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Date: **4 January 2022**

**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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**With Confidential Annex**

**Request for the Submission of Evidence from the Bar Table regarding the  
Prevalence of Sexual and Gender Based Violence**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to recognise as formally submitted 140 items of evidence from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4), rule 63(2) of the Rules of Procedure and Evidence (“Rules”), and the Initial Directions on the Conduct of Proceedings (“Initial Directions”).<sup>1</sup> These 140 items comprise evidence relevant to the prevalence of sexual and gender based violence (“SGBV”) in CAR during and prior to the Relevant Period,<sup>2</sup> in particular SGBV committed by the Anti-Balaka (“Submitted Items”).

2. The Submitted Items are *prima facie* relevant to material issues at trial and mutually corroborative as to the prevalence of SGBV in the context of crises in the Central African Republic (“CAR”). As such, they are pertinent to article 30(2) and (3) in respect of counts 40 and 41. The Submitted Items bear sufficient indicia of reliability on which the Chamber may properly base its article 74 decision. Recognising their formal submission causes no prejudice to a fair trial. To the contrary, it would assist in the Chamber’s determination of the truth, and would contribute to an expeditious trial.

## II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Annex to this Request is classified as “Confidential” because it contains information revealing the identities of trial witnesses and sources of information, both direct and indirect.

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<sup>1</sup> ICC-01/14-01/18-631, para. 61.

<sup>2</sup> As defined in the Prosecution’s Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

### III. SUBMISSIONS

4. The Prosecution seeks the formal recognition of the Submitted Items. Each is relevant to the prevalence of SGBV in CAR during and prior to the Relevant Period, and in particular, SGBV committed by the Anti-Balaka. They are relevant, *inter alia*, to the Accused NGAISSONA's knowledge under article 30 and article 25(3)(d)(ii) that the Anti-Balaka would commit sexual violence "in the ordinary course of events", which underpins his criminal responsibility for the two confirmed charges of rape,<sup>3</sup> as well as the confirmed charge of persecution encompassing the perpetration of sexual violence<sup>4</sup> in BOSSANGO. Additionally, those items evidencing the Anti-Balaka's commission of SGBV against Muslim civilians during the Relevant Period are also relevant to the Anti-Balaka's widespread or systematic attack against that population under article 7(1). To this end, the Submitted Items concern events both preceding and following the 5 December 2013 rape charges.

5. As required by the Initial Directions,<sup>5</sup> the Prosecution has inquired with the Defence teams as to their respective positions on the items to be tendered for submission. The YEKATOM Defence has provided its position on the individual items. The NGAISSONA Defence has not consented to the submission of any of the items, and has reserved its right to object to any or all of the Submitted Items.

6. The Submitted Items are listed in the Confidential Annex, by ERN, along with their Date, Title, Source, and Disclosure Date, as recorded in the eCourt metadata. The last three columns set out their Relevance, Submission Status (whether submission is sought herein, or elsewhere<sup>6</sup>), and the YEKATOM Defence's position on their

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<sup>3</sup> Count 40: Rape as a crime against humanity on 5 December 2013 (article 7(1)(g)); Count 41: Rape as a war crime on 5 December 2013 (article 8(2)(e)(vi)).

<sup>4</sup> Count 42: Persecution (article 7(1)(h)): *see* ICC-01/14-01/18-723-Red, para. 430.

<sup>5</sup> ICC-01/14-01/18-631, para. 62.

<sup>6</sup> At the time of filing, five documents have already been recognised as submitted, and seven are included in pending applications for submission. These twelve documents are nevertheless included in the Annex, marked by

submission.<sup>7</sup> The items are grouped in the Confidential Annex into the following six categories:

- i) CAR government documents (40 items): Documents originating from or involving the CAR government, including the BOZIZE government prior to its overthrow in March 2013;
- ii) International organisation and NGO documents (45 items): Includes international accords, and reports published by NGOs, United Nations (“UN”) agencies and other international organisations;
- iii) Media articles and footage (27 items): Media reports by both the CAR media and the international media;
- iv) Reports (14 items): Reports produced by local victim collectives in CAR, broken down by organisation;
- v) Documents belonging to Levy YAKETE (four items): Documents found on a hard drive belonging to prominent Anti-Balaka figure Levy YAKETE; and
- vi) Documents provided by Prosecution trial witnesses (10 items).

7. Further, there are 54 items of Facebook messages and six items of Yahoo! messages relevant to the prevalence of SGBV that will be submitted in future bar table motions dedicated to the Facebook and Yahoo! document collections. Their relevance is set out in broad terms below,<sup>8</sup> but will be set out in detail in these forthcoming motions.

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footnotes, given their relatively limited number, and because they include additional descriptions of relevance that may assist the Chamber when considering the prevalence of conflict-related SGBV in CAR.

<sup>7</sup> Given the NGAISSONA Defence’s blanket position to reserve its right to object to the submission of any or all of the Submission Items, the Prosecution has not included this position in the Confidential Annex.

<sup>8</sup> See footnotes 11, 14, 17, 20 herein.

8. To assist the Chamber to provide a “full and reasoned statement of [its] findings on the evidence and conclusions” under article 74(5),<sup>9</sup> the Prosecution will address the standard evidentiary criteria (namely the relevance, probative value and potential prejudice)<sup>10</sup> each in turn, below.

#### **A. The Submitted Items are relevant to the issues at trial**

9. The relevance of each individual item submitted is set out in the “Relevance” column of the Confidential Annex. A standard short-hand statement of relevance is given in the first sentence, followed by a description of the individual document and – as appropriate – its most salient parts. The standard short-hand statements are as follows:

- i) “*Relevant to prevalence of SGBV (Anti-Balaka perpetrator)*”:<sup>11</sup> refers to evidence of the Anti-Balaka’s commission of crimes of SGBV during the Relevant Period of September 2013 to December 2014. This evidence goes directly to the group’s widespread attack for the purpose of crimes against humanity. Further, evidence of the Anti-Balaka’s commission of and/or participation in SGBV crimes at any time prior to the charged acts of sexual violence<sup>12</sup> also goes to the Accused NGAISSONA’s knowledge of the Anti-Balaka’s *intention* to commit such crimes, including rape — particularly, the *awareness* of

<sup>9</sup> ICC-02/04-01/15-1762-Red, paras. 246-247; ICC-01/05-01/13-1989-Red, para. 193.

<sup>10</sup> ICC-01/14-01/18-631, para. 53. *See also* ICC-01/05-01/13-1989-Red, para. 193.

<sup>11</sup> *See also* Facebook items CAR-OTP-2100-6030 and CAR-OTP-2102-7759 (at 7780, in which one collocutor states “keep two 12-year-old Muslims for me, I’m coming”, and the other replies “we’ll even rape old women of 70”), addressed in further detail in an upcoming dedicated bar table motion.

<sup>12</sup> Count 40: Rape as a crime against humanity on 5 December 2013 (article 7(1)(g)); Count 41: Rape as a war crime on 5 December 2013 (article 8(2)(e)(vi)).

the group (as a collective) that such crime would occur in the ordinary course of events.<sup>13</sup>

ii) *“Relevant to prevalence of conflict-related SGBV in CAR”*:<sup>14</sup> refers to evidence of a more general nature demonstrating the link between armed conflict and crimes of SGBV in CAR, including in prior conflicts.<sup>15</sup> This evidence also goes to the foreseeability of the Anti-Balaka’s commission of and/or participation in SGBV crimes. In particular, many documents originating from the CAR government show that conflict-related sexual violence was a well-known and recurrent phenomenon in CAR.<sup>16</sup>

iii) *“Relevant to Anti-Balaka (leadership)’s knowledge of prevalence of conflict-related SGBV in CAR / SGBV committed by Seleka”*:<sup>17</sup> refers to evidence

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<sup>13</sup> As envisaged by articles 25(3)(d)(ii) and 30(3). The Accused must be aware that either: (a) the group – as opposed to its individual members or sub-groups – meant to cause the crime; or (b) the group was aware that the crime would be committed in the ordinary course of events. *See further* ICC-01/14-01/18-723-Red, paras. 249, 296-297, 300-301, 307-311.

<sup>14</sup> *See also* Facebook items CAR-OTP-2099-7606, CAR-OTP-2099-7830, CAR-OTP-2099-9345, CAR-OTP-2100-2913, CAR-OTP-2100-6638, CAR-OTP-2100-9588, CAR-OTP-2101-6702, CAR-OTP-2101-6924, CAR-OTP-2101-9627, CAR-OTP-2102-1950 and CAR-OTP-2102-8439, addressed in further detail in an upcoming dedicated bar table motion.

<sup>15</sup> *See, in particular*, the United Nations mapping project (CAR-OTP-2055-1987), which reports on crimes of SGBV going as far back as 2003.

<sup>16</sup> *See, for example*, CAR-OTP-2000-0627, CAR-OTP-2042-2125, CAR-OTP-2092-1257, CAR-OTP-2092-1488, CAR-OTP-2092-2739, CAR-OTP-2092-2846, CAR-OTP-2101-1848, CAR-OTP-2101-3081, CAR-OTP-2101-3490, CAR-OTP-2101-3983, CAR-OTP-2101-4029.

<sup>17</sup> *See also* Facebook items reflecting the above noted propositions with respect to the retributive actions and crimes of the Anti-Balaka: CAR-OTP-2099-7606, CAR-OTP-2099-7830, CAR-OTP-2099-8050, CAR-OTP-2099-8120, CAR-OTP-2099-8194, CAR-OTP-2099-8920, CAR-OTP-2099-9019 (at 9023, referring to the necessity of action because “they have raped our wives, sisters, mothers”), CAR-OTP-2099-9345, CAR-OTP-2099-9738, CAR-OTP-2100-2717, CAR-OTP-2100-2913, CAR-OTP-2100-2916, CAR-OTP-2100-2931, CAR-OTP-2100-2994, CAR-OTP-2100-6030, CAR-OTP-2100-6638, CAR-OTP-2100-7344 (at 7404, referring to DJOTODIA wanting to kill men and rape women), CAR-OTP-2100-7886, CAR-OTP-2100-8342, CAR-OTP-2100-8499, CAR-OTP-2100-9059 (at 9706, in which one collocutor states that his girlfriend has been raped by the Seleka, and a prominent Anti-Balaka figure replies that the Seleka’s evil will not go unpunished), CAR-OTP-2100-9118, CAR-OTP-2100-9588, CAR-OTP-2100-9873 (at 9883, referring to the Seleka leader as the one who brought murderers and rapists to destroy “our” country), CAR-OTP-2101-5317, CAR-OTP-2101-6147, CAR-OTP-2101-6702, CAR-OTP-2101-6924, CAR-OTP-2101-7271, CAR-OTP-2101-7842, CAR-OTP-2101-7908, CAR-OTP-2101-8391, CAR-OTP-2101-9627, CAR-OTP-2102-1854, CAR-OTP-2102-1950, CAR-OTP-2102-3203, CAR-OTP-2102-4062, CAR-OTP-

that directly demonstrates (normally by reference to speeches of or communications between Anti-Balaka figures and associates) that the Accused NGAISSONA and/or other prominent figures in the Anti-Balaka knew of the prevalence of SGBV committed by the Seleka, and/or in armed conflicts in general.<sup>18</sup> The prevalence of these crimes in that context made it clear that the Anti-Balaka would commit such crimes in the ordinary course of events, not only because SGBV is a likely consequence of armed conflict, but because the vast scale of the Seleka's crimes including SGBV, and the thirst for revenge publicly expressed by Anti-Balaka elements, made it inevitable that the group would engage in similar retributory conduct.<sup>19</sup>

- iv) "*Relevant to prevalence of SGBV (Seleka perpetrator)*":<sup>20</sup> refers to the actual evidence of the Seleka's widespread perpetration of SGBV,

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2102-4833, CAR-OTP-2102-5343, CAR-OTP-2102-6098, CAR-OTP-2102-8009, CAR-OTP-2102-8439, CAR-OTP-2102-8584, CAR-OTP-2102-8658, CAR-OTP-2102-8735, CAR-OTP-2102-9169, CAR-OTP-2102-9354, CAR-OTP-2102-9367, CAR-OTP-2102-9395, CAR-OTP-2102-9726, CAR-OTP-2102-9756, CAR-OTP-2103-4844 and CAR-OTP-2130-0044, and Yahoo! items CAR-OTP-2126-2726, CAR-OTP-2126-2727, CAR-OTP-2126-2740, CAR-OTP-2126-2741, CAR-OTP-2126-2754 and CAR-OTP-2126-2755, addressed in further detail in upcoming dedicated bar table motions.

<sup>18</sup> See, for example, FROCCA press releases at CAR-OTP-2001-4048 and CAR-OTP-2123-0473 (press release no. 1); CAR-OTP-2102-8584 (press release no. 2 at 8585; press release no. 5 at 8590-8591); and CAR-OTP-2102-8735 (press release no. 6 at 8735). See also the call of the *Collectif des Officiers Libres* to all CAR military personnel adhering to FROCCA's objectives: CAR-OTP-2069-3544 and CAR-OTP-2103-4844, at 4844-4845.

<sup>19</sup> See references in the operative section of the Confirmation Decision to the retributory aspect of the Anti-Balaka's criminal policy to primarily target the Muslim population: ICC-01/14-01/18-403-Corr-Red, p. 106, 111 ("in retribution for Seleka exactions"). See further, on NGAISSONA's knowledge of the Anti-Balaka's thirst for revenge: ICC-01/14-01/18-723-Red, para. 305.

<sup>20</sup> See also Facebook items CAR-OTP-2099-7606, CAR-OTP-2099-8050, CAR-OTP-2099-8120, CAR-OTP-2099-8194, CAR-OTP-2099-8920, CAR-OTP-2099-9019, CAR-OTP-2099-9738, CAR-OTP-2100-2717, CAR-OTP-2100-2916, CAR-OTP-2100-2931, CAR-OTP-2100-2994, CAR-OTP-2100-6030, CAR-OTP-2100-6638, CAR-OTP-2100-7344, CAR-OTP-2100-7886, CAR-OTP-2100-8342, CAR-OTP-2100-8499, CAR-OTP-2100-9059, CAR-OTP-2100-9118, CAR-OTP-2100-9873, CAR-OTP-2101-5317, CAR-OTP-2101-6147, CAR-OTP-2101-6924, CAR-OTP-2101-7271, CAR-OTP-2101-7842, CAR-OTP-2101-7908, CAR-OTP-2101-8391, CAR-OTP-2102-1854, CAR-OTP-2102-3203, CAR-OTP-2102-4062, CAR-OTP-2102-4833, CAR-OTP-2102-5343, CAR-OTP-2102-6098, CAR-OTP-2102-8009, CAR-OTP-2102-8584, CAR-OTP-2102-8658, CAR-OTP-2102-8735, CAR-OTP-2102-9169, CAR-OTP-2102-9354, CAR-OTP-2102-9367, CAR-OTP-2102-9395, CAR-OTP-2102-9726, CAR-OTP-2102-9756, CAR-OTP-2103-4844 and CAR-OTP-2130-0044, and Yahoo! items CAR-OTP-2126-2726, CAR-OTP-2126-2727, CAR-OTP-2126-2740,

mainly prior to the Relevant Period. This evidence further supports the foreseeability that the Anti-Balaka would commit the same crimes in the ordinary course of events, *in the Relevant Period*. As such, evidence of Seleka crimes preceding the Relevant Period remain relevant and are not barred from submission,<sup>21</sup> as they inform the *mens rea* of the Anti-Balaka's crimes as charged.

## **B. The Submitted Items are reliable and authentic**

10. The Submitted Items bear sufficient indicia of reliability for the Chamber to base its article 74(2) decision on.

- i) The documents in the *first* category are records of CAR governmental activities, most of which were provided by the CAR authorities. The authenticity and *prima facie* reliability of these documents is further corroborated by their general appearance, including the appropriate presence of letterheads, signatures and seals. Otherwise, the reliability and authenticity of those documents collected from the CAR *Primature* will be specifically addressed in a separate forthcoming bar table motion.
- ii) The *second* category of documents consists of international accords, and reports published by NGOs, the UN, and other international organisations. In most cases, these are publicly available documents from well-known and established organisations, and as such, *prima facie* reliable. In addition, the documents are self-authenticating.

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CAR-OTP-2126-2741, CAR-OTP-2126-2754 and CAR-OTP-2126-2755, addressed in further detail in upcoming dedicated bar table motions.

<sup>21</sup> See ICC-02/04-01/15-795, para. 7.

- iii) The *third* category – media articles and broadcasts produced by international and national CAR media outlets – comprises open source material. They are from reputable sources and were produced contemporaneously to the events they describe, and are mutually corroborating.
- iv) The reports included in the *fourth* category were produced by local CAR victim collectives. They were produced by non-governmental organisations to survey the victims of events, for such purposes as monitoring human rights violations, gathering data and reporting. Where further information on the purpose, establishment or working method of the relevant organisations is available, this is set out in the “Relevance” column.
- v) The documents in the *fifth* category were obtained from a hard drive belonging to Levy YAKETE obtained through a request to the French authorities.<sup>22</sup>
- vi) Finally, the *sixth* category consists of nine documents provided by Prosecution trial witnesses, as specified in the Confidential Annex. These documents were directly provided by the witnesses to Prosecution investigators when giving their signed statements in accordance with the Statute and Rules, the truth of which was expressly acknowledged and attested to.

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<sup>22</sup> The hard-drive itself is registered against ERN CAR-OTP-2129-0193. See details of its seizure at CAR-OTP-2129-0132, CAR-OTP-2129-0176 and CAR-OTP-2129-0178. For all documentation related to the seizure provided by the French authorities and provision to the Prosecution, see ERN range CAR-OTP-2129-0110 to CAR-OTP-2129-0178.

11. Further, there is no legal impediment to the submission of the items in their totality. That some items – media articles or NGO records or reports, for example – contain information where the source of the information is unknown or is otherwise not being called before the Chamber, is no bar to their submission. None of the items are testimonial in nature, such as to preclude their submission under rule 68(3).<sup>23</sup> In relation to the victim collective reports in particular, there is no indication that these were produced in circumstances where the victims understood themselves to be “providing information which may be relied upon in the context of legal proceedings”.<sup>24</sup> They were collected not by law enforcement authorities, but by non-governmental organisations for the purpose of surveying the victims of events. Finally, there is no requirement that a document be shown to and submitted through a witness;<sup>25</sup> to hold otherwise would be antithetical to the very notion of submission of evidence from the bar table.

### **C. There is no prejudicial effect**

12. The probative value of the Submitted Items outweighs any prejudicial effect for the following reasons: (i) the items are reliable and highly relevant to the confirmed charges; (iii) they will assist the Chamber in the determination of the truth and ensure an expeditious trial; and (iii) the Defence has had sufficient notice of the content of the items.

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<sup>23</sup> See ICC-01/05-01/13-2275-Red, para. 581, as recalled in ICC-01/14-01/18-631, para. 56.

<sup>24</sup> ICC-01/05-01/13-1478-Red-Corr, para. 32. *See also* ICC-02/04-01/15-795, para. 19.

<sup>25</sup> See ICC-02/04-01/15-795, para. 13-15.

#### IV. CONCLUSION

13. For the foregoing reasons, the Prosecution requests that all 140 items listed in the Confidential Annex to this filing be recognised as formally submitted.

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**Karim A. A. Khan QC, Prosecutor**

Dated this 4<sup>th</sup> day of January 2022  
At The Hague, The Netherlands