

**ANNEX A**  
***Public Redacted Version***

|    | ERN #                                            | DEFENCE REPOSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| 1. | CAR-OTP-0013-0051: Press Article from Le Citoyen | <p>The Defence opposes the admission of this document, which the Prosecution asserts is a “press article” from Le Citoyen. It is in fact, at best, a one-page extract. Such incomplete extracts are inadmissible under the Chamber’s own jurisprudence.<sup>1</sup> Being an extract, it has insufficient reliability and probative value to warrant admission. The Prosecution has never produced an author, publisher or anyone associated with this newspaper to vouch for the reliability or provenance of these documents, nor produced any originals, despite their extensive reliance on this publication at trial.</p> <p>The document was neither recognised nor authenticated by the witness in question, whose sworn testimony in fact contradicted its contents. The Defence also notes that while the article is dated 14 December 2002, no date is provided of the alleged crimes being reported, undermining the Prosecution’s submissions about relevance, particularly given that Witness D04-54 testified [REDACTED].<sup>2</sup></p> <p>The Prosecution failed to make any substantive submissions on prejudice, simply stating “this document is not prejudicial”. This is manifestly insufficient given the requirement to provide submissions on the three-pronged test.</p> <p>In addition, the Defence reiterates its previous submissions on the admission of media and press articles,<sup>3</sup> and continues to adopt the position adopted by Trial Chamber I and Trial Chamber II of the ICC, and the <i>ad hoc</i> criminal tribunals that media reports are generally not considered a source of reliable evidence and their admission should generally be rejected for</p> |

<sup>1</sup> ICC-01/05-01/08-2299-Red, para. 116.

<sup>2</sup> [REDACTED]

<sup>3</sup> ICC-01/05-01/08-2168, paras. 36-37, citing Decision on the Prosecutor's Bar Table Motions, 17 December 2010; ICC-01/04-01/07-2635, paras. 29-33, and *The Prosecutor v. Kupreskic et al.* Decision, 3 September, 1999, para. 7.

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|    |                                                  | lack of probative value. <sup>4</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 2. | CAR-OTP-0013-0082: Press Article from Le Citoyen | <p>The Defence opposes the admission of this “press article”, which again is an extract from an alleged newspaper. Such incomplete extracts are inadmissible under the Chamber’s own jurisprudence.<sup>5</sup> Being an extract, it has insufficient reliability and probative value to warrant admission.</p> <p>The Defence notes that in addition to starting only at Page 5, the document skips from Page 6 to Page 9. The Prosecution submits, having produced no evidence in support, that the article itself skips from Page 6 to Page 9. Even if this is the case, this undermines the probative value and reliability of this document. The Defence also notes the extreme unlikelihood that, on 5 November 2002 in Bangui, given the conflict situation prevailing at the time, journalists were able to go to work, produce a newspaper (necessarily requiring staff, paper, electricity, computers) and sell these papers to members of the public on the streets of Bangui.</p> <p>The Prosecution has never produced an author, publisher or anyone associated with this newspaper to vouch for the reliability or provenance of these documents, nor produced any originals, despite their extensive reliance on this publication at trial.</p> <p>The Prosecution failed to make any substantive submissions on prejudice, simply stating “this document is not prejudicial”. This is manifestly insufficient given the requirement to provide submissions on the three-pronged test.</p> <p>The document was not recognised or authenticated by the witness in question, whose sworn testimony in fact contradicted its contents.<sup>6</sup> [REDACTED].”<sup>7</sup> In addition, the Defence</p> |

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<sup>4</sup> ICC-01/05-01/08-2168, para. 11.

<sup>5</sup> ICC-01/05-01/08-2299-Red, para. 116.

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED]

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|    |                                                  | reiterates its previous submissions on the admission of media and press articles, <sup>8</sup> and continues to adopt the position adopted by Trial Chamber I and Trial Chamber II of the ICC, and the <i>ad hoc</i> criminal tribunals that media reports are generally not considered a source of reliable evidence and their admission should generally be rejected for lack of probative value. <sup>9</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 3. | CAR-OTP-0013-0320: Press Article from Le Citoyen | <p>The Defence objects to the admission of this document. The Prosecution has never produced an author, publisher or anyone associated with this newspaper to vouch for the reliability or provenance of these documents, nor produced any originals, despite their extensive reliance on this publication at trial.</p> <p>The Defence also notes the extreme unlikelihood that, on 8 November 2002 in Bangui, given the conflict situation prevailing at the time, journalists were able to go to work, produce a newspaper (necessarily requiring staff, paper, electricity, computers) and sell these papers to members of the public on the streets of Bangui.</p> <p>The Prosecution failed to make any substantive submissions on prejudice, simply stating “this document is not prejudicial”. This is manifestly insufficient given the requirement to provide submissions on the three-pronged test.</p> <p>The document was not recognised or authenticated by the witness in question,<sup>10</sup> whose sworn testimony in fact contradicted its contents. In addition, the Defence reiterates its previous submissions on the admission of media and press articles,<sup>11</sup> and continues to adopt the position adopted by Trial Chamber I and Trial Chamber II of the ICC, and the <i>ad hoc</i> criminal</p> |

<sup>8</sup> ICC-01/05-01/08-2168, paras. 36-37, citing Decision on the Prosecutor's Bar Table Motions, 17 December 2010; ICC-01/04-01/07-2635, paras. 29-33, and *The Prosecutor v. Kupreskic et al.* Decision, 3 September, 1999, para. 7.

<sup>9</sup> ICC-01/05-01/08-2168, para. 11.

<sup>10</sup> [REDACTED]

<sup>11</sup> ICC-01/05-01/08-2168, paras. 36-37, citing Decision on the Prosecutor's Bar Table Motions, 17 December 2010; ICC-01/04-01/07-2635, paras. 29-33, and *The Prosecutor v. Kupreskic et al.* Decision, 3 September, 1999, para. 7.

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|    |                                                          | tribunals that media reports are generally not considered a source of reliable evidence and their admission should generally be rejected for lack of probative value. <sup>12</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4. | CAR-OTP-0070-0128: Alleged military record of [REDACTED] | <p>This document has utterly no probative value, with the Prosecution having failed to provide any evidence as to its reliability or provenance. Nor has the Prosecution provided any evidence as to the authenticity of the website from which the document was apparently downloaded and printed. It was not recognised or authenticated by either of the witnesses to which it was shown. Similar documents have previously been deemed inadmissible by the Chamber, on the basis that “contrary to its submission, the prosecution has provided no information regarding the origin and reliability of these document.”<sup>13</sup> Moreover and in any event, even if the information in the document is accepted as accurate, it does not in any way contradict the other documentary evidence in the record of the case about the length of time that [REDACTED] was in custody, it only shows the date he became a member of the FARDC. The Prosecution has not demonstrated that a man could not be administratively transferred whilst still in prison, and self-evidently the fact that [REDACTED] had been imprisoned was no bar to his becoming a soldier in the FARDC. Accordingly, the document lacks probative value</p> <p>Per curiam there is evidence of the release dates of several other soldiers tried and convicted at the Gbadolite courts martial which suggest they all served the entirety of their sentences.</p> |
| 5. | CAR-OTP-0069-0372: <i>Le Choix de Liberté</i>            | The Prosecution’s assertion that “this book was written by the accused himself”, is inaccurate in light of sworn testimony to the contrary which was not challenged. The Chamber has heard evidence from both CAR-D04-PPPP-0021 and CAR-D04-PPPP-0018 as to the book’s inaccuracies, and characterised those aspects shown to them as “propaganda”. As such, the book is lacking in probative value. CAR-OTP-PPPP-0018 testified that: <sup>14</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

<sup>12</sup> ICC-01/05-01/08-2168, para. 11.

<sup>13</sup> ICC-01/05-01/08-2299-Red, para. 156.

<sup>14</sup> [REDACTED]

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|    |                                    | <p>[REDACTED]</p> <p>In addition, Witness D04-54 had no knowledge of the extract shown to him, testifying that: [REDACTED]<sup>15</sup> Had the Prosecution intended to use this book to impugn Witness D04-54's credibility on other grounds, fairness dictates that he should have been given the opportunity to comment on any alleged inconsistencies between the book and his testimony. He was not given this opportunity.</p> <p>Moreover, the Defence recalls that the Majority of Trial Chamber's refused to grant the Defence request admit victims participation forms used during the examination of dual status witnesses, despite these documents been recognised and authenticated by their authors, on the basis that it "may be perceived by victim applicants as an unfair use of documentation that was provided to the Court for a discrete purpose."<sup>16</sup> The same reasoning must necessarily apply to documents adverse to the accused. The Defence notes that there was no indication at the time the book in question was authored that it would be used in a manner adverse to the accused in subsequent criminal proceedings. As such, it is not admissible under the Majority's own jurisprudence.</p> |
| 6. | CAR-OTP-0004-0874: Press Statement | <p>This "press release" exhibits no indicia of reliability on its face. At best, it appears to be nothing more than a print-out from the internet of a letter purporting to be over a decade old. There is no signature, letterhead, no stamp or seal. The Prosecution presented no evidence of its reliability, and its author was not called to testify. The witness to whom it was put had no knowledge of the documents or the contents.<sup>17</sup> Similar documents have previously been deemed inadmissible by the Chamber, on the basis that "contrary to its submission, the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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<sup>15</sup> [REDACTED]

<sup>16</sup> ICC-01/05-01/08-2012-Red, para. 102.

<sup>17</sup> [REDACTED]

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|    |                                  | prosecution has provided no information regarding the origin and reliability of these document.” <sup>18</sup> The Prosecution failed to make any substantive submissions on prejudice, simply stating “this document is not prejudicial”. This is manifestly insufficient given the requirement to provide submissions on the three-pronged test. The Defence accordingly opposes its admission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 7. | CAR-OTP-0013-0012: Press Release | <p>The Defence opposes the admission of this document. This “press release” is in fact a one-page extract from what the Prosecution alleges to be a publication called “Le Confident”. Such incomplete extracts are inadmissible under the Chamber’s own jurisprudence.<sup>19</sup> Being a one-page extract, it has insufficient reliability and probative value to warrant admission. Moreover, while the “source” is alleged to be AFP, the Chamber has previously rejected documents of this type, on the grounds that:<sup>20</sup></p> <p>The Chamber notes that the [documents] are all copies of online publications, quoting as their source of information either news agencies such as the AFP or the MLC directly. The documents are copies from unofficial open sources - whose reliability cannot be established - and therefore the Chamber has not been able to verify that the information they contain emanates from the media source or institution they purport to emanate from. Under these circumstances, although the documents may contain information relevant to the case, the Chamber is of the view that the documents do not bear sufficient indicia of reliability or authenticity and therefore the alleged probative value of the documents is outweighed by their potentially prejudicial effect on a fair trial.</p> <p>The document was not recognised or authenticated by the witness in question, whose sworn</p> |

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<sup>18</sup> ICC-01/05-01/08-2299-Red, para. 156.

<sup>19</sup> ICC-01/05-01/08-2299-Red, para. 116.

<sup>20</sup> ICC-01/05-01/08-2299-Red, para.113.

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|  |  | <p>testimony in fact contradicted its contents. The Prosecution failed to make any substantive submissions on prejudice, simply stating “this document is not prejudicial”. This is manifestly insufficient given the requirement to provide submissions on the three-pronged test. In addition, the Defence reiterates its previous submissions on the admission of media and press articles,<sup>21</sup> and continues to adopt the position adopted by Trial Chamber I and Trial Chamber II of the ICC, and the <i>ad hoc</i> criminal tribunals that media reports are generally not considered a source of reliable evidence and their admission should generally be rejected for lack of probative value.<sup>22</sup></p> |
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<sup>21</sup> ICC-01/05-01/08-2168, paras. 36-37, citing Decision on the Prosecutor's Bar Table Motions, 17 December 2010; ICC-01/04-01/07-2635, paras. 29-33, and *The Prosecutor v. Kupreskic et al.* Decision, 3 September, 1999, para. 7.

<sup>22</sup> ICC-01/05-01/08-2168, para. 11.