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Date: **13 December 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 Redacted Version of the Yekatom Defence Written Submissions Relevant  
to Sentencing**

**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. Mr. Yekatom has never denied the existence of crimes committed in the context of the CAR crisis or the harm suffered by victims and in particular to the Muslim community in 2013 and 2014. Indeed, it was the very existence of such crimes that drove Mr. Yekatom to work towards the promotion of peace and to secure social cohesion, working alongside religious and local leaders to reach this goal. He did so both in his role as a FACA personnel and within his capacity as a member of parliament, and was only interrupted from continuing to do so following his arrest and subsequent transfer to the ICC.
2. Throughout the course of these proceedings, Mr. Yekatom has maintained his wish that the impact of the atrocities committed in CAR during the charged period be recognised, and his defence has been prepared and conducted accordingly. These submissions are therefore provided in accordance with Mr. Yekatom's consistent instructions and do not in any way seek to minimise the suffering of victims.

## **SUBMISSIONS**

### a) Applicable sentencing principles

3. The statutory framework relevant to sentencing is set out in articles 76, 77, and 78 of the Statute and rules 145, 146 and 147 of the Rules of Procedure and Evidence. It is the combination of these provisions which identify and provide the relevant factors to be assessed and then balanced in the determination of any applicable sentence.<sup>1</sup>
4. The following submissions, which are provided in accordance with the Trial Chamber's directions,<sup>2</sup> highlight aspects of the relevant sentencing framework and factors which are pertinent to the Chamber's determination of a fair, proportionate and appropriate sentence in the event of any conviction. The Defence intends to fully ventilate its position with regard to these factors in its oral submissions on potential sentencing during hearings scheduled between 8 – 10 January 2025.<sup>3</sup>

#### *i. Object and purpose*

<sup>1</sup> ICC-01/04-01/06-3122 A4 A6, paras. 32-35.

<sup>2</sup> ICC-01/14-01/18-2600, para. 9.

<sup>3</sup> ICC-01/14-01/18-2600, para. 10.

5. The statutory framework does not explicitly articulate the object and purpose of sentencing individuals before this Court. As such, the jurisprudence has routinely emphasised retribution and deterrence as the main objectives of sentencing,<sup>4</sup> with reference to the preamble of the Statute,<sup>5</sup> the text of which provides a summary of the overarching aims and purposes of the Statute as a whole.
6. Accordingly, the scope of the objectives of sentencing cannot be limited by the preamble of the Statute alone. As expressly articulated by Judge Ibáñez Carranza, ‘sentencing serves various purposes, including in particular retribution and prevention in all its variants (emphasis added)’.<sup>6</sup> In doing so, Judge Ibáñez Carranza paid due regard to the principle of positive general prevention,<sup>7</sup> ‘which includes contributions to the promotion of restorative justice and reconciliation as a way to advance the enforcement of the rule of law and therefore sustainable peace’.<sup>8</sup> On a specific or individual level, positive prevention further includes the resocialisation and reintegration into society of the convicted person.<sup>9</sup>
7. As will be further set out in oral submissions, the Chamber must therefore consider whether any applicable sentence imposed against Mr. Yekatom – both in the context of the CAR crisis and his individual circumstances as a former military personnel and member of parliament – would adequately allow for the reintegration of Mr. Yekatom

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<sup>4</sup> ICC-01/12-01/18-2662, para. 16, ICC-01/04-02/06-2442, para. 9, ICC-01/12-01/15-171, para. 66, and ICC-01/04-01/07-3484-tENG-Corr, para. 38.

For the scope of retribution see in particular ICC-01/04-02/06-2442, para. 10 (‘[r]etribution must not be understood as fulfilling a desire for revenge, but rather as an expression of the international community’s condemnation of the crimes’). See also ICC-01/12-01/15-171, para. 67, ICC-02/04-01/15-1819-Red, para. 389. See further, IT-95-14/2-A, Prosecutor v. Kordić and Čerkez, Appeal Judgment, para. 1075 (‘Kordić and Čerkez AJ’) (‘[i]t is important to state that retribution should not be misunderstood as a way of expressing revenge or vengeance. Instead, retribution should be seen as an objective, reasoned and measured determination of an appropriate punishment [...]’). See also ICC-02/04-01/15-1819-Red, para. 389. For the scope of deterrence (i.e. as part of the theory of negative general prevention) see ICC-01/12-01/18-2662, para. 16 and cites therein. See also IT-02-60-T, Prosecutor, Blagojević and Jokić Trial Judgment, para. 822.

<sup>5</sup> See e.g. ICC-01-12-01/18-2662, para. 16 and fn. 40.

<sup>6</sup> ICC-02/04-01/15-2023-Anx1, p. 4. For an overview of the general theories of criminal punishment see ICC-02/04-01/15-2023-Anx1, see also Hola, B., International Sentencing – A Game of Russian Roulette or Consistent Practice, 2012, p. 32 and cites therein.

<sup>7</sup> Also referred to as affirmative prevention as applied at the *ad hoc* tribunals see e.g. Kordić and Čerkez AJ, para. 1082.

<sup>8</sup> ICC-02/04-01/15-2023-Anx1, p. 4 and paras. 4, 170, 185, 191-193 and cites therein (‘[t]he specific purpose of sentencing as an expression of positive general prevention in the context of international criminal law and international criminal justice, namely ‘contributions to the promotion of peace and reconciliation’, has also been acknowledged repeatedly by the Assembly of States Parties in numerous resolutions as a ‘relevant consideration in sentencing decisions’). See also ICC-01/04-01/07-3484-tENG-Corr, para. 38 and ICC-01/12-01/15-171, para. 67.

<sup>9</sup> ICC-02/04-01/15-2023-Anx1, paras. 84, 90 with reference to ICC-01/04-01/07-3484-tENG-Corr, para. 144.

and more pertinently, contribute to the maintenance of peace and reconciliation in CAR.

ii. *Determination of a fair, proportionate and appropriate sentence*

a. *Step-by-step calculation*

8. Whilst the Chamber has discretion in its determination of the sentence to be imposed,<sup>10</sup> this is not unfettered and must be exercised in a manner which fully ensures that the convicted person is not punished beyond his/her actual culpability.<sup>11</sup> To this end, and to prevent the arbitrary selection of a sentence without proper basis, article 78 mandates a step-by-step calculation process to be followed in the event of any conviction.
9. First, and in accordance with article 78(1), the Chamber is to determine a fair, proportionate and appropriate sentence for each individual crime.<sup>12</sup> In doing so, and as discussed below, the Chamber is to balance the applicable factors as set out in article 78(1) and rule 145(1) and (2).<sup>13</sup> Second, and only where an individual is convicted of more than one crime, the Chamber is to then determine a joint sentence which specifies the total period of imprisonment in accordance with article 78(3). In this regard, whilst the legal framework does not contain mandatory minimum or maximum sentences, or sentence ranges, for specific crimes,<sup>14</sup> any individual or joint sentence cannot exceed the applicable penalties as set out in article 77. Third, and in accordance with article 78(2), the Chamber is to then deduct the time previously spent in detention in accordance with an order from the court,<sup>15</sup> from the total period of imprisonment – imposed either as a joint sentence or a single sentence for a single crime. In relation to Mr. Yekatom, any sentence must therefore deduct the time he has spent imprisoned as of 17 November 2018, following his transfer to the custody of the Court.<sup>16</sup>

b. *Prohibition against double-counting*

<sup>10</sup> ICC-01/04-02/06-2667-Red, para. 21 with reference to ICC-01/05-01/13-2276-Red, para. 22 and ICC-01/04-01/06-3122, para. 40.

<sup>11</sup> ICC-01/12-01/18-2662, para. 17, ICC-01/04-02/06-2442, para. 11, ICC-01/04-01/06-3122, paras. 34, 39-40 and ICC-01/05-01/13-2276-Red A6 A7 A8 A9, para. 113.

<sup>12</sup> ICC-01/04-02/06-2667-Red, para. 129 and ICC-01/05-01/13-2312, para. 18(ii).

<sup>13</sup> ICC-02/04-01/15-1819-Red, para. 50 with reference to ICC-01/04-01/06-3122, paras. 32-34.

<sup>14</sup> See most recently ICC-01/12-01/18-2662, para. 14 and cites therein.

<sup>15</sup> See most recently ICC-01/12-01/18-2662, para. 31.

<sup>16</sup> ICC-01/14-01/18-403-Conf-Corr, para. 3 and fn. 3.

10. As repeatedly held by the Appeals Chamber, there is a ‘well-established prohibition on ‘double-counting’ of factors relevant to the determination of a sentence, such that ‘factors taken into consideration as aspects of the gravity of a crime cannot additionally be taken into account as separate aggravating circumstances, and vice versa’’.<sup>17</sup> Whilst the scope of the assessment of the gravity of the crimes and the scope of aggravating circumstances is further set out below, the risk of double-counting is ‘most likely to occur in a trial chamber’s determination of the appropriate individual sentence’,<sup>18</sup> i.e. in the first step of the calculation set out above in accordance with article 78(1). This is as a result of the degree of overlap between: (i) the gravity of the crime as set out in article 78(1); (ii) the extent of the damage caused and the degree of participation set out in rule 145(1)(c); and (iii) the aggravating circumstances listed in rule 145(2).<sup>19</sup>
11. At this stage, while acknowledging that the categorisation of the relevant factor is not of overriding concern *per se*,<sup>20</sup> the Defence emphasises the importance of a clear and explicit distinction between instances where a particular factor has been given weight as part of the gravity assessment and where it has been considered as an aggravating circumstance. This express distinction in the reasoning ensures a careful evaluation, demonstrating that the same factor is not relied upon more than once when determining the individual sentence for each crime.<sup>21</sup> As set out further below, this is particularly pertinent given the underlying facts and circumstances of the case against Mr. Yekatom and in particular, the shared identity between the alleged common plan and the criminal policy.<sup>22</sup>

*c. Joint sentence*

<sup>17</sup> ICC-01/04-02/06-2667-Red, para. 123 and fn. 253, ICC-01/05-01/13-2276-Red, paras. 127-129. See also ICC-02/04-01/15-2023-Anx1, paras. 25-33 and cites therein.

<sup>18</sup> ICC-01/04-02/06-2667-Red, para. 124 and ICC-01/05-01/13-2276-Red, para. 112.

<sup>19</sup> ICC-01/05-01/13-2276-Red, para. 112.

<sup>20</sup> ICC-01/05-01/13-2276-Red, paras. 4, 112

<sup>21</sup> ICC-02/04-01/15-2023-Anx1, para. 32 (‘it is clear that while a trial chamber can identify factors relevant to both the gravity of a particular crime and any aggravating circumstance, it must be ‘careful’ not to rely on the same factor more than once. It follows that, in cases where a given factor may be relevant to both the gravity assessment and as an aggravating circumstance, a trial chamber should be careful. In this regard, the sentencing decision must clearly state in its reasoning whether weight is given to this factor as part of the gravity assessment or as an aggravating circumstance. If this is not unambiguous, the trial chamber has not been ‘careful’ and the only reasonable conclusion is that a trial chamber has given weight to the same factor twice in contravention of the prohibition against double-counting’).

<sup>22</sup> See also ICC-01/14-01/18-2737-Conf-Corr, paras. 581-583.

12. In addition to the need to prevent the double-counting of factors in the determination of the sentence for each individual crime, it is also necessary to ensure that any relevant factual overlap between two or more crimes is taken into account when determining the overall joint sentence ‘with a view to ensuring that the convicted person is not actually punished beyond his or her real culpability’.<sup>23</sup> This process is equally applicable where the same underlying conduct is relied on to secure convictions for crimes which are only distinguished by their classification as either a war crime or crime against humanity.<sup>24</sup>

13. Accordingly, it is emphasised that whilst Mr. Yekatom is charged with 21 separate counts, the factual basis of the charged events is rather narrow and defined by limited geographical and temporal parameters such that there is a considerable degree of overlap between the underlying conduct within each of the four categories of charged events:

- i) Counts 1, 2, 3, 4, 5, 6 and 8 all concern the same conduct with regard to alleged events in Boeing/Cattin on 5 December 2013. In particular Counts 2 and 3 concern the murder of the same alleged victims,<sup>25</sup> and are charged as both a war crime and crime against humanity such that each crime is solely based on the existence of distinct contextual elements. Counts 4 (forcible transfer and deportation) and 5 (order for displacement) both concern the alleged dislocation of the same Muslim persons residing in Boeing/Cattin to PK5, other parts of CAR and neighbouring countries and characterised as a crime against humanity and war crime respectively. It is alleged that the victims would have been dislocated as a direct result of the factual allegations which underpin Counts 2 and 3, as well as Count 1 (the alleged attack against the civilian population in Bangui) and Count 6 (the alleged attack against the Boeing Mosque). Similarly, Count 1 is itself premised on the underlying conduct relied on for Counts 2 to 6, whilst Count 8 (persecution) is entirely based on conduct characterised as distinct crimes in Counts 1 to 6.

<sup>23</sup> ICC-02/04-01/15-1819-Red, para. 59. See also ICC-01/12-01/18-2662, paras. 40, 132-133.

<sup>24</sup> ICC-01/12-01/18-2662, para. 133.

<sup>25</sup> See ICC-01/14-01/18-403-Conf-Corr, pp. 104, 106 (‘the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market’).

- ii) Counts 11, 12, 13, 14, 15, 16 and 17 all concern the same alleged conduct which is stated to have taken place across the space of a few hours on or about 24 December 2013 at the Yamwara school base and concern victims from the Lapo family. In particular, Counts 12 and 13 concern the alleged torture of Lapo N'gomat as a war crime and crime against humanity whilst Counts 15 and 16 concern his alleged murder, again as both a war crime and crime against humanity. Further, Counts 11 (other inhumane acts) and 13 (cruel treatment) concern the alleged abduction and mistreatment of the same six victims which are premised on the same fact pattern and characterised as a war crime and crime against humanity. Moreover, Counts 11 and 13 are also based on the underlying conduct as relied upon for Count 14 (imprisonment and severe deprivation of liberty). Count 17 (persecution) entirely encompasses the factual conduct characterised as distinct crimes in Counts 11 to 16.
- iii) Counts 24, 25, 26, 27 and 28 all concern the same factual conduct with respect to the alleged takeover of the PK9-Mbaïki Axis. In particular, Counts 26 and 27 concern the alleged murder of Djido Saleh characterised as both a war crime and crime against humanity. Counts 24 (forcible transfer and deportation) and 25 (order for displacement) concern the alleged dislocation of Muslim victims from towns and villages across the axis on or about 10 January 2014 and on or about 6 February 2014 which is alleged to have occurred as a result of the same alleged conduct of Mr. Yekatom or acts allegedly attributed to him and again framed as both a crime against humanity and war crime. Moreover, Count 28 (persecution) is entirely based on the factual conduct characterised as the crimes set out in Counts 24, 25, 26 and 27.
- iv) Count 29 concerns allegations with regard to the alleged enlistment, conscription and use of child soldiers. Given that it is alleged that child soldiers would have been present throughout the charged period, the determination of a joint sentence which includes Count 29, must also consider the specific factual overlaps insofar as it is established that the alleged child soldiers were involved in any of the alleged conduct which underpin Counts 1-6, 8 and 24-28.

**b) Assessment of relevant factors**

*i) Individual circumstances*

14. In accordance with article 78(1), the individual circumstances of Mr. Yekatom are to be considered in the event of any conviction. In this respect, the Defence recalls the context in which the charged crimes allegedly occurred, in particular, the conflict between Seleka forces and Anti-Balaka forces and the dissolution and systematic persecution of the FACA shortly after the Seleka takeover of Bangui in March 2013.
15. At the time of the takeover, Mr. Yekatom held the position of Caporal Chef within the FACA. He had begun his military training in Bouar in 2004,<sup>26</sup> having followed in the footsteps of his grandfather, as well as his uncle Mr. Evariste Yekatom, a FACA lieutenant, and was subsequently positioned at Camp Kassai within the Battalion Provincial of the Republican Guards.<sup>27</sup> He progressed through the FACA, receiving his promotion to the rank of Caporal in 2009 and Caporal Chef in 2011, in the ordinary course and without privilege. Throughout his military career, he was never the subject of disciplinary sanctions in the army nor prior convictions,<sup>28</sup> and opposed the corrupt promotion of other personnel.<sup>29</sup> Even as a member of parliament, Mr. Yekatom continued to advocate against nepotism within the military and more broadly, against corrupt practices amongst his peers in the national assembly.<sup>30</sup>
16. Mr. Yekatom's commitment to military values provides the relevant framework for his conduct during the charged period and serves as individual circumstances which go to each individual crime. In particular, it is the reason why, following the Seleka takeover, he remained in his military position with the Republican Guards in Bangui and awaited orders to be given from the new Seleka authorities under the authority of General Abdel Kader.<sup>31</sup> His departure from his military post was necessitated only by virtue of the fact that he was abducted and then detained by Seleka forces who considered him to be a threat, as a FACA personnel.<sup>32</sup> It is also the reason behind his

<sup>26</sup> CAR-D29-0001-0081, p. 0085.

<sup>27</sup> CAR-D29-0001-0142. Mr. Yekatom would be sent on missions to the provinces from the Camp Kassai base see e.g. P-8024 : CAR-D29-0009-0909-R01, para. 14 ; P-8026 : CAR-D29-0009-0916-R01, para. 14.

<sup>28</sup> CAR-D29-0001-0142; CAR-OTP-2039-0071 dated 18 November 2015.

<sup>29</sup> D29-8014: CAR-D29-0009-0855-R01, para. 21.

<sup>30</sup> D29-8027: CAR-D29-0009-0934-R01, paras. 22-2, D29-8019: CAR-D29-0009-0881-R01, paras. 34-35.

<sup>31</sup> D29-8014: CAR-D29-0009-0855-R01, paras. 24-25; P-1786: T-198, p. 4, line 28 to p. 5, line 10. See also ICC-01/14-01/18-22737-Conf, para. 220.

<sup>32</sup> P-2027: T-040, p. 60, lines 10-16.

decision to respond to the request from Cpt. Ngremangou on 29 November 2013 ahead of the events on 5 December 2013.<sup>33</sup> Cpt. Ngremangou had been Mr. Yekatom's military supervisor as of 2010, following Mr. Yekatom's appointment to the archiving section of the army (3<sup>e</sup> bureau de l'état major / 'B3').<sup>34</sup>

*ii) Gravity*

17. For the purposes of article 78(1), the assessment of gravity must take into account both the gravity of the crime (including the particular act fulfilling its elements) as well as the gravity of the convicted person's culpable conduct (in particular the conduct constituting the elements of the relevant mode of liability).<sup>35</sup> In this regard, the factors stipulated in rule 145(1)(c) are to be considered in the evaluation of gravity provided that the factors relate to elements of the offence and mode(s) of liability.<sup>36</sup> The assessment of the gravity of the crimes and gravity of the culpable conduct requires a concrete assessment of the circumstances of the case, from both a quantitative and qualitative standpoint.<sup>37</sup>

18. With respect to the gravity of the crime, not all crimes are of equivalent gravity. In particular, crimes targeting property are considered less grave than crimes against persons.<sup>38</sup> This is of particular relevance in relation to any conviction article 8(2)(e)(vi) whereby the elements of the offence are met where the perpetrator directed the attack against the projected object even in the absence of any resulting destruction.<sup>39</sup> Accordingly, any conviction under Count 6 in relation to the alleged destruction of Boeing Mosque must consider the lesser gravity with respect to the fact it concerns a crime against a single property, which was not used to house or provide private shelter for individuals,<sup>40</sup> and was not the only mosque used by local

<sup>33</sup> See, CAR-OTP-2054-1480, row #314272 (for first contact available in OTP CDRs between attributed phone numbers of Messrs Yekatom and Ngremangou, at 10:50 on 29 November 2013).

<sup>34</sup> CAR-D29-0001-0142, p. 0143.

<sup>35</sup> ICC-02/04-01/15-1819-Red, para. 52, ICC-01/04-02/06-2442, para. 16.

<sup>36</sup> See e.g. ICC-01/12-01/18-2662, para. 22. Factors include: the extent of the damage caused, the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime, and/or the circumstances of manner, time and location, as well as the nature and degree of participation of the convicted person in the commission of the crime and his or her degree of intent.

<sup>37</sup> ICC-01/04-02/06-2442, para. 16 and ICC-01/04-01/07-3484-tENG-Corr, para. 43. As explained by ICTY Appeals Chamber, gravity 'does not refer to a crime's 'objective gravity', but rather to the particular circumstances surrounding the case and the form and degree of the accused's participation in the crime see IT-95-13/1-A, Prosecutor v. Mrkšić et al., Appeals Judgment, para. 375.

<sup>38</sup> ICC-01/04-02/06-2442, para. 14, ICC-01/04-01/07-3484-tENG-Corr, para. 43 and ICC-01/12-01/15-171, para. 72.

<sup>39</sup> ICC-01/04-02/06-2359, para. 1136.

<sup>40</sup> C.f ICC-01/04-02/06-2442, para. 137 and cites therein.

residents.<sup>41</sup> The Boeing Mosque was also subsequently re-built and a re-opening ceremony was held on 26 February 2021.<sup>42</sup>

19. Similarly, as with article 8(2)(e)(vi), any conviction under article 8(2)(e)(i) also does not require any actual harm to civilians to ensue from the attack and as such, the crime of intentionally attacking civilian is considered *in abstracto* to be less serious compared to other crimes against persons.<sup>43</sup> Any conviction under Count 1 must therefore consider the lesser gravity of this offence, with reference to the limited scope of the underlying conduct. In particular, it is recalled that Count 1 concerns events arising from an isolated attack on 5 December 2013 and premised on conduct which it is alleged resulted in the destruction of a single mosque and the deaths of up to 18 persons.<sup>44</sup> In this regard, and whilst recognising the seriousness of crimes against persons, it is recalled that whilst the alleged deaths would have occurred in the midst of an attack, it is not alleged that indiscriminate weapons or means were used to target the victims and which would have resulted in their deaths.<sup>45</sup>
  
20. With respect to the alleged dislocation of the Muslim population from Boeing/Cattin in the context of the 5 December 2013, as well as the alleged dislocation of the Muslim population from villages and towns across the PK9-Mbaïki Axis, it is recalled that a proportion of displaced persons are alleged to have returned to their homes and/or returned to CAR in general, with reports on the peaceful cohabitation of Muslims in Mbaïki in 2015/2016.<sup>46</sup> Whilst this does not negate the harm caused to the victims for the duration of their displacement, the gravity of the crimes under Counts 4, 5, 24 and 25 is reduced in relation to the returning victims. Similarly, in relation to Count 14, it is recalled that the duration of the alleged imprisonment of the Lapo family members amounted to a single evening prior to their transfer and release.<sup>47</sup>

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<sup>41</sup> P-1528: CAR-OTP-2048-0757-R05, para. 16.

<sup>42</sup> CAR-D29-0008-0001 and corresponding metadata. See also CAR-D29-0008-0105, D29-4013: T-277, p. 37 line 14 to p. 38, line 1.

<sup>43</sup> ICC-01/04-02/06-2442, para. 53.

<sup>44</sup> *Supra.*, fn. 25. Collectively across the 19 counts, Mr. Yekatom is allegedly culpable for the deaths of up to 20 persons, which includes the alleged killing of Lapo N'gomat and Djido Saleh.

<sup>45</sup> ICC-01/14-01/18-2737-Conf-Corr, paras. 390, 589.

<sup>46</sup> P-1317: CAR-D29-0009-0838, P-1595: T-106, p. 41, lines 10-13. See also P-2084: CAR-OTP-2094-0968-R02, para. 61; T-233, p. 12, line 26 to p. 13, line 1, p. 18, lines 19-21; D29-5015: T-254, p. 45, line 27 to p. 46, line 3; P-0888: T-122, p. 19, line 25 to p. 21, line 1; D29-5012: T-294, p. 45, lines 14-28; P-1823: T-183, p. 68, line 22 to p. 71, line 14.

<sup>47</sup> ICC-01/14-01/18-2737-Conf-Corr, para. 463 and cites therein.

21. Moreover, and with due regard to the seriousness of crimes concerning the conscription and enlistment of children under 15 years old and using them to actively participate in hostilities, it is recalled that the allegation under Count 29 predominantly concerns the fraudulent demobilisation of children under 15 years old,<sup>48</sup> which was designed to secure financial opportunities for the participants of the demobilisation programme.<sup>49</sup> This is in stark contrast to the violent and orchestrated campaigns to abduct children or target their families depicted in the fact patterns in *Lubanga*, *Ongwen* or *Ntaganda*. Further, it is submitted that in the event that a conviction is secured in relation to Count 29, a thorough and individual re-assessment of each victim application form is necessary for each of the 292 participating victims in order to confirm the veracity of the alleged victim status. The Chamber will note the serious allegations regarding the fabricated status of child soldiers in these proceedings, as 100% of the disclosed participating victims forms provided to the Defence exhibit significant reliability issues.<sup>50</sup>

22. In relation to the second component of the gravity assessment – that is, the gravity of the convicted person’s culpable conduct – there is no *in abstracto* hierarchy among individual modes of liability for the purposes of sentencing.<sup>51</sup> Therefore, the level of culpability of the convicted person and its impact on the sentence always depends on an *in concreto* assessment of the degree of participation and the degree of intent in the particular circumstances of the case.<sup>52</sup> This is particularly pertinent in these proceedings, noting that the Prosecution has alleged alternative modes of liability including the various forms of perpetration under article 25(3)(a) as well as ordering under article 25(3)(b) in relation to the same underlying conduct and factual circumstances. In this regard, whilst indirect perpetration and indirect co-perpetration both amount to principal perpetration, the physical proximity to the commission of crimes and knowledge of the specific details of how the crimes are committed are of relevance to the assessment of the degree of participation of an individual.<sup>53</sup> The ambiguities in the Prosecution’s case with regard to the concrete functioning of the

<sup>48</sup> ICC-01/14-01/18-2122-Conf, paras. 6-7. See also ICC-01/14-01/18-2738-Conf, para. 749 with reference to fn. 1741 citing to P-2082: CAR-OTP-2109-0452-R02, p. 0462, paras. 47-48; T-217, p. 19, line 23-p. 20, line 3.

<sup>49</sup> See e.g. ICC-01/14-01/18-2737-Conf-Corr, para. 579 and cites therein.

<sup>50</sup> See e.g. ICC-01/14-01/18-2737-Conf-Corr, paras. 55-71, 557-580. See also T-308, p. 88 line 18 to p. 89 line 3.

<sup>51</sup> ICC-01/04-02/06-2442, para. 15.

<sup>52</sup> ICC-01/04-02/06-2442, para. 15 with reference to ICC-01/12-01/15-171, para. 77 and ICC-01/04-01/07-3484-tENG-Corr, para. 43.

<sup>53</sup> ICC-01/04-02/06-2667-Red, paras. 1 and 45.

alleged relationship between Mr. Yekatom and alleged members of ‘the command’ including Freddy Ouandjio, as well as the latter’s alleged role and authority within the charged ‘Anti-Balaka’ organisation, therefore have a direct implication on the resulting degree of alleged culpability of Mr. Yekatom particularly in relation to his alleged knowledge of crimes perpetrated by other individuals.

23. Similarly, and by extension, the Prosecution’s reliance on the nebulous ‘anti-balaka’ term is directly relevant to the Chamber’s determination of Mr. Yekatom’s alleged participation and intent in the commission of crimes. Specifically, it is alleged that the ‘anti-balaka’ constituted an organised coordination whose common purpose and criminal policy both entailed the alleged ‘violent targeting of the Muslim civilian population in western CAR who, based on their political, ethnic and/or religious affiliation, were perceived as collectively responsible for, complicit with, and/or supportive of, the Seleka’. The Chamber must therefore critically evaluate the reality of such organisation noting, *inter alia* the alleged size, composition and differing objectives of the ‘anti-balaka’ as well as the timeframe in which such coordination would have taken effect. In particular, the Chamber must assess the basis for Mr. Yekatom’s alleged participation and intent in the commission of crimes related to 5 December 2013 noting that the evidential basis, as relied on by both the Prosecution and Defence, establishes that Mr. Yekatom’s involvement in the 5 December 2013 operations was as a result of, or at the very least, linked to direct orders provided to Mr. Yekatom from Cpt. Ngremangou who was his military superior.<sup>54</sup>
24. The alleged degree of Mr. Yekatom’s participation in the commission of crimes is also delineated by the Chamber’s factual findings concerning his alleged role in the ‘anti-balaka’ coordination both in terms of operations and the design of the alleged common plan and criminal policy. In this regard, given the shared identity between the common plan, criminal policy and nexus as a contextual requirement, any assessment of the gravity of each individual crime must also take this factual overlap into account.
25. Finally, it is necessary to consider the context in which the alleged crimes are said to have occurred when assessing Mr. Yekatom’s alleged participation and intent.

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<sup>54</sup> See, P-0487: T-206, p. 23, lines 23-26; P-1786: T-198, p. 4, line 28 to p. 5, line 3.

Specifically, given the overlap in the characterisation of crimes as both war crimes and crimes against humanity, it is alleged that these acts took place amidst a conflict between the ‘anti-balaka’ and the Seleka. The violent and indiscriminate atrocities committed by the Seleka are said to have exacerbated tensions between local Muslim and non-Muslim communities and led to the creation of the ‘anti-balaka’.<sup>55</sup> The assessment of Mr. Yekatom’s alleged culpability throughout the charged period—particularly regarding the events of 5 December 2013 and those linked to movements along the PK9-Mbaïki Axis—must account for the presence and criminal conduct of the Seleka, the violent tensions amongst the local communities and the absence of any effective security apparatus in these localities. Furthermore, the evaluation of the scope of alleged harm must delineate between: (i) harm directly attributable to Mr. Yekatom’s acts (and not harm caused by other perpetrators whose acts are not attributed to him), and (ii) harm resulting from lawful military conduct by Mr. Yekatom or individuals whose acts are allegedly attributable to him.

*iii) Aggravating circumstances*

26. Where a factor does not go to the elements of the crime or the mode(s) of liability, then the Chamber has a degree of discretion to consider such other relevant factors as an aggravating circumstance.<sup>56</sup> To do so however, the aggravating circumstance must be established beyond reasonable doubt.<sup>57</sup> It must also relate to the crime(s) of which a person was convicted or to the convicted person himself and be objectively foreseeable.<sup>58</sup> That is, ‘[f]or a factor to be considered as aggravating, there must be a sufficiently proximate link between the factor and the crime or crimes that form the basis of the conviction’.<sup>59</sup>

27. In relation to the allegations against Mr. Yekatom, it is submitted that types of aggravating circumstances as set out in rule 145(b) either fall within the elements of the offence or mode(s) of liability and would, in the event of any conviction, be part of the gravity assessment, or have not materialised or been asserted against Mr. Yekatom so as to amount to an additional aggravating circumstance. First – and

<sup>55</sup> See e.g. ICC-01/14-01/18-2737-Conf-Corr, paras. 199-216 and cites therein.

<sup>56</sup> See most recently ICC-01/12-01/18-2662, para. 22.

<sup>57</sup> See most recently ICC-01/12-01/18-2662, para. 23.

<sup>58</sup> ICC-01/04-02/06-2667-Red, paras. 2, 49. See also ICC-01/05-01/13-2276-Red, paras. 263, 334.

<sup>59</sup> ICC-01/04-02/06-2667-Red, para. 101. See also ICC-01/04-02/06-2442, para. 18 and ICC-01/05-01/13-2276-Red, para. 151.

for the purposes of rule 145(2)(b)(i) - there is no evidence that Mr. Yekatom has any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature. Reports that Mr. Yekatom would have fired a gun at the National Assembly in November 2018 have no temporal or substantive link to the alleged crimes in this case or the alleged common purpose and criminal policy, did not target or result in injury or death to any civilians and further, was not the subject of any final criminal adjudication.<sup>60</sup>

28. Second, and notwithstanding the dissolution of the FACA by the Seleka and the fact that Mr. Yekatom did not hold any official military title or role during the charged period, the allegation that Mr. Yekatom would have abused his power or official capacity as a military personnel cannot be considered as an additional aggravating circumstances under rule 145(2)(b)(ii) where the same underlying conduct would form part of the gravity assessment in relation to Mr. Yekatom's alleged essential contribution for the purposes of article 25(3)(a) and his position of authority for the purposes of article 25(3)(b).
29. Similarly, with reference to rule 145(2)(b)(iv), allegations that the crimes would have been committed with particular cruelty cannot be considered as an additional aggravating circumstance in relation to Counts 11, 12, and 13 given that the same underlying conduct would have been assessed as part of the gravity assessment of the elements of the offence in the event of any conviction. This is also applicable in relation to the aggravating circumstances as set out in: (i) rule 145(2)(b)(v) given that the alleged discrimination against the Muslim population is the same underlying conduct for the alleged common purpose, criminal policy and, in relation to Counts 8, 17 and 28, the elements of the crime of persecution; and (ii) rule 145(2)(b)(iii) in relation to Count 29 given that the age and status of the alleged child soldiers goes to the elements of the offence under article 8(2)(e)(vii) and is therefore at risk of double-counting.
30. Third, and relatedly, whilst victims are of course vulnerable in the abstract, there is no concrete evidence, other than in relation to Count 29 set out above, which establishes that the victims were particularly vulnerable or defenceless beyond

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<sup>60</sup> ICC-01/14-01/18-2679-Conf, para. 2 with reference to CAR-OTP-2093-0830. For further context see also D29-8027: CAR-D29-0009-0934-R01.

reasonable doubt for the purposes of rule 145(2)(b)(iii). In this regard, general allegations or second/third hand hearsay concerning the displacement of families or elderly individuals would not meet the legal burden of proof to be relied upon as an aggravating circumstance, particularly where the evidence has not been tested prior to any conviction in order to determine whether the same original source has been unduly repeated.

31. Finally, there is also no cogent evidence, which is established beyond reasonable doubt, that Mr. Yekatom would have personally acted with cruelty, zeal or enthusiasm in the alleged commission of crimes nor that he would have personally broadcast the commission of crimes. Indeed, as set out below and to be further articulated in oral pleadings, the evidence clearly establishes that Mr. Yekatom genuinely sought to minimise the harm to victims, provide assistance and restore security and peace to the localities in which he was based.

*iv) Mitigating circumstances*

32. In addition to the mitigating circumstances set out in rule 145(2)(a), the Chamber has the discretion to determine what constitutes a mitigating circumstance,<sup>61</sup> so as to reduce the length of the sentence determined to be appropriate on the basis of the gravity of crime.<sup>62</sup> Whilst mitigating circumstances must relate directly to the convicted person,<sup>63</sup> they do not directly relate to the crimes that the person is convicted of, and are not limited by the scope of the confirmed charges or the findings upon which any conviction is based.<sup>64</sup> The existence of a mitigating circumstance is assessed on the balance of probabilities.<sup>65</sup>

a. Efforts to minimise harm caused to the victims

33. As will be further articulated during its oral pleadings, the evidence meets the relevant threshold to establish that Mr. Yekatom concretely and genuinely sought to minimise the harm caused to the victims.<sup>66</sup> In particular the evidence establishes that Mr.

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<sup>61</sup> ICC-01/04-02/06-2442, para. 22 and cites therein.

<sup>62</sup> ICC-01/04-02/06-2442, para. 23.

<sup>63</sup> Mitigating factors are distinct from the individual circumstances to be taken into account when determining the appropriate sentence for each individual crime in accordance with article 78(1) see e.g. ICC-01/12-01/15-171, paras. 94-105.

<sup>64</sup> ICC-01/12-01/18-2662, para. 28 and cites therein.

<sup>65</sup> ICC-01/12-01/18-2662, para. 28 and cites therein.

<sup>66</sup> ICC-01/12-01/15-171, paras. 89-93, 109 (efforts to limit harm caused may amount to mitigating circumstances).

Yekatom personally undertook various measures to ensure that the principle of distinction was respected, emphasising the need for orders to be solely issued by military personnel to minimise risk of harm to the civilian population,<sup>67</sup> and consistently issued directives – both in public and private – which explicitly made clear that the Muslim population was not the enemy and was not to be targeted.<sup>68</sup> Further, the evidence establishes that where Mr. Yekatom was made aware of situations where the Muslim population and/or their property was targeted, he undertook the relevant enquiries and ensured that the appropriate measures were undertaken or attempted to prevent any further violations.<sup>69</sup> Relatedly, and as set out below, Mr. Yekatom also undertook personal and concrete efforts to restore the security apparatus across the Lobaye prefecture,<sup>70</sup> and took concrete steps to work with local gendarmeries and leaders as well as Seleka forces to prevent the harm caused to the Muslim population by other civilians and bad actors.<sup>71</sup> These circumstances are of direct relevance to the determination to reduce the length of any individual sentence noting that it pertains to the mode(s) of liability as charged against Mr. Yekatom.

34. Similarly, the evidence also establishes that Mr. Yekatom undertook various measures to ensure that the surrounding civilian population was not in fear as a result of the RFACPP's activities, including for example, conducting military training exercises without firing live ammunition or blanks,<sup>72</sup> and taking particular routes- even where inefficient - so as not to unnecessarily frighten the civilian population.<sup>73</sup> Such conduct is relevant to the charged conduct as a whole, and more specifically in relation to Counts 1, 4, 5 , 8, 24, 25 and 28.

b. Efforts to assist victims of the charged crimes

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<sup>67</sup> P-1647: T-195, p. 41, lines 25-27. See also CAR-OTP-2065-3220, [00:00:46] to [00:03:20] / CAR-OTP-2127-3668, lines 12-23 in which Mr. Yekatom distinguishes between how the RFACPP movement operates in relation to military objectives versus other military groups including those led by Yagouzou. See also ICC-01/14-01/18-2737-Conf-Corr, para. 335.

<sup>68</sup> See ICC-01/14-01/18-2737-Conf-Corr, paras. 326-346 and cites therein.

<sup>69</sup> See ICC-01/14-01/18-2737-Conf-Corr, paras. 324 and 350 and cites therein.

<sup>70</sup> See ICC-01/14-01/18-2737-Conf-Corr, paras. 233, 343-346, 484, 656 and 658 and cites therein.

<sup>71</sup> See e.g. ICC-01/14-01/18-2737-Conf-Corr, paras. 351, 521- 525 and cites therein. See further D29-8019: CAR-D29-0009-0881.

<sup>72</sup> P-1647: T-195, p. 20 line 20 to p. 21 line 26; CAR-OTP-2065-1015 [00:00:00] to [00:01:40] / CAR-D29-0006-1325, lines 4-16. See also CAR-OTP-2065-1023 (2233-Conf-AnxA, p.37, item 27 for submissions).

<sup>73</sup> CAR-OTP-2065-0396 [00:00:04] to [00:00:10]/ CAR-OTP-2122-2284, p. 2286, lines 4; P-0876: T-086, p. 55, lines 23- 25.

35. The evidence clearly and compellingly establishes the efforts by Mr. Yekatom to assist victims during the charged period and thereafter.<sup>74</sup> As will be developed during oral pleadings, Mr. Yekatom's assistance was not selective, was not in furtherance of the commission of crimes, and moreover, concerned direct victims of the charged crimes such that it is of direct relevance to the reduction of the length of sentence for each individual crime. In particular, the evidence establishes the immediate assistance provided by Mr. Yekatom in order to secure the release and transfer of the Lapo family following his arrival at the Yamwara school base,<sup>75</sup> his offer to assist the family of Djido Saleh with burial costs,<sup>76</sup> and his personal conduct to ensure the safety and well-being of Muslims who are alleged to have been the target of the common purpose and criminal policy of the anti-balaka during the charged period.<sup>77</sup>

36. Similarly, as well as the efforts to promote peace and reconciliation as set out below, the evidence further establishes the concrete steps taken by Mr. Yekatom to restore social cohesion across CAR with a particular emphasis in the Lobaye prefecture. Mr. Yekatom is described by Muslim and non-Muslim civilians as repeatedly using his public platform to emphasise that the Muslim population was not the enemy both during the charged period and thereafter.<sup>78</sup> Witnesses further testified to the fact that Mr. Yekatom undertook various steps in order to facilitate the free movement of Muslims across the Lobaye,<sup>79</sup> facilitated humanitarian aid and goods to rural and/or Muslim communities,<sup>80</sup> reopened mosques;<sup>81</sup> and personally supported the re-opening of Muslim cemeteries as part of efforts to allow for the return of Muslims to their homes.<sup>82</sup> Further still, the evidence establishes that Mr. Yekatom played a significant role in providing educational and economic opportunities for the youth in

<sup>74</sup> See in particular ICC-01/12-01/18-2662, para. 115 and fn. 309.

<sup>75</sup> See ICC-01/14-01/18-2737-Conf-Corr, para. 463 and cites therein.

<sup>76</sup> P-1838: CAR-OTP-2100-0252-R05, para. 99.

<sup>77</sup> D29-5014: T-257, p. 17, line 17 to p. 20, line 8, p. 18, lines 2-4, 23-25, p. 19, lines 3-5, 28 to p. 20, line 1, p. 35, lines 12-18; P-1647: CAR-OTP-2050-0654-R02, para. 63; P-0888: T-122, p. 20, line 3 to p. 21 line 1; P-2353: CAR-OTP-2100-0226-R03, para. 66.

<sup>78</sup> D29-3010: CAR-D29-0009-0832; P-1317: CAR-D29-0009-0838; D29-8019: CAR-D29-0009-0881. See also ICC-01/14-01/18-2737-Conf-Corr, paras. 328, 329, 334, 352, 521, 522, 523 and cites therein.

<sup>79</sup> P-1317: CAR-D29-0009-0838; P-1317 : CAR-D29-0009-0838-R01, paras. 28-32.

<sup>80</sup> D29-8019: CAR-D29-0009-0881. See also ICC-01/14-01/18-2737-Conf-Corr, paras. 337, 485, 486 and cites therein.

<sup>81</sup> D29-3010: CAR-D29-0009-0832.

<sup>82</sup> D29-3010: CAR-D29-0009-0832.

Lobaye having assisted both in the re-opening of schools in the Lobaye and following the creation of the Koya security company.<sup>83</sup>

37. The genuineness of Mr. Yekatom's efforts to assist the victims is further emphasised by the fact that Muslim civilians directly sought his help in real-time during the charged period,<sup>84</sup> and moreover, have subsequently testified on his behalf in these proceedings.

c. Efforts to promote peace and reconciliation

There is an abundance of evidence which establishes the genuine and sustained efforts by Mr. Yekatom to promote peace and reconciliation across CAR.<sup>85</sup> The evidence demonstrates well beyond the requisite threshold, that Mr. Yekatom actively worked and cooperated with various actors including *inter alia*, international organisations including MISCA and the Sangaris, governmental authorities, civil society actors and religious leaders in order to restore peace and reconciliation across CAR.<sup>86</sup> He was an outlier in his approach, and repeatedly participated in reconciliation initiatives,<sup>87</sup> including by organising football matches and roundtable discussions involving women and youth representatives to promote social cohesion.<sup>88</sup> Mr. Yekatom's efforts were undertaken in a personal capacity and form the basis for his subsequent decision to serve his community as a member of parliament following the charged period.<sup>89</sup>

d. Institutional violations

38. Throughout the proceedings, Mr. Yekatom remained respectful and cooperative with the Court,<sup>90</sup> striving to ensure efficiency and integrity. He did so despite serious and repeated statutory and procedural violations of his rights caused by the institution and

<sup>83</sup> D29-8019: CAR-OTP-0009-0881; D29-8017: CAR-D29-0009-0845.

<sup>84</sup> D29-5014: T-257, p. 29, line 14 to p. 30, line 11

<sup>85</sup> ICC-01/04-02/06-2442, para. 218 and cites therein (promotion of peace and reconciliation may only constitute a mitigating circumstance if it is genuine and concrete). See also ICC-01/04-01/07-3484-tENG-Corr, para. 91 ('[t]he Chamber considers that the efforts undertaken to promote peace and reconciliation can and must be taken into account in the sentencing and could potentially mitigate the sentence).

<sup>86</sup> See e.g. ICC-01/14-01/18-2737-Conf-Corr, paras. 351, 353 and cites therein.

<sup>87</sup> D29-3010: CAR-D29-0009-0832; P-1317: CAR-D29-0009-0838.

<sup>88</sup> P-1317: CAR-D29-0009-0838-R01, para. 27; D29-8017, CAR-D29-0009-0845-R01, para. 20.

<sup>89</sup> P-8027: CAR-D29-0009-0934-R01, paras. 17-18.

<sup>90</sup> *Prosecutor v. Lubanga*, Decision on Sentence pursuant to Article 96 of the Statute, ICC-01/04-01/06-2901, para. 91.

which, when considered holistically, resulted in a significant delay of proceedings. Whilst Mr. Yekatom is of course entitled to time served in the event of any conviction, he should not be doubly prejudiced as a result of these violation and as such, would warrant a mitigation of the total length of the sentence. These violations can be summarised – in chronological order- as follows:

- *Ineffective representation*: The Chamber will recall that Mr. Yekatom did not benefit from effective legal representation during his arrest in Bangui and transfer to the Court in November 2018, neither by Ms. Christine Prissa Ouamballo, appointed by the Court, nor by his lawyer Mr. Morouba, both being in conflict of interest as they represented Prosecution witnesses in the course of the investigations against Mr. Yekatom prior to his arrest.<sup>91</sup> This ineffective legal representation, that should and could have been anticipated by the Court, infringed Mr. Yekatom's fundamental rights at the time.
- *Joinder*: Three months after Mr. Yekatom's surrender to the Court, Pre-Trial Chamber II decided to join the cases against Mr. Yekatom and Mr. Ngaïssona.<sup>92</sup> While the confirmation hearing in the case against Mr. Yekatom was initially scheduled for 30 April 2019, it was then postponed a first time to June 2019<sup>93</sup> and a second time to September 2019.<sup>94</sup> It is noted that collectively the Defence objected to both postponements to the confirmation hearing but was opposed by the Prosecution which requested more time due to the speed of the arrest of Mr. Ngaïssona.<sup>95</sup> In total, three and a half months were lost, during which Mr. Yekatom remained in detention.
- *COVID-19 measures*: Delays following the joinder of the cases were only further compounded by the restrictions necessitated by the COVID-19 pandemic which further delayed preparations ahead of the trial including the postponement of the initial status conference by a further three months.<sup>96</sup> While the Defence appreciates

<sup>91</sup> CAR-OTP-2094-1125-R01; CAR-OTP-2092-3927-R01. See also ICC-01/14-01/18-358-Conf and T-004-CONF-ENG CT, p. 2, line 20 to p. 3 line 11.

<sup>92</sup> ICC-01/14-01/18-87.

<sup>93</sup> ICC-01/14-01/18-87, para. 18; ICC-01/14-01/18-121, para. 18.

<sup>94</sup> ICC-01/14-01/18-199.

<sup>95</sup> ICC-01/14-01/18-82, paras. 6, 25; ICC-01/14-01/18-194-Conf-Corr, paras. 1, 25 and 61; ICC-01/14-01/18-186-Conf-Red-Corr, paras. 2, 7 and 10.

<sup>96</sup> ICC-01/14-01/18-543.

that the restrictions implemented were indispensable during this extraordinary situation, this should not be offset against Mr. Yekatom's rights or result in prejudice to Mr. Yekatom.

- *Disclosure violations:* The Chamber has found - on fourteen separate occasions - that the Prosecution failed to comply with his disclosure obligations.<sup>97</sup> These violations were not insignificant and included violations with respect to the provision of exculpatory material, which delayed the preparation of the defence with particular reference to disclosure violations concerning Count 29,<sup>98</sup> and noting the additional burden on the Defence to investigate the fabrication of evidence in the absence of the same by the Prosecution.
- *Fabricated evidence:* In the event the Chamber is minded to recognise the fabrication of evidence that affected Count 29, this onerous violation of Mr. Yekatom's rights in the preparation of his defence should be taken into consideration for the reduction of his sentence.<sup>99</sup> The analysis and investigation of false statements and fabricated evidence, as well as the significant efforts to demonstrate their falsity to the Chamber, consumed significant time and resources, causing a considerable prejudice for Mr. Yekatom. A perfect example is the means deployed by the Defence to establish P-2475's fabricated allegations. The Prosecution's last-minute withdrawal of P-2475 during their closing statements, forced the Defence to allocate time, resources and precious pages of its brief. In this respect, the additional burdens cannot be categorised as preparations conducted in the ordinary course of proceedings. [REDACTED],<sup>100</sup> is a serious prejudice to Mr. Yekatom's fundamental right to a fair and impartial trial that should be taken into consideration in the deliberation of his sentence.

## **CONFIDENTIALITY**

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<sup>97</sup> ICC-01/14-01/18-315-Conf; ICC-01/14-01/18-342; ICC-01/14-01/18-551-Conf; ICC-01/14-01/18-595; ICC-01/14-01/18-740-Conf; ICC-01/14-01/18-783-Anx5; ICC-01/14-01/18-829; ICC-01/14-01/18-1202; ICC-01/14-01/18-1309-Conf; ICC-01/14-01/18-1566-Conf; ICC-01/14-01/18-1896; ICC-01/14-01/18-3069.

<sup>98</sup> See in particular ICC-01/14-01/18-1202-Red, para. 21 ('the Chamber notes that while the Prosecution submits that having been responsive to the Defence's disclosure inquiries and requests, there is no clear indication from the Prosecution that it has discharged its disclosure obligations entirely, in particular in relation to other material relevant to Count 29').

<sup>99</sup> ICC-01/14-01/18-2737, paras. 55-71.

<sup>100</sup> [REDACTED]

39. These submissions are classified as confidential as it refers to confidential correspondence and pending litigation. A public redacted version will be filed forthwith.

## **CONCLUSION**

40. As a father of fourteen children, eight of whom are minors, Mr. Yekatom seeks only to return to his family. Regrettably, having spent over six years in detention already, he missed the birth of his youngest son, whom he has only met with on three occasions. He had to forego his responsibilities as the primary salary earner for his entire family – and as a carer of his elderly mother.<sup>101</sup>

41. This abandonment has weighed heavily on Mr. Yekatom, not least because it has had a detrimental impact on the quality of his children's education and the state of medical care provided to his mother, as he could no longer financially contribute. As such, his time in detention has been a significant period of reflection, having been isolated from his family, exacerbated during COVID-19<sup>102</sup> – and removal from the only cultural he knows.<sup>103</sup> Undoubtedly, this has strengthened his resolve to return to a private family life in CAR upon release.

**RESPECTFULLY SUBMITTED ON THIS 13<sup>th</sup> DAY OF DECEMBER 2024**



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<sup>101</sup> D29-8024: CAR-D29-0009-0909-R01, para. 19.

<sup>102</sup> DS/2020/023/PC/mc dated 19 March 2020 “URGENT New Detention Centre Temporary Measures Regarding COVID-19” and DS/2021/037/HT/mc dated 2 July 2021 “Resumption of In-Person Visits at the ICC Detention Centre”.

<sup>103</sup> See also ICC-R0R220-03/22-5-Red and email correspondence. Available upon request.