P-0876:** T-085-CONF-ENG CT2, p. 72, lns 9-19; **P-0884:** T-055-CONF-ENG ET, p. 30, ln. 24 to p. 31, ln. 2, p. 31, lns 23-25; T-057-CONF-ENG ET, p. 14, ln. 13 to p. 15, ln. 3; **P-0992:** T-092-CONF-ENG ET, p. 53, lns 1-6; **P-0952:** T-251-ENG CT, p. 32, lns 8-19.
[1609] CAR-OTP-2001-2769, at 2829.
[1610] **P-0808:** T-070-ENG CT2, p. 42, ln. 23 to p. 43, ln. 4, p. 58, ln. 23 to p. 59, ln. 5; **P-0888:** T-123-ENG CT2, p. 15, ln. 1; **P-1521:** T-082-CONF-ENG CT2, p. 12, lns 8-20; **P-0446:** CAR-OTP-2118-6278-R02, p. 6290, lns 492-500; **P-0889:** T-109-CONF-ENG CT2, p. 74, ln. 18 to p. 75, ln. 12.
[1611] Taylor TJ, para. 4026, where the Chamber, considering the small amounts of funding provided by the accused, along with the fact that most of it was for personal or unspecified uses, was unable to find that the accused's financial support had a direct impact on the armed movement AFRC/RUF. *See also* Katanga TJ, para. 1633 (finding that: "[c]onduct inconsequential and immaterial to the commission of the crime cannot […] be considered sufficient and constitute a contribution within the meaning of article 25(3)(d) of the Statute").

459. Mr NGAÏSSONA was in a precarious financial situation during his exile in Cameroon. D30-4777, a Cameroonian businessman familiar with Mr NGAÏSSONA since 1998, testified that upon his arrival in Cameroon, Mr NGAÏSSONA initially stayed with his family in an exiguous motel in DOUALA.[1612] The witness also confirmed his role in finding two houses for Mr NGAÏSSONA and his family, and that he assumed personal financial responsibility for them.[1613] D30-4777 even funded the repatriation of the body of Mr NGAÏSSONA's brother from DOUALA to BANGUI, and paid the DOUALA morgue to preserve the body of Mr NGAÏSSONA's sister, who passed away in September 2013, for about eight months.[1614] In addition, money transfer records[1615] show that D30-4777 financed Mr NGAÏSSONA's wife's transportation from BANGUI to DOUALA.[1616]

460. Witnesses who spent time with Mr NGAÏSSONA and his family in DOUALA confirmed it was a very difficult period for him, characterized by evident resource scarcity.[1617] The two rented houses were overcrowded, and food was limited,[1618] highlighting the challenging living conditions the CAR exiled faced in Cameroon.[1619]

461. Mr NGAÏSSONA did his best to share whatever little resources he had with fellow countrymen and women who sought his help, assisting them with accommodation, food and medicine.[1620] He held up to his long-established reputation for helping those in need,[1621] even in exile.

462. Mr NGAÏSSONA was also providing financial assistance to football players, in his capacity as President of the Central African Republic Federation of Football. However, Brice Stanislas MOHI – D30-4504 ('MOHI'), a national football team member, testified that in Cameroon, Mr NGAÏSSONA could no longer offer the same financial support he did back in BANGUI, due to the looting and destruction of all his possessions by the Seleka.[1622]

[1612] **D30-4777**: CAR-D30-0019-0001, at 0003-0004, paras. 12-19. *See also* CAR-D30-0011-0105 to CAR-D30-0011-0112.
[1613] **D30-4777**: CAR-D30-0019-0001, at 0004, paras 21-22.
[1614] **D30-4777**: CAR-D30-0019-0001, at 0004-0005, paras 23-24.
[1615] **D30-4777**: CAR-D30-0019-0001, at 0004, para. 20; CAR-D30-0003-0017.
[1616] **D30-4777**: CAR-D30-0019-0001, at 0004, para. 20.
[1617] [REDACTED]; **D30-4504**: T-287-CONF-ENG CT, p. 33, lns 3-12.
[1618] [REDACTED]; **D30-4504**: CAR-D30-0023-0001-R02, at 0003, para. 18.
[1619] **P-0884**: T-054-CONF-ENG ET, p. 56, lns 15-16; **D30-4504**: CAR-D30-0023-0001-R02, at 0003-0004, para. 20.
[1620] **D30-4756**: T-268-CONF-ENG CT, p. 47, lns 19-24; **P-2027**: T-040-CONF-ENG CT2, p. 23, lns 10-23; CAR-OTP-2078-0059-R03, at 0069-0070, paras 61-62; **P-0446**: T-096-CONF-ENG CT2, p. 17, lns 5-25; **D30-4679**: T-299-CONF-ENG CT, p. 78, lns 2-8.
[1621] **P-0446**: T-097-CONF-ENG CT2, p. 43, ln. 15 to p. 44, ln. 3; **P-0808**: T-070-ENG CT2, p. 44, lns 13-24; **D30-4756**: T-269-CONF-ENG CT, p. 9, lns 13-19; **D30-4504**: CAR-D30-0023-0001-R02, at 0005, paras 32-33.
[1622] **D30-4504**: CAR-D30-0023-0001-R02, at 0005, paras 32-33.

463. Concerning the two money transfers made by OUEBIO on 4 and 5 November 2013,[1623] amounting to 5 million CFA each, the witness explained that Mr NGAÏSSONA had asked him to deposit this money into his bank account.[1624] The transactions coincided with Mr NGAÏSSONA's departure from DOUALA to France, which the witness confirmed he was aware of,[1625] and which required having funds in his bank account.[1626]

464. In the absence of evidence, no other inference can be drawn in relation to the provenance of this money, or the fact that Mr NGAÏSSONA might have been financed by certain individuals, as elaborated below.

2. Mr NGAÏSSONA did not provide equipment and transportation prior to 5 December 2013

465. Evidence on record does not support the conclusion that Mr NGAÏSSONA was in any way involved in financing P-1719's or others' transportation to the Cameroonian border. Such conclusion, which is contradicted by the accounts of MOHI, OUEBIO and D30-4914, could only be drawn from impermissible inferences based on speculation and hearsay.

466. First, MOHI, who resided in DOUALA in 2013 and [REDACTED], testified that [REDACTED].[1627] MOHI also unequivocally refuted the allegation that he ever was a combatant alongside CHOGBO.[1628] MOHI also denied that [REDACTED][1629] or that they received any financial support from Mr NGAÏSSONA or Bernard MOKOM.[1630] MOHI stated that he visited YAOUNDÉ only once for a football match against South Africa in June 2013 and did not travel to YAOUNDÉ thereafter.[1631] MOHI also testified that CHOGBO received money from Mr NGAÏSSONA solely to return to BANGUI for a football match.[1632] The existence of [REDACTED] does not undermine MOHI's credibility, since he explained [REDACTED] upon his return in BANGUI. The witness clarified [REDACTED].[1633] During this time, due to his status as a football player, [REDACTED].[1634] This explanation [REDACTED], supporting the consistency and reliability of his testimony.

[1623] CAR-OTP-2098-0066; CAR-OTP-2098-0067.
[1624] **D30-4679**: T-299-CONF-ENG CT, p. 88, ln. 18 to p. 92, ln. 20.
[1625] CAR-OTP-2131-6407, at 6408.
[1626] CAR-OTP-2124-0927.
[1627] **D30-4504**: [REDACTED].
[1628] **D30-4504**: T-283-ENG CT, p. 43, lns 2-18.
[1629] **D30-4504**: [REDACTED].
[1630] **D30-4504**: [REDACTED].
[1631] **D30-4504**: T-283-ENG CT, p. 53, ln. 22 to p. 54, ln. 14.
[1632] **D30-4504**: CAR-D30-0023-0005, at 0005, para. 32.
[1633] **D30-4504**: [REDACTED].
[1634] **D30-4504**: [REDACTED].

467. Second, OUEBIO, who had a clear vantage point at the Golf residence in YAOUNDÉ,[1635] testified that he neither saw nor heard of a group of 17 youths arriving from DOUALA, and was unaware of any military reinforcement provided by Mr NGAÏSSONA at the Cameroonian border.[1636]

468. Third, D30-4914 [REDACTED][1637] and explained that the few exiled who were able to cross the border from Cameroon had nothing to eat and were merely trying to get over to the CAR side to go home.[1638]

469. In addition, P-1719's limited and indirect alleged interactions with Mr NGAÏSSONA, coupled with his assumptions lacking substantiation, undermine the credibility of his accusations against Mr NGAÏSSONA. P-1719 testified about [REDACTED],[1639] [REDACTED].[1640] Nothing from the content of this alleged discussion substantiates any promise of financial assistance for travel expenses to the Cameroonian border. To the contrary, Mr NGAÏSSONA allegedly discussed [REDACTED].[1641] He allegedly merely expressed a [REDACTED]. This must be read in conjunction with P-1719's allegation that he later called Mr NGAÏSSONA from the border, seeking food and medicine for the troops. Mr NGAÏSSONA's alleged answer was described as 'not satisfactory' and P-1719 implied that his request was a disturbance to Mr NGAÏSSONA.[1642] Mr NGAÏSSONA's alleged behaviour is not consistent with someone actively encouraging or funding participation in combat, further distancing him from P-1719's allegation that he would have funded P-1719's transportation for that purpose.

470. P-1719 then testified that when he arrived in YAOUNDÉ, it was Bernard MOKOM who welcomed him, provided funds, and briefed him. Mr NGAÏSSONA's alleged involvement was limited to waving from a balcony, without any direct engagement, financial or otherwise. P-1719 assumed that Mr NGAÏSSONA must have provided the money for transportation, but in fact, he only interacted with Bernard MOKOM. He also admitted to having no concrete knowledge of any exchanges between Bernard MOKOM and Mr NGAÏSSONA regarding the

[1635] **D30-4679**: T-299-CONF-ENG CT, p. 46, lns 1-5.
[1636] **D30-4679**: T-299-CONF-ENG CT, p. 71, lns 5-10, p. 73, ln. 25 to p. 74, ln. 3.
[1637] **D30-4914**: T-302-CONF-ENG CT, p. 73, ln. 19 to p. 74, ln. 17.
[1638] **D30-4914**: CAR-D30-0024-0001-R01, at 0011, lns 407-411; T-302-CONF-ENG CT, p. 39, ln. 20 to p. 40, ln. 12, p. 41, lns 13-21, p. 66, lns 5-7.
[1639] **P-1719**: T-141-CONF-ENG CT, p. 30, ln. 1 to p. 32, ln. 25; p. 35, lns 2-3.
[1640] **P-1719**: T-141-CONF-ENG CT, p. 49, lns 19-23.
[1641] **P-1719**: T-141-CONF-ENG CT, p. 49, lns 19-23.
[1642] **P-1719**: T-143-CONF-ENG CT, p. 63, lns 1-7.

money that he allegedly received. He did not personally witness Mr NGAÏSSONA give money to Bernard MOKOM.[1643]

471. Furthermore, P-1719's Facebook conversation with [REDACTED] indicates that it was in fact [REDACTED], not Mr NGAÏSSONA, who was pressing P-1719 to travel to the border.[1644] P-1719's allegations according to which [REDACTED] lacks detail and fails to make any connexion between those individuals and Mr NGAÏSSONA.[1645]

472. P-1719 stated that Bernard MOKOM gave [REDACTED], a very small sum which aligns more with humanitarian assistance than with financing an armed struggle.[1646] [REDACTED],[1647] further supports the argument that these funds – which correspond to about 20 euros – were insufficient for facilitating any serious military engagement. Rather, it supports the idea that it was intended as a basic support measure for exiled in need.

473. Overall, the evidence of P-1719 suggests limited and passive interactions from Mr NGAÏSSONA, inconsistent with assertions of encouraging or facilitating armed engagement. The Chamber cannot draw that inference in the current circumstances, as it is not the only reasonable inference from circumstantial evidence on the trial record.[1648]

474. The Chamber should also not rely on P-2673's testimony regarding the financing of individuals to the border. First, P-2673's allegations that Mr NGAÏSSONA provided money to Bernard MOKOM for individuals to fight at the border are speculative and lack specific sources of information. P-2673's testimony is based on vague assertions such as "we all knew",[1649] and anonymous hearsay.[1650] P-2673 speculated that the money came from Mr NGAÏSSONA because Mr NGAÏSSONA and Bernard MOKOM lived together,[1651] which was largely refuted by the evidence,[1652] or because citing other individuals who claimed they received money from Bernard MOKOM who himself had received it from Mr NGAÏSSONA, without more explanation or expanding on their source of knowledge.[1653] This is not sufficient to support any

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[1643] **P-1719**: T-143-CONF-ENG CT, p. 12, ln. 5 to p. 13, ln. 1; [REDACTED].
[1644] CAR-OTP-2101-6428, at 6447.
[1645] **P-1719**: T-141-CONF-ENG CT, p. 50, lns 4-8.
[1646] **P-1719**: T-141-CONF-ENG CT, p. 50, lns 9-21.
[1647] **P-1719**: T-141-CONF-ENG CT, p. 50, lns 17-23
[1648] Bemba et al. AJ, para. 868; Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 51; Bemba TJ, para. 239.
[1649] **P-2673:** P-T-041-CONF ET, p. 18, ln. 23 to p. 19, ln. 6, p. 19, lns 13-16.
[1650] **P-2673**: CAR-OTP-2127-6435-R01, at 6443, para. 53.
[1651] **P-2673**: T-041-CONF-ENG ET, p. 20, lns 10-12.
[1652] *See below*, VI.F.1.2. Mr NGAÏSSONA did not liaise with Bernard MOKOM.
[1653] **P-2673**: CAR-OTP-2127-6435-R01, at 6444, para. 56, at 6460-6461, para. 168.

key findings to the requisite standard. Similarly, P-2673 failed to identify the 'colleagues' who allegedly informed him that Bernard MOKOM distributed money received from Mr NGAÏSSONA, and even lacked direct knowledge of how these 'colleagues' obtained that information.[1654] P-2673 also contradicted P-1719's testimony in relation to the exact sum allegedly received by CAR soldiers.[1655] He also claimed [REDACTED].[1656] The witness also shifted on whether he ever received money from Bernard MOKOM, between [REDACTED] and then a certain [REDACTED].[1657] It is also striking that the witness claimed in many Facebook conversations [REDACTED],[1658] yet [REDACTED].[1659] These multiple inconsistencies make his evidence unreliable.

475. Second, P-2673 speculated that Mr NGAÏSSONA was 'in charge', because he allegedly gave money for people to go to the border, but could not say more,[1660] as he conceded never seeing Mr NGAÏSSONA himself.[1661] His far-fetched explanation of his 24 October 2013 Facebook message to [REDACTED][1662] is also not credible and should be disregarded.[1663] In a separate message, he asked [REDACTED] if [REDACTED]. His explanation that he was merely seeking information about [REDACTED] is unconvincing, indicating, rather, his lack of insight into the actual events.[1664]

476. Third, P-2673's inaccurate claim that Élysée SABE ('SABE') was in charge of the border,[1665] is directly contradicted by D30-4914, [REDACTED]. D30-4914 asserted that SABE was never in a position of responsibility.[1666]

477. P-2673's testimony is a speculative assemblage of mismatched puzzle pieces. The witness failed to explain how he became aware that Mr NGAÏSSONA provided money to Bernard

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[1654] **P-2673**: CAR-OTP-2127-6435-R01, at 6443, paras 52-53.
[1655] **P-2673**: T-041-CONF-ENG ET, p. 20, lns 3-7. *Compare* with **P-1719**: T-141-CONF-ENG CT, p. 50, lns. 9-21.
[1656] **P-2673**: CAR-OTP-2127-6435-R01, at 6444, para. 59.
[1657] *Compare* **P-2673**: CAR-OTP-2127-6435-R01, at 6449, para. 90, at 6452, para. 111 with T-041-CONF ET, p. 20, lns 1-2, T-042-CONF-ENG CT, p. 72, lns 1-17.
[1658] CAR-OTP-2101-6897, at 6900-6901; *See also ibid.,* at 6915.
[1659] **P-2673**: T-042-CONF-ENG CT, p. 72, ln. 18, to p. 73, ln. 10.
[1660] **P-2673**: CAR-OTP-2127-6435-R01, at 6444, para. 56.
[1661] **P-2673**: CAR-OTP-2127-6435-R01, at 6444, para. 59.
[1662] CAR-OTP-2101-6897, at 6899.
[1663] **P-2673**: CAR-OTP-2127-6435-R01, at 6449, para. 89; CAR-OTP-2101-6897, at 6899.
[1664] **P-2673**: CAR-OTP-2127-6435-R01, at 6450, paras 98-99.
[1665] **P-2673**: CAR-OTP-2127-6435-R01, at 6445, para. 61.
[1666] **D30-4914**: T-303-CONF-ENG CT, p. 9, ln. 4 to p. 11, ln. 15.

MOKOM, forcefully fitting this claim into his narrative despite its inconsistency with verified information. The Chamber should therefore not rely on P-2673 to reach any conclusion.

478. In light of the above, there is no credible evidence that Mr NGAÏSSONA financed the movement of Anti-Balaka elements to the Cameroonian border. In any event, the Prosecution failed to demonstrate that Mr NGAÏSSONA's alleged contribution, if any, assisted the commission of the charged crimes. First, no charged crimes occurred at the border. Second, there is no evidence that the individuals who allegedly received funds to go to the border, actually engaged in hostilities or contributed to any alleged fighting during the charged attacks.[1667] For instance, [REDACTED],[1668] [REDACTED].[1669] Similarly, neither [REDACTED] engaged in hostilities.[1670] D30-4914 testified that [REDACTED], *i.e.* after the 5 December attacks.[1671]

3. Mr NGAÏSSONA did not provide money, weapons, ammunitions or any other material

3.1. Prior to 5 December 2013

3.1.1. CAR border

479. D30-4914 denied that Mr NGAÏSSONA, Bernard MOKOM, BOZIZÉ and/or YAKÉTÉ ever financed [REDACTED].[1672] He specified that Bernard MOKOM, [REDACTED], used to go out on foot and "had nothing".[1673]

480. The hearsay allegations concerning the funding of (i) elements in BERTOUA or (ii) the alleged attack on BOUAR exclusively implicate Bernard MOKOM, refer to minor amounts, earmarked strictly for food,[1674] and are contradicted by a Facebook communication sent on the eve of the alleged attack, indicating no funds were conveyed to the field, potentially accounting for the

[1667] Bemba et al. AJ, paras 19, 1329.
[1668] **P-2673**: CAR-OTP-2127-6435-R01, at 6446, para. 68, at 6447, para. 75, at 6453, para. 115.
[1669] **P-2673**: T-042-CONF-ENG CT, p. 73, lns 2-10.
[1670] **D30-4914**: T-303-CONF-ENG CT, p. 20, ln. 17 to p. 21, ln. 7; **P-2673**: T-042-CONF-ENG CT, p. 72, ln. 18, to p. 73, ln. 10.
[1671] **D30-4914**: T-303-CONF-ENG CT, p. 20, ln. 17 to p. 21, ln. 7; T-303-CONF-ENG CT, p. 22, lns 5-12.
[1672] D30-4914 repudiated a 10 February 2014 intelligence report (CAR-OTP-0080-0821) stating that Mr NGAÏSSONA, BOZIZÉ and others would have financed the events from Cameroon; **D30-4914**: T-302-CONF-ENG CT, p. 74, ln. 25 to p. 76, ln. 8 ("[REDACTED]").
[1673] **D30-4914**: T-302-CONF-ENG CT, p. 43, lns 2-16.
[1674] **P-2673**: CAR-OTP-2127-6435-R01, at 6455, paras 127-128; CAR-OTP-2102-5143, at 5169. *See also* CAR-OTP-2103-1846, at 1847-1848.

attack's failure.[1675] Therefore, the evidence that Mr NGAÏSSONA would have provided money to the Anti-Balaka at the border remains wholly inconclusive.

481. There is no credible evidence that Mr NGAÏSSONA financed the purchase of weapons and ammunition to support the Anti-Balaka elements at the border.[1676] To the contrary, there is compelling evidence indicating that the only weapons available at the border were those stolen from the Seleka after the launch of the Anti-Balaka counter-offensive in mid-January 2014, *i.e.* long after the 5 December attack. Weapons abandoned by FACA on their way to exile and buried by the population and soldiers along the way, including in KOUNDÉ, were retrieved by the SANGARIS rather than by the Anti-Balaka.[1677]

482. The allegation that Mr NGAÏSSONA sent ammunition without accompanying weapons is illogical, primarily rests on P-2673's testimony and is in any event contradicted by more reliable evidence. P-2673's pre-memorised testimony, based purely on hearsay, reveals contradictions that significantly undermine its credibility. P-2673 struggled in explaining the precise circumstances in which several hunting guns and ammunition would have been bought and shipped over in "cartons" to BOUAR.[1678] As explained above,[1679] P-2673's constant reliance on his prior recorded statement demonstrated his lack of candour. He also contradicted himself on the nature of the material allegedly provided, first alleging it was hunting ammunition, then hunting guns and ammunition, and finally, hunting ammunition only.[1680] In any case, P-2673 conceded having never seen these boxes personally.[1681]

483. In contrast, D30-4914 asserted never having heard of ammunition being transferred in Maggi boxes, nor through any other method,[1682] adding that ammunition could not have bypassed the laser checks at the border.[1683] Furthermore, D30-4914 stressed that AK-47 ammunitions,

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[1675] CAR-OTP-2101-9735, at 9829-9831.
[1676] *See* **P-1521**: T-082-CONF-ENG CT2, p. 74, lns 1-4 ("And so, as far as I know, there is no individual who financed the Anti-Balaka generally speaking when it comes to -- to weapons. And I am saying this conscious of the oath that I have taken before this Court.").
[1677] **D30-4914**: CAR-D30-0024-0001-R01, at 0012, lns 450-466; T-303-CONF-ENG CT, p. 7, lns 24-25; *See also* **P-2673**: CAR-OTP-2127-6435-R01, at 6453-6454, para. 120.
[1678] *Compare* **P-2673**: T-041-CONF-ENG ET, p. 24, ln. 21 to p. 25, ln. 5 with CAR-OTP-2127-6435-R01, at 6451, para. 100.
[1679] *See above* II.C.2.1. P-2673.
[1680] **P-2673**: CAR-OTP-2127-6435-R01, at 6451, para. 100; T-041-CONF-ENG ET, p. 24, ln. 21 to p. 25, ln. 5; T-041-CONF-ENG ET, p. 40, lns 15-17.
[1681] **P-2673**: CAR-OTP-2127-6435-R01, at 6451, para. 100; T-041-CONF-ENG ET, p. 40, lns 15-19.
[1682] **D30-4914**: CAR-D30-0024-0001-R01, at 0013, lns 474-476; T-302-CONF-ENG CT, p. 50, lns 9-14.
[1683] **D30-4914**: T-302-CONF-ENG CT, p. 50, lns 9-14.

measuring 7,62mm for the most common type, could most probably not fit into Maggi boxes.[1684]

484. D30-4914 also dismissed the possibility that Francis BOZIZÉ could have engaged in negotiations with the Cameroonian authorities to channel weapons and equipment through the border during that period.[1685] Facebook conversations show that Francis BOZIZÉ's purported arrival in Cameroon to negotiate the transfer of equipment through the border was based on rumours which never materialised.[1686] In a message sent on 7 October 2013,[1687] [REDACTED] admitted that the information he initially circulated was incorrect, making the other rumour in that message, of "Francis" having provided money to Mr NGAÏSSONA, equally unreliable.

485. Another conversation dated 14 October 2013 between [REDACTED] and [REDACTED], in which the former stated that Bernard MOKOM and Mr NGAÏSSONA left for BERTOUA and the border with ammunition and medication for the archers of BOUAR, and that Bernard MOKOM has left for good in view of the final assault[1688] is at least partly incorrect as P-2673, briefed with the same details, admitted he was surprised to see Bernard MOKOM return.[1689] Interestingly, the 14 October message contradicted a message sent two days earlier, which made no mention of Mr NGAÏSSONA travelling to the border.[1690] On 16 October, [REDACTED] contradicted himself again on the nature of the material provided: it was no longer ammunition and medication as announced in his previous messages, but Thurayas and money.[1691] Importantly, D30-4914, [REDACTED],[1692] never received any information to that effect.[1693]

486. The above shows that the available evidence is largely speculative, contradictory and based on anonymous hearsay. This is insufficient to prove the allegations against Mr NGAÏSSONA beyond a reasonable doubt.

[1684] **D30-4914**: T-302-CONF-ENG CT, p. 51, lns 20-21.
[1685] **D30-4914**: T-302-CONF-ENG CT, p. 53, lns 9-24, contradicting CAR-OTP-2101-9451, at 9503.
[1686] CAR-OTP-2101-9451, at 9503; CAR-OTP-2131-7091, at 7153; CAR-OTP-2131-7091, at 7157. *See also* **D30-4679**: T-301-ENG CT, p. 64, ln. 1 to p. 65, ln. 25. *See also* **P-2328**: T-046-CONF-ENG CT, p. 83, ln. 22 to p. 85, ln. 13.
[1687] CAR-OTP-2101-9451, at 9551-9552 ("*[REDACTED]*"). *See also* CAR-OTP-2101-9735 at 9830, [19:15:47].
[1688] CAR-OTP-2101-9735, at 9817*; see* **P-2841**: T-030-CONF-ENG CT2, p. 20, lns 1-25.
[1689] **P-2673**: CAR-OTP-2127-6435-R01, at 6460, paras 159- 160.
[1690] CAR-OTP-2102-4062, at 4124.
[1691] CAR-OTP-2102-2520, at 2644.
[1692] **D30-4914**: T-303-CONF-ENG CT, p. 65, lns 15-18.
[1693] **D30-4914**: T-302-CONF-ENG CT, p. 49, lns 11-19. *See above* VI.B.2. Mr NGAÏSSONA did not assist the Anti-Balaka and FACA located at the border with Cameroon.

487. Despite participating in the dissemination of a rumour that medical supplies had been sent to the field, OUEBIO testified he never received confirmation that this happened at all.[1694] Similarly, D30-4914 never heard of medication being sent to CAR through the border during the Relevant Period.[1695] Regarding food, [REDACTED].[1696] Likewise, P-1719 observed that [REDACTED].[1697] The limited, speculative and unreliable evidence available cannot support the inference that Mr NGAÏSSONA sent medicine or food to the border area.

488. P-1847 denied being the source of information behind [REDACTED]'s 15 October messages[1698] to three different persons according to which Mr NGAÏSSONA would have brought Thurayas to the Golf residence.[1699] OUEBIO, who lived at the Golf residence also refuted ever seeing Thurayas there or hearing about a plan to provide Thurayas to elements in the field involving Mr NGAÏSSONA.[1700] Likewise, D30-4914 never heard of Thurayas being channelled to the border and [REDACTED], was unequivocal he was never given one.[1701] This is consistent with messages dated 24 and 25 October 2013 sent by a Facebook account attributed to [REDACTED], claiming that people in BOUAR were in need of satellite phones:[1702] had Thurayas been delivered, people in BOUAR would not have needed them on the eve of the attack. It also contradicts earlier reports from [REDACTED] and [REDACTED] that Thurayas had already been delivered.

489. Second, P-2673's claim that Bernard MOKOM and Mr NGAÏSSONA provided Thurayas to the chief of BOUAR, Didier DANBOY ('DANBOY'), at the Golf residence[1703] only rests on hearsay,[1704] and is contradicted by OUEBIO who never saw DANBOY whom he knew at the Golf.[1705] Moreover, P-2673 is the only source identifying DANBOY as the chief of BOUAR.

[1694] **D30-4679**: T-299-CONF-ENG CT2, p. 86, ln. 8 to p.87, ln. 16, p. 88, lns 7-12. *See also* CAR-OTP-2133-7723, at 7776-7777. Regarding the propagation of false information on Facebook, *see above* II.E.3 The Facebook conversations have little to no probative value.
[1695] **D30-4914**: T-302-CONF-ENG CT, p. 54, lns 1-6.
[1696] **D30-4914**: CAR-D30-0024-0001-R01, at 0014-0015, lns 557-562.
[1697] **P-1719**: T-141-CONF-ENG CT, p. 52, lns 5-7.
[1698] CAR-OTP-2102-2520, at 2643. *See also* CAR-OTP-2101-8599, at 8691; CAR-OTP-2101-9735, at 9818.
[1699] **P-1847**: CAR-OTP-2122-8251-R01, at 8261, paras 94-95.
[1700] **D30-4679**: T-299-CONF-ENG CT2, p. 78, ln. 11 to p. 79, ln. 7.
[1701] **D30-4914**: T-302-CONF-ENG CT, p. 55, ln. 15 to p. 56, ln. 5.
[1702] CAR-OTP-2131-5707, at 5777-5779.
[1703] **P-2673**: CAR-OTP-2127-6435-R01, at 6463, para. 185, [REDACTED]. **P-2673**: T-041-CONF-ENG ET, p. 35, ln. 25 to p. 37, ln. 3.
[1704] **P-2673**: CAR-OTP-2127-6435-R01, at 6464, paras 188-190.
[1705] **D30-4679**: T-299-CONF-ENG CT2, p. 70, lns 21-24.

In addition, while P-2673 initially stated that only one Thuraya was sent to BOUAR,[1706] he later claimed that at least four Thurayas were sent to BOUAR, [REDACTED].[1707]

490. Third, P-2841 testified that he did not know where NGAÏSSONA could have obtained those Thurayas, and that it would have been difficult to find them in Cameroon. He also testified never hearing about people receiving Thurayas in the field.[1708] Therefore, outside of contradictory Facebook rumours and hearsay, there is no evidence showing that Mr NGAÏSSONA provided Thuraya phones to the elements in the field in preparation of the BOUAR attack.

3.1.2. GOBÉRÉ

491. Many witnesses directly or indirectly deny that Mr NGAÏSSONA had any role in the financing of the 'GOBÉRÉ group'. OUABIRO-DANA, who was in GOBÉRÉ, stated that while in the bush he did not hear Mr NGAÏSSONA's name and that he is only aware of him supporting the Anti-Balaka movement after his return to BANGUI.[1709] P-2602, P-0975 and P-2251 also refuted Mr NGAÏSSONA's involvement with the movement at the time they were in GOBÉRÉ.[1710] P-1521, who joined a group of Anti-Balaka [REDACTED][1711] also testified not knowing whether the group was financed by anyone[1712] and not being aware of Mr NGAÏSSONA providing weapons or ammunition to the Anti-Balaka in advance of the 5 December attack.[1713]

492. Evidence points to P-0306 having been part of the 'GOBÉRÉ group' as well,[1714] although he evaded the matter during testimony.[1715] P-0306 stated that he never received any money from Mr NGAÏSSONA.[1716] While P-0306 is plagued by countless credibility issues and a visible bias against Mr NGAÏSSONA,[1717] his denial of having received money from Mr NGAÏSSONA is credible precisely because it goes against his own bias. P-0306's account of events also

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[1706] **P-2673**: CAR-OTP-2127-6435-R01, at 6463, paras 184-185.
[1707] **P-2673**: T-041-CONF-ENG ET, p. 25, lns 6-12.
[1708] **P-2841**: CAR-OTP-2127-4238-R01, at 4258, para. 115.
[1709] **P-0966**: T-117-ENG CT, p. 23, lns 1-22.
[1710] **P-2602**: CAR-OTP-2118-9764-R01, at 9770-9771, lns 179-230; **P-0975**: CAR-OTP-2033-7885-R02, at 7892, para. 52; **P-2251**: T-043-CONF-ENG CT, p. 42, lns 3-4.
[1711] **P-1521**: T-081-CONF-ENG ET, p. 8, lns 2-8.
[1712] **P-1521**: T-082-CONF-ENG CT, p. 73, ln. 20 to p. 74, ln. 4.
[1713] **P-1521**: T-082-CONF-ENG CT, p. 78, lns 20-25.
[1714] **P-2602**: CAR-OTP-2118-9617-R01, at 9636, lns 624-626.
[1715] **P-0306**: T-067-CONF-ENG CT, p. 55, ln. 25 to p. 56, ln. 21.
[1716] **P-0306**: T-064-CONF-ENG ET, p. 55, ln. 14 to p. 56, ln. 19.
[1717] *See above* II.B.3.1 P-0306.

directly refutes P-2673's hearsay allegation according to which Mr NGAÏSSONA would have [REDACTED].[1718]

493. Against this backdrop, P-2269's evidence that Mr NGAÏSSONA sent 3 million FCFA to his group in GOBÉRÉ[1719] lacks probative value, especially since according to this witness' account, the money allegedly sent by Mr NGAÏSSONA was distributed openly "amongst all of the chiefs".[1720] Had this been the case, other GOBÉRÉ witnesses would have said so. Besides, there is no other mention in the entire case record of Ladja KPAWILI, the supposed intermediary who allegedly received the money from Mr NGAÏSSONA via Money Gram and physically brought it to GOBÉRÉ on three occasions. The lack of corroboration of P-2269's allegations is unsurprising given that, as pointed out, this witness lied about having been in GOBÉRÉ.[1721]

494. In his Rule 68(2)(d) statement, P-1847 initially claimed that Mr NGAÏSSONA and others sent money to specific Anti-Balaka leaders, including DEDANE. However, he then recalled [REDACTED] that the transfers came from Maxime and Bernard MOKOM.[1722] P-1847's claim that [REDACTED] that he received money from Mr NGAÏSSONA by Express Union or through interposed people[1723] is vague and uncorroborated. Also, P-1847's narrative on the alleged financial contribution by Mr NGAÏSSONA to elements or leaders in the field presents important inconsistencies. While the witness originally stated that Mr NGAÏSSONA either handed money to GODONAM at the Golf[1724] or sent it to CAR (in GARAM-BOULAÏ or in BANGUI) via Express Union or through interposed persons (notably his brother),[1725] he later said that Mr NGAÏSSONA actually gave money to Bernard MOKOM or Fred SEREFIO whom, in turn, would transfer it to the Anti-Balaka, mainly via Express Union.[1726] Other than the name of the money transfer service, the witness' narrative and the names of the persons involved changed completely between his 2017 and his 2020 interviews. The witness made his

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[1718] **P-2673**: T-042-CONF-ENG CT, p. 26, lns 2-3.
[1719] **P-2269**: CAR-OTP-2111-0336-R01, at 0350-0351, paras 108-113.
[1720] **P-2269**: CAR-OTP-2111-0336-R01, at 0351, para. 110.
[1721] *See above* III.B.2.3.2 The 'GOBÉRÉ group' was not deployed, fn. 753; III.C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks, fn. 786; *see also* ICC-01/14-01/18-1986-Conf, paras 19-30 and ICC-01/14-01/18-1987-Conf, paras 21-30.
[1722] **P-1847**: CAR-OTP-2061-1534-R01, at 1555, paras 132, 134.
[1723] **P-1847**: CAR-OTP-2061-1534-R01, at 1555, para. 135.
[1724] **P-1847**: CAR-OTP-2061-1534-R01, at 1552, para. 115, the witness says he saw him 3-4 times take the money from Mr NGAÏSSONA at the GOLF, but in his second interview he said he saw Mr NGAÏSSONA at the GOLF only once, *see* **P-1847**: CAR-OTP-2122-8251-R01, at 8264, para. 119.
[1725] **P-1847**: CAR-OTP-2061-1534-R01, at 1552, para. 116.
[1726] **P-1847**: CAR-OTP-2122-8251-R01, at 8263, para. 115.

unreliability clear when he said that he did not know the identity of those who allegedly received the money, but it was "the Anti-Balaka and the FACA".[1727] These inconsistencies cast serious doubts as to the reliability of P-1847's hearsay allegations concerning the financing of the Anti-Balaka by Mr NGAÏSSONA in 2013. They should be disregarded on that basis alone, but also because the witness disavowed them completely during his live testimony.[1728] Moreover, when asked to comment on P-1847's allegation that Mr NGAÏSSONA and Bernard MOKOM would have used Fred SEREFIO as an intermediary to send money to the border *via* Express Union,[1729] D30-4914 answered that these were doubtful allegations as money transfers would have been traceable, and that he never heard any information regarding such transactions.[1730] P-1847's allegations concerning Fred SEREFIO's role are uncorroborated. Finally, P-1847's claims that alleged money transfers were behind Olivier KOUDEMON, alias GBANGOUMA ('GBANGOUMA') and Tandor Hypolytte LAMKAGUE's arrest[1731] are contradicted by evidence demonstrating that their arrest was wholly unrelated to any money withdrawals.[1732]

495. P-2658 is equally vague and unconvincing with respect to the alleged provision of weapons and ammunition by Mr NGAÏSSONA to the 'GOBÉRÉ group'. The witness only provided anonymous hearsay evidence according to which Mr NGAÏSSONA allegedly promised to provide the group with weapons. Yet, P-2658 acknowledged that nothing of the sort had in fact been provided and that he never saw any provisions being distributed.[1733] While the witness alleged that at some point DEDANE went to pick up weapons in BOSSANGOA, there is no link between this alleged event and Mr NGAÏSSONA. Furthermore, P-2658 lacked consistency, first suggesting that he had witnessed a distribution of specific weapons following a trip by DEDANE to BOSSANGOA,[1734] but later admitting that he did not see DEDANE return with weapons and that he could not say which kind of weapons he would have brought back.[1735] In addition, a closer look at P-2658's testimony betrays its unreliability. The witness suggested that he heard that Mr NGAÏSSONA provided the group with weapons, to then correct

[1727] **P-1847**: CAR-OTP-2061-1534-R01, at 1552, para. 117.
[1728] **P-1847**: T-023-CONF-ENG CT, p. 56, lns 6-12.
[1729] **P-1847**: T-023-CONF-ENG CT, p. 42, lns 13-24; CAR-OTP-2122-8251-R01, at 8263, para. 115; CAR-OTP-2061-1534, at 1552, para. 116.
[1730] **D30-4914**: T-303-CONF-ENG CT, p. 30, lns 4-12, p. 30, lns 9-12.
[1731] **P-1847**: CAR-OTP-2122-8251-R01, at 8263, para. 116.
[1732] *See e.g.* **P-2027**: T-039-CONF-ENG CT, p. 54, ln. 22 to p. 56, ln. 7; CAR-OTP-2102-6174, at 6273.
[1733] **P-2658**: T-134-CONF-ENG CT, p. 60, ln. 8 to p. 61, ln. 24.
[1734] **P-2658**: T-134-CONF-ENG CT, p. 61, ln. 25 to p. 62, ln. 14.
[1735] **P-2658**: T-136-CONF-ENG ET, p. 65, lns 7-22.

himself and say that he had only heard that Mr NGAÏSSONA *would* do so.[1736] Just like P-2673,[1737] he also contradicted himself on the nature of the material provided, first alleging it was weapons,[1738] then weapons and ammunition,[1739] and finally, ammunition only.[1740] P-2658's claims that DEDANE "briefed" his elements about these alleged promises by Mr NGAÏSSONA, who was described as their "big boss",[1741] lack corroboration by GOBÉRÉ witnesses, which further casts doubts on the veracity of his account.

496. P-2673 also claimed that Mr NGAÏSSONA sent a Thuraya and ammunition to P-0306 at the time of [REDACTED], which the witness erroneously places around 10 November.[1742] First, P-2673 was inconsistent on the source of this information.[1743] Second, while the witness suggested that he learned about the sending of a Thuraya and ammunition [REDACTED] by P-0306 directly, the latter stated that [REDACTED],[1744] and that his group did not receive any ammunition until after the BANGUI attack.[1745] P-2673 also claimed that Mr NGAÏSSONA and MOKOM sent Thurayas to GOBÉRÉ and BOSSANGOA.[1746] This allegation is entirely uncorroborated, and inconsistent with his subsequent testimony, where he said that he only knew of Thurayas having been sent to BOUAR and [REDACTED].[1747] Elsewhere, the witness claimed that Mr NGAÏSSONA had only "promised" to send Thuraya to BAMA,[1748] whom the witness placed in GOBÉRÉ. The witness's lack of consistency on these alleged facts show that his account cannot be trusted.

[1736] **P-2658**: T-134-CONF-ENG CT, p. 60, lns 17-23.
[1737] *See above* para. 482.
[1738] **P-2658**: T-134-CONF-ENG CT, p. 60, lns 22-23 ("A: They said that they would provide them with weapons.").
[1739] **P-2658**: T-134-CONF-ENG CT, p. 61, lns 6-8 ("Q: And you said that Dedane would receive more than one message from Ngaïssona. Did the elements say anything else about Ngaïssona? A. No. They only spoke about arms and ammunition.")
[1740] **P-2658**: T-134-CONF-ENG CT, p. 62, lns 15-19 ("Q. And you mentioned before that the elements, [REDACTED], talking about Ngaïssona making promises. Can you tell us more about what promises you heard about? A. They said that they were waiting for provisions in ammunition, that they had been promised ammunition. That's what they were talking about.").
[1741] **P-2658**: CAR-OTP-2126-0012-R02, at 0037, para. 163.
[1742] **P-2673**: CAR-OTP-2127-6435-R01, at 6453, para. 119; **P-2673**: T-041-CONF-ENG ET, p. 39, ln. 21, to p. 40, ln. 19.
[1743] *Compare* **P-2673**: CAR-OTP-2127-6435-R01, at 6453, para. 119, where the witness said that he "[does] not remember who [he] heard that from", with T-041-CONF-ENG ET, p. 40, lns 4-14, where he changed course to allege that "[a]ll of these people were brothers in arms, my brothers in arms. [REDACTED]" (emphasis added).
[1744] **P-0306**: T-064-CONF-ENG ET, p. 52, lns 5-8.
[1745] **P-0306**: T-064-CONF-ENG ET, p. 73, ln. 13 to p. 74, ln. 13.
[1746] **P-2673**: CAR-OTP-2127-6435-R01, at 6461, para. 175, at 6464, paras 188-190.
[1747] **P-2673**: T-041-CONF-ENG ET, p. 40, ln. 21 to p. 41, ln. 2.
[1748] **P-2673**: CAR-OTP-2127-6435-R01, at 6453, para. 119.

497. Lastly, P-2556 said it was common knowledge that Mr NGAÏSSONA helped the Anti-Balaka in the BENZAMBÉ area with money and food.[1749] He further alleged that BOZIZÉ would have requested Mr NGAÏSSONA to distribute weapons from his hidden stock, situated between BOSSEMBÉLÉ and BENZAMBÉ, to the Anti-Balaka of BOSSANGOA and BENZAMBÉ.[1750] The source of this information is allegedly an old lady who sold fetishes in BENZAMBÉ and claimed to have family ties to Mr NGAÏSSONA, as well as an unidentified Anti-Balaka element who lived with said lady. P-2556 had no information on how this alleged money was sent,[1751] and did not indicate a timeframe for these allegations, However, when assessed in the context of P-2556's testimony, it appears that the information concerning Mr NGAÏSSONA allegedly helping the Anti-Balaka in the BENZAMBÉ area dates from 2014, as the witness claimed to have learnt it during his second and third trips to BENZAMBÉ, which took place when Mr NGAÏSSONA was already the National Coordinator of the Anti-Balaka.[1752]

3.1.3. BANGUI

498. Mr NGAÏSSONA did not finance the Anti-Balaka based in or around BANGUI for the commission of the charged crimes. P-0954 repeatedly stated that he had no information whatsoever on Mr NGAÏSSONA providing money to the Anti-Balaka, prior to their first encounter in June 2024 at the UNDP.[1753] Similarly, P-0884 testified that the allegation that Mr NGAÏSSONA sent money to his brothers in BANGUI were mere rumours;[1754] P-0884 did not know to whom money would have allegedly been sent, for what purpose, or on behalf of whom, if anyone,[1755] and seemed confused with respect to the timeline.[1756] P-0884 also could not confirm whether Mr NGAÏSSONA gave money to the Anti-Balaka prior to his return to BANGUI.[1757]

[1749] **P-2556**: CAR-OTP-2112-1300-R01, at 1313, paras 99, 102.
[1750] **P-2556**: CAR-OTP-2112-1300-R01, at 1313, para. 101.
[1751] **P-2556**: T-146-CONF-ENG CT2, p. 39, ln. 11 to p. 42, ln. 5.
[1752] **P-2556**: CAR-OTP-2112-1300-R01, at 1313, para. 99, the witness later corrected this and claimed that he first time he went to CARNOT, Mr NGAÏSSONA was already coordinator. This was established to be around February 2014, *see* **P-2556**: T-146-CONF-ENG CT2, p. 26, ln. 19 to p. 32, ln. 2.
[1753] **P-0954**: T-166-CONF-ENG CT, p. 67, ln. 22 to p. 69, ln. 14. P-0954 admitted the mention of Mr NGAÏSSONA as a financier in his prior recorded testimony was "perhaps an error", *see* **P-0954**: T-166-CONF-ENG CT, p. 69, lns 8-10; T-169-CONF-ENG CT, p. 22, lns 7-12, p. 46, ln. 20 to p. 47, ln. 20.
[1754] **P-0884**: T-058-CONF-ENG CT, p. 101, lns 16-17 ("But this is information that was going around").
[1755] **P-0884**: T-058-CONF-ENG CT, p. 99, lns 19-23, p. 101, lns 11-18.
[1756] **P-0884**: T-058-CONF-ENG CT, p. 99, lns 19 to p. 101, ln. 18, where it is clear that the alleged money transactions would have occurred after Mr NGAÏSSONA's return to BANGUI, namely around February 2014.
[1757] **P-0884**: T-058-CONF-ENG CT, p. 66, lns 13-22.

499. The crux of the Prosecution's case that Mr NGAÏSSONA provided weapons and ammunition to the Anti-Balaka in BANGUI from Cameroon is based on two email chains[1758] attributed to Mr NGAÏSSONA and P-2843.[1759] P-2843, the sender of the "BESOINS",[1760] "BESOINS ZONE SUD",[1761] "Re: informations",[1762] and "numero"[1763] emails of 7 and 12 October 2013, and P-2841, the person identified as the "*point focal*" therein, provided first-hand contextualisation of the emails. Their testimonies invalidate the theory that Mr NGAÏSSONA provided weapons and ammunition to the Anti-Balaka in BANGUI.[1764]

500. First, both P-2843 and P-2841 testified that the contents of the emails exchanged between [REDACTED] and [REDACTED] in October 2013 were entirely fabricated as a ruse to extort money from Mr NGAÏSSONA.[1765] P-2843 explained that contrary to what appears in the 7 October 2013 email, [REDACTED] did not have any "elements".[1766] He confirmed that both [REDACTED] and [REDACTED] were hiding in BANGUI the entire time[1767] and did not travel to their alleged "zones of control".[1768] P-2841 independently confirmed these facts,

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[1758] ICC-01/14-01/18-1546-Conf (on the authenticity and probative value of the "BESOINS" and "BESOINS ZONE SUD" emails). *Compare* CAR-OTP-2124-0899 (7 Oct 2013) email titled "Besoins" with the same document found at CAR-OTP-2130-3383, which has a different time stamp.

[1759] The account attributed to Mr NGAÏSSONA is [REDACTED], while [REDACTED] is attributed to P-2843; ICC-01/14-01/18-1546-Conf, para. 73, P-2843 was in frequent contact with Mr NGAÏSSONA during the relevant timeframe by virtue of [REDACTED], and not for the purposes of discussing military matters. *See also* **P-2843**: T-073-CONF-ENG ET, p. 19, lns 5-24 ("[REDACTED]."), p. 27, ln. 24 to p. 28, ln. 1 ("[REDACTED].)", p. 30, lns 4-9; CAR-OTP-2130-3372.

[1760] CAR-OTP-2124-0899.

[1761] CAR-OTP-2124-0900; CAR-OTP-2124-0901; CAR-OTP-2124-0903.

[1762] CAR-OTP-2124-0891; CAR-OTP-2124-0892.

[1763] CAR-OTP-2124-0894; CAR-OTP-2124-0895; CAR-OTP-2124-0896.

[1764] PTB, paras 278, 79-81.

[1765] **P-2843**: T-073-CONF-ENG ET, p. 79, lns 15-21 ("A. Yes. Afterwards we were still corresponding, but very sincerely my impression was that what was of interest to them was money. Because afterwards they even came twice to see me to tell me to ask Mr Ngaïssona to send them money because they had to take care of people. But I did not convey that message to Mr Ngaïssona because I understood that they wanted to extort money from Mr Ngaïssona. They wanted to get money from him, so I didn't convey that message.)" (emphasis added); *see also* T-074-CONF-ENG ET, p. 41, lns 18-22, p. 43, ln. 24 to p. 44, ln. 3. P-2841 also indicated that the expression of "needs" likely was an attempt by P-2843 to extract money from Mr NGAÏSSONA, given that he was "broke financially" at the time, *see* **P-2841**: T-029-CONF-ENG CT, p. 47, lns 13-20.

[1766] *See* **P-2843**: T-073-CONF-ENG ET, p. 59, lns 1-4 ("We received information from everywhere. And that's why I talked about information units. The information that we received, we met up and we discussed what we'd heard."); T-074-CONF-ENG ET, p. 43, ln. 24 to p. 44, ln. 3 ("A. We realised later that almost everything he said was not true. He got us to believe that he had elements, that he was controlling some people, that there were people under his control, but all of that was lies, all of that was lies, all of that was lies. And then he would -- he would invent stories. And we then got to understand that [REDACTED] was not a serious person.").

[1767] **P-2843**: T-074-CONF-ENG ET, p. 49, ln. 21 to p. 50, ln. 16.

[1768] **P-2843**: T-074-CONF-ENG ET, p. 45, lns 3-13 ("So, for example, let us have a closer look at OTP -- CAR-OTP -- tab 7, and it's CAR-OTP-2124-0899. If you look, sir, at that email of 7 October which was transmitted by you based on a piece of paper drafted by these two friends, you see under sub 1 "[REDACTED] (sites: Kouzoundoro, Bogoura, Lambi, Lac Caimon, Ndjo, Bossemptélé, Bozoum and Baoro)." Did you ever hear from them that they were really in contact with these sites at that time? A. That is the information they provided us

testifying that the contents of the email "didn't really exist", "none of that really existed",[1769] "all of that was lies".[1770] P-2843 and P-2841 both confirmed that the terminology used in the email such as "*cellule d'information*" and "*éléments*"[1771] were misleadingly and unsuccessfully used for persuasive appeal in order to extract money from Mr NGAÏSSONA.[1772] P-2841 confirmed that his purported role as the "*point focal*"[1773] "didn't exist in reality".[1774] P-2843 testified that [REDACTED] and [REDACTED], identified in the 7 October 2013 email as "*officiers*",[1775] whom he was friends and in frequent contact with, never mentioned having been involved in military operations.[1776]

501. Second, P-2843 and P-2841 testified that the various requests for "needs" sent by P-2843 in October 2013 never materialised.[1777] Mr NGAÏSSONA provided no response to the "needs" purportedly sent to him by P-2843, as confirmed by the emails themselves, and P-2843 in Court.[1778] P-2841 testified he never "saw any results of the requests in these emails, such as the

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with. That's the information they told me. He said he had people there, he had control over them and that he had contacts there. It is only later on that I found out that everything that he was saying was lies, was lies, it was untrue."), p. 47, lns 13-19 ("They told us that they were in contact with their elements in those zones, that they had permanent contact with those zones. That's what they told us. But it is only afterwards that I realised that most of what [REDACTED] was narrating or the stories that he was inventing, all of that was untrue, those were lies. Because throughout that period they never travelled, he never travelled, they were in Bangui. But it is only afterwards that we realised that they were lying and that they were not telling the truth.") (emphasis added). P-2841 also confirmed in his live oral testimony that [REDACTED] was playing a "double game", *see* **P-2841**: T-029-CONF-ENG CT, p. 28, lns 7-19. In his statement, P-2841 also clarified "Frankly speaking, they did not occupy a certain territory, they would simply call each other and organise meetings, then spread the message and the news, and get on with their activities", *see* **P-2841**: CAR-OTP-2127-4238-R01, at 4256, para. 101.

[1769] **P-2841**: T-029-CONF-ENG CT, p. 54, ln. 16 to p. 55, ln. 2.

[1770] **P-2841**: T-030-CONF-ENG CT2, p. 54, lns 1-25; **P-2843**: T-074-CONF-ENG ET, p. 41, ln. 16 to p. 45, ln. 13, p. 50, lns 17-21.

[1771] CAR-OTP-2130-3381; CAR-OTP-2124-0890, CAR-OTP-2124-0891; **P-2841**: T-029-CONF-ENG CT, p. 48, ln. 25 to p. 49, ln. 6 ("So I think he was referring to that team, but because he had to somehow present the situation -- he was trying to get some money, and since he had to present this situation to President Ngaïssona, he needed to find the right words to achieve his goal. So he was simply referring to our small group which came together from time to time to have discussions with friends. So he just used a sophisticated term there which doesn't mean much. He was simply referring to our small group.") (emphasis added).

[1772] **P-2841**: T-029-CONF-ENG CT, p. 48, ln. 20 to p. 49, ln. 6.

[1773] CAR-OTP-2124-0900.

[1774] **P-2841**: T-029-CONF-ENG CT, p. 54, ln. 20 to p. 55, ln. 6; CAR-OTP-2127-4238-R01, at 4255, para. 97.

[1775] CAR-OTP-2124-0899.

[1776] **P-2843**: T-074-CONF-ENG ET, p. 49, ln. 21 to p. 50, ln. 16, while the Prosecution fiercely "cross-examined" its own witness, this did not result in P-2843 confirming the Prosecution allegations.

[1777] **P-2843**: T-073-CONF-ENG ET, p. 66, lns 2-3, p. 84, lns 18-22; T-074-CONF-ENG ET, p. 47, ln. 22 to p. 48, ln. 4; CAR-OTP-2124-0985. The Prosecution relies on Facebook conversation CAR-OTP-2101-9735 in PTB, fn. 188, however, three Prosecution witnesses testified that the information contained in this particular Facebook conversation was false, *see* **P-2027**: T-040-CONF-ENG CT2, p. 37, ln. 5 to p. 39, ln. 3; **P-0801**: T-038-CONF-ENG CT, p. 37, ln. 24 to p. 38, ln. 20; **P-1719**: T-142-CONF-EN CT, p. 9, ln. 21 to p. 10, ln. 25.

[1778] CAR-OTP-2124-0985; CAR-OTP-2124-0899; CAR-OTP-2124-0900; **P-2843**: T-073-CONF-ENG-ET, p. 66, lns 2-4, p. 84, ln. 2 to p. 85, ln. 1, p. 84, lns 18-22 ("Q. Okay. In respect of the communications that you sent him regarding arms and money as of I think it was 17 October, did you try to reach him or follow up on those requests? Or speak to him about them? A. No, I did not contact him. I had sent him a message. He did not respond. I got no

receipt of supplies or a deployment on the ground".[1779] Such unilateral communications can hardly prove a contribution on Mr NGAÏSSONA's part. Moreover, P-2843 confirmed he never discussed with Mr NGAÏSSONA the Anti-Balaka or military matters during their frequent exchanges;[1780] [REDACTED].[1781]

502. Third, there is no evidence that Mr NGAÏSSONA contacted or spoke with [REDACTED] or [REDACTED] following the provision of their purported phone numbers by P-2843.[1782] The alleged call between a number attributed to Mr NGAÏSSONA ([REDACTED]) and [REDACTED] on 13 October 2013[1783] does not support the allegation that they were in contact, because (i) the attribution of [REDACTED] to Mr NGAÏSSONA is not established;[1784] and (ii) the "call" lasted 00:00:00 minutes.[1785]

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feedback, so I didn't contact him on that point."); T-074-CONF-ENG ET, p. 41, lns 2-10 ("A. They didn't say anything about it. They didn't talk about that to me. But as I have already said, it is only afterwards that I realised that what they were interested in, my friends who wanted to contact Ngaïssona, was money. Because when I sent the needs, he didn't answer. He didn't answer when I asked about the needs. The friends came to see me twice and asked me if I could put them into contact and to send them money. Send them money. And I didn't do that because I realised that what they were interested in was money. Apparently, they wanted money from Mr Ngaïssona and I didn't do that. The message I sent to Mr Ngaïssona was something he didn't respond to."), p. 47, ln. 22, to p. 49, ln. 19.

[1779] **P-2841**: T-029-CONF-ENG CT, p. 51, lns 9-13 ("Q. Now, Mr Witness, do we take that response to mean that you knew then at the time, 9 October 2013, that Ngaïssona had told [REDACTED] to give him the needs? A. No. The "yes" here -- my "yes" here is referring to the fact that the people in Bangui had not yet received the matériel, the *matos* that they were expecting") (emphasis added); CAR-OTP-2127-4238-R01, at 4255, para. 96, at 4260, para. 126.

[1780] **P-2843**: T-073-CONF-ENG ET, p. 64, ln. 8 to p. 66, ln. 3, p. 93, lns 1-16.

[1781] **P-2843**: T-073-CONF-ENG ET, p. 84, lns 5-17.

[1782] The Prosecution has not established there were any phone contacts between [REDACTED] and Mr NGAÏSSONA during this period.

[1783] ICC-01/14-01/18-2061-Conf-AnxA, p. 2.

[1784] There are several contacts between number [REDACTED] and another number attributed to Mr NGAÏSSONA ([REDACTED]), which is an impossibility, *see* ICC-01/14-01/18-1409-Conf-AnxB, Table 6, p. 13, with reference to items CAR-OTP-2008-0483.xls/Sheet 1 (13151), CAR-OTP-2008- 0483.xls/Sheet 1 (13152), CAR-OTP-2008-0483.xls/Sheet 1 (13189), CAR-OTP-2008- 0483.xls/Sheet 1 (13190), CAR-OTP-2008-0483.xls/Sheet 1 (13225), CAR-OTP-2008-0483.xls/Sheet 1 (13250), CAR-OTP-2008-0483.xls/Sheet 1 (13251), CAR-OTP-2008-0483.xls/Sheet 1 (13266), CAR-OTP-2008- 0483.xls/Sheet 1 (13267), CAR-OTP-2008-0483.xls/Sheet 1 (13268), CAR-OTP-2008-0483.xls/Sheet 1 (13298), CAR-OTP-2008-0483.xls/Sheet 1 (13299); CAR-OTP-2008-0483.xls/Sheet 1 (13310), CAR-OTP-2008- 0483.xls/Sheet 1 (13311); CAR-OTP-2068-0034.csv (37116), CAR-OTP-2068-0034.csv (37120); CAR-OTP-2008-0483.xls/Sheet 1 (13321); CAR-OTP-2008-0483.xls/Sheet 1 (13336), CAR-OTP-2008-0483.xls/Sheet 1 (13337), CAR-OTP-2008-0483.xls/Sheet 1 (13340), CAR-OTP-2008-0483.xls/Sheet 1 (13366); CAR-OTP-2068-0034.csv (37140), CAR-OTP-2068-0034.csv (37141), CAR-OTP-2068-0034.csv (37186). *See also* **D30-4864**: T-272-ENG ET, p. 25, ln. 11 to p. 26, ln. 11.

[1785] Similarly, the Prosecution has argued that Mr NGAÏSSONA was in touch with [REDACTED] in December 2013. However, the number which the Prosecution attributes to Mr NGAÏSSONA which was allegedly in touch with [REDACTED] was in contact with other phone numbers which Mr NGAÏSSONA attributes to Mr NGAÏSSONA, which shows that they cannot both have belonged to Mr NGAÏSSONA, *see* **D30-4864**: T-272-ENG ET, p. 25, ln. 11 to p. 26, ln. 11. With respect to the alleged call between Mr NGAÏSSONA and [REDACTED], *see* ICC-01/14-01/18-2085-Conf, paras 15-20.

503. Fourth, the purported "transfer" by Mr NGAÏSSONA of the 12 October 2013 email to [REDACTED] fails to show a contribution by Mr NGAÏSSONA: there is no body to the email, and there is no context showing any link between this email "transfer" and the provision of weapons and ammunition, or any military operation. No witness could provide contextualisation or corroboration for this alleged "transfer".[1786]

3.1.4. ZONGO

504. The Prosecution's claim that Mr NGAÏSSONA financed the Anti-Balaka in ZONGO solely relies on P-2841's hearsay evidence. The witness testified having learnt about it from [REDACTED] and [REDACTED], who were allegedly in touch with MOKOM in ZONGO.[1787] However, he also conceded that MOKOM personally confirmed to him that he had received nothing from Mr NGAÏSSONA.[1788] This denial, compounded with the serious concerns on record as to the reliability of information provided by [REDACTED] and [REDACTED],[1789] casts serious doubts on the accuracy of this allegation, despite the fact that P-2841 shared it on Facebook.[1790] It is further noteworthy that P-2843, who used to get together with P-2841, [REDACTED] and [REDACTED] to discuss the evolution of events in CAR,[1791] confirmed having heard about the provision of material in ZONGO[1792] but had no information about Mr NGAÏSSONA's involvement.[1793] Similarly, while P-2843's "informations" email refers to the equipment of elements in ZONGO, it does not confirm that Mr NGAÏSSONA was the one who provided it.[1794]

505. In addition, while Prosecution witnesses who were in ZONGO testified that their group received some financial support, they consistently refuted having any knowledge that Mr

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[1786] **P-2843**: T-073-CONF-ENG ET, p. 76, ln. 25 to p. 79, ln. 3, P-2843 testified that he had no idea why his email would be forwarded to [REDACTED] and he was not aware of the transfer nor that [REDACTED] responded to Mr NGAÏSSONA. He never heard anything about the request for "needs". On the alleged communication on 17 October 2013 between a number attributed to Mr NGAÏSSONA and a number attributed to [REDACTED], *see* ICC-01/14-01/18-2061, ICC-01/14-01/18-2085-Conf, paras 15-26, ICC-01/14-01/18-1546-Conf, para. 72. *See also* **P-0992**: T-092-CONF-ENG ET, p. 38, ln. 2 to p. 41, ln. 10, P-0992 who was shown the "Besoins" email of 7 October 2013 and indicated he knew nothing about the contents of the email.
[1787] **P-2841**: T-029-CONF-ENG CT, p. 43, ln. 11 to p. 44, ln. 8.
[1788] **P-2841**: CAR-OTP-2127-4238-R01, at 4253, para. 88.
[1789] *See above* VI.D.3.1.3 BANGUI, para. 500.
[1790] CAR-OTP-2101-9735, at 9805.
[1791] Hyperbolically referred to as a "*céllule d'information*" in email exchanges with Mr NGAÏSSONA, *see* **P-2841**: T-029-CONF-ENG CT, p. 48, ln. 20 to p. 49, ln. 6.
[1792] **P-2843**: T-073-CONF-ENG ET, p. 59, lns 14-16, p. 60, lns 4-13.
[1793] **P-2843**: T-073-CONF-ENG ET, p. 63, ln. 5 to p. 64, ln. 24.
[1794] CAR-OTP-2124-0890.

NGAÏSSONA was the source.[1795] NAMSIO was unambiguous that the money he received from Mr NGAÏSSONA was used to pay rent at a time of financial distress.[1796] As to P-1847's vague claim that Mr NGAÏSSONA was involved in sending money,[1797] it was recanted during his testimony,[1798] during which he specifically identified Bernard MOKOM – and him only – as the individual who sent money to MOKOM for the purchase of ammunition.[1799]

506. More generally, questioned on Mr NGAÏSSONA's alleged distribution of weapons to Anti-Balaka chiefs for use in the 5 December attack, P-2673, DEMAFOUTH, and P-0954 had no information,[1800] while POUSSOU could not specify to whom Mr NGAÏSSONA would have sent money, and for what purpose.[1801] POUSSOU contradicted himself entirely by first testifying that he did not recall Mr NGAÏSSONA ever discussing financing the Anti-Balaka to purchase arms,[1802] only to later change his story, stating that Mr NGAÏSSONA personally confirmed financing the purchase of weapons during a meeting months before his arrest.[1803] In addition, DEMAFOUTH provided no information on any alleged involvement of Mr NGAÏSSONA in the supply of ammunition from the DRC to the Anti-Balaka in CAR during his live testimony.[1804]

3.2. After 5 December 2013

507. There is no credible evidence showing that Mr NGAÏSSONA financed the Anti-Balaka for the purchase of weapons and ammunition after the 5 December attack. *First*, P-2232 struggled

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[1795] [REDACTED]; **P-0889**: CAR-OTP-2027-2290-R02, at 2296, para. 35; T-109-CONF-ENG CT2, p. 22, lns 10-20, [REDACTED]; **P-0876**: T-088-CONF-ENG CT2, p. 49, lns 2-22, P-0876 also stressed that he had no knowledge of Mr NGAÏSSONA having financed the Anti-Balaka movement.
[1796] **P-0446**: CAR-OTP-2105-0572-R01, at 0588-0590, lns 528-583; T-097-CONF-ENG CT2, p. 35, lns 6-10.
[1797] **P-1847**: CAR-OTP-2122-8251-R01, at 8264, para. 121.
[1798] **P-1847**: T-023-CONF-ENG CT, p. 33, lns 15-22, p. 56, lns 11-12, p. 67, lns 14-25.
[1799] **P-1847**: CAR-OTP-2122-8251-R01, at 8264, para. 121.
[1800] **P-2673**: T-041-CONG-ENG ET, p. 40, lns 20-25, p. 52, lns 10-14, P-2673 testified that he did not know whether ammunition for the 5 December attack came from Mr NGAÏSSONA. P-2673 admitted to not having first-hand experience of Mr NGAÏSSONA distributing weapons, ammunitions or Thurayas, that it is only hearsay, *see* **P-2673**: T-042-CONF-ENG CT, p. 40, lns 16-19. *See e.g.* **P-2328**: T-047-CONF-ENG CT, p. 27, ln. 21 to p. 28, ln. 12, P-2328 had no first-hand knowledge of Mr NGAÏSSONA's alleged activities in 2013, including of any alleged financing, or provision of weapons and ammunitions; **P-0954**: T-169-CONF-ENG CT, p. 48, lns 8-10, P-0954 never saw or heard of Mr NGAÏSSONA distributing weapons to anyone, at any moment.
[1801] **P-2625**: T-189-CONF-ENG CT, p. 38, lns 1-14; T-190-ENG CT, p. 35, ln. 24 to p. 36, ln. 1; T-193-CONF-ENG CT2, p. 17, lns 2-24; *see above* II.B.3.3. POUSSOU (P-2625).
[1802] **P-2625**: T-190-ENG CT, p. 35, ln. 22 to p. 36, ln. 1.
[1803] **P-2625**: T-193-CONF ENG CT2, p. 70, ln. 6 to p. 72, ln. 25.
[1804] **P-2328**: T-046-CONF ENG CT, T-047-CONF ENG CT; T-048-CONF-ENG CT; *see e.g.* T-047-CONF ENG CT, p. 27, ln. 21 to p. 28, ln. 12.

initially to identify the potential sources of the alleged funding.[1805] When reminded of his statement,[1806] he claimed that Mr NGAÏSSONA gave money to Comzones during meetings to buy weapons and ammunition.[1807] Yet, he later contradicted himself, stating that these funds were for transportation and "to feed the elements" to prevent disorder.[1808] The witness noted that disorder ensued once funds ceased, leading to uncontrolled Anti-Balaka elements committing crimes to survive,[1809] while others left for the provinces.[1810]

508. Second, P-0965 claims that Mr NGAÏSSONA had the means to buy weapons and was the Anti-Balaka financier,[1811] was mentioned for the first time before the Chamber, and suffers from the overall lack of credibility of the witness.[1812] Contradictorily, P-0965 admitted his lack of knowledge as regards "the money which was sent to support the troops."[1813]

509. A plethora of Prosecution witnesses, however, have categorically refuted any claims that Mr NGAÏSSONA distributed weapons or financed their acquisition after the 5 December attack.[1814] While Mr NGAÏSSONA was still in Cameroon, NGAYA collected several donations

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[1805] **P-2232**: T-077-CONF-ENG CT, p. 19, ln. 24 to p. 20, ln. 6 ("Everybody was doing what they could to get some money. Some had roadblocks and all the people who passed by had to give them a bit of money, had to put some money in the basket. They used that money either for food or to buy anything that they needed. I repeat, everybody had their own way of doing things and at a certain point of time it was difficult to control the Anti-Balaka. There was a lot of robbery, theft by some, and others used different strategies to try and get supplies. So it's difficult. I can't know all the sources.").
[1806] Despite P-2232 not being a Rule 68(3) witness, the Prosecution repeatedly referred to his statement to the point where both the Presiding Judge and Counsel for the Defence made remarks, *see* **P-2232**: T-075-CONF-ENG CT, p. 63, lns 9-10; T-077-CONF-ENG CT, p. 41, lns 16-24.
[1807] **P-2232**: T-077-CONF-ENG CT, p. 22, ln. 14 to p. 23, ln. 6.
[1808] **P-2232**: T-076-CONF-ENG ET, p. 67, lns 14-24. *See also* **P-0965**: T-063-CONF-ENG CT, p. 30, lns 14-19. P-2232's account on money given by Mr NGAÏSSONA to the Anti-Balaka for food and to prevent disorder is consistent with the accounts of the following witnesses: **P-1858**: T-187-CONF-ENG ET, p. 30, lns 13-25; **P-0888:** CAR-OTP-2072-1715-R01, at 1731, lns 550-551; T-123-ENG CT2, p. 20, lns 12-13, p. 37, lns 8-13; **P-0889:** T-109-CONF-ENG CT2, p. 34, lns 3-22. *See also* **D30-4496**: T-289-ENG CT, p. 63, ln. 5 to p. 64, ln. 13, who testified that Mr NGAÏSSONA gave food to hungry Anti-Balaka elements and told them that he was not in favour of the acts of violence and abuse they had committed in BANGUI. He also advised them to go back to their villages and return to farming.
[1809] **P-2232**: T-076-CONF-ENG ET, p. 67, ln. 24 to p. 68, ln. 9; T-077-CONF-ENG CT, p. 25, lns 9-18. According to P-2232, this situation made the Sangaris and the MISCA adamant to disarm the Anti-Balaka, *see* T-076-CONF-ENG ET, p. 68, lns 10-18.
[1810] **P-2232**: T-076-CONF-ENG ET, p. 55, lns 15-17. On Mr NGAÏSSONA financing some of the youth to return to their villages, *see* **P-1521**: T-083-CONF-ENG CT, p. 46, ln. 19 to p. 47, ln. 2; **P-0888**: T-123-ENG CT2, p. 51, lns 3-10.
[1811] **P-0965**: T-063-CONF-ENG CT, p. 34, lns 14-18, p. 35, lns 9-24.
[1812] **P-0965**: T-063-CONF-ENG CT, p. 28, ln. 2 to p. 30, ln. 21. On P-0965's lack of credibility, *see above* II.B.3.2. P-0965.
[1813] **P-0965**: T-063-CONF-ENG CT, p. 30, lns 11-21.
[1814] **P-0954**: T-169-CONF-ENG CT, p. 48, lns 8-10; **P-1193**: T-125-CONF-ENG CT2, p. 42, lns 3-13; **P-1077**: T-150-ENG CT, p. 48, lns 6-13; **P-0889**: T-109-ENG CT2, p. 83, lns 15-22; **P-1042**: T-164-CONF-ENG CT, p. 23, lns 20-24; **P-1521**: T-083-CONF-ENG CT, p. 47, lns 3-9, the witness testified that no money was given by Mr NGAÏSSONA at any time in 2014 to buy weapons or ammunition since Mr NGAÏSSONA had no control over operational matters.

from "people of good faith", including 80-100,00 FCFA (around 120-150 euros) from Mr NGAÏSSONA, aimed at preventing Anti-Balaka present in BANGUI from descending into crime due to a lack of resources and state support.[1815] Jacob MOKPEM-BIONLI – P-0992 ('MOKPEM-BIONLI') also testified about Mr NGAÏSSONA's alleged donation made through NGAYA; however, MOKPEM-BIONLI's evidence on the exact amount sent should be given little weight, given its hearsay nature, contrasting with NGAYA's first-hand account.[1816]

510. Upon his return to BANGUI and during meetings with the Comzones, Mr NGAÏSSONA gave money for the Comzones' transportation and accommodation in BANGUI, as well as for food for their elements.[1817]

511. Mr NGAÏSSONA was a community-oriented figure, whose financial contributions to the Anti-Balaka were humanitarian in nature,[1818] meant and for purchasing basic sustenance,[1819] food and medicine.[1820] P-0889 and BEINA emphasized the transparency of Mr NGAÏSSONA's generosity, often made publicly.[1821] Mr NGAÏSSONA also helped cover funeral expenses for Anti-Balaka elements,[1822] a gesture intended to cover their essential financial needs.[1823] These contributions were somewhat expected from someone of Mr NGAÏSSONA's stature in the

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[1815] **P-0808**: T-069-CONF-ENG CT, p. 37, lns 8-25, p. 38, ln. 1 to p. 39, ln. 2; CAR-OTP-2093-0010-R02, at 0018, paras 41-44, P-0808 indicated that the Anti-Balaka had turned to harassing Christians and Muslims alike in order to feed themselves. He added that he provided the money to ANDJILO because he was an Anti-Balaka leader, in order to ensure it would be distributed, *see* **P-0808**: T-069-CONF-ENG CT, p. 38, ln. 13 to p. 39, ln. 23.
[1816] **P-0992**: CAR-OTP-2110-0048-R05, at 0056, para. 39, at 0057, para. 46; T-092-CONF-ENG ET, p. 29, ln. 20 to p. 30, ln. 7.
[1817] **P-0992**: CAR-OTP-2110-0048-R05, at 0066, paras 100-101. P-0992 also explains that during his tenure as communications adviser, various regions from CAR sent requests for food and medication, not for weapons or ammunition, *see* **P-0992:** T-093-CONF-ENG ET, p. 39, lns 2-13. *See also* **P-0966**: CAR-OTP-2031-0241-R03, at 0257, para. 91 ("During these Coordination meetings held in front of NGAÏSSONA's house, NGAÏSSONA gave money to the Anti-Balaka chiefs in order to support destitute combatants who came from the provinces. For the Chiefs who had no houses, NGAÏSSONA paid for them to have houses"); **P-1858**: T-187-CONF-ENG ET, p. 30, lns 13-25. *See also* VII.D.2. Means of subsistence.
[1818] *See below* VII.D.2. Means of subsistence.
[1819] **P-2251**: CAR-OTP-2093-0045-R01, at 0063, para. 117, at 0064, para. 118; T-044-CONF-ENG CT2, p. 37, ln. 1 to p. 38, ln. 2. The amount given was 10.000-20.000 FCFA, i.e. 15-30 euros. *See also* **D30-4496**: T-289-ENG CT, p. 63, ln. 5 to p. 64, ln. 13, who testified that Mr NGAÏSSONA gave food to the Anti-Balaka elements and advised them not to commit crimes; **P-1858**: T-187-CONF-ENG ET, p. 30, lns 13-25.
[1820] **P-0966**: T-118-CONF-ENG CT, p. 20, ln. 24 to p. 21, ln. 14, p. 46, lns 18-19; CAR-OTP-2031-0241-R03, at 0257, para. 91; **P-2269:** CAR-OTP-2111-0336-R01, at 0350, para. 103 ("NGAISSONA would help us to buy food and medicine […]"); **P-0888:** T-123-ENG CT2, p. 20, lns 12-13.
[1821] **P-0888**: T-123-ENG CT2, p. 20, lns 7-8; **P-0889**: T-109-CONF-ENG CT2, p. 85, lns 9-21. *See also* **P-0884**: T-058-CONF-ENG CT, p. 67, lns 1-2, lns 19-24, p. 70, lns 2-3, lns 11-12, albeit hearsay since he was not present during those meetings.
[1822] **P-0954**: T-169-CONF-ENG CT, p. 47, lns 12-16. According to P-0954, the biggest amount he received from Mr NGAÏSSONA for the funeral of one of his elements was 50.000 FCFA, i.e. 76 euros, *see* **P-0954**: CAR-OTP-2048-0171-R03, at 0189, para. 106. *See also* **P-0888**: T-123-ENG CT2, p. 20, lns 10-14; **P-1077**: T-150-ENG CT, p. 48, lns 6-13; **P-2269:** CAR-OTP-2111-0336-R01, at 0350, para. 105.
[1823] **P-0952**: T-249-ENG CT, p. 39, ln. 18 to p. 40, ln. 1; T-251-ENG CT, p. 59, lns 8-20.

CAR community.[1824] However, Mr NGAÏSSONA's generosity did not go unnoticed and was often exploited by people falsely claiming to be Anti-Balaka to obtain money from him.[1825]

512. Even taken at its highest, the evidence cannot prove beyond a reasonable doubt that Mr NGAÏSSONA's funds were intended for weapons and ammunition post 5 December attack. No link is established between these contributions and the acquisition of weapons for the commission of the charged crimes in 2014.[1826] Mr NGAÏSSONA's monetary contributions for the purposes described above had no bearing on the occurrence of any crimes and/or manner of their commission. Consequently, they do not constitute a contribution within the meaning of Articles 25(3)(c) and (d) of the Statute,[1827] or establish any *post facto* contribution.[1828]

E. The Prosecution failed to prove that Mr NGAÏSSONA issued military instructions to Anti-Balaka members, including regarding the 5 December 2013 attack and preceding attacks

513. Even taken at their highest, the allegations that Mr NGAÏSSONA, who is devoid of military experience or authority over military personnel, oversaw military instructions, is fundamentally unsound and lacks coherence with the overall evidence presented. These claims are speculative and rely on inconclusive evidence, such as uncorroborated Facebook messages or dubious testimonies. If anything, the Prosecution's attempt to connect Mr NGAÏSSONA to roles unsupported by logic or fact, undermines the credibility of its case.

1. Insufficient evidence to prove that Mr NGAÏSSONA and Bernard MOKOM summoned NGAÏKOSSET so he could return to CAR to carry out attacks

514. Inconsistent hearsay-based testimonies from P-1847 and P-2673, coupled with unreliable Facebook information, cast serious doubts on claims about Eugène NGAÏKOSSET's ('NGAÏKOSSET') role within the Anti-Balaka and his connection to Mr NGAÏSSONA. P-1847's claim that, once NGAÏKOSSET arrived in YAOUNDÉ, he lived at the Golf with

[1824] **P-0446**: T-097-CONF-ENG CT2, p. 42, lns 10-19, p. 43, ln. 15 to p. 44, ln. 3.
[1825] **P-0966**: T-118-CONF-ENG CT, p. 51, lns 2-19. Mr NGAÏSSONA's generous nature made no distinction since he also sent food to Muslims at KM5, *see* **P-1193**: T-125-CONF-ENG CT2, p. 23, lns 13-15.
[1826] Al Hassan TJ, para. 1244 ("Indeed, the facts must evidence that the accused's contribution is not solely to the activities of the group in a general sense but to *the commission of the crime*. Thus to determine if liability is established there will need to be in each instance a case-by-case analysis in light of the specific context of the case as to the links between the contribution and the commission of the crime.").
[1827] Katanga TJ, para. 1632.
[1828] Mbarushimana Confirmation Decision, paras. 286-287.

NGAÏSSONA and Bernard MOKOM,[1829] is refuted by the evidence.[1830] OUEBIO, who lived at the Golf residence, stated that NGAÏKOSSET never lived there and that he only visited the residence once.[1831] OUEBIO also clarified that on this occasion, NGAÏKOSSET did not receive money from Mr NGAÏSSONA and Bernard MOKOM,[1832] which again refutes P-1847's hearsay allegations. Even assuming that NGAÏKOSSET would have lived at the Golf, it does not assist the Chamber in determining that Mr NGAÏSSONA and Bernard MOKOM gave him military instructions in relation to Anti-Balaka operations in CAR.

515. In his 2017 statement, P-1847 stated that his sources of information were [REDACTED] and [REDACTED], who supposedly also lived at the Golf residence.[1833] However, in his 2020 statement, P-1847 stated that [REDACTED] did not in fact live there.[1834] This was confirmed by OUEBIO,[1835] who did not name [REDACTED] either among Golf residents.[1836] P-1847's live testimony was similarly inconclusive[1837] as the witness was once again inconsistent on the source of his information, which he then attributed to [REDACTED].[1838] P-2673 fails to adequately corroborate P-1847's evidence, as his testimony on this aspect amounts to hearsay.[1839]

516. Facebook evidence also fails to corroborate P-1847 and P-2673's accounts. Instead, it shows that in late 2013, information about NGAÏKOSSET's alleged movements was widely shared and often inconsistent,[1840] highlighting once again the utter lack of reliability of information

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[1829] **P-1847**: CAR-OTP-2061-1534-R01, at 1561-1562, paras 176-178.
[1830] **D30-4679**: T-299-CONF-ENG CT2, p. 64, lns 2-15.
[1831] **D30-4679**: T-299-CONF-ENG CT2, p. 69, lns 9-17.
[1832] **D30-4679**: T-299-CONF-ENG CT2, p. 75, lns 1-5.
[1833] **P-1847**: CAR-OTP-2061-1534-R01, at 1562, paras 177-178.
[1834] **P-1847**: CAR-OTP-2122-8251-R01, at 8254-8255, para. 28.
[1835] **D30-4679**: [REDACTED].
[1836] **D30-4679**: T-299-CONF-ENG CT2, p. 48, lns 2-16.
[1837] **P-1847**: T-023-CONF-ENG CT, p. 87, ln. 3 to p. 88, ln. 21.
[1838] **P-1847**: T-023-CONF-ENG CT, p. 87, ln. 15 to p. 88, ln. 2.
[1839] **P-2673**: T-041-CONF-ENG ET, p. 8, ln. 23 to p. 9, ln. 10, especially p. 9, lns 2-4 ("I heard that Eugène Ngaïkosset had come to meet with Ngaïssona […] That is what I heard people say."), lns 6-8 ("I heard that he had arrived in Yaoundé […] we all learned that").
[1840] *Compare* CAR-OTP-2100-9896, at 9909-9911, where user [REDACTED] places NGAÏKOSSET in YAOUNDÉ on 25 November with CAR-OTP-2102-6699, at 6921, where, on 25 November, user [REDACTED] says he has learnt from KOKATÉ that NGAÏKOSSET is in DOUALA since the day before; *Compare* CAR-OTP-2100-9896, at 9912, where, on 29 November, user [REDACTED] says NGAÏKOSSET is moving towards the border; CAR-OTP-2102-8228, at 8243-8244, where, on 2 December, user [REDACTED] says that NGAÏKOSSET had problems and got stuck in BÉTOU [close to the CAR southern border] while going through Congo with CAR-OTP-2101-6260, at 6276, where, on 5 December, an unidentified user says that "contrary to what is being said", NGAÏKOSSET is still in Cameroon, which is confirmed by user [REDACTED], who says that erroneous information is circulating because "he is feared" and therefore he is "being seen everywhere". Yet, in CAR-OTP-2101-6303, at 6309, the same user claims just one day later (6 December) that NGAÏKOSSET is in

shared over Facebook. This confusion is evident in P-1847 and P-2673's accounts. While the former claims NGAÏKOSSET was incarcerated in YOKADOMA (Congo) on his way to CAR,[1841] the latter claims that he was seeking to go to GARAM-BOULAÏ.[1842] These places are almost 400 km away and the discrepancies related to NGAÏKOSSET's supposed journey towards CAR are irreconcilable. Moreover, other items of evidence rather suggest that NGAÏKOSSET was not arrested in Congo until February 2014,[1843] challenging P-1847's claim that he would have been arrested while on his way to conduct military operations in CAR in advance of 5 December 2013.[1844] In any event, evidence is consistent in stating that NGAÏKOSSET did not make it to BANGUI until later in 2014[1845] and that therefore, even assuming that he meant to play a role within the Anti-Balaka during the 5 December attack, that role never materialised.

2. Insufficient evidence to prove that Mr NGAÏSSONA instructed the Anti-Balaka to attack BOUAR and BELOKO in October 2013

517. D30-4914 was unequivocal that the allegation that Mr NGAÏSSONA and Bernard MOKOM coordinated any attack in BOUAR at the end of October 2013 or at any other time is "absolutely wrong".[1846] He explained that as civilians, neither had the skills to organise and coordinate military operations.[1847] Likewise, while OUEBIO testified that both men visited the Golf residence respectively,[1848] he denied having ever discussed this with them at the time or having had information on this outside of Facebook rumours.[1849]

518. This contradicts allegations circulating on Facebook, and originated by [REDACTED],[1850] that the alleged BOUAR attack in October 2013 was coordinated by both men. [REDACTED]'s

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BOUAR. *Compare* with CAR-OTP-2133-3390, at 3466-3467 where user [REDACTED] claims that NGAÏKOSSET is leading elements in camp Kassai on 5 December, to which his interlocutor responds that it is not true, although he is on the terrain and "not far" from BANGUI.

[1841] **P-1847**: CAR-OTP-2061-1534-R01, at 1562, para. 178.

[1842] **P-2673**: T-041-CONF-ENG ET, p. 9, lns 2-4.

[1843] CAR-OTP-2030-0984, at 0987; CAR-OTP-2124-0605, at 0685.

[1844] **P-1847**: CAR-OTP-2061-1534-R01, at 1561, para. 175, at 1562, paras 177-178.

[1845] **P-2232**: T-075-CONF-ENG CT, p. 29, lns 22-23; **P-2027**: CAR-OTP-2078-0059-R03, at 0072, para. 79; **P-0889**: T-110-CONF-ENG CT, p. 4, lns 8-14; **P-1521**: T-080-CONF-ENG ET, p. 53, lns 11-24.

[1846] **D30-4914**: T-302-CONF-ENG CT, p. 56, ln. 24 to p. 57, ln. 1; T-303-CONF-ENG CT, p. 6, lns 8-16.

[1847] **D30-4914**: T-302-CONF-ENG CT, p. 57, lns 3-8. *See also* **P-4679**: T-301-ENG CT, p. 58, lns 8-11.

[1848] **D30-4679**: T-299-CONF-ENG CT2, p. 63, ln. 5 to p. 64, ln. 8, p. 66, lns 8-19.

[1849] **D30-4679**: T-299-CONF-ENG CT2, p. 71, ln. 23 to p. 72, ln. 3; T-301-ENG ET, p. 58, lns 21-25. *See also* **D30-4848**: T-297-CONF-ENG CT, p. 26, lns 16-23; **P-1042**: T-164-CONF-ENG CT, p. 23, lns 20-24.

[1850] CAR-OTP-2102-8338, at 8345-8347; CAR-OTP-2101-8599, at 8707-8710, at 8703-8705. In the latter, [REDACTED] cryptically comments on 27 October 2013, that Mr NGAÏSSONA and Bernard MOKOM did not inform the military "in time", because they wanted to finish KOKATÉ off. This does not demonstrate they were the ones launching the attack and could at most imply that the transfer of men from Cameroon never materialised.

claim that KOKATÉ had a role in coordinating the alleged military operations in BOUAR,[1851] is also not supported by the evidence and undermines the allegation that Mr NGAÏSSONA and Bernard MOKOM were in charge.[1852] [REDACTED]'s speculative assertion that they were responsible for the Anti-Balaka elements, while KOKATÉ oversaw the military operations, and that they prematurely ordered the attack without BOZIZÉ's approval, to sideline KOKATÉ and YAKÉTÉ for ethnic reasons, is unconvincing and contradicted by more probative evidence in relation to the logistical realities on the ground.[1853] It also contrasts with other evidence suggesting that the timing of the attack was known well ahead of its execution,[1854] which refutes the idea that Mr NGAÏSSONA and Bernard MOKOM would have somewhat "rushed" the order. Finally, the fact that MOKOM reached out to [REDACTED] and [REDACTED] to ask for a contact in the field, weakens allegations that Mr NGAÏSSONA and Bernard MOKOM were coordinating the attack with MOKOM.[1855]

519. KOKATÉ's claim that Mr NGAÏSSONA provided him with details on the BOUAR attack over the phone is equally unconvincing.[1856] The witness raised this allegation for the first time in his testimony,[1857] and thus contradicted his own narrative according to which "there was a lot of suspicion around [his] person, so [he] could not have been brought into the details of the decisions pertaining to the launching of any attack".[1858] There is also no probative evidence that Mr NGAÏSSONA deployed reinforcement to BOUAR, a few days after the failed attack. This allegation solely rests on anonymous hearsay based on [REDACTED]'s Facebook account.[1859]

520. As to the BELOKO offensive which took place mid-January 2014,[1860] D30-4914 is unequivocal: no instructions were ever given by Mr NGAÏSSONA, Bernard MOKOM, BOZIZÉ or anyone from YAOUNDÉ.[1861] The Facebook message on 28 October 2013 announcing an imminent attack on BELOKO is yet another example of misinformation

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[1851] CAR-OTP-2101-8599, at 8707-8710.
[1852] **P-0801**: T-034-ENG CT, p. 61, lns 22-23 (where P-0801 refutes knowing [REDACTED]).
[1853] CAR-OTP-2101-8599, at 8703-8705, 8707-8710, 8719-8721; CAR-OTP-2102-3014, at 3081.
[1854] CAR-OTP-2079-1004, at 1008; CAR-OTP-2101-9735, at 9821-9822.
[1855] CAR-OTP-2102-8338, at 9745-9747; CAR-OTP-2066-3003, at 3064, 3071.
[1856] **P-0801**: T-034-ENG CT, p. 62, ln. 2 to p. 63, ln. 23.
[1857] **P-0801**: T-037-CONF-ENG CT, p. 89, lns 8-23.
[1858] **P-0801**: T-035-CONF-ENG CT, p. 12, lns 19-20.
[1859] CAR-OTP-2101-8391, at 8412-8413; CAR-OTP-2101-9735, at 9830-9831.
[1860] **D30-4914**: CAR-D30-0024-0001-R01, at 0013, lns 479-481; T-302-CONF-ENG CT, p. 64, lns 11-17, p. 82, lns 12-17; T-303-CONF-ENG CT, p. 51, lns 12-13, p. 70, lns 21-22.
[1861] **D30-4914**: T-303-CONF-ENG CT, p. 7, ln. 1 to p. 12, ln. 25.

involving [REDACTED].[1862] D30-4914 is equally firm that Mr NGAÏSSONA never sent reinforcement from Cameroon or took any actions [REDACTED] in BELOKO.[1863]

521. Lastly, the testimony of P-1719 is largely based on assumptions and speculation. P-1719 blended conjecture with fact when linking instructions reportedly given by [REDACTED] to an authority figure, Mr NGAÏSSONA, simply because the instructions allegedly habitually originated from YAOUNDÉ.[1864] Assumptions cannot alone establish the truth. It is crucial for the Chamber to critically evaluate and distinguish between P-1719's assumptions and verified facts before drawing conclusions based on his narrative. A cautious approach is required to ensure a balanced and fair assessment of the evidence.

3. Unreliable Facebook evidence alleging that Mr NGAÏSSONA provided military instructions in November 2013

522. The claim that Mr NGAÏSSONA coordinated military deployment together with Bernard MOKOM and BOZIZÉ in November 2013 rests solely on one Facebook message from user [REDACTED] to OUEBIO[1865] and which wording highlights the doubt of its author on the truth of his assertion. OUEBIO could indeed not confirm its veracity.[1866] He also refuted [REDACTED]'s claim that Mr NGAÏSSONA and Bernard MOKOM lived at the Golf residence[1867] and disavowed a message he had sent to another interlocutor claiming that the Anti-Balaka were "*pilotés*" from YAOUNDÉ,[1868] admitting it was merely a rumour.[1869]Against this backdrop, the evidence fails to meet the requisite threshold to establish that Mr NGAÏSSONA had any role or involvement in issuing military instructions. Furthermore, the evidence does not demonstrate coordination between Mr NGAÏSSONA, Bernard MOKOM and BOZIZÉ.[1870]

523. In addition, the Facebook allegation that Mr NGAÏSSONA instructed men in BOUAR to reach BOSSEMBELÉ in three days is nothing more than anonymous hearsay. The information

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[1862] CAR-OTP-2103-7447, at 7488-7489.
[1863] **D30-4914**: T-303-CONF-ENG CT, p. 8, lns 6-17; CAR-D30-0024-0001-R01, at 0010, lns 344-345, at 0012, lns 460-465.
[1864] **P-1719**: T-143-CONF-ENG CT, p. 56, lns 8-10.
[1865] CAR-OTP-2100-2994, at 3027 ("[REDACTED].").
[1866] **D30-4679**: T-301-ENG CT, p. 55, ln. 20 to p. 58, ln. 20.
[1867] **D30-4679**: T-299-CONF-ENG CT2, p. 64, lns 2-8, on Mr NGAÏSSONA not having lived at the GOLF, p. 66, lns 9-12, on Bernard MOKOM not having lived at the GOLF.
[1868] CAR-OTP-2132-5849, at 5868, Facebook conversation between user "[REDACTED]" and D30-4679.
[1869] **D30-4679**: T-299-CONF-ENG CT2, p. 82, ln. 16 to p. 84, ln. 5.
[1870] *See below* VI.F.1.1 Mr NGAÏSSONA did not liaise with BOZIZÉ; VI.F.1.2. Mr NGAÏSSONA did not liaise with Bernard MOKOM.

apparently originated from [REDACTED], who learnt it from an unnamed source.[1871] The fact that [REDACTED] repeated this information to various interlocutors does not make it more reliable.[1872] It is noteworthy that when [REDACTED] shared it again two days later, he omitted to mention Mr NGAÏSSONA as the supposed source of the order.[1873] On that same day, [REDACTED] stated that KPEFIO was now coordinating BOUAR and that the elements only answered to him.[1874] This further discredits the allegation that Mr NGAÏSSONA issued military instructions to these elements. [REDACTED]'s messages also suggest that the elements in BOUAR did not leave their location,[1875] establishing at the very least that even if instructions to reach BOSSEMBÉLÉ were given, they were not followed. Additionally, a CDR attributed to NDALE, who allegedly led the BOUAR elements, suggests he also did not leave the BOUAR area during that timeframe.[1876] Similarly, OUEBIO could not confirm the reliability of his Facebook messages concerning the supposed descent of men from Cameroon to BANGUI, admitting they were merely rumours.[1877]

524. The claim that Bernard MOKOM and Mr NGAÏSSONA ordered elements in ZONGO to cross to BANGUI before the 5 December attack is equally unreliable. It is based on a single Facebook message written by D30-4848, who received the information from an anonymous third party.[1878] When questioned about these exchanges, the witness could not name the source and could not attest to its accuracy.[1879] In any event, the allegation that Mr NGAÏSSONA and Bernard MOKOM were giving military orders to elements in ZONGO contradicts the Prosecution's theory that MOKOM was in charge of deploying elements in that area.[1880]

4. Insufficient evidence to prove that Mr NGAÏSSONA provided instructions to the Anti-Balaka in CAR relating to attacks, including the 5 December attack

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[1871] CAR-OTP-2102-2520, at 2689 ("*j'ai appris que*").
[1872] CAR-OTP-2101-9451, at 9583-9584.
[1873] CAR-OTP-2101-9735, at 9867-9868.
[1874] CAR-OTP-2101-9735, at 9867-9868 ("[REDACTED].").
[1875] CAR-OTP-2101-8921, at 8951 (stating, on 29 November 2013, that the elements in BOUAR "risk" entering into action to reach BOSSEMBÉLÉ tomorrow); CAR-OTP-2102-2520, at 2717 (stating, on 2 December 2013, that those in BOUAR have not yet moved).
[1876] *See* CAR-OTP-2068-0033, at, *inter alia*, lns 231054 (23/11/2013), 233732 (25/11/2013), 238699 (28/11/2013), 243037 (30/11/2013), 246250 (01/12/2013), 251016 (03/12/2013) and 258588 (05/12/2013), with number [REDACTED] (attributed to Adamou NDALE) consistently pinning at cell tower 36552, which is listed as "BOUAR2" in ORANGE document CAR-OTP-2092-3914, at 3919.
[1877] **D30-4679**: T-300-ENG ET, p. 49, ln. 1 to p. 50, ln. 3.
[1878] CAR-OTP-2102-5471, at 5633, [18:45:54] ("*j'ai appris*").
[1879] **D30-4848**: T-297-CONF-ENG ET, p. 27, ln. 7 to p. 28, ln. 2.
[1880] PTB, paras 84-85.

525. Evidence does not establish that Mr NGAÏSSONA provided instructions to the Anti-Balaka in CAR. P-1847's claim to this effect was based on second-hand information.[1881] He also recanted this allegation during his live testimony.[1882] P-1847's further claim that Mr NGAÏSSONA instructed the "troops" to rest for a week before the 5 December attack[1883] was also recanted.[1884] This allegation is further refuted by other evidence, which offer contrasting accounts as to the reason why the BANGUI attack took place on 5 December.[1885]

526. P-0306 also made allegations of Mr NGAÏSSONA giving military instructions. According to him, Mr NGAÏSSONA was "the one who gave all of the instructions"[1886] directly instructing military commanders,[1887] despite being a civilian. However, his account lacks credibility. The witness was remarkably vague in his description of the events, dates and instructions received in the lead-up to the BANGUI attack[1888] and kept going back to Mr NGAÏSSONA's subsequent role as National Coordinator to validate his claims.[1889] Despite not remembering any dates,[1890] the witness vividly recalled that on 1 December, Mr NGAÏSSONA would have instructed KONATÉ to take BANGUI and await his arrival.[1891] It is unclear how P-0306 would have learnt that these supposed orders originated from Mr NGAÏSSONA. He claimed at first that [REDACTED], only to change his version shortly thereafter and state that [REDACTED],[1892]

[1881] **P-1847**: CAR-OTP-2061-1534-R01, at 1551, para. 112.
[1882] **P-1847**: T-023-CONF-ENG CT, p. 43, lns 15-17.
[1883] **P-1847**: CAR-OTP-2061-1534-R01, at 1560, para. 165.
[1884] **P-1847**: T-023-CONF-ENG CT, p. 92, ln. 14 to p. 93, ln. 6.
[1885] CAR-OTP-2101-9735, at 9882 ([REDACTED] states that the men have arrived in BANGUI but the "authority" did not want them to attack directly because it is Sunday and because they should rest. The "authority" referred to is not Mr NGAÏSSONA, who was consistently referred to in this conversation simply as "Ngaïssona"). **P-0884**: T-055-CONF-ENG ET, p. 49, lns 24-25 (According to P-0884, the Anti-Balaka had already arrived in BANGUI on 1 December but could not attack because it was a national holiday.) **P-0889**: CAR-OTP-2027-2290-R02, at 2297, paras 38-39 (the attack was moved from 1 December to the 5th because Seleka were expecting something to take place on the 1st). **P-1521**: T-081-CONF-ENG ET, p. 42, ln. 16 to p. 43, ln. 16 (according to P-1521, the Anti-Balaka waited to launch the attack because they were hoping to be joined by other elements, but finally had to attack because they feared their presence at the outskirts of BANGUI would become common knowledge and they would therefore be targeted by the Seleka).
[1886] **P-0306**: T-064-CONF-ENG ET, p. 53, lns 5-17.
[1887] **P-0306**: T-065-CONF-ENG ET, p. 15, lns 5-17, p. 74, lns 20-24 ("[a]ll the other groups that were coming in were manoeuvring under Édouard Ngaïssona's authority. Even when we were settled behind the hill, it was still under his authority. Now, when Ngremangou went to get supplies for us, it was under his authority. I myself, I was under his authority"), p. 8, ln. 22 to p. 9, ln. 2.
[1888] **P-0306**: T-065-CONF-ENG ET, p. 14, lns 11-13 ("Now, about dates, quite honestly I do not remember the dates. There was no plan, as such, and I had no idea of the plan. All I know is that we received orders from those who were under the authority of the chief.").
[1889] **P-0306**: T-064-CONF-ENG ET, p. 52, ln. 19 to p. 53, ln. 17, p. 53, ln. 25 to p. 54, ln. 2, p. 75, lns 2-5.
[1890] **P-0306:** T-065-CONF-ENG ET, p. 15, ln. 17 to p. 16, ln. 2.
[1891] **P-0306**: T-065-CONF-ENG ET, p. 14, lns 19-21. Yet, note at T-067-CONF-ENG CT, p. 33, lns 6.
[1892] **P-0306**: T-065-CONF-ENG ET, p. 14, ln. 15 to p. 15, ln. 25.

which once more raises questions on the veracity of his testimony. This is only one example of the exaggerated and uncorroborated claims P-0306 made about Mr NGAÏSSONA.[1893]

527. P-0965's allegation that Mr NGAÏSSONA gave instructions to the Anti-Balaka gathered at the hill in advance of the 5 December attack[1894] should be dismissed as entirely unreliable. P-0965 lied about the timeframe of his alleged role as [REDACTED], as he did not perform that role at any point before 5 December.[1895] Therefore, P-0965 could not have been aware of any instructions given to the alleged leaders of the movement ahead of the 5 December attack. That he might have overheard KONATÉ loudly reporting operational details[1896] is implausible. Furthermore, other evidence on the record casts doubts on P-0965's very presence at the YASSINDA hill before 5 December.[1897]

F. The Prosecution failed to prove beyond reasonable doubt that Mr NGAÏSSONA liaised and coordinated with BOZIZÉ, MOKOM, Mr YEKATOM and Anti-Balaka leaders of BOSSANGOA prior to or at the time of the Charged Crimes

1. Prior to 5 December 2013

1.1. Mr NGAÏSSONA did not liaise with BOZIZÉ

528. A major flaw in the Prosecution's theory is the lack of any reliable evidence regarding BOZIZÉ's role *vis-à-vis* the Anti-Balaka, despite placing him and Mr NGAÏSSONA at the core of a strategic plan to reclaim political power through criminal means. Also, aside from unsupported allegations in relation to Mr NGAÏSSONA and BOZIZÉ's proximity and their alleged presence at a couple of meetings in YAOUNDÉ and PARIS,[1898] no efforts were made to show any tangible contact between the two men, let alone how such contact would have contributed to the commission of the charged crimes.[1899]

[1893] *See above* II.B.3.1. P-0306.
[1894] **P-0965**: T-061-CONF-ENG ET, p. 29, ln. 25 to p. 30, ln. 18.
[1895] **P-0965**: T-062-CONF-ENG CT, p. 45, ln. 8 to p. 46, ln. 22; *See above* II.B.3.2. P-0965.
[1896] **P-0965:** T-063-CONF-ENG CT, p. 24, ln. 15 to p. 25, ln. 8.
[1897] **P-0965**: T-063-CONF-ENG CT, p. 6, ln. 6 to p. 11, ln. 6, referring to CDR document CAR-OTP-2057-0440, lns 365-369, 385, 390, 391, 398, 406, 414, 428, 443, 450, which show that P-0965's number [REDACTED], provided by the witness in his Rule 68(3) statement (**P-0965**: CAR-OTP-2046-0055, at 0066, lns 386-393) consistently connected to various cells in BANGUI during the week before 5 December.
[1898] *See above* VI.A. The Prosecution failed to prove that Mr NGAÏSSONA was part of BOZIZÉ's so-called inner circle.
[1899] The Prosecution failed to adduce any evidence of phone contacts between BOZIZÉ and Mr NGAÏSSONA during the relevant period or that BOZIZÉ's contact was recorded in Mr NGAÏSSONA' phone.

529. First, the series of e-mails from 16 July to 14 August 2013 allegedly forwarded by Mr NGAÏSSONA to WAPOUNABA[1900] does not show that Mr NGAÏSSONA kept BOZIZÉ apprised of the planning of military operations.[1901] OUEBIO testified that BOZIZÉ left Cameroon unexpectedly, without taking his aide-de-camp with him. WAPOUNABA, who remained in the same state of poverty as the rest of the Golf household, stayed there for months after BOZIZÉ's departure, eventually returning to BANGUI in April 2014.[1902] There is no credible evidence that BOZIZÉ maintained communication with WAPOUNABA after leaving Cameroon.

530. Second, there is no credible evidence that Mr NGAÏSSONA helped mobilize Anti-Balaka groups, or FACA and PG members loyal to BOZIZÉ, in concertation with the former President. [REDACTED]'s Facebook claim that 'KANGARA' sent Mr NGAÏSSONA to meet [REDACTED] and [REDACTED] with specific instructions is unsupported and has been refuted by D30-4848.[1903] Similarly, OUEBIO denied ever witnessing any direct orders from BOZIZÉ to Mr NGAÏSSONA.[1904]

531. Third, there is no corroboration to P-2673's speculative claim that BOZIZÉ instructed Mr NGAÏSSONA, who in turn passed orders to MOKOM.[1905] Interestingly, witnesses described the population's general assumption of BOZIZÉ's involvement in the resistance akin to urban myths, simple rumours swirling without substantiation.[1906] Similarly, P-2673 contradicted himself by initially claiming having heard that BOZIZÉ called YAMBÉTÉ to provide KONATÉ with instructions,[1907] to later allege it was Mr NGAÏSSONA whom BOZIZÉ had called.[1908] When faced with these discrepancies, P-2673 denied any inconsistency, further casting doubt on his reliability.[1909]

1.2. Mr NGAÏSSONA did not liaise with Bernard MOKOM

[1900] CAR-OTP-2124-0788; CAR-OTP-2124-0789; CAR-OTP-2130-3288; CAR-OTP-2130-3294; CAR-OTP-2130-3291 (forwarded to email address [REDACTED]).
[1901] *See* ICC-01/14-01/18-1546-Conf, paras 31-33; ICC-01/14-01/18-1546-Conf -Anx1, p. 69, #206-207.
[1902] **D30-4679**: T-299-CONF-ENG CT2, p. 56, ln. 23 to p. 57, ln. 17, p. 59, lns 10-24.
[1903] CAR-OTP-2103-4757, at 4765-4767. *See* **D30-4848**: T-297-CONF-ENG CT, p. 10, lns 10-21.
[1904] **D30-4679**: T-300-ENG ET, p. 43, ln. 24 to p. 45, ln. 7; CAR-OTP-2131-5407, at 5505-5507.
[1905] **P-2673**: T-041-CONF-ENG ET, p. 44, ln. 22 to p. 45, ln. 3.
[1906] **D30-4848**: T-297-CONF-ENG CT, p. 24, ln. 23 to p. 25, ln. 16; **D30-4679**: T-300-ENG ET, p. 29 ln. 21 to p. 30, ln. 25, p. 32, lns 11-15; T-301-ENG ET, p. 43, ln. 16 to p. 44, ln. 1. *See also* **D30-4914**: T-302-CONF-ENG CT, p. 74, lns 18-24 (categorically denying BOZIZÉ's involvement in [REDACTED]).
[1907] **P-2673**: CAR-OTP-2127-6435-R01, at 6461, para. 173.
[1908] **P-2673**: T-041-CONF-ENG ET, p. 49, lns 10-15.
[1909] **P-2673**: T-042-CONF-ENG CT, p. 50, ln. 18 to p. 51, ln. 3.

532. There is no credible evidence that Mr NGAÏSSONA and Bernard MOKOM were close. OUEBIO, who lived at the Golf residence until April 2014,[1910] testified that neither Mr NGAÏSSONA nor Bernard MOKOM ever lived there.[1911]

533. While P-1847 claimed he would often see Mr NGAÏSSONA at the Golf residence after BOZIZÉ's departure,[1912] OUEBIO, who (i) [REDACTED],[1913] and (ii) spent most of his time at home playing cards,[1914] refuted having ever seen P-1847 at the Golf.[1915] P-2673 claimed knowing that Mr NGAÏSSONA and Bernard MOKOM lived together at the Golf residence through GODONAM and Davy FONO ('FONO').[1916] However, OUEBIO refuted being familiar with the name of Achille GODONAM, which excludes that he could have been a regular visitor to the residence.[1917] Interestingly, according to P-2673, FONO knew Mr NGAÏSSONA and Bernard MOKOM lived together because he was in charge of Mr NGAÏSSONA's security at the Golf residence, which is entirely unsupported, and casts doubt as to the reliability of FONO as a source of information, assuming he ever was.[1918] Finally, P-1719's mere assumptions in respect of Mr NGAÏSSONA and Bernard MOKOM's place of residence[1919] are also inconsistent with his prior statement, in which he claimed that Mr NGAÏSSONA lived in YAOUNDÉ with Francis BOZIZÉ, YAKÉTÉ and KPEFIO.[1920]

534. Also, there is no credible evidence of Bernard MOKOM's presence at the alleged Hilton meetings in Yaoundé. While KOKATÉ thought that Bernard MOKOM might have been there, POUSSOU did not include him as a participant in any meetings and even clarified: "[n]ot only I don't know him, but I think I've never met him".[1921]

[1910] **D30-4679**: T-299-CONF-ENG CT2, p. 57, lns 8-13.
[1911] **D30-4679**: T-299-CONF-ENG CT2, p. 64, lns 2-8; T-299-CONF-ENG ET, p. 66, lns 11-12 ("A. After, yes, [Bernard MOKOM] came once. He didn't live there. He just dropped in once and that's how I got to know him. And then afterwards, he went on his way.").
[1912] **P-1847**: T-023-CONF-ENG CT, p. 63, lns 23-24; CAR-OTP-2061-1534-R01, at 1551, para. 112. *Compare* **P-1847**: T-023-CONF-ENG CT, p. 26, ln. 9 to p. 27, ln. 3 *with* CAR-OTP-2122-8251, at 8254, paras 23-24.
[1913] **D30-4679**: [REDACTED].
[1914] **D30-4679**: T-299-CONF-ENG CT2, p. 49, lns 21-23, p. 69, ln. 20; T-301-ENG CT, p. 17, lns 17-18.
[1915] **D30-4679**: [REDACTED].
[1916] **P-2673**: CAR-OTP-2127-6435-R01, at 6450, para. 92; T-042-CONF-ENG CT, p. 14, lns 11-25.
[1917] **D30-4679**: T-299-CONF-ENG CT, p. 70, ln. 25 to p. 71, ln. 1.
[1918] **P-2673** : T-042-CONF-ENG CT, p. 14, lns 18-20; **D30-4679**: T-299-CONF-ENG CT, p. 70, lns 2-16.
[1919] **P-1719**: T-143-CONF-ENG CT, p. 13, ln. 21 to p. 14, ln. 1; T-141-CONF-ENG CT, p. 45, ln. 8; T-142-CONF-ENG CT, p. 20, lns 4-18.
[1920] **P-1719**: T-144-CONF-ENG CT, p. 12, ln. 14 to p. 14, ln. 13.
[1921] **P-0801**: T-037-CONF-ENG CT, p. 72, lns 19-20; **P-2625**: T-192-ENG CT, p. 27, ln 13. For a detailed analysis of the lack of reliable evidence in relation to Mr NGAÏSSONA and Bernard MOKOM's alleged mobilisation of the Anti-Balaka groups in preparation for the 5 December 2013 attack, *see above* III.B.2.2.1. The so-called "Cameroon group".

1.3. Mr NGAÏSSONA did not liaise with MOKOM

535. The allegation that Mr NGAÏSSONA liaised and coordinated with MOKOM is based on hearsay, speculation and evidence lacking credibility. P-0884's claim that he is "sure […] that [Mr NGAÏSSONA] had constant and regular contact with Maxime MOKOM"[1922] amounts to speculation, as the witness stressed that he did not know how things were organised in Cameroon.[1923] P-2673 also speculated when claiming that Mr NGAÏSSONA must have been in contact with MOKOM given that he was with his father.[1924] The fact that P-2673 could not reveal his source for this information[1925] only casts further doubt on the reliability of his evidence.

536. POUSSOU's allegation that he witnessed a call between Mr NGAÏSSONA and MOKOM while at a café in PARIS[1926] lacks credibility, just like the entirety of this witness' evidence.[1927] The witness' description of this alleged interaction, which he had to be reminded of on the basis of his statement,[1928] was vague and failed to provide a level of details sufficient to substantiate his account of events.[1929] Further, that the supposed exchange between Mr NGAÏSSONA and MOKOM concerned military matters is based solely on POUSSOU's speculation.[1930] POUSSOU's evidence concerning this alleged call is further not corroborated by CDR evidence.

537. CDR evidence does not demonstrate the existence of a coordination between Mr NGAÏSSONA and MOKOM, especially given the absence of information concerning the content and purpose of alleged contacts.[1931] Besides, the Prosecution has only identified a handful of calls, starting as late as 30 November 2013, when events in CAR were already in full motion on the eve of the 5 December attack. Most of these contacts were rather short, below one minute, with over half of them lasting precisely 43 seconds only.[1932] The recurrence of precisely 43 second calls

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[1922] **P-0884**: T-055-CONF-ENG ET, p. 71, lns 13-21.
[1923] **P-0884**: T-055-CONF-ENG ET, p. 46, lns 5-25.
[1924] **P-2673**: CAR-OTP-2127-6435-R01, at 6455-6456, para. 132.
[1925] **P-2673**: CAR-OTP-2127-6435-R01, at 6455-6456, para. 132.
[1926] **P-2625**: T-189-CONF-ENG CT, p. 47, lns 3-24.
[1927] *See above* II.B.3.3. POUSSOU (P-2625).
[1928] **P-2625**: T-189-CONF-ENG CT, p. 46, lns 6-13.
[1929] **P-2625**: T-189-CONF-ENG CT, p. 47, ln. 3 to p. 49, ln. 3.
[1930] **P-2625**: T-189-CONF-FRA ET, p. 47, lns 19- 20 ("*Ngaïssona a alors téléphoné à Maxime Mokom...*" *(suite de l'intervention non interprétée)* "*... que les choses sous-entendues militaires, bien entendu, avançaient sur le terrain*"), (emphasis added) (English version not accurate, as it does not include the nuance specified by the witness "*sous-entendues*", T-189-CONF-ENG CT, p. 47, ln. 9).
[1931] CoC Decision, para. 159.
[1932] *See* CAR-OTP-2054-1480, lns 2713, 2752, 128720, 212562, 212570, 254325.

is surprising and could indicate an unexplained technical anomaly.[1933] At the very least it would not be far-fetched to assume it represents unanswered calls that are going to voicemail.[1934] Furthermore, most of these calls show contacts with a phone number whose attribution to Mr NGAÏSSONA is highly contested.[1935]

538. None of the witnesses who had contact with MOKOM in ZONGO were able to confirm that he was in touch with Mr NGAÏSSONA.[1936] Besides, P-0889's account that MOKOM reacted with frustration to Mr NGAÏSSONA's new position as general coordinator, [REDACTED][1937] tends to corroborate the absence of contact and coordination between the two in the relevant timeframe.

539. The Prosecution's attempt to fill evidentiary gaps concerning contacts between Mr NGAÏSSONA and MOKOM by claiming that Mr NGAÏSSONA was close to Bernard MOKOM, who was in turn in touch with his son is a simplistic approach. First, evidence on the frequency of contact between Mr NGAÏSSONA and Bernard MOKOM is inconclusive.[1938] Second, evidence is also inconsistent when it comes to the frequency of contact between MOKOM and his father. P-0889, [REDACTED],[1939] noted that [REDACTED].[1940] P-2232's testimony was incoherent in this respect: while he stated that he had no idea whether MOKOM was reporting to his father and how frequent their contacts were,[1941] he went on to suggest the exact opposite on the following day.[1942] On this aspect of his testimony, P-2232 appears to have largely resorted to speculation.[1943] P-2841 also speculated about the existence of contact between MOKOM and his father,[1944] just like P-1847, who failed to indicate his source for the

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[1933] *See above* II.F.6. The CDRs are fundamentally deficient.
[1934] **D30-4864**: T-270-ENG ET, p. 20, lns 16-25, on the challenges of interpreting CDR and identifying whether a call was actually answered or rather transferred to voicemail.
[1935] The defence contests the attribution of [REDACTED] to Mr NGAÏSSONA, *see* ICC-01/14-01/18-1409, para. 58.
[1936] [REDACTED].
[1937] **P-0889**: CAR-OTP-2122-7653-R02, at 7668, lns 535-554. Partly corroborated by **P-1521**: T-083-CONF-ENG CT, p. 11, lns 16-23, stating that MOKOM objected to Mr NGAÏSSONA becoming coordinator because the latter "was not there at the beginning".
[1938] *See above* VI.F.1.2 Mr NGAÏSSONA did not liaise with Bernard MOKOM.
[1939] **P-0889**: CAR-OTP-2027-2290-R02, at 2294-2295, paras 27-28.
[1940] **P-0889**: CAR-OTP-2122-7600-R02, at 7619, lns 736-755; T-109-CONF-ENG CT2, p. 21, lns 5-24.
[1941] **P-2232**: T-075-CONF-ENG CT, p. 62, lns 1-14.
[1942] **P-2232**: T-076-CONF-ENG ET, p. 19, ln. 10 to p. 20, ln. 5 ([REDACTED]); T-077-CONF-ENG CT, p. 8, lns 1-14, where the witness conceded that he did not know if MOKOM reported back to his father about the BANGUI attack.
[1943] **P-2232**: T-075-CONF-ENG CT, p. 62, ln. 9 ("you know, a father and a son can only communicate frequently […]"); T-076-CONF-ENG ET, p. 19, ln. 25 to p. 20, ln. 11 ("[i]f they had not had these reports, they could not do the coordination"), p. 20, lns 9-10 "[*a*]*ccording to me*, the work was done together and they came to Bangui with this set up. *This is how I see things*.") (emphasis added).
[1944] **P-2841**: CAR-OTP-2127-4238-R01, at 4260, para. 123.

claim that the two were in "permanent" contact.[1945] P-1847 further extensively speculated on Bernard MOKOM's role,[1946] which shows that his knowledge of contacts between MOKOM and Bernard MOKOM was based on nothing more than speculation and hearsay. MOKOM's message on his alleged Facebook profile that he "calls frequently, at least once a week", "the old one in Cameroon"[1947] also fails to demonstrate that the two communicated frequently in the relevant timeframe, let alone what they spoke about.

1.4. Mr NGAÏSSONA did not liaise with Mr YEKATOM

540. Mr NGAÏSSONA never liaised with Mr YEKATOM prior to, and/or at the time of the charged crimes. Contact between the two was only established after the June 2014 merger and the creation of the unified Anti-Balaka coordination.[1948]

541. As elaborated above, the Anti-Balaka were a fragmented movement whose various factions did not act together.[1949] Early on, Mr YEKATOM rejected the Anti-Balaka label, stating in an interview on 7 December 2013 that his group was called *Révolution des Forces armées centrafricaines pour le peuple.*[1950] Evidence supports this statement, and does not establish any contact, coordination, or hierarchical relationship with Mr NGAÏSSONA before the 5 December attack, or at any point until June 2014.[1951] Prior to, and/or at the time of the charged crimes, Mr YEKATOM's group was "managed at another level", according to P-1193.[1952]

[1945] **P-1847**: CAR-OTP-2061-1534-R01, at 1549, para. 102.
[1946] **P-1847**: CAR-OTP-2061-1534-R01, at 1547, para. 85 ("Bernard MOKOM avait été designé *clairement* pour rentrer en contact avec les Anti-Balaka"), at 1549, para. 101 ("Bernard MOKOM […] leur donnait *clairement* des ordres en leur demandant de se regrouper […]"), at 1562, para. 177 ("NGAIKOSSET a *clairement* reçu des instructions de NGAÏSSONA et Bernard MOKOM […]"); CAR-OTP-2122-8251-R01, at 8254, para. 28 ("*ma conviction* est qu'ils préparaient l'attaque du 5 décembre "); at 8264, para. 119 ("*tout le monde savait* qu'il [Bernard MOKOM] était un pion essentiel dans tout ce qui se passait à la frontière") (emphasis added).
[1947] CAR-OTP-2066-2142, at 2158-2159 (Note that messages are displayed in reverse order).
[1948] *See* ICC-01/14-01/18-282-Conf-AnxJ1, p. 300 *et seq*. showing that communication between Mr NGAÏSSONA and Mr YEKATOM started in June 2014; **P-0808:** T-072-ENG CT, p. 42, ln. 6 to p. 43, ln. 19.
[1949] *See above* III.B.1. Failure to prove that BOZIZÉ's intent was to reclaim power at all costs, para. 163 and IV.B.1. The Anti-Balaka is not one group.
[1950] CAR-OTP-2065-0396, CAR-OTP-2122-2284; **P-1839**: T-172-CONF-ENG CT, p. 77, ln. 5, to p. 78, ln. 9, p. 79, ln. 11 to p. 80, ln. 2, p. 80, ln. 17, to p. 82, ln. 1.
[1951] **P-1193**: T-124-CONF-ENG CT3, p. 57, lns 3-11, p. 65, lns 11-15; T-125-CONF-ENG CT2, p. 7, ln. 24 to p. 8, ln. 2. *See also* **P-0888**: CAR-OTP-2031-0217-R03, at 0223, para. 39 ("At that time, the North and South Anti-Balaka groups were not coordinated."); T-123-ENG CT2, p. 30, ln. 15 to p. 31, ln. 7; **P-0954**: T-169-CONF-ENG CT, p. 23, lns 8-17; **P-1521**: T-080-CONF-ENG ET, p. 54, lns 5-7 ("I only got to know Yekatom in 2014 when the Anti-Balaka from the north and the south came together for discussions. It is at that time that I got to know Yekatom.").
[1952] **P-1193**: T-125-CONF-ENG CT2, p. 8, lns 3-8. *See also* **P-1858**: T-187-CONF-ENG ET, p. 15, lns 2-13 ("Q. I'm now going to go on to the fusion of the movement in 2014. Now, in your statement -- June 2014. Now, you described the joining together of the north and south branches, but would you agree that before June 2014 there was no hierarchical link between Mr Ngaïssona and the Anti-Balaka of the south because the Anti-Balaka of the south were coordinated and managed by Mr Wenezoui? A. Well, what I would say is the following. Before there

BEINA explained that the actions carried out by Mr YEKATOM during that period were not in collaboration with Mr NGAÏSSONA, given that he was not there at the beginning of the movement.[1953] P-0954 confirmed that Mr YEKATOM never mentioned Mr NGAÏSSONA, and never mentioned any other groups ahead of the 5 December attack.[1954]

542. Eventually, two factions emerged: the so-called "Anti-Balaka of the North" and the "Anti-Balaka of the South";[1955] Mr YEKATOM was part of the latter.[1956] In late December 2013, the members of both branches[1957] held two meetings at Yamwara, to create a coordination bureau and start the dialogue with the international community.[1958] [REDACTED].[1959] The meeting ended unsatisfactorily, as the two factions did not agree on a way forward.[1960] Mr NGAÏSSONA did not participate in those meetings,[1961] and there is no evidence that suggests he was represented by anyone in attendance.

543. Mr NGAÏSSONA's return to BANGUI and his appointment as National Coordinator by Comzones of the north branch demonstrates the continuing rift between the North and the South. In January 2014, newly elected President SAMBA-PANZA held a meeting at her residence with the different Anti-Balaka factions as part of the dialogue between the various stakeholders that took part in the conflict.[1962] The attendees representing the Anti-Balaka of the

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was no structure, and it was only afterwards when the NGO MOUDA tried to join the two tendencies together. It was at that time, coming out of that meeting, that we found out that Ngaïssona in future would be the person in charge, and thereafter he left to arrange the different posts and the structure therein. So before, before that, there was a tendency. There wasn't a structure. There was a governing tendency but no structure.)".

[1953] **P-0888**: T-121-ENG CT, p. 77, ln. 14 to p. 79, ln. 2. On the absence of link and/or support from BOZIZÉ to YEKATOM's group, *see* CAR-OTP-2065-0396, from [00:02:02] to [00:02:14], CAR-OTP-2122-2284, at 2287, lns 40-43 *("Journaliste: Est-ce que François BOZIZÉ vous soutient ? AYR: Non, on n'a pas de contact avec des François BOZIZÉ. Je vous ai bien dit que nous c'est la Révolution des Forces armées centrafricaines. Nous, on n'a pas de contact avec les BOZIZÉ. Si on a des contacts avec BOZIZÉ, on doit avoir des matériels plus que ça.* "); **P-1193**: T-126-CONF-ENG CT2, p. 58, lns 6-8.

[1954] **P-0954**: T-166-CONF-ENG CT, p. 35, lns 6-17.

[1955] **P-0808**: T-070-ENG CT2, p. 45, lns 10-11, p. 53, lns 5-13; **P-1193**: T-124-CONF-ENG CT3, p. 59, lns 4-9; **P-0876**: T-086-CONF-ENG CT, p. 81, ln. 21 to p. 82, ln. 8. *See also* CAR-OTP-2084-1319, CAR-OTP-2107-1577; CAR-OTP-2023-0032, at 0184, para. 2.

[1956] **P-0801**: T-036-ENG CT, p. 16, lns 16-17; **P-0808**: T-072-ENG CT2, p. 38, lns 11-18; **P-0876**: T-086-CONF-ENG CT, p. 82, lns 9-11; **P-0952**: T-252-ENG CT, p. 39, lns 8-17; CAR-OTP-2074-3246, at 3247. KAMEZOLAÏ was the chief of staff of the Anti-Balaka of the South, *see* **P-0954**: T-169-CONF-ENG CT2, p. 72, lns 22-24.

[1957] For the list of attendees *see* CAR-OTP-2063-0074. *See also* **P-0974**: T-243-CONF-ENG CT, p. 51, lns 7-22; **P-0487**: T-204-CONF-ENG ET, p. 78, lns 12-14.

[1958] **[REDACTED].**

[1959] **P-0954**: T-166-CONF-ENG CT, p. 17, lns 10-24, p. 29, ln. 23 to p. 30, ln. 2, commenting on the list of attendees found in CAR-OTP-2063-0074 and who decided [REDACTED].

[1960] [REDACTED].

[1961] **P-0884**: T-058-CONF-ENG CT, p. 31, lns 6-11; **P-1839**: T-171-CONF-ENG CT, p. 74, lns 3-19; **P-0954**: T-169-CONF-ENG CT, p. 24, ln. 22 to p. 25, ln. 3; **P-1858 :** T-186-ENG ET, p. 31, lns 24-25 commenting on CAR-OTP-2063-0074.

[1962] **P-0952**: T-249-ENG CT, p. 21, ln. 22 to p. 23, ln. 2.

North and those of the South arrived separately,[1963] while it was clear that they were two separate groups.[1964] KOKATÉ stated it was the first time he met some of the people "in that delegation", i.e. the Anti-Balaka of the South.[1965] After the meeting, General ESSONGO talked to Mr NGAÏSSONA and five other attendees, asking them to stop the dissension and find an agreement to create unity and a single interlocutor.[1966] Despite General ESSONGO's efforts, however, the coordination that was set up that day lasted only two hours.[1967] The division between the South and the North therefore continued, while there is evidence of a genuine dislike of Mr YEKATOM towards Mr NGAÏSSONA lasting for several months.[1968]

544. Mr YEKATOM, persistently refused to be part of a joined coordination[1969] since he and Sébastien WENEZOUI ('WENEZOUI'), were not pleased with Mr NGAÏSSONA's appointment as National Coordinator.[1970] On 3 March 2014, WENEZOUI, in a radio interview, expressed his disagreement with Mr NGAÏSSONA and stated that they did not recognise him as National Coordinator,[1971] effectively challenging his position.[1972]

545. Later, the South branch officially launched its own coordination at a meeting in Pismis on 15 May 2014, where WENEZOUI was appointed coordinator of the Anti-Balaka of the South,[1973] an appointment Mr NGAÏSSONA characterised as a "masquerade".[1974]

546. The division between the two groups was such that mediation was necessary. An NGO called MOUDA, led the mediation to bring the North and the South groups together,[1975] after Antoinette MONTAIGNE, the Minister of Reconciliation in the Transitional Government,

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[1963] [REDACTED].
[1964] [REDACTED].
[1965] **P-0801**: T-036-ENG CT, p. 84, lns 5-10.
[1966] [REDACTED].
[1967] [REDACTED].
[1968] **P-1962**: CAR-OTP-2068-0037-R04, at 0059, para. 106 ("[…] RAMBO did not get along well with NGAISSONA and the BOY RABE group.").
[1969] **P-0876**: T-086-CONF-ENG CT, p. 80, lns 13-22.
[1970] **P-0889**: CAR-OTP-2034-0463-R02, at 0473, para. 56; **P-0808**: T-070-ENG CT2, p. 45, lns 8-21.
[1971] CAR-OTP-2076-0825, from [00:00:00] to [00:02:40], CAR-OTP-2122-7403, at 7404, lns 3-36.
[1972] **P-0808**: T-070-ENG CT, p. 49, lns 10-18.
[1973] **P-0888**: CAR-OTP-2031-0217-R03, at 0223, para. 39; T-120-CONF-ENG CT2, p. 82, lns 19-21; **P-0876**: T-088-CONF-ENG CT, p. 55, lns 10-18; **P-0954**: CAR-OTP-2048-0171-R03, at 0179, para. 46; T-166-CONF-ENG CT, p. 65, ln. 18 to p. 66, ln. 4; **P-1193**: CAR-OTP-2051-0353-R02, at 0360, para. 37; T-125-CONF-ENG CT2, p. 10, lns 16-22; **P-1858**: CAR-OTP-2063-0050-R04, at 0061, para. 68; **P-1521**: T-083-CONF-ENG CT, p. 28, ln. 21 to p. 22, ln. 9; CAR-OTP-2084-1331, from [00:00:55] to [00:03:49], CAR-OTP-2107-1586, at 1587, lns 11-40; CAR-D30-0008-0041.
[1974] CAR-D30-0008-0030.
[1975] **P-0888**: T-122-CONF-ENG CT2, p. 7, lns 9-24; **P-1858**: CAR-OTP-2063-0050-R04, at 0062, paras 71-73; T-185-CONF-ENG ET, p. 48, ln. 24 to p. 49, ln. 5; **P-0954**: T-167-CONF-ENG CT2, p. 84, lns 4-11.

requested that the groups unite and become one single interlocutor.[1976] To strike a balance between the two groups it was decided that Mr NGAÏSSONA would be the National Coordinator and WENEZOUI would be his deputy,[1977] so that both groups were equally represented in the unified coordination.

547. In conclusion, there is no evidence proving that Mr NGAÏSSONA had any link with Mr YEKATOM and his group prior to and at the time of the charged crimes. There was a clear division between the two and their contacts were only established after the merger in June 2014. After that point, all contacts were part of Mr NGAÏSSONA's efforts to organize the newly established National Coordination, sensitize the Comzones, and establish peace and security.[1978] The Prosecution equally failed to prove any link between Mr NGAÏSSONA's alleged contribution and the crimes allegedly committed by the YEKATOM group, let alone any specific ones.[1979]

1.5. Mr NGAÏSSONA did not liaise and coordinate with alleged Anti-Balaka leaders in BANGUI

548. It remains unproven that Mr NGAÏSSONA "liaised" and "coordinated" with alleged "Anti-Balaka leaders" in BANGUI, such as NGAYA, WENEZOUI, NGREMANGOU, and KONATÉ, prior to 5 December 2013.[1980]

549. First, the Prosecution has not established that NGAYA was an "Anti-Balaka leader" in BANGUI prior to 5 December 2013. NGAYA did not even recall being aware of the existence of the Anti-Balaka prior to 5 December,[1981] while his attempts to drive out the Seleka were focused on peaceful civil society actions, rather than military resistance.[1982] Evidence shows that prior to 5 December 2013, NGAYA and Mr NGAÏSSONA's alleged contacts[1983] centred

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[1976] CAR-OTP-2023-1990, from [00:00:49] to [00:01:39], CAR-OTP-2122-9420, at 9421, lns 12-22; **P-1193**: CAR-OTP-2051-0353-R02, at 0360, para. 37; T-124-CONF-ENG CT3, p. 57, lns 6-11; **P-0954**: T-166-CONF-ENG CT, p. 66, lns 4-10; CAR-OTP-2084-0173 ("Le Coordonnateur Général Mouvement des Patriotes AntiBalaka, fort de la résolution prise par les membres des différentes entités dudit mouvement, réunis en session extraordinaire le Vendredi 20 Juin 2014 dans la salle de réunion du PNUD, sous l'impulsion de l'ONG MOU-DA en vue de la fusion des différentes entités Antibalaka en une seule Coordination Nationale, (…)").
[1977] **P-1521**: T-082-CONF-ENG CT, p. 15, lns 21-23; **P-0888**: T-120-CONF-ENG CT2, p. 82, lns 19-23; T-121-CONF-ENG CT, p. 83, lns 2-9; **P-0954**: T-167-CONF-ENG CT2, p. 84, lns 4-11.
[1978] *See below* VI.F.2 After 5 December 2013. *See also* **P-1521**: T-082-CONF-ENG CT2, p. 6, lns 14-19.
[1979] Al Hassan TJ, para. 1244; Katanga TJ, paras 1619, 1632.
[1980] PTB, paras 77, 291.
[1981] **P-0808**: T-069-CONF-ENG CT, p. 35, lns 14-17, p. 37, lns 2-7.
[1982] **P-0808**: T-069-CONF-ENG CT, p. 14, lns 1-5; ICC-01/14-01/18-1546-Conf, paras 31-42.
[1983] *See* previous submissions on the lack of probative value of the Prosecution CSTs, including the CST of the alleged calls between Mr NGAÏSSONA and P-0808 in December and January, ICC-01/14-01/18-1409-Conf-AnxB, Table 6, p. 13. *See also* ICC-01/14-01/18-1546-Conf.

on (i) the state of Mr NGAÏSSONA's warehouse which had been pillaged by the Seleka,[1984] (ii) news about the atrocities being committed by the Seleka in BANGUI,[1985] and (iii) the organisation of peaceful civil society and political actions in reaction to the Seleka atrocities, including printing and distributing flyers and the organisation of a "*concert de casserole*" around August 2013.[1986] NGAYA had approached Mr NGAÏSSONA given his experience in the associative or non-profit sector.[1987] NGAYA explained that his reference in his 31 July 2013 email to purported "military operations" referred to a hypothetical international community intervention which NGAYA and many others were hoping for to drive out the Seleka.[1988] Significantly, NGAYA never discussed the Anti-Balaka with Mr NGAÏSSONA,[1989] nor did he ever have the impression that Mr NGAÏSSONA was involved in military activities.[1990] The 17 July 2013 email from NGAYA addressed the organisation of a civilian demonstration; it did not involve in the slightest the Anti-Balaka.[1991] In sum, NGAYA's first-hand testimony of his alleged contacts with Mr NGAÏSSONA prior to 5 December 2013 shows that they were wholly unrelated to military action or the Anti-Balaka movement.

[1984] **P-0808**: T-069-CONF-ENG CT, p. 36, ln. 21 to p. 37, ln. 1.
[1985] **P-0808**: T-069-CONF ENG CT, p. 36, lns 21-25.
[1986] **P-0808**: CAR-OTP-2093-0010-R02, at 0015-0016, para. 30; T-070-ENG-CT2, p. 23, lns 5-15. For an explanation of the origins of the "concert de casseroles", *see* **D30-4756**: T-268-CONF-ENG CT, p. 34, lns 4-10. This is consistent with other emails attributed to Mr NGAÏSSONA on record in which user [REDACTED] sends a list of peaceful civilian actions such a publishing flyers and a "concert de casseroles", *see e.g.* CAR-OTP-2130-3490.
[1987] **P-0808**: T-069-CONF-ENG CT, p. 24, lns 9-16.
[1988] CAR-OTP-2130-3296; **P-0808**: T-069-CONF-ENG CT, p. 14, lns 3-13, p. 15, lns 6-14, p. 24, lns 9-20, p. 26, lns 1-14, p. 27, lns 17-19; T-070-ENG CT2, p. 23, lns 5-15, P-0808 testified that he sent similar appeals to several other civil society actors. *See also* **P-0808**: T-069-CONF-ENG CT, p. 12, lns 19-25; ICC-01/14-01/18-1546-Conf, paras 32-37. P-0808 clarified that Mr NGAÏSSONA's reference in an email dated 19 September 2013 to "*hommes sur le terrain*" referred to the mobilisation of associations and civil society actors, rather than a military reference, *see* **P-0808**: T-070-CONF-FRA CT, p. 27, lns 5-18 ("Donc, moi, personnellement, je n'ai aucun élément qui puisse me permettre de le soupçonner comme un homme de guerre. Donc, le terme qu'il a employé "hommes sur le terrain", à mon avis, la compréhension que j'ai, c'est... découle de nos premiers échanges : il avait demandé que je puisse mobiliser les gens au niveau des organisations de la société civile, les associations […] Alors, donc, la compréhension que j'ai fait référence à... aux premiers échanges qu'on avait déjà eus concernant la mobilisation de la population : des actions politiques, des actions citoyennes.") (emphasis added), (English version not accurate, T-070-ENG CT2, p. 24, ln. 21 to p. 25, ln. 3).
[1989] **P-0808**: T-069-CONF-ENG CT, p. 37, lns 2-7.
[1990] **P-0808**: T-069-CONF-ENG CT, p. 26, lns 1-6; T-070-FRA CT, p. 27, lns 15-19 (English version not accurate, T-070-ENG CT2, p. 25, lns 1-4). P-0808 testified that Mr NGAÏSSONA was not an Anti-Balaka political leader during the period prior to his return to CAR, *see* **P-0808**: T-070-ENG CT2, p. 40, ln. 24 to p. 41, ln. 4.
[1991] CAR-OTP-2130-3291, at 3291 ("[…] la population, notamment celle de Bangui est dépassée et prête à descendre dans la rue pour protester […]"). Moreover, P-0808 had no idea who the reference to the "boss" in the email of 22 September 2013 referred to (CAR-OTP-2124-0844); **P-0808**: T-069-CONF-ENG CT, p. 27, lns 23-25; for reference only, *see* ICC-01/14-01/18-2543-Conf-Anx, p. 36.

550. Second, prior to the crisis, P-0884 and Mr NGAÏSSONA [REDACTED].[1992] This explains why Mr NGAÏSSONA had P-0884's phone number, although P-0884 never had Mr NGAÏSSONA's Cameroonian number.[1993] In August 2013, P-0884 [REDACTED] a widely-mediatised demonstration in BANGUI against the Seleka regime, resulting in the blockage of the BANGUI-M'POKO airport. The demonstration drew significant media attention,[1994] involving FOMAC, and caused tremendous internal and international pressure on DJOTODIA, eventually leading to the formal dissolution of the Seleka.[1995] Following this extraordinary event, several exiles, [REDACTED], called him to discuss the situation.[1996] Mr NGAÏSSONA was among them.[1997] Their exchanges revolved around the general situation in BANGUI and CAR, where Mr NGAÏSSONA still had family, including his father.[1998] Importantly, they did not discuss the Anti-Balaka.[1999]

551. P-0884 testified that while he and Mr NGAÏSSONA discussed the 5 December attack on BANGUI after it occurred, the attack was common knowledge even prior to its occurrence: "[t]he attack […] wasn't something that was secret. Everybody was aware of it."[2000] P-0884 and Mr NGAÏSSONA did not discuss any upcoming attacks, including those on BANGUI and BOUAR, of which they were informed through news.[2001] P-0884 is also unaware of any actions on Mr NGAÏSSONA's part to mobilise the international community during his exile,[2002] or of

[1992] **P-0884**: T-054-CONF-ENG ET, p. 12, lns 22-25; T-058-CONF-ENG CT, p. 7, ln. 19 to p. 8, ln. 5 ("[REDACTED]").
[1993] **P-0884**: T-054-CONF-ENG ET, p. 12, lns 22-25; T-055-CONF-ENG ET, p. 13, lns 8-10, p. 15, lns 10-17.
[1994] **P-0884**: T-055-CONF-ENG ET, p. 21, lns 1-5, p. 20, ln. 4 ("And the international media also came, RFI, France 24 […]").
[1995] **P-0884**: T-055-CONF-ENG ET, p. 19, ln. 6 to p. 20, ln. 10.
[1996] **P-0884**: T-055-CONF ENG ET, p. 20, lns 4-5.
[1997] **P-0884**: T-055-CONF-ENG ET, p. 15, ln. 24 to p. 16, ln. 4, p. 20, ln. 20 to p. 21, ln. 4.
[1998] **P-0884**: T-055-CONF-ENG ET, p. 16, lns 14-16, p. 48, ln. 17 to p. 49, ln. 2 ("[REDACTED]."); T-056-CONF-ENG CT, p. 5, lns 19-21 ("And, as I told you, he called me, he asked me for some information on the town and what was happening in the country, and that was quite normal.").
[1999] **P-0884**: T-055-CONF-ENG ET, p. 19, lns 6-8 ("No, no. When he called me, he didn't talk of the Anti-Balaka. He called me because, as I said, [REDACTED].").
[2000] **P-0884**: T-056-CONF-ENG CT, p. 6, lns 11-18; **P-2843**: T-073-CONF-ENG ET, p. 56, lns 9-13.
[2001] **P-0884**: T-058-CONF-ENG CT, p. 36, lns 16-18 ("At no point did Ngaïssona talk to me about an upcoming attack."); T-055-CONF-ENG ET, p. 41, lns 16-19.
[2002] **P-0884**: T-058-CONF-ENG CT, p. 18, lns 1-9 ("No. In 2013 I did not meet Ngaïssona physically in person, so I was not aware of what was happening. We would phone each other, but we didn't meet in person. We bumped into each other in January. I saw him at the airport and I spoke to him and I said everything had finished, he could go back and carry out and continue his activities. So he could do what he had to do at his level, but I was not aware of that.").

Mr NGAÏSSONA's alleged involvement with the Anti-Balaka prior to his return to BANGUI in January 2014.[2003]

552. Third, there is no credible evidence supporting Mr NGAÏSSONA's alleged coordination with KONATÉ and NGREMANGOU during the time of the charged crimes; the Prosecution's case rests solely on CDR. However, according to the Prosecution's own CSTs, NGREMANGOU and Mr NGAÏSSONA would have communicated solely on 11 January 2014, well after the 5 December attack, the majority of calls lasting between seven and twelve seconds.[2004] Moreover, as previously submitted, the attribution of phone numbers [REDACTED] and [REDACTED] to Mr NGAÏSSONA are extremely weak and should therefore be rejected, given they are either in contact with other numbers attributed to Mr NGAÏSSONA or rely on insufficient attribution evidence.[2005] Even if the Chamber were to consider that Mr NGAÏSSONA and NGREMANGOU were in contact on or around 11 January 2014, the case record is silent as to the content of those communications, and whether they relate to the charged crimes.[2006] Similarly, the Prosecution's CSTs suggest that Mr NGAÏSSONA and KONATÉ did not communicate prior to 5 December.[2007] Moreover, the attribution of [REDACTED] to Mr NGAÏSSONA is not established given this number was in touch with another phone number attributed to Mr NGAÏSSONA,[2008] nor are [REDACTED] and [REDACTED] given the extremely weak attribution attached thereto.[2009]

1.6. Mr NGAÏSSONA did not liaise with the alleged leaders of the 'BOSSANGOA group'

553. Even assuming that crimes were committed by Anti-Balaka elements in BOSSANGOA on and/or after the 5 December attack, the Prosecution failed to show that the local Anti-Balaka chiefs had any link with the so-called 'de facto coordination', or any links with Mr NGAÏSSONA.

[2003] **P-0884**: T-055-CONF-ENG ET, p. 32, ln. 4-5, p. 44, lns 11-17, p. 46, ln. 5 to p. 47 ln. 1, p. 49, ln. 17 to p. 50, ln. 3, P-0884 only mentions that Mr NGAÏSSONA was allegedly involved politically with FROCCA as a "political coordinator", *see above* III.B.2.2.2. FROCCA.
[2004] ICC-01/14-01/18-1296-Conf-AnxA-Corr, Table 12, p. 337. On the lack of credibility of P-0306 in describing alleged contacts between KONATÉ and Mr NGAÏSSONA, *see above* II.B.3.1 P-0306; VI.E.4. Insufficient evidence to prove that Mr NGAÏSSONA provided instructions to the Anti-Balaka in CAR relating to attacks, including the 5 December attack.
[2005] ICC-01/14-01/18-1409-Conf-AnxC, pp. 55-56; ICC-01/14-01/18-1409-Conf-AnxB, Table 8, pp. 16-17. *See* para. 123 *above* regarding [REDACTED].
[2006] CoC Decision, para. 159.
[2007] ICC-01/14-01/18-1296-Conf-AnxA-Corr, pp. 337-383.
[2008] ICC-01/14-01/18-1409-Conf-AnxB, Table 6, p. 13. *See also* para. 123 *above* regarding [REDACTED].
[2009] ICC-01/14-01/18-1409-Conf-AnxC, pp. 55-56.

554. At trial, no evidence of alleged contacts between Mr NGAÏSSONA and alleged leaders of the 'BOSSANGOA group' was elicited. More particularly, no evidence suggests contacts between Mr NGAÏSSONA and alleged leaders Alexis MANDAGO or [REDACTED].[2010] CDRs merely point to phone calls between numbers attributed to Mr NGAÏSSONA and other alleged leader KEMA, after Mr NGAÏSSONA's appointment as coordinator,[2011] therefore long after 5 December 2013.

555. Even if the Chamber concluded that DEDANE was a leader of the BOSSANGOA group, which the evidence does not support,[2012] the content and purpose of alleged contacts between Mr NGAÏSSONA and DEDANE cannot be ascertained. The Pre-Trial Chamber found that CDR alone "do not provide the Chamber with any kind of indicia as to the content and purpose of the conversations between Ngaïssona and the Comzones or de facto leaders of the Anti-Balaka groups on the ground".[2013]

556. The little evidence on the contents or purposes of the alleged calls between Mr NGAÏSSONA and DEDANE was provided by P-2658 and P-1847, whose evidence is unreliable and speculative. P-2658 contradicted himself by first claiming he heard that DEDANE had "got news" or "received messages" from Mr NGAÏSSONA through either KEMA, Charly or YONGO,[2014] to later state that he "would not know if the Anti-Balaka, including DEDANE, were communicating with NGAÏSSONA".[2015]

557. P-1847's proposed evidence according to which Mr NGAÏSSONA, along with others, contacted DEDANE[2016] is devoid of foundation. First, his sources of knowledge on the existence of these contacts alone are unclear and varied throughout his prior recorded testimonies.[2017] Second, his evidence on the content and purpose of these calls is based on his "belief" and "convictions" only.[2018] Third, it is unclear which location his evidence on the

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[2010] PTB, para. 418.
[2011] First identifiable contacts between numbers attributed to Mr NGAÏSSONA and those attributed to KEMA occurred on 17 January 2014, *see e.g.*, CAR-OTP-2008-0483, tab 1, row 15647.
[2012] *See above* III.C. The 'GOBÉRÉ group' did not have the required means and capacity to carry out the alleged attacks.
[2013] CoC Decision, paras 159, 180.
[2014] **P-2658**: CAR-OTP-2126-0012-R02, at 0037, para. 164.
[2015] **P-2658**: CAR-OTP-2126-0012-R02, at 0037, para. 166.
[2016] **P-1847**: CAR-OTP-2122-8251-R01, at 8254, para. 28.
[2017] In his 2017 Statement, P-1847 claims to be [REDACTED], **P-1847**: CAR-OTP-2061-1534-R01, at 1560, para 165. In his 2020 statement, P-1847 claims that he received the information from [REDACTED], **P-1847**: CAR-OTP-2122-8251-R01, at 8254, para. 28. In his live testimony, P-1847 fails to mention any contacts between Mr NGAÏSSONA and DEDANE.
[2018] **P-1847**: CAR-OTP-2122-8251-R01, at 8254, para. 28.

content and purpose of these calls relates to and therefore, cannot be attributed to the 5 December attack on BOSSANGOA.

558. Overall, the Prosecution not only failed to show that Mr NGAÏSSONA was in contact with the alleged leaders of the 'BOSSANGOA group', but equally failed to provide evidence that instructions to commit crimes were imparted during and by means of those contacts.[2019]

2. After 5 December 2013

559. There is no evidence that the contacts between Mr NGAÏSSONA and Anti-Balaka leaders after the 5 December attack and the establishment of the National Coordination constitute a *post facto* contribution to the charged crimes.[2020] NGAYA, one of the key actors in the National Coordination's efforts to restore peace, testified that the Coordination liaised with the Comzones through *communiqués de presse*, distributed to embassies and radio stations, as well as through phone calls and consultation meetings with them to request that they stop the hostilities and return to normalcy.[2021] These efforts were in line with the transitional government's instructions to unify the myriads of individuals who identified as Anti-Balaka.[2022]

560. While the frequency of these meetings is not clear,[2023] their aim was: to pass on instructions pursuant to which Anti-Balaka would not steal or harass the population, and to bring structure to a movement that had none.[2024] This is corroborated by several witnesses, such as BEINA who testified that, during those meetings, Mr NGAÏSSONA would ask the Comzones to respect

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[2019] *See* reasoning in CoC Decision, para. 236.
[2020] In order for a *post facto* contribution under Article 25(3(c) to be considered as assistance to a crime, there must be a prior offer of assistance of an agreement, see Bemba et al. AJ, para. 1399 ("if there was a prior offer of assistance or an agreement between the principal perpetrator and the accessory that the latter would lend assistance after the commission of the crime or offence, that conduct can be said to have amounted to assistance in the commission of the crime because the principal perpetrator committed it, knowing that he or she would receive assistance in the aftermath").
[2021] **P-0808**: CAR-OTP-2025-0324-R05, at 0334, para. 68; T-071-ENG CT2, p. 24, ln. 14 to p. 25, ln. 17. OROFEI, the Secretary General, would call the Comzones to invite them in the meetings, *see* **P-0808**: CAR-OTP-2025-0324-R05, at 0338, para. 94; T-072-ENG CT, p. 46, lns 8-11. *See also* **P-1193**: T-124-ENG CT3, p. 73, lns 18-20 ("But they would receive messages from the coordination. They were told that the war was over and everyone should be accepted as brothers and -- and we were to get ready for the elections."); **P-1042**: T-164-CONF-ENG CT, p. 23, ln. 25 to p. 26, ln. 12; **P-1172**: CAR-OTP-2082-1058-R03, at 1066, para. 50, at 1067, para. 52. For examples of *communiqués de presse* and radio statements, *see e.g.* CAR-OTP-2084-0150, CAR-OTP-2030-0245, CAR-OTP-2030-0243.
[2022] **P-0952**: T-251-ENG CT, p. 34, ln. 22 to p. 35, ln. 1; **P-1193**: T-126-CONF-ENG CT2, p. 58, lns 9-18.
[2023] **P-0966**: CAR-OTP-2031-0241-R03, at 0257, para. 91, mentions weekly meetings, whereas P-0992 mentions monthly meetings, as well as "extraordinary meetings" if required, *see* **P-0992**: CAR-OTP-2110-0048-R05, at 0066, paras 100-101; **P-2027**: CAR-OTP-2078-0059-R03, at 0068, para 52. *See also* **P-1858**: T-185-CONF-ENG ET, p. 46, lns 4-6; **P-1042**: T-163-CONF-ENG CT2, p. 40, ln. 19 to p. 41, ln. 1.
[2024] **P-0808**: CAR-OTP-2093-0010-R02, at 0027, paras 94-95; **P-1042**: T-164-CONF-ENG CT, p. 28, lns 1-10.

the civilian population and comply with the law.[2025] With no means at his disposal to disarm the Anti-Balaka,[2026] Mr NGAÏSSONA communicated with the Comzones to avoid the commission of crimes and work towards peace,[2027] and authorised awareness missions to the provinces.[2028]

561. P-0889 refuted the allegation that Mr NGAÏSSONA discussed military and/or combat operations during meetings with the Comzones. The subject matter of those meetings was awareness raising and the restoration of peace[2029] and Mr NGAÏSSONA never encouraged, supported or voluntarily ignored the commission of violent acts against the civilian population.[2030] On the contrary, upon being informed of a crime committed by the Anti-Balaka, Mr NGAÏSSONA would get angry and would try to step in and remedy the situation.[2031]

562. The accounts of the few witnesses who alleged that Comzones were reporting to the National Coordination[2032] are based on hearsay or speculation. In contrast, P-1193, who participated in these meetings, denied that the Comzones reported to the coordination.[2033] He added that not only the Comzones would not report on incidents in the provinces, but they would often deny

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[2025] **P-0888**: T-123-ENG CT2, p. 42, lns 6-17. *See also* **P-2269**: CAR-OTP-2111-0336-R01, at 0352, para. 121, stating that they mostly discussed about the DDR process during those meetings; **P-0889**: T-109-CONF-ENG CT2, p. 78, ln. 24 to p. 79, ln. 18; **P-1193**: T-125-CONF-ENG CT2, p. 5, lns 9-17; **P-1858**: T-185-CONF-ENG ET, p. 44, lns 13-24, p. 45, lns 19-23.

[2026] On the absence of measures taken by the government to billet the Anti-Balaka, *see* **P-1193**: T-125-CONF-ENG CT2, p. 33, lns 1-11, p. 35, ln. 19 to p. 36, ln. 2; **P-0888**: T-123-ENG CT2, p. 53, lns 2-24; **P-0808**: T-070-ENG CT2, p. 61, ln. 14 to p. 62, ln. 10; **P-0889**: T-110-CONF-ENG CT, p. 34, ln. 25 to p. 35, ln. 7. *See also* **P-1077**: T-150-ENG CT, p. 59, ln. 25 to p. 61, ln. 16, who describes the discussion on « *cantonnement* » Mr NGAÏSSONA had with the Comzones in Hotel Azimut during one of the meetings organized by the Coordination.

[2027] **P-1193**: T-125-CONF-ENG CT2, p. 16, ln. 25 to p. 17, ln. 15. Among those Comzones who attended the meetings was also YEKATOM, *see* **P-1858**: T-185-CONF-ENG ET, p. 49, ln. 19 to p. 50, ln. 12. However, according to P-0808, YEKATOM only participated in the meetings as of June 2014 since before that he was not in the so-called "Ngaïssona wing", *see* **P-0808**: T-072-ENG CT, p. 42, ln. 6 to p. 43, ln. 19.

[2028] **P-0446**: T-098-ENG CT, p. 8, ln. 23 to p. 9, ln. 14. The mission order discussed with the witness is CAR-OTP-2029-0171. For similar mission orders, *see* CAR-OTP-2108-0050, CAR-OTP-2068-0077, all of which had as their object peace and reconciliation. Among the zones visited was also that of YEKATOM, *see* **P-0808**: CAR-OTP-2093-0010-R02, at 0028, para. 102.

[2029] **P-0889**: T-109-CONF-ENG CT2, p. 81, lns 2-12, corroborated by **P-1962**: T-139-CONF-ENG CT, p. 27, lns 23-25.

[2030] **P-0889**: T-109-ENG CT2, p. 80, ln. 15 to p. 81, ln. 1, p. 85, lns 5-8, corroborated by **P-1858**: T-187-CONF-ENG ET, p. 24, lns 6-16. *See also* **P-1042**: T-164-CONF-ENG CT, p. 23, lns 14-19, p. 26, lns 5-12, p. 28, lns 11-20.

[2031] **P-0889**: T-109-ENG CT2, p. 81, ln. 5 to p. 82, ln. 2, corroborated by **P-1858**: T-187-CONF-ENG ET, p. 23, lns 20-24. *See also* **P-0992**: CAR-OTP-2128-0288-R02, at 0312, paras 153, 155.

[2032] **P-0884**: T-056-CONF-ENG CT, p. 70, ln. 12 to p. 71, ln. 8. In general, all information provided on those meetings by P-0884 is hearsay since he never attended them, *see* **P-0884:**T-056-CONF-ENG CT, p. 78, ln. 16 to p. 79, ln. 1; **P-1962**: T-139-CONF-ENG CT, p. 29, ln. 12 to p. 30, ln. 24; **P-0487**: T-203-CONF-ENG ET, p. 4, lns 9-13. *See above* II.B.3.6 P-0487.

[2033] **P-1193**: T-124-ENG CT3, p. 73, ln. 3 to p. 74, ln. 19. *See also* **P-2232:** T-077-CONF-ENG CT, p. 26, lns 8-17; p. 26, ln. 23 to p.27, ln. 7.

them.[2034] Others testified that the Comzones would report to the operations coordinator, i.e. MOKOM.[2035] Consequently, there is insufficient evidence to show that Mr NGAÏSSONA was informed by Comzones of any crime committed by Anti-Balaka elements in BANGUI or in the provinces.

563. In any event, Mr NGAÏSSONA had no power over the Comzones since they were the self-appointed[2036] leaders of their own groups. He could not force them to attend the meetings or punish them if they were absent,[2037] or punish them in case they stepped out of line.[2038] The Comzones' presence in those meetings was no indication of their acceptance of Mr NGAÏSSONA's authority,[2039] as some of them did not share Mr NGAÏSSONA's vision,[2040] while others would openly disobey his orders for peace.[2041]

564. Mr NGAÏSSONA had no means to verify whether the Comzones did in fact pass on the advice to their elements;[2042] P-2556's claims about Mr NGAÏSSONA's instructions being followed by the Comzones[2043] are contradicted by several witnesses who testified that the Comzones

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[2034] **P-1193**: T-124-ENG CT3, p. 74, lns 15-19, p. 75, lns 4-5.
[2035] **P-1521**: T-082-CONF-ENG CT, p. 21, lns 3-8 ("The coordinator of the operations, who is Maxime Mokom, he is in permanent contact with the commanders of the zone. He doesn't report to anyone, it's the zone commanders who who report to him. And he makes the decisions. Let me explain it to you. There was a point in time when all the zones had divisions in the Anti-Balaka, so each individual tried to manage Anti-Balaka in their own way. If there was one individual, then that -- he would command those Anti-Balaka."); **P-1077:** T-149-ENG CT, p. 45, ln. 24 to p. 46, ln. 6, testifying that he would report to MOKOM but not all information would be passed on to the National Coordination.
[2036] **P-0888**: T-123-ENG CT, p. 46, lns 11-21. On the Comzones being self-proclaimed, *see* **P-0876**: T-086-CONF-ENG CT, p. 22, lns 7-8 ("Considering that the Seleka were no longer there, many people self-proclaimed themselves as Anti-Balaka leaders."); **P-0992**: T-095-CONF-ENG ET, p. 7, lns 5-16; **P-1042**: T-164-CONF-ENG CT, p. 9, lns 3-16; **P-1521**: T-083-CONF-ENG CT, p. 36, lns 9-16.
[2037] **P-0888**: T-123-ENG CT2, p. 41, lns 5-18 (in the beginning, Mr NGAÏSSONA did not have any contact with the Comzones and it was the leaders who invited them to the meetings); **P-0889**: T-109-ENG CT2, p. 77, ln. 12 to p. 78, ln. 3; **P-1193**: T-125-CONF-ENG CT2, p. 15, ln. 22 to p. 16, ln. 8.
[2038] **P-0808**: CAR-OTP-2093-0010-R02, at 0024-0025, para. 78; T-072-ENG CT, p. 49, ln. 11 to p. 50, ln. 5; **P-0889**: T-109-ENG CT2, p. 77, lns 20-21 ("What is more, I would go on to say that, at the time when the ComZones were still using weapons, they could punish Ngaïssona, but he could not punish the ComZones").
[2039] **P-0889**: T-109-CONF-ENG CT2, p. 78, lns 4-7; T-110-CONF-ENG CT, p. 8, lns 1-17. P-0487's claim that "[…] if you call somebody and that person goes to the meeting, that means that that person is subject to Ngaïssona's orders […]" should be dismissed as speculative, *see* **P-0487**: T-203-CONF-ENG ET, p. 5, lns 7-17.
[2040] **P-1839**: T-172-CONF-ENG CT, p. 85, lns 18-24.
[2041] **P-0954**: T-166-CONF-ENG CT, p. 87, ln. 15 to p. 89, ln. 3; T-169-CONF-ENG CT, p. 37, lns 17-25. **P-0889**: T-110-CONF-ENG CT, p. 55, ln. 11 to p. 56, ln. 18, where P-0889 underlines that "[n]ow when you talk about dismantling these roadblocks, I do not see how he could have forced anyone, because no one would have listened to him". On Mr NGAÏSSONA's attempts to dismantle the roadblocks, *see* CAR-OTP-2030-0243; CAR-OTP-2124-1236; CAR-OTP-2030-0245; **P-0808**: T-071-ENG CT2, p. 42, ln. 16 to p. 43, ln. 24; **P-0952**: T-251-ENG CT, p. 77, lns 2-14; **P-0954**: T-166-CONF-ENG CT, p. 81, ln. 25, to p. 83, ln. 4; **P-1521**: T-083-CONF-ENG CT, p. 61, ln. 7 to p. 62, ln. 2, p. 63, ln. 5 to p. 64, ln. 6; **P-2328**: T-047-CONF-ENG CT, p. 34, lns 2-3 ("He would ask the Anti-Balaka to stop pressure, racketeering, and dismantle the roadblocks.").
[2042] **P-0889**: T-109-CONF-ENG CT2, p. 79, ln. 22 to p. 80, ln. 14.
[2043] **P-2556**: T-145-CONF-ENG CT, p. 10, ln. 24 to p. 11, ln. 5, p. 13, lns 4-10. P-2556's behaviour and lack of truthfulness while on the witness stand casts a doubt as the reliability of his entire testimony, *see* **P-2556**: T-146-CONF-ENG CT2, p. 56, lns 2-21. *See also* [REDACTED].

would not respect the mission orders they were given,[2044] openly challenge Mr NGAÏSSONA's leadership[2045] and even attempt to kill him.[2046]

565. The Prosecution failed to prove beyond a reasonable doubt that any contacts between Mr NGAÏSSONA and Comzones were for reasons other than the ones described above, namely to restore peace and security. As such these contacts cannot be deemed a criminal contribution.

VII. THE PROSECUTION FAILED TO PROVE THAT MR NGAÏSSONA HAD THE REQUIRED INTENT AND KNOWLEDGE

566. Under Article 25(3)(c) of the Statute, the Prosecution must demonstrate a higher subjective element on the part of the accessory, beyond the ordinary *mens rea* provided for in Article 30 of the Statute. It is not sufficient to show that the accessory knew that his conduct would assist the principal perpetrator in committing the offence; rather it must be shown that the accessory lent his assistance *with the aim of* facilitating the commission of the offence.[2047]

567. *Mens rea* under Article 25(3)(d) of the Statute requires that "the accused's contribution was intentional and (i) was made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court or (ii) was made in the knowledge of the intention of the group to commit the crime."[2048]

568. "Intentional" means that the accused person "must have intended to engage in the conduct such that his or her acts were deliberate and made with awareness", and he/she must have been aware that the conduct contributed to the activities of the group.[2049] Under Article 25(3)(d), general knowledge is insufficient; rather, the accused must have been aware of the group's intention to commit each of the specific crimes to which he is contributing.[2050]

[2044] **P-0889**: T-110-CONF-ENG CT, p. 13, ln. 19 to p. 14, ln. 6, p. 14, ln. 13 to p. 15, ln. 7, according to P-0889, having a mission order from Mr NGAÏSSONA did not establish a hierarchical link between him and the Comzones. *See also* **P-0888**: T-123-ENG CT2, p. 46, ln. 22 to p. 47, ln. 6; **P-1858**: T-187-CONF-ENG ET, p. 23, ln. 25 to p. 24, ln. 7.
[2045] **P-0808**: T-070-ENG CT2, p. 45, ln. 25 to p. 46, ln. 5; **P-0889**: T-110-CONF-ENG CT, p. 33, lns 12-23; **P-1193**: T-125-CONF-ENG CT2, p. 20, lns 14-24.
[2046] **P-1193**: CAR-OTP-2045-0048-R03, at 0055, para. 42; T-125-CONF-ENG CT2, p. 19, ln. 21 to p. 20, ln. 13; **P-0888**: T-123-ENG CT2, p. 41, lns 18-24; **P-0954**: T-169-CONF-ENG CT, p. 37, ln. 25 to p. 38, ln. 7, p. 52, lns 11-20; **P-2027**: CAR-OTP-2107-2922-R02, at 2951, para. 155; T-040-CONF-ENG CT2, p. 12, ln. 13 to p. 13, ln. 20; **P-0884**: T-058-CONF-ENG CT, p. 69, lns 3-16; **P-0889**: T-110-CONF-ENG CT, p. 16, ln. 15 to p. 18, ln. 1; **P-0952**: T-251-ENG CT, p. 104, ln. 24 to p. 105, ln. 3; **P-2251**: T-044-CONF-ENG CT2, p. 47, ln. 25 to p. 48, ln. 20; **P-1521**: T-083-CONF-ENG CT, p. 36, lns 9-16.
[2047] Bemba et al. TJ, para. 97; Al Hassan TJ, para. 1227.
[2048] Al Hassan TJ, paras 1245 [citation omitted], 1247-1248; Katanga TJ, para. 1640.
[2049] Al Hassan TJ, para. 1246; Katanga TJ, paras 1638-1639.
[2050] Al Hassan TJ, para. 1248; Katanga TJ, para. 1642.

569. In addition to the specific requirement for both modes of liability, the conditions of Article 30 of the Statute must be met, namely, the Prosecution must prove that "the accessory also had intent with regard to the principal offence pursuant to Article 30 of the Statute",[2051] which means that the accused "must at least be aware that the principal perpetrator's offence will occur in the ordinary course of events"[2052] in relation to Article 25(3)(c), or that he "was aware of the intention of the group to commit the crime or knew that the crime would occur in the ordinary course of events"[2053], under Article 25(3)(d).

570. As developed above,[2054] the Prosecution failed to show that Mr NGAÏSSONA contributed to the commission of alleged crimes, under Article 25(3)(c) and (d) of the Statute. Having failed to prove the *actus reus* of the crimes beyond reasonable doubt, there is no need for the Chamber to address Mr NGAÏSSONA's criminal intent. However, should the Chamber find that he did contribute to part, or to all of the crimes, the Prosecution failed to prove that Mr NGAÏSSONA had the required *mens rea*.

A. The Prosecution failed to prove that Mr NGAÏSSONA lent his assistance for the purpose of facilitating the offence

571. The evidence adduced at trial does not establish the required 'elevated' *mens rea*. In *Bemba et al.*, Trial Chamber VII applied a stringent approach to the intent requirement and relied on (i) the content of repeated and direct contacts between the aider and abettor and members of the criminal policy and (ii) the impact of the accessory's contribution on the commission of the offense[2055] to infer knowledge and elevated *mens rea*.

572. Despite sustained efforts at distorting the little evidence available to suit its purpose, the Prosecution failed to point to even one single item of evidence to show that Mr NGAÏSSONA knew that his alleged contribution would assist in the commission of any crime, let alone that he did it with this specific goal in mind. The Prosecution muddles the *actus reus* with the mental

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[2051] Bemba et al. TJ, para. 98; Al Hassan TJ, para. 1228.
[2052] Bemba et al. TJ, para. 98; Al Hassan TJ, para. 1228.
[2053] Al Hassan TJ, para. 1248.
[2054] *See above*, VI The Prosecution failed to prove that Mr NGAÏSSONA contributed to the commission of any crimes.
[2055] Bemba et al TJ, paras 866-870 ("[Magenda's] elevated *mens rea* comes to the fore in various discussions with Mr Kilolo, in which he advises the latter on how best to illicitly coach the witnesses. His justification that Mr Haynes could not be taken into the field because he must not find out about the '*les couleurs*' operation is also indicative of Mr Mangenda's intent to facilitate the offence by trying to conceal it from others."); paras 883-884, 890 ("Again, the evidence does not establish any link between Mr Babala's actions to convey these messages and concrete illegitimate payments to other witnesses. It therefore cannot serve as evidence to prove Mr Babala's intent to assist in the commission of the offences.").

element by merely citing evidence of contribution as proof of intent,[2056] revealing that its case of *mens rea* appears to be just as primitive as it was at the confirmation stage.[2057] If anything, the manner in which the evidence unfolded at trial demonstrated the inadequacy of the Prosecution's theory as regards Mr NGAÏSSONA's intent.

573. Like millions of Central Africans in 2013, Mr NGAÏSSONA was concerned about the scale of the criminality to which the civilian population was subjected under the Seleka regime. It is in this context that tried to mobilise parts of the population in BANGUI to conduct pacific demonstrations, or civil disobedience,[2058] or that, while in PARIS, he attended meetings of the FROCCA group, during which diplomatic strategies were discussed to garner support from France and international community.[2059] However, this is a far cry from actually lending one's 'assistance' *with the aim* of facilitating murder, persecution, torture and other crimes against Muslim civilians, especially in the absence of any concrete and corroborated evidence that Mr NGAÏSSONA repeated or endorsed any alleged anti-Muslim rhetoric during these interactions.[2060] To the contrary, when taken at face value and in their proper context, none of Mr NGAÏSSONA's public speeches, interviews, or publications, from 2012 to 2014 and beyond, show encouragement or promotion of crimes against the Muslim civilian population.[2061] Only a gross distortion of Mr NGAÏSSONA's words, and a presumption of bad faith, leads the Prosecution to argue otherwise.[2062]

574. There is no credible evidence that Mr NGAÏSSONA played a role in the creation of the Anti-Balaka,[2063] or that he was kept informed of Anti-Balaka movements and capacity ahead of the

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[2056] PTB, para. 313. Mr NGAÏSSONA is not charged as a principal under Article 25(3)(a), for which the accused's contribution could indicate intent, thus, the Prosecution's reasoning falls short.
[2057] CoC Decision, paras 179-182.
[2058] *See above*, para. 549.
[2059] *See above*, VI.B.1 Mr NGAÏSSONA did not assist the Anti-Balaka and FACA through FROCCA.
[2060] *See above*, VI.A.4. Mr NGAÏSSONA never expressed anti-Muslim sentiment or sow division within the CAR population ; VI.B.1 Mr NGAÏSSONA did not assist the Anti-Balaka and FACA through FROCCA. *See also* III.B.2.2.2.2 FROCCA was never formalised.
[2061] The Prosecution's claim, in para. 176 of the PTB, that Mr NGAÏSSONA referred to CAR Muslims as "Boko Haram" in a derogatory way in CAR-OTP-2014-0749 from [00:02:09] to [00:02:41] and transcript CAR-OTP-2122-9374 is directly contradicted by SAMBA-PANZA, and Roger OKOA-PENGUIA, who explained that Boko Haram was actually the name of a Muslim armed group present in PK5 in 2014 (*see* **P-0952:** T-250-ENG ET, p. 67, lns 12-19; **P-2084:** CAR-OTP-2094-0968-R02, at 0982, para. 73).
[2062] For example, in para. 175 of the PTB, the Prosecution refers to CAR-OTP-2072-1204, p. 1205 to argue that Mr NGAÏSSONA promoted the criminal policy. However, this press article does not represent the actual words spoken by NGAYA (*see* **P-0808:** T-069-CONF-ENG CT, p. 59, ln. 4 to p. 62, ln. 2; p. 83, ln. 5 to p. 86, ln. 14). *See also* ICC-01/14-01/18-1942-Conf, paras. 14, 20-21, 35.
[2063] VI.B. The Prosecution failed to prove that Mr NGAÏSSONA took steps to structure the Anti-Balaka and FACA pre-January 2014.

5 December attack.[2064] There is also no reliable evidence that he was in contact with the group led by Mr YEKATOM[2065] and with the 'BOSSANGOA group'.[2066] Reliance on CDR evidence for this purpose is inadequate, in the absence of reliable attributions of phone numbers (nor evidence of whom was in fact speaking over the phone), and/or of any evidence on the content of such conversations.[2067] Indeed, not a single alleged phone call involving Mr NGAÏSSONA during the fall of 2013, related to the preparation of the 5 December attack was confirmed by testimonial evidence.[2068] Even if Mr NGAÏSSONA had suspected that self-defence groups in CAR intended to commit crimes, the evidence is insufficient to show that his actions, as removed as they were geographically and substantively from these groups, were committed *for the purpose* of facilitating these crimes.[2069]

575. The Prosecution thus fails on every level. Not only did it not show that Mr NGAÏSSONA was in contact with the alleged perpetrators, but it also failed to show that his alleged contribution had any impact, let alone a significant one, on the commission of the offences. As such, the standards set in the *Bemba et al.* are not met, and elevated *mens rea* cannot be inferred on the basis of the little circumstantial evidence available.

B. The Prosecution failed to prove that Mr NGAÏSSONA's alleged contribution was intentional, and made with the aim of furthering the criminal activity or criminal purpose of the group, or in the knowledge of the intention of the group to commit the charged crimes

[2064] *See above*, VI.F. The Prosecution failed to prove beyond reasonable doubt that Mr NGAÏSSONA liaised and coordinated with BOZIZÉ, MOKOM, Mr YEKATOM and Anti-Balaka leaders of BOSSANGOA prior to or at the time of the Charged Crimes.
[2065] *See above*, VI.F.1.4 Mr NGAÏSSONA did not liaise with Mr YEKATOM.
[2066] *See above*, VI.F.1.6 Mr NGAÏSSONA did not liaise with the alleged leaders of the 'BOSSANGOA group'.
[2067] CoC Decision, para. 236.
[2068] The alleged call between POUSSOU and Mr NGAÏSSONA during which the latter allegedly informed the former of the impending attack on BANGUI has been addressed, and debunked, see **P-2625:** T-190-~~CONF~~-ENG~~L~~ CT, p. 20, lns 12-13; T-193-CONF-ENG CT, p. 48, ln. 13 to p. 50, ln. 7; *see also above*, para. 551 (the attack was common knowledge even prior to its occurrence). POUSSOU's claim that Mr NGAÏSSONA had several phone calls, with persons he assumed were "former FACA members, former members of the presidential guard, as well as militiamen from the COAC" is purely speculative (**P-2625:** T-189-CONF-ENG CT, p. 10, ln. 24 to p. 11, ln. 11; T-192-ENG CT, p. 45, ln. 8 to p.48, ln. 24, and in particular p. 48, lns 20-23 ("I told you he was constantly hooked to the telephone. Unless he himself could tell us whom was he speaking to and give us a name, one could only assume whom he was speaking to. But we do not know -- we cannot know in a more specific way with whom he was talking."). Similarly, the claim by KOKATÉ that Mr NGAÏSSONA called him to speak about the preparation of the BOUAR attack (**P-0801:** T-034-ENG CT, p. 62, ln. 13 to p.63, ln. 11), is unsupported by CDR evidence.
[2069] Al Hassan TJ, Opinion of Judge Akane, para. 92.

576. There is no evidence that Mr NGAÏSSONA's alleged contribution was made deliberately and with the specific aim[2070] or awareness that they would contribute to alleged criminal activities of the Anti-Balaka in preparing and carrying out the 5 December attack.

577. Mr NGAÏSSONA's geographical separation from the events, combined with the absence of evidence on the content of any alleged conversation between him and members of the alleged group with the criminal purpose, means that Mr NGAÏSSONA could not have known, in the fall of 2013, that self-defence groups emerging in CAR provinces, including in GOBERÉ, had the intention of committing wide-scale crimes against the Muslim civilian population.

578. As stated above,[2071] there is not even clear evidence that the group, insofar as one existed, shared the intent to commit those alleged crimes.[2072] While it may have appeared likely for someone with contacts within the emerging Anti-Balaka movement, that the group was planning to attack *the Seleka* to liberate the country, that assumption cannot go as far as including the commission of violent crimes against Muslim civilians.

579. What is more, there is no evidence that Mr NGAÏSSONA knew, at the time of his alleged contribution, that the Anti-Balaka intended to commit *each of the specific crimes* to which he allegedly contributed,[2073] i.e. all crimes charged against him in this case, including murder, persecution, rape, destruction of civilian property and mosques, as well as deprivation of liberty and deportation. There is no indication whatsoever that the intention to commit such crimes was communicated to him, nor that was it so obvious that he must have known about it, at any point before or after the 5 December attack.

C. The Prosecution failed to prove that Mr NGAÏSSONA was aware of the intention of the alleged group to commit the crime, or knew that the offence would occur in the ordinary course of events

580. In the absence of proof of the specific *mens rea* required under Articles 25(3)(c) and (d), the question of the general *mens rea* of Article 30 of the Statute is moot. However, should the

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[2070] The issue of specific aim is developed *above*, paras 573-574.
[2071] IV.D. The Anti-Balaka groups never shared a common purpose to commit crimes against the Muslim civilian population
[2072] Katanga TJ, para. 1641 ("the group of persons acting with a common purpose must have harboured the intention to commit the crime; such interpretation references article 30(2)(b) of the Statute.")
[2073] Katanga TJ, para. 1641 ("the accused must be aware that the intention existed when engaging in the conduct which constituted his or her contribution."), *see also* para. 1642 ("Knowledge of such circumstance must be established for each specific crime and knowledge of a general criminal intention will not suffice to prove, as article 25(3)(d)(ii) mandates, that the accused knew of the group's intention to commit each of the crimes forming part of the common purpose.")

Chamber believe that Mr NGAÏSSONA possessed the required specific *mens rea*, the demonstration of his criminal intent would still fail at the last hurdle.

581. To show the general *mens rea* of Article 30 of the Statute, the Chamber must be satisfied that the accused person was aware that "a circumstance exists or a consequence will occur in the ordinary course of events".[2074] The expressions "ordinary course of events" mean that the "foreseeability of events" requires "virtual certainty" that the consequence in question would occur.[2075] This high standard is not met in this case.[2076]

D. Mr NGAÏSSONA's words and actions in 2014 prove he never harboured any criminal intent

582. The fact that Mr NGAÏSSONA became, in January 2014, National Coordinator of the Anti-Balaka movement is insufficient to infer knowledge and criminal intent.[2077] As decided by the Pre-Trial Chamber, the role occupied by Mr NGAÏSSONA in 2014 is not sufficient to show that he willingly contributed to crimes allegedly committed on 5 December 2013. It is also insufficient that he knew or intended to contribute to any subsequent crimes in the same pattern of conduct.[2078] In any event, by the Prosecution's own admission, evidence of Mr NGAÏSSONA's acts after the charged crimes that could relate to his prior intent, is circumstantial.[2079] An inference based on circumstantial evidence must be the only or most reasonable one.[2080] It is certainly not the case here.

583. To the contrary, Mr NGAÏSSONA's consistent words and actions throughout 2014 demonstrate that his one and only objective was to bring peace back in CAR and put an end to the crisis. Amid the reigning chaos and despite the lack of functioning State authorities and the hostility

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[2074] Al Hassan TJ, para. 1120.
[2075] Al Hassan TJ, para. 1121; Ongwen TJ, para. 2695; Lubanga AJ, para. 447. *See also* Katanga TJ, para. 777 ("Thus, this form of criminal intent presupposes that the person knows that his or her actions will necessarily bring about the consequence in question, barring an unforeseen or unexpected intervention or event to prevent its occurrence. In other words, it is nigh on impossible for him or her to envisage that the consequence will not occur.")
[2076] *See above*, para. 578; IV.The Prosecution failed to prove the alleged existence of a common criminal purpose.
[2077] CoC Decision, para. 238 ("Furthermore, the very formulation of the Prosecutor's allegation seeking to establish Ngaïssona's knowledge of the events is telling: '[a]s General National Coordinator, Ngaïssona *would* have been informed': the Chamber finds that a hypothetical assumption, merely based on Ngaïssona's formal role and role as coordinator, does not constitute adequate foundation for a finding to this effect.") (emphasis added). *See* submissions related to the absence of factual foundation for using *post facto* conduct to prove prior intent: ICC-01/14-01/18-573-Conf, para. 25; ICC-01/14-01/18-650-Conf, paras 35-37.
[2078] CoC Decision, paras 182, 195 ("Finally, regarding the arguments submitted by the Prosecutor relating to Ngaïssona's intent and endorsement of the crimes charged, the Chamber underlines anew the inadequacy of post facto validation conducts.").
[2079] ICC-01/14-01/18-640, para. 54; ICC-01/14-01/18-488, para. 16.
[2080] *See above*, II.A The Prosecution excessively relied on circumstantial evidence; *See* Bemba TJ, paras 192, 239.

of international forces towards him,[2081] Mr NGAÏSSONA took concrete measures to stop violence on the ground, while advocating in political and diplomatic circles for the adoption of practical solutions. Several witnesses confirmed that Mr NGAÏSSONA's public commitment towards peace was genuine and conformed with discussions held in private.[2082]

584. While *ex post facto* to most charged crimes, the following steps taken by Mr NGAÏSSONA in 2014 show his commitment and engagement for the return of peace in CAR. They demonstrate that to the extent that his actions could be deemed as contributions pursuant to Articles 25(3)(c) and (d), they were not made with the specific aim of facilitating any offence, nor that of furthering any criminal activities. To the contrary, the most reasonable inference is that Mr NGAÏSSONA's actions as the Anti-Balaka National Coordinator aimed to bring back peace in CAR.[2083] Mr NGAÏSSONA had no knowledge of the intention of Anti-Balaka to use his alleged contribution to commit crimes; to the opposite, he acted with the specific aim to put an end to criminal activities.

1. Lists and badges

585. In early 2014, Mr NGAÏSSONA oversaw a project aiming at listing Anti-Balaka elements in order to issue identification badges. As explained by several witnesses, the purpose of the badges was to "distinguish the genuine Anti-Balaka from thugs and thieves who wanted to join the movement", and to facilitate the DDR process.[2084] While the badge system experienced failures,[2085] this initiative was nonetheless taken as a step towards the restauration of peace and

[2081] **P-0889:** T-110-CONF-ENG CT, p. 64, ln. 15 to p. 65, ln. 8, CAR-OTP-2117-0704.
[2082] **P-0808:** T-070-ENG CT2, p. 59, lns 6-12, p. 66, lns 14-23, p. 72, ln. 19 to p. 73, ln. 1; T-071-ENG CT2, p. 10, ln. 23 to p. 11, ln. 9, p. 19, ln. 15 to p. 20, ln. 3, p. 24, ln. 23 to p. 24 ln. 8, p. 39, lns 10-19, p. 42, ln. 25 to p. 43, ln. 10, p. 43, lns 21-24, p. 56, lns 2-14; **P-1521:** T-083-CONF-ENG, p. 54, lns 7-23; p. 60, lns 21-25, p. 64, ln. 23 to p. 65, ln. 4, p. 74, line 18 to p. 75, line 19, p. 78, lns 10-23; **P-0889:** T-110-CONF-ENG CT, p. 40, lns 9-12, p. 50, lns 10-23, p. 51, ln. 16 to p. 52, ln.-20, p. 54, ln. 6 to p. 55, ln. 10, p. 59, ln. 11 to p. 60, ln. 15, p. 79, ln. 17 to p. 81, ln. 1; **P-0888:** T-123-ENG CT2, p. 33, ln. 20 to p. 34, ln. 9, p. 58, ln. 22 to p. 59, ln. 3, p. 59, ln. 11 to p. 60, ln. 3, p. 66, ln. 25 to p. 67, ln. 5; **P-1962:** T-139-CONF-ENG CT, p. 62, lns 3-13; T-140-CONF-ENG CT2, p. 24, lns 14-18, p. 25, ln. 24 to p. 25, ln. 14; **P-1042:** T-164-CONF-ENG CT, p. 25, lns 8-23, p. 28, lns 11-20; **P-1858:** T-187-CONF-ENG ET, p. 19, lns 17-24.
[2083] Ruto & Sang Judgment of Acquittal (Reasons of Judge Fremr), para. 23; Al Bashir Arrest Warrant AJ, paras 32-33; Bemba et al. AJ, para. 868; Bemba AJ, para. 42; Gbagbo and Blé Goudé Judge Henderson's Reasons, para. 51.
[2084] **P-0808:** T-070-ENG CT2, p. 59, lns 13-23; **P-1521:** T-083-CONF-ENG CT, p. 49, lns 3-22; **P-0889:** T-110-CONF-ENG CT, p. 28, ln. 6 to p. 29, ln. 22; p. 32, lns 9-15; **P-0888:** T-123-ENG CT2, p. 54, lns 14-18; p. 54, line 19 to p. 55, line 1; **P-1962:** T-140-CONF-ENG CT2, p. 10, lns 15-22, p. 20, ln. 20 to p. 21, ln. 5; **P-1042:** T-164-CONF-ENG CT, p. 28, ln. 21 to p. 29, ln. 7; **P-2251:** T-044-CONF-ENG CT2, p. 50, lns 12-22; **P-0992:** T-093-CONF-ENG ET, p. 41, lns 14-23.
[2085] **P-0808:** T-070-ENG CT2, p. 61, lns 1-13; **P-0889:** T-110-CONF-ENG CT, p. 29, lns 2-4.

security,[2086] which is confirmed by the fact that, despite an initial lack of support,[2087] when the DDR was finally put in place in 2015-2016, the preparation of lists and issuance of badges were among the measures adopted.[2088]

2. Means of subsistence

586. Several witnesses testified that Mr NGAÏSSONA would occasionally give money to Anti-Balaka elements for food, transportation, medical care and other basic needs, with the specific purpose to dissuade them to trouble the civilian population, or to allow them to return to their village.[2089] If they subsequently committed crimes, Mr NGAÏSSONA no longer gave them anything.[2090] This system was discussed with the *chefs de quartiers*, and approved by them as a measure to make criminality stop.[2091]

587. President SAMBA-PANZA conceded doing the same,[2092] and recognised that Mr NGAÏSSONA's donations were for humanitarian reasons, so that Anti-Balaka members could "face their daily needs".[2093]

3. Military police

588. In 2014, Mr NGAÏSSONA recognised that petty crimes were being committed in BANGUI, in particular by rogue or uncontrolled elements, and expressed his concerns and took measures to make it stop.[2094] In the absence of any functioning police or gendarmerie, Mr NGAÏSSONA took steps to create a so-called 'military police', tasked with arresting people responsible for crimes against civilians, whether they were Anti-Balaka, fake Anti-Balaka or other armed group members, and bring them to justice.[2095] The military police also contributed to

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[2086] **P-0808:** T-070-ENG CT2, p. 60, lns 21-25; **P-1521:** T-083-CONF-ENG CT, p. 49, lns 3-22; **P-0889:** T-110-CONF-ENG CT, p. 29, lns 15-22.
[2087] **P-0889:** T-110-CONF-ENG CT, p. 30, lns 11-20; **P-1962:** T-140-CONF-ENG CT2, p. 18, lns 6-10.
[2088] CAR-D30-0006-0049; **P-0889:** T-110-CONF-ENG CT, p. 44, lns 3-22.
[2089] **P-0808:** T-069-CONF-ENG CT, p. 19, lns 4-11; p. 38, ln. 15 to p. 40, ln. 3, T-071-ENG CT2, p. 45, lns 3-25; **P-1521:** T-083-CONF-ENG CT, p. 44, lns 1-11, 17-23, p. 46, ln. 19 to p. 47, ln. 2; **P-0889:** T-109-CONF-ENG CT2, p. 85, lns 9-21; **P-0888:** T-123-ENG CT2, p. 20, lns 3-20, p. 35, ln. 7 to p. 37, ln. 13; **P-1858:** T-187-CONF-ENG ET, p. 30, lns 13-25; **P-2251:** T-043-CONF-ENG CT, p. 41, ln. 23 to p. 42, ln. 18; T-044-CONF-ENG CT2, p. 43, lns 6-10; **P-0992:** T-095-CONF-ENG ET, p. 8, ln. 22 to p. 9, ln 10.
[2090] **P-0808:** T-071-ENG CT2, p. 46, lns 1-12; **P-2251:** T-043-CONF-ENG CT, p. 43, lns 3-11, p. 45, ln. 15 to p. 46, ln. 10. *See also* **P-0992:** T-093-CONF-ENG ET, p. 46, lns 1-12.
[2091] **D30-4756:** T-269-CONF-ENG CT, p. 16, ln. 25 to p. 17, ln. 9.
[2092] **P-0952:** T-249-ENG CT, p. 59, lns 6-9, 14-21.
[2093] **P-0952:** T-251-ENG CT, p. 59, lns 9-20.
[2094] CAR-OTP-2088-0649, at 0654-0655, lns 159 to 187.
[2095] **P-0808:** T-070-ENG CT2, p. 58, lns 9-10, 15-17; p. 71, lns 2-24; **P-0446:** T-097-CONF-ENG CT2, p. 84, lns 2-7 to p. 85, ln. 21; T-098-ENG CT, p. 40, ln. 25 to p. 41 ln. 22; **P-1521:** T-083-CONF-ENG CT, p. 59, ln. 1 to p. 61, ln. 6; **P-0889:** T-110-CONF-ENG CT, p. 45, ln. 3 to p. 46, ln. 4, p.48, ln. 24 to p. 49, ln. 7; p. 50, ln. 24 to p.

disarmament, and brought weapons back to the gendarmerie.[2096] Members of the military police received training to ensure they would exercise their role properly.[2097]

589. The military police could not replace, or make up for the weakness and inefficiency of local law enforcement authorities.[2098] Yet, before its creation, there was no mechanism in place at the State level to pursue perpetrators.[2099]

590. Unfortunately, the military police's efforts were impeded by the lack of cooperation by national and international forces,[2100] as well as by the corruption and lack of means of existing State structures.[2101] Due to lack of support, the military police could not effectively ensure compliance of some influential Comzones, like ANDJILO or MAZIMBELET.[2102]

4. Meetings with Comzones

591. Mr NGAÏSSONA occasionally convened meetings to speak to Comzones.[2103] During these meetings, he would advise them against violence and promote reconciliation.[2104] The lack of hierarchy meant that Comzones did not report crimes to Mr NGAÏSSONA.[2105] When he did hear that crimes had been committed, he showed anger.[2106] Unfortunately, several witnesses

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51, ln. 14; **P-0888:** T-123-ENG CT2, p. 57, lns 5-22, p. 65, lns 10-16; **P-2251:** T-044-CONF-ENG CT2, p. 51, ln. 11 to p. 52, ln. 4; **P-0992:** T-093-CONF-ENG ET, p. 41, lns 5-13; p. 46, lns 14-22.

[2096] **P-0446:** T-098-ENG CT p. 23 ln. 19, to p. 24, ln. 15; **P-1521:** T-083-CONF-ENG CT, p. 62, lns 13-18.

[2097] CAR-OTP-2025-0356, at 0361; **P-0808:** T-070-ENG CT2, p. 72, lns 5-18. Contrary to what is stated in CAR-OTP-2025-0356, at 0359, ANDJILO and MAZIMBELET were never members of the military police (*see* **P-0446:** T-098-ENG CT, p.42, ln. 14 to p. 43, ln. 6; **P-2251:** T-044-CONF-ENG CT2, p. 56, lns 2-9; **P-0888:** T-123-ENG CT2, p. 58, lns 18-21; **P-1521:** T-083-CONF-ENG CT, p. 60, lns 14-20.

[2098] CAR-OTP-2118-5597, at 5602, lns 156-174; **P-0952:** T-251-ENG CT, p. 66, lns 3-7.

[2099] **P-0808:** T-070-ENG CT2, p. 73, lns 4-18; **P-1521:** T-083-CONF-ENG CT, p. 59, ln. 1 to p. 61, ln. 6; **P-1962:** T-140-CONF-ENG CT2, p. 21, lns 9-25.

[2100] **P-0952:** T-251-ENG CT, p. 67 ln. 24 to p. 68, ln. 6; **P-0808:** T-070-ENG CT2, p. 74, ln. 23 to p. 75, ln. 14; **P-0889:** T-110-CONF-ENG CT, p. 49, lns 9-23. *See also* CAR-OTP-2110-0145, at 0146.

[2101] **P-0808:** T-070-ENG CT2, p. 73, ln. 20 to p. 74, ln. 6.

[2102] **P-0808:** T-070-ENG CT2, p. 74, lns 7-22.

[2103] **P-0808:** T-071-ENG CT2, p. 25, lns 9-17.

[2104] **P-0808:** T-070-ENG CT2, p. 43, lns 10-18; **P-1521**: T-083-CONF-ENG CT, p. 35, lns 16-25; **P-1077:** T-150-ENG CT WT, p. 47, ln. 17 to p. 48, ln. 4; **P-0889:** T-109-CONF-ENG CT2, p. 78, ln. 24 to p. 79, ln. 18 ; T-110-CONF-ENG CT, p. 18, lns 4-21; **P-0888:** T-123-ENF CT2, p. 42, lns 6-20; **P-1962:** T-139-CONF-ENG CT, p. 27, ln. 19 to p. 28 ln. 7, p. 64, lns 7-23; T-140-CONF-ENG CT2, p. 7, lns 13-18; **P-1042:** T-164-CONF-ENG CT, p. 23, lns 9-19, p. 28, lns 1-20; **P-0992:** T-095-CONF-ENG ET, p. 16, ln. 20 to p. 17, ln. 10 ; **D30-4756:** T-269-CONF-ENG CT, p. 18, lns 8-15.

[2105] **P-2232:** T-077-CONF-ENG CT, p. 26, lns 8-17; p. 26, ln. 23 to p.27, ln. 7.

[2106] **P-0889:** T-109-CONF-ENG CT2, p. 81, ln. 2 to p. 82, ln. 2; **P-1858:** T-187-CONF-ENG ET, p. 22, ln. 21 to p. 23, ln. 24.

recalled that there was nothing he could do, as he was an unarmed civilian, and did not have the power to expel them from their Comzone positions.[2107]

5. Mission orders

592. Throughout 2014, Mr NGAÏSSONA issued mission orders[2108] to try and influence Anti-Balaka in remote provinces to lay down their weapons and ensure they did not mistreat the civilian population. These mission orders were issued with the purpose of restoring peace and security in CAR provinces away from BANGUI.[2109]

6. Press communiqués and other statements

593. From his appointment as General Coordinator in January 2014, Mr NGAÏSSONA signed and issued several press releases,[2110] and gave several media interviews[2111] in which he repeatedly called for peace and asked Anti-Balaka elements to lay down their weapons.[2112]

594. Mr NGAÏSSONA specifically called for appeasement and respect of the Muslim community, in particular around the Holy month of Ramadan, in late June 2014, and in the lead up to the BRAZZAVILLE forum.[2113] He advocated for the unity of Muslim and Christian communities.[2114] This matched with his behaviour in private, where he "would do everything to protect" Muslim civilians.[2115]

[2107] **P-0808:** T-071-ENG CT2, p. 49, lns 17-24; **P-0889:** T-109-CONF-ENG CT2, p. 77, ln. 12 to 78, ln. 7; T-110-CONF-ENG CT, p. 16. ln. 15 to p. 18, ln. 3, p. 59, lns 1-10; **P-0888:** T-123-ENG CT2, p. 40, ln. 14 to p. 42, ln. 4; **P-1858:** T-187-CONF-ENG ET, p. 23, ln. 25 to p. 26, ln. 16; **P-2232:** T-077-CONF-ENG CT, p. 26, lns 12-17; **D30-4756:** T-269-CONF-ENG CT, p. 19, ln. 13 to p. 20, ln. 12.

[2108] CAR-OTP-2087-9108; CAR-OTP-2001-5386, at 5466; CAR-OTP-2108-0050; CAR-OTP-2029-0175. In contrast, mission order CAR-OTP-2029-0171 was not signed by Mr NGAÏSSONA (**P-0446:** T-098-ENG CT, p. 5, lns 18-21) and as such, will not be addressed here.

[2109] **P-0808:** T-070-ENG CT2, p. 75, lns 15-25, p. 77, lns 11-20, p. 78, lns 14-22; **P-0446:** T-098-ENG CT, p. 4, lns 7-15; **P-1521:** T-083-CONF-ENG CT, p. 63, ln. 21 to p. 64, ln. 6; **P-0889**: T-110-CONF-ENG CT, p. 12, line 18 to p. 14, ln. 7, p. 15, ln. 8 to p. 16, line 9; **P-1962:** T-139-CONF-ENG CT, p. 59, ln. 24 to p. 60, 1n. 20.

[2110] CAR-OTP-2084-0146; CAR-OTP-2084-0147; CAR-OTP-2084-0148; CAR-OTP-2110-0145; CAR-OTP-2084-0150; CAR-OTP-2084-0155; CAR-OTP-2084-0157; CAR-OTP-2084-0166; CAR-OTP-2101-3611; CAR-OTP-2030-0245; CAR-OTP-2030-0243.

[2111] CAR-OTP-2118-5622, at 5624, lns 19-28; CAR-D30-0002-0006; CAR-OTP-2068-0619; CAR-OTP-2042-2641 at [00:18:38] to [00:23:10], CAR-OTP-2107-2997, CAR-OTP-2118-5622.

[2112] **P-0808:** T-071-ENG CT2, p. 23, lns 7-12; **P-1042:** T-164-CONF-ENG CT, p. 22, ln. 18 to p. 23, ln. 8.

[2113] CAR-OTP-2084-0157; CAR-OTP-2042-0916, from [00:11:08] to [00:12:10], CAR-OTP-2088-0646, CAR-OTP-2088-0649, at 0654, lns 138-150. *See also* **P-0808:** T-071-ENG CT2, p. 39, lns 4-19.

[2114] **P-0954:** T-169-CONF-ENG CT, p. 59, lns 16-25.

[2115] **P-0808:** T-070-ENG CT2, p. 29, lns 17-25; T-071-ENG CT2, p. 54, ln. 18 to p. 55, ln. 20, p. 56, lns 2-14; p. 57, lns 3-8; **P-1521:** T-083-CONF-ENG CT, p. 83, ln. 25 to p. 84, ln. 11. *See also* CAR-OTP-2023-1597, CAR-OTP-2107-1499; **P-1193:** T-125-CONF-ENG CT2, p. 23, lns 9-15; **P-1962:** T-140-CONF-ENG CT2, p. 8, ln. 18 to p. 10, ln. 6; **P-1077**: T-150-ENG CT WT, p. 55, lns 6-15; **P-0889:** T-109-CONF-ENG CT2, p. 81, ln. 2 to p. 82, ln. 2; T-110-CONF-ENG CT, p. 24, ln. 20 to p. 25, ln. 15, p. 52, lns 10-20; **P-0888:** T-123-ENG CT2 WT, p. 61 ln. 4 to p. 62, ln. 9.

7. Billeting and DDRR

595. Mr NGAÏSSONA demanded billeting and inclusion of Anti-Balaka elements in a disarmament and demobilisation program immediately upon his appointment as general coordinator in January 2014. He detailed his vision in several documents and correspondences,[2116] starting with an Urgent Assistance Project sent to SAMBA-PANZA's office in February 2014,[2117] in which he requested that roughly 10,000 elements be billeted.[2118] Several witnesses testified that the billeting and disarmament of elements were measures that could have facilitated the return of peace in CAR.[2119]

596. SAMBA-PANZA conceded that the billeting and disarmament of armed groups was an important part of a sustainable peace process,[2120] and for this reason, it was part of the BRAZZAVILLE peace agreement.[2121] Yet, she insisted that the Anti-Balaka movement could not be recognised, and that in any event, the Transitional Government could not afford the billeting of the elements,[2122] since that was too early, and too difficult.[2123] After refusing to go forward with Mr NGAÏSSONA's proposal, the Transitional Government made no counter-proposal and closed the discussions.[2124] By SAMBA-PANZA's own admission, the absence of

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[2116] **P-0952:** T-251-ENG CT, p. 51, lns 7-23; **P-0808:** T-070-ENG CT2, p. 61 ln. 14 to p. 62, ln. 10, p. 65, lns 4-21; **P-0889:** T-110-CONF-ENG CT, p. 40 ln. 17 to p. 41, ln. 10; p. 43, lns 1-5; **P-0888:** T-123-ENG CT2, p. 50, ln. 3 to p. 51, ln. 10; **P-1858:** T-187-CONF-ENG ET, p. 33, lns 16-22. *See also* CAR-OTP-2042-2641, from [00:21:25] to [00:23:05], CAR-OTP-2107-2997, CAR-OTP-2118-5622, at 5624-5625, lns 34-53; CAR-D30-0008-0037; CAR-D30-0008-0040; CAR-OTP-2074-3219, at 3225; CAR-OTP-2042-2467, from [00:25:01] to [00:28:05], CAR-OTP-2107-1489, at 1490.

[2117] CAR-OTP-2025-0372 and its duplicate CAR-OTP-2087-9176. SAMBA-PANZA recalled receiving this document (**P-0952**: T-251-ENG CT, p. 52, lns 8-13; p. 53, lns 7-8). **P-0808:** T-070-ENG CT2, p. 62, ln. 13 to p. 63, ln. 7. *See also* CAR-OTP-2025-0362.

[2118] CAR-OTP-2087-9176, at 9181. The number of 58,000 elements given by SAMBA-PANZA in her testimony (**P-0952**: T-249-ENG CT, p. 35, lns 16-21; *see also* T-250-ENG CT, p. 28, lns 8-21, were the number 53,000 is discussed) is directly contradicted by the numbers officially presented to her at the time of the events.

[2119] **P-0808:** T-070-ENG CT2, p. 66, lns 7-13; **P-0446:** T-098-ENG CT, p. 47, ln. 17 to p. 48, ln. 13; p. 48, ln. 22 to p. 40, ln. 7; **P-1521:** T-083-CONF-ENG CT, p. 50, ln. 21 to p. 51, ln. 16; **P-0889:** T-110-CONF-ENG, p. 32, ln. 16 to p. 36, ln. 3; **P-0888:** T-123-ENG CT2, p. 49, lns 13-24; **P-1962:** T-140-CONF-ENG CT2, p. 18, ln. 11, to p. 19, ln. 16.

[2120] **P-0952:** T-249-ENG CT, p. 31, ln. 24 to p. 32, ln. 7. *See also* **P-2251:** T-044-CONF-ENG CT2, p. 40, lns 4-9.

[2121] CAR-OTP-2001-3405, at 3408, Article 4.

[2122] **P-0952:** T-249-ENG CT, p. 35, lns 6-21. *See also* **P-1521:** T-083-CONF-ENG CT, p. 55, lns 4-16.

[2123] **P-0952:** T-251-ENG CT, p. 56, lns 3-10. On the similarly adverse position of Sangaris's General SORIANO, *see i.a.*: CAR-OTP-2117-0704; **P-0889:** T-110-CONF-ENG CT, p. 36, ln. 4 to p. 37, ln. 7; T-110-CONF-ENG CT, p. 37, line 8 to p. 40, ln. 7.

[2124] **P-0952:** T-251-ENG CT, p. 55, ln. 22 to p. 56, ln. 2; **P-0808:** T-070-ENG CT2, p. 67, lns 3-8; **P-0888:** T-123-ENG CT2 WT, p. 55, ln. 2 to p. 56, ln. 7; **P-2251:** T-044-CONF-ENG CT2, p. 37, ln. 23 to p. 38, ln. 5, p. 40, lns 10-18, p. 40, ln. 23 to p. 41, ln. 25; **P-0992:** T-093-CONF-ENG ET, p. 55, lns 5-17.

billeting led to a situation where armed elements were mixing with the civilian population,[2125] contributing to the prevailing insecurity.[2126]

597. When the pre-DDRR was finally put in place in 2015[2127] and 2016, the measures adopted by the Transitional Government and the international community were identical with those put forward by Mr NGAÏSSONA from January 2014.[2128] This confirms that the measures promoted by Mr NGAÏSSONA intended to bring back peace.

8. High level advocacy, BRAZZAVILLE forum and implementation of peace accord

598. Mr NGAÏSSONA, committed to assist the Transitional Government, regularly expressed his support to President SAMBA-PANZA[2129] and repeatedly extended his hand towards her by proactively suggesting ways to move forward.

599. For example, in June 2014, a document[2130] was sent to the Transitional Government, and was widely disseminated.[2131] Its "goal was to get the transitional authorities and the international organisations, particularly MISCA, to understand [the coordination's] orientation and [] vision relating to the conditions that needed to be put in place for us to return to normalcy".[2132] Unfortunately, the suggestions put forward in this document were once again ignored by the Transitional Government[2133] and the international community.[2134]

600. Mr NGAÏSSONA was an active participant in the BRAZZAVILLE forum in July 2014, and again promoted peace and reconciliation in his opening address.[2135] He continuously

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[2125] **P-0952:** T-251-ENG CT, p. 57, ln. 22 to p. 58, ln. 1.
[2126] **P-0808:** T-070-ENG CT2, p. 69, lns 3-11; **P-1521:** T-083-CONF-ENG CT, p. 56, ln. 23 to p. 57, ln. 4; **P-0889:** T-110-CONF-ENG CT, p. 36, ln. 19 to p. 37, ln. 7; **P-0888:** T-123-ENG CT2 WT, p. 47, lns 8-14.
[2127] CAR-OTP-2039-0024.
[2128] *See for example* CAR-OTP-2087-9059, at 9060, which provides that elements should be grouped and billeted, provided with food and engaged in community project allowing them to earn a living. *See also* **P-0952:** T-251-ENG CT, p. 58, lns 2-17; CAR-D30-0006-0049; **P-0889:** T-110-CONF-ENG CT, p. 44, lns 3-22; **P-1962:** T-140-CONF-ENG CT2, p. 20, lns 12-23.
[2129] CAR-OTP-2118-5597, at 5602, lns 156-163; CAR-OTP-2084-0146; **P-1521:** T-083-CONF-ENG CT, p. 64, ln. 7 to p. 65, ln. 4; **P-0889:** T-110-CONF-ENG CT, p. 50, lns 10-23.
[2130] CAR-OTP-2025-0396.
[2131] CAR-OTP-2025-0408.
[2132] **P-0808:** T-071-ENG CT2, p. 36, lns 1-6; *see also* **P-0446:** T-098-ENG CT, p. 20, ln. 12 to p. 21, ln. 10; **P-0889:** T-110-CONG-ENG CT, p. 41, ln. 11 to p. 42, ln. 25; **P-1858:** T-187-CONF-ENG ET, p. 17, ln. 18 to p. 19, ln. 1.
[2133] **P-0808:** T-071-ENG CT2, p. 36, ln. 7 to p. 37, ln. 11; **P-0888:** T-123-ENG CT2, p. 52, ln. 16 to p. 53, ln. 24.
[2134] **P-0808:** T-071-ENG CT2, p. 38, lns 15-24.
[2135] CAR-D30-0003-0001. *See also* **P-1521:** T-083-CONF-ENG CT, p. 74, ln. 18 to p. 75, ln. 19; **P-0889:** T-110-CONF-ENG CT, p. 59, ln. 11 to p. 60, ln. 14; **P-0888:** T-123-ENG CT2, p. 54, lns 1-13; p. 71, ln. 13 to p. 72, ln. 16.

demonstrated his commitment to diplomacy, including by trying to resolve issues in his interactions with the Transitional Government.[2136]

601. Following the BRAZZAVILLE forum, Mr NGAÏSSONA took measures to implement the provisions of the peace agreement. For example, he issued several *'communiqués radio'*, requesting the dismantling of roadblocks,[2137] the free passage of persons, goods and humanitarian convoys.[2138] Admittedly, implementation of the agreement was challenging and as one witness put it, Mr NGAÏSSONA 'was alone'.[2139]

9. Creation of the PCUD

602. In November 2014, Mr NGAÏSSONA created his political party, the *Parti Centrafricain pour l'Unité et le Dévelopement* ('PCUD').[2140] SAMBA-PANZA encouraged him to do so,[2141] and stated that in her view, this was a positive step towards legality.[2142] Mr NGAÏSSONA's inaugural speech was pronounced with several dignitaries in attendance, including members of the Sangaris.[2143]

603. The creation of the PCUD, which was another attempt at fostering peace in the spirit of the BRAZZAVILLE forum,[2144] led to the fragmentation of the National Coordination, between the so-called 'NGAÏSSONA' and 'MOKOM' branches of the movement. Witnesses confirmed that

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[2136] CAR-OTP-2030-0270; **P-0889:** T-110-CONF-ENG CT, p. 67, ln. 16 to p. 69, ln. 10; CAR-OTP-2099-1360, CAR-OTP-2107-1600.
[2137] CAR-OTP-2030-0243; CAR-OTP-2124-1236; CAR-OTP-2001-3405, at 3408, Article 5. *See also* **P-0952:** T-251-ENG CT, p. 76, ln. 22 to p. 77, ln. 14; **P-0808:** T-071-ENG CT2, p. 43, lns 11-24; **P-1521:** T-083-CONF-ENG CT, p. 61, lns 7-18; **P-0889:** T-110-CONF-ENG CT, p. 55, line 11 to p. 56, line 3; **P-0888:** T-123-ENG CT2, p. 67, ln. 6 to p. 68, ln. 14; **P-1042:** T-164-CONF-ENG CT, p. 25, lns 8-23.
[2138] CAR-OTP-2030-0245; **P-1521:** T-083-CONF-ENG CT, p. 76, lns 10-18, p. 77, lns 10-15, 18-20; **P-0888:** T-123-ENG CT2, p. 65, ln. 17 to p. 66, ln. 15. Witnesses have confirmed that these releases were indeed published at the time, *see* **P-0808:** T-071-ENG CT2, p. 42, lns 9-15; **P-1193:** T-124-CONF-ENG CT3, p. 69, lns 17-22; **P-0889:** T-110-CONF-ENG CT, p. 54, line 6 to p. 55, line 10; **P-1042:** T-164-CONF-ENG CT, p. 23, ln. 25 to p. 25, ln. 1.
[2139] **P-0889**: T-110-CONF-ENG CT, p. 60, ln. 16 to p. 61, ln. 13.
[2140] CAR-OTP-2030-0255. *See* also CAR-OTP-2023-2935, CAR-OTP-2107-1521, at 1522-1523; CAR-OTP-2023-2920, CAR-OTP-2107-1519, at 1520.
[2141] **P-0952**: T-251-ENG CT, p. 80, ln. 16 to p. 81, ln. 8.
[2142] **P-0952**: T-251-ENG CT, p. 81, ln. 25 to p. 82, ln. 4.
[2143] **P-1193**: T-125-CONF-ENG CT2, p. 51, lns 12-20; CAR-OTP-2023-2919, from [00:05:55] to [00:07:02], CAR-OTP-2023-2920, from [00:00:42] to [00:01:07].
[2144] **P-0889**: T-110-CONF-ENG CT, p. 72, ln. 17 to p. 73, ln. 17; **P-0888**: T-123-ENG CT2, p. 80, ln. 22 to p. 82, ln. 23; **P-1858**: T-187-CONF-ENG ET, p. 3, ln. 20 to p. 4, ln. 16, p. 5, lns 3-10; **P-0992**: T-095-CONF-ENG ET, p. 32, ln. 23 to p. 33, ln. 7.

the pro-BOZIZÉ hard-liners joined the MOKOM wing of the movement, while those motivated by peace and reconciliation followed Mr NGAÏSSONA.[2145]

604. Even if the PCUD was created to gain political power, this does not diminish the impact of its creation and in any event, does not establish any intent on Mr NGAÏSSONA's part to contribute to, or condone the commission of crimes in any way. As SAMBA-PANZA stated, "I cannot reproach somebody for having political ambition and presenting themselves forward in politics […]. So if he created a political party, it was because he had ambitions to access power, which is legitimate and normal."[2146]

10. NAIROBI negotiations

605. Mr NGAÏSSONA's commitment towards peace was also manifested by his absence from the NAIROBI talks in late 2014. According to NGAYA, the NAIROBI meetings may have been a covert attempt at fomenting a coup against the Transitional Government.[2147] Upon being warned against this possibility by the French embassy in CAR, Mr NGAÏSSONA decided to stay away from this meeting,[2148] demonstrating a clear moral compass.

606. As illustrated by the above, the Prosecution failed to prove that the only reasonable inference is that Mr NGAÏSSONA intended the commission of each of the alleged crimes.

E. Mr NGAÏSSONA's failure to stop the violence is not indicative of a criminal intent

607. The mere fact that crimes continued to be committed in CAR in 2014 and beyond does not mean that Mr NGAÏSSONA's efforts were not genuine, or did not have a positive impact. Several witnesses in fact pledged that the situation would have been much worse without

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[2145] **P-0808**: T-069-CONF-ENG CT, p. 79, lns 17-24; **P-1193**: T-125-CONF-ENG CT2, p. 52, ln. 13 to p. 54, ln. 24; **P-0889**: T-110-CONF-ENG CT, p. 73, lns 17-19; **P-1858**: T-187-CONF-ENG ET, p. 28, ln. 24 to p. 29, ln. 9; **P-0992**: T-093-CONF-ENG ET, p. 42, lns 10-22; T-095-CONF-ENG ET, p. 30, ln. 4 to p. 31, ln. 14.
[2146] **P-0952**: T-251-ENG CT, p. 83, lns 2-10.
[2147] **P-0808**: T-071-ENG CT2, p. 50, lns 7-17.
[2148] CAR-D30-0006-0093, at 0238-0240 ("En particulier nous convainquons les principaux chefs restés à Bangui que sont Mohamed Dhaffane, Abdoulaye Issène, Armel Sayo, Edouard Ngaïssona et Sébastien Wenezoui de ne pas suivre Michel Djotodia, Noureddine Adam et François Bozizé. Finalement Noureddine Adam ne regroupera autour de cette rencontre, outre Bozizé et Djotodia, que ses lieutenants Abacar et Mustapha Sabone, et côté Antibalaka Maxime Mokome. C'est un échec malgré l'accord signé entre les deux anciens présidents. Cet échec de Nairobi est un succès de la communauté internationale largement dû aux actions du G8-RCA, et en particulier à l'action de l'ambassade et de Sangaris pour garder le contact avec tous les chefs et chefs secondaires des groupes armés afin de les convaincre de ne pas repartir dans un affrontement comme en 2013"); **P-0889**: T-110-CONF-ENG CT, p. 68, ln. 11 to p. 69, ln. 5; **P-1193**: T-125-CONF-ENG CT2, p. 62, ln. 4 to p. 63, ln. 16.

Mr NGAÏSSONA's involvement.[2149] SAMBA-PANZA also recognised Mr NGAÏSSONA's engagement and work towards social cohesion.[2150] Despite all the setbacks, Mr NGAÏSSONA never wavered from his objective to achieve peace and reconciliation.[2151]

608. When engaging in peace efforts, one does not have an obligation of result. It would be unfair to consider Mr NGAÏSSONA's failure to bring back peace as a substantiation of his criminal intent, in a situation where all actors involved in the crisis also failed.[2152] President SAMBA-PANZA admitted her own shortcomings and that of State authorities in this respect.[2153] International forces, including the Sangaris, were largely incapable of restoring calm and security.[2154] Yet, there is no suggestion that they somehow are responsible for alleged war crimes and crimes against humanity by way of their own failures. The same standard must apply to Mr NGAÏSSONA.

VIII. RELIEF SOUGHT

609. Based on the foregoing, the Defence respectfully requests the Chamber to:

- **ACQUIT** Mr NGAÏSSONA on all counts;
- **ORDER** his immediate release pursuant to Article 81(3)(c) of the Statute.

Respectfully submitted,

[2149] [REDACTED] ("I said the action of Mr Ngaïssona, when he was general coordinator of the Anti-Balaka movement, the action that he carried out in order to bring about peace was, for me, an attempt to bring about peace, at least partially, in Bangui. And he continued to do that. And right now, he is in the Hague. So for me, his actions, as far as I'm concerned, assisted a little to calm down the tension in Bangui."); **P-0808:** T-071-ENG CT2, p. 73, lns 6-20; **P-1521**: T-083-CONF-ENG CT, p. 79, ln. 19 to p. 80, ln. 2; **P-1077**: T-150-ENG CT, p. 48, lns 2-4. *See* also CAR-D30-0006-0057, at 0058; **P-1858**: T-187-CONF-ENG ET, p. 34, lns 7-16; **P-2251**: T-044-CONF-ENG CT2, p. 42, ln. 18 to p. 43, ln. 8, p. 53, lns 6-15; **D30-4756**: T-269-CONF-ENG CT, p. 30, lns 7-22; CAR-D30-0001-0098.
[2150] **P-0952**: T-251-ENG CT, p. 60, lns 8-9 ("But as regards working towards social cohesion, that's -- it's to the merit of Mr Ngaïssona"). *See* also, **P-0889**: T-110-CONF-ENG CT, p. 25, ln. 20 to p. 28, ln. 4; [REDACTED].
[2151] **P-0889**: T-110-CONF-ENG CT, p. 53, ln. 24 to p. 54, ln. 5; p. 74, lns 4-7; p. 79, lns 3-10; **P-1962**: T-140-CONF-ENG CT2, p. 6, lns 8-12; **P-1042**: T-164-CONF-ENG, p. 26, lns 5-12; **P-1858**: T-187-CONF-ENG ET, p. 4, ln. 22 to p. 5, ln. 2; **P-2251**: T-043-CONF-ENG CT, p. 45, ln. 21 to p. 46, ln. 14; **P-0992**: T-095-CONF-ENG ET, p. 12, lns 12-18, p. 34, ln. 13 to p. 35, ln. 11.
[2152] **P-2012**: T-025-ENG CT, p. 76, lns 23-25.
[2153] **P-0952**: T-251-ENG CT, p. 66, ln. 12 to p. 67, ln. 4. *See* also **P-0889**: T-110-CONF-ENG CT, p. 57, ln. 16 to p. 58, ln. 6.
[2154] **P-0888**: T-123-ENG CT2, p. 37, ln. 16 to p. 38, ln. 10.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 15 November 2024

At The Hague, the Netherlands.