

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 18 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 YEKATOM AND PATRICE-ÉDOUARD
NGAISSONA***

Public

Public Redacted Version of the "Sentencing Submissions of the Common Legal Representative of the Former Child Soldiers regarding Alfred RHOMBOT YEKATOM" (No. ICC-01/14-01/18-2744-Conf, dated 13 December 2024)

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “CLR1”) herewith presents his submissions on sentencing with respect to Alfred RHOMBOT YEKATOM (“YEKATOM”) and in relation to Count 29. As set out in his Closing Brief, the CLR1 posits that the evidence on the record is sufficient to establish beyond reasonable doubt YEKATOM’s guilt with respect to Count 29,¹ namely the *“conscription and/or enlistment and use of children [under the age of fifteen years] into his group at various locations, including [REDACTED], and the assignment of a variety of tasks to them, such as, inter alia, participating in hostilities, including the 5 December 2013 Attack, between at least December 2013 and August 2014”*.²

2. The former child soldier victims respectfully request that Trial Chamber V (the “Chamber”) impose on YEKATOM a sentence of no less than 20 years of imprisonment for committing the war crime of conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities proscribed under article 8(2)(e)(vii) of the Rome Statute (the “Statute”).³ The individual sentence with respect to Count 29 should holistically reflect the culpability for and gravity of the crime YEKATOM committed, and should therefore be significant and substantial so as to adequately reflect the lifelong suffering YEKATOM has inflicted upon children in his group.

3. As to the overall sentence to be imposed on YEKATOM, the CLR1 defers to the submissions of the Prosecution. The former child soldiers have no interest in demanding an overall sentence to be imposed on YEKATOM. They do not seek

¹ See the “Closing Brief of the Common Legal Representative of the Former Child Soldiers”, [No. ICC-01/14-01/18-2735-Conf](#), 15 November 2024, para. 273. A public redacted version of the brief was filed on 22 November 2024 as [No. ICC-01/14-01/18-2735-Red](#) (the “CLR1 Closing Brief”).

² See the “Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-403-Conf-Corr](#), 14 May 2020, p. 105. A public redacted version of the Decision on the confirmation of charges was filed in a corrected version on 14 May 2020 as [No. ICC-01/14-01/18-403-Red-Corr](#) (the “Decision on the Confirmation of Charges”).

³ See [article 8\(2\)\(e\)\(vii\) of the Rome Statute](#).

revenge against their former commander, but merely seek to assert their right to justice and redress for the crime he has committed against them individually.

4. Nevertheless, the CLR1 will also set forth submissions on mitigating and aggravating circumstances, as they are particularly relevant to the individual sentence with respect to Count 29. As will be developed in these submissions, YEKATOM's abuse of his role of hierarchical superior in a criminal fashion should be regarded as an aggravating factor. While it is true that YEKATOM's efforts to eventually demobilise children from his armed group deserve to be accorded some weight in mitigation, the CLR1 will set out why any weight accorded to this factor should be minimal in the circumstances.

5. Finally, the former child soldiers respectfully request that, in accordance with the spirit of the Statute, their views and demonstrated victimization resulting in substantial harm should carry significant weight in the Chamber's analysis and consideration of an appropriate, just, and proportionate sentence to be imposed on YEKATOM with respect to Count 29.

II. PROCEDURAL BACKGROUND

6. On 11 November 2018, Pre-Trial Chamber II issued a warrant of arrest for YEKATOM for his alleged criminal responsibility for crimes against humanity and war crimes committed in various locations in the Central African Republic (the "CAR").⁴

7. On 17 November 2018, YEKATOM was surrendered to the Court, and he appeared for the first time before Pre-Trial Chamber II on 23 November 2018.⁵

⁴ See the "Warrant of Arrest for Alfred Yekatom" (Pre-Trial Chamber II), No. ICC-01/14-018-1-US-Exp, 11 November 2018. A public redacted version of the arrest warrant was made public on 17 November 2018 as [No. ICC-01/14-01/18-1-Red](#), 17 November 2018.

⁵ See the transcript of the hearing held on 23 November 2018, [No. ICC-01/14-01/18-T-001-ENG](#), p. 4, line 24 to p. 5, line 2.

8. On 11 December 2019, Pre-Trial Chamber II partially confirmed the charges presented against YEKATOM.⁶

9. On 16 February 2021, the trial commenced pursuant to the order of the Chamber.⁷

10. On 18 July 2024, the Chamber set the procedural calendar for the potential sentencing proceedings and ordered the participants to file any request to present additional evidence for potential sentencing by 6 September 2024,⁸ and submissions relevant to potential sentencing by 13 December 2024, respectively.⁹ The Chamber emphasised that this procedure was “*without prejudice to the outcome of its decision pursuant to Article 74 of the Statute*”.¹⁰

11. On 18 September 2024, the Chamber declared the closure of the submission of evidence.¹¹

12. On 11 November 2024, the Chamber rendered a decision on several requests to present additional evidence for potential sentencing,¹² granting one such request of the

⁶ See the “Public Redacted Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-403-Red-Corr](#), 11 December 2019.

⁷ See the “Order Rescheduling the Commencement Date of the Trial” (Trial Chamber V), [No. ICC-01/14-01/18-875](#), 8 February 2021.

⁸ See the “Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-2600](#), 18 July 2024.

⁹ *Ibid.*

¹⁰ *Idem*, para. 3.

¹¹ See the “Declaration on the Closure of the Submission of Evidence” (Trial Chamber V), [No. ICC-01/14-01/18-2697](#), 18 September 2024.

¹² See the “Decision on the Requests to Present Additional Evidence for Potential Sentencing” (Trial Chamber V), [No. ICC-01/14-01/18-2733-Conf](#), 11 November 2024. In this Decision, the Chamber also granted in full the first NGAISSONA Defence request to present additional evidence for potential sentencing.

YEKATOM Defence in full¹³ and partially granting two YEKATOM Defence requests¹⁴ as well as the Prosecution request.¹⁵

13. On 15 November 2024, all parties and participants submitted their Closing Briefs with respect to the Chamber's article 74 determination.¹⁶

III. CLASSIFICATION

14. Pursuant to regulation 23*bis* (1) of the Regulations of the Court, the present submissions are classified as confidential since they contain references to confidential material on the record. A public redacted version of these submissions will be filed in due course.

IV. SUBMISSIONS ON SENTENCING

1. The applicable law

15. Articles 76, 77 and 78 of the Statute stipulate the relevant conditions and parameters for a sentence to be imposed on an accused who has been found guilty of one or more crimes under the Statute. Rules 143 and 145 the Rules of Procedure and

¹³ See the "Public Redacted Version of the 'Third Yekatom Defence Request to Present Additional Evidence for Potential Sentencing'" (Trial Chamber V), [No. ICC-01/14-01/18-2720-Red](#), 4 October 2024.

¹⁴ See the "Public Redaction Version of the 'Yekatom Defence Request to Present Additional Evidence for Potential Sentencing'" (Trial Chamber V), [No. ICC-01/14-01/18-2678-Red](#), 6 September 2024. See also the "Public Redacted Version of the 'Second Yekatom Defence Request to Present Additional Evidence for Potential Sentencing'" (Trial Chamber V), [No. ICC-01/14-01/18-2718-Red](#), 4 October 2024.

¹⁵ See the "Public redacted version of 'Prosecution's Request to present Additional Evidence for potential Sentencing'" (Trial Chamber V), [No. ICC-01/14-01/18-2679-Red](#), 6 September 2024.

¹⁶ See the "Prosecution's Closing Brief", [No. ICC-01/14-01/18-2738-Conf](#), 15 November 2024. A public redacted version was filed on 22 November 2024 as [No. ICC-01/14-01/18-2738-Red](#) (the "Prosecution Closing Brief"). See also the "Yekatom Defence Final Trial Brief", No. ICC-01/14-01/18-2737-Conf, 15 November 2024. A public redacted version was filed as [No. ICC-01/14-01/18-2737-Red](#) on 22 November 2024 and a corrected version of the confidential brief was filed on 6 December 2024 as [No. ICC-01/14-01/18-2737-Conf-Corr](#) (the "Yekatom Defence Closing Brief"). See also the "Ngaïssona Defence Closing Brief", [No. ICC-01/14-01/18-2736](#), 15 November 2024. See also the "Closing Brief on behalf of Victims of Other Crimes", [No. ICC-01/14-01/18-2734-Conf](#), 15 November 2024. A public redacted version was filed on 22 November 2024 as [No. ICC-01/14-01/18-2734-Red](#) (the "CLR2 Closing Brief"). See also the CLR1 Closing Brief, *supra* note 1.

Evidence (the “Rules”) set out further specifications of considerations a Chamber must have regard to in passing a sentence.¹⁷

16. According to article 78(3) of the Statute, a Chamber must pronounce a sentence for each crime and a joint sentence specifying a total period of imprisonment where a person has been convicted of more than one crime under the Statute.

17. Of particular note and relevance to the interests of the victims of the crimes committed by a person convicted thereof is rule 145(1)(c) of the Rules. It sets out in mandatory terms that the Chamber “shall [...] give consideration, inter alia, to the extent of the damage caused, in particular to the harm caused to the victims and their families [...]”.¹⁸

2. The purpose of sentencing

18. The sentencing of an individual perpetrator found guilty under the Statute follows the main principles of retribution, deterrence and rehabilitation.¹⁹

19. The CLR1 submits that the individual sentence to be determined for YEKATOM with respect to Count 29, without prejudice to other individual sentences and the overall sentence to be determined by the Chamber, should reflect these purposes. The conscripting or enlisting of children under the age of 15 into armed groups or forces and their use to participate actively in hostilities is a particularly grave crime.²⁰ Former child soldiers are amongst the most vulnerable victims.²¹ Besides punishment, deterring the commission of this crime should play a central role in the length of the sentence imposed on an individual found guilty of committing any or all of these acts.²²

¹⁷ See the “Decision on Sentence pursuant to Article 76 of the Statute” (Trial Chamber I), [No. ICC-01/04-01/06-2901](#), 10 July 2012 (the “Lubanga Sentencing Judgment”), para. 17.

¹⁸ See [rule 145\(1\)\(c\) of the Rules](#).

¹⁹ See the “Sentencing Judgment” (Trial Chamber X), [No. ICC-01/12-01/18-2662](#), 20 November 2024 (the “Al Hassan Sentencing Judgment”), para. 16; the “Sentence” (Trial Chamber IX), [No. ICC-02/04-01/15-1819-Red](#), 6 May 2021 (the “Ongwen Sentencing Judgment”), para. 60; and the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019 (The “Ntaganda Sentencing Judgment”), paras. 9-10.

²⁰ See the Ntaganda Sentencing Judgment, *supra* note 19, para. 193; the Ongwen Sentencing Judgment, *supra* note 19, paras. 357-358; and the Lubanga Sentencing Judgment” *supra* note 17, paras. 37-39, and 44.

²¹ See the Ongwen Sentencing Judgment, *supra* note 19, para. 369; the Ntaganda Sentencing Judgment, *supra* note 19, para. 193; and the Lubanga Sentencing Judgment, *supra* note 17, para. 39.

²² See the Ongwen Sentencing Judgment, *supra* note 19, paras. 60, and 389-396; and the Ntaganda Sentencing Judgment, *supra* note 19, paras. 9-10, and 12.

3. The gravity of the crimes

20. The CLR1 submits that the Chamber's gravity assessment should place significant emphasis on the evidence of harm to the victims the Chamber has heard and received in the form of expert reports, discussed in more detail *infra*. The scope of what is ordinarily considered the impact of a crime, lasting consequences, injury, and irreparable harm should define the gravity of crime YEKATOM committed against the children under the age of 15 present in his group.

a) The harm suffered by child soldiers in YEKATOM's group

21. There is a unique vulnerability that attaches to children under the age of 15.²³ Moreover, their stage of physical and mental development plays a significant role in the amplified consequences harm inflicted through child soldiering and other acts, including sexual assaults.²⁴ The Court's jurisprudence acknowledges the inherent gravity of crimes against child soldiers as exceptionally high by reason of the young age of the victims.²⁵ As first recognised in the *Lubanga* case and subsequently confirmed by other Chambers,²⁶ the conscription or enlistment of children "*are undoubtedly very serious crimes that affect the international community as a whole. [...] The vulnerability of children means that they need to be afforded particular protection that does not apply to the general population, as recognised in various international treaties*".²⁷

22. The CLR1 also recalls that, as held by Trial Chamber VI in the *Ntaganda* case, general precarious and conflict conditions prevailing at the relevant time "*do not*

²³ See the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 193. See also SCSL, *Sesay et al. (RUF)*, Case No. SCSL-04-15-T, [Sentencing Judgment](#), 8 April 2009, para. 182 and, *Fofana and Kondewa (CDF)*, Case No. SCSL-04-14-T, [Judgement on the Sentencing](#), 9 October 2007, paras. 54-58.

²⁴ See e.g. "Mental Health Outcomes of Trauma in the Central African Republic: Child Soldiering, Forcible Displacement, Rape and Sexual Violence" [CAR-OTP-2127-6805-PRV](#) (the "Expert Report"), p. 19.

²⁵ See the *Ntaganda* Sentencing Judgment, *supra* note 19, paras. 121, and 193-195; and the *Ongwen* Sentencing Judgment, *supra* note 19, paras. 357-359, and 369.

²⁶ See e.g. the "Second Decision on Bosco Ntaganda's Interim Release" (Pre-Trial Chamber II), [No. ICC-01/04-02/06-284](#), 17 March 2014, para. 33; the *Ongwen* Sentencing Judgment, *supra* note 19, paras. 358-359; and the "Decision on the confirmation of charges" (Pre-Trial Chamber I), [No. ICC-01/04-01/06-803-tEN](#), 29 January 2007, para. 308.

²⁷ See the *Lubanga* Sentencing Judgment, *supra* note 19, para. 37 (footnotes omitted).

*diminish the gravity of having been conscripted or enlisted into an armed group and/or used to actively participate in hostilities”.*²⁸

23. The Chamber has before it the testimony of former child soldiers and others testifying about the different forms of physical and mental violence young children in YEKATOM’s group were either subjected to or witnessing, in particular physical abuse,²⁹ sexual abuse,³⁰ deprivation of food,³¹ corporal punishment,³² psychological pressure and threats,³³ distribution of drugs,³⁴ and the condonement of drug abuse.³⁵ Children were also made to undergo a traditional initiation procedure,³⁶ they were forced to kill or mutilate prisoners or forced to witness such killings,³⁷ and actively participates in hostilities where they had to kill the enemy and where they were exposed to the real danger of being killed or injured themselves.³⁸

24. Concretely, the Chamber heard Witness P-0965 who recounted that children were being given drugs to consume to get rid of their fear, and which made them behave in an odd, unnatural way.³⁹ Children were also beaten or lashed as a form of punishment⁴⁰ or deprived of food as a form of punishment,⁴¹ when they already were not being given enough to eat; sometimes one food ration would be given to ten children to share.⁴²

25. The commanders also used the hemp they distributed to the children to “*motivate them to act*”.⁴³ This not only resulted in securing their compliance with orders

²⁸ See the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 185.

²⁹ See the CLR1 Closing Brief, *supra* note 1, paras. 152-153.

³⁰ *Idem*, paras. 111-113, 115, and 117. See also the Prosecution Closing Brief, *supra* note 16, para. 746.

³¹ *Idem*, paras. 141, 143, and 155. See also the Prosecution Closing Brief, *supra* note 16, para. 755.

³² *Idem*, paras. 106, 150-153, and 155.

³³ *Idem*, paras. 119, 152, 159-160, and 164.

³⁴ *Idem*, paras. 144-147, and 152.

³⁵ *Idem*, paras. 140, and 145-147.

³⁶ See the CLR1 Closing Brief, *supra* note 1, paras. 114, 120-122, and 125.

³⁷ *Idem*, paras. 120, and 123-124.

³⁸ *Idem*, paras. 80, 82-84, 92, and 263.

³⁹ See P-0965: [T-061](#), p. 55, lines 17-23.

⁴⁰ *Idem*; p. 58, lines 23-25. See also P-2476: [T-213](#), p. 27, lines 4-5.

⁴¹ See P-0965: [T-061](#), p. 58, lines 4-5.

⁴² *Idem*, p. 55, lines 24-25; and p. 56, line 1.

⁴³ *Idem*, p. 56, lines 5-6.

or removal of their inhibition to kill,⁴⁴ but also resulted in some of the child soldiers developing a drug addiction.⁴⁵

b) There is no distinction as regards the gravity of conscription and enlistment

26. The CLR1 submits that the Chamber should not differentiate between ‘conscription’ and ‘enlistment’ of children into YEKATOM’s group and draw an artificial dividing line on the level of gravity and – ultimately – culpability for each of these criminal acts, because the consent of a child under the age of 15 is not a valid excuse.⁴⁶ Such distinction would further be artificial as in both instances children were exposed to the same environment of violence and fear, once in the group. The Chamber has heard evidence both establishing the crime of conscription⁴⁷ and ‘voluntary’ enlistment.⁴⁸ In both instances, the evidence demonstrated that the same forms of physical and mental violence was meted out to both categories of children within YEKATOM’s group. Second, the effect and harm inflicted upon victims⁴⁹ does not justify any kind of grading of the gravity of these acts.⁵⁰

27. The CLR1 submits that, in reality, there is no such thing as children under the age of 15 joining an armed group ‘voluntarily’, because the criminal act and intention always rests with the adult commanders who accept their enlistment, and in particular the hierarchical superior; in the present case, YEKATOM. As a militarily trained commander of a professional army,⁵¹ he knew or was reasonably expected to know, that accepting or actively recruiting children into his ranks constituted a criminal act. Worse even, the Chamber has heard the particularly harrowing testimony of P-2475

⁴⁴ See the CLR1 Closing Brief, *supra* note 1, paras. 145, 147, and 152.

⁴⁵ *Idem*, paras. 79, and 144-146; See also **V45-0002: T-247**, p. 36, lines 15- 23; **P-2475: T-129**, p. 20, lines 3-12; T-131, p. 19, lines 2-4 and p. 68, line 12 to p. 69, line 4 (Conf).

⁴⁶ See the *Lubanga* Sentencing Judgment, *supra* note 17, para. 43; the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 180; and the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019 (the “*Ntaganda* Judgment”), para. 1107.

⁴⁷ See the CLR1 Closing Brief, *supra* note 1, paras. 58, 60, and 263.

⁴⁸ *Ibid.*

⁴⁹ See *infra* paras. 29 *et seq.*

⁵⁰ See the *Ongwen* Sentencing Judgment, *supra* note 19, para. 366; the *Ntaganda* Sentencing Judgment, *supra* note 19, paras. 179, 184; and the *Lubanga* Sentencing Judgment, *supra* note 17, paras. 37-42.

⁵¹ See CAR-OTP-2062-0657, line 10160 (Conf).

recalling commanders praising the bravery and courage of [REDACTED], an eleven-year old, for joining the group ‘voluntarily’.⁵² As an example on point, this illustrates the overall attitude of the group’s commanders and the predominant culture within the group. It cannot be over-stressed that, especially at such a tender age, children are highly impressionable.⁵³ As is obvious from the corroborating accounts of other former child soldiers,⁵⁴ it remained engraved in their memory that the smallest of them all was the ‘favourite’ who was particularly praised and loved by the commanders for his cruelty and fearlessness. Such acts, directly or indirectly, condoned by YEKATOM constitute significant contributions to the infliction of lasting psychological harm on the young children he and his group enlisted into their ranks.

28. In addition to the ‘voluntary’ enlistment of children into YEKATOM’s group, the CLR1 refers the Chamber to the relevant evidence highlighted in his Closing Brief that establishes forced recruitment and conscription of children to through abductions and other forms of coercion.⁵⁵ It is submitted that both means of integrating children into YEKATOM’s Anti-Balaka group are equally serious and grave.

4. The evidence of harm is supported by expert evidence

29. As set out in greater detail in the CLR1 Closing Brief,⁵⁶ the Chamber has received abundant evidence on the record establishing the different forms of physical and mental violence children were subjected to within YEKATOM’s group. In some cases, their victimisation began with the abduction and forceful removal from their parents and communities.⁵⁷

30. The CLR1 also recalls that, as held by Trial Chamber VI in the *Ntaganda* case, general precarious and conflict conditions prevailing at the relevant time “do not

⁵² See the CLR1 Closing Brief, *supra* note 1, paras. 79, and 161.

⁵³ See [CAR-OTP-2122-9155](#) at 9201-9203; [CAR-OTP-2122-9082](#) at 9109.

⁵⁴ See the CLR1 Closing Brief, *supra* note 1, paras. 79, 90, 135, and 161.

⁵⁵ *Idem*, paras. 58, and 60.

⁵⁶ *Idem*, pp. 37-74.

⁵⁷ *Idem*, paras. 58, and 60.

*diminish the gravity of having been conscripted or enlisted into an armed group and/or used to actively participate in hostilities”.*⁵⁸

a) The expert evidence supports testimony on the record

31. The Chamber has heard expert evidence on the particular vulnerabilities of child soldiers and the lasting, devastating impact the crime of conscription and enlisting of children under the age of 15 has on their psychological development and well-being in both the short-term and long-term. The CLR1 invites the Chamber to place significant reliance upon the expert reports it has received in this case.

32. In particular, the Chamber has heard that between 97 and 99% of children who have been child soldiers develop PTSD, a higher percentage than that of their war-affected counterparts who were not child soldiers.⁵⁹

33. Witness P-0925 explained that “[t]rauma (including sexual assault, violence exposure, and home insecurity/displacement) experienced during childhood or adolescence have been shown to have more pervasive and severe consequences than adult exposure to the negative impact on the cognitive, intellectual, executive functioning, emotion regulation and interpersonal skills development”.⁶⁰ Indeed, such difficulties and injuries to cognitive, emotional, and behavioural capacities lead to lasting impairments, including in the areas of self-care, academic and vocational performance among others.⁶¹ Child soldiering is “commonly associated with functional impairment [...] and risk of further trauma or victimization”.⁶²

34. The Chamber is invited to assess the experts reports against the backdrop of the evidence it has heard that child soldiers were being lashed, asked to kill, and being given drugs, such as hemp and tramadol.⁶³ Specifically related to drug use, P-0925

⁵⁸ See the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 185.

⁵⁹ See the Expert Report, *supra* note 24, p. 37 (internal references omitted).

⁶⁰ *Idem*, p. 19 (internal references omitted).

⁶¹ *Idem*, p. 20 (internal references omitted).

⁶² *Idem*, p. 21 (internal references omitted).

⁶³ See *supra*, paras. 23, and 25.

observes that drug use “often leads to co-occurring addiction problems along with any other mental disorders the children accrue from their experiences”.⁶⁴

35. Witness P-2927, a second expert, testified before the Chamber and submitted two reports on the phenomenon of child soldiers within armed groups in the CAR spanning from the MLC, to the Seleka and the Anti-Balaka movement. She explained to the Chamber several phenomena associated with armed groups, such as the Anti-Balaka accepting children into their ranks, *i.e.* enlisting them. Importantly, P-2927 did not lump all movements together but set out her specific research and findings in relation to each armed group. In the context of the Anti-Balaka, she spoke about the phenomenon of some children ‘voluntarily’ joining the Anti-Balaka to avenge the death of loved-ones, referring to an interview with a former child soldier who joined the Anti-Balaka movement for this reason and told her that “*he was given a machete [...] [and] was asked to hit people in the head with it!*”.⁶⁵ As her report otherwise accords with the *modus operandi* used by the Anti-Balaka as borne out by the evidence in the case,⁶⁶ the CLR1 submits that the Chamber should resort to relying on it within the context of assessing the harm inflicted upon child soldier victims recognized in this case. Notably, the report underscores the perfidiousness of the Anti-Balaka’s offers of protection and/or promising of jobs to children who presented themselves ‘voluntarily’ and their subsequent abuse of these children by pushing them to kill and witness violence in armed clashes and within their camps.⁶⁷

36. The evidence on record establishes⁶⁸ what P-2927 refers to as a cycle of abuse, namely indoctrination and active feeding of hatred of Muslims, which, according to

⁶⁴ See the Expert Report, *supra* note 24, p. 40 (internal references omitted).

⁶⁵ See P-2927: [CAR-OTP-2122-9082](#), at 9141.

⁶⁶ See the CLR1 Closing Brief, *supra* note 1, paras. 58-60, 123, and 127.

⁶⁷ See P-2927: [CAR-OTP-2122-9082](#), at 9142; P-0965: [T-061](#), p. 54, lines 22-25. See also the CLR1 Closing Brief, *supra* note 1, paras. 82-83, 123-124, 127, 258, 261, and 267-268; and the Prosecution Closing Brief, *supra* note 16, para. 751.

⁶⁸ See the CLR1 Closing Brief, *supra* note 1, paras. 60, 83, 123-131, 258, 260, and 267; and the Prosecution Closing Brief, *supra* note 16, para. 438-444, and 749.

her, has an unstoppable effect on children, especially when added to personal feelings of revenge after losing parents or siblings.⁶⁹

37. P-0925's report further explores long-term consequences such as stigmatization – in particular of female child soldiers – and inability to access socio-economic opportunities or reintegration programmes.⁷⁰ Former child soldiers face additional obstacles in re-integrating into society, depending on the level of their traumatization.⁷¹ P-0925's report explains that “[i]ndividuals who were former child soldiers who experienced traumatic events also manifest decreased school performance. As a result, many child soldiers self-report feeling unequipped to or incapable of contributing productively to their household or their family economy”.⁷²

5. YEKATOM's individual circumstances

38. YEKATOM was surrendered to the Court by the CAR authorities on 17 November 2018⁷³ after having been arrested in the National Assembly of the CAR.⁷⁴

a) Degree of YEKATOM's participation and intent

39. Pursuant to rule 145(1)(c) of the Rules, the Chamber must also consider the “degree of participation” and the “degree of intent” of YEKATOM.⁷⁵

40. YEKATOM was a career soldier,⁷⁶ who had risen to the rank of “*Corporal Chef*” in the FACA⁷⁷ prior to gathering elements under his control within the Anti-Balaka movement. He was at the helm of this structure and oversaw the companies and

⁶⁹ See P-2927: [CAR-OTP-2122-9082](#), at 9143.

⁷⁰ See the Expert Report, *supra* note 24, p. 38 (internal references omitted).

⁷¹ *Idem*, p. 46.

⁷² *Ibid.* (internal references omitted).

⁷³ See the Decision on the Confirmation of Charges, *supra* note 2, para. 3.

⁷⁴ See [CAR-OTP-2093-0830](#). See also the transcript of the hearing held on 23 November 2018, [No. ICC-01/14-01/18-T-001-ENG](#), p. 4, line 24 to p. 5, line 2.

⁷⁵ See the *Ongwen* Sentencing Judgment, *supra* note 19, paras. 48, 135, and 139; the *Ntaganda* Sentencing Judgment, *supra* note 19, paras. 15-16; the “Decision on Sentence pursuant to article 76 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3484-tENG-Corr](#), 23 May 2014 (the “*Katanga* Sentencing Judgment”), para. 40; and the *Lubanga* Sentencing Judgment, *supra* note 17, para. 44.

⁷⁶ See P-0888: [T-120](#), p. 65, lines 9-10.

⁷⁷ See CAR-OTP-2062-0657, line 10160 (Conf); P-1339: T-151, p. 19, lines 15-17 (Conf).

sections led by his deputies.⁷⁸ His orders, notwithstanding their cruelty, were carried out without question,⁷⁹ and together with his ComZones, he was involving children in the torture of prisoners,⁸⁰ work at check-points⁸¹ and active hostilities.⁸² As set out in the CLR1 Closing Brief,⁸³ YEKATOM's acts and *mens rea* regarding the conscription, enlistment, and use of children below the age of 15 in the hostilities have been established by the evidence beyond reasonable doubt.⁸⁴

6. The sentencing practices at the Court

41. The CLR1 submits that the sentence to be imposed on YEKATOM with respect to Count 29, must not only be proportionate to his degree of responsibility and intent and the harm inflicted upon the victims, but it must also be in general accord with comparable sentences passed on other convicted persons before this Court. Notwithstanding the fact that each sentence is individual to the relevant circumstances of the convicted person and the case,⁸⁵ it is submitted that the sentence to be imposed for comparable acts should not be an outlier in that the term of imprisonment be either significantly higher or lower as that imposed on others for the commission of a comparable crime.

42. Mr Lubanga was sentenced to 14 years in prison, for the joint commission with other persons of the crimes of conscripting, enlisting, and using children under the age of 15 to participate actively in hostilities.⁸⁶ It is noteworthy, however, that Trial Chamber I specifically noted Mr Lubanga's cooperation with the Court as a mitigating factor and did not find any aggravating circumstances.⁸⁷

⁷⁸ See **P-1339**: T-151, p. 44, lines 22-24 (Conf).

⁷⁹ See e.g. **P-1839**: [T-171](#), p. 24, lines 4-16; **P-1858**: [T-185](#), p. 26, lines 9-15; CAR-OTP-2063-0050-R04, para. 82 (Conf). See also the CLR1 Closing Brief, *supra* note 1, footnotes 849-850.

⁸⁰ See the CLR1 Closing Brief, *supra* note 1, paras. 65, 92, 120, and 123.

⁸¹ *Idem*, paras. 65, 93-95, 97, 103, and 263-264.

⁸² *Idem*, paras. 80-85, 120, 123-124, and 263-265.

⁸³ *Ibid.*

⁸⁴ *Idem*, sections VIII (2) and VIII (3).

⁸⁵ See the "Judgment and Sentence" (Trial Chamber VIII), [No. ICC-01/12-01/15-171](#), 27 September 2016, para. 107.

⁸⁶ See the *Lubanga* Sentencing Decision, *supra* note 17, paras. 97-99.

⁸⁷ *Idem*, paras. 91, and 97-99.

43. Mr Katanga, whose responsibility was recognised in relation to an attack against a single village carried out in the course of one day, was sentenced to twelve years of imprisonment “*for accessoryship in any other way to the commission of the crime of murder as a war crime and crime against humanity, the crime of attack against a civilian population as such or against individual civilians not taking direct part in hostilities, as a war crime, and the crime of destruction of enemy property as a war crime and the crime of pillaging as a war crime*”.⁸⁸ By doing so, Trial Chamber II considered that a more severe penalty should be imposed for the crimes of murder and attack against a civilian population, amounting to violence to life.⁸⁹ It is also worth noting that the Chamber did not find any aggravating circumstances but recognised two mitigating circumstances related to Mr Katanga’s young age at the material time and to his family situation, both of which were considered likely to make rehabilitation and reintegration easier. Mr Katanga’s active support for the process of disarming and demobilising child soldiers in Ituri was considered as mitigating.⁹⁰

44. Mr Ntaganda was found guilty of conscripting or enlisting children under the age of 15 into his armed group and using them to participate actively in hostilities. He received an individual sentence for committing this crime in contravention of article 8(2)(e)(vii) of the Statute of 18 years of imprisonment.⁹¹ Trial Chamber VI afforded no weight in mitigation.⁹² However, the Chamber took into account several aggravating circumstances, such as the particularly harsh treatment of some of the child soldiers and the fact that at least one of them was very young.⁹³

⁸⁸ See the *Katanga* Sentencing Judgment, *supra* note 75, para. 170. See also the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3436-tENG](#), 7 March 2014, pp. 658-659.

⁸⁹ See the *Katanga* Sentencing Judgment, *supra* note 75, para. 145.

⁹⁰ *Idem*, para. 144.

⁹¹ See the *Ntaganda* Sentencing Judgment, *supra* note 19, p. 114.

⁹² *Idem*, paras. 228, 230, 235, 244, and 250.

⁹³ *Idem*, paras. 126-127, and 193-195.

45. In the *Ongwen* case, Trial Chamber IX determined that for the two counts relating to the conscription of children under the age of 15 and their use to participate actively in the hostilities alone, a term of 20 years of imprisonment was appropriate.⁹⁴

a) Aggravating Circumstances

46. To date, this Court has sentenced four persons for committing the war crime of conscripting and enlisting children under the age of 15 to participate actively in hostilities pursuant to and prohibited by article 8(2)(e)(vii) of the Statute. In all of these cases, the following aggravating circumstances have particularly been regarded as significant in relation to crimes committed under said provision, namely abuse of power and authority,⁹⁵ and harsh/brutal treatment of children enlisted into the group.⁹⁶

47. The CLR1 submits that, in the present case, the same aggravating factors are present and have been established by the evidence before the Chamber. Accordingly, he invites the Chamber to also consider the aforementioned factors in aggravation when determining the sentence to be imposed with respect to Count 29. YEKATOM's abuse of his role of hierarchical superior in a criminal fashion should be regarded as an aggravating factor.⁹⁷ He personally and actively victimised children, who are the most vulnerable in any conflict and particularly vulnerable once enlisted into the group.⁹⁸ Additionally, the Chamber should consider the very young age of some child soldiers – some being nine or eleven years old⁹⁹ – as an aggravating circumstance.¹⁰⁰

⁹⁴ See the *Ongwen* Sentencing Judgment, *supra* note 19, para. 373.

⁹⁵ See the *Lubanga* Sentencing Decision, *supra* note 17, paras. 35, 55, 97; the *Katanga* Sentencing Decision, *supra* note 75, paras. 70-72, 75; and the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 83.

⁹⁶ See the *Lubanga* Sentencing Decision, *supra* note 17, para. 57; and the *Ntaganda* Sentencing Judgment, *supra* note 19, paras. 193, and 197.

⁹⁷ See the *Katanga* Sentencing Decision, *supra* note 75, paras. 70-72, 75; the *Ongwen* Sentencing Judgment, *supra* note 19, paras. 49, 64, and 132-133; the *Lubanga* Sentencing Decision, *supra* note 17, paras. 55, and 97; and the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 83.

⁹⁸ See the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 193; the *Ongwen* Sentencing Judgment, *supra* note 19, paras. 287, and 369; and the *Lubanga* Sentencing Decision, *supra* note 17, paras. 39, and 77.

⁹⁹ See the CLR1 Closing Brief, *supra* note 1, paras. 74, 77, and 101.

¹⁰⁰ As the age of the child forms part of the elements of the crime, being under the age of 15 is not an aggravating circumstance as such. However, the very young age of some child soldiers has previously been considered as an aggravating circumstance – if not otherwise addressed in the gravity assessment of the crime. See e.g. the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 197; the *Lubanga* Sentencing Decision, *supra* note 17, paras. 77-78; and the *Ongwen* Sentencing Judgment, *supra* note 19, para. 332.

The Chamber should accord no weight to the untested written statements of D29-8019, D29-8017 and D29-8023 the Defence will be relying on to show [REDACTED].¹⁰¹

48. The Defence will further try to portray YEKATOM as a law-abiding commander who actively sought to assist young persons. However, the victims in this case did not experience YEKATOM as such. As has been set out in detail in the CLR1's Closing Brief, YEKATOM has demonstrated particular cruelty towards children enlisted in his group and those with whom he surrounded himself. In addition, the Chamber has heard harrowing evidence on YEKATOM's short-temperedness,¹⁰² which more than once ended in him killing another human being,¹⁰³ threatening¹⁰⁴ or directing his firearm at his own elements¹⁰⁵ or indeed members of the National Assembly.¹⁰⁶ More so, YEKATOM showed no mercy. When shooting one of his elements who ended up severely wounded, YEKATOM ordered that he be buried alive rather than taken to the hospital as "*it wasn't worthwhile taking him to the hospital*".¹⁰⁷ All of these actions paint a bleak picture of disdain for human life, and intolerance to those who did not show him unlimited loyalty.

49. The CLR1 thus submits that YEKATOM is not the man the Defence attempts to portray him as. Instead, he is a merciless leader who surrounded himself with obedient, young children. Young children, who are impressionable, unquestioning, and unable to oppose or question the legality of his orders to destroy, kill and loot.

b) Mitigating Circumstances

50. Unlike other accused before this Court, YEKATOM has not surrendered voluntarily.¹⁰⁸ Nor can he expect to receive credit in mitigation for notable cooperation

¹⁰¹ See CAR-D29-0009-0845-R01 (Conf); CAR-D29-0009-0881-R01 (Conf); CAR-D29-0009-0921-R01 (Conf).

¹⁰² See V45-0001: T-245, p. 34, lines 6-8 (Conf); P-1839: T-171, p. 23, lines 13-16, p. 24, lines 4-5, p. 30, lines 16-21 and p. 78, lines 19-22; P-0487: T-201, p. 45, lines 8-13 (Conf); P-1858: T-185, p. 26, lines 9-15.

¹⁰³ *Ibid.*

¹⁰⁴ See V45-0001: T-245, p. 22, lines 2-6 and p. 34, lines 21-25 (Conf); P-1858: T-185, p. 26, lines 9-15.

¹⁰⁵ See P-1839: T-171, p. 24, lines 4-5 and p. 78, lines 19-22.

¹⁰⁶ See CAR-OTP-2093-0830.

¹⁰⁷ See P-1839: T-171, p. 24, lines 4-16.

¹⁰⁸ See the Decision on the Confirmation of Charges, *supra* note 2, para. 3; and the Ntaganda Sentencing Judgment, *supra* note 19, para. 228.

with the Court or a sincere statement of remorse¹⁰⁹ because none of these factors is applicable in his case.

51. It is, however, undisputed that YEKATOM is entitled to have his demobilization efforts of children considered in mitigation, as they *de facto* led to the demobilization of children, including children under the age of 15, from his armed group. Nevertheless, the CLR1 submits that the Chamber should attach but very limited weight to this mitigating factor, as the record shows that YEKATOM's acts were not motivated by genuine repentance, remorse or an acknowledgment of wrongdoing. Rather, his efforts were a pragmatic response to his inability to raise sufficient funds to feed the children in his group.¹¹⁰ Although he actively contributed to ending the criminal conscription of children under the age of 15 in his group, his deeds cannot be given the same credit in mitigation they would deserve had they been motivated by reasons of remorse and repentance. Therefore, the CLR1 respectfully requests that this mitigating factor carry only minimal to neutral weight in the Chamber's consideration of an appropriate sentence in relation to Count 29.

V. CONCLUSION

52. The 292 victims whose interests the CLR1 represents in this case seek justice. Nothing can undo the traumata and harm they have suffered on account of having been robbed of their adolescent years. Instead of going to school or assisting their parents in a trade, they were made to carry weapons, kill, take drugs and endure vicious beatings for failing to obey strict military orders. Today, they suffer the consequences. Some are addicted to drugs, others have recurrent nightmares, anxiety disorders, anger management problems, and difficulties in engaging in human relations or society at large.

¹⁰⁹ See the *Katanga* Sentencing Decision, *supra* note 75, paras. 117-119; and the *Ntaganda* Sentencing Judgment, *supra* note 19, para. 239.

¹¹⁰ See the CLR1 Closing Brief, *supra* note 1, paras. 156, and 170.

53. YEKATOM bears responsibility for what has happened to these victims. For justice to be done, he must face the consequences of his criminal acts and be given a prison sentence that respects the victims and reflects the gravity of his wrong-doing.

VI. RELIEF SOUGHT

54. For the foregoing reasons, the CLR1 respectfully requests that the Chamber impose an individual sentence of no less than 20 years of imprisonment on YEKATOM with respect to Count 29.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', followed by a period.

Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 18th Day of December 2024
At The Hague, The Netherlands