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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **25 November 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redaction Version of the 'Yekatom Defence Request to Present
Additional Evidence for Potential Sentencing', 6 September 2024, ICC-
01/14-01/18-2678**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Pursuant to Trial Chamber V's "Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings",¹ the Defence hereby requests the introduction of the written statements of 12 witnesses ("Testimonial Material") which it submits are relevant to the Chamber's determination of Mr YEKATOM's sentence in the event of conviction pursuant to Article 76(1) of the Statute. The statements are probative, bear sufficient *indicia* of reliability for admission, and are not repetitive of evidence already on the record. They are therefore suitable and appropriate for admission for potential sentencing.
2. As set out below, the Defence respectfully submits that the testimonial material of the 12 witnesses can be introduced for the purposes of potential sentencing without the procedural prerequisites of Rule 68 needing to have been met given the nature and purpose for which the statements are relied upon.
3. In the alternative, should the Chamber be minded to apply the framework under Rule 68, the Defence submits that the requirements are fulfilled for the Testimonial Material to be recognised as formally submitted under Rule 68(2)(b). However, the Defence requests to be dispensed from the requirement under to Rule 68(2)(b)(ii) to have a member of the Registry witness the declarations accompanying the prior recorded testimony. In the alternative, and noting that completing Rule 68(2)(b)(ii) certifications requires significant time and resources from the Defence which are otherwise necessary to complete closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

¹ ICC-01/14-01/18-2600.

PROCEDURAL BACKGROUND

4. On 18 July 2024, Trial Chamber V (“Chamber”) issued its “Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings” (“Sentencing Procedure Decision”) deciding to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgement under Article 74 and setting a calendar for sentencing.² *Inter alia*, the Chamber set the deadline for parties and participants to file any requests to present additional evidence for potential sentencing by 6 September 2024.³ The Chamber emphasised that “given the abundance of evidence already on the record, the Chamber will intervene in the selection and presentation of such evidence in order to ensure the fair and expeditious conduct of the present proceedings”.⁴
5. On 27 August 2024, the Chamber granted the Defence’s request in accordance with Regulation 37(2) to extend the page limit with respect to this request to 50 pages.⁵

SUBMISSIONS

A. The procedural prerequisites of Rule 68 are not applicable in the context of sentencing

6. Trial Chambers enjoy greater flexibility in considering relevant evidence and submissions at the sentencing stage than they ordinarily have during trial. As a result, the applicability of the Rule 68 prerequisites has varied across cases before this Court in relation to the submission of material for sentencing purposes.

² ICC-01/14-01/18-2600.

³ ICC-01/14-01/18-2600, para. 5.

⁴ ICC-01/14-01/18-2600, para. 7.

⁵ Email from the Chamber to Parties and Participants dated 27 August 2024 at 09:51.

7. For instance, Trial Chamber VII in *Bemba et al.* held that it was not necessary for parties to meet the procedural prerequisites of Rule 68 in order to submit witness statements in writing for sentencing.⁶ This determination was based on Article 76(1) of the Statute which provides that the Chamber “shall take into account the evidence presented *and submissions made* during the trial that are relevant to the sentence”,⁷ meaning that “Rule 68 procedural pre-requisites are not a procedural bar for sentencing in the same way they are at trial” as a Chamber may take into account non-evidentiary submissions for sentencing purposes.⁸ To reach this determination, Trial Chamber VII also observed that previous chambers introduced written witness statements and expert reports at sentencing without exploring whether the Rule 68 prerequisites were met⁹ and examined statutory schemes of other international tribunals allowing chambers to consider any relevant information, not just evidence, in the determination of a sentence.¹⁰
8. In *Ntaganda*, mindful of the stage of the sentencing proceedings, Trial Chamber VI applied similar reasoning in dispensing parties from the requirement under Rule 68(2)(b)(ii) to have a member of the Registry witness the declarations

⁶ Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing, [ICC-01/05-01/13-2025](#), 11 November 2016, para. 6 (“Bemba et al. Decision”).

⁷ Article 76(1) of the Statute.

⁸ Bemba et al. Decision, para. 7.

⁹ Bemba et al. Decision, para. 7, citing Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Transcript of Hearing, 22 August 2016, [ICC-01/12-01/15-T-4-Red-ENG](#), page 3 line 20 to page 4 line 15; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, 4 May 2016, [ICC-01/05-01/08-3384](#), para. 15; Trial Chamber II, *The Prosecutor v. Germain Katanga*, Order on the Prosecution and Defence requests for admission of documentary evidence into the record of the sentencing proceedings and on the Legal Representative’s request for reclassification of a Registry report, 10 April 2014, ICC-01/04-01/07-3463-Conf-tENG, para. 8.

¹⁰ Bemba et al. Decision, para. 7 citing *inter alia* ICTY, Rules of Procedure and Evidence, Rule 100(A); ICTR, Rules of Procedure and Evidence, Rule 85(A)(vi); MICT, Rules of Procedure and Evidence, Rule 102(A)(vi); SCSL, Rules of Procedure and Evidence, Rule 100(A); RSCSL, Rules of Procedure and Evidence, Rule 100(A); STL, Rules of Procedure and Evidence, Rule 171(A).

accompanying the prior recorded testimony for the purposes of sentencing as was the case during the trial phase of the proceedings.¹¹

9. More recently, the Single Judge in *Al Hassan*, noting that past chambers of the Court have dispensed with certain procedural prerequisites of Rule 68 for the purposes of sentencing evidence, decided that the declarations of witnesses whose prior recorded testimony would be submitted pursuant to Rule 68(2)(b) need not be witnessed by a member of the Registry.¹²
10. The Defence considers that the procedure undertaken by previous Trial Chambers as detailed above is appropriate and applicable in the present context.
11. Indeed, the sentencing phase distinguishes itself from the trial phase. During the main case, Chambers must evaluate the evidence presented in order to determine if the Prosecution has met its burden to determine the accused's guilt beyond a reasonable doubt. This process is strictly bound by legal standards and offers little room for discretion. However, the sentencing phase operates under different principles in that there is no evidentiary threshold to be met. In contrast, in determining a sentence range, the Chamber is only guided by the factors as set out in Article 78 and Rule 145,¹³ given that guilt has already been determined at this stage and the burden of proof thus met. Consequently, the

¹¹ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Public Redacted version of 'Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing', [ICC-01/04-02/06-2385-Red](#), 23 August 2019, para. 10.

¹² Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request to dispense with certain certification requirements under Rule 68(2)(b)(ii) of the Rules, [ICC-01/12-01/18-2610](#), 18 July 2024, para. 7. The Defence appreciates the distinguishing circumstances but relies on this decision to show the ability of a Trial Chamber to dispense with the requirement under Rule 68(2)(b)(ii).

¹³ Appeals Chamber, *The Prosecutor vs. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", [ICC-01/04-01/06-3122](#), 1 December 2014, para. 40; Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on Sentence pursuant to article 76 of the Statute, [ICC-01/04-01/07-3484-tENG-Corr](#), 23 May 2014, paras. 36-40; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Sentencing judgment, [ICC-01/04-02/06-2442](#), paras. 8-28; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Sentence, [ICC-02/04-01/15-1819-Red](#), paras. 44-64. See also S. D'Ascoli, *Sentencing in international criminal law* (Portland, Or., Hart Publishing, 2011), p. 48-49. See also K. Ambos, *Rome Statute of the International Criminal Court : Article-by-Article Commentary* (C.H. Beck, 4th ed., 2022), Article 78, p. 2290.

stringent rules of evidence that govern the trial phase should not unduly constrain the Trial Chamber during sentencing,¹⁴ allowing for a more nuanced and individualised approach.

12. By way of example of the broader approach taken in considering relevant evidence at the sentencing stage, the written statements of four witnesses in *Katanga* were admitted for sentencing purposes because the Chamber considered they satisfied the relevance requirement under Article 76 and took note of the fact that: the Defence had expressly requested their admission, the Prosecution did not oppose the request, the witnesses would be considered by the Chamber strictly for the purposes of the sentencing proceedings and their testimonies related to issues which were not challenged by any of the parties.¹⁵
13. Most recently, Trial Chamber X treated Mr Al Hassan's, the accused, statement for which the Defence had initially requested introduction pursuant to Rule 68(2)(b), as an unsworn statement under Article 67(1)(h) instead, in order for it to be taken into account by the Chamber for the purposes of the sentencing procedure.¹⁶
14. It follows from the above that Trial Chambers enjoy a certain flexibility when admitting evidence in the context of sentencing. In this regard, the Defence submits that this Chamber must necessarily adopt a broader approach in

¹⁴ ICTY, Appeals Chamber, *Zejnir Delalić et al.*, [Judgement](#), 20 February 2001, IT-96-21-A, para. 787.

¹⁵ Bemba et al. Decision, para. 7, footnote 18 citing Trial Chamber II, *The Prosecutor v. Germain Katanga*, Order on the Prosecution and Defence requests for admission of documentary evidence into the record of the sentencing proceedings and on the Legal Representative's request for reclassification of a Registry report, 10 April 2014, ICC-01/04-01/07-3463-Conf-tENG, para. 8 ('With respect, in particular, to the written statements of the four witnesses which the Defence wishes to file into record, the Chamber considers that these evidentiary items satisfy the relevancy requirement stipulated in article 76(2) of the Statute and sees no obstacle to their being admitted into the record, considering that: (1) the Defence has expressly requested this; (2) the Prosecution, subject to the condition specified in paragraph 4 above, is not opposing it; (3) they will be examined and, where appropriate, considered by the Chamber strictly for the purposes of the sentencing proceedings and in particular where it is necessary to consider the existence of mitigating circumstances; and (4) they relate to issues which are not challenged by any of the parties.').

¹⁶ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Second decision on Defence requests for the introduction of sentencing evidence, [ICC-01/12-01/18-2633](#), 8 August 2024, paras. 16-20.

considering relevant evidence and submissions at the sentencing stage than it ordinarily has during trial. Indeed, the alternative to meeting the Rule 68(2)(b) requirements would be to call witnesses to testify *viva voce*, which would only prolong the proceedings. Such a course of action is not viable at this stage, particularly in light of other considerations at play, namely the importance of ensuring that any potential decision under Article 76 be issued by the same composition of judges in a timely manner of which the Defence is mindful.¹⁷ Dropping these witnesses would be highly prejudicial for the Defence. It would not however be prejudicial to the Prosecution given that they are also entitled to submit additional evidence for sentencing purposes and are provided with an opportunity to respond to the relevance of the proposed statements introduced by the Defence.

15. This prejudice is further compounded by the Chamber's decision to opt for a simultaneous sentencing procedure. As a result, the Defence has had to broaden the scope of its investigations for sentencing purposes to cover all possible avenues of conviction, leading to less targeted submissions.

16. In light of the above, the Defence requests that this Trial Chamber take a broader and more inclusive approach in evaluating relevant evidence and submissions during the sentencing phase, such that Rule 68(2)(b) procedural prerequisites are not a procedural bar for sentencing in the same way they have been at trial. Rather, the introduction of written statements for the purposes of sentencing should be limited to whether they satisfy the relevancy requirement set out in Article 76(1) and how they relate to the various factors outlined in Article 78 and Rule 145.

¹⁷ ICC-01/14-01/18-2600, para. 2.

a) The Testimonial Material is relevant for sentencing purposes

17. The Defence submits that the Testimonial Evidence is relevant to the Chamber's determination of Mr YEKATOM's sentence in the event of conviction pursuant to Article 76(1) of the Statute. Moreover, the statements are probative, bear sufficient *indicia* of reliability for admission, and are not repetitive of evidence already on the record. They are therefore suitable and appropriate for admission for potential sentencing.

18. In order to assist the Chamber's assessment of the Testimonial Material, the Defence provides below (i) a comprehensive overview of the salient issues arising within the prior recorded testimony for each of the witnesses which it submits satisfy the relevance requirement stipulated in Article 76(1), (ii) indication of any need to keep the identity of the relevant witness confidential,¹⁸ and (iii) indication of how the proposed additional evidence relates to factors under Article 78 of the Statute and Rule 145 of the Rules.

19. The Defence emphasises that where statements cover similar Rule 145 sub-factors, their comprehensive and collective consideration is essential to illustrate that Mr YEKATOM's positive actions were not singular or isolated occurrences, but rather indicative of a consistent pattern of conduct. This further demonstrates the genuineness of Mr YEKATOM's intent and actions and must therefore be considered in a cumulative manner.

i. AHAMAT Deleris (P-3010)

20. The Defence tenders for formal submission P-3010's statement collected on 18 August 2024 totalling approximately 6 pages.¹⁹

21. At the outset, the Defence requests that P-3010's identity not be disclosed to the public, as he would face an objectively justifiable risk to his legitimate interests.

¹⁸ Pursuant to ICC-01/14-01/18-2600, para. 5.

¹⁹ CAR-D29-0009-0832-R01.

As Mr YEKATOM is portrayed publicly, in the context of the current proceedings, as being responsible for crimes “*against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions*”,²⁰ P-3010 has expressed well-founded fears of retaliation or stigmatisation by other Muslims who may criticise him for testifying for the Defence, despite being a Muslim himself. P-3010’s fear is further compounded by his professional responsibilities and his prominent role within the Muslim community which could be negatively impacted should his cooperation with the Defence become known.

22. The witness’s proposed testimony establishes the following:

- P-3010 has been the president of the *Conseil Supérieur Islamique de Centrafrique* since 2021 and was formerly vice president of the *Comité Islamique Centrafricain* in 2010;
- P-3010 first encountered Mr YEKATOM during a meeting at the MINUSCA aimed at disarmament and restoration of peace shortly after SAMBA-PANZA’s election in the presence of representatives of the Muslim community and the ANTI-BALAKA. Mr YEKATOM introduced himself as a FACA;
- Mr YEKATOM fought for the reopening of several mosques, namely the KINA, LAKOUANGA and MBAÏKI mosques, between the end of 2014 and 2016;
- Mr YEKATOM invited the Muslim population to the FATIMA Church at the end of 2014 or 2015 and questioned why Christians could pray in their churches, but Muslims had nowhere to pray;

²⁰ ICC-01/14-01/18-403-Red-Corr, page 103.

- Mr YEKATOM publicly asked that the FATIMA-PK5-PETEVO road be used freely by both communities and that the combat end;
- Mr YEKATOM participated in several social cohesion meetings, namely one at the Omnisport stadium in the presence of the witness;
- Mr YEKATOM militated in favour of the reopening of a Muslim cemetery;
- Mr YEKATOM stood up at the Bangui Forum to explain that his objective was to bring back peace to the country and that the civilian population must not be harmed; and he added that not all Muslims are SELEKA and that the former were also victims of the latter.

23. P-3010's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged events. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* others. Specifically, the testimony underscores Mr YEKATOM's proactive role in launching an awareness campaign amongst the Christian population in KINA, where he emphasized the fundamental right of Muslims to have a place to pray, thereby fostering a spirit of understanding and mutual respect between the two religious communities. Further, Mr YEKATOM's instrumental role in the reopening of three mosques proves that his actions went beyond mere words and directly contributed to ensuring the fundamental rights of the Muslim population to have access to their places of worship, thereby rebuilding trust and encouraging coexistence among previously divided communities. The Defence submits that P-3010 provides compelling evidence of Mr YEKATOM's genuine attempts to heal societal rifts and promote unity between Christians and Muslims. P-3010's testimony also highlights Mr YEKATOM's efforts in deterring the local population from attacking Muslims thereby reducing his

degree of responsibility and intent in the event of conviction pursuant to Rule 145(1)(c).

ii. BALLA Ibrahim (P-1317)

24. The Defence tenders for formal submission of P-1317's statement collected on 20 August 2024 totalling approximately 7 pages.²¹

25. At the outset, the Defence requests that P-1317's identity not be disclosed to the public, as he would face an objectively justifiable risk to his legitimate interests. As Mr YEKATOM is portrayed publicly, in the context of the current proceedings, as being responsible for crimes "*against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions*",²² P-1317 has expressed well-founded fears of retaliation or stigmatisation by other Muslims who may criticise him for testifying for the Defence, despite being a Muslim himself. P-1317's fear is further compounded by his role as *chef de quartier* which could be negatively impacted should his cooperation with the Defence become known.

26. The witness's proposed testimony establishes the following:

- P-1317 is a merchant and *chef de quartier*. He is of Muslim faith;
- P-1317 knows Mr YEKATOM as a *caporal chef* in the FACA and met him several times in the context of peace-building activities;
- In April or May 2015, P-1317 asked Mr YEKATOM to participate in a meeting organised in Bimbo 3 in the context of social cohesion and peace-building in order to find a solution to ensure the free circulation of Muslims in PK5. Mr YEKATOM arrived at the meeting with the

²¹ CAR-D29-0009-0838-R01.

²² ICC-01/14-01/18-403-Red-Corr, page 103.

Organisation de la Femme Centrafricaine (OFCA). Representatives from the Muslim and Christian communities were also present;

- Following the above-mentioned meeting, Mr YEKATOM gathered comzones from the sector and warned them against harming Muslims. P-1317 heard about this from the comzones themselves;
- Mr YEKATOM travelled to BANGUI, PISSA, MBAÏKI and BODA on his own initiative to organise social cohesion meetings, to ensure that awareness was raised about the importance of peaceful coexistence and that Muslims, particularly those from BODA, could travel to BANGUI to conduct their commercial activities without fear of harassment or violence;
- During a trip to MBAÏKI to verify the effectiveness of Mr YEKATOM's cohesion initiatives, P-1317 met NANA Youssouf, a BOBOUA refugee living in MINUSCA tents. Mr NANA is currently in BANGUI for jury duty;
- P-1317 witnessed MBAÏKI Muslims cohabitating peacefully and circulating freely, on a visit to the locality in 2016 after the signature of a non-aggression pact.

27. P-1317's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period. It is also relevant to show Mr YEKATOM's good intentions and character *vis-à-vis* others. P-1317's testimony clearly demonstrates Mr YEKATOM's dedication to rebuilding trust and fostering unity between communities. His proactive steps to ensure that Muslims could move freely and safely to conduct their daily activities underscore his genuine commitment to the protection of all civilians, regardless of religious affiliation.

28. By issuing warnings against harming Muslims and undertaking initiatives to educate and sensitise local populations, Mr YEKATOM showed a clear determination to prevent violence and promote peaceful coexistence and reconciliation between communities. The Defence submits that Mr YEKATOM's efforts in deterring the local population from attacking Muslim civilians should be considered in the Chamber's evaluation in the event of conviction as reducing Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c).

29. The Defence submits that P-1317's evidence is also relevant for the purpose of the Chamber's evaluation of the gravity of the crime(s) in the event of conviction particularly with regard to its determination of the extent of damages caused to victims pursuant to Article 78(1) and Rule 145(1)(c). Indeed, P-1317 reports on the peaceful cohabitation of Muslims in MBAÏKI in 2015/2016 thereby reducing the perceived extent of harm and displacement attributed to Mr YEKATOM in the event of conviction.

iii. BEDOT NZENGUE Kevin Seigneur (P-8022)

30. The Defence tenders for formal submission P-8022's statement collected on 6 September 2024 totalling approximately 7 pages.²³ The witness's proposed testimony establishes the following:

- P-8022 has known Mr YEKATOM since 1983, they were childhood friends;
- Mr YEKATOM participated in a social cohesion meeting between Christians and Muslims at the FATIMA catholic church. P-8022 was the meeting *rapporteur*. The meeting was organised slightly before the events that led to the murder of Abbe NZALE at the FATIMA church. About 100 persons participated in that meeting. The aim of the meeting was to reestablish peace because there were killings on both sides. During the

²³ CAR-D29-0009-0902-R01.

meeting, some Muslims congratulated Mr YEKATOM for having participated in the organisation of the meeting and more importantly, for having saved their lives;

- P-8022 gives the example of one Muslim who explained how Mr YEKATOM saved him and who underlines that if everyone had acted like Mr YEKATOM, there would not have been killings between both communities;
- P-8022 provides names of Muslims who can testify on Mr YEKATOM's good behaviour towards them;
- During the same meeting at the FATIMA church, Mr YEKATOM expressed his wish for peace between both communities;
- During the meeting, the participants established means or methods of alerting each other in case someone was arrested in their respective zones;
- P-8022 recalls how Mr YEKATOM saved a young Muslim who was about to be lynched by the local population.

31. P-8022's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and proactive efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period. Mr YEKATOM's active engagement provides clear evidence of his role in fostering peace and stability within the community reflecting a genuine intention to ensure the well-being of all community members. It is also relevant to show Mr YEKATOM's good intentions and character *vis-à-vis* others.

32. The Defence submits that P-8022 provides compelling evidence of Mr YEKATOM's genuine attempts to heal societal rifts and promote unity between Christians and Muslims. P-8022's testimony also highlights Mr YEKATOM's efforts in deterring the local population from attacking Muslims thereby

reducing his degree of responsibility and intent in the event of conviction pursuant to Rule 145(1)(c).

iv. BISSA LOMBE Joel Thibault (P-8017)

33. The Defence tenders for formal submission P-8017's statement collected on 23 August 2024 totalling approximately 5 pages.²⁴

34. The Defence requests that P-8017's identity not be disclosed to the public, as he would face an objectively justifiable risk to his interests. Indeed, P-8017 has expressed well-founded fears of retaliation or stigmatisation by others who may criticise him for testifying for the Defence. This is further compounded by the fact that P-8017 testifies about sharing a close relationship with Mr YEKATOM.

35. The witness's proposed testimony establishes the following:

- P-8017 is a wood merchant in BANGUI;
- Mr YEKATOM and P-8017 have known each other since primary school;
- Mr YEKATOM helped P-8017 by attempting to find a wheelchair for his paralysed spouse;
- P-8017 and Mr YEKATOM stopped seeing each other when the SELEKA arrived in BANGUI, but reconnected when Mr YEKATOM became an MP;
- Mr YEKATOM organised a football game on the SAGBADO field to encourage social cohesion between Muslims and Christians after being elected an MP. The witness attended and so did Mr YEKATOM;
- Mr YEKATOM shared many conversations with the witness during which he expressed that he did not want the population to harm Muslims or to take up arms and that it was everyone's responsibility to promote social cohesion because Muslims are brothers;
- Mr YEKATOM frequently held awareness speeches, even before he was elected an MP. After being elected an MP, he doubled those efforts;

²⁴ CAR-D29-0009-0845-R01.

- Mr YEKATOM provided financial assistance to those in need after becoming an MP;
- Mr YEKATOM bought materials to build a school in KAPOU which the witness saw himself, but was arrested before the project was completed;
- Mr YEKATOM founded his own company, *KOYA Sécurité*, providing employment opportunities for youth from various neighbourhoods.

36. P-8017's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and proactive efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period. Mr YEKATOM's active engagement provides clear evidence of his role in fostering peace and stability within the community reflecting a genuine intention to ensure the well-being of all community members.

37. It is also relevant to show Mr YEKATOM's good intentions and character *vis-à-vis* others, for instance by trying to purchase a wheelchair for his friend's spouse. After being elected as an MP, Mr YEKATOM chose to invest his increased earnings in meaningful ways by providing financial assistance to those in need, commencing the construction of a school for children to avoid them having to travel long distances for an education. These actions demonstrate Mr YEKATOM's generosity and commitment towards his community.

v. BOBOYA Martial Michel (P-8012)

38. The Defence tenders for formal submission P-8012's statement collected on 16 August 2024 totalling approximately 5 pages.²⁵ The witness's proposed testimony establishes the following:

- P-8012 has been a journalist for radio NDEKE LUKA in MBAÏKI since 2010;

²⁵ CAR-D29-0009-0850-R01.

- P-8012 fled to Congo during the SELEKA regime and returned to MBAÏKI a week after SAMBA-PANZA's visit to the locality;
- It was the Chadian consulate that requested the convoys to pick up the Muslims in MBAÏKI;
- P-8012 met Mr YEKATOM for the first time in MBAÏKI in the context of one of the many intercommunal football games between Muslims and non-Muslims organised at his initiative to foster social cohesion and intercommunal peace in the LOBAYE. This took place after the Chadian convoy had left. Mr YEKATOM would inform the Prefect of these games beforehand;
- Mr YEKATOM organised similar sports activities in other localities such as PISSA and BOSSONGO;
- After their first meeting, P-8012 met with Mr YEKATOM on a weekly basis to conduct interviews;
- Mr YEKATOM wanted peace. He was against pillaging and theft and against the youth destroying the houses and stealing the goods of the Muslims that had left;
- P-8012 often accompanied Mr YEKATOM to report on pillages. Mr YEKATOM took proactive measures to apprehend thieves by seizing the stolen goods, handing them and the thieves to the gendarmerie, and reporting the incident to the Prefect.

39. P-8012's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period through inclusive sports activities. Moreover, P-8012's statement attests to Mr YEKATOM's efforts to restore order by taking concrete steps to address lawlessness, further reinforcing his dedication to maintaining security and

order. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* others.

40. P-8012's testimony also highlights Mr YEKATOM's effort to deter the local population from committing pillages thereby reducing his degree of responsibility and intent in the event of conviction pursuant to Rule 145(1)(c).

41. Moreover, P-8012's account of the organisation of the Muslims' departure by the Chadian authorities is a factor that minimises Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c) in the event of conviction, since this decision was taken independently of Mr YEKATOM's involvement and prior to his arrival in MBAÏKI.

vi. BOUKANGA KOULIN Habib Gontron (P-8014)

42. The Defence tenders for formal submission P-8014's statement collected on 18 August 2024 totalling approximately 6 pages.²⁶

43. The Defence requests that P-8014's identity not be disclosed to the public, as he would face an objectively justifiable risk to his interests stemming from the current political climate exacerbated by ongoing disinformation campaigns, namely targeting the ICC.²⁷ As a FACA, P-8014 could face genuine consequences should his identity and cooperation with the Defence become known considering that the current government has been actively targeting real or perceived opposition.²⁸

44. The witness's proposed testimony establishes the following:

- P-8014 joined the FACA in 2009;

²⁶ CAR-D29-0009-0855-R01.

²⁷ ICC-01/14-01/18-2656-Conf-Anx, para. 34

²⁸ ICC-01/14-01/18-2656-Conf-Anx, paras. 2-3, 7, 9, 20. See also ICC-01/14-01/18-2656-Conf-Anx, paras. 2, 5, 17.

- In 2011-2012, during the period in which the SELEKA took control of NDELE and BIRAO, P-8014 was a *soldat première classe* and started working at the B3 chief-of-staff offices. At that time, Mr YEKATOM was *caporal-chef* and chief of the B3 archives and documentation centre. He was in charge of emitting driver's licences;
- P-8014 describes Mr YEKATOM as a military who was not resentful and had self-control;
- Mr YEKATOM continued to work under the SELEKA period the same way he did under the previous regime without any difficulty, even coming back to work after being assaulted by the SELEKA elements. He reported this assault to his SELEKA chief, Abdel KADER. Shortly after this incident, Mr YEKATOM suddenly disappeared;
- P-8014 discussed frequently with Mr YEKATOM on their way home from work. Mr YEKATOM was someone whom P-8014 could discuss freely with and could recognise P-8014's point of view even while being his military superior.

45. The proposed testimony of P-8014 is highly relevant to the Chamber's considerations under Article 78(1) and Rules 145(1)(b) and 145(2)(a) of the Rules as it shows Mr YEKATOM's character and conduct *vis-à-vis* others well before the period covered by the charges. P-8014's testimony sheds light on Mr YEKATOM's resolute commitment to fulfilling his military duties even during an opposing regime and political disorder. Mr YEKATOM showed continuous collaboration, discipline and obedience to his SELEKA superiors even though they assaulted him.

vii. [REDACTED] (P-8021)

46. The Defence tenders for formal submission P-8021's statement collected on 4 September 2024 totalling approximately 7 pages.²⁹

47. At the outset, the Defence requests that P-8021's identity not be disclosed to the public, as she would face an objectively justifiable risk to her legitimate interests. As Mr YEKATOM is portrayed publicly, in the context of the current proceedings, as being responsible for crimes *"against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions"*,³⁰ P-8021 has expressed well-founded fears of retaliation or stigmatisation by other Muslims who may criticise her for testifying for the Defence, despite being a Muslim himself. P-8021's fear is further compounded by the fact that her testimony details [REDACTED] which could escalate the risk to her well-being.

48. The witness's proposed testimony establishes the following:

- P-8021 lived in CATTIN until 2013. She is of Muslim faith;
- P-8021 knows Mr YEKATOM because they lived in the same neighbourhood. He was friends [REDACTED] at P-8021's house;
- P-8021 describes Mr YEKATOM as an individual who interacted with everyone, regardless of their ethnicity or religion;
- On 05 December 2013, she recalls seeing Muslims who did not live in CATTIN armed with grenades, machetes and heavy weapons going door to door. When they reached her family's house, they ordered them outside. Despite telling them they were Muslim, the men did not believe them until P-8021's cousin spoke to them in Arabic. They were then told to leave or be

²⁹ CAR-D29-0009-0895-R01.

³⁰ ICC-01/14-01/18-403-Red-Corr, page 103.

killed by BALAKA. P-8021 and her family left their home in CATTIN to seek refuge in the GBAYA neighbourhood because they were afraid of being killed. If her cousin had not spoken Arabic, P-8021 believes they would have been killed by the armed Muslims;

- A few years ago, at a meeting with other victims of the 2013 events, P-8021 spoke with Muslim women who shared that Mr YEKATOM had helped them reach BANGUI and had not harmed them;
- P-8021's uncles from BOBOUA told her that during the 2013-2014 events, Mr YEKATOM prevented the local population from destroying their houses;
- Mr YEKATOM protected P-8021's brother who lived in the [REDACTED] neighbourhood against the youth who wanted to harm him. This was during SAMBA-PANZA's presidency. After the events, he returned to CATTIN and was stabbed because he was considered to be a BALAKA since he lived in the [REDACTED] neighbourhood. The PK5 Muslims considered all the other neighbourhoods as BALAKA;
- During the 2013-2014 events, P-8021's [REDACTED]. Upon hearing this, Mr YEKATOM gave [REDACTED] money to help cover his medical treatment.

49. P-8021's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and proactive efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR during and after the charged period. Mr YEKATOM's active engagement provides clear evidence of his role in fostering peace and stability within the community reflecting a genuine intention to ensure the well-being of all community members.

50. It is also relevant to show Mr YEKATOM's good intentions and character *vis-à-vis* others, such as paying for P-8021's [REDACTED]. This demonstrates Mr YEKATOM's generosity and commitment towards his community.

51. P-8021's statement also details several external factors that should be considered to minimise Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c) in the event of conviction. For instance, the armed Muslims going door to door on 5 December 2013 inciting the Muslim civilian population to flee is an external factor. This factor which heightened intercommunal tensions and delayed the return of Muslims to their communities is external to Mr YEKATOM's involvement and should therefore not be held against him when determining his sentence in the event of conviction.

viii. [REDACTED] (P-8013)

52. The Defence tenders for formal submission P-8013's statement collected on 17 August 2024 totalling approximately 9 pages.³¹

53. At the outset, the Defence requests that P-8013's identity not be disclosed to the public, as he would face an objectively justifiable risk to his legitimate interests. As Mr YEKATOM is portrayed publicly, in the context of the current proceedings, as being responsible for crimes "*against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions*",³² P-8013 has expressed well-founded fears of retaliation or stigmatisation by other Muslims who may criticise him for testifying for the Defence, despite being a Muslim himself.

³¹ CAR-D29-0009-0861-R01.

³² ICC-01/14-01/18-403-Red-Corr, page 103.

54. The witness's proposed testimony establishes the following:

- P-8013 has lived in [REDACTED] since 1988 and has [REDACTED];
- P-8013 was one of the only Muslims left in [REDACTED] after the SELEKA left, most of them having fled to MBAÏKI because the SELEKA told them that they would be killed if they stayed in [REDACTED];
- Upon arrival, Mr YEKATOM reassured the local population that he did not come to harm Muslims and asked that everyone stay and practice their religion freely. P-8013 felt reassured by his words;
- P-8013 heard how Mr YEKATOM prevented the local population from harming Muslims in MBAÏKI;
- Mr YEKATOM saved a Muslim woman arrested in BAGANDOU who was travelling from BETOU, and brought her to BANGUI;
- Mr YEKATOM intervened to save a Muslim from PK5 named KOYABADE who was being assaulted by youth in BOSSONGO in 2014. KOYABADE was brought to the gendarmerie by Mr YEKATOM's elements after which Mr YEKATOM called the president of the Muslim youth, a journalist from NDEKE LUKA and Mr Emotion NAMSIO. Mr YEKATOM ensured that KOYABADE was escorted safely to BANGUI;
- Mr YEKATOM facilitated attendees' travel to a cultural ceremony in BANGUI including individuals of pygmy and a Mbororo ethnicity;
- Mr YEKATOM brought back the [REDACTED] gendarmerie and village chiefs;
- During his time in [REDACTED], Mr YEKATOM ensured that P-8013 felt safe. He showed respect for P-8013's religious practices and ensured that he was able to celebrate Ramadan and pray freely;
- Mr YEKATOM organised a meeting to discuss the reconstruction of the [REDACTED] mosque which was previously destroyed by the [REDACTED] youth. The youth also destroyed many of the Muslims' houses;

- Mr YEKATOM organised many football games to encourage social cohesion between different villages on the MBAÏKI route. Mr YEKATOM said that this social cohesion was to reconcile ex-members of armed groups whether from the SELEKA or the ANTI-BALAKA side.

55. P-8013's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* the Muslim population. Upon his arrival in [REDACTED], Mr YEKATOM immediately reassured the population. His actions aligned with his words as he intervened to protect the security of many Muslims despite not knowing them personally, demonstrating his commitment to protecting all civilians regardless of religious affiliation. P-8013's testimony demonstrates Mr YEKATOM's respect for P-8013's and all Muslims' faith.

56. P-8013's statement also details several external factors that should be considered to minimise Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c) in the event of conviction, such as the significant role played by the SELEKA in inciting the displacement of Muslims from [REDACTED] to MBAÏKI and the destruction of the mosque and Muslims' houses by the [REDACTED] youth. Both reflect external factors completely out of Mr YEKATOM's control which contributed to the harm and displacement experienced by the Muslims. Mr YEKATOM could not have prevented these events which happened prior to his arrival in [REDACTED].

57. Finally, P-8013's testimony highlights Mr YEKATOM's effort to deter the local population from attacking Muslims which should also be taken into account by

the Chamber in the event of conviction as lowering Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c).

ix. MAMENEMOKOWA Gregoire Nicaise (P-8016)

58. The Defence tenders for formal submission P-8016's statement collected on 22 August 2024 totalling approximately 5 pages.³³ The witness's proposed testimony establishes the following:

- P-8016 is a forestry technician and mechanic in BANGUI;
- P-8016 and Mr YEKATOM have known each other since growing up and attending primary school together;
- P-8016 recalls Habib BEINA telling him that Mr YEKATOM's group did not attack nor harm Muslims and that their only objective was the SELEKA and DJOTODIA;- this conversation took place near the PK9 barrier at the time SAMBA-PANZA was president and KAMOUN was prime minister;
- Mr YEKATOM organised a football game at SAGBADO between Christians and Muslims and awarded the winners with a "reconciliation" trophy. After the match, the participants exchanged together;
- Mr YEKATOM organised similar football games in PISSA during SAMBA-PANZA's presidency and before he became an MP;
- Mr YEKATOM purchased school benches in BOSSONGO and PISSA so that they could be made available to schools.

59. P-8016's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance, unity and social cohesion in CAR after the charged events. It also shows Mr YEKATOM's good intentions, character and dedication to ensure that Muslims could live without fear of being harmed by the Christian

³³ CAR-D29-0009-0876-R01.

population. Further, Mr YEKATOM's initiative to purchase school benches is an example of his generosity and a symbol of his dedication towards his community.

60. Further, the Defence submits that P-8016's conversation with Habib BEINA should be considered in the Chamber's evaluation in the event of conviction as reducing Mr YEKATOM's degree of intent pursuant to Rule 145(1)(c).

x. MOZANGA GANZO Maximin (P-1600)

61. The Defence tenders for formal submission P-1600's statement collected on 14 August 2024 totalling approximately 13 pages.³⁴ The witness's proposed testimony establishes the following:

- P-1600 was general vicar of the St-Jeanne d'Arc Cathedral in MBAÏKI from 2009 to 2023;
- During the SELEKA period, an incident occurred in MBATA involving a Muslim killing a young man which resulted in houses being burnt in both Muslim and Christian communities. Following this incident, the prefect asked the MBATA population not to create a crisis for nothing so as to avoid SELEKA reprisals which were known to be disproportionate and to target entire localities;
- The SELEKA incited Muslims from surrounding villages to group in MBAÏKI in exchange for financial compensation. The witness understood this as a scam because the SELEKA told Muslims that they would be killed if they stayed in their localities in order to receive financial compensation;
- Heavy weapons were seen being transported from the homes of certain Muslims and the central mosque onto the Chadian convoys the day of their departure; this infuriated the local population leading the youth to destroy the mosque near YERIMA;

³⁴ CAR-D29-0009-0819-R01.

- Muslims declared themselves as Chadian expatriates by filling out an information sheet which was conditional to their evacuation; this internal organisation was necessary in order for the Chadian army to send the correct amount of trucks;
- P-1600 signed an agreement by which a Muslim family bequeathed him the management of their concession in exchange for a right of first refusal should someone wish to buy the property;
- An incident at the Fatima church in BANGUI, where Gary MAMADOU's son was seen amongst SELEKA elements, provoked the MBAÏKI population to retaliate by destroying MAMADOU's house and the BAGUIRMI mosque. This event also contributed to the population's reluctance for Muslims to return;
- Mr YEKATOM contributed to peace on the axis and intervened against local youth who proclaimed themselves as ANTI-BALAKA and who created barriers to ransom the population;
- Mr YEKATOM collaborated with MISCA. The latter provided him with fuel so that he could intervene and ensure security in remote areas to which the MISCA did not want to go;
- Mr YEKATOM started the construction of a school in KAPOU when he became deputy;
- Mr YEKATOM created a security company named KOYA where he employed vagrants to give them discipline and structure;
- P-1600 describes the return of many MBAÏKI Muslims.

62. The Defence submits one associated exhibit, the certificate of sale of Ms BATOU's property, which forms an integral part of P-1600's testimony.³⁵

³⁵ CAR-D29-0009-0818.

63. P-1600's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR during and after the charged events. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* others. For instance, Mr YEKATOM's speech at St-Jeanne d'Arc was a sincere effort to deter and dissuade anyone from harming Muslim civilians and demonstrates Mr YEKATOM's commitment to protecting the Muslim population, thereby also reducing his degree of responsibility and intent pursuant to Rule 145(1)(c).
64. The Defence submits that P-1600's evidence is also relevant for the purpose of the Chamber's evaluation of the gravity of the crime(s) with regard to its determination of the number of victims and evaluation of the damage caused to them in the event of conviction pursuant to Article 78(1) and Rule 145(1)(c). Indeed, P-1600's account of the Muslims' weapons being loaded onto the Chadian trucks implies that not all individuals being transported were civilians, thereby reducing the perceived extent of harm and displacement attributed to Mr YEKATOM in the event of conviction.
65. Moreover, P-1600's testimony shows the return of several MBAÏKI Muslims after their evacuation by Chadian convoy indicating a reduction in their prolonged suffering which should be considered by the Chamber pursuant to Rule 145(1)(c). Those who did not return were known to be implicated with SELEKA or unable to return due to unrelated incidents such as the event at the Fatima Church allegedly involving the son of a Muslim parliament member, MAMADOU Gary. These factors that delayed the return of Muslims to their communities are external to Mr YEKATOM's involvement and should therefore not be held against him when determining his sentence in the event of conviction.

66. P-1600's statement also details several external factors that should be considered to minimise Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c) in the event of a conviction. For instance, the incident in MBATA was a serious event caused by external actors with no link whatsoever to Mr YEKATOM resulting in heightened fear among the Muslim population leading to their displacement. P-1600's account of how the SELEKA used fear to manipulate Muslims from surrounding villages into fleeing to MBAÏKI should also be taken into account to diminish Mr YEKATOM's degree of responsibility since the displacement is directly attributable to the SELEKA and is completely independent of Mr YEKATOM's actions. Similarly, the organisation of the Muslims' departure by the Chadian authorities, which occurred independently of Mr YEKATOM's involvement and prior to his arrival in MBAÏKI, should also be factored in to reduce his degree of responsibility.

xi. VACKAT Thierry Georges (P-8019)

67. The Defence tenders for formal submission P-8019's statement collected on 1 September 2024 totalling approximately 7 pages.³⁶ The witness's proposed testimony establishes the following:

- P-8019 is an expert in civil protection, defence and security. Between 2013 and 2016, P-8019 was *conseiller national de transition*. In 2016, he was elected as an MP in the National Assembly of CAR;
- In 2014 or 2015, when KAMOUN was prime minister, Mr YEKATOM organised a voluntary disarmament at the PISSA gendarmerie. Mr YEKATOM organised a similar initiative when TOUADERA was President;

³⁶ CAR-D29-0009-0881-R01.

- During this period, Mr YEKATOM billeted the youth he had disarmed at BERENGO and near ZILA to await the government-organised disarmament. The youth helped the local population with their farming;
- Mr YEKATOM attended the BRAZZAVILLE Forum as part of the security committee and asked the committee to ensure the population's security. After his return from the forum, Mr YEKATOM sensitised the population on reconciliation and intercommunal peace;
- Mr YEKATOM attended the BANGUI Forum and visited BODA in this context as part of a delegation to raise awareness among the population;
- During the 2015-2016 legislative elections, P-8019 learned that Mr YEKATOM had applied to become an MP and his application was approved. At the time, P-8019 was president of the defence and security committee at the National Assembly of which Mr YEKATOM was part of;
- In 2018, Mr YEKATOM opposed the impeachment of Karim MECKASSOUA, president of the National Assembly, because it was an unconstitutional manoeuvre;
- Mr YEKATOM was actively committed to restoring peace. He regularly intervened at the National Assembly about the need to promote equality among all. He also criticised the fact that certain military moved up the military ranks, while others stayed the same;
- Mr YEKATOM was involved in awareness efforts to allow the free circulation of the Muslim and Christian population in PK5, carried out on both the SELEKA and ANTI-BALAKA sides;
- On 1 May 2018, following an attack on the FATIMA Church, Mr YEKATOM was one of the first to help injured people and appease the Christian population to avoid reprisals. At a following session at the National Assembly, Mr YEKATOM criticised the government's inaction. He defended intercommunal peace and wanted to avoid tensions;

- Mr YEKATOM took many initiatives for education, such as the construction of a school in LESSE and KAPOU and invested in lamps to enable children to read after sunset;
- Mr YEKATOM built a health centre in BOSSONGO;
- Mr YEKATOM created a security company to help reduce unemployment and steer young people away from criminal activities;
- Mr YEKATOM created an NGO to help rural populations.

68. P-8019's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote religious tolerance and social cohesion in CAR after the charged period. P-8019 provides compelling evidence showing Mr YEKATOM's dedication to ensuring that Muslims and Christians can live peacefully together.

69. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* others. After being elected as an MP, Mr YEKATOM chose to invest his increased earnings in meaningful ways by providing financial assistance to those in need, investing in initiatives to support education and creating a security company to fight unemployment and reduce criminal activities. These actions reflect Mr YEKATOM's generosity and commitment towards his community.

xii. [REDACTED] (P-8020)

70. The Defence tenders for formal submission P-8020's statement collected on 3 September 2024 totalling approximately 7 pages.³⁷

71. At the outset, the Defence requests that P-8020's identity not be disclosed to the public, as he would face an objectively justifiable risk to his legitimate interests. As Mr YEKATOM is portrayed publicly, in the context of the current

³⁷ CAR-D29-0009-0888-R01.

proceedings, as being responsible for crimes *“against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions”*,³⁸ P-8020 has expressed well-founded fears of retaliation or stigmatisation by other Muslims who may criticise him for testifying for the Defence, despite being a Muslim himself. P-8020’s fear is further compounded by his professional responsibilities which could be negatively impacted should his cooperation with the Defence become known.

72. The witness’s proposed testimony establishes the following:

- P-8020 is a [REDACTED] in the PISSA commune;
- There were two groups of SELEKA in [REDACTED]: the first group led by Arniac was notorious for its misconduct having killed a resident of BONGOMBE, while the second was composed of Goulas and did not get along with the first group. The second group appeased the population but there was still distrust. The population considered the first group to be SELEKA and the second to be Goulas;
- P-8020 became acquainted with Mr YEKATOM because the latter inquired [REDACTED] about the behaviour of the SELEKA billeted at BERENGO. To prevent them from stealing and causing trouble, Mr YEKATOM provided them with tools for odd jobs, as they were struggling to feed themselves. He wanted to avoid them stealing and making trouble. Some of these Seleka have since settled there permanently;
- Before being elected MP, Mr YEKATOM would protect his zone against poachers that targeted Mbororos ;
- In 2016, he ensured the security of the population in LESSE and PISSA;

³⁸ ICC-01/14-01/18-403-Red-Corr, page 103.

- After being elected MP, Mr YEKATOM bought solar panels which he installed in ten villages;
- Mr YEKATOM recruited seven youths to work at his private security company, *Koya Sécurité*, because he wanted to provide young unemployed people with a valuable employment opportunity. P-8020 selected these individuals based on their good morality;
- Mr YEKATOM initiated a project for the rehabilitation of the BERENGO health centre and teachers' housing at the BERENGO High School in collaboration with the MINUSCA. These projects were abandoned following his arrest;
- Every Mother's Day, Mr YEKATOM would send money to the women of BERENGO and nearby localities, joining them to eat and celebrate;
- Mr YEKATOM visited BONGOMBE every 29 March to commemorate the death of Barthélémy BOGANDA;
- Similarly, Mr YEKATOM visited BONGOMBE every 13 August to celebrate Independence Day.

73. P-8020's evidence is relevant for the purpose of mitigation under Article 78(1) and Rules 145(1)(b) and 145(2)(a) as it details the genuine and sustained efforts made by Mr YEKATOM to bring back peace and security and to promote social cohesion in CAR after the charged period.

74. It also shows Mr YEKATOM's good intentions and character *vis-à-vis* others. Prior to his election as MP, Mr YEKATOM chose to spend what little financial means he had to purchase tools so that the SELEKA - previously his military opponents could sustain themselves in turn, ensuring the safety of the local population. After being elected as an MP, Mr YEKATOM chose to invest his increased earnings in meaningful ways by investing in solar panels, collaborating with the MINUSCA on housing and education projects, and creating employment opportunities for young people who were previously

jobless. Further, Mr YEKATOM demonstrated generosity and commitment towards his community by bringing together the population for celebrations.

75. Moreover, P-8020's statement details the SELEKA's misconduct which led to widespread distrust among the local population. This factor, completely unrelated to Mr YEKATOM's actions, should be taken into account in the event of conviction to minimise his degree of participation and intent pursuant to Rule 145(1)(c).

B. Should the Chamber apply the Rule 68 framework, the Testimonial Material meets the admissibility criteria under Rule 68(2)(b)

76. Should the Chamber be minded to apply the framework under Rule 68, the Defence requests that the Testimonial Material be recognised as formally submitted under Rule 68(2)(b) as all the requirements therein are fulfilled. However, bearing in mind the more flexible sentencing framework as argued above, the Defence submits that the Chamber should adopt a more lenient interpretation of the Rule 68(2)(b) requirements.³⁹

77. In addition, as previous Chambers have determined it appropriate, the Defence requests to be dispensed from the requirement to have a member of the Registry witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b)(ii) and (iii). In the alternative, and noting that completing the certifications requires significant time and resources from the Defence which are otherwise crucial to prepare closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

³⁹ *Supra*, paras. 6-16.

a) *The Testimonial Material is appropriate for introduction through Rule 68(2)(b)*

i. *The Testimonial Material is correctly identified as 'prior recorded testimony' for the purposes of Rule 68(2)(b)*

78. The Testimonial Material comprises the written statements collected from the 12 witnesses as well as the associated exhibits which were either used or explained by each witness and which therefore constitute an integral part of their respective testimonies.⁴⁰ As reflected in the statements, each of the witnesses understood at the time that the information they provided may be relied upon in the context of legal proceedings specifically with regard to sentencing submissions and that they may be called upon to provide their testimony in public.⁴¹

ii. *The Testimonial Material has been prepared in a reliable manner*

79. The Testimonial Material has sufficient *indicia* of reliability for the purposes of formal submission pursuant to Rule 68(2)(b).⁴² For each of the witnesses, the prior record testimony was: (i) taken in the ordinary course of proceedings, (ii) signed by the witness and the investigator(s) conducting the interview, (iii) given voluntarily, (iv) verified by the witness at the time of the statement and, (v) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence. In this regard, each statement contains an express acknowledgement attesting to the voluntariness and the truth of its contents to the best of the witness' knowledge.

80. Each statement was obtained in a language understood by each of the witnesses, namely French and/or Sango, and read back by a qualified interpreter assigned by the Registry when necessary. In doing so, each of the

⁴⁰ ICC-01/14-01/18-1833-Conf-Corr, para. 24. A public redacted version is available: ICC-01/14-01/18-1833-Corr-Red.

⁴¹ ICC-01/14-01/18-1833-Conf-Corr, para. 23.

⁴² ICC-01/14-01/18-1833-Conf-Corr, para. 42.

witnesses was informed of their right to make corrections and clarifications to their statement.

81. Nor do the statements exhibit any issues pertaining to the credibility of the information therein that are so manifest and of such nature that questioning the witnesses would be necessary.

iii. The Testimonial Material does not relate to matters concerning the charged acts and conduct of the accused

82. Further, the Defence submits that the Testimonial Material goes to proof of a matter other than the acts and conduct of the accused. References to Mr YEKATOM therein do not relate to the charged acts and conduct of the accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish the accused's criminal responsibility for the crimes charged.⁴³

83. Indeed, the testimonies of P-3010, P-1317, P-8017, P-8012, P-8013, P-8016, P-8019, P-8020, and P-8021 are limited to Mr YEKATOM's acts and conduct *after* the charged period,⁴⁴ while P-8010 and P-8014's testimonies relate to Mr YEKATOM's conduct *before* the charged period.

84. With regard to P-1600's testimony, the Defence does not intend to rely on paragraphs 34 to 44 which pertain to a meeting with Mr YEKATOM in PISSA and the St-Jeanne d'Arc Church meeting,⁴⁵ for the purpose of establishing Mr YEKATOM's acts and conducts. The Defence submits that this reference is peripheral and does not constitute the core of P-1600's testimony and thus does not entail that his testimony cannot be introduced under Rule 68(2)(b).⁴⁶

⁴³ ICC-01/14-01/18-1833-Conf-Corr, para. 28.

⁴⁴ ICC-01/14-01/18-2643-Conf, para. 6.

⁴⁵ CAR-D29-0009-0819-R01, paras. 34-44.

⁴⁶ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, [ICC-02/04-01/15-596-Red](#), 18 November 2016, para. 13.

85. In the same vein, with regard to P-8021's testimony, the Defence does not intend to rely on paragraph 23 to establish Mr YEKATOM's absence in CATTIN on 05 December 2013.⁴⁷ The Defence contends that this reference is peripheral and does not form the core of P-8021's testimony and therefore, it should not preclude the introduction of her testimony under Rule 68(2)(b).⁴⁸

86. In any event, to the extent that any part of the Testimonial Material is deemed to pertain to the acts and conduct of the accused, it should not preclude the introduction of the written statements as part of the Chamber's holistic assessment to determine an appropriate sentence.

iv. The introduction of the Testimonial Material through Rule 68(2)(b) best serves the interests of justice

87. The interests of justice are best served by the introduction of the testimonial material through Rule 68(2)(b).⁴⁹ Its introduction would streamline the presentation of evidence during the sentencing phase and safeguard expeditiousness. It would also save the Chamber and Parties' resources that may instead be utilised for other activities, notably those related to the Defence's closure of its case and the Chamber and Parties' preparations ahead of the final arguments.

b) Request to dispense with certification requirement under Rule 68(2)(ii) and (iii)

88. The Sentencing Procedure Decision instructed the parties to submit "any proposed arrangement for the obtention of accompanying declaration(s) under Article 68(2)(b)(ii) of the Statute" at the time of filing any request for additional written testimonial evidence.⁵⁰ In response to the Chamber's query, the Defence respectfully submits the following steps and challenges which demonstrate the

⁴⁷ CAR-D29-0009-0895-R01, para. 23.

⁴⁸ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, [ICC-02/04-01/15-596-Red](#), 18 November 2016, para. 13.

⁴⁹ ICC-01/14-01/18-1833-Conf-Corr, paras 40-41.

⁵⁰ ICC-01/14-01/18-2600.

intricate and time-sensitive coordination efforts involved in securing the accompanying declaration for each witness:

- Initial contact with the witness: The certification process begins with an attempt to reach out to the witness. Communication with the witness is often impacted by local conditions including unreliable network, unavailability due to the rainy season and frequent power outages. Once contact is established, the Defence inquires about the witness's availability.
- Securing the AVL room in Bangui: Upon confirming the witness's availability, the Defence must then coordinate with COCAR personnel and the Victims and Witnesses Unit ("VWU") to secure the Audio-Visual Link ("AVL") room at the Field Office in Bangui. Both COCAR and VWU staff must independently confirm the availability of an AVL room to conduct the certification.
- Arranging linguistic interpretation: Following the AVL room's availability, the Defence reaches out to the Counsel Support Section ("CSS") to secure a linguistic interpreter for the read-back procedure. CSS then communicates with the Language Services Section ("LSS"), which in turn confirms the availability of an interpreter through CSS. This confirmation is then communicated back to the Defence via CSS.
- Coordination with CMS: Once interpretation services are confirmed, the Defence liaises with the Court Management Section ("CMS") to secure the availability of a certifying officer. It is pertinent to note that CMS has been delegated the authority to proceed with certification by the Registry Legal Office.⁵¹ CMS will confirm the availability of both a certifying officer and another interpreter who will assist the certifying officer in reading the

⁵¹ ICC-01/14-01/18-508.

statement during the certification process. However, there are frequent occasions where the availability of CMS personnel does not align with the availability of the AVL room, necessitating further coordination with all relevant entities.

- Witness' presence in BANGUI: After confirming the availability of all required personnel and facilities, the Defence must ensure the witness' presence in BANGUI on the day of the certification. For witnesses that live outside of BANGUI, the Defence must organise their transportation to the capital while anticipating road and weather conditions.
- Logistical support from VWU: The Defence then coordinates with VWU to ensure the safe transportation of the witness to the Field Office. A member of the Defence team will escort the witness to a secure location in BANGUI, where they will board a VWU vehicle to be transported to the Field Office premises. The witness cannot enter the Field Office without VWU assistance due to strict security protocols enforced by VWU.
- Coordination with CMS for audio-video link: The Defence next coordinates with CMS to receive the necessary audio-video link. This link is then forwarded to the Registry IT personnel in BANGUI. The Defence must further coordinate with CMS to ensure that the IT personnel test the link on the day of the certification, verifying that the technical part is in place prior to the witness's arrival at the Field Office.
- On-site coordination during certification: During the certification process, the Defence member in BANGUI must work closely with the certifying officer in THE HAGUE, who needs to receive printed and scanned pages of the statement or read-back form. This coordination is crucial to ensure the smooth progression of the certification process while adhering to security protocols. Due to unstable internet connection, the certifying

officer often communicates with members of the Defence team in THE HAGUE when any issue arises so that the latter can then liaise with the Defence member in BANGUI.

89. Each of these steps presents its own set of challenges which can hinder the certification process at any stage. It is not uncommon for witnesses to be unable to provide their schedule with certainty ahead of time, which in turn complicates the scheduling with the other involved parties. Additionally, the absence of a single Registry entity responsible for overseeing all necessary sections for certification places the burden on the Defence to individually contact each section, often through intermediaries like CSS, to ensure schedules align. Given that CMS requires the Defence to submit certification requests at least three working days in advance—a deadline that is sometimes unfeasible due to the limited availability of certain witnesses—the Defence frequently has to restart the process and coordinate new proposed dates with all participants involved.

90. In addition, the Defence envisages that its ability to obtain the relevant certification specifically in the context of sentencing will be further curtailed due to the rainy season. Indeed, many of the witnesses introduced in the present request live in remote areas outside of BANGUI.⁵² In order for their certification to be conducted, the Defence must arrange their travel to BANGUI using roads that are considerably impacted by the rain. With regard to witnesses that live outside of the Central African Republic, the Defence will need to organise additional missions or contact local authorities so that they may be certified. Moreover, many witnesses do not have telephones and are only reachable through other individuals. The Defence also anticipates its certifications to be

⁵² P-8012 in MBAÏKI; P-8013 in BOSSONGO; P-8019 in KINSHASA (RDC); P-8020 in BONGOMBE.

impacted by the upcoming elections scheduled in October 2024 which have escalated political tensions and disorder.⁵³

91. Further, as demonstrated by the numerous steps above, completing the certifications requires significant time and resources from the Defence. These resources are otherwise necessary for the Defence to complete its closing arguments and prepare its sentencing submissions ahead of the Article 76 hearing scheduled for January.

92. In light of the above, the Defence respectfully requests that the Chamber consider these foreshadowed challenges, many of which are outside the Defence's control. On the basis that previous Trial Chambers have considered it appropriate,⁵⁴ the Defence submits that there is good cause to dispense with the requirement to have a member of the Registry to witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b)(ii) and (iii) for the purposes of sentencing. This course of conduct would ensure the efficient and expeditious conduct of the potential sentencing procedure. As argued above, the Defence recalls that the jurisprudence of the Court suggests that Rule 68 procedural prerequisites are not a procedural bar for sentencing in the same way they are at trial and that Trial Chambers enjoy greater flexibility in considering relevant evidence and submissions at the sentencing stage than they ordinarily have during trial.⁵⁵

93. Lastly, the Defence submits that dispensing with the certification requirement would not cause undue procedural prejudice. The Defence confirms that all written statements sought to be tendered for potential sentencing were given

⁵³ ICC-01/14-01/18-2656-Conf-Anx, paras. 5-19.

⁵⁴ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Public Redacted version of 'Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing', [ICC-01/04-02/06-2385-Red](#), 23 August 2019, para. 10; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request to dispense with certain certification requirements under Rule 68(2)(b)(ii) of the Rules, [ICC-01/12-01/18-2610](#), 18 July 2024.

⁵⁵ *Supra*, paras. 6-16.

under declaration confirming the witness's identity; have been signed and given voluntarily; have been given under declaration of honour and conscience that their content is accurate. Further, the statements are internally consistent and coherent and therefore show sufficient *indicia* of reliability.

94. In the alternative, and noting that completing the certifications requires significant time and resources from the Defence which is otherwise necessary to complete closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

CONCLUSION

95. In light of the above, the Defence submits that the Testimonial Material is suitable and appropriate for admission for potential sentencing without the procedural prerequisites of Rule 68 needing to have been met. The Testimonial Material is relevant to the Chamber's determination pursuant to Article 76(1), probative, bears sufficient *indicia* of reliability for admission, and is not repetitive of evidence already on the record.

96. In the alternative, should the Chamber be minded to apply the framework under Rule 68, the Defence submits that the requirements are fulfilled for the Testimonial Material to be recognised as formally submitted under Rule 68(2)(b). However, the Defence requests to dispense with the requirement pursuant to Rule 68(2)(b)(ii) to have a member of the Registry witness the declarations accompanying the prior recorded testimony. In the alternative, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

CONFIDENTIALITY

97. This request is filed on a confidential basis as it concerns the identities and confidential information of protected witnesses. A public redacted version will be filed in due course.

RELIEF SOUGHT

98. In light of the above, the Defence respectfully requests Trial Chamber V to:

INTRODUCE the Testimonial Material for the purposes of potential sentencing;

or, in the alternative;

RECOGNISE the Testimonial Material as formally submitted under Rule 68(2)(b); and

ORDER that the Defence be dispensed from the requirement to have a member of the Registry witness the accompanying declarations pursuant to Rule 68(2)(b)(ii), with respect to the prior recorded testimony sought to be introduced through Rule 68(2)(b) for sentencing purposes;

or, in the alternative,

ORDER that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

RESPECTFULLY SUBMITTED ON THIS 25th DAY OF NOVEMBER 2024



Me Mylène Dimitri
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The Hague, the Netherlands