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International
Criminal
Court

Original: **English**

No.: **ICC-01/14-01/18**
Date: **19 December 2025**

THE APPEALS CHAMBER

Before: **Judge Solomy Balungi Bossa, Presiding**
Judge Luz del Carmen Ibáñez Carranza
Judge Gocha Lordkipanidze
Judge Kimberly Prost
Judge Erdenebalsuren Damdin

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

Public
with Public Annexes 1 and 2 and Confidential Annexes 3-6

Public Redacted Version of the "Corrected Version of the 'Yekatom Defence Appeal against the Judgment, ICC-01/14-01/18-2784-Conf, 24 July 2025', ICC-01/14-01/18-2848-Conf, 25 November 2025", ICC-01/14-01/18-2848-Conf-Corr, 18 December 2025

Source: **Defence for Mr. Alfred Rombhot Yekatom**

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I. INTRODUCTION

1. However lengthy a judgment or voluminous a case file, volume alone does not equate to fairness or legal accuracy. In its essence, this case concerns a straightforward factual matrix and a limited set of charged incidents. The complexity of the proceedings arose less from the underlying facts than from the broader conflict background and the manner in which the case was framed, including the layering of multiple, shifting 'common plans' intended to link disparate and weakly connected groups. Yet the impugned Judgment – the longest yet rendered by this Court – is structured in a manner that obscures the core issues of individual criminal responsibility and *mens rea*. Essential assessments were left incomplete or were reshaped at the deliberation stage, and key findings are dispersed across a complex structure, precluding a reasoned understanding of the legal and evidential basis for the Chamber's conclusions. The result is a series of sweeping assertions that (erroneously) portray Mr. Yekatom as an omnipresent, all-knowing central figure, a caricature not borne out by the evidence. When the record did not support this portrayal, and when the relevant elements were not met, the Chamber either moulded the case or collapsed and re-labelled elements to fit the preferred narrative, or failed to engage with, and accurately reflect, witness testimony as given in the original language.[1] The present appeal challenges those approaches and their consequences.

2. The applicable standards of appellate review under Article 83 are well established.[2] The Appellant has framed each ground in accordance with that jurisprudence and with the Appeals Chamber's consistent distinction between errors of law, errors of fact, and procedural errors that materially affect the judgment. The arguments that follow identify how the impugned errors meet the statutory threshold for intervention.

3. The Appellant advances the following arguments in order to comply with Article 83(2), Regulation 58 and the judicial orders of this Court. For the avoidance of doubt, he does not abandon or waive any of the grounds set out in the Notice of Appeal. To the extent that certain grounds or sub-grounds are not developed in this Brief due to space constraints, they remain fully maintained. Should the Appeals Chamber consider that further elaboration is required on any such point, the Appellant stands ready to provide it so that his appeal may be adjudicated on a complete and fair basis.

[1] Throughout the brief, the Appellant relies on the original language transcripts, which better capture the evidence as actually given and avoid distortions introduced by defective transcripts and translations.
[2] ICC-01-04-02/06-2666-Red, paras. 35-46 and cites therein.

II. SUBMISSIONS

1. Part 1 – Errors in exceeding the parameters of the confirmed charges

4. Part 1 submits that the Trial Chamber erred in law by exceeding the 'facts and circumstances' of the confirmed charges and thereby distorted the factual and legal basis of Mr. Yekatom's liability rendering the convictions on Counts 1–6, 8 and 24–28 unsafe and warrant their reversal.

1. Ground 1.1 – The Trial Chamber improperly expanded the factual basis beyond the charges as confirmed

5. In the Court's practice, a functional distinction exists between material facts, i.e. the 'facts and circumstances described in the charges' underpinning each count, and subsidiary facts, i.e. those from which material facts may be inferred, or that serve to demonstrate or support them.[3] This distinction reflects a substantive limit on what can form the factual matrix that can lawfully ground conviction or re-characterisation: only material facts may, and subsidiary facts may not.[4] This distinction raises two key consequences. First, a judgment cannot exceed the 'facts and circumstances described in the charges', and even Regulation 55 permits only a change in the legal characterisation of facts, not a change in the statement of facts itself.[5] Second, charges are a coherent narrative in which each material fact has a particular place;[6] elevating background or 'supporting' matter into decisive operative facts after confirmation amounts to altering that narrative, which is procedurally impermissible.[7]

6. Properly understood, any fact that goes to the *actus reus* or *mens rea* is a material fact.[8] It must lie within the confirmed 'facts and circumstances' and be proven beyond reasonable doubt. It cannot be established by inference from context alone or by re-labelling background propositions as though they have satisfied the elements of the offence.[9]

7. Relatedly, Mr. Yekatom's right to be informed of the charges is 'firmly grounded' in the Statute.[10] This right requires that an accused be informed of the acts that they are alleged to have committed (their 'cause'), and the legal characterisation of these acts (their 'nature').[11] The Appeals Chamber

[3] ICC-02/05-03-09-121-Corr-Red, para. 36; ICC-01/09-01/11-373, para. 47; ICC-01/09-02/11-382-Red, para. 59. See also IT-95-16-A, paras. 88-89, 105.
[4] ICC-01/04-01/07-3319, Dissenting Opinion of Judge Van Den Wyngaert, paras. 15 and 20; see also ICC-02/11-01/11-325, paras. 27-28; ICC-02/11-02/11-57, para. 11. While the precise terminology has not been definitively endorsed at the appellate level, it is commonly used in proceedings; see ICC-02/11-01/11-572 OA5, paras. 36-37; cf. ICC-01/05-01/08-3636-Anx2, fn. 22; Chambers Practice Manual, para. 36. See also Judgment, p. 212, para. 661.
[5] ICC-01/04-01/06-2205, para. 93; ICC-01/04-01/07-3319, Dissenting Opinion of Judge Van Den Wyngaert, para. 12. See also, Chambers Practice Manual, para. 64.
[6] ICC-02/11-01/11-325, para. 28.
[7] ICC-01/04-01/07-3319, Dissenting Opinion of Judge Van Den Wyngaert, para. 13.
[8] See also IT-95-14-A, paras. 218-219.
[9] ICC-01/05-01/08-3636-Anx2, para. 12.
[10] ICC-02/04-01/15-1562, para. 69; Article 67(1)(a) of the Rome Statute (wherein he is entitled to be informed 'promptly and in detail of [their] nature, cause and content').
[11] ICC-01/14-01/18-874, para. 38.

has repeatedly emphasised the 'strong link' between this right and the right to effective defence preparation.[12]

8. The sufficiency of detail required will vary; however, at a minimum, Mr. Yekatom was entitled to be informed of the material facts, i.e. 'precise details', associated with his form of participation.[13] For the charges under which he was convicted as a co-perpetrator, he was entitled to *inter alia* 'detailed information' on the 'alleged conduct that gives rise to criminal responsibility'.[14] For those under which he was convicted as a direct (i.e. 'individual') perpetrator, he was entitled to a higher level of specificity: the means by which he was alleged to have carried out the acts ought to have been pleaded 'with the greatest precision'.[15]

9. In the Judgment, the Chamber relied on an assortment of material facts that were not properly pleaded at trial, thereby violating Mr. Yekatom's rights. These fall within three groups: first, that Mr. Yekatom's instructions on 5 December 2013 'were to fight the Seleka and included targeting sectors where 'Muslims' were to be found',[16] that Mr. Yekatom and other 'elements' conducted a 'reconnaissance' mission on the eve of the operation,[17] and that Mr. Yekatom fired a pistol in the air to 'launch[ed] the attack' at the Boeing Market'[18] ('5 December Operation Material Facts'); second, *qua* coercive acts,[19] that Mr. Yekatom established a base in Yamwara and continued to be present in Bangui along with the 'Anti-Balaka'[20] ('Count 4-5 Material Fact'); third, *qua* evidence of *mens rea*, that Muslims' departure from Mbaïki was a foregone conclusion, and Mr. Yekatom knew, via Mbaïki

[12] ICC-02/04-01/15-1562, para. 69 and references cited therein.
[13] ICC-01/14-01/18-874, paras. 1, 38-39, 43; IT-95-14-A, para. 210. The material facts of the Judgment are those set out in section II ('Findings of Fact'), see Judgment, pp. 18-40, paras. 24-125.
[14] ICC-01/14-01/18-874, para. 59.
[15] IT-95-14-A, paras. 210-213 and references cited therein; cf. ICC-01/04-01/06-3121-Red A, para. 123 (in particular, 'where an accused is not alleged to have directly carried out the incriminated conduct').
[16] Judgment, p. 28, para. 74 (emphasis added); relied on to establish EoC and/or MoL under Counts 1-8: Judgment, p. 1353, para. 3950 (material fact underpinning attack directed against civilian population); pp. 1356-1357, para. 3959 (object of the attack); p. 1367, para. 3986; p. 1368, para. 3989 ('order to displace'); pp. 1374-1375, para. 4010; p. 1375, para. 4012 ('control' over crimes or persons(s)); p. 1376, paras. 4014, 4016; p. 1378, para. 4023 (Mr. Yekatom's *mens rea*).
[17] Judgment, p. 28, para. 75; relied on to establish EoC and/or MoL under Counts 1-8: Judgment, p. 1353, para. 3950 (material fact underpinning attack directed against civilian population); pp. 1356-1357, para. 3959 (object of the attack); pp. 1374-1375, para. 4010 (as 'control' over crimes or persons(s)); pp. 1376-1377, para. 4017 (as Mr. Yekatom's mens rea).
[18] Judgment, p. 29, para. 76; relied on to establish EoC and/or MoL under Counts 1-8: Judgment, pp. 1353-1354, para. 3951 (material fact underpinning attack directed against civilian population); pp. 1356-1357, para. 3959 (object of the attack); pp. 1360-1361, para. 3970 (civilian status of traders); pp. 1362-1363, paras. 3975-3976 (as coercive conduct); p. 1367, para. 3986 (as 'order to displace'); pp. 1374-1375, para. 4010 (as 'control' over crimes or persons(s)); p. 1376, para. 4016 (as Mr. Yekatom's *mens rea*).
[19] The Defence notes that in amongst the Trial Chamber's findings on Mr. Yekatom's essential contributions is a finding that 'life-threatening' living conditions in Mbaïki led to the departure of Muslims 'despite' Mr. Yekatom's public speeches warning against anti-Muslim violence (see Judgment, p. 1486, para. 4362). This finding cannot logically be considered an 'essential contribution', as it contains no reference to Mr. Yekatom's personal acts and conduct that could logically be understood as a basis for 'control' over the relevant crimes under Counts 24-28 therein (see Ground 2.6). However, the Defence notes that, in any event, this would have constituted an unpleaded material fact thus precluding reliance thereon as a basis for conviction. See also Judgment, p. 1471, para. 4313.
[20] See Judgment, pp. 1362-1363, para. 3975.

Muslims, that RFACPP elements committed 'acts of violence' in Mbaïki ('Axis *Mens Rea* Facts') (collectively, 'Unpleaded Material Facts').[21] The Chamber's reliance on these Unpleaded Material Facts did not take place in a vacuum: it was an impermissible response to the OTP's failure to prove the key material factual allegations as originally pleaded – most notably in respect of Mr. Yekatom's instructions prior to the 5 December operation.[22]

10. In relying on the 5 December Operation Material Facts and Axis *Mens Rea* Facts, the Trial Chamber exceeded the facts and circumstances described in the charges, thereby violating Article 74(2). These findings cannot be used to establish a conviction.[23]

11. Moreover, the Appellant was not promptly informed that the Unpleaded Material Facts, in their 'nature' and/or their 'cause', would constitute the basis(/es) for his criminal liability.[24] Nor was this cured by the provision of 'timely, clear and consistent information detailing the factual basis underpinning the charges'.[25] The OTP called two 'insider' eyewitnesses, P-1339 and P-2475, who claimed to have participated in the 5 December operation. Yet their accounts were irreconcilable – notably in respect of Mr. Yekatom's conduct, both on the eve of the operation and his very presence during the Boeing Market events, as was repeatedly brought to the attention of the Chamber.[26] The OTP insisted that P-2475's account was reliable, until its eleventh-hour admission in closing submissions that, in fact, it did not intend to rely on him at all.[27] These procedurally irregular, inconsistent representations contaminated the Chamber's assessment of the evidence on the 5 December operation. Far from curing the prejudice to the Appellant's rights by providing 'clear and consistent information' on his

[21] See Judgment, p. 1487, para. 4365.
[22] Judgment, pp. 28-29, paras. 74-76; cf. DoCC, paras. 86-87. Yekatom Closing Statements, T-308 (ENG), 13:11-25.
[23] See ICC-01/05-01/08-3636-Red A, paras. 115-116.
[24] See IT-95-16-A, para. 110. Cf. DCC, paras. 246-261; OTP Pre-Trial Brief, paras. 393-410.
[25] IT-95-16-A, para. 114 (emphasis added); ICC-01/04-01/06-3121-Red A, para. 129; KSC-CA-2024-03-F00069/RED, para. 194.
[26] See Yekatom Defence Closing Brief, paras. 363-365; Yekatom Defence Opening Statements, T-253, 29:6-25. The accounts fundamentally diverge in respect of, inter alia, i) the group's progress, arrival and pre-operation actions in Bangui (see P-2475: T-129, 39:18-41:12; 48:8-18; T-132, 74:20-76:26 (where P-2475 stated that the group split in two after crossing the M'Poko River and that one group led by Mr. Yekatom stayed on the main road leading to Foyer (i.e. Cattin), whilst the group led by Cœur de Lion proceeded to the Muslim cemetery, where they awaited the start of the Operation)); and compare, P-1339: T-155, 4:8-6:13; T-159, 55:10-56:16 (where P-1339 stated that the elements did not split after crossing the river but instead all proceeded to Proget as a group, including Mr. Yekatom and Cœur de Lion, where they rested until the start of the operation); and ii) the events at the Boeing Market (see P-2475: T-129, 40:28-41:12; 49:8-20; 52:20-23; 53:10-12; T-133, 3:28-7:15; 11:14-19; T-132, 74:20-76:26 (where P-2475 stated inter alia that only the Cœur de Lion subgroup, comprising less than 50 elements, proceeded to the Boeing Market and that neither Mr. Yekatom nor Beina were present); and compare, P-1339: T-154, 45:11-16; 47:24-48:10; 50:5-13; 51:2-5; 53:20-26; 74:8-11; 91:13-16; T-159: 58:15-20; CAR-OTP-2041-0767; CAR-REG-0001-0008 (where P-1339 states that at least 611 members – possibly over 750 – were present at Boeing Market, that they formed rows across from the Traders' shops, and that Mr. Yekatom was present and gave the signal by firing in the air, at which point Hassan emerged with a machine gun and counter-attacked)).
[27] ICC-01/14-01/18-2249-Conf, para. 11 ('*l'Accusation réitère que […] elle considère sa déposition crédible et fiable quant à son appartenance au groupe de YEKATOM pendant la période pertinente*' [emphasis added]); Yekatom Closing Statements : T-306, 102:22-23. See also, T-308 (ENG), 93:22-94:5; and Judgment, pp. 162-167, paras. 506-521 (in particular, para. 520: 'the Chamber finds that P-2475 was wholly unreliable on his involvement within Mr. Yekatom's group'.).

charged conduct, the OTP compounded it by effectively running two irreconcilable cases.

2. Ground 1.2 – The Trial Chamber convicted Mr. Yekatom for direct perpetration on the basis of an unlawful re-characterisation of the facts

12. When the possibility of re-characterisation appears to a trial chamber at any time during trial,[28] it must (i) give notice thereof to the accused, and (ii) give the accused the opportunity to make submissions therein.[29] Regulation 55 of the RoC sets out 'stringent safeguards' that act to ensure that any re-characterisation does not violate an accused's fair trial rights.[30] The Appeals Chamber has held that 'human rights law demands that the modification of the legal characterisation of facts […] must not render [the] trial unfair';[31] and that '[t]he protection of the rights of the accused person in the process of legal re-characterisation of facts is thus among the main goals' of the provision.[32] The safeguards therein thus require strict compliance.[33]

13. The Chamber convicted Mr. Yekatom on Counts 1, 4, 5, and 8 as a 'direct perpetrator' (i.e. 'as an individual'),[34] despite being demonstrably aware that this MoL was not confirmed by the PTC.[35] It also impermissibly re-characterised the Count 4-5 Material Facts as coercive conduct underpinning those counts. It thus entirely disregarded the safeguards within Regulation 55, failing to provide notice of its intention to re-characterise, and failing to hear Mr. Yekatom thereon. This was an error of law.[36]

14. The fact that the Appellant first learned of this re-characterisation in the Judgment was per se a violation of his right to notice of the 'nature' of the charges.[37] The prejudice was materially compounded by the fact that this re-characterisation (i) was based in part on the Unpleaded Material Facts regarding Mr. Yekatom's conduct; and (ii) meant the stringent pleading requirements applicable to

[28] The Appeals Chamber has held that Regulation 55(2) notice can be given at the deliberations stage: see ICC-01/04-01/07-3363, paras. 21, 23-24.
[29] Regulation 55(2) of the RoC.
[30] ICC-01/04-01/06-2205, para. 85; ICC-01/12-01/18-1562-Red, para. 64; ICC-01/04-01/07-3363, paras. 87, 95. See also, ICC-01/04-01/07-3319-tENG/FRA, para. 22 (where the *Katanga* Trial Chamber noted 'the fundamental right of the Defence to submit observations on the recharacterisation' enshrined in regulation 55(2)).
[31] ICC-01/04-01/06-2205, paras. 69, 85; ICC-01/12-01/18-1562-Red, para. 64.
[32] ICC-01/12-01/18-1562-Red, para. 65 (emphasis added).
[33] See ICC-01/12-01/18-1562-Red, para. 41. See also ICC-01/04-01/07-3319-tENG/FRA, para. 14 ('It is evident from the wording of this provision that the power to modify the legal characterisation of the facts is vested in trial chambers, which must then comply strictly with the terms set out therein.').
[34] See Judgment, pp. 1375-1376, para. 4013; pp. 1536-1537, para. 4504; p. 1547, para. 4535.
[35] See Judgment, p. 1373, para. 4007; ICC-01/14-01/18-703-Red, paras. 23-24. See also, ICC-01/14-01/18-874, para. 18; DoCC, p. 107; DCC, 'Schedule of Charges', pp. 221-223 (where the OTP had requested that 'individual perpetration' be confirmed in respect of these counts); OTP PTB, paras. 329-330.
[36] ICC-01/12-01/18-1562-Red, paras. 48-49. The 5 December Operation Material Facts were based on the unreliable testimony of P-1339; see Ground 4.1.
[37] Cf. ICC-01/04-01/07-3363, para. 100; ICC-01/12-01/18-1562-Red, para. 67. See Article 67(1)(a) of the Rome Statute; ICC-01/04-01/07-3363, para. 93 (where the Appeals Chamber noted ECtHR case law providing that notice of possible re-characterisation is necessary in order to give the accused an opportunity to meaningfully defend themselves) and references cited therein.

charges of direct participation were unmet.[38] In the same vein, in failing to allow the Appellant to make submissions on the re-characterisation, or on the unpleaded facts on which it relied,[39] the Chamber also violated his right to effective defence preparation, as well as the principle of *audi alteram partem*.[40] The ECtHR has repeatedly found that legally re-characterising facts in a Judgment, without allowing an accused to provide submissions thereon, constitutes a breach of the right to a fair trial.[41] Tellingly, the Trial Chamber failed to even acknowledge that it was re-characterising his MoL, let alone explain how this re-characterisation was permissible or consistent with fairness.

15. The Appeals Chamber has held that it is of 'particular significance' that an accused be given notice under Regulation 55(2) where a possible re-characterisation may affect the gravity of the charged crimes, and by extension, the sentence of an accused.[42] The fact that the Chamber expressly relied on Mr. Yekatom's conviction via direct participation, including the unpleaded facts on which the re-characterisation was based, in determining sentences for the relevant counts further demonstrates the prejudice caused.[43]

16. There can be no reasonable suggestion that re-characterisation within Article 25(3)(a) is permissible without recourse to the Regulation 55(2) procedure. As previously held by the Appeals Chamber, where Article 25(3)(a) liability is charged, due respect for an accused's right to notice entails 'setting out […] the specific form of participation within that sub-provision'.[44] If an accused is entitled to notice that he is charged with direct perpetration, it necessarily follows that he is entitled to notice of the possibility that he may be convicted for that mode. Further, the legal elements of direct participation are not intrinsic to other modes within Article 25(3)(a), as they vary according to the charged crimes. Moreover, even if *arguendo* the re-characterisation had been based on facts that had been properly pleaded and debated at trial, the violation would still stand.[45]

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[38] See also, *Ramirez v. Guatemala* (2005), IACHR Series C No. 126, paras. 65-80, and in particular, paras. 73-75.
[39] See ICC-01/04-01/07-3363, para. 101; ICC-01/09-01/11-907, para. 10.
[40] Cf. ICC-01/12-01/18-1562-Red, para. 46. See Article 67(1)(b) of the Rome Statute. See also ICC-01/04-01/07-3319-tENG/FRA, paras. 5-6, 35-38 (where in *Katanga*, the majority of Trial Chamber II found, drawing on ECtHR case law, that this right of the Accused had been respected following the provision of Regulation 55(2) notice (several months into deliberations), as he had thereby been 'placed in a position to exercise [his] rights and file any necessary submissions'); and ICC-01/04-01/07-3363, para. 95 (where it was noted that Mr. Katanga was given the opportunity to make submissions).
[41] See e.g. Application no. 25444/94, paras. 62-63; Application no. 20494/04, paras. 41-44.
[42] ICC-01/12-01/18-1562-Red, para. 45.
[43] See e.g. Judgment, pp. 1536-1537, para. 4504; p. 1547, para. 4535; p. 1551, para. 4549; see also, p. 1533, para. 4492; pp. 1533-1534, para. 4495 (regarding the reconnaissance mission); p. 1534, para. 4496 (noting that Mr. Yekatom 'personally launched the attack'), para. 4497 (regarding Mr. Yekatom's instructions).
[44] See also ICC-01/14-01/18-703-Conf, para. 17 (where in restating the principle that 'the exact sub-provision and specific MoL must be identified', the Trial Chamber expressly cited the example of 'commission of a crime as an individual under Article 25(3)(a) of the Statute').
[45] See Application no. 20494/04, paras. 41-44 (where the ECtHR expressly dismissed the argument that 'the legal characterisation of the offence was of little importance as long as the alternative conviction was based on the same facts', reiterating that, per the Convention, the applicant was entitled to notice of both the facts underlying the charges and their legal

3. Ground 1.3 – The Trial Chamber erroneously moulded the material facts of Mr. Yekatom's co-perpetration liability for the PK9-Mbaïki Axis charges

17. An accused charged with non-direct perpetration liability 'must be provided with detailed information regarding: i) his or her alleged conduct that gives rise to criminal responsibility, including the contours of the common plan and its implementation as well as the accused's contribution ii) the related mental element; and iii) the identities of any alleged co-perpetrators'.[46]

18. Prior to the commencement of trial, the Defence seized the Chamber, seeking dismissal of the confirmed mode of co-perpetration on the basis of insufficient notice of the material facts underpinning Mr. Yekatom's liability thereunder.[47] In its decision dismissing the motion, the Chamber set out the facts establishing these elements of co-perpetration, finding that Mr. Yekatom was 'sufficiently informed of the contours of the common plan and the identities of his alleged co-perpetrators'.[48] The Chamber's delineation of the charges thus depicted a common plan that: materialised in the immediate aftermath of the Seleka's March 2013 takeover of Bangui and continued throughout the period of the charges; spanned various locations in CAR, DRC and Cameroon; and involved an array of co-perpetrators, including individuals in the circle of ex-President Bozizé, and three named RFACPP members: Mr. Yekatom, Cœur de Lion, Beina.[49] The Chamber further found that Mr. Yekatom had been 'informed of his alleged contribution' to this common plan, and set out twelve charged 'essential contributions' underpinning his alleged liability. These twelve contributions comprised a range of conduct undertaken over ten months in 2013 and 2014: first in Zongo, Kalangoi in DRC, in the Lobaye prefecture of CAR; then in Bangui; and then in Lobaye again.[50]

19. The Chamber convicted the Appellant under Counts 24-28 on the basis of a radically transformed, if not entirely new, co-perpetration case. The common plan was drastically narrowed in temporal and geographical scope, i.e. to an agreement entered between Mr. Yekatom, Cœur de Lion and Alkanto on the PK9-Mbaïki Axis, at some point after 10 January 2014.[51] This agreement was established by their instructions to 'kill all Muslims in the area', and the subsequent implementation of those instructions.[52] Mr. Yekatom's co-perpetrators were thus reduced to two RFACPP members, one of whom

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characterisation); see in particular, para. 43 ('the Supreme Court of Cassation should have given the applicant an opportunity to defend himself against the new charge. It could, for example, adjourn the hearing for further argument, or, alternatively, allow the applicant the opportunity to make written submissions on the new charge').

[46] ICC-01/04-01/06-3121-Red A, para. 123.

[47] ICC-01/14-01/18-565-Conf.

[48] ICC-01/14-01/18-703-Conf, paras. 27-32.

[49] ICC-01/14-01/18-703-Conf, paras. 27-32.

[50] ICC-01/14-01/18-703-Conf, paras. 28-31. See also, ICC-01/14-01/18-874, para. 56 (where the Appeals Chamber cited these findings in noting that 'the Trial Chamber examined the Confirmation Decision as a whole and determined that it contains factual findings that directly relate to Mr. Yekatom's contribution to a common plan').

[51] Judgment, pp. 1481-1484, paras. 4345-4356. See Ground 2.5.

[52] Judgment, p. 1484, para. 4356.

(Alkanto) had never been identified as such at trial, including in the OTP closing submissions.[53] Mr. Yekatom's twelve essential contributions were reduced to two: i) his 'undisputed' leadership of a group numbering 1000 elements on the Axis; and ii) his instructions to 'kill the Muslims', issued while on the Axis.[54]

20. The Chamber's reliance on a radically transformed factual basis for co-perpetration was erroneous.[55] If, as the Appeals Chamber has recognised, 'a meaningful defence can only be prepared when the OTP is not allowed to 'mould [his] case to the evidence' as the trial progresses',[56] then the Chamber should not be permitted to drastically modify the factual underpinnings of Mr. Yekatom's liability as a co-perpetrator in the Judgment. The Chamber's eleventh-hour shifting of the goalposts was particularly prejudicial given that it had itself set up those goalposts, in expressly delineating the material facts underpinning his alleged co-perpetration liability, as set out above. The Chamber thus violated the Appellant's interlinked rights to notice and to effective preparations.

4. Materiality

21. The above interrelated errors materially affected the Judgment. At trial, the OTP evidence turned out materially differently than was expected – if it materialised at all. Pursuant to its statutory powers and duties, the Chamber ought to have taken measures to ensure that these developments did not unfairly prejudice the fairness of the proceedings, including the timely issuance of appropriate directions to the OTP: to clarify the case against Mr. Yekatom; to amend its PTB; or if necessary, to seek an amendment of the charges.[57] This is especially so given that the Chamber was on notice at the very outset of the proceedings as to potential difficulties *vis-à-vis* the parameters and nature of the OTP case as confirmed; and given the Chamber's own statutory limits *vis-à-vis* the scope, content and parameters of the confirmed charges.[58]

22. Above all, upon the OTP's failure to establish the material facts with which Mr. Yekatom had been charged, the Chamber ought to have acquitted him. Instead, it opted to (i) rely on material facts regarding his conduct that had never been properly pleaded at trial; (ii) unlawfully re-characterise his MoL on four counts; (iii) unlawfully re-characterise facts as 'coercive acts' underpinning Counts 4-5; and (iv) drastically transform the factual basis of his co-perpetration liability; and in this way, to secure convictions against Mr. Yekatom on Counts 1-6, 8, and 24-28. It thus treated the charges as a

[53] See Yekatom Closing Statements: T-306 (ENG); T-307 (ENG).
[54] See Judgment, pp. 1485-1486, paras. 4360-4363 (in particular, para. 4362). Regarding the finding on 'life-threatening' conditions in Mbaïki, see above, Ground 1.1 (on coercive acts).
[55] See IT-95-16-A, para. 93.
[56] ICC-01/12-01/18-1562-Red, para. 102; see also IT-95-16-A, para. 92.
[57] See e.g. Article 64(1) and 64(6)(f) of the Statute. See also, IT-95-16-A, para. 92.
[58] See e.g. ICC-01/14-01/18-703-Conf; Article 74(2) of the Statute. See also Chambers Practice Manual, paras. 58-59, 62; Rule 122(3) of the RPE.

loose collection of names, places and events, reordering and re-characterising them at will.[59] This is not trial by ambush, but conviction by ambush.

23. These wide-ranging violations of the Appellant's fair trial rights give rise to a reasonable apprehension of bias.[60] They inevitably create the reasonable perception that the Chamber, after reviewing the evidence and submissions during deliberations, decided to exceed, rework, and/or re-characterise the factual parameters of the confirmed charges, to avoid entering acquittals on the relevant charges.[61] This perception is strengthened by the Trial Chamber's failure to comply with the stringent safeguards within Regulation 55 – specifically, to allow the Defence to be heard on the Unpleaded Material Facts on which it intended to base the re-characterisation.[62] In *Katanga,* the Majority of Trial Chamber II concluded that its decision to give Regulation 55(2) notice during the deliberations stage did not give rise to the perception of partiality, finding that following its triggering of the Regulation 55(2) procedure, the issue of Katanga's potential liability was 'open to discussion and the submissions of the parties and participants in this respect will be decisive'.[63] The reasonable observer would note the Chamber's starkly different approach to Mr. Yekatom's right to be heard. They would be mindful that the Chamber dismissed the OTP's Regulation 55(2) requests on three separate occasions, each time finding that it did not appear to it that the legal characterisation of facts in the case might be subject to change.[64] In their assessment of whether the above errors were consistent with a mind open to persuasion on the merits, the Chamber's conspicuous silence in the Judgment on the re-characterisations would weigh particularly heavily.

24. The above legal errors warrant the reversal of the Appellant's convictions and reduction of sentences on the affected counts.[65] Moreover, the cumulative effect of these errors has prejudiced Mr. Yekatom's right to notice and his right to effective defence preparations. Convictions rendered in such flagrant violation of these rights are unreliable, given that Mr. Yekatom was effectively deprived of a fair and meaningful opportunity to defend himself against them; in this regard, they offend the most basic principle of criminal justice. Pursuant to Article 83(2)(a), the Defence therefore requests that Mr. Yekatom's convictions on Counts 1-6, 8, and 24-28 be reversed.

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[59] See ICC-01/04-01/07-3319, Dissenting Opinion of Judge Christine van den Wyngaert, para. 20.
[60] See Part 4 (bias).
[61] ICC-01/04-01/07-3319-tENG/FRA, para. 19 ('Indubitably, legal recharacterisation of the facts at the deliberation stage may raise concerns about an appearance of partiality on the part of the judges who may be thought to be already convinced of the accused's guilt, or to be seeking to establish it at all costs'). See also, ICC-01/04-01/07-3319, Dissenting Opinion of Judge Christine van den Wyngaert, paras. 27-35.
[62] See ICC-01/04-01/07-3363, para. 101; ICC-01/09-01/11-907, para. 10.
[63] ICC-01/04-01/07-3319-tENG/FRA, para. 19; see also, ICC-01/04-01/07-3363, paras. 60, 105.
[64] ICC-01/14-01/18-542, para. 14; ICC-01/14-01/18-1482, para. 9; ICC-01/14-01/18-2097, para. 6. See also, ICC-01/04-01/07-3363, para. 24 (stressing that Regulation 55(2) notice 'should always be given as early as possible'); ICC-01/04-01/07-3319, Dissenting Opinion of Judge Christine van den Wyngaert.
[65] See above, Ground 1.1 (on Unpleaded Material Facts); Ground 1.2 (on sentencing).

2. Part 2 – Errors in the attribution of responsibility to Mr. Yekatom

1. Ground 2.1 – The Trial Chamber erred in finding that the Anti-Balaka was 'one movement'

25. In convicting Mr. Yekatom under Article 25(3)(a), the Chamber found that he led his own Anti-Balaka group,[66] composed of Anti-Balaka elements,[67] and committed crimes in coordination with other Anti-Balaka groups,[68] to achieve the Anti-Balaka's overarching objective of ousting the Seleka by targeting the Muslim population.[69] In effect, Mr. Yekatom's liability was anchored in his supposed membership in, and perceived association with, a unified 'Anti-Balaka movement'.[70] In doing so, the Chamber ascribed to Mr. Yekatom's alleged group the collective characteristics and objectives of the broader 'Anti-Balaka movement' – an approach that was impermissible given the manner in which the case was charged. The Chamber erred in law by improperly relying on findings relevant to contextual elements to substitute for the individual conduct, agreement, and intent.

a) The case as pled and confirmed required an Article 25(3) nexus

26. Before addressing the Chamber's reliance on Article 7(2)(a) to ascribe the 'one movement' features of the Anti-Balaka to Mr. Yekatom, it is necessary to recall how the OTP framed its case and how the PTC and Trial Chamber fixed the parameters of individual liability. That procedural architecture forecloses the path the Chamber took: in this case, as pleaded and confirmed, any attribution of inter-group conduct to Mr. Yekatom had to be established – if at all – under Article 25(3). The Chamber could not substitute contextual determinations about the Anti-Balaka as a 'unified' movement for proof of individual liability; doing so conflated contextual elements with modes of liability and invoked a theory not pleaded and not available on this record.

27. From the outset, the OTP acknowledged that the term 'Anti-Balaka' described a diffuse constellation of self-defence groups, which included 'any sub-group or plurality of members/elements thereof, whether or not formally organised or constituted'.[71] In order to frame the diffuse groups under the 'Anti-Balaka' umbrella, it pleaded liability through two inter-linked 'common plans' under Article 25(3): a 'Strategic Common Plan' (to claim or reclaim political power by instrumentalising

[66] Judgment, p. 38, para. 115; p. 896, para. 2524; p. 1185, para. 3444; p. 1202, para. 3481; p. 1214, para. 3521; p. 1285, fn. 9200; p. 1481, para. 4345; p. 1568, para. 4606. See also reference to 'Mr. Yekatom's group' and 'other Anti-Balaka groups': Judgment, p. 28, para. 73; p. 116, fn. 491; p. 623, paras. 1644, 1646; p. 896, para. 2523; p. 937, para. 2673; pp. 1334-1335, para. 3901; p. 1340, para. 3917; p. 1353, para. 3950; p. 1374-5, para. 4010; pp. 1533-1534, para. 4495.
[67] Judgment, pp. 89-90, para. 275; p. 105, para. 322; pp. 107-108, para. 330; p. 115, para. 355; pp. 474-475, para. 1228; p. 777, para. 2115; p. 1147, para. 3337; pp. 1195-1196, para. 3470; pp. 1220-1221, para. 3542; p. 1381, para. 4032.
[68] Judgment, pp. 27-30, paras. 69-80; p. 780, para. 2124; p. 800, para. 2191; pp. 863-896, paras. 2407-2525; pp. 1331-1332, para. 3894; p. 1333, para. 3896; p. 1334, para. 3901; pp. 1338-1339, para. 3913; pp. 1340-1341, paras. 3917-3918; p. 1344, para. 3926; pp. 1348-1349, para. 3939; p. 1353, para. 3950; p. 1363, para. 3976. See also Ground 2.3.
[69] Judgment, p. 22, para. 43; pp. 22-23, para. 45; p. 24, para. 50; pp. 27-28, para. 71.
[70] Judgment, p. 25, para. 63; p. 589; p. 1336, para. 3906; pp. 1348-1349, para. 3939; p. 1375, para. 4011; pp. 1483-1484, para. 4353; p. 1485, para. 4358.
[71] DCC, para. 3, fn. 3.

self-defence groups)[72] and a 'subsidiary' 'Operational Common Plan' (to violently target Muslim civilians in Bangui and western CAR).[73] It expressly asserted that, although different in scope, the two plans were 'identical in the criminal means that they employed', and used and designed so that the strategic level would 'exploit and enhance' the crimes of the subsidiary level - an architecture that by design relied on Article 25(3) linkages.[74]

28. Within that same charging framework, the OTP introduced a 'Common Purpose' under Article 25(3)(d) as the legal device to connect the otherwise decentralised actors across sub-groups. The DCC defined this as 'a common purpose to violently target the Muslim civilian population in western CAR, based on their religious, national or ethnic affiliation, and their perceived collective responsibility for, complicity with, and/or support of, the Seleka (the 'Common Purpose')',[75] and made clear that it operated alongside the two common plans asserting that '[t]he crimes were also committed [by the Anti-Balaka] in the implementation of the Strategic Common Plan and pursuant to the Common Purpose'.[76] This overlap extended across all alleged 'Anti-Balaka groups' including Mr. Yekatom.[77] Moreover, the Common Purpose was introduced and relied on as being analytically distinct from the contextual element of 'organisational policy' in Article 7(2)(a).[78]

29. Crucially the DCC framed the 'Mokom link' (i.e. as a member of the Strategical Common Plan instrumentalising the Operational Common Plan)[79] within its Common Purpose.[80] It is in this framework that the OTP portrayed Mr. Mokom as the *de facto* Anti-Balaka operations coordinator - organising FACA/PG members, securing funds and ammunition from Zongo, directing when to attack - and tied Mr. Yekatom to him through specific coordination efforts including allegedly, *inter alia*: arranging accommodation in Zongo for Mr. Yekatom; regular meetings in Zongo ahead of Mr. Yekatom allegedly constituting his 'own group'; supplying weapons and ammunition to 'Mr. Yekatom's group'; and regular telephone contact with Mr. Yekatom in preparation for the 5 December 2013 operation.[81] The OTP then alleged that the 5 December operation was mounted by the 'Anti-Balaka',

[72] DCC, paras. 2-5, 15, 16, 119, 121.
[73] DCC, paras. 2, 6, 186.
[74] DCC, para. 2.
[75] DCC, para. 125.
[76] DCC, para. 242.
[77] DCC, para. 206. See also DCC, paras. 189, 235.
[78] DCC, para. 125 ('the 'Common Purpose' materialised at least contemporaneously with the membership or participation of the respective subgroups and/or their leaders in the Anti-Balaka, or their subscription to its organisational policy. Each Anti-Balaka subgroup thus committed the crimes set out herein pursuant to the Common Purpose and in furtherance of their own related common plans (emphasis added)'); see also DCC, paras. 235, 242.
[79] DCC, para. 40; see also para. 121.
[80] DCC, paras. 202-206.
[81] DCC, paras. 202-206 with cross-reference to paras. 44-47 which sets out the OTP's case on the origins of the 'Anti-Balaka' and purports to frame Messrs Yekatom and Mokom as the 'Zongo Group'.

which included Mr. Yekatom, 'under Mokom's coordination from Zongo'.[82]

30. The same linkage was carried forward into the OTP's pleading of post-5 December conduct. In setting out Mr. Yekatom's alleged participation in the Common Purpose, the DCC links him not only to Mr. Mokom but also to other alleged members of the Strategic Common Plan and the National Coordination, and pleaded on-going coordination 'after the 5 December 2013 attack and throughout 2014'.[83] Beyond asserting that the relevant counts were in furtherance of that purpose,[84] the DCC also pleaded the manner of commission namely, that the crimes followed a certain pattern across sub-groups,[85] and were carried out through meetings, telephone communications, instructions and operational tasking from the alleged 'leadership', invoked, for example, immediately after the 5 December 2013,[86] and in relation to the Yamwara school base.[87] Insofar as the OTP sought to attribute any component of the charged post-5 December events, either in relation to the objective or subjective elements of the offence and by reference to coordination, instructions or other operational links with 'Anti-Balaka groups' or the Strategical Common Plan/National Coordination leadership, then that attribution had to be made, if at all, through the Article 25(3)(d) modalities that it had constructed. The OTP itself drew a clear boundary in this regard, explicitly stating that whilst 'the crimes committed by Yekatom through his Operational Common Plan are imputable to members of the Strategic Common Plan […] [b]y contrast, Yekatom is responsible for his group's crimes […] and not those crimes committed by other Anti-Balaka sub-groups'.[88] That allocation accepted decentralisation and confirmed that any extension of attribution beyond Mr. Yekatom's alleged group had to be proven through the Article 25(3) constructs pleaded - two common plans and a Common Purpose - rather than inferred from contextual notions of a single movement.

31. The DoCC fixes the facts and circumstances described in the charges. Here, the PTC confirmed only Article 25(3)(a) and (b), noting the OTP's reliance on a 'Strategic' and an 'Operational' common plan as complementary aspects of a common criminal design but deeming it 'unnecessary and inappropriate, for the purposes of the present decision, to determine or otherwise address the extent to which either the notion of a common plan, or its specific variation used in this case, are compatible with the statutory framework'; the PTC emphasised the existence of a 'criminal agreement' and characterised Article 25 as a 'comprehensive provision, suitable to encompass any and all possible forms

[82] DCC, para. 53.
[83] DCC, para. 204 and fn. 474.
[84] DCC, para. 206. See also para. 194.
[85] DCC, para. 189.
[86] DCC, para. 71.
[87] DCC, paras. 301, 308-310. For PK9-Mbaïki Axis: see DCC, para. 346.
[88] DCC, para. 7.

and manners of contribution to a crime'.[89] It declined to address or confirm Article 25(3)(d) for Mr. Yekatom in light of its finding that his acts would have met all of the requisite elements through Article 25(3)(a) and (b).[90] By contrast, the PTC confirmed Article 25(3)(d) as an alternative mode for Mr. Ngaïssona for his alleged contribution to 'Anti-Balaka group crimes',[91] producing a notable asymmetry in which a leadership-level 'common purpose' route remained available only for Mr. Ngaïssona.

32. When the Defence sought further particulars on the scope of the confirmed charges and the form(s) of participation,[92] the Chamber stated the case would proceed on the facts and circumstances confirmed,[93] and that Mr. Yekatom had been sufficiently informed, with precision, of the three applicable modes of liability - co-perpetration and indirect (co-)perpetration under Article 25(3)(a), and ordering under Article 25(3)(b) which was upheld on appeal.[94]

33. Faced with this confirmed framework, the OTP repeatedly tried to re-open Article 25(3)(d) with respect to Mr. Yekatom. Immediately after confirmation it sought reconsideration or, alternatively, leave to appeal the non-confirmation of Articles 28 and 25(3)(c)/(d), arguing that 'the Decision specifically left out […] article 25(3)(c) and (d) from the scope of the charges' and that Mr. Yekatom 'cannot be tried on this basis unless the Trial Chamber re-characterises the facts […] under regulation 55'.[95] The OTP subsequently filed three Regulation 55(2) applications, requesting the Chamber to give notice that the facts 'may be re-characterised' to Articles 25(3)(c) and (d).[96] In each request, the OTP expressly argued that the PTC's contextual findings concerning the Anti-Balaka and the 'criminal policy' sufficed to meet the 'group with a common purpose' requirement under Article 25(3)(d).[97] Moreover, the OTP's own practice after confirmation reinforces that it still saw a gap in how to attribute characteristics of the various disparate groups for criminal responsibility and continued framing the alleged coordination of such groups using the initial alleged Common Purpose – as a distinct concept to the organisational policy - throughout its Trial Brief and Closing Brief, including to repeatedly frame Mr. Yekatom's alleged contributions and *mens rea*.[98] Even in its recent Notice of Appeal, and in an effort to secure Mr. Ngaïssona's conviction for Counts 40-42 under Article 25(3)(d),

[89] DoCC, para. 60.
[90] DoCC, paras. 98-100, 124-126, 139-141, and 154-156.
[91] DoCC, paras. 104, 128, 143; p. 112.
[92] ICC-01/14-01/18-565-Conf.
[93] ICC-01/14-01/18-703-Conf, para. 25.
[94] ICC-01/14-01/18-703-Conf, para. 24; ICC-01/14-01/18-874 OA2.
[95] ICC-01/14-01/18-437, para. 31.
[96] ICC-01/14-01/18-503-Conf; ICC-01/14-01/18-1345-Conf; ICC-01/14-01/18-1973-Conf.
[97] ICC-01/14-01/18-503-Conf, paras. 56-57; ICC-01/14-01/18-1345-Conf, para. 55.
[98] ICC-01/14-01/18-723-Conf, paras. 355, 364, 379. See also, ICC-01/14-01/18-723-Conf, paras. 6-7, 326, 381, 385, 389, 404, 429, 450, 473; ICC-01/14-01/18-2738-Conf, para. 434; see also paras. 6-7, 259, 454, 574, 594, 686, 690, 740.

the OTP continues to assert that the 'Anti-Balaka' - without distinction - 'shared a common criminal purpose to violently target the Muslim civilian population in western CAR in retribution for Seleka exactions'.[99]

34. Two points emerge that are pivotal for this ground. First, the PTC and Appeals Chamber 'locked in' the Article 25(3)(a)/(b) framework for Mr. Yekatom and confirmed Article 25(3)(d) only for Mr. Ngaïssona. That allocation defined the lawful route for attributing criminal conduct to Mr. Yekatom which excluded the possibility of ascribing movement-related conduct to him. Second, the OTP's own litigation conduct - seeking reconsideration and then successive Regulation 55 notices to add Article 25(3)(d) despite its non-confirmation for Mr. Yekatom - underscores that, in this case, neither 'Anti-Balaka' membership nor an asserted unification of the movement could be used to attribute the movement's characteristics, aims, or policy to Mr. Yekatom for the purposes of his individual criminal responsibility. If the features of the Anti-Balaka as a 'unified movement' were to bear on his liability, the Statute required either a charged Article 25(3)(d) 'group acting with a common purpose' theory or a duly noticed re-characterisation - together with proof of his intentional contribution. Neither option was available to the Trial Chamber at the point of conviction.

b) Misuse of contextual 'one-movement' to establish individual responsibility

35. Despite the aforementioned limits set by the DoCC, the Judgment blurred the line between contextual and individual elements by using movement-related findings about the 'Anti-Balaka's' existence, structure and aims to infer Mr. Yekatom's intent, knowledge and contribution. In doing so, it imputed to him the collective motives and patterns of conduct ascribed to the Anti-Balaka as a whole. As developed in Ground 2.2, that approach is factually untenable and proceeds from a misconstructed and inherently nebulous notion of a unitary 'Anti-Balaka'.

36. The Chamber's contextual determinations concerning the 'Anti-Balaka movement', framed within Article 7(2)(a) and Article 8(2)(f), centred on two main themes. First, the Chamber considered the so-called 'evolution of the Anti-Balaka', finding that various individuals and local self-defence groups, irrespective of how the groups organised internally on a granular level,[100]had 'organised and developed structures and mechanisms over time and came to be known as the Anti-Balaka'.[101] The Chamber considered the ability of such groups to prepare for and launch the 5 December 2013 operations, characterising Bangui and Bossangoa attacks as 'highly coordinated undertakings' led by

[99] ICC-01/14-01/18-2814, para. 8.
[100] Judgment, p. 1344, para. 3926.
[101] Judgment, p. 1344, para. 3926.

'common leaders' with assigned targets and synchronised start times.[102] The Chamber found that the disparate groups had 'increasingly coordinated their activities, thereby essentially forming one movement'.[103]

37. Second, and relatedly, the Chamber considered that the groups had coordinated against one common enemy,[104] the Seleka, and that whilst the heterogeneous groups may have each held different objectives, it did not consider that the various Anti-Balaka groups had to 'be a monolithic or singular entity and/or ideologically homogeneous at any stage of the events'.[105] It was on this basis that the Chamber found that the perceptions of the Anti-Balaka changed over time,[106] and that 'due to the religious and ethnic commonalities between the Muslims in the CAR and the Seleka, the Anti-Balaka perceived the former as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka' and began to target the Muslim civilian population.[107] Whilst the chronology in which these perceptions would have developed is omitted, these two core limbs formed the foundation of the Article 7(2)(a) organisational policy.

38. The Chamber subsequently imported these apparent 'characteristics' of the Anti-Balaka movement into its individual liability analysis, thereby ascribing them to Mr. Yekatom for the purposes of Article 25(3). The Chamber's analysis of the 5 December 2013 operation exemplifies this substitution. The Chamber first sought to establish a coordination narrative involving self-defence groups, which set out alleged common leaders, assigned targets and synchronised start times.[108] Subsequently, the Chamber 'superimposed' Mr. Yekatom's alleged 'group' movements on those of Anti-Balaka groups to conclude that 'Mr. Yekatom's group coordinated with other Anti-Balaka groups'.[109] It was this supposed temporal and geographic overlay, rather than evidence of a specific criminal design or agreement, which provided the foundation for the Chamber's finding that Mr. Yekatom's alleged 'group', 'was seen as and understood to be part of the Anti-Balaka'.[110] In doing so, the

[102] Judgment, pp. 860-863, paras. 2394-2406; pp. 1331-1333, paras. 3894-3897; pp. 1337-1342, paras. 3910-3923; p. 1344, para. 3926.
[103] Judgment, p. 22, para. 43; p. 404; pp. 1331-1332, para. 3894; pp. 1337-1338, para. 3910. See also p. 596, para. 1581; p. 615, para. 1626; p. 648, para. 1717 cf. CPS/C.ASS/1SA/22-001, paras. 234-239.
[104] Judgment, p. 22, para. 43; p. 404; pp. 1331-1332, para. 3894; pp. 1337-1338, para. 3910.
[105] Judgment, p. 471, para. 1216; p. 574, para. 1526; p. 596, para. 1581; p. 614, para. 1624; pp. 1337-1338, paras. 3910-3912; pp. 1345-1346, paras. 3930-3932.
[106] Judgment, p. 1338, para. 3912.
[107] Judgment, pp. 22-23, para. 45; p. 467; pp. 1331-1332, para. 3894; p. 1338, para. 3912.
[108] Judgment, pp. 860-863, paras. 2394-2406; p. 1344, para. 3926.
[109] Judgment, p. 28, para. 73; p. 864; p. 896, para. 2525; p. 1340, para. 3917; p. 1374, para. 4010; p. 1381, para. 4032.
[110] Judgment, p. 25, para. 63; p. 589; p. 1336, para. 3906; pp. 1348-1349, para. 3939; p. 1375, para. 4011; pp. 1483-1484, para. 4353; p. 1485, para. 4358.

Chamber recycled terminology such as the 'Anti-Balaka leadership'[111] and 'central coordination',[112] all mentioned in the context and timing of the charged events,[113] concluding that the leadership 'always remained represented as one entity[114] and reused as if it established an Article 25(3) nexus.[115] Yet again, the Chamber blurred the line between describing an organisation and proving participation in a common plan or purpose.[116]

39. Mr. Yekatom's purported membership – as well as those of his alleged group – was subsequently used as the basis for the Chamber to impute liability to Mr. Yekatom for acts where the direct perpetrators were unidentified or the link to 'his group' was not sufficiently established - including for example, the Cattin killing by unidentified elements as well as the mass displacement to PK5 and later along the PK9-Mbaïki Axis and persecution - on the sole basis that those acts were attributed to 'the Anti-Balaka' and 'his group' was said to belong to it.[117] Moreover, the Chamber invoked an alleged perception that Mr. Yekatom's 'own group' was Anti-Balaka - without identifying who held this perception or the evidential basis - to construct his purported control over 'Anti-Balaka elements'. In doing so, it conflated all such elements under a single 'Anti-Balaka' label and inferred that Mr. Yekatom subordinated the will of these elements, either individually or through a supposed criminal agreement with Cœur de Lion and Alkanto.[118]

40. The same reasoning underpinned the Trial Chamber's conclusions on *mens rea*.[119] Having found that the 'Anti-Balaka' equated Muslims with the Seleka and pursued a policy of targeting Muslim civilians,[120] it then inferred, based on his alleged membership, that Mr. Yekatom shared that perception and acted with the same discriminatory intent,[121] concluding that the 'Anti-Balaka' 'could rely on him to execute' its policy.[122] Notwithstanding the ambiguity as to which particular individuals or

[111] Judgment, p. 27, para. 70; p. 88, para. 269; p. 499, para. 1298; pp. 634-635, para. 1678; p. 779; p. 950, para. 2717. See also, Judgment, p. 26, para. 64; p. 432, para. 1130; p. 572, para. 1517; p. 949, para. 2714.
[112] Judgment, p. 392, para. 1034.
[113] *Contra* Judgment, p. 648, para. 1717.
[114] Judgment, p. 26, para. 64; pp. 589-590.
[115] Judgment, p. 499, paras. 1298-1299.
[116] See also ICC-02/11-01/15-1400-Anx1-Corr-Red, para. 336 ('there is a difference between establishing a background incidence of widespread or systematic attacks against a civilian population as a general proposition (albeit a prerequisite element of crimes against humanity); as opposed to holding a defendant criminally responsible on a personal basis for any instance of such an attack. The criminal responsibility of a defendant depends on his or her own personal culpability for the impugned conduct – assessed for him or her along the usual dual axes of *actus reus* (the unlawful act or omission) and *mens rea* (the intent to engage in the unlawful act or omission')).
[117] See Ground 2.2.d).
[118] See Grounds 2.4 and 2.5.
[119] See Ground 2.7.
[120] Judgment, pp. 471-472, paras. 1217, 1219; pp. 498-499, para. 1297; p. 1185, para. 3444; p. 1214, para. 3521.
[121] Judgment, p. 23, para. 48; p. 468; pp. 1348-1349, para. 3939; p. 1371, para. 3999; p. 1378, para. 4024; p. 1442, para. 4227; p. 1479, para. 4337; p. 1483, para. 4352; p. 1488, para. 4368.
[122] Judgment, p. 1375, para. 4011. See also Judgment, p. 1378, para. 4024; p. 1488, para. 4368; (where Judgment transposes Mr. Yekatom's knowledge of the Anti-Balaka's perception of Muslims to his knowledge of 'his elements' purported perception of the same).

groups are meant to have 'relied' on Mr. Yekatom, the Chamber's inference further ignored the temporal development and heterogeneity of the movement and discounted contrary evidence which set out his stated aim to oust the Seleka regime, recognised by the PTC as a 'primary and *per se* legitimate objective'.[123]

41. The Chamber deemed such legitimacy as 'immaterial',[124] treating the objective of removing the Seleka as proof of discriminatory intent because some Anti-Balaka elements had conflated or equated Muslims with the Seleka.[125] This was, in effect, flawed and deductive reasoning on the basis that as: Mr. Yekatom sought to oust the Seleka; many Seleka were Muslim; Anti-Balaka groups equated Muslims with the Seleka; and therefore, Mr. Yekatom must have shared the anti-Muslim animus and was Anti-Balaka. Such syllogism is legally impermissible because it imputes collective animus from contextual findings, collapses the organisational policy analysis into the individual *mens rea* that Article 25(3)(a) requires, and - absent any adjudicated Article 25(3)(d) inter-group theory - risks conviction by (weak) association.

42. The inference is compounded by a chronology gap the Judgment never closes. The Chamber does not identify when Mr. Yekatom purportedly became 'Anti-Balaka', or even when he was perceived as such, yet it uses that label from the outset to attribute intent and control. This temporal indeterminacy is dispositive. Without a dated finding of membership or perceived membership, the Chamber cannot lawfully bootstrap early-period intent or control from later-period context; nor can it treat a floating 'perception' as a standing proxy for the specific discriminatory purpose required for the material time. Moreover, these chronological deficiencies taint the Chamber's reliance on evidence it says supports Mr. Yekatom's alleged anti-Muslim animus. The supposed 'instructions to kill Muslims' are mischaracterised or distorted and, in any event, do not identify any specific, particularised instruction linked to a charged incident.[126] Further, even setting aside the Chamber's misreading of P-1339,[127] its finding that Mr. Yekatom's instructions on 5 December 2013 to fight the Seleka 'were understood by the elements to accept that Muslim civilians would be killed' conflates foreseeability or misinterpretation by others with discriminatory purpose on his part.[128] Knowledge that civilian casualties might occur, or that undisciplined actors might misconstrue orders, does not establish that he intended civilians to be targeted because they were Muslims.

[123] DoCC, para. 64.
[124] Judgment, pp. 1345-1346, para. 3930.
[125] Judgment, pp. 471-472, paras. 1217-1219; p. 1185, para. 3444; p. 1214, para. 3521. See also p. 875, para. 2448.
[126] See Ground 2.3.
[127] See Ground 2.3.d).
[128] Judgment, p. 28, para. 74; p. 864; p. 875, para. 2446; p. 877, para. 2454; p. 896, para. 2524; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; p. 1374, para. 4010; p. 1385, para. 4044.

43. The Chamber's failure to anchor any finding on when membership or perceived membership attaches enabled a circular chain of inferences from the start of the charged period: label Mr. Yekatom (or his 'own group') as 'Anti-Balaka' – attribute to him the conflated animus held by some 'Anti-Balaka' actors – use that attributed animus to infer control and intent – cite those inferences to confirm the original label. Because this foundational error permeates subsequent findings and because the supposed evidence of anti-Muslim animus is (as shown elsewhere) mischaracterised or unreliable, the Judgment does not establish beyond reasonable doubt the specific discriminatory intent required for persecution or the mental elements for Article 25(3)(a).

44. The same erroneous frame was used to discount other reasonable inferences to be drawn from the evidential record. When the Defence argued that the PK9-Mbaïki advance was aimed to restore security and reopen trade,[129] the Chamber used the Anti-Balaka-wide mindset to conclude that these activities merely masked discriminatory aim.[130] Similarly, the Chamber also erroneously re-characterised Mr. Yekatom's cooperation with national and international forces, orders protecting civilians, and interventions to assist Muslim residents as occurring only after the Muslim population had fled, or as compelled by international oversight,[131] rather than assessing them within his own conduct and that of the RFACPP.[132]

45. The error therefore concerns the conflation of distinct legal inquiries. Article 7(2)(a) findings define the contextual framework for CAH by identifying an organisation, and a policy for jurisdictional purposes.[133] The threshold is deliberately minimal and satisfied where an entity possesses structures or mechanisms capable of coordinating an attack, reflecting the fact that the inquiry is about the existence of an organised attack, not the guilt of its participants.[134] The contextual elements do not, without more, establish an accused's personal agreement, contribution, control, or intent under Article 25(3).[135] Article 25(3) is the Statute's exclusive gateway to individual culpability and requires those elements to be proved against the particular accused.[136] Whilst the contextual requirements may have

[129] Yekatom Defence Closing Brief, paras. 480 et seq.
[130] Judgment, p. 1185, para. 3444 and cites therein.
[131] Judgment, p. 1165, para. 3393; p. 1213, para. 3519.
[132] See Ground 3.2.
[133] Ambos (2022) Article 7, pp. 146-148 and cites therein. See also ICC-01/09-19-Corr, Dissenting Opinion of Judge Kaul, para. 26; ICC-01/04-02/06-2666-Anx3, paras. 2, 10, 156, 204(g), 380(b)(vii).
[134] ICC-01/04-01/07-3436-tENG, paras. 1117 – 1122; see also ICC-01/05-01/08-3343-AnxII, para. 25; ICC-01/04-02/06-2666-Anx3, paras. 2, 10, 145, 147, 156, 164, 204(g). In relation to the contextual elements of a NIAC, the organisation of the armed group(s) for the purposes of Article 8(2)(f) is also a lower threshold see ICC-01/04-01/06-2842, paras. 534-538; ICC-01/04-01/07-3436-tENG, paras. 1183-1187. For discussion on drafting history of Article 8(2)(f) see Cullen (2008), pp. 419-445; see also IT-04-82-T, para. 197.
[135] ICC-02/11-01/15-1400-Anx1-Corr-Red, para. 337 ('In international criminal law, a defendant may not be held individually responsible on a charge of a crime against humanity only on the basis of an assessment that other people committed widespread or systematic attacks against a civilian population').
[136] ICC-02/11-01/11-432, para. 22.

been satisfied, or uncontested, the Chamber could not lawfully repurpose findings concerning the Anti-Balaka's supposed unity as a movement to enter findings concerning Mr. Yekatom's alleged control over 'his group' or his *mens rea* for the purposes of Article 25(3)(a) and in circumstances where Article 25(3)(d) was not confirmed for Mr. Yekatom and no Regulation 55 notice was provided. There was also no other charged nexus between Mr. Yekatom and members of the 'Anti-Balaka leadership' to allow for any mutual attribution noting that he was not convicted as an indirect co-perpetrator along with members of the 'Anti-Balaka' leadership,[137] nor as part of a 'joint indirect perpetration' within any other members of the 'Anti-Balaka leadership'.[138]

46. Treating the two frameworks as interchangeable collapses these two analytical tiers,[139] and effectively re-introduces collective or membership liability, a concept that the Statute explicitly rejects in Article 25(2).[140] The separation must also be consistent across crime categories: participation is always tested through Article 25(3), irrespective of whether a policy element forms part of the CAH chapeau or whether only war crimes are charged.

47. The Court's practice confirms the point. In *Katanga*, Trial Chamber II first accepted the CAH chapeau elements - finding an organised armed entity and a policy – and clarified that, at that stage, it was not necessary to show that the physical perpetrators were members of, or personally aligned with, the organisation.[141] When the trial record instead pointed to liability grounded in a group acting with a common purpose rather than principal co-perpetration under Article 25(3)(a), the Chamber did not treat those contextual findings as a shortcut to principal liability. It gave notice under Regulation 55 and re-characterised the facts to Article 25(3)(d)(ii). In doing so, it relied on the same factual matrix already on the record, including facts initially adduced to demonstrate the organised attack/policy, in order to identify a 'group of persons acting with a common purpose' and to find that Mr. Katanga had contributed with knowledge of that group's intention. Thus, the contextual findings were re-used only after the Regulation 55 shift to satisfy the distinct elements of contribution and knowledge under

[137] Noting that the other alleged participants in the 'common plan' as set out in the Judgment (Cœur de Lion and Alkanto) were neither pleaded nor found to be part of the Anti-Balaka leadership. This was therefore not a case of two organisations concluding an agreement and making an essential contribution to its realisation cf. fact patterns for *Katanga & Ngudjolo*.
[138] See also Ambos (2022) Article 25, pp. 1212-1213 with respect to Gbagbo and Ble Goude; ICC-01/04-02/06-2359, para. 772; ICC-01/04-01/06-3121-Red A, fn. 863.
[139] ICC-01/04-01/07-3436-AnxI, paras. 192-193; see also Ambos (2022), Article 7, p. 169.
[140] Ambos (2022), Article 25, pp. 1197-1198; ICC-01/04-01/07-3436-AnxI, para. 258; ICC-01/04-02/06-2666-Anx5-Corr, paras. 153 et seq. Even within confines of Article 25(3)(d), membership of a group of persons acting with a common purpose is not in and of itself sufficient to establish liability see ICC-01/04-01/07-3436-tENG, para. 1631 ('Lastly, the Chamber does not view an accused's membership of the group of persons acting with a common purpose as a decisive ingredient for ascertaining and establishing that person's individual responsibility for the purposes of article 25(3)(d). In its view, the language of the article criminalises contribution to the commission of a crime within the jurisdiction of the Court, irrespective of an accused's membership of the group).
[141] ICC-01/04-01/07-3436-tENG, para. 1115.

Article 25(3)(d)(ii), not to impose liability under Article 25(3)(a).[142] Comparative authority is consistent. In *Šešelj*, the MICT Appeals Chamber made clear that individual criminal responsibility must rest on the proven elements of the charged MoL, not on ideological alignment or participation in a broader campaign. Although Šešelj's actions were situated within a wider nationalist context, the Appeals Chamber reversed acquittals only where the evidence satisfied the elements of instigation, and upheld acquittals where causation or contribution to the crimes was unproven, underscoring that context alone does not ground liability.[143]

c) Materiality

48. The Chamber did not embed its reasoning in Article 25(3) because it could not. The DoCC fixed Mr. Yekatom's liability to Articles 25(3)(a) and (b) only; Article 25(3)(d) was confirmed for Mr. Ngaïssona alone, and no Regulation 55 notice was issued. Confronted with that procedural architecture, the Chamber filled the gap by importing 'one-movement' findings under Article 7(2)(a) to supply, the agreement, contribution, authority, and intent that Article 25(3) requires. That move was unlawful and, as Ground 2.2 demonstrates, not evidentially available.

49. This misstep is not abstract: the 'one movement' construct underpins the Chamber's conclusions that Mr. Yekatom's conduct at Boeing and Cattin, Yamwara, and along the PK9–Mbaïki Axis implemented an Anti-Balaka policy to eliminate Muslims and that he shared that discriminatory purpose. It also enabled the Chamber to treat the mere presence of Anti-Balaka in an area as sufficient to attribute crimes – including displacement, forcible transfer and acts by unidentified perpetrators – to 'the Anti-Balaka', and then to impute them to Mr. Yekatom on the basis that 'his group' was said to form part of that movement. On that footing, the Chamber characterised him as a 'principal perpetrator' under Article 25(3)(a) in relation to the Bangui Attack (Counts 1–6 and 8),[144] the Yamwara Incident (Counts 11–17)[145] and the PK9–Mbaïki advance (Counts 24–28),[146] and it inferred the specific intent for persecution in Counts 8, 17 and 28[147] and a 'high degree' of participation and intent for sentencing.[148] Stripped of the unlawful importation of contextual 'one movement' findings into the Article 25(3) analysis, there is no pleaded or proven basis to ascribe to him a movement wide policy or animus, such that the Appeals Chamber cannot be satisfied that either the convictions or the joint

[142] ICC-01/04-01/07-3436-tENG, paras. 1417-1421. See also ICC-01/04-02/06-2666-Anx2, para. 40.
[143] MICT-16-99-A, paras. 127-134, 154-163.
[144] Judgment, p. 1353, para. 3950; pp. 1358-1359, paras. 3964-3965; pp. 1362-1363, para. 3975; pp. 1374-1376, paras. 4008-4013; p. 1377, para. 4019; p. 1378, para. 4024.
[145] Judgment, p. 1456, para. 4268; p. 1457, para. 4270.
[146] Judgment, pp. 1467-1468, paras. 4303-4305; p. 1471, para. 4314; pp. 1477-1478, paras. 4331, 4333; p. 1481, para. 4345; p. 1482, para. 4347; pp. 1483-1484, paras. 4349-4350, 4352-4353, 4355; p. 1485, paras. 4357-4358; p. 1488, para. 4368.
[147] Judgment, p. 1371, paras. 3999, 4001; p. 1442, para. 4227; p. 1443, para. 4230; p. 1479, para. 4337; p. 1480, para. 4341.
[148] Judgment, pp. 1506-1507, paras. 4422-4423; pp. 1533-1534, para. 4495; p. 1535, para. 4499; pp. 1542-1543, paras. 4523, 4525; p. 1549, para. 4542; pp. 1568-1569, para. 4606; pp. 1569-1570, para. 4609; pp. 1571-1572, paras. 4613-4614.

sentence would have been the same; the materiality threshold in Article 83(2)(a) is therefore met.

2. Ground 2.2 – The Trial Chamber erred in finding that Mr. Yekatom was 'Anti-Balaka'

50. This ground challenges the Trial Chamber's finding that Mr. Yekatom was the leader of 'an active group of elements which was seen as and understood to be part of the Anti-Balaka'.[149] The evidence instead shows that the RFACPP was an independently formed, FACA-based movement which Mr. Yekatom consistently distinguished from the loose 'anti-balaka' label. By collapsing the RFACPP into a monolithic Anti-Balaka structure, the Chamber erred in law and fact and then built key findings on that error.

a) Errors in failing to consider the context in which the RFACPP was established

51. Creation of RFACPP: In assessing the contextual elements, the Chamber considered 'how the Anti-Balaka emerged as an armed group following the Seleka takeover', which includes its finding that 'Mr. Yekatom briefly went to Zongo in 2013 and then started forming a group'.[150] It erred in law and in fact by treating Mr. Yekatom's exile in Zongo and the creation of the RFACPP as part of the emergence of the 'anti-balaka', without analysing the distinct context of his situation. First, the Chamber omitted crucial evidence concerning the circumstances of his exile. Although it described the reasons and context of the exile to Zongo of numerous individuals,[151] it did not address his own.[152] The evidence demonstrates that Mr. Yekatom, a FACA, remained in post under the new Seleka regime, serving several months under Seleka General Abdel Kader,[153] until his abduction and detention by Seleka forces.[154] By omitting this evidence, the Chamber deprived itself of a proper understanding of the context surrounding Mr. Yekatom's exile, in particular his willingness to continue serving under the Seleka regime, demonstrating that he did not initially oppose the Seleka. He continued to work as a soldier, well after the anti-foreign and anti-Muslim speeches made by the Bozizé regime before the Seleka takeover,[155] undermining any suggestion that he was permeable to, or influenced by, that rhetoric. This was material to the Chamber's attempts to draw parallels between Mr. Yekatom and other individuals,[156] and to its assessment of whether the RFACPP shared the 'Anti-Balaka' mindset.

[149] Judgment, p. 25, para. 63; p. 1336, para. 3906; pp. 1348-1349, para. 3939. See also, Judgment, p. 28, para. 73; p. 1344, para. 3926; p. 1375, para. 4011.
[150] Judgment, pp. 1331-1332, para. 3894. This finding is also found at p. 21, para. 36; p. 253.
[151] Judgment, p. 355, para. 953; pp. 355-356, para. 954; p. 356, paras. 955-957.
[152] Judgment, p. 355, para. 952.
[153] P-1786: T-198, 4:28-5:14. See also Yekatom Defence Closing Brief, para. 220.
[154] P-2027: T-040, 60:11-25; P-0888: T-120, 20:11-12; T-121, 8:15-9:28; 11:14-27. See Yekatom Defence Closing Brief, para. 220.
[155] Judgment, pp. 479-495, paras. 1243-1288.
[156] Judgment, pp. 356-358, paras. 958-960; pp. 869-870, para. 2426 (subsection 'Mr. Yekatom's presence in Zongo and contacts with Maxime Mokom' in which the Chamber found that 'Mr. Yekatom's return to the CAR, grouping in locations close to Bangui, and arming prior to the Bangui Attack is similar to many other FACA members').

Properly assessed, it supports the conclusion that, from its inception, the RFACPP was driven by independent objectives.

52. Second, the Chamber failed to set out a clear chronology of Mr. Yekatom's stay in Zongo and return to the CAR, merely stating that he crossed 'at some point' during the Seleka regime and returned 'some time thereafter',[157] thereby undermining its later reliance on supposed 'similarities' with others in Zongo. Third, having itself found no evidence of links between Messrs Yekatom and Mokom in Zongo – despite the DoCC theory hinging on such a link[158] – the available reasonable inference was that the RFACPP emerged independently of the 'anti-balaka',[159] or at least that no reliable evidence established such an organisational connection.[160]

53. Lack of awareness of 'anti-balaka' movements pre-5 December 2013: The Chamber found that, before the 5 December operation, 'Mr. Yekatom knew of the advance of the Anti-Balaka groups through the province towards Bangui'.[161] This finding is based on compounded errors. The evidential record does not establish this awareness or knowledge.

54. First, the Chamber failed to give proper, evidence-based reasoning. The finding is supposedly developed in the 62-page section IV.A.6, 'Hostilities during the advance towards Bangui'.[162] Yet, Mr. Yekatom's name appears only in the penultimate paragraph, which merely repeats the conclusion and introduces it by stating 'on the basis of this evidence, and further considering Mr. Yekatom's own involvement in coordinating his own group's advance […]',[163] without identifying the evidence relied upon in the text or in any footnote.[164] Given the length of this section, the absence of direct references to Mr. Yekatom, and the lack of specific citations, this amounts to an unreasoned finding.[165] This conclusion is further supported by the evidence summarised in the subsection 'Other general information on hostilities during the advance', which confirms that the finding is an unreasoned and unsupported inference. The Chamber held that information on the 'anti-balaka' advance and related hostilities was 'generally known and available'[166] and, 'considering Mr. Yekatom's own involvement

[157] Judgment, p. 355, para. 952; p. 865, para. 2411.
[158] DoCC, para. 83.
[159] Judgment, p. 370, para. 986 (in which the Chamber was 'unable to conclude that Mr. Yekatom was discussing with Maxime Mokom'). See also Judgment, p. 869, para. 2425 (in which the Chamber indicated that 'while Mr. Yekatom also crossed over from Zongo, like some other elements discussed above, the Chamber cannot conclude it was on Maxime Mokom's instruction or otherwise facilitated by him').
[160] Judgment, pp. 1331-1332, para. 3894.
[161] Judgment, p. 24, para. 55; pp. 502-503; pp. 1348-1349, para. 3939.
[162] Judgment, pp. 502-564.
[163] Judgment, p. 564, para. 1494.
[164] Mr. Yekatom is mentioned only in the penultimate paragraph of a 62-page section.
[165] See Part 4 (unreasoned).
[166] Judgment, p. 560, para. 1481.

in coordinating his own group's advance', inferred that he knew of these movements.[167] None of the evidence summarised in this section, however, relates specifically to Mr. Yekatom.[168] The Chamber appeared simply to assume that, because information was 'generally known and available', he must have known of it. Such an adverse inference against an accused cannot be drawn in the absence of clear, case-specific evidence.[169]

55. Several witnesses cited by the Chamber obtained their information on 'anti-balaka' movements through privileged sources, not accessible to the general public, including P-2673,[170] P-2027,[171] P-0291,[172] P-2841,[173] or P-0520.[174] Others, such as P-1647[175] acquired their information only after the 5 December operation, or from the 2014 CAR Panel interim report.[176] In parallel, the Chamber dismissed evidence that would go against its position without any clear reasoning,[177] or ignored it by omitting key extracts from a witness's testimony.[178] While the Chamber referred to contemporaneous media reports and to P-0884's statement that 'everyone' was aware of the attacks,[179] this is a generalised and subjective assessment by a witness based in Bangui.

56. Importantly, the Chamber ignored Mr. Yekatom's own circumstances at the time. Before the 5 December operation he was in the bush, where communication and access to information was extremely limited. P-1858, part of another anti-Seleka group, testified that when he was in the bush, he had to return to town to check on his family and 'to learn what was happening in Bangui regarding crimes committed by the Seleka',[180] illustrating the need to leave the bush to obtain external information. The same constraints applied to Mr. Yekatom and there is no evidence that before the 5 December operation he left the bush and returned to Bangui where he would have received news of the

[167] Judgment, p. 564, para. 1494.
[168] The finding on Mr. Yekatom at para. 1494 does not refer back, not even by a cross-reference through a footnote, to the first finding of the Chamber in para. 1481.
[169] Part 4 (burden reversal).
[170] Judgment, p. 561, para. 1484; P-2673; CAR-OTP-2127-6435-R01, paras. 173-174 (in which the witness indicates that [REDACTED] is his source of information; [REDACTED]). See also Judgment, p. 563, para. 1490; P-2673: CAR-OTP-2127-6435-R01, para. 131.
[171] Judgment, p. 561, para. 1485; P-2027: CAR-OTP-2078-0059-R03, paras. 89-90, 106, 108.
[172] Judgment, p. 561, para. 1486; P-0291; T-051, 39:10-42:11.
[173] Judgment, p. 563, para. 1490 (in which the Chamber indicates itself that the source of information of the witness are [REDACTED]; those two individuals being 'Anti-Balaka' insiders [REDACTED]).
[174] Judgment, p. 563, para. 1491; P-0520; CAR-OTP-2050-0788-R02, paras. 47, 51, 59, 68.
[175] Judgment, p. 562, para. 1488; P-1647: T-194, 60:2-61:11 (in which the extract 60:2-3, before the quoted excerpt by the Chamber, gives the context of the answer and the fact that the witness talks about the time period when the RFACPP is in Mbaïki - well after the 5 December operation).
[176] Judgment, p. 563, para. 1492; referring to CAR-OTP-2001-0835 which is dated 1 July 2014.
[177] Judgment, p. 564, para. 1493 (in which the Chamber gave less weight to the evidence of [REDACTED] P-2467).
[178] Judgment, p. 562, para. 1488 (in which the Chamber uses P-1193 for the assertion that several witnesses mentioned being aware of Anti-Balaka's progression through media reporting; however the witness was unable to answer when asked if people could miss such information).
[179] Judgment, pp. 560-561, para. 1483.
[180] P-1858: CAR-OTP-2063-0050-R04, para. 29.

'anti-balaka' movements and actions.

57. Presentation of Mr. Yekatom: The Chamber failed to properly assess contemporaneous evidence in which Mr. Yekatom categorically rejected the term 'Anti-Balaka', and misinterpreted key items of that evidence. It singled out one video, in which Mr. Yekatom stated that they were not Anti-Balaka but military personnel, and treated this as merely illustrating a distinction between 'uncontrolled elements' and trained soldiers. This is a distorted reading in light of other evidence.[181] In a video filmed two days after the 5 December operation, Mr. Yekatom explains that his group is composed of FACA, that it is called the '*Révolution des forces armées centrafricaines pour le peuple*', and that its objective is to free the population.[182] When the journalist asks why 'anti-balaka' and FACA are often confused, he replies unambiguously that they are not anti-balaka but FACA.[183] Witnesses likewise testified that Mr. Yekatom presented himself as FACA, not 'anti-balaka', in Lobaye: when meeting community representatives in Pissa, at the St Jeanne d'Arc meeting in Mbaïki; and, before President Samba-Panza, he appeared in military attire and introduced his group as the RFACPP, not as 'anti-balaka'.[184] The omission or downplaying of this material shows, at minimum, a failure to assess the evidence holistically. Taken together, these videos and testimonies support the plain reading that Mr. Yekatom's repeated statements, that he is not 'anti-balaka', were accurate.

58. The Chamber further relied on a video in which Mr. Yekatom describes himself as '*chef de mouvement Anti-Balaka zone sud*', dismissing as immaterial the fact that it was recorded after the timeframe of the charges, in 2015–2016.[185] Given that he joined the Anti-Balaka Coordination in June 2014,[186] the timing is crucial: use of the anti-balaka label after that date is entirely consistent with a later political alignment and cannot lead to the inference that he was anti-balaka throughout the charged period. The Chamber also erred in its assessment of how 'Mr. Yekatom's group' was perceived as anti-balaka.[187] Relying on P-1839, it stated that 'while at Yamwara, Mr. Yekatom's group used the term "RFACPP" to designate itself, a term put to the witness by the counsel', and that P-1839 'also made clear that while at Yamwara, everybody knew and considered them to be Anti-

[181] Judgment, p. 622, para. 1643, referring to video CAR-OTP-2065-3180 / CAR-OTP-2122-7503.
[182] CAR-OTP-2065-0396, [00:29] to [00:54] / CAR-OTP-2122-2284, 2286:15-20. Video filmed two days after the 5 December operation.
[183] CAR-OTP-2065-0396, [01:45] to [02:01] / CAR-OTP-2122-2284, 2287:36-39. See also, Yekatom Defence Closing Brief, para. 243, fn. 811.
[184] See e.g. P-2354: T-210, 20:8-28; see also Yekatom Defence Closing Brief, para. 244, fn. 817; D29-5012: T-293, 55:12-22, in Pissa; D29-5015: T-255, 32:13-19; P-1666: T-230, 43:5-10; P-1839: T-172, 87:23-88:7, at St-Jeanne d'Arc; [REDACTED], at the Residence Meeting in military attire; [REDACTED].
[185] CAR-OTP-2118-0415 [00:37:50] to [00:38:38] / CAR-OTP-2127-4410, 4426:537-544 (in which there is a mention that there is political instability for more than two years at the time of the filming). Which is coherent with the date on Nuix (01/05/2016), the prize obtained by the documentary in 2017 (see at [00:00:02]), and the date given at the end (see at [01:11:40] 'MMXVI' standing for 2016).
[186] Yekatom Defence Closing Brief, para. 353.
[187] Judgment, p. 25, para. 63; p. 589.

Balaka […]'.[188] A reading of P-1839's evidence shows that she herself (albeit with minor errors in the wording) mentioned the name RFACPP in direct examination,[189] and was not simply adopting a term suggested by Defence counsel. Further, the assertion that 'everybody knew and considered them to be Anti-Balaka' is premised on an error in the English translation used by the Chamber. While the English transcript indicates 'everybody knew and considered us as Anti-Balaka',[190] in the original French transcript, the inclusion of the negation '*ne*', combined with the rest of her answer,[191] shows she said the opposite of the Chamber's summary and finding. Other evidence likewise contradicts the notion that Mr. Yekatom's movement was seen as 'Anti-Balaka'. During the 5 December operation itself, the Seleka present in Cattin identified the opposing force – i.e. Mr. Yekatom's RFACPP – as military and not 'Anti-Balaka'.[192] Members of the population also described Mr. Yekatom and his men as FACA / ex-FACA, not Anti-Balaka.[193] Taken collectively, the mistranslation, the misreading of the video evidence, and the contrary contemporaneous material further demonstrate the Chamber's error in finding that Mr. Yekatom was seen and understood to be part of the 'Anti-Balaka' throughout the timeframe of the charges.

b) Errors in finding that the RFACPP co-ordinated with the 'Anti-Balaka'

59. Lack of co-ordinated efforts pre-5 December 2013 operation: The Chamber erred in finding that '[t]he movement of Mr. Yekatom's group in the bush, when superimposed onto those from other groups who proceeded towards Bangui along the same time frame, shows that this coordination had begun well before November 2013'.[194] This is emblematic of its broader tendency to state factual conclusions – later used for legal characterisation – without identifying the evidence or sufficient reasoning. This finding appears at the beginning of section IV.B.2 (i.e. 34 pages)[195] and is then repeated verbatim, without any citation, as the concluding paragraph.[196] The absence of footnotes or clear reference deprives the Appellant and the Appeals Chamber of the ability to understand the basis for the

[188] Judgment, p. 621, para. 1641.
[189] P-1839: T-171, 76:25-27 (in which the witness indicated that Mr. Yekatom's movement was '*un movement de la liberation du peuple centrafricain, comme ça, mais du côté de M. Ngaïssona, il s'est autoproclamé coordonnateur des Anti-Balaka*'). See Annex 5, row 37.
[190] P-1839: T-171 (ENG), 75:11-12.
[191] The French transcript corresponds to the language used by the witness. P-1839: T-171, 76:24-25. See Annex 5, row 36. the original French transcript indicates '*tout le monde ne nous considérait comme des Anti-Balaka'*. See also P-1839: T-171, 76:24-77:4 (in which the witness makes a distinction between Mr. Yekatom's movement and Mr. Ngaïssona, including a mention of a mediation corresponding to the first time she saw Mr. Ngaïssona).
[192] CAR-OTP-2065-1284, [00:32] to [00:55] / CAR-D29-0006-1485 (in which the Seleka indicates that '*Je connais très bien. Ces 3 personnes c'est FACA. Donc c'est pas anti-balaka, c'est (inaudible) FACA, tout. Pas (inaudible) Anti-Balaka*'). This video and its context were described in detail in a Defence BTM: see ICC-01/14-01/18-2515-Conf-AnxB, p. 5, item #16 and the video was disclosed as PEXO by the OTP.
[193] CAR-OTP-2065-0580 [00:35] to [01:25] / CAR-OTP-00001940, lines 13-25. While the term 'FACA' is first used by the journalist, the interviewee used it himself. See also: ICC-01/14-01/18-2233-Conf-AnxA, pp. 59-62.
[194] Judgment, p. 28, para. 73; p. 864; p. 896, para. 2525; p. 1340, para. 3917; pp. 1374-1375, para. 4010.
[195] Judgment, pp. 863-864, 'Involvement of Mr. Yekatom' in the 5 December operation.
[196] Judgment, p. 896, para. 2525, subsection 'Conclusion'.

Chamber's inference. Nowhere does the Chamber identify: which movements of Mr. Yekatom it considered; or of 'other groups' it relied on; which other groups were considered; or when the alleged events occurred to justify its conclusion that the coordination began 'well before November 2013'.[197] Having drawn an adverse inference on a contested issue, the Chamber failed to articulate its reasoning.[198]

60. Lack of coordinated efforts 5 December 2013 operation: The Chamber erred in law and in fact in finding that 'Mr. Yekatom's group coordinated with other Anti-Balaka groups to participate in the attack on Bangui on 5 December 2013' based on the following factors.[199]

61. *Absence of communication between the RFACPP and the 'Anti-Balaka'*: The record points to an absence of communications between Mr. Yekatom (including the RFACPP) and members of other groups who could be considered as 'Anti-Balaka'. Since communication is an indispensable element of coordination, this alone should have led the Chamber to reject any finding that Mr. Yekatom 'coordinated with other Anti-Balaka groups to participate in the attack on Bangui on 5 December 2013'. The DoCC grounded this aspect entirely on supposed communications with Maxime Mokom.[200] That theory collapsed at trial.[201] Despite suggesting that 'Mr. Yekatom and Maxime Mokom may have been in contact', the Chamber ultimately found it could not conclude that any exchanges took place.[202] Similarly, the Chamber accepted that four 'Anti-Balaka'-linked witnesses 'did not appear to have direct contact with Mr. Yekatom's group',[203] yet nevertheless inferred 'that information was shared between Mr. Yekatom and Konaté either directly or through interlocutors', hence that a coordination existed.[204] This inference - resting solely on P-0446[205] - is unsustainable. A single call with an ambiguous timeline (in the original language),[206] cannot reasonably support an inference of pre-attack coordination.

62. Further, the Chamber's inference is also affected by reliance solely on P-0446's testimony in

[197] Including section 'Coordinating with other groups', Judgment, pp. 886-896, paras. 2485-2522.
[198] Judgment, p. 28, para. 73; p. 864; p. 1341, para. 3917; p. 1374, para. 4010.
[199] Judgment, p. 28, para. 73; p. 863; pp. 1334-1335, para. 3901; p. 1340, para. 3917; p. 1353, para. 3950; pp. 1374-1375, para. 4010.
[200] DoCC, para. 83 (in which PTCII found that from Lobaye 'Mr. Yekatom stayed in touch with Maxime Mokom and agreed to participate in the impending 5 December 2013 Attack').
[201] For more details, see ICC-01/14-01/18-2194-Conf, paras. 21-25; Yekatom Defence Closing Brief, para. 360.
[202] Judgment, p. 869, para. 2425.
[203] Judgment, p. 890, para. 2499 (in which it reached this conclusion in relation to P-1521, P-0889, P-2602, P-0306).
[204] Judgment, p. 890, para. 2498.
[205] Judgment, pp. 889-890, paras. 2495-2498. This finding is made in the subsection 'vii. Coordinating with other groups' of section IV.B.2 related to the involvement of Mr. Yekatom in the 5 December operation.
[206] Judgment, p. 889, para. 2496, fn. 6275 referring to P-0446: T-099 (ENG), 25:12-26:24 (in which the witness would have said 'But on the eve of the attack, they called each other to–maybe to give guidelines or instructions'). The Chamber's finding rests on an unsound English translation of P-0446's testimony. The French transcript shows a confused answer, mixing '*la veille*' and '*pendant l'attaque*'. P-0446: T-099, 30:7-9 (in which the witness said '*Mais pendant l'attaque, pendant l'attaque... à la... à la veille de l'attaque, ils se sont appelés pour donner des consignes.*').

contradiction with the Chamber's own finding on his credibility where it took note of the Defence's submissions on his evidence regarding the call with Konaté, before indicating '[a]s regards the issues raised by the Yekatom Defence relating to certain other specific aspects of his evidence, as noted above, the Chamber has assessed them holistically, in light of the other evidence before it, in its evidentiary analysis below'.[207] The Chamber subsequently ignored its own finding by relying exclusively on P-0446, without any indication of other evidence analysed holistically, to aver that such communications existed for the 5 December operation.

63. As to contacts between Ngremangou and Mr. Yekatom, the Chamber further erred by ignoring the pre-existing hierarchical relationship between them when assessing whether these contacts showed coordination with 'other Anti-Balaka groups'.[208] These contacts are not disputed and were pled by the Defence,[209] but the Chamber nowhere addresses that Ngremangou was Mr. Yekatom's direct military superior.[210] It therefore failed to consider the reasonable inference that the communications simply reflected Mr. Yekatom reporting to his commander, rather than coordinating with 'other Anti-Balaka groups'. This flawed approach is reflected in the Chamber's findings that '[w]hether and to what extent Ngremangou conveyed complete details about the 'broader Operation' to Mr. Yekatom is immaterial insofar as it concerns Mr. Yekatom's responsibility for what unfolded during the attack',[211] and that 'the Chamber's conclusions above and below do not rest on whether Mr. Yekatom was aware of the movement of other groups or the level of detail he was made privy to before 5 December 2013 about such attacks'.[212] Such information is not 'immaterial'. To find that Mr. Yekatom personally coordinated with 'other Anti-Balaka groups,' the Chamber had to establish that he communicated with them, was aware of their intentions for the 5 December operation, and that he communicated his own in return. This is what coordination entails.

64. The Chamber's final finding on this issue simply extends its flawed reasoning as it concerns Mr. Yekatom. It found that coordination did not require 'perfect lines of communication', and that 'imperfect communication between chiefs and elements across different groups did not take away from the Chamber's conclusion that these groups were being coordinated in relation to the Bangui

[207] Judgment, p. 74, paras. 220, 222.
[208] Judgment, p. 895, paras. 2519-2520 (which are part of the subsection 'Coordinating with other groups').
[209] See Yekatom Defence Closing Brief, para. 355.
[210] P-1786: T-198, 4:25-5:1 (in which the witness confirms that Mr. Yekatom was working at B3); P-0487: T-206, 23:16-26 (in which the witness confirms that Ngremangou was the one in charge of B3). The Defence highlights that the Chamber decided to not rely on P-0487 as regard any factual allegation, however the unreliability of his testimony stems from his evasiveness and tendency to distance himself from the events (Judgment, pp. 75-77, paras. 223-232). [REDACTED], he is one of the few persons able to testify on this very specific and uncontested point of who was responsible for the B3 at the FACA Etat Major.
[211] Judgment, p. 895, para. 2520.
[212] Judgment, p. 896, para. 2521.

Attack'.[213] Yet, there is no such evidence of these 'imperfect' communication involving Mr. Yekatom; the Chamber expressly stated that its conclusions do not rest on his awareness of the movements of other groups. In such circumstances, the fact that other groups 'were being coordinated' does not establish that Mr. Yekatom himself 'was coordinating'.

65. *Absence of awareness of the broader 5 December operation*: Given the absence of any communications with 'other Anti-Balaka groups', it is not established that Mr. Yekatom was aware of the broader 5 December operation. After addressing the Defence's submissions,[214] the Chamber nevertheless held that 'the alleged coordinated nature of the Bangui Attack does not rest on Mr. Yekatom's awareness of its broader contours',[215] a position it repeated in its coordination findings.[216] This reasoning is flawed: coordination presupposes at least some prior awareness, without which there could be no coordination. In other words, awareness of the broader operation would not, by itself, prove coordination; absence of awareness makes coordination impossible.

66. The Chamber merely 'suggests' Mr. Yekatom was aware,[217] based on two witnesses who 'appeared to have called Mr. Yekatom just after the Bangui Attack'.[218] This uncertainty ('appeared') undermines any firm finding that the calls occurred and their timing.[219] In any case, a post-5 December 2013 call cannot, without more, establish prior awareness or pre-attack coordination. Moreover, other evidence contradicts any such awareness: P-0884 testified that Mr. Yekatom did not understand what was happening regarding the 5 December operation.[220]

67. *Absence of supply of weapons to the RFACPP by the 'Anti-Balaka'*: The Judgment identifies no finding, nor any supporting evidence, that 'Anti-Balaka' groups supplied weapons to Mr. Yekatom, or coordinated with him in procuring them. The Chamber's analysis rests on a single paragraph summarising P-1339's account.[221] Even taken at its highest, the Chamber did not find that Mr. Yekatom obtained weapons from 'other Anti-Balaka groups' or from any 'Anti-Balaka coordination'.[222] Other evidence showed that Mr. Yekatom armed the RFACPP independently – through attacks against the

[213] Judgment, p. 896, para. 2522.
[214] Yekatom Defence Closing Brief, paras. 357-358.
[215] Judgment, p. 778, para. 2120.
[216] Judgment, p. 896, para. 2521, section IV.B.2.vii.
[217] Judgment, p. 893, para. 2512.
[218] Judgment, p. 891, para. 2504.
[219] P-0954: T-168 (ENG), 50:8-10 (in which the witness said 'Your Honour, according to what counsel said, the conversation took place. Perhaps the date is incorrect. But I did have a conversation with Rambo on this topic').
[220] Judgment, pp. 894-896, para. 2516, fn. 6315; Yekatom Defence Closing Brief, para. 357; P-0884: T-055, 79:11-13.
[221] Judgment, p. 867, para. 2418. See fn. 6118 for contradictions of this witness on the procurement of weapons.
[222] [REDACTED].

Seleka[223] or through FACA members bringing their own service firearm when joining the group.[224] The record confirms that Mr. Yekatom did not obtain weapons from 'other Anti-Balaka groups' or from the 'Anti-Balaka' coordination. Yet, in its legal characterisation, it linked the structuring of the 'Anti-Balaka' to Mr. Yekatom's arming in the bush without any evidentiary basis. On the contrary, the absence of any such link in the procurement of weapons should have been underlined as an element undermining the allegation that Mr. Yekatom was coordinating with 'other Anti-Balaka groups'.

68. *Absence of co-ordination 'indicators'*: The Chamber identified 14 'indicators' of coordination and planning for the 5 December 2013 operation[225] which were developed long before its specific finding that Mr. Yekatom allegedly coordinated with 'other Anti-Balaka groups', and it is unclear whether they were meant to apply to him. In any event, they cannot sustain that conclusion. Many of these indicators are developed without reference to him at all (existence of a prior plan, inter-chief communications, lists of elements, financing and arming along the way, transmission of the order to attack).[226] It may speak to how certain 'Anti-Balaka' groups operated, but they do not show that Mr. Yekatom was part of that structure; indeed, the record indicates that the RFACPP's independence was not the subject of any central order.[227]

69. Where Mr. Yekatom is mentioned, the underlying evidence is equivocal or points away from coordination. The Chamber loosely aligns his movements with those of other groups ('at the same time') without ever establishing a chronology for his presence and return from Zongo,[228] while itself finding that FACA from Zongo were deployed by Mokom and that Mr. Yekatom 'crossed separately', with no evidence of Mokom's involvement.[229] P-2232 expressly distinguishes between Mr. Yekatom, fighting in small villages, and others who 'co-ordinated their actions' for 5 December 2013.[230] Likewise, the suggestion that RFACPP was assigned a specific target around PK9/KM5[231] rests solely on P-0446's uncorroborated hearsay account, despite his own admission that he was not behind the hill, did not know what happened where Mr. Yekatom was, and did not verify where he attacked.[232] In each case, Mr. Yekatom's conduct is more plausibly explained as obedience to his

[223] CAR-OTP-2065-0396, [01:16] to [01:39] / CAR-OTP-2122-2284, 2286:27-34 (lines 40-43 Mr. Yekatom also says they have no contacts with François Bozizé; if they had, they would have more weapons than what they had).
[224] P-1647: T-195, 21:27-22:4.
[225] Judgment, p. 780, para. 2123.
[226] Judgment, pp. 781-783, paras. 2125-2131 (Existence of a plan); pp. 801-808, paras. 2192-2214 (Level of communication between the Anti-Balaka chiefs); pp. 808-810, paras. 2215-2220 (Keeping records of elements); pp. 819-820, paras. 2249-2253 (Financing, arming); pp. 835-838, paras. 2305-2316 (Order to attack Bangui).
[227] Mr. Yekatom is not mentioned in the section on 'The order to attack Bangui on 5 December 2013'.
[228] Judgment, pp. 785-786, paras. 2140-2141.
[229] Judgment, p. 800, paras. 2190-2191; p. 869, para. 2425; p. 370, para. 986.
[230] P-2232: T-075, 40:18-23 (Witness distinguished between Mr. Yekatom, and those from '*notre côté*' [i.e witness side]). See Annex 5, row 28.
[231] Judgment, pp. 846-847, para. 2350 ('Assignment of specific locations and time to attack in advance').
[232] P-0446: T-096, 54:22-55:2; 52:23-53:2; T-099, 33:27-34:4.

military superior, Captain Ngremangou, within a FACA chain of command, not horizontal coordination with Anti-Balaka groups.

70. Several indicators are not genuine *indicia* of coordination even if taken at face value. Assembling in various locations[233] around Bangui, or mention of common leaders,[234] are a normal feature of any military operation and, without more, do not show coordination between distinct groups. Likewise, the 'unfolding of the attack and retreat'[235] and the 'aftermath and retaliation by the Seleka'[236] are described by the Chamber in terms that emphasise the failure, disorder and rapid collapse of the operation, or the subsequent conduct of the opposing force, but no reasoning is given as to how these features demonstrate a 'very high level' of pre-attack coordination.[237]

71. The remaining indicators rely on unreasoned global findings that are never linked back to Mr. Yekatom. The Chamber extrapolates from highly speculative headcounts to thousands of Anti-Balaka elements and treats this as proof of sophisticated organisation;[238] and elevates a supposed goal of 'systematic targeting of Muslim civilians' largely on the basis of mischaracterised and minority evidence, against a body of testimony identifying the Seleka/Djotodia as the objective.[239] Throughout, the Chamber fails to engage with the Defence's core theory that Mr. Yekatom operated within a FACA/hierarchical framework, not an Anti-Balaka command,[240] and in the absence of communications or reliable, case-specific evidence it could not reasonably treat these generic indicators as proof that he coordinated with 'other Anti-Balaka groups'.

72. These defects are crystallised in the Chamber's statement that 'none of the Defence arguments created doubt because Mr. Yekatom's group appeared on the same day and time, armed, from a location that 'closed the circle' around Bangui and moved towards Seleka positions 'on instructions from Ngremangou, who was communicating with Maxime Mokom'.[241] Instead of asking whether the indicators and evidence showed that Mr. Yekatom coordinated with other groups, the Chamber treated

[233] Judgment, pp. 810-818, paras. 2221-2245 ('Waiting at common locations and preparing').
[234] Judgment, pp. 841-844, paras. 2328-2342 ('Common leaders').
[235] Judgment, pp. 852-857, paras. 2364-2384.
[236] Judgment, pp. 858-860, paras. 2385-2393.
[237] Judgment, p. 819, para. 2248 (Whereby the Chamber, as regards indicators related to the number of elements, found that a 'very high level of coordination and organisation' was established in this case).
[238] Judgment, pp. 818-819, paras. 2246-2248 ('Number of elements estimated to be involved').
[239] Judgment, pp. 838-841, paras. 2317-2327 ('Goal of the Bangui Attack'). The Chamber relied on P-1847 over nine other witnesses who identified the Seleka as the target (P-2251 (p. 839, para. 2319); P-0306 (p. 839, para. 2319); P-2232 (p. 839, para. 2320); P-0446 (p. 839, para. 2321); P-0291 (p. 839, para. 2322); P-0889 (p. 840, para. 2323); P-0992 (p. 840, para. 2323); P-0876 (p. 840, para. 2323); P-1521 (pp. 840-841, para. 2326)). The Chamber also found in another section that the targets 'corresponded to the Seleka bases in Bangui at the time', see Judgment, p. 847, para. 2351. Video CAR-OTP-2065-5468 (Judgment, p. 841, para. 2327) was filmed after the 5 December operation, as such it is of no use as regards the goal and target of that operation.
[240] Yekatom Defence Closing Brief, para. 355.
[241] Judgment, p. 891, para. 2502.

his mere presence in the operation as dispositive and read the indicators through that lens. This 'participation equals coordination' approach, superimposed on generic or unreasoned indicators, reflects confirmation bias: once the Chamber assumed coordination, every movement or contact was interpreted to fit that conclusion, rather than assessed against alternatives. The evidence instead shows that Mr. Yekatom joined the 5 December 2013 operation by obeying orders from his military superior, Cpt. Ngremangou,[242] as part of a military effort to oust the Seleka/Djotodia regime. There is no reliable evidence that he personally coordinated with 'other Anti-Balaka groups', or that any broader Anti-Balaka plan known to Ngremangou was communicated to him.

c) Errors in finding that Mr. Yekatom was part of the National Coordination

73. The Chamber's conclusion that Mr. Yekatom 'was seen as and understood to be part of the Anti-Balaka' throughout the relevant period rests on a distorted account of the movement's structure.[243] By ignoring or mischaracterising key evidence, it collapsed the clear division between the so-called 'Anti-Balaka South', with which Mr. Yekatom and the RFACPP were aligned,[244] and 'Anti-Balaka North', whose groups fell under the National Coordination led by Mr. Ngaïssona.

74. First, the Chamber erred by failing to set out a clear chronology of the meetings of North and South actors, notwithstanding the Defence's detailed sequencing in its Closing Brief.[245] Regarding the meetings held at Yamwara,[246] the Judgment refers to multiple 'first' and 'second' meetings without clarifying how many occurred or how they relate in time.[247] In its discussion of meetings with President Samba-Panza, the Chamber shifted between several other events without respecting chronology,[248] presenting them as if they formed part of the same, conflating distinct meetings and failing

[242] P-0954:T-166, 25:28-26:7; P-0884: T-056, 3:25-4:24; 6:9-14; 41:19-24; P-2841: CAR-OTP-2127-4238-R01, paras. 106, 108; T-030, 35:22-36:10; P-0446: CAR-OTP-2059-1546-R02, 1564:641-661; P-2232: T-076, 20:21-24; 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).
[243] Judgment, p. 25, para. 63; p. 589; p. 1336, para. 3906; pp. 1348-1349, para. 3939; p. 1375, para. 4011; pp. 1483-1484, para. 4353.
[244] P-0876: T-086, 91:8-14.
[245] Yekatom Defence Closing Brief, paras. 178-198.
[246] Judgment, pp. 565-575, paras. 1497-1526.
[247] A meeting together with 'zone commanders coming from Boy-Rabe, Boeing, and other parts of Bangui, including Kamezoulai, Ngremangou, and Mr. Yekatom' which the Chamber qualified as a first meeting (Judgment, p. 567, paras. 1503-1504); a meeting held on Bara's initiative with Kamezoulai, Mr. Yekatom and Donoh without Ngremangou with a view to setting up a 'bureau' (p. 568, para. 1506); a meeting 'the next day' involving Ngremangou, Bara and Kamezoulai during which a 'new' bureau was set up (p. 568, para. 1507); a meeting on 30 December 2013 during which a structure for the 'Anti-Balaka' was created (pp. 569-571, paras. 1508-1516) which the Chamber qualified as a 'first meeting' (p. 570, para. 1511); and a meeting on 31 December during which there was a disagreement about Bozizé's return to power, (pp. 572-574, paras. 1517-1523) which the Chamber seems to qualify as a 'second meeting' (p. 574, para. 1524).
[248] Shifting from the meeting at President Samba-Panza's residence ('Residence Meeting') to a follow-up discussion on Mr. Ngaïssona's government position requests (Judgment, p. 598, para. 1586), to a list of proposed appointments received from Nguendet (pp. 598-599, para. 1587), then back to the meeting at Samba-Panza's residence, (p. 599, para. 1588) to the government's formation (p. 599, para. 1589, noting the phrase 'when she did not attribute the posts as requested' which refers to the moment the government was formed towards the end of January 2014 and beginning of February 2014, see

to indicate when a new meeting was being discussed or when each occurred.[249] This created an erroneous narrative.

75. Likewise, the Chamber erred in finding that the 'Anti-Balaka' acted separately only after the period covered by the charges.[250] This effectively shifted the timeline downward, allowing it to dismiss relevant evidence falling outside the scope of charges. A judgment of this length, relying on those meetings as key *indicia* of 'coordination',[251] is required to present a coherent chronology.[252] Proper sequencing would have shown that only a few meetings occurred over several days on [REDACTED]; quickly exposing a fundamental divide between pro-Bozizé actors and those opposing his return (including the RFACPP); that this divide crystallised - albeit loosely - into distinct North and South co-ordinations; and that the RFACPP never formally joined the South co-ordination but remained the RFACPP, using the South structure merely as a political channel to convey non-violent proposals to the international community.[253]

76. Second, the Chamber erred in law and fact in treating Anti-Balaka North and South as a single

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CAR-OTP-2094-0295; CAR-OTP-2004-1180, pp. 1184-1191), back to the residence meeting (pp. 599-600, para. 1590), following which it discussed a separate meeting convened by Nguendet to which he invited Mr. Ngaïssona, Kokaté and Bara to his office (pp. 600-601, para. 1592), a mediation by the Congolese contingent (pp. 601-602, paras. 1593-1594), a radio broadcast dated 27 February 2014 (pp. 604-606, paras. 1598-1600), lists of 'Anti-Balaka' wishes for posts within the new transition government (pp. 606-611, paras. 1601-1613), before concluding on the meeting at Samba-Panza's residence (p. 611, para. 1614).

[249] Regarding the Chamber's conflation of the Residence Meeting with a meeting held at the Presidency on 25 January 2014, see Judgment, pp. 599-600, para. 1590, fns. 4180-4182, citing P-0801: T-035 (ENG), 25:8, cf. fn. 4183, referring to T-034, 52:10-53:9, where the Defence notes the Chamber capitalised on a translation error. The Defence notes the use of the term 'during this meeting' in the fourth sentence of paragraph 1590, which erroneously leads the reader to believe that the following sentences relate to the Residence Meeting. Regarding the Chamber's conflation between a meeting with Nguendet and the Residence Meeting, see Judgment, pp. 598-599, para. 1587, referring to CAR-OTP-2087-9028 which originated from a meeting with Nguendet addressed in the Judgment at p. 600, para. 1592. The latter is mentioned after references to the Residence meeting although it occurred before it (P-0876: CAR-OTP-2046-0249-R01, 0265:642-0266:687; T-088, 63:14-64:13; TCV-0952: T-249, 23:21-24:10) and the resulting list provided from Nguendet to the former President was cited prior to any explanation of its origin (pp. 598-599, para. 1587). This error is compounded by the Chamber's collapsing this meeting with the Residence Meeting (pp. 600-601, para. 1592, fn. 4185 and references therein). Regarding the Chamber's conflation between the meeting with General Essongo and the Residence Meeting (both took place on the same day but were separate events), see Judgment, pp. 601-602, para. 1593, fn. 4188 and references therein which cite P-0974's testimony in which he distinguishes between a meeting 'organised at the home of Madam Samba-Panza' and a meeting 'which was carried out by the Congolese' which is consistent with P-0974's prior recorded testimony, see CAR-OTP-2058-0165-R01, para. 79 ('we met with the Congolese mediation'), para. 80 ('we then met […] with Samba-Panza'); cf. fns. 4189-4194 and references therein which cite to the Residence Meeting. In the same vein, see Judgment, p. 602, para. 1594, fn. 4195 and references therein which cite P-1839's testimony on the meeting with the Congolese general (nothing the use of the phrase 'the meeting' in the first sentence of para. 1594 which induces the reader into error given the previous paragraph refers to the Residence Meeting); cf. fns. 4196-4201 and references therein which refer to the Residence Meeting (noting the use of the phrase 'this meeting' in the fifth sentence of para. 1594 which leads the reader to believe that the entire paragraph refers to the Residence Meeting).

[250] Judgment, p. 615, para. 1626, fn. 4281, referring to p. 648, para. 1717 outlining evidence of a meeting held on 15 May 2014 and one at the end of June 2014 (pp. 649-654, paras. 1719-1729); p. 653, para. 1728.

[251] Judgment, p. 566, para. 1499; pp. 574-575, para. 1526; p. 594, para. 1575; p. 596, para. 1581; pp. 614-615, paras. 1624-1626.

[252] Cf. ICC-02/05-01/20-1240, para. 237.

[253] P-0876: T-086, 67:10-19; 74:10-24; 79:5-11; 91:8-14; P-1839: T-173, 5:3-8; 12:10-19.

movement. The evidence shows two independent, often hostile groupings: the South delegation travelled separately to meetings in a MISCA armoured vehicle due to threats from the North;[254] the North rejected Mr. Bara's ministerial appointment, refused to recognise him and issued death threats;[255] and the North [REDACTED].[256] Each delegation prepared and presented its own demands for the N'Djamena Summit.[257] At the National Assembly, Bara and Ngaya spoke separately for South and North with opposing views;[258] at President Samba-Panza's residence, two delegations attended;[259] only the North sought government posts.[260] President Samba-Panza herself acknowledged the existence of two distinct delegations.[261] Although the Chamber mentioned part of this evidence, its disordered presentation and lack of analysis prevented it from drawing the clear inference that the movement was not unified.

77. Third, the Chamber mischaracterised Mr. Yekatom's relationship to the National Coordination. None of the CLPC or 'Anti-Balaka' documents or press release it cited mention Mr. Yekatom or any South actors.[262] Ngaya – part of Mr. Ngaïssona's faction – testified that Mr. Yekatom was 'on the other side', did not join the coordination until June 2014, and never saw Mr. Yekatom in meetings because he was '*pas avec nous*'.[263] Rather than engaging with this exculpatory testimony, the

[254] P-0876: CAR-OTP-2046-0249-R01, 0264:605-0265:631; T-086, 72:23-26; P-0954: T-167, 82:18-24. [REDACTED] (P-0876: CAR-OTP-2046-0249-R01, 0264:624-0265:631). See also in relation to the Residence Meeting, P-0876: T-086, 76:2-9; P-0954: T-167, 83:6-21; P-1839: T-171, 77:2-21; T-173, 7:11-14; 11:23-12:4.
[255] [REDACTED].
[256] P-0888: CAR-OTP-2108-0333-R01, paras. 83-84; T-122, 35:1-38:8; P-1193: CAR-OTP-2045-0048-R03, para. 36; T-126, 55:24-56:20.
[257] Regarding the demands of the North, see Judgment, pp. 582-583, paras. 1543-1547 and references therein; see CAR-OTP-2124-0512. Contrary to the Chamber's view, the evidence is clear that only individuals affiliated with pro-Bozizé groups were aware of the meeting (P-0884: T-056, 31:4-6, 33:6-34:27; P-0808: T-069, 56:9-57:12; 58:21-28) whereas groups represented by Bara were not (P-1858: T-186, 42:23-43:26; P-0974: T-243, 28:15-29:6; P-0876: T-086, 69:10-21). Regarding the demands of the South, see P-0876: CAR-OTP-2046-0249-R01, 0263:540-561; CAR-OTP-2046-0427-R01, 0434:240-241; T-086, 64:20-65:3; P-0974: CAR-OTP-2058-0165-R01, para. 69; T-243, 53:2-28; P-1858: T-186, 41:1-18. *Contra* Judgment, p. 26, para. 64; p. 590; pp. 612-613, para. 1618; p. 1342, para. 3922; p. 1350, para. 3943.
[258] Bara represented the South with a 'pacifist tendency': P-0876: T-086, 72:27-73:12; 74:10-24; P-0974: T-243, 55:24-57:20; P-0954: T-167, 82:2-8; P-1858: T-186, 42:4-15. Ngaya represented the North in favour of Bozizé's return: T-086, 73:4-12. See also P-0808: T-070, 60:1; T-072, 45:24-46:17. *Contra* Judgment, p. 26, para. 64; p. 590; pp. 612-613, para. 1618; p. 1342, para. 3922; p. 1350, para. 3943.
[259] P-0876: T-086, 75:21-76:1; P-0954: T-167, 84:2-16; P-0974: CAR-OTP-2058-0165-R01, para. 80; T-243, 10:22-25; 57:28-58:2; T-244, 27:9-12; P-1839: T-173, 8:3-13. *Contra* Judgment, p. 26, para. 64; p. 590; pp. 612-613, para. 1618; p. 1342, para. 3922; p. 1350, para. 3943.
[260] The South did not seek government posts. No RFACPP members or South actors figure on the lists of wishes for government positions (CAR-OTP-2087-9024; CAR-OTP-2087-9025; CAR-OTP-2075-0737; CAR-OTP-2079-0024; CAR-OTP-2087-9290). Cf. CAR-OTP-2014-0755, at 00:07:38-00:13:35 / CAR-OTP-2122-7370, 7372:74-7374:149. Mr. Yekatom's only intervention during the Residence Meeting was to advocate for peace (P-1839: T-173, 8:14-9:11).
[261] TCV-0952: T-252, 41:16-23. The Chamber omitted this extract, despite citing an excerpt immediately following it (see T-252, 41:24-42:8) in a subsequent footnote, see Judgment, pp. 596-597, para. 1582, fn. 4161. See Annex 5, row 34.
[262] See CAR-OTP-2060-0596; CAR-OTP-2084-0049; CAR-OTP-2060-0590; CAR-OTP-2025-0380; CAR-OTP-2006-1210; CAR-OTP-2080-2250. See also P-0808: T-072, 49:16-51:3, 53:1-54:16; P-0876: T-086, 80:23-82:4; P-0884: T-056, 77:19-20; T-057, 13:18-28, commenting on CAR-OTP-2060-0596 agreeing with the suggestion that the reason why Mr. Yekatom's name did not appear on documents was because he evolved separately and was not with the others.
[263] P-0808: T-072, 49:16-50:10. See also similar comments from witnesses affiliated to Mr. Ngaïssona's coordination, P-2232: T-078, 55:17-56:5; P-0306: T-068, 58:22-24

Chamber conflated North and South interventions 'in the name of the Anti-Balaka'[264] and treated Mr. Ngaïssona as if he had represented Mr. Yekatom throughout,[265] without explaining how this could be reconciled with the record.

78. Finally, the Chamber downplayed powerful contemporaneous evidence that no unified coordination existed until mid-2014. The January 2014 Essongo meeting was explicitly convened to try to create a 'unique coordination' which did not exist at that time;[266] P-0876's unchallenged testimony (which the Chamber relegated to a footnote[267]) makes clear that this arrangement lasted only two hours and failed, and even Mr. Ngaïssona did not recognise it.[268] On 8 May 2014, Minister Montaigne publicly asked the 'anti-balaka' to structure themselves and designate a single co-ordinator,[269] prompting the 15 May 2014 meeting at Pissmiss at which Mr. Wenezoui was appointed 'general co-ordinator'.[270] Those government-driven efforts culminated only on 24 June 2014 in the creation of the National Coordination under Mr. Ngaïssona,[271] prior to which no unified coordination existed and Mr. Yekatom was not part of the North structure.[272] By omitting or misanalysing this evidence, the Chamber wrongly treated Mr. Yekatom as part of a single 'Anti-Balaka' and National Coordination throughout, erroneously finding that he 'was seen and understood to be part of the Anti-Balaka'[273] over the whole period relevant to the charges.

d) Errors flowing from the 'Anti-Balaka' mischaracterisation

79. The Trial Chamber erred in finding that Mr. Yekatom was 'Anti-Balaka' at the time of the Yamwara incident: The Chamber erred in law and in fact in concluding that, at Yamwara, Mr. Yekatom belonged to a unified 'Anti-Balaka' movement[274] and 'used' Yagouzou to keep the five captives at a

[264] E.g. Judgment, pp. 570-571, para. 1513; pp. 586-587, para. 1556; pp. 594-596, paras. 1575-1577, 1579; pp. 599-600, para. 1590; pp. 612-613, para. 1618.
[265] Judgment, p. 25, para. 61; p. 26, para. 64; pp. 589-590.
[266] P-0876: CAR-OTP-2046-0455-R01, 0469:498-0471:585; T-085, 61:23-26; 62:15-16; T-086, 77:11-78:8; T-088, 56:27-57:6; P-0974: T-243, 10:23-27; 61:6-20. On the lack of a single coordination, see P-0876: CAR-OTP-2046-0455-R01, 0470:554-556; P-1839: T-171, 76:24-77:4; 78:2-8; P-0974: T-243, 10:23-25; 61:6-20.
[267] Judgment, p. 603, para. 1596, fn. 4208, referring to 'T-085, p. 62, line 24 – p. 64, line 6; T-086, p. 76, line 2 – p. 77, line 22'.
[268] P-0876: CAR-OTP-2046-0500-R01, 0503:82-100; T-085, 61:4-63:4; T-086, 76:28-78:26, 86:11-15; 91:15-24; T-087, 6:15-21; CAR-OTP-2084-1323, [04:30] to [04:53] / CAR-OTP-2107-1580, 1582:52-54; P-1521: T-083, 15:14-26; P-0889: T-109, 38:21-39:11.
[269] CAR-OTP-2023-1990, [01:19] to [01:44] / CAR-OTP-2122-9420, 9421:18-22; P-0888: CAR-OTP-2031-0217-R03, para. 38; CAR-OTP-2108-0333-R01, para. 85; T-120, 80:26-81:9; P-1193: CAR-OTP-2045-0048-R03, para. 37; T-124, 68:18-20; T-125, 5:10-24; 6:23-27; 7:7-10; P-0876: T-087, 7:1-27; 10:4-8; P-1858: T-186, 45:9-26.
[270] P-1193: CAR-OTP-2045-0048-R03, para. 37; T-124, 68:18-27; 69:27-70:6; T-126, 58:13-59:5; P-1858: T-186, 48:1-9; CAR-D30-0008-0041; CAR-OTP-2001-4867. See also contemporaneous videos dated 15 May 2014: CAR-OTP-2084-1303 to CAR-OTP-2084-1347.
[271] P-0954: CAR-OTP-2048-0171-R01, paras. 65-69; T-167, 85:7-27; P-1858: CAR-OTP-2063-0050-R04, paras. 71-73; P-1193: CAR-OTP-2045-0048-R03, paras. 43, 46; P-0888: T-120, 83:22-84:8; P-0884: T-056, 62:11-63:6.
[272] *Contra* Judgment, p. 653, para. 1728; P-0954: T-167, 87:12-19; P-1858: T-186: 46:24-47:1; 48:1-9; T-187, 15:19-16:18; P-1193: T-124, 70:2-25; T-125, 7:11-15; T-126, 72:3-14.
[273] Judgment, p. 25, para. 63; p. 26, para. 64.
[274] Judgment, pp. 36-37, paras. 109-112; pp. 1128-1129, paras. 3275-3276; p. 1446, para. 4238.

base close to the airport,[275] maintaining 'control over the term of their captivity, its conditions, and their treatment.[276] These findings rest on the same mischaracterisation of Mr. Yekatom as 'Anti-Balaka' and are unsupported by a holistic assessment of the record.

80. First, the Chamber failed to explain how Mr. Yekatom could have 'used' Yagouzou when its own findings recognised that Yagouzou was the leader of his own group based behind M'Poko airport[277] to which Mr. Yekatom did not belong. The Defence had repeatedly underlined that Mr. Yekatom identified himself – before and after Yamwara – as a member of the RFACPP,[278] explicitly distinguishing it from Yagouzou's group led by a civilian.[279] Second, the Chamber ignored consistent evidence distinguishing 'the elements in Mr. Yekatom's group […] who walked back' from the person to whom they were brought, Yagouzou, who introduced himself as 'coordinator of the base behind the airport' and 'spokesperson of the Anti-Balaka',[280] while 'giving instructions to the soldiers' at the M'Poko base.[281] Such evidence shows that Yagouzou - not Mr. Yekatom - was in charge of the M'Poko base and the individuals present there. Third, Yagouzou also appears to have opportunistically used the situation to promote his own group, even providing President Samba-Panza with messaging to publicly claim responsibility for the group's release.[282] The Chamber's conclusion that Mr. Yekatom 'used' Yagouzou is therefore unsupported and contrary to the record, which shows that Yagouzou was the sole interlocutor of political authorities and that Mr. Yekatom was never mentioned in their exchanges.

81. The Chamber also erred by relying on the inconsistent and unreliable testimony of P-0884 to support [REDACTED].[283] The Chamber conceded that P-0884's account contained 'discrepancies that cannot be reconciled' with the established facts, yet treated it as the central pillar of its conclusion.[284] Such selective reliance on an internally inconsistent testimony is a manifest error of reasoning. The Chamber also failed to explain how Mr. Yekatom could [REDACTED] Yagouzou in relation to the supposed 'captivity' of the Lapo Family Group: it merely asserted [REDACTED] without identifying any supporting evidence. While the record shows the group was transferred to Yagouzou's base, no

[275] Judgment, p. 1449, para. 4246.
[276] Judgment, pp. 1450-1451, para. 4248.
[277] Judgment, p. 816, para. 2239.
[278] Yekatom Defence Closing Brief, paras. 243-244. See also, P-1839: T-172, 82:19-83:10; P-0888: T-121, 83:8-84:3. See also CAR-OTP-2065-0396, [00:01:45] to [00:02:02] / CAR-OTP-2122-2284, 2286:36-39; CAR-OTP-2065-3180, [00:01:48] to [00:02:00] / CAR-OTP-2122-7503, 7504:37.
[279] CAR-OTP-2065-3220, [01:45] to [02:39] / CAR-OTP-2127-3668, 3670:27-3671:43 (video in which Mr. Yekatom admonishes a FACA for accepting directions and instructions from Yagouzou because he is a civilian chief of an 'anti-balaka' base in Boeing). See also Ground 2.3 on the Trial Chamber's mischaracterisation of this video.
[280] Judgment, p. 1123, para. 3260.
[281] Judgment, p. 1124, para. 3264.
[282] Judgment, p. 1126, para. 3271.
[283] [REDACTED].
[284] Judgment, pp. 1132-1133, para. 3290.

witness ever mentioned any role or presence of P-0884 during that process. Given the internal inconsistencies in P-0884's account – including errors regarding the group's composition and chronology of events,[285] his testimony provides no credible basis for inferring any involvement of P-0884's group, [REDACTED].

82. Instead of acknowledging the complete absence of proof, the Chamber drew speculative inferences [REDACTED] and other 'Anti-Balaka' groups during separate and isolated military operations described by P-1786.[286] It further relied on Yagouzou's later role in the Anti-Balaka 'coordination' which post-dates the December 2013 events.[287] These inferences, devoid of any logical or temporal nexus with the Yamwara incident, cannot sustain a finding of coordination at the material time. By offering no reasoned explanation of any link between [REDACTED] Yagouzou and Mr. Yekatom during the relevant period, and by relying chronologically and substantively disconnected evidence from the incident, the Chamber committed errors of fact and law.

83. Crucially, the Chamber failed to recognise that, no organised or unified 'Anti-Balaka' structure existed at the time of the Yamwara incident. The evidence showed fragmented, spontaneous mobilisation of local self-defence groups with no overarching command. Treating these disparate actors as already coordinated was a clear legal error. This flawed and premature finding of coordination at the time of the Yamwara incident tainted the Chamber's subsequent reasoning on the alleged continuing detention. No such continuity existed: the transfer from Yamwara to M'Poko marked a clear break in geography and authority. The evidence shows that Mr. Yekatom did not accompany the group, that his 'elements' walked back after encountering Yagouzou, and that control – if any – was exercised by a separate and autonomous group.

84. The Chamber's findings on Mr. Yekatom's continued control over the term of their captivity, its conditions and their treatment therefore lack any factual basis.[288] It conflates two distinct phases - the initial transfer by Mr. Yekatom and the subsequent stay under Yagouzou's responsibility - and thereby attributes to Mr. Yekatom a continuing control that he could not have exercised. By interpreting the unavoidable delay caused by combat as evidence of intent,[289] the Chamber effectively reversed the burden of proof, requiring the Defence to disprove control.

85. Errors regarding the nebulous 'anti-balaka' label: The Chamber failed to properly address relevant evidence and ignored the Defence argument that the OTP exploited the nebulousness of the label

[285] Judgment, pp. 1130-1133, paras. 3280-3290.
[286] [REDACTED].
[287] [REDACTED].
[288] Judgment, pp. 1450-1451, para. 4248.
[289] See Ground 3.1.

'anti-balaka' to misattribute conduct to the RFACPP and, by extension, to Mr. Yekatom, thereby erroneously failing to provide a reasoned decision.[290]

86. The Defence had argued that the label 'anti-balaka' was ill-defined and loosely applied in two inter-related ways.[291] First, individuals *perceived* to have been involved in resisting the Seleka, and eventually, in anti-Muslim conduct and/or general criminality, were commonly and loosely labelled as 'anti-balaka' and/or RFACPP members. The Defence had specifically placed this labelling within its particular historical context, i.e. the fact that the 'anti-balaka' movement had its roots in traditional local self-defence groups in CAR, arguing that the fluidity of 'participation' and 'membership' in the latter informed the manner in which the 'anti-balaka' label was applied.[292] Second, civilians self-proclaimed as 'anti-balaka' and/or (incorrectly) as RFACPP members. The Chamber received abundant evidence of these phenomena.[293] The effect of the nebulous label 'anti-balaka' was compounded by the prevalent, yet demonstrably incorrect, belief that Mr. Yekatom was 'chief' of, or otherwise 'controlled', all 'anti-balaka' in Lobaye or Mbaïki.[294] This mistaken belief was prevalent throughout the OTP evidence, wherein witnesses attributed conduct to 'Rambo's men' or 'Yekatom's elements' on this conclusory and unfounded basis.[295]

87. There was clear evidence that the RFACPP was not the only armed group present in Mbaïki. [REDACTED], ComZone of the Damala 'anti-balaka', who commanded 'a few hundred' ex-FACA and civilians, and arrived in Mbaïki with 'three pick up trucks' of 'Anti-Balaka', remaining there while RFACPP members and Muslims were present.[296] A Sangaris Report records the arrival of three pick-ups of ex-FACA on 31 January 2014, notably distinguishing these ex-FACA from the 'elements

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[290] See Yekatom Defence Closing Brief, paras. 211-216, 515; Yekatom Closing Statements, T-308 (ENG), 61:13-63:11; 64:15-67:21; 69:24-73:5.
[291] See Yekatom Defence Closing Brief, para. 515.
[292] See Yekatom Defence Closing Brief, paras. 212-215.
[293] See e.g. CAR-OTP-2019-1359, [04:12] to [04:28] / CAR-OTP-2130-1204, 1205:68-75; P-1676: CAR-OTP-2066-0105-R01, paras. 68, 87; P-1595: CAR-OTP-2104-0274-R02, para. 51; CAR-D29-0005-0399, 0472, fn. 228; P-2354: CAR-OTP-2105-0991-R03, para. 49; P-1813: T-180, 30:25-31:2; D29-5013: T-286, 16:5-17:4; CAR-D29-0008-0007, [01:39] to [01:49] / CAR-D29-0006-1090, 1090:19-21; CAR-OTP-2074-0075, [00:00-00:50] / CAR-D29-0006-0001, 0001:5-18. Evidence on the killing of the Bagandou imam aptly illustrates this loose labelling phenomenon: see evidence of Bagandou [REDACTED] P-2041: CAR-OTP-2104-0003-R02, para. 45 (stating that the imam was killed by 'the youth of Bagandou'); P-2353: CAR-OTP-2100-0226-R03 para. 38 (stating that he was killed 'by young people from BAGANDOU acting as Anti-Balaka'); cf. P-2354: CAR-OTP-2105-0991-R03, para. 41 (stating that he was 'killed by the Anti Balaka'). See also, Yekatom Closing Statements, T-308 (ENG), 61:18-62:15; 71:24-72:1.
[294] Yekatom Defence Closing Brief, para. 514; Yekatom Closing Statements, T-308 (ENG), 70:19-73:5.
[295] See e.g. P-1666: T-231, 11:17-12:6 ('*depuis le barrage, le check-point de PK 9 jusqu'à Mbaïki, c'étaient les Anti-balaka […] qui régnaient. […] c'était connu de tout le monde que ces éléments étaient sous le commandement d'Alfred Yekatom Rombhot*'); P-2354: CAR-OTP-2105-0991-R03, para. 33; P-2353: CAR-OTP-2100-0226-R03, paras. 40, 49. See also, Yekatom Defence Closing Brief, para. 514.
[296] [REDACTED]. The RFACPP entered Mbaïki on 30 January and Cœur de Lion was killed in Boda at some point prior to the Muslims' departure from Mbaïki on 6 January; see Judgment, p. 1194, para. 3466; pp. 1227-1228, para. 3562; pp. 1250-1251, para. 3640, fn. 8951. See also, Yekatom Closing Statements, T-308 (ENG), 66:22-67:21. See also, [REDACTED].

of caporal-chef (CCH) Rambot', whom it recorded as arriving on 1 February 2014.[297] Second, as discussed below, the record shows that perceived 'anti-balaka' were present in Mbaïki prior to the Church Meeting, i.e. before the arrival of the RFACPP.

88. This evidence taken together – the nebulous 'anti-balaka' label; the misperception that Mr. Yekatom was chief of all 'anti-balaka' in the region; and the evidence of multiple armed groups or individuals in Mbaïki – has implications on whether conduct of perceived 'anti-balaka' could be safely attributed to the RFACPP. This is a question of perpetrator identification: where an accused's alleged liability via remote modes is under examination, a chamber must be alive to the real risk of misattribution of criminal conduct to an individual and/or group, especially in NIACs involving widespread civilian participation in armed groups and/or violence. This is a well-established imperative, developed through careful and reasoned judicial consideration of this matter.[298]

89. The Chamber's approach to the elevated risk of misattribution in the particular circumstances of the CAR stands in stark contrast. While it acknowledged evidence on the difficulty of distinguishing 'real' from 'fake' 'anti-balaka'; it did not meaningfully consider the nebulous 'anti-balaka' label and its implications on the identification of perpetrators, failing to discuss the Defence's submissions or evidence on this matter.[299] It failed to draw on abundant case law or set out principles to follow in assessing identifications.[300] It failed to examine evidence wherein references were made to the conduct of individuals perceived as 'anti-balaka' to exclude the reasonable possibility that they referred not to the RFACPP but to other perceived 'anti-balaka' in and around Mbaïki. It failed to examine the factual basis for any 'identifications' of perpetrators as RFACPP members, to exclude unfounded qualifications as such.[301]

90. These failures are underscored by the Chamber's dismissal of the Ngaïssona Defence's submissions on the 'fake anti-balaka', as a concept 'immaterial to its determinations for purposes of the charges insofar as the Chamber discusses the specific individuals involved and their place or role within the Anti-Balaka in relation to each charged incident.'[302] Yet the Chamber did precisely the opposite: as discussed below, it systematically interpreted references to 'anti-balaka' as referring to RFACPP specifically, and (mis-)attributed conduct to the latter on that basis, while failing to explain

[297] CAR-OTP-2090-0373, 0376-0377.
[298] See e.g. ICC-01/05-01/08-3343, para. 243; ICC-01/04-02/06-2359, para. 73; IT-06-90-T, vol. I, paras. 61-62, 64-66.
[299] Judgment, pp. 674-680, paras. 1785-1800; see Yekatom Closing Statements, T-308 (ENG), 65:21-67:21; Yekatom Defence Closing Brief, para. 531.
[300] Cf. e.g. ICC-01/05-01/08-3343, para. 243; ICC-01/04-02/06-2359, para. 73; IT-06-90-T, paras. 61-62; 64-66; SCSL-04-15-T, paras. 1512-1514.
[301] Cf. e.g. IT-06-90-T, paras. 696, 703; IT-01-47-T, para. 1151; ICTR-00-55C-T, paras. 1036-1037; ICTR-98-41-A, paras. 311-315; ICTR-00-55C-A, paras. 275, 388-389; IT-04-74-T, para. 2142; IT-04-83-T, para. 221.
[302] Judgment, pp. 679-680, para. 1800 (emphasis added).

how it safely made such a determination.[303] Nor can it be presumed to have duly considered this issue, given its failure to engage with submissions and evidence on this point. It also systematically failed to even consider, let alone exclude, reasonable alternative inferences whereby references to 'anti-balaka' in fact referred to individuals/groups other than the RFACPP. Its silence on this matter frustrates the Appeals Chamber's review function, rendering it unable to ensure that the attribution of conduct to the RFACPP, and by extension to Mr. Yekatom, is sufficiently founded; or to ensure that the Chamber properly excluded all alternative reasonable inferences in this regard, before convicting Mr. Yekatom of Counts 24-28 jointly through alleged direct perpetrators.[304]

91. The Chamber erroneously attributed conduct to the RFACPP in Mbaïki: It automatically interpreted evidential references to 'anti-balaka' and/or 'elements' under Mr. Yekatom's control as references to the RFACPP and thus misattributed conduct to the latter, and failed to exclude reasonable alternative inferences as to perpetrators' identities or group membership.

92. In finding that 'elements of Mr. Yekatom's group threatened Muslims' in Mbaïki, the Chamber automatically (mis-)attributed conduct of 'anti-balaka' in Mbaïki to the RFACPP, relying on evidence of *inter alia*, local Muslim witnesses P-1595, P-1666, P-2353 and P-2354.[305] This was unsafe: this evidence, viewed holistically, gives rise to the reasonable inference that the identified perpetrators were not RFACPP members; and no reasonable chamber would have excluded this.

93. First, these witnesses applied the label 'anti-balaka' to individuals and/or groups who were distinct from the RFACPP, as is clear from their use of the term to describe individuals and/or groups were present in Mbaïki and engaging in anti-Muslim conduct prior to the arrival of the RFACPP. P-1595's definition of 'anti-balaka', i.e. 'the armed people', illustrates the inherent ambiguity (and therefore danger) in the term.[306] He stated that the 'anti-balaka' whom he witnessed being hostile to Muslim evacuees in Mbaïki had been present in the city 'for about three weeks'; and given the evacuees departed on 6 February 2014, it follows that the 'anti-balaka' to whom he referred were present in Mbaïki at least two weeks prior to the arrival of the RFACPP.[307] This sequence of events, i.e. the appearance of 'anti-balaka' in Mbaïki, followed by the arrival of the RFACPP, is further reflected in P-

[303] Judgment, pp. 1222-1224, paras. 3547-3550.
[304] Judgment, p. 1485, paras. 4357-4359.
[305] Judgment, pp. 1220-1221, para. 3542, fn. 8726; pp. 1222-1224, paras. 3547-3550.
[306] P-1595: CAR-OTP-2104-0274-R02, para. 51.
[307] P-1595: CAR-OTP-2104-0274-R02, para. 85. Cf. Judgment, p. 1222, para. 3547; see also p. 39, para. 120.

1595's live testimony.[308] It is also corroborated by witnesses P-2353,[309] P-1666,[310] and P-2354,[311] all of whom testified to the active presence of 'anti-balaka' in Mbaïki prior to the Church Meeting and the arrival of the RFACPP. It is also consistent with P-2353's evidence that Muslims were experiencing 'fears of being attacked and killed' by 'anti-balaka' in Mbaïki from 'well before' the 25 January 2014 killing of the imam of Bagandou, which 'only increased [P-2353's] fear'.[312] Likewise, with P-1666's evidence that the crowd gathered outside the Church Meeting, who were agitating to attack the Muslim attendees, included individuals from areas outside Mbaïki.[313]

94. Second, these witnesses harboured the misapprehension that Mr. Yekatom had authority over all perceived 'anti-balaka' in Mbaïki and surrounds; and by extension, that all perceived 'anti-balaka' were therefore members of the RFACPP. This is demonstrated in the manner in which P-2353, P-1666, P-1595 and P-2354 referred to the hostile civilians whom Mr. Yekatom addressed after the Church Meeting as 'anti-balaka' and/or his 'elements',[314] when the evidence clearly indicates that he was not addressing RFACPP members, but the civilian population.[315] Media reports and rumours contributed to this misapprehension.[316] In this regard, witnesses' qualification of individuals as RFACPP and/or under the authority of Mr. Yekatom cannot automatically be relied on, where the

[308] P-1595: T-106, 6:27-7:5 ('*L'arrivée de Rambo dans la ville de Mbaïki, sa venue a été précédée par l'arrivée des Anti-balaka qui sillonnaient la ville, qui menaçaient par-ci par-là. […] [A] l'arrivée de M. Rambo dans la ville de Mbaïki, j'ai vu qu'il a été acclamé, applaudi par les Anti-balaka et les non-musulmans.*'); 8:8-15 (that during his speech at the Church Meeting, Mr. Yekatom stated, '*Je demande aux Anti-balaka qui sont dans la ville de Mbaïki de se retirer pour laisser la population de la ville en... en paix.*'). Cf. Judgment, p. 1222, para. 3547.
[309] P-2353: CAR-OTP-2100-0226-R03, paras. 53-54 (that 'anti-balaka' harassment of Mbaïki's Muslims took place 'for about a month' which, given their evacuation on 6 February, establishes the presence of 'anti-balaka' in Mbaïki weeks prior to the RFACPP arrival).
[310] P-1666: T-230, 32:4-5 ('*Après leur arrivée, [REDACTED] avec les éléments de... d'Alfred Rombhot [REDACTED]*.'). Cf. Judgment, pp. 1222-1223, para. 3548.
[311] P-2354 consistently testified that 'anti-balaka' were present in Mbaïki prior to i) the arrival of Sangaris (on 28 January 2014) and ii) the Church Meeting (on 30 January 2014); see P-2354: CAR-OTP-2105-0991-R03, paras. 51, 56; T-210, 21:7-18. Regarding the date of the arrival of Sangaris in Mbaïki, see CAR-OTP-2091-0373, 0376.
[312] P-2353: CAR-OTP-2100-0226-R03, paras. 53-54; T-161, 76:24-77:5; cf. Judgment, p. 1223, para. 3549. On the date of the killing of the imam of Bagandou, see Judgment, p. 1181, para. 3433. See also, on the prevailing atmosphere of fear in the lead-up to the Church Meeting, P-2353: T-161, 25:21-28 ('*A cette époque, la peur était partout, il y avait très peu de circulation. […] J'étais limité dans mes déplacements et j'avais aussi peur. […] Cependant, certaines personnes ont eu le courage d'y aller. […] Ils ont assisté à cette réunion.*').
[313] P-1666: T-232, 19:24-20:24; cf. Judgment, pp. 1222-1223, para. 3548, where the Trial Chamber relied on his evidence that Muslims were 'not afraid of the local people but of the Anti-Balaka who had arrived 'from everywhere'' to Mbaïki.
[314] P-2353: CAR-OTP-2100-0226-R03, para. 57; T-161, 26:8-10; P-1666: T-230, 43:20-44:8; P-2354: T-210, 16:23-17:2; P-1595: CAR-OTP-2104-0274-R02, para. 79.
[315] See e.g. CAR-D29-0010-0182 (photograph taken after Church Meeting, where RFACPP members are in military uniform and clearly distinguishable from civilians); D29-5013: T-285, 44:13-16 (regarding Mr. Yekatom telling the youths gathered: '*Vous êtes trop jeunes, votre place n'est pas ici. Votre place est soit au champ pour aider vos parents à travailler la terre, soit à l'école. Mais avec moi, c'est un travail de professionnels, ce n'est pas votre place.*'); D-5015: T-254, 43:14-44:3 ('*Parce que maintenant, il doit se rendre à la population pour dire ça à la population.*'); see also Judgment, pp. 117-118, para. 363 (where the Trial Chamber refers to Mr. Yekatom's speeches as 'peace messages' to Christians').
[316] P-2354: CAR-OTP-2105-0991-R03, para. 33. See SCSL-04-15-T, paras. 1512-1514 (where the *Sesay et al.* Trial Chamber noted the role of radio in engendering the 'common misconception' that all rebel attacks were attributable to the RUF, and ultimately 'treated identifications by civilian witnesses of RUF rebels as the perpetrators of attacks in Freetown as inherently unreliable').

factual basis of this identification is not sufficiently established.[317] P-2354's identification in his OTP-drafted statement of 'the Anti-Balaka elements that had arrived with Mr. Yekatom' is unsafe, as the basis for this qualification is not clear; and in particular given his retraction of a key allegation contained within his OTP-drafted witness statement.[318]

e) Materiality

95. The errors identified under this ground are material. The mischaracterisation of the RFACPP as part of a monolithic 'Anti-Balaka' structure is a foundational premise of the Judgment: it underpins the contextual elements, the existence and content of any policy, Mr. Yekatom's alleged coordination with and authority over other groups, and the attribution to him of that movement's purported characteristics and criminal policy for the purposes of individual criminal responsibility (see Ground 2.1).[319] Absent these errors, a reasonable trial chamber could have concluded that Mr. Yekatom's alleged Anti-Balaka affiliation and his resulting authority, coordination and responsibility for acts of 'anti-balaka' actors were not established beyond reasonable doubt thereby materially affecting the convictions within the meaning of Article 83(2).

3. Ground 2.3 – The Trial Chamber erred in finding that Mr. Yekatom targeted the Muslim population

96. This ground alleges legal and factual errors in the Chamber's core premise that Mr. Yekatom and the RFACPP targeted Muslims. It challenges the misreading and over-extension of limited, unreliable evidence to infer that he knew of, shared and implemented an anti-Muslim policy, the re-casting of the 5 December 2013 operation, the Yamwara incident and the PK9–Mbaïki Axis as sectarian attacks on 'Muslims' rather than operations against Seleka forces, and the disregard of exculpatory material and consistent IHL training and instructions to distinguish civilians. These errors vitiate the findings on discriminatory intent, persecution, the contextual elements and Mr. Yekatom's *mens rea*, rendering the convictions unsafe.

a) Errors in findings on Mr. Yekatom's alleged knowledge of Anti-Balaka perceptions

97. The Chamber erred in fact and in law in finding that 'Mr. Yekatom knew that the Anti-Balaka perceived […] the Muslims in the CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka and that the Anti-Balaka targeted the Muslim

[317] See IT-06-90-T, paras. 65-66. Regarding his evidence that the 'anti-balaka' had established their base at the town hall, the Defence notes that the Trial Chamber did not enter a finding as to the location of RFACPP base(s) in Mbaïki; see Judgment, p. 1217, para. 3530; P-2354: CAR-OTP-2105-0991-R03, para. 53.
[318] See P-2354: T-210, 16:16-17:21.
[319] Judgment, pp. 1334-1335, para. 3901; p. 1336, para. 3906; p. 1340, para. 3917; p. 1344, para. 3926; pp. 1346-1347, paras. 3933-3934; pp. 1348-1349, para. 3939; p. 1350, para. 3942; p. 1353, para. 3950; pp. 1371-1372, paras. 3999, 4001; pp. 1374-1375, paras. 4009-4010; p. 1442, para. 4227; pp. 1450-1451, para. 4248; p. 1468, para. 4305; p. 1479, para. 4337; pp. 1483-1484, paras. 4350, 4352-4353, 4355; p. 1485, para. 4358; p. 1488, para. 4368.

civilian population, specifically in the west of the CAR, on this basis'.[320] It then used this finding – both indirectly[321] and directly[322] – to characterise and attribute responsibility in relation to the 5 December operation related charges,[323] the Yamwara School base incident, around 24 December 2013,[324] and the PK9-Mbaïki axis in early 2014.[325]

98. From the outset, the Chamber failed to establish when Mr. Yekatom is supposed to have acquired this knowledge. Establishing the temporal scope of any such knowledge was indispensable: if he acquired it only after some or all of the charged crimes, it was legally erroneous for the Chamber to rely on it when assessing responsibility for those crimes. The Chamber was required to distinguish between what he knew at the time of each alleged crime and what he may have learned later. Yet the 34-page section following this factual finding provided no chronology.[326]

99. Instead, the Chamber relied on vague assertions that 'the Anti-Balaka groups sought revenge in their advance and attacks was also known at the time the Anti-Balaka structure became more formalised in 2014'[327] – a statement unsupported by any evidence of Mr. Yekatom's own knowledge and without specifying when in 2014 this 'more formalised' structure emerged. Where the Chamber did refer to him, the references likewise concern 2014, for example 'on the PK9-Mbaïki axis in January and February 2014 where Anti-Balaka elements, including from Mr. Yekatom's group, are seen expressing Anti-Muslim sentiment'.[328] Critically, the Chamber did not establish whether he was aware of those incidents, nor whether they formed part of its assessment of Mr. Yekatom's knowledge of Anti-Balaka 'targeting' the Muslim civilian population. Similarly, the Chamber summarised P-1193's account of [REDACTED] 'Mr. Yekatom's group […] [REDACTED] make them understand that not all Muslims were 'wrong' and that they should distinguish between Muslims and mercenaries'.[329] It omitted P-1193's statement, in the very same paragraph, that Muslims were present in the RFACPP, and that no atrocities were committed.[330] In short, the entirety of the evidence relied upon by the Chamber for this finding relates to 2014; no evidence supports the conclusion that Mr. Yekatom possessed such knowledge prior to January or February 2014 at the earliest.[331]

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[320] Judgment, p. 23, para. 48; p. 468; pp. 1348-1349, para. 3939; p. 1371, para. 3999; p. 1378, para. 4024; p. 1442, para. 4227; p. 1479, para. 4337; p. 1483, para. 4352; p. 1488, para. 4368.
[321] Judgment, pp. 1348-1349, para. 3939.
[322] Judgment, p. 1371, para. 3999.
[323] Judgment, p. 1378, para. 4024.
[324] Judgment, p. 1442, para. 4227.
[325] Judgment, p. 1479, para. 4337; see also p. 1483, para. 4352; p. 1488, para. 4368.
[326] Judgment, pp. 468-502.
[327] Judgment, p. 475, para. 1229.
[328] Judgment, pp. 474-475, para. 1228, fn. 3339.
[329] Judgment, p. 478, para. 1237.
[330] P-1193: CAR-OTP-2045-0048-R03, paras. 33-34.
[331] Judgment, pp. 474-475, para. 1228.

100. The Chamber's subsidiary finding confirms this deficiency. It held that in light of the evidence, 'bearing in mind Mr. Yekatom's control over his own group at the relevant time, the Chamber is of the view that this was known to, and instrumentalised by, François Bozizé, Mr. Ngaïssona and others in their actions'.[332] This wording identifies other individuals – Bozizé, Mr. Ngaïssona and others – as those possessing knowledge and exploiting this alleged perception. It does not support the general finding that Mr. Yekatom himself held such knowledge.

b) Errors in finding that Mr. Yekatom perceived Muslim civilians as responsible

101. The Chamber further found that Mr. Yekatom himself perceived 'the Muslims in the CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka'.[333] Building on its (already erroneous) finding that he knew of the Anti-Balaka perception of Muslims, this alleged perception became central to the Chamber's legal characterisation of the facts of persecution.

102. The Chamber expressly relied on the combination of these 'knowledge' and 'perception' findings when 'recalling of factual findings' for the crimes of persecution[334] in relation to all three charged events.[335] It treated Mr. Yekatom's supposed perception of Muslims as the core indicator of the discriminatory intent for all three crime-base findings. Additionally, it used this finding to establish his responsibility for the 5 December 2013 operation and the PK9-Mbaïki axis advance, reasoning that, because he held this perception, he intended to deprive the Muslim civilian population of their fundamental rights.[336]

103. Yet, in the entire section following this finding,[337] the Chamber identifies no evidence that Mr. Yekatom himself perceived Muslim civilians as collectively responsible for Seleka exactions and points to no statement in which he expressed anti-Muslim sentiments that could sustain such a conclusion. To establish a personal discriminatory 'perception' capable of grounding persecution, the Chamber was required to provide clear reasoning and to explain how any inference from the crimes themselves (many of which were limited in scope and committed by others) demonstrated his own animus. It did neither, instead providing a simple conclusion that Mr. Yekatom gave instructions to attack Muslim civilians,[338] referring back to multiple other sections of the Judgment.[339] Crucially, as

[332] Judgment, pp. 478-479, para. 1239.
[333] Judgment, p. 23, para. 48; p. 468; p. 1349, para. 3939; p. 1371, para. 3999; pp. 1378-1379, para. 4024; p. 1442, para. 4227; p. 1479, para. 4337; p. 1483, para. 4352; p. 1488, para. 4368.
[334] Judgment, p. 1371, para. 3999; p. 1442, para. 4227; p. 1479, para. 4337.
[335] Counts 8, 17 and 28.
[336] Judgment, p. 1378, para. 4024; p. 1488, para. 4368.
[337] Judgment, pp. 468-502.
[338] Judgment, pp. 501-502, para. 1305.
[339] See Judgment, p. 501, para. 1305, fn. 3503, '*See* sections IV.B.2, IV.B.3.i, IV.D.3, IV.E.1-IV.E.3 below' which refers

developed below, the underlying finding that he instructed attacks on Muslim civilians is itself erroneous.

104. This deficiency is compounded by the Chamber's failure to conduct a holistic assessment of the evidence. It ignored clear, exculpatory evidence directly contradicting any such perception toward Muslim civilians. A Muslim witness quoted Mr. Yekatom as stating 'Don't be afraid. I've come to save you. I'm not the enemy of the Muslims', adding 'We rose to fight Seleka and not Muslims'.[340] The Chamber's attempt to discount this evidence – for example, by focusing on the witness' supposed familial relationship – does not address the substance of Mr. Yekatom's words.[341] Video evidence likewise depicts Mr. Yekatom indicating that Muslims are his brothers and only Djotodia and his mercenaries are the enemies,[342] as subsequently corroborated by other witnesses.[343] The Chamber also disregarded that Muslims were present in the same group,[344] further undermining any inference that he perceived all Muslims as collectively responsible.

c) Errors in finding Mr. Yekatom knew the group held Muslims civilian responsible

105. Errors in finding that there was no training in the principle of distinction: The Chamber relied on a subsidiary finding that 'Mr. Yekatom as leader of his group did not demand or emphasise the need for such distinction when instructing his elements in preparation of the attack on Bangui on 5 December 2013, in Yamwara, or when his group advanced along the PK9-Mbaïki axis'.[345] This assertion is unreferenced. It later repeated that Mr. Yekatom 'did not draw an appropriate distinction between targeting Seleka members or individuals belonging to the Muslim civilian population',[346] but the accompanying footnote merely refers back to multiple sections of the Judgment totalling 159 pages,[347] preventing meaningful appellate verification of such a consequential finding. These unsubstantiated assertions appear designed to reinforce the broader conclusion that Mr. Yekatom perceived Muslim civilians as collectively responsible; by failing to substantiate or cross-refer to specific supporting material, the Chamber undermined that broader finding. This subsidiary finding is further weakened by the errors set out below regarding training on the principle of distinction,[348] and international

to entire sections for a total of 159 pages, almost 10% of the entire judgment. See also fn. 3504 '*See* sections IV.B.2, IV.B.3.i, IV.E.1-IV.E.3 below' which refers to a total of 97 pages; *Contra* Chambers Practice Manual, Guideline for ICC Judgment Drafting, para. 73.

[340] Yekatom Defence Closing Brief, p. 6 referring to D29-5014: T-257, 18:23-26, 20:18-23.

[341] Judgment, pp. 620-621, para. 1639.

[342] CAR-OTP-2107-1191, [00:00:19] to [00:00:29] / CAR-D29-0006-0933, 0933:10-12.

[343] P-1647: T-196, 20:11-16; P-1193: T-126, 77:19-22.

[344] P-1193: CAR-OTP-2045-0048-R03, para. 33.

[345] Judgment, p. 499, para. 1299.

[346] Judgment, pp. 501-502, para. 1305.

[347] Judgment, pp. 501-502, para. 1305, fn. 3503.

[348] Judgment, p. 28, para. 74 (in a section dedicated to the 5 December operation).

humanitarian law.[349]

106. In relation to the 5 December operation, the Chamber held that 'Mr. Yekatom's instructions were understood by the elements to accept that Muslim civilians would be killed as a result of the fighting based on his elements not having been trained or instructed to apply the principle of distinction during combat […]'.[350] It further concluded that 'his elements had not been trained in or instructed to apply the principle of distinction', and that Mr. Yekatom was aware of this.[351] No evidentiary basis was provided for either proposition; the Judgment simply repeats the finding without analysis, citation, or explanation.[352] As such, it is wholly unreasoned and cannot stand.

107. In any event, the finding is contradicted by evidence. FACA members – who formed a significant part of the RFACPP movement[353] – received humanitarian law training, including on the principle of distinction.[354] Insider witnesses, including P-1647 and P-1786, also confirmed that this principle was taught to the 'elements' within the movement.[355] Given this evidence, no reasonable trier of fact could have concluded that RFACPP members were not trained in the principle of distinction.

108. The Chamber also asserted that the elements would not have been instructed to apply the principle of distinction.[356] Even accepting its reliance on a single, unreliable witness, P-1339, this finding is unsupported and contradicted by the Chamber's own summary of his evidence. P-1339 recalled Mr. Yekatom's instruction: 'Listen, if you attack Muslims, don't touch the women or the children. It's the Muslims who are shooting, not the women'.[357] This evidence itself reflects an instruction consistent with the principle of distinction: targeting only 'the Muslims who are shooting' i.e. armed adversaries. Further, the section devoted to Mr. Yekatom's pre-5 December operational instructions,[358] relied entirely on P-1339, who explicitly stated that he was not present throughout the totality of the briefing.[359] It was reasonable to infer that specific instructions on the principle of distinction could have been provided during his absence. This is not speculative: it is supported by: (i) his own testimony distinguishing between the 'Muslims who are shooting' and women and children; and (ii)

[349] Judgment, p. 32, para. 94 (in a section dedicated to the 'Training at Yamwara' in relation to the events at Yamwara around 24 December 2013).
[350] Judgment, p. 28, para. 74; p. 875, para. 2446; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; pp. 1374-1375, para. 4010.
[351] Judgment, p. 875, para. 2447; p. 877, para. 2452.
[352] Judgment, p. 877, para. 2454.
[353] CAR-OTP-2065-0396, [01:45] to [02:01] / CAR-OTP-2122-2284, 2287:36-39; CAR-OTP-2094-7618, [00:06:03] to [00:06:15] / CAR-OTP-2118-4260, 4263:80-82; P-1647: T-195, 12:7-13:25.
[354] [REDACTED]; P-1786: T-197, 76:18-25; P-1647: T-194, 44:15-45:5.
[355] P-1647: T-194, 45:14-20; T-195, 43:15-23; P-1786: T-198, 40:26-41:9; T-198 (ENG), 38:23-39:7 (the English version contains the answer of the witness missing in the French one); see also Yekatom Defence Closing Brief, paras. 299-303.
[356] Judgment, p. 28, para. 74; p. 864.
[357] Judgment, p. 874, para. 2444.
[358] Judgment, pp. 870-877, paras. 2427-2454, subsection ii. 'Mr. Yekatom's instructions to the elements in Gbangba'.
[359] P-1339: T-159, 40:1-11; 41:12.

evidence that RFACPP members – including FACA – received training on distinction. In this context, it was erroneous for the Chamber to fill the evidentiary gap created by P-1339's physical absence by nonetheless concluding that no instructions on the principle of distinction were given.

109. The Chamber then drew an adverse inference that 'Mr. Yekatom knowingly did not instruct his elements to apply the principle of distinction',[360] relying on video recordings made after the 5 December operation. Although it stated that the dates of the video were not on the case record, the metadata was available (dated 10 December 2013),[361] and in the OTP's BTM.[362] The Chamber could not use videos filmed after the operation, or treated as undated, to infer what Mr. Yekatom instructed before the operation. Its adverse inference also appears to turn on the timing of Mr. Yekatom's intervention in one of those videos. The Chamber noted 'Sylvestre Yagouzou is addressing elements, […] and instructing the elements not to pillage. Mr. Yekatom interrupts and says […]';[363] any insinuation that he deliberately interrupted Yagouzou because he was discussing the prohibition of pillaging, suggesting that Mr. Yekatom 'knowingly did not instruct his elements' on the principle of distinction, should be rejected. First and foremost, there is no evidence of pillaging by the RFACPP. Further, the video shows that Mr. Yekatom arrived mid-discussion.[364] There is no indication that he heard the subject matter before intervening. His comments show that he did not want civilians to give orders to soldiers,[365] and that he distinguished between the group of soldiers and Yagouzou's.[366] Nothing indicates a refusal to endorse instructions on the prohibition of pillage.

110. The Chamber further erred in fact in concluding that no IHL training occurred at Yamwara.[367] This misapprehension stems from a selective assessment of P-1786, P-1647, and P-1839's evidence, leading it to discount corroborating accounts.[368] Properly read, P-1786's evidence confirms that: i) FACA members – including himself – were responsible for transmitting IHL principles to non-military recruits; ii) members were told not to target Muslim civilians; and iii) no systematic killings occurred within the RFACPP. The Chamber focused narrowly on an isolated remark about abuses by '*other* Anti-Balaka groups' and ignored his clarifications. P-1786 explained that FACA members,

[360] Judgment, p. 877, para. 2453, fn. 6190 cross-referencing to paras. 2472-2474.
[361] JEM/Nuix Metadata field 'Document Date' for videos CAR-OTP-2065-3208, CAR-OTP-2065-3212, CAR-OTP-2065-3220.
[362] For videos CAR-OTP-2065-3208 and CAR-OTP-2065-3212, see ICC-01/14-01/18-2233-Conf-AnxA, items #246 (pp. 230-232) and #259 (pp. 243-246) in which the OTP indicated 'video shows the second camp of the Anti-Balaka on 10 December 2013'.
[363] Judgment, p. 882, para. 2473, fns. 6226, 6227 with reference to video CAR-OTP-2065-3220 and its translation CAR-OTP-2127-3668.
[364] CAR-OTP-2065-3220, [01:48 to 01:55].
[365] CAR-OTP-2065-3220, [02:04 to 02:11] / CAR-OTP-2127-3668, 3670:32.
[366] CAR-OTP-2065-3220, [02:33 to 02:38] / CAR-OTP-2127-3668, 3671:42-43.
[367] Judgment, p. 32, para. 94; p. 1071, para. 3097.
[368] See Part 4 (evidence assessment) and Part 4 (holistic).

including Mr. Yekatom, Cœur de Lion, and Beina, instructed FACA to train non-military members to fight the Seleka and not to target Muslim civilians.[369]

111. The Chamber seized on his comment about abuses by other Anti-Balaka groups,[370] to suggest he 'relativised' his testimony,[371] without considering that, during the relevant period, there were no systematic killings of the Muslim population and that he never witnessed such conduct among the group's members. He further testified non-military recruits were forbidden to conduct arbitrary arrests of civilians and were instructed to call the military and bring in anyone believed to be Seleka, in order to prevent harm to civilians;[372] told not to steal from civilians; and that they were told not to inflict on the population the same abuses committed by the Seleka, as the group's objective was to protect civilians.[373] Far from relativising his evidence on IHL training, his testimony as a whole is coherent and shows that specific measures were in place to provide instructions on distinction. The Chamber's selective reading, despite the Defence expressly highlighting the clarifying and corroborative passages,[374] and its failure to explain why it disregarded them, amounts to a misapprehension of the evidence, and a failure to provide a reasoned opinion.[375]

112. The Chamber compounded this error by treating P-1647's evidence as standing 'in contrast' to P-1786's, on the basis of the latter's comments regarding the treatment of captured Seleka elements.[376] Their testimonies are corroborative and consistent: both described IHL instruction delivered to the non-military recruits of the RFACPP;[377] both conducted these trainings;[378] that section chiefs were responsible for conducting the trainings at Yamwara;[379] and that explicit instructions were given to members not to target civilians.[380] P-1647 further testified that the training also addressed the protection of children and of civilian objects, including schools and hospitals.[381]

113. The Chamber also misapprehended P-1839's evidence by considering that she 'did not know of any international humanitarian law training at Yamwara'.[382] P-1839 was only asked about external

[369] Judgment, p. 1070, para. 3093.
[370] P-1786: T-198, 41:18-42:4 (Annex 5, row 42). See also P-1786: T-197, 77:28-78:10.
[371] Judgment, pp. 1070-1071, para. 3094.
[372] P-1786: T-197, 78:13-21. See also example provided by P-1786 where suspects were detained and subsequently released by military personnel, 79:4-13; CAR-OTP-2058-0200-R03, para. 31.
[373] P-1786: T-197, 26:24-27:5.
[374] Yekatom Defence Closing Brief, paras. 299-303.
[375] See Part 4 (evidence assessment) and Part 4 (unreasoned).
[376] Judgment, p. 1071, para. 3098.
[377] P-1647: T-194, 44:22-27; P-1786: T-197, 76:15-17; T-198, 40:26-41:12; see T-198 (ENG), 39:2-16 for the answer of the witness missing in the French transcript.
[378] P-1647: T-194, 43:1-10; P-1786: T-197, 26:24-27:5.
[379] P-1647: T-194, 43:12-17; P-1786: T-197, 75:3-10.
[380] P-1647: T-194, 45:14-20; T-195: 43:15-23; P-1786: T-198, 41:4-12.
[381] P-1647: T-194, 44:15-19.
[382] Judgment, p. 1072, para. 3100.

trainers, 'white' individuals, coming to provide IHL trainings, which she did not recall.[383] The Chamber's incorrect paraphrasing suggests that she denied the existence of IHL trainings altogether. On the contrary, other sections of P-1839's testimony confirm that elements at Yamwara were instructed in fundamental IHL principles, including to refrain from attacking unarmed persons.[384] Her testimony does not exclude internal trainings delivered by section chiefs, as described by P-1647 and P-1786. Nor does her reference to basic arms training contradict the occurrence of IHL instruction.[385] [REDACTED], her evidence could not outweigh the direct accounts of FACA instructors P-1786 and P-1647.[386] Moreover, the Chamber's reference to P-1839's testimony on 'two incidents involving captured 'Muslims'' as evidence of a lack of respect of IHL misrepresents the record and is misplaced. Both alleged incidents referred to by the Chamber involved Cœur de Lion who acted independently and did not occur in Mr. Yekatom's presence or on his instructions.[387]

114. The Chamber likewise contrasted P-1786's testimony, that he never heard any military member discuss the killing of Muslim civilians, with its findings on Cœur de Lion's actions in the Saint-Cyr Lapo incident.[388] This reasoning improperly treats isolated misconduct by Cœur de Lion as reflective of group practice and instructions. Even accepting that violations occurred in those instances, Cœur de Lion's independent conduct does not negate evidence that IHL principles were taught at Yamwara. The Chamber further relied on isolated video material showing Maidanda threatening to kill all Muslims, while noting that he was a section chief who provided trainings on IHL to non-military members.[389] This does not undermine the direct evidence of P-1786 nor P-1647 that FACA members trained non-military members on the distinction principle.[390] Maidanda's video comments were neither shown to have occurred with Mr. Yekatom's knowledge or consent, nor was it reflective of group-wide practice.[391] The witnesses themselves emphasised having never heard any military members within the group discussing the killing of Muslim civilians, after hearing the video extract.[392] P-1786 added '*si je pouvais entendre ce qu'ils disaient, je pourrais intervenir*'.[393] P-1647 confirmed that he had never heard such rhetoric from Maidanda,[394] explaining that a good soldier would not speak

[383] P-1839: T-173, 37:28-38:3; Annex 5, row 13.
[384] P-1839: T-174, 88:20-25.
[385] Judgment, p. 1072, para. 3099.
[386] P-1647: T-194, 43:1-3; P-1786: T-197, 26:24-27:5.
[387] See Ground 2.4.d). on the conflation error of the incidents; P-1839 evidence on the first incident, mischaracterised by the Chamber as involving 'Muslims', concerned two thieves, occurred in Mr. Yekatom's absence, and did not involve Muslims.
[388] Judgment, pp. 1070-1071, para. 3094, fn. 7653.
[389] Judgment, p. 1071, para. 3095; see also p. 1070, para. 3093, fn. 7650.
[390] Judgment, p. 1070, para. 3093.
[391] P-1786: T-197, 79:18-20; 82:8-18.
[392] P-1786: T-197, 80:16-82:18.
[393] P-1786: T-197, 82:8-18.
[394] P-1654: T-194, 51:12-16.

in such a manner.[395] He described Maidanda as a '*chanvreur'* (a weed smoker) who spoke in his own way and added that anyone expressing themselves like that should be corrected or educated.[396] P-1839 – a witness found to be fully credible by the Chamber - likewise confirmed never hearing anyone talk with a similar rhetoric, and was surprised to hear the video.[397]

115. The Chamber's conclusion that, other than P-1647's evidence, there was 'no other evidence suggesting that the purported trainings on international humanitarian law were provided to civilian elements at Yamwara' relies on its incorrect assessment of the evidence of P-1786 and P-1839 as contradicting P-1647. This was not a genuine evidentiary conflict but the product of a factual error in the Chamber's evaluation. Once P-1786 and P-1839's evidence is properly assessed, no inconsistency arises and there is no reasonable basis to doubt P-1647's unchallenged, first-hand testimony regarding IHL instruction at Yamwara. The Chamber's misapprehension of the evidence materially affected its conclusion that 'Mr. Yekatom's group' targeted Muslim civilians.

116. Errors in finding that Mr. Yekatom knew that members of his group would assimilate Muslims as collectively responsible for Seleka crimes: The Chamber made subsidiary findings that group members held anti-Muslim animus, or conflated the Muslim civilians with the Seleka, and that Mr. Yekatom was aware of these prejudices. It stated, for example, that 'Mr. Yekatom, given his own history with the Seleka and flight to Zongo, knew about the context and how members of his group, irrespective whether they were trained FACA members or not, did not distinguish between Muslim civilians and the Seleka'.[398] Its reliance on Mr. Yekatom's 'history with the Seleka and flight to Zongo' is wholly unreasoned. The Chamber did not engage with the reasons for his flight, nor with the fact that he continued to serve as a FACA under the Seleka regime for several months until his abduction, which, as argued under Ground 2.2, undermines any inference that he was prejudiced against Muslims or that 'history' showed knowledge of a lack of distinction between Seleka and Muslim civilians.

117. The further assertion that 'Mr. Yekatom must have been aware of the statements against Muslims, in general, made by elements and leaders of his group' is equally unreasoned.[399] The phrase, 'must have been aware', reflects speculation rather than a properly reasoned finding of fact; the Chamber identified no evidentiary basis establishing his awareness of any such statements. As the Defence

[395] P-1654: T-194, 48:23-25.
[396] P-1654: T-194, 47:28-48:1; 48:23-25; 51:19-28.
[397] P-1839: T-174, 81:12-19.
[398] Judgment, p. 499, para. 1299.
[399] Judgment, p. 501, para. 1305.

argued,[400] the Beina video[401] does not mention Muslims or religion at all, cannot evidence anti-Muslim animus; and neither shows nor implicates Mr. Yekatom – matters the Chamber failed to address. In the absence of any proof that Mr. Yekatom knew of anti-Muslim statements, or of any conflation of Muslims with the Seleka by group members, the subsidiary finding cannot stand.

118. Errors in findings on the RFACPP's perception of the Lapo Family Group: The Chamber manifestly erred in fact and in law by concluding that 'Alkanto's identification of the women as being related to Djotodia and Mamour as well as being Muslims, combined with Alkanto's negative feelings centred around a desire for revenge against the women, predisposed Alkanto's group to perceive the seven persons as "Muslims"'.[402] This finding is speculative, conflates distinct evidentiary inferences (Seleka affiliation and religious identity), and vitiates its subsequent conclusions on the elements of the crimes, responsibility, and sentencing.[403]

119. On the Chamber's own findings, the treatment of the Lapo family did not arise from the charged policy of targeting the Muslim population '[b]ased on their religious or ethnic affiliation' 'perceived as collectively responsible for the crimes allegedly committed by the Seleka, complicit with, or supportive of the Seleka'.[404] However, it was not any known or supposed religious affiliation that prompted the group's arrest, but the concrete link to the Seleka card then in Saint-Cyr's possession – an objective, material indicator that convinced Alkanto and his men that the group was aligned with the Seleka.[405] By introducing an additional, unfounded element – a supposed perception of the group as 'Muslim' – the Chamber either (i) effectively expanded the organisational policy beyond the scope of the charges, or (ii) used this asserted perception to displace the obvious explanation that the group was apprehended because of its Seleka connections and status. In either case, its approach was legally erroneous. The decisive factor was P-1811's [REDACTED] of the Seleka [REDACTED].[406] In the context of an ongoing armed conflict against the Seleka, it was manifestly unreasonable to conclude that she was perceived as Seleka-affiliated because of her religion; the motive for the arrest was her direct, personal link to General Mamour, a prominent Seleka figure personally known to Alkanto.

120. The Chamber's reliance on the testimony of P-0967 – who merely believed that Alkanto might have recognised P-1811 and therefore assumed the women were Muslims – falls far short of proving

[400] See ICC-01/14-01/18-1935-Conf-AnxA, pp. 92-94.
[401] Judgment, p. 875, para. 2449 referring to video CAR-OTP-2065-0436.
[402] Judgment, p. 1412-1413, para. 4135.
[403] Judgment, pp. 1412-1413, para. 4135; p. 1441, para. 4223; p. 1442, para. 4227.
[404] DoCC, para. 64.
[405] Judgment, pp. 1085-1086, paras. 3138, 3140.
[406] Judgment, pp. 1084-1085, paras. 3137-3139.

an anti-Muslim animus.[407] P-1811's own testimony,[408] corroborated by others,[409] confirms that Alkanto never mentioned religion, but focused on her familial ties to General Mamour and the Djotodia family. The Chamber also ignored that Alkanto presented himself as Muslim.[410] When that fact is considered, together with Alkanto's reference to P-1811's [REDACTED] post and his personal grievances against her,[411] there was a reasonable inference that any hostility was personal and linked to Seleka membership. The conclusion that the group was perceived 'as Muslims' cannot be reconciled with the record, which shows that their known Seleka connections drove their arrest. The error is even more pronounced for the men in the group. Having found that they were not Muslims,[412] the Chamber could not reasonably subsume their treatment under a policy of targeting Muslims based on their religious or ethnic affiliation.[413]

121. The Chamber also erred in its treatment of the Seleka card found on Saint-Cyr. P-1839 – a principal OTP witness deemed fully credible[414] – testified unequivocally that the discovery of the Seleka card in Saint-Cyr's possession triggered the group's transfer to Yamwara.[415] This fact was uncontested by the OTP, acknowledged in the Chamber's own findings,[416] and could not be ignored without rendering the reasoning defective. Yet the Chamber mentioned the card only in passing, merely restating the Defence position,[417] and offered no rationale for rejecting the card's discovery as the operative cause of the transfer.

122. The deficiency is compounded by a perplexing footnote observing that 'none of these witnesses, including P-1839, was questioned on whether they had seen the 'Seleka cards' shown to P-2050.[418] This observation is both immaterial and misleading. P-2050 testified after all the Yamwara witnesses had been heard,[419] and her evidence had no bearing on their ability to confirm the card found on Lapo. Once the Chamber incorporated the discovery of the Seleka card into its factual findings, it was immaterial whether P-1839 had physically seen the particular cards later shown to P-2050;[420] her

[407] Judgment, p. 1085, para. 3139, fn. 7576.
[408] P-1811: CAR-OTP-2058-0003-R05, para. 26; T-114, 17:25-27. See also P-0967: T-200, 22:4-9; P-1705: T-212, 11:2-9; P-1811: CAR-OTP-2058-0003-R05, para. 17; P-0884: T-056, 14:5-7.
[409] Judgment, p. 1084, para. 3137, fns. 7747-7749. See also P-1705: T-211, 22:5-13.
[410] P-1704: T-128, 38:6-9; P-1839: T-173, 71:18-26.
[411] Judgment, p. 1084, para. 3137; p. 1086, para. 3141.
[412] Judgment, p. 1085, para. 3139.
[413] DoCC, para. 64.
[414] Judgment, p. 118, para. 364.
[415] P-1839: T-170, 28:20-22; 30:19-21; T-173, 73:19-28. See also: T-173, 73:14-16.
[416] Judgment, p. 33, para. 98; pp. 1088-1089, para. 3147.
[417] Judgment, p. 1086, para. 3140.
[418] Judgment, p. 1088, para. 3147, fn. 7773.
[419] P-2050 was among the last witnesses heard by the TCV in August 2023 (see T-240) while P-1704, P-1705, P-0967 and P-1839 testified between 5 May 2022 and 14 March 2023.
[420] Judgment, p. 1088, para. 3147, fn. 7773.

detailed,[421] reliable account of the card's existence and significance was corroborated by P-2050's testimony that such cards circulated at the time.[422]

123. In light of Saint-Cyr's specific mistreatment and Alkanto's clear knowledge of P-1811's connection to the Seleka [REDACTED], the Chamber's acknowledgment that the men were not Muslims, and the undisputed discovery of the Seleka card, the Chamber was required to address the card's decisive role and to explain why it nonetheless attributed the arrest and transfer to a supposed perception of 'Muslim' identity. Its failure to do so – while preferring an unreasoned 'Muslim' perception over concrete evidence of Seleka affiliation – constitutes a clear breach of its duty to render a reasoned judgment.[423]

d) Errors in finding that Mr. Yekatom gave instructions to kill Muslim civilians

124. Instructions on the 5 December operation: The Chamber found that 'Mr. Yekatom's instructions to his elements concerning the attack on 5 December 2013 were to fight the Seleka and included targeting sectors where 'Muslims' were to be found'.[424] As discussed, the Chamber erred in its assessment of P-1339's credibility,[425] warranting that his testimony be disregarded in its entirety. Even assuming credibility, the finding remains erroneous.

125. The Chamber failed to assess P-1339's evidence holistically, in particular his acknowledged language bias: he used the word 'Muslim' to describe 'Seleka',[426] requiring a cautious, contextual reading of his account of alleged orders. When asked about the Boeing Market, he described the objective as reaching PK-5 where the Seleka are, and explained that instructions were given to go to the Boeing Market as the 'Muslims' that are there could attack them from behind.[427] The target in PK5 is clearly identified as the Seleka; as to Boeing, his answer denoted armed combatants capable of engaging the RFACPP, not civilians, despite his use of 'Muslims'.

126. Likewise, his paraphrased account of Mr. Yekatom's instruction – 'Listen, if you attack Muslims, don't touch the women or the children. It's the Muslims who are shooting, not the women'[428] – again identifies the target as those actively firing, i.e. combatants, not civilians. His further explanation confirms this: *'Si vous rencontrez des Séléka, tuez-les'*.[429] The order is directed at the Seleka; his

[421] P-1839: T-170, 33:1-5.
[422] P-2050: CAR-OTP-2076-0911-R02, para. 61; T-240, 27:10-28:8.
[423] See Part 4 (unreasoned).
[424] Judgment, p. 28, para. 74, p. 864; pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; p. 1368, para. 3989; p. 1375, para. 4012; p. 1378, para. 4023.
[425] See Ground 4.1. The Defence clarifies that it never conceded P-1339's participation in the 5 December operation, see Yekatom Defence Closing Brief, para. 124, *contra* Judgment, p. 865, para. 2410, fn. 6101.
[426] P-1339: T-157, 45:8-14; T-159, 27:9-20.
[427] P-1339: T-154, 63:11-22.
[428] Judgment, p. 874, para. 2444; reference to the original French transcript is P-1339: T-160, 8:28-9:2.
[429] P-1339: T-160, 8:1-4.

reference to possible harm to 'parents' reflects his conjecture about collateral effects, not instruction to target civilians. Consistent with this, P-1339 confirmed that the 'enemy' was the Seleka. When the Presiding Judge asked him directly who the 'enemy' was in the trainings he described as being 'to defend against the enemies', he answered that the enemies were Seleka elements[430] – again indicating enemy forces and not Muslim civilians. These portions of P-1339's evidence, as the sole account relied upon by the Chamber for the 5 December 2013 instructions, could not be ignored in any holistic assessment.

127. The contested finding originates in the Chamber's summary that P-1339 'said that the goal of Mr. Yekatom's group was to attack KM5' and that 'the goal of the Anti-Balaka was to target those sectors where Muslims were to be found'.[431] The Chamber then stated that, in its view, P-1339 'continued to conflate the Seleka with the Muslims in how he understood Mr. Yekatom's instructions'.[432] This supposed 'conflation' is neither explained nor reasoned. In the absence of analysis, the sub-finding is unsustainable.

128. The conclusion that 'Mr. Yekatom's instructions to his elements were to fight the Seleka and that it included targeting sectors where 'Muslims' were to be found' mischaracterises P-1339's testimony.[433] He never attributed such an instruction to Mr. Yekatom. The relevant extract concerned the 'goal of the Anti-Balaka' in general,[434] not a specific order by Mr. Yekatom or the RFACPP. Even on the Chamber's own summary, the comment is framed at movement level, not as a description of instructions from Mr. Yekatom.[435] Moreover, P-1339's explanation that only divine intervention saved them because the Seleka were vastly superior in arms and material leads to the reasonable inference that his use of 'Muslims' denoted Seleka combatants, not civilians.[436] A more reasonable interpretation of his evidence is that, when he said 'Muslims', he meant the Seleka. The Chamber erred by extrapolating a broad comment about Anti-Balaka objectives into a concrete instruction from Mr. Yekatom and by failing to consider that alternative, reasonable reading. This erroneous finding was then used to support key contextual elements, as well as to bolster the conclusion that Mr. Yekatom exercised control over the crimes. The Chamber compounded the error by later characterising

[430] P-1339: T-152, 4:22-5:3; *contra* Judgment, p. 872, para. 2435. On P-1339's change, following spontaneous answers identifying the enemy as the Seleka, after multiple OTP attempts and the reading of his prior statement, see P-1339: T-152, 4:22-5:3; 11:4-5; 18:15-20.
[431] Judgment, pp. 874-875, para. 2445.
[432] Judgment, pp. 874-875, para. 2445 (emphasis added).
[433] Judgment, p. 875, para. 2446.
[434] Judgment, pp. 874-875, para. 2445. See also P-1339: T-155, 18:2-3.
[435] The question leading to the witness' answer was in relation to the location of the Muslim community after the 5 December operation. The absence of mentions of RFACPP members in the question prevents an inference that the witness was discussing about him in his answer (see P-1339: T-155, 17:23-25).
[436] P-1339: T-155, 18:4-12.

these supposed instructions as 'specific and express' in relation to deportation and displacement,[437] a flagrant mischaracterisation of both the evidence and its own prior reasoning. Similarly, in assessing an 'order to displace', it elevated the language to 'instructing his elements, prior to the Bangui attack, to target all sectors where Muslims are to be found', without attempting to justify the notion that the order extended to 'all' such sectors.[438]

129. The Chamber also found that on the night of 4 December 2013 'Mr. Yekatom instructed his elements to target Seleka positions along the Boeing-Cattin-PK5 direction. These instructions encompassed attacking the Muslim traders at the market in Boeing before moving along the route to PK5'.[439] This finding was used to support the CAH nexus, the factual basis of Count 1,[440] the 'by reason of identity' element for Count 8,[441] and Mr. Yekatom's individual responsibility for the 5 December crimes.[442]

130. The Chamber relied on P-1339 as having said that Mr. Yekatom gave 'the instruction to 'attack the Muslims and Seleka' present at Boeing Market'.[443] It erred in law by relying on material that was not properly admitted. In the first reference, the OTP merely read extracts from his prior recorded statement; P-1339 did not adopt the statement,[444] and as a live witness his prior statement was not evidence unless confirmed in court. In the second,[445] the statement was again read to him; he neither confirmed its content nor stated that he heard such an order. The reliance on this non-admitted material is all the more problematic because, in his very next answer, P-1339 clarified that the instructions were to pass through Boeing Market so as not to be attacked from behind when moving towards PK5 – a description of a tactical concern about armed opponents, not an order to attack civilians.[446] The Chamber noted that he later stated there was no 'predisposition' to go to the market but failed to explain the implications of this contradiction.[447] The absence of any predisposition to go to the market directly undermines the idea that they were instructed to attack it; the Chamber was required to grapple with this inconsistency.

131. A holistic reading of the same exchange further shows the witness expressing uncertainty – 'I

[437] Judgment, p. 28, para. 74; p. 864; pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; p. 1368, para. 3989; p. 1375, para. 4012; p. 1378, para. 4023.
[438] Judgment, p. 1367, para. 3986.
[439] Judgment, p. 28, para. 75; p. 897; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1372-1373, para. 4004; pp. 1374-1375, para. 4010.
[440] Judgment, p. 1353, para. 3950.
[441] Judgment, pp. 1372-1373, para. 4004.
[442] Judgment, pp. 1374-1375, para. 4010.
[443] Judgment, p. 898, para. 2531.
[444] Judgment, p. 898, para. 2531, fn. 6334 referring to P-1339: T-154 (ENG), 54:11-15.
[445] Judgment, p. 898, para. 2531, fn. 6334 referring to P-1339: T-154 (ENG), 58:8-59:8.
[446] P-1339: T-154 (ENG), 59:1-8.
[447] Judgment, pp. 898-899, para. 2532, fn. 6336.

don't know what to tell you'[448] – when asked how he knew the market would be attacked, weakening any inference of a clear, explicit instruction. The Chamber's conclusion that he understood they would attack the market because 'there were Muslims in that location' and they 'had to start there' as the 'goal of the Anti-Balaka'[449] again ignores the established language bias whereby he used 'Muslims' to refer to Seleka combatants. Nowhere in the relevant section does the Chamber cite evidence supporting the finding that Mr. Yekatom instructed his elements to target Boeing Market, still less 'Muslim traders'. Even the more generic assertion that he ordered them 'to target Seleka positions along the Boeing-Cattin-PK5 direction' is unsupported by the passages quoted. The term 'Muslim traders' does not appear in the development, and the cited evidence does not sustain an inference of instructions to target Muslim civilians.

132. The Chamber further found that 'on 5 December 2013, and following Mr. Yekatom's instructions, Mr. Yekatom's elements attacked the mosque in Boeing'.[450] As with the other 5 December instructions, this finding rests exclusively on P-1339. Notwithstanding the Chamber's erroneous credibility assessment for P-1339,[451] its analysis of his evidence on this point was equally flawed. The Chamber relied first on a summary of P-1339 as saying that Mr. Yekatom instructed them to 'destroy the houses of the Muslims' and that 'they ['we'/'*on*'] destroyed the mosque of the Muslims [in Boeing]'. As detailed,[452] the Chamber relied on an incorrect translation that materially affected its reading of his testimony. It also failed to consider his answers holistically, even though they raised sufficient doubt as to whether he meant to include himself – and by extension Mr. Yekatom's RFACPP – in the destruction of the mosque. A proper holistic assessment would have required it to engage with, rather than dismiss, the Defence submissions on this point. The only other passage relied on by the Chamber is P-1339's claim that 'Alkanto on his own initiative would not have shot a rocket at the mosque'; that 'the leader, the commander, Yekatom' gave the instruction; and that Alkanto 'only complied with the instructions that Yekatom gave him'.[453] This claim was elicited under highly irregular circumstances, which the Chamber failed to take into account. In these circumstances, no reasonable trier of fact could rely on this single, internally inconsistent and procedurally tainted testimony to conclude beyond reasonable doubt that, 'following Mr. Yekatom's instructions, Mr. Yekatom's elements attacked the mosque in Boeing'.

133. Instructions on the PK9-Mbaïki axis: No reasonable trier of fact could have found that '[a]t the

[448] P-1339: T-154, 57:27-58:10.
[449] Judgment, pp. 898-899, para. 2532.
[450] Judgment, p. 29, para. 78; p. 921; pp. 1353-1354, para. 3951; p. 1369, para. 3992.
[451] See Ground 4.1.
[452] See Ground 4.3.
[453] Judgment, p. 925, para. 2631.

time of the group's presence on the Mbaïki road, Mr. Yekatom, Cœur de Lion, and Alkanto instructed the elements to kill all the Muslims in the area',[454] and that these instructions did not make 'any distinction between armed and unarmed Muslims since it was considered, by the group in general and the "chiefs" in particular, that all Muslims could have weapons hidden at their homes and that they were therefore all the same'.[455] This material finding, and its component sub-findings, results from flawed evidence assessment and faulty reasoning.

134. First, the Chamber erred in finding that the killing of Saleh 'exemplifies the targeting of Muslim civilians' by RFACPP members.[456] Its failure to correctly assess evidence of Saleh's involvement with the Seleka materially affected this finding, given that his killing was the specific result of the suspicion harboured towards him by Mbaïki locals for his active participation in deadly Seleka operations.[457] The Chamber's examination on whether Saleh was 'part of' Seleka forces or suspected to be so was erroneously narrow.[458] Further, assuming *arguendo* that the Chamber had not erred in finding that RFACPP members were involved in the incident, this finding fails to account for P-1647's clear evidence that Mbafolo was punished and turned over to the gendarmerie for her involvement.[459] In this respect, its failure to enter a finding as to whether Mbafolo was sanctioned was a material failure to provide a reasoned opinion.[460] The Chamber also erred in finding that RFACPP operations targeted Muslim persons on religious grounds: these operations were conducted lawfully and pursuant to military necessity, and were aimed at ensuring the security of the civilian population of Lobaye.[461] These errors go directly to the second and third elements of Article 7(1)(h).[462]

135. Second, the Chamber failed to appreciate the significance of P-1839's clarification during her examination by the Defence that RFACPP members were instructed to distinguish between armed and unarmed Muslims:

> Q. [Q]uand vous étiez là, présente, est-ce que M. Yekatom a, à quelque moment que ce soit, donné ce genre d'instructions?
> R. Il a donné l'instruction de tuer tous les musulmans, mais non les musulmans non armés, c'était bien précis.[463]

136. Her evidence that Mr. Yekatom gave '*bien precis*' ('specific') instructions in this regard goes to

[454] Judgment, p. 38, paras. 114; pp. 1136-1138, paras. 3300-3304.
[455] Judgment, pp. 1137-1138, para. 3304.
[456] Judgment, pp. 1479-1480, para. 4339.
[457] See Ground 4.6; cf. Judgment, pp. 1479-1480, para. 4339.
[458] Judgment, pp. 1479-1480, para. 4339.
[459] P-1647: T-194, 63:28-64:3.
[460] Judgment, p. 1268, para. 3678.
[461] See Parts 5(2) and 5(3).
[462] Judgment, pp. 1479-1480, paras. 4339-4342.
[463] See P-1839: T-174, 88:9-25; see also, T-174 (ENG), 85:8-11 (Q: When you were present, when you were present, did Mr. Yekatom ever give such an instruction? A: He gave the instruction to kill all the Muslims, but not Muslims that weren't armed. That was very clear, specific.).

the heart of this matter, if not of the OTP case. Yet the Chamber never addressed this clarification in its reasoning on instructions. Instead, it cited the extract with a 'see also' signal under its finding that P-1839 never heard any instructions from Mr. Yekatom to attack unarmed Muslim civilians.[464] This was a multifaceted error. Properly read, P-1839's clarification shows that RFACPP members were instructed to specifically distinguish between armed and unarmed Muslim civilians – as corroborated by multiple OTP insider witnesses, who confirmed that RFACPP members were positively instructed not to attack civilians and non-combatants.[465] The Chamber's failure to expressly consider this probative corroborative evidence is thus illustrative, not to mention an error in its own right.[466] In any event, a reasonable chamber could not simply relegate such a clarification to a transcript footnote without engaging with it in its analysis.

137. Third, the Chamber failed to properly consider, evaluate and/or weigh the relevant evidence in concluding that 'P-1839 unambiguously testified that Mr. Yekatom and other leaders […] instructed his elements to kill all the Muslims' without distinction on the Axis.[467] The Chamber's failure to properly appreciate the significance of P-1839's clarification, led it to erroneously fail to take it into consideration when evaluating the remainder of her evidence on instructions. In addition, it failed to properly evaluate P-1839's own evidence which, properly understood, indicated that her assertion in direct examination that RFACPP leaders issued instructions to 'kill all the Muslims' without distinguishing between armed and unarmed Muslims, was not factual in nature, but was an unreliable cocktail of hearsay, speculation and conclusory opinion.

138. It is critical to note that P-1839's clarification (that RFACPP members received 'specific' instructions to distinguish) was only elicited after Defence counsel specifically and expressly requested the witness to limit her responses to facts regarding the instructions that were given, and to avoid speculating or concluding.[468] The Chamber thus ought to have been alive to her tendency in this regard, and ought to have properly recognised it as such when it manifested in her evidence. One clear indication in this regard lay in the language of her responses. When asked in direct examination whether the purported instructions issued by RFACPP chiefs to 'kill all the Muslims' extended to children, her affirmative answer contained the language and grammar of conclusory opinion evidence: '*Oui, aux enfants aussi, parce que si on laisse les enfants, ils vont venger leurs pères dans le futur, donc, si on trouve aussi les enfants, on... on les tue*'.[469] The non-factual nature of her response

[464] Judgment, p. 1137, para. 3303, fn. 8100.
[465] See e.g. P-1647: T-194, 45:14-20; P-1786: T-198, 41:6.
[466] See Judgment, pp. 1138-1139, para. 3306; See Part 4 (unreasoned and bias); Annex 5, row 44.
[467] See Judgment, pp. 1137-1138, para. 3304.
[468] P-1839: T-174, 86:9-15.
[469] P-1839: T-171, 36:18-21 (emphasis added).

(and her broader tendency in this regard) was confirmed in examination by the Defence where, upon being asked a direct question, she clarified her response, confirming that she had never in fact heard RFACPP chiefs instruct elements to kill children.[470]

139. Another clear indication that her evidence on instructions was not based in fact was her repeated inability to provide concrete factual evidence regarding the instructions to 'kill all the Muslims' without distinction supposedly given by RFACPP chiefs. When asked (twice) for an example of an occasion when Mr. Yekatom gave instructions to kill Muslims without distinction, she was unable to provide a single one, and confirmed that she had never actually heard him give such instructions – this, from an RFACPP member [REDACTED], whose [REDACTED] was expressly cited by the Chamber.[471] When subsequently asked (again, twice) for an example of an occasion when such instructions were given at all, by any RFACPP chief – 'maybe a meeting or a gathering or whatever' – again, she was unable to do so.[472]

140. The Chamber thus repeatedly took and relied on P-1839's evidence as factual, ignoring clear indications of speculation and subjective conclusions therein, and thus failing to critically examine its manifestly dubious probative value. Its finding that RFACPP leaders 'in particular, considered that all Muslims could have weapons hidden at their homes and that they were therefore all the same',[473] was likewise based on P-1839's evidence which, again, exhibited the telltale language and grammar of speculation and conclusory opinion: '*Il y avait pas de différence* ***parce que*** *les musulmans non armés aussi avaient des armes qu'ils cachaient chez eux, à la maison,* ***donc***, ***on les considérait*** *tous ensemble*'.[474] P-1839's inability to provide concrete factual evidence is revealing: when asked in her OTP interview (taken in 2017, and thus while the 2014 events were relatively recent in her mind) who it was that said all Muslims are the same whether armed or not, P-1839 had been unable to provide the name of a single RFACPP member, let alone a chief, and could only resort to sweeping generalisations about what 'all the 'anti-balaka'' had 'in their minds'.[475] The Chamber took this speculation as positive evidence.[476]

141. To support its finding that instructions issued to RFACPP members did not distinguish between armed and unarmed Muslims, the Chamber substantially mischaracterised P-1839's evidence.

[470] P-1839: T-174, 81:20-82:3. Whereas the Chamber conceded and accepted her clarification regarding children, it did not do so in respect of her clarification regarding Mr. Yekatom's positive '*bien precis*' / 'specific' instruction to not target unarmed Muslims; see Judgment, p. 1138, para. 3305.
[471] P-1839: T-171, 36:23-37:2; see also, Judgment, p. 115, para. 356 and fn. 485.
[472] P-1839: T-171, 37:10-22; T-171 (ENG), 36:18-37:4.
[473] Judgment, pp. 1137-1138, para. 3304.
[474] P-1839: T-171, 36:11-16 (emphasis added).
[475] P-1839: T-174, 83:10-18; 85:16-19.
[476] Judgment, p. 1136, para. 3300.

Prompted by the Presiding Judge, P-1839 clarified her above interview response, stating that the chiefs 'put it in their minds' that everyone who was armed was to be treated the same, whether Muslim, Christian or Seleka.[477] This clarification was consistent with the abundant evidence heard at trial, that religion played no part in the RFACPP's objectives of combatting the Seleka and restoring order in Lobaye; and not least with Mr. Yekatom's address to the civilian population of Mbaïki, specifically warning members of both the Christian and Muslim communities not to harm one another.[478] In the English transcript, her clarification was transcribed as '[a]nd our chiefs put this to us so we had it in our minds that everything that is a Muslim – everyone who is a Muslim, Christian or Seleka who are – have weapons are the same'.[479] Astoundingly, the Judgment simply reformulated her exculpatory testimony, removing key words and replacing them with ellipses, to make it fit the preferred, un-founded conclusion that RFACPP members and 'chiefs in particular' considered that all Muslims were armed: 'everyone who is a Muslim, Christian or Seleka […] have weapons are the same'.[480] This initiative on the part of the Chamber, when assessed alongside inter alia its further distortions of the trial record, selective reliance on transcripts, and omissions of exculpatory evidence, cannot but give rise to a reasonable apprehension of bias.[481] Suffice to say the very fact that the Chamber deemed it necessary to thus distort this evidence speaks volumes about the weakness of the finding that it underpins.

142. In the same vein, when asked for 'examples' of how RFACPP members spoke about Muslims, notably with the express instruction to 'please be as specific as possible', again P-1839 could not provide any factual examples, instead resorting to a vague and generalised response about Muslims being 'enemy number one', and 'there were no Muslims' where the group went,[482] which does not allow a clear factual understanding of how RFACPP members actually spoke about Muslims, or who amongst the group spoke in what way, etc. Far more probative than this vague response were, as set out above, (i) P-1839's OTP interview, where she said she had never heard similar rhetoric to Mai-danda's and was 'surprised' by it,[483] and (ii) the consistent evidence of RFACPP chief P-1647, who stated that any member speaking in such terms would be 'reproached' and 'educated'.[484] Yet the Chamber failed to take this material into account when assessing her indeterminate answers, just as it

[477] P-1839: T-174, 85:23-86:5 ('*la Séléka était mélangée avec les civils pour... pour se battre, en fait, et–comment dirais-je ?–et nos chefs nous ont mis ça dans la tête, que tout ce qui est musulman, c'est-à-dire que chrétiens ou armés ou Séléka sont pareils, en fait.*').
[478] See e.g. P-1813: CAR-OTP-2069-0035-R02, para. 55. See Ground 3.2.e).
[479] P-1839: T-174 (ENG), 82:12-14 (emphasis added).
[480] Judgment, p. 1136, para. 3300.
[481] See Part 4 (bias) / Annex 5, row 14.
[482] P-1839: T-171, 35:10-12; T-171 (ENG), 34:14-17.
[483] P-1839: T-174, 81:12-19.
[484] P-1647: T-194, 51:26-28.

relied uncritically on her explanation that Muslims were 'enemy number one' while ignoring her qualification that the reason for this was 'in our heads', another indication that she was expressing subjective opinion rather than recalling concrete facts.[485]

143. No reasonable chamber would have failed to appreciate that P-1839's evidence showed that Mr. Yekatom and RFACPP leaders positively instructed members to distinguish between combatants and noncombatants, or between the armed and unarmed. Conversely, no reasonable chamber would have relied on P-1839's speculation and conclusory opinion to find that RFACPP members were instructed by Mr. Yekatom to kill all Muslims without thus distinguishing; or that RFACPP chiefs 'in particular' considered that 'all Muslims […] were all the same'. A number of weak arguments for a proposition do not and cannot ever combine into a strong reason for accepting it.[486] The Chamber also erred in failing to take into consideration, per its obligation to holistically assess the trial record, the multiplicity of evidence establishing more broadly that Mr. Yekatom and the RFACPP did not target Muslim civilians, in its evaluation of P-1839's evidence on instructions.[487] At an absolute minimum, it was manifestly unreasonable to suggest that no reasonable doubt surrounded this finding, or that all reasonable alternative inferences as to the existence of these purported unlawful instructions were excluded. Given the above inter-related errors, the impugned findings are fundamentally unsafe, and the Chamber's confident assertions that it was 'clear to the chamber' that P-1839 'unambiguously testified' to the existence of unlawful instructions belie its error-strewn, manifestly unreasonable assessment of her evidence.[488]

e) Materiality

144. The errors identified under Ground 2.3 are material within the meaning of Article 83(2)(a) because they go to the core factual and legal premises underpinning all of Mr. Yekatom's convictions. First, the findings that Mr. Yekatom perceived and targeted 'Muslims' as collectively responsible for Seleka crimes, and that the RFACPP did not distinguish between Muslim civilians and Seleka,[489] were treated as a central thread running across the Judgment.[490] They were used to (i) define the targeted group and discriminatory intent for persecution (including Counts 8, 17 and 28);[491] (ii) characterise the 5 December 2013 operation, the Yamwara incident, and the PK9–Mbaïki Axis as directed against Muslim civilians 'by reason of' their identity rather than against Seleka forces;[492] and (iii)

[485] P-1839: T-171, 35:5-17; cf. Judgment, p. 1136, para. 3301. See Part 4 (holistic).
[486] ICC-01/05-01/08-3636-Anx2, para. 15.
[487] Judgment, pp. 1137-1138, para. 3304. See Part 4 (holistic).
[488] Judgment, pp. 1137-1138, para. 3304.
[489] Judgment, p. 23, para. 48; p. 468.
[490] See Yekatom Closing Statements, T-308 (ENG), pp. 77 et seq.
[491] Judgment, p. 1371, para. 3999; p. 1442, para. 4227; p. 1479, para. 4337.
[492] Judgment, pp. 1374-1375, paras. 4010-4012; p. 1481, para. 4345; p. 1483, para. 4352.

support the existence and scope of an organisational policy of targeting Muslims underpinning the contextual elements of CAH and WC,[493] which were impermissibly transposed to Article 25(3)(a) findings. Once these findings are set aside as unreasoned, speculative and contrary to the evidence (including exculpatory material showing that Muslims were present in, and protected by, the RFACPP), there is a reasonable likelihood that, but for these errors, the Trial Chamber would have declined to draw the conclusions it did about the alleged targeting of the Muslim civilian population. This affects the contextual and mental elements across the counts, not only the persecution convictions.

145. As regards the 5 December 2013 operation, the specific erroneous findings that Mr. Yekatom instructed RFACPP members to attack 'Muslim traders' and to attack the Boeing Mosque were repeatedly treated as decisive inferences of both *actus reus* and *mens rea*.[494] They were relied upon to support the CAH nexus,[495] to construe the operation as an attack on Muslim civilians 'by reason of' their religion, and to underpin key elements of Counts 1–6 and 8,[496] including the alleged discriminatory purpose of the deportation and displacement charges.[497] The Chamber also used these findings to reject central Defence submissions that the operation was directed at Seleka positions and armed adversaries.[498] If those findings are removed, the factual and legal basis for treating the 5 December events as part of a campaign against the Muslim population, and for attributing discriminatory intent to Mr. Yekatom, is fundamentally weakened.

146. Similarly, in relation to the Yamwara incident, the unwarranted conflation of Seleka affiliation with 'Muslim' identity allowed the Chamber to attribute to Mr. Yekatom a sectarian motive unsupported by the record, thereby distorting both the *actus reus* and *mens rea* findings for Counts 11–17.[499] By treating the Lapo family as targeted as 'Muslims' rather than as persons suspected of concrete Seleka links, the Chamber altered the factual matrix on which the convictions rest. Correctly understood, the record supports, at most, operations against Seleka elements, not a policy or intent to attack Muslim civilians as such. There is therefore a reasonable possibility that, absent these errors, the Trial Chamber would have reached different conclusions on the Yamwara related counts.

147. On the PK9–Mbaïki Axis, the alleged 'kill all Muslims' instruction was effectively the backbone

[493] Judgment, pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1348-1349, para. 3939; p. 1350, para. 3942.
[494] Judgment, p. 1353, para. 3950; pp. 1364-1365, para. 3980; p. 1368, para. 3989; pp. 1372-1373, para. 4004; pp. 1374-1375, para. 4010; p. 1375, para. 4012; p. 1376, para. 4016; p. 1378, paras. 4023-4024.
[495] Judgment, pp. 1348-1349, para. 3939.
[496] Judgment, p. 1378, para. 4024.
[497] Judgment, p. 1376, para. 4016.
[498] Judgment, pp. 1356-1357, para. 3959.
[499] Judgment, pp. 1412-1413, para. 4135; p. 1420, para. 4159; p. 1437, para. 4210; p. 1441, para. 4223; p. 1442, para. 4227; pp. 1443-1444, paras. 4230-4231; p. 1452, para. 4253; p. 1456, para. 4268; p. 1457, para. 4270.

of the factual and legal conclusions for Counts 24–28. The Chamber relied on it to establish multiple elements of the underlying crimes, to characterise the alleged common plan as one to eliminate Muslims on the Axis, and to infer Mr. Yekatom's essential contribution and discriminatory intent.[500] It systematically wielded this finding to dismiss key Defence arguments about the RFACPP's conduct and objectives on the Axis and to bolster critical adverse findings, and it was expressly invoked in determining sentence on these counts.[501] Once this cornerstone is shown to rest on a misreading and mischaracterisation of the evidence, the legal and factual basis for the Axis convictions collapses.

148. Whether, as alleged, Mr. Yekatom ensured that elements under his supposed authority received instruction on the principle of distinction and other IHL rules was central to the Chamber's assessment of both the precautions he took and whether he intended, or accepted the risk, that such elements would target Muslim civilians. The misappreciation of the IHL training evidence (notably the testimonies of P-1647, P-1786 and P-1839) underpinned the conclusion that elements were not trained in distinction, that Mr. Yekatom 'knowingly' failed to instruct them, and that he accepted that Muslim civilians would be killed.[502] These findings fed directly into the Chamber's appraisal of his *mens rea* across the counts.[503] Properly assessed, the body of evidence instead undermines the inference that he intended to target Muslim civilians and supports the existence of instructions and measures aimed at protecting civilians.

149. Accordingly, these multi-layered errors plainly meet the Article 83(2)(a) threshold for materiality. They invalidate the Chamber's conclusions that Mr. Yekatom targeted the Muslim population and, as a result, materially taint the factual and legal basis of all his convictions and the sentences imposed on them.

4. Ground 2.4 – The Trial Chamber erred in finding that Mr. Yekatom exercised control over the RFACPP

150. This Ground alleges legal and factual errors in the Trial Chamber's conclusion that Mr. Yekatom incurred responsibility as an indirect (co-)perpetrator on the basis that he exercised 'control' over the

[500] Judgment, pp. 1473-1474, paras. 4320-4322 (to establish that the Muslims' departure took place 'without grounds' and was 'not justified' under Counts 24-25); pp. 1474-1476, paras. 4323-4328 (to establish that there was an order to displace under Count 25); p. 1476, para. 4329 (to establish that Mr. Yekatom was in a position to effect displacement); p. 1481, para. 4343 (to establish the fourth element of Count 28); pp. 1487-1488, paras. 4366-4368 (to establish Mr. Yekatom's specific knowledge and intent for Counts 24, 27-28). See also pp. 1481-1482, paras. 4345-4346 (to establish an 'agreement'); p. 1486, paras. 4362-4362 (as an essential contribution of Mr. Yekatom and to establish his control over the crimes); p. 1487, para. 4365 (to establish Mr. Yekatom's *mens rea*).
[501] Judgment, pp. 1569-1570, para. 4609.
[502] Judgment, p. 28, para. 74; p. 864; p. 877; para. 2453.
[503] Judgment, pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; pp. 1374-1375, para. 4010; p. 1529, para. 4481; p. 1534, para. 4497.

RFACPP. Where liability is founded on control over an organisation, ICC jurisprudence requires reasoned findings on three distinct elements: (i) an organised, hierarchical apparatus of power; (ii) the accused's effective control over that apparatus, amounting to a power to frustrate the crimes; and (iii) execution of the crimes through (almost) automatic compliance with his orders.[504]

151. The Chamber failed to conduct this structured assessment. It treated the 'power apparatus' as a loose factual label, never clearly identifying the organisation allegedly controlled, its structure, or when it acquired the requisite organisational features. Relying instead on generic references to 'Mr. Yekatom's group' and an asserted 'strict' hierarchy with Mr. Yekatom at the apex and Cœur de Lion as his 'deputy', it used leadership as a proxy for both the existence of an apparatus and 'control' under Article 25(3)(a), without examining whether the RFACPP actually functioned through (almost) automatic compliance, whether subordinates were fungible, or whether the charged crimes were executed through a will-neutralising apparatus.

a) Errors in failing to determine the available 'power apparatus'

152. The first objective element requires a clear, reasoned finding identifying what the apparatus is, how it is organised, and when it possessed the requisite organisational features. The Chamber, whilst noting that the criterion of control means an indirect perpetrator uses at least part of an apparatus of power subordinate to him to steer it towards the crimes,[505] made no specific finding identifying the apparatus in this case and instead treated the 'apparatus of power' as an optional pathway rather than a mandatory element.[506] However, the manner in which this case was pled, and the language in Judgment including repeated references to 'Mr. Yekatom's group',[507] and to a 'power apparatus available to [Mr. Yekatom]',[508] plainly relate to an organisation. Accordingly, the Chamber should have made findings on the organised nature of that apparatus.

153. This omission is not remedied by the Chamber's broader findings on the heterogeneous Anti-Balaka movement,[509] which even if accepted, required a different analysis. Article 25(3)(a) demands that when liability is premised on control through an organisation, the Chamber must identify the particular apparatus through which the accused is said to 'control the crime' and demonstrate that this

[504] ICC-01/04-01/07-717, paras. 500-518; ICC-01/09-01/11-373, paras. 292, 313; ICC-01/04-02/06-309, para. 104; ICC-02/11-01/11-656-Red, para. 230; ICC-02/05-01/12-1-Red, para. 35; ICC-02/05-02/09-243, fn. 246; ICC-01/04-02/06-2666-Anx3, paras. 12, 233-277; 311-313; 377(c)-(e); 381(a)(iii)-(v). See also Kiss (2019), p. 37.
[505] Judgment, p. 1324, para. 3870.
[506] Judgment, p. 1324, para. 3870.
[507] Within Section II alone see e.g. Judgment, p. 28, para. 73; p. 29, paras. 76, 77, 79; p. 30, para. 80; pp. 31-32, para. 89; p. 32, paras. 91, 93, 94; p. 33, paras. 96, 97; pp. 33-34, para. 100; p. 34, paras. 101, 102; p. 35, para. 104; p. 36, paras. 107, 108; pp. 36-37, para. 109; p. 37, para. 112; p. 38, paras. 116, 117, 118; p. 39, paras. 121, 122; p. 40, paras. 124, 125.
[508] Judgment, pp. 1450-1451, para. 4248.
[509] See Ground 2.1.

apparatus itself was organised in the requisite sense at the relevant time.[510] A diffuse, loosely connected Anti-Balaka movement is not, without more, an apparatus of power for the purposes of indirect perpetration; the Chamber was required to identify and reason the existence of a distinct structure around Mr. Yekatom.

154. The organisation of the apparatus is also distinct from mapping hierarchy.[511] The question is whether the relevant members in fact formed one organisation, what structures existed, how sub-units operated individually and together, and which mechanisms – including command and communication lines, discipline, logistics and other means to ensure compliance – secured the functioning of the apparatus such that orders were executed with near automatic compliance. A simple two-tier hierarchy of 'chief' and 'deputy' presiding over a loose and largely disorganised group of soldiers and civilians does not, without more, establish the existence of an organised and hierarchical apparatus of power. Absent those organisational findings, any conclusion that Mr. Yekatom exercised control over the organisation lacks the necessary foundation.

155. Further, references to testimonial evidence which is said to describe the group's 'structures' are insufficient. The cited passages do not establish what those structures were, and the Chamber does not rely on them to enter findings on the organisation of the apparatus as distinct from its discussion of the purported hierarchy between Mr. Yekatom and Cœur de Lion. For example, although the Chamber records that witnesses 'talked more generally about the structure and roles of individuals within Mr. Yekatom's group', it does not identify any concrete structures and nor does the ensuing passage establish the 'specific roles' of all the named individuals.[512] Similarly, whilst the Chamber accepts that P-0888 only became involved with the National Coordination in June 2014,[513] and noting the witness' repeated reference that he did not know how the group was structured or operated,[514] the Chamber still refers to his evidence that the RFACPP 'was very well structured'.[515] Yet the Judgment does not set out what those structures were or how they operated.

156. Further, when the Chamber refers to evidence from P-1786, P-1647 and P-1839 about the existence of 'sections' and 'companies' at Yamwara, it deploys that evidence to estimate numbers,[516] or a

[510] ICC-02/04-01/15-2022-Red A, para. 630.
[511] Ambos (2011), p. 149; see also ICC-01/04-02/06-2666-Anx3, para. 234 (with reference to control of the crime by virtue of the 'hierarchical position within an organised power structure […] (emphasis added)' see also paras. 238, 249, 259.
[512] Judgment, p. 616, para. 1630 (with reference to Rodrigue Momokama, Vivien Beina and Paleon Zilabo).
[513] Judgment, pp. 644-645, para. 1707 (noting that fn. 4473 cites to the incorrect citation which should be P-0888: CAR-OTP-2031-0217-R03, para. 46; T-120, 8:2-9:3))
[514] P-0888: T-120, 30:18-28, 31:2-12.
[515] Judgment, p. 617, para. 1631, fn. 4291.
[516] Judgment, pp. 1055-1056, para. 3048.

general reference to the existence of these labels,[517] and not to make findings on their formation, operations, internal structuring or communications. Of note, the Chamber further enters findings elsewhere which would depict the lack of uniformity across these 'sections' or 'companies' including, for example in relation to military training, and IHL training, all of which weigh against any inference of a uniform organisation capable of implementing orders across 'companies'.[518] The use of a unit label such as 'section' or 'company' does not meet the required degree of organisation absent proof that such structures functioned in a consistent, apparatus wide manner.

157. The evidence of P-1786, P-1647 and P-1839 also concerns activities at the Yamwara base. Even if this evidence showed that the group was organised at that stage, it would speak only to the period during which the group was based there noting that all three witnesses joined at Yamwara and were not present at the 5 December operation. The Chamber therefore could not rely on them to establish that an organised apparatus existed on or before 5 December 2013. Given the absence of clear findings on the group's organisational architecture, the Chamber needed to explain whether any such structure existed prior to Yamwara and whether it persisted thereafter, particularly in light of its own finding that, once the group reached Sekia, it split into sub-groups[519] – a finding that undermines any assumption that the structures identified at Yawmara persisted as the group moved beyond Sekia.

b) Errors in finding a strict hierarchy

158. Having failed to articulate any clear finding on the organised nature of the apparatus through which 'control' was supposedly exercised, the Chamber proceeded to find an 'unambiguous directional flow of authority' from Mr. Yekatom to Cœur de Lion (and later Beina),[520] which was used to prop up expanded findings,[521] describing Mr. Yekatom as a 'supreme leader',[522] who exercised 'undisputed authority' over elements at the Yamwara base,[523] and was the 'undisputed leader' on the PK9–Mbaïki Axis.[524] These terms were then recycled back and used as a core basis for subsequent control findings.[525] However, the purported hierarchy was set out only in relation to Mr. Yekatom at the apex and Cœur de Lion as his 'deputy' with no further hierarchical lines discussed. It further rested on impressions and mere labels thereby failing to meet the threshold for proving a *de facto* superior/subordinate relationship.

[517] Judgment, p. 1059, para. 3059.
[518] Judgment, p. 1070, para. 3093, fn. 7650.
[519] Judgment, pp. 1143-1144, paras. 3323, 3324.
[520] Judgment, p. 616, para. 1630.
[521] Judgment, p. 616, para. 1630; p. 1062, para. 3068; p. 1155, para. 3357.
[522] Judgment, p. 1067, para. 3084.
[523] Judgment, p. 32, para. 92; p. 1059; pp. 1065-1066, para. 3078.
[524] Judgment, p. 38, para. 115; pp. 615-616, paras. 1628; p. 1147; p. 1150, para. 3344.
[525] Judgment, p. 1445, para. 4235; p. 1481, para. 4345, p. 1485, para. 4357; p. 1486, para. 4362; pp. 1553-1554, para. 4556; p. 1568, para. 4606.

159. First, the finding that the group at Yamwara had a 'hierarchical setup' that 'resembled a military hierarchy', with 'sections' and 'companies' described as military-type units is superficial.[526] The Judgment nowhere details how this supposed hierarchy operated in real time, what the reporting lines were, or how decisions and orders were transmitted and enforced. At its highest, the Chamber records that there was a daily roll-call and a weekly meeting attended by company adjutants, the 'deputy' and Mr. Yekatom, during which Mr. Yekatom is stated to have addressed 'the soldiers'.[527] Given that the group remained at Yamwara for under three weeks, this equates to at most three meetings with 'full' attendance.[528] There is no finding as to what was decided at those meetings, who was accountable to whom, or how any 'hierarchical setup' functioned before and after them.

160. Nor does the Judgment meaningfully address evidence pointing away from a tight, single line of command. P-1647's evidence indicates that 'section chiefs' were responsible for training and discipline within their sections, suggesting decentralised authority rather than a unified chain.[529] Similarly, whilst the Chamber found that Alkanto was subordinate to, and 'regularly reported' back to, Cœur de Lion,[530] it made no corresponding finding that Cœur de Lion regularly reported to Mr. Yekatom (noting the contrary evidence of P-1839), or that other section chiefs regularly reported via Cœur de Lion in the same way. Much of P-1839's insider testimony, which the Chamber cites in this context,[531] in fact only establishes a reporting line between Cœur de Lion and Alkanto and not Mr. Yekatom.

161. Likewise, the Chamber failed to address the fact that the strategical decision to depart from Yamwara was taken collectively at a meeting of at least ten RFACPP members, including Kamezoulai (who called for the initiative), Cœur de Lion, Alkanto, [REDACTED] and Mr. Yekatom.[532] Similarly, the Chamber's conclusion that Mr. Yekatom was the 'supreme leader' over all groups at Yamwara, including those from Gobere and Bossongoa,[533] is both contradicted by the evidence,[534] and unaccompanied by any explanation of how those Anti-Balaka groups fit into the supposed strict hierarchal structure under Mr. Yekatom.

162. Second, the conclusion that 'all witnesses who were at Yamwara' regarded Mr. Yekatom as 'chief of all activities' is built on weak opinion evidence.[535] P-1811, on whom the Chamber relies,

[526] Judgment, p. 1059, para. 3059.
[527] Judgment, pp. 1059-1060, para. 3060.
[528] Noting further evidence that Mr. Yekatom did not reside at the Yamwara base and was rarely physically present, *infra*.
[529] P-1647: T-195, 31:21-27; T-194, 43:11-23; see also P-1786: T-197, 43:22-24; CAR-OTP-2058-0200-R03, para. 30.
[530] Judgment, p. 1065, para. 3076. See also P-1839: T-170, 47:20-23.
[531] Judgment, p. 1065, para. 3076.
[532] [REDACTED]; CAR-OTP-2065-4605 / CAR-D29-0006-1321; and see P-1786: T-198, 6:27-10:7. See also Yekatom Defence Closing Brief, para. 278.
[533] Judgment, p. 1067, para. 3084; See also pp. 884-885, para. 2476.
[534] P-1839: T-173, 13:19-24, 14:19-22. See also T-172, 4:10-25; P-1786: T-197, 50:4-19; 38:25-39:22.
[535] Judgment, pp. 1059-1060, para. 3060; see also p. 32, para. 92; p. 1059; p. 1445, para. 4235.

was at the base for less than 24 hours.[536] Her account of Mr. Yekatom's authority consists largely of her impression – [REDACTED], she 'had the impression' he was calling someone higher than him – which says nothing about the internal chain of command purportedly flowing from Mr. Yekatom.[537] The Chamber also invoked P-0974 to describe Mr. Yekatom as 'chief of Bimbo area',[538] even though P-0974 was not a member of the RFACPP and expressly stated that 'Rombhot, Cœur de Lion and Mbomon each had their own troops and they were all under Kamezoulai',[539] directly contradicting the strict hierarchy posited. His contradictions were relegated to footnotes instead of being addressed.[540] P-0884's evidence, for its part, goes no further than showing that Mr. Yekatom had an aide-de-camp; it does not speak to further hierarchal functions or to any chain of command.[541] The Chamber's approach further ignored evidence describing Mr. Yekatom as being more articulate than Cœur de Lion,[542] which explains why he may have been perceived externally as representing the group. Such perception is impressionistic only and, at most, shows a capacity to speak on behalf of the group or to influence others.[543]

163. Third, to bridge this evidentiary gap, the Chamber emphasised the asserted consistency of witnesses describing Cœur de Lion as 'deputy',[544] finding that the Defence 'pointed to no reason why […] their own elements would consistently testify to Cœur de Lion being the 'deputy''.[545] The Chamber's finding not only conflated labels with legal hierarchy but is incompatible with the burden and standard of proof.[546] It was for the OTP to establish, beyond reasonable doubt, the existence of a *de facto* superior/subordinate relationship; it was not for the Defence to demonstrate why witnesses might have used that label or to disprove the hierarchy argued by the OTP.

164. Further, the Chamber mischaracterised the Defence position and selectively applied self-identification evidence. It portrayed the Defence case as 'contradictory', faulting it for noting Mr. Yekatom's FACA self-identification while challenging the probative value of the 'deputy' label for Cœur

[536] Judgment, p. 1059, para. 3060, fn. 7574.
[537] P-1811: CAR-OTP-2058-0003-R05, para. 26.
[538] Judgment, p. 616, para. 1630, fn. 4285.
[539] P-0974: CAR-OTP-2058-0165-R01, para. 91.
[540] Judgment, pp. 1059-1060, para. 3060, fn. 7574.
[541] Judgment, p. 616, para. 1630, fn. 4285.
[542] P-0974: CAR-OTP-2058-0165-R01, para. 91; Yekatom Defence Closing Brief, para. 279.
[543] ICC-01/05-01/08-3343, para. 183; IT-04-81-A, para. 117; IT-98-30/1-A, para. 382; IT-96-21-T, para. 651; IT-95-14/2-T, paras. 838-840; IT-01-48-T, para. 752; see also Mettraux (2009), pp. 185-187 and pp. 144-145 (short of establishing the elements of effective control 'the doctrine of de facto superior responsibility would become an instrument of oppression, not one of justice).
[544] Judgment, p. 1062, para. 3068.
[545] Judgment, p. 1062, para. 3068 (dismissing Defence challenges to the premise that titles or self-descriptions evidenced a functioning chain of command set out in the Yekatom Defence Closing Brief, paras. 270-294).
[546] See Part 4 (burden reversal).

de Lion.[547] That misstates the Defence's core contention: titles and self-descriptions, without more, do not prove a functioning chain of command. At the same time, the Chamber downplayed how Mr. Yekatom introduced himself at the Church Meeting, yet elevated Cœur de Lion's filmed statement – '*C'est moi qui suis adjoint de ce mouvement*' – as affirmative proof of hierarchy,[548] and relied on later media footage in which Mr. Yekatom described himself as 'caporal […] chef of the Anti-Balaka movement of the south' to support leadership,[549] even though that footage post-dates the charged events and, as the Defence argued, was made for political purposes.[550] Self-identification was thus treated as persuasive when seemingly inculpatory and disregarded when exculpatory, an inconsistent evidentiary approach amounting to an error of law and an unreasonable assessment of the evidence.[551]

165. Fourth, even if, *arguendo*, Cœur de Lion was described as Mr. Yekatom's 'deputy', there was no probative showing that this translated into a *de facto* superior/subordinate relationship in practice. The Chamber relied on snippets of opinion evidence from insider witnesses and failed to engage with the same witnesses' objective accounts, which indicated that, in practice, Cœur de Lion did not operate under Mr. Yekatom's command. P-1839 testified that she did not know what Mr. Yekatom's role was when she was introduced to him and understood he was 'chief' only because [REDACTED] told her so.[552] The Chamber nonetheless described her as 'unequivocal' that Cœur de Lion was deputy,[553] that Mr. Yekatom was chief of the group, and that he had 'the greatest influence in the group'.[554] In fact, the witness stated that he was 'really influential' on the road[555] – not that he occupied a clearly defined superior position in a formal chain of command. The witness' understanding of hierarchy was explicitly impressionistic and based on [REDACTED] assumption that '[she] think[s], when it comes to the military men, everything comes from the top down',[556] rather than on direct knowledge of the group's internal command structure. When pressed on whether Cœur de Lion was under Mr. Yekatom's command on the axis, the witness accepted that she did not know.[557] The Judgment did not engage with this answer. Taken holistically, P-1839's evidence goes no further than showing that Mr. Yekatom was influential and that some elements referred to him as 'chief'. However, the mere ability

[547] Judgment, p. 1155, para. 3357; see also pp. 1202-1203, para. 3481.
[548] Judgment, p. 1062, para. 3066.
[549] Judgment, pp. 1202-1203, para. 3481.
[550] Judgment, p. 371, para. 988, fn. 2562 and references therein.
[551] See Part 4 (unreasoned).
[552] P-1839: T-170, 17:9-14.
[553] Judgment, p. 1065, para. 3077.
[554] Judgment, p. 1150, para. 3345.
[555] P-1839: T-170, 45:22-25: '*sur la route, beaucoup plus, je vois la personne qui est vraiment influent dans le groupe, c'est M. Yekatom*'.
[556] P-1839: T-170, 45:22-25 (emphasis added).
[557] P-1839: T-170, 45:17-19. See Annex 5, row 45.

to exercise influence, or the use of such labels, is not sufficient to establish effective control.[558]

166. P-1839's account also undercuts the existence of an 'unambiguous directional flow of authority'.[559] She testified that Cœur de Lion would often do things without Mr. Yekatom's knowledge or agreement.[560] She further recalled Mr. Yekatom stating that Cœur de Lion '*peut faire ce qu'il veut*', recognising his functional independence.[561] These are hallmarks of parallel or autonomous authority, not of a subordinate bound by a strict duty to obey. Yet the Judgment cited her statement that 'the chiefs complied with what [Mr. Yekatom] said' on the axis.[562] The Chamber used this isolated remark to support a finding of strict hierarchy, without reconciling it with the immediately adjacent contrary evidence or with the Defence submissions on independent operations and divided loyalties.[563]

167. Similarly, P-1647 and P-1786, both insiders at Yamwara, are cited for describing Cœur de Lion as Mr. Yekatom's 'deputy',[564] yet the Judgment again does not explain what, in practice, that title entailed, over which elements it was supposed to extend, or during what period, nor does it engage with their evidence as a whole. P-1786 indicated that instructions from Mr. Yekatom were transmitted via Habib Beina,[565] and accepted that chiefs such as Cœur de Lion could 'stand up to' Mr. Yekatom.[566] P-1647 gave a direct account of the Boda episode in which Cœur de Lion insisted on going despite knowing that Mr. Yekatom did not want him to,[567] [REDACTED].[568] Rather than grappling with these indications of a more diffuse and contested authority structure, the Chamber relied on P-1786's inability, when pressed, to recall specific instances of confrontation and used that absence of detail to discount disobedience,[569] [REDACTED].[570] In so doing, it failed to engage with the implications of this evidence for its asserted 'unambiguous' flow of authority from Mr. Yekatom downwards.[571]

168. The Judgment's treatment of this 'friction' and of instances of unilateral conduct by Cœur de Lion reinforces that conclusion. Although the Chamber noted material suggesting that Cœur de Lion acted without Mr. Yekatom's knowledge or agreement, it resolved the tension by assuming that

[558] See e.g. IT-04-81-T, para. 147; IT-04-81-A, para. 117.
[559] Judgment, p. 616, para. 1630; p. 1062, para. 3068; p. 1155, para. 3357.
[560] P-1839: T-174, 18:15-22.
[561] P-1839: T-174, 19:22-20:14.
[562] Judgment, p. 1150, para. 3345.
[563] Yekatom Defence Closing Brief, paras. 272, 285, 290, 293.
[564] Judgment, pp. 1061-1062, para. 3065; P-1786: T-197, 63:7-8; P-1647: CAR-OTP-2050-0654-R02, para. 30; T-194, 33:25; T-194 (ENG), 33:23.
[565] P-1786: T-197, 50:12-19.
[566] P-1786: CAR-OTP-2058-0200-R03, para. 28; P-1647: T-196, 13:10-12; 25:2-4.
[567] P-1647: CAR-OTP-2050-0654-R02, para. 50; T-196, 13:5-26; 25:2-5.
[568] [REDACTED].
[569] Judgment, p. 1150, para. 3346.
[570] [REDACTED].
[571] Judgment, pp. 1155-1156, para. 3358; see also p. 1063, para. 3070.

friction presupposes a duty to obey.[572] That inverts the proper inquiry. On this evidence, friction is at least as consistent with parallel authority or functional independence, particularly where elements were alleged to be 'strictly loyal' to their own chiefs and units operated in parallel.[573] Absent reasoned engagement with how the relationship actually operated in practice, including the Defence submissions on independent operations and divided loyalties,[574] a *de facto* hierarchical tie was not sustained. Moreover, where the Chamber acknowledged that Mr. Yekatom was closer to certain individuals than others, it treated that proximity as irrelevant to deputy status,[575] whereas such closeness is directly relevant to how any hierarchy functioned in practice. A reasonable Chamber could not treat the witnesses' use of the term 'deputy' as dispositive of hierarchy while sidelining their evidence that Cœur de Lion and other chiefs could and did act contrary to Mr. Yekatom's wishes.

169. Similar deficiencies arise in the Chamber's reliance on non-insider witnesses. P-1962, who was not a RFACPP member, provided an account that was predominantly hearsay and contained myriad internal and external inconsistencies concerning the Boda trip.[576] The Judgment explicitly stated that it was not necessary to assess P-1962's contradictions with respect to the Boda trip,[577] and subsequently cited the same paragraph to sustain the 'deputy' narrative along the PK9–Mbaïki Axis, without engaging with his statement that 'men listened to Cœur de Lion more',[578] which undercuts the notion of a strict line from Mr. Yekatom. The treatment of P-2353 reveals the same pattern: the Judgment cites this witness for the proposition that, when Mr. Yekatom was not in Mbaïki, Cœur de Lion was 'in charge',[579] even though the witness explicitly stated he had not heard him say this himself,[580] and the witness did not attend that meeting. P-1858's references to a 'warlord' whose orders were obeyed 'without question',[581] and P-1666's statement that 'after Rambo [Cœur de Lion] was the boss and was in control',[582] were similarly adopted without analysis of the witnesses' sources of knowledge or, in P-1666's case, analysis of the same passage in which the witness described [REDACTED] claiming higher military rank than both Cœur de Lion and Mr. Yekatom.[583]

170. Finally, the Chamber inferred a straight-line hierarchy from the fact that, after Cœur de Lion's

[572] Judgment, p. 616, para. 1630; p. 1063, para. 3070; pp. 1155-1156, para. 3358.
[573] CAR-OTP-2065-4910 / CAR-D29-0006-1320 as referenced in Yekatom Defence Closing Brief, para. 286.
[574] Yekatom Defence Closing Brief, paras. 285-294.
[575] Judgment, p. 616, para. 1630.
[576] Judgment, pp. 1154-1155, para. 3355. See also Ground 3.2.d).
[577] Judgment, p. 124, para. 380.
[578] P-1962: CAR-OTP-2068-0037-R04, para. 34.
[579] Judgment, pp. 1154-1155, para. 3355.
[580] P-2353: CAR-OTP-2100-0226-R03, para. 56
[581] Judgment, p. 1151, para. 3347.
[582] Judgment, p. 1215, para. 3524.
[583] [REDACTED].

death, Habib Beina assumed the 'deputy' role,[584] without addressing Defence submissions that Cœur de Lion's elements left the group entirely,[585] undermining any notion of succession within a stable apparatus of power. Treating such hearsay and ambiguous material as proof of a core element of the MoL, while discounting probative Defence material, reflects an uneven application of evidentiary standards and a failure to provide a reasoned opinion.[586]

171. These errors are further aggravated by chronology defects. The Chamber's reliance on P-1193 to describe Mr. Yekatom as 'head of the Anti-Balaka movement in the south' is unmoored from any precise timeframe, with contextual cues pointing to 2014 or later.[587] In the same footnote, it relies on P-0974, yet, as noted above, P-0974's account that 'Rombhot, Cœur de Lion and Mbomon each had their own troops and they were all under Kamezoulai' directly contradicts the strict hierarchy posited under Mr. Yekatom. None of these sources shows a continuous chain of command during the charged period, still less on or before 5 December 2013.

172. More broadly, much of the 'deputy' discussion relates to early-2014 events along the PK9-Mbaïki axis, while the rest is tied to late-December 2013 material, including Yamwara footage and accounts of the group's arrival in Mbaïki. The Judgment itself dates the Yamwara events to on or around 24–27 December 2013',[588] and the PK9-Mbaïki axis to on or around 10 January to 6 February 2014,[589] and records that, once the group reached Sekia, it split into at least two (and possibly three) sub-groups.[590] The evidence the Chamber cites – including P-1839's characterisation of Mr. Yekatom as particularly influential on the road and of chiefs generally complying with what he said,[591] P-1786's assertion that he was chief of everyone ,[592] and P-1858's references to him as 'chief' – all relates to these later periods.[593] It does not establish a continuous, apparatus-wide chain of command of the exacting kind found by the Chamber, still less one operating on or before 5 December 2013.

c) Errors in finding exercise of control over the organisation

173. The Chamber's finding of liability as an indirect (co-)perpetrator primarily rests on its conclusion that Mr. Yekatom exercised control over 'his group'.[594] In doing so, as further discussed below, the

[584] Judgment, p. 616, para. 1630.
[585] Yekatom Defence Closing Brief, paras. 287-288; P-1647: T-196, 27:4-9.
[586] See Part 4 (unreasoned and evidence assessment).
[587] Judgment, p. 616, fn. 4285 citing to 'P-1193 Statement, CAR-OTP-2045-0048-R03, at 0058, para. 63' (where witness describes number of locations and positions concerning the RFACPP's advance along the PK9-Mbaïki Axis i.e. 2014 onwards); see also Chamber's reliance on 'P-1193: T-124 […] p. 28, lines 11-16'.
[588] Judgment, pp. 14-17, pp. 36-37, paras. 109-110; p. 1125, p. 1465, para. 4298, pp. 1642-1643, 1645-1646.
[589] Judgment, pp. 13-14; p. 1466, para. 4300; pp. 1643, 1646.
[590] Judgment, pp. 1143-1144, para. 3324, fns. 8144-8145.
[591] Judgment, p. 1150, para. 3345.
[592] Judgment, p. 1150, para. 3346.
[593] Judgment, p. 1151, para. 3347.
[594] For discussion on the criminal agreement see Ground 2.5.

Chamber erroneously equated purported control over the organisation with control over the crimes, without any further assessment or specific findings concerning the internal organisation of the group or, more pertinently, whether the commission of crimes was secured through almost automatic compliance by its members.

174. As a result, the Chamber's findings on Mr. Yekatom's purported control over the group were determinative and therefore required strict and concrete proof of such control. In this regard, it was incumbent on the Chamber to establish 'effective control' – that is, the material ability to prevent or punish the commission of offences, and not merely influence, respect, or symbolic authority.[595] Jurisprudence of the *ad hoc* tribunals makes clear that a *de facto* superior's authority must be comparable to that of a *de jure* superior, and that the requisite degree of authority or *de facto* control must be commensurate with that required for *de jure* control.[596] It must be shown, on a case-by-case basis, both that the superior was able to give orders and that those orders were in fact followed; there is no irrebuttable presumption of effective control.[597] What matters is the nature and scope of the authority actually wielded, rather than its formal source.[598] The Chamber failed to apply this exacting standard, and thus: (i) erred in law by misapplying the standard of 'effective control' applicable under Article 25(3)(a); (ii) erred in fact in its assessment of the evidence on formation, discipline, weapons, territorial control and numbers; and (iii) failed to provide a full and reasoned opinion, as required by Article 74(5).[599] Moreover, even a finding of 'overall' or political control over the group would not by itself establish effective control in the strict sense; that distinct question is not squarely addressed in the Chamber's analysis.[600] In purporting to establish Mr. Yekatom's control over the group, the Chamber identified five factors, each of which is defective for the reasons set out below and undermines this central conclusion.[601]

175. Position within the group: it is necessary to recall the errors in its findings concerning the purported hierarchy between him and Cœur de Lion, noting that hierarchy 'does not in and of itself provide conclusive evidence of effective control on the part of the superior'.[602] The negation of any genuine *de facto* hierarchy necessarily undermines the Chamber's assessment of the position Mr.

[595] IT-96-21-A, paras. 197-198, 256; ICTR-99-52-A, para. 625. See also signalling the necessity of a 'significant' degree of control and influence to stop abuses: IT-98-30/1-A, paras. 195-196; IT-08-91-A, para. 734 and cites therein; IT-05-87-A, paras. 1045, 1242; see further *Lubanga* explication of the control over the crime for co-perpetration, similar to the 'effective control' requirement: ICC-01/04-01/06-2842, para. 1003.
[596] IT-96-21-A, para. 197; ICTR-95-1A-A, paras. 50-52; 55-62.
[597] ICTR-95-1A-A, para. 51 and cites therein.
[598] IT-96-21-A, paras. 193-197.
[599] See Part 4 (unreasoned).
[600] IT-01-48-A, paras. 59, 69, 207.
[601] Judgment, p. 616, para. 1629.
[602] Mettraux (2009), p. 174 and cites therein.

Yekatom allegedly held within the group. Further, the very premise of the Chamber's assessment stems from its mischaracterisation that Mr. Yekatom alone created the group and that, on this basis, he 'assumed control'.[603] The Chamber does not clarify how, or at what point in time, this supposed assumption of control occurred. Moreover, this premise is misguided as the group was jointly established by Mr. Yekatom, Cœur de Lion, and Habib Beina.[604] This clarification is lost in the Chamber's reasoning and undercuts the basis of the Chamber's logic.[605] If, as the Chamber assumes, the structure and control of the group flows from its creation, then the fact that it was a joint initiative by individuals of the same military rank strongly undercuts any inference that one of them alone possessed a hierarchical, command-style control apparatus from inception.[606]

176. Likewise, the evidence cited in support of this finding is mischaracterised. The Chamber relies on the testimony of P-0888 for the proposition that he recalled his brother, Habib Beina, being in Zongo and 'joined Mr. Yekatom's group'.[607] In fact, P-0888 testified that Mr. Yekatom and Habib Beina were both in Zongo and had 'become committed together with their brother in arms' and that 'they had reorganised themselves so they could fight the Seleka.[608] This evidence does not support the notion that Mr. Yekatom alone formed the group or thereby assumed overall control. The Chamber's reliance on P-0884 is equally flawed. It cites P-0884 to the effect that Mr. Yekatom 'started to set up his own movement and called on his brothers in arms to create his own group',[609] and yet subsequently in the Judgment refers to the fact that P-0884 did not know what Mr. Yekatom did before 5 December 2013.[610] His account thus provides no reliable basis for a finding that Mr. Yekatom exercised overarching control by virtue of founding the group.

177. The same concerns arise from the Chamber's reliance on a 2016 political campaign video, which it described as depicting Mr. Yekatom 'explaining how he came to start 'their movement''.[611] The context of this video undermines its probative value as evidence that Mr. Yekatom exercised 'absolute' control in mid-June 2013. By using later events to infer a pre-existing hierarchy and ignoring the chronological mismatch, the Chamber mis-appreciated the evidence and failed to give a reasoned explanation for its conclusion. In the absence of any reasoned finding as to how or when Mr. Yekatom

[603] Judgment, p. 21, para. 36; p. 253; pp. 1331-1332, para. 3894; p. 1348, para. 3938; p. 1374, para. 4009; p. 1516, para. 4447.
[604] P-1786: T-197, 62:15-18; P-0888: T-120, 22:27-23:6; Yekatom Defence Closing Brief, para. 222.
[605] Judgment, pp. 613-614, para. 1621.
[606] See also P-1339: T-151, p. 44, line 22 – p. 45, line 19 as cited in Judgment, p. 1059, fn. 7574 (P-1339 describing Cœur de Lion, Habib Beina, and Mr. Yekatom as forming 'a trio').
[607] Judgment, p. 866, para. 2413.
[608] P-0888: T-120, 28:6-29:3.
[609] Judgment, pp. 369-370, para. 985.
[610] Judgment, p. 894, para. 2515.
[611] Judgment, p. 865, para. 2411; p. 371, para. 988, fn. 2562, referring to CAR-OTP-2118-0415. See Ground 2.2 for fuller submissions in relation to context in which this video was relied upon.

'assumed control', especially in light of the joint nature of the group's formation, the Chamber compounded its error. As set out above, the supposed hierarchy between Mr. Yekatom and Cœur de Lion is based on evidence relating to events occurring after 5 December 2013. This belated material cannot retroactively establish the degree of control allegedly exercised at the time of the charged events.

178. Role in maintaining discipline: The Chamber's finding that 'Mr. Yekatom enforced discipline',[612] is predominantly based on selective opinion evidence. The Chamber relied on [REDACTED] 'impression' that people, including 'Mr. Yekatom's elements', were afraid of him.[613] It provides no discussion of the foundation for this impression, contrary to its own evidentiary principles,[614] and given the significance of the finding drawn.[615] Nor does it explain why it accepted [REDACTED] testimony that an element who disobeyed Mr. Yekatom risked being beaten or killed 'without question',[616] despite direct insider evidence contradicting this assertion.[617] When questioned about concrete examples of consequences for disobedience, [REDACTED] was unable to provide any, stating that the [REDACTED] prevented him from doing so.[618] The Chamber offers no explanation for relying on such an unsubstantiated and fragile basis. The error is further compounded by the Chamber's subsequent finding that Mr. Yekatom was a 'feared and much in control commander of his group at this time', which it based on the evidence of P-0884, P-0992, P-0974 and P-0954.[619] Yet, these references are either irrelevant to the issue of disciplinary authority or do not provide direct and probative support for the sweeping inferences drawn.

179. Similarly, the Chamber's reliance on 'insider witnesses' to paint Mr. Yekatom as a feared leader falls well short of what this element requires. Its reliance on P-1193 as an 'insider'[620] who said 'he never saw anyone opposing 'Rombhot',[621] makes no attempt to reconcile the fact that the witness [REDACTED] after [REDACTED] 2014.[622] Moreover, the remaining witness relied on spoke only to the impression (often based on limited interactions with the group and even less so with Mr.

[612] Judgment, p. 617, para. 1631.
[613] Judgment, p. 1151, para. 3347.
[614] Judgment, pp. 66-67, para. 200.
[615] Part 4 (unreasoned).
[616] Judgment, p. 1151, para. 3347.
[617] See in particular consistent insider witness evidence concerning Cœur de Lion undertaking activities either without Mr. Yekatom's knowledge, in defiance of Mr. Yekatom's position and in disagreement with Mr. Yekatom *supra* re Boda incident; see also P-1786: CAR-OTP-2058-0200-R03, paras. 5, 47-48, 56; CAR-OTP-00000843, p. 4; T-197, 60:18-22 cf. CAR-OTP-2058-0200-R03, para. 26; P-1839: T-174, 18:15-22, 20:9-14; 21:2-9; T-170, 45:17-19; P-0888: T-122, 60:22-61:13; 63:3-21; P-1647: T-196, 14:21-15:3; P-1558: CAR-OTP-2105-0195-R01, para. 42. See also Yekatom Defence Closing Brief, paras. 289-294.
[618] [REDACTED].
[619] Judgment, p. 624, para. 1647.
[620] Judgment, pp. 105-107, paras. 322-329 under heading 'Mid-level Insiders'.
[621] Judgment, p. 617, para. 1631.
[622] [REDACTED]. The same error extends to the Chamber's treatment of P-1786.

Yekatom) that Mr. Yekatom was the one who disciplined the group,[623] again without the Chamber sufficiently engaging with P-1647's explicit evidence that the sections chiefs were the ones responsible for disciplinary measures.[624]

180. Nor is this conclusion undermined by the Chamber's findings concerning the 'Seda incident', which it treated as an example illustrating that, as leader of his group, Mr. Yekatom possessed authority to sanction his elements, and did so by injuring or even killing those who disobeyed or challenged him.[625] This narrow reasoning ignores the possibility, consistent with the evidence, that the relationship between Mr. Yekatom and Seda had become hostile,[626] such that this was not a case of disciplining recalcitrant subordinates, but a confrontation between parties who had effectively become enemies or hostile forces.[627] Such a situation is incompatible with a superior/subordinate relationship based on effective control. The correct relevance of the incident therefore lies in the conduct of Seda and others, not in any alleged disciplinary authority of Mr. Yekatom. Noting further that cooperation or coordination across units, or even joint operations, does not automatically imply a superior/subordinate relationship - different units may fight side-by-side without being under a single commander's effective control.

181. This error is compounded by the Chamber's failure to address evidence that Seda wanted to kill Mr. Yekatom, having summoned Mr. Yekatom to the field, used derogatory language, and insisted that 'the matter had to be settled that day'.[628] The Chamber also ignored the fact that Seda was of the same military rank as Mr. Yekatom and Beina - an important element when assessing whether the relationship was one of superior/ subordinate or of opposing armed actors on an equal footing.[629] The Chamber further mischaracterised the record when dismissing Defence arguments on this point. It stated that clarification during the proceedings led to neither the witness nor the Presiding Judge considering the incident to be a 'duel'.[630] Yet the clarification in question did not concern whether the event was a duel; it concerned whether the two groups of men involved that day were from the RFACPP.[631] The term 'duel' was introduced by the witness himself,[632] who reiterated that had Mr. Yekatom not been quicker, he would have been the one killed.[633] It was in this context, overlooked

[623] Judgment, p. 617, para. 1631.
[624] P-1647: T-195, 31:20-27; 20; Judgment, p. 1060, para. 3061.
[625] Judgment, p. 1151, para. 3347.
[626] P-0888: T-122, 49:14-52:10.
[627] IT-01-47-A, paras. 225 *et seq*.
[628] P-0888: T-120, 48:21-49:7; T-122, 49:14-26.
[629] P-0888: T-120, 47:5-7; CAR-OTP-2031-0217-R03, para. 19.
[630] Judgment, p. 1152, para. 3349, fn. 8207.
[631] P-0888: T-120, 50:5-51:2.
[632] P-0888: T-120, 49:9-10
[633] P-0888: T-122, 49:19-22.

in the Judgment, that the Presiding Judge intervened to say that the use of the term 'duel' was understood and asked counsel, whose questions merely sought to clarify what the witness meant by 'duel', to move on as no further clarification was required.[634] In misrepresenting this exchange, the Chamber mischaracterised the record and deprived the Defence of the benefit of a key contextual element supporting its submission that the incident reflected a confrontation between hostile forces, not the disciplining of a subordinate.

182. Access to weapons and resulting operational capability: The Chamber's finding that the group's access to weapons supported a conclusion that Mr. Yekatom exercised control over it is inadequately reasoned.[635] Insofar as this finding concerns the group as a whole, the Chamber found that it possessed 'sufficient weaponry and ammunition to conduct active operations and control certain territory' but then fails to explain how the limited number of weapons available demonstrates Mr. Yekatom's alleged control.[636] Insofar as the Chamber relies on [REDACTED] for this finding,[637] the witness did not establish that Mr. Yekatom would have purchased ammunition (or indeed any weapons) to the degree necessary to support the Chamber's findings with respect to Mr. Yekatom's purported control – at most the witness was able to speak [REDACTED].[638] Similarly, whilst the Chamber relies on P-1339 for finding that 'Mr. Yekatom's group received weapons prior to the Bangui Attack'-[639] and notwithstanding the vast credibility concerns regarding this witness on the procurement of weapons,[640] the witness does not establish that Mr. Yekatom personally purchased or physically acquired weapons.[641] Moreover, P-1339 (and P-1193, whom the Chamber itself cited)[642] confirmed that the group would have ran out of ammunition during the 5 December operation,[643] and spoke to the wider shortage of weapons. Indeed, as brought to the Chamber's attention: i) the lack of available weapons was the result of the Seleka taking control of weapon storages, coupled with the arms embargo imposed on CAR by the UNSC, ii) there was direct evidence that the shortage of weapons was a source of complaint within the RFACPP, and iii) the RFACPP resorted to obtaining weapons by other means, including from FACA bringing their own service weapon or Seleka stocks or makeshift weapons.[644]

[634] P-0888: T-122, 50:14-51:20. Annex 5, row 20.
[635] Judgment, p. 616, para. 1629.
[636] Judgment, p. 619, para. 1635.
[637] Judgment, p. 618, para. 1633, fn. 4300.
[638] [REDACTED].
[639] Judgment, p. 867, para. 2418.
[640] As conceded by the Chamber, see Judgment, p. 867, para. 2418, fn. 6118.
[641] P-1339: T-159, 5:1-12.
[642] Judgment, p. 618, para. 1633.
[643] P-1339: T-154, 45:25-26; T-155, 7:15-17.
[644] P-1647: CAR-OTP-2050-0654-R02, para. 81; T-195, 21:27-22:4; P-0888: T-120, 54:9-14; T-123, 5:27-28; Yekatom Defence Closing Brief, paras. 239-240.

The Chamber failed to sufficiently engage with this evidence,[645] nor develop its reasoning in relation to the fact that Mr. Yekatom was neither the sole supplier of the weapons such that it still considered him to be a principal under Article 25(3)(a).[646]

183. Moreover, the only 'tangible' evidence concerning the volume of weapons consists of lists drawn up in 2015,[647] well after the charged events. The Chamber failed to explain how weapons handed over in 2015 demonstrated that the RFACPP possessed similar weapons in 2013–2014 or, by extension, that this proved Mr. Yekatom's control over the group at the relevant time. When evidence is temporally remote from the charged period or produced for another purpose, a trial chamber must carefully justify how far it can be projected back; the Chamber did not do so here.

184. Area 'under control' following the resignation of Michael Djotodia: As regards the Chamber's finding that Mr. Yekatom's supposed control over the group can be inferred from the area under RFACPP control following the resignation of Michael Djotodia,[648] the Chamber made no clear subsequent finding as to how control over territory after 10 January 2014 directly evidences effective control over the group. Its only response, when dismissing the Defence argument that there was a shortage of weapons and ammunition, was to state that 'the group under Mr. Yekatom's control clearly possessed sufficient weaponry and ammunition to conduct active operations and control certain territory, which it effectively did'.[649] This reasoning is deficient. The Chamber failed to establish the scope and degree of control held by the RFACPP along the axis.[650] Further, it failed to squarely address the link between the Seleka's departure from posts along the axis and the near-absence of direct hostilities, facts acknowledged by the Chamber, and how such circumstances are compatible with a finding of ample weaponry. More fundamentally, even on the Chamber's account, the degree of territorial 'control' falls short of the threshold for effective control over a group.

185. The Chamber's lack of reasoning concerning its reliance on Mr. Yekatom's purported territorial control as of 10 January is further illustrated by its comparable findings with respect to the Yamwara base. There, the Chamber found that Mr. Yekatom maintained a 'constant presence' at Yamwara, in order to support its conclusion that he 'exercised overall control over the activities at Yamwara at all

[645] See Judgment, p. 619, para. 1635, fn. 4307 whereby the Chamber rebuts the entirety of the Defence submission with a global reference to 'sections IV.B.2, IV.B.3, IV.D.1, IV.D.2, IV.E.1, IV.E.2, IV.E.3 below'.
[646] Cf. *Katanga* moving from article 25(3)(a) to (d) despite Katanga being found to have been central in supplying all weapons to the group illustrating that a role in procuring weapons does not, by itself, demonstrate 'control over the organisation' see ICC-01/04-01/07-3436-tENG, paras. 1270-1293.
[647] Judgment, pp. 618-619, para. 1634 with reference to CAR-OTP-2039-0072, pp. 0072-0074; see 'Annex 5.19' to CAR Panel Final Report 2015, CAR-OTP-2023-0032, p. 0329.
[648] Judgment, p. 616, para. 1629.
[649] Judgment, p. 619, para. 1635.
[650] See Ground 3.2.

times, including through Cœur de Lion' despite the fact he did not reside there but that Cœur de Lion did.[651] No reasonable Chamber could infer 'constant presence' from physical absence. By failing to explain how it moved from (i) non-residence and another commander living on the base to (ii) 'constant presence' and 'overall control' through subordinates, and by not grappling with contrary evidence, the Chamber both mis-appreciated the evidence and failed to provide a reasoned opinion.[652] Equally flawed is the inference that recognition by 'individuals at Yamwara' of Mr. Yekatom as 'chief' and superior to Cœur de Lion, despite not living there' evidenced 'even greater authority'.[653] This line of reasoning is circular and speculative.

186. The Trial Chamber further erred in its treatment of the video material, which it took out of context to infer Mr. Yekatom's authority over non-RFACPP groups at Yamwara.[654] It relied on footage of other self-defence groups (Modibo and Yagouzou) to infer RFACPP coordination and Mr. Yekatom's authority over them, despite P-1839's evidence,[655] and even though the transcript shows the opposite: Mr. Yekatom insisted that '*ce n'est pas à des civils de nous dominer*', stressed that his men had their own tasks, and that Yagouzou should act only within his own remit.[656] Rather than asserting dominance, he was rejecting interference by another group. The Chamber's finding that he was 'asserting authority' is a mischaracterisation of the record and inconsistent with its own principles on evaluating testimonial and documentary evidence. Nor could a brief appearance in a single video reasonably sustain a finding of 'constant presence' in Yamwara or overarching control over RFACPP members and non-members alike. Treating such evidence as sufficient effectively extends principal liability under Article 25(3)(a) to a situation of near-absence and, at most, omission – a MoL that was neither charged nor reasoned through in the Judgment.[657]

187. Number of elements: The Chamber concludes that 'in the period until end of February 2014 and beyond, Mr. Yekatom had at least 1,000 elements under his control'.[658] It makes no further assessment of how such control was allegedly exercised, nor does it analyse either the organised nature of the supposed apparatus or the requirement of (almost) automatic compliance. At the same time, the

[651] Judgment, p. 32, para. 90; p. 1057, para. 3053; p. 1445, para. 4235.
[652] Judgment, p. 1057, para. 3053.
[653] Judgment, p. 1058, para. 3056.
[654] Judgment, p. 1057, para. 3053, fn. 7560 referring to Judgment, pp. 882-885, paras. 2473-2476 mentioning a video where Modibo and Yagouzou appear in the context of the documentary that was filmed.
[655] P-1839 testified that Modibo and his Bossangoa group had not joined the RFACPP and that she did not know Sylvestre Yagouzou see P-1839: T-173, 13:19-24, 14:19-22. See also T-172, 4:10-25. See further P-1786: T- 197, p. 50: 4-19, 38:25-39:22 where witness confirmed he did not know who gave instructions to the other groups present at Yamwara.
[656] Judgment, pp. 882-883, para. 2473, fn. 6228, quoting verbatim Mr. Yekatom's intervention, citing Translation, CAR-OTP-2127-3668, 3670:32-33 (Mr. Yekatom to soldiers); 3671:42-43 (Mr. Yekatom to Yagouzou).
[657] DoCC, para. 125.
[658] Judgment, p. 38, para. 115; p. 620, para. 1637; pp. 1055-1056, para. 3048; p. 1147; pp. 1149-1150, para. 3342; pp. 1195-1996, para. 3470; p. 1481, para. 4345; p. 1486, para. 4362; pp. 1568-1569, para. 4606.

Chamber accepts that there are no reliable estimates of the number of elements, yet it nevertheless settles on a total based entirely on witness headcounts that vary widely, without addressing this disparity.[659] If the figures are too inconsistent to yield a reliable estimate, they cannot sustain a finding of control over 'at least 1,000' elements; conversely, if the Chamber considered the differing estimates sufficiently accurate to enter a finding, it was required to evaluate how such fluctuation affected its control assessment. This internal inconsistency underscores the unreliability of the Chamber's findings on the alleged size of the forces under Mr. Yekatom's 'control' and further demonstrates a failure to provide a coherent and reasoned opinion.

d) Errors concerning the execution of crimes by (almost) automatic compliance

188. In applying the 'control over the organisation' theory, the Chamber was required to determine whether the commission of the crimes was secured through 'almost automatic compliance' with the accused's orders. This presupposes an organised and hierarchical apparatus of power in which: (i) orders of the leadership are generally complied with; (ii) subordinates are replaceable, so that if one refuses another will execute the order; and (iii) the organisation has features – such as strict and violent training, coercive recruitment, or payment and punishment mechanisms – that ensure subordinates act as 'mere gears in a giant machine', rendering their individual will irrelevant.[660]

189. The leader's authority and control must be 'manifest in subordinates' compliance with his orders'; it may be exercised through hiring, training, discipline and the provision of resources, but in all cases the execution of the crimes must be secured by this (almost) automatic compliance. The 'mechanisation' of the apparatus is intended to ensure that the criminal plan is not compromised by any particular subordinate's refusal to comply, because non-compliant subordinates can simply be replaced.[661] In cases arising from the *Situation in the DRC* and *Ongwen*, the Chambers linked this to conditions that broke or neutralised the individual will of child soldiers and other recruits, through brutal training, indoctrination and structural dependence, such that their will became irrelevant to the execution of orders.[662] In *Ruto & Sang*, the PTC accepted 'almost automatic compliance' only where there was evidence of a structured payment and punishment mechanism securing obedience.[663] Comparative jurisprudence, such as the *Fujimori* judgment, likewise found indirect perpetration through an organised apparatus only where the accused exercised tight *de facto* control over a specialised unit,

[659] Judgment, p. 878, paras. 2455-2458, pp. 1051-1057, paras. 3038-3052; pp. 1147-1156, paras. 3336-3359.
[660] ICC-01/04-01/07-717, paras. 512-517; ICC-02/04-01/15-2022-Red A, para. 632; ICC-01/04-02/06-2666-Anx3, para. 234.
[661] ICC-01/04-01/07-717, para. 516; ICC-02/04-01/15-2022-Red A, para. 633; see also ICC-01/04-02/06-2666-Anx3, paras. 253, 255-259.
[662] See e .g. ICC-01/04-01/06-803-tEN, para. 379; ICC-01/04-02/06-309, para. 116; ICC-01/04-01/07-717, para. 547; ICC-02/04-01/15-2022-Red A, para. 669 and cites therein.
[663] ICC-01/09-01/11-373, paras. 196-197, 201.

integrated into a secretive structure, whose members were effectively fungible executors of his security agenda.[664]

190. This jurisprudence makes clear that two distinct showings were required before the Chamber could properly convict on a 'control over the organisation' theory. At the organisational level, it had to be satisfied that the RFACPP functioned as an apparatus in which orders were obeyed with (almost) automatic compliance and subordinates were fungible. At the crime-specific level, it had to be satisfied, for each set of crimes, that those acts were executed through that apparatus – that is, pursuant to orders issued within that structure, by direct perpetrators whose will had been subjugated and who were replaceable if they refused. It is the leader's ability to secure automatic compliance that justifies treating him as a principal, rather than as an accessory who merely orders or instigates crimes.[665] Perpetration through another person requires 'personal dominance' over the direct perpetrator and proof of control over that person's will; the mere fact of leadership, or the bare existence of an organisation, is not sufficient. Subsequent case law has likewise confirmed that 'control over the crime' turns on a normative assessment of whether the accused had such control by virtue of an essential contribution and the resulting power to frustrate the crime's commission, rather than mere influence or leadership over a group.[666]

191. Against this legal framework, the Trial Chamber was required to make clear findings that Mr. Yekatom's orders were, in practice, executed with (almost) automatic compliance by RFACPP members, that he had subjugated their will, and, in particular, that he had subjugated the will of the direct perpetrators of the charged crimes. It did not conduct these assessments. Instead, it relied on the fact that Mr. Yekatom was the 'chief' of the group to conclude that he controlled the crimes. In the absence of any showing of actual effective control, however, the Chamber was required to identify a concrete evidential basis demonstrating that Mr. Yekatom's orders were in fact followed with (almost) automatic compliance. It failed to do so, thereby misapplying the legal test for 'control over the organisation' and failing to provide a reasoned opinion on this objective element.

192. The Chamber's error in failing to address the lack of automatic compliance within the group stems from its initial failure to assess the organisational architecture of the group and the manner in which reporting lines operated and orders were processed. This was compounded by its attempt to channel virtually all authority through Cœur de Lion, notwithstanding clear evidence that he operated

[664] Ambos (2011); see also ICC-01/04-02/06-2666-Anx3, para. 267 and cites therein.
[665] ICC-01-01/04-01/07-717, para. 484; see also ICC-01/04-01/06-3121-Red A, paras. 465-466, 473; ICC-01/04-02/06-2666-Anx3, para. 230.
[666] ICC-01/04-02/06-2359, para. 779; Ambos (2022) pp. 1210-1211. See also Ground 2.6 in relation to essential contribution. ICC-01/04-02/06-2666-Red A, para. 1037 and cites therein; ICC-01/04-02/06-2666-Anx3, para. 231

autonomously, exercised control over his own elements and repeatedly acted contrary to Mr. Yekatom's position. The Chamber's effort to dismiss this as mere personal animosity does not address the fact that, if all orders were meant to be routed through Cœur de Lion, there is an obvious break in the alleged chain of command where that intermediary does not implement what Mr. Yekatom is said to have ordered. This defect is further compounded by the Chamber's own reference to evidence that key decisions of the group were taken collectively, by committee, and that day-to-day matters, including discipline, were decided by 'section chiefs'.

193. Further, with respect to the Chamber's assessment of whether orders originated from Mr. Yekatom, it erred by relying exclusively on witnesses' subjective assumptions that an order 'must have' come from him solely by virtue of his position. Such reasoning is circular and does not establish that he in fact issued or transmitted the relevant orders. This is most evident by the Chamber's reliance on P-1839's purported account of two persons at Yamwara who had been tied in '*arbatacher*' manner and interrogated;[667] on the finding that [REDACTED].[668] The Chamber then stated that P-1339 'appeared to describe a similar incident' concerning 'two Muslims', involving 'Cynthia' and Bougie Noire as assailants, and cited his evidence that Cœur de Lion was implementing Mr. Yekatom's instructions to kill and would not have done so if Mr. Yekatom had refused, because Mr. Yekatom 'certainly gave the order for them to be put down'.[669] In fact, these are two distinct and contradictory accounts. P-1839 expressly testified that [REDACTED],[670] and not Muslims,[671] and that Mr. Yekatom was absent and unaware of what occurred.[672] P-1339, by contrast, spoke of 'two Muslims' and attributed direct involvement and orders to Mr. Yekatom.[673] Nevertheless, subsequent passages in the Judgment refer to the incident 'described by P-1839' as involving captured Muslims, cross-referencing both witnesses, and asserts that 'P-1839 provided concise accounts about killings committed by Mr. Yekatom's elements following his explicit orders'.[674] Notably, the OTP did not submit that the incidents described by P-1839 and P-1339 were the same.[675] Yet the Chamber misrepresented the OTP's position by claiming that it had argued that the incident described by 'P-1839 involved the killing of two Muslims using the same *modus operandi* as the one in the Yamwara incident',[676] when

[667] Judgment, p. 1063, para. 3069.
[668] Judgment, p. 1063, para. 3069.
[669] Judgment, p. 1063, para. 3069.
[670] Judgment, p. 1063, para. 3069; P-1839: T-170, 36:10-38:15.
[671] Judgment, pp. 1136-1137, para. 3302, fn. 8090; P-1839: T-171, 37:1-9.
[672] P-1839: T-174, 19:22-20:3.
[673] P-1339: T-155, 28:4-16; 33:19-22; 36:1-17; 39:9-11; T-159, 23:8-24:14; 24:27-27:28 (noting at 27:22-28, P-1339 clarified he meant Seleka combatant when he stated Muslim); see also Ground 2.3.
[674] Judgment, pp. 1153-1154, para. 3354, fn. 8213.
[675] OTP Closing Brief, para. 472 *contra* para. 683.
[676] Judgment, p. 1063, para. 3069, fn. 7595.

the underlying passage in fact referred to P-1339.[677] The OTP's references to P-1839 in the corresponding footnotes,[678] concerned only Cynthia's presence at Yamwara,[679] and [REDACTED].[680] By transferring elements of P-1339's testimony into P-1839's account, the Chamber conflated two incidents, distorted P-1839's evidence and created a narrative that misrepresented the record.[681] As this composite incident was relied upon to support findings on Mr. Yekatom's alleged authority and control over Cœur de Lion, it was particularly necessary for the Chamber to explain why it preferred P-1339's version over that of P-1839, whom it otherwise found fully credible.[682]

194. The Chamber further failed to engage with, or to provide adequate reasons for disregarding, direct evidence that an order attributed to Mr. Yekatom was given but not complied with,[683] including with respect to express orders given by Mr. Yekatom to 'protect the population, not to harass them' and that he instructed FACA trainers to teach elements to fight the Seleka, not to target Muslim civilians.[684] In so doing, it mis-appreciated the evidence and failed to provide a reasoned opinion in support of its conclusion that Mr. Yekatom's orders were (almost) automatically complied.

195. Nor did the Chamber properly assess whether the group possessed the necessary characteristics to demonstrate that its members were fungible, functioning as interchangeable 'elements' within an organised apparatus of power. In fact, the evidential record, as assessed by the Chamber itself, lacks the factors that have supported findings of fungible elements in prior cases.

196. *No finding of child soldiers*: Although the OTP's case theory invoked the presence of child soldiers to argue control over the crime,[685] the Chamber made no finding that the RFACPP included child soldiers, let alone that their age made them particularly fungible or susceptible to subjugation.

197. *Voluntary membership and ability to leave:* The Chamber found that members joined the RFACPP voluntarily.[686] There is no finding that they were forcibly recruited, subjected to violent coercion, or financially compelled to stay.[687] On the contrary, the evidence shows that members could and did leave the group, as occurred after Cœur de Lion's death,[688] with P-1839 further explaining

[677] OTP Closing Brief, para. 683. See Annex 5, row 12.
[678] OTP Closing Brief, para. 683, fns. 1598-1600.
[679] P-1839: T-172 (ENG), 63:2-11 (as cited from the English transcript by OTP).
[680] P-1839: T-172, 53:6-54:3 (as cited from the English transcript by OTP).
[681] See Part 4 (evidence assessment).
[682] Judgment, p. 116, para. 358; p. 118, para. 364.
[683] Judgment, p. 116, para. 358.
[684] Judgment, p. 1070, para. 3093.
[685] See e.g. OTP PTB, para. 325. Cf. ICC-01/04-01/07-717, para. 547.
[686] Judgment, pp. 1053-1054, para. 3043. See also P-1786: T-197, 13:28-14:3; T-198, 27:6-8; P-1647: T-194, 8:5-8; T-195, 26:25-27:2; 35:9-11; CAR-OTP-2050-0654-R02, para. 28; P-1839: T-170, 11:6-16; 12:5-6; 13:3-5; 20:3-9; T-172, 22:5-6.
[687] Cf. e.g. ICC-01/04-01/07-717, paras. 518, 547; ICC-01/09-01/11-373, para. 317.
[688] *Supra.*

that some may have stayed or left for personal reasons.[689] The absence of constraints on leaving is incompatible with an apparatus designed to neutralise individual will.

198. *No pattern of violent punishment for disobedience:* Aside from opinion evidence and the mischaracterised 'Seda incident', there is no evidence of a system of violent punishment used to force compliance. The Chamber does not identify any consistent practice of disciplining those who refused to follow orders, which is a core indicator of automatic compliance in the control theory model.

199. *Rudimentary, defensive training rather than violent indoctrination*: The Chamber did not find that RFACPP elements were subjected to violent training in how to rape, pillage or kill, of the kind relied upon in other cases and to support findings of automatic compliance.[690] At most, it found that elements received military-style training on how to handle weapons, defend themselves from the Seleka and maintain fitness.[691] P-1339 referred to two weapons used for training, a rifle and a Kalashnikov,[692] and P-1839 described training as 'intense' in the sense of physical exercises (crawling, press-ups) and basic weapons handling.[693] The Chamber itself noted the rudimentary nature of training at Yamwara, based on audio-visual evidence showing small groups of individuals, some armed with machetes and sticks, in a classroom-type setting receiving lessons from an instructor.[694]

200. *Training not controlled by Mr. Yekatom and no use of live ammunition*: The Chamber noted that Mr. Yekatom did not train elements himself;[695] training was *ad hoc*, provided by various leaders if they felt comfortable, with no fixed instructors or schedule.[696] P-1647 confirmed, that the group did not use live ammunition at Yamwara so as not to frighten the civilian population,[697] and that training consisted in showing how to assemble and disassemble weapons.[698] This stands in stark contrast to the brutal live-fire training regimes that have supported findings of automatic compliance elsewhere.

201. Further, the Chamber did not assess whether the will of the direct perpetrators of the crimes was in fact subjugated. Instead, it *again* relied on general findings about Mr. Yekatom's purported status as 'chief' of the group, without any normative assessment of his relationship with the direct perpetrators.

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[689] P-1839: T-170, 25:17-27. See also CAR-OTP-2065-3220 / CAR-OTP-2127-3668.
[690] See e.g. ICC-01/04-01/07-717, para. 518.
[691] Judgment, pp. 1068-1069, paras. 3087, 3089, 3091.
[692] Judgment, p. 871, para. 2432 (noting P-1339's testimony that he was not present during trainings see P-1339: T-152, 6:15-18; 10:15-27).
[693] Judgment, p. 1072, para. 3099.
[694] Judgment, p. 1068, para. 3088.
[695] Judgment, p. 1069, para. 3090.
[696] Judgment, p. 1069, para. 3090.
[697] Judgment, p. 1070, para. 3092.
[698] Judgment, p. 1070, para. 3092.

202. 5 December 2013 operation: When assessing Mr. Yekatom's supposed control over Counts 1-6 and 8, the Chamber simply repeated that he was the alleged founder and chief of his group, that he gave instructions and personally participated in the Bangui attack, and on this basis concluded that he 'had control over the crimes committed by the elements in his group'.[699] This reasoning conflates control over a group with control over the crimes without any further assessment. None of this amounts to a finding that his orders were automatically complied with or that he had subjugated the will of the RFACPP members present on 5 December 2013. At that time, on the Chamber's own narrative, the alleged 'highest' level of control over the group is based almost entirely on the assertion that Mr. Yekatom 'created' the group. There are no contemporaneous findings that the RFACPP possessed the sort of tightly organised, hierarchical structure envisaged in prior cases before this Court. In particular, the Chamber does not explain the evidential basis for any conclusion that Mr. Yekatom had subjugated the will of Alkanto in relation to the alleged rocket fired at the Boeing Mosque, or of Cœur de Lion and Habib Beina – who are said to have formed the group with him – in relation to the alleged shooting at traders in Boeing Market.[700] Even taken at its highest, the Chamber's later findings that there was a hierarchy between Mr. Yekatom and others are based on evidence relating to events at Yamwara and along the PK9–Mbaïki Axis, that is, after the 5 December operation. This belated material cannot retroactively establish 'automatic compliance' at the time of the attack. The problem is underscored by the Chamber's own recognition of the shifting relationship between Cœur de Lion, Alkanto and Mr. Yekatom, as evidenced by the Chamber's finding of a subsequent agreement along the axis less than a month later. Such fluid arrangements are antithetical to the kind of rigid, 'button-press' structure required for almost automatic compliance.[701]

203. Yamwara base: For Counts 11-17, the Chamber concluded that Mr. Yekatom 'controlled the activities' at Yamwara, and under the 'control of persons' section stated that 'from the moment of capture of the seven persons and at least until their respective death or release, Mr. Yekatom retained control over the actions of his elements and his will'.[702] This is a bare assertion. The Chamber provides no further findings as to which orders were allegedly being complied with, how his will was imposed from the outset, or what structural features rendered non-compliance practically impossible. The Chamber further held that Mr. Yekatom controlled the crimes 'through' Cœur de Lion, despite accepting that Cœur de Lion was not present during the initial apprehension of the captives. It stated, for example, that 'Mr. Yekatom, through Cœur de Lion, instrumentalised his elements, to beat,

[699] Judgment, p. 1375, para. 4012.
[700] Judgment, p. 1375, para. 4013.
[701] Werle/ Burghardt (2011), p. 198; see also ICC-01/04-02/06-2666-Anx3, para. 265.
[702] Judgment, p. 1448, para. 4242.

interrogate, break legs, tie up, and maim Saint-Cyr',[703] and used similar language for the male and female captives.[704] This would have required a prior determination that Cœur de Lion's will had itself been subjugated to Mr. Yekatom's, such that he functioned as a mere instrument in executing the crimes. The Chamber does not conduct this analysis, let alone explain how this could be reconciled with other evidence showing that Cœur de Lion did not always comply with Mr. Yekatom's wishes and that their relationship was, at times, one of disagreement and negotiation. In other words, the Chamber effectively skipped the two necessary steps: first, whether Cœur de Lion's will was subjugated to Mr. Yekatom's at the point when the relevant crimes were executed; and second, whether the will of the direct executors (acting under Cœur de Lion) was subjugated to Mr. Yekatom's. In the absence of such findings, the rhetoric of 'instrumentalisation' does not demonstrate automatic compliance, nor does it establish that Mr. Yekatom could rely on a fungible set of executors who would carry out his orders regardless of individual refusal.

204. The closest the Chamber came to addressing automatic compliance is its statement that, 'given Cœur de Lion's presence, encouragement, and orders to the assailants to 'do the job properly', this element was replaceable at the time of the incident',[705] coupled with its conclusion that Mr. Yekatom approved of his elements mistreating the remaining six persons during their captivity at Yamwara.[706] Neither point supports a finding of automatic compliance. First, encouragement and exhortations of the kind to 'do the job properly' may go to *mens rea* or participation, but they do not, without more, show that the crime occurred pursuant to a structure in which the executors' will was neutralised or that they feared punishment if they refused. [REDACTED] evidence suggested that [REDACTED] participated at least partly to prove herself, and not out of fear of Mr. Yekatom – a mixed motivation that is inconsistent with subjugation of will.[707] Second, *ex post* approval of mistreatment or rhetorical endorsement of violence is not the same as *ex ante* control over its commission. At most, such approval is evidence that Mr. Yekatom did not object to what had already occurred. It says nothing about the structural position of the direct perpetrators at the time of the crimes – whether they could have refused, whether others would have replaced them, or whether they experienced their will as subjugated. Even a political leader with no effective control over particular executors can later praise their actions; this does not retroactively create an apparatus of automatic compliance. *Ex post* rhetorical endorsement of violence is not the same as *ex ante* control over its commission, which is what matters for automatic compliance and subjugation of will.

[703] Judgment, p. 1448, para. 4244.
[704] Judgment, pp. 1448-1449, paras. 4245-4246.
[705] Judgment, p. 1448, para. 4244.
[706] Judgment, p. 1448, para. 4244.
[707] [REDACTED].

205. PK9-Mbaïki Axis: Notwithstanding the alleged common plan with Cœur de Lion and Alkanto[708] the Chamber simply asserted that Mr. Yekatom 'controlled crimes through others' because he remained the 'undisputed leader' along the axis,[709] and that throughout the relevant period he 'retained and exercised control over an active group of elements which was seen as and understood to be part of the Anti-Balaka'.[710] As with Yamwara, these findings relate to purported control over the group or to contextual elements of the crimes, not to the organisational features required for automatic compliance with criminal orders. Seeking to bridge this gap, the Chamber entered the unfounded conclusion that 'Mr. Yekatom could rely on the elements of his group to execute the agreement, and that the will of the individual elements in this execution was immaterial',[711] and that 'Mr. Yekatom had full control over his elements performing the relevant conduct in the context of the advance through and takeover of villages along the PK9–Mbaïki Axis, and during the events in Mbaïki until the transport of the Muslim civilian population and including the killing of Djido Saleh'.[712] It then stated that these findings 'conclusively' showed that he had control over the crimes 'by virtue of his essential contribution to them, and the resulting power to frustrate their commission'.[713] This conclusion is far from 'conclusive'. At most, on the Chamber's own account, it shows that Mr. Yekatom was the purported leader of a large group of around 1,000 elements. It does not establish that his orders were executed with almost automatic compliance, that the individual will of those elements was irrelevant, or that any element who refused would automatically be replaced by another. In particular, the Chamber does not identify any of the objective hallmarks of automatic compliance that were present in other cases involving indirect (co-)perpetration. Absent proof of an apparatus that guaranteed the execution of orders irrespective of individual executors, the invocation of a 'power to frustrate' collapses into a mere restatement of Mr. Yekatom's leadership role and does not satisfy the standard for 'principal liability' under Article 25(3)(a). Moreover, in relation to Counts 26 and 27, the Chamber fails to address the evidence that the purported members involved in the killing of Saleh were not RFACPP members at the time of the killing, and in any case, would have participated in the killing for personal motives and in defiance of Mr. Yekatom's orders.[714]

206. Taken together, these factors show that, unlike in other indirect perpetration cases, the RFACPP did not function as an 'automatic' apparatus of power in which the will of individual executors was rendered irrelevant, and orders were guaranteed to be executed by interchangeable subordinates. The

[708] See Ground 2.5.
[709] Judgment, p. 1485, para. 4357.
[710] Judgment, p. 1485, para. 4358.
[711] Judgment, p. 1485, para. 4359.
[712] Judgment, p. 1486, para. 4363.
[713] Judgment, p. 1486, para. 4363.
[714] See Ground 4.6.

Chamber nonetheless imported formulaic language from the control theory jurisprudence and declared that Mr. Yekatom had 'full control' and that the will of his elements was 'immaterial', without the evidential foundation required for such findings.

e) Materiality

207. The errors identified in this Ground are material within the meaning of Article 83(2)(a) because they go to the very basis on which the Trial Chamber held that Mr. Yekatom 'committed' the crimes.[715] The Chamber's findings that there existed an organised apparatus of power, that Mr. Yekatom exercised effective control over it, and that the crimes were executed through (almost) automatic compliance were not peripheral: they were the essential building blocks for characterising his liability under Article 25(3)(a) as indirect (co-)perpetration. Once those three objective elements are shown to be undefined, unreasoned or unsupported, there is no coherent legal or factual foundation on which 'control over the organisation' liability can rest.

208. All of Mr. Yekatom's convictions are expressly based on this control theory characterisation. If the Appeals Chamber accepts that the RFACPP was never properly established as an organised apparatus of power, that Mr. Yekatom's alleged 'leadership' was treated as a proxy for effective control, and that the requirement of (almost) automatic compliance was in substance ignored, a reasonable trial chamber could not have concluded that he 'committed' the crimes within the meaning of Article 25(3)(a). At a minimum, the legal basis and gravity of his responsibility would have been assessed differently. These errors therefore materially affect every conviction premised on indirect (co-)perpetration through the alleged RFACPP apparatus, and, by extension, the sentences imposed on all counts.

5. Ground 2.5 – The Trial Chamber erred in finding that Mr. Yekatom entered into a common plan with Cœur de Lion and Alkanto

209. This Ground alleges errors of law, fact and reasoning in the Trial Chamber's conclusion that, during the advance along the PK9–Mbaïki Axis, Mr. Yekatom entered into an agreement with Cœur de Lion and Alkanto forming the basis for indirect co-perpetration liability for Counts 24–28.[716] The Chamber (i) failed to establish on the evidence that any agreement existed, still less a jointly adopted plan whose implementation would, in the ordinary course of events, involve the charged crimes; (ii) having elevated Cœur de Lion and Alkanto to co-perpetrators, did not explain how they shared 'control' over an organised apparatus of power or what their 'essential contributions' were, contrary to its own articulation of indirect co-perpetration; and (iii) relied on elastic, impressionistic labels of

[715] Judgment, p. 25, para. 63; p. 589; p. 1336, para. 3906; p. 1348, para. 3939; pp. 1483, para. 4353; p. 1485, para. 4358.
[716] Judgment, p. 1484, para. 4356.

principal liability for subordinate commanders that further expose the fragility of its overarching finding that Mr. Yekatom 'controlled' the RFACPP and the crimes. These combined errors vitiate the finding that he committed Counts 24–28 'jointly with and through others' along the PK9–Mbaïki Axis.

a) The Chamber failed to establish the common plan

210. The Trial Chamber held that 'at the time of the advance along the PK9–Mbaïki Axis, an agreement existed between Mr. Yekatom, Cœur de Lion and Alkanto' to establish control over the area and remove all Muslims, 'including by killing them', and that this agreement 'is established by their instructions to kill all Muslims in the area, as well as the subsequent implementation of these instructions'.[717] This conclusion cannot be sustained on the Chamber's own findings, particularly when measured against the standard applied in the Court's jurisprudence that, even where a common plan is inferred rather than proved directly, the inference must rest on sufficiently detailed findings on the existence and content of the plan, together with a reasoned explanation of how these reflect the co-perpetrators' intent to commit the charged crimes.[718]

211. First, there is no direct evidence of any agreement between Mr. Yekatom, Cœur de Lion and Alkanto. The Judgment does not identify any meeting between these three individuals at which a plan was formulated, nor any minutes, communications or contemporaneous documents recording a joint decision to remove Muslims from the Axis.[719] This stands in marked contrast to *Ntaganda*, where the Appeals Chamber noted that the Trial Chamber relied on evidence of meetings, specific orders and planning discussions, in addition to crimes on the ground, when upholding the existence of a criminal common plan.[720]

212. Second, the only direct evidence cited by the Chamber for the alleged 'kill all Muslims' instruction on the Mbaïki road is the testimony of P-1839.[721] Yet, as explained in Ground 2.3, P-1839 (i) never described a concrete occasion on which she personally heard Mr. Yekatom instruct the killing of Muslims, (ii) when asked whether she recalled any specific instance in which Mr. Yekatom gave such an instruction, she replied that she had merely been told about it and had not seen it with her own eyes, and (iii) she accepted that most of the people killed in her presence were 'Christians, not Muslims', noting further there is no evidence of Muslims being killed during the RFACPP's advance

[717] Judgment, p. 1484, para. 4356. See also pp. 37-39, paras. 113-121; pp. 1136-1137, paras. 3300-3302; pp. 1481-1483, paras. 4345-4350.
[718] Judgment, p. 1325, para. 3874; ICC-01/04-02/06-2666-Red A, paras. 905-914, 918-922, 934-939.
[719] Judgment, pp. 37-39, paras. 113-121; pp. 1481-1484, paras. 4345-4350, 4356.
[720] ICC-01/04-02/06-2666-Red A, paras. 918-920, 939.
[721] Judgment, pp. 1136-1137, paras. 3300-3302; pp. 1481-1484, paras. 4345-4350, 4356.

along the axis.[722] Even on the Chamber's own (incomplete) summary, P-1839 only spoke in general terms of 'the chiefs' giving an instruction 'to kill all the Muslims who were in our area', which the Chamber understood as a reference to Mr. Yekatom, Cœur de Lion and Alkanto, but she herself did not identify any one of them as personally voicing that order on a particular occasion.[723] Her evidence on this point also sits uneasily with the Chamber's own finding that P-1839 confirmed that she had never heard Mr. Yekatom (or Habib Beina) instruct attacks on unarmed Muslim civilians (noting further her evidence that Mr. Yekatom would have positively instructed the group to not harm the Muslim civilian population), and that when she was based at Yamwara 'the order he gave us was, if the enemy attacks, we defend ourselves', the 'enemy' being the Seleka.[724] At most, therefore, the Chamber's reliance on P-1839's testimony shows only that, in her perception, unnamed 'chiefs' expressed a generalised hostility towards Muslims; it does not establish that all three alleged co-perpetrators each issued, or jointly repeated, a concrete 'kill all Muslims' order on the Axis, still less that they did so with the mutual awareness required to sustain an inference of a specific three-person criminal agreement.

213. Third, the Chamber's reliance on the 'subsequent implementation' of the supposed instructions does not cure this evidentiary deficit. The factors cited (the advance of 'Mr. Yekatom's group' along the Axis, the taking over of checkpoints, the flight of Muslims in fear, the threats and harassment of Muslims and the overcrowded and precarious conditions for Muslims in Mbaïki) are findings about the conduct and reactions of large numbers of people, not about any joint decision of three particular individuals.[725] No specific actions by either Cœur de Lion or Alkanto on the Axis are identified as evidencing a shared criminal agreement. Moreover, the OTP never alleged, and nor did the Chamber find, a single instance of a Muslim being killed in the context of the RFACPP's advance itself. The Chamber thus moves impermissibly from findings about generalised insecurity and displacement to the existence of a specific three-person agreement to commit the charged crimes, in a way that, at the level of legal reasoning, weakens the distinction between liability based on 'control over the crime' and liability based on general group criminality.

214. Fourth, the alleged plan itself improperly conflates a military objective with criminal intent. On the Chamber's own formulation, the plan comprises two distinct components: (i) gaining control over the road and surrounding villages, and (ii) removing Muslims from the area, including by killing them.[726] Even accepting that a common plan need not enumerate every statutory crime, but must at

[722] Judgment, pp. 1136-1137, paras. 3302.
[723] Judgment, pp. 1136-1137, paras. 3300-3302; pp. 1481-1484, paras. 4345-4350.
[724] Judgment, p. 1137, paras. 3303.
[725] Judgment, pp. 37-39, paras. 113-121; pp. 1481-1483, paras. 4345-4349; p. 1484, para. 4356.
[726] Judgment, p. 1484, para. 4356.

least contain an 'element of criminality',[727] the Judgment does not explain how a plan to secure a strategic road – consistent with the stated objective of 'free[ing] up the country' and chasing out the Seleka – necessarily implied for all three alleged co-perpetrators, and in the absence of crimes during the advance, the virtual certainty that the crimes of forcible transfer, deportation, persecution and murder would be committed in its execution.[728] The contrast with *Ntaganda* is telling: there, the Appeals Chamber upheld an inference of a criminal common plan only because the Trial Chamber relied, in addition to evidence of crimes on the ground, on meetings, specific orders and instructions to troops that were 'sufficiently detailed and specific to the crimes in question';[729] here, by contrast, the Trial Chamber identified no comparable pattern of evidence, yet nonetheless treated the conduct of the group as a whole as sufficient to prove a three-person criminal agreement[730].

b) The Chamber failed to establish shared control over an organised apparatus

215. Even if the existence of some form of agreement on the axis were accepted, the Chamber was further required to establish that each alleged co-perpetrator exercised joint control over the crime through an organised apparatus of power,[731] and that each made an 'essential contribution' such that he possessed the power to frustrate the commission of the crimes.[732] Where crimes are committed 'through other persons, who function as a tool of all of the co-perpetrators', their essential contribution may consist in activating the mechanisms that lead to the automatic compliance with their orders and thus the commission of the crimes, but it remains necessary to show that each co-perpetrator actually controlled part of that apparatus.[733]

216. The Judgment contains no such analysis for either Cœur de Lion or Alkanto. The Chamber repeatedly emphasised that Mr. Yekatom was the 'undisputed leader' of the Anti-Balaka group along the PK9–Mbaïki axis, comprising at least 1,000 elements, and that he 'retained and exercised control' over this group throughout the relevant period.[734] It then simply asserted that the conduct of the

[727] ICC-01/04-01/06-803-tEN, pp. 116-117, para. 344; ICC-01/04-01/07-717, p. 180, para. 532; ICC-01/04-01/06-3121-Red A, pp. 159-160, paras. 445-446; ICC-01/09-01/11-373, p. 111, para. 301; ICC-01/04-02/06-2666-Anx3, pp. 118-119, para. 306.
[728] Judgment, pp. 1138-1139, paras. 3306-3307.
[729] ICC-01/04-02/06-2666-Red A, pp. 330-332, paras. 934-939. See also ibid, pp. 319-322, paras. 905-914; pp. 323-325, paras. 918-922.
[730] Judgment, p. 1484, para. 4356.
[731] Judgment, pp. 1324-1325, para. 3873; ICC-01/04-02/06-2666-Red A, pp. 337-339, paras. 954-959; ICC-01/04-02/06-2666-Anx3, paras. 301-308, 315; ICC-02/04-01/15-2022-Red A, paras. 12, 637-638; ICC-02/05-01/09-3, p. 82, para. 216; ICC-01/09-01/11-373, pp. 106-107, para. 292 and cites therein; see also OTP position as cited in ICC-01/04-02/06-2666-Red A, p. 371, para. 1032.
[732] Judgment, p. 1325, paras. 3874-3875; ICC-01/04-02/06-2666-Red A, p. 346, para. 1041; ICC-02/04-01/15-2022-Red A, paras. 628–631, 635–638; ICC-01/04-01/06-3121-Red A, p. 172, para. 473. See Ground 2.6.
[733] See e.g. ICC-01/04-02/06-2666-Anx3, p. 118, paras. 304-307 and cites therein.
[734] Judgment, pp. 37-39, paras. 113-121; pp. 1481-1484, paras. 4345-4350, 4356. See also Ground 2.4.

elements 'must be attributed to Mr. Yekatom, Cœur de Lion and Alkanto as their own',[735] without explaining (i) how Cœur de Lion or Alkanto themselves controlled the organisation or the direct perpetrators; (ii) what their essential contributions were; or (iii) how either of them could independently 'press the button' to ensure the commission of the crimes, as the control theory jurisprudence requires.[736]

217. This omission is particularly stark in relation to Alkanto. Apart from the Yamwara incident, the Judgment makes virtually no findings as to his role, authority, or disciplinary powers. Yet, despite this evidentiary vacuum, the Chamber still treated him as an indirect co-perpetrator on the axis. As regards Cœur de Lion, the Chamber described him as Mr. Yekatom's 'deputy' but, for the events of 5 December 2013 and at the Yamwara base, it nonetheless proceeded on the basis that Mr. Yekatom alone controlled the group and, on that premise, that he committed the Yamwara crimes 'through' Cœur de Lion[737]. The Judgment does not set out what concrete powers the Chamber considered Cœur de Lion had over the group, nor any findings that his orders were followed, or that he exercised independent disciplinary or operational authority. Nor does it explain how – on its findings – Cœur de Lion could have moved from having no control over the group to exercising control over even part of it within the short time between the group's departure from Yamwara and the alleged conclusion of the criminal agreement.

218. Again, a comparison with *Ntaganda* is instructive. There, the Appeals Chamber rejected a complaint that the TC VI had left unclear the status of commander Salumu Mulenda, noting that the Trial Chamber's extensive analysis of his orders and briefings he gave showed that his conduct formed part of the execution of the common plan, in a context where the crimes were committed through an organised apparatus controlled by the co-perpetrators.[738] Here, by contrast, there is no 'extensive analysis' – or indeed any concrete analysis – of how Cœur de Lion or Alkanto contributed to, or exercised control over, an apparatus of power on the axis. The Chamber's silent elevation of them to indirect co-perpetrators, despite the absence of such findings, demonstrates that its application of the 'control over the organisation' theory is untethered from its own legal test.[739] If subordinate section chiefs, about whom there are no concrete findings of authority beyond leading a checkpoint or being described as a 'deputy', can be treated as indirect co-perpetrators without any demonstration that they controlled an apparatus of automatic compliance, then the standard of 'control' has been diluted far

[735] Judgment, p. 1484, para. 4356.
[736] ICC-01/04-02/06-2666-Red A, para. 1041; ICC-02/04-01/15-2022-Red A, paras. 628-631, 635-638; ICC-01/04-01/06-3121-Red A, para. 473. See also Werle (2011), p. 198.
[737] Judgment, pp. 1444-1445, paras. 4234-4235; pp. 1448-1449, paras. 4244-4245.
[738] ICC-01/04-02/06-2666-Red A, para. 925.
[739] Judgment, pp. 1324-1325, para. 3873.

beyond what this Court's jurisprudence envisages.[740]

c) Materiality

219. Any argument that the shortcomings in the Chamber's analysis of Cœur de Lion and Alkanto can be cured by treating them as mere intermediaries within a structure controlled by Mr. Yekatom finds no support in the Judgment. First, the form of liability applied by the Chamber is expressly that of indirect co-perpetration: Mr. Yekatom is said to have 'committ[ed] the crimes underlying Counts 24 to 28 jointly with and through others'.[741] The entire discussion of the common plan, the 'meeting of minds' and the attribution of the group's conduct is framed in terms of a three-person agreement, not of a single indirect perpetrator acting through subordinates. The Appeals Chamber cannot simply excise two co-perpetrators from this framework as if one disposable participant had fallen away; if both alleged co-perpetrators are removed, the entire three-person agreement – and thus the very basis of the conviction – collapses.[742]

220. Second, the same evidentiary deficiencies that prevent a finding that Cœur de Lion and Alkanto controlled an organised apparatus also undermine the conclusion that Mr. Yekatom did so. The Chamber never identified with precision the 'apparatus of power' through which Mr. Yekatom is supposed to have controlled the crimes; it conflated impressionistic references to him as 'chief' or 'supreme leader' with a finding of effective control; and it failed to demonstrate that his orders were executed with near-automatic compliance across the RFACPP.[743] Any finding that Cœur de Lion and Alkanto also controlled part of this supposed apparatus further undermines the Chamber's already weakened findings concerning Mr. Yekatom's alleged undisputed authority over the group.

221. Third, by elevating Cœur de Lion and Alkanto to co-perpetrators without explaining how they, too, controlled the organisation, the Chamber has shown that it does not, in practice, regard 'control' in the strict sense as a limiting principle for principal liability under Article 25(3)(a). Rather, it treated Mr. Yekatom's purported status as a purported 'Anti-Balaka' figure and the presence of other 'section chiefs' on the axis as sufficient to transform a loosely associated group into a 'power apparatus' and its leaders into principals. This expansive and impressionistic approach is precisely what Grounds 2.4 and 2.6 contest.[744]

[740] ICC-01/04-02/06-2666-Red A, paras. 918–920, 1041; ICC-02/04-01/15-2022-Red A, paras. 628-631, 635-638; ICC-01/04-01/06-3121-Red A, para. 473.
[741] Judgment, p. 1484, para. 4356; see also p. 1325, para. 3874.
[742] C.f. ICC-01/04-02/06-2666-Red A, paras. 313-316, 329-330.
[743] See Ground 2.4; c.f. ICC-02/04-01/15-2022-Red A, paras. 628-631, 635-638; ICC-01/04-02/06-2666-Red A, paras. 918-920, 1041.
[744] Judgment, p. 1325, paras. 3874-3875; ICC-01/04-02/06-2666-Red A, paras. 918-920, 1041; ICC-01/04-01/06-3121-Red, para. 473.

222. In this light, the Chamber's unreasoned inclusion of Cœur de Lion and Alkanto in the supposed axis agreement is not an isolated defect that can be cured by recasting them as mere intermediaries while preserving Mr. Yekatom's liability. It is symptomatic of a broader misapplication of the control theory framework, which infects the findings on the existence and content of the common plan, the identification of any organised apparatus of power on the Axis, and Mr. Yekatom's alleged ability to 'frustrate' the commission of crimes.[745] Absent properly reasoned, evidence-based findings on these foundational elements, the legal and factual basis for treating Mr. Yekatom as having 'committed' Counts 24–28 under Article 25(3)(a) falls away, such that a reasonable trial chamber could not have entered the same convictions or sentences.

6. Ground 2.6 – The Trial Chamber erred in finding that Mr. Yekatom made an essential contribution to the crimes

223. This Ground alleges errors of law, fact and reasoning in the Chamber's treatment of the third objective element of the control theory[746] – Mr. Yekatom's 'essential contribution' giving him a genuine *ex ante* power to frustrate the crimes, such that without it they would not have been committed or would have been committed in a significantly different way.[747] Even taking the findings at their highest, the Chamber treated his purported leadership status and the RFACPP's involvement in the 5 December 2013 operation, the Yamwara incident and the PK9–Mbaïki advance as sufficient, without showing that his own conduct was indispensable or that he could have frustrated the crimes by withholding it. These defects are most acute on the PK9–Mbaïki Axis, where the supposed essential and co-ordinated contributions of Mr. Yekatom, Cœur de Lion and Alkanto are never defined.

a) Errors on essential contribution for 5 December 2013 (Boeing and Cattin)

224. For Counts 1–6 and 8, Trial Chamber characterises Mr. Yekatom's responsibility as 'commission' under Article 25(3)(a), relying, without clear distinction, on all three modalities ('directly', 'through another person' and 'jointly with another') for Counts 1, 4, 5 and 8.[748] For the same factual conduct, it convicts him as a direct perpetrator and yet presents him as someone acting through others, revealing basic confusion as to his role, the extent of his contribution and his alleged power to frustrate the crimes. The same conduct cannot coherently be described as both 'direct' and 'through others' without explanation.

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[745] Judgment, p. 1325, paras. 3874-3875; pp. 1481-1483, paras. 4345-4350; p. 1484, para. 4356; pp. 1485-1486, para. 4360; p. 1486, para. 4363; ICC-01/04-02/06-2666-Red A, paras. 918-920, 939, 1041; ICC-02/04-01/15-2022-Red A, paras. 628–631, 635–638; ICC-01/04-01/06-3121-Red A, para. 473. See Ground 2.6.
[746] Judgment, pp. 1324-1325, paras. 3873, 3875; ICC-01/04-01/06-3121-Red A, paras. 7, 469, 473; ICC-01/04-02/06-2666-Red A, paras. 1041
[747] ICC-01/04-02/06-2666-Red A, paras. 22, 1041, citing to ICC-01/05-01/13-2275-Red A, paras. 820, 825; ICC-02/04-01/15-2022-Red A, paras. 661, 961. See Ground 2.4.
[748] Judgment, p. 1375, para. 4013; p. 1379, paras. 4025, 4026.

225. First, as set out in Ground 2.4, the Judgment never finds that, on 5 December 2013 operation, Mr. Yekatom controlled an organised apparatus in which 'intermediaries' such as Alkanto, Cœur de Lion and Beina would implement any criminal decision with (almost) automatic compliance. Instead, on the Chamber's own findings Mr. Yekatom is purported to have formed, armed and trained his group, coordinated with Anti-Balaka, conducted reconnaissance of Boeing on 4 December, instructed 'his elements' to target Seleka positions along the Boeing–Cattin–PK5 axis, and signalled the start of the attack by firing his pistol in the air. It is on this basis that the Chamber attributed the mosque attack, killings and destruction to 'elements in Mr. Yekatom's group', which for the Chamber included Alkanto.[749] Even taking the Chamber's findings at their highest, this shows only leadership of a collective operation, not control over an organised apparatus of power characterised by (almost) automatic compliance with orders. The Chamber merely relies on P-1339's unreliable inference that individuals like Alkanto 'would not have acted on his own initiative' and must have followed instructions.[750] That falls short of the control theory requirement that intermediaries operate within an organised apparatus of power in which execution of the crimes is secured by (almost)automatic compliance, such that orders will be carried out if not by one subordinate, then by another.[751]

226. Second, because this foundation is missing, the Chamber cannot simply assume that Mr. Yekatom had the power to frustrate each specific 5 December operation crime by withholding his contribution. It never conducts the counterfactual analysis required as to whether, without his individual contribution within the broader 5 December operation, those crimes would not have occurred or would have been committed in a significantly different manner.[752] Instead, it moves directly from his general leadership and status as group leader to the conclusion that he made an 'essential contribution' to all crimes committed that morning.[753] Accordingly, even taking the findings at their highest, the Judgment does not show that, on 5 December 2013, Mr. Yekatom exercised the degree of control over the crimes – rooted in automatic compliance and an *ex ante* power to frustrate – that Article 25(3)(a) demands.

b) Errors on essential contribution for Yamwara incident

227. For the Yamwara incident (Counts 11–17), the Chamber convicts Mr. Yekatom as an indirect perpetrator, finding that he 'used the power apparatus available to him to steer it intentionally towards the commission of the crime, without leaving any of his elements at liberty to decide whether the

[749] Judgment, pp. 1374-1375, para. 4010.
[750] Judgment, p. 925, para. 2631.
[751] E.g. ICC-01/04-01/07-717, para. 518.
[752] ICC-01/04-02/06-2666-Red A, paras. 22, 1041 citing to ICC-01/05-01/13-2275-Red A, paras. 820, 825; ICC-02/04-01/15-2022-Red A, paras. 661, 961.
[753] Cf. ICC-02/05-02/09-243-Red , para. 219.

crime is to be executed'.[754] It relies on his overall authority over activities at Yamwara, including *through* Cœur de Lion, and his 'undisputed authority' over Cœur de Lion, Alkanto and Bojos.[755]

228. Even on the Chamber's own factual narrative, this does not meet the essential-contribution standard. As with the 5 December operation, the Judgment never establishes that Cœur de Lion and Alkanto operated within an organised apparatus of automatic compliance. Its description of events shows that Alkanto along with 'his elements' stopped, searched and beat the victims at the checkpoint on suspicion of links to the Seleka;[756] that [REDACTED] played a central role in the incident (noting that [REDACTED] was motivated in part by [REDACTED] own animus),[757] and by the time Mr. Yekatom encountered the Lapo Family Group in the evening, the core acts of violence, including the torture of Saint-Cyr Lapo, had already been inflicted.[758] This narrative underscores the initiative and personal motives of these 'intermediaries', rather than their subjugation within an apparatus that automatically translated Mr. Yekatom's decisions into action.

229. The Chamber's most explicit discussion of 'power to frustrate' appears in its analysis of the expression 'peeling the papaya', which it finds was used within the group as a euphemism for severe mistreatment or killing of suspected Seleka; it notes that elements used it at the checkpoint and that, in other conversations, including when discussing what had happened to Saint-Cyr Lapo, Mr. Yekatom himself used the expression. From this, it infers that he understood its meaning and possessed 'the power to frustrate its execution, if needed', and that he had the sole power to end the captives' unlawful detention and mistreatment.[759]

230. Even taken at face value, the Chamber's assessment of the 'power to frustrate' looks only to Mr. Yekatom's conduct after the core crimes had already been committed. By the time Mr. Yekatom arrived in Yamwara, the victims had already been apprehended and according to the Chamber, interrogated and mistreated.[760] Any ability he may have had at that stage to end the detention or prevent further harm goes to a failure to intervene in an ongoing situation created by others. At most, that kind of reasoning could, if effective control were established, be relevant to omission based or superior responsibility; it is not the same as an *ex ante* essential contribution to bringing about the crimes.[761] Because the Chamber (i) never establishes an organised apparatus of power characterised by (almost) automatic compliance at Yamwara and yet (ii) locates Mr. Yekatom's supposed 'power to frustrate'

[754] Judgment, pp. 1450-1451, para. 4248.
[755] Judgment, p. 1445, para. 4235.
[756] Judgment, pp. 1448-1449, para. 4245.
[757] Judgment, p. 1448, para. 4244; p. 1455, para. 4265; p. 1456, para. 4267. See Ground 2.7.
[758] Judgment, pp. 1445, para. 4236
[759] Judgment, pp. 1449-1451, paras. 4247, 4248.
[760] Judgment, p. 1445, paras. 4236.
[761] See e.g. ICC-01/04-02/06-2666-Red A, p. 374, para. 1041.

only in post crime comments at a time when he could no longer prevent the core offences, its control over the crime assessment is erroneous. It treats a belated failure to intervene as if it were proof of an *ex ante* essential contribution contrary to the Article 25(3)(a) assessment.

c) Errors on essential contribution for PK9-Mbaïki Axis

231. For Counts 24-28, the Chamber adopted a theory of indirect co-perpetration based on an alleged agreement between Mr. Yekatom, Cœur de Lion and Alkanto on the existence of an organised apparatus of power on the Axis.[762]

232. Co-perpetration requires 'co-ordinated essential contributions' by each co-perpetrator, involving a division of essential tasks between them so that each is aware of his own and the others' roles and can, by withholding his contribution, frustrate the crime.[763] Accordingly, for indirect co-perpetration on the axis, the Chamber had to identify the essential tasks assigned to each alleged co-perpetrator, explain how those tasks, taken together, were indispensable to the crimes, and demonstrate Mr. Yekatom's awareness that his acts were coordinated with the essential contributions of Cœur de Lion and Alkanto so that they jointly controlled the crimes.

233. At paragraph 4362, the Chamber concludes that: (i) at the time of the advance along the axis, 'Mr. Yekatom's group' numbered at least 1,000 elements and he was its 'undisputed leader'; (ii) together with Cœur de Lion and Alkanto, he instructed elements to 'kill the Muslims in their area'; and (iii) conditions for Muslims in Mbaïki after the St Jeanne d'Arc church meeting were 'life threatening', despite his supposed 'peace messages', such that Muslims 'had no choice but to leave the town'. On that basis, it holds that he had control over the crimes 'by virtue of his essential contribution to them, and the resulting power to frustrate their commission'.[764]

234. First, leadership status is not, without more, personal essential contributions to the crimes. ICC caselaw insists that even 'archetypical' leaders must be shown to have advanced the crimes through identifiable acts; status alone is never enough.[765] The Chamber treats Mr. Yekatom's position as 'undisputed leader' and the alleged joint instruction with Cœur de Lion and Alkanto to 'kill the Muslims in their area' as sufficient to ground an 'essential contribution' to the Axis crimes and the life threatening conditions in Mbaïki. Yet it neither demonstrates that this instruction in fact originated from Mr. Yekatom,[766] nor that RFACPP members implemented any such order with (almost) automatic

[762] Judgment, pp. 1324-1325, para. 3873.
[763] ICC-01/04-01/07-717, paras. 524-527; ICC-01/09-01/11-373, para. 292; ICC-01/04-02/06-2666-Anx3, paras. 307-308.
[764] Judgment, p. 1486, para. 4363.
[765] ICC-01/04-01/07-717, para. 525; ICC-01/09-01/11-373, para. 307; ICC-02/04-01/15-2022-Red A, para. 638; ICC-01/04-02/06-2666-Red A, para. 1041; ICC-01/04-02/06-2666-Anx3, para. 304.
[766] See Ground 2.3.

compliance, in the sense that disobedience was practically inconceivable.[767] Even on its own terms, the Judgment asserts control through orders, but does not show that those orders were automatically executed.

235. On the Chamber's own earlier findings, threats and harassment of Muslims in Mbaïki continued 'irrespective of' measures attributed to Mr. Yekatom, and the violence ended not because of his measures, but because Muslims were removed from Mbaïki and transported elsewhere.[768] In those circumstances, it is difficult to see how the deportation, forcible transfer and persecution on the Axis 'depended' on his will in the control theory sense: if violence persisted regardless of what he did or attempted to do, he could not, by withholding his contribution, frustrate the crimes in the manner envisaged under the control theory.

236. Second, insofar as the Chamber treats the life threatening conditions in Mbaïki themselves as part of Mr. Yekatom's 'essential contribution', this misapplies the standard. Conditions such as overcrowding or hunger are group level consequences of a complex situation – the conflict, multiple actors and the reactions of the civilian population – and are not themselves personal acts by Mr. Yekatom. The Appeals Chamber has emphasised that an essential contribution must be to 'the crime for which [the accused] is responsible', even where it takes the form of contributions to implementing a broader plan, and that the decisive question is whether, without the individual contribution, the crime would not have been committed or would have been committed in a significantly different way.[769] Treating general humanitarian conditions as part of his essential contribution obscures the requirement that the contribution be grounded in his own conduct.[770]

237. Even assuming *arguendo* that a common plan and apparatus existed, the Judgment never articulates the essential contributions of Cœur de Lion and Alkanto or how those contributions were coordinated with Mr. Yekatom's. Beyond stating that they, together with Mr. Yekatom, instructed their elements to 'kill the Muslims in their area', the Chamber makes no concrete findings on what they actually did on the Axis which is incompatible with the requirement of coordinated essential contributions. The jurisprudence on joint commission through an organisation is clear that each co-perpetrator must be assigned an essential task, with the power to frustrate the crimes by not performing it, and that they must share an understanding of each other's roles.[771]

[767] See Ground 2.4.
[768] Judgment, p. 1228, para. 3563.
[769] ICC-01/04-02/06-2666-Red A, paras. 1040-1043.
[770] ICC-01/04-02/06-2666-Red A, para. 1060; ICC-02/04-01/15-2022-Red A, para. 253.
[771] Cf. e.g. ICC-01/04-01/07-717, paras. 524, 526; ICC-01/09-01/11-373, para. 292; ICC-01/05-01/08-424, paras. 350–351; ICC-01/04-02/06-2666-Anx3, Separate Opinion of Judge Ibáñez Carranza, paras. 305, 307.

238. Here, no such tasks are identified for Cœur de Lion or Alkanto: the Judgment does not explain how they exercised control over executors or how their conduct combined with Mr. Yekatom's. This omission means the Chamber has not shown that Cœur de Lion and Alkanto themselves had joint control over the crimes, as required for indirect co-perpetration. It also deprives the Appeals Chamber of the framework needed to assess whether Mr. Yekatom's own contribution was 'essential' in the relevant sense.[772] If the roles of the other alleged co perpetrators remain undefined, it cannot be said that his contribution – as opposed to theirs or that of the group as a whole – was such that, without it, the crimes along the Axis would not have occurred or would have been significantly different. Nor can it be said that he acted with the requisite awareness that his own contribution was coordinated with theirs, as the concept of a common plan through an organised apparatus presupposes.[773]

d) Materiality

239. Across all three episodes – 5 December 2013 operation, Yamwara incident and the advance along the PK9–Mbaïki Axis – the Trial Chamber failed properly to apply the control theory standard under Article 25(3)(a) in relation to all counts.[774] For the 5 December operation and the Yamwara incident, it identified no concrete contribution by Mr. Yekatom whose absence would have frustrated the crimes, relying instead on his general leadership status and alleged failure to intervene once crimes initiated by others were already under way. For the Axis, it used the vocabulary of 'essential contribution' while grounding its findings in leadership labels, a disputed instruction and general conditions in Mbaïki, without specifying the essential, co-ordinated contributions of the other alleged co-perpetrators or showing that he had the power to frustrate the crimes in the sense required by the Appeals Chamber. On a proper application of Article 25(3)(a), these defects preclude a finding that Mr. Yekatom 'committed' any of the crimes for which he was convicted as an indirect (co-)-perpetrator; in the absence of reasoned and factually supported findings that his personal conduct amounted to an essential contribution giving him the power to frustrate those crimes, his Article 25(3)(a) convictions cannot stand.

7. Ground 2.7 – The Trial Chamber erred in its findings on Mr. Yekatom's *mens rea*

240. The Chamber erred in law and fact in its assessment of the Appellant's *mens rea* across all three charged events and all counts. It misapplied Article 30 by (i) inferring intent and knowledge from mischaracterised or *post facto* conduct, (ii) conflating the perceptions and motives of others with those of Mr. Yekatom, and (iii) failing to establish his awareness of the factual circumstances underpinning

[772] See also Yanev/van Sliedregt (2019), p. 97, para. 24 and cites therein.
[773] ICC-01/09-01/11-373, para. 292 and cites therein; ICC-01/04-01/07-717, paras. 538-539; ICC-02/05-01/09-3, paras. 209-213.
[774] Judgment, pp. 1373-1379, paras. 4007-4025; pp. 1444-1451, paras. 4233-4249; pp. 1481-1486, paras. 4344-4363.

indirect co-perpetration. In particular, the Chamber erred in finding that Mr. Yekatom was aware that the implementation of his agreement with Cœur de Lion and Alkanto would in the ordinary course of events result in the execution of the material elements of Counts 24–28.

241. Errors concerning *mens rea* for 5 December 2013 operation (Counts 1-6, 8): The Chamber relied primarily on three elements to establish the Appellant's alleged *mens rea* for Counts 1–6 and 8: (i) his presence during the operation; (ii) the alleged act of 'launching' the attack by firing a gun; and (iii) his alleged instructions to target 'all sectors where Muslims are to be found'.[775] Only the third element could, in principle, sustain the Article 30 mental element. The Chamber's approach disregards the broader factual context of the operation, which included a legitimate military objective and concrete precautions taken to minimise harm to civilians.[776] Presence at, and even 'launching' of, a military operation designed and conducted as a limited engagement against an enemy force does not, without more, demonstrate either *dolus directus* of the first or second degree.[777] Even assuming *arguendo* the correctness of the Chamber's reliance on a single, unreliable witness (P-1339) to find that Mr. Yekatom fired into the air to commence the operation, and assuming further that this conduct falls within the confirmed facts and charges,[778] the initiation of a military operation against what is believed to be a legitimate military objective cannot, of itself, satisfy the Article 30 threshold.

242. In reality, the Chamber's conclusion as to *mens rea* rests almost entirely on the content it attributes to Mr. Yekatom's pre-attack instructions. Elsewhere in the Judgment, it finds that his instructions to 'his elements' for the 5 December operation were to fight the Seleka and these instructions 'included targeting sectors where 'Muslims' were to be found'.[779] That finding, repeated in various parts of the Judgment, does not establish an instruction to kill Muslims as such; the stated objective remained the Seleka enemy forces believed to be located in certain sectors, some of which were also inhabited by Muslims. On that basis, an order to target Seleka fighters, even if they were believed to be present in areas where Muslims lived, does not demonstrate that Mr. Yekatom intended, or knew with virtual certainty, that the charged crimes against a civilian population would result.

243. However, in the specific section addressing *mens rea*, the Chamber alters its formulation, now describing the instructions as an order 'to target all sectors where Muslims were to be found'.[780] This is a materially broader and qualitatively different instruction which is nowhere supported in the

[775] Judgment, p. 1376, para. 4016; see also pp. 1356-1357, paras. 3958-3959.
[776] See Ground 3.3.
[777] ICC-01/04-01/06-3121-Red A, paras. 446-449; ICC-01/04-02/06-2666-Anx3, paras. 342-344 and cites therein.
[778] See Ground 1.1; Ground 2.3; Part 5(1).
[779] Judgment, p. 28, para. 74; p. 864; pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1364-1365, para. 3980; p. 1368, para. 3989; p. 1375, para. 4012; p. 1378, para. 4023.
[780] Judgment, p. 1376, para. 4016.

evidential record and is not the formulation analysed elsewhere in the Judgment. If there had truly been an order to target all sectors where Muslims were present, one might argue that Mr. Yekatom knew it was virtually certain that crimes against Muslim civilians would occur. But no such instruction is proved, and the Chamber offers no reasoned explanation for this linguistic escalation at the crucial stage of the Article 30 analysis. The finding on *mens rea* is thus based on a mischaracterisation of the underlying factual finding.

244. In relation to Counts 2 and 3, the Chamber further relies on the reconnaissance mission of 4 December 2013 and on Mr. Yekatom's status as a FACA member, to conclude that he 'knew that unarmed Muslim traders at the Boeing Market enjoyed civilian protection' and that he and his elements 'must have known' that Hassan was employing necessary and proportionate force in self defence.[781] This reasoning is factually and logically flawed. As explained, the reconnaissance mission was a standard precautionary measure taken by a military unit operating against an enemy force; properly understood, it was part of a pattern of precautions consistent with an intent to conduct a limited, discriminate operation, not to attack civilians.[782] It would, moreover, have revealed that at least some of the Traders - who had Seleka affiliations - were armed.[783] This would also accord with the Chamber's own subsequent inference that 'Mr. Yekatom's elements' 'knew that Hassan Mahamat, a Muslim trader bearing a weapon at the time of the attack, was firing in self defence'.[784] Either the elements knew, on the basis of reconnaissance or otherwise, that these traders were armed (and viewed them as hostile actors), or they did not know this and the Chamber's conclusion that they 'must have known' he was acting in self defence is speculative; and as argued elsewhere unsubstantiated on the facts when taken in context.[785] On either view, the Chamber cannot validly infer that Mr. Yekatom possessed the intention to attack protected civilians, or the knowledge that such a result was virtually certain.

245. The Chamber compounds this error by stating that even if Mr. Yekatom 'held the suspicion or an inaccurate assumption that all or some Muslim traders at the Boeing Market were Seleka, such a possibility, suspicion or assumption of the perpetrator does not change the status of the victims at the time of the attack'.[786] While this may be relevant to the objective legal status of the victims, it is a different question for *mens rea*. For Article 30, what matters is what Mr. Yekatom intended and knew. If he believed, even mistakenly, that those persons were Seleka fighters, then his intention was to

[781] Judgment, pp. 1376-1377, para. 4017.
[782] See Ground 3.3; Part 5(1).
[783] See Ground 3.3.
[784] Judgment, pp. 1376-1377, para. 4017.
[785] See Ground 3.3.
[786] Judgment, p. 1377, para. 4018.

engage what he perceived to be legitimate military targets; falling short of the Article 30 threshold. By conflating the legal status of the victims with the accused's mental state, the Chamber misdirected itself in its assessment of the mental element for Counts 2 and 3.

246. As to Count 4, the Defence argued that the OTP had adduced no evidence that Mr. Yekatom personally engaged in acts that threatened or intimidated the Muslim population in a manner calculated to force them to leave Boeing or Cattin.[787] This argument was advanced in relation to the first element of Article 7(1)(d), citing *Simić,* where it was recognised that a lack of genuine choice may be inferred, *inter alia*, from threatening and intimidating acts calculated to deprive the civilian population of the ability to exercise its free will to remain.[788] The point was not to introduce a novel mental element, but to highlight the absence of evidence that Mr. Yekatom's conduct was directed at bringing about the displacement of the population. The Chamber rejects this submission in its discussion of *mens rea*, holding that 'having to show that the accused's acts were 'calculated to force the population to leave' introduces an additional mental requirement that does not exist in the Elements of Crimes'.[789] In so doing, the Chamber mischaracterises the Defence's position - it did not contend that 'calculated to force the population to leave' is a separate mental element; rather, it relied on *Simić* as authority that such calculation may be used to infer the requisite intent to forcibly displace, and conversely, that the absence of such acts undermines any inference of that intent. By reframing the argument as an attempt to add a mental element, the Chamber avoids engaging with the question whether any of Mr. Yekatom's proven conduct was in fact directed at coercing civilians to depart. That failure to address the intention underlying the alleged acts constitutes both an error of law and a failure to provide a reasoned opinion on a central Defence contention regarding the Article 30 mental element for Count 4.

247. For Count 6, the Chamber makes findings concerning the intent and knowledge of 'Mr. Yekatom's elements', including that 'Mr. Yekatom's elements were aware that they were attacking a religious building' and that they 'intended Boeing Mosque to be the object of the attack'.[790] These findings may be relevant to the responsibility of those individuals, but they are not, without more, probative of Mr. Yekatom's *mens rea*. The Chamber itself does not find – and nor does the evidence establish - that he specifically ordered an attack on the Boeing Mosque or that he was present at the time.[791] In the absence of findings that he directed, authorised, or knowingly condoned an attack on a religious building, the mental state of 'subordinates' cannot be imputed to him. The Judgment thus fails to

[787] Yekatom Defence Closing Brief, para. 604.
[788] IT-95-9-T, paras. 125-126.
[789] Judgment, p. 1376, para. 4016.
[790] Judgment, p. 1378, para. 4023.
[791] See Ground 4.3.

articulate how the Appellant could have possessed the requisite intent and knowledge for Count 6, and improperly conflates the *mens rea* of alleged direct perpetrators with that of the accused.[792]

248. The Chamber adopts a similar approach for Count 8 and concludes that 'Mr. Yekatom knew that his elements perceived, and himself perceived, the Muslims in the CAR as collectively responsible for, or complicit in, or supportive of the violence and abuses committed by the Seleka'.[793] This expands upon an earlier finding that Mr. Yekatom 'knew that the Anti-Balaka perceived, and himself perceived'.[794] As set out in Ground 2.1, attributing a unified perception to the heterogeneous Anti-Balaka movement and using that attribution as a basis for individual criminal responsibility is impermissible. The evidentiary record does not show that Mr. Yekatom knew that 'his elements' held such a perception, still less that he adopted it as his own guiding motive.

249. Even if it were established that some members of the group harboured anti-Muslim animus, that fact alone cannot satisfy Article 30. To suggest that a military personnel is virtually certain that crimes will be committed merely because some of his colleagues or even subordinates 'hate the enemy ethnicity' would reduce the threshold of *dolus directus* of the second degree to an unacceptably low level in the realities of armed conflict'.[795] Nor, on the Chamber's own findings, is the specific discriminatory intent required for Count 8 made out. At its highest, the only express instructions it attributes to Mr. Yekatom are to target enemy Seleka forces. Recharacterising such instructions *ex post facto* as an intent to persecute Muslims as such is unsupported by the record and incompatible with the strict requirements of Article 30.

250. Errors concerning *mens rea* for Yamwara base (Counts 11-17): The Chamber relied on four main factors to establish Mr. Yekatom's alleged *mens rea* for Counts 11 to 17: (i) his knowledge of the incident; (ii) his presence at Yamwara in the evening 24 December 2013; (iii) his purported interactions with Saint-Cyr[REDACTED]; and (iv) his interactions with the three women.[796] It then supplemented these with a series of additional considerations said to support these inferences. Each of these factors relates to events after the crimes or to evidence the Chamber found unreliable in other contexts; none can sustain a finding of intent or knowledge at the material time.

251. From the outset, the OTP case rested on the allegation that Mr. Yekatom was present during the commission of the crimes at Yamwara and ordered the torture of Saint-Cyr.[797] This allegation

[792] See Part 4 (unreasoned).
[793] Judgment, p. 1378, para. 4024 (emphasis added).
[794] Judgment, p. 23, para. 48 (emphasis added).
[795] Van der Vyver (2004), pp. 63, 66.
[796] Judgment, pp. 1451-1452, para. 4251.
[797] ICC-01/14-01/18-403-Conf-Corr, paras. 113-115; 124-126.

originated with P-1704, whom the Chamber ultimately found unreliable.[798] The Chamber expressly acknowledged that '[t]he evidence shows that Mr. Yekatom was not present at the scene during the mistreatment of Saint-Cyr, P-1704, P-1705, and P-1716'.[799] In the absence of any finding that he ordered the crimes, the Chamber's assessment of *mens rea* thus depended on Mr. Yekatom's physical presence at the base. On its own findings, that presence is established, 'at the very least', only for the evening of 24 December 2013.[800]

252. Despite this, the Chamber proceeded to enter findings almost entirely in relation to acts for which Mr. Yekatom was not present and which were carried out by others, and then sought to reconstruct his knowledge and intent from factors arising only after the crimes had been committed. This reverses the proper inquiry under Article 30, which concerns the accused's intent and knowledge at the time of the conduct and the consequences, including whether he was aware that those consequences 'will occur in the ordinary course of events'. Endorsement or awareness after the fact, even if established, cannot substitute for contemporaneous intent or knowledge. As set out below, this approach led to a series of errors in respect of each count.

253. Recalling the facts used to underpin Count 11 (other inhumane acts), the Chamber found that it primarily concerned the treatment of the three women purportedly by 'the elements in Mr. Yekatom's group' including: their apprehension, threats, strip-search, being held at gunpoint, and exposure to the torture of Saint-Cyr.[801] According to the Chamber's own chronology, these acts occurred before Mr. Yekatom's arrival; his presence is established by the Chamber only for the evening of 24 December, when he is found to have interacted with the women, and, at the latest, by the morning of 25 December in relation to P-1716.[802] The only conduct attributed to him thereafter concerns arrangements for their transfer to the airport – which, as addressed below, were directed towards their release. None of this demonstrates that he possessed the requisite intent or knowledge at the time when the underlying inhumane acts were committed.

254. Counts 13 and 16 suffer from the same fundamental defect. The Chamber accepted that 'elements in Mr. Yekatom's group' could have viewed Saint-Cyr as integrated within the enemy forces,[803] yet held that he was a civilian at the time of his capture and that this was 'a fact that Mr. Yekatom and his elements were fully aware of'.[804] This reasoning is internally inconsistent and fails

[798] Judgment, p. 1101, para. 3181.
[799] Judgment, p. 1101, para. 3180.
[800] Judgment, p. 1454, para. 4261.
[801] Judgment, pp. 1430-1431, para. 4191.
[802] Judgment, p. 1453, para. 4256.
[803] Judgment, pp. 1453-1454, para. 4259.
[804] Judgment, pp. 1453-1454, para. 4259 (emphasis added).

to establish *mens rea* at the material time. On the Chamber's own findings, Mr. Yekatom was not present at the time of capture and there is no evidence that the direct perpetrators themselves appreciated that Saint-Cyr was a protected civilian. To assert that his civilian status was a fact 'fully' known to Mr. Yekatom 'at the time of capture' is untenable when he was not there. The Chamber later found that Mr. Yekatom became aware of the civilian status of the six persons 'at the very least, on the evening of 24 December 2013' through his interactions with the three female captives and the father, yet it drew from this only *post-hoc* awareness conclusions about his intent at earlier stages, without identifying any evidence of contemporaneous *mens rea*.[805]

255. The Chamber also erred in its analysis of the special intent required for torture as a war crime (Count 13). It dismissed the Defence submission that the personal motives of the direct perpetrator [REDACTED] to inflict pain were relevant to whether the special intent was established,[806] thereby mischaracterising the argument and sidestepping the core issue. It then concluded that '[a]s set out below, Mr. Yekatom and his elements inflicted pain and suffering on Saint-Cyr for the purpose of punishment, intimidation, and discrimination based on religion'.[807] Yet the conduct it relied upon 'below' concerns acts carried out entirely in Mr. Yekatom's absence.[808] The Judgment never explains how his personal special intent, as required by Article 8(2)(c)(i), is established in circumstances where he neither participated in nor ordered the torture and where the direct perpetrator's motives were, on the Chamber's own findings, mixed and partly personal.

256. Nor can the requisite special intent be said to have been 'shared' by Mr. Yekatom, as the Chamber suggests, simply by reference to the perceptions of 'his elements'.[809] The Chamber relied again on his supposed knowledge that Saint-Cyr had links with 'Goula', that the women that Saint-Cyr was escorting were Muslim, and that he allegedly made approving remarks about the incident.[810] Even on the Chamber's version, all of these elements arise only after the crimes had been committed. They cannot retroactively establish that he shared, at the material time, a purpose to torture Saint-Cyr for punishment, intimidation or discriminatory reasons.

257. The same flawed approach underlies the analysis of Count 14. The Chamber acknowledged the personal vendetta and motives of Alkanto, but held that these were irrelevant to the elements of the crime and that '[t]here is nothing in the legal framework of the Court requiring proof of motive of the direct perpetrator of a crime underlying crimes against humanity to establish the mental elements of

[805] Judgment, p. 1454, para. 4261.
[806] Judgment, p. 1455, paras. 4264-4265.
[807] Judgment, p. 1456, para. 4266.
[808] Judgment, pp. 1456-1457, paras. 4267-4269.
[809] Judgment, p. 1457, para. 4270.
[810] Judgment, p. 1457, para. 4270.

such crimes'.[811] While motive is not itself an element, it is crucial where the Chamber seeks to infer that an absent alleged 'chief' 'shared' the perpetrators' intent. In a scenario where Mr. Yekatom was not present and was not the direct perpetrator, the fact that the detention was driven by Alkanto's personal motives breaks the alleged chain of shared intent and undermines the conclusion that Article 30 is satisfied in relation to Mr. Yekatom.

258. This confusion is illustrated by paragraph 4274, which notes that Mr. Yekatom 'must have known' the captives were entitled to procedural guarantees and that these were not afforded to them.[812] Even if correct as a general proposition, this says nothing about his intent at the time of the crimes. Article 30 requires proof that the accused intended the deprivation of liberty in the circumstances of the case, or knew that it would occur in the ordinary course of events; it is not satisfied by showing that he was generally aware of abstract legal obligations. Moreover, on the Chamber's own findings, Mr. Yekatom was not present when the captives were initially detained and mistreated, and when he did intervene, he sought to secure their release, any delay being caused by external factors.[813] General knowledge that detainees should have been afforded rights cannot substitute for contemporaneous *mens rea* for their earlier imprisonment and mistreatment. A similar error appears in paragraph 4275, where the Chamber finds that Mr. Yekatom knew that, at the time of his capture, Saint-Cyr was escorting the three women and 'must have known that the other male captives […] were similarly accompanying the women'.[814] This is not based on evidence of what he actually knew at the time, but on speculation as to what he 'must have known' about events that occurred in his absence. Such imputed knowledge falls short of Article 30, which requires proof of actual intent or knowledge that the relevant consequences would occur in the ordinary course of events. These substantive errors in the *mens rea* analysis are compounded by the Chamber's reliance on unreliable and untested evidence to establish Mr. Yekatom's alleged approval of, or attitude towards, the events after the fact.

259. *P-1654*: The Chamber relied almost entirely on P-1654's prior statement to conclude that: (i) twelve men came to his home and took him to Yamwara; (ii) on arrival he saw P-1704, P-1705 and P-1716 at the same location; (iii) he was interrogated and threatened by Mr. Yekatom, Bojos and Cœur de Lion until around 22:00, with Mr. Yekatom allegedly ordering him not to approach the authorities; (iv) he was informed by P-1704 of the ill-treatment of Saint-Cyr; and (v) he had the impression that Saint-Cyr 'was still in Mr. Yekatom's custody'.[815] To treat these facts as established, the

[811] Judgment, p. 1458, para. 4273.
[812] Judgment, p. 1458, para. 4274.
[813] See Ground 3.1.
[814] Judgment, pp. 1458-1459, para. 4275.
[815] Judgment, pp. 1115-1117 , paras. 3231-3236.

Chamber dismissed the inter-contradictory testimonies of P-1705 and P-1704 about the alleged encounter between P-1654 and Mr. Yekatom,[816] and overlooked inconsistencies between the accounts of P-1654 and P-1716 regarding the chronology and circumstances of their alleged meeting. This constitutes a serious error of evidence assessment.[817]

260. According to P-1654, he saw P-1716 twice: first during his initial visit to Yamwara, when he was allegedly interrogated by Mr. Yekatom, Bojos and Cœur de Lion in the presence of P-1704, P-1705 and P-1716,[818] and again briefly the following morning.[819] By contrast, P-1716 recalled seeing P-1654 only once, [REDACTED] and in the absence of P-1704 and P-1705.[820] Crucially, P-1716 mentioned seeing Mr. Yekatom at Yamwara only when revising his prior statement on the eve of his testimony.[821] The Chamber accepted this last-minute addition without any meaningful analysis, despite Defence submissions about collusion [REDACTED],[822] and despite P-1716's confirmation that he had never seen Mr. Yekatom before [REDACTED] – directly contradicting P-1654's claim of a lengthy interrogation by Mr. Yekatom in his presence.[823] The Chamber also failed to reconcile P-1716's evidence who never witnessed any interaction between Cœur de Lion and P-1654, with P-1654's description of a prolonged questioning session involving both men.[824] By disregarding these material contradictions, the Chamber further erred in its assessment of the reliability of P-1654's account and of the alleged meeting with Mr. Yekatom.

261. In the absence of in-court examination of P-1654, the Chamber was required to approach his prior statement with particular caution. Instead, it relied on that untested statement as the sole substantive source for Mr. Yekatom's alleged interrogation of P-1654 and his supposed knowledge of Saint-Cyr's fate, location and condition on the night of the events.[825] The two other witnesses cited for this purpose, P-1839 and P-0954,[826] offered no corroboration. The Chamber itself found that P-1839's conversation with Mr. Yekatom occurred only after the incident, in an unrelated context,[827] and expressly declined to rely on P-0954 to determine how the Yamwara incident unfolded or when

[816] Judgment, pp. 1117-1118, paras. 3237-3240 (about P-1705); pp. 1115-1116, para. 3231, fn. 7957 (about P-1704).
[817] See Part 4 (evidence assessment and holistic).
[818] Judgment, p. 1116, para. 3232; para. 3234; pp. 1116-1117, para. 3235.
[819] P-1654: CAR-OTP-2053-0112-R04, para. 40.
[820] P-1716: T-148, 32:15-19. See also P-1716: CAR-OTP-2053-0062-R05, para. 50.
[821] P-1716: Corrections CAR-OTP-2135-4118-R01 to CAR-OTP-2053-0062-R05, para. 49.
[822] Yekatom Defence Closing Brief, paras. 438-442. See also Judgment, pp. 1073-1074, para. 3105.
[823] Judgment, p. 1116, para. 3232.
[824] P-1716: T-148, 32:20-33:9. It should also be noted that there is another contradiction between P-1716 and P-1654 on the person that allegedly interrupted their exchange, P-1716 mentioning 'Cœur de Lion', while P-1654 says it was a man referred to as 'CB'. See P-1654: CAR-OTP-2053-0112-R04, para. 42.
[825] Judgment, pp. 35-36, paras. 105-106; p. 37, para. 111; p. 1128, para. 3275; pp. 1446-1447, paras. 4239-4240; pp. 1451-1452, paras. 4250-4253; pp. 1453-1459, paras. 4259-4277.
[826] Judgment, p. 1101, para. 3184.
[827] Judgment, p. 1102, para. 3187. See also Judgment, pp. 1102-1103, paras. 3188-3191.

his alleged phone call took place.[828] Their evidence therefore cannot support a finding of contemporaneous intent or awareness.

262. Accordingly, P-1654's untested and uncorroborated statement became the sole basis for the Chamber's finding that Mr. Yekatom was aware 'of Saint-Cyr's presence at Yamwara at the time of this encounter' and that 'at this stage of the events, Mr. Yekatom also knew of Saint-Cyr's actual physical state'.[829] That finding was decisive for conviction, as it was erroneously used by the Chamber to establish the *mens rea* for Counts 12, 13, 15 and 16.[830] Under Rule 68(2), such a decisive fact concerning the acts, conduct and relevant state of mind of the accused,[831] cannot properly be established solely by untested prior recorded testimony.[832] The Defence was deprived of any opportunity to challenge this evidence on examination by the Defence.[833]

263. Even taken at its highest, P-1654's account could not justify the conclusion that Mr. Yekatom knew what had actually happened to Saint-Cyr, who had been removed before his arrival and was never seen again.[834] Nothing in P-1654's statement shows that anyone informed Mr. Yekatom of the torture,[835] nor does any member of the Lapo Family Group state that they told him about it.[836] A reasonable trier of fact could not, on this basis alone, conclude beyond reasonable doubt that 'at this stage of the events, Mr. Yekatom knew of Saint-Cyr's actual physical state'.[837]

264. This error is magnified by the way the Chamber admitted and then used P-1654's statement. In its admission decision,[838] the Chamber held that receiving the statement under Rule 68(2) was not prejudicial to, or inconsistent with, the rights of the accused, noting in particular that there was 'not an absolute bar' to such evidence even where it concerned the acts and conduct of the accused.[839] Yet, at the deliberation stage, it ignored the 'sole or decisive' safeguard,[840] and allowed the statement to become the only evidence on a fact indispensable for conviction,[841] contrary to its own jurisprudence

[828] Judgment, pp. 1104-1105, para. 3193, fn. 7889.
[829] Judgment, p. 1118, para. 3241.
[830] Judgment, p. 36, para. 106; p. 1447, para. 4240.
[831] IT-98-29-AR73.2, para. 11.
[832] ICC-01/04-02/06-2666-Red A, para. 16. See also MICT-13-55-A, para. 449; IT-05-88-A, para. 96. See also STL-11-01/T/TC, paras. 275-277; STL-11-01/A-2/AC, para. 196.
[833] See Application nos. 26766/05 and 22228/06, paras. 118, 127.
[834] Judgment, p. 34, para. 101; p. 1099, para. 3177.
[835] P-1654: CAR-OTP-2053-0112-R04, para. 43.
[836] Judgment, pp. 1113-1114, paras. 3222-3226. See P-1705: T-211, 49:6-18 and specifically line 13 *('après cette présentation, personne ne lui a répondu'*) and line 18 *('Je le répète: je n'ai pas eu la possibilité de m'entretenir avec lui'*).
[837] Judgment, p. 1118, paras. 3241-3242.
[838] ICC-01/14-01/18-1975-Conf, para. 39. The Defence had forcefully argued in opposition: ICC-01/14-01/18-1181-Conf, specifically paras. 22-32.
[839] ICC-01/14-01/18-1975-Conf, para. 54.
[840] Application no. 23369/16, paras. 99-100.
[841] Re 'sole or decisive test' see ICC-01/04-02/06-2666-Red A, para. 16. The ECtHR has defined the two limbs of this test:

on the limits of Rule 68(2).[842]

265. The Chamber also relied, at the admission stage, on the supposed opportunity for the Defence to confront 'significant parts' of P-1654's account through other members of the Lapo family.[843] Once the Chamber later disregarded the in-court testimonies of those witnesses – precisely because Defence questioning exposed contradictions[844] – this safeguard disappeared. It is particularly telling that the Chamber excluded live testimony from key members of the same Lapo Family Group, yet relied exclusively on the untested statement of P-1654, a central figure in that group and a key source of testimonial contamination.[845] This course of action caused manifest prejudice and invalidates the findings of *mens rea* based on that statement.

266. *P-1839:* The Chamber further erred in fact and law by mischaracterising the evidence of P-1839. It extrapolated from an equivocal conversation that she allegedly had with Mr. Yekatom and concluded that 'Mr. Yekatom came to know about this incident, including the actions of the element that had cut off Saint-Cyr's toes, fingers and an ear, shortly after the fact'.[846] Yet the Chamber itself recorded that this conversation took place after the Yamwara incident, in an unrelated context,[847] and that when first asked whether Mr. Yekatom knew of the incident P-1839 replied unequivocally: '*Là, je ne sais pas'*.[848] A post-factum conversation of uncertain content cannot establish contemporaneous intent or knowledge.[849]

267. The Chamber also ignored P-1839's admitted uncertainty about what Mr. Yekatom meant. She stated that '*il a juste dit 'bon boulot'* and added '*je ne sais pas si ça fait référence à ça*'.[850] Despite this, the Chamber treated her subjective impression as confirmation of his knowledge of the torture.[851] This was an error of law: opinion evidence about what an accused 'must have meant' cannot substitute

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Sole means the only evidence against the accused; decisive refers to evidence so significant that it determines the outcome of the case: Application no. 9154/10, para. 123: 'As regards the question whether the evidence of the absent witness whose statements were admitted in evidence was the sole or decisive basis for the defendant's conviction (second step of the *Al-Khawaja* and *Tahery* test), the Court reiterates that "sole" evidence is to be understood as the only evidence against the accused (see *Al-Khawaja* and *Tahery*, cited above, § 131). "Decisive" evidence should be narrowly interpreted as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case.' The ad hoc tribunals confirmed that the 'sole and decisive' test applies to any fact indispensable for a conviction: MICT-13-55-A, para. 449; IT-05-88-A, para. 96; See also STL-11-01/T/TC, paras. 275-277; STL-11-01/A-2/AC, para. 196.

[842] ICC-01/14-01/18-2127-Conf, para. 36. See also ICC-01/14-01/18-2424-Conf, para. 96.

[843] ICC-01/14-01/18-1975-Conf, para. 55.

[844] See for example Judgment, p. 1101, para. 3180; p. 1109, para. 3208; pp. 1117-1118, paras. 3237-3240.

[845] See also ICC-01/14-01/18-1181-Conf, paras. 33-37. See Ground 4.7.

[846] Judgment, p. 1102, para. 3186.

[847] Judgment, p. 1102, para. 3187.

[848] Judgment, p. 1102, para. 3188, fn. 7872. See original in French: P-1839: T-170, 35:17-20.

[849] Judgment, pp. 1451-1452, paras. 4251-4253; pp. 1453-1454, paras. 4256-4259; p. 1454, para. 4261.

[850] P-1839: T-171, 16:1-7.

[851] Judgment, p. 1102, paras. 3186-3187.

for proof beyond reasonable doubt of his mental state, and risks usurping the role of the trier of fact.[852] The error was aggravated by the Chamber's reliance on the English phrase 'good job insofar', a formulation introduced by the OTP during questioning.[853] P-1839's original words were simply '*bon boulot*',[854] a neutral expression that does not imply an ongoing course of conduct or knowledge of specific prior acts. By adopting the OTP's expanded wording, the Chamber read into the evidence a meaning unsupported by the record. Nothing in P-1839's testimony suggested that Mr. Yekatom knew the specific details of Saint-Cyr's torture, let alone that he approved it.[855] Defence questioning showed that her assumptions were based entirely on a narrative provided by [REDACTED].[856] The Chamber nevertheless inferred that the element responsible was 'welcomed' and 'rewarded' by Mr. Yekatom,[857] even though P-1839 used such language only in relation to her own unit and, in another context, the discovery of a SIM card.[858] The Chamber even speculated that [REDACTED] were a reward for the Yamwara incident, although [REDACTED] only in connection with PK9–Mbaïki and never linked them to Yamwara.[859] By taking her words out of context and ignoring available reasonable inferences, the Chamber violated the principle of *in dubio pro reo*. Even if her account is accepted at face value, it does not establish knowledge or intent at the time of the crimes.[860]

268. *P-0954*: The Chamber likewise erred in its use of P-0954's testimony. It described his evidence as contradictory and unreliable, expressly stating that it 'does not rely on P-0954 when entering conclusions on how the Yamwara incident unfolded or when this phone call took place'.[861] Nevertheless, it relied on the same testimony to infer Mr. Yekatom's *mens rea*, on the basis that he allegedly said during a phone call that 'they had peeled the papaya', meaning that a 'traitor' 'in cahoots with the Seleka' had been killed.[862] This selective reliance is inherently inconsistent and legally unsustainable.

269. P-0954's account of the Yamwara events rested entirely on hearsay from supposed RFACPP members,[863] [REDACTED][864] or to have no knowledge of the incident.[865] He gave incompatible

[852] *R v. Sekhon*, [2014] 1 SCR 272, para. 80. See Ground 4.1.
[853] Judgment, pp. 1102-1103, para. 3189, fn. 7876, referring to the English transcription P-1839: T-171(ENG), 16:12-14 (emphasis added).
[854] P-1839: T-171, 16:1-7.
[855] Judgment, p. 1102, para. 3186; p. 1445, para. 4237; P-1839: T-171, 16:1-7.
[856] [REDACTED].
[857] Judgment, pp. 34-35, para. 103; p. 1103, para. 3190, p. 1445-1446, para. 4237; p. 1457, para. 4270.
[858] P-1839: T-170, 35:10-20; T-173, 76:9-18.
[859] Judgment, p. 1103, para. 3190; pp. 1445-1446, para. 4237; P-1839: T-170, 55:7-17; 63:4-23. The element is part of Mr. Yekatom's security after being treasurer.
[860] Judgment, pp. 34-35, para. 103; p. 1103, para. 3190, p. 1445-1446, para. 4237; p. 1457, para. 4270.
[861] Judgment, pp. 1104-1105, para. 3193, fn. 7889.
[862] Judgment, pp. 34-35, para. 103; p. 1106, para. 3198; p. 1107, para. 3201; p. 1447, para. 4241; pp. 1451-1452, paras. 4251-4253; p. 1457, paras. 4270-4271; p. 1458, paras. 4274-4277.
[863] [REDACTED].
[864] [REDACTED].
[865] [REDACTED].

accounts of the sequence of the death,[866] and his versions of the victim's identity, the arrest, and the alleged phone call do not align with the incident.[867] The Chamber's conclusion that he had been 'forthcoming on the details that he did not know' is contradicted by the categorical way in which he presented demonstrably false information – a factor the Chamber failed to weigh when assessing credibility.[868]

270. Although the Chamber recognised that it could not rely on P-0954 to establish how the incident unfolded or how Saint-Cyr died,[869] it nonetheless inferred from his evidence that the 'aide de camp to Djotodia's wife' referred to by P-0954 was Saint-Cyr Lapo.[870] This inference has no evidentiary basis and directly contradicts the Chamber's own assessment of his unreliability. It also ignores the fact that P-0954 claimed that this person had been '*froidement abattu […] devant Yekatom'*, making no mention of torture and describing a situation that bears no resemblance to the Yamwara incident.[871] The Chamber further failed to analyse P-0954's testimony as a whole. He explained that his alleged call with Mr. Yekatom was prompted by what he had heard from his informants – that is, the call narrative itself was derivative of hearsay later shown to be false.[872] In these circumstances, the Chamber was required to explain why it nevertheless regarded this conversation as credible and probative of Mr. Yekatom's mental state.[873]

271. *P-1716:* The Chamber also relied on P-1716's evidence about an alleged ransom payment to Cœur de Lion and Mr. Yekatom to conclude that, by 25 December 2013, Mr. Yekatom was aware of

[866] P-0954 alleged that the 'aide de camp' was slaughtered on the spot when they were arrested, his throat cut, in the presence and on the order of Mr. Yekatom (P-0954: CAR-OTP-2048-0171-R03, para. 86); in his in-court testimony P-0954 will then say that he was shot (P-0954: T-166, 41:10-11: *'cet élément a été froidement abattu'*) and reiterated he was killed immediately (P-0954: T-168, 60:13). Another narrative will be that the individual was killed on the spot before the woman being transferred to the base (T-168, 61:1-8). In contrast with the findings of the Trial Chamber on the incident.

[867] P-0954 alleged that General Lapo's son, aide de camp of the wife of Djotodia, that was killed (P-0954: CAR-OTP-2048-0171-R03, para. 86; T-166, 41:4-5), while in reality [REDACTED]; P-0954 only mentioned that Djotodia's wife would have been held at Yamwara (P-0954: CAR-OTP-2048-0171-R03, para. 86; T-166, 41:4-5), while in reality, even by omitting the men, in total three women were held, none of which was the wife of Djotodia. P-0954 alleged that Djotodia's wife and her aide de camp were attacked while travelling in a vehicle (P-0954: CAR-OTP-2048-0171-R03, para. 86; T-166, 41:7-9), which is wrong both as to the composition of the group that was attacked and the manner in which they were travelling (on foot versus in a car).

[868] Judgment, p. 99, para. 304; p. 1104, para. 3193; P-0954: T-168, 60:21-28: '*Je ne sais pas de quel mètre ou à côté du véhicule où ils l'ont emmené quelque part pour le tuer, mais non, mais ils l'ont tué, c'est ce que j'ai vu, ils ont vraiment tué sur place. C'est ce que j'ai appris. Q. [12:45:08] O.K. Je veux juste clarifier quelque chose, parce que vous dites: « Je ne sais pas à quel mètre. Donc, dans votre déclaration, vous dites–et je vous cite: « Ils l'ont amené à quelques mètres du véhicule R. [12:45:43] C'était ça parce que je connais pas la distance, c'est-à-dire j'étais à quelques mètres du véhicule, d'après l'explication des intéressés.'*

[869] Judgment, p. 1105, para. 3194.

[870] Judgment, p. 1105, para. 3196.

[871] Judgment, p. 1105, para. 3197. For example, P-0954 claims that Yekatom spoke to him about what happened to 'Djotodia's wife' which has nothing to do with the evidence heard by the Chamber. P-0954: T-168, 64:21-65:5. This extract of P-0954 testimony places the phone call after the liberation of 'a' woman.

[872] Judgment, pp. 1105-1106, paras. 3197-3198. See Part 4 (unreasoned).

[873] Judgment, p. 1104, para. 3193; pp. 34-35, para. 103; p. 1106, para. 3198; p. 1107, para. 3201; p. 1447, para. 4241; pp. 1451-1452, paras. 4251-4253; p. 1457, paras. 4270-4271; p. 1458, paras. 4274-4277.

P-1716's capture and mistreatment.[874] This finding rested solely on P-1716's testimony that Mr. Yekatom was present when the ransom was paid and personally set the conditions of his release.[875] His prior recorded statement, in which he provided a detailed account of the discussion between Cœur de Lion and [REDACTED], made no mention whatsoever of Mr. Yekatom's presence.[876]

272. In court, P-1716 sought to explain this omission by claiming that he had not been specifically asked about Mr. Yekatom.[877] The Chamber merely noted this explanation in a footnote, yet accepted his live testimony as credible.[878] This does not amount to a reasoned opinion. The omission is irreconcilable with P-1716's own description of Mr. Yekatom as '*le chef de tous ceux qui étaient à Yamwara*', who was present and '*qui a décidé de [son] sort*'.[879] A person fitting that description could not plausibly have been omitted from a prior detailed account of the ransom discussion. Given the belated and implausible addition of Mr. Yekatom's presence, P-1716's acknowledged contacts with [REDACTED],[880] and the Defence submissions on contamination,[881] the Chamber was required at minimum to address explicitly the reliability of this new allegation. Its failure to do so amounts to an error of fact and law. The acceptance of this inconsistent testimony was material: it formed the sole basis for the finding that Mr. Yekatom knew of P-1716's detention and mistreatment by 25 December 2013 and that he exercised control over those responsible.[882]

273. Absent this error, there is no direct evidence that Mr. Yekatom was present at the alleged ransom payment, that he set conditions for release, or that he was informed of P-1716's detention and mistreatment at that time. A reasonable trier of fact would, at the very least, have had a reasonable doubt as to his knowledge by that date, and the related findings on *mens rea* for P-1716's imprisonment cannot stand.[883]

274. Errors concerning *mens rea* for PK9-Mbaïki Axis (Counts 24-28): At the outset, it is recalled that the Chamber convicted Mr. Yekatom as an indirect co perpetrator, finding that a criminal agreement existed between Mr. Yekatom, Cœur de Lion and Alkanto along the Axis after 10 January

[874] Judgment, p. 36, para. 107; p. 1120, para. 3250; p. 1415, para. 4142; p. 1431, para. 4192; pp. 1434-1435, para. 4201; p. 1439, para. 4217; pp. 1448-1449, para. 4245; pp. 1458-1459, para. 4275.
[875] P-1716: CAR-OTP-2135-4118 (corrections to P-1716's statement); T-147, 17:4-24; 20:10-15.
[876] P-1716: CAR-OTP-2053-0062-R05, paras. 47, 49.
[877] P-1716: T-147, 20:25-22:1; 22:27-23:12; CAR-OTP-2135-4118.
[878] Judgment, p. 1120, para. 3250, fn. 7985.
[879] P-1716: T-147, 22:27-23:12.
[880] P-1716: T-148, 34:11-23.
[881] See Part 4 (unreasoned); Yekatom Defence Closing Brief, paras. 434-440, 446. See also Yekatom Closing Statements: T-308 (FRA), 44:20-27; 52:16-24.
[882] Judgment, p. 1120, para. 3250. See also p. 1415, para. 4142; p. 1431, para. 4192; p. 1434, para. 4201; p. 1439, para. 4217; pp. 1448-1449, para. 4245; p. 1458, para. 4275.
[883] Judgment, pp. 1448-1449, para. 4245; p. 1458, para. 4275.

2014.[884] However, as set out in Grounds 2.4 / 2.6, beyond merely asserting the existence of such an agreement, the Chamber neither substantiated its existence nor articulated how the alleged co-perpetrators exercised control over the group or what their essential contributions were. In particular, notwithstanding its own statement of the legal test for indirect co-perpetration, including the requirement that the accused be aware of the factual circumstances enabling him to exercise joint control over the crime,[885] the Chamber did not undertake any assessment of whether Mr. Yekatom possessed such awareness. In the absence of any such analysis, the Chamber erred in law and in fact in finding that Mr. Yekatom had the requisite *mens rea* as an indirect co-perpetrator.

275. With respect to the specific mental elements for Counts 24-28, the Chamber relied on three material factual findings to underpin its finding that Mr. Yekatom had the requisite *mens rea*: first, that 'Mr. Yekatom, with Cœur de Lion and Alkanto, issued specific instructions to their elements'.[886] Mere reference to 'specific instructions', without an explanation of their nature, content, etc., cannot support the impugned finding. Nor can further detail simply be inferred; factual findings underpinning *mens rea* must be clear and reasoned.[887] In any event, Mr. Yekatom's instructions were legitimate; nor is there any evidence that he was aware of unlawful instructions given by Cœur de Lion or Alkanto.[888]

276. Second: that Mr. Yekatom took part in the Church Meeting, 'at which time the removal of the Muslim civilian population from Mbaïki was a foregone conclusion'.[889] At the outset: the Chamber found three 'sets' of departures – the first two involving departures from the Axis and the third, departures from Mbaïki.[890] The 'foregone conclusion' finding specifically pertains to departures from Mbaïki and not Axis Departures;[891] and whereas the Trial Chamber found that the departure of Mbaïki's Muslims was a foregone conclusion on 30 January 2014, it entered no finding as to whether this was the case prior to that date and/or if so, when this might have crystalised.[892] As such, none of the *mens rea* findings support a conclusion that Mr. Yekatom possessed the necessary *mens rea* prior to 30 January 2014, including vis-à-vis the Axis Departures.[893] Further, the flawed logic is apparent. The reasoning is circular: Mr. Yekatom knew Muslims would be dislocated as matter of virtual certainty

[884] Judgment, p. 1484, paras. 4356.
[885] Judgment, p. 1325, para. 3875.
[886] Judgment, p. 1487, para. 4365.
[887] See Part 4 (unreasoned).
[888] See Ground 2.3.c), and d).
[889] Judgment, p. 1487, para. 4365.
[890] Judgment, pp. 1470-1471, paras. 4310-4313.
[891] As is also clear from the evidentiary foundation of the 'foregone conclusion' finding, which is limited to Mbaïki; see Judgment, pp. 1205-1208, paras. 3491-3496 (on evidence that 'the removal of Muslims from Mbaïki was decided at the meeting'); pp. 1238-1241, paras. 3595-3609 (on evidence of the reasons why Muslims 'fled Mbaïki').
[892] Judgment, p. 39, para. 120; see also, p. 1205, paras. 3491.
[893] Given that the third *Mens Rea* finding postdates the Axis departures; see below.

(Proposition A), because Muslims' dislocation from Mbaïki was a foregone conclusion, i.e. 'a result that can be predicted with certainty' (Proposition B).[894] Proposition B cannot logically constitute proof for Proposition A. Moreover, the 'foregone conclusion' finding is a subjective assessment of the Chamber itself, that does not establish who (besides the Chamber) was aware that the departure was a 'foregone conclusion'. Most importantly, it does not purport that Mr. Yekatom was aware that 'the removal of [Mbaïki's Muslims] was a foregone conclusion'. A critical link in the chain is thus missing, between the objective finding that these departures were a foregone conclusion, and the subjective finding that Mr. Yekatom was aware that these departures would occur in the ordinary course of events.

277. This critical link cannot be simply implied or inferred. While the Chamber found that i) Mr. Yekatom was present at the Church Meeting and ii) the removal of Mbaïki's Muslim was 'decided' there, at no point did it infer from these two findings, to the requisite standard, that Mr. Yekatom was aware that the departure was 'decided' (let alone his awareness that it was a 'foregone conclusion'). This is not accidental: there is no evidence that could ground such an inference to the necessary exclusion of all alternative reasonable inferences. This is particularly clear from the testimonies of the Church Meeting attendees – in particular, D29-5012, who organised and conducted the Church Meeting, was unaware that the Muslims would depart;[895] Mbaïki Imam P-1595, who was also caught by surprise by the evacuation;[896] and Mbaïki Mayor P-1838 (who sat with Mr. Yekatom during the meeting) who gave express evidence that he did not know if or when Mr. Yekatom was informed of the decision.[897] Indeed, the sole reference to Mr. Yekatom's prior awareness of the departures is in a subsidiary finding elsewhere in the Judgment; and neither evidence nor reasoning is provided as to the basis of this subsidiary finding.[898]

278. The Chamber's evidence assessment was typically unreasonable. It did not properly consider the above evidence. It distorted[899] and/or ignored[900] parts of P-1813's testimony. It relied on meeting

[894] OED, 'foregone conclusion'.
[895] D29-5012: T-294, 54:21-55:4; T-295, 5:18-24. See also [REDACTED] (identifying D29-5012 in CAR-D29-0010-0172, seen conducting the Church Meeting).
[896] P-1595: CAR-OTP-2104-0274-R02, para. 88 ('I had not been informed on time so we were not ready to move. I was caught by surprise when I saw a Chadian vehicle with a big gun arriving in the city.'); cf. Judgment, pp. 1205-1206, para. 3491. See also, P-2389: CAR-OTP-2104-0033-R01, paras. 66-67 (on his being unaware of the date of the expected evacuation).
[897] P-1838: T-215, 30:17-26. See also D29-5013: T-285, 47:5-23 (identifying P-1838 in CAR-D29-0010-0167).
[898] Judgment, p. 1213, para. 3519. See Part 4 (unreasoned).
[899] P-1813: T-182, 33:11-15 ('*La décision de solliciter au niveau des hiérarchies, […] la décision avait été réellement […] prise ou discutée à l'occasion de la réunion de St Jeanne d'Arc.*'); contra Judgment, pp. 1205-1206, para. 3491, finding P-1813 'later clearly indicated that the decision to take them out of Mbaïki "was taken and discussed during the [Church Meeting]" [emphasis added]'). See Part 4 (bias).
[900] P-1813: CAR-OTP-2069-0035-R02, para. 53 ('We discussed whether it was possible that the Chadian Muslims could

notes purportedly handwritten in French by [REDACTED], ignoring the evidence that [REDACTED] was unable to write in French.[901] It discarded the unambiguous insistence of attendee P-1838 that the RFACPP were not present when 'the decision was made to evacuate the Chadians',[902] on the unreasonable basis that P-1838 was referring to different meetings – thereby contradicting its own prior finding on P-1813's evidence that the decision was only discussed on one occasion, i.e. the Church Meeting.[903] It relied on evidence of purported post-meeting 'logistical' discussions with Bangui involving Mbaïki authorities, D29-5015 and [REDACTED] DRC; yet it ignored these witnesses' own evidence indicating the contrary.[904] It mischaracterised [REDACTED] evidence of a conversation between [REDACTED] and Muslim evacuees, to suggest that it was Mr. Yekatom to whom [REDACTED] referred,[905] contrary to basic grammar and reading comprehension, e.g. the fact that as '*ils*' is a third person plural pronoun, it cannot refer to Mr. Yekatom; or that as a rule, where a subject is introduced in a question, pronouns used in the answer refer back to that subject.

279. Even if *arguendo* Mr. Yekatom was aware that the departure was decided, no explanation is given as to why this translates into knowledge that it was linked to the RFACPP advance or presence, given that Muslims' progressive departures had commenced months prior to the RFACPP advance and the Church Meeting, triggered by mass anti-Muslim violence and the Seleka withdrawal; and given that the RFACPP's presence in Mbaïki had been specifically requested by local authorities and a humanitarian NGO.[906]

280. Third, that 'Mr. Yekatom and Cœur de Lion knew that elements of the group committed acts of violence in Mbaïki'.[907] No indication is provided as to what these 'acts of violence' comprised – their degree, nature, frequence, etc; nor what Mr. Yekatom knew specifically; nor any reasoning as to how awareness of unspecified 'acts of violence' should translate into awareness that implementation of the agreement would result, as a matter of virtual certainty, in Muslims being dislocated or Saleh being

be moved to BANGUI while the tensions settled down.'); cf. Judgment, pp. 1205-1206, para. 3491 (finding P-1813 'stated that one of the issues they discussed at the meeting was "the movement of the Chadian Muslim community").

[901] [REDACTED]; CAR-OTP-00001500-R01 ([REDACTED] corrections to statement written by an interpreter); CAR-OTP-00001501-R01 (explanatory note to WS corrections indicating that [REDACTED] requested the interpreter to annotate his statement); see also email from VWU to parties and Chamber indicating that the witness should not be asked to write (11 may 2023, 15:53); cf. Judgment, pp. 1205-1206, para. 3491. See [REDACTED].

[902] P-1838: T-215, 29:1-14 cf. Judgment, pp. 1207-1208, para. 3495.

[903] Judgment, pp. 1207-1208, para. 3495; cf. Judgment, pp. 1205-1206, para. 3491 ('finding P-1813 'later clearly indicated that the decision to take them out of Mbaïki "was taken and discussed during the [Church Meeting] and on that occasion only" [emphasis added]). The meeting referred to by P-1838 involved 'local authorities and administration' and therefore would not have taken place without P-1813's knowledge; see P-1838: T-215, 29:14-20. The Trial Chamber also relied on P-1838's prior statement while ignoring his in-court testimony that he had erred therein; see P-1838: T-215, 28:27-29:20.

[904] D29-5015: T-254, 85:3-14; [REDACTED]; Cf. Judgment, pp. 1207-1208, paras. 3494-3496. See also D29-5012: T-294, 23:8-25. D29-5012 was D29-5015's deputy; see D29-5015: T-254, 36:6-7.

[905] [REDACTED]; cf. Judgment, pp. 1206-1207, para. 3492. See Part 4 (bias) / Annex 5, row 22.

[906] See Ground 3.2.e), and f).

[907] Judgment, p. 1487, para. 4365.

killed by a mob. This conspicuous ambiguity is compounded in the Chamber's 'reasoning' thereon: while this finding purportedly 'transpires from the evidence [of] P-1666, P-2353 and P-2354', no references are provided.[908] No explanation is given as to how it was determined that these 'acts' could be safely attributed to the RFACPP.[909] Nor do the Chamber's findings on Mr. Yekatom's interactions with these individuals provide sufficient clarity in this regard.[910] Notably, the evidence of P-2353, who stated that he 'never heard of anyone complaining to [Mr. Yekatom] about the behaviour of his elements', plainly contradicts the finding.[911] Nor did the Chamber cite to P-1839's evidence of Cube Maggi's conduct, which would in any event have been impermissible given i) the OTP's failure to elicit clarifying information as to whether Mr. Yekatom actually witnessed his conduct;[912] and ii) that it was not properly pleaded as a basis for Mr. Yekatom's *mens rea*. This lack of reasoning is erroneous: the Chamber was obliged to clearly identify the evidence relied upon to enter the constituent finding underpinning *mens rea* elements; and its failure to do so frustrates both Mr. Yekatom's exercise of his right of appeal, and the Appeals Chamber's ability to duly ensure that key findings are sufficiently supported in the evidence.[913]

281. In any event, the second and third *mens rea* findings were not properly pleaded *qua* material facts underpinning the Appellant's *mens rea* under Counts 24-28, and fall outside the scope of the charges as confirmed; they therefore cannot be used to found a conviction, pursuant to articles 74(2) and 67(1)(a) and (b).[914]

282. Materiality: These errors were material to the Judgment. *Mens rea* is an essential element of all crimes and modes of liability under Article 30; where it is not established beyond reasonable doubt, a conviction cannot stand. Had the Trial Chamber correctly applied the legal standard and properly evaluated the evidence, it could not reasonably have concluded that Mr. Yekatom possessed the requisite intent or knowledge for Counts 1–8, 11–17 and 24–28, whether as principal, indirect co-perpetrator, or otherwise. In particular, absent the mischaracterisation of his alleged instructions on 5 December,[915] the improper reliance on *post facto* and unreliable evidence concerning Yamwara,[916] and the erroneous finding that he had the requisite *mens rea* both for the specific crimes committed during the advance along the axis and for the implementation of any agreement with Cœur de Lion and

[908] Judgment, pp. 1226-1227, para. 3558.
[909] See Ground 2.2.d).
[910] Judgment, pp. 1214-1216, paras. 3523-3526.
[911] P-2353: CAR-OTP-2100-0226-R03, para. 66.
[912] See also, Yekatom Closing Statements, T-308 (ENG), 68:4-69:23, citing IT-96-21-A, paras. 438-452 (in particular para. 452).
[913] See Part 4 (bias).
[914] Cf. DCC, para. 352; DoCC, paras. 129-134, 139-140; OTP Closing Brief, para. 479. See Ground 1.1.
[915] Judgment, pp. 1376-1378, paras. 4014-4024.
[916] Judgment, pp. 1451-1459, paras. 4250-4276.

Alkanto would, in the ordinary course of events, result in the material elements of Counts 24-28,[917] a reasonable trier of fact would have had at least a reasonable doubt as to his mental state. The impugned errors thus materially affected the convictions and the overall sentence, requiring that the relevant findings be quashed or, at a minimum, vacated and remitted.

3. Part 3 – Errors in failing to consider the NIAC circumstances

283. The Chamber erred in law and fact by failing to situate Mr. Yekatom's conduct within the realities of an ongoing NIAC in the CAR – including the collapse of State authority, the absence of effective security forces, and fluid, hostile front lines – and its tendency to assess incidents as if they had occurred in a peacetime law-and-order setting. A chamber is required to assess contentious settings and adopt the standpoint of the combatant facing criminal proceedings, particularly when the legality of military operations must be assessed. Military operations must not be assessed as isolated acts,[918] but evaluated *in concreto* within the broader context of the armed conflict. The sound application of the law depends on a chamber's precise and thorough understanding of the factual record, which requires examining core elements of armed conflict (e.g. troop identification, movements, means, weaponry, and military objectives).[919] It is well established that an accused's conduct must be assessed based on the information and means available to him at the time, not in hindsight;[920] and that a Chamber must identify concrete measures he could reasonably have taken in light of the operational realities and conflict dynamics he faced.[921]

284. By definition, armed groups conduct military operations; they are inherent to armed conflicts. The term military operations means any troops, manoeuvres or activities carried out by armed forces to achieve a military objective. Armed groups may establish checkpoints as a matter of military necessity, provided that their operation complies with IHL;[922] their lawfulness depends on the manner in which they operate and the purpose they serve. Checkpoints can have different objectives including: protection of civilian populations; force preservation; and prevention of infiltration, sabotage and espionage.[923]

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[917] Judgment, pp. 1487-1488, paras. 4364-4368.
[918] Maison (2012), pp. 115-122.
[919] IT-95-14-A, paras. 325-335; see also *Ibid*.
[920] IT-98-29-T, para. 58, fn. 109; Bill (2009), pp. 134-135.
[921] ICC-01/05-01/08-3636-Red-A, pp. 66-67, paras. 168-170; ICRC Principle of Proportionality, pp. 61-62.
[922] Sassòli (2025), p. 344; Heffes (2022), pp. 135-136: see also definitions of military necessity by international and national manuals: ICRC Casebook Glossary, Law of Armed Conflict (Australia), p. 38; The Joint Service Manual of The Law of Armed Conflict (UK), p. 75; Manual of the Law of Military Operations (France), p. 21; The Soldier's Handbook on the Law of Armed Conflict Applicable to Land Warfare (Canada).
[923] Manual of the Law of Armed Conflict (Norway), pp. 265-266; ICRC Principle of Proportionality, p. 25; UN Peacekeeping PDT, Checkpoints, p. 6; CICDE Gestion des Personnes Capturées (France), paras. 205-210; in accordance with article 27(4) of GC IV, see ICRC Commentary on GC IV (2025); see also PKSOI Protection of Civilians Military Reference Guide (U.S.), p. 73: checkpoints are frequently used to control traffic, particularly along major thoroughfares and at key nodes such as bridges.

285. Armed groups have an implicit authority to deprive people of their liberty for reasons related to the armed conflict, inter alia for security reasons.[924] In IACs, checkpoints constitute permissible 'measures of control and security', provided that they are necessary, proportionate, and related to the conflict;[925] this applies mutatis mutandis to NIACs. Moreover, IHL requires parties to an armed conflict to protect civilians under their control. Unduly restricting defensive operations, such as the establishment of checkpoints aimed at inter alia protecting civilians, would disincentivise the very objective of IHL i.e. safeguarding the civilian population.[926] From a practical perspective too, denying parties in a NIAC the authority to arrest or detain would have significant consequences for the effectiveness of IHL.[927]

1. Ground 3.1 – Failure to consider security/operational context at Yamwara

a) Errors in assessment of checkpoints at Yamwara

286. The Chamber failed to situate the establishment of checkpoints at Yamwara within the prevailing security context and the continued military threat posed by the Seleka following the failed 5 December operation. It failed to recognise the acute insecurity faced by the RFACPP at Yamwara and did not consider the Defence submissions on the purpose of the checkpoints in this context.[928] This led to a fundamental misapprehension of the defensive nature and purpose of the checkpoints, and abundant evidence on the context of Seleka reprisals, and looting and insecurity arising from ongoing clashes between Seleka and 'anti-balaka' groups.[929]

287. The Chamber erred in assessing the security situation of RFACPP members by disregarding the conditions at Yamwara,[930] including evidence of Seleka attacks, ongoing threats, and the stark equipment disparity that left the RFACPP highly vulnerable.[931] A reasonable trier of fact would have considered the Seleka's targeting, including torture and killing, of FACA members, who made up the

[924] GC IV, Article 8; ICRC Commentary on GI IV (2025) on Article 3; AP I, Article 5; ICRC Rules of Customary IHL, Rule 99.
[925] ICRC Commentary on GI IV (2025) on Article 27(4): 'Other security measures may involve establishing checkpoints'; ICRC Casebook, Non International Armed Conflict, both branches of international humanitarian law rest upon common principles, recourse to analogy is therefore necessary to interpret certain provisions and fill gaps within the framework applicable to NIACs; Sassòli (2024), pp. 227, 247, 249, 252.
[926] ICRC Principle of Proportionality, p. 16.
[927] Murray (2017), p. 450.
[928] See Yekatom Defence Closing Brief, paras. 229-242, 333; 419-422; 607.
[929] On Seleka reprisals: P-1839: T-172, 26:9-12; 27:7-14; P-1704: T-128, 34:14-22; 57:6-16; P-0884: T-057, 44:6-21; TCV-0952: T-252, 19:1-14; P-0446: T-099, 22:1-14; 36:16-37:13; CAR-OTP-2065-1568 / CAR-D29-0006-0090; CAR-D29-0002-0117, p. 0117; CAR-OTP-2012-0523, [18:47] to [19:50] / CAR-OTP-2118-5507, 5522:470-480. On Seleka lootings: P-1647: T-195, 9:8-21; P-0889: T-111, 4:7-5:11; P-2027: T-040, 46:12-16; CAR-OTP-2078-0059-R03, para. 46; P-0884: T-057, 48:21-49:7; P-0888: T-121, 10:13-11:12; TCV-0952: T-252, 7:26-8:8; 20:20-24; P-0446: T-098, 94:10-95:1. On armed clashes in December: P-1811: T-115, 10:10-26; P-1704: T-128, 34:14-35:1; CAR-D29-0002-0115.
[930] Judgment, pp. 1058-1059, paras. 3057-3058.
[931] On Seleka continued threats: P-0954: T-167, 52:2-53:18; 54:14-22; 56:16-26; CAR-OTP-2065-4416 / CAR-OTP-00001962; see also submissions made on this item in ICC-01/14-01/18-2233-Conf-AnxA, item #298. On

RFACPP;[932] and recognised that their presence at Yamwara, known to locals, further heightened their vulnerability to Seleka attacks.[933] It further erred in fact and law by not giving weight in its finding about the necessity of security measures at Yamwara, including checkpoints,[934] nor to the complete collapse of State authority, and the resulting total lack of State protection for either the civilian population or the RFACPP[935] In these conditions, the Yamwara base served as a temporary defensive position, allowing the RFACPP to regroup, and providing protection both for themselves and for nearby civilians exposed to Seleka reprisals. As the Yamwara site was open and accessible to the local population,[936] the acute insecurity made precautionary defensive measures necessary.

288. By disregarding this context, the Chamber erred in concluding that 'Mr. Yekatom's group had no legal basis to set up a checkpoint or to grant themselves the authority to carry out searches of the vehicles and individuals in and around Yamwara'.[937] Its finding failed to consider the conflict environment, as well as the information reasonably available to Mr. Yekatom at the time: including on ongoing Seleka attacks, credible risk of infiltration, the systematic targeting of FACA personnel, and the collapse of the State security apparatus. In these circumstances, a reasonable trier of fact would have found that Mr. Yekatom, as a FACA, retained *de facto* authority to adopt defensive measures to protect himself, RFACPP members, and nearby civilians. Within the operational reality of December 2013, the establishment of checkpoints at Yamwara was a necessary and proportionate defensive response to the Seleka threats faced.

289. The Chamber erred in characterising Yamwara checkpoints as merely intended to 'monitor the passage of vehicles and people',[938] distorting RFACPP witnesses' evidence that they were set up

[932] P-1786: T-198, 20:17-21:2; 48:5-12; P-1647: T-195, 7:6-25; 8:20-9:7; P-1521: T-082, 49:20-50:7; P-0876: T-086, 6:16-7:1; P-0974: CAR-OTP-2058-0165-R01, para. 30, CAR-OTP-00001761-R01, para. 30. See also CAR-OTP-2084-1005, pp. 1006-1007; P-1172: CAR-OTP-2046-1003-R03, paras. 25-27; P-0974: T-243, 37:28-38:5; P-0974: T-243, 41:27-42:3; P-1647: CAR-OTP-2050-0654-R02, para. 17; P-1647: CAR-OTP-2050-0654-R02, para. 18. See also on the Seleka reliance on FACA who had defected P-0888: T-121, 10:6-12.
[933] P-1786: T-198, 20:17-21:2; CAR-OTP-2065-4849 [04:13] to [05:16] / CAR-OTP-2118-5685, 5690:125-145.
[934] Judgment, p. 1059, para. 3058.
[935] P-0291: T-051, 18:25-19:3. See also on the destruction of law-enforcement capacities: P-0801: T-036, 72:21-73:1; P-1647: T-195, 52:25-28; P-1595: T-106, 23:28-24:16; T-107, 13:9-26; P-0291: T-051, 18:25-19:3; 20:22-27; TCV-0952: T-251, 10:24-11:7; P-2353: CAR-OTP-2100-0226-R03, para. 21; P-1823: CAR-OTP-2063-0369-R02, paras. 19, 21; P-2084: CAR-OTP-2094-0968-R02, para. 29. On inoperability of public institutions: P-0801: T-036, 72:21-73:14; P-1595: T-107, 13:9-26; P-0876: T-088, 9:21-25; P-2841: T-030, 52:7-11; see also on hospitals CAR-OTP-2058-0165-R01, para. 31; D29-5012: T-293, 36:2-17.
[936] Judgment, p. 1058, para. 3057; P-1647: T-195, 17:1-3; P-1990: T-237, 6:20-24; P-1716: T-148, 26:7-12; see also drone pictures CAR-OTP-2126-1297; CAR-OTP-2126-1300; CAR-OTP-2126-1324; CAR-OTP-2126-1349; CAR-OTP-2126-1356; CAR-OTP-2126-1362. See also on the community fountain located at Yamwara P-1839: T-172, 61:18-21; P-1990: T-237, 6:25-7:7; CAR-OTP-2126-1324; CAR-OTP-2126-1400; and on its ongoing use throughout the RFACPP's presence P-1839: T-172, 61:23-27; P-1990: T-237, 7:1-7; P-1786: T-197, 35:23-36:6; P-1716: T-148, 26:22-24. See also P-1786: T-197, 44:16-19; P-1647: T-194, 23:21-25; P-1647: T-195, 17:4-7.
[937] Judgment, p. 1422, para. 4164; see also p. 1424, para. 4169; pp. 1436-1437, paras. 4208-4209.
[938] Judgment, p. 1059, para. 3058.

specifically to detect and guard against Seleka threats and infiltration, while Seleka remained active.[939] P-1839 confirmed that individuals were screened, including by checking phone calls, to prevent Seleka espionage.[940] P-1786 explained that checks were directed only at individuals unfamiliar to the RFACPP, given the large civilian presence.[941] Their accounts were not descriptions of routine population or traffic control, but of specific defensive measures.

290. The Chamber thus erred in finding that checkpoints and related searches had no legal basis, and in treating subsequent apprehensions as unlawful in consequence of that initial finding.[942] Had the Chamber correctly assessed the conflict context and taken into account Defence submissions thereon, it would have recognised that the establishment of checkpoints around Yamwara constituted legitimate, necessary, and proportionate security precautions. This error was material: by mischaracterising the checkpoints as unlawful, the Chamber wrongly concluded that apprehensions at Yamwara were inherently illegal, and imputed the requisite *mens rea* for Count 14.[943]

b) Errors in disregarding the ongoing NIAC during the Yamwara incident

291. The Chamber committed an error of fact and law in finding that the search of vehicles was 'neither 'routine' nor 'lawful', on the basis that 'Mr. Yekatom's group' lacked any legal authority to establish a checkpoint or to conduct searches of vehicles and individuals in the Yamwara area.[944]

292. Failure to assess suspicion arising from Lapo family's Seleka links: The arrest of the Lapo Family Group occurred on 24 December, just days after the events of 5 December, at a time of ongoing Seleka reprisals against the population and clashes in Bangui, particularly in Boeing, where the Yamwara base was targeted.[945] The Chamber erroneously failed to consider prevailing heightened tensions, against which backdrop the presence of a group, identified by Alkanto as belonging to the family of the Seleka [REDACTED], near the Yamwara base, was perceived;[946] and to properly assess the suspicion engendered by this proximity to senior Seleka authorities.

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[939] P-1839: T-173, 20:3-19; 21:1-16; P-1647: T-195, 31:8-19; CAR-OTP-2050-0654-R02, para. 36 (see P-1647's statement where he clearly mentions 'we had posts outside to look out for Seleka' that is not cited by the Chamber).
[940] P-1839: T-173, 21:1-16.
[941] On civilian presence at Yamwara, see above. On verification of unknown civilians: P-1786: T-197, 44:11-20; see also for security checkpoint: CAR-OTP-2065-1989 / CAR-OTP-2127-4438; ICC-01/14-01/18-2233-Conf-AnxA, #115, 117; CAR-OTP-2065-2085, [00:00:25] to [00:00:30] / CAR-OTP-2127-3605, 3607:12-16. Prohibition of illegal checkpoints: P-1647: CAR-OTP-2050-0654-R02, para. 52.
[942] Judgment, p. 1422, paras. 4163-4164; p. 1424, para. 4169; pp. 1436-1437, paras. 4208-4209.
[943] Judgment, p. 1458, para. 4274.
[944] Judgment, p. 1422, paras. 4163-4164; pp. 1436-1437, para. 4209. See also on the dismissal of Defence argument about the first passage of the ambulance at the checkpoint: Judgment, pp. 1421-1422, para. 4162.
[945] P-0487: T-204, 5:4-19 (on exchanges of gunfire and Seleka about to enter the Yamwara base); P-0954: T-167, 52:2-53:18; 54:14-22; 56:16-26 (on frequent attacks on Yamwara base by the Seleka and a confrontation on 20 December); CAR-OTP-2065-4416 / CAR-OTP-00001962.
[946] About [REDACTED] the military forces fighting the RFACPP) and closeness of the family to Djotodia: P-0967: T-200, 22:4-9; P-1705: T-212, 11:2-9; P-1811: CAR-OTP-2058-0003-R05, para. 17. See also P-0884: T-056, 14:5-7.

293. It further erred by failing to properly address the discovery of the Seleka ID card mentioned by P-1839 regarding Saint-Cyr which further reinforced these initial suspicions. This illustrates its failure to situate the incident within the NIAC context,[947] which underpinned the Chamber's erroneous conclusion that 'Alkanto's group' was predisposed to view the seven individuals as 'Muslims'.[948] The suspicion did not stem from religion but from the group's direct link to the Seleka, as established by their link with [REDACTED] General Mamour and the Seleka ID card, which triggered legitimate security concerns and led to their transfer to Yamwara.[949]

294. The Chamber also erred in concluding that it was 'clear throughout the events [...] that none of the members of the group, including Saint-Cyr, was armed or posed a threat to the security of elements at Yamwara'.[950] By adopting an *ex post* perspective and concluding 'there was no reason to entertain suspicions',[951] it ignored the RFACPP's perception at the checkpoint after finding a Seleka card and a hidden SIM card.[952] Espionage involves clandestine gathering of information in adverse territory.[953] In an ongoing NIAC therefore, the group's unarmed and civilian appearance did not eliminate the manifest (and perceived) risk of intelligence on RFACPP operations reaching the Seleka, and investigative measures were thus legitimate. The Chamber erred by failing to properly assess such security measures, i.e. investigations, apprehensions, and actions against suspected spies, within their NIAC context.[954]

295. The Chamber further failed to distinguish between the initial arrest and verification phase, and subsequent events. At the checkpoint, the group's link to [REDACTED], their proximity to political authority, and the discovery of the Seleka ID card reasonably gave rise to the suspicion that they were associated with, or operating on behalf of, enemy forces. P-1811 and P-1716 both testified that they were indeed suspected of being spies, particularly Saint-Cyr,[955] which was corroborated by P-1839.[956] The concealed SIM card found in one woman's *pagne* further heightened suspicion.[957] By disregarding the prevailing security environment, the Chamber improperly concluded that there was 'no legal basis' 'to apprehend persons on the basis of suspicions at checkpoints'.[958] It thus attributed

[947] See Ground 2.3.
[948] Judgment, p. 1086, para. 3142.
[949] P-1839: T-170, 28:20-22; 30:19-21; T-173, 73:19-28. See Ground 2.3.
[950] Judgment, p. 1422, para. 4163.
[951] Judgment, p. 1422, para. 4163.
[952] See Ground 2.3.
[953] On espionage under customary IHL, see Lieber Code (1863), art. 88; Brussels Declaration (1874), art. 19; The Hague Convention of 1907, art. 29; AP I, art. 46.
[954] Judgment, p. 1438, para. 4213.
[955] P-1716: CAR-OTP-2053-0062-R05, para. 29; P-1811: CAR-OTP-2058-0003-R05, para. 36.
[956] P-1839: T-173, 73:14-16.
[957] See also P-1839: T-170, 28:20-29:1.
[958] Judgment, pp. 1436-1437, para. 4209.

criminal motives to the RFACPP from the very moment of the Lapo group's apprehension, despite the fact that these were investigative procedures, legitimate in the circumstances. This flaw taints the Chamber's conclusions on the gravity of the conduct and the alleged violation of fundamental rules of international law.[959]

296. Unreasonable finding on the alleged breach of procedural rights guarantees: The Chamber further erred, in fact and in law, in concluding that none of the members of the Lapo Family Group 'were treated to the standard required under the fundamental rules of international law'.[960] This finding is untenable. It rests on an abstract assessment divorced from the concrete realities and security conditions prevailing in the CAR at the time and ignores the operational context in which RFACPP elements were acting.

297. In situations where combat is active, parties' ability to communicate, coordinate, or surrender captives may be severely hindered by operational risks. As such, any temporal delay in the release or transfer of persons cannot be automatically interpreted as criminal intent or deliberate obstruction, but must be examined within the constraints imposed by the prevailing combat conditions. The Chamber failed to take into consideration the operational and security conditions prevailing between 24-27 December 2013. Its failure to assess Mr. Yekatom's (and Yagouzou's) conduct in light of the military situation on the ground and the existence of continuous clashes in Bangui and around M'Poko airport during the relevant period, resulted in a distorted understanding of the events and of Mr. Yekatom's alleged role. Heavy fighting involving Anti-Balaka and Seleka was ongoing during this period, in and around Bangui. Witnesses described exchanges of fire, roadblocks, and a general atmosphere of insecurity that made any movement towards Sangaris positions extremely dangerous.[961] P-1811 confirmed that Sangaris could not retrieve the group immediately '*à cause des affrontements'* in Bangui.[962] P-1704 likewise recalled Sangaris could not come because of '*affrontements entre les Anti-Balaka et la Seleka, le 26 décembre sur le marché de combattant*'.[963]

298. By failing to take this factual context into account, the Chamber erroneously treated the delay until their release on or around 27 December as intentional 'continued control' rather than the direct consequence of active hostilities and security constraints. Overlooking these operational constraints was a material error of fact. These errors materially affected the Chamber's findings on Counts 11

[959] Judgment, p. 1436, para. 4208.
[960] Judgment, p. 1438, para. 4215.
[961] See e.g. P-1839: T-173, 20:3-13; P-1811: T-115, 10:10-26; P-1704: T-128, 34:14-22; CAR-D29-0002-0680, p. 0681. See also CAR-OTP-2042-1457 / CAR-D29-0006-0092, pp. 0094-0095.
[962] P-1811: T-115, 10:19-11:4.
[963] P-1704: CAR-OTP-2054-1136-R05, para. 59 (corrections CAR-OTP-2136-0486). See also para. 60 where P-1704 describes that the situation in Bangui warranted an heavy operation: *'Le 27 décembre, ils ont rappelé les hommes de l'opération Sangaris. Après 16 heures, les troupes de l'opération Sangaris ont envoyé un hélicoptère et puis des véhicules blindés*'.

and 14.[964] The Chamber also incorrectly determined that 'there was no indication that Mr. Yekatom's elements granted any of the seven persons access to any procedural rights that accompany such deprivation of liberty'.[965] As regards Saint-Cyr, Mr. Yekatom cannot be held accountable for events that unfolded without his knowledge or presence.[966] The same applies to P-1716, whose account, already shown to rely on a late and artificial insertion of Mr. Yekatom's presence, does not withstand scrutiny.[967] Accordingly, any assessment of a potential violation of fundamental procedural guarantees can concern Mr. Yekatom only with respect to P-1811, P-0967, P-1705, P-1704 and [REDACTED].

299. In addition, the Chamber failed to consider the very limited period during which the Lapo Family Group remained at Yamwara. The group arrived in the afternoon, and once Mr. Yekatom spoke with the women that evening and confirmed they were civilians, he arranged their safe transfer to the Sangaris at the M'Poko base.[968] Except for Saint-Cyr and P-1716, the group left that night for the Yagouzou base where they stayed overnight.[969] They were at Yamwara only a few hours before being transferred,[970] directly contradicting the Chamber's adverse findings.[971]

300. The Chamber erred in rejecting evidence that Mr. Yekatom's request to bring the group to Yagouzou was part of their transfer to the Sangaris,[972] which clearly indicates that, at that stage, any suspicion of espionage had been dispelled. Its factual errors on ongoing fighting and handover delays undermine its assessment.[973] It failed to consider the prevailing context of absent State security services and authorities, and did not explain how procedural guarantees could realistically have been ensured in the circumstances and within a short timeframe. It should have found that transferring the group to Sangaris was the only way to ensure their protection once they were confirmed to pose no threat. Its conclusions on alleged violations of fundamental international law must be dismissed for P-1811, P-0967, P-1705, P-1704 and [REDACTED].[974]

c) Errors in disregarding Mr. Yekatom's cooperation efforts at Yamwara

301. The Chamber erred notably by disregarding evidence relating to Mr. Yekatom's cooperation

[964] Judgment, p. 1431, para. 4194; pp. 1438-1439, para. 4216; p. 1449, para. 4246; p. 1450-1451, para. 4248-4249; pp. 1458-1459, paras. 4275-4276.
[965] Judgment, pp. 1436-1437, para. 4209.
[966] See Ground 2.7.
[967] See Ground 2.7.
[968] See Ground 2.2.
[969] Judgment, p. 1122, para. 3256; p. 1123, para. 3260; p. 1124, para. 3264. See also Ground 2.2.
[970] On arrival at Yamwara in the afternoon see P-1811: CAR-OTP-2058-0003-R05, para. 22; P-1704: T-128, 42:28-43:6; P-1705: T-211, 14:17-22. On the departure to M'Poko base in the evening, see P-1811: T-114, 29:7-14; P-1705: T-211, 16:25-17:4.
[971] Judgment, pp. 1438-1439, para. 4216.
[972] Judgment, p. 1432, para. 4195; p. 1438, para. 4216.
[973] See Ground 2.2.
[974] Judgment, pp. 1435-1439, paras. 4206-4217.

efforts with the French forces immediately after 5 December 2013. Before that date, French *Operation Boali* was already present,[975] explaining why the RFACPP was in contact with French forces as soon as they established themselves in Yamwara. Videos show Sangaris forces already present in Yamwara between 13 and 17 December 2013,[976] including French soldiers conversing with Mr. Yekatom,[977] who explicitly refers to their collaboration.[978] This cooperation is corroborated by a press article highlighting the RFACPP's 'warm relations with French Special Forces' and noting that 'their cooperation dates from the start of Opération Sangaris',[979] and by further videos from Yamwara.[980] Mr. Yekatom's cooperation with international forces therefore began well before Djotodia's resignation, during the peak of the conflict. The Chamber erred by ignoring this key evidence. By ignoring Mr. Yekatom's ongoing cooperation with the Sangaris, the Chamber wrongly dismissed his call to them during the night of the Yamwara incident as unrelated to the Lapo Family Group.[981] It also caused the Chamber to erroneously undervalue it as mitigating factor for sentencing.[982]

2. Ground 3.2 – Failure to consider security/operational context on the PK9-Mbaïki Axis

302. The Chamber erred by assessing RFACPP operations as inherently criminal rather than situating them within the NIAC in which they occurred.[983] It failed to engage with the operational reasons for the RFACPP's emergence and advance against the Seleka along the strategic Axis, the legitimate force-protection and territorial-security imperatives underlying the establishment of checkpoints; and to situate these operations in the ongoing asymmetric conflict and Seleka threat, amid the collapse of State security and mass inter-religious violence. It unreasonably discounted the sustained good-faith efforts of Mr. Yekatom and the RFACPP to cooperate with international forces, local and State authorities, and humanitarian actors to restore a measure of order and security for the civilian population of Lobaye in its entirety.

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[975] P-0876: T-085, 20:26-21:3. See also CAR-OTP-2001-2769, p. 2802; CAR-OTP-2001-2890, pp. 2909-2910.
[976] CAR-OTP-2065-4236 / CAR-D29-0006-1459: arrival of the Sangaris at Yamwara. In Sango, individuals note that the French soldiers are different ('*ceux-là sont différents*') implying they had seen others before.
[977] CAR-OTP-2012-0523, [45:55] to [46:09] / CAR-OTP-2118-5547, 5583:1180-1182 on French soldiers in Yamwara conversing with Mr. Yekatom. See also CAR-OTP-2065-4268 / CAR-D29-0006-1460.
[978] CAR-OTP-2065-2169 / CAR-OTP-2127-3615, 3617:26-28; CAR-OTP-2065-2177 / CAR-OTP-2127-3623, 3425:19-23 on Mr. Yekatom indicating being in contact with '*les blancs*' (referring to French forces).
[979] CAR-OTP-2001-3811, p. 3817.
[980] See CAR-OTP-2065-4617 / CAR-OTP-2130-1146 in which Mr. Yekatom is in contact on the phone with French forces, discussing the security situation. See also CAR-OTP-2065-4268 / CAR-D29-0006-1460. The purpose of this cooperation was to ensure security in that area of Bangui, as illustrated by footage showing Mr. Yekatom attempting to maintain order in the Boeing neighbourhood by intervening against potential criminals and referring to a discussion he had held with the French forces. See CAR-OTP-2065-2177 / CAR-OTP-2127-3623, 3425:19-23, 25. The video also shows that RFACPP members are trying to maintain the order and are not pillaging. See also CAR-OTP-2065-2169 / CAR-OTP-2127-3615, 3617:39-40: Mr. Yekatom explains his objective is to protect the population.
[981] Judgment, p. 1115, para. 3229. See also Judgment, pp. 1438-1439, para. 4216. See Ground 2.7.
[982] Judgment, p. 1524, para. 4468; p. 1527, para. 4475.
[983] Judgment, pp. 1135-1246, paras. 3297-3627; pp. 1468-1476, paras. 4306-4329.

303. The Chamber's findings regarding the geographical location and movements of Mr. Yekatom were likewise flawed. Determining an accused's whereabouts is essential to assessing any alleged control over criminal conduct, particularly when co-perpetration through others is at issue.[984] It must be an individual assessment to determine whether a group's presence was sufficiently close in time and place to events to infer responsibility when perpetrators' identities are unclear.[985] Chambers often declined to identify an armed group as responsible when other armed actors or civilians were present in the area, even if they were in close proximity.[986] Yet, the Chamber failed to establish the precise geographical context of checkpoints, troop movements, and Mr. Yekatom's whereabouts vis-à-vis the Axis charges, despite these findings being essential to assessing his alleged control. Its conclusion that 'Mr. Yekatom […] moved from one village (and checkpoint) to the other, patrolling the area and inspecting the elements under his command' lacks evidentiary support,[987] disregards insider testimony contradicting his presence on the axis,[988] and overlooks the practical realities of the road and distances.[989] By relying on an inflated and misleading geographic representation, treating closely situated localities as indicative of broad territorial authority,[990] the Chamber materially overstated the scope of the Appellant's purported control, culminating in an erroneous finding of control over villages on the Axis.[991]

a) Errors regarding the RFACPP's emergence and advance along the Axis

304. The Chamber assessed the RFACPP's advance in isolation from the ongoing hostilities, thus ignoring the constant Seleka threat in the area and its impact on their defensive and protective operations,[992] even after their departure from localities on the Axis.[993] On the evidence, the checkpoints were established for security reasons, to protect billeted RFACPP members, and to counter the risk of 'enemies' gathering information or attempting to harm.[994]

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[984] ICC-01/04-02/06-2666-Red A, paras. 25, 1108.
[985] IT-06-90-T, vol. I, para. 64; SCSL-04-15-T, para. 1514; SCSL-04-16-T, para. 885.
[986] IT-06-90-T, paras. 696, 703; IT-04-83-T, para. 221; SCSL-04-16-T, paras. 819-820; IT-01-47-T, para. 1862.
[987] Judgment, p. 1162, paras. 3379-3382, fns. 8288-8292 (citing P-1858 who alleges that Mr. Yekatom was moving around, not that he stayed in the houses listed; P-1666 who refers only to Mbaïki, where he saw Mr. Yekatom for one week and described him making unspecified trips to and from the town, with no indication how often or where he went; P-1838 who only mention Pissa as a place where he saw Mr. Yekatom at a checkpoint, without providing a precise date); cf. P-1974: T-215, 14:7-17 (who started his activities on the axis only starting July 2014); P-1839: T-227, 54:22-55:3 (referred to within the limited context of the advance against the Seleka rather than control).
[988] [REDACTED].
[989] P-1823: CAR-OTP-2063-0369-R02, para. 31; D29-5015: T-254, 79:23-24.
[990] For example, on the 5 localities cited in the Chamber's finding (Sekia, Ndangala, Bimon, Kapou, Bossongo and Pissa (Judgment, p. 1135)), the first 4 villages are located on an axis of 12km, an insignificant distance when assessed against the reality of an axis stretching roughly 100 kilometres; see P-0888: T-120, 56:18-57:24.
[991] Judgment, p. 1144, para. 3325.
[992] Yekatom Defence Closing Brief, paras. 480-485.
[993] CAR-OTP-2094-7618 at [00:25:09] / P-1558: CAR-OTP-2105-0195-R01, para. 101 referring to the arrest of 3 Seleka members who had planned to attack Pissa after the arrival of the RFACPP
[994] P-1839: T-170, 44:3-21; T-174, 32:7-33:13.

305. The Chamber erred by failing to consider that Mr. Yekatom acted pursuant to his FACA duties.[995] As military, he and other RFACPP members had an obligation to protect the population, who expected their intervention in the absence of State authorities.[996] The RFACPP interacted with national and international forces, on equal footing as military peers, with the aim of restoring order and security, according to their duty.[997] It is precisely because Mr. Yekatom acted in his military capacity (as shown by his introducing himself to his interlocutors as caporal-chef) that gendarmes, international forces, and government officials (following the election of Samba-Panza) agreed to cooperate with him and the RFACPP[998]

306. The Chamber's failure to appreciate the factual context is also evidenced by its downplayed finding that 'upon the Seleka's arrival in the area the [state forces] left', which distorts the reality. State forces did not simply abandon their position: their withdrawal was compelled by the Seleka's systematic campaign of targeting their personnel and dismantling public structures, effectively rendering any continued presence impossible and resulting in a complete security vacuum.[999] This error is particularly significant as the decision to leave Yamwara for the Axis was taken shortly after Djotodia's resignation and amidst the resulting collapse of effective authority.[1000] Seleka forces remained significantly better armed and equipped,[1001] and given the widespread atrocities they had committed during Djotodia's regime, against Muslims and non-Muslims alike,[1002] including in the aftermath of the 5 December operation, it was objectively reasonable for Mr. Yekatom and the RFACPP to anticipate that the pattern of abuses and/or retaliatory attacks against both the RFACPP and the population

[995] P-1647: T-195, 12:7-13:25; see also CAR-OTP-2065-0806 / CAR-D29-0006-1324 (where RFACPP FACA member Salvador Manoumana states that he has mobilised pursuant to his duty); P-1786: CAR-OTP-2058-0200-R03, paras. 12, 19-20; see also Yekatom Defence Closing Brief, para. 220.
[996] CAR-OTP-2065-0580 [00:00:35] to [00:01:24] / CAR-OTP-00001940, 2:14-25; P-0888: T-121, 14:13-16 ('*eux, c'étaient des militaires formés pour défendre la patrie. Mais voilà que les autorités n'ont pas pu défendre la population et ils ont commencé à souffrir*'); CAR-OTP-2094-7618 [00:06:11:03] to [00:06:14:05] / CAR-OTP-2118-4260 at 4263:80-82; CAR-OTP-2042-3879 / CAR-D29-0006-1353; D29-5014: T-257, 38:15-40:15.
[997] CAR-OTP-2094-7618, [00:06:10] to [00:06:17] / CAR-OTP-2118-4260, 4263:82-84; CAR-OTP-2118-0723, [00:01:08] to [00:01:15] / CAR-D29-0006-0761, 0761:25-26; CAR-OTP-2065-0396, [00:00:16] to [00:00:27] / CAR-OTP-2122-2284, 2286:9-14; P-1839: T-172, 82:19-25, 83:11-17, 85:24-25, 86:25, 87:14-88:7, 90:26-91:5.
[998] P-0888: T-121, 52:8-18; T-122, 17:14-25; CAR-D29-0001-0138; P-0446: T-099, 73:18-28.
[999] Judgment, p. 1156, para. 3360; contra TCV-0952: T-252, 76:21-77:5; P-1595: T-106, 24:4-16; T-107, 13:16-26; P-1647: T-195, 52:25-28; P-1666: T-230, 30:20-27; P-1813: T-180, 63:14-27; P-1823: CAR-OTP-2063-0369-R02, para. 19; P-2041: CAR-OTP-2104-0003-R02, paras. 18-19; P-2084: CAR-OTP-2094-0968-R02, paras. 29, 32, 35, 40; T-234, 61:12-14; 63:4-9; P-2353: T-161, 68:3-19; CAR-OTP-2100-0226-R03, para. 21; P-2354: CAR-OTP-2105-0991-R03, para. 25; D29-5012: T-293, 25:12-20; 34:7-13; 44:4-16; D29-5015: T-254, 32:27-33:1-2, 14-22; D29-6037: CAR-D29-0009-0459-R01, para. 18; D29-6048: CAR-D29-0009-0804-R01, para. 39, timing [20:23:21]; see also CAR-D30-0009-0001 / CAR-D30-0002-0011; CAR-D29-0002-0680; CAR-OTP-2001-1756; CAR-OTP-2054-1371; CAR-D29-0012-0001; CAR-OTP-2055-2610, [00:00:34] to [00:00:42]; CAR-OTP-2107-6906, 6908:11-14; Yekatom Defence Closing Brief, para. 480.
[1000] Judgment, p. 1135, para. 3297.
[1001] Yekatom Defence Closing Brief, para. 421.
[1002] D29-5014: T-257, 6:24-26, 11:15-12:23; D29-5013: T-285, 24:12-25:14; see also Judgment, pp. 239-244, paras. 723-730.

would continue. This borne out by subsequent events: Seleka exactions continued unabated after Djotodia's resignation;[1003] in particular, they continued to target the population in the Lobaye in January 2014.[1004]

307. The Chamber heard evidence on the intent behind the decision to leave Yamwara, taken amidst the prevailing chaos. P-1647 explicitly stated that this decision was driven by the objective of expelling Seleka forces and securing the area.[1005] While the Chamber observed that difficulties in sustaining RFACPP members contributed to this decision, it failed to appreciate that such circumstances represented a logistical military constraint.[1006] By assessing the decision to leave Yamwara in isolation from the operational context, the Chamber improperly downplayed its significance as a rational and lawful military response to prevailing field conditions faced by the RFACPP.

308. The Chamber materially downplayed military operations, including the confrontation at the PK9 bridge between the RFACPP and still-present Seleka forces, in concluding that 'at least one of the groups fired at the other […]'.[1007] While the skirmish was limited in intensity, it was strategically significant: the PK9 bridge lies on the main supply route between the Lobaye region and Bangui, and securing it was essential to clearing the Axis of Seleka forces.[1008] Similarly, the Trial Chamber failed to engage with evidence showing that the RFACPP conducted a covert intelligence-gathering operation to verify the Seleka's withdrawal from the Sekia checkpoints before emerging from the bush – evidence that was directly relevant to determining the legitimate purpose of the advance.[1009]

b) Errors in assessing the evidence on RFACPP checkpoints

309. While the Chamber cited P-2084's testimony acknowledging that Mr. Yekatom and the RFACPP sought to expel Seleka elements and prevent their return, it ended its analysis there.[1010] P-1647's testimony, explicitly confirming that the advance aimed to secure the area and remove Seleka forces, was relegated to a mere footnote.[1011] It disregarded Defence arguments and evidence

[1003] P-1839: T-173, 20:3-13; P-1811: T-115, 10:10-26; P-1704: T-128, 34:14-22; CAR-D29-0002-0680, p. 0681. See also Yekatom Defence Closing Brief, para. 420.
[1004] Mbata (P-1813: CAR-OTP-2069-0035-R02, paras. 31-33; T-180, 39:20-40:3; 40:5-8; T-182, 17:4-13; 17:18-19; 20:18-20; P-1666: T-232, 7:6-8:3; 9:2-19; D29-5012: T-295, 8:24-9:14; 10:3-10; 10:17-27); Bimon (P-2419: CAR-OTP-2112-0036-R03, para. 42); Boda (CAR-OTP-2090-0373, p. 0378: '*le 31 janvier, plusieurs sources (…), indiquent à la force Sangaris que la situation à Boda serait très dégradée. Il y aurait eu aujourd'hui une douzaine de chrétiens tués par les ex-Séléka, qui voudraient nettoyer Boda*'); See also Ground 3.2.e).
[1005] P-1647: T-195, 44:2-7.
[1006] Judgment, p. 1163, para. 3385, fn. 8296.
[1007] Judgment, pp. 1142-1143, para. 3321.
[1008] CAR-OTP-2118-0723, [00:00:00] to [00:13:11] / CAR-D29-0006-0761, 0761:5-9 '*Au-delà de cette barrière, le pont de PK 9 est le principal axe de ravitaillement de Bangui et, désormais, un point de confrontation majeur entre forces Seleka et milices Anti balaka*'; CAR-OTP-2118-0723, [00:01:05] to [00:01:14] / CAR-D29-0006-0761, 0761:22-26.
[1009] P-1839: T-174, 29:5-9; 32:3-15; P-1647: CAR-OTP-2050-0654-R02, para. 37; see also Yekatom Defence Closing Brief, para. 481.
[1010] Judgment, p. 1163, para. 3385; P-2084: T-234 (ENG), 69:23-70:9.
[1011] Judgment, p. 1163, para. 3385, fn. 3296; P-1647: T-195 (ENG), 42:20-22.

demonstrating that the PK9, Sekia, and Pissa checkpoints constituted military objectives, not least given the prior presence of the Seleka there, and that the RFACPP established itself at these locations to prevent their return, to secure the area against attacks and to facilitate the safe and free movement of persons.[1012]

310. The Chamber also erred by neglecting to determine the geographical context,[1013] failing to find that a checkpoint was established by the RFACPP at the entrance of Centrapalm, a state-owned palm oil plantation, rather than in Bossongo.[1014] It disregarded testimony differentiating between the two locations and noting that RFACPP elements provided security at Centrapalm,[1015] two kilometres from the Axis traversing Bossongo.[1016] It fragmented and distorted the evidence of P-2084.[1017] It disregarded evidence that RFACPP members were stationed at Centrapalm – not in Bossongo,[1018] were deployed to other factories in the Lobaye and in Bangui;[1019] and critically, that the Seleka had a base at Centrapalm,[1020] making its seizure a decisive military advantage.

c) Errors regarding the RFACPP's legitimate fund-collecting to support operations

311. As correctly found by the Chamber, the checkpoints also served to collect funds to finance the group's basic needs.[1021] However, the Chamber omitted to find that payment at these checkpoints was not strictly mandatory.[1022] It also cherry-picked portions of P-2084's testimony to conclude that 'contrary to the Yekatom Defence's suggestion, the money collected amounted to more than 'small amounts to pay for [the element's] coffee'':[1023] the witness explicitly stated: 'it was small amounts to

[1012] P-2084: CAR-OTP-2094-0968-R02, paras. 78, 81; P-1839: T-170, 44:3-21, T-174, 26:26-27:6, 32:7-34:16; CAR-OTP-2066-1460; see also, CAR-D29-0001-0526, p. 0530; P-1647: CAR-OTP-2050-0654-R02, para. 44; P-2041: CAR-OTP-2104-0003-R02, para. 24; Yekatom Defence Closing Brief, para. 483.
[1013] Judgment, pp. 1156-1162, paras. 3360-3382; see also Ground 3.2.
[1014] Judgment, pp. 1160-1161, para. 3374.
[1015] D29-5016: CAR-D29-0009-0576-R01, para. 24; Judgment, pp. 1160-1161, para. 3374.
[1016] The site of Centrapalm plantation is clearly visible on satellite imagery on the outskirts of Bossongo, forming a distinct 'star' pattern; see also ICC-01/14-01/18-282-Conf-AnxF10 differentiating on the map the village of Bossongo from Centrapalm; see also CAR-OTP-2118-0415 at [00:56:11:15] (where the factory appears in the background) to [00:58:39:17] (where the barrier situated next to the factory appears in the background).
[1017] P-2084: CAR-OTP-2094-0968-R02, para. 77: 'YEKATOM had men in (…) CENTRAPALM'. The witness references other companies such as PALMEX and PALME D'OR specifically referring to those companies rather than the villages they are associated with. See also, para. 51 (specifying that, following the departure of the Seleka, the RFACPP protected various enterprises, including Centrapalm and Palme d'Or); T-234, 39:23-40:2, 40:24-41:4, 41:19-25 (where, when questioned regarding the gendarmerie checkpoints existing on the Axis prior to 2013, he confirmed that (i) one checkpoint existed on the road leading to Centrapalm to ensure protection of the site; (ii) a gendarmerie brigade had been established from the inauguration of Centrapalm to secure the facility; and (iii) temporary mobile checkpoints were occasionally deployed within Bossongo by the gendarmes when circumstances required).
[1018] P-1786: CAR-OTP-2058-0200-R03, para. 41; P-0446: CAR-OTP-2105-0611-R01, 0644:1142-1145; P-1193: CAR-OTP-2045-0048-R03, para. 63.
[1019] P-1193: CAR-OTP-2045-0048-R03, para. 63; CAR-OTP-2039-0018; CAR-OTP-2065-5192; CAR-OTP-2065-5196; CAR-OTP-2065-5244 with ICC-01/14-01/18-2515-Conf-AnxB #64; see also CAR-OTP-2023-0032, pp. 0079-0080.
[1020] P-2084: CAR-OTP-2122-4905-R01, para. 77; T-234, 66:19-28.
[1021] Judgment, p. 1172, para. 3411; see also Yekatom Defence Closing Brief, para. 483.
[1022] P-1558: CAR-OTP-2105-0195-R01, para. 50; P-1839: T-170, 56:13-18.
[1023] Judgment, p. 1173, para. 3415.

pay for their coffee […]'.[1024] This finding also ignored CAR reality: it is common practice for gendarmes, police officers, or military personnel to euphemistically request money for 'coffee' at checkpoints – i.e. an informal contribution.[1025]

d) Errors in finding that by 'taking over' checkpoints, Mr. Yekatom and the RFACPP 'aimed at searching and identifying Muslims'

312. While the Chamber's evidence assessment on this issue was marred at the outset by its reliance on the prejudicial fiction that RFACPP members were instructed to kill all Muslims on the Axis,[1026] its primary error consisted in its failure to apply sufficient caution in assessing P-1823's uncorroborated 'identification' of Mr. Yekatom at a purported encounter with the RFACPP at PK9 checkpoint.[1027] It did not acknowledge its heightened duty concomitant with the assessment of identification evidence in turbulent circumstances.[1028] It did not address his repeated insistence on the severe stress he was under during the encounter, as a consequence of which he could not provide details on several aspects of the event.[1029] While it noted certain circumstances of the encounter, it did not address their implications on the reliability of the 'identification'.[1030] It mischaracterised his evidence on the basis of his 'recognition': the fact that Mr. Yekatom lived in Kina is not such a basis, nor did P-1823 specify that he 'had not personally known' Mr. Yekatom.[1031] Nor did it assess *qua* reliability factor (i.e. that up to 15 years prior, someone had pointed 'Mr. Yekatom' out to P-1823 not by name but 'as a FACA'),[1032] merely finding his account was not 'contradictory' or 'inconsistent'.[1033] It also erred *vis-à-vis* the irreconcilable nature of his account;[1034] first temporally: whereas the RFACPP occupied a PK9 checkpoint after 10 January 2014, per P-1823, the encounter took place before 1 January

[1024] P-2084: CAR-OTP-2094-0968-R02, para. 78.
[1025] CAR-OTP-2118-0415, [01:00:17:20] to [01:01:40:00] / CAR-OTP-2127-4410, 4434:842-850.
[1026] See Ground 2.3.d); Judgment, p. 1167, para. 3397.
[1027] Judgment, pp. 1167-1170, paras. 3398-3405. See ICC-01/05-01/08-3343, paras. 241-242; ICC-02/05-01/20-1240, paras. 207-210.
[1028] See e.g. ICC-01/05-01/08-3343, paras. 241-242; ICC-02/05-01/20-1240, paras. 207-210; ICC-01/04-02/06-2359, paras. 71-72; IT-95-16-A, paras. 34-40, 134. See P-1823: T-183, 66:3-8 (citing the 'turbulence').
[1029] See P-1823: T-183, 13:5-27; 15:12-18; 17:7-19; 23:6-12; 23:13-24; 66:10-19; see also, 66:3-8; 74:11-19. See Yekatom Defence Closing Brief, para. 489.
[1030] ICC-02/05-01/20-1240, para. 210; ICC-01/04-02/06-2359, para. 72, citing IT-95-16-A, para. 40. See e.g P-1823: T-183, 64:1-10 (that during the encounter, the individual he identified as Mr. Yekatom was 'moving around' and 'everywhere'); CAR-OTP-2063-0369-R02, para. 27, T-183, 12:1-15 (that he was wearing a cap to cover his prayer mark, thus partially impeding his field of vision); P-1823: T-193, 13:23-24; 14:11-12; 16:4-6 (he was preoccupied with not being recognised); CAR-OTP-2063-0369-R02, para. 28 (that it was a fellow voyager who told him that the individual's name was 'Yekatom').
[1031] See P-1823: CAR-OTP-2063-0369-R02, para. 28 (where P-1823 states that Mr. Yekatom lived in Kina and was an MP (also notably after the events)); T-183: 17:7-19, 64:11-15 ('*M. Yekatom, moi, je le connaissais pas'; 'Parce que moi, je le connaissais pas*'); *contra* Judgment, pp. 1169-1170, para. 3404 (finding that P-1823 recognised Mr. Yekatom because he lived in Kina), fn. 8344 (relying on the English transcript whereas P-1823 testified in French; see T-183, 1:15).
[1032] P-1823: 79:3-13-80:11 (in particular, '*je l'ai connu ça parce qu'on me dit « ça, c'est un FACA » […] Mais à distance, on dit, ça c'est X, c'est tout. Je l'ai pas rencontré, je l'ai pas abordé'*); T-183: 17:7-19; 64:11-15.
[1033] Judgment, pp. 1168-1169, para. 3404. See ICC-02/05-01/20-1240, para. 210.
[1034] See IT-95-16-A, para. 40 (on 'the existence of irreconcilable witness testimonies')

2014.[1035] The Chamber distorted his evidence, contrary to the plain language of the terms 'New Year's' / '*le nouvel an*', finding that he was in fact referring to 'the new year';[1036] and it mischaracterised his examination.[1037] Second, geographically: whereas the RFACPP occupied the west, and not the east PK9 checkpoint,[1038] per P-1823 the encounter took place on the east PK9 checkpoint.[1039] This checkpoint was occupied by [REDACTED] 'anti-balaka' group[1040] (which the Chamber unreasonably failed to conclude, ignoring [REDACTED] clear evidence that this was the case, and instead preferring [REDACTED]).[1041] Its finding that 'every other detail' pointed to the RFACPP was incoherent.[1042] No reasonable Chamber would have found beyond reasonable doubt that P-1823 had recognised Mr. Yekatom at the checkpoint,[1043] or otherwise that the encounter involved RFACPP members at all.

313. That this unreliable, uncorroborated account is the centrepiece of the Chamber's finding on the purpose of RFACPP checkpoints is revealing.[1044] Conspicuously absent in this regard is any evidence from RFACPP witnesses. The sole specific allegation of mistreatment of a Muslim person at an RFACPP checkpoint, along the entirety of the 100 km-long Axis, is an uncorroborated hearsay account of an anonymous convert being 'arrested and beat[en]' at Sekia; no information is available on what may have led to the incident.[1045] Sweeping generalisations, conclusions and speculation were mistaken for evidence,[1046] not least the bombastic, unsubstantiated claims of P-0954, relied on despite his revealing attempt to blame Mr. Yekatom when confronted with evidence of abuses at his own

[1035] P-1823: T-183, 59:26-60:5; CAR-OTP-00001790-R01, p. 5 ('*J'ai donc décidé de rentrer à Mbaïki passer les fêtes de fin d'année 2013 en famille.'*). See Judgment, p. 1135, para. 3297. ICC-01/14-01/18-2830, paras. 11-14.
[1036] Per the OED, 'New Year's' refers to 'New Year's Eve or New Year's Day'. In French, '*le nouvel an'* refers to 1 January; see e.g. Le Robert Dictionary 'an'; *contra* Judgment, p. 1169, para. 3403. See Part 4 (bias) / Annex 5, row 17. See also, ICC-01/14-01/18-2830, paras. 15-18.
[1037] See T-183, 57:20-28 (where P-1823 responds to the first question posed by the Defence that he left 'a few days' after the 13 December 2013 Petevo incident); *contra* Judgment, p. 1169, para. 3403.
[1038] P-1647: CAR-OTP-2050-0654-R02, paras. 37, 44; T-195, 48:17-21; P-1839: T-174, 27:8-24; T-173, 41:11-28; CAR-OTP-2066-1461 (with PISSMISS 'villa' and the 'Bimbo' checkpoint on opposing sides, the latter with the gendarmerie post previously occupied by the Seleka); P-1858: CAR-OTP-2063-0050-R04, para. 79; P-0954: T-166, 53:24-27; CAR-OTP-2048-0171-R03, para. 89. See also P-0888: T-121, 23:21-22. See also, Judgment, pp. 443-446, paras. 1157-1159; pp. 1157-1158, 1159, paras. 3362-3365, 3367 (on the RFACPP setting up 'a checkpoint at PK9 [emphasis added]').
[1039] P-1823: T-183, 61:26-62:2 (on the encounter taking place at the barrier before crossing the PK9 bridge).
[1040] P-0954: T-167, 40:27-44:27 (confirming [REDACTED] occupied the PK9 barrier where gendarmes / Burundian forces were stationed, after the Seleka withdrew, across the river from PISSMISS, and identifies this location in video CAR-OTP-2055-2610 [02:54] to [03:22]); [REDACTED]. See also P-1839: T-173, 41:11-28, CAR-OTP-2066-1461; P-1858: CAR-OTP-2063-0050-R04, para. 79.
[1041] P-0954: T-168, 71:13-72:2; see Judgment, pp. 1158-1159, para. 3366. See Part 4 (bias).
[1042] See Judgment, p. 1170, para. 3405, fn. 8351 ([REDACTED]); cf. Judgment, p. 1264, para. 3668 (finding that 'it was generally known that [RFACPP members] wore a mixture of civilian and military clothing').
[1043] See also ICC-02/05-01/20-1240, para. 208.
[1044] See Judgment, p. 1167, para. 3397 (citing 'in particular, P-1823's below account').
[1045] P-2419: CAR-OTP-2112-0036-R03, para. 34.
[1046] See Judgment, p. 1171, para. 3408.

[REDACTED].[1047] In this regard, the Chamber's misguided focus on 'strong language' misses the point:[1048] it is the lack of concrete facts in P-0954's claims that renders his claims worthless. Evidence was mischaracterised: D29-5015's account of travelling Muslims having to take precautions at road-blocks was relied on – despite him referring to spontaneous roadblocks established by local villagers along the Mbaïki-Boda axis, which the RFACPP did not control; or this having been expressly pointed out in closing by the Defence.[1049]

314. Lastly, the Chamber erroneously relied on P-1962's prejudicial claims regarding Cœur de Lion.[1050] The Defence contested P-1962's reliability wholesale, arguing that he lied about travelling with [REDACTED] to Boda and citing inter alia [REDACTED] irreconcilable evidence.[1051] The Trial Chamber found it not 'necessary' to address this contradiction 'in the context' of its evidentiary analysis.[1052] This is erroneous: his contested [REDACTED] was the specific source of his claims on Cœur de Lion;[1053] moreover it was central to the Defence's contestation of his overall reliability.[1054] This was an unlawful dereliction: the Chamber was obliged to provide reasons as to why it preferred P-1962's account over [REDACTED].[1055] The lack of reasoning was systematic: the quasi-entirety of the extensive evidence indicating that P-1962 lied about [REDACTED] was ignored, not least his inability to recognise Cœur de Lion in a photoboard, while purported positive *indicia* of reliability were addressed.[1056] It sidestepped the plainly contrary evidence of D29-3014 regarding [REDACTED], merely finding P-1962's credibility 'overall' was unaffected, thus erring in failing to address this contested [REDACTED] within the context of the Defence challenge to his evidence on the trip and Boda events, not merely his 'overall' credibility.[1057] This reasoning was also flawed: reference to [REDACTED] or [REDACTED] means little, given the contrary evidence that the

[1047] See e.g. P-0954: T-166, 54:12-17 ('*Ce checkpoint que vous voyez, vraiment, a causé trop, trop, trop, trop, trop de crises* […] *Pour passer ce checkpoint, vraiment, il faut Dieu soit avec toi*.'). See Judgment, pp. 1171-1172, para. 3409.
[1048] Judgment, p. 1171-1172, para. 3409.
[1049] D29-5015: T-255, 20:4-21:1; T-256, 13:19-14:12, 34:13-35:9; see also Yekatom Closing Statements, T-308 (ENG), 64:24-65:12; cf. Judgment, p. 1171, para. 3407. On the fact that RFACPP did not control the Mbaïki-Boda Axis, see e.g. P-1647: T-196, 23:22-26.
[1050] Judgment, p. 1172, para. 3410.
[1051] See Yekatom Defence Closing Brief, paras. 136-150 (in particular 137, citing [REDACTED] denial that P-1962 was [REDACTED], particularly significant in light of P-1962 specifically claiming that [REDACTED].
[1052] Judgment, p. 124, para. 380, referring to pp. 770-776, paras. 2091-2114.
[1053] [REDACTED].
[1054] See Yekatom Defence Closing Brief, paras. 136-144.
[1055] ICTR-01-63-A, para. 282. See Part 4 (unreasoned).
[1056] See Yekatom Defence Closing Brief, paras. 136-144 (citing further contrary evidence and inconsistencies in respect of [REDACTED]; on his claims regarding the [REDACTED] meeting in Boda; on his claims to not have been present in Boda in December / January); P-1962: T-141, 11:17-12:3 (where he is unable to recognise Cœur de Lion in CAR-D29-0010-0042); [REDACTED]; cf. Judgment, pp. 123-124, paras. 378-381. See also, P-1839: T-174, 17:3-25 (wherein she recognised Cœur de Lion); [REDACTED].
[1057] Judgment, p. 125, paras. 382-383; cf. Yekatom Defence Closing Brief, para. 140. See D29-3014: [REDACTED]; *contra* P-1962: [REDACTED].

[REDACTED] even occurred;[1058] and the Chamber mischaracterised D29-3014's evidence, implying he was not in Bangui at the time.[1059] The Chamber compounded these errors, failing to provide sufficient reasoning for its reliance on P-1962's accomplice evidence generally despite his involvement in the criminal events as [REDACTED], or to consider his incentives to implicate Mr. Yekatom and the RFACPP, and how this impacted his reliability.[1060] This lack of caution was manifest in its reliance on his 'details' about RFACPP members and the 'source' of his knowledge, while entirely ignoring Defence submissions and evidence that these 'details' and 'source' were fictive;[1061] its superficial assessment of the falsity of his claim that Habib Soussou, and not P-1962, was [REDACTED];[1062] and ignoring that P-1962 benefited from relocation following his cooperation with the OTP.[1063] In light of the above, no reasonable Chamber would have concluded that by 'taking over' checkpoints, Mr. Yekatom and the RFACPP 'aimed at searching and identifying Muslims'.

e) Errors in dismissing Mr. Yekatom's cooperative actions

315. Errors in setting an arbitrary and impossible timeline: An accurate chronological sequence of events must be established, where findings are entered on elements of an accused's individual criminal responsibility.[1064] The Chamber erroneously found that the evacuation of Muslim civilians from Mbaïki was a 'forgone conclusion' by 30 January 2014 without determining when this conclusion was reached; it also failed to specify when Mr. Yekatom's alleged 'control' over the Axis materialised. These errors suggested Mr. Yekatom sustained control over time and were improperly used to diminish the significance of his cooperative actions. They resulted from its flawed assessment of the context, leading to further errors on Mr. Yekatom's intent and responsibility and inflated his scope of control.[1065]

316. The Chamber effectively dismissed evidence of Mr. Yekatom's efforts to cooperate with various authorities and international forces, finding 'that they took place after Mr. Yekatom had gained

[1058] Cf. Judgment, p. 125, para. 383.
[1059] Judgment, p. 143, para. 443 (finding that D29-3014 'was in Bangui for his medical treatment after the Seleka left Boda in January 2014' and 'he could not say anything about what occurred in Bangui'); cf. D29-3014: T-274, 7:5-21 (confirming that he was in Bangui before 5 December 2013; and that he was did not have a clear idea of what happened during the 5 December Bangui attack).
[1060] ICC-01/04-02/06-2666-Red A, para. 655; IT-04-74-A, vol. II, para. 2690; IT-98-32/1-A, para. 62.
[1061] See Yekatom Defence Closing Brief, para. 150, citing inter alia D29-3014: CAR-D29-0009-0355, paras. 21-22, 27 (where he confirms that neither [REDACTED] nor Mr. Yekatom ever worked for him in the Boda mines; and that Mr. Yekatom did not grow up with his son Habib in Boda); *contra* P-1962: CAR-OTP-2068-0037-R04, para. 30 (where P-1962 claimed that he had [REDACTED]); see also P-0884: T-055, 82:9-10; P-0888: T-122, 46:4-7; P-1528: CAR-OTP-2048-0757-R05, para. 51 (on Mr. Yekatom having grown up in Bangui); cf. Judgment, p. 124, para. 379, fn. 542.
[1062] See Judgment, p. 126, para. 388; cf. Yekatom Defence Closing Brief, paras. 149-150.
[1063] See, ICC-01/14-01/18-906-Conf-Red, para. 50. See also Yekatom Defence Closing Brief, para. 76 and para. 136, fn. 444; P-1962: CAR-OTP-2068-0037-R04, paras. 6-10.
[1064] See, for example, IT-00-39-A, para. 176.
[1065] See also Part 4 (evidence assessment).

effective control of the PK9-Mbaïki axis and following […] Samba-Panza's election as president' and 'after a significant proportion of the Muslim civilian population along the axis had to flee their towns and villages and Mbaïki'.[1066] While the unfounded nature of this finding is addressed below, the Chamber's reasoning is itself flawed in that it effectively condemns Mr. Yekatom for not having undertaken these actions prior to 20 January 2014, an interpretation that fails to account for the reality on the ground: in particular, the ongoing presence of the Seleka on the Axis. On the evidence, the chronology of events demonstrates that Seleka were stationed at PK9 until at least 11 January 2014;[1067] on 21 January, they were 15 km from the village of Bossongo Café;[1068] they remained in Pissa until 27 January;[1069] and they left Mbaïki on 29 January.[1070] Prior to 27 January 2014, the RFACPP had progressed less than halfway along the Axis, reaching Mbaïki only on 30 January 2014.[1071] Even assuming *arguendo* that 20 January 2014 is a relevant date (noting the lack of explanation in this regard), this would suggest that only cooperation efforts made in this 8-day window would have merited consideration by the Chamber.[1072] The Chamber's reliance on a period 'after Mr. Yekatom had gained effective control of the Axis' is similarly unreasonable: it was entirely legitimate for the RFACPP to focus primarily on repelling the Seleka.

317. The Chamber's reasoning is also inconsistent. It dismissed his efforts made after the Muslims community's departure, effectively finding that they came too late, despite also finding that their departures were a foregone conclusion by 30 January 2014, thus imposing an unreasonable double-bind.[1073] It also failed to take them into consideration in finding that the RFACPP presence on the Axis and in Mbaïki until the end of February 'was sufficient to hamper the return of those Muslims'.[1074]

318. The Chamber engaged in similarly flawed reasoning when finding that 'while the above evidence indicates that Mr. Yekatom allowed the gendarmerie and the national staff to go back to their stations […], that same evidence shows that Mr. Yekatom did not give them back any effective power', finding a 'relevant difference […] between allowing the authorities to be physically present in their duty stations and handing them over effective responsibility for the checkpoints'.[1075] Yet the

[1066] Judgment, p. 1165, para. 3393.
[1067] CAR-OTP-2118-0723; CAR-OTP-2055-2610.
[1068] CAR-OTP-2107-1191 (while per the metadata the video is dated 21 January 2014, the journalist reports the election of Samba Panza; therefore the video should have been recorded on 20 or 21 January 2014.
[1069] P-2353: CAR-OTP-2104-0033-R03, paras. 44, 49.
[1070] P-1813: CAR-OTP-2069-0035-R02, paras. 48-49; T-180, 13:10-18; CAR-OTP-2090-0373, p. 0376.
[1071] Annex 6, pp. 1-2 (Chronological timeline of relevant events for the context); and Annex 6, p. 3 (map presenting Seleka and RFACPP presence on the axis by 21 January 2014).
[1072] Judgment, pp. 1165-1166, para. 3394.
[1073] Judgment, pp. 1205-1206, para. 3491.
[1074] Judgment, p. 1475, para. 4327.
[1075] Judgment, pp. 1165-1166, para. 3394.

former President herself explained that at the time, CAR was 'plunged into chaos with no State, no administration, […] no justice, no army',[1076] lasting until 2015.[1077] Per Pissa's mayor, the situation was 'uncontrollable', and while the President ordered the return of the gendarmes and police, this only materialised in March 2014.[1078] A mid-February 2014 video depicts gendarmes reduced to patrolling Bangui while unarmed.[1079] The Chamber thus overlooked that, in the complete absence of official State authorities, ex-FACA in the RFACPP were the only functioning security forces, and were thus expected, including by state personnel themselves, to restore order.[1080] The Chamber noted, but failed to appreciate the significance of the fact that the RFACPP members posted to checkpoints alongside state personnel were mostly FACA members dressed in military uniform'.[1081] Moreover, the Chamber erroneously assessed Mr. Yekatom's conduct in hindsight, rather than examining what constraints existed at the time.[1082] While RFACPP worked alongside the gendarmes as military colleagues,[1083] he lacked both the authority and the means to empower them further.

319. The Chamber's dismissal of cooperation efforts made after the departure of Mbaiki's Muslims had been decided and/or carried out is also factually and logically unsound;[1084] likewise, its finding that the measures undertaken by Mr. Yekatom in Mbaïki were 'clearly insufficient'.[1085] The double-bind reappears: Mr. Yekatom could never have taken sufficient measures in this six-day period, because the departures were a foregone conclusion before the RFACPP even arrived in Mbaïki. In any event, there is no reasonable indication that Mr. Yekatom knew, before 30 January 2014, that convoys would evacuate the Muslims;[1086] nor the date of the evacuation. The reasoning underpinning this dismissal of Mr. Yekatom's efforts and measures is also fundamentally undermined by i) the fact that the Malian Muslims' departures was not decided until after 6 February, and there is no indication that Mr. Yekatom was ever aware of their intention to leave; and ii) that in any event Muslim civilians remained in Mbaïki after these evacuations.[1087] The Chamber also unduly downplayed P-1647's

[1076] Judgment, pp. 258-259, para. 766, fn. 1561.
[1077] TCV-0952: T-250, 23:3-9, 45:23-46:7; CAR-OTP-00002254, 0008:241-0009:244.
[1078] P-2084: T-233, 29:7-8; T-234, 82:1-26.
[1079] Judgment, p. 1147, para. 3337, fn. 8175; see also [CAR-OTP-2055-2610] / CAR-OTP-2107-6906.
[1080] CAR-D29-0002-0676, p. 0678: '*un gendarme glisse discrètement: 'ça ne va pas du tout. Il faut qu'on les libère d'ici. Ils font trop de problèmes* (…) *on est mal à l'aise a cause de leur comportements. Ils règlent tous leurs problèmes avec une arme. Beaucoup d'entre nous sont cachés dans la forêt*'; CAR-OTP-2055-2610 at [00:01:14] to [00:02:20] / CAR-OTP-2122-2271, 2275:39-2276:82.
[1081] Judgment, pp. 1165-1166, para. 3394.
[1082] Annex 6, pp. 1-2.
[1083] CAR-D29-0001-0526, p. 0530; See also above on 'equal footing'.
[1084] Judgment, p. 1227, para. 3559.
[1085] Judgment, p. 1228, para. 3563.
[1086] See Ground 2.7.
[1087] Judgment, p. 40 para. 123, p. 1242, para. 3615. See P-1666: T-232, 5:2-22. See P-1647: CAR-OTP-2050-0654-R02, para. 62; P-1838: CAR-OTP-2100-0252-R04, para. 86; P-1595: CAR-OTP-2104-0274-R02, para. 94. See also, Judgment, p. 1246, para. 3628, fn. 8925 (where the Trial Chamber 'notes' that per P-1838, some Muslims remained in Mbaïki, citing T-215 (ENG) 37:10-14 and T-216 (ENG) 24:22-25:6). Cf. Judgment, pp. 1226-1227, paras. 3558-3559.

evidence regarding RFACPP security measures in Mbaïki,[1088] selectively referring only to his evidence from March 2014 and offering no justification for excluding his testimony that the group generally worked with the gendarmes.[1089] Its finding that, in any event, it heard no concrete evidence of measures taken by P-1647 in Mbaïki reverses the burden of proof.[1090]

320. Errors in ignoring cooperative actions: the Chamber failed to consider evidence demonstrating reconciliation and cooperation with authorities in January 2014.[1091] While it acknowledged that no clashes occurred between the Seleka and the RFACPP along the axis, it failed to appreciate that the RFACPP's advance aimed at minimising harm to the civilian population.[1092] It failed to properly assess evidence demonstrating cooperation between gendarmeries and the RFACPP.[1093] It disregarded the fact that the local population established checkpoints, some of which were the sites of security incidents,[1094] and that RFACPP dismantled certain checkpoints.[1095]

321. It failed to properly appreciate the RFACPP's collaboration with local authorities held prior to the Church Meeting as an instance of the RFACPP's cooperative approach as aptly illustrated by the finding that 'the evidence available does not indicate that the Seleka in Mbaïki left because of any exchanges with Mr. Yekatom'.[1096] Regardless of whether the Seleka's departure was attributable to the negotiations, the key point is that Mr. Yekatom contacted Seleka Colonel Anour with the aim of securing their peaceful withdrawal from the town.[1097] It is equally relevant that Mr. Yekatom had agreed to meet authorities in Pissa rather than to unilaterally enter Mbaïki, and to attend the planned

[1088] Judgment, p. 1226, para. 3556; p. 1227, para. 3559.
[1089] P-1647: T-195, 52:25-53:17; 56:9-17.
[1090] P-1647: T-195, 50:13-51:17; CAR-OTP-2050-0654-R02, para. 41; see also Part 4 (burden reversal).
[1091] Cooperation with national forces at PK9: P-1839: T-174, 28:6-20; CAR-OTP-2094-7618, [00:05:53] to [00:09:04]; even though the FOMAC, was acting in concert with the Seleka, committing abuses against the civilian population (on FOMAC: D29-5013: T-285, 21:25-22:20; P-0884: T-057, 23:5-20 commenting on CAR-OTP-2012-0424 at [01:13-04:15]; CAR-OTP-2065-0716, [00:04:33:17] / CAR-OTP-2107-6924 at lines 79-83. Cooperation with governmental representatives: P-0876: T-086, 72:5-73-3; CAR-OTP-2046-0249-R01, 0264:605-0265:631; P-0954: T-167, 82:18-24; P-0974: T-243, 55:20-56:27; Reconciliation: CAR-D29-0004-2593; P-0884: T-057, 75:15-17; P-1647:T-195, 45:23-47:3; CAR-OTP-2055-2610, [00:02:52] to [00:03:17], [00:06:42] to [00:07:45] / CAR-OTP-2122-2271, 2276:93-101, 2287:178-2279:188; see also Yekatom Defence Closing Brief, paras. 352 and 481.
[1092] P-1647: T-195, 44:2-7; P-2353: CAR-OTP-2100-0226-R03, para. 49; P-1786: CAR-OTP-2058-0200-R03, paras. 36, 42-43; P-1558: CAR-OTP-2105-0195-R01, para. 26; P-2084: CAR-OTP-2094-0968-R02, para. 81, T-234, 75:24-76:5; P-1839: T-174, 29:5-9; 30:26-31:1, 32:11-33:13.
[1093] Judgment, para. 3391; P-1839: T-174, 53:12-54:7; CAR-D29-0004-3897.
[1094] P-1666: T-232, 22:3-24:21 (on threats at checkpoints toward Muslims from local youths on the Ndolobo road, 12-13 km from Mbaïki, days prior to the Church Meeting); P-2041: CAR-OTP-2104-0003-R02, paras. 43-44 ([REDACTED]); P-1647: T-195, 50:13-51:12 (on 'illegal' checkpoints established along the Axis by self-proclaimed 'anti-balaka' (aka 'fake anti-balaka'); and personally dismantling one such checkpoint at Boyali (near Pissa) at the end of January 2014); [REDACTED].
[1095] P-1647: T-195, 50:13-51:12.
[1096] Judgment, pp. 1190-1194, paras. 3454-3463.
[1097] P-0884: T-057, 75:15-17; P-1647: T-195, 45:23-47:3; CAR-OTP-2055-2610, [00:02:52] to [00:03:17]; [00:06:42] to [00:07:45] / CAR-OTP-2122-2271, 2276:93-101; 2278-2279:178-188; CAR-OTP-2123-0430, 0433; see also CAR-OTP-2094-7703-R01 (attributing phone number to Souleymane Daouda); [CST] CAR-D29-0004-2593 (CST showing phone calls between phone numbers attributed to Mokomkama and Daouda); See also Yekatom Defence Closing Brief, para. 481.

peace negotiations.[1098] Here too, the Chamber's selective evidence analysis is laid bare: while it found that the RFACPP caused the Seleka to retreat from the Axis generally,[1099] it refused to credit Mr. Yekatom's negotiation efforts for their departure from Mbaïki.[1100]

322. The Chamber also failed to recognise the concerns of Mbaïki authorities at the Pissa meeting, in response to which Mr. Yekatom agreed to participate in the subsequent Church Meeting. It failed to holistically consider the evidence that, following the Seleka's abrupt withdrawal from Mbaïki, both the Prefect and humanitarian representatives feared that intercommunal violence could erupt.[1101] Muslims in Lobaye were left unprotected and exposed to the deadly consequences of the Seleka's prior dismantling of CAR security forces and its widespread campaign of abuses that had inflamed anti-Muslim hostility.[1102] The non-Muslim population, who had borne the brunt of Seleka atrocities, started to violently attack Muslims civilians in vengeance.[1103] Muslim refugees reported widespread fear of 'anti-balaka' presence in remote areas, while semi-organised 'anti-balaka' groups expanded attacks into Lobaye.[1104] The planned negotiations between the Seleka and the RFACPP was thus transformed into a meeting on social cohesion and security, which Mr. Yekatom was requested to attend, so as to help ensure order and ensure the protection of both Muslim and non-Muslim communities.[1105]

323. By arbitrarily compartmentalising timeframes and ignoring the wider context, the Chamber erroneously dismissed the continuum of the RFACPP's cooperation efforts starting in December 2013

[1098] P-1813: CAR-OTP-2069-0035-R02, para. 43; T-180, 7:17-24, 12:16-22, 13:10-18, 15:3-24; D29-5012: T-293, 52:10-53:4; T-295, 47:22-48:19; see also Yekatom Defence Closing Brief, paras. 517-520.
[1099] Judgment, pp. 1146, para. 3335; p. 1182, para. 3436.
[1100] Judgment, pp. 1193-1194, para. 3463.
[1101] [REDACTED]; P-1813: T-180, 15:3-11; 18:7-16; 21:4-28; 24:6-9; T-182, 39:10-17; CAR-OTP-2069-0035-R02, para. 50; see also Yekatom Defence Closing Brief, paras. 519-520.
[1102] Judgment, pp. 239-244, paras. 723-730.
[1103] Bagandou: P-2041: CAR-OTP-2104-0003-R02, paras. 38-41, 46, 43-45, 39-46; P-2353: CAR-OTP-2100-0226-R03, paras. 38, 54; T-161, 20:16-24; 21:12-26; 22:2-12; 75:24-77:5; P-2354: CAR-OTP-2105-0991-R03, paras. 41-42; T-210, 40:8-41:12; P-1666: T-231, 12:13-13:16; T-232, 10:7-20; D29-5013: T-285, 30:4-27; D29-5012: T-295, 8:6-21; Bimon: P-2419: CAR-OTP-2112-0036-R03, paras. 42-43, 45-56; T-177, 23:20-25:8; Café Bossongo: P-1838: CAR-OTP-2100-0252-R05, para. 94; D29-5012: T-295, 13:9-15:13; D29-5016: CAR-D29-0009-0576-R01, paras. 18-20; see also P-1666: T-231, 11:19-12:3; CAR-OTP-2107-1191, [00:00:30] - [00:01:28] / CAR-D29-0006-0933, 0933:13-23; Pissa: D29-6048: CAR-D29-0009-0804-R01, paras. 23-24; Boda: D29-5012: T-293, 58:20-63:15; T-295, 48:23-49:8; P-1813: T-180, 39:8-19; CAR-OTP-2090-0373, pp. 0376, 0378: '*28 Janvier 2014: (...) Cette mission s'est arrêtée sur Mbaïki où la situation locale n'a pas permis de relancer l'action sur Boda en raison de risques forts d'exactions au départ de la force*'; see also Yekatom Defence Closing Brief, para. 495.
[1104] P-2354: CAR-OTP-2105-0991-R03, para. 42; P-1666: T-231, 22:7-25; P-1813: T-182, 41:14-26; 42:8-43:17; P-1773: CAR-OTP-2064-0063-R03, paras. 26; 30 et seq; 33 et seq; 80; D29-5012: T-293, 59:26-60:8; 63:5-8; T-294, 21:27-22:8; 31:26-32:21; 71:14-20; 75:22-77:1; T-295, 48:23-27; D29-5015: T-254, 36:22-37:6; 38:20-23; 39:2-14; 75:4-77:28; P-1838: CAR-OTP-2100-0252-R05, para. 43; CAR-D29-0005-0392, p. 0396; CAR-OTP-2001-2248; CAR-OTP-2055-1987, pp. 2155-2158; p. 2158; CAR-OTP-2001-2237, pp. 2237; 2244-2245; P-0801: CAR-OTP-2001-2237, 2245; P-2324: CAR-OTP-2100-2002-R02, para. 29; CAR-OTP-2090-0373; CAR-OTP-2090-0378; CAR-OTP-2042-3463 /CAR-OTP-2107-1526; See also CAR-OTP-2042-3464, [00:01:23]-[00:01:42] / CAR-D29-0006-0103, 0103:24-0104:21; CAR-D29-0006-0107, 0110:15-21; Yekatom Defence Closing Brief, para. 496; CAR-OTP-2023-1636, [00:08:09]-[00:08:50].
[1105] Judgment, pp. 1192-1193, para. 3460.

and the RFACPP's important steps in restoring peace in the Lobaye region, an impact captured in the words of the Imam of Mbaïki that it was 'thanks to Mr. Yekatom'.[1106] If such efforts increased in subsequent months, this was merely the result of greater room to manoeuvre following the Seleka retreat and the gradual stabilisation of the country. This error led the Chamber to disregard a substantial body of evidence demonstrating RFACPP cooperation and promotion of social cohesion, peace and reconciliation, alongside international forces, governmental authorities and civil society actors.[1107]

324. Errors in factual findings on Mr. Yekatom's cooperation and security efforts: The Chamber systematically misapprehended the nature and extent of Mr. Yekatom and the RFACPP's efforts to ensure security for the population on their arrival in Mbaïki, alongside international forces, local authorities and humanitarian actors.

325. It failed to properly consider exchanges between Sangaris and Mr. Yekatom at PK9 in the context of their continuous cooperation.[1108] Its failure in this regard is mirrored in its erroneous finding that Sangaris 'compelled' Mr. Yekatom to deliver a peace message in Mbaïki and prevented attacks of his group against Muslims there, which is simply not supported in the evidence.[1109] First, the Chamber mischaracterised the evidence of P-1666, who explained that the absence of attacks following the Mbaïki meeting was attributable both to Mr. Yekatom's speech and to the presence of Sangaris and FOMAC forces – two distinct factors, with no indication that the latter influenced the RFACPP's

[1106] P-1595: T-106, 41:7-13.

[1107] Reconciliation and peace efforts: P-0884: T-057, 75:15-17; P-1647: T-195, 45:23-47:3; CAR-OTP-2055-2610, [00:02:52] to [00:03:17], [00:06:42] to [00:07:45] / CAR-OTP-2122-2271, 2276:93-101; 2287:178-2279:188; CAR-OTP-2023-1990, [00:01:03] to [00:01:37] / CAR-OTP-2122-9420, 9421:15-21; P-1193: CAR-OTP-2135-2773-R01, para. 36; T-126, 55:24-56:1; Omnisport gathering towards social cohesion (March 2014): P-0884: T-057, 70:5-71:20, 72:27-78:8; P-0808: T-072, 60:11-16; P-0888: T-122, 34:1-17; 35:12-37:25; TCV-0952: T-252, 44:6-9; P-0884: T-057, 70:16-71:16; 72:10-19; CAR-OTP-2023-1831, [00:01:07], [00:50:21] / CAR-OTP-2127-6561; Governmental missions: P-0801: T-036, 14:13-25:17; CAR-OTP-2100-1699 (14 March 2014 Order for government 'mediation and security' mission to BODA involving inter alia P-0801 and Mr. Yekatom); CAR-OTP-2100-1699 (referring to non-aggression pact signed pursuant to mission); P-0808: CAR-OTP-2093-0010-R02, para. 105; CAR-OTP-2115-0285; ICC-01/14-01/18-2661-Conf-AnxA, #32; CAR-D29-0013-0028 (Mr. Yekatom's letter to the Minister of National Defence, in which he detailed a series of missions carried out in Boda, Bossongo Café and Pissa in April 2014 improperly dismissed by the Trial Chamber at para. 3391); CAR-OTP-2060-0799 (referring to non-aggression pact signed pursuant to mission); CAR-D29-0001-0138 (ordre de mission); CAR-D29-0013-0267; See also ICC-01/14-01/18-2561-Conf-AnxA, p. 26, #7, 8, 16. Gathering at Pissmiss in the presence of international actors and NGO (May 2014): P-0888: T-122, 7:6-8:6; P-0954: T-167, 88:11-89:15; P-1858: T-186, 48:11-22; T-186, 44:19-45:5; P-1193: T-126, 58:13-59:5; 61:4-23; 65:14-20; P-0876: T-087, 5:22-28; Disarmament, arrest et cooperation with MISCA: P-1813: CAR-OTP-2069-0035-R02, para. 71; T-180, 29:24-31:2; 35:19-36:3; 36:12–37:2; T-182, 46:6-23; see also D29-5015: T-254, 55:26–56:18; CAR-D29-0002-0086; CAR-D29-0013-0030; Cooperation with gendarmerie: CAR-OTP-2055-2610; P-1647; CAR-OTP-2050-0654-R02, paras. 44; 67; 84; T-195, 56:9-18; P-1193: T-126, 80:4-19; see also paras. 351-353 of Yekatom Defence Closing Brief.

[1108] CAR-OTP-2118-0723 / CAR-D29-0006-0761, 0761:25-26 ('*Nous, tout de suite, s'ils veulent décaler les gens-là, nous, on va aller prendre PK9, puis c'est fini. On travaille avec l'armée française*'); P-1839: T-173, 30:17-28; CAR-OTP-2065-4268; CAR-OTP-2065-4617; CAR-OTP-2065-4876.

[1109] Judgment, p. 1212, para. 3513; p. 1213, para. 3519.

conduct.[1110] P-2389's evidence lacks probative value as it relies merely on his impression and contradicts his other evidence that the Sangaris departed for Boda the next day.[1111] The Chamber fragmented P-1647's evidence, omitting that he clarified 'we told them we wouldn't do that'.[1112] The French version of the statement – reviewed during familiarisation – states *'les Français nous ont demandé'* rather than *'instructed'*, a material distinction indicating cooperation, rather than subordination, between Sangaris and the RFACPP.[1113] Finally, the Chamber's reliance on P-2041's evidence is misplaced: the scene he described occurred immediately after Mr. Yekatom warned that anyone harming Muslims would face consequences, and demonstrates his collaboration with Sangaris to ensure security.[1114] Indeed, if Sangaris's presence alone prevented violence, it is unclear why the French then relied on him to control the crowd. Moreover, the mere fact that Sangaris asked RFACPP not to harass civilians or display their weapons does not establish that their presence was the sole reason why the RFACPP refrained from attacking or why Mr. Yekatom delivered a message of peace. It ignored evidence of the Sangaris' limited operational capabilities and the fact that Mr. Yekatom was specifically requested to come to Mbaïki specifically because his assistance was considered necessary for security;[1115] and it disregarded private instances of his interaction with Muslims that further undermine its conclusion.[1116]

326. Moreover, the Chamber systematically mischaracterised the evidence and/or entered flawed factual findings, evidencing a clear pattern of misappreciating the nature and extent of RFACPP, and Mr. Yekatom's, efforts to ensure security and order in Mbaïki. The Chamber incorrectly relied on P-1666 to describe the purpose of the Mbaïki meeting, rather than on its organisers, including P-1813, relegated to a mere footnote, despite him having personally invited Mr. Yekatom to ensure security in Mbaïki amid fears of clashes.[1117] It also improperly assessed evidence concerning Mr. Yekatom's introduction as a FACA during the meeting, further demonstrating its failure to acknowledge that the

[1110] Judgment, p. 1212, para. 3514; p. 1213, para. 3517.
[1111] Judgment, p. 1213, para. 3515; P-2389: CAR-OTP-2104-0033-R03, para. 61.
[1112] Judgment, p. 1213, para. 3516; CAR-OTP-2102-0199-R02, para. 47.
[1113] P-1647: CAR-OTP-00000826; CAR-OTP-2102-0199-R02, para. 47.
[1114] Judgment, p. 1213, para. 3518.
[1115] D29-5012: T-294, 61:21-62:9; [REDACTED]; D29-5015: T-255, 67:17-21; CAR-OTP-2090-0373, pp. 0376, 0378; see also above Pissa meeting requesting Mr. Yekatom's cooperation.
[1116] D29-5014: T-257, 16:9-20:23, 22:4-16; P-2353: CAR-OTP-2100-0226, para. 66; T-161, 35:28-37-12.
[1117] Judgment, pp. 1201-1202, para. 3480, fn. 8586 referring to P-1813: T-182, 28:20-29:1 but omitting crucial evidence P-1813: T-180, 15:7-11: '*Alors, j'avais appelé l'accusé pour lui demander de descendre à Mbaïki afin qu'on voit de quelle manière assurer la sécurité à Mbaïki pour éviter du désordre, du fait que les Séléka qui étaient passés pour être les protecteurs des musulmans étant partis, comme beaucoup de gens s'improvisaient Anti-balaka, il allait y avoir des confrontations*'. See also D29-5012: T-295, 47:22-49:27; D29-5015: T-254, 41:9-42:22; [REDACTED]. The Chamber overlooked part of P-1666's testimy indicating that widespread rumours circulated about Muslims possessing significant arsenal and being prepared to fight the non-Muslim population, clearly evidencing pre-existing intercommunal tensions. See Judgment, pp. 1201-1202, para. 3480, fn. 8586 referring to P-1666: T-230 (ENG), 44:23-24 and avoiding T-230 (ENG), 44:24-45:3.

RFACPP members were acting in a de facto military capacity.[1118] It downplayed Mr. Yekatom's intervention during the Church Meeting, notwithstanding that the very witnesses it relied upon provided consistent and corroborated accounts demonstrating that his conduct and statements were fully aligned with the RFACPP's objective of repelling the Seleka and restoring order and peace in the area.[1119]

327. The Chamber erred in finding that D29-5015 warned Mr. Yekatom of a potential risk of facing justice.[1120] It improperly gave greater weight to [REDACTED] P-2041 over the direct testimony of D29-5015, who expressly stated that he did not recall making any such statement, and who was corroborated by another attendee.[1121] It omitted crucial portions of Mr. Yekatom's speech, in which he explicitly affirmed that the RFACPP had no intention of harming the Muslim population, but rather sought to protect both Muslim and non-Muslim civilians, warning that any acts of violence against Muslims would not be tolerated.[1122] The Chamber also failed to give proper weight to the fact that Muslim participants found reassurance and relief in Mr. Yekatom's statements.[1123] Notably, P-1666 – [REDACTED] – [REDACTED];[1124] likewise, P-1595, a Mbaïki imam, who confirmed the positive impact of Mr. Yekatom's participation at the Church meeting and speech to the population.[1125] Likewise, the Chamber overlooked the significance of the fact that Mr. Yekatom was invited to, and did, repeat his speech twice before the population.[1126] Both times, Mr. Yekatom remained consistent in his message, reiterating his message of peace, warning against any harm to the Muslim community, fully aware that it might not be what the population wanted to hear; and witnesses confirmed that his intervention was decisive in calming tensions.[1127]

[1118] Judgment, pp. 1202-1203, para. 3481; see Ground 2.2(a).
[1119] Judgment, pp. 1202-1203, paras. 3482-3483.
[1120] Judgment, p. 1205, para. 3489.
[1121] Judgment, pp. 1204-1205, paras. 3486-3489; D29-5012, 13:7-25. This is all the more a weak assessment as P-2041 was unable [REDACTED] (CAR-OTP-2104-0003-R02, p. 0003; CAR-OTP-00001501-R01, see fn. 901 above); [REDACTED] (P-2041: CAR-OTP-2104-0003-R02, para. 53). P-2041 was further inconsistent regarding Mr. Yekatom's response: he twice denied that Mr. Yekatom made any reply (P-2041: T-229, 93:3-94:7) yet elsewhere asserted that Mr. Yekatom stated he was not responsible for the actions of local youths causing disturbances in the Lobaye (P-2041: CAR-OTP-2104-0003-R02, para. 53).
[1122] P-1595: CAR-OTP-2104-0274-R02, para. 78; P-1666: T-230, 9:3-15; 41:6-8; 43:5-10; T-232, 15:1-3; P-1839: T-174, 67:19-25; P-2041: T-229, 92:16-20; P-2084: CAR-OTP-2094-0968-R02, para. 68; D29-5012: T-293, 70:5-21; T-294, 11:23-25; D29-5015: T-254, 43:16-44:13; P-1595: T-106, 8:9-15; 39:22-24; 40:5-11; see also Yekatom Defence Closing Brief, para. 521.
[1123]D29-5012: T-293, 65:23-28; 68:12-27; T-294, 11:11-12:6; D29-5015: T-254, 54:28-55:2; T-255, 7:9-17; P-1595: T-106, 41:8-9; P-1666: T-230, 50:15-28; T-232, 17:6-9; see also Yekatom Defence Closing Brief, para. 522.
[1124] P-1666: T-232, 16:27-17:9; P-1595: T-106, 41:4-9; see also Yekatom Defence Closing Brief, para. 522.
[1125] P-1595: CAR-OTP-2104-0274-R02, paras. 68-69; T-106, 9:11-23; The Trial Chamber's failure to draw proper connections between evidence is clear here, as it erred in not linking Mr. Yekatom's intervention at the meeting to the scene described by P-1595 while the witness explicitly declared: '*Ils ont dit aux autres "Mais vous, là, vous n'avez pas écouté la déclaration de M. Rambo",* demonstrating a direct continuity between the two events that the Chamber overlooked.
[1126] Judgment, p. 1209, para. 3498; p. 1211, paras. 3502-3503.
[1127] Judgment, p. 1209, para. 3498; p. 1211, paras. 3502-3503.

328. The Chamber's finding that 'several witnesses mentioned that Mr. Yekatom's elements asked certain Muslim inhabitants of Mbaïki for money and/or that some of these inhabitants offered them money' ignores evidence indicating that the local population, Muslim or non-Muslim, provided money and goods to the RFACPP.[1128] These contributions were made either in recognition of their efforts to expel the Seleka or to support the group,[1129] which was an operational necessity for the RFACPP as it could not have sustained itself without this support. It does not render less meaningful, as the Chamber did,[1130] the RFACPP's assistance towards the Muslim population, particularly given other evidence showing that members genuinely offered assistance to Muslim civilians, including by providing their phone numbers.[1131]

329. The Chamber erred in finding that Mr. Yekatom and Cœur de Lion only provided their phone numbers 'in the context of receiving payment'.[1132] [REDACTED] recounted [REDACTED] after the conclusion of the Church Meeting, stating that Mr. Yekatom 'gave his phone number to [REDACTED] to call him in case anything happened'.[1133] There is no reasonable basis to conclude that this took place during [REDACTED]'s subsequent encounter with Mr. Yekatom, which took place 3-4 days after the Church Meeting,[1134] especially as [REDACTED] did not state he received Mr. Yekatom's number during this subsequent encounter (in contrast to Cœur de Lion's number);[1135] and the Chamber erred in not taking this into account.[1136] In any event, the logic behind the Chamber's theory is unclear: if Cœur de Lion provided his number not as a good faith attempt to ensure security in Mbaïki but merely because he was given money, it is unclear as to why he would have bothered to intervene when it was subsequently reported to him, via that number, that Muslim vendors' goods were being stolen.[1137] Moreover, there is no evidence that Cœur de Lion had any prior awareness of the Muslims' departure. Even if *arguendo* the departure had been decided at the Church Meeting,[1138] the Chamber's finding that Cœur de Lion was present, citing a single photograph and excerpts from various testimonies, was erroneous:[1139] none of the cited evidence identifies Cœur de Lion in the

[1128] Judgment, pp. 1214-1216, paras. 3522-3526.
[1129] P-2084: CAR-OTP-2094-0968-R02, para. 78; P-1647: CAR-OTP-2050-0654-R02, paras. 65, 81; P-1786: CAR-OTP-2058-0200-R03, para. 37; CAR-OTP-2065-0580, [00:00:35] to [00:01:24] / CAR-OTP-00001940, 2:24-25; CAR-OTP-2055-2610 [00:07:49] to [00:08:12] / CAR-OTP-2107-6906, 6914:225-236.
[1130] Judgment, p. 1227, para. 3561.
[1131] D29-5014: T-257, 28:18-34:15; P-0446: T-096, 83:19-28; T-099, 88:11-28; P-0888: T-122, 20:3-28; 21:1; 28:21-25; P-1647: CAR-OTP-2050-0654-R02, para. 43; T-195, 53:7-17; P-1193: T-126, 81:13-82:13.
[1132] Cf. Judgment, p. 1227, para. 3561.
[1133] P-2389: CAR-OTP-2104-0033-R03, para. 55.
[1134] See [REDACTED].
[1135] [REDACTED].
[1136] Cf. Judgment, p. 1215, para. 3524, fn. 8686.
[1137] [REDACTED]; *contra* Judgment, p. 1227, para. 3561.
[1138] See Ground 2.7.
[1139] Judgment, pp. 1198-1199, para. 3476, fn. 8556; p. 1201, para. 3478, fn. 8584.

photograph. In fact the individual in question is Vianney Guenewi; Cœur de Lion was not present at the meeting.[1140] As such, the Chamber's discounting of Mr. Yekatom's efforts are undermined given that this reasoning cannot be applied to dismiss other RFACPP members' efforts to ensure security for Mbaïki's Muslims.[1141]

330. The Chamber's failure to assess context continued: it ignored evidence that some Seleka mercenaries remained in Mbaïki after the departure of the main group on 29 January 2014.[1142] It also ignored Cœur de Lion's intervention at a town hall meeting, in presence of the Sangaris, requesting those still armed to surrender their weapons,[1143] which aligns with the departure of the French forces shortly after.

331. The Chamber improperly dismissed D29-5015's evidence confirming MISCA's request for assistance to Mr. Yekatom, giving undue weight to P-1838, who claimed not to be aware of such requests, based on his 'unique position' as Mayor.[1144] It failed to explain why D29-5015, the Bishop of Mbaïki,[1145] was not similarly in a 'unique position,' especially given evidence that P-1838 was largely inactive during the period.[1146] It ignored portions of P-1838's testimony acknowledging Mr. Yekatom's participation in MISCA meetings and his own absences,[1147] and did not consider D29-5015's evidence alongside that of P-1813.[1148] This flawed approach was repeated: the Chamber dismissed P-1813 in favour of P-1838 without addressing D29-5015's evidence.[1149] Similarly, the Chamber unreasonably rejected the Bulletin Notes ('Bulletin Notes'), which confirmed Mr. Yekatom's collaboration with MISCA and corroborated P-1813's testimony, citing (incorrectly) an absence of information on provenance, sources and author.[1150]

332. Lastly, the Chamber erred in finding that the RFACPP were responsible for commandeering a

[1140] CAR-OTP-2094-7618 at [25:24] for Vianney Guenewi (alias 'Cessez le Feu') identified by P-1558: CAR-OTP-2105-0195-R01, para. 102 and at [26:51] for Freddy Ouandjio (alias Cœur de Lion) identified by P-1558: CAR-OTP-2105-0195-R01, para. 104. The Trial Chamber's cursory treatment of the evidence on the Mbaïki meeting is equally illustrated by its conflation of two distinct meetings described by P-1666 – one held at the Sainte Jeanne d'Arc Church and another convened by Cœur de Lion at the Mbaïki town hall (Judgment, para. 3480, fn. 8587 referring to P-1666: T-230 (ENG), 61:17-20; see P-1666: T-230 (ENG), 60:18-61:4, notably Q: Mr. Witness, apart from the meeting in the church St Jeanne d'Arc, were there other meetings with the elements of Rambo and the Mbaïki authority?).
[1141] Cf. Judgment, pp. 1226-1227, paras. 3558-3559.
[1142] P-1647, T-195, p. 55:12-56:5; CAR-OTP-2090-0373 at 0376.
[1143] [REDACTED].
[1144] Judgment, p. 1166, para. 3395.
[1145] D29-5015: T-254, 65:20-23.
[1146] D29-5012: T-295, 29:11-31:12.
[1147] Relevant extract omitted by the Chamber P-1838: T-216, 25:25-26-1 / extract cited by the Chamber P-1838: T-216, 26:2-6; see also P-1838: T-126, 28:12-29:2.
[1148] P-1813: T-182, 45:25-46:23, 48:7-49:1.
[1149] Judgment, pp. 1224-1226, paras. 3553-3555; p. 1227, para. 3560; see also Ground 4.6, para. 402.
[1150] Judgment, p. 1225, para. 3553.

vehicle being used by gendarmes.[1151] P-1813's reference to 'a group of Anti-Balaka' is insufficiently precise to allow identification of the perpetrators,[1152] as is P-2041's reference to 'Anti-Balaka'.[1153] The Chamber failed to provide sufficient reasoning in relying on P-2354's account without addressing the fact that D29-5015 directly contradicted it;[1154] and even if *arguendo* P-2354's account could be relied on, the Chamber failed to address the implications of Mr. Yekatom's purported intervention to have the vehicle returned vis-à-vis its findings on his cooperation efforts.

f) Errors in findings on the reason for Muslim civilians' departures

333. The finding that a 'significant proportion of the Muslim civilian population' fled the Axis 'due to and in fear of' the RFACPP advance was reached via a series of factual and legal errors of logic, evidence assessment, and reasoning.[1155] First, the finding relies primarily on what the Chamber found was evidence of Muslims fleeing the Axis 'after hearing' of the RFACPP advance from PK9 to Mbaïki.[1156] The Chamber thus established a causal link between these events on the basis that departures took place after 10 January 2014, i.e. when the RFACPP emerged on the Axis. The impugned finding is thus premised on a post hoc logical fallacy; correlation does not imply causation. To the extent that Muslims departed from the Axis localities after 10 January 2014, common sense dictates that a causal relationship between those departures and the RFACPP advance cannot be reasonably deduced, let alone established beyond reasonable doubt. Still less, given that alternative causes for the departures can be reasonably inferred from evidence demonstrating that departures commenced months prior to the RFACPP advance, and were caused by the inter-related factors of the outbreak of collective anti-Muslim violence in Lobaye, and the progressive retreat of the Seleka from the Axis.[1157]

334. The combined effect of this failure of logic and indifference to factual context is evinced in the Chamber's finding that the departure of Mbata's Muslims 'occurred at the time when, and because of the RFACPP advance'.[1158] In reality, these Muslims were evacuated on the day the Mbaïki Seleka conducted a house-burning and killing-spree in Mbata, between 10-12 January 2014, after violence erupted when a Muslim civilian threw a grenade into a crowd celebrating Djotodia's resignation.[1159] Never mind that these Muslims' departure was thus the inevitable outcome of local inter-community

[1151] Judgment, p. 1228, para. 3564; see also Judgment, p. 41, para. 129; p. 1483, para. 4349.
[1152] P-2041: CAR-OTP-2104-0003-R02, para. 58; see Ground 2.2.
[1153] P-2041: CAR-OTP-2104-0003-R02, para. 59; see Ground 2.2.
[1154] D29-5015: T-254, 50:8-12; *contra* P-2354: T-210, 10:8-23; cf. Judgment, p. 1228, fn. 8778. See Part 4 (unreasoned).
[1155] Judgment, p. 38, para. 118, pp. 1173-1186, paras. 3417-3445.
[1156] Judgment, pp. 1176-1184, paras. 3423-3442.
[1157] See above. See Yekatom Defence Closing Brief, paras. 495-502. See also Part 5(5).
[1158] Judgment, p. 1179, para. 3429.
[1159] P-1813: T-180, 39:20-40:3 (Counsel's reference in English to 'between 10 and 12 January' was erroneously interpreted in French as '*entre le 20 et le 12 janvier*' – see T-180 (ENG), 41:22-23); P-1666: T-232, 8:15-9:25 (stating that Mbata Muslims were evacuated the very day of the incident). Cf. Judgment, p. 1179, para. 3429.

violence inflamed by Seleka abuses;[1160] or that there is no indication that Mbata's Muslims nor the Mbaïki-based Seleka were even aware of the RFACPP advance at the time, let alone compelled by it; or that Mbata is not located on the Axis, and lies over 100 km away from where the RFACPP was positioned at the time:[1161] the Chamber unreasonably concluded that the RFACPP advance was to blame for these departures.

335. In this regard, a clear pattern emerges from the reasoning underpinning the impugned finding, whereby evidence was distorted so that Muslims' departures could be temporally situated after 10 January 2014, and thus 'causally' linked to the RFACPP advance. Witnesses P-1666 and P-1595 testified that Muslims' departures in Lobaye commenced in October 2013 following the killing of two Muslims in Bangui-Bouchia. The Chamber sought to bypass this critical fact, claiming that these witnesses' evidence contained 'further details' allowing it to 'date such movement more specifically'.[1162] It thus interpreted P-1666's evidence that Muslims' departure to Mbaïki began 'after the [Bangui-Bouchia] events', to be referring not to October 2013 but to after 10 January 2014, reasoning that P-1666's 'placing this movement generally 'after' the Bangui-Bouchia incident does not indicate that it was immediately thereafter'.[1163] Yet per the French transcript, P-1666 specifically stated that the departures 'started with' the incident.[1164] Tellingly, the Chamber was aware of this: while relying on the English transcript, it (apparently inadvertently) cited to the French transcript.[1165] Similarly, the Chamber cobbled together disparate, indeterminate extracts in P-1595's evidence, transforming it to conclude that he too was referring to January 2014 when he referred to departures after the Bangui-Bouchia incident.[1166] This conclusion ignores his evidence that when the incident occurred, he travelled to Bangui-Bouchia with Seleka to retrieve the victims; that while they were there, 'many Muslims came to us in panic, also seeking to leave the villages, afraid also to be killed', and [s]ome forcefully placed their belongings in our vehicles'; and notably, that '[w]hen the people from [Bangui-Bouchia] were evacuated, the Muslims from other villages also started leaving for MBAÏKI'.[1167]

[1160] See Yekatom Defence Closing Brief, para. 501.
[1161] See e.g. Judgment, p. 1135, para. 3297; pp. 1140-1141, paras. 3311-3316. *Contra* Judgment, p. 1184, para. 3442, fn. 8449 (noting that the Trial Chamber's faulty reasoning is premised on the localities' distance from the Axis, whereas logically the RFACPP position is the relevant variable).
[1162] Judgment, p. 1184, para. 3441. Note that the Trial Chamber's finding that P-1666's evidence placing the departures after Djotodia's resignation was a 'specification' is specious, as in fact it precedes his evidence that they commenced in October 2013; if anything therefore, the latter is in fact the 'specification'.
[1163] Judgment, p. 1184, para. 3441. See P-1666: T-231 (ENG), 24:24-25:4 ('People began to travel after the [Bangui-Bouchia] events').
[1164] P-1666: T-231, 24:11-16 ('*Ces déplacements ont commencé par les incidents sur Aba Zakaria et Mahamat*.').
[1165] Judgment, p. 1184, para. 3441, fn. 8447. See Part 4 (bias) / Annex 5, row 19.
[1166] Judgment, p. 1180, para. 3431, citing P-1595: CAR-OTP-2104-0274-R02, paras. 41, 43.
[1167] P-1595: CAR-OTP-2104-0274-R02, paras. 40, 43-45; P-1595 confirmed that he was referring to the Bangui-Bouchia incident, despite his description of the locality as Boukanga (see T-106, 41:20-42:9) as the Trial Chamber effectively accepted (see Judgment, p. 1180, para. 3431). See also, P-1595: CAR-OTP-2104-0274-R02, paras. 40-41 (notably, 'From

These distortions required the Chamber to ignore outright evidence recording the 'definitive departure' of Bangui-Bouchia's Muslims as of 22 October 2013.[1168]

336. Evidence of Muslims' evacuations, from P-2353 and P-2354, was also distorted.[1169] The claim that neither 'provide any timeline' for the evacuations is incorrect: P-2353 stated (twice), [REDACTED].[1170] The Chamber was (again) aware of this.[1171] Again, it distorted the evidence to situate his involvement in [REDACTED] evacuation after 10 January 2014: it concluded that whereas P-2353 stated that he evacuated Muslims from [REDACTED] on 29 December 2013, in fact he meant to say [REDACTED] January 2014; yet P-2353 described [REDACTED] who, by the Chamber's timeline, was dead at the time, [REDACTED].[1172] The Chamber also failed to grasp that his evidence that departures 'increased' after Djotodia's resignation necessarily meant that departures had been ongoing prior; and failed to appreciate the fact that this evidence did not refer to the RFACPP's advance.[1173] Likewise, the Chamber reasoned that evacuations referred to by P-2354 occurred after 10 January 2014, citing the fact that the Seleka were 'encouraging' Muslims to gather in Mbaïki.[1174] Again, faulty logic: given the Seleka were present in Mbaïki since mid-2013, evidence of 'encouraging' does not temporally situate the evacuations, Seleka retreat notwithstanding.[1175]

337. Conspicuously missing from the Chamber's evidence assessment is any finding that could support its claim that these Muslims departed after 'hearing' of the RFACPP's advance: another flaw in the spurious causal link.[1176] In fact, the Chamber only cites to two witnesses who link their own departures to the RFACPP's advance;[1177] here too, it fails to accurately summarise the evidence.[1178] To the extent that the Chamber seeks to suggest that reference to 'anti-balaka' generally can be understood as the RFACPP, this is misguided.[1179] Similarly, missing is any explanation as to how the

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this moment on, fear increased'; 'As fear increased, people […] started moving to Mbaïki', clearly referring to departures triggered by the Bangui-Bouchia incident).

[1168] CAR-D29-0005-0497, p. 0499 (report produced further to a CAR Parliamentary Mission to Lobaye). The Chamber ignored this evidence but relied on it elsewhere; see Judgment, p. 1183, para. 3440, fn. 8445; see Part 4 (bias).

[1169] Judgment, pp. 1180-1182, paras. 3432-3435.

[1170] P-2353: T-161, 19:10-19; *contra* Judgment, p. 1180, para. 3432.

[1171] The Trial Chamber cited to this very passage; see Judgment, p. 1181, para. 3433, fn. 8426.

[1172] [REDACTED].

[1173] P-2353: CAR-OTP-2100-0226-R03, para. 44 cf. Judgment, p. 1181, para. 3434.

[1174] Judgment, pp. 1181-1182, para. 3435.

[1175] See e.g. P-1813: T-182, 5:22-28; Judgment, p. 1193, para. 3462. Cf. Judgment, pp. 1181-1182, para. 3435.

[1176] Cf. Judgment, p. 1176, para. 3423.

[1177] Regarding P-2354, see above. The Trial Chamber's reliance on events in Sakoulou and Bangui-Bouchia undermines its narrative as both took place in October 2013. On the Sakoulou (PALMEX) incident, see P-2389: CAR-OTP-2104-0033-R01, para. 38; P-2084: CAR-OTP-2094-0968-R02, para. 48. See Part 5(5).

[1178] See P-2389: CAR-OTP-2104-0033-R01, paras. 32-33, 41 (stating that his family left after they 'got scared when they saw the other Muslims leaving Pissa' and that Pissa's Muslim started to move to Bangui after seeing news of the 5 December 2013 'Anti-Balaka attacks'); cf. Judgment, p. 1184, para. 3442; see also pp. 1176-1177, paras. 3424-3425. Regarding the departure of Muslims from Pissa after 10 January 2014, see e.g. P-2084: T-235, 9:7-11. See Part 5(5).

[1179] See Ground 2.2.d).

Chamber determined that 'a substantial proportion' of the Axis Muslims left due to the RFACPP advance – a material error that frustrates meaningful appellate review of the impugned finding.[1180] Its assessment (and reliance) on P-2419's evidence underscores how unsafe and detached from detail the Chamber's assessment was: per P-2419, all but four of Bimon's 300 Muslim inhabitants had left in December 2013, or otherwise before mass anti-Muslim violence erupted there on 11 January 2014, when local Christians rampaged through the town, burned and looted Muslims homes, and destroyed the local mosque; and of the remaining four, three left after the attack for unknown reasons.[1181] In fact, the Chamber inexplicably fails to appreciate the significance of its own findings on the 'general context' of departure en masse of Lobaye's Muslims for fear of unspecified 'anti-balaka' – key context that evidently undermines its attempt to pin the Axis departures on the RFACPP advance.[1182]

338. The Trial Chamber erroneously failed to engage with the key Defence argument that the interrelated factors of the Seleka retreat and the outbreak of mass anti-Muslim violence constituted alternative reasonable causes for the departures.[1183] The Defence position was typically mischaracterised, then dismissed on the basis 'the fact that some Muslim[s] […] could have fled due to these factors does not detract from the fact that other[s] fled due to the [RFACPP] advance'.[1184] More flawed logic: the Chamber took as established that Muslims fled due to the RFACPP advance before dismissing the Defence argument as to alternative reasons, when in fact it ought to have examined whether these alternative reasons could be excluded when assessing the circumstances of these departures themselves; it thus confused two distinct inquiries. There is no indication that this exercise was undertaken, and its finding elsewhere that it 'could draw no conclusion' on the Defence argument that Muslims fled due to the retreat of the Seleka is a further manifestation of this error.

339. The sweeping finding that Muslims 'left Mbaïki in fear of the Anti-Balaka and, in particular, due to the arrival of [the RFACPP] to Mbaïki' is likewise insufficiently supported by the evidence.[1185] Conspicuously lacking are references to evidence from the Muslim departees themselves linking the RFACPP's arrival to their departures.[1186] Again, the Chamber fails to explain how it determined, to the exclusion of alternative reasonable inferences, that Muslim witnesses' references to fear of the 'anti-balaka', as well as the basis for their fear, could be safely understood as fear of the RFACPP, or

[1180] See Part 4 (unreasoned).
[1181] P-2419: CAR-OTP-2112-0036-R03, paras. 35, 37-39, 42-56, 68.
[1182] Judgment, pp. 1173-1176, paras. 3417-3422. On the issue of the nebulous 'anti-balaka' label in the context of perpetrator identification, see Ground 2.2d). Cf. Judgment, p. 1471, para. 4314.
[1183] See Yekatom Defence Closing Brief, paras. 495-502. See Part 5(5).
[1184] The Defence did not argue that the Seleka withdrawal and anti-Muslim collective violence was 'exclusively' the cause of Muslims' departure; see Yekatom Defence Closing Brief, para. 511, *contra* Judgment, pp. 1184-1185, para. 3443.
[1185] Judgment, p. 39, para. 122 (emphasis added); pp. 1228-1241, paras. 3565-3609.
[1186] Judgment, pp. 1239-1240, paras. 3600-3604.

attributed to it.[1187] Typically, it mischaracterised critical evidence: P-1838, who spoke to departees, specifically stated that '[t]hey based their decision [to leave] on what had happened in [Bangui-Bouchia], and in other areas'; in other words, on events dating to October 2013, and events occurring elsewhere than Mbaïki.[1188] It relied on non-Muslim witnesses' speculative opinion as to how Muslims felt or why they fled, without addressing the factual source of this opinion (contrary to its own stated principles),[1189] on which its probative value is entirely contingent.[1190] It omitted context from P-1647's abstract reference to anti-Muslim comments causing fear, itself part of a discussion on Bossangoa 'anti-balaka' crimes; and it omitted his comment that he had not heard any such comments being made, and his clarification that in Mbaïki specifically, it was 'the name anti-balaka' that made the Muslims flee.[1191]

3. Ground 3.3 – Failure to consider security/operational context for 5 December

a) Errors in assessing status of the Traders

340. The Chamber erred in law and in fact by limiting its assessment of the status of the Boeing Market Traders, including Hassan Mahamat, to their 'links' or 'interactions' with Seleka officials in determining whether they were members of, or otherwise affiliated with, the Seleka at the time of their death.[1192] The Chamber should have applied two distinct legal tests: first, whether the Traders exercised a CCF within the Seleka; and, alternatively, whether they directly participated in hostilities. A finding in the affirmative under either test would have resulted in the loss of civilian protection.

341. In a NIAC, individuals who become members of a non-State armed group and who hold a CCF lose protection against direct attack. They may be targeted at all times, even when not engaged in a specific hostile act.[1193] Conversely, civilians without a CCF lose protection on a temporary basis only when they directly participate in hostilities. This distinction is essential to differentiate between: (i) members of a non-State fighting force; (ii) civilians performing non-combat functions within such forces; and (iii) civilians taking a direct part in hostilities without being members of such a force.[1194] One can also identify so-called *irregular combatants*, individuals who take part in hostilities without being members of the regular armed forces of a State.[1195] An act amounts to DPH where it meets all

[1187] See Ground 2.2.d).
[1188] See P-1838: CAR-OTP-2100-0252-R05, para. 80 ('They learned this when they attended the mosque and information concerning other atrocities was discussed. They received a lot of information by mobile phone from relatives and friends in [Chad].'); cf. Judgment, p. 1239, para. 3599 ('Muslims heard what happened in Bangui-Bouchia') (emphasis added).
[1189] Judgment, p. 1238, paras. 3596-3597; cf. p. 66, para. 200.
[1190] See Ground 4.6.
[1191] P-1647: T-194, 61:5-19; cf. Judgment, p. 1238, para. 3596.
[1192] Judgment, p. 29, para. 77; p. 905, paras. 2556-2557; pp. 907-908, para. 2565; p. 908, para. 2566; p. 914, paras. 2589-2590; p. 916, para. 2597.
[1193] ICRC IG on DPH, pp. 72-73; Hayashi (2021), p. 87; Henry (2018), p. 272; Dinstein (2022), para. 598.
[1194] ICRC IG on DPH, pp. 33-34; Hayashi (2021), p. 87.
[1195] ICRC Commentary on the Additional Protocols, para. 1943; ICRC IG on DPH, p. 69; Hayashi (2021), p. 87.

three constitutive elements – threshold of harm, direct causation, and belligerent nexus[1196] – and civilians lose protection *only for the duration* of such qualifying acts, which encompass measures preparatory to the execution of those acts, as well as the deployment to and the return from the location of its execution.[1197]

b) Errors in properly assessing continuous combat functions

342. The Chamber failed to assess whether Hassan had assumed a CCF which was necessary to determine whether he was a member of the Seleka and relied on incomplete evidence.[1198] It erred by limiting its assessment to 'interactions by themselves'[1199] and failing to conclude that Hassan was a Seleka member or otherwise affiliated with them, including through a CCF, at the time of his death. It made the same error with the Boeing Market Traders,[1200] overlooking the broader and more probative evidence of CCF within the Seleka and again relying on incomplete evidence.[1201] It was necessary 'to look at patterns of conduct in order to determine whether an individual can be considered to belong to an armed group under the principle of distinction in NIAC'.[1202]

343. The Chamber took out of context P-1339's evidence as having 'denied that the shopkeepers had carried out any attack against the population or the Anti-Balaka before the Bangui Attack'.[1203] His answer had minimal probative value and could not support the Chamber's findings that there was no indication that the Muslim traders were armed or engaged in combat[1204] and/or enjoyed civilian protection.[1205] Hassan's conduct among the traders far exceeded personal visits by the Seleka for coffee/tea or market activity.[1206] Notwithstanding P-1339's credibility issues, he was corroborated on this point by P-0884 and D29-4011 and their evidence could not be disregarded wholesale.[1207] When the Seleka entered Boeing Market, they would fire their weapons to disperse civilians, pillaged homes, and create chaos before sitting with Hassan; they would park outside his place and he pointed out

[1196] ICRC IG on DPH, p. 46; Hayashi (2021), p. 87.
[1197] ICRC IG on DPH, p. 60.
[1198] Judgment, pp. 905-9056, para. 2558, e.g. Seleka members stopping at Hassan's for coffee, friendly ties with Bichara; pp. 906, para. 2559, a card showing he was a former Chadian soldier; p. 906, para. 2560, traders wearing military attire and Hassan holding a 'Colonel' rank; pp. 907-908, para. 256, and his role representing traders before the authorities.
[1199] Judgment, p. 905, para. 2557; pp. 907-908, para. 2565; p. 908, 2566.
[1200] Judgment, p. 914, para. 2589-2590; p. 916, para. 2597.
[1201] Judgment, p. 915, para. 2593, referring to evidence such as their alleged Chadian origin and former affiliation with Habré's party, their wearing of military attire, their alleged betrayal of FACA soldiers and certain civilians, and their ability to fire into the air.
[1202] Corn & Jenks (2011), p. 338; Henry (2018), p. 270.
[1203] Judgment, pp. 900-901, para. 2538. P-1339 clarified he had been in the bush at the time and implying that he could not know whether they had done so. See P-1339: T-154, 55:1-9.
[1204] Judgment, p. 29, para. 77; p. 913, para. 2586; p. 918, para. 2606; p. 1356, para. 3957; pp. 1357-1358, para. 3962.
[1205] Judgment, p. 914, para. 2590; pp. 1376-1377; paras. 4017-4018.
[1206] Judgment, pp. 905-906, paras. 2557-2558; pp. 914-915, paras. 2590, 2592; P-1339: T-157, 12:26-13:13.
[1207] Yekatom Defence Closing Brief, paras. 394-395 and cites therein.

FACA soldier houses for them to loot.[1208] He added that following Hassan's death, the population of Boeing expressed open anger towards him because 'he collaborated with the Seleka' and 'what he was doing was not good'.[1209] P-0884 further testified that the traders denounced Christians, civilians, and FACA soldiers to the Seleka, leading to their arrest, torture, or killing; stored and used Seleka firearms; shared weapons; and continued such activities when the Anti-Balaka arrived; fired into the air, and stated they had 'joined the Seleka'.[1210] P-0884 compared the traders' conduct to notorious Seleka chiefs Abatom and Bichara,[1211] and P-1339 confirmed that Bichara personally visited Hassan.[1212] D29-4011 further stated that Hassan routinely called upon the Seleka to search houses and pillage the inhabitants' belongings, and that he and other traders kept weapons in their shops.[1213] Upon the Seleka's arrival, Hassan publicly threatened to kill any youth who 'joked around', kept a military uniform in his bag, and with other traders, were seen firing weapons when the Seleka arrived.[1214]

344. The Chamber further distorted the corroborating evidence of D29-4011 and P-0884 in concluding that there was 'no evidence' linking the traders to the Seleka, and that reports of their being armed were mere 'generalities'.[1215] Although it partially acknowledged D29-4011's evidence, it wrongly dismissed her testimony as something she had only 'generally heard' contrary to her evidence.[1216] It discounted P-1339 and P-0884 on the erroneous basis that P-0884 had not seen weapon caches.[1217] Its reliance on P-1339's and P-0884's failure to observe weapons or caches to affirm civilian status was flawed,[1218] since the absence of observed weapons in the chaos described by P-1339 is not affirmative proof that the traders were unarmed or that weapons were not used.[1219]

345. In light of the evidence demonstrating that the Traders had effectively 'joined' the Seleka, were equipped through the receipt, sharing, and use of firearms, and actively supported its operations denouncing FACAs, the Chamber should have concluded that they were members of, and continuously integrated within, the Seleka's fighting force.[1220] Their function was not in the realm of spontaneous, sporadic, or unorganised participation and they ought to have been deemed to have assumed a CCF.[1221] By failing to engage with these factors, the Chamber erred in not finding that Hassan

[1208] P-1339: T-157, 13:7-13; 16:17-17:16; 18:22-28.
[1209] P-1339: T-157, 19:22-20:3.
[1210] P-0884: T-057, 52:28-53:21 ; 54:4-55:2.
[1211] P-0884: T-056, 23:11-24; T-057, 48:14-49:12; 50:24-51:12; 53:9-21; 54:4-12.
[1212] P-1339: T-157, 30:10-18.
[1213] D29-4011: CAR-D29-0009-0680-R01, paras. 28.
[1214] D29-4011: CAR-D29-0009-0680-R01, paras. 28, 29, 31.
[1215] Judgment, pp. 915-916, paras. 2595-2597; p. 1356, para. 3957.
[1216] Judgment, pp. 907-908, para. 2565; p. 909, para. 2569. D29-4011: CAR-D29-0009-0680-R01, paras. 29, 31.
[1217] Judgment, p. 917, para. 2599; p. 918, para. 2606.
[1218] Judgment, p. 918, para. 2605.
[1219] See Ground 4.1; see also P-1339: T-154, 50:28-51:5.
[1220] ICRC IG on DPH, p. 46; Henry (2018), p. 272.
[1221] ICRC IG on DPH, pp. 71-72; Henry (2018), pp. 271-272.

Mahamat and the Traders exercised a CCF as of 5 December 2013. At a minimum, these elements rebutted the presumption of civilian status. This error materially affected the Chamber's conclusion, as it failed to find that Hassan was a member of the Seleka,[1222] and it reached the same erroneous finding with respect to the other Traders.[1223]

346. The Chamber compounded this error by failing to assess holistically[1224] the function of the traders and Hassan in combination with their conduct at the time of the attack, contrary to the established understanding of CCF as a functional and ongoing status test.[1225] The proper inquiry concerns the individual's membership and role within the group – not merely their isolated conduct during a single event, i.e. the reason why 'they were sleeping in their shop' the night of 5 December[1226] or the reason why Hassan fired his weapon.[1227] Further, when the attack began, Hassan emerged armed with a machine gun, while his brother was likewise armed and operational.[1228] He had a military identification card on him,[1229] which further supported his CCF and affiliation.

c) Errors in assessing the Traders' direct participation in the hostilities

347. Even absent CCF, these acts constitute DPH as 'measures preparatory to the execution of a specific act of DPH, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act'.[1230] Further, 'where preparatory measures and geographical deployments or withdrawals constitute an integral part of a specific act or operation amounting to DPH, they extend the beginning and end of the act or operation beyond the phase of its immediate execution'.[1231] Hassan and the other Boeing Market Traders were actively taking preparatory measures that night.[1232] These acts collectively establish that Hassan and the Traders were directly participating in hostilities at the material time.

348. Applying the recognised test for DPH, the Traders' conduct as evidenced above (i) adversely affected the opposing forces' military capacity (threshold of harm); (ii) had a direct causal link to ensuing arrests, torture, and killings (direct causation); and (iii) was clearly undertaken in support of

[1222] Judgment, p. 905, para. 2557; pp. 907-908, para. 2565; p. 908, para. 2566.
[1223] Judgment, p. 914, paras. 2589-2590; p. 916, para. 2597.
[1224] See Part 4 (holistic).
[1225] Judgment, p. 29, para. 77; pp. 1357-1358, para. 3962.
[1226] Judgment, p. 908, para. 2567.
[1227] Judgment, p. 909, para. 2571.
[1228] Judgment, p. 911, para. 2576; pp. 916-917, para. 2598; p. 918, para. 2605.
[1229] P-1339: T-157, 13:24-26; T-157, 15:9-10.
[1230] ICRC IG on DPH, p. 17.
[1231] ICRC IG on DPH, p. 68.
[1232] The Defence had argued that, aware of this pending operation, Hassan had deliberately remained at the market overnight, shared this information with other traders, and prepared to take up an armed position using Seleka firearms, see Yekatom Closing Brief, paras. 396-397.

the Seleka (belligerent nexus). By confining its assessment to social interactions,[1233] the Chamber distorted the evidentiary record and erred in law. Acts amounting to DPH include bearing or using arms; taking part in military or hostile acts, conduct or operations; participating in attacks; transmitting military information for immediate operational use; transporting weapons near combat; and serving as guards, lookouts, observers, or intelligence agents.[1234]

349. The Chamber erred by reducing its analysis to whether the Traders were armed on the night of the attack: an unduly narrow approach to DPH. Possession of a weapon is not determinative; the assessment must consider the broader context and conduct. As recognised in *Ntaganda*, even 'singing and making noise' to distract opposing forces can constitute DPH.[1235] The Chamber failed to assess whether the Traders' proximity, behaviour, conduct or coordinated actions amounted to DPH.[1236] This restrictive approach led to an erroneous classification of the Traders as not directly taking part in hostilities and materially affected its findings.[1237]

350. The Chamber limited its analysis to whether the Traders were armed[1238] on 5 December and incorrectly concluded that they were not,[1239] despite inconclusive evidence within P-1339's testimony[1240] that only those at the front with firearms could see who was shooting.[1241] P-1339's inability to recall or see if those in the front line were armed[1242] was not probative of the Traders' being unarmed; it merely reflects a limited vantage point acknowledged by the Presiding Judge at the time.[1243] By drawing a negative inference from an absence of observation, the Chamber omitted a necessary assessment,[1244] leading to an unreasoned and erroneous conclusion as well as a reversal of the burden of proof[1245] that the traders did not participate in hostilities.[1246]

351. Their conduct as described above met both the threshold of harm and direct causation elements. The Traders' actions also satisfied the belligerent nexus criterion, as they were undertaken to support the Seleka, with whom they maintained regular contact and, according to P-1339, cooperation.[1247] The Chamber's failure to apply the proper criteria led it to erroneously find that they retained civilian

[1233] Judgment, p. 905, paras. 2556-2557.
[1234] ICC-02/05-02/09-243-Red, para. 81; IT-01-42-A, para. 177.
[1235] ICC-01/04-02/06-2359, para. 925.
[1236] Judgment, pp. 1359-1361, paras. 3966-3971.
[1237] Judgment, p. 29, para. 77; p. 1359, para. 3965.
[1238] Judgment, p. 913, para. 2586; p. 914, para. 2589; p. 918, paras. 2605-2606.
[1239] Judgment, p. 914, para. 2590; p. 918, para. 2606.
[1240] Judgment, pp. 916-917, para. 2598.
[1241] P-1339: T-154, 49:13-17.
[1242] Judgment, p. 911, para. 2579; p. 912, para. 2580; P-1339: T-154, 49:2-3, 10-12; 50:28-51:5.
[1243] P-1339: T-154, 51:17-23.
[1244] Judgment, p. 918, paras. 2605-2606; pp. 1359-1361, paras. 3966-3971.
[1245] See Part 4 (burden reversal).
[1246] Judgment, p. 913, para. 2586; p. 918, para. 2606.
[1247] P-1339: T-157, 20:2.

protection, notwithstanding continuous conduct and during the 5 December amounting to DPH.

352. The Chamber heard evidence that 'upon the arrival of the Seleka, the Muslim traders of the Boeing Market took their weapons out of their shops and shot into the air, which everybody saw'.[1248] Even on P-1339's account, unlike other traders who fled when Mr. Yekatom allegedly fired into the air,[1249] Hassan and his brother remained and exchanged fire with the group, Hassan with a machine gun.[1250] Such actions, consistent with their combat-readiness, can only be understood as a deliberate decision to DPH. Hassan was therefore acting from a combat posture, not in self-defence;[1251] an argument fully developed[1252] but not addressed by the Chamber.

353. The Chamber further erred by assessing the deaths of the two unnamed Muslim traders in isolation from the broader events at the Boeing Market.[1253] It could not separate their status from that of Hassan and his brother: the same surrounding facts, i.e. conclusive evidence of armed individuals remaining on site, engaging in hostilities, were equally relevant to determining whether the unnamed Traders also participated. Their decision to stay at the market alongside armed actors was part of the operational context that the Chamber was required to evaluate.[1254]

354. Accordingly, even if the Chamber was not satisfied that Hassan Mahamat and the Traders were Seleka members holding a CCF, it was nonetheless required to recognise that the evidence raises at least reasonable doubt that they were acting as protected civilians.[1255] Their conduct on 5 December 2013 precludes any presumption of civilian status. Where reasonable doubt subsists as to the existence of a nexus between the victims' activities at the time of the offence and any acts of war, a Chamber cannot lawfully enter a conviction.[1256]

355. The Chamber erred in concluding that the Traders' interactions were merely related to market activity;[1257] in its dismissal of evidence from D29-4011, P-0884, and P-1339 indicating that the traders were armed,[1258] and in failing to determine whether they were members of the Seleka.[1259] These misapprehensions tainted the Chamber's findings that the Traders enjoyed civilian protection,[1260] that

[1248] Judgment, p. 909, para. 2569.
[1249] Judgment, p. 900, para. 2537.
[1250] P-1339: T-159, 78:6-27; Judgment, pp. 910-911, paras. 2575-2576.
[1251] Judgment, p. 29, para. 77; p. 908, para. 2568; p. 909, para. 2571; pp. 1357-1358, para. 3962; pp. 1360-1361, para. 3970; pp. 1376-1377, para. 4017.
[1252] Yekatom Defence Closing Brief, para. 388.
[1253] Judgment, p. 918, paras. 2605-2606; p. 1361, para. 3971.
[1254] ICC-01/04-02/06-2359, para. 884.
[1255] ICTR-99-46-T, para. 766; ICTR-98-41-T, para. 2229; ICTR-98-44-T, para. 1694; ICTR-97-20-T, para. 512.
[1256] IT-01-42-A, para. 178.
[1257] Judgment, p. 914, para. 2590.
[1258] Judgment, p. 916, para. 2597.
[1259] Judgment, p. 916, para. 2597; p. 1356, para. 3957.
[1260] Judgment, p. 29, para. 77; p. 918, para. 2606; pp. 1360-1361, paras. 3969-3970.

Mr. Yekatom was aware of circumstances establishing such status,[1261] and its ultimate convictions for murder as a WC and CAH.[1262]

356. Because the events occurred in the context of an armed conflict, the proper legal framework was IHL, and the Chamber should have assessed Hassan's conduct accordingly. Treating his actions as self-defence in these circumstances risks conflating distinct legal regimes. By erroneously concluding that Hassan fired in self-defence,[1263] the Chamber halted its analysis instead of evaluating the evidence holistically taking into account the broader pattern of conduct and the fact that Hassan used a machine gun and fired repeatedly that night.[1264] It further erred by assessing Hassan's conduct solely through the lens of self-defence.[1265] It focused narrowly on the moment he fired and treated this as defensive, thereby presuming civilian protection, instead of assessing his actions in light of his broader conduct and role beforehand. In failing to find that the OTP had not proved beyond reasonable doubt that Hassan was a civilian, the Chamber misapplied the law and reached an unreasonable conclusion.

4. Materiality

357. The errors identified under this part are material. Had the Chamber properly situated Mr. Yekatom's conduct in the realities of the NIAC, it could have found that the Yamwara checkpoints and the initial apprehension and investigation of the Lapo Family Group were legitimate defensive security measures in response to an ongoing Seleka threat, rather than inherently unlawful arrests and arbitrary detention. On that basis, a reasonable chamber could have concluded that the elements of unlawful deprivation of liberty and breach of fundamental guarantees were not established beyond reasonable doubt in respect of Counts 11 and 14.[1266]

358. Likewise, had the Chamber correctly evaluated the RFACPP advance along the PK9–Mbaïki Axis in its operational and security context, it could not safely have found that RFACPP checkpoints were operated with the specific aim of searching for and targeting Muslims, or that a 'significant proportion' of Muslims left the Axis localities and Mbaïki 'due to and in fear of' the RFACPP.[1267] Properly assessed against the conflict background, the evidence leaves at least a reasonable alternative explanation for these departures (Seleka retreat, earlier Seleka abuses, the eruption of anti-Muslim mob violence, and fear of generic 'anti-balaka' actors rather than the RFACPP in particular). The Chamber's conclusions on coercion, causation and Mr. Yekatom's *mens rea* underlying Counts 24–

[1261] Judgment, p. 1377, para. 4020.
[1262] Judgment, p. 1359, para. 3965.
[1263] Judgment, p. 29, para. 77; p. 909, para. 2571; pp. 1357-1358, para. 3962.
[1264] Judgment, p. 903, paras. 2546-2547.
[1265] Judgment, pp. 1360-1361, paras. 3969-3970.
[1266] Judgment, pp. 1451-1453, paras. 4250-4257; pp. 1457-1458, paras. 4272-4277.
[1267] Judgment, pp. 1467-1468, paras. 4302-4305; p. 1482, paras. 4346-4347.

25 and 28 would therefore not have been established beyond reasonable doubt.[1268]

359. Finally, had the Chamber applied the CCF/DPH framework to the Boeing Market Traders within the armed-conflict setting, it could not have excluded the reasonable possibility that Hassan Mahamat and other traders had lost civilian protection through their integration into the Seleka's fighting force or their direct participation in hostilities on 5 December 2013.[1269] In those circumstances, Mr. Yekatom's liability for the Boeing killings (Counts 1–6 and 8) could not have been affirmed beyond reasonable doubt.

4. Part 4 – Errors in the treatment and assessment of evidence

360. This Ground submits that, in assessing the evidence, the Trial Chamber failed to apply the applicable criteria: to give a reasoned opinion under Article 74(5); to respect the presumption of innocence and the standard of proof in Article 66; and to evaluate credibility and proof holistically. Instead, it repeatedly reproduced testimony with little analysis, misstated or selectively quoted key evidence and resolved evidentiary ambiguities against Mr. Yekatom. Taken cumulatively, these defects undermine the reliability of the findings across the Counts and give rise to a reasonable apprehension that, in drafting and adopting the Judgment, the Chamber did not bring a genuinely open and impartial mind to the trial record.

361. The Trial Chamber erred in failing to provide a reasoned opinion in its assessment of the evidence underlying key factual findings.[1270] This duty serves multiple key purposes.[1271] It obliges a chamber to engage substantively with the foundations of its conclusions,[1272] and is heightened where evidence is contested.[1273] A judgment is insufficiently reasoned if it fails to apply its own evaluative principles;[1274] fails to explain a preference for one account over another; or disregards relevant

[1268] Judgment, pp. 1470-1472, paras. 4310-4318; pp. 1487-1488, paras. 4364-4368. See also Parts 5(3), 5(5).
[1269] Judgment, p. 29, para. 77; pp. 899-900; p. 1356, para. 3957; pp. 1357-1358, para. 3962; pp. 1360-1361, paras. 3969-3971; p. 1372, para. 4002; pp. 1376-1377, paras. 4015, 4017-4018, 4020.
[1270] ICC-01/05-01/13-2275-Red A, para. 102 (procedural error) (noting that the jurisprudence of the ad hoc tribunals whereby an unreasoned opinion constituted a legal error see e.g. IT-04-81-A, para. 92). See also IT-95-17/1-A, para. 69; IT-96-23 & IT-96-23/1-A, para. 41; IT-95-16-A, para. 32.
[1271] See e.g. the right to be heard: (IT-96-17/1-A, para. 37; IT-96-23 & IT-96-23/1-A, para. 41; see also Application No. 37801/97, para. 37; the meaningful exercise of the right to appeal: ICC-01/05-01/13-2275-Red A, paras. 102, 107; Application No. 37801/97, para. 37; allowing discharge of appellate review: ICC-01/05-01/13-2275-Red A, para. 102; IT-96-23 & IT-96-23/1-A, para. 41; IT-95-14/2-A, para. 385; the promotion of transparency and the administration of justice: Application No. 37801/97, 1 July 2003, para. 37; as counterpart to deference to first instance finding: IT-95-16-A, para. 32; ICC-01/04-01/06-3121-Red A, para. 24; see also, ICC-01/04-02/12-271-Corr A, para. 23; ICC-01/05-01/13-2275-Red A, para. 93.
[1272] See, vis-à-vis: constituent EoC / MoL: ICC-01/05-01/13-2275-Red A, paras. 105-106, 1540; IT-04-81-A, para. 92; IT-98-30/1-A, para. 23; ICTR-01-73-A, para. 45; contradictory material: ICC-01/05-01/13-2275-Red, para. 103; see also, paras. 106 and 1540; IT-04-81-A, para. 92; IT-98-30/1-A, para. 23; ICTR-01-63-A, para. 282.
[1273] IT-95-16-A, paras. 30, 39, 224; IT-95-14/2-A, para. 385. See also *R v. J.M.H.* [2011] 3 S.C.R., para. 32; IT-95-16-A, para. 39.
[1274] ICTR-01-76-A, para. 143.

evidence without addressing it.[1275] In the Judgment, the Chamber reproduced extensive witness summaries with little or no analysis, juxtaposed conflicting accounts without clarifying which it accepted or why, recycled identical passages across distinct elements, and selectively applied articulated credibility criteria.[1276] It failed to articulate clear findings on essential elements of liability.[1277] Its reasoning was neither transparent nor intelligible; and the Judgment's scale belies and compounds this deficiency.

362. The Chamber violated the presumption of innocence by effectively shifting the burden of proof onto Mr. Yekatom. It drew adverse inferences in the absence of proof and resolved evidentiary ambiguities against him, contrary to Article 66. The beyond reasonable doubt standard applies to each element of the charged crimes and the pleaded mode(s) of liability and any additional facts indispensable to a conviction.[1278] It thus applies to the material facts and circumstances which the Chamber describes as the 'facts and circumstances which form the basis for the Chamber's decision under Article 74'.[1279] Moreover, the Chamber's ambiguous articulation of the standard governing circumstantial evidence appears to have informed its erroneous evidence assessment: the formulation that the Chamber 'reached a conclusion beyond reasonable doubt when it was convinced that this was the only reasonable inference to be drawn from the relevant facts',[1280] framed the inquiry in subjective terms and on 'relevant' rather than proven facts, without expressly requiring the exclusion of any other reasonable inference consistent with innocence.[1281] This articulation risks disregarding direct evidence in favour of circumstantial evidence, contrary to the principle of *in dubio pro reo*.[1282] The presumption that a chamber applied the correct standard of proof does not bar specific challenges and is rebuttable,[1283] particularly where its articulation and/or reasoning are unclear.[1284]

363. Adequacy of reasoning is what allows the Appeals Chamber to ensure that the fact-finder excluded other reasonable inferences, per the 'beyond reasonable doubt standard', particularly where

[1275] ICC-01/05-01/13-2275-Red, paras. 98, 105; IT-04-81-A, para. 95; ICTR-00-55A-A, para. 147; IT-03-66-A, para. 86; IT-98-30/1-A, para. 23; IT-95-16-A, para. 39; IT-02-60/1-A, para. 96. ICC-01/05-01/08-3636-Anx2, para. 16.
[1276] Chambers Practice Manual, Annex Guideline for ICC Judgment Drafting, p. 13, para. 70; see also p. 14, para. 72, see also p. 13, paras. 65-67.
[1277] See Grounds 2.6,. 2.7.
[1278] See Judgment, p. 40-41, para. 127, fn. 39 citing ICC-01/04-01/06-3121-Red A, para. 22 citing inter alia *Blagojević and Jokić* (see IT-02-60-A, para. 226 and cites therein). See also ICC-02/04-01/15-2022-Red, para. 77 citing to ICC-01/04-02/06-2666-Red A, para. 37 and ICC-02/11-01/15-1400 A, para. 66.
[1279] As set out in paragraphs 27 to 125 of the Judgment; see p. 18, para. 24, further noting the Chamber's reference to subsidiary facts as set out in Section IV and which, in other words, are excluded from Section II/Findings of Fact. See Ground 1.
[1280] Judgment, p. 44, para. 136, emphasis added.
[1281] ICC-01/05-01/08-3636-Red A, para. 42 and cites therein; IT-96-21-A, para. 458; IT-97-24-A, para. 219.
[1282] See e.g. MICT-13-56-A, para. 648; ICTR-99-50-A, paras. 138-139.
[1283] ICC-02/04-01/15-2022-Red A, para. 321; IT-01-48-A, para. 110.
[1284] ICTR-01-73-A, para. 20. On the duty to articulate standards correctly, IT-98-29/1-A, para. 22; ICTR-99-54A-A, paras. 38-39.

findings rest on weak or inferential evidence.[1285] The weaker or more inferential the evidence, the more rigorous and transparent the reasoning required.[1286] In particular, any ambiguity as to intent must be resolved in the accused's favour.[1287] When inferring shared intent from an accused's acts, special attention must be paid to whether those acts are ambiguous and allow several reasonable inferences.[1288] The Chamber was required to exercise particular caution and avoid stacking weak or equivocal inferences to impute *mens rea*; reasonable inferences had to be excluded through explicit, rigorous reasoning.[1289] Yet it relied on inferential chains, unlawfully bootstrapping several conclusions on *mens rea* that rest on unproven or misapprehended premises. If an intermediate premise, including a misreading or mischaracterisation of direct evidence, is erroneous or not established beyond reasonable doubt, any derivative inference drawn from it cannot stand.[1290]

364. The Chamber committed extensive factual errors in its evidence assessment. The margin of deference to a trial chamber's factual finding is qualified[1291] and must be exercised with extreme caution.[1292] Errors of fact arise where the Appeals Chamber is unable to discern objectively how the trial chamber's conclusion could have been reached from the evidence on the record,[1293] or whenever the failure to interfere may occasion a miscarriage of justice.[1294] A finding is unreasonable when no reasonable trier of fact could have reached it on the evidence as a whole; for findings based on circumstantial evidence, the inference must be the only reasonable one available.[1295] Again, sufficient reasoning is critical:[1296] yet the Judgment failed to explain why it omitted to consider, or even refer to, material evidential items; and where it relied on evidence that was significantly contradicted by other items, it did not explain why one was preferred over the other. Factual findings made beyond reasonable doubt must be clear and unassailable, both in terms of evidence and rationale.[1297] In the

[1285] ICTR-97-31-A, paras. 319-320.
[1286] See IT-06-90-A, para. 63 (where it was found that the Trial Chamber had drawn an unreasonable inference - concluding that no artillery attacks on Knin were aimed at targets of opportunity - because the underlying analysis effectively shifted the burden to the Defence to negate unproven assumptions about the shelling, and found a failure to explain how guilt could be the only reasonable inference in light of alternative explanations); ICC-01/05-01/08-3636-Red A, para. 43 and cites therein.
[1287] ICC-01/05-01/08-424, para. 31; ICC-01/09-01/11-373, para. 41.
[1288] IT-98-32-A, para. 131.
[1289] ICTR-99-50-A, para. 136.
[1290] ICTR-98-41-A, para. 654.
[1291] ICC-02/11-01/15-1400 A, para. 70; ICC-01/04-02/06-2666-Red A, para. 41; ICC-01/05-01/08-3636-Red A, para. 41.
[1292] ICC-02/11-01/15-1400 A, para. 70; ICC-01/05-01/08-3636-Red A, para. 38. On errors of fact requiring intervention, see ICC-02/11-01/15-1400 A, para. 70; ICC-01/04-02/06-2666-Red A, para. 41; ICC-01/04-01/06-3121-Red A, para. 21; ICC-01/05-01/08-3636-Red A, para. 39.
[1293] ICC-02/11-01/15-1400 A, para. 70; ICC-01/04-01/06-3121-Red A, para. 21.
[1294] ICC-01/05-01/08-3636-Red A, para. 40; cf. Rule 25(1)(b) ICTY statute and IT-04-74-A, vol. I, para. 21; IT-95-17/1-A, para. 40.
[1295] ICC-01/05-01/08-3636-Red A, paras. 42-45; IT-04-74-A, vol. I, para. 21.
[1296] ICC-02/11-01/15-1400 A, para. 71; see also ICC-01/04-02/06-2666-Red A, para. 42; ICC-01/05-01/08-3636-Red A, para. 44; ICTR-00-55A-A, para. 10.
[1297] ICC-01/05-01/08-3636-Red A, para. 45.

Judgment, the evidential record was systematically miscited or mischaracterised:[1298] the Chamber entered factual findings unsupported by the evidence, mischaracterised or failed to objectively reflect testimony, cherry-picked testimony excerpts out of context rather than evaluate the totality of the testimony, misstated the timeline or sequence of events, and/or relied on inaccurate translations or mistranslations.[1299]

365. The Chamber failed to assess the evidence and party submissions holistically. A reasoned judgment remains legally defective if the Chamber failed to consider the evidence holistically. When making factual findings, a trial chamber must holistically evaluate evidence, 'in the sense of assessing in a connected way and weighing all the relevant evidence taken together, in relation to the fact at issue, rather than evaluating items of evidence without regard to other related evidence'.[1300] Both inculpatory and exculpatory material is to be weighed cumulatively against the standard of proof beyond reasonable doubt.[1301] A methodology that isolates individual pieces of evidence without situating them within the wider evidentiary context is legally erroneous.[1302]

366. In assessing witness credibility, testimony must be assessed both on its own terms and holistically with the trial record.[1303] Where competing accounts exist, the Chamber must examine all versions of the witness's account together and address any internal and external inconsistencies against the totality of the evidence, to decide 'whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence'.[1304] The presumption that a chamber has considered all of the evidence before it is rebutted, notwithstanding a declaration that to this effect, where evidence clearly relevant to its findings was omitted, ignored, or dismissed without

[1298] See also ICC-01/14-01/18-2816, para. 22.
[1299] E.g. ICC-01/04-01/06-3121-Red A, paras. 360-361; ICC-01/05-01/08-3636-Red A, para. 182; ICTR-00-56-A, paras. 344 et seq; ICTR-01-63 A, paras. 307 et seq; IT-95-14/2-A, para. 938; MICT-16-99-A, paras. 70-71; IT-95-14/2-A, para. 429 et seq; IT-06-90-A, paras. 58-61; ICTR-00-56-A, paras. 209-300; ICTR-01-73-A, paras. 40-52; ICTR-98-41-A, para. 502 (noting translation issue was not considered to be material); IT-02-60/1-A, paras. 68-73.
[1300] ICC-02/04-01/15-2022-Red A, para. 78 and cites therein.
[1301] ICC-01/04-01/06-3121-Red A, para. 22 ('In the view of the Appeals Chamber, when determining whether this standard [beyond reasonable doubt] has been met, the Trial Chamber is required to carry out a holistic evaluation and weighing of all the evidence taken together in relation to the fact at issue. Indeed, it would be incorrect for a finder of fact to do otherwise').
[1302] ICC-01/04-02/12-271-AnxA, para. 34 and cites therein. For a concise illustration, see Judge Chile Eboe-Osuji's binary evidence example demonstrating that a majority of 'Yes' indicators cannot eclipse decisive 'No' indicators on critical elements such as identification, presence, or *mens rea* see ICC-02/11-01/15-1400-Anx1-Corr-Red, para. 122. See also IT-97-24-A, para. 55, IT-95-5/18-AR98bis.1, para. 56 (describing a 'compartmentalised mode of analysis' as one that 'obscure[s] the proper inquiry').
[1303] ICC-02/05-01/20-1240, para. 197; ICC-01/04-02/12-271-Corr A, para. 168.
[1304] ICC-02/05-01/20-1240, para. 197; ICC-02/04-01/15-2022-Red A, para. 524 and cites therein. See also, ICC-01/04-02/12-271-AnxA, para. 69 ('a fragmentary approach towards the evaluation of evidence and speculations on its substance create[s] highly alarming precedents in international criminal law, capable of compromising the integrity of the whole proceedings and undermin[ing] the perception of the victims and the public that justice is being delivered').

explanation.[1305] This error becomes even clearer – and the presumption most readily rebutted – where the chamber states that 'no evidence' exists on a matter despite relevant material being on the record – itself also a factual error.[1306]

367. This duty further requires that the Chamber examine the arguments made by the parties and participants during the course of the trial,[1307] including BTMs, submission of evidence by email and related responses, without treating them in isolation, confining their discussion to discrete issues divorced from the totality of the record, selectively citing portions of Defence submissions, or ignoring undisputed Defence factual allegations.[1308] The Defence case must thus be assessed as an integral part of the evidentiary matrix.

368. The Trial Chamber's errors cumulatively give rise to a reasonable apprehension of bias. Pursuant to the principle that justice must not only be done, but must also be seen to be done, the violation of a right to an impartial trial is established upon a showing of a reasonable apprehension of bias on the part of the Chamber.[1309] While the threshold is high, the presumption of impartiality is rebuttable.[1310] The test is objective: the Appeals Chamber can find that the circumstances give rise to reasonable apprehension of bias, while remaining convinced that the Chamber performed its functions with full impartiality.[1311] The test requires no conclusion as to what factors actually influenced an outcome: 'no attempt need be made to inquire into the actual thought processes' of the Chamber.[1312] Impartiality must be viewed from the objective perspective of whether a fair-minded and informed observer, having considered the facts and circumstances in their totality, would reasonably apprehend judicial bias.[1313] This theoretical reasonable observer is objective, and would take into account the entire context of this case; they understand the nature of a judge's profession, and are informed of all relevant circumstances, including relevant law and practice of the Court.[1314] Importantly, this observer would

[1305] IT-98-30/1-A, para. 23; ICTR-01-74-A, vol. I, para. 20. ICC-01/05-01/08-3636-Red A, para. 172 (finding that Trial Chamber III's omission of testimony 'significant and directly relevant to the issues at hand' exemplified a failure to evaluate the evidence as a whole).
[1306] ICC-01/04-02/06-2666-Red A, paras. 39, 41.
[1307] ICC-02/05-01/20-1240, para. 171.
[1308] ICC-01/05-01/08-3636-Red A, paras. 174-175 (where it was held that the Trial Chamber was 'not at liberty simply to ignore' Bemba's submission that he had written to the Central African authorities proposing a commission of inquiry and failed to take it into account when evaluating whether Mr. Bemba had cooperated with national or international investigative efforts); ICC-02/11-01/15-1400 A, para. 71.
[1309] ICC-01/21-01/25-172, para. 23; ICC-01/04-02/06-2711-Anx, para. 20; IT-01-47-A, para. 78 ('there should be nothing in the surrounding circumstances giving rise to a reasonable apprehension of bias.'); IT-95-17/1-A, para. 182 (finding that doubts about impartiality alone may amount to an inadmissible jeopardy of the confidence which the Court must inspire in a democratic society).
[1310] ICC-01/22-107, para. 20.
[1311] See Commentary on the Bangalore Principles, para. 86; ICC-01/04-02/06-2711-Anx, para. 31.
[1312] *Ebner v The Official Trustee in Bankruptcy* [2000] HCA 63, paras. 7-8.
[1313] ICC-01/21-01/25-172, para. 23; ICC-02/05-03/09-344-Anx, para. 30. On the standpoint of a party: see ICC-02/05-03/09-344-Anx, para. 31; Commentary on the Bangalore Principles, para. 54.
[1314] ICC-01/21-01/25-172, para. 23; IT-08-91-A, para. 51.

know that judges arrive at the Court with the highest level of experience in the fields of criminal and/or international law,[1315] and are supported by teams of legal officers, with extensive collective experience in these fields. They would also know that the Court, including its judiciary, strives to be the global exemplar of criminal justice.

369. Thus informed, this observer would, based on the cumulative effect of the factual and legal errors in the Judgment, reasonably apprehend that the Chamber has not brought a mind open to persuasion by the evidence and the submissions of the Defence; in other words, that the Chamber did not bring an impartial mind to bear on the adjudication of the case against Mr. Yekatom.[1316] They would note that throughout the Judgment, the Chamber systematically misstated the evidence,[1317] including distortions of evidence on key issues on which multiple elements of the crimes and modes of liability rest. They would be aware that per the Court's judgment-drafting guidelines and practice, the drafting process involves rounds of detailed review, through which misstatements and erroneous summaries of evidence would necessarily be discovered and rectified,[1318] in particular evidence underpinning key findings and convictions. They would struggle to accept that misstatements of this nature and on this scale simply went unnoticed in the judgment-drafting process. This observer would note the systematic omissions of exculpatory extracts of testimonial and documentary evidence.[1319] They would notice that these omissions often comprised transcript lines found just above or below the extracts the Chamber relied on, and that these lines provided critical context to their evidence and/or even outright contradicted the Chamber's findings thereon, which were passed over in silence. They would note that in the Judgment, the Chamber selectively relied on transcripts,[1320] disregarding exculpatory passages in French transcripts in favour of neutral, even incriminatory passages in English transcripts. This observer would be aware that the Chamber nonetheless appears to have been systematically reviewing both transcripts.[1321] They would be aware that in the trial, the Chamber was repeatedly seized of issues relating to the quality of interpretation in the proceedings,[1322] and was thus alive to the

[1315] ICC-01/12-01/18-398-AnxI, para. 42; Article 36(3) of the Rome Statute.
[1316] See IT-95-17/1-A, para. 186, citing the Supreme Court of South Africa in the 'South African Rugby Football Union Case'.
[1317] See Annex 5(I) compiling selected misstatements of the evidence.
[1318] See also, Chambers Practice Manual, Annex: Guideline for ICC Judgment Drafting, para. 36.
[1319] See Annex 5(III) compiling selected instances where the Chamber overlooked exculpatory clarifications and/or key context within a witnesses' evidence or document.
[1320] See Annex 5(II) compiling selected instances where the Chamber overlooked French transcripts, despite their being the 'initial interpretation language', and entered findings or summarise evidence on the basis of discrepancies in English transcripts.
[1321] See e.g. Judgment, fns. 455-461, 1290, 1478, 9025-9031, 9145, 9148-9152, 9217. See also Judgment, fn. 17 ('At times, transcripts may specify the version language referenced, as appropriate').
[1322] See e.g. ICC-01/14-01/18-1167-Anx26-Red (in particular, Email from Defence and OTP of 15 July 2021 at 17:08); ICC-01/14-01/18-1167-Anx32-Red; ICC-01/14-01/18-1287-Anx20-Red; Email from Defence to TCV, 2 February 2022 at 17:18 (available on request); Email from TCV Legal Officer to parties, 20 April 2022 at 17:00 (available on request).

pervasive transcript discrepancies. They would be aware of the Chamber's findings that the Sango-French interpretation was the 'initial interpretation language'.[1323] They would note occasions where the English transcript was relied on to the detriment of Mr. Yekatom, even where a witness spoke in French. They would conclude that, in the absence of any reasoning, the omission of exculpatory extracts or selective reliance on transcripts was not a mere matter of interpretation, but the result of systematic cherry-picking of the evidence.

370. The reasonable observer would not attribute these errors to genuine differences in the assessment of relevant facts.[1324] They would understand that accurately stating or summarising the relevant evidence in a judgment, a key preliminary step in judgment-drafting, is largely an objective process. They would be unable to accept that errors in the basic components of fact-finding could organically occur on this scale in the Judgment, or that they could be attributed to mere coincidence. Nor would they deem the Chamber's repeated reliance on facts outside the parameters of the confirmed charges, or its unlawful recharacterisation of Mr. Yekatom's MoL, as merely motivated by plausible interpretations of the law.[1325] They would note that the pervasive lack of explanation or sufficient reasoning, which often accompanies these errors, compounds their cumulative effect. They would recognise that these errors, extraordinary in their totality, systematically disfavour Mr. Yekatom; and that these errors are most conspicuous where the evidence brought by the OTP materialised differently than anticipated (if at all), or where Defence evidence presented a compelling picture of the events that did not accord with the OTP narrative – in other words, where they were 'necessary' for a trial chamber that did not wish to acquit. The reasonable observer would discern a clear pattern from the cumulative effect of these errors, and reasonably conclude that Mr. Yekatom's convictions were not the result of an open-minded and impartial assessment of the trial record or application of the law.

371. In light of the above, the presumption of impartiality of the Trial Chamber has been rebutted and a reasonable apprehension of bias is firmly established.[1326] The Defence emphasises that a reasonable perception of partiality leaves a sense of grievance and injustice, thereby destroying confidence in the judicial system – here, in the Court itself.[1327] In this regard, the Appeals Chamber's decision will reflect not only upon the integrity of the Court's proceedings, but also upon the standard of fact-finding and legal reasoning that the international community should be able to expect therefrom.

1. Ground 4.1 – General errors in the Trial Chamber's assessment of P-1339

[1323] Judgment, fn. 8985 (also expressly noting that 'some details of the account are included in the French version of the transcript but not in the English version').
[1324] Cf. ICC-01/05-01/13-511-Anx, para. 38, and references cited therein.
[1325] See Ground 1.
[1326] ICC-01/21-01/25-172, para. 23; IT-08-91-A, para. 44.
[1327] See UNODC, Commentary on the Bangalore Principles of Judicial Conduct (2007), para. 52.

372. Insider witnesses' accounts may be compromised where they testify under fear of prosecution or in expectation of protection benefits.[1328] Rule 74 assurances cannot, on their own, dispel the risk that fear of prosecution, or personal interests, might consciously or unconsciously result in unreliable testimony. Witnesses may provide false allegations to avoid prosecution, and once on the stand, feel compelled to maintain those versions.[1329] While the Chamber acknowledged and assessed this risk elsewhere,[1330] it failed to apply the same caution to P-1339, and did not address his potential biases, personal animosity or motivations,[1331] resentment and grievance against Mr. Yekatom.[1332] Unlike with P-1962,[1333] the Chamber did not address the Defence contention that P-1339 did not participate in the 5 December operation, stating only that his group membership was uncontested.[1334] This is unreasoned.

373. The Trial Chamber credibility and reasoning failures in its assessment of P-1339's testimony must be assessed cumulatively and in light of the broader pattern of contradictions permeating the witness' testimony across the Boeing Market, Boeing Mosque, Saleh, and Yamwara events.[1335] He was the sole or principal source relied upon for each of these key incidents. Viewed together, these errors reveal not isolated lapses but a systemic failure to engage with the Defence's credibility challenges and to reconcile significant contradictions in P-1339's evidence. While the duty to provide a reasoned opinion does not require it to provide every detail of its assessment of minor inconsistencies in the testimony of witnesses,[1336] a trial must provide reasons for accepting testimony despite alleged or material inconsistencies when it is the principal evidence relied upon to convict an accused, as is the case here.[1337] While these errors for each event are addressed throughout the brief, their cumulative effect is to undermine confidence in the reliability of the Chamber's factual findings and the fairness of the resulting conviction. It reinforces the appearance that the Chamber was determined to preserve the manifestly deficient evidence to protect a central pillar of the OTP case, rather than impartially assessing its credibility. It contributes to a reasonable apprehension of bias.

[1328] Yekatom Defence Closing Brief, para. 73.
[1329] Yekatom Defence Closing Brief, para. 74. See also P-1339: T-152, 8:21-9:4 with P-1339's Counsel intervention noting that investigators had given him comfort that he would not be incarcerated.
[1330] Judgment, p. 75, para. 226; pp. 76-77, paras. 228-232.
[1331] Yekatom Defence Closing Brief, para. 75.
[1332] See e.g. P-1339: T-152, 57:5-10. Yekatom Defence Closing Brief, para. 106, fn. 340.
[1333] Judgment, pp. 123-124, paras. 378-381 where the Chamber acknowledged that the Defence contested his participation in the Boda trip.
[1334] Judgment, p. 865, para. 2410, fn. 6101.
[1335] Discussed below.
[1336] IT-05-88-A, para. 1020.
[1337] IT-04-74-A, vol II, para. 1642; IT-05-88-A, para. 133; IT-04-84-A, para. 134. See also, IT-04-74-A, vol I, para. 202; ICTR-00-56B-A, para. 64; ICTR-98-44A-A, para. 61. ('[u]nder some circumstances, a reasoned explanation of the Trial Chamber's assessment of a particular witness's credibility *is* a crucial component of a 'reasoned opinion' – for instance, where there is a genuine and significant dispute surrounding a witness's credibility and the witness's testimony is truly central to the question whether a particular element is proven').

2. Ground 4.2 – Errors in the assessment of evidence concerning Boeing Market

374. The Chamber failed to sufficiently engage with key Defence arguments**:** (i) that armed traders were present at the Boeing Market, and that there was no evidence that unarmed traders were among the intended objects of attack;[1338] (ii) the alleged 'pre-operation observation mission' could only reasonably be understood as a military reconnaissance, aimed at gathering operational information on the proportion of combatants versus civilians to ensure that necessary precautions could be taken;[1339] (iii) that P-1339 appears to have been 'surprised to see the bodies of persons other than Hassan';[1340] and (iv) that there was no 'suggestion that the attack was indiscriminate or disproportionate in means'.[1341] This failure to provide sufficient reasoning impacted the material findings that Mr. Yekatom's instructions were understood by the elements to accept that Muslim civilians would be killed,[1342] that his conduct was intentional and he intended his elements to kill the Traders at the Boeing Market;[1343] that Mr. Yekatom and his elements knew that the Traders would be present on the morning of 5 December 2013 given the reconnaissance, that Mr. Yekatom knew that the unarmed Traders enjoyed civilian protection,[1344] that his 'elements' would target them and were aware of the factual circumstances that established their civilian status.[1345]

375. The Chamber erred by finding that Mr. Yekatom launched the attack on Boeing by firing his pistol: The Chamber erred in finding that 'when Mr. Yekatom's group reached the Boeing Market, he launched the attack by firing an automatic pistol in the air'.[1346] This finding rest entirely on P-1339–the *sole* witness on Boeing Market. The OTP asked P-1339 nine times whether Mr. Yekatom gave an order or indication to attack the market on 5 December.[1347] Each time, he either answered that he had not heard any such order or did not know.[1348] When this failed, OTP counsel resorted to an improper leading question, reading from the prior statement in an attempt to induce confirmation[1349] – yet the witness still did not confirm the existence of an order. The Defence highlighted this

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[1338] Judgment, p. 897, para. 2527; Yekatom Defence Closing Brief, paras. 388-389.
[1339] Yekatom Defence Closing Brief, para. 392.
[1340] Yekatom Defence Closing Brief, para. 389.
[1341] Yekatom Defence Closing Brief, para. 390.
[1342] Judgment, pp. 1348-1349, para. 3939.
[1343] Judgment, p. 1376, para. 4015.
[1344] Judgment, pp. 1376-1377, para. 4017. See Ground 3.3.
[1345] Judgment, p. 1377, paras. 4019-4020.
[1346] Judgment, p. 29, para. 76; p. 900, para. 2537; pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1353-1354, para. 3951; pp. 1357-1358, para. 3962.
[1347] Yekatom Closing Statements, T-308 (ENG), 13:11-21; P-1339: T-154 (ENG), 36:17-19; 37:10-12 (1st attempt); 37:14-17 (2nd attempt); 37:21-38:3 (3rd attempt); 38:4-8 (4th attempt); 38:19-24 (5th attempt); 39:4-6 (6th attempt); 40:11-15; 41:25-1 (7th attempt); 53:14-18 (8th attempt); 53:20-54:1 (9th attempt).
[1348] P-1339: T-154, 41:20-23: *'Je me tue à vous répéter depuis le vendredi qu'il y avait beaucoup de monde au du Proget. Les chefs échangaient entre eux. Je n'étais pas avec eux, je n'ai pas entendu. Je n'ai pas suivi les nouvelles indications qui sont données au niveau du Proget'.*
[1349] P-1339: T-154, 58:21-27: *'Je vais vous poser une question sur une déclaration que vous avez faites, au paragraphe 68.*

at closing.[1350] The Chamber did not address the repeated failures to answer, the improper technique used by OTP, nor the Defence's submissions.[1351]

376. Not only did the Chamber fail to reasonably conclude that the witness was not credible or reliable on this point – or grapple with the clear procedural impropriety – but it created its own factual allegation that Mr. Yekatom ordered the attack on Boeing Market. The Chamber changed the factual basis of the finding:[1352] rather than an order, it concluded that Mr. Yekatom 'launched the attack' on the market by firing his pistol in the air.[1353] In the Chamber's reasoning, 'launching' was synonymous with initiating an attack on the market.[1354] This inference – that a single warning shot equates to *launching an attack on Boeing Market* – was not the only reasonable inference available on the record.[1355] For instance, the purpose of firing in the air was to prompt armed individuals to reveal themselves before any engagement–an interpretation fully consistent with the laws of armed conflict and the evidence on record. By failing to consider these alternative explanations, ignoring the witness's repeated refusals to confirm any order, and substituting a new factual theory ('launching' the attack) without notice or evidentiary foundation, the Chamber materially erred in fact and in law.

377. The Chamber erred in distorting P-1339's evidence on Mr. Yekatom's alleged instructions: The Chamber found that 'P-1339 said that when they left the bush, it was 'Rombhot' who gave the instruction to attack the Muslims and Seleka present at Boeing Market'.[1356] The OTP improperly led from his prior statement, the phrase 'attack the Muslims and Seleka',[1357] to get the answer that the witness did not provide spontaneously.[1358] The Chamber never treated P-1339's unreliability and lack of credibility in relation to these alleged instructions, as argued by the Defence.[1359]

378. Further, while P-1339 testified about anticipating threats, not killing civilians,[1360] the Chamber erred by interpreting his understanding selectively[1361] without relying on his initial answer that they were to defend themselves against the enemy, i.e. the Seleka.[1362] These cumulative errors materially

[…] il est dit «Rombhot nous a dit qu'on attaquerait les musulmans et les Seleka au marché de Boeing.» Par conséquent, ma question est la suivante: quand l'a-t-il dit, si… pour autant qu'il l'ait dit.'
[1350] Yekatom Closing Statements, T-308 (ENG), 13:22-25.
[1351] Yekatom Defence Closing Brief, paras. 106-135. See also Ground 4.3.; Ground 2.3.
[1352] See Ground 1.
[1353] Judgment, p. 29, para. 76; p. 900, para. 2537; pp. 1334-1335, para. 3901; p. 1340, para. 3917; pp. 1353-1354, para. 3951; pp. 1357-1358, para. 3962.
[1354] Judgment, pp. 1348-1349, para. 3939; pp. 1374-1375, para. 4010.
[1355] See Ground 1.
[1356] Judgment, p. 898, para. 2531; p. 899, para. 2533.
[1357] Judgment, p. 898, para. 2531, fn. 6334; P-1339: T-154, 54:11-15.
[1358] P-1339: T-154, 60:1-8. Despite Defence objections, the Presiding Judge allowed the question (T-154, 59:14-25) and the OTP had to repeat the question (T-154, 60:15-18).
[1359] See Ground 2.3; Yekatom Closing Statement: T-308 (ENG), 11:13-12:20.
[1360] P-1339: T-152, 4:24-5:3. See Ground 2.3. See also, Yekatom Defence Closing Brief, para. 391.
[1361] Judgment, pp. 898-899, para. 2532.
[1362] P-1339: T-152, 4:24-5:3; T-152, 11:3-6.

impact the Chamber's finding that 'Mr. Yekatom instructions encompassed attacking the Muslims traders at the Boeing Market'.[1363] No evidence supports the Chamber's finding that 'the same night, Mr. Yekatom instructed his elements to target Seleka positions along the Boeing–Cattin–PK5 direction,'[1364] yet this assertion was reiterated throughout the Judgment.[1365] The Chamber extrapolated further by holding that 'these instructions encompassed attacking the Traders at the market in Boeing before moving along the route to PK5'.[1366]

379. The Chamber entered erroneous findings concerning the two unnamed Traders allegedly killed at the Boeing Market.[1367] The Chamber found that 'Mr. Yekatom's elements continued and advanced through the Boeing Market, they shot in all directions and those that were inside the shops fled'.[1368] P-1339 explicitly described a crossfire environment.[1369] This passage, ignored by the Chamber, demonstrates the reciprocal nature of the violence and the presence of weapons on both sides. Far from a one-sided attack, the evidence depicts a combat situation. The evidence on the Boeing Market events depicts a chaotic scene and reciprocal firefight, not a one-sided execution of unarmed traders. On the Chamber's own findings, two Traders present that day were armed and engaged in combat.[1370] P-1339's described shots being fired from all sides.[1371] P-1339 stated that he did not remember if the other Muslims were armed,[1372] an answer the Presiding Judge acknowledged had to be accepted.[1373] He also stated that 'certain civilians joined the group when the shooting started'.[1374] In the circumstances, the Chamber failed to properly engage with Defence submissions[1375] in holding that the lack of information on the circumstances of the traders' deaths did not preclude it from concluding thereon.[1376] This finding was in contradiction with the Chamber's legal finding that the means of killing was a material fact that the OTP had the onus to demonstrate.[1377] This evidence notwithstanding, the Chamber erroneously inferred that the unnamed Muslims 'died at the hands of Mr. Yekatom's group'[1378] thus reversing the burden of proof and failing to exclude other reasonable possibilities. The

[1363] Judgment, p. 28, para. 75; p. 897; p. 899, para. 2533; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1372-1373, para. 4004; pp. 1374-1375, para. 4010.
[1364] Judgment, p. 899, para. 2533; p. 1353, para. 3950; p. 1385, para. 4044.
[1365] Judgment, p. 28, para. 75; p. 899, para. 2533; p. 1349, para. 3939; p. 1359, para. 3950; pp. 1372-1373, para. 4004; pp. 1374-1375, para. 4010.
[1366] Judgment, p. 28, para. 75; p. 897; p. 899, para. 2533; p. 1353, para. 3950; pp. 1374-1375, para. 4010.
[1367] Judgment, p. 29, para. 77; p. 913, para. 2586; pp. 1357-1358, para. 3962; p. 1359, para. 3965.
[1368] Judgment, p. 29, para. 76; p. 911, para. 2577.
[1369] P-1339: T-154, 50:28-51:5.
[1370] Judgment, pp. 910-911, paras. 2575-2576.
[1371] P-1339: T-154, 50:28-51:5.
[1372] P-1339: T-154, 49:2-3, 10-12.
[1373] P-1339: T-154, 51:17-23.
[1374] P-1339: T-159, 58:18-20.
[1375] Yekatom Defence Closing Brief, paras. 393, 399, 400.
[1376] Judgment, p. 913, para. 2585.
[1377] Judgment, p. 1303, para. 3794.
[1378] Judgment, p. 29, para. 77; p. 913, para. 2586; pp. 1357-1358, para. 3962; p. 1359, para. 3965.

Chamber's cursory dismissal of Defence arguments on this point constituted a failure to provide a reasoned opinion.[1379]

380. The Chamber's tolerance of procedural irregularities, its failure to assess the evidence holistically, and its refusal to address the credibility and reliability issues in P-1339's testimony undermined its overall evaluation of the record. These errors directly enabled the Chamber to wrongly conclude that Mr. Yekatom 'launched the attack by firing an automatic pistol in the air with the armed elements to continue and advance together' and to attribute the killings of Hassan Mahamat and two unnamed Muslim traders to him.[1380]

3. Ground 4.3 – Errors in the assessment of evidence concerning Boeing Mosque

381. The Chamber's finding that the RFACPP 'attacked the mosque in Boeing […] by firing a 'rocket' at it', and 'torched the mosque […] with gasoline' was the result of a multiplicity of evidence assessment errors.[1381] First, it erred in its treatment of P-1339's unreliable account of the Mosque's destruction.[1382] The Chamber dismissed the fundamental inconsistencies on the unfounded basis that P-1339 drew a distinction between the 'attack' and the 'destruction' of the Mosque.[1383] Yet this purported explanation simply fails to account for them.[1384] The Presiding Judge repeatedly intervened to express noted inconsistencies,[1385] and described his ultimate version as a 'differentiated story'.[1386] The Chamber's revisionist description of these inconsistencies as mere 'intricate details',[1387] or a mere matter of 'memory refreshing', indicates its failure to appreciate their significance objectively.[1388]

382. Moreover, the Chamber mischaracterised the circumstances of this 'memory refreshing'. Following P-1339's denial of RFACPP involvement, he was requested by the Presiding Judge to provide

[1379] Judgment, p. 913, para. 2585.
[1380] Judgment, p. 900, para. 2537.
[1381] Judgment, p. 29, para. 78; pp. 1353-1354, para. 3951; p. 1369, para. 3992.
[1382] See e.g., [REDACTED] stated that RFACPP elements were not involved in the destruction of the Mosque, noting that [REDACTED] stated in Sango '*a fa a mosquée'*, which excludes the speaker; and as such, '*on a detruit la mosquée*' (as interpreted) must be understood the same way); [REDACTED], 81:16-82:12 (maintaining this position when subsequently pressed, denying that the group had even come across the Mosque at all during the 5 December operation); [REDACTED] 85:8-86:18; (continuing to deny the group's involvement, including when his prior inconsistent statement was put to him, stating the latter was incorrect, and citing 'transcription problems' in his statement); see also [REDACTED], 12:27–13:6, 14:25-28 (where the witness's rule 74 counsel warned that his use of 'we' in his statement did not include the witness, and where the Presiding Judge directed to the OTP to clarify accordingly in its examination). See Yekatom Defence Closing Brief, paras. [REDACTED].
[1383] Judgment, pp. 923-924, paras. 2624-2628.
[1384] At some point, [REDACTED] even denied the RFACPP 'came across' the Mosque that day, which prompted the Presiding Judge to stated that 'this answers the question that we cannot speak of an attack on the Boeing mosque by this Anti-Balaka group': [REDACTED], 81:24-82:12, [REDACTED] (ENG), 77:25-78:1.
[1385] P-1339: T-154 (ENG), 79:19-20 ('Well, nevertheless, this is not exactly what he said on Friday, I have to say.'); 81:6-7 ('not only have we a discrepancy here with -- to what the witness now said, it's also a discrepancy to what he said on Friday.'); 83:18-84:3 (seeking an 'explanation' for the 'complete[ly] different' account).
[1386] P-1339: T-154 (ENG), 86:3-4.
[1387] Judgment, p. 927, para. 2640.
[1388] Judgment, p. 927, para. 2640.

the 'right story', at which he expressed confusion.[1389] An unscheduled adjournment was then taken to allow him to 'think about' 'who destroyed the Mosque' and 'who perhaps gave an order'. Upon reconvening, P-1339 subsequently stated, appearing uncomfortable, that in fact the RFACPP had destroyed the Mosque on Mr. Yekatom's orders.[1390] The Chamber did not address his telltale demeanour nor the particular circumstances of his change of testimony, despite it expressly being argued (with video thereof) in closing arguments. Thus it erroneously failed to provide a reasoned opinion on a paramount aspect of P-1339's credibility.[1391] The Chamber also failed to resolve major chronological inconsistencies in P-1339's account. He variously claimed that civilians destroyed the mosque when fighting began;[1392] that the mosque was already behind his group and was only seen destroyed during their retreat;[1393] that it was intact during combat and found destroyed after clashes ended around 10 a.m.;[1394] that it was destroyed by his group during retreat around 7 a.m.;[1395] and that it was attacked by his group at the very start of the operation around 6 a.m.[1396] These irreconcilable versions are effectively bypassed in the Judgment: after a partial summary (including the diverging chronologies), the Chamber simply deems his account reliable.[1397] In this regard, the Chamber's failure to enter a finding as to whether the Mosque or Boeing Market was attacked first belies the unreliability of his account.[1398] It erroneously accepted P-1339's explanation as 'forthcoming' regarding his failure to mention, in his prior statement, that Alkanto was the perpetrator of the alleged rocket attack, thus failing to address its plausibility.[1399]

383. The Chamber erred in fact and law in assessing the evidence of multiple Boeing resident witnesses who gave corroborative accounts that contradict P-1339's uncorroborated and manifestly unreliable account of the Mosque's destruction. D29-4013 (whom the Chamber found credible[1400]), an ex-mason's assistant who lived nearby,[1401] saw the Mosque being 'destroyed' by 'youngsters' who dismantled and removed the roofing with nail pullers and hammers.[1402] The Chamber

[1389] P-1339: T-154, 87:8-24, 88:9-14.
[1390] P-1339: T-154, 88:9-14, 88:20-89:10, 89:24-90:8.
[1391] Yekatom Closing Statements, T-308 (FRA), 18:23-22:17.
[1392] P-1339: T-152, 74:12-20.
[1393] P-1339: T-154, 81:26–82:7.
[1394] P-1339: T-154, 86:8-12.
[1395] P-1339: T-160, 27:3-8.
[1396] P-1339: T-160, 31:18–22.
[1397] Judgment, pp. 924-925, para. 2630; p. 925, para. 2633; p. 926, para. 2636; p. 927, para. 2638. See also, Yekatom Defence Closing Brief, para. 414.
[1398] Judgment, p. 29, paras. 76-78; pp. 1361-1362, para. 3973. Compare, Judgment, p. 29, para. 79 (where the Chamber establishes chronology vis-à-vis the Cattin events).
[1399] P-1339: T-160, 34:15-35:19; cf. Judgment, p. 927, para. 2639. See also Yekatom Defence Closing Brief, para. 414, fn. 1379.
[1400] Judgment, pp. 927-928, paras. 2641-2643.
[1401] D29-4013: T-277, 5:26-27; 7:4-7; D29-4011: CAR-D29-0009-0680-R01, paras. 23-24.
[1402] Judgment, pp. 927-928, para. 2642. D29-4013: T-277, 26:11-27:22; 32:14-33:10; 43:25-27; 45:23-26.

mischaracterised this testimony in stating that he 'did not recall burning traces or smoke on the Boeing Mosque'.[1403] D29-4013 clearly testified that he did not see any traces of fire or smoke,[1404] thereby contradicting P-1339's claim that the Mosque had been attacked with a rocket and burned with gasoline.[1405] The Chamber noted this but erroneously failed to explain how D29-4013 would not have seen on the beige white walls of the Mosque,[1406] any traces of the explosives and gasoline that (per P-1339) were used to attack the Mosque,[1407] despite this being a key Defence argument.[1408] It also ignored D29-4013's evidence describing the aftermath of an explosive and arson attack on Gbaya-Doumbia Church, which he contrasted with the Mosque's destruction.[1409] In light of D29-4013's description, the Chamber manifestly erred by finding that D29-4013's account 'confirms the veracity of P-1339's testimony'.[1410]

384. The Trial Chamber similarly mischaracterised D29-4011's evidence, who saw the Mosque fully intact on the day of its destruction,[1411] and stated that it was not burnt or hit with a 'rocket'.[1412] The Chamber sought to bypass this evidence in finding that 'while she stated that she passed by the '*église néo-apostolique*' located close to the Boeing Mosque she did not specifically state that she walked close to or by the mosque or paid any particular attention to it'.[1413] This conclusion is in direct contradiction with a multiplicity of evidence showing that the two structures are directly adjacent.[1414] It is also significant that the Chamber erroneously found that D29-4011 did not have 'full visibility' of the Mosque from her home, when she said the exact opposite.[1415] The Chamber therefore erred in suggesting that D29-4011 who stated that she saw the destruction of the Mosque 'from beginning to end',[1416] would have somehow missed any traces of its alleged violent destruction by explosives and gasoline. Again, the Chamber's failure to provide reasoning on this specific point is an error, as is its manifestly unreasonable finding that D29-4011's account 'does not contradict that of P-1339'.[1417]

[1403] Judgment, p. 928, para. 2643. See Annex 5, Row 9.
[1404] D29-4013: T-277, 31:20-32:1.
[1405] Judgment, p. 29, para. 78; pp. 924-925, para. 2630; p. 925, para. 2633; p. 927, para. 2638.
[1406] D29-4011: CAR-D29-0009-0680-R01, para. 51.
[1407] Judgment, p. 929, para. 2646.
[1408] Yekatom Defence Opening Statements, T-253 (ENG), 25:23-26:18; Yekatom Defence Closing Brief, para. 417; Yekatom Closing Statements, T-308 (ENG), 16:24-18:18.
[1409] D29-4013: T-277, 30:5-31:19. See also Yekatom Defence Closing Brief, para. 417.
[1410] Judgment, p. 929, para. 2647.
[1411] Judgment, p. 928, para. 2644; D29-4011: CAR-D29-0009-0680-R01, para. 43.
[1412] D29-4011: CAR-D29-0009-0680-R01, para. 49.
[1413] Judgment, p. 929, para. 2647.
[1414] See e.g. P-1528: T-178, 20:1-12; 20:27-21:12; 22:19-23:3; CAR-OTP-2121-2859; CAR-D29-0008-0105, [00:01:19]-[00:01:23] / CAR-D29-0006-1404: 20-21; [REDACTED], 24:20-27.
[1415] D29-4011: CAR-D29-0009-0680-R01, para. 47; CAR-D29-0008-0105 [00:00:46]-[00:01:17]/ CAR-D29-0006-1404; contra Judgment, p. 929, para. 2647, fn. 6566 (failing to cite D29-4011's contrary evidence). See Annex 5, Row 10.
[1416] D29-4011: CAR-D29-0009-0680-R01, paras. 46-47.
[1417] Judgment, p. 929, para. 2647.

385. The Chamber failed to properly address clarifications in P-1528's evidence that the Mosque's windows, doors, and roof were removed,[1418] and that he heard (from the Muezzin) that it had been 'pillaged' and 'vandalised'.[1419] At no point did he suggest that the Mosque had been torched with gasoline or attacked with explosives. While his evidence is partially hearsay, it is particularly probative given his position as imam of the Mosque at the time and the source of his information, both of which militate against the suggestion that they would have been unaware that the Mosque had been attacked or destroyed in the violent manner described by P-1339. It failed to holistically weigh his evidence with the corroborative evidence of Boeing resident and Mosque-goer P-2682, who likewise testified to the progressive dismantling of the Mosque, including the removal of its roof,[1420] as well as that of D29-4011 and D29-4013.

386. Lastly, it failed to properly address the evidence of satellite expert P-2193, merely noting his evidence was 'inconclusive' as regards 'traces of fire' on the Mosque,[1421] while entirely ignoring his evidence contradicting P-1339, not least his evidence that imagery of the Mosque was inconsistent with rocket damage.[1422]

4. Ground 4.4 – Errors in the assessment of evidence concerning Cattin

387. The Chamber failed to holistically evaluate the circumstantial evidence of P-1528 and failed to consider or exclude alternative reasonable inferences, thus materially affecting its finding that RFACPP members killed an unarmed Muslim man during the attack on Cattin.[1423] The impugned finding rests exclusively on the testimony of P-1528, who did not witness the killing.[1424] He testified that he heard an individual apparently being pursued, shouting for help before ceasing; then (after an indeterminate period) saw four 'anti-balaka' standing in the road, through a hole in the wall of his concession; then, approximately six hours later, fleetingly saw an unidentified body in the road.[1425]

[1418] P-1528: CAR-OTP-2121-2831-R01, para. 14; T-178, 15:23-16:15; T-179, 10:6-7.
[1419] P-1528: T-178, 15:23-16:15; 16:20-17:4.
[1420] P-2682: T-017, 40:1-4. Cf. Judgment, p. 929, para. 2648 (where the Chamber finds that her evidence indicates that 'the Anti-Balaka, together with the civilian population, destroyed the Boeing Mosque').
[1421] Judgment, p. 929, para. 2648, fn. 6567.
[1422] See, P-2193: T-019, 79:3-7 (citing the manner of structural damage and lack of visible debris); see also, P-2193: T-019, 49:10-50:3 (stating that the abundant vegetation and trees around the Mosque did not appear to be damaged, unlike other areas he analysed where burnt patches of grass were visible); P-2193: T-019, 43:19-24 (that explosives 'cause a different pattern of destruction' to arson, as they 'throw debris out and usually level the structure, meaning it's gone'); P-2193: T-019, 67:11-15 (and that 'roofless structures with skeletal interior remains' were generally inconsistent with use of 'high explosives' or 'heavy munitions'). See also P-2193: T-019, 30:13-24 (where, referring specifically to the Mosque, P-2193 notes the missing roof and remaining interior timbers).
[1423] Judgment, pp. 1357-1358, para. 3962.
[1424] Judgment, p. 932, para. 2655; p. 934, para. 2663.
[1425] P-1528: T-178, 29:20-32:12, CAR-OTP-2048-0757-R05, para. 31; T-178, 29:12-17 (*'Entre 8 heures et 9 heures, […] Je n'ai pas assisté à son décès, […] mais plus tard, j'ai vu quatre hommes,'*); T-179, 60:22-24 (*'jusqu'à 14 heures et quelque, j'ai pu sortir avec ma famille […],'*).

The finding that P-1528 was 'unequivocal' as to the identity of the perpetrators,[1426] despite his clearly stating that he did not see the killing, demonstrated that the Chamber misapprehended his evidence.[1427]

388. The Chamber systematically and erroneously drew adverse inferences on the basis of evidentiary gaps in P-1528's circumstantial account, instead of resolving them in favour of Mr. Yekatom.[1428] It failed to justify its inference that the person P-1528 heard, but did not see,[1429] pleading for help was the same individual whose body he saw, in an active combat zone, six hours later.[1430] Its reference to 'the man […] lying on the ground when the Anti-Balaka approached him' demonstrates its failure to appreciate the fact that P-1528 indicated that when he saw the four 'anti-balaka', he could not see the body.[1431] It referred to 'Anti-Balaka elements beat[ing] him' and found that it was 'clear' that the 'wounds the body sustained' were not due to 'an exchange of fire' and that the description was 'consistent' with his 'impression' that the man had been beaten.[1432] Yet P-1528 expressly stated, in response to a direct question, that he did not know the type of wound on the body, nor where the blood he saw was coming from, having only seen the body fleetingly from inside a car.[1433] Unsurprisingly, the Chamber does not provide any reference for the above litany of speculative and unfounded findings.[1434]

389. The Chamber further erred in failing to properly exclude the reasonable possibility that the victim was shot by an exchange of fire or a stray bullet,[1435] having failed to assess evidence of active combat in the area, i.e. directly in front of P-1528's house at the relevant time,[1436] or to engage with the broader evidentiary picture of the Seleka indiscriminately shooting.[1437] In this regard, it erroneously concluded that footage taken in front of P-1528's house contained no information on time or date.[1438] Metadata indicates that it was filmed on 5 December 2013 before 9 am, i.e. in the exact period when the pursuit overheard by P-1528 took place,[1439] which had been submitted and extensively discussed

[1426] Judgment, p. 934, para. 2663.
[1427] P-1528: CAR-OTP-2048-0757-R05, para. 31; T-178, 30:4-16.
[1428] Judgment, p. 29, para. 79; pp. 1357-1359, paras. 3962-3965.
[1429] Judgment, pp. 932-933, para. 2658.
[1430] Judgment, p. 934, para. 2663. Regarding the combat in Cattin, see below.
[1431] P-1528: T-178, 30:4-16.
[1432] Judgment, p. 934, para. 2663.
[1433] P-1528: T-178, 30:15-16, 32:12.
[1434] Judgment, p. 934, para. 2663; see Yekatom Defence Closing Brief, paras. 379-382.
[1435] Judgment, p. 934, para. 2663.
[1436] CAR-D29-0003-0057; P-1528: T-179, 74:2-77:4; P-1339: T-159, 79:13-25.
[1437] Yekatom Defence Closing Brief, para. 378; P-0884: T-057, 46:13-47:4; 43:12-44-21; P-1339: T-154, 48:26-49-3; P-1839: T-172, 26:1-12.
[1438] Judgment, p. 938, para. 2675.
[1439] CAR-OTP-2048-0757-R05, para. 31.

at trial.[1440] The Chamber moreover limited its reasoning to whether the victim died during an 'exchange of fire', and did not consider a stray bullet or Seleka fire.[1441] It asserted that no evidence suggested the presence of other 'Anti-Balaka' groups in the Cattin area that morning,[1442] which is entirely inconsistent with its own finding elsewhere.[1443]

390. Moreover, the Chamber failed to properly identify the perpetrator before attributing responsibility to the RFACPP.[1444] In finding that the timing of the killing was between 08:00 and 09:00, and that this 'appears to coincide' with a period during which RFACPP members 'would' have been present near the Dameca factory,[1445] the Chamber drew an unsafe inference itself based on an unsafe inference. Again, P-1528 only heard a pursuit in that period, and no chronology can be established as to when P-1528 saw 'anti-balaka' outside his home. He did not describe any uniform, footwear, headwear, insignia, language or distinctive feature that could identify those individuals as RFACPP members, he merely referred to knives, gris gris, iron bars and red headbands.[1446] The Chamber failed to exclude the presence of armed groups operating 'in and around Boeing', and by treating references to Ngremangou's group (described as 'military men') as referring to RFACPP members,[1447] contrary to the evidence.[1448] In any event, temporal proximity to other operations cannot, without corroborative indicators, sustain a finding of group affiliation.[1449] Geographical proximity, while relevant, is insufficient, not least where P-1528 himself referred to a crowd of civilians at the scene.[1450] When several indistinguishable groups operate in the same area, as was the case for the Bangui operation on 5 December, the identification of any specific faction as the perpetrator 'lends no or only limited support for the inference that they belonged' to the accused's group.[1451] Given evidence that 'anti-balaka'

[1440] CAR-OTP-2065-1396; CAR-OTP-2065-6252 (indicating 2013:12:05 08:51:08). See ICC-01/14-01/18-2515-Conf-AnxB, pp. 2-3, items #4 and #5 (on the reliability of Metadata files in relation to the 5 December 2013 operation); pp. 5-7, items #14 to 16 and #19 (for advance of Seleka in Cattin around 8am on 5 December 2013); pp. 7-19 (for the subsequent advance of the Seleka from Cattin to Mpoko-Bac, Seleka informing French forces at 10:57 that the opposing forces (i.e Mr. Yekatom's RFACPP) already retreated). P-1339: T-160, 3:27-4:12; CAR-D29-0003-0057; P-1528: T-179, 74:2-77:9. See also Yekatom Defence Closing Brief, paras. 378, 383, 596.
[1441] Judgment, p. 934, para. 2663.
[1442] Judgment, p. 937, para. 2673.
[1443] Judgment, p. 887, para. 2486, citing P-1339: T-152, 70:27-71:1.
[1444] Judgment, p. 29, para. 79; p. 937, para. 2673; pp. 1358-1359, para. 3964; p. 1359, para. 3965. See ICC-01/14-01/18-282-Conf-AnxB1, para. 7.
[1445] Judgment, p. 937, para. 2673.
[1446] Judgment, p. 933, para. 2659.
[1447] Judgment, pp. 937-938, para. 2674.
[1448] Judgment, p. 937, para. 2673. See e.g. P-1786: CAR-OTP-2058-0200-R02, para. 61 (stating that Ngremangou maintained a base with 'Anti-Balaka' in Boeing Bercail).
[1449] IT-06-90-T, para. 65.
[1450] ICTR-98-41-A, para. 293; IT-01-47-T, para. 1862.
[1451] IT-04-83-T, para. 221. On multiple armed formations operating simultaneously and witnesses providing no distinctive indicators, Chambers of ad hoc tribunals were 'unable to draw any conclusions regarding the identity or affiliation of the alleged perpetrators', see also IT-06-90-T, para. 696; ICTR-00-55C-T, paras. 1036-1037. See also IT-01-47-T, para. 414.

routinely wore civilian clothing, attribution of perpetrators as such is inherently unreliable.[1452] P-1528's bare identification of the individuals as 'anti-balaka' is therefore insufficient to find that the only reasonable inference in the circumstances is that RFACPP members killed a Muslim man in Cattin.[1453]

5. Ground 4.5 – Errors in the assessment of evidence concerning Boeing-Cattin displacement

391. The Chamber erred in fact and law in its findings on displacement by distorting the evidence and failing to assess it holistically. It ignored Defence submissions and evidence demonstrating that the exodus of civilians, including Muslim residents, from Cattin and Boeing was precipitated by indiscriminate Seleka reprisal attacks on and after 5 December 2013.[1454] It also failed to address abundant evidence on the explosion of anti-Muslim hostility and mob violence.[1455] Again, the Chamber erroneously dismissed this evidence at a superficial level: it found that these factors 'contributed' to the reason for departures without excluding the alternative inference that they were themselves the reason for individuals' or groups' departures.[1456]

392. The Chamber erred in concluding that P-1528 fled from Cattin 'as a direct result of the events at the Boeing Mosque and at Cattin'.[1457] P-1528 heard of the Mosque's destruction after having moved to PK5.[1458] His departure was prompted by an unverified rumour that never materialised: i.e. that the 'Anti-Balaka […] were now planning to return and kill all Muslims in the area',[1459] which the Chamber failed to address.[1460] The error is compounded by the unfounded conclusion that 'many others, fled Cattin prompted by fear, having directly observed some of the events concerning the Boeing

[1452] SCSL-04-16-T, paras. 545-546. See also, Ground 2.2.
[1453] Judgment, p. 933, para. 2659, pp. 1358-1359, paras. 3964-3965; see SCSL-04-15-T, paras. 1512-1514.
[1454] CAR-OTP-2012-0523, [18:15] to [20:17] / CAR-OTP-2118-5547, 5562-5563:459-491; CAR-OTP-2065-1568 / CAR-D29-0006-0090; and see ICC-01/14-01/18-2515-Conf-AnxB, items #20-33, in particular: CAR-OTP-2065-1604; CAR-OTP-2065-1608; CAR-OTP-2065-1632; CAR-OTP-2065-1380; CAR-OTP-2065-1596 / CAR-D29-0006-1447; see also, CAR-D29-0007-0196-R01, and prior Defence submissions in ICC-01/14-01/18-2561-Conf-AnxA, item #24; CAR-OTP-2065-1448; See P-1839: T-172, 43:18-44:16; see also 42:7-43:11 (confirming that video CAR-OTP-2065-1444, filmed one minute prior, is 'right by' the Centre Foyer de Charité), and CAR-OTP-2118-9146 (for location of Centre Foyer de Charité; see southeast / bottom right sector of map, roughly 250 metres west of Dameca Intersection, aka Cattin Crossroad); P-2472: CAR-OTP-2110-0355-R01, para. 37; P-1704: T-128, 57:6–58:3; CAR-D29-0003-0021; P-1839: T-172, 24:10–17; 27:15–18;28:12–29:5; 36:19–28; 37:21–38:28; CAR-D29-0003-0051. See Yekatom Defence Closing Brief, paras. 407, 603.
[1455] See e.g. ICC-01/14-01/18-2515-Conf-AnxC, pp. 1-2, referring to video CAR-D29-0008-0012; see also similar videos listed in the 'Related submitted items' column, e.g. CAR-OTP-2120-0301, CAR-OTP-2059-1218; see also p. 3 referring to CAR-D29-0008-0025; pp. 4-5 referring to CAR-OTP-2014-0752; P-0291: T-052, 37:14-43:21; TCV-0952: T-252, 26:17-28:21. See Yekatom Defence Closing Brief, para. 409.
[1456] Judgment, pp. 958-959, paras. 2754-2756. See Ground 3.2.f).
[1457] Judgment, p. 940, para. 2682, p. 941, para. 2687.
[1458] P-1528: CAR-OTP-2048-0757-R05, para. 47; T-179, 9:22-10:8.
[1459] P-1528: T-179, 53:28-55:9.
[1460] Judgment, pp. 940-941, paras. 2684-2687; see also Yekatom Defence Closing Brief, para. 408.

Mosque and Cattin'.[1461] There is no evidence that any resident fled for having witnessed events at the Mosque or the killing in front of P-1528's house. The Chamber also erred in finding that P-1528 fled the CAR in the context of the Boeing Mosque and Cattin attacks,[1462] as it flows from its errors on the reasons for P-1528's flight from Cattin.

393. The Chamber erred in finding that 'P-2682 stayed in PK5 as [REDACTED],[1463] and that her continued stay is inevitably [REDACTED].[1464] However, P-2682 fled to PK5 at her mother's urging before the Boeing Market events,[1465] and no link between the individual and the RFACPP was established. It also erred in finding that P-2682 fled to Chad in the context of the Boeing Market events.[1466] Both P-1528 and P-2682 testified that conditions in PK5 had become unbearable due to continuing insecurity, repeated attacks, and dire humanitarian conditions,[1467] not due to any specific RFACPP conduct. P-2682 stated that she left the country because of threatening gestures of unidentified 'anti-balaka' and civilians.[1468]

394. Finally, the Chamber erroneously generalised that 'the majority of Muslims, including P-1528 and P-2682, fled Boeing and Cattin to PK5, while some others fled to other parts of the CAR, in the context of the attack by Mr. Yekatom's group'.[1469] The Chamber acknowledged that fear and insecurity in PK5 stemmed from broader 'anti-balaka' activity in Bangui;[1470] that no 'specific and reliable' evidence showed RFACPP attacks on PK5;[1471] and that dire living conditions and fear of being identified as Muslim drove civilians, including P-1528 and P-2682, to flee to other countries.[1472] By recognising that factors caused civilians to leave PK5, the Chamber itself severed the nexus on which the above impugned conclusion relied.[1473] The resulting errors materially affected the Judgment, which erroneously concluded – purportedly on the basis of P-1528's and P-2682's evidence – that Muslims linked their flight exclusively to events attributed to the RFACPP movement, and to no other actors.[1474] On that basis, the Chamber further found that Mr. Yekatom knew, through his alleged

[1461] Judgment, pp. 941-942, para. 2688.
[1462] Judgment, p. 944, para. 2696.
[1463] Judgment, p. 940, para. 2682.
[1464] Judgment, p. 945, para. 2698.
[1465] P-2682: T-018, 31:3-18.
[1466] Judgment, p. 947, para. 2703.
[1467] P-2682: T-017, 36:6-18; 42:27-43:16; 43:25-44:3; 45:15-24; T-018, 31:3-18; 45:12-46-21; P-1528: T-178, 10-20. See Judgment, p. 957, para. 2747.
[1468] P-2682: T-017, 35:2-36:18; T-018, 45:12-46:21.
[1469] Judgment, p. 30, para. 80; p. 957, para. 2747.
[1470] Judgment, p. 954, para. 2734.
[1471] Judgment, pp. 955-956, para. 2740.
[1472] Judgment, p. 955, para. 2737, p. 956, para. 2741, p. 957, para. 2745.
[1473] Judgment, p. 30, para. 80; p. 957, para. 2747.
[1474] Judgment, p. 959, para. 2757.

instructions and by launching the attack, that it would cause Muslims to flee[1475] and create conditions forcing the majority to leave.[1476] As this conclusion rests on a mischaracterisation of the evidence and an unfounded inference as to knowledge and causation, these errors warrant reversal.

395. All of these errors are compounded by the Chamber's earlier misapprehension and distortion of the evidence concerning the events at the Boeing Mosque, Boeing Market and the unnamed Muslim in Cattin. The erroneous attribution of the Boeing Mosque and Cattin events to Mr. Yekatom fatally taints the Chamber's determination that these displacements occurred 'in the context of the attack' led by him.[1477] Consequently, the findings related to the displacement cannot stand and must be reversed.[1478] The Defence submitted that the OTP failed to lead any evidence depicting Mr. Yekatom undertaking acts that threatened or intimidated the Muslim population in a manner calculated to force them to leave Boeing or Cattin.[1479] The Chamber merely rejected the mental-element formulation and asserted – without explanation – that Mr. Yekatom knew his acts would cause Muslims to flee.[1480] This was an error according to the jurisprudence.[1481]

6. Ground 4.6 – Errors in the assessment of evidence concerning Djido Saleh

396. Erroneous finding that 'Saleh was killed by a group of individuals which included at least three elements from Mr. Yekatom's group': The Chamber failed to provide sufficient reasoning in its findings 'on the perpetrators of Saleh's killing and the subsequent mistreatment', and of 'threats [made] by the Anti-Balaka' he received prior to his death; and it failed to correctly assess the evidence of said 'threats'.[1482]

397. The Chamber failed to explain its finding that P-1339's account of the incident was 'reliable', despite it diverging in key aspects from the Chamber's own findings on the incident:[1483] i.e. that a group of individuals 'attacked Saleh's house while he and his family were inside', following which Saleh tried to flee to the gendarmerie but was lapidated and killed by his pursuers.[1484] By contrast, P-1339 claimed that after Mbaïki locals informed Mbafolo that Saleh had left his home to attend prayers, she and two elements beat and killed him while he was praying.[1485] His suggestion that Saleh's

[1475] Judgment, p. 1376, para. 4015.
[1476] Judgment, p. 1376, para. 4016.
[1477] Judgment, p. 1364, para. 3978.
[1478] Judgment, pp. 1466-1476, paras. 4300-4329.
[1479] Yekatom Defence Closing Brief, para. 604.
[1480] Judgment, p. 1376, para. 4016.
[1481] ICC-01/04-02/06-2359, para. 1056; IT-95-9-T, paras. 125-126.
[1482] See Judgment, p. 1251, para. 3641; pp. 1255-1264, paras. 3649-3669; see also, p. 40, paras. 124-125.
[1483] Judgment, pp. 1252-1264, paras. 3643-3669 (in particular, pp. 1255-1256, para. 3650; p. 1258, para. 3654; pp. 1260-1261, para. 3659). See also, Defence Closing Brief, para. 543.
[1484] Judgment, pp. 1252-1253, para. 3644, fns. 8959-8960.
[1485] P-1339: T-154, 5:27-6:12. The Trial Chamber misstates P-1339's evidence in suggesting that Mbafolo and the elements

presence in Mbaïki after the Muslims' departure had been secret, and that he was killed upon this becoming known and exposed,[1486] is plainly at odds with the Chamber's findings indicating that his decision to remain was publicised and widely known.[1487] He repeatedly stated that three people were involved in the killing, contrary to its defining feature i.e. that Saleh was killed by a large mob.[1488] He even repeatedly misdescribed the victim as a 'Muslim youth'; Saleh was 46 and a deputy mayor.[1489] The Chamber's failure to address, let alone reconcile, these major inconsistencies was an error; and no reasonable Trial Chamber would have relied on P-1339's account of the incident.

398. The Chamber committed further errors in cross-assessing insider witnesses' accounts.[1490] It failed to reconcile a key divergence between P-1339 and P-1647, who expressly confirmed that it was 'only' Mbafolo.[1491] It ignored P-1647's evidence that Ngombe, whom P-1339 claimed was involved in the killing, was not in Mbaïki when Saleh was killed, but 40 km away in Pissa.[1492] The Chamber's unexplained claim that these accounts were 'not necessarily contradictory' is thus inaccurate and inadequate.[1493] This flawed assessment is compounded by its unsound dismissal of P-1786's corroborated and reliable account, addressed below.[1494] It failed to properly address the Defence position that P-1647's evidence was unclear as to the nature and degree of Mbafolo's involvement in the incident.[1495] Given the size of the crowd involved,[1496] 'involvement' does not automatically imply 'perpetration'; nor does participation in the mutilation of Saleh's body.[1497] Finding that his evidence 'unequivocally point[s] to' Mbafolo as a perpetrator of the killing falls far short of a properly reasoned opinion.[1498]

'went to the house' and killed him; see Judgment, pp. 1255-1256, para. 3650, Part 4 (bias) / Annex 5, row 25. The Trial Chamber's finding that P-1339 'seemed unclear' on 'the location of the killing' (citing P-1339: T-154, 7:24-27) is unsound: as is clear from the preceding question, the extract relates to the location where [REDACTED]; nothing therein suggests that P-1339 is referring to the location of the killing.

[1486] P-1339: T-154, 5:27-6:13.

[1487] The decision to remain was known to, inter alia, Muslim civilians, government officials, NGO workers, journalists, MISCA, Sangaris, 'anti-balaka', and RFACPP members; see Judgment, pp. 1247-1249, paras. 3629-3637; pp. 1250-1251, paras. 3640-3641, and references cited therein.

[1488] P-1339: T-154, 6:9-12; 11:6-12 ('*Ils étaient trois, ils l'ont tué.*'); compare Judgment, pp. 1252-1254, paras. 3644-3647. See e.g. P-1647: T-194, 63:14-22; CAR-OTP-2001-2707, p. 2728; P-1813: T-182, 59:16-18.

[1489] P-1339: T-154, 5:27, 6:9-13; compare CAR-OTP-2117-0687, p. 0687, cited in Judgment, pp. 1248-1249, para. 3636, fn. 8939.

[1490] Namely, P-1339, P-1647, and P-1786. Judgment, p. 1258, paras. 3653-3654.

[1491] P-1647: T-194, 63:19-21; cf. Judgment, p. 1258, para. 3654.

[1492] P-1647: T-194, 64:18-27; compare Judgment, pp. 1255-1256, para. 3650. See Annex 6, p. 3.

[1493] Judgment, p. 1258, para. 3654.

[1494] Judgment, p. 1258, paras. 3653-3654.

[1495] Defence Closing Brief, para. 544. See P-1647: T-194, 62:24-63:22 (wherein ultimately P-1647 stated that '*C'est les gens de Mbaïki. Il y a des foules, des civils de Mbaïki qui l'a occasionné, mais c'est elle qui a participé.*'). OTP Counsel's examination reflects the lack of clarity: see P-1647: T-194 (ENG), 66:10-11 ('Did you discuss what to do about [Mbafolo's] involvement in the killing and/or mutilation of Djido Saleh with Mr. Yekatom?').

[1496] An Amnesty International report stated that 'nearly 100 people' were involved; see CAR-OTP-2001-2707, p. 2728.

[1497] Cf. Judgment, pp. 1258-1260, paras. 3655-3657.

[1498] Judgment, pp. 1260-1261, paras. 3658-3659.

399. The Chamber's assessment as regards 'other individuals' from the group involved in the killing is erroneous.[1499] First, it failed to reconcile P-1647's 'reliable' evidence that 'only' Mbafolo was involved, with its conclusion that 'at least three elements from Mr. Yekatom's group' were in the group that killed Saleh.[1500] Second, it failed to provide sufficient reasoning as to why evidence of 'anti-balaka' involvement could safely be understood, and relied on, as evidence of RFACPP involvement. Here too, there is no indication that difficulties in identifying perpetrators were taken into consideration, nor sufficient reasoning as to how it determined that references to 'anti-balaka' involvement in the killing could safely be attributed to the RFACPP.[1501] On the contrary, its erroneous approach is manifest in its reliance on P-1823's account to find that RFACPP members killed Saleh, despite him specifically stating that Saleh was killed by an 'anti-balaka' group led by Mbaïki local Victor Cobo.[1502]

400. As regards 'threats': the finding that 'threats were made by elements of Mr. Yekatom's group' towards Saleh prior to his killing, based on P-1838's account of an 'interrogation' of Saleh by Cœur de Lion, lacked a proper evidentiary basis.[1503] This account predominantly comprises a range of P-1838's expressed subjective opinion: speculation,[1504] personal belief,[1505] conclusory opinion,[1506] and teleological conclusions.[1507] The Defence had warned of P-1838's tendency to present opinion as incriminatory fact.[1508] When this opinion is stripped away, what remains of his account is what he deemed an '*interrogatoire […] musclé*' such that Saleh was unable to respond.[1509] Critically, his account contains no factual evidence of any expressed intention to harm Saleh; it does not support the finding that 'threats were made'.[1510]

[1499] Judgment, pp. 1261-1264, paras. 3660-3669.
[1500] Judgment, p. 1264, para. 3669, p. 1258, para. 3654.
[1501] See Ground 2.2.d).
[1502] See Judgment, p. 1262, para. 3662; p. 1263, para. 3667; p. 1264, para. 3669. See P-1823: CAR-OTP-2063-0369-R02, paras. 37-38; T-183, 74:21-75:10; 76:1-12; CAR-D29-0010-0012 (depicting Prince Mondounga). See also, P-1666: T-231: 44:4-27. See also, Defence Closing Brief, para. 545.
[1503] Judgment, p. 40, para. 124; pp. 1250-1251, paras. 3640-3641.
[1504] P-1838: T-215, 19:3-4 ('*si […] je m'étais pas interposé, et si je suis pas arrivé tôt, il y aurait eu un problème*'), relied on at Judgment, pp. 1250-1251, para. 3640, fn. 8951.
[1505] P-1838: T-215, 19:22-24 ('*vu que les Anti-balaka n'avaient plus d'ennemis dans la ville, il ne restait plus que* [Saleh]. *Je crois que c'est ce qui a conduit à sa... à sa mort. Je crois que c'est aussi le sujet principal de ces… cet interrogatoire* [emphasis added].'), relied on at Judgment, pp. 1250-1251, para. 3640, fn. 8952.
[1506] P-1838: T-215, 19:1-3 ('*C'était aussi une forme de menace, parce qu'à cette époque, il n'y avait plus de musulmans à Mbaïki. Les camions ont exfiltré tous les musulmans de Mbaïki. Et il n'en avait plus qu'un seul.* [emphasis added]'), relied on at Judgment, pp. 1250-1251, para. 3640, fn. 8951; P-1838: T-215, 19:21-23 ('*D'après* […] *ce que j'ai compris, les Seleka et les Anti-balaka ne pouvaient pas cohabiter parce qu'ils étaient des ennemis et que... vu que les Anti-balaka n'avaient plus d'ennemis dans la ville, il ne restait plus que* [Saleh]'), relied on at Judgment, pp. 1250-1251, para. 3640, fn. 8952.
[1507] P-1838: T-215, 19:23-26 ('*Je crois que c'est ce qui a conduit à sa... à sa mort. […] Et tout ce que j'avais déjà envisagé est... est arrivé, donc, c'était le but. C'était de le tuer purement et simplement.* [emphasis added]').
[1508] See e.g. Defence Closing Brief, paras. 492, 541, 546.
[1509] P-1838: T-215, 18:11-20:6 (in particular, 20:1-2).
[1510] Cf. Judgment, p. 1251, para. 3641 (emphasis added).

401. The free assessment of evidence principle does not relieve a chamber from its duty to properly discern between factual evidence and opinion evidence, in terms of probative value. Notably, elsewhere the Chamber attributed 'little weight' to conclusory evidence on this basis.[1511] The danger of opinion lies in the fact that its probative value is entirely contingent on the validity of the facts and circumstances on which it is based, as is exemplified in P-1838's account. His subjective claim that the interrogation was '*une forme de menace*' was not based on a threat being made,[1512] but rather, on the fact that at the time, Saleh was the only remaining Muslim in Mbaïki.[1513] Yet Cœur de Lion had been killed in Boda prior to the Muslims' departure.[1514] As such, P-1838's claim that Cœur de Lion's 'interrogation' of Saleh was '*une forme de menace'* is premised on a factual impossibility. The Chamber conceded this incoherency, yet found P-1838's account 'reliable and credible', finding that he 'erred when mentioning that there were no longer Muslims in Mbaïki at the time of the interrogation'.[1515] P-1838 did not simply 'mention' that the Muslims had departed: he deemed it 'the main subject' of the 'interrogation';[1516] in his prior statement, his account is also prefaced by reference to the Muslims' departure.[1517] On top of downplaying this fundamental incoherency, the Chamber ignored evidence undermining its reasoning.[1518] It also failed to appreciate that P-1838 had previously misidentified Cœur de Lion.[1519] The Chamber thus materially erred in relying upon P-1838's account. While the finding that 'threats were made' to Saleh by RFACPP members was based specifically on P-1838's account,[1520] it is telling that the finding that unspecified 'anti-balaka' threatened Saleh is also unsupported: D29-5013 did not suggest Saleh was threatened by 'anti-balaka';[1521] and while P-1813 heard rumours that Saleh would be 'targeted' by unspecified 'anti-balaka' due to his

[1511] See Judgment, p. 1263, para. 3667. See also, where the Presiding Judge intervened when a witness gave conclusory opinion evidence: P-2475:T-133 (ENG), 44:7-12; D29-5012: T-295 (ENG), 24:5-7.
[1512] Per the OED, a 'threat' is 'a statement of an intention to inflict pain, injury, damage, or other hostile action on someone in retribution for something done or not done', or 'a menace of bodily harm, such as may restrain a person's freedom of action'.
[1513] P-1838: T-215, 19:1-3 ('*C'était aussi une forme de menace, parce qu'à cette époque, il n'y avait plus de musulmans à Mbaïki. Les camions ont exfiltré tous les musulmans de Mbaïki. Et il n'en avait plus qu'un seul.* [emphasis added]'), relied on at Judgment, pp. 1250-1251, para. 3640, fn. 8951.
[1514] As conceded by the Trial Chamber; see Judgment, pp. 1250-1251, para. 3640, fn. 8951.
[1515] Judgment, pp. 1250-1251, para. 3640, fn. 8951 (emphasis added).
[1516] P-1838: T-215, 17-25, 19:1-3, 19:21-25 ('*Je crois que c'est aussi le sujet principal de ces... cet interrogatoire.*'); see also, T-215, 19:3-4 ('*Et il n'en avait plus qu'un seul et si […] je m'étais pas interposé, et si je suis pas arrivé tôt, il y aurait eu un problème'*).
[1517] P-1838: CAR-OTP-2100-0252-R05, para. 91. Cf. Judgment, p. 1250, para. 3640, where the Chamber relies on the extract 'shortly after the Anti-Balaka arrived', without addressing his reference to 'abandoned houses of the Muslims'.
[1518] See ibid.; P-1838: T-215, 18:11-23 (where P-1838 states that prior to the incident, he had seen Ouandjio in other meetings, and knew him from 'well before' ('*je le connaissais bien avant*')); *contra* Judgment, pp. 1250-1251, para. 3640, fn. 8951 (where the Trial Chamber suggests that the incident took place 'on the first day he met' Cœur de Lion).
[1519] P-1838 misidentified Cœur de Lion as present at the Church Meeting; see Ground 3.2.e).
[1520] Judgment, p. 1251, para. 3641.
[1521] D29-5013: T-285, 56:21-57:7. The Chamber did not address D29-5013's evidence that Saleh was not liked 'by the community', which preceded (and thus contextualised) her evidence regarding threats; see Judgment, p. 1248, para. 3635.

participation in Seleka attacks, he did not suggest that Saleh was threatened.[1522] Given the above, no reasonable chamber would have found that 'threats were made' by RFACPP members to Saleh.[1523]

402. Erroneous finding that Saleh 'was killed because he was a Muslim': The Chamber erroneously found that three factors 'leave no doubt' that Saleh 'was killed because he was a Muslim': (i) he was 'not engaged in any hostile activities' when he was 'attacked while in his house'; (ii) 'he was one of the very few remaining Muslims in Mbaïki'; and (iii) audible comments in a video of the mistreatment of his body.[1524] The Chamber failed to holistically address evidence regarding the reason for Saleh's killing and failed to provide sufficient reasoning thereon, among other sub-errors. First, regarding the Chamber's errors on Saleh's Seleka collaboration: the Chamber found that it could not conclude that Saleh 'was a member of, or otherwise affiliated with' the Seleka.[1525] The Defence did not argue this.[1526] Via straw man reasoning, the Chamber failed to address the key Defence argument that Saleh was killed by a mob of Mbaïki locals because of his actual participation in deadly Seleka operations in Bangui-Bouchia and Mbata, and the local community's resulting hostility and suspicion towards him.[1527] Further, the assessment of evidence of Saleh's participation in Seleka operations was improperly piecemeal. It downplayed P-1813's evidence, incorrectly implying it was hearsay; and failed to address his evidence that he twice witnessed an armed Saleh among Seleka on their way to conduct reprisal operations.[1528] It ignored corroborative contemporary notes from Radio Ndeke Luka Mbaïki correspondent Boboya, and testimony of his visit to Bangui-Bouchia after Seleka reprisals.[1529] It ignored the fact of Saleh's participation in attacks in Mbata, where Seleka killed six individuals and burned down 70 homes.[1530] It superficially summarised these operations as 'revenge' or

[1522] See Judgment, p. 1248, para. 3634, fns. 8933-8934 and references therein. Regarding Saleh's participation in deadly Seleka reprisal attacks, see below. Regarding P-1813's reference to unspecified 'anti-balaka', see discussion of the ambiguity of the label 'anti-balaka' vis-à-vis perpetrator identification in Ground 2.2.d).
[1523] Cf. Judgment, p. 1251, para. 3641; see also p. 40, para. 124.
[1524] Judgment, pp. 1264-1265, para. 3670; see also p. 40, paras. 124-125.
[1525] Judgment, p. 1250, para. 3639, fn. 8947, citing as '*See contra*' the Yekatom Defence Closing Brief, para. 537. Per the OED, 'affiliated' is defined as 'officially attached or connected to an organization'.
[1526] Yekatom Defence Closing Brief, paras. 537-539.
[1527] See also the language employed by the Trial Chamber in finding that 'evidence could suggest' his participation in Seleka operations, or in referring to Saleh's 'alleged cooperation with the Seleka'; and that 'there was no indication in the evidence that [he] was […] suspected to be' part of the Seleka'; Judgment, p. 1250, para. 3639; pp. 1264-1265, para. 3670; pp. 1479-1480, para. 4339. See also Ground 2.3.d).
[1528] Judgment, pp. 1249-1250, para. 3638, fn. 8941 (citing P-1813's evidence that 'it was known' that Saleh had 'dealings with the Seleka' and that he 'heard' that Saleh was among the Seleka who went to Bangui-Bouchia); however see P-1813: T-182, 55:1-16. See Judgment, p. 1261, para. 3660, fn. 9030, the Chamber partially cites to this extract elsewhere but omitted the lines specifically regarding P-1813's eyewitness evidence in this respect; see Part 4 (bias) / Annex 5, row 53.
[1529] CAR-D29-0002-0080, recording that '*selon les sources, [Saleh] avait participé activement aux exactions, pillages et tueries des éléments de Seleka aux villages Bangui-Bouchia et à Mbata*.'; P-1813: T-182, 13:4-15, 14:17-26; 60:20-28. See discussion of Bulletin Notes in following paragraph.
[1530] P-1813: CAR-OTP-2069-0035-R02, para. 31; T-182, 17:5-13, 18:9-12, 55:1-16. Cf. Judgment, pp. 1249-1250, paras. 3638-3639.

'reprisals',[1531] instead of assessing their destructive nature,[1532] despite their clear relevance to the population's hostility towards Saleh and thus to the reason for his killing. It ignored P-1813's evidence that Saleh's participation in these operations was perceived by the Mbaïki population 'very badly' and seen as a 'betrayal'; and that the local population was thus surprised when Saleh refused to depart with Mbaïki's Muslims 'as though he had been neutral' during the Seleka regime.[1533] In this respect, irrespective of Saleh's motivations for his conduct, the resulting hostility is logically unaffected.[1534]

403. Second, the Chamber erred in finding that Saleh 'was not engaged in any hostile activities' when he was 'attacked while in his house'.[1535] It failed to ascertain the circumstances of his killing, which necessarily informed the reason for the killing. A multitude of evidence indicates that Saleh first used his bow and arrow upon the crowd gathered outside his home, and that the violence escalated from that point onwards. A comment audible in the video of the immediate aftermath of Saleh's killing expressly refers to him being first to fire upon the crowd; this was omitted from the Chamber's assessment.[1536] The reasonable observer, aware of the systematic omission of exculpatory evidence in the Judgment, would struggle to conclude that this was a coincidence. This evidence is directly corroborated by P-1786;[1537] yet this was erroneously deemed the 'least reliable' insider account, inter alia because 'no other witness mentioned' that 'Saleh started attacking some people close to his house before he was attacked'.[1538] This ignores corroborative non-testimonial evidence on Saleh having been first to fire on the crowd, i.e. the essential core of the inquiry.[1539] The Chamber found that P-1786's comment that Saleh was not shot or attacked with batons or machetes but lapidated was contradicted by video evidence.[1540] This is flawed reasoning: the video depicts the mutilation of Saleh's

[1531] Judgment, pp. 1249-1250, paras. 3638-3639.
[1532] Regarding Bangui-Bouchia, see CAR-D29-0005-0497, pp. 0499-0500 (CAR parliamentary report detailing that nine civilians were killed during the Seleka reprisals in Bangui-Bouchia; that over 2000 inhabitants had fled the town and were living in 'dramatic' conditions in the surrounding forest, leading to the further deaths of seven infants and elderly refugees; and documenting the 'hatred' amongst the population towards the local Muslim youth, whom they accused of having guided the Seleka during the reprisal operations). Regarding Mbata, see e.g. P-1813: CAR-OTP-2069-0035-R02, para. 31. See also, Yekatom Defence Closing Brief, paras. 501; 537-539.
[1533] P-1813: T-182, 66:10-27. See also, D29-5013: T-285, 56:21-57:7.
[1534] Judgment, pp. 1249-1250, paras. 3638-3639. In any event, Saleh was mistreated by the first group of Seleka to arrive in Mbaïki, as it was the second group with which he participated in the Bangui-Bouchia and Mbata reprisals; see P-1838: CAR-OTP-2100-0252-R05, paras. 21, 32, 42-45; P-2353: T-161, 65:1-5, 66:6-13. See also P-1813: T-182, 5:22-28; D29-5012: T-293, 21:9-12 (on the Seleka arrival in Mbaïki in April 2013).
[1535] Judgment, pp. 1264-1265, para. 3670.
[1536] See CAR-OTP-2118-5633, 5641:229 ('*Et puis n'est-ce pas qu'il est le premier à tirer sur des gens avec sa flèche*.) See Judgment, p. 1253, para. 3644, fn. 8961; see Part 4 (bias) / Annex 5, row 54. See Judgment, pp. 1254-1255, para. 3647, fn. 8978 (where the Chamber cited the immediately preceding comment). See also P-2353: T-161, 56:2 (where the video in question, including the above omitted line, was shown to P-2353 during his evidence); P-2353: T-161 ENG, 29:5-8 (where the Presiding Judge stated that authentic contemporary video of the incident, was 'of course much better' than hearsay evidence of the incident).
[1537] P-1786: T-197, 91:17-26.
[1538] Judgment, pp. 1258, para. 3653.
[1539] See ICC-02/11-01/15-1400 A, para. 358.
[1540] Judgment, p. 1258, para. 3653.

body after his killing, not the killing itself;[1541] P-1786's comment that Saleh was not shot implies that he was not describing his mutilation but his killing;[1542] and given the evidence that Saleh was not shot and was in fact lapidated, the purported contradiction is partial and minor.[1543] Further, the Chamber cited the hearsay nature of P-1786's account, which is irrelevant as it applies to every account of the killing relied upon.[1544] The Chamber improperly dismissed the Bulletin Notes per an arbitrary procedural bar, finding it would not rely them 'to the detriment of the other information on the incident', despite their being corroborated, without 'further information' on their provenance, author, or sources.[1545] This was both legally flawed[1546] and factually unfounded: ample information and evidence on the Bulletin Notes' provenance and author was available, which the Chamber ignored.[1547] It also ignored another corroborative article on this point.[1548] This evidence is indirectly corroborated by P-1595's depiction of the incident as '*les combats*';[1549] it is consistent with P-1813's evidence that he heard that Saleh 'threatened to attack' the youths gathered outside his home; and, logically, it is not inconsistent with the fact that P-1813 did not hear that Saleh had been armed or had injured the youths.[1550]

404. Third, the Chamber erred in relying on its finding that Saleh and his family were 'among the very few remaining Muslims in Mbaïki'[1551] to conclude that Saleh was killed 'because he was a Muslim'. It failed to comprehensively assess evidence that some Muslims remained in Mbaïki, a fact

[1541] CAR-OTP-2059-0384; see also Judgment, p. 1252, para. 3643, pp. 1252-1253, para. 3644, fn. 8960.
[1542] The Trial Chamber did not expressly consider his comment that Saleh was not shot; see Judgment, para. 3653.
[1543] See Judgment, pp. 1252-1253, para. 3644, fn. 8960.
[1544] See Judgment, pp. 1252-1255, paras. 3644-3647, and references cited therein. Cf. Judgment, p. 44, para. 135 ('that evidence is hearsay does not necessarily deprive it of probative value').
[1545] CAR-D29-0002-0080 (recording that a group of youths were demonstrating and demanding the departure of Saleh, who had actively participated in Seleka exactions, and that three youths were then injured by Saleh, provoking their anger and leading them to kill him). Judgment, pp. 1257-1258, para. 3652, fn. 9002.
[1546] See RPE Rule 63(2); Judgment, p. 43, para. 133 (citing the free assessment of evidence principle).
[1547] *Contra* Judgment, pp. 1257-1258, para. 3652, fn. 9002. See ICC-01/14-01/18-2661-Conf-AnxA, item #2 ([REDACTED]). See also P-1813: T-182, 60:18-22 (where the Defence described them as *'un reportage, aussi pour Ndéké Luka, de M. Martial Boboya qui est spécifique sur le... l'assassinat de M. Djido Salleh. Et donc, l'article date du 2 mars 2014.*'). The Trial Chamber heard testimonial evidence regarding Boboya himself: see, D29-5012: T-294, 37:1-20; P-1813: T-182, 12:28-13:15, 14:17-19, 36:1-10, 48:7-12; it also received documentary evidence regarding Boboya: see e.g. CAR-D29-0005-0392, p. 0392 (referring to Boboya having accompanied the May 2014 Parliamentary Mission in Lobaye in his capacity as Radio Ndeke Luka Mbaïki correspondent); see also, CAR-OTP-2023-2049, [00:00:44] to [00:02:42] / CAR-OTP-2127-6194, 6195:9-28. See also [REDACTED].
[1548] CAR-D29-0002-0686, p. 0688 ('[s]ome neighbours allege Dido fired arrows into the crowd first, wounding several people'). The Trial Chamber relied on this document elsewhere, see Judgment, pp. 1257-1258, para. 3652, fn. 9002; pp. 1578-1579, para. 4635, fn. 10647. While the article refers to the 'disputed' nature of the circumstances of the killing, this relates to whether Saleh's acts were committed in self-defence, and not the fact of whether he fired first.
[1549] P-1595: T-106, 15:10-11. Regarding P-1595's source for this account; see CAR-OTP-2104-0274-R02, para. 98; see also Judgment, pp. 1261-1262, para. 3661.
[1550] Cf. Judgment, p. 1257, fn. 9002. See also, Judgment, pp. 1252-1253, para. 3644 (where the Trial Chamber found that Saleh was armed); cf. P-1813: T-182, 61:1-6 (where P-1813 was unaware that Saleh was armed).
[1551] Judgment, p. 40, para. 124.

widely known,[1552] and to account for this in its reasoning: i.e. to explain, if indeed Saleh was killed because he was a Muslim who remained in Mbaïki, why not any other remaining Muslims were killed. If the Chamber deemed it relevant that P-1838 specified that 'some Muslims "whose mother was Central African" remained',[1553] then its failure to explain the relevance was a further error, noting its failure to address the ethnicity or confession of Saleh's own parents.

405. Fourth, the Trial Chamber's reliance on footage depicting the post-killing mutilation of Saleh's body is erroneous. Whereas the Chamber understood the video to show the mutilation of Saleh's body 'after his killing', there is no indication that it determined how long after the killing the footage commences;[1554] or whether the individual/s who made the comments was involved in the killing. It failed to address the sizeable crowd seen and heard in the footage.[1555] It did not explain how it determined that the five comments referring to Muslims made over the course of the nearly fifteen-minute video were attributable to more than one individual.[1556] It failed to explain how they were probative of anti-Muslim animus for everyone involved in the killing; or for specific individuals, including *arguendo* any RFACPP member involved.

7. Ground 4.7 – Errors in the assessment of evidence concerning Yamwara

406. The Chamber's treatment of the witnesses in relation to the Yamwara incident is emblematic of the broader unreasoned approach that permeates the Judgment. The Chamber found witnesses P-1705, P-1704, P-1811, P-1716, P-0967 (collectively, 'the Five Witnesses'), and P-1839 to be 'generally reliable and credible',[1557] while at the same time determining that several of them were unreliable on core and material aspects of their testimony. This contradiction strikes at the heart of the Chamber's reasoning. Having expressly acknowledged that the same witnesses were unreliable as to Mr. Yekatom's presence, his alleged orders, and the conduct said to constitute the offences, the Chamber could not coherently maintain that they were nevertheless 'generally reliable and credible'.[1558] The resulting finding is internally inconsistent and unreasoned within the meaning of Article 74(5) of the Statute.

407. Although the Chamber stated that it had considered 'the discrepancies within and among these

[1552] See P-1647: CAR-OTP-2050-0654-R02, para. 62; P-1838: CAR-OTP-2100-0252-R04, para. 86; P-1595: CAR-OTP-2104-0274-R02, para. 94. See also, Judgment, p. 1246, para. 3628, fn. 8925 (where the Trial Chamber 'notes' that per P-1838, some Muslims remained in Mbaïki, citing T-215 (ENG), 37:10-14 and T-216 (ENG), 24:22-25:6).
[1553] See Judgment, pp. 1246-1247, para. 3628, fn. 8925.
[1554] The Chamber understood the video to show the mutilation of Saleh's body 'after his killing'; see Judgment, p. 1252, para. 3643; p. 1253, para. 3644, fn. 8960.
[1555] CAR-OTP-2059-0384; CAR-OTP-2001-2707, p. 2728; P-1813: T-182, 59:16-18; P-1647: T-194, 63:14-22.
[1556] CAR-OTP-2118-5633, 5638:122, 5641:210-225, 5642:246. Cf. Judgment, p. 1254, para. 3647. The term 'Mono/Monon', derived from the Mono ethnicity/ language of Congo, is used in Sango to refer to a Congolese person; cf. Judgment, p. 1254, para. 3647 (implying that a comment referring to 'les M[onon]' related to Muslims). On the Mbaïki-based Congolese peacekeepers, see e.g. Judgment, pp. 1241-1243, paras. 3610-3619.
[1557] Judgment, p. 1074, para. 3106.
[1558] Judgment, p. 1074, para. 3106.

testimonies',[1559] it failed to explain how it reconciled the material contradictions it itself identified. For instance, it found: i) P-1704 unreliable on whether Mr. Yekatom was present upon the Lapo family's arrival at Yamwara,[1560] on the alleged order to mistreat Saint-Cyr, on the supposed knife attack by Cœur de Lion,[1561] on the undressing of the women,[1562] and on P-1654's purported visit;[1563] ii) P-1705 is unreliable regarding both the undressing of the women[1564] and the supposed meeting between P-1654 and Mr. Yekatom–an account derived from P-1654's own letter ('the Letter');[1565] iii) P-1716 unreliable as to the presence of a mixed-race woman[1566] and the alleged undressing of the women;[1567] and iv) P-0967 is confused about Saint-Cyr's interrogation,[1568] and influenced by 'the Letter', notably as to names and participants.[1569]

408. Having itself found that the testimonies of P-1705 and P-0967 were affected by their exposure to 'the Letter',[1570] the Chamber's further conclusion that this exposure 'did not mean that their testimonies were affected' is logically incoherent.[1571] By simultaneously recognising contamination and denying its effect, the Chamber rendered its assessment unreasoned. This fundamental inconsistency is compounded by the fact that the witnesses' testimony diverged materially from the statements they had previously given to the OTP – the very statements upon which the OTP had pleaded its case. The Chamber neither identified which discrete portions of each witness's account it considered reliable, nor demonstrated what independent corroboration, if any, supported those portions after the material inconsistencies were excised. This is the very type of contradiction that triggers a duty to explain the selection of accepted testimony with precision. The Chamber's failure to do so renders its global credibility findings unreasoned.[1572] The example of P-1704 illustrates the problem starkly. His account formed the foundation of the OTP's pre-trial theory that Mr. Yekatom ordered the mistreatment of Saint-Cyr – a theory adopted by the PTC.[1573] Yet, the Trial Chamber later found his testimony unreliable on those very points. To nonetheless regard him as generally credible is both contradictory and unreasoned. The Trial Chamber's findings on the interactions between Mr. Yekatom and the women

[1559] Judgment, p. 1074, para. 3107.
[1560] Judgment, p. 1094, paras. 3165-3166.
[1561] Judgment, p. 1101, para. 3181.
[1562] Judgment, p. 1109, para. 3208.
[1563] Judgment, pp. 1115-1116, para. 3231, fn. 7957.
[1564] Judgment, p. 1109, para. 3208.
[1565] Judgment, p. 1076, para. 3115; p. 1117, paras. 3237-3238; p. 1118, paras. 3239-3240.
[1566] Judgment, p. 1091, para. 3156, fn. 7793.
[1567] Judgment, p. 1109, para. 3208.
[1568] Judgment, p. 1098, para. 3175, fn. 7843.
[1569] Judgment, p. 1076, para. 3116.
[1570] Judgment, p. 1076, paras. 3115-3116.
[1571] Judgment, p. 1076, paras. 3114.
[1572] Judgment, p. 1074, para. 3106.
[1573] ICC-01/14-01/18-403-Conf, paras. 115, 124-126.

further reveal its flawed reasoning. While it noted that 'P-1811 and P-0967 did not feel reassured by Mr. Yekatom's words, actions or presence', it went so far as to conclude – based solely on P-0967's confused recollections – that Mr. Yekatom had made threatening remarks.[1574] This conclusion is unsustainable. P-0967's account was uncertain and confused, marked by hesitation and factual inconsistencies, whereas P-1811 – deemed entirely credible by the Chamber – provided a clear, coherent, and detailed description of a calm and reassuring attitude by Mr. Yekatom, even if it failed to comfort her.[1575] The Chamber gave no reasoned explanation for preferring P-0967's confused testimony[1576] over P-1811's precise and credible account, despite the Defence having shown that P-0967 had mistaken the identity of the men who entered the house.[1577] Its failure to justify this preference constitutes a manifest error in the assessment of the evidence and a breach of its duty to provide a reasoned judgment.

409. The Chamber's further attempt to rationalise these inconsistencies[1578] by invoking the 'collective memory' of witnesses exposed to shared trauma also falls short of its duty to provide adequate reasoning.[1579] The Defence had shown that the alignment of the witnesses' accounts to incriminate Mr. Yekatom – despite the inconsistencies – resulted not from collective memory but from post-hoc coordination, particularly through reliance on P-1654's Letter.[1580] The Chamber failed to engage with that argument and instead relied on the very declaration whose influence it had elsewhere acknowledged. Its analysis was thus fragmented and piecemeal, rather than holistic as required under Article 74.

8. Materiality

410. These errors are material because they strike at the core of the Chamber's factual findings for each incident cluster: the 5 December 2013 events in Boeing and Cattin (Counts 1–6 and 8), the Yamwara incident (Counts 11–17), and the PK9-Mbaïki Axis events, including the killing of Saleh (Counts 26–28). They concern not peripheral details but the reliability of P-1339, the main insider witness whose sole evidence is used to underpin alleged crimes during the 5 December operation, the treatment of exculpatory evidence, and the way in which the Chamber articulated and applied the

[1574] Judgment, pp. 1113-1114, para. 3225.
[1575] Judgment, p. 1114, para. 3226: 'P-1811 said that Yekatom was not aggressive to them in any way, but talked to them in a calm manner […].'; P-1811: T-114, 28:10-18; CAR-OTP-2058-0003-R05, para. 38: '*[REDACTED]. J'avais toujours peur, malgré ses mots. Tant que je n'en étais pas sortie, je ne pouvais pas être rassurée.*' (emphasis added).
[1576] Judgment, p. 1112, para. 3219, where the TCV notes: '[…] While P-0967 is unclear on when this happened relative to the other events during their stay inside Cœur de Lion's house, she agreed that she was scared and it was difficult to follow what was happening around her.'
[1577] Yekatom Defence Closing Brief, para. 453; P-0967: T-199, 45:9-12; see also P-0967: T-200, 51:1-52:12.
[1578] Judgment, p. 1074, para. 3107.
[1579] Judgment, p. 1080, para. 3127.
[1580] Yekatom Defence Closing Brief, paras. 435- 440; Judgment, pp. 1073-1074, para. 3105.

standard of proof.

411. As regards the 5 December events (Counts 1–6 and 8), the mischaracterisation of P-1339's evidence, the failure to address defence arguments on armed traders,[1581] cross-fire and means of killing,[1582] systematic adverse inferences from gaps in P-1528's circumstantial evidence on the Muslim man in Cattin, and the inadequate treatment of Boeing–Cattin displacement evidence underpin the findings that: Mr. Yekatom 'launched' an attack on Boeing Market, that his instructions encompassed attacks on Muslim traders, that his elements killed a Muslim man in Cattin, that RFACPP elements destroyed the Boeing Mosque with a rocket and gasoline, and that the resulting displacement occurred 'in the context of the attack' led by him.[1583] Absent these errors, a reasonable Trial Chamber could not have been satisfied beyond reasonable doubt that the killings, the attack on the mosque, the Boeing-Cattin displacement and the associated persecution met the elements of Counts 1–6 and 8. At a minimum, the only reasonable conclusion would have been that other inferences consistent with lawful military action, cross-fire, or non-RFACPP responsibility could not be excluded.

412. As regards Yamwara (Counts 11–17), the Chamber's failure to give a coherent, reasoned assessment of the Five Witnesses' credibility, its inconsistent treatment of contamination by P-1654's Letter, and its reliance on untested or *post-hoc* evidence (including P-1839 and P-0954) directly affect the findings that Mr. Yekatom was present at crucial moments, that he exercised control over those responsible, and that he possessed the requisite intent and knowledge for the underlying crimes. Once the unreliable or contaminated parts of those accounts are removed, and the internal and external inconsistencies are properly weighed, the evidential basis for the *actus reus* and *mens rea* of cruel treatment/other inhumane acts, torture and imprisonment (Counts 11–17) is no longer established beyond reasonable doubt. A properly directed Chamber, applying the correct standard and reasoning requirements, could not have convicted on those counts.[1584]

[1581] See Ground 3.3.
[1582] See Part 5(1).
[1583] Judgment, p. 29, para. 76; p. 897; pp.1334-1335, para. 3901; p. 1340, para. 3917; pp.1353-1354, para. 3951; pp. 1360-1361, para. 3970; pp. 1361-1362, para. 3975, p. 1367, para. 3986; p. 1363, para. 3976; pp. 1367-1368, para. 3988; pp. 1374-1375, para. 4010; p. 1376, para. 4016; pp. 1378-1379, para. 4021 (Mr. Yekatom 'launched' an attack); Judgment, p. 28, para. 75; p. 897; p. 1340, para. 3917; pp. 1348-1349, para. 3939; p. 1353, para. 3950; pp. 1356-1357, para. 3959; pp. 1364-1365, para. 3980; p. 1367, para. 3986; p. 1368, paras. 3989-3990; pp. 1372-1373, para. 4004; pp. 1374-1375, para. 4010; p. 1376, para. 4016; p. 1378, para. 4023 (instructions); Judgment, p. 29, para. 78; p. 921; pp.1334-1335, para. 3901; p. 1340, para. 3917; pp. 1353-1354, para. 3951; p.1356, para. 3957; pp. 1361-1363, para. 3973, 3975, p. 1370, paras. 3995-3996, pp. 1372-1373, paras. 4002, 4004; pp. 1374-1375, para. 4010; p. 1378, para. 4023 (attack of the Boeing Mosque); p. 30, para. 80; pp. 1361-1364, paras. 3975-3978; pp. 1367-1368, paras. 3986, 3988-3990; p. 1376, para. 4016 (displacement - attack led by him); Judgment, p. 29, para. 79; pp. 930-931; p. 1349, para. 3940; pp. 1357-1358, para. 3962; pp. 1358-1359, paras. 3964-3965; pp. 1361-1362, para. 3975; p. 1368, para. 3989; p. 1372-1373, paras. 4002, 4004; pp. 1375-1376, para. 4013, 4015; p. 1377, paras. 4019-4020; p. 1378, para. 4024 (Muslim man in Cattin)
[1584] Judgment, p. 1448-1459, paras. 4242-4277 (Counts 11-17).

413. As regards the PK9–Mbaïki Axis and Saleh (Counts 26–28),[1585] the erroneous preference for P-1339's manifestly inconsistent account, the failure to grapple with contradictions in the insider evidence (notably P-1647 and P-1786), the misreading of the video and Bulletin Notes, and the speculative treatment of alleged threats and motive underpin the key findings that: (i) at least three RFACPP elements killed Saleh; and (ii) he was killed 'because he was a Muslim'.[1586] Correctly assessed, the record supports at least a reasonable alternative inference that Saleh was killed by a local mob, triggered by his perceived participation in deadly Seleka reprisals and by his own use of force against the crowd, rather than because of his religious identity or at the hands of RFACPP members. These errors therefore go directly to the first element of murder as a CAH and WC (Counts 26–27)[1587] and to the discriminatory ground and nexus required for persecution (Count 28).[1588]

414. Finally, the cumulative effect of the Chamber's failures to give a reasoned opinion, to apply Article 66's standard of proof correctly, and to evaluate inculpatory and exculpatory material even-handedly also bears on the overall fairness and reliability of the Judgment. From the perspective of a properly informed observer, the systematic misstatement and selective treatment of evidence across the three charged events give rise to a reasonable apprehension that the Judgment, as rendered, is not the product of an open and impartial assessment of the record. These defects thus amount to errors of law and fact that materially affect the convictions on those counts and the sentence based on them, warranting that the impugned findings be set aside, and the convictions reversed or, at the very least, vacated and remitted.

5. Part 5 – The Chamber erred in its findings concerning the specific crimes

415. Beyond the factual and reasoning errors identified elsewhere, the Chamber misapplied the law on several crimes: it i) misconstrued an 'attack directed against the civilian population' (Art. 8(2)(e)(i)); ii) erred on 'ordering the displacement' and the military-necessity exception (Art. 8(2)(e)(viii)); iii) adopted an impermissibly low, collective severity threshold for cruel treatment and other inhumane acts (Arts 7(1)(f), 8(2)(c)(i)-3); and iv) misinterpreted the causal and coercive elements of deportation and forcible transfer (Art. 7(1)(d)), thereby vitiating its findings on the crimes' existence, scope and gravity.

1. Errors concerning the definition of 'attack' (Article 8(2)(e)(i))

416. The Chamber erred in law by misinterpreting the notion of 'attack' under Article 8(2)(e)(i).[1589]

[1585] See Ground 4.6.
[1586] Judgment, p. 1477, para. 4331; p. 1479, para. 4337.
[1587] Judgment, pp. 1477-1478, paras. 4333-4334.
[1588] Judgment, pp. 1477-1478, paras. 4333-4334; pp. 1479-1480, paras. 4339-4340; p. 1481, para. 4343.
[1589] Judgment, pp. 1354-1356, paras. 3952-3957.

Rather than asking whether the force was 'directed against civilians', it effectively treated the mere occurrence of civilian casualties during hostilities as sufficient to establish an 'attack' on the civilian population.[1590] This collapses the legally required distinction between i) attacks directed at lawful military objectives which may cause incidental civilian harm, and ii) attacks whose 'object' is the civilian population,[1591] and thus impermissibly broadens the scope of Article 8(2)(e)(i). The Chamber disregarded the requirement that the 'civilian population' denotes a 'collective' and that civilians must be the 'primary object', not incidental victims, of the attack.[1592] By relying on an isolated number of casualties arising from a combat operation against Seleka positions[1593] as proof that civilians were the intended target, it transformed a confrontation between armed groups into a war crime against civilians on a legally insufficient basis.[1594] By stating that a civilian population 'need not be the sole and exclusive target of an attack' and that the presence of combatants 'does not deprive the entire population of its civilian character',[1595] the Chamber failed to engage with the Defence's argument that the correct legal question was whether civilians were the 'primary' object of the force used[1596] and thus misdirected itself as to the applicable standard.

417. A proper legal assessment under Article 8(2)(e)(i) required the Chamber to consider: i) means and methods employed;[1597] ii) status of the persons affected (civilians versus combatants or persons DPH); iii) scale and pattern of harm; iv) level of armed resistance and combat context; and v) whether precautions,[1598] distinction and proportionality were observed. The Judgment contains no structured analysis of these factors.[1599] It did not meaningfully examine the nature of the weapons used,[1600] the presence of Seleka positions,[1601] the existence of ongoing hostilities in Boeing and Cattin, or any precautionary measures taken but instead inferred an attack on civilians from limited and highly localised casualties alone. The Chamber's own findings – including that Mr. Yekatom conducted reconnaissance on 4 December, and he 'instructed his elements to target Seleka positions along the Boeing-Cattin-PK5 direction'[1602] – describe a military operation directed at identifiable Seleka objectives

[1590] ICC-01/04-01/10-465-Red, paras. 142, 218; ICC-01/04-01/07-3436-tENG, para. 802.
[1591] La Haye (2001), p. 215; Dörmann (2022), p. 405, mn 206 et seq; ICC-01/04-02/06-2359, paras. 744, 917, 921; ICC-01/04-01/07-3436-tENG, para. 802; ICC-02/04-01/15-1762-Red, para. 2759.
[1592] ICC-02/04-01/15-1762-Red, para. 2759; ICC-01/04-02/06-2359, para. 921.
[1593] According to Prime Minister Tiangaye, there was widespread fighting across Bangui on 5 December 2013 where about 1000 people were killed by the Seleka, P-0291: T-052, 8:9-16.
[1594] ICC-02/04-01/15-1762-Red, para. 2759; ICC-01/04-02/06-2359, para. 921; ICC-01/04-01/07-3436-tENG, para. 802.
[1595] Judgment, p. 1355, para. 3955.
[1596] Yekatom Defence Closing Brief, para. 589.
[1597] ICC-01/04-02/06-2359, para. 921; ICC-01/04-01/07-3436-tENG, para. 802.
[1598] ICC-01/04-01/07-3436-tENG, para. 1104; see also IT-96-23 & IT-96-23/1-A, para. 91; ICC-02/05-01/20-1240, paras. 694-696; IT-95-5/18-T, para. 475; ICC-01/05-01/08-3343, para. 153.
[1599] *Lexsitus*, Article 8(2)(e)(i); ICC-02/04-01/15-1762-Red, para. 2760; ICC-01/04-02/06-2359, para. 921.
[1600] ICC-01/04-01/07-3436-tENG, para. 802; P-1339: T-152, 77:3-8; T-155, 18:2-12; P-0291: T-052, 8:9-16.
[1601] Judgment, pp. 27-28, para. 71.
[1602] Judgment, p. 28, para. 75; pp. 1374-1375, para. 4010.

requiring consideration of the reasonable possibility that the operation was aimed at Seleka forces and any civilian harm was incidental. Its failure to do so, and its treatment of this operation as an attack 'directed against' civilians purely on the basis of limited, highly localised and incidental casualties alone[1603] reflects the application of an incorrect legal test.[1604]

418. The Chamber's treatment of intent compounds this error. The Chamber relied on a supposed instruction to target areas 'where "Muslims" were to be found' to conclude that his intent was to attack the civilian population, yet this was based on testimony that referred, at most, to a general Anti-Balaka briefing regarding the wider 5 December operation.[1605] Further, it found that Mr. Yekatom's instructions were 'understood by the elements to accept that Muslim civilians would be killed'.[1606] Under IHL, acceptance of the risk of incidental civilian harm – subject to distinction, proportionality and precautions – is characteristic of an attack on military objectives. To 'accept' possible collateral harm of civilians is conceptually incompatible with the conclusion that civilians were the 'object' of the attack. By relying on this formulation to infer an intent to attack civilians, the Chamber misapplied the *mens rea* requirement of Article 8(2)(e)(i).[1607]

419. Finally, the Chamber failed to respect the threshold under Article 8(2)(e)(i). On its own findings, the alleged civilian harm was a small number of deaths in active combat zones against the backdrop of intense fighting between 'anti-balaka' and Seleka forces across Bangui. Such limited and contested casualties, absent a demonstrated pattern of force directed at civilians, are insufficient to characterise the operation as an attack against the civilian population.[1608]

2. Error in failing to prove the existence of an 'order' (Article 8(2)(e)(viii))

420. The Chamber erred in its interpretation of 'ordering the displacement' within the meaning of Article 8(2)(e)(viii) to mean that the perpetrator must be in a position to effect such displacement by giving such an order,[1609] and 'conduct alone can constitute an order', reading Article 17 AP II and Rule 129(B) of the ICRC Customary IHL as prohibiting any displacement of civilians[1610] irrespective of an order. Relying on *Ntaganda*, it concluded that an 'order' for the purposes of Article 8(2)(e)(viii) may consist in instructing another person 'in any form' to perform an act or omission as a result of

[1603] Sixty-five bodies were brought to the Ali Babolo mosque – including Seleka fighters – and approximately 90% of these victims came from areas other than Boeing, P-1676: CAR-OTP-2066-0105-R01, paras. 19-20, 34-36, 39.
[1604] ICC-01/05-01/08-3343, para. 154; ICC-01/04-01/07-3436-tENG, para. 802; para. 1104; IT-96-23 & IT-96-23/1-A, para. 91.
[1605] Judgment, p. 28, para. 74; p. 29, para. 79.
[1606] Judgment, p. 28, para. 74.
[1607] ICC-02/04-01/15-1762-Red, para. 2761.
[1608] ICC-01/04-01/07-3436-tENG, para. 802.
[1609] Judgment, p. 1305, para. 3805.
[1610] Judgment, p. 1366, para. 3985, and fn. 9640.

which displacement would occur.[1611]

421. The Chamber rejected the Defence submission that 'ordering' as a MoL and 'ordering displacement' as the *actus reus* of Article 8(2)(e)(viii) must be distinguished, finding that MoLs are merely 'a lens' and offer limited support as to the meaning of an EoC.[1612] Yet the Chamber failed to do precisely that. It relied on the *Ntaganda* Trial Judgment,[1613] which itself had drawn on the *Mudacumura*,[1614] even though the relevant passage concerns the constituent elements of 'ordering' as a MoL, not the ordinary meaning of 'ordering' in Article 8(2)(e)(viii). Despite the Defence having flagged this distinction,[1615] the Chamber uncritically transplanted jurisprudence on Article 25(3)(b) into its interpretation of a substantive element of the war crime, thereby replicating and compounding the *Ntaganda* error.

422. This transposition unjustifiably broadens the *actus reus* of 'ordering displacement' beyond the meaning conferred by the text and drafting history. 'Ordering' as a MoL under Article 25(3)(b) is a distinct term of art, referring to an instruction by a person in a position of authority to commit an offence.[1616] By contrast, under Article 8(2)(e)(viii) the *actus reus* is itself 'ordering' displacement. The two concepts are not interchangeable; importing the broader, functional approach developed for modes of liability erodes the specific textual requirement of an order to displace a civilian population. It was incumbent on the Chamber to engage with the drafting history of Article 8(2)(e)(viii) which shows that the negotiators deliberately aligned its wording with Article 8(2)(a)(vii) (unlawful deportation and transfer) and Article 8(2)(b)(xii) (denial of quarter) so as to treat the terms 'declare' and 'order' consistently in the EoC.[1617] The choice of 'ordering' in Article 8(2)(e)(viii) is intentional: the provision is meant to implicate the individual who gives the order to displace, not someone who simply carries it out.[1618] Had the drafters intended to criminalise a broader range of acts, they would have adopted language akin to 'ordering or causing' displacement, or used more general terms.[1619] Instead, they retained the narrow formulation of an instruction expressly aimed at removing a civilian

[1611] Judgment, p. 1366, para. 3985, referring to ICC-01/04-02/06-2359, para. 1081.
[1612] Judgment, p. 1367, para. 3987.
[1613] Judgment, p. 1366, para. 3985, referring to ICC-01/04-02/06-2359, para. 1081.
[1614] See ICC-01/04-02/06-2359, para. 1081, fn. 3033 with reference to ICC-01/04-01/12-1-Red, para. 63 ('[t]aking note of the way ordering liability is analysed at the ad hoc tribunals, the Chamber considers that, to be responsible under article 25(3)(b) of the Statute it must be established that: (a) the person is in a position of authority, (b) the person instructs another person in any form to either: (i) commit a crime which in fact occurs or is attempted or (ii) perform an act or omission in the execution of which a crime is carried out[…]' (emphasis added) (footnotes omitted)).
[1615] Yekatom Defence Closing Brief, para. 612.
[1616] ICC-01/04-02/06-309, p. 53, para. 145. See also ICC-01/04-01/12-1-Red, para. 63.
[1617] Dörmann (2003), p. 472.
[1618] Dörmann (2003), p. 472.
[1619] Article 7(1)(j), CAH of apartheid; Article 7(1)(k), CAH of other inhumane acts; Article 8(2)(a)(ii)-2, WC of inhuman treatment. See references in these Articles to 'such an act was of a character similar to any other act referred to […]'.

population,[1620] not an order to carry out other acts or omissions that incidentally cause displacement.

423. Likewise, the drafting history of Article 17 AP II – the direct legal source for Article 8(2)(e)(viii)[1621] – underscores the focus on ordering displacement. Article 17(2) AP II, which addresses other forms of forced movement, employs different language and does not require an order.[1622] Article 17(1) AP II, on the other hand, states that '[t]he displacement of the civilian population shall not be ordered'. Earlier drafts used the phrase 'shall not be ordered or compelled', but 'or compelled' was deliberately removed. Had the drafters wished to prohibit all forms of compelled displacement in Article 17(1), they would have retained that language.[1623] The retention of 'ordered' confirms that the scope of the prohibition, and thus of Article 8(2)(e)(viii),[1624] is limited to situations in which displacement is ordered, not merely caused. Similarly, under Article 31(1) VCLT, 'ordering' in Article 8(2)(e)(viii) must be interpreted in accordance with its ordinary meaning, in context, and in light of the object and purpose of protecting civilians from forced displacement. In ordinary usage, to 'order' means to use a position of authority to tell someone to do something or to state that something must happen, connoting an unequivocal command.[1625] A comparison with the equally authentic Arabic and Russian texts,[1626] reinforces this conclusion: both versions refer to 'issuing orders' signalling that the provision contemplates an express order, not merely conduct that 'requires an imperative action to follow'. On a proper multilingual reading, 'ordering' under Article 8(2)(e)(viii) cannot be satisfied by generic conduct that may, among many other factors, prompt civilians to leave.

424. As such, the Chamber's classification of the alleged act of firing a pistol in the air and a purported general instruction to 'target all sectors where Muslims are to be found'[1627] as an 'order' under Article 8(2)(e)(viii) is untenable. Quite apart from the fact that the pistol-firing lies outside the confirmed facts and circumstances,[1628] treating it as the requisite order collapses the distinction between i) conduct which may contribute to civilians deciding to flee, and ii) a specific order to displace a civilian population. The Chamber's dilution of the 'ordering' requirement is further exacerbated by its finding that 'Mr. Yekatom's conduct need not have been the sole reason why the Muslim civilian population fled'.[1629] Taken together, the conclusions that i) no express order to displace is required and ii) the accused's conduct need not even be the principal reason for flight, expand Article 8(2)(e)(viii) far

[1620] Geiß/Zimmermann (2022), p. 658, mn. 966.
[1621] Geiß/Zimmermann, p. 658, mn. 964.
[1622] AP II, Article 17(2) ('Civilians shall not be compelled to leave their own territory' (emphasis added)).
[1623] Willms (2009), pp. 552-553 and references therein.
[1624] ICC-02/04-01/15-1762-Red, para. 2722. See also Scalia/Garner (2012), Chapter 26 'Surplusage Canon' p. 151.
[1625] Oxford Learner's Dictionary, 'Order'.
[1626] Article 128 RS (Arabic: أوامر إصدار; Russian: отдача распоряжений).
[1627] Judgment, p. 1367, para. 3986.
[1628] See Ground 1.
[1629] Judgment, pp. 1367-1368, para. 3988.

beyond its plain meaning and drafting history. This two-step broadening undermines the protective function of the provision and IHL balance between prohibiting ordered displacement and recognising commanders' lawful participation in hostilities.

3. Error in finding there was no military necessity (Article 8(2)(e)(viii))

425. The finding that there was 'no indication' that Mr. Yekatom's 'order[s]' under Counts 5 and 25 were justified by military necessity or the security of the civilians is insufficiently reasoned and itself unreasonable.[1630] Regarding military necessity: the RFACPP operations in Cattin on 5 December targeted Seleka positions[1631] and i) the RFACPP's emergence and advance against Seleka positions on the Axis, plus ii) the establishment of checkpoints, were aimed at force protection and securing territory.[1632] These operations were indispensable for securing the end of the conflict against the Seleka[1633] – on the Chamber's own findings, the RFACPP Axis advance 'caused the retreat of the Seleka from the area'.[1634] Within weeks of the operation, the Djotodia regime fell and the Seleka began to retreat.[1635] These RFACPP operations were lawful, conducted in accordance with the principles of IHL, and as assessed *ex ante* on the basis of the information known to Mr. Yekatom at the time.[1636] The Chamber conflated incidental and forcible displacement.[1637] Regarding security of citizens: during the relevant period, the Seleka were engaged in mass killings and human rights abuses of civilians in Lobaye and Bangui, including Boeing.[1638] The RFACPP's lawful military operations were aimed at the removal of the Seleka in these areas, and at preventing interreligious conflict in Mbaïki.[1639] By extension they were aimed at ensuring the security of all civilians in the area. In respect of Count 25, even if *arguendo* illegal instructions were issued, there is no evidence temporally or substantively linking them with these operations.[1640] The Chamber's failure to properly address these key arguments and evidence materially affected Mr. Yekatom's convictions under Counts 5 and 25. On a proper assessment, it would have found that the OTP failed to meet its burden of proof on the second element of Article 8(2)(e)(viii),[1641] and would not have convicted Mr. Yekatom on Counts 5 and 25.

[1630] Judgment, p. 1365, paras. 3981-3982; pp. 1473-1474, paras. 4320-4322.
[1631] See e.g. P-0884: T-057, 40:23-42:26; P-1521: T-084, 7:17-10:19; P-0801: T-036, 71:13-72:20; and CAR-OTP-2126-2719 (list of Seleka dignitaries suggesting a 'location' linked to Djotodia in Cattin); CAR-OTP-2065-2292, [00:44-00:51] / CAR-OTP-2127-3635, 3637:22-23. See also Yekatom Defence Closing Brief, paras. 355, 366-368.
[1632] See Part 3, Grounds 3.1, 3.2; see also Yekatom Defence Closing Brief, paras. 480-485, 655-659, 662.
[1633] ICC-01/04-02/06-2359, para. 1164.
[1634] Judgment, p. 1182, para. 3436.
[1635] Judgment, p. 25, para. 58.
[1636] See Part 3, Grounds 3.1, 3.2; see also Yekatom Defence Closing Brief, paras. 355-356, 655-659, 662.
[1637] See Part 5(5).
[1638] Judgment, pp. 239-244, paras. 723-730; see also Ground 3.3.; see also Yekatom Defence Closing Brief, paras. 356, 480.
[1639] See Ground 3.2.; see also Yekatom Defence Closing Brief, paras. 516-529.
[1640] See Ground 3.3.
[1641] Judgment, pp. 1470-1472, paras. 4310-4318.

4. Errors concerning severity threshold (Article 7(1)(1)(f)/Article 8(2)(c)(i)-3)

426. The Chamber found that the Lapo Family Group: i) suffered mentally by being threatened (women and men) and interrogated (men); ii) suffered physically from beatings (men); iii) suffered mentally by being kept in a location where they could hear (women), and by being kept near Saint-Cyr (men) while he was mistreated; iv) suffered physically by being searched and forced to undress (women); v) suffered physically (women and P-1716) and mentally (P-1704 and P-1705) by being kept in captivity; and vi) suffered physically (women) and mentally (P-1704 and P-1705) by being forced to walk to a location near the M'Poko airport.[1642] The Chamber found that 'the treatment of the six persons […] when considered as a whole, squarely fulfilled the gravity requirement'[1643] however, it should have assessed the suffering of each individual separately[1644] to see if it reached the requisite degree to constitute cruel treatment or other inhumane acts. Had it done so, it would have found that the level of individual suffering was not great enough to constitute cruel treatment or other inhumane acts.

427. Concerning threats, death threats have been found to cause severe suffering, based on the effect that the threats had on the victims.[1645] The Chamber failed to make any finding on how individuals felt when threatened and so it could not find that they suffered severely.[1646] Concerning beatings, the Chamber failed to make findings on duration, effect, or severity, making a finding that the beatings were severe, impossible.[1647] As for mental suffering from hearing Saint-Cyr Lapo's mistreatment, any suffering was unintentional on the part of the perpetrators and should not be considered. The Defence had argued that for third parties to be considered indirect victims of an inhumane act, it must be established that the third-party suffering was deliberate on the part of the perpetrator.[1648] The Chamber misunderstood this requirement stating this would introduce 'an additional mental requirement which is not in the legal framework', and that '[t]he third element of other inhumane acts […] need only show that the perpetrator was aware of the factual circumstances that established the character, meaning the 'nature and gravity', of the act'.[1649] This is erroneous: the Trial Chamber correctly

[1642] Judgment, pp. 1417-1418, paras. 4148-4151.
[1643] Judgment, p. 1417, para. 4147.
[1644] Cf. ICC-01/12-01/18-2594, paras. 1364-1372: TC individually assessed the suffering of six victims, despite acknowledging that four were similar being female, arrested/imprisoned for a violation of dress code rules. See also IT-97-25-T, paras. 189-307: TC analysed 100+ paragraphs assessing the treatment of individual detainees to determine whether if subjected to torture or cruel treatment. It grouped the treatment into categories (e.g. 'beatings upon arrival') but then assessed the treatment of each individual victim, where able, e.g. the mistreatment of one amounted to cruel treatment where he was beaten so hard he fell across the canteen and dragged down stairs into an isolation cell, cf. another's mistreatment did not amount to cruel treatment, he was slapped/kicked in the ankles.
[1645] E.g. IT-98-32/1-A TC found victims 'feared for their lives' and '[felt…] all hope was lost', para. 964.
[1646] Judgment, pp. 1099-1100, para. 3178.
[1647] See in contrast IT-97-25-T, paras. 196, 204, 211, fn. 594.
[1648] See Yekatom Defence Closing Brief, para. 636, citing ICTR-95-01-T, para. 153; Mettraux (2020), pp. 697-698.
[1649] Judgment, pp. 1452-1453, para. 4255.

set out the third element but the requirement that the suffering be deliberate is not related to this element, but to the *mens rea* required for criminal responsibility because 'if at the time of the act, the accused was unaware of the third party bearing witness to his act, then he cannot be held responsible for the mental suffering of the third party'[1650]. This deliberateness is also required by Article 30. The Chamber failed to make any finding that the individuals were purposely placed near Saint-Cyr with the intent of causing severe suffering, nor that it was Mr. Yekatom intention, as per Ground 2.7.

428. Concerning being searched and forced to undress, absent special circumstances making this act unusually painful, this cannot cause severe physical suffering. The Chamber made no such finding. A finding of humiliation cannot be considered in assessing severity under cruel treatment as the ICC has a separate war crime of outrages on personal dignity, in particular humiliating and degrading treatment, not charged here. Being kept 'in captivity' could not be considered in assessing if the conduct amounts to other inhumane acts, as it is already the basis of another charge.[1651] Further, it could not be considered to amount to severe physical suffering absent a finding, not made here, on the level of physical pain caused. Duration is one consideration in assessing whether conduct amounts to cruel treatment;[1652] the Lapo Family Group were held for a relatively short time, akin to cases where detention alone did not constitute cruel treatment.[1653] Finally, being forced to walk a long distance, in combination with other mistreatment has been found to cause severe physical pain,[1654] but the Chamber did not make findings concerning how long the Lapo Family Group walked or what physical effects it caused. The Chamber noted only that they walked 'overnight' and referred to testimony that they walked slowly and there were three stops made along the way.[1655]

5. Errors concerning causal link, coercive acts and genuine choice (Article 7(1)(d))

429. First, the Chamber erred in finding that the RFACPP's conduct 'produced the effect to deport or forcibly transfer'[1656] the Muslims dislocated from along the Axis (the first and second sets of departures)[1657] ('Axis Departures') or from Mbaïki (the third set)[1658] ('Mbaïki Departures'). Its factual findings underpinning causation are erroneous as it did not establish to the exclusion of all reasonable alternative inferences that the Axis or Mbaïki Departures were caused by RFACPP operations or

[1650] SCSL-04-15-T, para. 171.
[1651] Conduct as the basis of another charge: Judgment, pp. 1429-1435, paras. 4186-4205. For conduct not being another inhumane act when already charged as the crime of imprisonment: ICC-01/09-02/11-382, para. 269.
[1652] IT-98-32/1-A, para. 957; IT-95-11-T, para. 80; KSC-BC-2020-05-F00494/RED3/COR, para. 661; IT-01-47-T, para. 33.
[1653] E.g. IT-04-74-T, para. 1173.
[1654] ICC-02/04-01/15-1762-Red, paras. 2829-2830, 2885-2886, 2938-2939, 2984-2985.
[1655] Judgment, pp. 1122-1123, paras. 3256-3257; p. 1051, para. 3038, fn. 7514.
[1656] See ICC-01/09-01/11-373, paras. 244-245.
[1657] Judgment, p. 1470, paras. 4310-4312.
[1658] Judgment, p. 1471, para. 4313.

conduct.[1659] It treated abundant evidence of alternative reasons for the departures as spurious,[1660] instead of conducting a thorough and detailed examination of the specific reasons individuals or groups fled.[1661] It then relied on circular reasoning stating the fact 'that departures occurred for reason A does not exclude departures occurring for reason B', which is only sound if it has first been established that the departures did in fact occur for reason A.

430. Second, the Chamber erred in its findings regarding Muslims' lack of genuine choice but to leave.[1662] RFACPP operations on the Axis and in Mbaïki were erroneously characterised as 'coercive acts' giving rise to a 'fear of violence' causing the Axis and Mbaïki Departures.[1663] Even if, *arguendo*, these departures could be causally linked to RFACPP operations on the Axis and in Mbaïki, these lawful operations cannot constitute coercive acts for Count 24.[1664] The Chamber impermissibly collapsed the critical distinction between incidental and forcible displacement in armed conflict. Axis or Mbaïki Departures that resulted from fear of the RFACPP's imminent arrival, or general fears of the 'anti-balaka', cannot be characterised as forcible transfers or deportation.[1665] This argument was raised at trial but not addressed in the Judgment.[1666]

431. Third, even if *arguendo* the finding that RFACPP members engaged in harassment or threatening conduct in Mbaïki was not erroneous,[1667] this conduct does not constitute 'coercive acts'.[1668] The material factual findings on misconduct lack the specificity to allow the Appeals Chamber to exclude the reasonable possibility that any such misconduct was limited to isolated incidents,[1669] and by extension, to safely determine whether it could reach the threshold of 'coercive acts' specifically causing any of the Mbaïki Departures. The ambiguity in the Chamber's findings flows from the erroneous amalgamation of 'anti-balaka' with the RFACPP,[1670] and by extension, the impossibility to reliably determine whether and to what degree any such conduct gave rise to Muslims' fears. In the case at hand, this threshold analysis was particularly critical given: i) the abundant evidence of Mr. Yekatom and RFACPP members' efforts to ensure the safety of Mbaïki's Muslims, including concrete steps to address and curb misconduct;[1671] and ii), the abundant evidence of alternative reasons for the Axis

[1659] See Ground 3.2.f). Cf. Judgment, pp. 1471-1472, paras. 4314-4315, 4317-4318.
[1660] See Ground 3.2.f).
[1661] See Ground 3.2.f). Compare IT-06-90-T, Vol. II, paras. 1540-1668, 1742-1763.
[1662] Judgment, p. 1471, para. 4314.
[1663] See Judgment, pp. 1470-1472, paras. 4309-4316.
[1664] ICC-01/04-02/06-2359, para. 1056; IT-06-90-T, Vol. II, para. 1755. See Part 5(3).
[1665] See, IT-06-90-T, Vol. II, para. 1762.
[1666] Yekatom Defence Closing Brief, paras. 653-659; cf. Judgment, paras. 4307-4316 (in particular, para. 4307).
[1667] See Ground 2.2.d).
[1668] Judgment, p. 1471, para. 4313.
[1669] See, IT-06-90-T, Vol. II, para. 1754.
[1670] See Ground 2.2.d). See also Yekatom Defence Closing Brief, paras. 211-216, 515; Yekatom Closing Statements T-308 (ENG), 61:13-63:11, 64:15-67:21, 69:24-73:5.
[1671] See Ground 3.2.e).

and Mbaïki Muslims' departures, and that the Mbaïki Departures had been decided prior to the group's arrival there.[1672]

432. Fourth, the Chamber erred in finding that the RFACPP operations were conducted 'without grounds permitted under international law'.[1673] These lawful and proportionate operations were conducted in accordance with IHL for reasons of military necessity and civilian security.[1674] Fifth, for the same reasons, the Chamber also erred in finding that these operations were committed as part of a widespread or systematic attack directed against a civilian population; and that Mr. Yekatom knew or intended the operations to be part of said attack. Its finding that Counts 24, 26 and 28 'were identical in pattern to the crimes committed by the Anti-Balaka in the provinces prior to the Bangui Attack' lacks sufficient reasons, and is erroneous per se.[1675]

6. Materiality

433. These legal errors are material under Article 83(2)(a) because they concern the proper interpretation of key Elements of Crimes and were central to the Chamber's reasoning. First, its misinterpretation of an 'attack directed against a civilian population' under Article 8(2)(e)(i) (Section 1) underpins Count 1. By equating limited civilian casualties during hostilities against Seleka positions with an 'attack on civilians' and inferring intent from alleged 'acceptance' of incidental harm, it applied an incorrect test to *actus reus* and *mens rea*. On a correct interpretation – requiring that civilians be the primary object and distinguishing incidental harm from deliberately directed force – there is a reasonable possibility it would have found the 5 December operation was directed at Seleka positions and acquitted on Count 1 or declined to qualify it under Article 8(2)(e)(i).

434. Second, the errors on 'ordering displacement' and the military-necessity exception under Article 8(2)(e)(viii) (Sections 2–3) go to the core of Counts 5 and 25. By diluting the requirement of a specific order to displace into a requirement of conduct 'in any form' contributing to flight, and by treating lawful operations against Seleka positions as displacement '[not] permitted under international law', the Chamber broadened the actus reus and second element beyond their statutory and treaty basis. Properly applying the requirement of a specific displacement order and the narrow military-necessity exception, there is a reasonable possibility it would have found no qualifying 'order' and/or that any movement of civilians was incidental to lawful military action; the war crime of ordering displacement would not be established and Counts 5 and 25 could not stand.

435. Third, the errors on the severity threshold for cruel treatment and other inhumane acts (Section

[1672] See Ground 3.2.f).
[1673] Judgment, p. 1473, paras. 4320-4322.
[1674] See Part 5(3).
[1675] Judgment, pp. 1348-1349, paras. 3939-3940; see also Yekatom Defence Closing Brief, paras. 581-583.

4) directly affected Counts 11 and 13. By aggregating the experiences of the Lapo Family Group, failing to assess each victim's suffering, and rejecting the requirement that severe suffering of third parties be deliberately inflicted or accepted, the Chamber misapplied Articles 7 and 8. Correctly applying the need for severe suffering per victim and deliberate infliction (or acceptance) of third-party harm, there is a real possibility it would have found that the treatment of some or all Lapo family members did not reach the threshold, leading to acquittal on Counts 11 and/or 13 or, at a minimum, a narrower basis for those convictions.

436. Fourth, the errors on causation and 'no genuine choice' for deportation/forcible transfer under Article 7(1)(d) (Section 5) go to the essential elements of Count 24. By treating lawful RFACPP operations and undifferentiated 'fear of the Anti-Balaka' as coercive acts, collapsing incidental and forcible displacement, and failing to engage with alternative, non-coercive reasons for departure, the Chamber did not establish that the Axis and Mbaïki departures were caused by coercive conduct attributable to Mr. Yekatom or that there was no genuine choice but to leave. On a correct application of causation and coercion, there is at least a reasonable possibility it would have found the first, fourth and fifth elements of Article 7(1)(d) unproven and acquitted on Count 24. Individually and cumulatively, these errors materially affect the reliability of the convictions on Counts 1, 5, 11, 13, 24 and 25 and the associated gravity and sentencing findings.

6. Part 6 – Errors in the determination of sentence

437. Part 6 submits that the Chamber's errors of law, fact and discretion—including its misinterpretation of Article 76, its erroneous assessment of aggravating and mitigating factors, and its arbitrary approach to gravity, compounded by the errors in the Article 74 Judgment—rendered the sentencing process unfair, such that the individual and joint sentences can no longer be regarded as reliable or proportionate. As noted in the Introduction, the Appellant maintains that further errors regarding individual circumstances and the determination of sentences,[1676] as set out in the notice of appeal, cannot be fully developed here.[1677]

1. Errors in the interpretation and application of Article 76

438. The Chamber's joint issuance of the Article 74 judgment and the Article 76 decision on sentence departs from precedent before this Court. While not precluded by the Statute, this option ceases to be

[1676] Judgment, p. 1496, para. 4391; p. 1514, paras. 4442-4445.

[1677] Combining conviction and sentencing grounds effectively reduces the pages available for sentencing issues compared to the page limits previously granted by the Appeals Chamber i.e. *Ongwen* = granted a total 350 pages (Art 74: 250 pp. + Art 76: 100 pp.); *Ntaganda* = granted a total 250 pages (Art 74: 150 pp. + Art 76: 100 pp); *Bemba et al*. = granted a total of 215 pages (Art 74: 115 pp. + Art 76: 100 pp.); *Bemba* = granted a total of 300 pages (Art 74: 200 pp. + Art 76: 100 pp.); *Lubanga* = granted a total of 220 pages (Art 74: 120 pp. + Art 76: 100 pp.). Although Mr. Al Hassan did not file an appeal, he was granted a total of 280 pages (Art 74: 180 pp. + Art 76: 100 pp.).

available once a party requests a further hearing under Article 76(2) following the judgment. In denying the Defence the opportunity to submit additional evidence under Article 76(2) after the Article 74 Judgment, the Chamber erred in law in its interpretation and application of Article 76.

439. The Chamber's interpretation of Article 76 fails when read in good faith according to its ordinary meaning, context and purpose.[1678] Having scheduled a hearing *proprio motu*, the Chamber concluded that there was 'no obligation to convene a further separate hearing after the issuance of its judgment'.[1679] It held that Article 76(2) stipulates that a chamber may hold a hearing *proprio motu*, and shall do so if it is seized of a request and that these 'triggers are to be understood as alternatives'.[1680] This interpretation is dissonant with the ordinary meaning of Article 76.

440. Unlike the disjunction 'or', which can allow alternatives,[1681] the conjunction 'and' is unequivocal, ensuring both clauses retain effect. Article 76(2)'s wording stating that 'the Trial Chamber may on its own motion and shall, at the request of […] the accused, hold a further hearing' – envisions that both scenarios for a further hearing are possible.[1682] The Chamber's discretion cannot nullify the text. This conclusion is further bolstered by the mandatory 'shall' in Article 76(2), stressing a binding obligation on the Chamber to hold a hearing if so requested by the parties.[1683] Under the rule against surplusage, every word of the Statute must be given effect, as legislators are presumed to intend no word to be meaningless.[1684]

441. The Chamber also disregarded the context of the text. The Appeals Chamber jurisprudence is clear: a provision 'must be read as a whole and in a manner that gives meaning and effect to all of its constituent words, rather than in a disjointed manner'.[1685] A reading of Article 76 as a whole requires the phrase '[i]n the event of a conviction' from paragraph (1) to be read with paragraph (2), which relates to the request of a further hearing to hear any additional evidence or submissions relevant to the sentence. This conclusion is further supported by Article 76(3), which provides that any representation on reparations must also be made if a further hearing is held under Article 76(2). Since reparations are ordered only 'against a convicted person',[1686] Article 76(2) hearings are clearly intended to occur in the event of a conviction. Article 76's purpose is to allow the parties to make targeted

[1678] Vienna Convention, Article 31(1).
[1679] ICC-01/14-01/18-2645, para. 15.
[1680] ICC-01/14-01/18-2645, para. 15.
[1681] ICC-02/04-01/05-610, paras. 40-41.
[1682] Article 76(2): the 'Trial Chamber may on its own motion and shall, at the request of the Prosecutor or accused'.
[1683] Cornell Law School, Legal Information Institute, Glossary: 'shall' ('Shall is an imperative command, usually indicating that certain actions are mandatory, and not permissive'); see also ICC-01/04-169, para. 44.
[1684] ICC-02/04-01/15-1762-Red, para. 2722.
[1685] ICC-01/09-01/20-107, para. 69.
[1686] Article 75(2) of the Statute.

submissions to assist the Chamber in imposing a fair and proportionate sentence. Additionally, since Article 76(1) allows consideration of trial evidence and submissions for sentencing, Article 76(2)'s provision for additional post-conviction evidence implies that the convicted person must be able to address specific findings made against him.

442. While the Statute aims to end impunity,[1687] this must be achieved through fair proceedings respecting the parties' rights.[1688] Allowing further evidence post-conviction upholds the accused's Article 67(1)(g) rights to silence and protection against self-incrimination,[1689] ensuring vital mitigating evidence can be considered, while also enabling the OTP to make specific submissions on counts where guilt was established beyond a reasonable doubt.[1690]

443. The refusal also undermined Mr. Yekatom's ability to give informed instructions on sentencing issues. A meaningful Article 76(2) process presupposes that portions of the conviction will be provided to the accused in a language he fully understands, so that he can instruct counsel on focused evidence and submissions. By refusing a further hearing, the Chamber denied the procedural opportunity to obtain translations and respond to the Judgment's newly framed liability and scope findings. Article 76(2) required the Chamber to facilitate that focused, post-conviction sentencing phase; its failure to do so was an error of law that materially affected the Judgment.

2. Errors in the assessment of aggravating factors

444. The Chamber erred in law by treating discriminatory motive as an aggravating factor for Counts 2, 4, 11, 12, 14, 15, and 24–27.[1691] The Chamber's reliance on discriminatory motive is improper, as it was embedded in the crimes' legal elements and the common agreement for the PK9–Mbaïki counts, and thus cannot be counted again as an aggravating factor.[1692]

445. The Chamber held that the 'Anti-Balaka' attack, including 'Mr. Yekatom's group', was carried out 'pursuant to […] a criminal policy to primarily target the Muslim population in Bangui and western CAR prefectures in retribution for Seleka exactions',[1693] and, for the PK9–Mbaïki Axis, that the common agreement between Mr. Yekatom, Cœur de Lion and Alkanto was to establish control over the area and 'remove all Muslims therefrom, including by killing them'.[1694] These findings establish

[1687] ICC-02/04-01/05-610, para. 74, and references therein.
[1688] See ICC-02/04-01/05-610, paras. 74-75, 77.
[1689] Schabas/Ambos (2022), mn. 5.
[1690] See, for example, Harmon/Gaynor (2007), p. 708.
[1691] Judgment, pp. 1506-1509, paras. 4419-4425; pp. 1540-1541, para. 4516; p. 1547, para. 4536; p. 1559, para. 4574; p. 1562, para. 4586; p. 1565, para. 4595; p. 1566, para. 4600; p. 1577, para. 4631; p. 1580, para. 4641.
[1692] ICC-01/05-01/13-2276-Red, paras. 127, 129; ICC-01/12-01/18-2662, para. 25; ICC-01/04-02/06-2442, para. 20; ICC-02/04-01/15-2023, para. 319; ICC-01/05-01/13-2276-Red, para. 129.
[1693] Judgment, p. 1347, para. 3934.
[1694] Judgment, p. 1484, para. 4356.

discriminatory targeting as a constituent part of the contextual attack for the CAH, and as an essential component of the common agreement, a legal element of the MoL for the PK9-Mbaïki Axis crimes.

446. Although the Chamber noted that the Defence's argument that discriminatory motive was embedded in the criminal policy and the common agreement, it offered no reasoning as to why these elements were excluded from the crimes' constitutive elements yet still used to aggravate the sentence.[1695] In doing so, it erred in law in contradiction with the Court's jurisprudence.[1696] The Chamber expressly defined both the criminal policy and the PK9-Mbaïki common agreement as discriminatory, making discriminatory motive an integral element which the OTP had to prove.[1697] By counting discriminatory intent as both an element of the crimes and as an aggravating factor, the Chamber impermissibly double-counted it, inflating the sentence on an improper legal basis.

3. Errors in the assessment of mitigating factors

447. The Chamber erred in law and in fact by failing to accord sufficient weight to Mr. Yekatom's peace and reconciliation efforts carried out after the period relevant to the charges.[1698] An accused's post-crime conduct is relevant in assessing his awareness of wrongfulness and intent to 'make amends'.[1699] It is not required that those efforts, made with a view to promoting peace and reconciliation, directly alleviate the suffering of the victims.[1700]

448. The Chamber 'acknowledge[d]' Mr. Yekatom's actions during the time following the charges.[1701] Yet the Chamber considered that these actions had to 'be put into perspective', as these efforts 'occurred in the context of broader peace negotiations with the CAR government and international authorities' and were not primarily driven by Mr. Yekatom.[1702] The Chamber also deemed it significant that these efforts occurred at time without large-scale hostilities, when the Seleka had largely withdrawn and many Muslim civilians had already fled.[1703]

449. There is no legal basis for the Chamber's attempt to reduce the mitigation of the peace efforts because they were not primarily driven by Mr. Yekatom.[1704] The criterion for mitigation is whether the peace efforts are palpable and genuine; results are not required.[1705] The impact of any

[1695] Judgment, pp. 1506-1508, paras. 4420, 4425.
[1696] See *a contrario* ICC-02/04-01/15-2023, paras. 343-344: The Appeals Chamber rejected a comparable argument precisely because the discriminatory perception relied on was not part of the common plan defined by the Chamber, but a contextual factor supporting its existence. See also ICC-01/04-02/06-2442, paras. 34, 84, 125, 151, 169, 171.
[1697] Judgment, p. 1347, para. 3934; p. 1484, para. 4356.
[1698] Judgment, pp. 1523-1527, paras. 4464-4475.
[1699] IT-03-72-A, para. 55.
[1700] IT-03-72-A, paras. 56, 59.
[1701] Judgment, pp. 1525-1526, para. 4471; fns. 10304, 10305, 10306; p. 1526, para. 4472; fns. 10307, 10308, 10309.
[1702] Judgment, p. 1526, para. 4473.
[1703] Judgment, p. 1526, para. 4473.
[1704] Judgment, p. 1526, para. 4473; cf. IT-02-60-T, paras. 858-860.
[1705] ICC-01/04-02/06-2442, para. 218; ICC-01/04-01/07-3484-tENG-Corr, para. 91.

reconciliation efforts of the accused must be viewed subjectively and the fact that some individuals may wield greater influence cannot bar others from relying on their sincere efforts in mitigation of sentence.[1706] Regarding Mr. Yekatom, it is contradictory for the Chamber to both find that he was a person of authority[1707] and to then reject any possibility of his being an authority figure in the peace efforts. That his efforts unfolded within a 'broader landscape' of international mediation does not negate the authenticity of his attempts to foster social cohesion.

450. The Chamber erred in finding Mr. Yekatom's other efforts – such as the building of schools and a health centre – were not relevant to its assessment of Mr. Yekatom's role in establishing peace and reconciliation;[1708] measures in the medical and education sectors have been recognised to play an important role in peace building and the rehabilitation process.[1709] It found these efforts to be irrelevant and that they were 'primarily […] motivated by [his] personal economic and political interests'.[1710] Even assuming, *arguendo*, that Mr. Yekatom acted with personal interest, his efforts – creating jobs, building schools and a health centre, and organising football games – contributed to rebuilding the social fabric and should have been given greater weight.[1711]

451. Finally, the Chamber erred in dismissing Mr. Yekatom's efforts during the charged period as 'inconcrete and disingenuous'.[1712] Mr. Yekatom's peace and reconciliation activities after the charged period were a natural corollary and continuation of his efforts during the charged period, and cannot be summarily divorced from each other. Moreover, crucially, if parts of the Conviction fall, it will be incumbent on the Appeals Chamber to consider mitigating circumstances by analysing the Appellant's efforts during the charged period as well.[1713]

4. Errors in the assessment of the gravity of the crimes

452. The Chamber erred in law by applying internally inconsistent and arbitrary categorisations of the gravity of crimes. While the Defence is cognisant of the broad discretion afforded to trial chambers in determining a sentence,[1714] that discretion is not unfettered and must not permit arbitrariness. Without a statutory or regulatory hierarchy of offences, the Chamber must apply a clear, rational

[1706] IT-00-39&40/1-S, paras. 85-94.
[1707] See Judgment, p. 32, para. 92; p. 616, para. 1630; pp. 884-885, para. 2476; p. 1058, para. 3056; p. 1065, para. 3078; p. 1152, para. 3349; pp. 1202-1203, para. 3481.
[1708] Judgment, pp. 1526-1527, para. 4474.
[1709] ICC-01/04-02/06-2442, para. 138; *Osorio Rivera v. Peru* (2013), IACHR Series C No. 274, para. 256; PEIC/BIICL (2013), p. 139; *Río Negro Massacres v. Guatemala* (2012), IACHR Series C No. 250, para. 284; see also ICC-01/12-01/15-236, para. 83.
[1710] Judgment, pp. 1526-1527, para. 4474.
[1711] See similarly, IT-05-88-T, para. 2220.
[1712] Judgment, p. 1524, para. 4468.
[1713] See Ground 3.2.
[1714] ICC-01/05-01/13-2276-Red, para. 283; ICC-01/04-01/06-3122, paras. 40, 42; ICC-01/12-01/18-2662, para. 17; ICC-01/04-02/06-2442, para. 11; ICC-01/05-01/13-2123-Corr, para. 36; ICC-01/12-01/15-171, para. 68.

framework to ensure that convicted persons understand how gravity is assessed.

453. In determining individual sentences for each crime, the Chamber employed various descriptors to assess gravity, whether *in abstracto* or *in concreto*,[1715] without articulating any hierarchy between them[1716] nor providing an explanation of the scale used.[1717] The absence of a discernible hierarchy is compounded by the Chamber's arbitrary *in abstracto* assessments.[1718] The Chamber also erred by resorting to abstract criteria in its evaluation of the gravity of the offence such as asserting that, in relation to the crimes of murder (Counts 2 and 3), a person can reasonably expect less harm to occur when inside their own property.[1719] This is a novel and highly abstract factor that treats victims' reasonable expectations of safety, rather than the actual harm and context, as determinative of gravity, absent explanation or authority.

454. Similarly, in finding that Mr. Yekatom exercised 'unlimited control over his elements' activities', the Chamber relied on a degree of participation that exceeds the Judgment's own conviction findings,[1720] even though a gravity assessment must be confined to the facts and role attributed to the accused therein.[1721] The Chamber's flawed reasoning on gravity underscores the arbitrariness of its

[1715] Judgment: 'low' p. 1548, para. 4538 / 'high': pp. 1535-1536, paras. 4501, 4503 (Count 1); p. 1541, paras. 4517, 4519 (Counts 4, 5); pp. 1550-1551, para. 4548 (Count 8); p. 1557, para. 4567 (Count 14); p. 1560, paras. 4578-4579 (Counts 11, 13); p. 1566, para. 4601 (Count 17); p. 1570, paras. 4611 (Counts 24, 25); p. 1581, para. 4643 (Count 28) / 'very high': p. 1537, para. 4507 (Counts 2 and 3); p. 1563, paras. 4588 (Counts 12, 13); p. 1627, para. 4801 (Counts 15, 16, citing p. 1565, para. 4596; p. 1537, para. 4507); p. 1632, para. 4817 (Counts 26, 27 citing p. 1577, para. 4632, and then p. 1537, para. 4507) / 'particularly high': pp. 1537-1538, para. 4508 (Counts 2, 3); p. 1563, para. 4589 (Counts 12, 13); p. 1565, para. 4596 (Counts 15, 16); p. 1577, para. 4633 (Counts 26, 27); 'particularly serious': p. 1550, para. 4547 (Count 8); p. 1566, para. 4601 (Count 17, citing p. 1550, para. 4547); p. 1580, para. 4642 (Count 28, citing p. 1550, para. 4547); 'substantial': p. 1541, para. 4518 (Counts 5); pp. 1547-1548, para. 4537 (Count 6); p. 1557, para. 4566 (Count 14); p. 1613, para. 4812 (Count 25, citing p. 1570, para. 4610, and then p. 1541, para. 4518).

[1716] See e.g. Count 14: gravity considered to be 'substantial' *in abstracto* and 'high' *in concreto* (Judgment, pp. 1557-1559, paras. 4566-4574); Counts 11, 13: gravity considered as 'high' *in abstracto* and 'high' *in concreto* (Judgment, pp. 1559-1562, paras. 4575-4586). The factual circumstances underlying these offences being identical, it is unclear why the Chamber assigned different *in abstracto* gravity levels while arriving at the same *in concreto* assessment. See Ambos et al. (2022), p. 336; see also Carcano, (2002) (pp. 592 et seq).

[1717] ICC-01/04-01/07-3484-tENG-Corr, paras. 46-58, where the Chamber assessed the gravity by reference to concrete factors contrary to the undefined scaling used in the present case; see also ICC-01/04-02/06-2442, paras. 44, 53, 158, 163, 175, refraining from employing arbitrary and unexplained descriptors; ICC-01/12-01/18-2662, paras. 44-45, 70; ICC-01/05-01/13-2123-Corr, paras. 45, 70, 100, 153, 203. While the Chamber in *Ongwen* used certain qualitative descriptors, its scaling ranged between 'high' and 'very high' gravity and was anchored in the concrete circumstances of each offence (see ICC-02/04-01/15-1819-Red, paras. 154, 185, 188, 192, 223, 226).

[1718] See e.g. for Count 14 the Chamber relied on the TC IX's findings in *Ongwen* regarding enslavement to conclude that 'imprisonment' was of 'substantial gravity' (Judgment, p. 1557, para. 4566, fn. 10498, citing ICC-02/04-01/15-1819-Red, para. 162 'with regard to assessing liberty of movement in the context of the crime against humanity of enslavement'), whereas 'other forms of severe deprivation of liberty' was qualified as of 'considerable' gravity (ICC-02/04-01/15-1819-Red, para. 162) without explaining how these two labels are comparable, nor why the gravity assessment for enslavement, involving heightened forms of deprivation of liberty, could be transposed to a different offence involving a different nature and intensity of harm (see IT-96-23 & IT-96-23/1-A, para. 117 noting that enslavement involves the exercise of powers akin to ownership and a destruction of the victim's juridical personality). Similar arbitrary assessment infected Counts 4, 5, 8, 24 and 25.

[1719] Judgment, p. 1538, para. 4510.

[1720] Judgment, p. 1533, para. 4494; p. 1552, para. 4553, referring to paras. 92, 3183.

[1721] Ambos et al. (2022), p. 339.

descriptors, materially affecting its determination of the joint sentence.[1722]

5. Materiality

455. The errors identified in this Part are material within the meaning of Article 83(2)(a) because they strike at the framework and core factors used to determine both the individual and joint sentences. First, by misinterpreting Article 76(2) and refusing a post-conviction sentencing hearing, the Chamber prevented the Appellant from adducing targeted mitigating evidence and addressing, for sentencing purposes, the Judgment's newly framed modes of liability and expanded scope of responsibility. These matters bear directly on gravity, degree of participation, intent, and aggravating and mitigating circumstances; had a further hearing been held, a reasonable trial chamber may have imposed different, and lower, sentences.

456. Second, treating discriminatory motive as an aggravating factor where it was already embedded in the contextual attack and in the common agreement for the PK9–Mbaïki counts resulted in impermissible double counting, inflating the sentences on those counts and the assessment of overall gravity for the joint sentence. Third, the Chamber's undue discounting of Mr. Yekatom's peace and reconciliation efforts, and its arbitrary and internally inconsistent gravity analysis – including reliance on descriptions of his 'unlimited control' that exceed the conviction findings – skewed the balance between gravity and mitigation and underpinned the 15-year joint sentence. In these circumstances, the Appeals Chamber cannot be satisfied that, absent these errors, the same individual or joint sentences would have been imposed; should any convictions be upheld, the sentences – in particular the 15-year joint sentence – require revision on appeal.

III. CONCLUSION AND RELIEF

457. For the Appellant, the exceptional size and timing of the Judgment has had concrete consequences. Its length placed heavy demands on language services and meant that, even with a modest extension, the Defence was required to analyse and challenge it within a compressed appellate timetable. At the time of filing this brief, Mr. Yekatom remains the first accused before this Court who has not received a complete translation of even the essential parts of the Judgment, including the sentencing findings, into a language he fully understands and speaks. This has necessarily constrained his ability to understand with precision the basis for his convictions, to provide fully informed instructions on the entirety of the Judgment, and to participate as fully as he would otherwise have done in the preparation of his appeal. These circumstances are highlighted in light of submissions made in other proceedings that an accused can effectively exercise his rights without receiving a full translation of

[1722] Judgment, p. 1585, para. 4659.

essential passages of a judgment;[1723] the experience in this case illustrates the practical limits of that position.

458. For the foregoing reasons, and pursuant to Article 83 of the Rome Statute, the Appellant respectfully requests the Appeals Chamber to:

(i) **GRANT** the appeal;

(ii) **REVERSE** the Trial Chamber's findings of guilt and acquit Mr. Yekatom of all charges;

or in the alternative should any convictions be maintained,

(iii) **QUASH** the sentencing decision and substantially reduce the joint sentence to reflect the corrected legal characterisation, reduced factual basis and mitigated gravity as developed in Part 6 of this brief;

or further in the alternative

(iv) **REMIT** the matter for prompt re-sentencing with binding guidance on the proper legal and factual framework.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF DECEMBER 2025[1724]

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[1723] ICC-02/05-01/20-1272, para. 5.

[1724] The Defence is particularly grateful for the assistance of Pr. Julia Grignon, Lena Casiez, Christophe Anglade, Maëlle Dalin Voogsgerd, Louis Martin, Aubed Nzalet Yamale, Lionel Romaric Messi Tikpa, Anas Qazi, Liv Mould, Elise Cardoso, Manon Vernat, Priyangaa Thivendrarajah, Anaë Bomben, Héloïse Martin, Marion Marlin, Solenne Ceglia, Salma Hafez, Hafina Vilette, Espérancia Ahouangbe, Maria Pará Nunes, Emilie Estarellas and Tanya Pettay for their assistance in drafting this brief.