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**International  
Criminal  
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Date: **8 March 2024**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Public**

**Public Redacted Version of ‘Defence Response to the “Prosecution’s  
Seventh Application for the Submission of Evidence from the Bar Table”  
(ICC-01/14-01/18-1874-Conf)’, filed 21 July 2023 (ICC-01/14-01/18-1999-  
Conf)**

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

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## I. INTRODUCTION

1. The Defence of Mr Patrice-Edouard Ngaïssona (“Defence”) hereby responds to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” (“Application”).<sup>1</sup>
2. Further, the Defence provides in confidential Annex 1 to the present response its item-by-item objections to the [REDACTED] accounts that the Prosecution seeks to submit into the record of the case (the “Facebook Items”). The Defence makes these objections pursuant to rule 64(1) of the Rules of Procedure and Evidence (“Rules”), which are intended to assist the Chamber in its holistic assessment of the evidence during the deliberation of the judgment.<sup>2</sup>

## II. CONFIDENTIALITY

3. In accordance with regulation 23bis(1) of the Regulations of the Court, this response and its Annexes 1 and 2 are filed confidentially as they respond to documents of the same classification and contain confidential information. A public redacted version will be filed in due course.

## III. APPLICABLE LAW

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

## IV. SUBMISSIONS

### A. Major procedural bars

5. The Defence objects to the submission of the following documents because they are not on the Prosecution’s List of Evidence: CAR-OTP-2103-7505, CAR-OTP-2103-7447 and CAR-OTP-2130-0268.

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<sup>1</sup> ICC-01/14-01/18-1874-Conf together with confidential Annex.

<sup>2</sup> ICC-01/14-01/18-631, para. 62 (“Directions”).

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

6. The Defence also objects to the submission of the following items to the extent that they contain extensive Sango passages, or several shorter ones, which have not been translated into an official language of the Court. The following pages cannot be submitted via bar table until the Prosecution provides translations thereof: CAR-OTP-2100-2994 (at 3004), CAR-OTP-2100-4956 (at 4963-4964), CAR-OTP-2102-3014 (at 3051-3053, 3058-3059, 3066, 3078, 3144), CAR-OTP-2099-8120 (at 8120-8128, 8133, 8137, 8141-8142, 8145, 8147-8148, 8176-8177, 8182, 8188), CAR-OTP-2102-8290 (from 8308 to 8312), CAR-OTP-2102-8444 (at 8445-8446), CAR-OTP-2102-8822 (at 8822-8825).
7. Lastly, the Defence notes that the following documents have already been recognised as formally submitted and should therefore have been removed from the Annex to the Application: CAR-OTP-2100-7317, CAR-OTP-2101-6897, CAR-OTP-2101-8109, CAR-OTP-2100-3030, CAR-OTP-2101-9735, CAR-OTP-2102-5143. However, the Defence responds to the arguments made with respect to these items since the Prosecution included them in the Application.

#### **B. Preliminary remarks on the unacceptable approach of the Prosecution to the evidence**

8. By cherry picking Facebook conversations that fit its narrative, the Prosecution is, arguably, able to construct an internally coherent theory. Unfortunately, it does not reflect the truth. It only reflects a one-sided version of the events. Based on the screenshots attached in Annex 2, it is apparent that the Prosecution is deliberately withholding important information that does not fit its narrative, resulting in a skewed version of events that might be inspired by reality but does not fully reflect it. Two items that were previously included in the Bar Table annex sent to the Defence during the *inter partes* stage of the discussions have been subsequently removed from the Annex to the Application,<sup>4</sup> clearly because certain excerpts of these items were in contradiction with the Prosecution's case theory. Indeed, as the Prosecution's comments emphasized in the draft version initially sent to the Defence, one of the items "*could go against the meetings in Cameroon pre July 2013*". As to the second item, it was questioned whether it was "*worth putting it*" since "*[REDACTED]denies having distributed weaponst (sic) to COCORA*".<sup>5</sup> Both of these items have in the meantime been removed from the Annex to the Application.

<sup>4</sup> CAR-OTP-2100-7278, CAR-OTP-2101-6840.

<sup>5</sup> See screenshots of the first version of the bar table annex in Annex 2.

In light thereof, it cannot be excluded that the Prosecution has proceeded with a one-sided selection all throughout the case. Therefore, the Prosecution's interpretation of items should be critically assessed and approached with great caution.

### C. General remarks on the unreliability of Facebook conversations

9. The great majority of the Facebook Items have not been contextualised by any witness. In general, contextualization through a witness is not a requirement for the submission of evidence, but in this case, Facebook Items should be accorded little to no probative value without such contextualization. The Prosecution's submissions as to their relevance are self-serving and amount to speculation, which the Prosecution itself admitted in its previous submissions before the Chamber.
10. In the Prosecution's request to add 103 Facebook records to its List of Evidence, one of the Prosecution's justifications for the delay between disclosure of the items to the Defence and the Prosecution's identification of the most relevant items was the difficulty to 'decipher' the messages, making their significance "*not always clear instantaneously*".<sup>6</sup> This is a euphemism given the phrasing and vocabulary being used in these conversations. For many of them, clarity is not a question of having enough time to review the messages but is simply impossible to achieve without the person in question providing an explanation as to their true meaning. It is striking that the Prosecution makes unequivocal allegations on the basis of these very opaque conversations.<sup>7</sup> In light thereof, the Defence requests the Chamber to accord no probative value to Facebook evidence, when taken for the truth of its content, when neither the sender nor the recipient of the exchange in question, nor the individuals mentioned therein have provided testimony as to the meaning and veracity of the relevant conversations or posts.
11. The low probative value to be afforded to Facebook (and email) conversations is implicit in the Trial Chamber's oral rulings on the use of Facebook conversations during witness testimony.<sup>8</sup> The limited weight of Facebook entries, albeit related to the account

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<sup>6</sup> ICC-01/14-01/18-1330-Conf, para. 11.

<sup>7</sup> See e.g. submissions in Annex to Application, item #47, referring to CAR-OTP-200-5465, at 5465-5466. See also CAR-OTP-2100-6412 in which coded language is extensively used.

<sup>8</sup> P-1847: ICC-01/14-01/18-T-023-CONF-ENG CT, page 70, lines 15-22 and page 73, lines 15-20; P-2841: ICC-01/14-01/18-T-029-CONF-ENG ET, pages 43-44 ; P-0889: ICC-01/14-01/18-T-109-CONF-ENG ET, pages 6-7, lines 17-1, where the President of this Chamber clarified that: "*not everything that is being said in a Facebook conversation can be taken at face value*" and that "*it might have probative value, but it very well is possible that it doesn't*".

“coordination des Anti-Balaka”, was also echoed by the Pre-Trial Chamber in the Decision on the confirmation of charges.<sup>9</sup>

12. Moreover, several Prosecution witnesses testimony has underscored the unreliability of Facebook conversations. For instance, during his testimony, [REDACTED].<sup>10</sup> Also, P-0889, when confronted with several of his Facebook conversations, admitted to having said “silly” or incorrect statements on Facebook. He also testified that many people would share incorrect information in order to gain attention, visibility, or establish networks.<sup>11</sup> P-0889 also confirmed the fake news being propagated on Facebook.<sup>12</sup> A perfect illustration of such fake news stems from an account for which the Prosecution seeks to submit the messages in the present bar table, namely the [REDACTED]. The Defence recalls that the user of the [REDACTED] posted pictures on his wall stating that they pictured Anti-Balaka fighters outside of Bangui in late November 2013.<sup>13</sup> This was a proven false statement; the pictures were not taken in Bangui. They were not even taken in Central African Republic (“CAR”). The user of the account posted pictures from Côte d’Ivoire from the 2010 post-electoral crisis and presented them as if they were taken on the outskirts of Bangui in 2013.<sup>14</sup>

13. For most of the Facebook user accounts at hand, the Prosecution submits Facebook metadata to show the alleged “Anti-Balaka connections” of certain users. More specifically, the Prosecution seeks to submit some metadata showing “friend” connections on Facebook, for instance for the [REDACTED]. However, the Prosecution fails to identify specific individuals on voluminous lists of Facebook “friends”.<sup>15</sup>

14. The Prosecution also often submits Facebook conversations to attribute telephone numbers to individuals including [REDACTED]. However, the attribution is weak given that it is unknown whether the person behind the user Facebook account is in fact one and the same

<sup>9</sup> ICC-01/14-01/18-403-Conf-Corr, paras 202, 211.

<sup>10</sup> P-2673: ICC-01/14-01/18-T-041-CONF-ENG ET, page 8, lines 13-19 and page 9, lines 18-24.

<sup>11</sup> P-0889 : ICC-01/14-01/18-T-108-CONF-ENG ET, page 44, lines 7-22; page 78, lines 6-16 ; page 80, lines 5-14. *See also* P-0889: ICC-01/14-01/18-T-108-CONF-ENG ET, pages 27-28, lines 22-25.

<sup>12</sup> P-0889: ICC-01/14-01/18-T-108-CONF-ENG ET, page 83.

<sup>13</sup> ICC-01/14-01/18-1942-Conf, para 46.

<sup>14</sup> *Ibid.*

<sup>15</sup> For [REDACTED]: CAR-OTP-2099-2746; CAR-OTP-2099-2835. For [REDACTED]: CAR-OTP-2099-2257; CAR-OTP-2099-2338. For [REDACTED]: CAR-OTP-2099-4361.

person; and the provision of a phone number is not indicative that it is a number used exclusively by the user.<sup>16</sup>

15. Finally, an argument that the Defence has already raised, notably during the Defence's opening submissions, is that Facebook items are not self-authenticating, "*partly due to the anonymity resulting in the use of pseudonyms as user names*".<sup>17</sup> Indeed, social media evidence bears inherent risks in this regard, some of which have been identified by the Court of Criminal Appeals of Texas in *Tienda v. State*: "*computers can be hacked [...] and cell phones can be purloined*".<sup>18</sup> Beyond hacking and theft, the social media application can merely be used by someone whom the owner of the social media account allowed access using his/her credentials.<sup>19</sup> In this respect, the Court in *State v. Smith* rejected the Government's social media evidence holding that "*there [was] no evidence of whether, [...], [the defendant] allowed others access using his password or any unique qualities regarding the messages themselves from which one may assert [that it was the defendant who] sent the messages*".<sup>20</sup> Thus, mobile instant messaging ("MIM") evidence (*i.e.* including Facebook messenger which can be used from a phone) must be "*independently authenticated*" by corroborating elements, such as "*the testimony of a knowledgeable witness or other accepted means*".<sup>21</sup> For that reason, the Court of Criminal Appeals of Texas has held that the circumstance that "*the respondent in an internet chat room dialogue purports to identify himself*" cannot be "*without more*" regarded as sufficient to support a finding of authenticity.<sup>22</sup> Likewise, the US Court of Appeals for the Third Circuit has rejected the Government's theory of self-authentication because the Government could only show that "*the communications took place as alleged between the named Facebook accounts*", but could not demonstrate that these accounts were actually

<sup>16</sup> See Defence submissions in ICC-01/14-01/18-1409-Conf, paras 59-61.

<sup>17</sup> ICC-01/14-01/18-T-016-ENG CT, page 24. See also P-1847 : ICC-01/14-01/18-T-23-CONF-ENG CT, pages 69-70

<sup>18</sup> Geert-Jan Alexander Knoops, "The evidentiary value of social media in international criminal proceedings", *International Studies Journal*, Vol 18 No. 3, 2022, citing *Tienda v. State*, 358 S.W.3d 633, paras. 642 (Tex. Crim. App. 2012). Available at: <https://casetext.com/case/tienda-v-state-10>.

<sup>19</sup> See *e.g.* ICC-01/14-01/18-T-016-ENG CT, page 24. See also CAR-OTP-2102-6596, at 6600, in which the interlocutor of suddenly leaves to go to class [REDACTED] and lets [REDACTED] continue the discussion with another interlocutor. See also Defence submissions below about the Facebook account [REDACTED] where it seems that more than one person had access to the credentials and could have used this account. See finally P-0889 [REDACTED]. See ICC-01/14-01/18-T-109-CONF-FRA ET, pages 8-9.

<sup>20</sup> *State v. Smith*, 192 So.3d 836, para. 842 (4th Cir. 2016). Available at: <https://www.leagle.com/decision/inlaco20160422311>.

<sup>21</sup> Y. Choi, *Mobile Instant Messaging Evidence in Criminal Trials*, 26 *Cath. U. J. L. & Tech* 1 (2017), page 16.

<sup>22</sup> *Tienda v. State*, 358 S.W.3d 633, para. 642 (Tex. Crim. App. 2012).

used by their legitimate owner.<sup>23</sup> Therefore, it appears that “*user identification is the key to authenticating MIM evidence*”.<sup>24</sup>

16. In light thereof, reliance on Facebook conversations when neither the sender nor the recipient of the exchange in question, nor the individuals mentioned therein, have provided testimony as to the meaning and veracity of the relevant conversations or posts would be prejudicial to Mr Ngaïssona, even more so when they relate to central aspects of the charges or highly contentious issues.<sup>25</sup> Yet, the Prosecution relies, *inter alia*, on Facebook conversations between [REDACTED] and other interlocutors, who are not witnesses, to attempt to establish key aspects of the charges such as Mr Ngaïssona’s alleged “*coordination of military actions together with Bernard Mokom*”, “*his direct involvement in the BOUAR military operations*” and “*his arrival in Bangui [...] upon BOZIZE’s request*”.<sup>26</sup> It would be detrimental to Mr Ngaïssona’s fundamental right under article 67 of the Statute if Facebook conversations that have not been independently authenticated and contextualized would be relied on by the Chamber for the truth of their content.

#### **D. Lack of relevance**

##### **a. [REDACTED] alleged Facebook account**

17. *First*, [REDACTED] Facebook conversations lack probative value in showing that he was close to François Bozizé. [REDACTED] conversations show that he was in contact only once with François Bozizé during the period between his arrival in Cameroon and 4 November 2013 and that during this contact, Bozizé blamed him for associating his name with the Anti-Balaka [REDACTED].<sup>27</sup> Had he been planning François Bozizé’s return of power through military means as part of Bozizé’s so-called inner circle, one would have thought that he would have had more frequently mentioned contacts with the former President of CAR during this key 2013 period.

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<sup>23</sup> *U.S. v. Brown*, 834 F.3d 403, para. 410 (3rd Cir. 2016). Available at: <https://www.leagle.com/decision/infco20160825083>.

<sup>24</sup> Y. Choi, *Mobile Instant Messaging Evidence in Criminal Trials*, 26 *Cath. U. J. L. & Tech* 1 (2017), page 10.

<sup>25</sup> The Defence refers to his general submissions relating to prejudice in its response to the Bar Table application relating to the origin of the conflict ICC-01/14-01/18-1942-Conf, para. 48.

<sup>26</sup> Application, para. 18.

<sup>27</sup> CAR-OTP-2100-9923, at 9926.



18. In the same vein, [REDACTED].<sup>28</sup> This also contradicts the Prosecution's theory that [REDACTED] was taking actions as part of an inner circle of Bozizé.
19. *Second*, [REDACTED] Facebook conversations lack probative value in showing that he was (i) associated with and (ii) a key figure in the organization of the Anti-Balaka.<sup>29</sup> While he may have been commenting on the activities of the Anti-Balaka on the ground,<sup>30</sup> based on information from various mostly unknown sources, including press articles and social media, certain conversations suggest, that, on the contrary, his movement and activities were separate from those of the alleged Anti-Balaka. For instance, in a conversation dated 13 February 2014, while conceding that the Anti-Balaka had a real weight on the departure of the Seleka, he explains that it was in fact the work of his movement ("*travail de fournis*"), notably before the international community, France, and President Deby, which led to the resignation of Michel Djotodia.<sup>31</sup>
20. Moreover, the Prosecution is plainly incorrect when alleging that [REDACTED] "was involved in the provision of ammunition" prior to 5 December 2013.<sup>32</sup> Being somehow informed and being involved are not the same.<sup>33</sup> Nothing in his conversations suggests that he was *actively* taking part in the provision of ammunition. As to the relevance of [REDACTED] use of certain possessive terms such as "our men" or "our troops", it is based on a misplaced interpretation of the Prosecution.<sup>34</sup> During the Relevant Period,<sup>35</sup> there was a strong sentiment of solidarity towards the Anti-Balaka movement, in particular from the Central Africans forced into exile, and the use of such possessive pronouns was so common across the internet or in discussions among Central Africans, that the Prosecution could claim that every single Central African opposing the Seleka regime was involved in the organization of the Anti-Balaka and their attacks.<sup>36</sup> Moreover, [REDACTED] does not seem to be aware of the situation in the field on 5 December 2013

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<sup>28</sup> CAR-OTP-2101-7105, at 7112.

<sup>29</sup> Application, paras 16-17.

<sup>30</sup> See e.g. CAR-OTP-2101-7391, at 7409-7410.

<sup>31</sup> CAR-OTP-2100-7001, at 7037. See also CAR-OTP-2100-4413, at 4420 and CAR-OTP-2100-5765, at 5775.

<sup>32</sup> Application, para. 17.

<sup>33</sup> See e.g. CAR-OTP-2100-5662, at 5663, which suggests that [REDACTED] does not know who is involved in the alleged advancement on the ground.

<sup>34</sup> See Application, footnotes 28, 31. See also Defence submissions in Annex 1 regarding CAR-OTP-2100-8322, CAR-OTP-2100-8961, CAR-OTP-2101-5553.

<sup>35</sup> The Relevant Period in CAR spans from December 2013 to December 2014. ICC-01/14-01/18-89, para. 2.

<sup>36</sup> See e.g. CAR-OTP-2100-7340, CAR-OTP-2100-8034 in which the Prosecution conflates the Anti-Balaka with any and every individual resisting against the Seleka. See also CAR-OTP-2100-8322, at 8326.

when he states: « *Ok, je suis encore l'évolution de la situation que je ne maîtrise pas encore bien* ». <sup>37</sup>

21. The only source cited by the Prosecution in support of its allegations of contact between Levy Yakété and François and Francis Bozizé as well as Kokaté, is a conversation [REDACTED],<sup>38</sup> who, as elaborated below, was circulating false and misleading information over Facebook. P-0889 also berated [REDACTED] (and the veracity of his statements) during his oral testimony, saying how people like him would exaggerate/distort information to make it seem as though they held a more important role than they actually did. This was a reoccurring phenomenon, as has been demonstrated by witnesses and documentary evidence.<sup>39</sup>
22. *Third*, [REDACTED] Facebook conversations lack probative value in confirming Mr Ngaïssona's role and position in the Anti-Balaka movement. For instance, when asked what he meant in his conversation with [REDACTED],<sup>40</sup> in which he stated he would often communicate the position of the enemies to the youth in the field through Mr Ngaïssona, P-0808 replied that he was not on the ground and does not know what position he could have possibly communicated to Mr Ngaïssona. He added that the only aspects of the crisis he was communicating about with Mr Ngaïssona was what was happening in their neighborhood, such as the looting of Mr Ngaïssona's warehouse, but that he does not remember communicating about the Anti-Balaka in general terms.<sup>41</sup> Therefore, in light of P-0808's answers, this item should not be accorded any probative value as far as the truth of its content is concerned.
23. Moreover, while Levy Yakété mentions that Mr Ngaïssona, Kokaté and himself were invited to the Ndjamená talks, he nowhere suggests, contrary to the Prosecution's assertion, that the three of them were invited as key Anti-Balaka leaders.<sup>42</sup> [REDACTED] even indicates that it was as the leader of his own movement, independent from the Anti-Balaka, that he was invited,<sup>43</sup> and that he sent [REDACTED] to read his declaration,<sup>44</sup>

<sup>37</sup> CAR-OTP-2100-5023, at 5027.

<sup>38</sup> Application, footnote 20.

<sup>39</sup> P-0889: ICC-01/14-01/18-T-108-CONF-ENG ET, page 82. *See also* further submissions on this in the section of [REDACTED] alleged account.

<sup>40</sup> CAR-OTP-2100-7317, at 7322.

<sup>41</sup> P-0808: ICC-01/14-01/18-T-069-CONF-ENG ET, pages 34-35.

<sup>42</sup> Application, para. 18.

<sup>43</sup> CAR-OTP-2100-7001, at 7037.

<sup>44</sup> CAR-OTP-2100-6685, at 6759.

therefore suggesting that this declaration was made on behalf of his movement, rather than on behalf of the Anti-Balaka.

24. Finally, the Prosecution mischaracterizes the conversation between [REDACTED] and [REDACTED].<sup>45</sup> It is clear from the latter that the political positions [REDACTED] have been proposed by the transitional government, not Mr Ngaïssona, and that it is the government's proposition that [REDACTED]. The suggestion that Mr Ngaïssona would have proposed [REDACTED] name for smaller positions is yet another mischaracterization from the Prosecution.

**b. [REDACTED] alleged Facebook accounts**

25. The Prosecution's submissions on the relevance of the Facebook conversations extracted from the [REDACTED] and [REDACTED] accounts reveal the weakness of its case. The Prosecution relies on the alleged Facebook conversations of an individual who has not testified in these proceedings, namely [REDACTED] to prove the core of the charges against Mr Ngaïssona. The Prosecution does this knowing that it has not proven that [REDACTED] is in fact the author of the messages coming from these two accounts since [REDACTED] did not authenticate these messages.

26. Such authentication is necessary because there is evidence on record that at least one other individual had access to the [REDACTED] account. The Prosecution admits in the Application that [REDACTED], and the Facebook conversation cited for this allegation unequivocally shows that at least two individuals had access to this Facebook profile. On 5 May 2013,<sup>46</sup> the user of the [REDACTED] account specified: [REDACTED] », which implies a collaborative use of this single account.<sup>47</sup> The same day, the user of the [REDACTED] Facebook profile created the account and provided the name of the new email account to the user of the [REDACTED] account, as well as the Facebook account credentials including the password.<sup>48</sup>

27. As a result, these conversations amount to anonymous hearsay, and the Defence objects to the Chamber relying on them for the three reasons. *First*, the anonymous hearsay contained

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<sup>45</sup> Application, footnote 43, referring to CAR-OTP-2100-6685, at 6768-6769.

<sup>46</sup> CAR-OTP-2101-9451, at 9454.

<sup>47</sup> Ibid.

<sup>48</sup> CAR-OTP-2101-9451, at 9455.

in the conversations is devoid of probative value because it is impossible to assess the trustworthiness of the users behind [REDACTED]. In these proceedings, it has become apparent that the conversations involving the [REDACTED] are completely unreliable seeing as numerous Prosecution witnesses, when confronted with their content, called into question their veracity, or provided an interpretation that showed the conversations cannot be taken at face value. *Second*, the conversations on their face give little detail as to the sources of information or show that the information emanates from not-credible sources thereby showing a lack of any indicia of reliability. *Third*, the Prosecution provides its own interpretations of the conversations, which reflect its one-sided narrative but which are not an objective reflection of the conversation.

28. Several witnesses have discredited the accuracy of the information shared by users of the alleged [REDACTED] in their Facebook conversations. For instance, portions of a Facebook conversation between the user of the [REDACTED] and [REDACTED] profile were shown to witnesses P-1847, P-0801, P-2328, P-2027, P-2841, all of which either denied the veracity of the conversations, which they characterized as “fake or propaganda”,<sup>49</sup> rumours,<sup>50</sup> or inaccurate,<sup>51</sup> or cast significant doubt as to the accuracy of the information, for instance by indicating they did not even know who [REDACTED] was<sup>52</sup> or having ever had spoken to [REDACTED] about the Anti-Balaka or any coordination.<sup>53</sup> These conversations were shown to the aforementioned witnesses because the user of the [REDACTED] either mentioned the said witnesses or stated that he obtained information from them.

29. In addition, it became evident during Witness P-2841’s testimony that information circulated over Facebook was unreliable.<sup>54</sup> P-2841, one of [REDACTED] Facebook interlocutors, explained that given the speed at which information was shared, information could not always be cross-checked. P-2841 admitted that on social media, and particularly on Facebook, a rumour or bad information, once exchanged, could be passed on to other

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<sup>49</sup> P-0801 : ICC-01/14-01/18-T-034-ENG CT, pages 61-63. See also ICC-01/14-01/18-T-038-CONF-ENG ET, pages 43-45; when shown an excerpt of this conversation (page 3371) where P-0801 is mentioned, P-0801 indicates that the information did not ring a bell: ICC-01/14-01/18-T-038-CONF-ENG ET, page 39.

<sup>50</sup> P-2027 : ICC-01/14-01/18-T-040-CONF-ENG CT2, pages 36-39.

<sup>51</sup> P-2841 : ICC-01/14-01/18-T-030-CONF-ENG CT2, page 6.

<sup>52</sup> P-2328 : ICC-01/14-01/18-T-049-CONF-ENG CT, pages 46-47; P-0801 ICC-01/14-01/18-T-034-ENG CT (pages 61-63).

<sup>53</sup> P-1847 : ICC-01/14-01/18-T-023-CONF-ENG CT, pages 72-77; P-2027 indicates that [REDACTED] never tried to confirm any information with him ICC-01/14-01/18-T-040-CONF-ENG CT2, pages 36-39.

<sup>54</sup> P-2841: T-030-CONF-ENG-CT, page 9, lines 9-14.

people very quickly.<sup>55</sup> During examination by the Defence, P-2841 confirmed that information being disseminated at the time by [REDACTED] turned out to be incorrect;<sup>56</sup> P-2841 confirmed that the incorrect information provided by [REDACTED] was also disseminated to other people.<sup>57</sup>

30. During the Prosecution re-examination, P-2843 commented on a Facebook conversation between [REDACTED] and P-2843,<sup>58</sup> more specifically a portion where P-2843 informs [REDACTED]. [REDACTED].<sup>59</sup>

31. P-2841 also provided a reason for the circulation of false information in his prior recorded statement in which he explained that during the crisis in CAR, “*everyone was just trying to get themselves a particular position or advantage, and with information, they could influence people*”.<sup>60</sup> P-2841 maintained this statement during his live testimony. P-2841 gave the example of [REDACTED], who would willingly publish incorrect information, which then circulated on Facebook and elsewhere online and that [REDACTED] was part of a “virtual rebellion” to show his influence, by saying that certain towns had been attacked or claiming responsibility for attacks.<sup>61</sup>

32. It is likely that when [REDACTED] was using the account he also wanted to portray himself as someone of importance. The Prosecution bases its submissions on [REDACTED] having contacts with members of the alleged inner circle on the user of the [REDACTED] profile talking to third parties about his contacts with these alleged inner circle members.<sup>62</sup> The Prosecution has not provided further evidence of [REDACTED] contacts with these individuals. It seems unlikely since the evidence shows his insignificant role during the Relevant Period. Witnesses who the Prosecution alleges had an important role in the alleged Anti-Balaka, did not demonstrate a particular knowledge of [REDACTED]. For instance, P-0801 denied knowing who [REDACTED] was several

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<sup>55</sup> P-2841: T-030-CONF-ENG-CT, page 9, line 22 to page 10, line 15.

<sup>56</sup> P-2841: ICC-01/14-01/18-T-029-CONF-ENG ET, pages 81-82.

<sup>57</sup> P-2841 T-30-CONF-ENG-CT2, pages 3-12.

<sup>58</sup> CAR-OTP-2131-4976, pages 5015-5016.

<sup>59</sup> [REDACTED].

<sup>60</sup> CAR-OTP-2127-4238-R01, para. 83.

<sup>61</sup> CAR-OTP-2127-4238-R01, para 132; T-30-CONF-ENG-CT, pages 10-11. *See also*, on the same topic, P-0889 ICC-01/14-01/18-T-108-CONF-ENG ET, page 78.

<sup>62</sup> Application para. 23 footnotes 56-61.

times in the course of his testimony<sup>63</sup> and P-0884 [REDACTED].<sup>64</sup> Moreover, he did not know what relationship he had with Mr Ngaïssona.<sup>65</sup>

33. Similarly, P-2027 intimated that the user of the [REDACTED] was inventing information when confronted with a conversation between [REDACTED] and P-2841 where [REDACTED] referred to P-2027.<sup>66</sup> P-2027 testified that he did not understand what [REDACTED] meant by his message, despite [REDACTED] specifically referring to P-2027 in the cited passage. When asked by the Prosecution for instance, about the meaning of an excerpt of the conversation at page 9825, where [REDACTED] contacting P-2027 and telling him *“tout est bon et le retour est d’ici peu”*, P-2027 testified *“all that is not of my own writing. People can invent things. And I believe that it is the person who has written this who is in a better position to explain what it is all about, not me. Because he is having a conversation with [REDACTED]. I don’t even know who [REDACTED] is”*.<sup>67</sup> When asked a follow-up question by the Presiding Judge about whether P-2027 had any idea why [REDACTED],<sup>68</sup> P-2027 testified *“Well, I have no idea. Clueless. No idea. And I repeat myself, Kokaté was coming in from France. Maybe many people went to see him in Douala. Whatever they said among themselves, I have no idea. But I myself, I did not see Kokaté when he was in Douala because -- or in Yaoundé. I was in Yaoundé.”*<sup>69</sup>

34. In addition to witnesses contradicting the information disseminated on the [REDACTED] accounts, witnesses have also contextualized the conversations such that it became evident that the plain meaning of the conversation is not what was intended by the two parties to the conversation.

35. As has been demonstrated across several social media accounts, the use of plural personal pronouns was common at the time. For instance, P-2841 [REDACTED].<sup>70</sup> The Prosecution also tried to have P-2843 [REDACTED].<sup>71</sup> When the Prosecution asked P-

<sup>63</sup> ICC-01/14-01/18-T-034-CONF-ENG, p.61 ; ICC-01/14-01/18-T-038-ENG, pp. 35 ; 37-38, 41.

<sup>64</sup> ICC-01/14-01/18-T-055-ENG, p. 4.

<sup>65</sup> Ibid., p. 8.

<sup>66</sup> CAR-OTP-2101-9735.

<sup>67</sup> P-2027 : ICC-01/14-01/18-T-039-CONF-ENG CT, page 52, lines 7-20.

<sup>68</sup> P-2027: ICC-01/14-01/18-T-039-CONF-ENG CT, page 52, lines 1-10.

<sup>69</sup> P-2027: ICC-01/14-01/18-T-039-CONF-ENG CT, page 53, lines 6-10.

[REDACTED].

<sup>71</sup>[REDACTED].

2843 about the “plans” which are discussed in a Facebook conversation with the user of the [REDACTED] account,<sup>72</sup> P-2843 testified that [REDACTED].<sup>73</sup>

36. [REDACTED].<sup>74</sup> [REDACTED].<sup>75</sup> Despite having led this evidence in Court, the Prosecution argues in the annex that this Facebook conversation shows *inter alia* “the anti-Muslim animus of the Anti-Balaka”. Moreover, the use of the word “Muslim” in Facebook conversations to mean “Seleka” does not show that the interlocutors conflated all Muslims with the Seleka coalition. Indeed, P-0889 testified that the term “Muslim” was used rather than “Seleka” to avoid being denounced to the Seleka,<sup>76</sup> to the point where P-0889 in a conversation with a fellow Muslim refers to Muslims and his interlocutor knows he is not targeting him, as a Muslim, but rather a group of different people.<sup>77</sup>

37. In the conversations, the user of the [REDACTED] accounts rarely, if ever, mentions the source(s) of the information he disseminates. The user seems to provide information about other individuals’ movements and actions, while being himself remote from these individuals and events, including Mr Ngaïssona’s alleged activities in 2013.<sup>78</sup> He does not seem to have participated in any combat,<sup>79</sup> and does not seem to have held any formal role among the Anti-Balaka. In the Application, the Prosecution does not even allege that [REDACTED] was part of the Anti-Balaka. He is merely described as a Bozizé loyalist who would have lived with [REDACTED].

38. Moreover, some of [REDACTED] interlocutors have been discredited as unreliable sources in the present case. P-2328 described one of the interlocutors [REDACTED] as “*des individus fauteurs de trouble... et peuvent se permettre d’écrire du n’importe quoi dans des conversations.*”<sup>80</sup> P-2328 also testified, in relation to [REDACTED] and the

<sup>72</sup> CAR-OTP-2102-3799, at 3817, 3819, 3820, 3877, 3921.

<sup>73</sup> P-2843: T-073-CONF-ENG-ET, page 49, lines 17-21.

<sup>74</sup> CAR-OTP-2102-3799.

<sup>75</sup> [REDACTED].

<sup>76</sup> ICC-01/14-01/18-1342-Conf, para.11.

<sup>77</sup> Ibid.

<sup>78</sup> See for example: CAR-OTP-2101-9735 at 9834; CAR-OTP-2101-9451 at 9497, 9526; CAR-OTP-2101-9402 at 9408-9409; CAR-OTP-2102-8374 at 8374; CAR-OTP-2102-8290 at 8331; CAR-OTP-2101-8855 at 8877; CAR-OTP-2102-3203 at 3297; CAR-OTP-2101-9735, at 9780, 9817; R-OTP-2101-8987, at 8994-8995; CAR-OTP-2101-9735, at 9805, 9829-9830; CAR-OTP-2103-7447, at 7480-7481.

<sup>79</sup> See e.g. CAR-OTP-2101-9672, at 9692. See also P-2843: T-073-CONF-ENG ET page 47, lines 24-25 to page 48, line 1.

<sup>80</sup> P-2328 : ICC-01/14-01/18-T-049-CONF-FRA CT, page 41, lines 26-27.

information he shared on Facebook: that “[REDACTED], là, son travail, c’est créer des blogs où... au profit des Anti-balaka et diffuser, salir ce qu’il peut.”<sup>81</sup>

39. Lastly, the Prosecution often misrepresents [REDACTED] Facebook conversations. One example is a conversation between [REDACTED],<sup>82</sup> for which the Prosecution argues that it shows *inter alia* “NGAISSONA’s involvement in the Anti-Balaka after the 5 December 2013 attacks on BANGUI and BOSSANGO, but before his return to BANGUI on 14 January 2014”. However, [REDACTED] merely mentions that Mr Ngaïssona is set to arrive on Tuesday. The message or conversation clearly does not suggest Mr Ngaïssona’s alleged involvement in the 5 December attack.<sup>83</sup>
40. In addition, the Prosecution again provides speculative interpretations of the Facebook conversations of the [REDACTED]. For example, in the conversation between [REDACTED],<sup>84</sup> [REDACTED] mentions that he spoke to “NGAISSONA” about minutes of a meeting. Contrary to the Prosecution’s assertion,<sup>85</sup> it is not apparent or clear from the conversation that Mr Ngaïssona attended any meeting in Yaoundé with [REDACTED]. When [REDACTED] responds “oui, ensemble tout le temps” it is not known with whom he or Mr Ngaïssona would be together with “all the time”. The Prosecution’s assertion that this conversation excerpt would show Mr “NGAISSONA’s leadership role and involvement in the Anti-Balaka prior to the 5 December 2013 attacks on BANGUI and BOSSANGO; NGAISSONA’s role in BOZIZE’s inner circle; the location/movement of Anti-Balaka groups outside of CAR, in particular in YAOUNDE [CAMEROON], prior to the 5 December 2013 attacks on BANGUI and BOSSANGO” is not founded in the conversation itself and entirely hypothetical.
41. In the same vein, the Prosecution’s suggestion that the message sent by the Facebook user [REDACTED] that “[REDACTED] should be interpreted to mean that Mr Ngaïssona held a “leadership role and involvement in the Anti-Balaka prior to the 5 December 2013

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<sup>81</sup> P-2328 : ICC-01/14-01/18-T-049-CONF-FRA CT, page 41, lines 19-21. Regarding the lack of reliability of [REDACTED], see also: CAR-OTP-2101-7908, pages 7926-2927; P-0889: CAR-OTP-2122-7554-R02, at pages 7569-7570.

<sup>82</sup> CAR-OTP-2102-3934.

<sup>83</sup> CAR-OTP-2102-3934, at 3967.

<sup>84</sup> CAR-OTP-2102-8290, at 8300.

<sup>85</sup> Application, para. 23.



attacks on BANGUI and BOSSANGO; NGAISSONA's role in BOZIZE's inner circle"<sup>86</sup> is clearly speculative.

42. For the aforementioned reasons, the Defence requests that the Chamber proceed with extreme caution when assessing the [REDACTED], and that it ascribe no probative value to conversations associated with them, especially when they have not been contextualized through a witness. Such caution should especially be used when determining any role Mr Ngaïssona would have allegedly held in the events leading up to the 5 December attacks and their aftermath. Testimony from several witnesses has consistently proven that the conversation's content is inaccurate and speculative, or on its face is impossible to verify because of its lack of sources.

**c. [REDACTED] alleged Facebook account**

43. *First*, while certain Facebook Items might be relevant to showing [REDACTED] to François Bozizé's political party prior to 24 March 2013, they do not show that [REDACTED]. For instance, it is not surprising that [REDACTED], who was involved in the [REDACTED], [REDACTED].<sup>87</sup> However, this has no bearing on the allegation that François Bozizé would have relied on him to allegedly contribute to committing crimes, as part of his so-called "inner circle".<sup>88</sup> This is simply not established [REDACTED]. Similarly, Mr Ngaïssona's alleged role within Bozizé's inner circle is a legal qualification that cannot be drawn from a mere conversation between two individuals alleging that [REDACTED].<sup>89</sup> This coarse shortcut is simply unreasonable.

44. *Second*, as with other Facebook users, the Prosecution picks and chooses very limited, almost anecdotal, excerpts of [REDACTED] conversations which appear *prima facie* coherent with its case theory. However the Prosecution is not willing to attach any relevance to other excerpts that would shed some light on key aspects of the case. For instance, the Prosecution argues that a conversation dated from September 2013 shows [REDACTED]".<sup>90</sup> It is true that in this conversation [REDACTED] indeed mentions in passing that he always asks "*father MOKOM*" news about his interlocutor, [REDACTED].

<sup>86</sup> ICC-01/14-01/18-1874-Conf-Anx, page 121.

<sup>87</sup> Application, para. 28.

<sup>88</sup> Application, para. 28; Prosecution's submissions in the Annex to the Application, item #548.

<sup>89</sup> Application, para. 30, referring to CAR-OTP-2102-9756, at 9767.

<sup>90</sup> Application, para. 28 referring to CAR-OTP-2103-1672.

However, the importance of the message stems from his insistence that certain groups, such as those of Dazoumi Yalo and Meckassoua, were fraudulently using Bozizé’s name, who in reality were not at all in contact with Bozizé, to convince elements to join them on the ground.<sup>91</sup> Although the Prosecution does make mention of this excerpt in its Annex,<sup>92</sup> it chooses to simply ignore the core part of it that suggests that these groups were fraudulently using Bozizé’s name for their own personal benefit.

45. Additionally, the Prosecution omits to mention [REDACTED].<sup>93</sup> Moreover, the conversation [REDACTED] is not relevant to showing “*the chain of command of the elements in BERTOUA, which included BOZIZE*”.<sup>94</sup> This is particularly misleading as no express link is made in this conversation between Bozizé and the men in Bertoua, and thus, certainly no chain of command can be inferred. So far as [REDACTED] seems to be aware, “*the old one*” had not given any directions.<sup>95</sup> This is the only potential point of relevance, although extremely limited, as it touches upon someone’s knowledge or absence thereof. As to the phrasing “*our men*”,<sup>96</sup> this does not mean at all that these two interlocutors were involved in activities on the ground. They could very well have obtained the information from the media, through which the population was keeping itself abreast of events at the time.

46. The fact that the Prosecution labels any individuals or groups reported by [REDACTED] as conducting some form of activities on the ground as “Anti-Balaka” is problematic. Not only does the Prosecution fail to adduce any evidence in support of the reported allegations but it also fails to provide any elements relevant to showing that these individuals or groups are indeed Anti-Balaka having committed crimes.<sup>97</sup> For instance, the Prosecution automatically associates the HCRRN group with the Anti-Balaka when [REDACTED], with no reference whatsoever to the Anti-Balaka. [REDACTED].<sup>98</sup>

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<sup>91</sup> CAR-OTP-2103-1672, at 1673.

<sup>92</sup> See Annex to Application, item #544.

<sup>93</sup> CAR-OTP-2102-9756, at 9764.

<sup>94</sup> Application, para. 29.

<sup>95</sup> CAR-OTP-2102-9934, at 9938-9939.

<sup>96</sup> *Ibid.*

<sup>97</sup> See e.g. Prosecution’s submissions in the Annex o the Application, items #521, 533, 547 (in relation to [REDACTED]).

<sup>98</sup> CAR-OTP-2103-1723; CAR-OTP-2103-1936.

47. *Third*, the Prosecution cannot argue that [REDACTED] shows “*the Anti-Balaka’s availability/provision of weapons in December 2013*” is more probable.<sup>99</sup> The conversation rather seems to confirm that the containers in question, which are in the Cameroonian gendarmerie, are for the use of the Seleka, not the Anti-Balaka. Once again, this mischaracterization on the part of the Prosecution is very misleading and should be disregarded.

**d. [REDACTED]alleged Facebook accounts**

48. *First*, the Prosecution fails to substantiate that [REDACTED].<sup>100</sup> For instance, the Prosecution fails to provide any evidence or argument making it more probable that [REDACTED]. The Prosecution even fails to do so for [REDACTED] himself.<sup>101</sup> For instance, contrary to the Prosecution’s submissions, [REDACTED] does not say that [REDACTED].<sup>102</sup> The only assumption that can be reasonably drawn from this statement is that the “boss”, whom no one except [REDACTED] himself can confirm whether it is a reference to Bozizé or not, [REDACTED]. However, it should certainly not be interpreted as meaning that the “boss” and him actually met.<sup>103</sup> Moreover, in a conversation dated 29 July 2013, while saying that Kangara is holding a meeting in Yaoundé, [REDACTED] admits himself not to have cross-checked this information. First, it is not certain that Kangara refers to Bozizé. Second, even if he did, the presence of Bozizé in Yaoundé at the end of July would be completely inconsistent with other evidence proposed by the Prosecution on his whereabouts.<sup>104</sup> Furthermore, the Prosecution merely assumes that [REDACTED] was in contact with [REDACTED] while failing to establish that the “[REDACTED]” whom [REDACTED] alleges he was in contact with is [REDACTED] and not someone else named [REDACTED]. Finally, even assuming [REDACTED] was in contact with these individuals, which the Prosecution fails to establish, the conversations in question do not indicate the content of the discussion he would have had with these individuals, let alone their criminal nature.

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<sup>99</sup> Prosecution’s submissions in the Annex to the Application, item #545, referring to CAR-OTP-2103-1706, at 1713.

<sup>100</sup> Application, para. 35.

<sup>101</sup> See Prosecution’s submission in the Annex to the Application, item #448 suggesting that [REDACTED].

<sup>102</sup> CAR-OTP-2103-4252, at 4254-4255 : « *j’étais parti avant le boss était venu me retrouver ydé (sic)* ».

<sup>103</sup> CAR-OTP-2103-4252, at 4254-4255.

<sup>104</sup> Prosecution’s submission in the Annex to the Application, item #589, referring to CAR-OTP-2102-4269, at 4282-4283.

49. *Second*, by alleging that [REDACTED] conversations provide detailed *insight* into the Anti-Balaka's strategy to regain power and the *coordination* of the alleged attacks, the Prosecution greatly mischaracterizes these conversations.<sup>105</sup> The Prosecution fails to adduce any evidence that the reported information was strategic insight. [REDACTED] rarely provides the source of his information and when he does, suggests on many occasions he received the information through the radio or social media.<sup>106</sup> He also often says "*on dit que*" or "*on m'a dit que*" suggesting that his source of information is anonymous hearsay. In his conversation with [REDACTED], the latter seems to be asking for confirmation that certain events he heard about indeed happened. Most of the time, [REDACTED] does not know either or is not sure. Other times, [REDACTED] alleges something that is contradicted by [REDACTED].<sup>107</sup> Also, when asked on 17 September 2013 if he could verify contradictory information received on the situation in Bossangoa, [REDACTED] responds that he cannot.<sup>108</sup> These examples show once again how dangerous it would be to rely on Facebook conversations to confirm any allegations concerning material facts. Similarly, these conversations in no way establish that the different alleged attacks reported would have been coordinated and the Prosecution has failed to lead any evidence in relation thereto.

50. *Third*, [REDACTED] conversations have little to no probative value regarding Mr Ngaïssona's alleged role in the Anti-Balaka movement.<sup>109</sup> [REDACTED] generally does not provide any detail as to the source of the relayed information, which is often in direct contradiction with other elements of the case.<sup>110</sup> For instance, [REDACTED], it is not clear at all who Mr Ngaïssona would have met, where, and how reliable this information is, as no source is provided and thus it cannot be verified.<sup>111</sup> This lacks *prima facie* reliability and is further reinforced by the next conversation with<sup>112</sup> [REDACTED]. The Prosecution even uses that conversation to establish Mr Ngaïssona's whereabouts.<sup>113</sup> Similarly, [REDACTED] is another example of unverified information being circulated on Facebook

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<sup>105</sup> Application, para. 36.

<sup>106</sup> See e.g. CAR-OTP-2102-6348, at 6372; CAR-OTP-2102-6699, at 6767-6768.

<sup>107</sup> CAR-OTP-2102-5143.

<sup>108</sup> CAR-OTP-2102-7759, at 7762-7763.

<sup>109</sup> Application, para. 37.

<sup>110</sup> See e.g. CAR-OTP-2102-8179, at 8193-8194 in which [REDACTED].

<sup>111</sup> CAR-OTP-2103-4312, at 4315-4317.

<sup>112</sup> CAR-OTP-2103-4327, at 4328-4329.

<sup>113</sup> See Annex to Application, item #454.

where both interlocutors seem to argue about the veracity and source reliability and where one party to the conversation suggests the information comes from websites.<sup>114</sup>

51. The Defence also strongly contests that [REDACTED] would in any way be probative in showing that Mr Ngaïssona “*was one of the Anti-Balaka leaders which Bozizé designated*”.<sup>115</sup> [REDACTED] in this conversation merely asks questions, showing if anything that he is completely unaware of Mr Ngaïssona’s alleged leadership role, if any.<sup>116</sup>

52. These examples show how prejudicial to Mr Ngaïssona it would be to accord any probative value to Facebook conversations containing information that has not been corroborated by a witness or other evidence, when such conversations are used to establish key aspects of the charges, such as Mr Ngaïssona’s alleged contribution within the Anti-Balaka movement. They should therefore be rejected as inadmissible for this particular proposition.

**e. [REDACTED] alleged Facebook IDs and his alleged associated accounts  
“[REDACTED]”**

53. The Prosecution submits that [REDACTED] was the effective user of the [REDACTED] Facebook account as well as the accounts [REDACTED] without demonstrating this was in fact the case.<sup>117</sup> The Prosecution’s evidence taken at its highest shows that there was crossover between the users of the three accounts. However, the Prosecution has failed to show that [REDACTED] was the primary user of the three accounts, especially the accounts [REDACTED]. These accounts make no reference to his name and the chosen profile names reflect association with a group. Facebook verification is not sufficient to show that he was the primary user of the three accounts since anyone with a password could access them.<sup>118</sup>

54. Moreover, the Facebook conversations linked with these three accounts are devoid of probative value because (1) the Prosecution interviewed [REDACTED], the alleged user

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<sup>114</sup> CAR-OTP-2102-4653, at 4656-4659.

<sup>115</sup> Application, para. 37 and footnote 141.

<sup>116</sup> CAR-OTP-2102-5471, at 5634.

<sup>117</sup> Application, paras 38-40.

<sup>118</sup> Prosecution witness P-0808 even stated that he did not know who was behind [REDACTED] despite allegedly having an interaction with this account. ICC-01/14-01/18-T-069-CONF-ENG ET, p. 31.

of these accounts and even asked him specific questions about his activities on Facebook in response to which [REDACTED], (2) the content of the Facebook conversations is inconsistent with other evidence on record, and (3) the Prosecution's submissions on the relevance of conversations does not objectively reflect their content.

55. *First*, [REDACTED].<sup>119</sup> The Prosecution took an article 55(2) statement in which P-2270's [REDACTED] was discussed at length. P-2270 categorically denied [REDACTED].<sup>120</sup> After receiving significant pressure from investigators in which they accused P-2270 of lying about [REDACTED],<sup>121</sup> P-2270 did not change his account when confronted with his alleged Facebook conversations.<sup>122</sup> P-2270 stated that these conversations were not true and that he simply wanted to brag to the outside world about [REDACTED], but that in reality, he was not involved in the organization.<sup>123</sup>

56. The Defence does not exclude the possibility that the Prosecution found P-2770 not credible, and thus decided to withdraw his name from its final list of witnesses. Whatever the reason, this choice entails certain consequences. One of them is that the Prosecution knowingly forewent the opportunity to contextualize these conversations through [REDACTED] testimony. The Prosecution should not have submitted these conversations through the Application knowing full well that: (1) [REDACTED] completely disavowed himself of their content, and (2) that the Chamber would not be able to rely on this information contained in [REDACTED] statement as a result of the application of Rule 68, which prohibits the reliance on prior recorded statements unless Rule 68's strict requirements are met. Such gamesmanship is a perfect example of the Prosecution's penchant for cherry-picking the items of evidence to fit its narrative with a complete disregard for the truth of the events that actually transpired in CAR during the Relevant Period. These methods mislead the Chamber in its assessment of the evidence and are prejudicial to the rights of Mr Ngaïssona who cannot confront [REDACTED] on the

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<sup>119</sup>[REDACTED].

<sup>120</sup> P-2270, CAR-OTP-2107-3773 at 3785 ; P-2270, CAR-OTP-2107-4069 at 4099; P-2270-CAR-OTP-2107-4151 at 4174 ([REDACTED]); CAR-OTP-2107-4105 at 4122 [REDACTED].)

<sup>121</sup> P-2270, CAR-OTP-2107-4069 at 4099 (investigators intimated that [REDACTED] is lying about his non-involvement in FROCCA by explaining that it is part an investigators job to deal with people who lie); P-2270, CAR-OTP-2107-4069 at 4100(investigators told [REDACTED] they do not think he is there to deliberately lie to them) ; P-2270, CAR-OTP-2107-4069 at 4103 (investigators told [REDACTED] to tell no more lies.)

<sup>122</sup> P-2270, CAR-OTP-2107-4105 at 4109, 4122, 4123 ([REDACTED] explained that its Facebook; it's not a serious matter and that he wanted to build himself up through saying he was a coordinator.)

<sup>123</sup> P-2270, CAR-OTP-2107-4105 at 4109, 4122, 4123 ([REDACTED] explained that its Facebook; it's not a serious matter and that he wanted to build himself up through saying he was a coordinator.)

content of these Facebook conversations and is further prohibited under Rule 68 from using his statement despite it being part of the case record.

57. Second, the content of these Facebook conversations is inconsistent with the other evidence on record. This further demonstrates the lack of reliability of Facebook conversations. Consistent with [REDACTED] prior recorded statement which the Prosecution elected not to introduce, not a single Prosecution witness has confirmed [REDACTED]. The Prosecution confronted P-2625 with documents containing names of individuals and their responsibilities in FROCCA,<sup>124</sup> and none make mention of [REDACTED].<sup>125</sup> Other witnesses who mentioned [REDACTED] never mentioned [REDACTED]. P-0808, who, according to the Prosecution [REDACTED], testified that he did not know who was behind the [REDACTED] account when confronted with it.<sup>126</sup>

58. As previously submitted by the Defence in response to the Prosecution's Sixth Bar Table, P-2625 testified that the various public announcement of groups stating that they were joining together under the FROCCA umbrella were false.<sup>127</sup> These groups did not exist. Such testimony is consistent with P-1521 who testified that [REDACTED] to make a show of strength in the face of the Seleka who were ravaging the country at the time. The attempt to show [REDACTED] is also inconsistent with the other evidence on record. P-2625 who was questioned specifically on [REDACTED]. Witness P-0808 stated that in December 2013 the CLPC had no military capacity and never indicated it would be affiliate with FROCCA.<sup>128</sup> P-0446 was questioned extensively on the CLPC and never made association between it and FROCCA.<sup>129</sup>

59. In addition to the Facebook conversations being inconsistent with other evidence on record, the Prosecution's submissions regarding the relevance of the conversation are the Prosecution's one-sided interpretation of the conversation or a misrepresentation of the conversations.

60. For example, while the Prosecution focuses on the user of the three accounts stating that [REDACTED], it omits from its submissions that the user also stated that

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<sup>124</sup> ICC-01/14-01/18-T-189-CONF-FRA ET pages 26-27.

<sup>125</sup> CAR-OTP-2124-0002; CAR-OTP-2124-0852.

<sup>126</sup> ICC-01/14-01/18-T-069-ENG, p. 31.

<sup>127</sup> ICC-01/14-01/18-T-190-FRA CT, p. 8

<sup>128</sup> ICC-01/14-01/18-T-069-ENG, pp.40-41

<sup>129</sup> ICC-01/14-01/18-T-069,p 33.

[REDACTED].<sup>130</sup> Further, the Prosecution's submissions on [REDACTED] are overstated. The conversations cited provide no detail as to the nature of these activities. In one conversation, [REDACTED] states that serious things will soon start but provides no information as to what he means by "serious things".<sup>131</sup>

61. While in the Facebook conversations the user claiming to be [REDACTED] states he is in contact with various individuals such as Bernard Mokom, Francis Bozizé, Joachim Kokaté, Lin Banoukepa, Claude Ngaïkosset, and Eugène Ngaïkosset, this evidence is devoid of probative value since it is based on a Facebook conversations between [REDACTED].<sup>132</sup> This anonymous hearsay statement cannot be verified.
62. Further, the conversations, even when taken at their highest, do not demonstrate that that the user behind the three accounts associated with [REDACTED] mobilized non-Muslim Central Africans to take up arms. The content of the conversation never mentions non-Muslim Central Africans. No distinction on religious lines is made in the conversations.<sup>133</sup> Similarly, the specific reference to COCORA in one of the conversations does not reference non-Central African Muslims at all, and only refers to driving out the Seleka.<sup>134</sup> It also constitutes nothing more than an opinion of the user of [REDACTED], who is drawing parallels between [REDACTED].<sup>135</sup>
63. Moreover, the mobilization of Central Africans through Facebook posts and messages is unlikely. As previously submitted by the Defence, most of the Central African population that came to be known as the Anti-Balaka was illiterate.<sup>136</sup> P-1521's testimony revealed that that FROCCA messages were not intended to rally Central Africans at all, but rather could be qualified as a publicity stunt to have the Seleka believe that the Anti-Balaka movement was effective and had control over certain parts of the country.<sup>137</sup>
64. P-1521's testimony with respect to FROCCA spreading fake news about the control of territory and Anti-Balaka attacks is consistent with the lack of detail in the Facebook

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<sup>130</sup> CAR-OTP-2102-8740, at 8768-8775

<sup>131</sup> CAR-OTP-2099-8920, at 8980-8981.

<sup>132</sup> Application, para. 43 footnotes 171-174, 176-179.

<sup>133</sup> The conversations call on central African in general or use the subject pronoun we in terms of driving out the Seleka. 2091-0434 and 2103-4831 2102-8664 at 8679.

<sup>134</sup> CAR-OTP-2102-8556 at 8560-8561.

<sup>135</sup> Ibid.

<sup>136</sup> ICC-01/14-01/18-1942-Conf, para. 29.

<sup>137</sup> ICC-01/14-01/18-T-080-CONF-ENG, p. 65-68.



conversations. The conversation cited in relation to the 5 December attack provides so little detail as to the alleged attack in terms of when it will occur, who will partake in the attack, and any plan as to how it will be carried out. It consists of the user of the [REDACTED] account making a metaphor on 4 December 2013 stating that “they will eat” tomorrow.<sup>138</sup> It is hardly a message that conveys insight on the Anti-Balaka’s alleged attack on 5 December as put forth by the Prosecution.

**f. [REDACTED]alleged Facebook account**

65. *First*, the Prosecution fails to provide sufficient information as to the identity and role of [REDACTED], whose Facebook conversations it seeks to submit via the Application. [REDACTED] is nowhere mentioned in the Trial Brief. So far as the Defence is aware, the only mention of [REDACTED] is in one request for assistance (“RFA”),<sup>139</sup> where the Prosecution requests access to several Facebook accounts including his. The Prosecution simply states that these individuals hold or held senior to mid-level position within the Anti-Balaka. Yet, there is no supporting information or evidence for this in the RFA or elsewhere. In its Application, the Prosecution provides no information and makes no effort to explain who [REDACTED] is and what his role is in the Anti-Balaka was. As the Prosecution makes no claim as to the specificity of his role or the basis for concluding this, the Chamber should not conclude that he was a member of the Anti-Balaka.

66. *Second*, the Prosecution’s interpretations are self-serving and speculative. For instance, the Prosecution argues that a conversation on 19 May 2013, where [REDACTED], “*shows, inter alia, the location of Anti-Balaka groups outside of CAR, in particular in YAOUNDE [CAMEROON], prior to the 5 December 2013 attacks on BANGUI and BOSSANGO*”.<sup>140</sup> The fact that [REDACTED] does not show either that (i) he is an Anti-Balaka member; or (ii) he is going to Yaoundé to organise with the Anti-Balaka. To the contrary, in May 2013, it was clearly unsafe to return to CAR, and it makes sense that he would go into exile like countless other CAR nationals. There are several other examples where the Prosecution alleges a certain relevance of [REDACTED] discussions to showing the organisation of

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<sup>138</sup> CAR-OTP-2102-9171, at 9176-9177.

<sup>139</sup> CAR-OTP-2130-0268.

<sup>140</sup> CAR-OTP-2103-2218.

the Anti-Balaka attacks when [REDACTED] and his interlocutor could most likely be simply commenting on the news.<sup>141</sup>

67. Moreover, the Prosecution's explanations as to the alleged probative value is at times misleading. For example, the Prosecution's suggestions that the mere mention by [REDACTED],<sup>142</sup> would show "*NGAISSONA's role in BOZIZE's inner circle; NGAISSONA's leadership role in the Anti-Balaka prior to the 5 December 2013 attacks on BANGUI and BOSSANGO*"<sup>143</sup> should be rejected. Such an interpretation is purely speculative. Also, the Prosecution's suggestion that [REDACTED], would somehow be linked to Mr Ngaïssona (the Prosecution writes in the annex besides [REDACTED] "*n.b. who is very close to NGAISSONA*") must equally be rejected as unfounded and speculative.

68. Similarly, the Prosecution highlights a conversation excerpt between [REDACTED] and [REDACTED] where [REDACTED] tells [REDACTED].<sup>144</sup> According to the Prosecution, the conversation "*shows, inter alia, [REDACTED] knowledge of the Anti-Balaka's strategy and organisation prior to the 5 December 2013 attacks on BANGUI and BOSSANGO, through his contact with [REDACTED]*".<sup>145</sup> This is misleading because it appears from the conversation that [REDACTED].<sup>146</sup>

## V. RELIEF SOUGHT

69. The Defence respectfully requests the Chamber to:

**REJECT** the Prosecution's request to submit items CAR-OTP-2103-7505, CAR-OTP-2103-7447 and CAR-OTP-2130-0268. CAR-OTP-2100-2994 (at 3004), CAR-OTP-2100-4956 (at 4963-4964), CAR-OTP-2102-3014 (at 3051-3053, 3058-3059, 3066, 3078, 3144), CAR-OTP-2099-8120 (at 8120-8128, 8133, 8137, 8141-8142, 8145, 8147-8148, 8176-8177, 8182, 8188), CAR-OTP-2102-8290 (from 8308 to 8312), CAR-OTP-2102-8444 (at 8445-8446), CAR-OTP-2102-8822 (at 8822-8825), which are either not on the list of evidence or contain extensive passages in Sango.

<sup>141</sup> See Facebook excerpts relied on by the Prosecution in Application, para. 49.

<sup>142</sup> CAR-OTP-2103-2592, at 2599.

<sup>143</sup> Annex to Application, item #421.

<sup>144</sup> CAR-OTP-2103-2375, at 2380-2381.

<sup>145</sup> Annex to Application, item #413.

<sup>146</sup> CAR-OTP-2103-2375, at 2381: "*j ai essaie d appele ouaps ana pas marcher*".

**TAKE INTO ACCOUNT** the Defence's objections contained in the present response and its Annex 1 when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized name or set of initials, located below the text 'Respectfully submitted,'.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 8 March 2024

At The Hague, the Netherlands.