Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.**: ICC-01/14-01/18**
Date: **8 May 2026**

THE APPEALS CHAMBER

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR V. ALFRED YEKATOM AND PATRICE-EDOUARD NGAÏSSONA

Public
with public Annex A

Public redacted version of "Prosecution consolidated response to Yekatom's and Ngaïssona's appeals against the Judgment and Yekatom's request to present additional evidence", 27 February 2026, ICC-01/14-01/18-2885-Conf

Source: **Office of the Prosecutor**

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**
D29
D30

☒ **Legal Representatives of the Victims**
V44
V45

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants (Participation/Reparation)**

☐ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations Section**

☐ **Other**

INTRODUCTION **5**

CONFIDENTIALITY **5**

RESPONSE TO YEKATOM'S CONVICTION APPEAL **6**

I. Ground 1: The Chamber did not exceed the parameters of the confirmed charges **6**
I.1. Ground 1.1: The Chamber did not expand the factual basis of the confirmed charges 6
I.2. Ground 1.2: The Chamber properly convicted Yekatom for committing the crimes under counts 1, 4, 5 and 8 9
I.3. Ground 1.3: The Chamber did not erroneously re-shape the material facts of Yekatom's liability for the PK9-Mbaïki axis charges 15
I.4. The alleged errors would not have impacted the Judgment 17

II. Ground 2: The Chamber correctly attributed responsibility to Yekatom **17**
II.1. Ground 2.1: The Anti-Balaka constituted an organisation within the meaning of article 7 and included Yekatom's group 17
II.2. Ground 2.2: The Chamber correctly found that Yekatom was a member of the 'Anti-Balaka' 21
II.3. Ground 2.3: The Trial Chamber correctly found that Yekatom targeted the Muslim population 38
II.4. Ground 2.4: The Chamber correctly found that Yekatom exercised control over his Anti-Balaka group 48
II.5. Ground 2.5: The Chamber correctly found that Yekatom entered into a common plan with Cœur de Lion and Alkanto 63
II.6. Ground 2.6: The Chamber correctly applied the elements of article 25(3)(a) in finding that Yekatom committed the crimes 66
II.7. Ground 2.7: The Chamber correctly established Yekatom's *mens rea* 71

III. Ground 3: The Chamber correctly considered the NIAC circumstances **83**
III.1. Ground 3.3: The Chamber properly considered the context of Yekatom's participation in the Anti-Balaka attack on Bangui (including Boeing and Cattin) on 5 December 2013 85
III.2. Ground 3.1: The Chamber properly considered the crimes committed by Yekatom's group at Yamwara on or about 24-27 December 2013 93
III.3. Ground 3.2: The Chamber properly considered the context of Yekatom's advance along the PK9-Mbaïki axis from about 10 January until about 6 February 2014 102

IV. Ground 4: The Chamber properly assessed the evidence **119**
IV.1. Ground 4.1: The Chamber properly assessed P-1339's credibility 122
IV.2. Ground 4.2: The Chamber properly assessed the evidence of the Boeing Market attack 123
IV.3. Ground 4.3: The Chamber properly assessed the evidence of the Boeing Mosque attack 126
IV.4. Ground 4.4: The Chamber properly assessed the evidence of the Cattin attack 128
IV.5. Ground 4.5: The Chamber properly assessed the evidence of the Boeing-Cattin displacement 131
IV.6. Ground 4.6: The Chamber properly assessed the evidence of Djido Saleh's murder and mutilation 133
IV.7. Ground 4.7: The Chamber properly assessed the evidence of the Yamwara crimes 138

V. Ground 5: The Chamber correctly addressed specific crimes **140**
V.1. Ground 5.1: Directing an attack against the civilian population - article 8(2)(e)(i) 140
V.2. Grounds 5.2 and 5.3: Displacement of civilians - article 8(2)(e)(viii) 142
V.3. Ground 5.4: Other inhumane acts and cruel treatment - articles 7(1)(k), 8(2)(c)(i) 145
V.4. Ground 5.5: Forcible transfer and deportation - article 7(1)(d) 146

RESPONSE TO NGAÏSSONA'S CONVICTION APPEAL **148**

VI. Ground 1: The Chamber correctly applied the evidentiary framework and made reasonable factual findings 148
VI.1. Ground 1.1: The Chamber applied the correct evidentiary standards 148
VI.2. Ground 1.2: The Chamber properly assessed witness credibility 153
VI.3. Ground 1.3: The Chamber's factual findings are safe 169

VII. Ground 2: The Chamber correctly convicted Ngaïssona under article 25(3)(c) 213
VII.1. Ground 2.1: *Actus reus*: The Chamber correctly found that Ngaïssona's conduct aided, abetted or otherwise assisted in the commission of the crimes 214
VII.2. Ground 2.2: *Mens rea*: The Chamber correctly found that Ngaïssona acted for the purpose of facilitating the commission of the crimes under article 25(3)(c) 223
VII.3. Ground 2.3: *Mens rea*: The Chamber correctly found that Ngaïssona had the required knowledge under article 30(2)(b) and (3) 232
VII.4. Ground 2.4: The Anti-Balaka constituted an organisation within the meaning of article 7 242

VIII. Ground 3: Ngaïssona had a fair trial 252
VIII.1. Ground 3 should be dismissed *in limine* 253
VIII.2. Ground 3.1: The Three Rulings were properly decided and occasioned no unfairness. 254
VIII.3. Ground 3.2: The reliability of the Judgment was not affected by any alleged error 257

RESPONSE TO YEKATOM'S SENTENCING APPEAL 259

IX. Ground 6: The Chamber correctly and reasonably determined Yekatom's sentence . 259
IX.1. Ground 6.1: The Chamber correctly interpreted and applied article 76(2) 259
IX.2. Ground 6.2: The Chamber correctly and reasonably assessed aggravating factors 261
IX.3. Ground 6.3: The Chamber correctly and reasonably assessed mitigating factors 261
IX.4. Ground 6.4: The Chamber correctly and reasonably assessed the gravity of the crimes 262
IX.5. The alleged errors under Ground 6 do not materially affect the sentences 264

RESPONSE TO NGAÏSSONA'S SENTENCING APPEAL 265

X. Ground 4: The Chamber correctly and reasonably weighed Ngaïssona's post offence conduct 265
X.1. Ground 4.1: The Chamber applied the correct legal standard under rule 145(2)(a)(ii) 265
X.2. Ground 4.2: The Chamber correctly and reasonably assessed and weighed the facts 267
X.3. The alleged errors do not materially affect the sentences 268

XI. Ground 5: The Chamber correctly and reasonably assessed Ngaïssona's involvement in DDR and related measures 269
XI.1. Ground 5.1: The Chamber did not apply an incorrect legal test for genuineness under rule 145(2)(a)(ii) 269
XI.2. Ground 5.2: The Chamber did not err in fact in assessing the evidence 271
XI.3. The alleged errors do not materially affect the sentences 273

XII. Ground 6: The Chamber correctly assessed Ngaïssona's degree of participation and intent 274
XII.1. Ngaïssona misrepresents the Chamber's factual findings 275
XII.2. The alleged errors do not materially affect the sentences 279

RESPONSE TO YEKATOM'S ADDITIONAL EVIDENCE REQUEST 280

XIII. Yekatom's request to present additional evidence should be rejected 280
XIII.1. Introduction 280
XIII.2. The criteria for the admission of additional evidence on appeal are not met 281
XIII.3. There are no compelling reasons to admit the Form 287

CONCLUSION 289

INTRODUCTION

1. In its Judgment of 24 July 2025,[1] issued pursuant to articles 74[2] and 76,[3] Trial Chamber V (the "Chamber") correctly convicted Mr Alfred Yekatom ("Yekatom") of 19 counts comprising 20 war crimes and crimes against humanity, and sentenced him to a joint sentence of 15 years' imprisonment. Likewise, the Chamber correctly convicted Mr Patrice-Edouard Ngaïssona ("Ngaïssona") of 27 counts comprising 28 war crimes and crimes against humanity, and sentenced him to a joint sentence of 12 years' imprisonment.

2. The Chamber applied the correct legal standards, properly considered all the evidence before it,[4] correctly applied the law to the facts and gave a reasoned Judgment. Furthermore, the Chamber conducted the proceedings fairly and expeditiously while at all times ensuring Yekatom's and Ngaïssona's rights.

3. In their respective appeals, Yekatom[5] and Ngaïssona[6] have not shown that the Chamber erred—either in law,[7] in fact,[8] or procedurally[9]—or that any purported error materially affected the Judgment.[10] Their respective appeals against their convictions and sentences should be dismissed, as should Yekatom's separate request to introduce additional evidence.

CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the RoC, the Prosecution files this consolidated response brief as confidential since it refers to information with the same classification. The Prosecution will file a public redacted version as soon as practicable.

---

[1] Judgment.
[2] Judgment, paras. 1-4386, 4846-4847 ("Conviction Decision").
[3] Judgment, paras. 4387-4845, 4848 ("Sentencing Decision").
[4] *Ntaganda* AJ, paras. 38, 587 (referring to the trial chamber's duty to assess the evidence holistically).
[5] Yekatom Appeal.
[6] Ngaïssona Appeal.
[7] For the standard of appellate review for legal errors, *see* *Ntaganda* AJ, para. 36; *Lubanga* AJ, paras. 17-18; *Ngudjolo* AJ, para. 20; *Bemba* AJ, para. 36; *Bemba et al.* AJ, para. 99; *Ongwen* SAJ, para. 33.
[8] For the standard of appellate review for factual errors, *see* *Ntaganda* AJ, para. 39; *Bemba et al.* AJ, paras. 91-96; *Lubanga* AJ, paras. 21-27; *Ongwen* SAJ, para. 34.
[9] For the standard of appellate review for procedural errors, *see* *Ntaganda* AJ, para. 44; *Lubanga* AJ, para. 20; *Ngudjolo* AJ, para. 21; *Bemba* AJ, para. 47; *Bemba et al.* AJ, paras. 46, 99. For discretionary decisions allegedly amounting to an abuse of discretion, *see* *Ongwen* SAJ, para. 35.
[10] For the requirement of material effect on a conviction decision, *see* *Ntaganda* AJ, para. 43; for a sentencing decision, *Ongwen* SAJ, para. 36.

RESPONSE TO YEKATOM'S CONVICTION APPEAL

I. Ground 1: The Chamber did not exceed the parameters of the confirmed charges

5. Yekatom argues that the Chamber improperly expanded the factual basis of the charges (counts 1-6 and 8); unlawfully recharacterised the facts to convict him as a direct perpetrator (counts 1, 4, 5 and 8); and erroneously narrowed the material facts of his co-perpetration liability (counts 24-28).[11] Yekatom misconstrues the law and the nature of the charges. Ground 1 of Yekatom's appeal should be rejected

I.1. Ground 1.1: The Chamber did not expand the factual basis of the confirmed charges

6. The Chamber correctly adhered to the facts and circumstances of the charges in convicting Yekatom,[12] expressly recognising its obligation to do so under article 74(2).[13] In alleging that the Chamber convicted him based on facts that were not pleaded Yekatom misunderstands the nature of the charges and the manner in which they bound the Chamber.[14]

7. Consistent with its role and the Court's legal framework, the Pre-Trial Chamber defined the charges[15] by carrying out a "macro-level" "light review" of the charges brought by the Prosecution.[16] To define the parameters of the trial and thereby notify Yekatom of the case against him so that he could prepare his defence,[17] the charges set out the material facts—*i.e.*, the facts setting out the objective and subjective elements of the crimes and the modes of liability, and the facts which are indispensable for entering a conviction—and their legal characterisation.[18] The Pre-Trial Chamber also cited to relevant paragraphs of the Prosecution's Document Containing the Charges, which provided further detail and were to be read together with the Confirmation Decision.[19]

---

[11] Yekatom Appeal, paras. 4-24.
[12] *Contra* Yekatom Appeal, paras. 5-11.
[13] Judgment, para. 26; *Ongwen* AJ, para. 298; *Ntaganda* AJ, para. 324; *Lubanga* Regulation 55(2) AD, para. 91.
[14] Yekatom Appeal, para. 9.
[15] 2024 ICC Chambers Practice Manual, paras. 57, 62; *Lubanga* AJ, para. 124; *Ntaganda* TJ, para. 37; *Bemba et al.* AJ, para. 196.
[16] *Al Hassan* Regulation 55 AD, para. 92.
[17] Confirmation Decision, para. 15; *Ruto & Sang* Charges Order, para. 8. *See also Al Hassan* DCC Time Limit Decision, para. 30; *Mbarushimana* CD, para. 81; *Lubanga* AJ, para. 118; *Bemba* TJ, para. 31; *Nevzlin v. Russia*, para. 137; *Sejdovic v. Italy*, paras. 89-90.
[18] Confirmation Decision, paras. 61-100, 113-126, 129-141, 144-156, pp. 100-103. *See Ngudjolo* AJ, para. 125; *Ntaganda* AJ, para. 37; *Lubanga* AJ, para. 22; *Bemba et al.* AJ, para. 96; Charges AD, para. 54. *See also* Charges Decision, para. 16; *Halilovic* AJ, paras. 129-130; *Merhi and Oneissi* AJ, para. 91.
[19] Charges AD, paras. 55-57.

8. The Chamber's review on the other hand, was "fact-intensive".[20] It could assess allegations not specifically addressed by the Pre-Trial Chamber, or rely on different evidence.[21] The Chamber was bound by the material facts set out in the charges, and not by the Pre-Trial Chamber's reasoning including its narrative of events, analysis of evidence, and reference to subsidiary facts, which were functionally evidence.[22] The Chamber was entitled to reason differently from the Pre-Trial Chamber and to assess allegations not relied upon by the latter, and its findings were inherently more detailed than those in the Confirmation Decision, as has been the case in prior judgments of this Court.[23] Since these findings arose from evidence that was within the scope of the pleaded facts, no issue arises as to adherence to the charges.[24] Yekatom fails to appreciate this distinction. The following facts he challenges were not new, but rather were within the scope of the sufficiently specific charges, for which he received adequate notice and defended himself:[25]

- The Chamber's finding that Yekatom's instructions regarding the 5 December 2013 attack "included targeting sectors where 'Muslims' were to be found"[26] was well-within the scope of the Pre-Trial Chamber's finding that he instructed his elements to "kill Selekas and Muslims", "attack Muslims and break their houses", "go to PK5 and find Muslims and Seleka", and "destroy the Muslims [*sic*] houses so they will go back to their country", along with the allegations it cited to in the DCC.[27] It came from the trial testimony of the same witness cited by the Pre-Trial Chamber,[28] who Yekatom's counsel cross-examined,[29] and on which his Defence made submissions.[30]

[20] *Al Hassan* Regulation 55 AD, para. 106.
[21] *Al Hassan* Regulation 55 AD, para. 106. *See also* 2024 ICC Chambers Practice Manual, para. 36; *Ruto & Sang* Charges Order, para. 10.
[22] *Banda & Jerbo* CD, paras. 36-37; 2024 ICC Chambers Practice Manual, paras. 36, 62. *See also Bemba* AJ Judges Morrison and Van den Wyngaert Sep. Op., para. 20 (defining 'subsidiary facts' as "intermediate findings that support the material facts").
[23] *Compare e.g. Ntaganda* CD, para. 138, *with Ntaganda* TJ, para. 739 (inferring, for the charge of murder, Ntaganda's knowledge of the victim's civilian status from the fact that he had interrogated the victim—a fact not mentioned in the Confirmation Decision); *compare Ongwen* CD, para. 73, *with Ongwen* TJ, para. 2913 (making findings on Ongwen's conduct in the Odek IDP camp attack that were not in the Confirmation Decision, including that he participated in a ritual and prayer before they set out).
[24] *See e.g. Furundžija* AJ, para. 61.
[25] *Contra* Yekatom Appeal, paras. 9-11.
[26] Yekatom Appeal, para. 9 (fn. 16: citing Judgment, paras. 74, 3950, 3959, 3986, 3989, 4010, 4012, 4014, 4016, 4023).
[27] Confirmation Decision, para. 85, p. 100 (concerning count 1, citing DCC, paras. 246-256); DCC, paras. 246-256, *especially* para. 255. *See also* Charges Decision, para. 30. *Contra* Yekatom Appeal, paras. 9, 10.
[28] Judgment, paras. 2445 (citing P-1339: T-155, pp. 16:22-17:5), 2446; Confirmation Decision, para. 85 (fn. 205: citing *inter alia* P-1339: CAR-OTP-2041-0741-R01 at 0748, para. 51).
[29] T-160, pp. 6:3-9:3.
[30] *See e.g.* Yekatom Closing Brief, paras. 122, 328-347.

- The finding that Yekatom and others conducted a 'reconnaissance' mission to Boeing Market on the eve of the operation[31] was within the scope of the Pre-Trial Chamber's findings that Yekatom "organis[ed]" and "instructed" his elements in the 5 December 2013 attack[32] and "was involved in [its] preparation".[33] Again, this came from the trial testimony of the same witness cited by the Pre-Trial Chamber,[34] who Yekatom's counsel cross-examined[35] and on which his Defence made submissions.[36]

- The finding that Yekatom fired a pistol in the air to launch the attack at Boeing Market[37] was within the scope of the Pre-Trial Chamber's finding that Yekatom "led his Anti-Balaka elements in this attack",[38] and came from the trial testimony of the same witness cited by the Pre-Trial Chamber.[39] Yekatom's counsel cross-examined the witness.[40] It is immaterial that the Trial Chamber did not also rely on the evidence of the other witness cited by the Pre-Trial Chamber (P-2475)[41] as it was not bound by the Pre-Trial Chamber's evidentiary assessment.[42]

- The finding that Yekatom established a base at the Yamwara School and continued to be present in Bangui with the Anti-Balaka[43] was within the scope of the Pre-Trial Chamber's findings for counts 11-17 that his group established a base in Yamwara School following the 5 December 2013 attack.[44] The Chamber's reliance on this same evidence to establish a fact relevant to a different count (count 4)[45] was not a recharacterisation of the facts.[46] It reasonably relied on the Confirmation Decision as a whole to ascertain the facts relevant

[31] Yekatom Appeal, para. 9 (fn. 17: citing Judgment, paras. 75, 3950, 3959, 4010, 4017). *See* Judgment, paras. 2465-2466 (citing P-1339: T-154, pp. 40:11-41:7, 52:8-21; T-159, pp. 64:25-65:8, 66:4-6).
[32] Confirmation Decision, paras. 84-85. *See also* Charges Decision, para. 30.
[33] Confirmation Decision, para. 98. *Contra* Yekatom Appeal, paras. 9-10.
[34] Judgment, paras. 2465-2466 (citing P-1339: T-154, pp. 40:11-41:7, 52:8-21, 53:1-9); Confirmation Decision, paras. 84 (fns. 200-202), 85 (fn. 205) (citing *inter alia* P-1339: CAR-OTP-2041-0741-R01, at 0745-0748).
[35] T-159, pp. 63:25-66:6.
[36] Yekatom Closing Brief, para. 392.
[37] Yekatom Appeal, para. 9 (fn. 18: citing Judgment, paras. 76, 3951, 3959, 3970, 3975-3976, 3986, 4010, 4016).
[38] Confirmation Decision, para. 98. *See also* paras. 86-87. *See further* Charges Decision, para. 30. *Contra* Yekatom Appeal, paras. 9-10.
[39] Judgment, para. 2537 (citing P-1339: T-154, pp. 50:10-13, 53:14-19); Confirmation Decision, paras. 86-87 (citing *inter alia* P-1339: CAR-OTP-2041-0741-R01, at 0750-0751).
[40] T-159, p. 75:6-19.
[41] *Contra* Yekatom Appeal, para. 11. The Chamber assessed P-2475 to be unreliable: Judgment, para. 520.
[42] *Al Hassan* Regulation 55 AD, para. 106; *Ruto & Sang* Charges Order, para. 10.
[43] Yekatom Appeal, para. 9 (fn. 20: citing Judgment, para. 3975).
[44] Confirmation Decision, para. 113. *See also* paras. 92, 98.
[45] Judgment, paras. 3975, 3977-3978. *See* Elements of Crimes, art. 7(1)(d), element 1.
[46] *Contra* Yekatom Appeal, para. 22.

to count 4[47] and could rely on the same evidence to establish other material facts.[48] Yekatom's challenge to the Chamber's finding on his essential contribution in creating life-threatening conditions in Mbaïki despite warning against anti-Muslim violence[49] should be dismissed *in limine* for inappropriately making substantive arguments in a footnote.[50] In any event, Yekatom misrepresents the Judgment which clearly describes the life-threatening conditions he created.[51]

- The findings that the Muslims' departure from Mbaïki was a foregone conclusion, and that Yekatom knew that his Anti-Balaka elements committed 'acts of violence' there[52] were *evidence*—as Yekatom acknowledges[53]—within the scope of the Pre-Trial Chamber's findings on his conduct[54] and his intent, knowledge and the specific *mens rea* elements required for the crimes charged under counts 24-29.[55] Both chambers cited many of the same witnesses.[56] The Yekatom Defence cross-examined witnesses[57] and made submissions on this evidence.[58]

9. Yekatom thus fails to establish that these facts were outside the scope of the charges, or that his ability to prepare his defence in relation to these facts was impaired.[59]

I.2. Ground 1.2: The Chamber properly convicted Yekatom for committing the crimes under counts 1, 4, 5 and 8

10. Yekatom alleges that the Chamber erroneously convicted him as a direct perpetrator under counts 1, 4, 5 and 8 although this mode of liability had not been confirmed by the Pre-Trial Chamber. He also alleges that the Chamber recharacterised counts 4-5 material facts as

[47] Charges AD, para. 56. *See also* *Al Hassan* Regulation 55 AD, para. 94; *Al Hassan* Second Regulation 55 Decision, para. 29. *Contra* Yekatom Appeal, para. 22.
[48] *Al Hassan* Regulation 55 AD, para. 106; *Ruto & Sang* Charges Order, para. 10; 2024 ICC Chambers Practice Manual, para. 62.
[49] Yekatom Appeal, para. 9 (fn. 19).
[50] *Lubanga* Refiling Decision, para. 6.
[51] Judgment, paras. 4346-4350.
[52] Yekatom Appeal, para. 9 (fn. 21: citing Judgment, para. 4365). *See also* Judgment, paras. 3454-3532, *especially* para. 3491.
[53] Yekatom Appeal, para. 9 ("third, *qua* evidence of *mens rea*").
[54] *See e.g.* Confirmation Decision, paras. 133 (finding *inter alia* that members of Yekatom's group harassed and threatened Muslins in Mbaïki, and Muslims left Mbaïki because they thought that the Anti-Balaka would attack them), 139 (finding that Muslims fled as Yekatom and his group advanced through the Lobaye Prefecture in January, continuing their pattern of crimes and threats, with Yekatom present).
[55] Confirmation Decision, para. 140.
[56] *See e.g.* Judgment, paras. 3595-3609 (citing *inter alia* P-1839, P-1666, P-1823); Confirmation Decision, para. 133 (citing *inter alia* P-1839, P-1666, P-1823).
[57] *See e.g.* P-1666: T-232, pp. 10:21-23:7; P-1839: T-172, pp. 80:23-82:2; P-1823: T-183, pp. 64:11-66:2.
[58] *See e.g.* Yekatom Closing Brief, paras. 490-510.
[59] *Lubanga* AJ, paras. 127-128, 135. *See also* *Prlić et al.* AJ, para. 30.

coercive conduct underpinning those counts, without first providing notice under regulation 55 of the RoC and hearing from the Defence.[60] Yekatom mischaracterises the Chamber's findings and does not show that any purported error should lead to his acquittal of those counts.

11. In claiming that the Chamber convicted him as a direct perpetrator, Yekatom selectively cites the Judgment and overlooks the Chamber's findings that it convicted him for counts 1, 4, 5 and 8 as a direct *co*-perpetrator,[61] which was a charged mode of liability.[62] The Chamber 'concluded' that he "committed [the crimes] jointly with others, within the meaning of Article 25(3)(a)",[63] and recalled this finding when sentencing him.[64] Although it also stated that Yekatom's responsibility was "best captured as a direct perpetrator",[65] and that for these counts, "the mode of responsibility of indirectly committing through others does not fully or meaningfully capture the entirety of [his] conduct […]",[66] this language does not undermine its conclusion convicting Yekatom as a co-perpetrator. The Chamber's reference to direct/indirect perpetration should be viewed as the Chamber's *factual*, rather than *legal*, characterisation of the nature of Yekatom's contributions to the crimes that he and his co-perpetrators committed.[67]

12. This interpretation accords with the Chamber's findings in the Judgment. As a co-perpetrator,[68] Yekatom agreed with his co-perpetrators, including Alkanto, Freddy Ouandjilo (also known as Cœur de Lion) and Habib Beina,[69] to commit the charged crimes, as is implied in the Chamber's findings regarding his instructions to his elements regarding the 5 December

[60] Yekatom Appeal, para. 13.
[61] Judgment, paras. 4025, 4492. *See* Yekatom Appeal, para. 13 (fn. 34: citing Judgment, paras. 4013, 4504, 4535).
[62] Confirmation Decision, para. 99, and p. 103. *See also* Judgment, para. 4007. The Prosecution had requested the Pre-Trial Chamber to confirm Mr Yekatom's responsibility as an "individual, and direct and indirect co-perpetrat[or]" under article 25(3)(a), as well as his responsibility under article 25(3)(b), (c) and (d): DCC, para. 185, and Schedule of Charges, pp. 221, 222, 223.
[63] Judgment, para. 4025 (under the heading "*Conclusion*", emphasis added).
[64] Judgment, para. 4492 (stating that it "recalls that Mr Yekatom is convicted of committing the crimes underlying Counts 1 to 6 and 8 jointly with, or through others, pursuant to Article 25(3)(a) of the Statute"). The reference in this paragraph to commission "through others", appears to refer to the convictions under counts 2, 3 and 6: *see* Judgment, para. 4026.
[65] Judgment, para. 4013.
[66] Judgment, para. 4013.
[67] *But see* Judgment, paras. 4504, 4535 (recalling, when sentencing him, that it had "convicted" him as a direct perpetrator).
[68] A co-perpetrator enters into an agreement or common plan between with other persons to commit crimes or engage in conduct which, in the ordinary course of events, would result in the commission of crimes. The co-perpetrator exercises control over the crimes by virtue of their essential contribution to it and resulting power to frustrate their commission: Judgment, paras. 3872-3873; *Lubanga* AJ, para. 445; *Ntaganda* TJ, paras. 773-774; *Bemba et al.* TJ, paras. 64-71.
[69] Judgment, paras. 36 (finding that Yekatom formed a group over which he assumed control, with Cœur de Lion and Habib Beina), 2669 (noting that after the attack on Boeing Market, Yekatom and Cœur de Lion led one group while Habib Beina and Alkanto led the other), 4013 (finding that other elements in his group who committed crimes on his instructions included Alkanto, Cœur de Lion and Habib Beina).

2013 attack and their subsequent conduct which resulted in the commission of crimes.[70] His essential contribution and ability to frustrate the commission of the crimes is established in the Chamber's findings regarding his role in the crimes as the founder and chief of his group and the one providing instructions,[71] his planning and reconnaissance for the attack,[72] and his launching of the attack and participation in it.[73] While some of his contributions were of an indirect nature, because he instructed and led other elements who physically committed the crimes (relevant to counts 2, 3 and 6),[74] others were direct because his own conduct was relevant to satisfying the material elements of the crimes (counts 1, 4, 5 and 8).[75] His *mens rea* is established in the finding that Yekatom intended the crimes, and knew that his elements would commit crimes. Moreover, he knew that his instructions to his elements would result in the commission of crimes.[76]

13. The Chamber's awareness that direct perpetration was not a charged mode of liability renders it even less likely that it convicted him under this mode. It expressly recalled that Yekatom was charged with committing the crimes in counts 1-6 and 8 "jointly with or through others" under article 25(3)(a).[77] It previously recognised this phrase as capturing the distinct modes of liability of co-perpetration, indirect perpetration and indirect co-perpetration.[78]

[70] Judgment, paras. 4010 (finding, *inter alia*, that Yekatom chose some of his elements and instructed them to move towards Bangui; he instructed them concerning the 5 December 2013 attack that they were to fight the Seleka, which included targeting sectors where Muslims were to be found; he instructed them to attack the Muslim traders at the Boeing Market; and it was on his instructions that his elements carried out the attack on the Boeing Market and Boeing Mosque), 4012 (Yekatom was aware of how his elements would interpret his instructions to 'target those sectors where Muslims were to be found' and that this would be understood as also targeting Muslim civilians), 4013 (Yekatom instructed elements including Alkanto, Cœur de Lion and Habib Beina to target the Boeing Market and Boeing Mosque and they acted on his instructions).
[71] Judgment, paras. 4012-4013.
[72] Judgment, para. 4010.
[73] Judgment, paras. 4010, 4012-4013.
[74] Judgment, paras. 4013, 4026.
[75] Judgment, paras. 4013, 4025. For count 1, Yekatom's reconnaissance of Boeing Market, instructions to his elements and launching of the attack by firing his pistol were relevant to showing that he "directed an attack" within the meaning of the first element of article 8(2)(e)(i) because he "selected the intended target and decided on the attack": *see* Elements of Crimes, art. 8(2)(e)(i), element 1; *Ongwen* TJ, para. 2758; *Ntaganda* TJ, paras. 744, 917; Judgment, para. 3788. For count 4, for which different types of conduct may amount to coercive acts resulting in the forcible displacement of the victim, Yekatom achieved this by, *inter alia*, personally launching the attack and participating in it as the group's chief, and instructing the group to target sectors where Muslims were to be found: *see* Elements of Crimes, art. 7(1)(d), element 1; *Ntaganda* TJ, para. 1047; Judgment, paras. 3798, 4010, 4012. For count 5, the perpetrator's order to displace a civilian population under article 8(2)(e)(viii) may be achieved via different means, including Yekatom's instructions to his elements to 'target those sectors where Muslims were to be found', his launching of the attack, and his participation in the attack as the chief of the group: *see* Elements of Crimes, art. 8(2)(e)(viii), element 1; *Ntaganda* TJ, paras. 1081-1082; Judgment, paras. 3805, 4009-4012. All of this conduct was relevant to count 8 (persecution) which was based on the same conduct underlying counts 1-6: *see* Judgment, para. 3998.
[76] Judgment, paras. 4014-4016.
[77] Judgment, para. 4007. *See* Confirmation Decision, p. 103. Yekatom was also charged in the alternative with ordering the commission of these crimes under article 25(3)(b).
[78] Charges Decision, paras. 23-24.

Moreover, it only set out the applicable law relevant to these three forms of commission, and not commission as an individual.[79] In the circumstances, since Yekatom was convicted on the basis of a charged mode of liability of co-perpetration, no error arises and this sub-ground of Yekatom's appeal should be dismissed.

14. That said, the Chamber's simultaneous use of the terms "commission jointly with others" and "direct perpetration" in relation to counts 1, 4, 5 and 8 may appear to lack clarity. However, even if it is considered that the Chamber convicted Yekatom of these counts as a direct perpetrator, which was not a charged mode of liability, this was not an error that materially impacted the Judgment, much less an error that should lead to an acquittal under counts 1, 4, 5 and 8.[80] In particular, Yekatom fails to demonstrate that his procedural rights under article 67(1) were effectively violated such that the Judgment would have been substantially different had the Chamber not erred.[81]

15. The Confirmation Decision put Yekatom on notice of the relevant conduct underlying his alleged criminal responsibility which the Chamber relied upon in convicting him,[82] including that he "was involved in the preparation of the 5 December 2013 Attack, led his Anti-Balaka elements in this attack and its aftermath, and issued patently illegal instructions", and that his own orders caused the displacement of Muslims from Boeing and Cattin.[83] Yekatom comprehensively defended against these allegations during the trial, including the allegations of his personal role in the commission of crimes under counts 1, 4, 5 and 8.[84] He does not identify any additional factual element he would have had to address, or further preparations he would have had to undertake to defend against circumstances relevant to the charged crimes, had he been given notice under regulation 55(2) of a possible recharacterisation of his liability

[79] Judgment, paras. 3869-3875 (setting out the elements of commission under article 25(3)(a) as an indirect perpetrator, co-perpetrator and indirect co-perpetrator).
[80] *Contra* Yekatom Appeal, paras. 13-16.
[81] *Al Hassan* Regulation 55 AD, para. 65. *Contra* Yekatom Appeal, paras. 14-16, 21-24.
[82] *Al Hassan* Regulation 55 AD, para. 54; *Katanga* Regulation 55 Decision, para. 22; *Leka v. Albania*, para. 74.
[83] Confirmation Decision, paras. 83-92, 94, 98.
[84] *Katanga* Regulation 55 Decision, para. 23. For example, the Defence argued, *inter alia*, that Yekatom was not "Anti-Balaka"; he did not order his elements to target Muslim civilians; his elements were not at the Boeing Market on 5 December 2013; the evidence was insufficient to establish that Yekatom and his Anti-Balaka group directed attacks against the Muslim civilian population of Boeing/Cattin, were present at the Boeing Market on 5 December 2013, targeted civilians, caused the Muslim residents of Boeing/Cattin to leave, or targeted the Boeing Mosque; P-1339's evidence regarding Yekatom and his elements' participation in the 5 December 2013 attack was unreliable: Yekatom Closing Brief, paras. 122-135, 217-262, 326-349, 355-418.

to direct perpetration.[85] Nor does he show how his defence strategy or cross-examination of witnesses would have been different or was materially impaired.[86]

16. The Chamber appropriately assessed Yekatom's role and conduct holistically,[87] relying on the same factual matrix confirmed by the Pre-Trial Chamber and relied upon by the Prosecution.[88] It determined Yekatom's liability by examining his degree of control over the crime,[89] which is the theory of liability intrinsic to[90] all forms of commission under article 25(3)(a).[91] The Chamber's analysis undoubtedly establishes that Yekatom *committed* the crimes charged in counts 1-6 and 8, and that his conduct satisfied more than one charged form of commission under article 25(3)(a)—namely, co-perpetration (as shown above),[92] but also indirect perpetration. For indirect perpetration,[93] the Chamber found that Yekatom "had control over the crimes committed by the elements in his group", was the "founder and chief of his group, as well as the one providing instructions and himself participating in the Bangui Attack", and knew how his elements would interpret his instructions to target 'all sectors' where Muslims were to be found, and that his instructions would be interpreted as also targeting Muslim civilians.[94] The Chamber found that his elements carried out his instructions and committed the charged crimes.[95] Subsequent findings in the Judgment also reinforce the Chamber's findings of Yekatom's control over his elements in committing crimes.[96]

[85] *See* *Leka v. Albania*, para. 78.
[86] *Al Hassan* Regulation 55 AD, para. 60; *Renzaho* AJ, para. 125.
[87] Judgment, paras. 4008-4024.
[88] Confirmation Decision, paras. 84-92; Prosecution Trial Brief, paras. 356-388, 393-409; Prosecution Closing Brief, paras. 417-521, 540-597.
[89] Judgment, paras. 4008-4013 (assessing Yekatom's liability under the heading "Control over the crimes or control of person(s) who exercise the material elements of the crime), especially 4012 (finding that Yekatom had control over the crimes committed by the elements in his group).
[90] *See* *Pélissier and Sassi v. France*, paras. 58-61 (assessing whether the mode of liability with which the applicant was convicted was intrinsic to the one charged, in which case notice to the applicant would not have been required). *See further* *Katanga* Regulation 55 AD, Judge Tarfusser Diss. Op., para. 11 (finding that a shift between the modes of responsibility listed respectively in articles 25 and 28 does not trigger the application of regulation 55 of the RoC). *See also* paras. 12-20.
[91] *Ongwen* AJ, para. 629; *Bemba et al.* AJ, para. 810; *Lubanga* AJ, paras. 469, 473; *Katanga* CD, paras. 485-486, 488; *Abu Garda* CD, para. 152. *See e.g.* *Abd-Al-Rahman* TJ, para. 793; *Ntaganda* TJ, para. 774; *Katanga* TJ, para. 1396; *Ruto & Sang* CD, paras. 291-292; *Kenyatta* CD, para. 296; *Banda & Jerbo* CD, para. 126; *Bemba* CD, para. 347. *See further* *Ntaganda* AJ, Judge Ibáñez Carranza Sep. Op., para. 232.
[92] *See above* para. 12.
[93] An indirect perpetrator exercises control over another person through whom they control and carry out the crimes: *Ntaganda* TJ, para. 773; *Lubanga* AJ, para. 465; *Katanga* TJ, para. 1394; *Katanga* CD, para. 487.
[94] Judgment, para. 4012. *See also* para. 4494 ("Mr Yekatom was the founder and chief of the group that carried out the attack on Boeing and Cattin on 5 December 2013. In this regard, he exercised a leading role and unlimited control over his group and the crimes committed by the elements in it. Notably, on 4 December 2013, he chose some of his elements and instructed them to move towards Bangui, he provided instructions on how to carry out the attack, and it was pursuant to his instructions that his elements attacked the Boeing Market, the Boeing Mosque and Cattin").
[95] Judgment, para. 4013.
[96] *See e.g.* Judgment, paras. 4235, 4242 (Yamwara), 4353, 4355, 4358-4359 (PK9-Mbaïki).

Importantly, the Chamber already found that Yekatom's responsibility could be described as an indirect perpetrator, as it found for counts 2, 3 and 6,[97] but concluded that under counts 1, 4, 5 and 8 his direct involvement would be "fully or meaningfully" better captured in its entirety as a direct perpetrator.[98] Thus, if the Chamber had not convicted him as a direct perpetrator for counts 1, 4, 5 and 8, it found that the facts also establish his responsibility as an indirect perpetrator.[99] This would not have impacted the sentence because the Chamber would have relied on the same underlying conduct to assess his degree of participation and intent.[100]

17. While Yekatom additionally claims that he suffered prejudice arising from reliance on "unpleaded material facts",[101] this is based on the premise that certain facts were unpleaded, which is incorrect for the reasons shown above.[102]

18. Thus, even if, *arguendo*, the Chamber had erred in convicting Yekatom as a direct perpetrator, Yekatom has not shown that his rights were *effectively* violated such that the Judgment would have been substantially different. But even if there was an error with impact, the remedy in this instance is not to acquit Yekatom of counts 1, 4, 5 and 8. This would fail to do justice in this case and stand in stark contrast to the Chamber's findings which clearly establish Yekatom's responsibility for *committing* the crimes in counts 1, 4, 5 and 8. Nor should the Appeals Chamber remand the matter to another chamber. Rather, the Appeals Chamber should exercise its power under article 83(2)(a) to amend the Judgment to either: (i) affirm the findings of the Chamber convicting Yekatom as a co-perpetrator and enter any further legal conclusions it considers necessary based on those findings;[103] or (ii) convict Yekatom under the alternatively charged mode of indirect perpetration under article 25(3)(a), for which it may rely on the existing findings in the Judgment (as set out above) and enter any legal conclusions without reviewing the evidence *de novo*.[104] This will allow the Appeals Chamber to correct the alleged error while remaining faithful to the Chamber's underlying findings and is not to Yekatom's detriment.

---

[97] Judgment, para. 4026.
[98] Judgment, paras. 4013, 4026.
[99] Judgment, paras. 4013, 4025-4026.
[100] *See* Judgment, paras. 4493-4499, 4504, 4515, 4535, 4545, 4549.
[101] *Contra* Yekatom Appeal, para. 14.
[102] *See above* section I.1. (paras. 6-9).
[103] Judgment, paras. 4025, 4492. *See above* para. 14.
[104] *See e.g. Mladić* AJ, para. 17; *Karadžić* AJ, para. 16. *See also Mustafa* AJ, paras. 19-20; *Case 002/02* AJ, para. 24; *Ongwen* AJ, para. 81 (recalling, albeit in a slightly different context, that "nothing in the Statute" contemplates an automatic "*de novo* review of the evidence on the record by the Appeals Chamber, in total disregard of the trial chamber's evidentiary assessment, unless there are specific reasons to do so").

19. Finally, Yekatom's additional claim that the Chamber recharacterised the material facts for counts 4-5 as coercive conduct underpinning those counts, without first giving notice under regulation 55(2), is misconceived.[105] As shown above, these facts were within the scope of the charges, and it was not a legal recharacterisation for the Chamber to rely on the same evidence underpinning the same facts for a different count (count 4) to the Pre-Trial Chamber. The Chamber was entitled to assess the facts and evidence differently to the Pre-Trial Chamber.[106]

I.3. Ground 1.3: The Chamber did not erroneously re-shape the material facts of Yekatom's liability for the PK9-Mbaïki axis charges

20. Yekatom argues that the Chamber convicted him for the PK9-Mbaïki axis charges (counts 24-28) on the basis of a "radically transformed" co-perpetration case based on a common plan that was drastically narrowed in scope,[107] violating his rights to notice and to effective preparation.[108] He again misconstrues the manner in which the Chamber was bound by the charges. A trial chamber may not *exceed* the facts and circumstances described in the charges when rendering its article 74 decision,[109] to guarantee the accused's rights to notice of the charges and adequate time and facilities to prepare their defence. The Chamber did not exceed the charges in this case. It convicted Yekatom on the basis of facts within the scope of the charges that were specific to the localities and incidents charged and for which he received ample notice.[110] The case law that Yekatom cites does not assist him.[111] Rather, it shows that charges should not *omit* material facts only for the Prosecution to mould its case at trial as new facts emerge from the evidence,[112] which was not the case here. In any event, Yekatom does not identify any prejudice as a result of this alleged error.[113] Yekatom otherwise mischaracterises the aspects of the case that he claims were "radically transformed" or "entirely new":[114]

- The Chamber did not convict Yekatom on the basis of a "drastically narrowed" common plan than the one charged.[115] It properly convicted Yekatom as an indirect co-perpetrator

[105] *Contra* Yekatom Appeal, para. 13.
[106] *Contra* Yekatom Appeal, para. 13. *See above* para. 8 (fourth bullet point).
[107] Yekatom Appeal, paras. 17-20.
[108] Yekatom Appeal, para. 20.
[109] Statute, art. 74(2); *Ongwen* AJ, para. 298; *Ntaganda* AJ, para. 324.
[110] *See above* paras. 7-8.
[111] *Contra* Yekatom Appeal, para. 20 (fn. 56: citing *Al Hassan* Regulation 55 AD, para. 102; *Kupreškić et al.* AJ, para. 92).
[112] *Al Hassan* Regulation 55 AD, para. 102; *Kupreškić et al.* AJ, para. 92.
[113] *Contra* Yekatom Appeal, para. 20.
[114] *Contra* Yekatom Appeal, para. 19.
[115] *Contra* Yekatom Appeal, para. 19.

for the crimes committed in that period (counts 24-28) on the basis of an agreement that it found to exist between the co-perpetrators at the time of his Anti-Balaka group's advance along the PK9-Mbaïki axis.[116] This was within the scope of the charges which alleged, *inter alia*, that Yekatom and his elements organised, trained and prepared for the 5 December 2013 attack in which Yekatom instructed them to, *inter alia*, "kill Selekas and Muslims", and that in a continuation of their targeting of the Muslim population, they continued the same pattern of crimes in January 2014 in the Lobaye Prefecture as during the 5 December 2013 attack.[117] Since the Pre-Trial Chamber had confirmed alternate modes of liability for *each* crime,[118] it was open to the Chamber to convict Yekatom under different modes of liability for each crime, making findings on the elements specific to each mode.

- Similarly, while the Pre-Trial Chamber relied on 12 allegations to assess Yekatom's essential contributions,[119] the Chamber did not err in relying on two contributions to convict him, as these were the two relevant to counts 24-28 for which he was convicted as an indirect co-perpetrator.[120] In any event, even a single essential contribution may satisfy the required element of indirect co-perpetration, as the Prosecution asserted.[121]

- The Chamber did not err in naming Alkanto as a co-perpetrator even though he was not named in the charges.[122] The charges must identify the co-perpetrators but do not need to do so by name.[123] The charges alleged that Yekatom's co-perpetrators were "members of Yekatom's Group including members of his command, such as deputies Ouandjio and Habib Beina, and other FACA members".[124] This was sufficiently specific information regarding the role and position of alleged co-perpetrators, including Alkanto.

21. Yekatom's arguments under this sub-Ground should be rejected.

---

[116] Judgment, paras. 4345-4369, *especially* para. 4356.
[117] Confirmation Decision, paras. 84-87, 113, 129, 139. *See also* Charges Decision, paras. 30-32.
[118] Confirmation Decision, p. 107 (charging him with committing the crimes "jointly with another or through another" under article 25(3)(a) or ordering under article 25(3)(b)).
[119] Charges Decision, para. 34. *See also* Charges AD, para. 56.
[120] *Contra* Yekatom Appeal, para. 19.
[121] Prosecution Trial Brief, para. 355 ("Yekatom's contributions to the Charged Crimes were essential, taken separately or cumulatively").
[122] *Contra* Yekatom Appeal, para. 19. *See* Judgment, paras. 4345, 4356.
[123] *Katanga* TJ, para. 1626; *Brđanin* AJ, para. 430; *Stakić* AJ, paras. 69-70. *See also e.g. Ntaganda* TJ, para. 808.
[124] DCC, para. 186; Confirmation Decision, paras. 83, 87, 99. The Appeals Chamber confirmed in this case that the information contained in paragraphs 185-233 of the DCC provided Yekatom with precise details regarding his alleged role, including the alleged common plan, and his contributions to it: Charges AD, para. 56 (fn. 125).

I.4. The alleged errors would not have impacted the Judgment

22. Even if the Chamber had erred as alleged by Yekatom, these errors would not have materially affected the Judgment and/or would not lead to an acquittal.[125] Yekatom's general argument of unfair prejudice to the fairness of proceedings is insufficient to show actual prejudice or impact.[126] As shown above, Yekatom received sufficient notice of the charges and his culpable conduct and was able to prepare, as reflected in the Defence's cross-examination of witnesses and submissions at trial. Furthermore, his allegations of bias by the Chamber are unfounded and should be dismissed.[127] The Chamber did not "exceed, rework and/or re-characterise the factual parameters of the confirmed charges", let alone for the purpose of avoiding acquitting Yekatom.[128] Finally, his convictions for counts 1, 4, 5 and 8 should not be overturned but should instead be corrected, as shown above. His request to reverse his convictions is without merit.[129]

23. For the reasons set out above, Ground 1 of Yekatom's Appeal should be rejected.

II. Ground 2: The Chamber correctly attributed responsibility to Yekatom

II.1. Ground 2.1: The Anti-Balaka constituted an organisation within the meaning of article 7 and included Yekatom's group

II.1.a. The Chamber correctly convicted Yekatom for article 25(3)(a) liability

24. Yekatom alleges that the Chamber erred in law in ascribing to him and his alleged group the collective motives and patterns of conduct of the Anti-Balaka, thereby conflating its findings on contextual elements (article 7(2)(a)) with those on modes of liability (article 25).[130] Yekatom frames as legal errors what are in substance factual disagreements with the Chamber's assessment of evidence. His submissions fundamentally misrepresent the basis for his conviction: the Chamber correctly convicted him pursuant to article 25(3)(a) and did not impute liability to him or his group simply based on Anti-Balaka membership or association. Yekatom's unsubstantiated submissions fail to show any error in the Chamber's approach.

[125] *Contra* Yekatom Appeal, paras. 21-24.
[126] Yekatom Appeal, para. 21.
[127] Yekatom Appeal, para. 23.
[128] *Contra* Yekatom Appeal, para. 23.
[129] *Contra* Yekatom Appeal, para. 24.
[130] Yekatom Appeal, paras. 25-49.

25. The Chamber correctly assessed Yekatom's liability under article 25(3)(a),[131] the primary alternative mode of liability confirmed by the Pre-Trial Chamber.[132] It correctly articulated and applied the requisite legal elements,[133] and entered convictions for Yekatom explicitly and exclusively pursuant to article 25(3)(a).[134] This is confirmed further in the Chamber's assessment of Yekatom's participation and intent for the purposes of sentencing.[135] There is nothing in the Chamber's assessment of Yekatom's criminal liability that suggests he was convicted, formally or in substance, under article 25(3)(d) for intentionally contributing to the commission of crimes by the Anti-Balaka acting pursuant to a common purpose.[136]

26. Furthermore, Yekatom's assertion that the Chamber grounded its conclusions on his individual criminal responsibility in findings on the contextual element of crimes against humanity under article 7(2)(a) or its corresponding legal test is unfounded.[137] The Chamber properly set out the applicable law for both articles 7 and 25(3)(a)[138] and made separate findings under each applying the appropriate tests.[139] The Chamber's conclusions on Yekatom's individual criminal responsibility are based on a careful assessment of the evidence relevant to him and the elements under his control.[140] For instance, in evaluating his responsibility for the crimes at Yamwara, the Chamber specified that it relied on Yekatom's degree of control, his presence at the location, his direct interactions with relevant individuals, his statements, and his approval of the actions of his elements.[141] None are "repurpose[d] findings concerning the Anti-Balaka's supposed unity as a movement".[142]

27. Specifically, Yekatom alleges that, in assessing his discriminatory intent or responsibility for individual crimes, the Chamber erred by ascribing to him or his group the collective motives and patterns of conduct of the Anti-Balaka.[143] However, rather than engaging

---

[131] Judgment, para. 3886.
[132] Confirmation Decision, paras. 99, 125, 140, 155, and p. 103.
[133] Judgment, paras. 4008-4024 (Bangui), 4241-4276 (Yamwara), 4345-4368 (PK9-Mbaïki). For the Chamber's articulation of the applicable law under article 25(3)(a), *see* paras. 3869-3875. Yekatom does not challenge the legal requirements set out by the Chamber.
[134] Judgment, paras. 4007, 4025-4026 (Bangui), 4233, 4277 (Yamwara), 4344, 4369 (PK9-Mbaïki), 4846.
[135] Judgment, paras. 4492, 4504, 4535, 4551, 4605.
[136] *Contra* Yekatom Appeal, paras. 25, 28, 30-34, 48.
[137] *Contra* Yekatom Appeal, paras. 35, 37-38, 45–46.
[138] *Compare* Judgment, paras. 3769-3779 (contextual element under article 7) *with* paras. 3869-3875 (commission jointly with another or through another under article 25(3)(a)).
[139] *Compare* Judgment, paras. 3908-3946 (contextual element under article 7) *with* paras. 4007-4026, 4233-4277, 4344-4369 (Yekatom's individual criminal responsibility under article 25(3)(a)).
[140] Judgment, paras. 4007-4026, 4233-4277, 4344-4369. Regarding Yekatom's responsibility for the crimes along PK9-Mbaïki: *see further below* para. 73.
[141] Judgment, para. 4241.
[142] *Contra* Yekatom Appeal, para. 45.
[143] *Contra* Yekatom Appeal, paras. 25, 35, 38-41, 43-44, 48-49.

with the factual findings in the Judgment, Yekatom attributes to the Chamber conclusions that it did not reach or otherwise misrepresents its analysis:

28. *First*, the Chamber did not infer Yekatom's discriminatory intent "based on his alleged membership" in the Anti-Balaka alone.[144] As set out in detail in response to Yekatom's ground 2.7 below, the Chamber reasonably found that 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".[145] Yekatom disregards a range of factual findings relied on by the Chamber in support of this conclusion, namely that he did not distinguish between Seleka and Muslim civilians in giving instructions;[146] expressly instructed the elements under his command to attack Muslim civilians;[147] personally participated in related attacks which targeted not only Seleka members, but also Muslim civilians;[148] and knew that, as a consequence of his specific instructions resulting in the targeting and killing of Muslim civilians, the latter would be driven from the areas they attacked.[149] None of these findings hinge on evidence of Yekatom's association to the Anti-Balaka or that of his group.

29. *Second*, Yekatom makes general or abstract claims that (i) the Chamber treated "the mere presence of Anti-Balaka in an area as sufficient to attribute crimes […] to the Anti-Balaka" and, in turn, to his group on the basis of their mere association to the movement;[150] and (ii) thereby characterised him as a 'principal perpetrator' in relation to all the crimes for which he was convicted.[151] He provides a single sentence referring to the Cattin killing, the dislocation from Cattin and Boeing to PK5 as well as from the PK9-Mbaïki axis, and persecution as purported examples, but gives no further explanation or references to impugned findings.[152] As such, Yekatom's unsubstantiated submissions should be dismissed summarily. In any event, the claim that the Chamber held him responsible based on association or proximity is entirely divorced from the Judgment and the Chamber's careful approach to attribution, including for

[144] *Contra* Yekatom Appeal, para. 40. *See also* paras. 41, 43-45, 48-49.
[145] Judgment, para. 48. *See below* section II.7 (paras. 162-200).
[146] Judgment, para. 1305, fn. 3503 (referring to findings in sections IV.B.2, IV.B.3.i, IV.D.3, IV.E.1-IV.E.3).
[147] Judgment, para. 1305, fn. 3504 (referring to findings in sections IV.B.2, IV.B.3.i, IV.E.1-IV.E.3). Yekatom's related claim that the Chamber erred in finding that he issued instructions to attack Muslim civilians is addressed in response to Yekatom's Ground 2.3. *See below* section II.3 (paras. 77-99). *Contra* Yekatom Appeal, para. 42.
[148] Judgment, para. 1305.
[149] Judgment, para. 1305, fn. 3506 (referring to findings in sections IV.B.5, IV.E.6).
[150] Yekatom Appeal, para. 49.
[151] Yekatom Appeal, para. 49.
[152] Yekatom Appeal, para. 39.

the crimes Yekatom identified,[153] as also set out in response to Yekatom's grounds 2.2, 4.4, and 4.5.[154]

II.1.b. The Anti-Balaka constituted an organisation within the meaning of article 7 and included Yekatom's group

30. Yekatom further suggests under this ground that the Chamber erred in considering the Anti-Balaka as unified or coordinated.[155] In analysing the contextual elements of war crimes and crimes against humanity, the Chamber reasonably concluded that the Anti-Balaka formed one movement.[156] The Chamber established based on its prior factual findings that, while initially self-defence and FACA groups formed separately, these groups started out with a common enemy and increasingly coordinated their activities, thereby "essentially forming o*ne movement*" that came to be known as the Anti-Balaka.[157]

31. In its assessment of the existence of an armed conflict, the Chamber further held that the Anti-Balaka movement was organised and had all the relevant bearings to constitute *one armed group* for the purposes of article 8,[158] based *inter alia* on (i) the Anti-Balaka gaining in structure geared towards armed action;[159] (ii) their use of weapons such as makeshift and bladed weapons, hunting rifles, service weapons retained by FACA members, and weapons seized in hostilities with the Seleka;[160] (iii) their ability to move troops, source and pull elements to advance with a unified military strategy;[161] and (iv) the resulting several large-scale coordinated attacks demonstrating their operational capacity.[162]

---

[153] Killing of a Muslim man in Cattin: Judgment, paras. 2668-2673 (attributing the killing to Yekatom's elements, based on evidence of the itinerary of Yekatom's group and the timing of the killing, combined with the absence of evidence that other Anti-Balaka groups were present that morning). *See further below* section IV.4 (paras. 308-312). Dislocation from Cattin/Boeing to PK5: Judgment, paras. 2749-2757 (finding that the majority of Muslims of Boeing and Cattin fled to PK5 in the context of the attack by Yekatom's group on Boeing and Cattin, based on testimony from Muslims who linked their flight to events attributed to Yekatom's group and the absence of evidence of other groups present in Boeing and Cattin on 5 December 2013). *See further below* section IV.5 (paras. 313-319). Dislocation from the PK9-Mbaïki axis: *see below* para. 73. Persecution: Judgment, paras. 3999, 4001-4002, 4004, 4006, 4223-4227, 4229-4230, 4337, 4339-4341, 4343 (attributing the conduct underlying the persecution convictions to Yekatom and/or his elements based on earlier findings, and reconfirming that Yekatom and his group shared the perception that the Muslims in the CAR were collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka).
[154] *See below* paras. 72-75; section IV.4 (paras. 308-312); section IV.5 (paras. 308-312).
[155] Yekatom Appeal, paras. 36-38, 40. Similar arguments are introduced under Yekatom's ground 2.2: paras. 83-86.
[156] Judgment, paras. 3894, 3910 (citing para. 43). *See also* paras. 1059-1209, *especially* paras. 1208-1209.
[157] Judgment, para. 43 (emphasis added).
[158] Judgment, para. 3897.
[159] Judgment, para. 3895 (citing paras. 41-42). *See also* paras. 1106, 1144, 1151.
[160] Judgment, para. 3895 (citing para. 44). For the Chamber's discussion on evidence regarding the Anti-Balaka's use of weapons, *see e.g.* paras. 1088, 1090, 1097, 1125, 1170, 1177, 1184, 1190, 1206.
[161] Judgment, para. 3896 (citing *e.g.* para. 50).
[162] Judgment, para. 3897. *See also* paras. 54, 69, 72, 81, 2394-2406.

32. As set out in detail in response to Ngaïssona's ground 2.4, the Chamber correctly and reasonably found that "the Anti-Balaka had sufficient bearings of an organisation for the purposes of finding an organisational policy within the meaning of article 7 of the Statute",[163] based on detailed factual findings.[164] In particular, far from having "ignored the temporal development and heterogeneity of the movement",[165] the Chamber carefully assessed the organisation's evolution and correctly held that the Anti-Balaka need not have been "ideologically homogenous at any stage of the events".[166] Yekatom's arguments on the designation of the Anti-Balaka as an organisation should be rejected for the same reasons as set out in response to Ngaïssona's ground 2.4.[167]

33. As further detailed in response to Yekatom's grounds 2.2 and 2.4 below, the Chamber reasonably found that Yekatom and his group were part of the Anti-Balaka and that he exercised control over his group.[168] The Chamber was not required to determine the precise moment at which Yekatom became, or was perceived as, a member of the Anti-Balaka, as long as it is demonstrated that at the time of the commission of the crimes he acted jointly with or through Anti-Balaka elements.[169]

34. In sum, Yekatom fails to demonstrate any legal or factual error in either his conviction under article 25(3)(a) or the Chamber's determination that the Anti-Balaka was an organisation within the meaning of article 7. Ground 2.1 should therefore be dismissed.

II.2. Ground 2.2: The Chamber correctly found that Yekatom was a member of the 'Anti-Balaka'

II.2.a. The Chamber reasonably found that Yekatom's group was part of the Anti-Balaka

35. The Chamber reasonably found that Yekatom was the leader of an active group of elements which was seen as and understood to be part of the Anti-Balaka.[170] Even though a chamber is not required to articulate every step of its reasoning,[171] the Chamber did so, consistently listed the evidence it considered, and explained its reasoning, including by cross-

[163] Judgment, para. 3926. *See below* section VII.4 (paras. 602-633).
[164] *See below* paras. 608-615. *See also* Yekatom Appeal, paras. 36-37.
[165] Yekatom Appeal, para. 40.
[166] Judgment, para. 1624. *See also* paras. 1216, 1526, 1581. *See further below* paras. 614-615.
[167] *See below* section VII.4 (paras. 602-633).
[168] *Contra* Yekatom Appeal, paras. 38-39. *See below* sections II.2 (paras. 35-76), II.4 (paras. 100-135).
[169] *Contra* Yekatom Appeal, paras. 42-43.
[170] Judgment, para. 63. *See also* section IV.A.7.iii.a.ii ("Mr Yekatom's group within the Anti-Balaka"), paras. 1619 *et seq*. *Contra* Yekatom Appeal, para. 50.
[171] Judgment, para. 136.

referencing to its earlier sections and conclusions, as shown below. While Yekatom disagrees with the totality of the Chamber's findings and its careful assessment of the evidence, he shows no error.

36. The Chamber engaged with and dismissed Yekatom's arguments—which he now repeats—namely that (i) Yekatom was not an Anti-Balaka; (ii) he established a separate, FACA-based movement called '*Révolution des forces armées centrafricaines pour le peuple*' ("RFACPP"); and (iii) he wanted to restore security, administrative institutions, and protect the population,[172] referring to its earlier twofold conclusions.[173] The Chamber explained that, on the one hand, the Anti-Balaka comprised self-defence groups which had a common core objective: to expel Michel Djotodia and the Seleka from power in the CAR.[174] On the other hand, the Chamber assessed that the ideological or political motivations of singular individuals or self-defence groups did not impede them from coordinating their actions around this core overriding objective, and were therefore not conclusive to consider whether they belonged to the Anti-Balaka or not.[175] The Chamber reasonably considered that the various Anti-Balaka groups did not have to be a "monolithic or singular entity and/or ideologically homogenous at any stage of the events" for them to still coordinate their actions around the core objective.[176] Against this backdrop, it concluded that Yekatom's purported individual motivations or objectives did not negate his core objective of ousting Michel Djotodia and the Seleka,[177] which brought him under the Anti-Balaka umbrella.[178]

37. This is further supported by the Chamber's findings that Yekatom coordinated with other Anti-Balaka groups, including in the context of the Bangui attack.[179]As the evidence makes clear, "regardless of the claimed independence or political character of Mr Yekatom's group, it presented itself on the same day, at the same time, armed, and from a location that closed the circle around Bangui, and proceeded towards attacking known locations of the Seleka, on instructions from Ngremangou, who was communicating with Maxime Mokom."[180]

---

[172] Judgment, para. 1621 (citing Yekatom Closing Brief, paras. 217-262, 351-354, 682-686).
[173] Judgment, para. 1624 (citing paras. 1210-1211, 1526).
[174] Judgment, paras. 1216, 1624.
[175] Judgment, para. 1624 (citing paras. 1210-1211).
[176] Judgment, paras. 1216, 1526, 1581, 1624.
[177] Judgment, paras. 1526, 1624, 1640. *See also* paras. 36, 978, 987-988, 1643 (citing CAR-OTP-2065-3180, at 00:00:55-00:01:27: "Mr Yekatom makes clear that their objective is Michel Djotodia's removal from power, that they cannot leave the country to be governed by 'bandits' and that if he did not resign, they must return by force").
[178] Judgment, para. 1624.
[179] Judgment, paras. 71, 73, 1644, 1646, 3901, 3917-3918. *See also* paras. 2350, 2407-2525 (*in particular* paras. 2433, 2502, 2522-2525). *See further below* section II.2.c. (paras. 52-64).
[180] Judgment, para. 2502. *See further below* section II.2.c. (paras. 52-64).

38. Likewise, the Chamber reasonably found that Yekatom and his group continued to be represented by the Anti-Balaka coordination formally led by Ngaïssona in 2014.[181] On the evidence, the Chamber held that no internal Anti-Balaka 'streams' (such as 'north' and 'south') were entirely independent or separate from each other and that they had no impact on the group acting in a coordinated manner, when they had to engage with the transitional government and international forces.[182] The Chamber also addressed and dismissed Ngaïssona's similar assertions on the inner divisions and diffuse nature of the Anti-Balaka.[183]

39. The Chamber's findings are in line with Yekatom's own concessions of being Anti-Balaka. This includes video material of Yekatom introducing himself as "*chef* of the Anti-Balaka movement of the south".[184] Furthermore, in March 2020, in his unsuccessful bid to challenge the admissibility of his case, Yekatom conceded that he was a "zone commander" of the Anti-Balaka. Fully aware of the scope of the charges against him, including the 5 December 2013 Bangui attack, Yekatom argued that "all the zone commanders at the level of Mr Yekatom" were envisioned to be prosecuted before CAR national courts,[185] which he claimed had already prosecuted four Anti-Balaka zone commanders.[186]

40. The Chamber thus reasonably rejected Yekatom's effort to recast his group as 'RFACPP' to distinguish it from the Anti-Balaka, finding that the evidence "does not support the conclusion of a separate movement."[187] Yekatom's various arguments, addressed below, fail to demonstrate that no reasonable trial chamber could have come to this conclusion. His further attempt to distinguish his group from the Anti-Balaka movement because his elements were FACA (as the name 'RFACPP' suggests) has no merit.[188] Indeed, the Chamber found that the broader Anti-Balaka movement also included FACA elements, who created new or joined pre-existing self-defence groups and organised themselves into military-like structures, assuming or sharing command over them.[189] Yekatom's group was no exception.[190]

---

[181] *See e.g.* Judgment, para. 1646.
[182] Judgment, paras. 1625-1627, 1717-1737. *See further below* paras. 628-632.
[183] Judgment, paras. 1622-1623.
[184] Judgment, paras. 988, 3353, 3481 (citing CAR-OTP-2118-0415, at approximately 00:53:30-00:54:43; CAR-OTP-2127-4410, at 4432, lns. 763-764).
[185] Yekatom Admissibility Challenge, para. 44, fn. 51 (referring to para. 51).
[186] Yekatom Admissibility Challenge, para. 51.
[187] Judgment, paras. 988, 1621, 1624.
[188] Yekatom Appeal, paras. 50, 57-58, 71.
[189] Judgment, paras. 41-42. *See also* paras. 1166-1201, 2395.
[190] *NB:* contrary to the Yekatom's claim, his group was not exclusively FACA, but also included civilians ahead of the 5 December 2013 attack, which they trained: Judgment, para. 2524. *See further* paras. 356, 2430, 2457.

II.2.b. The Chamber considered the context in which Yekatom's group was established

i. The Chamber reasonably considered the circumstances of the creation of Yekatom's group

41. Yekatom argues that the Chamber: (i) did not consider the circumstances surrounding Yekatom's exile, such as his collaboration with the new regime until his abduction and detention by the Seleka;[191] (ii) did not set out the exact dates when Yekatom stayed in Zongo (DRC) and returned to CAR;[192] and (iii) having found no link between Yekatom and Maxime Mokom, failed to find that Yekatom's group was independent.[193] Yekatom's arguments misrepresent the Judgment and show no error.

42. *First*, the Chamber referred to evidence on Yekatom's purported arrest at the hands of the Seleka, citing a video in which he claimed "*j'étais parti en banque pour aller prendre mon salaire, et il m'avait arrêté, et j'avais pris fuite pour traverser à Zongo*",[194] as well as evidence by P-0884, P-2232, and P-1172 about Yekatom's detention and release by the Seleka before he fled to Zongo.[195] That the Chamber did not give this information the weight Yekatom desired in concluding that Yekatom's group harboured anti-Muslim animus which Yekatom knew about and shared, shows no error.[196] Instead, the Chamber reasonably considered evidence specifically related to Yekatom's conduct and that of his group and provided reasoned explanations throughout multiple sections.[197]

43. *Second*, the absence of specific dates of Yekatom's stay in Zongo has no impact on the Chamber's conclusion that, upon returning to CAR, he set up a base in Gbangba and prepared for the coordinated armed attack on Bangui in which he participated with other Anti-Balaka members.[198]

44. *Third*, the Chamber found that that Yekatom and Maxime Mokom coordinated indirectly, through Ngremagou[199] and that Maxime Mokom received reports about Yekatom's actions prior to the Bangui attack and afterwards.[200] In any event, the Chamber's conclusion

---

[191] Yekatom Appeal, para. 51.
[192] Yekatom Appeal, para. 52.
[193] Yekatom Appeal, para. 52.
[194] Judgment, para. 2411 (citing CAR-OTP-2065-0716, at 00:00:00-00:02:00).
[195] Judgment, para. 2413, *in particular* fn. 6107.
[196] *Contra* Yekatom Appeal, para. 51.
[197] *See e.g.* Judgment, para. 1305. *See further above* para. 28.
[198] Judgment, paras. 2427-2433. *Contra* Yekatom Appeal, para. 52.
[199] Judgment, para. 2502.
[200] Judgment, paras. 2424, 2426. *See further* paras. 2473-2474. The Chamber also found that Maxime Mokom and Yekatom liaised in other contexts: Judgment, para. 986 (referring to paras. 2485-2522).

that Yekatom acted in concert with other Anti-Balaka groups during the Bangui attack, in a zone of responsibility attributed to him,[201] stands.

ii. Yekatom was aware of Anti-Balaka movements pre-5 December 2013

45. Yekatom challenges the Chamber's findings on his awareness of other Anti-Balaka groups before 5 December 2013, arguing that he was neither aware directly nor through information generally accessible to the public.[202] Yekatom again misrepresents the Judgment and shows no error.

46. The Chamber reasonably found that Yekatom was aware of the Anti-Balaka's advance from the provinces to Bangui.[203] The Chamber found that (i) information on the Anti-Balaka province attacks as of September 2013 and their advance to Bangui was generally known and available through contemporaneous reporting by various media and international statements;[204] and (ii) Yekatom's own involvement in coordinating his group's advance towards Bangui in preparation for the coordinated attack on 5 December 2013.[205] Yekatom's presence in the bush does not contradict this finding,[206] in particular given evidence of his and others' access to radio,[207] his communication with various Anti-Balaka commanders and an Anti-Balaka coordinator,[208] and his direct engagement with Anti-Balaka leaders of other province groups that had advanced to Bangui in view of the impending attack.[209]

47. In any event, even assuming *arguendo* that the Chamber erred in the manner alleged by Yekatom, any such error would not have materially affected his conviction. Yekatom's awareness of Anti-Balaka movements prior to 5 December 2013 is immaterial insofar as it

[201] Judgment, paras. 73, 3901. *See also* paras. 71, 2350, 2488, 2502, 2522-2525.
[202] Yekatom Appeal, paras. 53-56.
[203] Judgment, paras. 55, 1494.
[204] Judgment, paras. 1481, 1489. *See also* paras. 1483, 1488, 2291.
[205] Judgment, para. 1494 (referring to section IV.B.2). *See also* paras. 73, 2525.
[206] *Contra* Yekatom Appeal, para. 56.
[207] *See e.g.* CAR-OTP-2065-2412 (dated 10 December 2013, showing Yekatom's group in the bush with a member holding a radio); CAR-OTP-2065-3893 (showing Yekatom and his group around a table with a radio at the Yamwara base). *See further* Judgment, para. 2193 (referring to evidence of P-2269 listening to the radio in the bush in Gobere).
[208] Judgment, paras. 2489 ("P-2269 said that he was in communication with Mr Yekatom from Gobere and the latter was going to take the route from Mbaïki to Bangui."), 2495-2498 (discussing evidence of communication between Yekatom and Konaté and finding that "information was shared between Mr Yekatom and Konaté" and that "Mr Yekatom's group was coordinating actions with those that Konaté was communicating with.").
[209] Judgment, paras. 2464 ("P-1339 said that once they reached Projet, 'certain chiefs' contacted Mr Yekatom"), 2468-2476 (discussing engagement between Yekatom and Sylvestre Yagouzou, Honore Nganafio alias 'Modibo', and other Anti-Balaka chiefs in Projet).

concerns his group's association with the Anti-Balaka[210] and his responsibility under article 25(3)(a) for the charged crimes committed in the Bangui attack.[211]

iii. The Chamber properly assessed Yekatom's statements

48. Yekatom contends that the Chamber improperly relied on a single video to dismiss his assertion that his group was, or was perceived as, distinct from the Anti-Balaka, without assessing this and other evidence holistically.[212] He disagrees with the Chamber's reasoned assessment, reargues his trial submissions, but fails to show that its findings were unreasonable.

49. The Chamber did not "single[] out one video" in its analysis.[213] Rather, it properly assessed "audio-visual material in which Yekatom states that they are not Anti-Balaka, but soldiers (*'militaries'*)", including the very evidence that Yekatom argues it disregarded.[214] The fact that Yekatom does not agree with the weight the Chamber accorded to this video does not demonstrate any error in the Chamber's finding that Yekatom was merely distinguishing between his trained soldiers and 'uncontrolled elements'.[215] This finding is reasonable in light of the remainder of the video, P-1839 and P-0876's testimony, and the videos in which Yekatom, in discussing the creation of his group, admits that he created the Anti-Balaka movement upon returning to CAR from Zongo in view of ousting the Seleka.[216]

50. Yekatom's claim that one of these videos, recorded in 2015-2016, is not in fact an admission since it referred to the period after he had joined the Anti-Balaka National Coordination in June 2014,[217] is incorrect and was properly considered and dismissed by the Chamber.[218] In the video, Yekatom clearly refers to the creation of his movement several months prior to the 5 December 2013 attack on Bangui, when he returned from Zongo to CAR and spent months in the bush training and arming his group.[219] Further, even if the period of the

[210] Judgment, para. 2521 (finding that its conclusions on Yekatom's coordination with the Anti-Balaka "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."). *See also* paras. 2120-2121.
[211] Judgment, paras. 4007-4024 (the Chamber does not rely on its findings regarding Yekatom's awareness of Anti-Balaka movements at para. 55).
[212] Yekatom Appeal, paras. 57-58.
[213] Yekatom Appeal, para. 57.
[214] Judgment, para. 1643, fn. 4328 (citing CAR-OTP-2065-0396, *in particular* the portion where Yekatom explains that they are FACA and the distinction with the Anti-Balaka). *Contra* Yekatom Appeal, para. 57.
[215] Judgment, para. 1643.
[216] Judgment, para. 1643 (referring to paras. 987-988, fns. 2555 (citing CAR-OTP-2065-0716), 2562 (citing CAR-OTP-2118-0415)). *See also* paras. 3306, 3353. For P-1839, *see below* para. 51.
[217] Yekatom Appeal, para. 58.
[218] Judgment, fn. 2562.
[219] Judgment, para. 2429 (referring to a video in which Yekatom said that he had been in the bush for about seven months). *See also* para. 73.

video post-dated the 'creation' of his group, no error is shown by the Chamber considering his admissions.

51. Regarding others' perception of Yekatom's group, the Chamber reasonably found that it was seen as and understood to be part of the Anti-Balaka.[220] Yekatom's isolated challenges of the Chamber's treatment of P-1839's testimony[221] misrepresent the evidence and are immaterial to its conclusion given its further reliance on other witnesses.[222] The Chamber explicitly acknowledged that P-1839 used the term 'RFACPP',[223] but found that the witness "also made clear that while at Yamwara, everybody knew and considered them to be Anti-Balaka".[224] The Chamber properly relied on the English translation of P-1839's testimony,[225] which the parties had ample opportunity to review and correct.[226] In any event, a proper reading of P-1839's testimony—including in the French transcript—shows that the witness repeatedly described and referred to Yekatom and members of his group as being Anti-Balaka.[227]

II.2.c. Yekatom's group coordinated with other Anti-Balaka groups

52. The Chamber reasonably found that Yekatom's group coordinated with other Anti-Balaka groups, including in the context of the Bangui attack, based on a wide-range of underlying findings.[228] *First*, Yekatom was among a number of individuals who crossed to Zongo in the months following the Seleka takeover to begin organising with a view to fighting the Seleka.[229] *Second*, there were clear parallels between Yekatom's group's movements[230] and preparations, including arming and training,[231] prior to the Bangui attack, and the coordinated

[220] Judgment, para. 63. *See also e.g.* paras. 1641-1643, 1646. *Contra* Yekatom Appeal, para. 58.
[221] Yekatom Appeal, para. 58 (stating P-1839 admitted that their group was called RFACPP).
[222] *See* Judgment, paras. 1642-1643, 1646.
[223] Yekatom Appeal, para. 58.
[224] Judgment, para. 1641 (citing T-171, pp. 75:4-23, 76:4-77:5; T-173, pp. 4:17-23, 5:25-7:3).
[225] The use of "ne" without "pas" does not constitute a full negation in French, in particular when used by a non-native speaker, and it is apparent from the original French testimony that the witness said "***nous*** *nous considerait comme des Anti-Balaka*" (Trial Hearing, 28-10-2022, at 15:04:16)—which is indeed better reflected in the English transcript. *Contra* Yekatom Appeal, para. 58.
[226] The Parties could correct the transcripts either directly during the testimony, send corrections during each testimony day as agreed by the Parties, or submit a request within 21 days from notification of the edited version of the transcript as per the Directions on the Conduct of the Proceedings, para. 73.
[227] *See e.g.* T-171-FRA, pp. 17:22-17:27, 23:21-24:1, 31:12-14, 45:27-46:5; T-170-CONF-ENG, pp. 13:11-14:4.
[228] Judgment, paras. 71, 73, 1644, 1646, 3901, 3917-3918. *See also* paras. 2350, 2407-2525 (*especially* paras. 2433, 2502, 2522-2525).
[229] Judgment, paras. 951-952, 958, 961, 978.
[230] Judgment, paras. 73, 2428, 2518, 2520, 2524.
[231] Judgment, paras. 73, 2432-2433. The Chamber assessed evidence of Yekatom's group attacking smaller villages to recover weapons and "grow". Judgment, para. 2428. *See also* CAR-OTP-2065-0396, at 01:15-01:42; CAR-OTP-2107-6918; CAR-OTP-2122-2284, at 2286, lns. 27-34.

actions of other Anti-Balaka elements.[232] *Third*, Yekatom's group joined other Anti-Balaka groups outside of Bangui, at Projet,[233] conducted reconnaissance missions,[234] and received instructions in advance of the attack.[235] *Fourth*, Yekatom's group was assigned a specific territorial target and a zone of responsibility,[236] and launched the attack "at the exact same time as the groups in other locations in Bangui at a pre-decided location where the Seleka were supposed to be present."[237] *Fifth*, lines of communication existed between Yekatom and other Anti-Balaka and were used,[238] and Maxime Mokom received reports about Yekatom's actions prior to the Bangui attack and afterwards.[239]

53. Yekatom contests the Chamber's findings, selectively challenging individual strands of its analysis,[240] but, for the reasons identified below, he fails to identify any error.

i. Yekatom's group coordinated with the Anti-Balaka prior to the Bangui attack

54. Yekatom claims that the Chamber failed to identify evidence or reasoning to support its finding that the coordination between his group and other Anti-Balaka began well before November 2013.[241] Yekatom disregards the Chamber's detailed analysis. This includes (i) its findings on Yekatom's group's preparations and movements prior to the Bangui attack: their arming, training,[242] and advance to Bangui;[243] and (ii) its comparison of those actions to its earlier assessment of the planning and movements of other Anti-Balaka groups.[244] Based on the foregoing, it identified clear temporal and operational parallels between the conduct and movements of Yekatom's group and other Anti-Balaka elements, ultimately leading them to present themselves "on the same day, at the same time, armed, and from a location that closed the circle around Bangui" in advance of the coordinated attack.[245] Yekatom fails to demonstrate that no reasonable trial chamber could have come to this conclusion.

---

[232] Judgment, paras. 73, 2142, 2426, 2525. *See also* para. 2132 *et seq*. (detailed findings on the movement of Anti-Balaka elements and groups).
[233] Judgment, paras. 73, 2524. *See also* paras. 2460, 2462-2464, 2468-2470, 2478-2479.
[234] Judgment, paras. 75, 2465-2466, 2524.
[235] Judgment, paras. 73, 75, 2524
[236] Judgment, para. 3901. *See also* para. 2492.
[237] Judgment, para. 2524. *See also* paras. 2502, 2508-2509.
[238] Judgment, paras. 2504, 2522. *See further below* paras. 56-60.
[239] Judgment, paras. 2424, 2426. *See further* paras. 2473-2474. The Chamber also found that Maxime Mokom and Yekatom liaised in other contexts: Judgment, para. 986 (referring to paras. 2485-2522).
[240] Yekatom Appeal, paras. 59-72.
[241] Yekatom Appeal, para. 59.
[242] Judgment, paras. 73, 2430, 2432-2433.
[243] Judgment, paras. 73, 2428, 2518, 2520, 2524.
[244] Judgment, paras. 2123-2124, 2132-2142, 2192, 2221-2224, 2242, 2246-2253.
[245] Judgment, para. 2502. *See also* paras. 73, 2426, 2525.

55. In any event, even assuming *arguendo* that the Chamber erred in finding that coordination began well before November 2013, any such error would not have materially affected the Chamber's broader findings on Yekatom's group's coordination with other Anti-Balaka groups, including during the Bangui attack—a conclusion independently supported by a wide-range of underlying findings.

ii. Yekatom's group coordinated with the Anti-Balaka during the Bangui attack

Anti-Balaka communication

56. Yekatom contends there was "an absence of communications" between him and other Anti-Balaka members and argues that the Chamber erred in inferring, or relying on, his communications with Konaté and Ngremangou.[246] Yekatom's arguments misrepresent the Chamber's analysis and the evidence it relied on, and should be dismissed.

57. The Chamber reasonably found that lines of communication existed and were used between Anti-Balaka chiefs and elements across different groups.[247] While the Chamber did not make—nor was required to make[248]—a concrete finding on Yekatom's overall level of communication with other Anti-Balaka elements, it relied on multiple strands of evidence demonstrating his contact with other Anti-Balaka. For example, it relied on: (i) the testimony of P-1339, a member of Yekatom's group, confirming some communication with other groups";[249] (ii) the testimony of P-2269, an Anti-Balaka commander, confirming communication with Yekatom from Gobere;[250] (iii) P-0446's evidence on "close collaboration" between 'Wenezoui' and Yekatom;[251] (iv) P-0446's testimony regarding a phone contact between Yekatom and Konaté on the eve of the Bangui attack relating to the structure of the forthcoming Bangui attack;[252] (v) evidence from Anti-Balaka elements P-0876 and P-0954 that they called Yekatom on 5 December 2013;[253] (vi) claims by P-0884, an Anti-Balaka [REDACTED], of meeting Yekatom physically on 5 December 2013.[254] The Chamber further found that Ngremangou coordinated with Anti-Balaka elements regarding the Bangui attack,

[246] Yekatom Appeal, paras. 61-64.
[247] Judgment, para. 2522.
[248] Judgment, para. 2521. *See below* para. 60.
[249] Judgment, para. 2464, 2486. *See also* paras. 330, 332 (finding P-1339's testimony generally credible).
[250] Judgment, para. 2489. *See also* paras. 415, 420 (finding P-2269's testimony generally credible).
[251] Judgment, para. 2493. *See also* paras. 222, 967 (finding P-0446's testimony generally credible).
[252] Judgment, paras. 2496-2498. Contrary to Yekatom's allegation, P-0446 was looking for his words in French to express that the call occurred on the eve of the 5 December 2013 Bangui attack. The Chamber addressed Yekatom's arguments: *see* Judgment. para. 2497.
[253] Judgment, paras. 2504-2512. *See also* paras. 256, 259 (finding P-0876's testimony generally credible), 297, 301 (finding P-0954's testimony generally credible).
[254] Judgment, paras. 2513-2518. *See also* paras. 266, 271-273.

instructing Yekatom to advance to participate in the attack—findings that are not in dispute.[255] The Chamber correctly held that, the fact that Anti-Balaka lines of communication were not perfect, does not take away from the Chamber's conclusion that these groups were being coordinated in relation to the Bangui Attack.[256]

58. Contrary to Yekatom's claim,[257] in reaching its conclusion that "information was shared between Mr Yekatom and Konaté, either directly or through interlocutors", the Chamber assessed P-0446's generally credible testimony in light of other corroborative evidence and Yekatom's arguments at trial.[258]

59. Furthermore, Yekatom fails to show any error in the Chamber's reliance on his communication with Ngremangou when assessing Yekatom's coordination with other Anti-Balaka.[259] The existence of any purported hierarchical relationship between Ngremangou and Yekatom does not undermine the Chamber's conclusion that his instructions to Yekatom and other groups involved in the Bangui attack reflected coordination among those groups. To the contrary, in light of the Chamber's findings that Ngremangou had a role "coordinating the groups arriving from the south of Bangui" in view of the Bangui attack,[260] and that he communicated with Maxime Mokom,[261] the *de facto* Anti-Balaka coordinator[262] it only further "reinforces the Chamber's conclusion."[263]

60. In any event, even if the Chamber erred in inferring, or relying on, Yekatom's communications with Konaté and Ngremangou, this does not materially impact the Chamber's findings on his coordination more generally, which are supported by a broader range of evidence and findings discussed above.

[255] Judgment, paras. 2339, 2502, 2520.
[256] Judgment, para. 2522.
[257] Yekatom Appeal, para. 62.
[258] Judgment, paras. 2496-2497 (assessing absence of relevant CDR), fn. 6278 (citing CAR-OTP-2065-2292, at 00:01:33-00:02:11; CAR-OTP-2127-3635, at 3638, lns. 37-43; addressing Defence arguments pertaining to a video of Yekatom requesting one of his elements to call Konaté).
[259] Judgment, paras. 2339, 2502, 2520.
[260] Judgment, paras. 2338-2342.
[261] Judgment, para. 2502.
[262] Judgment, para. 41 (finding based on section IV.A.4, *in particular* para. 1130).
[263] Judgment, para. 2520.

Awareness of the broader 5 December 2013 Bangui operation

61. Yekatom's claim that he was unaware of a broader 5 December 2013 operation[264] repeats his argument at trial, properly addressed by the Chamber.[265] As the Chamber reasonably found, the evidence from Anti-Balaka elements P-0876 and P-0954 that they called Yekatom on 5 December 2013[266] "suggests […] that Mr Yekatom was not only aware of the broader operation but was also expected to be aware of it by the two aforementioned witnesses in relation to what had happened in Bangui on 5 December 2013."[267] Further, other findings support his awareness of a broader operation, such as Yekatom's joining other Anti-Balaka leaders outside of Bangui, at Projet, on the eve of the Bangui attack,[268] his reconnaissance mission,[269] him receiving instructions in advance of the attack,[270] testimony that Yekatom encircled and attacked Bangui "to bolster the other groups for the 'Camp Kassai attack'",[271] as well as the attack's coordinated execution.[272] In any event, Yekatom's submissions of his personal ignorance of a broader operation fail to substantiate any—and indeed have no—material impact on the Chamber's findings on the coordinated nature of the Bangui attack and his responsibility for the charged crimes under article 25(3)(a), and should be dismissed on that basis.[273]

Arming of Yekatom's group

62. The Chamber found that Yekatom's group armed in the bush in the months leading up to the Bangui attack,[274] similar to other FACA members.[275] Yekatom's claim that the Chamber did not establish that the Anti-Balaka supplied these weapons[276] does not impact this finding or its broader conclusions on Anti-Balaka coordination.

[264] Yekatom Appeal, paras. 65-66.
[265] Judgment, paras. 2119-2120, 2503 (citing Yekatom Closing Brief, paras. 357-362).
[266] Judgment, paras. 2504-2512. *See also* paras. 256, 259 (finding P-0876's testimony generally credible), 297, 301 (finding P-0954's testimony generally credible).
[267] Judgment, para. 2512.
[268] Judgment, paras. 73, 2524. *See also* paras. 2460, 2462-2464, 2468-2470, 2478-2479.
[269] Judgment, paras. 75, 2465-2466, 2524.
[270] Judgment, paras. 73, 75, 2524.
[271] Judgment, para. 2508. *See also* paras. 2484, 2509.
[272] Judgment, paras. 54, 69, 71, 2502, 2524.
[273] *See also* Judgment, paras. 2120-2121, 2520-2521.
[274] Judgment, paras. 73, 2432-2433.
[275] Judgment, para. 2426.
[276] Yekatom Appeal, para. 67.

Coordination 'indicators'

63. Yekatom argues that the indicators the Chamber considered in assessing the level of coordination and planning of the Bangui attack are not relevant to his group.[277] He disregards the structure of the Chamber's analysis,[278] whereby it first addressed the coordinated nature of the Bangui attack by means of the 14 indicators,[279] before assessing the conduct of Yekatom and his group, including his coordination with the other Anti-Balaka.[280] The fact that the Chamber did not consistently refer to Yekatom in the earlier section is thus entirely reasonable.

64. Yekatom further challenges the Chamber's overall conclusion that the Bangui attack was highly coordinated by providing unsubstantiated challenges to 3 of the 14 indicators assessed[281] or challenging its reliance on individual strands of evidence.[282] These arguments misrepresent the Chamber's analysis and the underlying evidence. The Chamber relied *inter alia* on evidence showing that (i) the Anti-Balaka that were moving to Bangui reassembled at common locations encircling Bangui before the Bangui attack;[283] (ii) the Bangui attack was carried out as planned;[284] and (iii) the aftermath involved Anti-Balaka systematically targeting Muslim civilians and civilian objects followed by Seleka reprisals.[285] Furthermore, the Chamber's finding that Yekatom's group was assigned a specific target during the Bangui attack does not rest exclusively on P-0446's evidence,[286] but is corroborated by P-1339's testimony.[287] In any event, even if correct, none of these alleged errors would have materially affected the Chamber's conclusion on the coordinated nature of the Bangui attack, which rests on a wide-range of additional findings.

II.2.d. Yekatom was part of the Anti-Balaka in 2014

65. Yekatom claims the Chamber erred in concluding that Yekatom was seen and understood to be part of the Anti-Balaka over the entire period relevant to the charges by (i) failing to set out a clear chronology of meetings by 'north' and 'south' actors; (ii) treating Anti-Balaka 'north' and 'south' as a single movement; (iii) mischaracterising Yekatom's relationship

[277] Yekatom Appeal, paras. 68-72.
[278] Judgment, para. 2121.
[279] Judgment, paras. 2122-2406.
[280] Judgment, paras. 2409-2525.
[281] Yekatom Appeal, para. 70.
[282] Yekatom Appeal, para. 69.
[283] Judgment, paras. 2221, 2223-2224, 2242.
[284] Judgment, paras. 2364, 2366.
[285] Judgment, paras. 2385-2393.
[286] Yekatom Appeal, para. 69.
[287] Judgment, paras. 2445 (citing T-155, pp. 16:22-17:5), 2453, 2532-2533 (citing T-154, p. 59:15-23).

to the National Coordination; and (iv) downplaying evidence that no unified coordination existed until mid-2014.[288] His submissions repeat arguments properly addressed at trial and selectively or inaccurately portray the evidence, and thus should be dismissed.

66. As set out in further detail in response to Ngaïssona's Ground 2.4, the Chamber reasonably rejected that "any 'north' and 'south' streams within the Anti-Balaka acted entirely independently and separately from each other at any time during the period relevant to the charges",[289] concluding that the Anti-Balaka "always remained represented towards the national and international authorities as one entity through Mr Ngaïssona".[290] The Chamber directly considered the participation of different Anti-Balaka 'streams' from the 'north' and 'south' during the transition process in early 2014.[291] Contrary to Yekatom's suggestion,[292] it also directly addressed witness evidence—including that of P-0876—suggesting a lack of cooperation or hostile relations between Anti-Balaka from the 'north' and 'south' prior to the coordination set up in June 2014,[293] and dismissed it on the totality of the evidence before it,[294] including testimony from P-0884, an Anti-Balaka [REDACTED], that they were "one Anti-Balaka with one objective".[295] The Chamber correctly held that the Anti-Balaka "did not have to be a monolithic or singular entity and/or ideologically homogenous at any stage of the events"[296] and "the question of there having been varying super-imposed interests within the Anti-Balaka does not lead the Chamber to conclude that there existed several movements seen as different parties to the conflict".[297] Having assessed the evidence holistically, it reasonably found that "groups which did have varying super-imposed interests were not only perceived to be one movement, the 'Anti-Balaka', from the outside, but also presented themselves as such with a view to being taken into account as party to the conflict"[298] and that "the various streams within the Anti-Balaka continued to cooperate, coordinate and align during the period relevant to the charges."[299] Yekatom's arguments alleging a 'North' and 'South' split or a lack of unified coordination before mid-2014 should be rejected for these reasons and those further set out in

[288] Yekatom Appeal, paras. 73-78.
[289] Judgment, para. 1626.
[290] Judgment, para. 64. *See also* paras. 1600, 1625. *See below* section VII.4 (paras. 602-633).
[291] Judgment, paras. 1581, 1625. *See below* para. 629.
[292] Yekatom Appeal, para. 78.
[293] Judgment, para. 1728. *See below* para. 630.
[294] Judgment, para. 1729.
[295] Judgment, para. 1720. *See also* para. 1722.
[296] Judgment, para. 1581. *See also* paras. 1216, 1526, 1624.
[297] Judgment, para. 1618.
[298] Judgment, para. 1581.
[299] Judgment, para. 1209. *See also* para. 1211.

response to Ngaïssona's Ground 2.4.[300] In any event, whether Ngaïssona represented Yekatom through the National Coordination before June 2014 is immaterial for Yekatom's responsibility, but rather for Ngaïssona's, insofar as the Chamber found that their groups still coordinated to deal, *inter alia*, with the authorities.[301]

67. In addition to the above, the Chamber considered evidence regarding meetings at Yamwara following the Bangui attack showing "emerging individual political ambitions of the various Anti-Balaka group leaders."[302] Contrary to Yekatom's submission, the Chamber "considered these meetings in turn",[303] referring to a meeting between 27 and 30 December and another on 31 December 2013.[304] Based on the evidence before it, the Chamber reasonably concluded that—rather than attest to a divided movement—these meetings reflected "attempts at pivoting the Anti-Balaka's combined force towards securing political leverage and, in some cases, ministerial positions in a potential future government."[305] The meetings were held in furtherance of the Anti-Balaka's core objective to remove Michel Djotodia and the Seleka from power, which Yekatom shared.[306] Since the various Anti-Balaka groups did not have to be ideologically homogenous at any stage of the events, the Chamber correctly held that any political and personal viewpoints and ambitions expressed did not detract from this core objective.[307]

68. The Chamber further discussed evidence of meetings between Catherine Samba-Panza and representatives of the Anti-Balaka, at which the latter came together to be represented towards the new transitional authorities.[308] Based on its assessment of the circumstances of these meetings and the Anti-Balaka requests made, the Chamber found that they were "another illustration of the Anti-Balaka structure taking further shape in the context of different political and personal ambitions of various individuals."[309] Although the Chamber referred to evidence of each meeting separately,[310] the purported absence of a precise chronology[311] neither means

[300] *See below* section VII.4 (paras. 602-633).
[301] Judgment, paras. 1580-1581. *Contra* Yekatom Appeal, para. 77.
[302] Judgment, paras. 1497-1526.
[303] Judgment, para. 1502.
[304] Judgment, paras. 1503, 1517. *Contra* Yekatom Appeal, para. 74.
[305] Judgment, para. 1499. *See also* paras. 1505, 1526.
[306] Judgment, para. 1526.
[307] Judgment, para. 1526.
[308] Judgment, paras. 1579-1618, 1625.
[309] Judgment, para. 1580. *See also* paras. 1579, 1581, 1618.
[310] *See* Judgment, paras. 1588, 1614-1615.
[311] Yekatom Appeal, para. 74.

that the Chamber failed to consider the evidence correctly, nor reflects any error in the Chamber's conclusions.

II.2.e. Absence of any 'Anti-Balaka' mischaracterisation

i. Yekatom retained control over five captives of the 'Yamwara incident'

69. Yekatom claims the Chamber erred in finding him responsible for the continued detention beyond 25 December 2013 of five captives under count 14, because he disputes Yekatom 'used' or coordinated with Sylvestre Yagouzou in keeping these captives at a base behind M'Poko airport.[312]

70. The Chamber correctly and reasonably found that Yekatom did not relinquish control over the five captives following their transfer to an Anti-Balaka base close to the M'Poko airport on 25 December 2013, since (i) Yekatom approved of the captive's transfer;[313] (ii) members of his group accompanied the captives and handed them over to Yagouzou's elements;[314] (iii) Yekatom met the captives the next day, telling them that they would be released in the presence of an international observer;[315] and (iv) Yekatom's elements coordinated with Wenezoui, Yagouzou, and the Anti-Balaka based there in the transfer and continued captivity of the five detainees.[316] Moreover, the Chamber assessed a range of evidence in assessing Yekatom's role in the Yamwara incident and the transfer of the captives, including (i) P-0884's testimony on Yekatom's authority over the release of the captives;[317] (ii) direct interactions with, and actions described by, four out of the five captives and another captive not transferred;[318] (iii) testimonies of Anti-Balaka members P-1839 and P-0954;[319] (iv) evidence from P-1654, Saint Cyr's father;[320] and information from P-1858 and P-1786 showing that Yekatom's group coordinated with Sebastien Wenezoui's group that was based behind the airport.[321] Yekatom fails to substantiate how the Chamber's reliance on parts of P-0884's evidence deemed credible is "a manifest error of reasoning",[322] or how Yagouzou's affiliation with a different Anti-Balaka group negates the evidence of coordination between them.[323] The

[312] Yekatom Appeal, paras. 79-84.
[313] Judgment, paras. 111, 3275.
[314] Judgment, paras. 109, 3256-3267.
[315] Judgment, paras. 110, 3268-3269.
[316] Judgment, paras. 112, 3276, 3292.
[317] Judgment, para. 3290. *See also* paras. 3278-3289.
[318] Judgment, para. 3291.
[319] Judgment, para. 3291. *See also* paras. 297, 355.
[320] Judgment, para. 3291.
[321] Judgment, para. 3292.
[322] Yekatom Appeal, para. 81.
[323] Yekatom Appeal, para. 80.

Chamber's conclusion is further supported by its earlier finding that Yekatom had authority over Yagouzou and his elements in the lead-up to the Bangui attack, based *inter alia* on audio-visual material and P-1339's evidence.[324]

71. In any event, Yekatom's argument has no material impact on his conviction for the crime of imprisonment of these five and two additional captives (count 14). The Chamber found that the deprivation of physical liberty for all seven persons began from the moment Yekatom's elements apprehended them at the checkpoint close to the Lapo N'Gomat family house and Yamwara on 24 December 2013.[325] Yekatom retained control over the actions of his elements and of their will, from the moment of the capture of the seven persons and at least until their respective death or release.[326] At most, any error would change the temporal scope of his conviction as ending on 25 December, when he transferred the five captives to Yagouzou's group, rather than "on or about 27 December".[327]

ii. The Chamber did not attribute "nebulous" Anti-Balaka conduct in Mbaïki to Yekatom or his group

72. Yekatom argues that the Chamber erred by relying on a 'nebulous' label of Anti-Balaka to ascribe conduct of individuals in the Mbaïki area not under his authority to him and his group.[328] Yekatom repeats his trial arguments[329] and misrepresents the Chamber's findings.

73. The Chamber's conclusions on Yekatom's individual criminal responsibility for the crimes along the PK9-Mbaïki axis are based on a careful assessment of the evidence relevant to him and the elements of his group. *First*, the Chamber reasonably found that the material elements of the crimes were committed by elements under his control, rather than by the 'Anti-Balaka' in general, namely that (i) Yekatom and elements under his control advanced along the PK9-Mbaïki axis, taking over a number of villages in the Lobaye prefecture;[330] (ii) Yekatom's elements took over checkpoints and established bases along the axis[331] to search and identify Muslims and to finance their group;[332] (iii) Yekatom and elements under his control entered Mbaïki on 30 January 2014[333] and his elements harassed and threatened Muslims there

[324] Judgment, para. 2476.
[325] Judgment, paras. 96, 4199.
[326] Judgment, para. 4242.
[327] Judgment, p. 1642 (count 14).
[328] Yekatom Appeal, paras. 85-94.
[329] Judgment, para. 3924 (citing Yekatom Closing Brief, paras. 211-216).
[330] Judgment, paras. 4345, 4357 (citing para. 113). *See also* paras. 3297, 3310, 3325, 3335.
[331] Judgment, paras. 4346, 4357 (citing para. 116). *See also* paras. 3361, 3365, 3367-3368, 3371.
[332] Judgment, paras. 4346, 4357 (citing para. 117). *See also* paras. 3383, 3397, 3411.
[333] Judgment, para. 4348 (citing para. 120). *See also* paras. 3454, 3466.

following a meeting at *St Jeanne d'Arc* Church;[334] and (iv) at least three elements of his group were involved in the killing of Djido Saleh.[335] *Second*, the Chamber entered findings that the displacement of Muslims was linked to fear for Yekatom and his group, rather than conduct of others: (i) a significant proportion of the Muslim civilian population fled their towns and villages along the axis due to and in fear of the advance of Yekatom's group;[336] and (ii) the dislocation of Muslim civilians was caused by the arrival of Yekatom's group.[337] *Third*, the Chamber considered Yekatom's own conduct, including that (i) Yekatom, Cœur de Lion, and Alkanto instructed the elements to kill all the Muslims in their area;[338] (ii) Yekatom took part in the meeting at *St Jeanne d'Arc* Church in Mbaïki, at which time the removal of the Muslim civilian population from Mbaïki was a foregone conclusion;[339] and (iii) Yekatom and Cœur de Lion knew that elements of the group committed acts of violence in Mbaïki.[340]

74. Rather than rely on a 'nebulous' Anti-Balaka label for attribution purposes, the Chamber based the foregoing conclusions on concrete evidence identifying Yekatom and his elements as the perpetrators.[341] For example, regarding the displacement along and around the PK9-Mbaïki axis, the Chamber relied on witnesses who identified the advance of Yekatom and his group as the reason for their departure.[342] In relation to the testimony of other witnesses, the Chamber's reasonably inferred that the departure of Muslims was because of Yekatom's group's advance, based on a careful assessment of the circumstances and timing of their departure.[343] Similarly, in Mbaïki, the Chamber relied on evidence of witnesses who identified Yekatom's elements as harassing and threatening Muslims,[344] which contributed to the atmosphere of fear causing Muslims to flee.[345]

75. Regarding Yekatom's authority, the Chamber concluded that Yekatom was the undisputed leader over the elements deployed on the PK9-Mbaïki axis.[346] As further set out in

[334] Judgment, paras. 4349, 4357 (citing para. 121). *See also* paras. 3444, 3533, 3541, 3551, 3563.
[335] Judgment, para. 4357 (citing para. 125). *See also* paras. 3444, 3649, 3659, 3669.
[336] Judgment, para. 4347 (citing para. 118). *See also* paras. 3335, 3423, 3428-3429, 3431, 3436, 3443-3444, fn. 8449.
[337] Judgment, paras. 3565, 4350 (citing para. 122). *See also* paras. 3595, 3608.
[338] Judgment, paras. 4345 (citing para. 114), 4362. *See also* paras. 3300, 3444.
[339] Judgment, paras. 4348 (citing para. 120), 4362. *See also* paras. 3445, 3477-3478, 3491, 3494, 3496, 3519.
[340] Judgment, paras. 4349 (citing para. 121), 4362. *See also* para. 3558.
[341] *See also* Judgment, para. 1800. *Contra* Yekatom Appeal, paras. 88-90.
[342] Judgment, paras. 3424-3425, 3427, 3430, 3435, 3442.
[343] Judgment, paras. 3428, 3435.
[344] *See e.g.* Judgment, paras. 3542, 3550.
[345] Judgment, para. 3608.
[346] Judgment, paras. 3344, 3481, 4345, 4357 (citing para. 115). *See also* paras. 3350-3354. *Contra* Yekatom Appeal, para. 86.

the response to Yekatom's Ground 2.4, the Chamber made this finding based on a thorough assessment of the evidentiary record and various factors,[347] including (i) witnesses, including members of Yekatom's group, providing evidence on Yekatom's incontestable leadership over the elements deployed on the PK9-Mbaïki axis;[348] (ii) evidence of Yekatom presenting himself as "*chef* of the Anti-Balaka movement of the south";[349] (iii) concrete examples of Yekatom's elements following his explicit orders;[350] (iv) witnesses indicating that they contacted Yekatom regarding the Mbaïki meeting "in his role as leader of the Anti-Balaka in the area";[351] and (v) Yekatom's statements at the Mbaïki meeting which could only have been made by a leader and an Anti-Balaka representative with sufficient authority.[352] Yekatom fails to demonstrate that the Chamber's finding was unreasonable.

76. For the reasons set out above, Ground 2.2 should be rejected.

II.3. Ground 2.3: The Trial Chamber correctly found that Yekatom targeted the Muslim population

II.3.a. Yekatom knew the Anti-Balaka perceptions

77. Yekatom argues that he did not know that the Anti-Balaka perceived the Muslims in CAR as collectively responsible for Seleka abuses and that the Chamber erred in making such a finding. Yekatom's arguments are based on a selective reading of the Judgment.[353] To the contrary, the Chamber's finding is firmly grounded in the evidence, which is further detailed in part IV of the Judgment, specifically in IV.B.2.ii cited therein.[354] The evidence relied upon by the Chamber shows that Yekatom knew that his own elements perceived Muslims civilians as collectively responsible for Seleka abuses.[355] It is also apparent that Yekatom was aware of this before the 5 December 2013 Bangui attack. The Chamber reached this conclusion based on P-1339's evidence, which it credited,[356] that Yekatom instructed his elements to attack the Seleka *and* the Muslims, to destroy the houses of the Muslims, and to attack "the sectors where the Muslims were to be found".[357] Yekatom's knowledge in this regard is further confirmed by his

[347] *See below* para. 101.
[348] Judgment, paras. 3345-3347, 3350-3352, 3481. *See also* para. 355.
[349] Judgment, paras. 3353, 3481. *See also* para. 988.
[350] Judgment, paras. 3348, 3354.
[351] Judgment, para. 3481.
[352] Judgment, para. 3481.
[353] *Contra* Yekatom Appeal, paras. 97-100 (referring to the 34-page section of the Judgment at pp. 468-502).
[354] Judgment, para. 1305, fns. 3503-3506 (referring to the Chamber's evaluation of the evidence in sections IV.B.2, IV.B.3.i, IV.D.3, IV.E.1-IV.E.3 b).
[355] Judgment, paras. 2436-2454.
[356] Judgment, paras. 332-333, 337.
[357] Judgment, paras. 2439-2446.

and his group's advance on the PK9-Mbaïki axis, where the Chamber found that he and his deputies instructed their elements to kill all the Muslims in the area.[358]

78. In any event, even assuming *arguendo* that the Chamber erred in the manner alleged by Yekatom—which it did not—such error would not have materially affected his conviction under article 25(3)(a) since the Chamber also found that Yekatom *himself* held this perception. The Chamber's findings regarding Yekatom's awareness of the Anti-Balaka's perception of Muslims were therefore not essential to his convictions under article 25(3)(a).

II.3.b. Yekatom himself perceived Muslim civilians as responsible

79. Yekatom challenges the Chamber's finding that he perceived the Muslims as collectively responsible for the Seleka abuses, arguing that the Chamber failed to explain its inferences and disregarded exculpatory evidence.[359] Yet, the Chamber provided ample reasoning on this point, as no other conclusion could have been drawn from Yekatom's instruction to his elements to attack the sectors where the Muslims were to be found in advance of the 5 December 2013 attack on Bangui,[360] and his later instruction when moving up the PK9-Mbaïki axis, to kill all the Muslims in the area.[361] Further, and contrary to Yekatom's submissions, the Chamber duly considered the body of evidence which Yekatom cites (*i.e.*, how Yekatom was involved in assisting a Muslim family and that he reportedly reconciled with a former Seleka 'captain'). It found that, despite these events, "it is clear from the evidence […] that Yekatom subscribed to the way in which his elements pursued the core objective […] which extended to perceiving the Muslim civilian population in the west of the CAR as the enemy".[362] That Yekatom disagrees with the Chamber's assessment does not demonstrate an error in its reasonable and correct findings based on reliable evidence.

II.3.c. Yekatom knew his own group held Muslim civilians responsible

i. There was no training in the principle of distinction

80. Yekatom challenges the Chamber's findings that he failed to distinguish between civilians and combatants in his instructions, while knowing the mentality of his group who had not been trained in this matter. Yet his arguments are contradictory: he first argues that the

[358] Judgment, para. 3444 (referring to para. 3300).
[359] Yekatom Appeal, paras. 101-104.
[360] Judgment, paras. 2439-2446.
[361] Judgment, paras. 3397, 3444, 3521, 4606 (referring to para. 3300).
[362] Judgment, paras. 1638-1639, 4479.

findings are unverifiable given the Chamber's broad cross-references, but then challenges the Chamber's specific evidentiary analysis – thus acknowledging its existence.[363]

81. *First*, contrary to Yekatom's arguments,[364] the Chamber made reasonable findings, supported by reliable evidence, on Yekatom's instructions to fight the Seleka and to target sectors where 'Muslims' were to be found, in the lead-up to the 5 December 2013 attack. The Chamber also made findings about how his elements understood these instructions given their lack of training on the principle of distinction, of which Yekatom was aware.[365]

82. Contrary to Yekatom's arguments,[366] the Chamber relied on the credible sworn testimony of P-1339, [REDACTED] element of Yekatom's group who participated in the 5 December 2013 attack in Boeing and Cattin, in relation to: (a) Yekatom's elements and leaders fostering a desire for revenge;[367] (b) receiving instructions during their training in the bush to "kill all Muslims because all Muslims were Seleka";[368] (c) receiving instructions from Yekatom and the group's leaders to kill captured Muslims or Seleka "if there was no witness [since] there would be no accounting for that to anyone";[369] (d) the leaders informing them on the day preceding the Bangui attack that they would fight the Seleka elements and the 'Muslims';[370] (e) Yekatom's instruction to destroy the houses of the Muslims;[371] (f) and the goal of Yekatom's group to attack the Muslim neighbourhood of PK5 but also those sectors where 'Muslims' were to be found.[372] The Chamber concluded that P-1339, tellingly, continued to conflate the Seleka with the Muslims in the way he understood Yekatom's instruction.[373] Contrary to Yekatom's argument, the Chamber did consider the part of P-1339's testimony where he talked about Yekatom's instruction "if you attack Muslims, don't touch the women or the children. It's the Muslims who are shooting, not the women".[374] However, the Chamber did not rely on this given the witness' clear and overwhelming explanation that Yekatom's group did not distinguish between Seleka and Muslims.[375] Yekatom disregards that a Chamber may consider a witness' testimony reliable with respect to certain parts even if it might be unreliable with respect to

[363] Yekatom Appeal, paras. 105-115.
[364] Yekatom Appeal, paras. 105-106.
[365] Judgment, paras. 2446-2454.
[366] Yekatom Appeal, paras. 106-109.
[367] Judgment, paras. 2435, 2451.
[368] Judgment, para. 2437.
[369] Judgment, para. 2437.
[370] Judgment, para. 2439.
[371] Judgment, paras. 2440-2441.
[372] Judgment, paras. 2445, 2453.
[373] Judgment, para. 2445.
[374] Judgment, para. 2444.
[375] Judgment, paras. 2439-2446.

others, as long as the Chamber considers the impact of the unreliable aspects of the testimony on the overall assessment of the witness' credibility.[376] This is the approach that the Chamber correctly adopted in its careful holistic assessment of P-1339's testimony.[377]

83. *Second*, the Chamber carefully assessed multiple witnesses and audio-visual evidence[378] to conclude that "Yekatom was aware that his elements (…) would not distinguish between the Seleka and Muslim civilians during combat",[379] which it then assessed in the context of the videos on Maidana and Beina,[380] and the ones flagged by Yekatom.[381] Yekatom's criticism because some of the audio-visual evidence post-dates 5 December 2013[382] lacks merit, since the Chamber considered it for the purposes of Yekatom's interaction with other individuals,[383] and was assessed in addition to, and holistically with, other evidence.[384] In any event, the evidence showing Yekatom's behaviour[385] and anti-Muslim animus of elements in Yekatom's group, even post-5 December 2013—in particular, leaders such as Habib Beina, Max Maidana,[386] Bodios, and Cœur de Lion[387]—is relevant to assessing their behaviour at the time of the crimes,[388] such as their mental state and pre-disposition to attack Muslims, in particular: the way they understood and indeed implemented both Yekatom's instruction and the broader Anti-Balaka's objective to oust the Seleka from power (which, at the time of their relevant conduct,[389] had not yet been attained). It also informs their likely conduct as trainers who would impart the group's discriminatory ethos to other elements.[390] Importantly, in the video sequentially preceding the one relied on by the Chamber, Yekatom was filmed standing nearby where Max Maidana explains that they fire tear gas at Muslim houses to drive them out and

[376] Judgment, para. 203.
[377] Judgment, paras. 2440-2447.
[378] Judgment, paras. 2446-2447 ("having regard to the above", "noting the above").
[379] Judgment, paras. 2446-2447, 2452.
[380] Judgment, paras. 2448-2451 ("in addition to the above"). *See also* fns. 6181-6183 (referring to videos CAR-OTP-2107-1539 regarding Beina; CAR-OTP-2065-3172 and CAR-OTP-2065-3188 regarding Maidana).
[381] Judgment, paras. 2453, fn. 6190 (referring to paras. 2472-2474). *See also* fns. 6226 (regarding video CAR-OTP-2065-3220, which it assessed in the context of other videos showing Yekatom and Yagouzou, cited at fn. 6225: CAR-OTP-2065-3208, CAR-OTP-2065-3212, CAR-OTP-2065-2544, CAR-OTP-2065-2548, CAR-OTP-2065-2392); Yekatom Appeal, para. 109, fns. 361-366 (referring mainly to video CAR-OTP-2065-3220 and its assessment in the context of other videos such as CAR-OTP-2065-3208 and CAR-OTP-2065-3212).
[382] Yekatom Appeal, para. 109. *See* Judgment, para. 2453, fn. 6190 ("*See* further").
[383] Judgment, para. 2472.
[384] Judgment, paras. 2446-2447 ("having regard to the above", "noting the above").
[385] Judgment, para. 2472.
[386] Judgment, paras. 2448-2450.
[387] Judgment, para. 2451.
[388] Yekatom Appeal, para. 109.
[389] Habib Beina's and Max Maidana's videos discussed in Judgment paras. 2449-2450. Bodios and Coeur de Lion's anti-Muslim animus are dated 24 December 2013 ('Yamwara School incident'): *see* Judgment para. 2451.
[390] Judgment, para. 2436.

then 'they kill them when they leave, even the little children'.[391] Contrary to Yekatom's submissions,[392] insider witness P-1839 corroborates that [REDACTED] heard similar comments on killing Muslims from Yekatom, Habib Beina, Alkanto and Cœur de Lion.[393] The Chamber considered, but reasonably dismissed Yekatom's arguments to the contrary.[394]

84. *Third,* the Chamber reasonably found that no IHL training was provided to Yekatom's elements. Contrary to Yekatom's submissions, the Chamber did not ignore contradictory evidence prior to 5 December 2013 attack nor did it selectively assess the evidence at the Yamwara base.[395] Likewise, contrary to Yekatom's claims, the Chamber did consider that FACA members had generally received IHL training prior to the events while in the military.[396] However, this did not detract from the pervasive anti-Muslim animus expressed by FACA leaders in the group—such as Cœur de Lion, Maidana (or Maidanda), Beina—which reached [REDACTED] elements such as P-1339 and P-1839 during their training and through their instructions.[397] Nor did the evidence show that Yekatom's group treated individuals as civilians when in doubt of their status.[398] Yekatom's disagreement with the weight given to P-1647's and P-1786's evidence on this topic does not detract from the Chamber's holistic assessment of the compelling evidence before it.[399]

85. *Finally*, Yekatom's arguments on the existence of IHL training at the Yamwara base equally fail. [400] Regardless of any purported IHL training, the group continuously displayed anti-Muslim behaviour in several instances, including in the Yamwara incident with respect to the Lapo family,[401] in another incident involving the killing of two Muslims,[402] and in Yekatom's subsequent instructions to his group to kill Muslims when advancing on the PK9-Mbaïki axis.[403] Yekatom selectively reads P-1786's, P-1647's, and P-1839's evidence and

[391] Judgment, para. 2450, fn. 6183 (referring to CAR-OTP-2065-3188). For Yekatom's presence in the hut outside which Maidana expresses his anti-Muslim views, *see* CAR-OTP-2065-3184.
[392] Yekatom Appeal, para. 114.
[393] Judgment, para. 2450, fn. 6183.
[394] Judgment, para. 2451, fn. 6184.
[395] Yekatom Appeal, para. 107.
[396] Judgment, para. 3096.
[397] Judgment, paras. 2436-2437, 2450-2451, 3088-3089, 3095, fns. 7641, 7650, 7656 (regarding training), 1305, 3100, 3305, fn. 6183 (regarding instructions). *See also* para. 3069.
[398] Judgment, para. 4018. For the killing of the Boeing market traders: *see* Judgment, section IV.B.3.i., *in particular* paras. 2587-2590. For the killing of civilians in Cattin: *see* Judgment, section IV.B.4, *in particular* paras. 2664-2665, 2673. For the Yamwara Incident: *see* Judgment, Section IV.D.3, *in particular* paras. 3149, 3242.
[399] Judgment, paras. 3085-3100. For the holistic assessment of the evidence, *see* paras. 127, 133, 203.
[400] Yekatom Appeal, paras. 108-115.
[401] Judgment, section IV.D.3, *in particular* paras. 3171-3173.
[402] Judgment, para. 3069.
[403] Judgment, paras. 3397, 3444, 3521, 4606 (referring to para. 3300).

merely disagrees with the Chamber's assessment of their testimonies, without showing an error.[404] The Chamber engaged with Yekatom's arguments that his group specifically received IHL training (as opposed just to tactical military training) as raised in Yekatom's Closing Brief, which precisely referred to P-1786's and P-1647's evidence.[405] The Chamber correctly dismissed these arguments after conducting a holistic assessment of P-1786's testimony who, among other matters, testified that as pay back for the Seleka exactions, 'Central Africans would chase out the Muslims present in their sector', and that this was also true 'for the Anti-Balaka in the Yamwara sector'.[406] The Chamber reasonably relied on this part of his testimony which was corroborated by other evidence of anti-Muslim sentiment prevalent in Yekatom's group,[407] as well as by two examples on the record where Yekatom's deputy, Cœur de Lion,[408] did not respect IHL norms.[409] Contrary to Yekatom's argument, the Chamber did not err in assessing P-1647's evidence against P-1786's testimony, and against P-1839's credible insider evidence.[410] This evidence described the trainings at Yamwara school as limited to 'using weapons', with no recollection of any training on IHL.[411] As noted above, P-1839 testified that [REDACTED] heard Yekatom, Habib Beina, Alkanto, and Cœur de Lion, give similar instructions about killing Muslims (albeit not children).[412]

ii. Yekatom knew that members of his group would hold Muslims collectively responsible for Seleka crimes

86. Contrary to Yekatom's argument,[413] the Chamber reasonably concluded that Yekatom 'must have been aware' of his group's statements against Muslims.[414] The Chamber relied on its multiple findings on Yekatom's instructions that: his elements attack 'Muslim sectors', which was echoed by leaders in his group; Yekatom's elements' open display of anti-Muslim

[404] Judgment, paras. 197-203.
[405] Judgment, para. 3086, fns. 7635-7639 (referring to Yekatom Closing Brief, paras. 299-303).
[406] Judgment, para. 3094.
[407] Judgment, para. 3095.
[408] *See* Judgment, paras. 3062, 3064-3071 (finding overwhelming evidence that Coeur de Lion was Yekatom's deputy and that Yekatom maintained overall control over the activities in Yamwara at all times, including through Coeur de Lion). *Contra* Yekatom Appeal, para. 114 (attributing it to exceptional and 'independent conduct').
[409] Judgment, fn. 7653 (referring to para. 3172, and paras. 3069, 3100). *See also* para. 2437.
[410] Judgment, paras. 358-364.
[411] Judgment, paras. 3099-3100.
[412] Judgment, para. 2450, fn. 6183.
[413] Yekatom Appeal, paras. 116-117.
[414] Judgment, para. 1305.

animus which permeated the group, and; his and his group's participation in attacks targeting Muslim civilians.[415]

iii. Yekatom's group's perception of the Lapo Family group

87. Contrary to Yekatom's submissions,[416] the Chamber reasonably concluded that the Lapo family were perceived to be Muslims by Yekatom's group and supported its conclusion by a wealth of reliable evidence.[417] Yekatom misrepresents the evidence and argues that the Chamber did not properly assess the import of a Seleka identification card found on Saint Cyr Lapo.[418] However, Yekatom fails to consider the totality of the evidence that informed the Chamber's decision. The Chamber emphasised that "it was a combination of Alkanto's negative feelings centred around a desire for revenge, the women being identified as related to Djotodia and Mamour, as well as being Muslims, that predisposed Alkanto's group to their perception of the seven persons".[419] The discovery of a Seleka card only happened after the persons had been stopped, identified as belonging to a Muslim family,[420] subjected to death threats, and searched.[421] The victim group was escorted by Alkanto's elements to the Yamwara base, during which they were kicked, slapped, insulted, and threatened with death, because they were all considered Muslims.[422] At the base, they were interrogated on their ethnicity and accused of being Goula—a Muslim ethnic group associated with Djotodia.[423] Cœur de Lion encouraged the torture and murder of Saint Cyr by saying *inter alia* that the victims were 'Muslims' and 'Seleka'.[424] Yekatom's submission fails to show any error in the Chamber's reasoning but merely disagrees with it.

[415] Judgment, para. 1305 (referring to sections IV.B.2 ("Involvement of Mr Yekatom"), IV.B.3.i ("Attack on Boeing"), IV.D.3 ("Yamwara Incident"), IV.E.1-IV.E.3 ("The departure of Mr Yekatom's group from Yamwara and its advance on the axis", "Elements under Mr Yekatom's control present along the axis", "Locations of checkpoints and basis on the axis")).
[416] Yekatom Appeal, para. 118.
[417] Judgment, paras. 3142, 4135.
[418] Yekatom Appeal, paras. 118-123.
[419] Judgment, para. 3142.
[420] Judgment, paras. 3139, 3142.
[421] Judgment, paras. 3139, 3142, 3143, 3145, 3146-3149.
[422] Judgment, paras. 3153-3154. *See also* Witnesses P-1705 and P-0967.
[423] Judgment, paras. 3158, 3161-3162.
[424] Judgment, para. 3172.

II.3.d. Yekatom gave instructions to kill Muslim civilians

88. 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" and to kill Muslim civilians in the PK9-Mbaïki advance.[425] Yekatom does not show otherwise.[426]

i. Instructions on the 5 December operation

89. Contrary to Yekatom's arguments, the Chamber did not mischaracterise P-1339's evidence regarding Yekatom's instructions ahead of the 5 December 2013 Bangui attack. Nor was the Chamber's conclusion unreasoned.[427]

90. *First,* the Chamber reasonably assessed P-1339's testimony about Yekatom's group's goal and not the Anti-Balaka's goal in general.[428]

91. *Second,* in addition to P-1339's testimony the Chamber also relied on evidence regarding: (i) trainings provided in Yekatom's group, including instructions on killing 'Muslims' upon capture, originating from Yekatom, Cœur de Lion, and Habib Beina;[429] (ii) the revenge motivation of members and leaders in Yekatom's group;[430] (iii) Yekatom's instructions (partially heard by P-1339), ordering his elements to 'cross over' and destroy the houses of the Muslims;[431] (iv) Yekatom's instructions allowing attacks against 'Muslims', as long as they were not women or children—which still suggests indiscriminate targeting.[432]

92. *Third,* the Chamber's conclusion is corroborated by other findings, namely that: (i) Yekatom required his group to lead a reconnaissance mission on 4 December 2013 to the Boeing Market, where Muslim shops were found,[433] and; (ii) on the next day, Yekatom and his elements attacked this sector killing Muslims found there.[434]

---

[425] Judgment, paras. 74, 3304, 3397, 3901, 3917, 3939, 3950, 3980, 3989, 4012, 4023.
[426] Yekatom Appeal, paras. 124-132.
[427] Yekatom Appeal, paras. 124-128.
[428] Judgment, paras. 2437, 2445 ("P-1339 said that the goal of Mr Yekatom's group was to attack KM5 but *also said* that 'in fact, I have always said that the goal of the Anti-Balaka was to target those sectors where Muslims were to be found'", emphasis added).
[429] Judgment, para. 2437.
[430] Judgment, para. 2435.
[431] Judgment, paras. 2438, 2441.
[432] Judgment, para. 2444.
[433] Judgment, para. 2466.
[434] Judgment, sections IV.B.3, IV.B.4.

93. *Fourth*, the Chamber assessed P-1339's evidence holistically—and found it generally credible, considering specific inconsistencies in his testimony in the context of other evidence received by the Chamber.[435]

94. Likewise, the Chamber correctly observed that P-1339 "continued to conflate the Seleka with the Muslims in how he understood Mr Yekatom's instruction".[436] *First,* by suggesting that "when [P-1339] said 'Muslims', he meant the Seleka",[437] Yekatom in fact accepts that P-1339 conflated the two. *Second,* the Chamber's conclusion is further based on the fact that P-1339 is [REDACTED] element in Yekatom's group,[438] who underwent training by individuals conveying and entertaining such a conflation.[439]

95. Further, it is incorrect that the Chamber found that Yekatom instructed to 'attack the Muslims and the Seleka' present at the Boeing Market based on non-admitted material.[440] *First,* the Chamber relied on P-1339's in-court confirmation of his prior statement where he stated that "Rombhot told us that we would attack the Muslims and Seleka at Boeing Market."[441] When asked whether it was Yekatom who said this and when, he answered that "I'll repeat, no other individual was giving instructions. Even Ouandjio, who was his deputy, did not issue instructions. It was Rombhot himself who gave instructions when we left the bush".[442] *Second,* P-1339 had confirmed *in Court,* at the beginning of his testimony, that he stood by his prior statement (including its disputed paragraph 68) after reviewing it in the presence of his lawyer in the days leading up to his ICC appearance, subject to the corrections he made to it.[443] *Third,* contrary to Yekatom's argument, the instruction to attack the Boeing market is based on direct evidence. P-1339 clarified that the elements were specifically instructed to attack Boeing Market, with their ultimate target being KM5: "But the Muslims located in Boeing, we couldn't leave them behind and attack Kilometre 5. They could have attacked us from behind. *That's why the instructions were given* so that we could start with the Boeing market before moving ahead, moving farther."[444] In sum, contrary to Yekatom's submission,[445] the Chamber's

[435] Judgment, paras. 330-337. *Contra* Yekatom Appeal, para. 125.
[436] Judgment, para. 2445. *Contra* Yekatom Appeal, paras. 125-128.
[437] Yekatom Appeal, para. 128.
[438] Judgment, para. 2445.
[439] Judgment, paras. 2436-2437, 2439, 2451.
[440] Yekatom Appeal, paras. 130-131.
[441] Judgment, para. 2531.
[442] Judgment, para. 2531(relying on T-154-CONF-ENG, pp. 58:8-12, 59:3-7).
[443] T-151-CONF-ENG, pp. 9:18-12:6, 15:17-20.
[444] T-154-CONF-ENG, p. 59:19-23 (emphasis added).
[445] Yekatom Appeal, para. 131.

analysis of P-1339 evidence, which is correctly cited,[446] supports the Chamber's finding that they were instructed by Yekatom to attack the Boeing Market.

96. Further, the Chamber reasonably concluded that Yekatom ordered them 'to target Seleka positions along the Boeing-Cattin-PK5 direction', encompassing attacking the Muslim traders.[447] *First,* the Chamber's conclusion is based on the reasonable assessment of the evidence it laid out in the relevant section.[448] *Second,* the Chamber properly reasoned that: (i) Yekatom and some of his elements, including P-1339, conducted reconnaissance of the Boeing Market on 4 December 2013 in preparation of the 5 December 2013 attack;[449] (ii) that the next day, at 6 am, 'the chief' gave a signal to start the attack;[450] and (iii) that their ultimate goal was PK5, a predominantly Muslim neighbourhood, yet they were also instructed to attack Boeing Market.[451] Yekatom fails to show an error in the Chamber's approach.

97. Nor did the Chamber improperly rely on an incorrect English translation of P-1339's testimony when concluding that the Boeing Mosque was attacked following Yekatom's prior instruction.[452] Yekatom again disagrees with the weight the Chamber gave to P-1339's evidence that 'the leader, the commander, Yekatom' gave this instruction, and Alkanto 'only complied with the instruction Yekatom gave him'.[453] Nor was P-1339's evidence elicited under "irregular circumstances". P-1339 was given an opportunity to refresh his memory with his prior statement following the Presiding Judge's permission[454] which allowed P-1339 to then reasonably cleared up the created confusion, namely by explaining that the Boeing mosque was first partly destroyed by Yekatom's commander Alkanto, who shot a rocket at the mosque and by other Anti-Balaka joining in, following which the youth also later finished destroying the mosque. P-1339 also explained that Alkanto could not have shot a rocket at the mosque on his own initiative, and that he only complied with the instruction that was given by Yekatom.[455]

ii. Instructions on the PK9-Mbaïki axis

98. Finally, the Chamber reasonably assessed the evidence and correctly found that "Mr Yekatom and other leaders of the group under his command instructed his elements to kill all

[446] Judgment, paras. 2531-2532.
[447] Judgment, para. 2533. *Contra* Yekatom Appeal, para. 131.
[448] Judgment, para. 2533 (mentioning "having regard to the above").
[449] Judgment, para. 2529.
[450] Judgment, para. 2530.
[451] Judgment, para. 2532.
[452] Yekatom Appeal, para. 132. *See also above* section II.2 (paras. 35-76); *below* section IV.1 (paras. 291-293).
[453] Judgment, para. 2631.
[454] T-154-CONF-ENG, p. 81:2-9.
[455] T-154-CONF-ENG, pp. 85:16- 86:15.

the Muslims on the Mbaïki road".[456] *First,* Yekatom misrepresents the Judgment by repeating the same trial arguments,[457] which the Chamber carefully analysed but disregarded in light of P-1839's entire testimony.[458] The Chamber correctly relied upon P-1839's evidence regarding Yekatom's instructions to attack unarmed Muslim civilians.[459] *Second,* the Chamber explained that P-1839, an insider witness whom the Chamber found fully credible,[460] unambiguously testified that "Mr Yekatom and other leaders of the group under his command instructed his elements to kill all the Muslims on the Mbaïki road, without making 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".[461] P-1839 did not speculate, but instead provided direct and unambiguous evidence (*e.g.,* that 'the Muslims were enemy number one', 'it was an eye for an eye and a tooth for a tooth, so anybody who was Muslim would be killed').[462] Finally, as prefaced,[463] the Chamber correctly assessed P-1839's evidence holistically and in light of other corroborative reliable evidence, such as P-2084, who also explained that the Anti-Balaka suspected that Muslim civilians hid weapons in their homes .[464] Yekatom's argument regarding Djido Saleh's murder is misplaced and will be dealt with below.[465]

99. For all the reasons set out above, Ground 2.3 should be rejected.

II.4. Ground 2.4: The Chamber correctly found that Yekatom exercised control over his Anti-Balaka group

100. Yekatom claims the Chamber erred in law and fact in establishing his individual criminal responsibility as an indirect (co-)perpetrator based on his control over his Anti-Balaka group.[466] Yekatom attempts to deconstruct the relevant legal standard under article 25(3)(a) into artificial elements that are not legally required, and were not required to be established on the facts of this case. He mischaracterises the evidentiary record and disagrees with the Chamber's careful assessment of the evidence without showing any error.

---

[456] Yekatom Appeal, paras. 135-138.
[457] Yekatom Appeal, para. 136.
[458] Judgment, paras. 3303-3304.
[459] Judgment, paras. 3300-3302.
[460] Judgment, paras. 355-364, *in particular* para. 358.
[461] Judgment, para. 3304.
[462] Judgment, paras. 3300 (fn. 8090), 3301. *Contra* Yekatom Appeal, paras. 139, 140.
[463] Judgment, para. 203.
[464] Judgment, para. 3304, fn. 8103.
[465] *See below* section IV.6 (paras. 320-331).
[466] Yekatom Appeal, paras. 150-207.

101. The Chamber reasonably found that Yekatom exercised control over his group of fighters, understood to be part of the Anti-Balaka. The Chamber found that, in 2013, Yekatom formed a group to respond to the Seleka violence and remove Michel Djotodia and the Seleka from power.[467] As its "uncontested leader", he retained and exercised control over his group throughout the period relevant to the charges.[468] Specifically, the Chamber concluded that Yekatom: (i) led his group in the attack on Bangui;[469] (ii) had undisputed authority and maintained overall control over all activities at Yamwara at all times,[470] and; (iii) was the undisputed leader of the group on the PK9-Mbaïki axis.[471] The Chamber drew these conclusions based on a thorough assessment of the evidentiary record and various factors, including: his leadership position within the group;[472] his enforcement of discipline within the group;[473] his ensuring that the group had access to weapons and ammunition;[474] the areas under his control over the charged period;[475] and the number of elements under his control.[476] As set out below, the Chamber reasonably relied on these and other factual findings to establish that Yekatom committed crimes through others under article 25(3)(a).

II.4.a. The Chamber correctly identified the 'organisation' or 'apparatus of power' through which Yekatom committed crimes

102. The Chamber identified the relevant power apparatus, *i.e.* the Anti-Balaka fighters under Yekatom's control.[477] Yekatom selectively reads the Judgment in arguing that it establishes only that Yekatom's group was a diffuse, loosely connected Anti-Balaka movement with a "simple two-tier hierarchy of 'chief' and 'deputy' presiding over a loose and largely disorganised group of soldiers and civilians".[478] In particular, the Chamber found that: Yekatom established a base with his group in Gbangba prior to the 5 December 2013 attack, where he trained his group and instructed them to target Muslims;[479] Yekatom was the leader of his group[480] and had "undisputed authority over Cœur de Lion, Alkanto" (and subordinate

[467] Judgment, para. 36.
[468] Judgment, para. 63.
[469] Judgment, para. 1628 (finding based on sections IV.B.2, IV.B.3).
[470] Judgment, paras. 92, 1628 (finding based on section IV.D.1, *in particular* paras. 3059-3084).
[471] Judgment, paras. 113, 115, 120, 1628 (findings based on section IV.E.1, IV.E.2, *in particular* paras. 3344-3359). *See further above* para. 75.
[472] Judgment, paras. 1629-1630.
[473] Judgment, paras. 1629, 1631-1632, 1647.
[474] Judgment, paras. 1629, 1633-1635.
[475] Judgment, paras. 1629, 1636.
[476] Judgment, paras. 1629, 1637.
[477] Judgment, paras. 1628-1647, 1883, 2427-2433. *Contra* Yekatom Appeal, para. 152.
[478] Yekatom Appeal, paras. 152-157, *especially* paras. 153-154.
[479] Judgment, paras. 2427, 2432-2446.
[480] Judgment, paras. 115, 1630, 2427, 3060, 3310-3312, 3344.

commanders);[481] his group had a hierarchical setup resembling military hierarchy;[482] Yekatom enforced discipline and punishment[483] and punished those who disobeyed his orders, including for instance, by killing two *aides-de-camp* and injuring a third along the PK9-Mbaïki axis.[484] It recalled these findings when examining his "control over the crimes or control of persons(s) who execute the material elements of the crime" for the purposes of establishing his criminal responsibility.[485]

103. In defining the contours of Yekatom's group, the Chamber reasonably credited Yekatom's admissions on the number of elements in his group and its structure,[486] and the evidence of Anti-Balaka elements, including those close to Yekatom and his group—"whom it would expect to be able to discern between members of their own movement and unidentified armed groups coming from the bush or the forest to commit exactions."[487] It did not solely rely on evidence of the period when the group was in Yamwara,[488] but also cited witnesses who described the training, preparations and instructions given by Yekatom in the lead up to the 5 December 2013 attack.[489] The Chamber's careful assessment as to the structure of Yekatom's group was based, *inter alia*, on the evidence of insider witnesses in his group.[490] Yekatom shows no error in the Chamber's reliance on this evidence.

104. Contrary to Yekatom's claim, the Chamber was not required either as a matter of law or on the facts to enter findings on structures within the group concerning its *organisation* as distinct from the *hierarchy* within it.[491] The Chamber's assessment of the existence of these military-like hierarchical structures concurrently demonstrates the existence of an apparatus of control.[492] The reference, *inter alia*, to P-1839's testimony concerning the "command structure and hierarchy within the group and the personal interactions and power dynamics between Mr

[481] Judgment, para. 3078. *See also* paras. 1630, 3072-3077, 3344, 4235.
[482] Judgment, para. 3059.
[483] Judgment, paras. 92, 3061, 3348.
[484] Judgment, para. 3348.
[485] Judgment, paras. 4008-4013 (concerning 5 December 2013 attack charges: counts 1-6, 8), 4242-4249 (concerning Yamwara charges: counts 11-17), 4360-4363 (concerning PK9-Mbaïki charges: counts 24-28).
[486] Judgment, paras. 2455-2456, 3337-3342.
[487] Judgment, para. 3343. *Contra* Yekatom Appeal, para. 155.
[488] *Contra* Yekatom Appeal, para. 157.
[489] *See e.g.* Judgment, paras. 2427, 2432-2447, 2465-2479, 2480-2484.
[490] Judgment, paras. 3091, 3340, 3470, 3651. *Contra* Yekatom Appeal, para. 155 ("testimonial evidence which is said to describe the group's 'structures' are insufficient").
[491] Yekatom Appeal, para. 155.
[492] *See e.g.* Judgment, paras. 92, 3059-3060, 3061, 3090.

Yekatom and other Anti-Balaka such as Cœur de Lion, Alkanto or Mr Ngaïssona",[493] further reinforces the Chamber's conclusions.

105. Yekatom misrepresents the evidence and the Chamber's findings by suggesting that the evidence shows that his group became organised only once based at Yamwara, following the attack on Bangui.[494] *First*, the Chamber could properly infer the Yekatom's group's earlier structure and hierarchy from evidence of its later organisation. *Second*, Yekatom's argument ignores the clear findings on the structure and hierarchy of his group before the 5 December 2013 Bangui attack, including that his group set up a base in Gbangba composed of civilians and FACA members,[495] advanced to Projet in preparation for the attack,[496] and joined up with Anti-Balaka elements arriving from Bossangoa.[497] It also found that Yekatom communicated with Ngremangou and others in advance,[498] prepared for the attack and undertook reconnaissance operations to pre-determined attack locations, and expressly instructed his group on the attack on the Boeing Market and in Cattin.[499] These findings demonstrated that Yekatom's group was organised, hierarchical, and controlled by Yekatom even before the 5 December 2013 attack.

II.4.b. The Chamber did not err in its findings regarding the 'hierarchy' in Yekatom's group

106. Yekatom asserts that the Chamber's findings on his control of his group relied on superficial and insufficient findings of the hierarchy between Yekatom and his deputies (Cœur de Lion and Habib Beina), failed to address evidence of decentralised authority and collective decision-making, and failed to situate the evidence of his leadership and control in a precise timeframe.[500] He further argues that the Chamber relied on weak evidence to reach its findings.[501] Yekatom's arguments should be rejected. He relitigates trial arguments that the Chamber considered and reasonably dismissed. Moreover, he misapprehends the Judgment and

[493] Judgment, para. 359.
[494] Yekatom Appeal, para. 157.
[495] Judgment, paras. 2124, 2411-2458, 2524. *See especially* paras. 2427 (finding that after having crossed over to Zongo, Yekatom established a base in Gbanga), 2433 (finding that Yekatom and his group armed and trained in the bush in the months leading up to the attack on Bangui).
[496] Judgment, paras. 2124, 2459-2464, 2524.
[497] Judgment, paras. 2124, 2465-2479, 2524.
[498] Judgment, paras. 2124, 2485-2522, 2524. *See especially* paras. 2520 (finding that Ngremangou instructed Yekatom and his group to advance to participate in the Bangui attack), 2522 (finding 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 Attack).
[499] Judgment paras. 2124, 2480-2484, 2524, 2529-2539.
[500] Yekatom Appeal, paras. 158-172.
[501] Yekatom Appeal, paras. 162, 165-170.

incorrectly assumes that evidence of 'structure', 'hierarchy' and 'apparatus or power' cannot overlap as a matter of law. Accordingly, Yekatom's suggestion that the Judgment is deficient in failing to describe "further hierarchical lines"[502] between Yekatom and his subordinates fails.

107. *First*, while 'hierarchy' may be relevant to assessing whether an indirect (co)-perpetrator exercised control over an 'organisation' or 'apparatus of power', there is no legal requirement under article 25(3)(a) that an organisation must meet any particular level of hierarchy.[503] In any event, the Chamber's factual findings on the hierarchy within Yekatom's group sufficiently established his ability to control the actions of his elements who physically perpetrated the charged crimes. Yekatom ignores that, apart from its findings regarding his authority over his deputies, the Chamber also made findings on commanders, ComZones, Section Chiefs, and elements,[504] [REDACTED] P-1339 [REDACTED],[505] and P-1839.[506] The Chamber detailed the basis for its reliance on P-1339[507] and P-1839,[508] and also referred to, *inter alia*, Dawili who led 120 elements in Yekatom's group as a Company Commander and, provided insight and detail as to its structure and functioning.[509]

108. *Second*, the Chamber's findings that Yekatom's group had a 'hierarchical setup' that 'resembled a military hierarchy', with 'sections' and 'companies' described as military-type units was not superficial, but was based on the credible evidence on the record.[510] Moreover, this was one of several relevant factors that the Chamber reasonably relied upon to find that Yekatom had control over his group.[511] Given this firm basis, the Chamber was not required (legally or factually) to enter further findings on reporting lines, the transmission of decisions or the number and content of meetings.[512]

109. *Third*, in addition to its express findings regarding the hierarchy in Yekatom's group, this hierarchy and the manner in which it functioned are evident from its actions, particularly

---

[502] Yekatom Appeal, para. 158.
[503] Judgment, para. 3870 (noting that the *way* in which an indirect perpetrator may subjugate the will of persons who execute the material elements of the crime—such as through the use of an organisation—is a factual consideration); *Ongwen* AJ, para. 630.
[504] *See e.g.* Judgment, paras. 62, 92, 1716, 1738-1756, 3059-3079.
[505] *See* Judgment, para. 332.
[506] *See* Judgment, para. 356. *See also* paras. 3048, 3060. As concerns the latter, the Chamber considered and rejected Yekatom's previous submission that P-1839 "lacked military understanding and would not have been privy to details concerning the command structure and hierarchy within the group: Judgment, para. 359.
[507] *See* Judgment, paras. 330-337.
[508] *See* Judgment, paras. 355–364.
[509] *See e.g.* Judgment, paras. 3048, 3091.
[510] *Contra* Yekatom Appeal, para. 159. *See* Judgment, paras. 3059-3079, *especially* para. 3059.
[511] *See above* paras. 101-102.
[512] *Contra* Yekatom Appeal, para. 159.

in relation to Yekatom's directives to subordinates regarding deployments, the takeover and exercise of control over territory and orders to kill all Muslims in their area.[513] The operational and criminal structure of the group can thus be clearly inferred. Thus, Yekatom's assertion of a "decentralised" authority structure and collective decision-making does not identify any unreasonableness in the Chamber's findings that prove otherwise. Moreover, these merely repeat Yekatom's arguments at trial that the Chamber reasonably rejected.[514]

110. *Fourth*, Yekatom's allegation that the Chamber reversed the burden of proof in observing that his Defence "has pointed to no reason why, [despite its assertions as to Cœur de Lion's higher or comparable authority *vis-à-vis* Mr Yekatom], their own elements would consistently testify to Cœur de Lion being the 'deputy'," misconstrues the Judgment.[515] The Chamber's observation articulates its absence of doubt on the evidence, in particular, the consistent testimony of Yekatom's own elements.[516] It did not suggest that the burden to identify a reasonable doubt as to the credibility of such testimony lies with the Defence.

111. *Fifth*, Yekatom's assertion that the Chamber mischaracterised the Defence position that "titles and self-descriptions" without more do not prove a functioning chain of command,[517] is unavailing. The Chamber relied on evidence demonstrating Yekatom's authority and control, including through his subordinates, irrespective of how he identified himself.[518] For the same reason, Yekatom's claim that evidence of "[s]elf-identification was thus treated as persuasive [by the Chamber] when seemingly inculpatory and disregarded when exculpatory"[519] should be rejected. The Chamber was free to assess evidence and any part of it in the context of a case as a whole—an approach consistent with the Court's well-established jurisprudence.[520]

112. *Sixth*, Yekatom mischaracterises the Judgment in arguing that there was no showing of a *de facto* superior/subordinate relationship between Yekatom and Cœur de Lion. He identifies no error or unreasonableness in the Chamber relying on Cœur de Lion's contemporaneous video statement confirming his status as his Deputy, and that he needed to request authorisation before taking an action,[521] or in its finding based on P-1839's testimony that Yekatom was the "chief

[513] *See e.g.* Judgment, paras. 2437-2447, 3062, 3079, 3310-3312.
[514] *See e.g.* Yekatom Closing Brief, paras. 277-278.
[515] Yekatom Appeal, para. 163 (fn. 545) (citing Judgment, para. 3068).
[516] Judgment, paras. 3059-3067.
[517] Yekatom Appeal, para. 163, fn. 545 (citing Judgment, para. 3068).
[518] *See e.g.* Judgment, para. 3481.
[519] Yekatom Appeal, para. 164.
[520] Judgment, para. 203 (citing *Ongwen* TJ, para. 260; *Ngudjolo* AJ, para. 168; *Al Hassan* TJ, paras. 37, 43).
[521] *See* Judgment, paras. 3066-3067. *Contra* Yekatom Appeal, para. 165.

of the group", Cœur de Lion was his deputy, and that Yekatom had the greatest influence in the Group.[522] The Chamber concluded that there is "overwhelming evidence on the record that shows that Cœur de Lion was Mr Yekatom's deputy"[523] and that Yekatom had "undisputed authority over Cœur de Lion, Alkanto, and Bojos *among others*.[524] Moreover, the Judgment is replete with examples of direct evidence confirming Yekatom's control over his group. For instance, the Chamber noted, *inter alia*, the testimonies of: P-1193 ("[he] never saw any one opposing [Yekatom]");[525] P-1786 ("[I] would not have survived if [I] had disobeyed him", "R[hombot] was the chef for everyone at Yamwara, Bimbo and Mbaïki");[526] P-1839 ("the chiefs 'complied with what he said'"),[527] and; P-1858 ("Yekatom's orders were obeyed without question").[528] Yekatom merely disagrees with the Chamber's reliance on this evidence.[529]

113. *Seventh*, Yekatom's contention that the Chamber failed to address Cœur de Lion's alleged exercise of parallel authority or functional independence is unsubstantiated.[530] The Chamber reasonably concluded that Yekatom was the "uncontested leader" of his group and that he retained and exercised control throughout the period relevant to the charges.[531] Instances of insubordination do not negate this. Yekatom conflates these two notions.[532] The Chamber explicitly addressed this, clarifying that: "the fact that Mr Yekatom had a smoother or close personal relationship with other elements of his group does not detract from the fact that Cœur de Lion was under Mr Yekatom's command."[533] Yekatom's selective reliance on testimony suggesting otherwise only shows his disagreement with the Chamber's finding.

114. In addition, Yekatom's assertion that the Chamber inferred a "straight-line hierarchy" without addressing his submissions that Cœur de Lion's elements left the group[534] is incorrect. The Chamber's findings in this regard are largely based on *direct* evidence.[535] Moreover, the Chamber did not discount Yekatom's submissions. Rather, it meticulously considered and

[522] Judgment, paras. 3077, 3345. *Contra* Yekatom Appeal, para. 165.
[523] Judgment, para. 3071. *See also* para. 3357.
[524] Judgment, para. 3078.
[525] Judgment, para. 1631 (citing P-1193).
[526] Judgment, para. 3346 (citing P-1786). *See also* para. 3065 (noting P-1786's testimony that Yekatom was the "topmost commander" and that his "deputy was Cœur de Lion").
[527] Judgment, para. 3345 (citing P-1839).
[528] Judgment, para. 3347 (citing P-1858).
[529] Yekatom Appeal, paras. 166-167.
[530] Yekatom Appeal, para. 168.
[531] Judgment, para. 63. *See above* para. 101.
[532] Yekatom Appeal, para. 168.
[533] Judgment, para. 3358.
[534] Yekatom Appeal, para. 170.
[535] *See* Judgment, para. 3071.

rejected them.[536] Similarly, the Chamber did not apply different evidentiary standards when assessing the Defence's evidence.[537] The Chamber reasonably relied upon, *inter alia*, direct and concrete evidence from elements in Yekatom's group and not "ambiguous material."[538] In any event, the Chamber was free to accept hearsay evidence, draw reasonable inferences from it, and to reject evidence proffered by the Parties respectively, within the proper exercise of its discretion.

115. *Finally*, Yekatom's arguments regarding the alleged failure to frame the findings on hierarchy within a precise timeframe or chronology are misplaced.[539] As shown above, the Chamber's findings on Yekatom's leadership and the hierarchy of his group, and his directives that resulted in it carrying out operations, controlling territory and committing crimes during the charged period, establish his control over the group during that period.

II.4.c. The Chamber correctly found that Yekatom exercised the requisite level of control over his group of Anti-Balaka elements

116. Yekatom alleges that the Chamber misapplied the standard of 'effective control' - which according to Yekatom applies in article 25(3)(a) for indirect co-perpetration; erred in its assessment of the evidence; and failed to provide a full and reasoned opinion.[540] Yekatom's submissions misstate the applicable legal standard, mischaracterise the Chamber's multi-layered findings, and thus demonstrate no error.

117. At the outset, Yekatom incorrectly asserts that for indirect co-perpetration the Chamber was required to find that he exercised "effective control" over the organisation, which he defines as "the material ability to prevent or punish the commission of offences".[541] Yekatom thus seems to apply the "effective control" test for command responsibility under article 28[542] to indirect (co-)perpetration under article 25(3)(a).[543] This imports an non-existent requirement in the text of article 25(3)(a) and misapprehends the legal standard for indirect (co-)perpetration,

[536] *See e.g.* Judgment, paras. 3064-3068.
[537] *Contra* Yekatom Appeal, para. 170.
[538] *See above* para. 103. *Contra* Yekatom Appeal, para. 170.
[539] *Contra* Yekatom Appeal, paras. 171-172.
[540] Yekatom Appeal, para. 174.
[541] Yekatom Appeal, paras. 174. *See also* paras. 207-208.
[542] *See e.g. Bemba* TJ, paras. 180, 183 ("For the purpose of Article 28(a), following consistent international criminal jurisprudence, the Chamber finds that 'effective control' requires that the commander have the material ability to prevent or repress the commission of the crimes or to submit the matter to the competent authorities.").
[543] Yekatom Appeal, para. 174 (fn. 595: citing *Delalić* AJ, paras. 197-198; *Nahimana et al.* AJ, para. 625). The cited cases apply the legal standard for superior responsibility under the ICTY Statute and ICTR Statute. Yekatom further claims the *Lubanga* Trial Chamber sets out a control standard "similar to the 'effective control' requirement", yet refers to its discussion of the standard of control required under *co-perpetration*, which is not relevant and also not similar to 'effective control': Yekatom Appeal, fn. 595 (citing *Lubanga* TJ, para. 1003).

which requires that the accused "controls the person or persons who execute the material elements of the crime by subjugating their will."[544] The use of an organisation is one way through which such subjugation may occur.[545] Whether an indirect (co-)perpetrator has such control over the tools he uses to commit the crimes is a matter of evidence which will be assessed on the facts of each case and not on the basis of whether certain specific requirements are always met. As discussed below, in this instance the Chamber reasonably considered Yekatom's role as the leader of his group; the enforcement of discipline; him ensuring access to weapons and ammunition; Yekatom group's control of territory; and the number of elements under his control.[546] There is no error in the Chamber's approach, which is consistent with prior ICC judgments.[547]

118. Moreover, Yekatom's claim that the Chamber erroneously equated control of the organisation to control of the crimes[548] misunderstands the law and the facts of this case. The Chamber relied on multi-layered findings to establish that Yekatom had control over his group, through which he committed the crimes as an indirect (co-)perpetrator.[549] The Chamber's findings were legally sufficient, grounded in the evidence, and reasonable. Moreover, this conclusion was supported by the Chamber's detailed findings that, as its "uncontested leader", Yekatom retained and exercised control over an active group of Anti-Balaka elements throughout the period relevant to the charges.[550] While Yekatom suggests that the Chamber's findings on his leadership of his group do not exceed "mere[] influence, respect, or symbolic authority",[551] this misrepresents the Judgment. The Chamber's findings demonstrate that Yekatom was the *absolute* authority and leader of his Anti-Balaka group—*de jure* and *de facto*, "without question".[552] Not only does Yekatom ignore that the Chamber took into account five

[544] Judgment, para. 3869 (fn. 9411) (citing *Ongwen* TJ, para. 2783; *Ntaganda* TJ, paras. 774, 777-779; *Katanga* TJ, paras. 1396, 1402-1403, 1406). *See also* Judgment, para. 3873.
[545] *Ongwen* AJ, paras. 630-632.
[546] Judgment, paras. 1628-1637.
[547] *See Ongwen* TJ, para. 2858 (basing its findings on control over persons who executed the material elements of the crimes on the conditions of recruitment, initiation, and training, service in the LRA generally of its members, and the number of soldiers); *Ntaganda* TJ, para. 819 (basing its findings on control over persons who executed the material elements of the crimes on the conditions of living, training, and service imposed on the UPC/FPLC soldiers, as well as the number of persons within the UPC/FPLC military structure).
[548] Yekatom Appeal, para. 173.
[549] Judgment, paras. 4009, 4012 (Bangui), 4242-4249 (Yamwara, for which the Chamber only considered Yekatom's control over his Anti-Balaka group and entered no convictions for co-perpetration), 4357-4363 (PK9-Mbaïki). *See further below* section II.6 (paras. 149-161).
[550] *See above* para. 101.
[551] Yekatom Appeal, para. 174.
[552] Judgment, paras. 1631, 3346-3347, 3349 (noting his authority to sanction and kill those who challenged him), 4363.

factors *holistically* to find that he had control, but his arguments challenging each factor in isolation are without merit.

119. *First*, as to the hierarchy within the group,[553] Yekatom's repeated argument that a *de jure* hierarchy does not prove *de facto* hierarchy should be rejected for the reasons above.[554] His claim that the Chamber did not account for him establishing the group with Cœur de Lion and Habib Beina as a "joint initiative by individuals of the same military rank" is likewise flawed.[555] It ignores that the Chamber's finding that Yekatom led his group was based on: his own admissions; Cœur de Lion's confirmation of Yekatom's authority, and; credible insider testimony.[556] His further claim that the Chamber overlooked a "chronological mismatch" by relying on a 2016 video of Yekatom describing his own founding role in the Anti-Balaka movement is unpersuasive. Moreover, the Chamber relied on multiple sources to establish Yekatom's role and function within his group, such as Yekatom's *contemporaneous* admissions in this regard.[557] Yekatom shows no error.

120. *Second*, as to the finding that Yekatom imposed discipline on his elements, it was open to the Chamber to rely in part on "opinion evidence",[558] particularly since this evidence came from insider witnesses who could reliably speak to Yekatom's authority over elements in the group.[559] Moreover, Yekatom's violent character and the fear that he instilled in his elements reflected his capacity to impose discipline and control them, and was a relevant factor which the Chamber reasonably relied upon based on the evidence of insider witnesses.[560] This included findings regarding the Seda incident, in which Yekatom killed two of his *aides-de-camp* and shot another element of his group.[561] Yekatom's contention that the Chamber did not consider the possibility that this incident could have been a 'confrontation' rather than a 'disciplinary action'[562] is not supported in the record[563] and contradicted by Dawili—a survivor of the shooting.[564] Similarly, Yekatom's argument that the Chamber ignored that he and Seda

[553] Yekatom Appeal, paras. 175-177.
[554] *See above* section II.4.b. (paras. 106-115).
[555] Yekatom Appeal, para. 175.
[556] Judgment, paras. 988, 3059-3061, 3066, 3069-3079.
[557] Judgment, para. 3353.
[558] *Contra* Yekatom Appeal, para. 178 (referring to Judgment, paras. 1631, 3347).
[559] *See e.g.* Judgment, para. 3347.
[560] *See e.g.* Judgment, para. 1644 (fn. 4335).
[561] *See e.g.* Judgment, para. 3348. *Contra* Yekatom Appeal, para. 179.
[562] Yekatom Appeal, para. 180.
[563] *See* Judgment, para. 3349. *See also* fns. 8207, 10237 (noting Yekatom's position and P-0888's testimony).
[564] Judgment, para. 3348. The Chamber was justified in relying on Dawili's evidence. He is an insider witness who is manifestly familiar with Yekatom's position and function within the group, having been assigned by Yekatom

were the same military rank and that their relationship was one of equal footing and not one of superior-subordinate, is incorrect.[565] The Chamber considered and reasonably rejected Yekatom's submissions on this point at trial.[566] Moreover, Seda's military rank was irrelevant in light of evidence clearly establishing that Yekatom was nevertheless the leader of his group.[567]

121. *Third*, Yekatom fails to show error in the Chamber's findings on the group's possession of sufficient weapons to conduct operations and to control territory.[568] Yekatom's control over his group's weapons directly corresponds, and was thus relevant, to establishing his control over the group itself—being a tool through which he committed crimes.[569] Moreover, the Judgment demonstrates that Yekatom's group effectively conducted active operations and controlled territory using their weapons.[570] Similarly, Yekatom's contention that the Chamber failed to explain how weapons handed over in 2015 demonstrated that the group possessed similar weapons in 2013–2014[571] ignores the Chamber's other findings that the group possessed weapons throughout the charged period.[572]

122. *Fourth*, Yekatom's arguments challenging the Chamber's reliance on the group's control over territory are without merit. Yekatom again misunderstands the Judgment in arguing that the Chamber made no finding as to how control over territory after 10 January 2014 evinces effective control over the group.[573] The Chamber found that Yekatom exercised control over his group which, *at his direction*, controlled the relevant areas, including by deploying resources and setting up checkpoints.[574] Once again Yekatom demonstrates no error. Similarly, Yekatom's challenges to the Chamber's findings concerning his presence at the Yamwara School[575] ignore that the Chamber found that he maintained a constant presence there "through

---

to his positions in the group as a Company Commander and as a Deputy ComZone: *see e.g.* Judgment, paras. 3091, 3099, 3340.
[565] Yekatom Appeal, para. 181.
[566] Judgment, para. 3349.
[567] *See e.g.* Judgment, para. 3528 (fn. 8696) ("The Chamber notes that while P-1666 mentioned that Lieutenant Gouga said [REDACTED] that he was higher in military rank than Cœur de Lion and Mr Yekatom, he also made clear that Mr Yekatom was the leader of the group").
[568] Yekatom Appeal, paras. 182-183.
[569] *See e.g.* Judgment, para. 1635, with references to other findings in the Judgment in fn. 4307. *Contra* Yekatom Appeal, para. 182.
[570] *See e.g.* Judgment, para. 1635.
[571] Yekatom Appeal, para. 183.
[572] *See e.g.* Judgment, paras. 336, 1632, 1633, 2418, 3398, 3475, 4304.
[573] Yekatom Appeal, para. 184.
[574] *See e.g.* Judgment, para. 1636.
[575] Yekatom Appeal, para. 185.

his elements."[576] The Chamber considered and rejected Yekatom's arguments to the contrary at trial.[577] Yekatom also fails to demonstrate the unreasonableness of the Chamber's finding that his authority was reflected in a video in which he chastises Anti-Balaka Coordinator Yagouzou (a civilian) for attempting to instruct newly recruited elements beyond his direction.[578] The exchange objectively reflects Yekatom's assertion of authority, including over Yagouzou regarding the recruitment of new Anti-Balaka elements into his group. The Chamber's assessment of this evidence was thus manifestly reasonable.

123. *Fifth*, Yekatom's arguments challenging the Chamber's finding that he controlled "at least 1,000 elements" ignore the Chamber's exhaustive findings which were based, *inter alia*, on Yekatom's own admissions.[579] His claim that the Chamber makes no further assessment of how such control was exercised[580] mischaracterises the Judgment, which clearly sets out the Chamber's fully reasoned conclusion.[581]

II.4.d. The Chamber correctly found that Yekatom subjugated the will of the elements under his control through automatic functioning of an organised power apparatus

124. Yekatom shows no legal or factual error in the Chamber's findings that demonstrate he steered elements under his control towards the commission of the crimes, with the will of the individual elements being immaterial to their execution.[582] Yekatom's claim that the Chamber did not assess whether his orders were, in practice, executed with (almost) automatic compliance by his elements [583] misapprehends the Judgment and the applicable law.

125. *First*, contrary to Yekatom's assertion,[584] "automatic compliance" does not require coerced membership of a group, but rather that its members are fungible, in the sense that there would always be a member who would comply and execute the material elements of the

[576] *See e.g.* Judgment, para. 3053.
[577] Judgment, para. 3056.
[578] Judgment, paras. 1644, 2473. *Contra* Yekatom Appeal, para. 186.
[579] Judgment, para. 3337.
[580] Yekatom Appeal, para. 187.
[581] Judgment, paras. 1637, 3039, 3048, 3342.
[582] Judgment, paras. 4009, 4012, 4248, 4359. *See further above* para. 101. *Contra* Yekatom Appeal, paras. 188-206.
[583] Yekatom Appeal, para. 191.
[584] *Contra* Yekatom Appeal, paras. 188-190.

crime.[585] As this determination depends on the specific circumstances of each case,[586] Yekatom's comparisons to the *DRC Situation* and *Ongwen* case are inapposite.[587]

126. *Second*, Yekatom overlooks that the Chamber cited the testimonies of P-1858, P-1339, P-1839, P-1193, P-0888, among others, showing that Yekatom's orders were followed at pain of serious discipline[588] and even potential death.[589] Yekatom merely disagrees with the Chamber's credibility assessments.[590] Similarly, his argument that key decisions of the group were taken collectively and that day-to-day matters, including discipline, were decided by 'section chiefs'[591] is not supported by the Chamber's findings or the overwhelming weight of the evidence, which instead confirm that Yekatom was the ultimate leader of his group.[592]

127. *Third*, the Chamber reasonably inferred from Yekatom's domineering leadership and control over the elements in his group that he issued orders to them.[593] Likewise no error arises from the Chamber's resolution of divergent descriptions provided by P-1339 and P-1839 regarding the killing of two civilians at the Yamwara School.[594] Yekatom merely disagrees with the Chamber's acceptance of P-1339's account of the event and attribution of the killing to orders issued by Yekatom.[595]

128. *Fourth*, the Chamber was entitled to reject Yekatom's claim that he gave orders to "protect the population, not to harass them",[596] having found that his group specifically targeted the Muslim population.[597] It also reasonably discounted his purported order not to harass Muslims, given its finding that Yekatom knew "how his elements would interpret his instructions to 'target those sectors where Muslims were to be found' […] as also targeting Muslim civilians."[598]

---

[585] *See e.g.* *Katanga* CD, paras. 515-518.
[586] *See* *Ongwen* AJ, para. 632.
[587] *Contra* Yekatom Appeal, para. 189.
[588] Judgment, paras. 92, 3061, 3062, 4235.
[589] *See e.g.* Judgment, paras. 1631, 3346.
[590] *Contra* Yekatom Appeal, para. 191.
[591] Yekatom Appeal, para. 192 (no citation is provided).
[592] Judgment, para. 3071 (referring to "overwhelming evidence").
[593] *Contra* Yekatom Appeal, para. 193.
[594] *Contra* Yekatom Appeal, para. 193. *See* *Ntaganda* AJ, para. 672; *Nahimana et al.* AJ, para. 428.
[595] *See* Judgment, para. 3069. *See also* fn. 7600.
[596] *Contra* Yekatom Appeal, para. 194.
[597] Judgment, para. 3095. *See also* para. 3304 (fn. 8103). The Chamber even noted video footage of one subordinate commander admitting so publicly, including their killing of Muslim children.
[598] Judgment, para. 2447. The Chamber also referred to evidence that elements under Yekatom's command understood that "'if a Central African who was apprehended in an area under Muslim control was systematically killed','[t]he same was true for the Anti-Balaka in the Yamwara sector": Judgment, para. 3094.

129. *Fifth*, Yekatom argues that the "absence of constraints on leaving is incompatible with an apparatus designed to neutralise individual will."[599] However, there is no need to demonstrate a pattern of violent punishment for disobedience.[600] The threat of killing one's own subordinates even in a single instance may well be sufficient to guarantee their near automatic compliance. In addition, the Chamber reasonably found that Yekatom's use of the phrase "skinning the papaya"[601] and the use of the same phrase among his elements was indicative of the violent climate he cultivated.[602] Likewise, the Chamber was not required to find that Yekatom's elements were subjected to violent training.[603] Its finding that no training was provided in international humanitarian law[604] contradicts Yekatom's suggestion that the training provided was not doctrinally supportive of violence.[605] The Chamber reasonably inferred the opposite given Yekatom's awareness that his instructions would be understood as targeting Muslim civilians.[606]

130. *Sixth*, Yekatom's contention that the Chamber did not engage in any "normative assessment of his relationship with the direct perpetrators"[607] misapprehends the Judgment. As noted above, the Chamber made several findings explaining Yekatom's "undisputed authority" and command over his group's actions as its leader.[608]

131. *Seventh*, in respect of the 5 December 2013 attack, Yekatom misreads the Judgment in asserting that it "conflates control over a group with control over the crimes".[609] Rather, the Chamber correctly found that Yekatom's group was the *instrument* (or tool) through which the crimes were committed.[610] His control over that instrument denotes both control over the group and over its crimes. Moreover, his argument that the Chamber's findings of a hierarchy on 5 December is based on subsequent events,[611] shows no error. The Chamber was not precluded from inferring the organisational hierarchy of Yekatom's group in relation to the Bangui attack from evidence of its structure a short time later at the Yamwara School and on the PK9-Mbaïki Axis. Moreover, with respect to Yekatom's relationship with his Deputy Cœur de Lion, the

[599] Yekatom Appeal, para. 197.
[600] *Contra* Yekatom Appeal, para. 198.
[601] *See* Judgment, paras. 3191-3201.
[602] Judgment, paras. 3144, 3145. *See also* fn. 7769.
[603] *Contra* Yekatom Appeal, para. 199.
[604] *See* Judgment, paras. 3097, 3099-3100.
[605] *See e.g.* Judgment, para. 3086.
[606] Judgment, para. 4012.
[607] Yekatom Appeal, para. 201.
[608] Judgment, paras. 3078, 3344-3345, 4235.
[609] Yekatom Appeal, para. 202.
[610] *See e.g.* Judgment, paras. 4244-4246.
[611] Yekatom Appeal, para. 202.

Chamber was clear that even if not smooth, this "does not detract from the fact that Cœur de Lion was under Mr Yekatom's command."[612]

132. *Eighth*, regarding the Yamwara School base, Yekatom's argument that "[t]he 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"[613] simply rehashes arguments previously submitted and rejected by the Chamber. His claim—that the Chamber was obliged to determine whether Yekatom specifically subjugated the will of his deputy, Cœur de Lion, and that of the direct perpetrators[614]—misrepresents the Judgment. The Chamber found that Yekatom controlled the apparatus of power through which his will was imposed and carried out by his elements.[615] Moreover, Yekatom's endorsement of violence and approbation of the violent crimes perpetrated by his elements corroborates that these were carried out consistently with his will, thereby strengthening the Chamber's conclusion of his control over the instrument(s) through which the crimes were committed. Even an *ex post* approval of mistreatment or rhetorical endorsement of violence may reasonably be used, among other things, to infer Yekatom's control.[616]

133. *Finally*, Yekatom's arguments concerning the PK9-Mbaïki axis merely disagree with the Chamber's reasonable conclusions.[617] Even assuming *arguendo* that the Chamber concluded that he controlled the crimes through others because he was the undisputed leader of his group, this would be sufficient for it to infer his control over the crimes. However, as noted above, the Chamber's findings establishing Yekatom's control over his group detail the basis on which it considered Yekatom's orders were executed with near automatic compliance.[618]

134. The Chamber made multiple findings that Yekatom's group removed the Muslim population from Mbaïki in pursuance of Yekatom's goal.[619] The Chamber's substantiated

[612] Judgment, para. 3358.
[613] Yekatom Appeal, para. 203.
[614] Yekatom Appeal, para. 203.
[615] *See e.g.* Judgment, para. 1628 (finding that Yekatom led a group in the attack on Bangui, based on its findings in sections IV.B.2, IV.B.3); paras. 92, 1628 (finding that Yekatom had undisputed authority and maintained overall control over all activities at Yamwara at all times, based on section IV.D.1, *especially* paras. 3059-3084); paras. 113, 115, 120, 1628 (finding that Yekatom was the undisputed leader of the group on the PK9-Mbaïki axis, based on section IV.E.1, IV.E.2, *especially* paras. 3344-3359).
[616] *Contra* Yekatom Appeal, para. 204.
[617] Yekatom Appeal, para. 205.
[618] *See e.g.* Judgment, paras. 3346-3348, 3352-3354. *Contra* Yekatom Appeal, para. 205.
[619] Judgment, para. 3454 *et seq*. *See also* paras. 3515-3516, 3519, 3533 *et seq*., 4360 *et seq*. The Chamber concluded that, "with the removal of the Muslim civilian population from Mbaïki, after which very few Muslim civilians remained in Mbaïki, Mr *Yekatom achieved his goal* of chasing out the Seleka, *which necessarily included Muslim civilians*": para. 3521 (emphasis added).

findings fully extend to Yekatom's control over the crimes through his elements, including the murder of Djido Saleh.[620] Yekatom's challenges to the Chamber's assessment of the weight and credibility of the evidence do not demonstrate any error. In fact, the Chamber concluded that "Yekatom and other leaders of the group under his command instructed his elements to kill all the Muslims on the Mbaïki road, without making any distinction between armed and unarmed Muslims."[621] The murder of Djido Saleh by elements of Yekatom's group is fully consistent with the implementation of his orders, according to his will.

135. For the reasons set out above, Ground 2.4 of the Yekatom's Appeal should be rejected.

II.5. Ground 2.5: The Chamber correctly found that Yekatom entered into a common plan with Cœur de Lion and Alkanto

136. Yekatom fails to demonstrate any error in the Chamber's determination that he entered into a Common Plan with Cœur de Lion and Alkanto pursuant to article 25(3)(a).

II.5.a. The Chamber correctly established the common plan

137. The Chamber reasonably concluded 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 as well as to remove all Muslims therefrom, including by killing them."[622] Based on an analysis of the evidence and its prior findings,[623] the Chamber found that such agreement was established by the instructions issued by Yekatom, Cœur de Lion and Alkanto for elements under their control to kill all Muslims in the area, and the subsequent implementation of these instructions.[624]

138. Yekatom's claim that there is "no direct evidence of any agreement" between him and his subordinate commanders misunderstands the applicable standard for co-perpetration under article 25(3)(a).[625] *First*, direct evidence is not required to establish the existence of a common plan.[626] An agreement may be inferred from subsequent concerted action or the wider circumstances, including the events on the ground.[627] The assessment is inherently case-specific. Accordingly, Yekatom's reference to the evidentiary record in *Ntaganda* cannot,

[620] Judgment, paras. 4363 *et seq*. *Contra* Yekatom Appeal, para. 205.
[621] Judgment, para. 3304.
[622] Judgment, para. 4356. *Contra* Yekatom Appeal, para. 210.
[623] Judgment, paras. 4345-4355. *See also* paras. 114, 120-121, 125, 3304-3307, 3325, 3335, 3383, 3397, 3444.
[624] Judgment, para. 4356.
[625] *Contra* Yekatom Appeal, para. 211.
[626] *Ntaganda* AJ, para. 918.
[627] *Ntaganda* AJ, para. 918.

without more, be transposed to the circumstances of this case.[628] Even if it could, a common plan is as readily inferable from the circumstances which unfolded along the PK9-Mbaïki axis as it is from the circumstances regarding the Bangui attack.

139. In any event, as Yekatom recognises, P-1839 and P-1339 both testified to Yekatom's and his subordinate commanders' orders to kill Muslims.[629] This is direct evidence of his membership in a common plan. The Defence's disagreement with the Chamber's assessment of the credibility of such testimony does not equate to an absence of relevant evidence. The Chamber need not identify meetings, minutes or any formalised agreement to substantiate its findings. The actions of the co-perpetrators alone provide sufficient evidence. These actions included statements expressing their intent to commit violence against Muslims in Yekatom's presence and among his sub-commanders,[630] including even threatening a 'genocide'.[631] They also include instructions to kill Muslims and their children.[632] The Chamber further considered evidence of Yekatom's group's intention to target PK5, a predominantly Muslim neighbourhood, and concluded that the targeting of Muslim civilians in such an attack would be high.[633] It also held that Yekatom did not specify or clarify the principles of distinction to his elements.[634]

140. Yekatom's argument that P-1839 did not describe a concrete occasion on which [REDACTED] personally heard him instruct the killing of Muslims[635] did not preclude the Chamber from relying on that evidence to find that he did so. The Chamber reasonably concluded that her testimony on this fact was accurate notwithstanding its hearsay nature, having analysed it in the context of her broader testimony.[636]

141. Similarly, Yekatom's contention that "there is no evidence of Muslims being killed during [his Anti-Balaka group's] advance along the axis" is without merit.[637] The Chamber reasonably relied on other established facts, such as the displacement of the Muslim population[638] in the context of the use or threatened use of force. These facts, together with

[628] Yekatom Appeal, para. 211.
[629] Judgment, paras. 2450, 2452, 3302, 3304. *See also* fn. 8103.
[630] *See* Judgment, paras. 2451, 3095, fn. 7656.
[631] Judgment, para. 2449.
[632] *See* Judgment, fn. 8103.
[633] Judgment, para. 2453.
[634] Judgment, para. 2453.
[635] Yekatom Appeal, para. 212.
[636] Judgment, paras. 3300-3306.
[637] Yekatom Appeal, para. 212.
[638] *See* Judgment, para. 4303.

Yekatom's order to "kill all the Muslims who were in our area" and its implementation by his group, constitute a sufficient basis for inferring a Common Plan.

142. Yekatom further misreads the Judgment in asserting that the Chamber's "reliance on the 'subsequent implementation' of the supposed instructions does not cure this evidentiary deficit."[639] The Chamber reasonably inferred the existence of the concerted commission of the charged crimes in the implementation of Yekatom's instruction to kill Muslims. In any event, the plan itself is evident from the objective consequences of its implementation. Yekatom's disagreement with the Chamber's evidential analysis does not show an error.

143. Yekatom's claim that the Chamber conflated a plan to execute a military objective with criminal intent[640] is refuted by the Chamber's findings, such as those on the anti-Muslim animus harboured by Yekatom and his commanders and their express intention to harm Muslim civilians including children. Such findings amply dispel any inference that they were solely pursuing a legitimate 'military objective'.

II.5.b. The Chamber correctly established shared control

144. Yekatom's arguments that the Chamber failed to establish shared control over the organised apparatus[641] are again contradicted by the record and the Chamber's express findings. On their face, his arguments misread the Judgment and misapprehend the applicable law.

145. *First*, even if the Chamber was required to make findings on the 'essential contribution' of each non-charged member of the Common Plan—which it is not[642]—it did so. The findings expressly identify members of the Common Plan whose *de facto* hierarchical authority enabled them to play an essential role in the group's criminal conduct; including by issuing and/or passing on orders to kill all Muslims in their area and to target or displace them.[643]

146. *Second*, as to Yekatom, the Chamber found that as the undisputed leader of his group, he necessarily had the power to frustrate the crimes.[644] Similarly, as subordinate commanders in the group, both Cœur de Lion and Alkanto had subordinate elements making up part of the forces employed on the PK9-Mbaïki axis. As such, they also made essential contributions by

[639] Yekatom Appeal, para. 213.
[640] Yekatom Appeal, para. 214.
[641] Yekatom Appeal, paras. 215-218.
[642] *Ongwen* AJ, para. 673.
[643] *See* Judgment, paras. 4345, 4356.
[644] Judgment, para. 4363.

their leadership of those forces, their delegated authority in managing them, and their implementation of criminal orders.[645]

147. Similarly, Yekatom misrepresents the Judgment in claiming that it does not set out Cœur de Lion's concrete powers, whether his orders were followed, or his ability to exercise independent disciplinary or operational authority.[646] Instead, the Judgment relies on direct evidence that Cœur de Lion was "Alkanto's boss' and Alkanto reported to him.[647] Likewise, Yekatom's argument, that "the standard of 'control' [over the crime] has been diluted" where the Chamber makes no concrete findings of authority beyond leading a checkpoint or being described as a deputy,[648] lacks merit. The Chamber need not have defined all aspects of Cœur de Lion's authority or that of any other of Yekatom's subordinate commanders. In any event, the Chamber sufficiently described the evidence that it considered relevant to making its findings regarding the authority and control of the co-perpetrators. In particular, the Chamber referred to P-1839's detailed testimony on the command structure and hierarchy in the group, and the personal interactions and power dynamics between Yekatom, Cœur de Lion, Alkanto and others.[649] Moreover, the Judgment describes the group as hierarchical, resembling military hierarchy, and referring to clear divisions of units and responsibilities among commanders and subcommanders, such as companies, and sections.[650] The Chamber specifically rejected Yekatom's prior assertion that Cœur de Lion's designation as 'deputy' did not constitute evidence of a *de facto* hierarchical relationship.[651] As such, Yekatom fails to identify any error or defect in the Chamber's reasoning.

148. For the reasons above, Ground 2.5 of Yekatom's Appeal should be rejected.

II.6. Ground 2.6: The Chamber correctly applied the elements of article 25(3)(a) in finding that Yekatom committed the crimes

149. Yekatom claims the Chamber erred in law, fact, and procedure in its assessment of whether he had made an 'essential contribution' to the commission of the crimes across the three incidents, such that he could have frustrated the crimes.[652] Yekatom misunderstands the applicable law corresponding to the different forms of liability under article 25(3)(a) and the

[645] Judgment, paras. 4356, 4365 4359, 4360, 4362, 4556, 4606.
[646] Yekatom Appeal, para. 217.
[647] Judgment, paras. 3074-3076.
[648] Yekatom Appeal, para. 218.
[649] Judgment, para. 359.
[650] Judgment, para. 3059. *See also* fn. 7577.
[651] Judgment, para. 3356.
[652] Yekatom Appeal, paras. 223-239.

Chamber's application of the relevant standard to each crime. The Chamber correctly held Yekatom responsible for crimes during the Bangui attack, at Yamwara, and during the advance along the PK9-Mbaïki axis based on his control over the crimes and/or his control of persons who executed the material elements of the crimes in light of his role in its founding, structuring, training, arming, funding, deploying, instructing, and ordering.[653] For his convictions as an (indirect) co-perpetrator for crimes during the advance along the PK9-Mbaïki axis, the Chamber reasonably found that Yekatom's actions constituted an 'essential contribution'.[654] Yekatom's attempt to deconstruct and deflate his centrality to the decision-making in his group is misconceived and repeats the same arguments advanced by Yekatom in his Closing Brief and rejected by the Chamber.[655]

II.6.a. The Chamber correctly found that Yekatom committed the crimes in the attack on Bangui, including Boeing and Cattin (counts 1-6, 8)

150. The Chamber correctly found that Yekatom committed the crimes in the attack on Bangui on 5 December 2013 under article 25(3)(a) (counts 1-6, 8).[656] In particular, the Chamber convicted him for counts 1, 4, 5 and 8 as direct *co*-perpetrator.[657] As explained above, the Chamber's reference to direct/indirect perpetration should be viewed as the Chamber's *factual*, rather than *legal*, characterisation of the nature of Yekatom's contributions to the crimes that he and his co-perpetrators committed.[658] Contrary to Yekatom's submission, the Chamber's approach reveals no "confusion as to his role"[659] but rather its effort to characterise it as accurately as possible based on its holistic assessment of the evidence of his conduct. In any event, even if the Chamber erred in entering convictions for counts 1, 4, 5, and 8 on the basis of direct perpetration or the Appeals Chamber considers the Chamber's findings insufficiently clear, any such error was harmless and had no impact on the Judgment since the Chamber would have equally convicted him under indirect perpetration.[660]

151. Yekatom's repeated suggestion that the Chamber relied only on his leadership *position* in his group, as opposed to his actual control over an organised apparatus of power characterised by (almost) automatic compliance with orders, misapprehends the Judgment.[661] The Judgment

[653] Judgment, paras. 4008-4013 (Bangui), 4242-4249 (Yamwara), 4357-4363 (PK9-Mbaïki).
[654] Judgment, paras. 4360-4363.
[655] Judgment, paras. 3064, 3071.
[656] Yekatom Appeal, para. 224.
[657] Judgment, paras. 4025, 4492.
[658] *See above* para. 11.
[659] Yekatom Appeal, para. 224.
[660] *See above* para. 16.
[661] Yekatom Appeal, para. 225. *See also above* paras. 100-101.

is clear. Yekatom controlled and commanded the instrument of the crimes, *i.e*. his Anti-Balaka group.[662] His arguments do not engage with the obvious link between the crimes and his exercise of authority and leadership. Moreover, his characterisation of P-1339's evidence as "unreliable",[663] given that the witness testified that "Alkanto on his own initiative would not have shot a rocket at the mosque",[664] does not demonstrate that the Chamber was unreasonable in relying on this sworn testimony. The Chamber already rejected Yekatom's argument that P-1339 was wholly unreliable.[665] Nor was he the only insider witness substantiating Yekatom's absolute leadership in, and control of, his group.

152. The Chamber did not "simply assume Mr. Yekatom had the power to frustrate each specific 5 December operation crime by withholding his contribution."[666] Rather, Yekatom's control over the crimes is subsumed in the Chamber's findings regarding his role in carrying them out. Yekatom's unreferenced claim that the Chamber "move[d] 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"[667] is incorrect. The Chamber did not "assume" that Yekatom had the power to frustrate the crimes; rather, it positively found he committed them, including through direct involvement and his control over his Anti-Balaka group.[668]

II.6.b. The Chamber correctly found that Yekatom committed the crimes in the Yamwara incident (counts 11-17)

153. As concerns Yamwara, the Chamber convicted Yekatom of the crimes 'committed through others.'[669] The Chamber was not required to assess his essential contribution, nor did it do so.[670] Yekatom's alleged errors regarding the Chamber's misapplication of "the essential-contribution standard" are inapposite.[671]

154. In any event, as set out above, the Chamber reasonably based Yekatom's liability on its findings that he used the power apparatus available to him to steer it intentionally towards the

---

[662] *See e.g.* Judgment, paras. 92, 115, 1628, 3077-3078, 3344, 4235, 4345, 4357, 4362, 4606 (referring to Yekatom as the "undisputed leader" of his Ground. *See also* para. 4556 (referring to Yekatom's "undisputed authority").
[663] Yekatom Appeal, para. 225.
[664] *See* Judgment, para. 2631 *et seq*. (referring to the Boeing Mosque). P-1339 added that "'the leader, the commander, Yekatom' gave the instruction, and Alkanto 'only complied with the instructions that Yekatom gave him'": Judgment, para. 2631.
[665] Judgment, paras. 330-337.
[666] *Contra* Yekatom Appeal, para. 226.
[667] Yekatom Appeal, para. 226.
[668] Judgment, paras. 4008-4014.
[669] Judgment, para. 4277; Yekatom Appeal, para. 227.
[670] *Compare* Judgment, paras. 3869-3871 (indirect perpetration), *with* paras. 3872-3875 ((indirect) co-perpetration).
[671] Yekatom Appeal, paras. 227-230.

commission of the crimes in Yamwara, without leaving any of his elements at liberty to decide whether the crime was to be executed.[672] Yekatom's contention that the Chamber merely relied on his authority over the group's activities at the base, including his undisputed authority over his deputies and subordinate commanders, identifies no error.[673] Elaborating his claim, Yekatom asserts that "the Judgment never establishes that Cœur de Lion and Alkanto operated within an organised apparatus of automatic compliance."[674] This is plainly incorrect, as explained above.[675] Moreover, Yekatom's assertion that his subordinates acted pursuant to their own initiative and personal motives, "rather than their subjugation within an apparatus that automatically translated Mr Yekatom's decisions into action",[676] misunderstands the Judgment. Rather, the Yamwara School incident reflects a manifest consistency with Yekatom's instructions to target Muslims.[677] Moreover, the Chamber correctly noted Yekatom's approbation of his elements' conduct in this respect.[678]

155. Yekatom incorrectly argues that the Chamber assessed his power to frustrate the commission of the crimes only through post-offence conduct.[679] The Judgment specifically points to Yekatom's orders as an overriding factor in the crimes committed by his subordinates at Yamwara, and details his presence *during* the commission of the crimes.[680] The Chamber found that "from the moment of the capture of the seven persons and at least until their respective death or release, Mr Yekatom retained full control over the actions of his elements and of their will."[681] He was present and aware and, rather than imposing sanctions, approved of his elements' conduct[682]—whether tacitly (at the time) or expressly thereafter.[683] Similarly, the Chamber relied on the evidence of P-0954 who described a conversation with Yekatom regarding Yamwara in which he admitted that "we have removed the skin of the papaya."[684]

[672] Judgment, para. 4249. *See above* section II.4 (paras. 100-135).
[673] Yekatom Appeal, para. 227.
[674] Yekatom Appeal, para. 228.
[675] *See above* section II.4.d. (paras. 124-135).
[676] Yekatom Appeal, para. 228. Yekatom refers to his subordinates as the "intermediaries".
[677] *See e.g.* Judgment, paras. 4244-4248. *See also* para. 3069 (describing an incident similar to the Yamwara incident, in which the victim was killed in a similar fashion in the implementation of Yekatom's orders).
[678] *See* Judgment, paras. 3273-3275. *See also* paras. 3274, 3197, 3200-3201.
[679] *Contra* Yekatom Appeal, para. 230.
[680] Judgment, paras. 103-105, 110, 4241, 4553.
[681] Judgment, paras. 4242, 4553.
[682] Judgment, paras. 103, 111, 3273-3274; 4237, 4249, 4553.
[683] Judgment, paras. 3186-3189.
[684] Judgment, paras. 3191, 3198, 3200 ("the Chief was the one who issued the order").

Yekatom's assertion that the Judgment fails to establish his essential contribution to the Yamwara crimes *ex ante* is baseless.[685]

II.6.c. The Chamber correctly found that Yekatom committed the crimes in the advance along PK9-Mbaïki axis (counts 24 to 28)

156. Regarding the crimes of his group along the PK9-Mbaïki axis, Yekatom's suggestion that the Judgment fails to show that his conduct was "indispensable or that he could have frustrated the crimes by withholding it" finds no merit in the record.[686] The Chamber reasonably concluded that the crimes were carried out in furtherance of his instruction.[687]

157. Yekatom contends that "leadership status is not, without more, personal essential contributions to the crimes."[688] However, he overlooks the Chamber's findings demonstrating how he put his undisputed leadership to use. The Judgment both defines his *status* and *actions* as the leader of his Anti-Balaka Group through examples of actions taken within the group in implementing his direction and evidencing his leadership of subordinates and elements.[689]

158. Similarly, Yekatom's assertion that the Judgment "does not show how [his] orders were automatically executed"[690] is unsupported. As noted, the Judgment includes multiple findings on instances where Yekatom's orders were obeyed without question by his subordinates.[691] The Judgment reveals that Yekatom's orders were to be obeyed at pain of serious sanctions and potential death,[692] which sufficiently and reasonably explains his elements' near automatic compliance.

159. Yekatom's suggestion that the Chamber "misapplies the standard", in finding that life threatening conditions in Mbaïki were part of Yekatom's essential contribution, is incorrect.[693] To the extent that Yekatom's actions contributed to the imposition of life threatening conditions on the Muslim population, his culpability is justifiably established. In its holistic assessment of the evidence, the Chamber determined that one of the chief contributors to the deplorable conditions of life inflicted on Muslims in Mbaïki was their forced displacement by Yekatom's

[685] *Contra* Yekatom Appeal, para. 230.
[686] *Contra* Yekatom Appeal, para. 223.
[687] *See e.g.* Judgment, paras. 4366, 4368, 4628.
[688] Yekatom Appeal, para. 234.
[689] *See e.g.* Judgment, paras. 113-117, 120-121, 3297-3308, 3379, 3527, 4470, 4606-4608.
[690] Yekatom Appeal, para. 234.
[691] Judgment, paras. 3347-3348, 1631. *See also* para. 3349 (using the Seda Incident to encapsulate how Yekatom asserted power in his group).
[692] Judgment, paras. 1631, 3346-3347.
[693] Yekatom Appeal, para. 236.

group from other towns and villages along the PK9-Mbaïki axis.[694] It further explained the impact of Yekatom's actions on the living conditions of the Mbaïki Muslim population.[695] Considering these findings, the Chamber's conclusion that Yekatom's contribution was essential, including to their subsequent displacement *from* Mbaïki, is not unreasonable.

160. Lastly, Yekatom's claim that the Chamber failed to "articulate the essential contributions of Cœur de Lion and Alkanto" again reflects a misunderstanding of the Judgment and the law.[696] He further erroneously contends that "if the roles of the other alleged co-perpetrators remain undefined, it cannot be said that his contribution was essential.[697] *First*, as the Judgment makes plain, the roles of Yekatom's subordinates are clear—certainly in respect of their implementation of his orders. *Second*, the premise of the argument is incorrect. An assessment of essentiality is not simply a relativistic comparison of the *roles* of members of a common plan, but distinctly, an assessment of the magnitude of a defendant's *contribution* to the common plan and implementation of the ensuing crimes.[698]

161. For the above reasons, Ground 2.6 of Yekatom's Appeal should be rejected.

II.7. Ground 2.7: The Chamber correctly established Yekatom's *mens rea*

162. The Chamber correctly and reasonably concluded that Yekatom acted with the required *mens rea*. As set out per incident below, it carefully assessed Yekatom's knowledge and intent in relation to each of the crimes within the context of the relevant incidents. Underlying these conclusions across incidents are its findings that Yekatom knew that his elements perceived, as did he, the Muslims in CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka and that the Anti-Balaka targeted Muslim civilians on this basis.[699] The Chamber's conclusions are thus grounded in multiple strands of evidence and findings, which Yekatom fails to address. Accordingly, Ground 2.7—selectively addressing only some findings and reasoning, while ignoring others—should be dismissed.

163. Yekatom's claim that the Chamber misapplied article 30 is unsubstantiated.[700] *First*, the Chamber correctly set out and applied the law.[701] *Second*, Yekatom's contention that a chamber

[694] *See* Judgment, paras. 4303, 4313, 4347, 4613.
[695] *See e.g.* Judgment, paras. 4613-4614.
[696] *See above* paras. 144-147.
[697] Yekatom Appeal, para. 238.
[698] *Bemba et al.* TJ, para. 69; *Ongwen* AJ, para. 673; *Ntaganda* AJ, para. 1060.
[699] Judgment, para. 48.
[700] *Contra* Yekatom Appeal, para. 240. Yekatom's argument that the Chamber inferred intent and knowledge from "mischaracterised […] conduct" is unclear and, in any case, does not give rise to any cognisable error.
[701] Judgment, paras. 3875, 4014-4024, 4250-4276, 4364-4368.

may not infer knowledge and intent from *post facto* conduct is incorrect.[702] *Third*, contrary to Yekatom's submission, the Chamber did not "conflat[e] the perceptions and motives of others with those of Mr Yekatom".[703] *Fourth*, the Judgment amply establishes Yekatom's awareness of the factual circumstances underpinning indirect co-perpetration, which can be readily gleaned from the Chamber's findings on his conduct and the structure and command of his group.[704]

164. As noted above, the Judgment is replete with references to direct evidence firmly establishing that Yekatom was fully cognisant[705] that his elements would commit the crimes for which he has been convicted.

II.7.a. The Chamber correctly established Yekatom's mens rea *for the crimes committed during the Bangui Attack*

165. The Chamber reasonably established that Yekatom acted with the required *mens rea* for each crime committed in the context of the Bangui attack.[706] The Chamber's analysis of Yekatom's *mens rea* is supported by a broad range of factual findings,[707] beyond merely the "three elements" put forward by Yekatom.[708] These include: (i) his coordination with other Anti-Balaka groups to participate in the attack, involving arming and training in the bush in the months before;[709] (ii) his use and deployment of elements harbouring anti-Muslim animus;[710] (iii) his issuance of instructions to target sectors where 'Muslims' were to be found, aware that they would be understood—by his untrained elements—as also targeting Muslim civilians;[711] (iv) his involvement in reconnaissance at Boeing Market;[712] (v) his personal launching of the attack and direct participation in it,[713] and; (iv) his failure to demand or emphasise the need for his elements to distinguish between Muslim civilians and the Seleka.[714] Based on these and

[702] *See* Charges Decision, para. 51 (internal citations omitted) (noting in the disposition of the Defendants' motion that, "facts which fall outside of the temporal scope of the charges may be relied upon to prove facts and circumstances described in the charges, whether for the purpose of establishing the contextual elements of the charged crimes or the modes of liability").
[703] Yekatom Appeal, para. 240.
[704] *See below* paras. 165, 177, 193.
[705] *See e.g.* Judgment, paras. 4513, 4522, 4533 (Bangui); 4565, 4567 4612 (Yamwara); 4628, 4634, 4637 (PK9-Mbaïki).
[706] Judgment, paras. 4015-4024.
[707] Judgment, para. 4014 (citing paras. 73-80).
[708] Yekatom Appeal, para. 241.
[709] Judgment, para. 73.
[710] *See e.g.* Judgment, para. 74.
[711] *See e.g.* Judgment, para. 74. *See also* paras. 2435-2437, 2439, 2441-2442, 2445-2447, 2452, 2454.
[712] Judgment, para. 75.
[713] Judgment, paras. 76, 4012.
[714] *See* Judgment, paras. 1299, 1305.

other findings, the Chamber properly assessed the specific knowledge requirements of specific crimes.[715]

166. While Yekatom disagrees with the Chamber's assessment of P-1339's reliability, his submissions do not undermine the reasonableness of the Chamber relying on his testimony in view of the totality of evidence.[716] The Chamber's finding that Yekatom instructed his group "to target all sectors where Muslims are to be found"[717] is alone sufficient to establish his article 30 *mens rea*. Yekatom repeats his trial submission and challenges the Chamber's finding that he fired his gun in the air to launch the attack, arguing that its approach "disregards broader factual context of the operation, which included a legitimate military objective and concrete precautions taken to minimise harm to civilians".[718] The Chamber addressed this argument,[719] and rejected Yekatom's submission that he was not sufficiently aware that displacement would occur as a result of his orders to carry out an attack.[720] Contrary to Yekatom's suggestion, he was not merely present at the launching of the attack, which included the *illegitimate* targeting of Muslim civilians.[721] In firing his gun in the air, he ordered it.[722] The Chamber reasonably found that the combination of launching the attack and his instruction to target sectors where Muslims were to be found "directly led to the commission of this crime."[723]

167. Yekatom's claim that "the Chamber's conclusion as to his *mens rea* rests almost entirely on the content it attributes to [his] pre-attack instructions"[724] lacks merit. The Judgment also refers to his voluntary *participation* in the Bangui attack,[725] which bears on his *mens rea*. The Chamber's rejection of Yekatom's "stated objective" as *only* targeting Seleka enemy forces located in certain areas does not show error.[726] Rather, the Chamber reasonably found that in the circumstances, another objective existed, namely, to violently target Muslim civilians. Thus, the Chamber reasonably found that "Yekatom was aware that his elements would not apply the principle of distinction during combat"[727] in executing his directions. Similarly, the Chamber found that Yekatom's instructions "encompassed attacking the Muslim traders at the Boeing

[715] Judgment, paras. 4017-4024.
[716] Yekatom Appeal, para. 241.
[717] Judgment, paras. 3986, 4515.
[718] Yekatom Appeal, para. 241.
[719] Judgment, paras. 3983-3989.
[720] *See* Judgment, para. 3984.
[721] *See* Yekatom Appeal, paras. 3955, 3957.
[722] Judgment, paras. 3951, 3986.
[723] Judgment, para. 3986.
[724] Yekatom Appeal, para. 242.
[725] Judgment, para. 3906.
[726] *Contra* Yekatom Appeal, para. 242.
[727] *See* Judgment, para. 2447.

Market"—traders whom Yekatom knew were not fighters and did not actively take part in hostilities.[728]

168. Yekatom shows no error by his claim that the 4 December 2013 "reconnaissance mission was a standard precautionary measure".[729] The Chamber reasonably found that such a mission would have made Yekatom aware that the traders were entitled to civilian protection, given his formal FACA training.[730] Rather than engaging in precautionary measures, Yekatom and his group made no effort to distinguish between any Seleka fighters and Muslim civilians.[731]

169. In respect of the Boeing Market incident and the killing of Hassan, contrary to Yekatom's assertions, the Chamber was not "speculative" in finding that Yekatom's elements would have known that Hassan was defending himself.[732] The Chamber's conclusion that Hassan fired in self-defence was reasonably based on evidence that it was Yekatom's group which initiated the attack, awakening the traders from their sleep in doing so.[733]

170. The Chamber took specific account of Yekatom's FACA training and reasonably inferred his knowledge of basic international humanitarian law[734]—on which, as it was conceded, all FACA received training.[735] Since international humanitarian law requires a person to be treated as a civilian in case of any doubt as to their status, the Chamber thus reasonably inferred that "Mr Yekatom and his elements must have been aware that they should operate on this basis."[736] Consistently, the Chamber also found that "Mr Yekatom was in fact in a position to differentiate between criminal and non-criminal conduct. Yet, he chose to commit the crimes he is convicted of."[737]

171. The Chamber correctly recalled that a perpetrator need only be aware of the factual circumstances establishing a victim's status and reasonably found that this requirement was satisfied.[738] Yekatom's submission that the Chamber "conflat[ed] the legal status of the victims

[728] *See* Judgment, paras. 2557, 2567, *especially* para. 4019.
[729] *Contra* Yekatom Appeal, para. 244.
[730] Judgment, paras. 4004, 4044.
[731] Judgment, paras. 2534, 2561, 2592.
[732] Yekatom Appeal, para. 244.
[733] Judgment, paras. 2567-2568.
[734] Judgment, paras. 4017-4018, 4445, 4565.
[735] *See* Yekatom Closing Brief, paras. 299-300.
[736] Judgment, para. 4018.
[737] Judgment, para. 4445.
[738] Judgment, para. 4020.

with the accused's mental state"[739] ignores these findings and misrepresents the Judgment. Yekatom challenges the Chamber's reasoning that "a possibility, suspicion or assumption of the perpetrator [that a person is a civilian] does not change the status of the victims"[740] and incorrectly presents this as the Chamber's finding on his mental state. For the same reason, it is equally misleading to suggest that the Judgment accepted that "he believed, even mistakenly, that those persons were Seleka fighters, [and that] then his intention was to engage what he perceived to be legitimate military targets."[741] It did not.

172. In relation to count 4, the Chamber correctly and reasonably rejected Yekatom's trial argument that there was no evidence "depict[ing] Mr. Yekatom undertaking acts which threaten or intimidate the Muslim population in a manner calculated to force the population to leave".[742] The Chamber found this argument legally flawed because "[h]aving 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 the crime."[743] Yekatom now submits that the Chamber wrongly treated his argument as relating to *mens rea* rather than to *actus reus* under the first element of article 7(1)(d).[744] Irrespective, the Chamber's conclusion remains correct. Article 7(1)(d) does not require that the acts are "calculated to force the population to leave" under either element—and Yekatom fails to show otherwise.

173. Regarding count 6, the Chamber correctly and reasonably found that, in implementing Yekatom's orders, his group attacked the Boeing Mosque. This attack resulted from his order to target sectors where Muslims were to be found, not distinguishing between Seleka fighters and Muslim civilians.[745] Yekatom misrepresents the Judgment and misunderstands the law in submitting that the Chamber "imputed to him" his subordinates' *mens rea* as the direct perpetrators.[746]

174. As noted, the Chamber found that Yekatom was aware that his instructions would be understood as calling for the targeting of Muslim civilians, given that: (i) his elements were not trained in or instructed to apply the principle of distinction,[747] and; (ii) they (like he) perceived

[739] Yekatom Appeal, para. 245.
[740] Judgment, para. 4018.
[741] Yekatom Appeal, para. 245.
[742] *See* Yekatom Appeal, para. 246; Yekatom Closing Brief, para. 604; Judgment, para. 4016.
[743] Judgment, para. 4016.
[744] Yekatom Appeal, para. 246.
[745] Judgment, paras. 4010, 4012.
[746] Yekatom Appeal, para. 247.
[747] *See e.g.* Judgment, paras. 2435, 2447, 2452-2454, 4023.

and targeted Muslim civilians as collectively responsible for—or supportive of—Seleka's crimes.[748] Yekatom is implausible in suggesting that a campaign of violent persecution against Muslims has no bearing on the likelihood of attacks on mosques, such that he would not have anticipated this outcome in the ordinary course of events. Certainly, he fails to show that the Chamber's conclusion was unreasonable. Further, to the extent that Yekatom submits that the Chamber was legally barred from making a positive finding on his *mens rea* absent "findings that he directed, authorised, or knowingly condoned an attack on a religious building",[749] this unsupported argument is legally untenable.

175. As regards count 8, Yekatom's arguments on his awareness of his elements' perception of the Muslim population as collectively responsible are premised on a misrepresentation of the Judgment.[750] The Chamber did not just "expand[] upon an earlier finding"[751] that the Anti-Balaka more broadly perceived the Muslim population as collectively responsible. Rather, consistently with this earlier finding, it reviewed the evidence specific to Yekatom's group and concluded that, like the other Anti Balaka groups, Yekatom was fully aware that his elements harboured anti-Muslim animus.[752] Further, as explained above,[753] the Chamber did not ascribe to him nor to his group any "unified perception".[754]

176. Finally, Yekatom's conclusory remark that the Chamber's finding on his article 30 *mens rea* was based solely on findings that "some members of the group harboured anti-Muslim animus" or "hate[d] the enemy ethnicity" misrepresents the Judgment and shows no error.

II.7.b. The Chamber correctly established Yekatom's mens rea *for the crimes committed at Yamwara*

177. The Chamber reasonably found that Yekatom acted with the required *mens rea* for each crime committed at Yamwara.[755] The Chamber's assessment of his intent rests on a careful analysis of the evidence and its prior findings, including (i) his knowledge of the incident;[756] (ii) his presence at Yamwara on the evening of 24 December 2013;[757] (iii) his direct interactions

[748] Judgment, para. 4024.
[749] Yekatom Appeal, para. 247.
[750] Yekatom Appeal, paras. 247-248.
[751] *Contra* Yekatom Appeal, para. 247.
[752] *See e.g.* Judgment, paras. 2447-2452.
[753] *See above* section II.2 (paras. 35-76).
[754] Yekatom Appeal, para. 248.
[755] Judgment, paras. 4250-4276.
[756] Judgment, para. 4251. *See also* paras. 103-107, 110, 3186, 4237-4238, 4240.
[757] Judgment, para. 4251. *See also* paras. 104-105, 4236.

with Saint Cyr's father and the three women captives;[758] (iv) his use of the phrase 'peeling the papaya' in relation to Saint Cyr and referring to him as a 'traitor' and 'in cahoots with the Seleka';[759] and (v) his approval of the conduct of his elements towards the seven persons and Saint Cyr.[760] Based on these and other findings, the Chamber further properly assessed the specific knowledge requirements for specific crimes.[761] By suggesting that findings regarding his *mens rea* are limited to four main factors, Yekatom misconstrues the Judgment and the Chamber's reasoning.[762]

178. Yekatom's assertion that the Chamber's *mens rea* assessment depended on his physical presence at the base is equally unconvincing.[763] As noted, Yekatom maintained a "constant presence" through his elements[764]—and these elements, including his deputies and commanders, had a duty to (and did) report to Yekatom. He "maintained overall control over the activities at Yamwara at all times, including through Cœur de Lion. Mr Yekatom had undisputed authority over Cœur de Lion, Alkanto and Bojos, among others."[765] Thus, the Chamber's findings concerning Yekatom's *mens rea* did not depend on his physical presence, but on several factors—including his presence coupled with his authority over the elements at the base (including his deputy Cœur de Lion and other commanders).[766] The Chamber expressly rejected Yekatom's arguments, noting that it "did not diminish the Chamber's appreciation of his role as a leader of the elements at Yamwara and his regular presence there during the relevant time."[767] On the contrary, it found that "the fact that individuals at Yamwara at the time, including his own elements, recognised Mr Yekatom as the 'chief' and superior to Cœur de Lion, despite not living there, spoke to an even greater authority he exercised over his elements."[768]

179. Yekatom's suggestion that his awareness and endorsement of the crimes committed by his elements at the Yamwara School base "cannot substitute for intent or knowledge" misrepresents the Chamber's findings and takes the evidence in isolation.[769] Coupled with other

[758] Judgment, para. 4251. *See also* paras. 104-105, 4238-4239.
[759] Judgment, para. 4251. *See also* paras. 97, 103, 4237, 4247.
[760] Judgment, para. 4252. *See also* paras. 111, 4237, 4241.
[761] Judgment, paras. 4254-4276.
[762] *Contra* Yekatom Appeal, para. 250.
[763] *Contra* Yekatom Appeal, para. 251.
[764] Judgment, paras. 90, 3053, 3055.
[765] Judgment, para. 92. *See also e.g.* para. 3056.
[766] Judgment, paras. 3054-3055.
[767] Judgment, para. 3056.
[768] Judgment, para. 3056.
[769] *Contra* Yekatom Appeal, para. 252.

factors—such as Yekatom's overriding authority and control over his elements at Yamwara, his 'constant presence' through his commanders, and the 'military-like' hierarchy, which entailed reporting up the chain of command[770]—Yekatom's approbation of crimes demonstrated the *mens rea* required under article 30 regarding the events.[771] Yekatom fails to show that no reasonable trial chamber could have reached such a conclusion.

180. The Chamber did not rely only on evidence of *ex post facto* knowledge to infer that Yekatom had the requisite *mens rea* at the time the underlying inhumane acts were committed.[772] As discussed above, the Chamber relied on several factors, based on evidence of circumstances preceding the commission of the crime.[773]

181. Equally, Yekatom's assertions concerning counts 13 and 16 fail to establish an error and misunderstand the Judgment.[774] For the same reasons as noted above,[775] in case of any doubt as to his status, Saint Cyr was to have been considered a civilian.[776] Even if certain elements in Yekatom's group allegedly viewed Saint Cyr as being integrated within enemy forces, the Chamber reasonably concluded that this did not affect Yekatom's knowledge and intent.[777] Contrary to Yekatom's submission, there is no internal inconsistency in the Chamber's reasoning and conclusion.[778] While Yekatom was not present at the time of Saint Cyr's capture, the evidence of Yekatom's *mens rea* for relevant crimes was not based merely on *ex post facto* events.

182. The Chamber did not mischaracterise Yekatom's submissions on the specific intent for torture as a war crime.[779] Rather, it considered and rejected his argument; its conclusions were both legally and factually sound.[780] Yekatom's disagreement—repeating his unsuccessful trial arguments that the allegation of an additional motive negates clear evidence of the perpetrators' intent to punish, intimidate, and discriminate against the man they tortured—shows no error.

---

[770] *See e.g.* Judgment, para. 3183.
[771] *See e.g.* Judgment, paras. 3186-3187, 4237-4241, 4251-4253.
[772] *Contra* Yekatom Appeal, paras. 252-253
[773] *See above* paras. 177-178.
[774] *Contra* Yekatom Appeal, para. 254.
[775] *See also above* paras. 84, 170.
[776] *See further below* section III.2.b. (paras. 239-242).
[777] Judgment, para. 4259 ("regardless of whether Saint Cyr […] could be considered as being 'integrated within enemy forces', he was a civilian, by role and function, at the time of his capture, a fact that Mr Yekatom and his elements were fully aware").
[778] Yekatom Appeal, para. 254.
[779] *Contra* Yekatom Appeal, paras. 255-256.
[780] Judgment, paras. 4267-4269 (concluding that any "other purported motivation" does not "negate" evidence of the "intention to inflict pain and suffering on Saint Cyr for the purpose of punishment, intimidation and discrimination based on religion").

Contrary to Yekatom's misrepresentation, the Judgment clearly explained how his specific intent was established.[781] This stemmed from multiple factors, including: (i) Yekatom's prior knowledge of his elements' discriminatory views; (ii) his awareness of Saint Cyr's family links to the Goula ethnicity; (iii) his characterization of Saint Cyr as a "traitor" and as being "in cahoots with the Seleka"; (iv) his statement that they "could not keep him"; (v) his approbation of the cutting of Saint Cyr's body parts, and; (vi) Yekatom's conduct in rewarding rather than punishing these acts and those who perpetrated them.[782]

183. Further, while acknowledging that 'motive' is not an element of the applicable mode of liability, Yekatom erroneously argues that "it is crucial where the Chamber seeks to infer that an absent alleged 'chief' shared the perpetrator's intent."[783] Again, the Judgment addresses this argument, which had been previously advanced by Yekatom, noting that "personal motives did not have any relevance for establishing the elements of the crime" and "[t]here is nothing in the legal framework of the Court requiring proof of motive of the direct perpetrator of a war crime or a crime underlying crimes against humanity to establish the mental elements."[784]

184. Yekatom mischaracterises the Judgment in suggesting that the Chamber predicated its determination of his *mens rea* under article 30 on a finding "that he was generally aware of abstract legal obligations", showing no error.[785] Rather, based on a careful analysis of the evidence, the Chamber found that Yekatom knew that his elements had no legal authority or basis to capture the seven persons or to mistreat them.[786]

185. Yekatom's attempt to impugn the Chamber's reliance on the testimonies of P-1654, P-1839, P-0954, and P-1716[787] fails for the reasons set out below.[788] The Judgment is clear as to the Chamber's reasoning and the extent to which it relies (or did not rely) on salient aspects of their evidence. Yekatom fails to demonstrate any error in the Chamber's approach to, or reliance on, these witnesses in determining his *mens rea*.

186. With respect to P-1654's prior statement, Yekatom fails to show any procedural error.[789] The Chamber's recognition of the formal submission of P-1654's testimony under rule 68(2)(c)

[781] *Contra* Yekatom Appeal, para. 255.
[782] Judgment, para. 4270.
[783] Yekatom Appeal, para. 257.
[784] Judgment, para. 4265.
[785] *Contra* Yekatom Appeal, para. 258.
[786] *See* Judgment, paras. 4274-4275.
[787] Yekatom Appeal, paras. 259-273.
[788] *See below* paras. 333, 364.
[789] *See* Yekatom Appeal, paras. 262 *et seq*.

is consistent with the Court's well-established jurisprudence, including that the introduction of the statement serves the interests of justice.[790] In its application to introduce P-1654's prior statement, the Prosecution noted that upon admission,"[…] the Chamber [should] consider to what extent a conviction on any of the charges supported by P-1654's evidence is appropriate on the basis of all relevant evidence at the end of the trial."[791] There is no indication that the Chamber did not do so. Rather, the Judgment describes many factors and findings leading to and underpinning the Chamber's conclusions, amply establishing Yekatom's knowledge and intent. Yekatom's argument that the Chamber "ignored the 'sole or decisive safeguard" is manifestly contradicted by the Judgment's further reference to corroborating evidence.[792]

187. Similarly, Yekatom's assertion that the Chamber "mischaracterised the evidence of P-1839" is without merit and misrepresents the Judgment.[793] The Chamber explained that P-1839 concluded that what had been done to Saint Cyr at Cœur de Lion's place was "passed on to Mr Yekatom."[794] It further explained that "P-1839 said that Mr Yekatom was 'aware', that [REDACTED] was surprised that he knew about it."[795] There is no error in the Chamber's acceptance of the witness' conclusions concerning Yekatom's knowledge, which was confirmed by his approbation of his elements' conduct and the lack of punishment or sanction.[796]

188. The Chamber also acknowledged the evidence of P-0954, to whom Yekatom admitted that his men had decapitated Saint Cyr.[797] It noted the "inescapable similarity" of the narrative provided by P-0954 to the Yamwara incident,[798] and the witness' conclusion that Yekatom was present and ordered the killing in question (explaining that Yekatom said "'we decapitated him' […] mean[ing] that it was done in his presence").[799] P-0954 further testified that "Yekatom told me that he was a—a traitor, and therefore, he was an element that needed to be killed' and '[i]f he said that to me, then he—what it meant was that he was present'"[800] Again, Yekatom fails to identify any error in arguing that the Chamber was "selective" in its reliance on this testimony. Instead, the Judgment reflects the Chamber's cautious and holistic approach in that

[790] *See* First Rule 68(2)(c) Decision, para. 57.
[791] P-1654 Rule 68(2)(c) Decision, para. 22.
[792] *Contra* Yekatom Appeal, para. 264. *See* Judgment, paras. 4250-4253. *See also below* paras. 365-366.
[793] *Contra* Yekatom Appeal, paras. 266-267.
[794] Judgment, para. 3189.
[795] Judgment, para. 3189.
[796] Judgment, para. 3190.
[797] Judgment, paras. 3196-3197.
[798] Judgment, para. 3195.
[799] Judgment, para. 3200.
[800] Judgment, para. 3201.

it concluded that it "cannot rely on P-0954 to establish conclusions on how the Yamwara Incident unfolded or how Saint Cyr died."[801]

189. By contrast, the Chamber was correct in considering P-0954's evidence on "where he placed Mr Yekatom in relation to the Yamwara incident."[802] The Chamber was also entitled to consider Yekatom's *admissions* during his conversation with P-0964, contrary to Yekatom's incorrect assertion that the Chamber's findings "rested entirely on hearsay."[803]

190. Yekatom also fails to show any error in the Chamber's assessment of P-1716.[804] A chamber is free to accept a witness's explanation for why a given proposition may or may not appear in a previous unsworn interview. Failure to persuade the Chamber of the unreliability of the witness' prior statement and/or in court testimony simply does not equate to the absence of a reasoned opinion concerning the assessed credibility of the witness.

191. The Chamber's finding that Yekatom was aware of P-1716's detention and mistreatment, relying on P-1716's testimony, is not undermined by the absence of such information in P-1716's prior statement. As the Chamber noted, the witness provided an explanation for the apparent omission,[805] which the Chamber was free to accept. It was under no obligation—as Yekatom seems to argue—to seek further information.[806]

192. The Judgment reflects the Chamber's holistic assessment of evidence in specifying its consideration of eyewitnesses to the Yamwara incident,[807] discrepancies arising within and among their testimonies, and the traumatic nature of the incident, in finding that these did not undermine their credibility[808] but "assessed in their totality 'suggested to the Chamber that the witnesses' accounts were genuine and not rehearsed […] contrary to the Yekatom Defence allegations concerning contamination."[809] Yekatom fails to identify any legal or factual error in the Chamber's approach or its findings.[810]

---

[801] Judgment, para. 3194. *See* Yekatom Appeal, para. 270.
[802] Judgment, para. 3194. *Contra* Yekatom Appeal, para. 268.
[803] Yekatom Appeal, para. 269.
[804] *See* Judgment, paras. 3245-3250, 4270-4271, 4274-4275. *Contra* Yekatom Appeal, paras. 271-273.
[805] Judgment, para. 3250 (fn. 7985).
[806] Yekatom Appeal, para. 272 (arguing "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").
[807] Judgment, para. 3106.
[808] *See also* *Ntaganda* AJ, para. 672; *Nahimana et al.* AJ, para. 428.
[809] Judgment, para. 3107.
[810] *Contra* Yekatom Appeal, para. 272.

II.7.c. The Chamber correctly established Yekatom's mens rea *for the crimes committed during the advance along the PK9-Mbaïki axis*

193. The Chamber reasonably found that Yekatom knew that his agreement with Cœur de Lion and Alkanto would, in the ordinary course of events, result in the execution of the material elements of the charged crimes. Thus, it found that Yekatom intended that: (i) Muslim civilians would be displaced, and; (ii) one of the last remaining Muslim civilians in Mbaïki would be killed.[811] These conclusions were based on a careful analysis of the evidence and its prior findings that Yekatom: (i) issued specific instructions to his elements;[812] (ii) took part in the meeting at *St Jeanne d'Arc* Church in Mbaïki, at which time the removal of the Muslim civilian population from Mbaïki was a foregone conclusion,[813] and; (iii) knew that elements of the group committed acts of violence in Mbaïki, yet took preventative action only after the removal of the Muslim civilian population had been decided and/or carried out.[814] Based on these and other findings, the Chamber positively assessed the specific knowledge requirements for specific crimes.[815]

194. Yekatom's arguments challenging these findings merely reiterate claims advanced under Grounds 2.4 and 2.6.[816] His claim that the "the Chamber neither substantiated [the existence of an agreement] nor articulated how the alleged co-perpetrators exercised control over the group or what their essential contributions were"[817] adds nothing new and, in any case, misunderstands the Judgment.[818]

195. Yekatom's disparagement of the Chamber's assessment as "typically unreasonable", "distort[ing]", or "ignor[ing]" shows no error.[819] As the Judgment notes, the Chamber carefully considered each witness' evidence.[820] It consistently reflected an holistic approach. It was not erroneous for the Chamber not to accept certain evidence and testimony, merely because Yekatom considers it should have.

196. Moreover, in several respects, Yekatom misrepresents the Judgment regarding the PK9-Mbaïki axis. For instance, he asserts that "if *arguendo* Mr. Yekatom was aware that the

[811] Judgment, para. 4365.
[812] Judgment, para. 4365. *See also* paras. 113-117, 121, 3297-3308.
[813] Judgment, para. 4365. *See also* paras. 120, 4348.
[814] Judgment, para. 4365. *See also* paras. 121, 4349.
[815] Judgment, paras. 4366-4368.
[816] *Contra* Yekatom Appeal, paras. 274-281.
[817] Yekatom Appeal, para. 274.
[818] *Compare* Judgment, para. 4356.
[819] *Contra* Yekatom Appeal, para. 278.
[820] Judgment, para. 203.

departure [of the Muslim community from Mbaïki] was decided, no explanation is given as to why this translates into knowledge that it was linked to [his Anti-Balaka group's] advance or presence."[821]

197. *First*, the Judgment details how the removal of Muslims from Mbaïki is linked to the advance and presence of Yekatom's group.[822] It is untenable to suggest that "no explanation is given".[823]

198. *Second*, whether progressive departures commenced before Yekatom's advance does not alter the Chamber's findings that his group actively forced out the population through threat of force or coercion.[824] The Chamber "consider[ed] that the dislocation of these Muslims from Mbaïki occurred because of Mr Yekatom's actions mentioned above combined with living in conditions of overcrowding, hunger, and fear of death from the Anti-Balaka."[825] Yekatom's actions related to his advance along the PK9-Mbaïki axis, which effectively displaced some civilians immediately on 10 January 2014, and subsequently dislocated others as Yekatom's group took over villages and checkpoints *en route* and, ultimately, Mbaïki itself.[826]

199. Finally, Yekatom again incorrectly contends that the Chamber's *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".[827] As shown above, these findings were within the scope of the Pre-Trial Chamber's findings on his *mens rea* for the crimes charged in these counts, for which Yekatom received sufficient notice and defended himself.[828]

200. For the above reasons, Ground 2.7 of Yekatom's Appeal should be rejected.

III. Ground 3: The Chamber correctly considered the NIAC circumstances

201. Yekatom shows no error of law or fact in the Chamber's approach to or assessment of the non-international armed conflict ("NIAC") which materially affects the Judgment.[829] Yekatom's general observations in this ground of appeal contain several misconceptions. *First*,

[821] Yekatom Appeal, para. 279.
[822] Judgment paras. 120-122, 3533-3609, 4305.
[823] *Contra* Yekatom Appeal, para. 279.
[824] *Contra* Yekatom Appeal para. 279. *See* Judgment, para. 4309.
[825] Judgment, para. 4313.
[826] Judgment, paras. 4310-4312.
[827] *Contra* Yekatom Appeal, para. 281. *See also* para. 9.
[828] *See above* para. 8 (fifth bullet point).
[829] *Contra e.g.* Yekatom Appeal, paras. 283, 357-359.

he incorrectly implies that, to convict him, the Chamber was required to "identify concrete measures he could reasonably have taken in light of the operational realities and conflict dynamics he faced."[830] This relies on the *Bemba* Appeal Judgment concerning article 28 of the Statute—which requires the Prosecution to prove that the accused failed to take all necessary and reasonable measures to prevent or punish crimes under the Statute. But this is inapposite where article 28 is not in issue, as in this case.

202. The Chamber was under no obligation to assess what Yekatom *could* reasonably have done in the circumstances to ensure that his subordinates acted lawfully. Rather, it was required only to satisfy itself (beyond reasonable doubt) as to what Yekatom *actually did*, with the required intent and knowledge, within the framework of the charges against him. In this context, the Chamber necessarily took account of evidence concerning the armed conflict, and Yekatom's material circumstances. However, it was not required to give this evidence any more or less weight than its assessment of all the other relevant evidence in the record.

203. *Second*, Yekatom suggests that, by definition, "armed groups conduct military operations".[831] This is true to the extent that, for the purpose of the law of armed conflict, a non-State organised armed group may only qualify as a party to such a conflict if it is sufficiently organised and participates in hostilities which are sufficiently intense[832]—thus implying at least the capability to participate in military operations. However, this does not mean that *all* activities of armed groups *are* military operations. To the contrary, an armed group may carry out criminal activities alongside military operations, or in furtherance of its perceived military objectives. Yekatom is thus incorrect to the extent he implies that the establishment of checkpoints must be regarded *a priori* as (lawful) military operations, simply because carried out by an armed group.[833] Similarly, even if non-State organised armed groups have a power to detain under the customary law of non-international armed conflict, this does not mean that all detentions by such groups are lawful.[834] Nor does the subjective claim that an activity is carried out to "safeguard[] the civilian population" necessarily make the activity lawful.[835] Rather, these issues are questions of fact, which must be resolved on the evidence in the case.

[830] Yekatom Appeal, para. 283 (citing *inter alia* *Bemba* AJ, paras. 168-170).
[831] Yekatom Appeal, para. 284.
[832] *See e.g.* Judgment, paras. 3766-3768.
[833] *Contra* Yekatom Appeal, para. 284.
[834] *Contra* Yekatom Appeal, para. 285. For an overview of the relevant considerations here, *see e.g.* ICRC, *Commentary to GCIV* (2025), Article 3, mns. 809-820.
[835] *Contra* Yekatom Appeal, para. 285.

204. Yekatom fails to show any error in the Chamber's consideration of matters arising from the armed conflict in any of the three episodes he highlights: at Yamwara,[836] on the PK9-Mbaïki axis,[837] or in Bangui on 5 December 2013.[838] In each respect, the Chamber correctly applied the law, and reasonably interpreted the evidence in the record. To consider these events in their proper context, the Prosecution has re-ordered its response to these episodes chronologically.

III.1. Ground 3.3: The Chamber properly considered the context of Yekatom's participation in the Anti-Balaka attack on Bangui (including Boeing and Cattin) on 5 December 2013

205. Under counts 1, 2-3, 4-5, 6, and 8, the Chamber convicted Yekatom of directing an attack upon the civilian population as such, murder, forcible transfer, directing an attack upon a building dedicated to religion, and persecution committed on 5 December 2013.[839] This was based on the participation of Yekatom and his subordinates in the coordinated Anti-Balaka attack on Bangui, which aimed to "chas[e] out the Seleka" and "which included systematic targeting of Muslim civilians."[840] In order to carry out his role in the attack, Yekatom had conducted a reconnaissance of Boeing market in Bangui on the previous night (4 December 2013), and instructed his subordinates to target Seleka positions along the Boeing-Cattin-PK5 axis including Muslim traders at the market ("the Traders").[841]

206. On the following morning, Yekatom commenced the attack by firing in the air when he and his subordinates arrived at the market; his forces then shot in all directions, including at the Muslim traders who were present, causing everyone inside the shops to flee.[842] Yekatom's elements killed at least three Traders; while one fired back in self-defence, there was no indication that the others were armed or engaged in combat.[843] At his order, Yekatom's forces also fired a rocket at the mosque in Boeing, and doused it with gasoline.[844] In accordance with Yekatom's plan, his forces subsequently advanced to Cattin, where they clashed with the Seleka. In the course of the attack, they killed at least one unarmed Muslim man who was not engaged in combat.[845] As a consequence of the attacks, many Muslim civilians from Boeing

[836] *Contra* Yekatom Appeal, paras. 286-301, 357.
[837] *Contra* Yekatom Appeal, paras. 302-339, 358.
[838] *Contra* Yekatom Appeal, paras. 340-356, 359.
[839] *See e.g.* Judgment, para. 4846 (verdict).
[840] Judgment, paras. 69-74, 3950-3951, 3962, 3973, 3992, 3999.
[841] Judgment, paras. 75, 3950.
[842] Judgment, paras. 76, 3951.
[843] Judgment, paras. 77, 3951, 3962.
[844] Judgment, paras. 78, 3992.
[845] Judgment, paras. 79, 3962.

and Cattin fled to PK5 in Bangui, while others fled to other parts of the CAR. Since PK5 soon became overcrowded and unsafe, some Muslim civilians then fled to neighbouring countries.[846]

207. Yekatom now argues that the Chamber erred in assessing the relevant circumstances pertaining to the Traders at Boeing market. Specifically, he contends that the Chamber incorrectly limited its assessment to the Traders' links or interactions with Seleka officials; in his view, it should instead have assessed whether they: (i) exercised a continuous combat function within the Seleka, or; (ii) otherwise directly participated in hostilities.[847] Yekatom fails to show that the Chamber erred in law, or reached any unreasonable conclusion of fact. He is also incorrect in his further claim that, but for these alleged errors, the Chamber "could not have excluded the reasonable possibility" that the Traders "had lost civilian protection".[848]

III.1.a. The Chamber correctly assessed whether the Traders were murdered, and whether these killings were also probative of an attack directed against the civilian population as such

208. The killing of the Traders was primarily relevant to counts 2 (murder as a crime against humanity), 3 (murder as a serious violation of common article 3), and 8 (persecution as a crime against humanity, through acts including—but not limited to—murder). While murder as a crime against humanity does not *expressly* demand proof of the victim's status or activities for the purpose of IHL, this is required for murder as a serious violation of common article 3. These circumstances were also *relevant*—although not essential—in proving count 1 (directing an attack against a civilian population),[849] given the evidentiary relevance of attacks directed against civilians not taking direct part in hostilities.

209. The Chamber correctly directed itself to the relevant law, recalling that:

- "Civilians are persons who are not members of State armed forces or organised armed groups of a party to the conflict";[850]
- Civilians are protected under common article 3 as long as they "tak[e] no active part in hostilities",[851] understood as "acts of war that by their nature or purpose strike at the

[846] Judgment, paras. 80, 3973.
[847] Yekatom Appeal, paras. 340-341 (Chamber's approach), 342-346 (continuous combat function), 347-356 (direct participation in hostilities).
[848] Yekatom Appeal, para. 359.
[849] In turn, the existence of such an attack was also relevant in proving the requisite coercion to establish counts 4-5 (forcible transfer): *see e.g.* Judgment, paras. 3973, 3975-3978, 3980, 3986, 3988-3990.
[850] Judgment, para. 3789 (citing *Ongwen* TJ, para. 2759; *Ntaganda* TJ, para. 883; *Katanga* TJ, para. 788; GCIV, art. 3).
[851] *See e.g.* Statute, art. 8(2)(c).

personnel and *matériel* of enemy armed forces".[852] As explained in the *Ntaganda* Trial Judgment, this definition is derived from the ICRC *Commentary on APII*—even though "the Statute, treaty law, and the principles and rules of international law, including the established principles of the international law of armed conflict do not define 'active participation in hostilities'".[853]

- For a "civilian to lose […] protection" from attack, "it is required that their acts have a belligerent nexus, meaning they were specifically designed to directly cause the required threshold of harm in support of a party to an armed conflict and to the detriment of another."[854]

- In carrying out its factual assessment, the Chamber "must have regard to the relevant facts and specific situation of the victims at the relevant time, including the location of the killings, whether the victims were carrying weapons, and the clothing, age, and gender."[855]

210. Yekatom claims that the Chamber erred in "limiting its assessment of the status of the Boeing Market Traders […] to their 'links' or 'interactions' with Seleka officials", and proposes that "[t]he Chamber should have applied two distinct legal tests: first, whether the Traders exercised a CCF [continuous combat function] within the Seleka; and, alternatively, whether they directly participated in hostilities."[856] In his view, "[a] finding in the affirmative under either test would have resulted in the loss of civilian protection."[857] Yekatom is wrong in several respects.

211. *First*, as explained further below, the Chamber did not limit its assessment to the Traders' links or interactions with Seleka officials but, rather, correctly assessed their relevant activities.[858] The Chamber directed itself to substantially the same law cited by Yekatom.[859] He thus fails to show how the Chamber erred in law when considering whether the Traders were protected by common article 3 at the material times,[860] or whether an attack was directed upon the civilian population as such with reference to the treatment of the Traders.[861]

---

[852] Judgment, para. 3793 (citing *Ongwen* TJ, para. 2697; *Ntaganda* TJ, para. 883; *Galić* TJ, para. 48).
[853] *Ntaganda* TJ, para. 883 (quoting ICRC, *AP Commentary*, APII, art. 13(3), p. 1453).
[854] Judgment, para. 3969 (citing ICRC, *DPH Interpretive Guidance*, p. 64).
[855] Judgment, para. 3968.
[856] Yekatom Appeal, para. 340. *See further* para. 341 (explaining Yekatom's view of the concepts of "continuous combat function" and "direct participation in hostilities").
[857] Yekatom Appeal, para. 340.
[858] *See below* paras. 217-226.
[859] *See above* para. 209. *Compare* Yekatom Appeal, paras. 340-341.
[860] *See e.g.* Judgment, paras. 3966-3971.
[861] *See e.g.* Judgment, paras. 3952-3960.

212. Yekatom incorrectly treats the *DPH Interpretive Guidance* as black letter law.[862] Yet it "is not and cannot be a text of a legally binding nature", but rather "an interpretation" of a concept—direct participation in hostilities ("DPH"), drawn from Additional Protocol I[863]—which is "one of the most difficult, but as yet unresolved issues of international humanitarian law",[864] whose "scope and application" remains the "subject of debate".[865] Since the Chamber's understanding of "taking no active part in hostilities" is compatible with the principles underlying the *Guidance*, and indeed the Chamber cited the *Guidance* at one point,[866] Yekatom shows no error in the law to which the Chamber directed itself.[867]

213. *Second*, Yekatom confuses two related but distinct IHL issues. Even applying the "continuous combat function", it is a means *only* of defining civilians as "members" of the armed forces of non-State organised armed groups for the purpose of *targeting in the conduct of hostilities* (such that they may be targeted when, ordinarily, civilians may not be targeted).[868] Similar considerations apply to DPH, *stricto sensu*, which determines the legality of targeting civilians who are *not* members of the armed forces of non-State organised armed groups.

214. By contrast, common article 3 is not concerned with targeting but protection from inhumane treatment *outside* the conduct of hostilities[869]—and, in this respect, protects *both* members of the armed forces and civilians alike. What matters for common article 3 is that, at the material time, the victim is not taking *active* part in hostilities but rather is in the power of the alleged perpetrator(s).[870] Thus, as a matter of law, a civilian could be targetable in the conduct of hostilities (on the basis of their continuous combat function), but in any event *still* be protected from murder when no longer taking an active part in hostilities (for example if placed *hors de combat*).

215. Accordingly, for the purpose of count 3 (murder), the Chamber was correct to consider whether the Traders were taking an active part in hostilities, based on all the relevant

---

[862] *Cf.* Yekatom Appeal, paras. 340-359.
[863] *See e.g. Galić* TJ, para. 48.
[864] ICRC, *DPH Interpretive Guidance*, p. 6. *See also* p. 9 (noting that the *Guidance* "does not necessarily reflect a unanimous view or majority opinion of the experts").
[865] ICRC, *Commentary to GCIV* (2025), Article 3, mn. 600.
[866] *See e.g.* Judgment, para. 3969.
[867] *Contra* Yekatom Appeal, paras. 340-342, 348-349. *See above* para. 209, *especially* fns. 852-854.
[868] ICRC, *DPH Interpretive Guidance*, pp. 32-33. *Cf.* Yekatom Appeal, para. 341. *See further* ICRC, *DPH Interpretive Guidance*, pp. 7 ("it does not address the consequences of [DPH] once [a person is] in the adversary's hands"), 11 ("not intended to serve as a basis for interpreting IHL regulating the status, rights and protections of persons *outside the conduct of hostilities*", emphasis added).
[869] *See* ICRC, *Commentary to GCIV* (2025), Article 3, mns. 614, 616-617. *See also* ICRC, *DPH Interpretive Guidance*, p. 28.
[870] *See e.g.* ICRC, *Commentary to GCIV* (2025), Article 3, mns. 614, 619-620. *See also Katanga* CD, para. 268.

circumstances including their own activities at the material time, without entering into the question whether they had a continuous combat function—which, if applicable, is a concept unique to the DPH (conduct of hostilities) assessment only. Likewise, for the purpose of count 1 (directing an attack upon the civilian population), the Chamber could in principle have found that Yekatom and his forces directed an attack upon the civilian population at Boeing market even *without* assessing the status or conduct of the Traders (for the purpose of the conduct of hostilities regime), since "the civilian population can still qualify as the primary object of an attack in a situation where everyone is targeted [in] a mixed military-civilian population."[871]

216. Yet on the facts of this case, the Chamber did rely upon the violence towards the Traders (among other aspects of the conduct of Yekatom and his forces) to support its finding that Yekatom and his forces directed an attack upon the civilian population.[872] Implicitly, therefore, the Chamber found the Traders to be civilians who were *not* members of the armed forces of a non-State organised armed group (in other words, if applicable, they did not have a continuous combat function), and were *not* otherwise taking direct part in hostilities.[873] While the Chamber did not set out every step of its reasoning in this respect, it is clear that it directed itself properly to the applicable law in this regard, and applied it reasonably.[874]

III.1.b. The Chamber did not err by failing to find that the Traders had a 'continuous combat function'

217. While the Chamber was not obliged to determine whether the Traders had a 'continuous combat function' for the purpose of count 3 (murder), in any event it is clear from the Chamber's findings that the definition of this concept in the *DPH Interpretive Guidance* could

---

[871] Judgment, para. 3790. *See also* para. 3789.
[872] *See e.g.* Judgment, paras. 3950-3951, 3955-3960. While not raised by Yekatom, there is no necessary inconsistency in finding that an attack was directed against the civilian population at Boeing market (a crime in the conduct of hostilities: *see e.g.* *Ntaganda* TJ, para. 904) but that individual Traders were murdered as a consequence of that attack (a crime outside the conduct of hostilities: *see e.g.* *Ntaganda* CD, para. 47; *Katanga* CD, para. 269; *above* fn. 869). The crime of directing an attack against the civilian population is primarily an endangerment crime; it is completed even without any showing of actual harm: Judgment, para. 3788. Thus, while the Chamber clearly found that Yekatom directed the attacks on the civilian population at Boeing market and Cattin within the conduct of hostilities paradigm, this crime was in principle completed when the attack was launched: *see e.g.* *Katanga* CD, para. 272. As Yekatom's forces advanced and gained control over relevant persons and/or territory, the killing of the Traders could properly be treated as murder as a serious violation of common article 3. Even if the Chamber erred in this respect, it was harmless since adopting the only alternative reasoning would equally result in criminal responsibility for the unlawful killings of the Traders—but simply as further instances of attacks on specific civilians under article 8(2)(e)(i), aggravated by the fact that they caused the death of the victim (which is not an element of the crime). *See further e.g.* *Ntaganda* SAJ, paras. 101-107.
[873] While the Judgment tended to use the terms "active" and "direct" participation interchangeably (*see e.g.* Judgment, paras. 3959-3960, 3969), this was no error because some of the underlying concepts remain closely linked, provided the Chamber took the correct approach on the facts, as it did. *See further* ICRC, *Commentary to GCIV* (2025), Article 3, mns. 599-602; *Lubanga* AJ, para. 323. *Cf.* *Katanga* TJ, para. 789.
[874] *See below* paras. 217-226.

not have been met. Notably, this requires a person to have: (i) a *continuous* function; (ii) involving the preparation, execution, or command of; (iii) acts or operations amounting to direct participation in hostilities.[875] In particular, the requirement of *continuous* activity in this test—and the distinction from a mere civilian support function even if the relevant person had *links* with a non-State organised armed group—imposes a high burden.

218. In other words, the Chamber's findings precluded that the Traders could properly be considered as members of the armed forces of a non-State organised armed group.[876] As such, they could not lawfully be targeted (relevant evidence for the Chamber's assessment of count 1: directing an attack upon the civilian population) unless they were taking direct part in hostilities at the material time. These findings were reasonable.

219. Yekatom claims that the Chamber failed to address evidence of the Traders' prior conduct which (in his view) would have established that they were Seleka members based on their continuous combat function,[877] and by failing to assess the evidence of their prior alleged affiliation with the Seleka "in combination with" their conduct at the time of the attack.[878]

220. Yekatom shows no error by the Chamber. In considering the evidence of the Traders' conduct and any links with the Seleka, the Chamber expressly referred to Yekatom's arguments.[879] It noted that Hassan was a "delegate" or representative of the Traders,[880] and directed itself to assess both "Hassan's purported links with the Seleka prior to 5 December 201[3]" before then "turning to the events immediately before his death."[881] On this basis, considering the evidence both individually and holistically, it could "not conclude […] that

[875] *See e.g.* ICRC, *DPH Interpretive Guidance*, pp. 34-35 ("Continuous combat function requires *lasting integration* into an organized armed group acting as the armed forces of a non-State party to an armed conflict. […] Individuals who continuously accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, are *not* members of [the armed forces of] that group within the meaning of IHL. Instead, they remain civilians assuming support functions […] In practice, *the principle of distinction must be applied based on information which is practically available and can reasonably be regarded as reliable in the prevailing circumstances*. A continuous combat function may be openly expressed through the carrying of uniforms, distinctive signs, or certain weapons. Yet it may also be identified on the basis of conclusive behaviour, for example where a person has repeatedly directly participated in hostilities in support of an organized armed group in circumstances indicating that such conduct constitutes a continuous function rather than a spontaneous, sporadic, or temporary role assumed for the duration of a particular operation […] [T]hat determination remains subject to all feasible precautions and to the *presumption of protection in case of doubt*", emphasis added).
[876] *See* Judgment, paras. 3969, 3971. The Chamber did not consider it necessary to spell out its reasoning with regard to the Traders other than Hassan, but this was implicit in its conclusions.
[877] Yekatom Appeal, paras. 342-345.
[878] Yekatom Appeal, para. 346.
[879] Judgment, paras. 2554, 3957, 3967.
[880] Judgment, para. 2540.
[881] Judgment, para. 2556.

Hassan was a member of, or otherwise affiliated with, the Seleka at the time of his death".[882] Likewise, it considered the presence of the Traders at their shops immediately before the attack.[883] The Chamber considered the potential significance of the Traders' access to weapons.[884]

221. *First*, in assessing alleged prior affiliations with the Seleka, the Chamber considered the evidence of six witnesses and on this basis concluded that "certain Seleka officials frequented Hassan's shop before 5 December 2013".[885] While noting that Hassan and the Seleka officials "were known to personally interact with each other", the Chamber also recalled Hassan's function as the Traders' "delegate" which required him "to represent the traders before the authorities."[886] It did not understand P-1339 and P-0884's evidence to mean that Hassan was a Seleka member either before or at the time of the attack. While D29-4011 did suggest that Hassan was a Seleka member, this was "based on what she generally heard" and was "in any event unsupported by any other evidence."[887]

222. Yekatom merely asserts his own disagreement with the evidence reasonably relied upon by the Chamber. In particular, he fails to show that the Chamber misinterpreted P-1339's and P-0884's evidence,[888] or that it erred in characterising D24-0411's evidence as unsupported hearsay.[889] Mere association with the Seleka, even if established, was legally insufficient to show that Hassan or the other Traders had a *continuous* function establishing their membership of the armed forces of the Seleka, justifying their targeting at all times.[890]

223. *Second*, the Chamber did not fail to take account of conduct at the time when Yekatom's group attacked Boeing. It expressly noted that Hassan had a weapon in his shop, which he fired in self-defence.[891] Yekatom shows no error in this analysis by referring to the alleged activities

[882] *See* Judgment, paras. 2557, 2566.
[883] *See* Judgment, para. 2567.
[884] *See* Judgment, paras. 2568-2572.
[885] Judgment, paras. 2565-2566. *See also* para. 2557. *See further* paras. 2558-2559 (evidence of P-1339), 2560 (evidence of P-0884), 2561 (evidence of D29-4011), 2562 (evidence of Gaston Sallo), 2563 (evidence of Salehou Ndiaye), 2564 (evidence of P-2682).
[886] Judgment, para. 2565. *See also* paras. 2566, 3962.
[887] Judgment, para. 2565.
[888] *Contra* Yekatom Appeal, para. 343.
[889] *Contra* Yekatom Appeal, para. 344.
[890] *Contra* Yekatom Appeal, para. 345.
[891] Judgment, paras. 2571, 3970.

of Hassan's brother, or an identification card allegedly carried by Hassan.[892] Likewise, the Chamber noted that the other Traders were not armed when they were killed.[893]

III.1.c. The Chamber did not err by failing to find that the Traders otherwise directly participated in hostilities

224. Furthermore, and in any event, the Chamber's findings likewise precluded any finding that the Traders were taking DPH when Yekatom's group attacked Boeing. Typically, to constitute DPH even under the *DPH Interpretive Guidance* which Yekatom asserts should apply, an act must: (i) result in a specific "threshold of harm"; (ii) with a "direct causal link" to the relevant act, and; (iii) satisfy a "belligerent nexus" in the sense that the act must be specifically designed to cause the relevant harm in support of one party to the conflict and to the detriment of another.[894]

225. Yekatom shows no error in the Chamber's analysis.[895] Notably, in finding that Hassan fired at the Anti-Balaka elements in self-defence, and that this was a necessary and proportionate use of force, the Chamber properly concluded that this did not amount to DPH because it lacked the requisite belligerent nexus.[896] Yekatom simply repeats his disagreement with this finding.[897] The Chamber was correct in law to distinguish self-defence from DPH.[898]

226. Likewise, for the other Traders, who were unarmed at the material time, the Chamber reasonably found that they were not engaged in combat at all,[899] and therefore could not be taking DPH. Yekatom merely disagrees with the factual basis of this finding, without showing how it was unreasonable, and speculates when he suggests that unspecified other aspects of the Traders' conduct—even in the absence of any weapons—could have amounted to DPH.[900] Nor

---

[892] *Contra* Yekatom Appeal, para. 346. Yekatom does not show how the Chamber was unreasonable in failing to draw any inferences about Hassan's own activities or status from the alleged activities of his brother: *see* Judgment, paras. 2576, 2598, 2605. Likewise, Yekatom shows no error in the Chamber's approach to P-1339's evidence that Hassan may have had an identification card as a "former" soldier in the armed forces of Chad: *see e.g.* T-157, p. 13:4-18.
[893] Judgment, para. 3962.
[894] *See* ICRC, *DPH Interpretive Guidance*, pp. 44-46. *See further* pp. 47-64. *See also* *Mbarushimana* CD, para. 148. *See also e.g.* Yekatom Appeal, para. 348.
[895] *Contra* Yekatom Appeal, paras. 347-356. Notably, applying to all his arguments in this ground, Yekatom does not substantiate his apparent claim that the Chamber misapplied the standard of proof: *contra* para. 354. *See further below* section VI.1.e. (paras. 372-373).
[896] *See* Judgment, paras. 3969-3970.
[897] *Contra* Yekatom Appeal, para. 352.
[898] *Contra* Yekatom Appeal, para. 356. *See e.g.* ICRC, *DPH Interpretive Guidance* p. 61; *Ongwen* TJ, para. 2697 (in the context of the "active part in hostilities" test for common article 3); *Mbarushimana* CD, para. 148; *Abu Garda* CD, para. 83; *Sesay* TJ, para. 233; *Bagosora* TJ, paras. 2237-2238.
[899] *See* Judgment, para. 3962.
[900] *Contra* Yekatom Appeal, paras. 349-350, 355.

does he show any basis for his claim that the Chamber improperly considered the activities of the Traders "in isolation from the broader events" at the market.[901]

III.1.d. Any error would have had minimal impact

227. Yekatom asserts that the Chamber's proper application of "the CCF/DPH framework to the Boeing Market Traders" meant that it could not be excluded that "Hassan Mahamat and other traders had lost civilian protection".[902] Not only is this incorrect for the reasons explained above,[903] but in any event such an error would not have materially affected Yekatom's convictions under counts 1-6 and 8, as he claims.[904] At most, an error in determining the status or activities of the Traders would affect *some* of the conduct underlying only some of these counts—namely counts 2-3 (murder) and 8 (persecution, through the underlying act of murder). However, it would have no impact on other counts which did *not* depend on evidence of the status of the Traders but rather pertained to the violent conduct of Yekatom's forces at Boeing and Cattin viewed in the aggregate or other specific acts, such as counts 1 (attack upon the civilian population as such),[905] 4-5 (forcible transfer),[906] and 6 (directing an attack upon a building dedicated to religion).[907]

228. Furthermore, even for counts 2-3 (murder) and 8 (persecution, through the underlying act of murder), the impact would only be partial and would not eliminate the factual basis for Yekatom's conviction entirely. For counts 2-3, Yekatom's convictions for murder did not depend solely on the killing of the Traders at Boeing, but also the killing of an unarmed man at Cattin.[908] The same applies for count 8, since Yekatom's conviction for persecution was based on multiple underlying acts (not limited to murder),[909] and in any event even the underlying act of murder likewise did not depend solely on the killing of the Traders.[910]

III.2. Ground 3.1: The Chamber properly considered the crimes committed by Yekatom's group at Yamwara on or about 24-27 December 2013

229. Under counts 11-17, the Chamber convicted Yekatom of other inhumane acts, torture, cruel treatment, imprisonment, murder, and persecution committed on or about 24-27

[901] *Contra* Yekatom Appeal, para. 353.
[902] Yekatom Appeal, para. 359.
[903] *See above* paras. 208-226.
[904] *Contra* Yekatom Appeal, para. 359.
[905] *See* Judgment, paras. 3949-3960.
[906] *See* Judgment, paras. 3972-3990.
[907] *See* Judgment, paras. 3991-3997.
[908] Judgment, para. 3965.
[909] Judgment, paras. 3998-4006, *especially* para. 4002.
[910] *See above* fn. 908.

December 2013, at Yamwara in Boeing, Bangui.[911] This was based on an incident in which members of the Lapo N'Gomat family and their friends (three women and four men) were apprehended at a checkpoint by Yekatom's elements. Despite posing no threat to Yamwara or the security of Yekatom's elements, the group was threatened with death, and the men were searched; two were beaten. The group was then taken to Cœur de Lion's house at Yamwara, where they were searched, interrogated and mistreated.[912]

230. Of the four men, one (Saint Cyr) was tortured and mutilated; he was then taken away and never seen again. The three other men (P-1704, P-1705, and P-1716) were forced to watch the torture of Saint Cyr, and were themselves then beaten and threatened with death. Yekatom subsequently told P-1839 that the element who had mutilated Saint Cyr had done a "good job".[913]

231. The women—who had been forced to undress to their underwear when they were searched, and again threatened with death—could hear the interrogation and torture of Saint Cyr outside. Subsequently, they were again threatened with death by Yekatom's elements, passing in and out of the house, and interrogated by Yekatom himself. On the following day, the women and two of the men (P-1704 and P-1705) were taken to another location in Yamwara, and again threatened. They were then made to walk to a location near the M'Poko airport, where they were handed over to a man called Yagouzou and detained in circumstances that some found frightening. Yekatom met them on the following morning and introduced himself. The detainees were eventually released on or about 27 December 2013.[914]

232. Yekatom asserts that the Chamber erred by taking insufficient account of the context of the armed conflict in considering the Yamwara incident, concerning: the checkpoints; the treatment of the Lapo N'Gomat family, and; Yekatom's own alleged efforts at "cooperation". He fails to show error in any respect.[915] In particular, he does not show that the Chamber misapplied the law or was unreasonable in its assessment of the evidence. His subjective view that a reasonable chamber "could have found that the Yamwara checkpoints and the initial apprehension and investigation of the Lapo Family group were legitimate defensive security

[911] Judgment, para. 4846 (verdict).
[912] Judgment, paras. 95-100, 4134-4138.
[913] Judgment, paras. 100-103, 4139, 4141-4142.
[914] Judgment, paras. 104-100, 4140-4144.
[915] *Contra* Yekatom Appeal, paras. 286-290 (checkpoints), 291-300 (concerning the Lapo family), 301 (alleged "cooperation" efforts).

measures", and "could have concluded" that the crimes of other inhumane acts and imprisonment were not proven, is thus immaterial, as well as unconvincing.[916]

III.2.a. The Chamber properly assessed the evidence of the checkpoints

233. The Chamber found that, in establishing their base at Yamwara, Yekatom's group set up checkpoints along its perimeter to monitor passage of vehicles and people, including at least one set up by the element known as Alkanto.[917] This checkpoint was the location at which the victims of the Yamwara crimes were initially apprehended. Yekatom shows no error in the Chamber's assessment which materially affects his convictions.[918]

234. Yekatom merely repeats his trial argument that these checkpoints had a "defensive nature and purpose", given the ongoing security risks from the Seleka.[919] Yet it is Yekatom (rather than the Chamber) who "disregard[s] the context", in claiming that "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 […]'" and that this invalidated its finding that "subsequent apprehensions" were "unlawful".[920] This is wrong because the "legal basis" of the "checkpoint" was only *indirectly* relevant to the Chamber's conclusions on the elements of the relevant charged crimes (torture and imprisonment as crimes against humanity).

235. Specifically, the Chamber referred to the legal basis of the checkpoints only in the context of: (i) finding that acts of severe mistreatment against persons initial apprehended there were not inherent in, or incidental to, any lawful sanction, for the purpose of torture,[921] and; (ii) finding that acts depriving such persons of their liberty were of such gravity as to violate fundamental rules of international law, for the purpose of imprisonment.[922]

---

[916] *Cf.* Yekatom Appeal, para. 357.
[917] Judgment, paras. 91, 3057-3058.
[918] *Contra* Yekatom Appeal, paras. 286-290.
[919] Yekatom Appeal, paras. 286-287. *See also* para. 289 (asserting that the checkpoints were not merely intended to "'monitor the passage of vehicles and people'", but rather were "set up specifically to detect and guard against Seleka threats and infiltration, while Seleka remained active"). This likewise shows no error in the Judgment.
[920] *Contra* Yekatom Appeal, paras. 288, 290.
[921] Judgment, para. 4169 (considering that the infliction of pain or suffering was not inherent in, or incidental to, any "lawful sanction" for the purpose of torture as a crime against humanity, and finding that Yekatom's elements had no "lawful authority or basis to set up the checkpoint" or "to stop and search" the Lapo Family group). *See also* paras. 4163-4164 (rejecting the claim that the Lapo Family group were apprehended as a result of lawful "investigative acts").
[922] Judgment, para. 4209 (considering that the gravity of relevant conduct was such that it violated fundamental rules of international law for the purpose of imprisonment as a crime against humanity, because Yekatom's elements "had no legal basis to arbitrarily apprehend persons on the basis of suspicions at checkpoints").

236. Thus, even if Yekatom were correct that the Anti-Balaka had "*de facto* authority to adopt defensive measures" by establishing checkpoints,[923] this is beside the point. Any such authority did not encompass either the intentional infliction of severe pain and suffering on civilians who were arbitrarily detained, nor indeed the arbitrary detention itself.[924] Such acts are not only prohibited *per se* under international humanitarian law,[925] but are causally remote in that they do not necessarily follow from establishing checkpoints. As the Chamber found, since none of the victims posed any threat to the security of Yekatom, his group, the Anti-Balaka, or the Yamwara base, they should not have been troubled at the checkpoint even if it were lawful.[926]

237. As such, even taking Yekatom's argument concerning the legality of the checkpoints at its highest, he shows no error in the Chamber's findings on imprisonment or torture. Indeed, the Chamber was careful to refer not only to the legality of the checkpoint but the absence of authority in those circumstances for Yekatom's group to "stop and search" the Lapo Family group or "to arbitrarily apprehend" them on the basis of mere "suspicions".[927]

III.2.b. The Chamber took proper account of the context of the conflict

238. In claiming that the Chamber erred "in finding that the search of vehicles [at the Yamwara checkpoint] was 'neither 'routine' nor 'lawful'"", Yekatom does not even identify an error that could materially affect his convictions.[928] Like his above argument concerning the legality of establishing the checkpoint, no finding essential to his convictions depended on the legality of the initial vehicle search at the Yamwara checkpoint.[929] Accordingly, this argument

[923] Yekatom Appeal, para. 288 (also asserting that the "checkpoints" were "a necessary and proportionate defensive response to the Seleka threats"). At most, Yekatom is understood to be referring to the framework of international humanitarian law, rather than the domestic legal framework of the CAR.
[924] *Contra* Yekatom Appeal, para. 290. *See also e.g.* Judgment, para. 4209.
[925] *See e.g.* GCIV, art. 3. On detention in NIAC, *see e.g.* ICRC, *Commentary to GCIV* (2025), Article 3, mns. 809 (for "detention in relation to a criminal process, common Article 3 imposes the obligation of a fair trial"), 810-811 (for "detention outside a criminal process", "[i]t is a requirement under customary international law […] that any detention must not be arbitrary"), 814 ("The ICRC has relied on 'imperative reasons of security' as the minimum legal standard that should inform internment decisions"), 820 ("even if one were to consider that international humanitarian law contains an inherent power to detain in [NIAC], that power would remain undefined […] [W]ithout more, the exercise of such a power would not conform to the principle of legality or safeguard against arbitrary detention. Therefore, additional authority related to the grounds and procedures for deprivation of liberty in [NIAC] must still be provided in all cases"). *See further* ICRC, *Detention by Non-State Armed Groups* (2023), pp. 55-56; Judgment, para. 4209. *See also above* fn. 834; *below* fn. 942.
[926] *See* Judgment, para. 4158 (none of the Lapo Family group "posed a threat to Yamwara or the security of the elements placed there").
[927] *See* Judgment, paras. 4169, 4209. *See also* paras. 4163-4164.
[928] *Contra* Yekatom Appeal, para. 291. The passage of the Judgment to which Yekatom seems to refer is just one part of the Chamber's broader analysis rejecting Yekatom's claim that his group did not inflict severe pain or suffering on Saint Cyr: *see* Judgment, para. 4164.
[929] *Contra* Yekatom Appeal, para. 291. *See also above* paras. 233-237.

should be dismissed *in limine*. Furthermore, and in any event, Yekatom is mistaken in his specific arguments concerning the circumstances of the Lapo Family group when they were stopped at the checkpoint, and the legality of their treatment under international law.

i. The Chamber properly assessed the circumstances of the Lapo Family Group

239. Yekatom asserts that, in assessing the behaviour of his elements at the checkpoint, led by Alkanto, the Chamber should have taken greater account of: (i) the effect of the "heightened tensions" with the Seleka on the identification of the Lapo Family group as "belonging to the family of the Seleka Minister of Defence"; (ii) the effect of discovering a Seleka ID card on Saint Cyr which "triggered legitimate security concerns", eliminating the basis for inferring anti-Muslim animus, and; (iii) the "manifest (and perceived) risk of intelligence […] reaching the Seleka", based on the finding of "a hidden SIM card", and consequently the justification of "security measures, i.e. investigations, apprehensions, and actions against suspected spies".[930] Yekatom merely repeats his unsuccessful arguments at trial, showing no error and mistaking the applicable law.

240. The Chamber clearly rejected these speculative arguments pertaining to the Lapo Family group. It reasonably found that the group of three women (escorted by four men)—who were returning to their home before dark and were threatened by Yekatom's elements even *before* they were first searched—posed no security threat,[931] nor could reasonably have been perceived as doing so.[932] It heard and relied evidence which is wholly inconsistent with Yekatom's present claims, which it clearly rejected:

- *First*, at trial, even Yekatom did "not dispute" that Alkanto initially recognised one of the group as being related to the Seleka Minister of Defence—but also that his "'vigilance' was heightened by 'personal grievances' and 'vendetta' to that person".[933] Consistent with this, the Chamber also heard evidence that Alkanto immediately began insulting members of the group, and Yekatom's elements soon formed the view that they were Muslims[934]—it was this combination of factors which "predisposed Alkanto's group" to victimising the

[930] Yekatom Appeal, paras. 292-294.
[931] *See* Judgment, paras. 95-98, 4158. *See further* paras. 3131-3155.
[932] *See also e.g.* Judgment, para. 4163 ("Having regard to the circumstances and the manner in which the [Lapo Family] group was apprehended, searched and threatened with death at the checkpoint and during their transfer to Yamwara, the Chamber finds that they bore no resemblance to any 'investigative' act legally carried out. […] The Chamber is convinced that elements in Mr Yekatom's group had no reason to entertain suspicions against the [Lapo Family] group […] let alone consider, as argued, that these suspicions were 'reasonable'"). *See also* paras. 4213-4215.
[933] *See* Judgment, paras. 3137-3141.
[934] *See* Judgment, para. 3139.

Lapo Family group.[935] This is inconsistent with Yekatom's present claim that the group was merely and objectively identified as a security threat.

- *Second*, as soon as Alkanto had made the identification, he and the other elements immediately "started to threaten the group with death".[936] As such, the animus towards the Lapo Family group was clear even before they were searched and Seleka ID cards discovered.[937] While the Chamber noted evidence that the group may then have been described as "spies", they were also characterised as "traitors" and were simultaneously beaten.[938] Again, this unlawful mistreatment is inconsistent with the notion that the group was genuinely suspected of being a security threat, and more consistent with the motives of revenge and anti-Muslim animus. Objectively, the Chamber concluded that "none of the seven persons were armed, or otherwise, [sic] posed a threat to Yamwara or the security of the elements placed there."[939]
- *Third*, the Chamber noted evidence that the Lapo Family group was searched on at least two occasions, and a SIM card was found only on the *second* search once the group had *already* been detained and taken to Cœur de Lion's house.[940] As such, this card could not have motivated the behaviour of Yekatom's elements at the checkpoint.

241. Furthermore, even if Yekatom's speculation were accepted—that is, that the Lapo Family group were genuinely considered as potential spies when first identified at the checkpoint (which they were not)—his apparent assumption that this would have justified their subsequent treatment is baseless and incorrect. To the contrary, there is never justification under any circumstances for intentionally mistreating detained persons.[941] Nor is civilian internment

[935] *See* Judgment, para. 3142 ("the Chamber finds that it was a combination of Alkanto's negative feelings centred around a desire for revenge, the women being identified as related to Djotodia and Mansour, as well as being Muslima, that predisposed Alkanto's group to their perception of the seven persons"). *See also* para. 4135.
[936] *See* Judgment, paras. 3143-3145.
[937] *See* Judgment, paras. 3140, 3146-3148.
[938] *See* Judgment, paras. 3146, 3148. *See also* paras. 4136, 4211, 4213.
[939] *See* Judgment, para. 3149. *See also* para. 4210.
[940] *See* Judgment, paras. 3147, 3150-3162, 3167-3169. *See also* paras. 4140, 4163, 4210.
[941] *See e.g.* GCIV, art. 3. *See also above* fn. 925. *See further* Judgment, para. 4215.

permitted unless exceptionally justified by "*imperative* reasons of security".[942] In circumstances such as those prevailing at the checkpoint, this excludes mere suspicion.[943]

242. Accordingly, Yekatom shows no reasonable basis to consider that Alkanto and other members of Yekatom's group were carrying out "investigative procedures" which were "legitimate in the circumstances".[944] To the contrary, the Judgment is abundantly clear that the Lapo Family group were unlawfully targeted from the outset, and there was no "initial arrest and verification phase" with any plausible claim to legality.[945]

ii. The Chamber correctly found that the Lapo Family Group were not treated in accordance with international law

243. Yekatom fails to show that the Chamber erred in concluding that the Lapo Family group were not treated to the standard required by fundamental rules of international law, even taking account of the "security conditions" and "operational context".[946] To the contrary, as stated above, the Chamber rightly held that the victims were mistreated having regard to: (i) the inadequate justification for their detention; (ii) the absence of any procedural safeguards, and; (iii) their gross physical mistreatment, including acts of torture and murder.[947] Yekatom's four arguments do not undermine these correct and reasonable conclusions.

244. *First*, Yekatom seeks to excuse this conduct by vaguely attributing the "delay" until the Lapo Family group's release on or around 27 December 2013 to "the direct consequence of active hostilities and security constraints", rather than "intentional 'continued control'" contributing to his criminal responsibility for other inhumane acts and imprisonment (counts 11 and 14).[948] Yet even if this were so, this wrongly conflates Yekatom's ability to effect the transfer of the group to the Sangaris with the exercise of control over the group members (manifested in their concrete treatment). As the Chamber reasonably found, it was the *latter*

[942] *See e.g.* ICRC, *Commentary to GCIV* (2025), Article 3, mn. 814; ICRC, *Detention by Non-State Armed Groups* (2023), p. 56 ("meaning in exceptional circumstances in which the detention is necessary to protect the detaining authority or civilians against an imperative security threat", balancing "considerations of humanity and military necessity"). *See also above* fns. 834, 925.
[943] *See e.g.* ICRC, *Detention by Non-State Armed Groups* (2023), p. 56 (noting that non-State armed groups should follow a "clearly established process" to determine whether a person can lawfully be interned, and that this may be done by specialised members such as the "intelligence or justice department", and in any event considering that "merely suspect[ing] [a person] of being a soldier or a fighter", or "working for the adversary in a civilian function", "cannot […] be accepted as a sufficient ground for internment" because such status "cannot—without justification—be considered as amounting to an imperative security threat"). *See also above* fn. 925. *See further* Judgment, paras. 4214-4215.
[944] *Contra* Yekatom Appeal, para. 295.
[945] *See e.g.* Judgment, paras. 4163, 4213-4215.
[946] *Contra* Yekatom Appeal, paras. 296-300.
[947] *See e.g.* Judgment, para. 4215.
[948] Yekatom Appeal, para. 298. *See also* para. 297.

that established the severe deprivation of the Lapo Family group's liberty.[949] Thus, for example, the Chamber highlighted that even once the group had been brought close to the airport, prior to their release, several victims continued to find the circumstances "frightening".[950] Furthermore, and in any event, Yekatom overlooks the Chamber's observation that "there is no minimum requirement of duration that a deprivation of liberty must fulfil", which must rather be assessed within the context of the relevant circumstances as a whole.[951] In this regard, the Chamber took account of "the overall circumstances of the deprivation of liberty, together with the duration", and "noted, *inter alia*, that Mr Yekatom's elements threatened the captives with death, separated and regrouped the persons at will at various points during their captivity, and kept them present in or around the location of where their family member, Saint Cyr, was tortured."[952] In this context, Yekatom's reliance on the broad context of hostilities, even if it were true, is simply irrelevant.

245. Second, concerning the crimes committed against Saint Cyr and P-1716, Yekatom baldly states that he "cannot be held accountable for events that unfolded without his knowledge or presence."[953] Yet—without showing error[954]—this merely contradicts the Chamber's express finding that, "while Mr Yekatom was not present at the scene during the mistreatment of Saint Cyr, P-1704, P-1705, and P-1716, he arrived at Yamwara later in the evening of 24 December 2013 while the incident was still ongoing",[955] and that at all material times he "retained control over the actions of his elements and of their will."[956] Likewise, Yekatom omits his own expression of approval when he came to know of the "'good job'" done by his element in mutilating Saint Cyr,[957] and the Chamber's specific findings of his knowledge of the victimisation both of Saint Cyr and P-1716.[958]

246. Third, Yekatom suggests that "the very limited period during which the Lapo Family Group remained at Yamwara" contradicted the Chamber's "adverse findings".[959] However, the finding in the Judgment to which he cites is part of a passage in which the Chamber specifically

[949] Judgment, para. 4199 ("their physical movement was restricted and subject to the will and control of Mr Yekatom and his elements"). *See further* paras. 4200-4204.
[950] Judgment, para. 4194. *See also* para. 109.
[951] Judgment, paras. 4196-4197.
[952] Judgment, para. 4198.
[953] Yekatom Appeal, para. 298.
[954] *See* Yekatom Appeal, para. 298 (fns. 966-968: merely cross-referring to grounds 2.2 and 2.7 of his appeal). *See further above* section II.2 (paras. 35-76); section II.7 (paras. 162-200).
[955] Judgment, para. 4236.
[956] Judgment, para. 4242. *See further* paras. 4235, 4243-4249. *See also above* section II.2.e.i. (paras. 69-71).
[957] Judgment, para. 4237.
[958] Judgment, para. 4240. *See further* paras. 4251-4253.
[959] Yekatom Appeal, para. 299 (fn. 971: citing Judgment, para. 4216). *See also* para. 300.

rejected Yekatom's arguments concerning the lack of severity of the deprivation of physical liberty.[960] As such, Yekatom merely disagrees with the Chamber, without showing error. Moreover, the Chamber's analysis in this passage is wholly consistent with its reasoning concerning the unlawful mistreatment of the Lapo Family group irrespective of the duration of their detention.[961]

247. Fourth, relatedly, Yekatom claims that "transferring the group to Sangaris was the only way to ensure their protection", and faults the Chamber for not "explain[ing] how procedural guarantees could realistically have been ensured in the circumstances and within a short timeframe" in "the prevailing context of absent State security services and authorities".[962] Again, Yekatom's vague claim does not address the reasoning of the Chamber, or the requirements of the relevant crimes. Among the procedural guarantees not afforded to the Lapo Family group, while detained, were "the right to be informed of the grounds of why they were being apprehended and held captive, the right to legal assistance, and the right of independent and impartial review of the necessity of captivity."[963] Providing these rights did not depend on the wider circumstances, nor would have taken particular time. Likewise, even more fundamentally, Yekatom's group could at any time have taken steps to ameliorate the "deplorable detention conditions" and "mental suffering" they inflicted upon the victims.[964] They did not. Yekatom shows no rational basis to consider this was anything other than a deliberate choice.

iii. The Chamber properly assessed evidence of Yekatom's alleged cooperation efforts at Yamwara

248. Yekatom shows no error in the Chamber's assessment of the evidence of his alleged "cooperation efforts" at Yamwara, materially affecting his convictions.[965] He mischaracterises the Judgment when he asserts that the Chamber "disregard[ed]" or "ignore[ed] evidence of such efforts. To the contrary, the Chamber acknowledged that he had "some interaction with national authorities" but could *not* "conclude, on the evidence before it, that Mr Yekatom's group would have entertained any special relations with the Sangaris with a view to re-establishing peace and security".[966] Likewise, the Chamber concluded that, "on the basis of the evidence pointed

[960] *See* Judgment, paras. 4216-4217.
[961] *See above* para. 244.
[962] Yekatom Appeal, para. 300.
[963] *See* Judgment, para. 4209.
[964] *See e.g.* Judgment, paras. 4148-4153. *See also* para. 4154. *See further above* para. 244.
[965] *Contra* Yekatom Appeal, para. 301.
[966] Judgment, para. 4209 (fn. 9891: cross-referring to paras. 1877-1884, 3386-3395). *See further* paras. 1877-1884. *See also* Prosecution Closing Brief, para. 670.

out by the Yekatom Defence, the Chamber could not conclude that Mr Yekatom indeed called the French forces in an effort to secure the release of the 'Lapo family'."[967] Yekatom merely disagrees with this reasonable assessment of the evidence.[968] In any event, even if the Chamber had erred, it would not have materially affected Yekatom's convictions since the Chamber further held that, "even accepting that Mr Yekatom did intervene, this would not have reduced the severity of the deprivation of physical liberty" suffered by the victims.[969]

III.3. Ground 3.2: The Chamber properly considered the context of Yekatom's advance along the PK9-Mbaïki axis from about 10 January until about 6 February 2014

249. Under counts 24-28, the Chamber convicted Yekatom of forcible transfer and deportation, murder, and persecution committed from about 10 January until about 6 February 2014.[970] This was based on a course of conduct, commencing on 10 January 2014, in which Yekatom and at least 1,000 elements under his command advanced from Bangui along the PK9-Mbaïki axis. They took over a number of villages, as well as numerous checkpoints including at PK9, Sekia, Bimon, Bossongo, and Pissa. Yekatom and other senior elements such as Cœur de Lion and Alkanto had instructed Yekatom's group to identify all the Muslims in the area, to kill them, and to collect money. As a consequence, much of the Muslim civilian population along the PK9-Mbaïki axis fled even before Yekatom's group arrived. At least 1,000 civilians fled to Mbaïki, which was already overcrowded.[971]

250. On 30 January 2014, Yekatom and his elements entered Mbaïki. Having met with representatives of the local authorities, as well as international organisations and NGOS, and Sangaris, Yekatom ostensibly delivered "peace messages" to the civilian population. Yet these were belied by the conduct of Yekatom's elements, who threatened and harassed Muslim civilians, telling them to leave the area. This halted only when it was agreed that the Muslim civilian population would leave *en masse*. On 6 February 2014, Chadian forces removed at least 3,000 Muslim civilians to refugee camps in Chad (where the living conditions were extremely

[967] Judgment, para. 4216. *See also* paras. 3222, 3229 (recalling that, "without more evidence as to the *contents* of the purported calls between Mr Yekatom and the French forces, the Chamber cannot conclude, only based on the CDR pointed to by the Yekatom Defence, that Mr Yekatom called the French forces in an effort to secure the release of the 'Lapo family', as argued", emphasis added).
[968] *Contra* Yekatom Appeal, para. 301. Concerning any impact on sentencing, *see below* para. 664.
[969] Judgment, para. 4217.
[970] Judgment, para. 4846 (verdict).
[971] Judgment, paras. 113-119, 4301-4303.

difficult), leaving very few Muslim civilians in Mbaïki. Subsequently, the Congolese MISCA transported a further group of Muslim civilians out of Mbaïki to Bangui and other locations.[972]

251. Following these removals, Yekatom's elements threatened a prominent representative of the small number of Muslim civilians remaining in Mbaïki—Djido Saleh, the second deputy mayor. On 28 February 2014, Saleh and his family were attacked at their home by a group which included at least three of Yekatom's elements. As he and his family fled, Saleh tried to defend himself with a bow and arrow. He was caught as he tried to reach the gendarmerie, beaten to death, and mutilated.[973]

252. Yekatom claims that the Chamber erred by failing to take account of: the broader circumstances relevant to the advance of his forces to Mbaïki; the purpose of the checkpoints established by Yekatom's forces; the circumstances in which money was collected by Yekatom's forces; the relevant aims of Yekatom and his forces; Yekatom's alleged efforts at "cooperation", and; alternative explanations for the departure of Muslim civilians.[974] Yekatom fails to show that the Chamber misapplied the law or was unreasonable in its assessment of the evidence in any respect. Consequently, he shows no basis to conclude that, in light of the "conflict background", "the evidence leaves at least a reasonable alternative explanation" for the removal of the Muslim civilian population such as "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".[975]

253. As a preliminary matter, Yekatom also claims that the Chamber's "findings regarding [his] geographical location and movements" were "flawed", such that it "materially overstated the scope of [his] purported control […] over villages on the Axis."[976] However, the underlying premise of this argument—that findings on "the precise geographical context of checkpoints, troop movements, and Mr Yekatom's whereabouts" are "essential"—is incorrect. It is well established that geographic remoteness does not constitute any legal bar to criminal responsibility under customary international law or the Statute,[977] and such questions are purely

[972] Judgment, paras. 120-123, 4304-4305.
[973] Judgment, paras. 125, 4331.
[974] *Contra* Yekatom Appeal, paras. 304-308 (advance along the PK9-Mbaïki axis), 309-310 (purpose of checkpoints), 311 (collection of money), 312-314 (Yekatom's aim), 315-332 (alleged "cooperation" efforts), 333-339 (reasons for Muslim civilian departures). *See also* para. 302.
[975] *Contra* Yekatom Appeal, para. 358.
[976] Yekatom Appeal, para. 303.
[977] In the context of perpetration, *see e.g.* *Ntaganda* AJ, para. 1108 ("establishing the whereabouts of an accused at the time that the alleged crimes—that he or she is said to have co-perpetrated through another person—took

of evidentiary relevance. The authorities cited by Yekatom show nothing to the contrary.[978] Since he does not even attempt to identify any concrete finding—which is both material to his convictions, and in his view unreasonable in light of specific evidence of his location and movements—these undeveloped submissions should be summarily dismissed.

III.3.a. The Chamber properly assessed the circumstances of Yekatom's advance

254. Yekatom shows no error in the Chamber's assessment of the circumstances in which his group advanced along the PK9-Mbaïki axis which materially affects his convictions.[979] While he claims that the Chamber "ignore[ed] the constant Seleka threat in the area", the "security reasons" for the establishment of checkpoints, and his claim that he "acted pursuant to his FACA duties", he fails to demonstrate how this rendered unreasonable any of the Chamber's essential findings.[980]

255. In particular, while the Chamber was aware of Yekatom's claim that the advance was legitimate,[981] it nonetheless found that: (i) Yekatom's group "did not meet with resistance as they passed from PK9 to Sekia and Pissa"; (ii) Yekatom, Cœur de Lion and Alkanto "instructed the elements to kill all the Muslims in their area", and; (iii) Yekatom's group took over or established checkpoints "aimed at searching and identifying Muslims in the area and raising money to finance the group and its needs."[982] It was in this context that the Chamber concluded that "Mr Yekatom leaving Yamwara with his elements and advancing towards Mbaïki starting on 10 January 2014 was sufficient, in itself, to create the coercive circumstances" which initially forced Muslim civilians along the axis to leave, and that subsequent civilians likewise fled "as

---

place may be relevant in establishing his or her control over the crimes in question. *This, however, does not mean that for an accused to be held responsible he or she must be present when the crimes are taking place*. Nevertheless, when, in cases such as the present one, it is alleged that the accused is controlling the crimes indirectly through, *inter alia*, the monitoring of the operations in the course of which crimes are being committed, *the whereabouts of the accused may be an important consideration*", emphasis added). In the context of aiding and abetting, *see e.g.* *Lukić & Lukić* AJ, para. 425; *Simić* AJ, para. 85; *Blaškić* AJ, para. 48.

[978] *Contra* Yekatom Appeal, para. 303 (fns. 984-986: citing *Ntaganda* AJ, paras. 25, 1108; *Gotovina* TJ (Vol. I), paras. 64, 696, 703; *Delić* TJ, para. 221; *Hadžihasanović & Kubura* TJ, para. 1862; *Sesay* TJ, para. 1514; *Brima* TJ, paras. 819-820, 885). The dictum of the Appeals Chamber in *Ntaganda* does not support the proposition that "determining an accused's whereabouts is *essential*" but rather stands for the opposite: *see above* fn. 977. Similarly, in *Gotovina*, *Delić*, *Hadžihasanović*, *Sesay*, and *Brima*, the Trial Chambers considered the different question of the circumstances in which *physical perpetrators* could be identified by inference from the circumstances (such as particular units known to be in the relevant area at the relevant time), and simply did not address the relevance (if any) of the location of *the accused* in establishing their responsibility for the conduct of such perpetrators.

[979] *Contra* Yekatom Appeal, paras. 304-308.

[980] *Contra* Yekatom Appeal, paras. 304-305.

[981] *See e.g.* Judgment, para. 4307.

[982] Judgment, paras. 4301-4302. *See also* paras. 113-117, 4320-4321.

a result of the fear of violence that was set in motion by Mr Yekatom's advance".[983] The Chamber reasonably rejected Yekatom's claim that the civilians fled "as a result of a fear of violence commonly associated with armed conflict".[984] Yekatom's renewed claims show no error in the Chamber's analysis.

256. Similarly, Yekatom shows no error by stressing isolated aspects of the evidence—including those expressly considered by the Chamber[985]—which he considers to show that the advance from Yamwara was "a rational and lawful military response to prevailing field conditions".[986] Even if true, this was immaterial to the charged crimes. What *was* relevant was the evidence of the instructions to Yekatom's group to "kill all the Muslims in their area", and the Chamber's conclusion that "chasing out the Seleka from the PK9-Mbaïki axis and freeing up the road necessarily implied chasing out the Muslims as well, as the Anti-Balaka considered them to be the same."[987] Yekatom identifies no error in this respect.

III.3.b. The Chamber properly assessed the purpose of checkpoints established by Yekatom's group

257. Yekatom shows no error in the Chamber's assessment of the purpose of establishing the checkpoints which materially affects his convictions.[988] Rather, the Chamber specifically noted his argument that the "ultimate goal" of his group was "to chase out the Seleka and secure the area", but rejected it as being "without merit […] in the face of overwhelming evidence […] that Mr Yekatom and his group took over the checkpoints on the PK9-Mbaïki axis with the aims of identifying Muslims and financing the group and its needs."[989]

258. Yekatom's preference for the evidence of Roger Okoa-Penguia (P-2084) and Stéphane Chrisostome Dawili (P-1647) shows nothing unreasonable in this conclusion.[990] Contrary to his submission, the Chamber did not "end[] its analysis" having cited Okoa-Penguia's and Dawili's evidence.[991] Rather, it continued to engage with Yekatom's arguments extensively over the following 30 paragraphs[992]—in which it did not "disregard[]" but referred to the evidence at

[983] Judgment, paras. 4311-4312. *See also* para. 4314.
[984] Judgment, para. 4315.
[985] Concerning the evidence of Stéphane Chrisostome Dawili (P-1647), *compare e.g.* Yekatom Appeal, para. 307, *with* Judgment, paras. 3298, 3306. Likewise, concerning the PK9 bridge, *compare e.g.* Yekatom Appeal, para. 308, *with* Judgment, paras. 3310-3321.
[986] *Contra* Yekatom Appeal, paras. 307-308. *See also* para. 306.
[987] Judgment, paras. 3300, 3307. *See also* paras. 3301-3306.
[988] *Contra* Yekatom Appeal, paras. 309-310.
[989] Judgment, para. 3383.
[990] *Contra* Yekatom Appeal, para. 309.
[991] *See* Judgment, para. 3385.
[992] *See* Judgment, paras. 3386-3416.

least of Okoa-Penguia, P-1839, and Dawili, among many other witnesses.[993] Yekatom's cursory complaint does not undermine the Chamber's careful analysis, leading it to find that Yekatom did not "aim to 'liberate' the PK9-Mbaïiki road" but rather "instrumentalised the checkpoints in the villages along the axis to search and identify Muslims"[994] as well as "to raise money to finance the group and its needs.[995]

259. Yekatom's further criticism of the Chamber's conclusion that a particular checkpoint was established at "the entrance of Centrapalm, a state-owned palm oil plantation, rather than in Bossongo" likewise merely disagrees with the Judgment without identifying any error which materially affects his convictions.[996] Once again, the Chamber addressed Yekatom's argument,[997] and Yekatom's particular complaint (and its impact) remains obscure. Even if the Chamber had erred, Yekatom fails to show how this would materially affect even its findings on the checkpoints, let alone the findings essential to Yekatom's convictions.

III.3.c. The Chamber properly assessed the evidence concerning the collection of money by Yekatom's group

260. While accepting that his elements did collect money at the checkpoints, Yekatom suggests that these collections were "not strictly mandatory" and merely "an informal contribution" consistent with "common practice" in the CAR.[998] Of itself, this shows no error in and does not materially affect the Chamber's finding that Yekatom's group took over or established checkpoints including with the aim of "raising money to finance the group and its needs",[999] let alone any finding essential to his convictions. But in any event Yekatom overlooks the Chamber's reference to evidence showing that the funds collected were significant to the financing of Yekatom's group, and that such payments were made in the context of Yekatom's elements "'[…] question[ing] the people, search[ing] them and t[aking] their possession[s]'."[1000] In this context, the Chamber could reasonably consider that payments at the checkpoints took place in a coercive environment. Nor did the Chamber "cherry-pick[]" Okoa-

[993] *Contra* Yekatom Appeal, para. 309 (fn. 1012: citing evidence of Okoa-Penguia, P-1839, Dawili, and P-2041). *See e.g.* Judgment, paras. 3385, 3394, 3415 (addressing evidence of Okoa-Penguia); 3391, 3397, 3412 (addressing evidence of P-1839); 3385, 3413 (addressing evidence of Dawili).
[994] Judgment, para. 3397.
[995] Judgment, para. 3411.
[996] *Contra* Yekatom Appeal, para. 310.
[997] Judgment, para. 3374.
[998] Yekatom Appeal, para. 311.
[999] Judgment, paras. 4301-4302. *See also* paras. 113-117, 4320-4321.
[1000] Judgment, paras. 3412-3414, 3416 (citing P-1839, Dawili, P-0954, and Mongbandi). *See also e.g.* paras. 3399-3400, 3409 (recalling P-0954's evidence: "'To pass these checkpoints, God had to be with you, really. Otherwise, you could be killed. So you had to be really careful. […]'").

Penguia's evidence, but reasonably contrasted Yekatom's emphasis on his reference to "'small amounts to pay for [the elements'] coffee'" with his observation that "big money" was involved.[1001]

III.3.d. The Chamber properly assessed evidence showing Yekatom's aim to use the checkpoints to search for and identify Muslims

261. Yekatom shows no error in the Chamber's assessment of the evidence of three witnesses, P-1823, P-0954, and P-1962, which materially affects his convictions.[1002] The Chamber took this evidence into account as part—but by no means the entirety—of its assessment of the evidence concerning the aims behind the use of the checkpoints.[1003] Yekatom's passing effort to disparage this careful analysis by emphasising the "[c]onspicuous[] absen[ce]" of any insider evidence from Yekatom's group is immaterial, and should be disregarded.[1004]

262. The Chamber recalled that P-1823 "provided a detailed account of his experience passing through the PK9 checkpoint", where he tried "to avoid being recognised as a Muslim" because he believed "his life was at risk."[1005] While he was there, he saw Yekatom ordering his elements "to try to identify Muslims, which the elements did, by checking for prayer marks or someone's accent".[1006] It specifically addressed Yekatom's claim at trial that P-1823's account was "'manifestly unreliable', in particular as regards the timing of the incident and his alleged recognition of the individuals involved", but was "unconvinced by [Yekatom's] arguments."[1007]

263. Yekatom repeats his complaint concerning "P-1823's uncorroborated 'identification'" of Yekatom and his view of the "temporal[]" and "geographical[]" inconsistencies in his account.[1008] He shows nothing unreasonable in the Chamber's approach. *First*, the Chamber reasonably treated P-1823 as a recognition witness—with which Yekatom merely disagrees—and was not required to direct itself expressly on the applicable law in this regard.[1009] Nor was it necessary to provide further express reasoning concerning the "turbulent" nature of P-1823's experience at the time since, while this may on occasion be relevant in assessing a witness'

[1001] *See* Judgment, para. 3415. *Contra* Yekatom Appeal, para. 311.
[1002] *Contra* Yekatom Appeal, paras. 312-214.
[1003] *See generally* Judgment, paras. 3383-3416.
[1004] *Contra* Yekatom Appeal, para. 313.
[1005] Judgment, para. 3398.
[1006] Judgment, para. 3399.
[1007] Judgment, para. 3401. *See further* paras. 3402-3405.
[1008] Yekatom Appeal, para. 312.
[1009] *Contra* Yekatom Appeal, para. 312. *See* Judgment, para. 3404 (assessing the evidence of "P-1823's prior knowledge of Mr Yekatom"). *See further e.g.* *Abd-Al-Rahman* TJ, para. 212; *Lukić & Lukić* AJ, paras. 118-119.

evidence, "there is 'no recognised rule of evidence that traumatic circumstances necessarily render a witness's evidence unreliable'."[1010] *Second*, the Chamber reasonably gave "more weight" to P-1823's "clear and concise" evidence that he left Bangui after Djotodia's resignation, and Yekatom shows no error in this regard by his mere semantic argument concerning "the plain language of the terms 'New Year's / '*le nouvel an*'".[1011] *Third*, the Chamber reasonably considered that "P-1823 erred when describing the exact location of the barrier" where he saw Yekatom but that otherwise his "account of the incident [was] credible and reliable."[1012] Yekatom's cursory dismissal of the Chamber's reasoning as "incoherent" does not show how it was unreasonable, and mischaracterises the Judgment.[1013]

264. The Chamber referred to P-0954's account of the dangers of passing through the checkpoints controlled by Yekatom's group, and again expressly noted Yekatom's objection to this evidence. It reasonably concluded that Yekatom's objection to P-0954's "strong language" did not make the relevant part of his evidence "less reliable or credible" and that, "in any event, his description accords with the other evidence outlined above."[1014] Yekatom shows nothing unreasonable in this assessment. His suggestion that the Chamber was "misguided" in focusing on P-0954's alleged strong language is at odds with his own renewed characterisation of that evidence as "[s]weeping generalisations, conclusions and speculation" and "bombastic, unsubstantiated claims".[1015] Furthermore, while he asserts that P-0954's evidence lacks "concrete facts", he does not address the Chamber's observation that his account was consistent with that of other witnesses.[1016] Yekatom thus shows no error in the Chamber's approach, especially as this witness was just one among many witnesses considered in this context.

265. Finally, Yekatom shows no error in the Chamber's reference to P-1962's evidence that Cœur de Lion "had chased away the Muslims from PK9 to Mbaïki" and "did not hide the fact that he wanted to chase the Muslims out of the CAR and to their 'country of origin'."[1017] The Chamber recalled that Yekatom had challenged P-1962's credibility, but nonetheless found his

[1010] *Contra* Yekatom Appeal, para. 312. *See* *Abd-Al-Rahman* TJ, para. 207 (fn. 388); *Ntaganda* TJ, para. 71 (fn. 158: quoting *Kunarac* AJ, para. 324). The Chamber's awareness of P-01823's likely state of mind is implicit in its recollection that he believed "his life was at risk", but nonetheless it also noted the generally "detailed" nature of his account: *see* Judgment, para. 3398.
[1011] *Contra* Yekatom Appeal, para. 312. *See* Judgment, paras. 3402-3403.
[1012] *Contra* Yekatom Appeal, para. 312. *See* Judgment, para. 3405.
[1013] *Contra* Yekatom Appeal, para. 312 (fn. 1042). Notably, Yekatom's paraphrase of the Chamber's reasoning in footnote 8351 of the Judgment does not reflect what it actually said. For its part, the Chamber accurately summarised the evidence which it cited: [REDACTED].
[1014] Judgment, para. 3409.
[1015] *Contra* Yekatom Appeal, para. 313.
[1016] *Contra* Yekatom Appeal, para. 313.
[1017] *Contra* Yekatom Appeal, para. 314. *See* Judgment, para. 3410.

evidence to be "generally credible" and resolved to assess the veracity of particular claims and opinions "in light of other evidence received."[1018] The Chamber was clearly satisfied that P-1962 had travelled to Boda, notwithstanding Yekatom's contrary view of the evidence, and was not unreasonable in its approach to the evidence of P-1786 and Dawili.[1019] P-1962 was thus in a position to provide the evidence relied upon by the Chamber.[1020] In any event, even if the Chamber's reasoning was limited with particular regard to this aspect of P-1962's evidence, this was neither erroneous nor materially affected Yekatom's convictions since this was just one part of the evidence considered in establishing the purpose of the checkpoints—which, in turn, was just one aspect of the evidence establishing the coercive environment leading to the displacement of the Muslim civilians.

III.3.e. The Chamber properly assessed evidence of Yekatom's alleged cooperation efforts on the PK9-Mbaïki axis

266. Yekatom shows no error in the Chamber's assessment of his alleged cooperation efforts on the PK9-Mbaïki axis which materially affects his convictions.[1021]

267. The Chamber reasonably acknowledged that Yekatom had "some interaction with national authorities", including evidence of "interactions […] in some instances with the CAR authorities and the international forces on the PK9-Mbaïki axis".[1022] However, it considered that *all* of these instances "took place *after* Mr Yekatom had gained effective control of the PK9-Mbaïki axis and following Catherine Samba-Panza's election as president of the CAR transitional government on 20 January 2014" and that *some* of them ("including the missions described by Mr Yekatom in his letter") occurred "*after* a significant portion of the Muslim civilian population along the axis had to flee their towns and villages and subsequently flee Mbaïki".[1023] It further noted that, while the evidence suggests that Yekatom did permit gendarmes and national staff to return to the PK9 and Sekia checkpoints, he "did not give them back any effective power" and that Anti-Balaka elements remained there.[1024]

268. Accordingly, the Chamber did not further address this evidence in determining that Yekatom and his group created a coercive environment on the PK9-Mbaïki axis, starting on 10

[1018] *See* Judgment, paras. 376-377, 389.
[1019] *Contra* Yekatom Appeal, para. 314. *See e.g.* Judgment, paras. 377-380, 2094-2097, 3410.
[1020] *Contra* Yekatom Appeal, para. 314 (*especially* fn. 153). *See* Judgment, para. 3410. The Prosecution notes that the transcript passage cited by Yekatom appears to be erroneous. [REDACTED].
[1021] *Contra* Yekatom Appeal, paras. 315-332.
[1022] Judgment, para. 4209 (fn. 9891: cross-referring to paras. 1877-1884, 3386-3395). *See further* paras. 3386-3395. *See also above* para. 248.
[1023] Judgment, para. 3393.
[1024] Judgment, para. 3394.

January 2014 and continuing until about 6 February 2014, which progressively forced the Muslim civilian population to leave.[1025] It also noted that the continued "armed presence of Mr Yekatom's group" thereafter "was sufficient to hamper the return of those Muslims to their homes".[1026]

269. The Chamber further found that, once Yekatom's group entered Mbaïki on 30 January 2014, a meeting was held at the *St Jeanne d'Arc* Church between Yekatom, members of his group, and representatives of the civilian population, international and NGOs, and Sangaris. While that meeting formally decided that the Muslim civilian population would be removed from Mbaïki, it was already "a foregone conclusion". Following the meeting, Yekatom addressed the crowds (both outside the church and at the bus station), and "delivered 'peace messages' similar to those he had expressed at the meeting". While these messages "prevented attacks of his group against the Muslim civilian population", Yekatom was "compelled" to give them by the "presence of the Sangaris and other international actors in Mbaïki at that time". Nevertheless, in the same period, "elements of Mr Yekatom's group threatened and harassed Muslim civilians in Mbaïki, telling them to leave the area." Efforts and measures to prevent acts of violence committed by Yekatom's elements in Mbaïki were "taken only after the removal of the Muslim civilian population […] had been decided and/or carried out."[1027]

i. The Chamber properly assessed the relevant timeline

270. Yekatom's elaborate criticism of the Chamber's reasoning concerning the order of events shows nothing unreasonable in its appreciation of the relevant evidence or in its logic.[1028] *First*, his arguments seem to depend on the assumption that it was for the Chamber to disprove his alleged cooperation efforts or that he was in some way convicted because he failed to take sufficient measures.[1029] This is incorrect. Since the Chamber found on the basis of a wealth of other evidence that *other* positive conduct by Yekatom, and his group coerced the Muslim civilian population into leaving, it was for him at least to show that his alleged cooperation

[1025] *See e.g.* Judgment, paras. 4310-4316, 4325-4329, 4345-4347, 4357, 4362-4363, 4365. *See also* paras. 3417-3453.
[1026] Judgment, para. 4327. *See also* para. 4328.
[1027] Judgment, paras. 4348-4349. *See also* paras. 3454-3564, 4357, 4362-4363, 4365.
[1028] *Contra* Yekatom Appeal, paras. 315-319.
[1029] *Contra e.g.* Yekatom Appeal, paras. 315 ("improperly […] diminish[ed] the significance of his cooperative actions"), 316 ("effectively condemns Mr Yekatom for not having undertaken these actions prior to 20 January 2014"), 317 ("dismissed his efforts […] effectively finding that they came too late"), 319 ("The Chamber's dismissal of cooperation efforts made after the departure of Mbaïki's Muslims […] is also […] unsound; likewise, its finding that the measures undertaken by Mr Yekatom in Mbaïki were 'clearly insufficient'"). *See also* para. 283. *See also above* paras. 201-202.

efforts could raise a reasonable doubt about that broader conduct.[1030] The Chamber reasonably found that they did not.[1031]

271. *Second*, Yekatom misconceives the purpose of the Chamber's temporal observations.[1032] His convoluted arguments concerning the order of events overlook the obvious—the Chamber's reference to 20 January 2014 only established that Yekatom's *subsequent* alleged cooperation efforts (even if true) could not possibly have affected the coerced displacements of Muslim civilians which took place *beforehand*, during the advance of Yekatom's group from 10 January 2014 until 20 January 2014.[1033] Likewise, for those coerced displacements which took place after 20 January 2014, the Chamber noted that in any case many of these had *also* occurred before any relevant alleged cooperation effort by Yekatom.[1034]

272. In other words, these temporal observations demonstrated that, even taken at their highest, Yekatom's alleged cooperation efforts could have been relevant for only a limited pool of victims. For many others, they were necessarily irrelevant. Nor did this mean—and Yekatom shows no basis in the Judgment to support such a view—that the Chamber accepted that any such efforts could raise a reasonable doubt in any of its findings essential for convicting Yekatom with regard to that limited pool.[1035] This remained to be considered—and was reasonably rejected—on the basis of the evidence.

273. *Third*, Yekatom shows nothing unreasonable in the Chamber's assessment. In particular, it is undisputed that Yekatom's group advanced progressively during the relevant period—but this did not preclude the coercive effect of that advance on Muslim civilians along the axis as a whole.[1036] Nor was it unreasonable for the Chamber to find that, by 30 January, it was already a "foregone conclusion" that most Muslim civilians in Mbaïki would leave—as a consequence of the coercive environment already created by Yekatom and his group, and

[1030] This was not a reversal of the burden of proof: *cf.* Yekatom Appeal, para. 319 (fn. 1090). *See* Judgment, paras. 128-129, 3563. *See further below* section VI.1.e. (paras. 372-373).
[1031] *See e.g. above* paras. 267-269.
[1032] *Contra* Yekatom Appeal, paras. 316-317, 319.
[1033] *See* Judgment, para. 3393.
[1034] *See* Judgment, para. 3393.
[1035] *See above* para. 271.
[1036] *Contra* Yekatom Appeal, para. 316. In this respect, tacitly, Yekatom seems to repeat the assumption—rejected by the Chamber—that the flight of Muslim civilians from locations on the axis prior to the arrival of Anti-Balaka elements was not a result of the coercive environment they created: *compare* Judgment, paras. 4306-4316, 4327.

notwithstanding the equivocal 'message of peace' that he delivered, even as his elements continued to threaten and harass Muslim civilians.[1037]

274. Likewise, while not strictly related to the temporal issue, Yekatom merely disagrees with the Chamber's assessment of the evidence concerning the limited role afforded to gendarmes and other national authorities once permitted to return to the checkpoints. His self-serving claim that his elements "were the only functioning security forces" shows no error; what mattered was the actual and perceived significance of their presence within the context of their role in causing the coerced displacement of the Muslim civilian population.[1038]

275. Finally, Yekatom merely disagrees with the Chamber's assessment of the evidence concerning alleged cooperation efforts after the Muslim civilian population had begun to be removed from Mbaïki, showing no error which materially affects his convictions.[1039]

ii. The Chamber did not ignore alleged cooperation by Yekatom

276. Yekatom fails to demonstrate that the Chamber unreasonably ignored evidence of relevant cooperation efforts.[1040] Notably, Yekatom claims that he and/or his group: (i) "aimed at minimising harm to the civilian population";[1041] (ii) cooperated with the gendarmerie;[1042] (iii) dismantled certain checkpoints;[1043] (iv) collaborated with local authorities prior to the "Church Meeting",[1044] and; (v) took "important steps in restoring peace in the Lobaye region".[1045]

277. Recalling that the Chamber is not obliged to cite or address each and every item of evidence in the record, none of this shows error materially affecting his convictions. In particular, much of this evidence was simply irrelevant, or deserving of minimal weight in the face of a wealth of contrary evidence establishing the conduct relevant to the charges. Having established that Yekatom and his group intentionally created a coercive environment causing the displacement of the Muslim civilian population, the Chamber was entitled to reject as irrelevant or to give minimal weight to evidence purporting to show that in other respects and

[1037] *Contra* Yekatom Appeal, paras. 315-317.
[1038] *Contra* Yekatom Appeal, para. 318.
[1039] *Contra* Yekatom Appeal, para. 319.
[1040] *Contra* Yekatom Appeal, paras. 320-323.
[1041] Yekatom Appeal, para. 320 (fn. 1092: citing evidence of P-1647, P-1786, P-1558, P-2084, and P-1839).
[1042] Yekatom Appeal, para. 320 (fn. 1093: citing Judgment, para. 3391, and P-1839).
[1043] Yekatom Appeal, para. 320 (fn. 1095: citing evidence of P-1647). Yekatom also notes that the "local population established checkpoints", but this is irrelevant since it does not contradict the evidence of checkpoints controlled by Yekatom's group or the effect of these checkpoints on the civilian population: *see e.g.* para. 320 (fn. 1094).
[1044] Yekatom Appeal, paras. 321-322.
[1045] Yekatom Appeal, para. 323.

on other occasions he may not have committed criminal activity. Indeed, it was implicit in the evidence cited by the Chamber that the conduct of Yekatom's group may have changed once the Muslim civilian population was displaced.[1046]

iii. The Chamber's findings concerning Yekatom's alleged cooperation efforts were reasonable

278. Yekatom shows no error in any of the Chamber's factual findings concerning his alleged cooperation efforts which materially affects his convictions.[1047] Rather, he merely disagrees with its reasonable assessment of the evidence—which, itself, went to just one aspect of its analysis leading to a finding essential to conviction, rather than to such a finding itself. Thus:

- The Chamber reasonably concluded that Yekatom's ostensible 'peace message' in Mbaïki was compelled by the presence of international forces.[1048] To the contrary, as the Chamber noted, this was supported by the evidence of witnesses including P-1666, P-2389, Dawili, and P-2041.[1049] Yekatom's mere disagreement with the Chamber's characterisation or interpretation of these witnesses' evidence shows no error. Furthermore, the Chamber's conclusion was consistent with the broader evidence concerning the continued harassment of Muslim civilians in Mbaïki, notwithstanding Yekatom's overtures.[1050]
- The Chamber reasonably assessed the evidence of the meeting at *St Jeanne d'Arc* church.[1051] Having "heard the testimony of eight individuals who participated in the meeting", as well as considered "notes taken during the meeting",[1052] the Chamber was entitled to reach the conclusions that it did. Yekatom shows no error in the Chamber's consideration of the "main aim" of the meeting with reference to the evidence of P-1666, and a footnoted citation to P-1813. Nor did Yekatom's cherry-picked additional references require express acknowledgement by the Chamber in this context.[1053] Likewise, Yekatom merely disagrees with the Chamber's considered assessment of his manner of introduction.[1054] He fails to substantiate or even articulate an error in his subjective claim

[1046] *See e.g.* Judgment, para. 3393.
[1047] *Contra* Yekatom Appeal, paras. 324-332.
[1048] *Contra* Yekatom Appeal, para. 325. *See further* Judgment, paras. 3519, 4348-4349.
[1049] *See* Judgment, paras. 3513-3518.
[1050] *See* Judgment, paras. 3533-3564, 4304, 4349.
[1051] *Contra* Yekatom Appeal, para. 326.
[1052] *See* Judgment, para. 3479. *See further* paras. 3480-3497.
[1053] *Contra* Yekatom Appeal, para. 326 (fn. 1117). *See* Judgment, para. 3480.
[1054] *Contra* Yekatom Appeal, para. 326. *See* Judgment, para. 3481. *See also above* para. 39.

that the Chamber "downplayed" the witness evidence that "Mr Yekatom said that he did not have a problem with Muslims".[1055]

- The Chamber reasonably relied on the evidence of P-2041 and contemporaneous notes taken during the meeting to conclude that Guerrino Perin had "warned Mr Yekatom that he might face justice" for the conduct of his group, even though Guerrino Perin himself denied this in his own testimony, as did another witness.[1056] While Yekatom dismisses this as "improper", he does not show it was unreasonable. Having acknowledged evidence that Yekatom said he "did not have a problem with Muslims" and "had not given orders to harm Muslims", the Chamber was not obliged to repeat or cite every last instance of testimony that Yekatom considers further supports this proposition.[1057] The passages of the Judgment cited by Yekatom do not show that the Chamber accepted evidence that "his intervention was *decisive* in calming tensions."[1058]
- The Chamber reasonably noted evidence that some of "Mr Yekatom's elements asked certain Muslim inhabitants of Mbaïki for money and/or that some of these inhabitants offered the elements money."[1059] Given this framing, Yekatom shows no error either by suggesting that the Chamber should have noted that "goods" were also supplied, or the evidence that he suggests showed that money was sometimes contributed "in recognition of […] efforts to expel the Seleka or support the group".[1060] Even if true, such evidence relating to some contributions does not contradict the evidence that Muslims may have "hoped that by paying the Anti-Balaka, [they] would not attack them, as 'a form of insurance'."[1061]
- The Chamber reasonably noted evidence from P-2354 that Yekatom and Cœur de Lion provided their phone numbers "[REDACTED]" from persons hoping for favourable

[1055] *Contra* Yekatom Appeal, para. 326. *See* Judgment, paras. 3482-3483.
[1056] *Contra* Yekatom Appeal, para. 327. *See* Judgment, paras. 3486-3489.
[1057] *Contra* Yekatom Appeal, para. 327 (fns. 1122-1125). *See* Judgment, paras. 3482-3483.
[1058] *Contra* Yekatom Appeal, para. 327 (emphasis supplied). *Compare* Judgment, paras. 3498 (referring to D29-5013's evidence that some people "regarded Mr Yekatom as 'someone who could help them defend themselves'" and Guerrino Perin's evidence that some people "expected Mr Yekatom to avenge the Seleka harassment and thought that 'he was there to do something against the Muslims'"), 3502-3503 (referring to evidence that Yekatom's speech at the bus station seemed to make people happy although one witness "also thought it was difficult for Muslims to accept what Mr Yekatom said and that maybe they applauded 'out of fear'"). *See further* paras. 3504-3512 (setting out the evidence of a variety of witnesses "whose impressions of Mr Yekatom's statements at the meeting and speeches thereafter outside differed widely").
[1059] *Contra* Yekatom Appeal, para. 328. *See* Judgment, paras. 3522-3526.
[1060] *Contra* Yekatom Appeal, para. 328 (*especially* fn. 1129).
[1061] *See e.g.* Judgment, para. 3523.

treatment in return.[1062] Yekatom mischaracterises the Judgment by stating that the Chamber found that Yekatom and Cœur de Lion "*only*" provided their phone numbers in such circumstances—a word which is not contained in paragraph 3561. In any event, Yekatom shows no error in the Chamber's reference to this evidence, which was also consistent with that of P-1666 and P-2353.[1063] Yekatom's speculation about the timing of this interaction, or what he considers to be "the logic behind the Chamber's theory" is immaterial insofar as it shows no error in the Chamber's finding that this and other incidents "took place *after* the removal of the Muslim civilian population from Mbaïki had been decided and/or carried out".[1064]

- The Chamber reasonably considered evidence of alleged efforts by Yekatom and his group to identify security threats present in and around Mbaïki, which it again found to have taken place "*after* the removal of the Muslim civilian population […] had been decided and/or carried out".[1065] Yekatom shows no error simply by asserting that the Chamber should also have referred to Dawili's claim (P-1647) that some Seleka mercenaries remained in Mbaïki after 29 January 2014, or Cœur de Lion's intervention at a town hall meeting.[1066]

- The Chamber reasonably weighed the evidence of Guerrino Perin (D29-5015) and Mongbandi (P-1838), and the so-called "Bulletin Notes", concerning Yekatom's interactions with MISCA.[1067] Yekatom shows no error in the Chamber's determination that Mongbandi's evidence was more reliable on the question whether "MISCA had asked Mr Yekatom to patrol the regions to re-establish public order". Notably, the Chamber did not rely only on Mongbandi's position, but also on the fact that Guerrino Perin's "source of information" to the contrary" was "unclear".[1068] Similarly, Yekatom shows no error in the Chamber's subsequent weighing of the evidence of Kouroupe-Awo (P-1813) and Mongbandi later in the Judgment, also concerning Yekatom's interaction with MISCA, where it did not expressly prefer one testimony over the other.[1069] Yekatom fails to develop or explain his claim of error in the Chamber's view that, "[f]rom the medatata," it was

[1062] *Contra* Yekatom Appeal, para. 329. *See also* para. 328. *See* Judgment, para. 3561.
[1063] *See* Judgment, paras. 3524-3526.
[1064] *See* Judgment, paras. 3558-3559. *Contra* Yekatom Appeal, para. 329.
[1065] *See* Judgment, paras. 3558-3563 (emphasis supplied).
[1066] *Contra* Yekatom Appeal, para. 330. *Compare also* Judgment, para. 3562.
[1067] *Contra* Yekatom Appeal, para. 331.
[1068] Judgment, para. 3395.
[1069] *See* Judgment, paras. 3553-3555. *But see further* para. 3559 (recalling that "the efforts and measures described above took place *after* the removal of the Muslim civilian population from Mbaïki had been decided and/or carried out", emphasis supplied).

"unable to discern" the origin of the "Bulletin Notes" document or the circumstances in "which […] it was prepared, or which specific sources it is based on."[1070]

- The Chamber reasonably noted evidence concerning the commandeering of a vehicle used by gendarmes.[1071] Yekatom shows no error in this regard—not least since the Chamber merely noted this evidence without expressly drawing any conclusion from it. In particular, like Kouroupe-Awo and P-2041, the Chamber only attributed this incident to "Anti-Balaka" in Mbaïki, and not specifically to Yekatom's group.[1072] Nor did the Chamber rely primarily on the evidence of P-2354 in this respect, which it noted in a footnote.

279. In any event, even if the Chamber had erred in any of these respects, it would not have materially affected Yekatom's convictions. As the Chamber itself noted, even if some or all of the evidence of "the alleged efforts or measures displayed by Mr Yekatom" were accepted, they remained "clearly insufficient because members of his group continued to threaten and harass the Muslim civilian population". As it further observed, "[t]he violence the Anti-Balaka exerted on Muslim civilians did not end as a consequence of the measures Mr Yekatom implemented but because the Muslims were removed from Mbaïki and transported elsewhere."[1073]

III.3.f. The Chamber properly assessed the reasons for the departure of Muslim civilians

280. Yekatom shows no error which materially affects his convictions in the Chamber's finding that a "significant proportion of the Muslim civilian population" was displaced along the PK9-Mbaïki axis "due to and in fear of" the advance of Yekatom's group.[1074]

281. *First*, the Chamber did not confuse correlation for causation.[1075] It reasonably concluded that Muslim civilians were forced to leave as a result of the coercive environment created by Yekatom and his group.[1076] In carrying out this assessment, the mere temporal correlation between the advance of Yekatom's group and the flight of Muslim civilians was a relevant but

[1070] *Contra* Yekatom Appeal, para. 331 (alleging without further explanation that the Chamber was "incorrect[]" in citing "an absence of information on provenance, sources and author"). *See* Judgment, para. 3555 (fn. 8760).
[1071] *Contra* Yekatom Appeal, para. 332. *See* Judgment, para. 3564.
[1072] *See e.g.* Judgment, paras. 121, 3564, 4349.
[1073] Judgment, para. 3563. *See also* paras. 4304, 4349.
[1074] *Contra* Yekatom Appeal, paras. 333-339. *See further e.g.* Judgment, paras. 118, 3417-3445, 4303, 4309-4312, 4314-4315, 4347.
[1075] *Contra* Yekatom Appeal, para. 333.
[1076] *See* Judgment, para. 4314 ("forcible transfer and deportation took place as a result of the fear of violence that was set in motion by Mr Yekatom's acts").

not dispositive factor.[1077] The Chamber also recognised the possibility of "other factors" contributing to the "fear of violence", but reasonably concluded that these did not displace the causal significance of the conduct of Yekatom and his group.[1078] This was reasonable, in particular, given:

- The positive evidence from a range of witnesses that: Muslims fled "because they feared that the Anti-Balaka were going to kill them";[1079] news of Anti-Balaka attacks on civilians "caused panic";[1080] Muslims were running from "death at the hands of the Anti-Balaka";[1081] Muslims fled "out of fear of being killed by the Anti-Balaka",[1082] and; Muslims "felt unsafe and feared for their lives at the hands of the Anti-Balaka".[1083] Fear became more acute as Yekatom's group advanced,[1084] in light of other manifestations of anti-Muslim violence, and evidence of the Anti-Balaka searching for and committing crimes against Muslims.[1085]
- The Chamber's findings establishing an objective foundation for Muslim civilians' fear of the advance of Yekatom's group.[1086]
- The Chamber's express consideration of the relationship between the advance of Yekatom's group and the retreat of the Anti-Balaka, and its conclusion that Muslim civilians "would have fled regardless of the assistance provided by the Seleka."[1087]
- The evidence of the *ex post facto* occupation or destruction of Muslim civilian houses once they had fled.[1088]

282. *Second*, the Chamber reasonably considered the evidence of the departure of Muslim civilians from Mbata, which Yekatom contends resulted from "local inter-community violence inflated by Seleka abuses" and not the advance of Yekatom's group.[1089] However, this mischaracterises the Chamber's analysis, which in those particular circumstances reasonably

[1077] The Chamber also carefully considered and rejected Yekatom's argument that Muslim civilian departures had commenced significantly prior to the advance along the PK9-Mbaïki axis, and therefore could not be correlated with it: *see e.g.* Judgment, paras. 3439-3444. *Contra* Yekatom Appeal, para. 333.
[1078] *See* Judgment, paras. 3443, 4315. In particular, the Chamber considered there was no basis to conclude that the alternative causes posited by Yekatom *exclusively* explained the flight of Muslim civilians from the PK9-Mbaïki axis.
[1079] *See* Judgment, paras. 3418, 3442 (citing P-2389).
[1080] *See* Judgment, para. 3419 (citing P-1666).
[1081] *See* Judgment, para. 3420 (citing P-2041).
[1082] *See* Judgment, paras. 3421, 3442 (citing P-2354).
[1083] *See* Judgment, para. 3422 (citing P-2353).
[1084] *See* Judgment, paras. 3424-3425, 3442 (citing P-2389).
[1085] *See* Judgment, paras. 3426-3431, 3442 (citing P-2419, Kouroupe-Awo (P-1813), Aboubakar (P-1595)).
[1086] *See e.g.* Judgment, para. 3444.
[1087] *See* Judgment, paras. 3436-3437. *See also* para. 3443.
[1088] *See* Judgment, para. 3438.
[1089] *Contra* Yekatom Appeal, para. 334.

inferred the necessary causal link to the advance of Yekatom's group given the temporal correlation between these events.[1090] Yekatom's account of the evidence of this incident does not show that this conclusion was unreasonable, nor is this suggested by the location of Mbata near rather than on the PK9-Mbaïki axis.[1091] In any event, even if the Chamber's assessment of this incident were erroneous, it was not dispositive for the Chamber's overall conclusion.

283. *Third*, the Chamber did not "distort" evidence "so that Muslims' departures could be temporally situated after 10 January 20214" and thus attributed to the advance of Yekatom's group.[1092] Yekatom disputes the Chamber's analysis of: (i) the evidence of P-1666 and Aboubakar (P-1595) concerning the departure of Muslim civilians from Lobaye (which he says commenced in October 2013 following the killing of two Muslims in Banguia-Bouchia),[1093] and; (ii) the evidence of P-2354 and P-2353 who helped transport Muslim civilians to Mbaïki.[1094] In both cases, ignoring the thrust of the analysis in the Judgment, Yekatom places undue emphasis on when displacements initially started, ignoring the further impetus provided by his later conduct.

- In the first respect, the Chamber acknowledged that the Banguia-Bouchia killings took place in October 2013, and that some witnesses related the movement of Muslim civilians to that event. However, it reasonably considered that the evidence also allowed for more specific temporal assessments of such movements, including to the effect that "Muslims began moving, going to Mbaïki, after Michel Djotodia resigned." As the Chamber rightly found, there was nothing inherently contradictory in this approach.[1095] Yekatom fails to show any error by his reference to the different linguistic versions of the transcript of P-1666's evidence,[1096] nor his preference for certain passages of Aboubakar's evidence

[1090] *See* Judgment, para. 3429.
[1091] *Contra* Yekatom Appeal, para. 334. Concerning the location of Mbata, *see also* Judgment, para. 3442 (fn. 9449: finding that Mbata was "sufficiently close to the axis for [its] Muslim inhabitants to flee in fear of Mr Yekatom's group's approach to Mbaïki").
[1092] *Contra* Yekatom Appeal, paras. 335-336.
[1093] *See* Yekatom Appeal, para. 335; Judgment, paras. 3430-3431, 3440-3442.
[1094] *See* Yekatom Appeal, para. 336; Judgment, paras. 3432-3435, 3442.
[1095] *See* Judgment, paras. 3440-3442. *See also* paras. 3431, 3433.
[1096] *Contra* Yekatom Appeal, para. 335 (fn. 1164). *See* Judgment, para. 3441 (fns. 8447-8448). *Compare e.g.* T-231-ENG, pp. 23:13 ("After Michel Djotodia resigned; that is when people began to move"), 25:1-2 ("People began to travel after the events, concerning Mahamat and others. It was seven—it was over the course of seven to 10 days"), *with* T-231-FRA, pp. 22:28-23:1 ("*C'est précisément après la demission de Michel Djotodia. C'est à cette… à ce moment-là que les gens ont commence à se déplacer*"), 24:13-14 ("*Ces déplacements ont commencé par les incidents sur Aba Zakaria et Mahamat. Donc, cela s'est fait sur une durée de 7 à 10 jours*"). It is readily apparent that the Chamber cited the French version of the transcript at fn. 8447 of the Judgment because this was the only version which fully captured the names "Aba Zakaria et Mahamat" (with the name Aba Zakaria omitted from the English transcript). The use of the term "after" in the relevant passages in English, compared with the

other than those reasonably relied on by the Chamber.[1097] His overstated claim that the Chamber "ignore[d] outright evidence" of the "definitive departure" of Muslim civilians likewise shows no error.[1098]

- In the second respect, Yekatom shows no error in the Chamber's assessment of the timeline implied by P-2353's evidence. Notably, Yekatom asserts that P-2353 "[REDACTED]" when he travelled there on 29 January 2014 (and that this was impossible because, according to the Chamber, [REDACTED][1099]—yet the Chamber did not find that P-2353 *encountered* [REDACTED] but that he "indicated that at the time, all the Muslims *left* [REDACTED] except for some farmers [REDACTED]".[1100] In the context of the other evidence, Yekatom likewise shows no error in his criticism of the Chamber's temporal "logic" concerning P-2454's evidence.[1101]

284. *Fourth*, the Chamber was entitled to determine the requisite causal link between the advance of Yekatom's group and the displacement of Muslim civilians without necessarily relying on direct evidence to that effect.[1102] Yekatom's atomistic disagreement with the Chamber's assessment of individual witnesses or items of evidence does not show that its approach was unreasonable, either in whole or in part. In particular, given the context of the evidence as a whole and as described above, the Chamber could reasonably attribute the displacements to the coercive environment created by Yekatom's group, and address the possible significance of the other causes suggested by Yekatom.[1103]

IV. Ground 4: The Chamber properly assessed the evidence

285. The Judgment is coherent, reasoned and consistent with the applicable law, and the Chamber correctly applied the evidentiary standards and the standard of proof.[1104] Yekatom's

French term "*ont commencé*", shows no error given the other temporal anchor points mentioned by P-1666 and expressly acknowledged by the Chamber such as "after Michel Djotodia resigned".

[1097] *Contra* Yekatom Appeal, para. 335 (fn. 1168). *See* Judgment, paras. 3431 (noting that Aboubakar also stated that Imam Mattar of Bagandou was also killed at the material time, and that other evidence established that this occurred at the end of January 2014), 3433.

[1098] *Contra* Yekatom Appeal, para. 335 (fn. 1168: citing CAR-D29-0005-0497, at 0499).

[1099] Yekatom Appeal, para. 336 (emphasis added).

[1100] Judgment, para. 3433 (fn. 8429: citing CAR-OTP-2100-0226, para. 38). While the wording of P-2353's statement is somewhat unclear in this respect, [REDACTED] but merely that he "was one of those who would not leave".

[1101] *Contra* Yekatom Appeal, para. 336. *See* Judgment, para. 3435.

[1102] *Contra* Yekatom Appeal, paras. 337-339.

[1103] *Contra* Yekatom Appeal, paras. 337-339. *See further above* para. 281.

[1104] *See also below* section VI.1 (paras. 361-373).

vague and unsubstantiated submissions do not meet the appellate standard of review.[1105] Relying on relevant aspects of its submissions responding to Ngaïssona, therefore, the Prosecution will here address only the three distinct issues raised by Yekatom, namely: (1) the alleged "ambiguous articulation of the standard governing circumstantial evidence"; (2) the alleged errors claimed by Yekatom in his "Annex 5"; and (3) the claim that alleged errors cumulatively rebutted the strong presumption of the Chamber's impartiality.

286. *First*, the Chamber properly articulated the "beyond reasonable doubt" standard, including its application to circumstantial evidence through the "only reasonable inference" test. Yekatom improperly seeks to expand the application of the "beyond reasonable doubt" standard to facts which are not indispensable to a conviction.[1106] Moreover, the issues raised by Yekatom are largely semantic rather than substantive. There is nothing improper in the Chamber's use of the word "convinced*,"* which is equivalent to "found", nor any ambiguity as to the meaning of "relevant facts," which clearly refers to established facts.[1107]

287. Yekatom also wrongly assumes that circumstantial evidence is inherently less probative than direct evidence.[1108] It is well established not only that the "beyond reasonable doubt" standard applies equally to direct and circumstantial evidence, but also that a conviction may be based solely on circumstantial evidence—provided that the only reasonable inference to be drawn from that evidence establishes the guilt of the accused.[1109] It follows that circumstantial evidence cannot be given less value than direct evidence. Moreover, the Chamber is not required to entertain or address hypothetical doubts but only reasonable doubts.[1110] Thus, where an error of fact is alleged, the Appeals Chamber applies the standard of *reasonableness*, irrespective of whether the factual finding is based on direct or circumstantial evidence.[1111]

288. *Second*, Yekatom improperly seeks to augment his claim of erroneous evidentiary assessment through "Annex 5" containing 39 pages (in landscape orientation) of excerpts from the Judgment and the evidentiary record. Yekatom's invitation to the Appeals Chamber to

---

[1105] *Contra* Yekatom Appeal, paras. 360-367 (including claims that the Chamber: (i) failed to provide a reasoned opinion in its assessment of the evidence underlying key factual findings; (ii) violated the presumption of innocence by shifting the burden of proof; (iii) committed extensive factual errors in its evidence assessment; and (iv) systematically miscited or mischaracterised the evidentiary record). *But compare below e.g.* section VI.1.d. (paras. 369-371); section VI.1.e. (paras. 372-373).
[1106] *Contra* Yekatom Appeal, paras. 362-363. *See e.g.* *Ongwen* AJ, para. 321; *Lubanga* AJ, para. 22; *Bemba et al.* AJ, paras. 96, 868.
[1107] *Contra* Yekatom Appeal, para. 362.
[1108] Yekatom Appeal, para. 363.
[1109] *See e.g.* *Taylor* AJ, para. 182; *Fofana et al.* AJ, paras. 198, 200; *Kupreškić et al.* AJ, para. 303.
[1110] *See also* Judgment, paras. 128-129.
[1111] *See above* para. 3; *below* paras. 362, 372.

assess those materials itself to identify supposed errors is impermissible, and should be dismissed *in limine*. The Appeals Chamber should only consider properly developed arguments, and should disregard the wholesale incorporation by reference of lengthy annexes.[1112] As such, the Prosecution does not consider it necessary to address the contents of Annex 5—which would, in any event, be impracticable in this consolidated brief. For purely illustrative purposes, the Prosecution briefly addresses the first entry in each of the three categories in Annex 5, to show that the content appears baseless.

- The first entry under "Misstatements of the evidence" does not show that the Chamber misstated the evidence, but rather relies on *counsel*'s question, not the witness' answer.[1113]
- The first entry under "Selective transcript reliance" does not show that the Chamber improperly relied upon the English version of the transcript. Yekatom incorrectly claims that the French version of this transcript is more accurate.[1114]
- The first entry under "Ignored and/or unaddressed exculpatory extracts" does not show what it claims, but instead relates to material which was considered by the Chamber.[1115]

289. *Third*, Yekatom does not show that the alleged errors in the Judgment cumulatively lead to a reasonable apprehension of bias. As a very high standard governing judicial disqualification,[1116] apprehension of bias may be raised as a ground of appeal to show that the proceedings were unfair in a manner affecting the reliability of the Judgment.[1117] Yekatom fails to demonstrate that any such apprehension arises regarding any individual judge, let alone the entire Chamber. Rather, Yekatom was unanimously convicted after the Chamber's lengthy and careful assessment of the evidence, which it found established his criminal responsibility beyond reasonable doubt. Merely claiming an error or errors does not establish that the independence or impartiality of the judges was undermined, or that the reliability of the conviction was affected.[1118]

[1112] *Kenya* Disqualification Decision, para. 5.
[1113] Annex 5, row 1. [REDACTED].
[1114] Annex 5, row 26. Yekatom incorrectly refers to a French passage reading "*tout le monde **ne** nous considerait comme des Anti-Balaka*". The use of (ne) without (pas) does not constitute a full negation, and it is apparent from the original French testimony that the witness said "***nous** nous considerait comme des Anti-Balaka*" (Trial Hearing, 28-10-2022, at 15:04:16)—which is indeed better reflected in the English transcript.
[1115] Annex 5, row 32. Yekatom suggests that, in the Judgment, the Chamber should have acknowledged that the "Groupe de ROMBHOT" included Muslims. In the relevant footnote, the Chamber cited the paragraph which included this information, noting P-1193's wish to convey that not all Muslims were bad.
[1116] *See e.g.* Yekatom Appeal, para. 368.
[1117] *See* Statute, art. 81(1)(b)(iv)*;* *Ntaganda* AJ, paras. 82-91.
[1118] *Contra* Yekatom Appeal, paras. 368-371.

290. Annex 5 does not prove Yekatom's claim of bias, and should be dismissed *in limine*.[1119] This selective and inaccurate compilation does not substantiate the claim that the Judgment was improperly drafted, or imply a systematic distortion of the evidence and/or bias, even if it were to contain any mistakes of drafting or citation.[1120] Finally, when the Chamber was informed of discrepancies in translations and transcriptions, it took appropriate and reasonable measures to address the issues.[1121]

IV.1. Ground 4.1: The Chamber properly assessed P-1339's credibility

291. Yekatom fails to show that the Chamber erred in assessing P-1339's credibility or in explaining its findings, in a way which materially affects his convictions.[1122]

292. The Chamber carefully explained its assessment of P-1339's credibility.[1123] In particular, it expressly addressed Yekatom's arguments,[1124] identified certain discrepancies in P-1339's testimony,[1125] and explained why it found him "nonetheless, generally credible".[1126] The Chamber limited its reliance upon certain aspects of P-1339's testimony only, because of the inconsistencies identified.[1127] This conformed with the recognised principle that a witness may be reliable in one part of their testimony, but not in another.[1128] As such, the Chamber's assessment of P-1339's credibility fell within its broad discretion, and no error is shown.[1129] Repeating his unsuccessful trial arguments, Yekatom simply disagrees with the Chamber's

[1119] Since Yekatom primarily relies on Annex 5—if not dismissed *in limine*, as it should be—to allege errors of fact, he must demonstrate that no reasonable trier of fact could have made a finding which materially affects the verdict. However, since Yekatom also alleges that Annex 5 undermines the reliability of the Chamber's findings, the Prosecution also addresses Annex 5 in the context of article 81(1)(b)(iv). *See below* para. 647.
[1120] The Prosecution cannot address every entry in Annex 5 (*see above* para. 288) but it notes the frivolous nature of many entries, which could have no conceivable impact on the independence or impartiality of the judges nor affect the reliability of Yekatom's conviction. For example, in row 2, Yekatom takes issue with imprecise drafting by the Chamber concerning use of the word "they". In row 12, Yekatom challenges a typographical error in the pseudonym of a witness.
[1121] Yekatom Appeal, fn. 1322 (citing ICC-01/14-01/18-1167-Anx26-Red; ICC-01/14-01/18-1167-Anx32-Red; ICC-01-/14-01/18-1287-Anx20-Red).
[1122] *Contra* Yekatom Appeal, paras. 372-373.
[1123] *See generally* Judgment, paras. 330-337.
[1124] *See* Judgment, paras. 331, 335-336.
[1125] *See* Judgment, paras. 332, 336.
[1126] Judgment, para. 332. *See also* paras. 333-334, 336. *Contra* Yekatom Appeal, para. 373 (Yekatom's claim that the Chamber failed to provide reasons for accepting testimony despite alleged or material inconsistencies).
[1127] *See* Judgment, paras. 335-336.
[1128] Judgment, para. 203 (fn. 193: citing *Ongwen* TJ, para. 260; *Ngudjolo* AJ, para. 168; *Al Hassan* TJ, paras. 37, 43).
[1129] *See e.g. Ntaganda* AJ, para. 672 ("trial chambers enjoy broad discretion in assessing inconsistencies within the evidence and in deciding whether corroboration is necessary").

assessment.[1130] In principle, the Chamber was entitled to make factual findings based on P-1339's uncorroborated evidence.[1131]

293. In any event, even if the Chamber had erred in assessing P-1339's credibility, this did not necessarily affect its factual findings. As explained below,[1132] the Chamber did not rely only on P-1339's evidence for the events at the Boeing Market, the Boeing Mosque or the killing of Djido Saleh.[1133] Yekatom's further apparent claim that P-1339 was also significantly relied upon for the Yamwara crimes is contradicted by a plain reading of the Judgment.[1134]

IV.2. Ground 4.2: The Chamber properly assessed the evidence of the Boeing Market attack

294. Yekatom fails to show that the Chamber erred in assessing the evidence of the attack on Boeing Market, in a way which materially affects his convictions.[1135] The Chamber addressed all the necessary matters, and reasonably relied on the evidence of P-1339. It reasonably assessed the evidence of the circumstances in which the Traders were killed.

IV.2.a. The Chamber reasonably addressed Yekatom's arguments

295. Yekatom shows no error by his undeveloped claim that the Chamber failed "to sufficiently engage" with his arguments concerning: (i) the Traders' conduct and the attackers' intent; (ii) the purpose of Yekatom's group's reconnaissance; (iii) P-1339's "surprise" in seeing bodies other than that of Hassan Mahamat, and; (iv) the means used in the attack (which he denies were indiscriminate or disproportionate).[1136] The Chamber was not required to address every argument in detail,[1137] and made all necessary findings (and/or referred to relevant evidence), including on the matters mentioned by Yekatom.[1138]

[1130] *Contra* Yekatom Appeal, para. 372. *See* Yekatom Closing Brief, paras. 73-77 (re-cited at Yekatom Appeal, para. 372). *See also* paras. 106-135.
[1131] *Contra* Yekatom Appeal, para. 373. There is no legal requirement for corroboration: *see e.g.* ICC RPE, rule 63(4); *Ntaganda* AJ, para. 690 (citing *Bemba et al.* AJ, para. 1084). *See further below* paras. 365-366.
[1132] *See below* paras. 296-298, 302-303, 321-323.
[1133] *Contra* Yekatom Appeal, paras. 373, 410.
[1134] In section IV.D.3, assessing the evidence on the Yamwara incident, the Chamber only referred once to P-1339 in a footnote on a relatively peripheral issue: *see* Judgment, fn. 8010.
[1135] *Contra* Yekatom Appeal, paras. 374-380, 410-411.
[1136] *Contra* Yekatom Appeal, para. 374 (citing Yekatom Closing Brief, paras. 388-390, 392).
[1137] *See below* para. 369.
[1138] *See e.g.* Judgment, paras. 75-76, 2433-2454, 2524, 2530-2534, 2540-2616, 3962, 3966-3971 (conduct of the Traders and the attackers' intent); 75, 2465-2466, 2524, 2529, 3950 (Yekatom's reconnaissance); 2578-2579 (P-1339's reaction to bodies); 74-78, 2537-2616, 2618-2648, 3951, 3954, 3957-3958 (considering the means used in the attack, including that the Anti-Balaka "fired at the Muslim traders", "shot in all directions", fired a rocket at the Boeing Mosque, and that there was no indication of any relevant precautions).

IV.2.b. The Chamber reasonably relied on P-1339's evidence

296. As noted above, the Chamber reasonably relied on P-1339's evidence, which it assessed as "generally credible" on the basis of its careful analysis.[1139] Yekatom shows no error in the Chamber's reliance on this evidence either regarding his launching of the Boeing Market attack, or his instructions to his group.[1140]

i. The Chamber reasonably assessed the launching of the attack

297. The Chamber reasonably relied on P-1339's evidence that Yekatom fired his pistol in the air to launch the Boeing Market attack.[1141] Yekatom merely disagrees with this finding, showing no procedural impropriety nor cause to doubt the witness' credibility.[1142] The Chamber was not required to determine the issue beyond reasonable doubt, since the *means* of launching the attack was not itself essential to Yekatom's conviction.[1143] In any event, Yekatom's self-serving alternative explanation for this action shows nothing unreasonable in the Chamber's analysis.[1144]

ii. The Chamber reasonably assessed Yekatom's instructions

298. The Chamber reasonably relied on P-1339's evidence that Yekatom had instructed his group to "fight the Seleka […] includ[ing] targeting sectors where 'Muslims' were to be found", and that this was understood "to accept that Muslim civilians would be killed" (because Yekatom's elements had "not been trained or instructed to apply the principle of distinction" and bore "strong anti-Muslim sentiment and feelings of vengeance against the Seleka").[1145]

[1139] *See above* section IV.1 (paras. 291-293).
[1140] *Contra* Yekatom Appeal, paras. 375-378.
[1141] *Contra* Yekatom Appeal, paras. 375-376. *See* Judgment, paras. 76, 2481, 2537, 3951.
[1142] *Contra* Yekatom Appeal, paras. 375-376. In particular, P-1339 testified that Yekatom had told his men that he would signal the start of the attack by shooting into the air, and he duly did so: *see* T-152, pp. 70:21-71:2; T-154-CONF, pp. 41:8-15, 50:10-13, 53:11-19; T-159, p. 75:6-12. This evidence was cited by the Chamber: Judgment, paras. 2481, 2537. Yekatom's assertion that P-1339 was asked "nine times" about the existence of a specific order to attack Boeing Market did not relate to the means by which Yekatom ordered the launching of the attack (on which P-1339 had already testified) but about the existence of any *specific* instruction to target the market as such: *contra* Yekatom Appeal, para. 375 (fns. 1347-1351). Nor was the questioning improper, since the Chamber overruled the objection of Yekatom's counsel: *see e.g.* T-154-CONF, pp. 57:16-58:18.
[1143] *Contra* Yekatom Appeal, para. 376. *See below* section VI.1.e. (paras. 372-373).
[1144] *Contra* Yekatom Appeal, para. 376.
[1145] *See* Judgment, para. 3950. *See also* paras. 74-75 ("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. 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 and bearing strong anti-Muslim sentiment and feelings of vengeance against the Seleka"), 2433-2454, 2524, 2530-2534, 3951, 3959.

This evidence was not elicited improperly, nor considered selectively by the Chamber, but rather holistically[1146]—including in the context of other relevant evidence.[1147]

IV.2.c. The Chamber reasonably assessed the evidence of the killing of the Traders

299. Yekatom shows no error in the Chamber's assessment of the evidence of the killing of the Traders.[1148] Yekatom's instructions to his group were plainly relevant in this regard, and could reasonably be taken into account.[1149] Likewise, the Chamber reasonably assessed the circumstances in which the Traders were killed, which provided an adequate basis to conclude that the Traders were killed deliberately and unlawfully.[1150]

300. Notably, P-1339 witnessed the killing of Hassan Mahamat, shot in the street after a grenade was thrown into his house,[1151] having fired in self-defence.[1152] While P-1339 did not see the killing of the other two Traders, he testified that Yekatom's elements "shot in all directions" as they advanced, with "gunfire from 'all sides'".[1153] Odette Namsona was told by the spouses of these Traders—who, like Hassan Mahamat, were killed in front of their shops—that "they had been killed by the 'Anti-Balaka'."[1154] On this basis, "[h]aving regard to the overall circumstances of the attack," the Chamber inferred "that these persons died at the hands of Mr Yekatom's group."[1155] Yekatom merely disagrees with these assessments without showing that they were unreasonable.[1156] He is incorrect in suggesting that it is legally essential

[1146] *Contra* Yekatom Appeal, paras. 377-378 (asserting that P-1339 did not reliably testify on the instructions). *Compare e.g.* T-154, pp. 36:22-38:24, 50:15-19, 51:5-18, 53:14-54:15, 58:8-59:23; T-155, pp. 16:15-19, 16:22-17:12. This evidence was relied upon by the Chamber concerning Yekatom's instructions: *see* Judgment, paras. 2530-2534. *See also* paras. 2434-2447 (rejecting Yekatom's argument that his group was ordered and trained to distinguish fighters from civilians, and finding that both people joining Yekatom's group and its leaders were motivated by revenge, citing T-152, pp. 4:18-21, 10:12-11:17, 15:10-15; 16:18-24, 18:13-17, 70:6-20, 71:17-72:5, 72:20-22, 74:2-9; T-154, pp. 38:19-24, 40:11-15; T-155, pp. 16:22-17:4; T-160, pp. 6:3-22, 7:21-8:17, 8:23-9:3, 51:7-13), 2452-2454.
[1147] *See e.g.* Judgment, paras. 2448-2451 ("there is audio-visual evidence showing that elements of Mr Yekatom's group expressed anti-Muslim sentiments and conflated the Seleka and Djotodia with Muslims").
[1148] *Contra* Yekatom Appeal, paras. 378-379.
[1149] *Contra* Yekatom Appeal, para. 378. *See above* para. 298.
[1150] *Contra* Yekatom Appeal, para. 379. *See e.g.* Judgment, paras. 2538, 2540-2606, 3962-3971. *See also* paras. 2607-2616 (recounting a "considerable" amount of evidence of persons other than the charged victims being killed or wounded, which it noted only to indicate "the scale of the attack and its consequences on the population of Bangui […] for the purposes of the general context").
[1151] *See e.g.* Judgment, paras. 2546-2547, 2552.
[1152] *See e.g.* Judgment, paras. 2546-2547, 2568.
[1153] *See e.g.* Judgment, paras. 2577-2579.
[1154] *See e.g.* Judgment, para. 2584. *See also* paras. 2582-2583.
[1155] Judgment, para. 2586.
[1156] *Contra* Yekatom Appeal, para. 379.

to prove the means of killing,[1157] and that the Chamber's evidentiary assessment reversed the burden of proof.[1158] The Chamber set out its findings with sufficient clarity.[1159]

IV.3. Ground 4.3: The Chamber properly assessed the evidence of the Boeing Mosque attack

301. Yekatom fails to show that the Chamber erred in assessing the evidence of the attack on the Boeing Mosque, in a way which materially affects his convictions.[1160] The Chamber reasonably relied on the evidence of P-1339, and addressed evidence which Yekatom now claims is contradictory.

IV.3.a. The Chamber reasonably relied on P-1339's evidence

302. The Chamber found that "following Yekatom's instructions, Yekatom's elements attacked the mosque in Boeing […] by firing a 'rocket' at it" and then "torched the mosque […] with gasoline."[1161] To reach these findings, the Chamber relied primarily on the evidence of the principal Imam, Salehou Ndiaye (P-1528), as well as P-1339 who witnessed the events.[1162] As the Chamber noted, P-1339 testified about two incidents affecting the mosque—an *attack* (which he attributed to Yekatom's group) during their incursion in Boeing, and the subsequent *destruction or dismantling* of the mosque by some members of the local population.[1163] Only the former forms the basis for the charges.[1164] The Chamber carefully described the course of events witnessed by P-1339, in which he saw Yekatom's element Alkanto fire a rocket at the mosque on Yekatom's instruction, and another Anti-Balaka element spray gasoline on the building.[1165] The Chamber found P-1339's account to be reliable.[1166]

303. Yekatom fails to show any error in the Chamber's assessment, but rather merely disagrees with it.[1167] In particular, the Chamber was entitled to find P-1339 reliable notwithstanding the absence of "intricate details of the actual destruction of the Boeing

[1157] *Contra* Yekatom Appeal, para. 379 (fn. 1377). *Compare* Judgment, para. 3794 (noting only that "the Prosecutor must demonstrate, *to the extent possible*, the location, date and means of killing", emphasis added).
[1158] *Contra* Yekatom Appeal, para. 379.
[1159] *Contra* Yekatom Appeal, para. 379 (fn. 1379: citing Judgment, para. 2585). *See Bemba* AJ, para. 53. Yekatom seems to mistake the Chamber's comment in paragraph 2585, which did not itself contain the Chamber's reasoning concerning the circumstances of the killing of the Traders, but merely responded to Yekatom's assertion that the *Prosecution* had failed "to elicit such details".
[1160] *Contra* Yekatom Appeal, paras. 381-386, 410-411.
[1161] Judgment, para. 78.
[1162] Judgment, para. 2618.
[1163] *See* Judgment, paras. 2624-2628.
[1164] *But see also* Judgment, paras. 2641-2648 (recalling evidence of the subsequent destruction).
[1165] *See* Judgment, paras. 2629-2636.
[1166] *See* Judgment, paras. 2637-2640.
[1167] *Contra* Yekatom Appeal, paras. 381-382.

Mosque"—as opposed to the *attack* upon it—and the fact that "certain details of his account were only brought forward after P-1339's memory was refreshed."[1168] The Chamber correctly recalled the applicable law,[1169] and there was no defect in the procedure adopted in this instance.[1170] Considering the Chamber's express caution about inconsistencies in P-1339's testimony, Yekatom shows nothing unreasonable in the Chamber's interpretation of his evidence as distinguishing between the attack and the subsequent destruction of the mosque.[1171]

IV.3.b. The Chamber reasonably addressed alleged contradictory evidence

304. The Chamber reasonably addressed evidence that Yekatom claims "contradict[ed]" P-1339's account, including from Gaston Sallo (D29-4013), D29-4011, and others.[1172]

i. The Chamber reasonably addressed Gaston Sallo's evidence

305. Gaston Sallo (D29-4013) recalled seeing the Boeing Mosque being "'destroyed'" by the "removal" of the metal roof, the wooden eaves, and the brickwork, carried out by persons who did not appear to be fighters. He did not see traces of burning or smoke.[1173] The Chamber reasonably considered that this account "confirms the veracity of P-1339's account", because "P-1339 indicated that he saw how the local population 'destroyed' the Boeing Mosque as the group withdrew, but at no point indicated that the mosque was fully destroyed that day."[1174] Yekatom shows nothing unreasonable in this assessment, merely criticising the Chamber's use of the word "recalled" and its alleged failure to resolve the apparent inconsistency that Sallo saw no sign of burning.[1175] This shows no necessary inconsistency, since while P-1339 testified that he saw a fire in the mosque, he did not testify as to its extent or to the degree of any damage caused by the rocket which was fired.[1176]

[1168] *Contra* Yekatom Appeal, para. 382. *See* Judgment, para. 2640.
[1169] *See* Judgment, paras. 198-199.
[1170] *Contra* Yekatom Appeal, para. 383 (fns. 1389-1390). *Compare* T-154-CONF, pp. 77:13-86:14 (in which the Chamber dismissed Yekatom's objection to the manner in which P-1339 was invited to resolve the apparent discrepancy in his evidence, the Chamber granted P-1339's request for a brief adjournment and reassured him of the purpose of the questioning, and P-1339 then clarified his evidence).
[1171] *Contra* Yekatom Appeal, paras. 381 (fns. 1383-1384), 382 (fns. 1392-1396). *See also* Judgment, para. 337.
[1172] *Contra* Yekatom Appeal, paras. 383-384.
[1173] *See* Judgment, paras. 2642-2643, 2646 (citing *e.g.* T-277, pp. 25:7-26:20, 27:1-28:9, 30:9-32:19, 32:20-33:24, 34:4-23, 42:14-43:16, 44:17-25, 45:1-14, 47:10-15).
[1174] Judgment, para. 2647.
[1175] *Contra* Yekatom Appeal, para. 383. It is apparent that there was no significance to the Chamber's use of the word "recall" since it subsequently stated the same proposition by saying that the witness "indicated not seeing" any sign of burning: *compare* Judgment, para. 2643, *with* para. 2646.
[1176] *See e.g.* Judgment, paras. 2631-2635. Necessarily, the mosque was still standing since P-1339 already observed "the Boeing Mosque beginning to be taken apart by the population already on the morning of 5 December 2013".

ii. The Chamber reasonably addressed D29-4011's evidence

306. Like Sallo, D29-4011 also saw and heard the removal of the roof from the Boeing Mosque, as well as the window frames, which she "said that she witnessed […] on the way back home from the location where she slept during 'the events'." She alleged that she "witnessed the destruction of the Boeing Mosque from the beginning till the end", and that it was not set on fire.[1177] The Chamber reasonably considered that "D29-4011's account does not contradict that of P-1339 nor that of Gaston Sallo" because, while she recalled passing a church "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" and that she "did not seem to have full visibility of the entirety of the mosque's building" from her house.[1178] Yekatom shows nothing unreasonable in this assessment by claiming that the church is "directly adjacent" to the mosque, or arguing whether the mosque could or could not fully be seen from D29-4011's house.[1179] The fact remains that the Chamber did not consider D29-4011 could reliably exclude the possibility of the prior attack on the mosque in the manner attested by P-1339.

iii. The Chamber reasonably addressed other evidence

307. Finally, Yekatom shows no error in the Chamber's assessment by referring to the evidence of Salehou Ndiaye (P-1528), P-2682, or Lars Bromley (P-2193).[1180] The Chamber expressly considered the evidence of these witnesses.[1181] It could reasonably consider that their evidence was consistent (or at least not incompatible) with the evidence of P-1339, since knowledge of the mosque's destruction does not necessarily exclude the fact of the prior attack—especially when the extent of damage resulting from that attack is unclear.

IV.4. Ground 4.4: The Chamber properly assessed the evidence of the Cattin attack

308. Yekatom fails to show that the Chamber erred in assessing the evidence of the Cattin attack, in a way which materially affects his convictions.[1182] It reasonably relied on the evidence of Salehou Ndiaye (P-1528), and reasonably addressed the possibility that the killing of the

[1177] *See* Judgment, paras. 2644-2646 (citing CAR-D29-0009-0680-R01, paras. 16, 43, 45-50).
[1178] Judgment, para. 2647.
[1179] *Contra* Yekatom Appeal, para. 384 (citing CAR-D29-0009-0680-R01, para. 47: "*Au moment de la destruction, aucun bâtiment n'obstruait ma vue. Aujourd'hui, une maison a été construite entre ma maison et la mosquée*"). *Compare* Judgment, paras. 2644 (noting that D29-4011 "could see [the mosque] when she went out of the house and walked to one of its corners", citing CAR-D29-0009-0680-R01, para. 16), 2647 (citing CAR-D29-0008-0105, at 00:00:43-00:01:30; CAR-D29-0006-1404, lns. 4-25).
[1180] *Contra* Yekatom Appeal, paras. 385-386.
[1181] Judgment, para. 2648 (fn. 6567).
[1182] *Contra* Yekatom Appeal, paras. 387-390, 410-411.

unidentified man was accidental or carried out by perpetrators other than members of Yekatom's group.

IV.4.a. The Chamber reasonably relied on Salehou Ndiaye's evidence

309. After the Boeing attack, Yekatom's group attacked Cattin. In the course of this attack, they killed at least one unarmed Muslim man because he was an "Arab".[1183] The Chamber relied on the evidence of Salehou Ndiaye (P-1528), whom it considered credible.[1184] Ndiaye first saw Anti-Balaka fighters exchange fire with Seleka fighters in a prolonged skirmish. Afterwards, Ndiaye saw Anti-Balaka fighters chase a Muslim man in front of his house between 08:00 and 09:00, shouting that he was an "Arab". While Ndiaye heard the man pleading for help, he could not immediately see his body on the ground—but, later, he saw four Anti-Balaka elements standing next to the body, armed with a Kalashnikov and machetes. When Ndiaye left his house some hours later, the body was still there, covered in wounds. Ndiaye identified the fighters as Anti-Balaka by their weapons, the fact they wore *gris-gris* and red bands, the fact they spoke Sango, and the fact they were encouraged by a crowd of locals.[1185] The Chamber concluded that the Muslim man was killed by Anti-Balaka elements when he was unarmed,[1186] and that these elements were members of Yekatom's group.[1187]

310. Yekatom shows nothing unreasonable in the Chamber's assessment of Ndiaye's evidence.[1188] He criticises the Chamber for not "provid[ing] any reference" for its findings rejecting his similar trial arguments, but overlooks that this passage of the Judgment immediately follows a detailed and footnoted summary of Ndiaye's relevant evidence.[1189] Likewise, he takes the Chamber's assessment out of context when challenging its finding that Ndiaye was "unequivocal" about the identity of the perpetrators of the killing.[1190] In fact, the Chamber stated that Ndiaye was "unequivocal about the identity of the alleged perpetrators as 'the Anti-Balaka'", clearly distinguishing between them and "the local population".[1191]

[1183] Judgment, para. 79.
[1184] Judgment, para. 2660.
[1185] *See* Judgment, paras. 2655-2659.
[1186] Judgment, paras. 2663-2665.
[1187] Judgment, paras. 2666-2675.
[1188] *Contra* Yekatom Appeal, paras. 387-388.
[1189] *Contra* Yekatom Appeal, para. 388 (*especially* fn. 1434). *But compare* Judgment, paras. 2661-2665 (addressing Yekatom's arguments), *with* paras. 2656-2660.
[1190] *Contra* Yekatom Appeal, para. 387 (fns. 1426-1427).
[1191] Judgment, para. 2663.

IV.4.b. The Chamber reasonably excluded the possibility that the killing was accidental

311. Yekatom misreads the Judgment in stating that the Chamber failed "to properly exclude the reasonable possibility that the victim was shot by an exchange of fire or stray bullet".[1192] He overlooks the Chamber's finding that the victim did not appear to have been killed by a gunshot wound at all, but rather appeared to have died from injuries sustained from bladed weapons.[1193] This is consistent with Ndiaye's evidence of Anti-Balaka fighters near the victim's body holding machetes.[1194] In these circumstances, when Ndiaye did not report gunfire near his house at the material times, the Chamber was not unreasonable in its conclusion.[1195]

IV.4.c. The Chamber reasonably excluded perpetrators other than Yekatom's group

312. The Chamber reasonably excluded the possibility that the victim was killed by persons other than members of Yekatom's group.[1196] *First*, Yekatom shows nothing unreasonable in the Chamber's reliance on Ndiaye's identification of the perpetrators as Anti-Balaka members, and not as civilians.[1197] *Second*, Yekatom does not apparently challenge the Chamber's reliance on P-1339's and P-0884's testimony that Yekatom's group were in the area of Cattin until around 09:00,[1198] which was compatible with Ndiaye's recollection of the timing of the attack on the unidentified Muslim man (between 08:00 and 09:00).[1199] This was also consistent with Yekatom's own submission that members of Yekatom's group were pushed out of the Cattin area around 09:00.[1200] *Third*, the Chamber reasonably considered that the evidence of P-0884, Brice Emotion Namsio (P-0446) and P-1521 did not support the presence of any other Anti-Balaka groups in the relevant area at the relevant time.[1201] Yekatom shows no error in this respect.[1202]

[1192] *Contra* Yekatom Appeal, para. 389.
[1193] Judgment, para. 2663 ("it is clear from [the witness'] description that these wounds were not sustained because of an exchange of fire"). *See also* para. 2658. While Ndiaye was not in a position to establish the victim's wounds (*see* T-178, p. 31:2-20), as Yekatom notes, the Chamber could still reasonably infer that they could only have been inflicted by bladed weapons given the events more broadly seen and heard by Ndiaye.
[1194] *See* Judgment, para. 2658.
[1195] *See also* Judgment, paras. 128-129 ("reasonable doubts must […] have a rational link to the evidence").
[1196] *Contra* Yekatom Appeal, paras. 389-390.
[1197] *See above* para. 310.
[1198] Judgment, paras. 2668-2672.
[1199] *See above* para. 309.
[1200] Judgment, para. 2673 (referring to the "assert[ion]" of the "Yekatom Defence", rather than commenting on the evidence upon which they purported to rely). This is without prejudice to the fact that the Chamber took no position whether the audio-visual evidence upon which Yekatom relied was accurate in the time portrayed: Judgment, para. 2675. While Yekatom argues that this was erroneous, because the "[m]etadata indicated that it was filmed on 5 December 2013 before 9 am", this was irrelevant in light of the Chamber's analysis: *contra* Yekatom Appeal, para. 389 (fn. 1440).
[1201] Judgment, para. 2674. *See also* para. 2675.
[1202] *Contra* Yekatom Appeal, para. 390.

IV.5. Ground 4.5: The Chamber properly assessed the evidence of the Boeing-Cattin displacement

313. The conduct of Yekatom's group in Boeing and Cattin caused the displacement of Muslim civilians.[1203] Yekatom fails to show that the Chamber erred in assessing the evidence of witnesses Salehou Ndiaye (P-1528) and P-2682, in a way which materially affects his convictions.[1204]

IV.5.a. The Chamber reasonably relied on Salehou Ndiaye's evidence

314. Yekatom mistakenly emphasises that Salehou Ndiaye (P-1528) learned of the *destruction* of the Boeing Mosque only after he had relocated to PK5, which he considers undermines his flight as a result of the *attack* on the mosque. This overlooks the Chamber's clear distinction between these two separate events.[1205] The Chamber also carefully considered all relevant factors described by Ndiaye—notably, that: (i) he left his home with his family on 5 December 2013 and went to PK5 as the only place he could go to flee Cattin; (ii) he witnessed a killing and heard gunshots coming from the direction of the Boeing Mosque, and; (iii) he later received a warning from a Christian neighbour.[1206] On this basis, the Chamber reasonably found that Ndiaye was coerced to leave because of events connected to the attack on the Boeing Mosque and in Cattin, and that this was reinforced by information subsequently received from his neighbour.[1207] In claiming that Ndiaye left solely because of the neighbour's warning, Yekatom is incorrect, and merely disagrees with the Chamber's conclusion.[1208]

IV.5.b. The Chamber reasonably relied on P-2682's evidence

315. Yekatom's alternative interpretation of P-2682's evidence shows no error.[1209] The Chamber was aware that P-2682 went to PK5 on 3 December 2013, prior to the events at the Boeing Market. However, the Chamber did not base its findings on the timing of P-2682's initial movement. Instead, it considered the context of events and their consequences—notably, that: (i) P-2682's husband remained at the Boeing Market and was killed during the attack

---

[1203] *See* Judgment, paras. 80, 3976. The Chamber found that the Muslims of Boeing and Cattin fled to PK5 in Bangui, while others fled to other parts of the CAR.
[1204] *Contra* Yekatom Appeal, paras. 391-395, 410-411. Notably, since the Chamber did not rely on these witnesses in isolation, any alleged error in assessing their testimony would not automatically affect the Judgment: Judgment, para. 2681.
[1205] *See above* paras. 302-307.
[1206] Judgment, paras. 2682-2696. The neighbour warned Ndiaye that her husband had advised them to "leave immediately because he had heard that 'the attack of the Anti-Balaka had failed and […] they were now planning to return and kill all Muslims in the area'."
[1207] Judgment, paras. 2687, 2696.
[1208] *Contra* Yekatom Appeal, para. 392.
[1209] *Contra* Yekatom Appeal, para. 393.

carried out by Yekatom's group, and; (ii) P-2682 never returned thereafter. The Chamber further observed that, but for the 5 December 2013 attack resulting in the death of her husband, there was no indication that P-2682 would not have returned from her stay in PK5. On this basis, the Chamber reasonably concluded that P-2682's displacement occurred in the context of the Boeing Market attack.[1210]

IV.5.c. The Chamber reasonably addressed other relevant evidence

316. The Chamber reasonably considered other evidence demonstrating the massive displacement of Muslim residents of Boeing and Cattin following the attack by Yekatom's group.[1211] Yekatom mischaracterises the Judgment by arguing that, because the Chamber acknowledged the existence of factors other than Yekatom's group's attack, it thereby severed the nexus underlying its conclusion.[1212]

317. The Chamber found that, from 5 December 2013 onwards, the majority of Muslims from Boeing and Cattin—including Salehou Ndiaye (P-1528) and P-2682—fled to PK5 in Bangui, while some others fled to other parts of the CAR, in the context of the attack by Yekatom's group on Boeing and Cattin. It did not find that the displacement was caused *exclusively* by Yekatom's group. However, while recognising that additional factors contributed to the displacement, the Chamber found that it was still *directly linked* to acts committed by Yekatom's group.[1213] The Chamber further addressed all circumstances raised by Yekatom, including that there were other armed groups present. It acknowledged that responsibility could not be attributed automatically to Yekatom's group; however, it also reasonably found that the presence of other armed groups does not necessarily diminish the responsibility of Yekatom's group.[1214]

IV.5.d. The Chamber correctly applied the mens rea for article 8(2)(e)(viiii)

318. The Chamber also correctly stated and applied the law on the required *mens rea* under article 8(2)(e)(viii).[1215] In particular, it correctly rejected Yekatom's argument that the Prosecution must show that Yekatom's acts were "calculated to force the population to leave."[1216] Neither article 8(2)(e)(viii), nor the Elements of Crimes, establish a mental element

[1210] Judgment, paras. 2697, 2699.
[1211] Judgment, paras. 2704-2746.
[1212] *Contra* Yekatom Appeal, para. 394.
[1213] Judgment, paras. 2747- 2748, 3972-3978, 3983-3990.
[1214] Judgment, paras. 2754-2756. *See* Judgment, para. 3976.
[1215] *Contra* Yekatom Appeal, paras. 394-395. In footnote 1478, Yekatom cites the findings at paragraphs 4300-4329 of the Judgment, but the arguments appear to relate to paragraphs 3972-3999.
[1216] *Contra* Yekatom Appeal, para. 395. *See* Judgment, paras. 4015-4016.

requiring "calculation to force the population to leave". Nor is such a requirement supported by any other authority.[1217] Rather, applying article 30 in the ordinary way, it sufficed to show knowledge that the population would flee in the ordinary course of events as a result of Yekatom's intentional acts.

319. The Chamber duly found that Yekatom's conduct in the Bangui attack could only have been intentional. It also found, *inter alia*, that "Yekatom intended to carry out an attack against the Muslim civilian population of Boeing and Cattin," and "knew that the launching of his attack and the instructions to his elements would cause the Muslims from Boeing and Cattin to flee."[1218] The Chamber further found that Yekatom knew that launching the attack on Boeing (in which he personally participated), his instructions to target "all sectors" where Muslims were located, and his instructions to his elements on the eve of the Bangui attack *would* create conditions *forcing* out the majority of Muslim civilians in Boeing and Cattin.[1219] Yekatom thus shows no error in the Chamber's analysis.

IV.6. Ground 4.6: The Chamber properly assessed the evidence of Djido Saleh's murder and mutilation

320. Yekatom fails to show that the Chamber erred in assessing the evidence of the killing of Djido Saleh, in a way which materially affects his convictions.[1220] Rather, he reargues credibility and the weight given to the evidence, merely disagreeing with the Chamber's reasonable conclusions.

IV.6.a. The Chamber reasonably assessed P-1339's evidence

321. Yekatom shows no error in the Chamber's assessment of P-1339's evidence. P-1339 testified that Honorine Mbafolo—another member of Yekatom's group (demonstrated by documents seized from Yekatom)[1221] described Saleh's killing, and confessed her involvement in it. She did this contemporaneously in front of [REDACTED] members of Yekatom's group and, [REDACTED], while Mbafolo literally had blood on her hands.[1222]

[1217] *Contra* Yekatom Appeal, fn. 1481. In *Ntaganda*, the Trial Chamber did not require that the acts be calculated to force the population to leave: *see* *Ntaganda* TJ, para. 1056. *See also* *Simić et al.* TJ, paras. 125-126 (when discussing the unlawful character of the displacement, only noting that the lack of genuine choice may be inferred from *inter alia* threatening and intimidating acts "calculated" to deprive the civilian population of free will).
[1218] Judgment, para. 4015.
[1219] Judgment, paras. 4014-4016, 4025.
[1220] *Contra* Yekatom Appeal, paras. 396-405, 413.
[1221] CAR-OTP-2094-3642, at 3645, row 003.
[1222] Judgment, para. 3650. *See also* T-154-CONF, pp. 11:17-12:5.

322. The Chamber reasonably relied upon P-1339's account of this incident. As recalled above, it found P-1339 to be generally credible,[1223] including because he distinguished between acts committed by Yekatom's group, Anti-Balaka more generally, and other persons.[1224] Nor did P-1339 testify exactly as Yekatom claims, in attempting to undermine the Chamber's reliance upon him. To the contrary, P-1339 did not claim that Saleh's presence in Mbaïki after the Muslims' departure was "secret", or that he was killed when this was allegedly "exposed".[1225] He merely explained that Saleh had "refused to leave the town" and that, although Saleh remained in a house, "we didn't know that".[1226]

323. Yekatom overstates the impact of alleged discrepancies in P-1339's testimony on the Chamber's findings. The Chamber did not ignore "major inconsistencies" in his evidence, and reasonably relied on P-1339's account to the extent that it did.[1227] The Chamber noted that, as P-1339 was unclear on the precise location of Saleh's murder, it did not rely on that aspect of his testimony.[1228] Nevertheless, it was still reasonable to find that P-1339's limited recollection of the events did not undermine the core, corroborated, portion of his evidence concerning the perpetrators' involvement.[1229] This included details of the incident, such as that "Mbafolo Honorine removed Djido Saleh's sex and was 'very delighted to do so'."[1230] Notably, the incident did not involve solely Mbafolo, but also two other members of Yekatom's group, including Cyrille Ngombe.[1231]

IV.6.b. The Chamber reasonably assessed P-1647's evidence

324. Yekatom shows nothing unreasonable in the Chamber's approach to P-1647's evidence. The Chamber did not ignore P-1647's supposed evidence that Ngombe—whom P-1339 implicated as one of Saleh's murderers—was in Pissa at the time.[1232] In fact, P-1647 clarified that given the passage of time, he could not recall if Ngombe was in Pissa when Saleh was killed.[1233] Yekatom further misrepresents P-1647's testimony regarding Mbafolo's role in the

[1223] Judgment, para. 333. *See above* paras. 291-293.
[1224] Judgment, para. 334.
[1225] Yekatom Appeal, para. 397.
[1226] T-154-CONF, p. 5:13-14.
[1227] *Contra* Yekatom Appeal, para. 397.
[1228] Judgment, fn. 8985.
[1229] *Contra* Yekatom Appeal, para. 397 ("[P-1339] misdescribed the victim as a 'Muslim youth'"). *Compare* T-154-CONF, p. 12:10-11 ("I know nothing more about him. What I do know is that he's a Muslim, a Muslim named Dido").
[1230] Judgment, para. 3650 (fns. 8985-8986: citing P-1339's testimony).
[1231] Judgment, para. 3650. *See also* CAR-OTP-2094-3642, at 3644, row 91, and at 3645, row 03; CAR-OTP-2039-0063, at 0066, fn. 8992 (in relation to Ngombe Gauthier Cyrille).
[1232] Yekatom Appeal, para. 398.
[1233] T-194-CONF, p. 65:1-16.

incident.[1234] P-1647 stated unequivocally that Mbafolo had organised Saleh's murder, leaving no ambiguity as to the nature of her involvement.[1235]

325. Yekatom also fails to show that the Chamber erred in finding that P-1339's and P-1647's accounts were "not necessarily contradictory", since he relies on an artificial reading of P-1647's statement that "only Mbafolo" participated.[1236] The Chamber reasonably concluded that this referred to the fact that Mbafolo was the *one person he personally recognised*, not that she was the only Anti-Balaka participant. By contrast, based on his knowledge of Yekatom's group, P-1339 testified that three of Yekatom's elements participated.[1237] The Chamber reasonably determined that these accounts were not mutually exclusive,[1238] but indeed were corroborative according to the established law.[1239] Moreover, since Saleh was killed within metres of the Anti-Balaka base,[1240] this further supported the Chamber's reliance on the participation of multiple Anti-Balaka elements, as P-1339 testified.

IV.6.c. The Chamber reasonably assessed evidence that Yekatom's group threatened Saleh

326. Yekatom shows no error in the Chamber's reliance on Raymond Mongbandi (P-1838) to establish that Saleh was threatened. The Chamber explicitly distinguished between Mongbandi's factual observations (on the nature of the interrogation, conduct of the Anti-Balaka, Saleh's inability to respond) and Mongbandi's own impressions.[1241] It reasonably assessed which parts carried probative value. It also found that Mongbandi erred in an inconsistency identified by Yekatom at trial but explained why this did not undermine the *core factual content* of his account.[1242] Importantly, the Chamber did not rely on Mongbandi alone, but considered his testimony together with the credible testimony of P-1813 and D29-5013, in concluding that Anti-Balaka elements threatened Saleh prior to his killing.[1243]

[1234] Yekatom Appeal, para. 398.
[1235] T-194-CONF-FRA, p. 62:24-26 ("*Oui, l'un de nos éléments qui a fait organiser ce meurtre, Mama Tia Godobé, comme vous venez de dire, c'est une malentendu, c'est une qui a commettre ce meurtre*"). *See also* p. 65:18-20 (referring to Mbafolo as "Mama Tia Godobé").
[1236] Yekatom Appeal, paras. 398-399.
[1237] T-154-CONF, pp. 9:19-11:5.
[1238] Judgment, para. 3654. *See also* T-194-CONF, p. 65:1-16.
[1239] *Ntaganda* AJ, para. 672. *See also Nahimana et al.* AJ, para. 428. *See further below* paras. 365, 458 (fn. 1725).
[1240] Prosecution Closing Brief, para. 724.
[1241] Judgment, para. 3640.
[1242] Judgment, fn. 8951. *See* Yekatom Closing Brief, para. 541 (referring to "P-1838's uncorroborated claim that Ouandjio had previously "interrogated" Saleh in a "threatening" manner, "because at the time there were no more Muslims in Mbaïki").
[1243] Judgment, para. 3641.

IV.6.d. The Chamber reasonably found that Saleh was killed because he was a Muslim

i. Saleh was not a member of or affiliated with the Seleka

327. Yekatom merely reiterates unsuccessful trial arguments, asserting that Saleh was killed by a 'mob' of locals from Mbaïki who harboured hostility towards him for his collaboration with the Seleka.[1244] The Chamber squarely addressed this claim and concluded that there was insufficient evidence to support the assertion that Saleh was a combatant or affiliated with the Seleka at the time of his murder. The limited and inconsistent testimony on which Yekatom relies cannot sustain the inference—clearly unreasonable—which he claims the Chamber wrongly excluded.[1245] The Chamber did not assess alleged evidence of Saleh's participation in Seleka operations "piecemeal".[1246] Rather, it evaluated the evidence in context, correctly characterising P-1813's testimony on Saleh's supposed participation as largely second-hand and contradicted by other accounts.[1247] It reasonably declined to rely on purported corroborative notes and radio materials that lacked verifiable sourcing, temporal specificity, and internal reliability.[1248] Such claims do not displace the Chamber's reasoned finding that Saleh was killed by a group that included at least three elements from Yekatom's group, including Honorine Mbafolo.[1249]

ii. Saleh was not engaged in hostile activities when attacked in his house

328. Yekatom's attempt to revive the "bow and arrow" narrative from trial, to suggest that Saleh engaged in 'hostilities', rests on a mischaracterisation of the record. *First*, the Chamber rightly found P-1786's account to be the least reliable, noting its inconsistency with multiple more credible witnesses and his failure to clearly establish his vantage point.[1250] *Second*, the Chamber did not reject the "Bulletin Notes" arbitrarily, but rather duly evaluated their relevance and chose not to rely on them when better and more substantiated evidence was available.[1251] This did not amount to the "systematic omission of exculpatory evidence", but merely reflects Yekatom's disagreement with the Chamber's assessment of evidentiary weight.[1252]

[1244] Yekatom Closing Brief, paras. 540-546.
[1245] Judgment, paras. 3638-3639. *See further* paras. 128-129.
[1246] Yekatom Appeal, para. 402.
[1247] Judgment, paras. 3638-3639.
[1248] Judgment, fn. 9002 ("Without further information on the provenance of this document, its author, or the sources mentioned—according to the note '*quelques jeunes*' which were met—the Chamber does not rely on this information to the detriment of the other information on the incident before it").
[1249] Judgment, para. 3669.
[1250] Judgment, paras. 3653-3654.
[1251] Judgment, fn. 9002 ("the Chamber does not rely on this information to the detriment of the other information on the incident before it").
[1252] *Contra* Yekatom Appeal, para. 403. *See* Judgment, paras. 3660-3669.

329. The Defence's "hostile locals" theory creates a false dichotomy. Finding that Yekatom's elements participated in the killing was not mutually exclusive with the presence of an angry local crowd. Indeed, P-1666 confirmed that local Christian civilians "joined the ranks" of Yekatom's group on arriving in Mbaïki.[1253] Therefore, even if locals were present or involved, they acted in concert with, or as part of, the elements of Yekatom's group. The Chamber also reasonably concluded that Saleh was targeted within his home.[1254] Even if the Appeals Chamber were to assume that Saleh shot an arrow, and "the violence escalated from that point onwards,"[1255] such an act was a self-evident response to the pre-existing hostility and immediate threat posed by the attackers. Saleh's response did not render him a 'hostile' participant, nor could it justify his subsequent murder and grisly mutilation.

iii. Saleh and his family were prominent in the remaining Muslims in Mbaïki

330. Yekatom's assertion that Saleh's murder could not have been motivated by anti-Muslim animus because some Muslims in Mbaïki remained unharmed is a *non sequitur*. Discriminatory intent does not require uniformity of conduct. The Chamber expressly acknowledged that some Muslims were not harmed and provided a reasoned explanation for the targeting of Saleh. This included his visibility within the community, his political role as Deputy Mayor, his prior interrogation by Yekatom's elements, and his defiant and public decision to remain in Mbaïki as a Muslim amid acute anti-Muslim hostility.[1256] Yekatom also ignores evidence that the "harm" avoided by other Muslims was often conditional upon renouncing their faith.[1257] Far from disproving animus, this demonstrates that safety was predicated on erasing Muslim identity, supporting the Chamber's finding that the violence directed at Saleh—who remained a visible and defiant Muslim figure in Mbaïki—was indeed discriminatory.

IV.6.e. The Chamber reasonably relied on footage depicting the mutilation of Saleh's body

331. Yekatom mischaracterises the Chamber's reliance on the video evidence. The Chamber expressly found that the footage shows Honorine Mbafolo, an identified perpetrator of Saleh's killing, mutilating his body after his death.[1258] This finding did not rest on the video alone, but was firmly supported by the convergent and credible testimony of insider witnesses P-1647 and

[1253] T-230-CONF, p. 58:4-7.
[1254] Judgment, paras. 3670, 4335.
[1255] Yekatom Appeal, para. 403.
[1256] Judgment, paras. 3629-3639.
[1257] T-090-CONF, pp. 40:15-41:21, 42:24-43:11.
[1258] Judgment, paras. 3655-3657.

P-1339,[1259] both of whom confirmed Mbafolo's participation in the murder.[1260] Contrary to Yekatom's claims, the Chamber need not have determined the precise interval between Saleh's murder and the commencement of the footage depicting his mutilation.[1261] It relied on the video to establish a *continuous course of conduct* by one of the perpetrators, making the statements made during the mutilation directly probative of motive.[1262]

IV.7. Ground 4.7: The Chamber properly assessed the evidence of the Yamwara crimes

332. Yekatom fails to show that the Chamber erred in assessing the evidence of the Yamwara crimes, in a way which materially affects his convictions.[1263] Rather, it made clear factual findings on Yekatom's presence at Yamwara when the victims were detained, his control over the direct perpetrators, and his *mens rea*.

333. Yekatom shows no inconsistency in the Chamber's assessment of witness credibility.[1264] To the contrary, a witness may be reliable in one part of their testimony, but not in another.[1265] The Chamber explained its analysis carefully, taking into account "the time that has elapsed since the Yamwara incident and its traumatic nature" and finding that "a majority of these inconsistencies were either minor or did not concern facts material to the allegations."[1266] The Chamber explained—in detail—how it reconciled inconsistencies.[1267] Yekatom misreads the Judgment in these respects, and overstates the issues he identifies. Notably:

- The Chamber explained P-1704's unreliability on certain aspects incriminating Yekatom (his initial presence at Yamwara and during Saint Cyr's torture, Cœur de Lion stabbing Saint Cyr),[1268] and the detail of whether an abductee was sent to point out P-1654's house.[1269]

[1259] Judgment, paras. 3654, 3656, and fn. 9015. *See also* T-156-CONF, pp. 28:25-29:18, 31:23-32:18 (referring to CAR-OTP-2094-7618, at 00:10:32-00:10:34).
[1260] Judgment, paras. 3654, 3668-3669. *See above e.g.* paras. 321-325.
[1261] *Contra* Yekatom Closing Brief, para. 405.
[1262] Judgment, para. 3670.
[1263] *Contra* Yekatom Appeal, paras. 406-409, 412.
[1264] Yekatom Appeal, para. 406.
[1265] Judgment, para. 203 (fn. 193: citing *Ongwen* TJ, para. 260; *Ngudjolo* AJ, para. 168, *Al Hassan* TJ, paras. 37, 43).
[1266] Judgment, para. 3107.
[1267] *Contra* Yekatom Appeal, para. 407. *See* Judgment, para. 3107.
[1268] *See* Judgment, paras. 3166, 3181.
[1269] *See* Judgment, para. 3231 (fn. 7957).

- The Chamber explained P-1705's unreliability on P-1654's encounter with Yekatom.[1270]
- On the precise sequencing of the female abductees being forced to undress, the Chamber's reasoning is clear in relying on the evidence of the female abductees themselves (P-1811 and P-0967) over the other abductees (P-1704, P-1705 and P-1716).[1271]
- The Chamber explained why its findings on P-1839's presence at Yamwara were undisturbed by P-1716's evidence that he did not see [REDACTED] there.[1272]
- The Chamber explained why a minor discrepancy in P-0967's evidence about Saint Cyr's interrogation did not alter its view of her credibility generally.[1273]

334. Yekatom misrepresents the Chamber's analysis in finding that his own presence, words and actions did not reassure the female abductees.[1274] The Chamber did not prefer P-0967's account over P-1811's account.[1275] Rather, the Chamber accepted the evidence of both P-0967 and P-1811 concerning Yekatom's words and their effect,[1276] his manner,[1277] and the overall circumstances of their captivity and treatment.[1278] Similarly, Yekatom misrepresents the Chamber's analysis of P-1654's letter.[1279] The Chamber did not "recognis(e) contamination" of witnesses,[1280] but recognised that two witnesses had read the letter prior to their testimony and duly took this into account (including on P-1705's reliability in one aspect).[1281] Yekatom's undeveloped and unexplained submission that "the witnesses' testimony diverged materially from [their] statements"[1282] should be summarily dismissed.

335. Finally, even if *arguendo* the Chamber's credibility findings were inconsistent in some way—which they were not—Yekatom's criminal responsibility is not materially affected. Yekatom shows no connection between the alleged errors and essential findings, but rather identifies only marginal issues[1283] addressed by the Chamber out of thoroughness. Where

[1270] *See* Judgment, paras. 3238-3239. The encounter is established in any case based on the evidence of P-1654 himself: *see* paras. 3232-3235.
[1271] *See* Judgment, paras. 3205-3208, *especially* para. 3208.
[1272] *See* Judgment, fn. 7793.
[1273] *See* Judgment, para. 3175 (fn. 7843). *See also* para. 3215.
[1274] *See* Judgment, para. 3228.
[1275] *Contra* Yekatom Appeal, para. 408.
[1276] *See* Judgment, para. 3225 ("P-1811 recalled still feeling afraid and not reassured").
[1277] *See* Judgment, para. 3226.
[1278] *See* Judgment, para. 3227.
[1279] *See* Yekatom Appeal, paras. 407-409.
[1280] *Contra* Yekatom Appeal, para. 408.
[1281] *See above* para. 333 (second bullet point).
[1282] Yekatom Appeal, para. 408.
[1283] *See above* para. 333 (first, second, third and fifth bullet points).

appropriate, ambiguities were resolved in Yekatom's favour.[1284] Nor do the three factual findings emphasised by Yekatom hinge on his claimed errors.[1285] Rather, these findings are supported by the overwhelming body of evidence on the record. As Yekatom accepts,[1286] the evidence clearly establishes that he visited Yamwara while the abductees were detained there.[1287] The disputed matters—his control over the direct perpetrators,[1288] and his *mens rea* in relation to the Yamwara crimes[1289]—are likewise firmly established.

336. For the reasons set out above, Ground 4 of Yekatom's Appeal should be rejected.

V. Ground 5: The Chamber correctly addressed specific crimes

337. Yekatom fails to show that the Chamber "misapplied the law" in convicting him under counts 1 (directing an attack against the civilian population), 4 (forcible transfer and deportation), 5 (civilian displacement), 11 (other inhumane acts), and 13 (cruel treatment).[1290]

V.1. Ground 5.1: Directing an attack against the civilian population - article 8(2)(e)(i)

338. The Chamber correctly defined the requirements of an "attack" under article 8(2)(e)(i), including that "[t]he civilian population or individual civilians [not taking DPH] must have been the *primary* object of the attack" and not mere incidental harms.[1291] While Yekatom does not challenge these definitions, he asserts that the Chamber misapplied the law to the facts, repeating unsuccessful trial arguments which should be dismissed.[1292]

339. *First*, the Chamber did not infer the existence of such an attack merely from the fact of civilian casualties, nor misdirect itself as to the applicable standard.[1293] It correctly stated the law—grounding a strong presumption that it then applied that law correctly—even doing so in terms similar to those advanced by Yekatom.[1294] Rather, it was on the facts that the Chamber

[1284] *See above* para. 333 (first bullet point).
[1285] *Contra* Yekatom Appeal, para. 412.
[1286] *See* Judgment, para. 3222. *See also* Yekatom Closing Brief, paras. 461, 463.
[1287] *See* Judgment, paras. 3220-3228 (Yekatom meeting the female captives at Yamwara in the evening), 3232-3235 (Yekatom meeting P-1654 at Yamwara also in the evening), 3250 (Yekatom meeting P-1716's father at Yamwara the next morning).
[1288] *See* Judgment, paras. 3059-3079 (Yekatom's control over the Yamwara perpetrators). *See also above* section II.4 (paras. 100-135) (Yekatom's control over his group generally).
[1289] *See* Judgment, paras. 3230, 3241-3244, 3249, 3269, 3275.
[1290] *Contra* Yekatom Appeal, para. 415. *See generally* paras. 415-436
[1291] *See* Judgment, para. 3790. *See also* paras. 3788-3791.
[1292] *Contra* Yekatom Appeal, paras. 416-419, 433.
[1293] *Contra* Yekatom Appeal, para. 416.
[1294] *Compare e.g.* Yekatom Appeal, para. 416, *with* Judgment, paras. 3788-3790.

reasonably rejected Yekatom's argument that the Muslim civilian population was not the primary object of the attack.[1295]

340. In particular, the Chamber correctly recalled that article 8(2)(e)(i) does not require that the civilian population is the *sole* or *exclusive* object of an attack, and that the presence of non-civilians does not deprive a population of its civilian character.[1296] Consequently, in principle, the fact that an attack may also include strikes on military objectives does not preclude that it is directed against a civilian population.[1297] Rather, determining the actual object of attack is an evidentiary question, to be resolved on the facts. Yekatom shows no error in this analysis. The Chamber reasonably concluded on credible evidence that neither Boeing Market itself, nor the mosque, was a military objective in the circumstances.[1298] As such, it reasonably rejected the idea that civilian deaths in and around these locations were merely *incidental*, rather than reflecting the object of the attack itself.

341. *Second*, the Chamber correctly and reasonably assessed the relevant circumstances to determine that the Muslim civilian population *was* the primary object of attack.[1299] While Yekatom recites various potentially relevant factors, this does not mean that each is a *sine qua non*. To the contrary, the Chamber noted evidence relevant to various factors including: the means and methods employed;[1300] the status of persons and objects affected in the attack;[1301] the level of armed resistance in the relevant places at relevant times,[1302] and; the absence of precautions.[1303] From this, it reasonably concluded that the Muslim civilian population was the primary object of attack.[1304] Yekatom shows no error in this analysis. In particular, his semantic disagreement with the terms in which the Chamber assessed his instructions to carry out the

[1295] *Contra* Yekatom Appeal, para. 416. *See e.g.* Judgment, paras. 3952-3954 (setting out Yekatom's arguments).
[1296] Judgment, para. 3955. *See also e.g. Mbarushimana* CD, paras. 142, 148.
[1297] In this context, an indiscriminate attack (which is directed equally at civilians and military objectives, or treats them as the same) may amount to making the civilian population the primary object of attack: *see also* Judgment, para. 3956. *See further Ongwen* TJ, para. 2760; *Ntaganda* TJ, paras. 921, 923; *Katanga* TJ, para. 802. This is to be distinguished from an attack which is *only* directed against military objectives, even if it is anticipated that civilians will be harmed incidentally—a question whose legality is determined under the separate rule of proportionality: *see e.g.* Statute, art. 8(2)(b)(iv).
[1298] Judgment, para. 3957. For the correct definition of military objective, *see* para. 3956.
[1299] *Contra* Yekatom Appeal, paras. 417-418.
[1300] *See e.g.* Judgment, paras. 2317-2327, 2427-2454, 2465-2525, 2529-2651, 3950-3951, 3959, 3975, 3992.
[1301] *See e.g.* Judgment, paras. 2538-2651, 2655-2677, 3951, 3959, 3962, 3866-3971, 3973, 3992, 3997.
[1302] *See e.g.* Judgment, paras. 2654, 2656, 2660-2677, 3959, 3973.
[1303] *See e.g.* Judgment, paras. 3950, 3958.
[1304] Judgment, para. 3959.

attack, and its understanding of the relevant evidence, does not show that the Chamber was unreasonable.[1305] Nor does it show any misapplication of the *mens rea*.[1306]

342. *Third*, there is no "threshold" for the application of article 8(2)(e)(i).[1307] *Any* attack directed against civilians not taking a direct part in hostilities, or the civilian population, is unlawful and a war crime. There is no requirement to prove a "demonstrated pattern of force directed at civilians" within the wider conflict.[1308] What matters is that, as in this case, it is established beyond reasonable doubt that the civilian population was made the object of attack, with intent and knowledge.

343. *Finally*, even if the Chamber had erred in its technical reasoning on these matters, such error would be harmless. This is because any reasonable chamber, directing itself properly (including with regard to potential incidental civilian harms), would still have found beyond reasonable doubt that the civilian population was the primary object of attack.[1309]

V.2. Grounds 5.2 and 5.3: Displacement of civilians - article 8(2)(e)(viii)

344. Since Yekatom challenges two aspects of the application of article 8(2)(e)(viii), these arguments are addressed together. He shows no error in the Chamber's findings of an order: (i) to displace civilians; (ii) which was not justified by imperative military reasons.

V.2.a. The Chamber properly found an order for displacement of civilians

345. The Chamber properly established the war crime of displacing civilians.[1310] It correctly considered that "conduct alone can constitute an order [for displacement]".[1311] It reasonably found that Yekatom's conduct—particularly his "specific and express instructions" to target "sectors where 'Muslims' were to be found", and his elements' conduct in "drawing no distinction" between Muslim civilians and the Seleka—proved such an order.[1312]

346. *First*, the Chamber's legal interpretation was correct because it was consistent with the established framework of international law, as required by article 8(2)(e).[1313] Notably, neither article 17 of AP II nor customary international law supports Yekatom's claim that a qualifying

[1305] *Contra* Yekatom Appeal, para. 418.
[1306] *Contra* Yekatom Appeal, para. 418.
[1307] *Contra* Yekatom Appeal, para. 419.
[1308] *Contra* Yekatom Appeal, para. 419. Nor is this proposition supported by the citation to *Katanga* TJ, para. 802.
[1309] *Contra* Yekatom Appeal, para. 433.
[1310] *Contra* Yekatom Appeal, paras. 420-424.
[1311] Judgment, para. 3985.
[1312] Judgment, para. 3989.
[1313] *See e.g. Ntaganda* AJ, para. 548 (citing *Ntaganda* 2nd Jurisdiction AD, para. 53).

"order" is limited to "an instruction *expressly* aimed at removing a civilian population".[1314] This would defeat the purpose of prohibiting the order of civilian displacement by allowing instructions which directly or indirectly result in the same outcome. In particular, Yekatom overlooks that article 17(1) of AP II has been interpreted as including a more general prohibition of coerced displacement.[1315] Nor is Yekatom assisted by the authorities upon which he relies, either concerning the drafting history of article 8(2)(e)(viii)[1316] or article 17 of AP II.[1317] The fact that the Arabic and Russian versions of the Statute refer to the "issuing" of an order is not determinative but merely reinforces the need for a correct interpretation of article 8(2)(e)(viii) in accordance with the established principles of the VCLT.[1318]

347. Furthermore, the Chamber did not elide "ordering" as a mode of liability and "ordering displacement" as a war crime, but rather emphasised the need to distinguish between them.[1319] It merely recognised, correctly, that an order to displace civilians under article 8(2)(e)(viii) and an order to commit any crime under the Statute under article 25(3)(b) can both be "fulfilled by conduct *not* including an express order, as such."[1320] Unlike *Ntaganda*, it left open that article 8(2)(e)(viii) could also be satisfied by directly instructing the *civilian population* to leave.[1321]

[1314] *Contra* Yekatom Appeal, para. 422 (emphasis added). *See also* paras. 423-424. *See further* *Ntaganda* AJ, para. 549 (defining the relevant treaty and customary law framework).

[1315] Yekatom thus incorrectly opposes the use of "ordering" with "ordering or causing" in the Statute. *See* Piotrowicz, p. 347 (suggesting that ordering and carrying out a displacement "appear to be treated as synonymous"); Willms, p. 564 (arguing that article 17(1) of AP II "not only prohibits orders of forced displacement, but also the [direct] coercion of civilians to leave an area", and recalling that "many States Parties […] have dropped the term 'ordered'"). *See further* ICRC, *AP Commentary*, APII, pp. 1472 (mn. 4853), 1474 (mn. 4864); Willms, pp. 551-559, 564; CIHL Study, rule 129, pp. 459-460 (fn. 21: UN practice condemning "instances of forced displacement").

[1316] *Contra* Yekatom Appeal, para. 422 (fns. 1618, 1620). Geiβ and Zimmermann suggest that the drafters intended article 8(2)(e)(viii) to prohibit "acts which are *directly* aimed at removing the respective civilian population", and make no reference to "an instruction *expressly* aimed". This is also consistent with their view that an "order need not necessarily be issued in writing and may be transmitted through a variety of means": *see* Geiβ and Zimmermann, pp. 658-659 (mns. 966-967). While Dörmann seems to argue that article 8(2)(e)(viii) was drafted only to implicate the individual giving the order (without suggesting that this must amount to an *express* order to displace), his position is ambiguous since he simultaneously recognises that a person who *carries out* the displacement should also incur responsibility: *see* Dörmann, p. 472

[1317] *Contra* Yekatom Appeal, para. 423 (fn. 1623). While Yekatom cites Willms' discussion of a possible interpretation of AP II as requiring an order that would result in a displacement (but still not an express order to displace), this is not Willms' view of the best interpretation, which is that forced displacement does not need to have been ordered for a violation of article 17(1) of AP II to occur. Willms notes that it remains to be seen whether the Court will require an order under article 8(2)(e)(viii). *See* Willms, p. 564.

[1318] *Contra* Yekatom Appeal, para. 423 (fn. 1623). On the correct interpretation of article 17(1) of APII, *see generally* Willms.

[1319] *Contra* Yekatom Appeal, paras. 421-423. *See* Judgment, para. 3987.

[1320] Judgment, para. 3987. *See above* para. 346.

[1321] *Contra* Yekatom Appeal, paras. 420-421. While referring to the Trial Chamber's analysis in *Ntaganda*, the Chamber did not adopt it as such—notably, it did not require the perpetrator to "instruct *another person*" either to displace "a civilian population" or to carry out an act or omission leading to that result: *compare e.g.* Judgment, para. 3985, *with* paras. 3803-3809, *especially* para. 3806. *See further* *Ntaganda* AJ, paras. 566-567.

Yet on the facts of this case it found (as in *Ntaganda*) that Yekatom ordered his elements to perform acts leading to the displacement of Muslim civilians.

348. *Second*, Yekatom shows no error in the Chamber's finding that the relevant order was constituted by the combination of: (i) his prior instructions to "target all sectors where Muslims are to be found"[1322] and; (ii) his specific initiation of the Boeing attack by firing his pistol. He misrepresents the Chamber's findings by claiming it considered "conduct which may contribute to civilians deciding to flee" as "ordering displacement."[1323] Since an order need not take any particular form,[1324] the Chamber properly identified Yekatom's order on the basis of conduct conveying "an imperative action to follow, namely an attack creating the conditions in which the displacement of the civilian population would inevitably take place."[1325] Nor does Yekatom show any error in the Chamber's conclusion that there was a "direct link" between Yekatom's order and the displacement of Muslim civilians,[1326] which Yekatom knew and intended.[1327]

V.2.b. The ordered displacement was not justified by imperative military reasons

349. The Chamber correctly and reasonably found that (ordering)[1328] the displacement of civilians under counts 5 and 25 was not justified by imperative military reasons,[1329] since Yekatom's group was instructed to participate in attacks directed against the civilian population.[1330] Yekatom merely disagrees with these conclusions based on his claim that the operations of his group were lawful.[1331] As previously stated, this is untenable.[1332]

[1322] Judgment, para. 3986.
[1323] *Contra* Yekatom Appeal, para. 424. *See* Judgment, paras. 3986, 3989.
[1324] *See also above* paras. 346-347.
[1325] Judgment, para. 3986.
[1326] Judgment, para. 3988 (recognising that Yekatom's conduct need not have been the sole reason, while satisfied that, had it not been for Yekatom's conduct, the Muslim civilian population would not have been displaced).
[1327] Judgment, para. 4015. *See also* paras. 4016, 4025.
[1328] *See also above* paras. 345-348.
[1329] *See also* Elements of Crimes, art. 8(2)(e)(viii), element 2 ("military necessity"); *Ntaganda* TJ, paras. 1098-1100.
[1330] *See e.g.* Judgment, paras. 3981-3982 (displacements from Boeing and Cattin), 4321-4322 (displacements along the PK9-Mbaïki axis). The approach taken by the Chamber is similar to that taken by the *Ntaganda* Trial Chamber to which Yekatom cites: *Ntaganda* TJ, paras. 1099-1100.
[1331] *Contra* Yekatom Appeal, para. 425.
[1332] *See e.g. above* paras. 143, 166, 235, 249, 256, 270. *See also generally above* section III (paras. 201-284).

V.3. Ground 5.4: Other inhumane acts and cruel treatment - articles 7(1)(k), 8(2)(c)(i)

350. The Chamber correctly applied the severity threshold. Yekatom shows no error materially affecting his convictions under counts 11 (other inhumane acts) and 13 (cruel treatment).[1333]

351. *First*, Yekatom shows no error in the Chamber's assessment of the six abductees' individual suffering.[1334] While the Chamber found that "the treatment of the six persons in the present case, when considered as a whole, squarely fulfilled the gravity requirement",[1335] the qualifier "considered as a whole" related to the "*treatment*" and not to the "six persons". Yekatom disregards that the Chamber's factual findings on the severity requirement were based on a detailed evidentiary analysis of the individual harm inflicted on each of the six victims.[1336] Mere disagreement with the structure of the Chamber's reasoning establishes no error.[1337]

352. *Second*, it is not required that each type of harm (if forming part of an overall course of conduct) must itself reach the severity threshold, as Yekatom seems to imply.[1338] Yekatom misreads the Chamber's finding that the treatment "considered as a whole" fulfilled the severity requirement.[1339] As the Chamber correctly held (in relation to cruel treatment), the determination whether particular conduct meets the threshold "will depend on an assessment of all particular circumstances of a case".[1340] Yekatom offers no legal basis for insisting that the Chamber should further have identified, specifically: (i) how a victim felt when threatened on a particular occasion;[1341] (ii) the duration, effect, or severity of a particular beating,[1342] or; (iii) the degree of pain resulting from particular instances of captivity or being forced to walk a long distance.[1343] Rather, what matters is that the *overall* course of conduct inflicted by the perpetrator on the victim met the threshold.

[1333] *Contra* Yekatom Appeal, paras. 426-428, 435. Despite Yekatom's sub-heading referring to "Article 7(1)(1)(f)", the Prosecution understands this to mean, relevantly, his conviction under article 7(1)(k) (other inhumane acts).
[1334] *Contra* Yekatom Appeal, para. 426.
[1335] Judgment, para. 4147.
[1336] For factual findings, *see* Judgment, paras. 4147-4153 (on count 11), 4178-4182 (on count 13). For evidentiary analysis, *see* Judgment, paras. 3143-3145, 3148, 3154, 3158-3162, 3167, 3169, 3171-3175, 3177-3178, 3203-3207, 3215-3219, 3246-3248, 3252-3259, 3262-3265.
[1337] *See* Yekatom Appeal, para. 426 (fn. 1644: suggesting comparisons to *Al Hassan* and *Krnojelac*).
[1338] *Contra e.g.* Yekatom Appeal, paras. 427-428.
[1339] *See* Judgment, para. 4147. *See also* paras. 4153 (count 11), 4182 (count 13).
[1340] Judgment, para. 3831.
[1341] *See* Yekatom Appeal, para. 427.
[1342] *See* Yekatom Appeal, para. 427.
[1343] *See* Yekatom Appeal, para. 428.

353. The Chamber was thus correct to consider all relevant types of mistreatment, including individual acts of imprisonment and forced search / undressing. For this purpose, it was immaterial that certain acts contextualising or forming part of this course of conduct may also amount to other crimes in their own right.[1344] Rather, the Chamber correctly recalled that "a conviction can be entered *also* under article 7(1)(k) when the full scope of the culpable conduct is not reflected by its qualification under the enumerated crime(s) alone."[1345]

354. *Third*, the Chamber correctly applied the *mens rea* required for articles 7(1)(k) and 8(2)(c)(i).[1346] In doing so, it correctly rejected Yekatom's claim that it was necessary to show that the infliction of "third party" suffering was "deliberate".[1347] In any event, the Chamber found that Yekatom's elements "knew that keeping the other captives within hearing distance of Saint Cyr's torture will cause severe mental suffering and that such suffering will result."[1348]

355. *Finally*, Yekatom fails to show the impact of any error. The Chamber's severity assessment was built on multiple and often inseparable types of harm suffered by all six victims, and its conclusion reflected the "totality of these circumstances endured by the captives from the moment they were apprehended until their respective release."[1349] Even if it were erroneous to rely on any individual aspect, the Chamber's ultimate finding would remain undisturbed.

V.4. Ground 5.5: Forcible transfer and deportation - article 7(1)(d)

356. The Chamber correctly established the crime of forcible transfer and deportation on the PK9-Mbaïki axis (count 24). Yekatom shows no error in the Chamber's approach to causation, coercion, or the absence of lawful justification, which materially affects his conviction.[1350]

357. *First*, the Chamber reasonably concluded that all relevant Muslim civilians "left as a result of Mr Yekatom's acts and not as a result of a fear of violence commonly associated with armed conflict".[1351] Based on the evidence, it found that "Muslims along the PK9-Mbaïki axis would not have wished to flee, absent the circumstances created by Mr Yekatom's group in that area".[1352] In that context, it was entitled to find that, while "other factors" might have

[1344] *Contra* Yekatom Appeal, para. 428.
[1345] Judgment, para. 3827 (citing *Ongwen* TJ, para. 2747).
[1346] *See* Judgment, paras. 3875, 4253. *Contra* Yekatom Appeal, para. 427. *Cf.* Yekatom Closing Brief, para. 636.
[1347] *See* Judgment, para. 4255.
[1348] Judgment, para. 4255.
[1349] *See* Judgment, paras. 4153 (count 11), 4182 (count 13).
[1350] *Contra* Yekatom Appeal, paras. 429-432, 436.
[1351] Judgment, para. 4315. *Contra* Yekatom Appeal, para. 429 (addressing the PK9-Mbaïki axis only).
[1352] Judgment, para. 4314. *See further* paras. 3417-3445 (*especially* paras. 3439-3445), 3565-3627 (*especially* paras. 3608-3609).

"compounded or added to the reasons for displacement", they did not break the causal link to the conduct of Yekatom's group.[1353] It did not adopt "circular" logic, since it *did* make the predicate finding, reasonably, that Yekatom's group caused the displacements.[1354]

358. *Second*, the Chamber reasonably found that the Muslim civilian population lacked any genuine choice but rather was coerced to leave.[1355] Yekatom's claim of error depends on the false premise that his operations were lawful—a premise reasonably rejected in the Judgment. Furthermore, the displacement of the Muslim civilian population resulted specifically from the conduct of *Yekatom's group* (and not the Anti-Balaka generally)—this included their advance towards Mbaïki, their armed presence in Lobaye prefecture, their takeover of villages, and their takeover or creation of various checkpoints.[1356] In this context, there was no reasonable possibility that the coercive acts by Yekatom's group were limited to isolated incidents.[1357]

359. *Third*, as explained above, the Chamber correctly and reasonably rejected any justification for imperative military reasons.[1358] Nor does Yekatom's undeveloped argument show any error in the Chamber's finding that the forcible transfer and deportation were committed as part of a widespread or systematic attack against a civilian population.[1359]

360. For the reasons set out above, Ground 5 of Yekatom's Appeal should be rejected.

[1353] Judgment, para. 4315. *See also* paras. 3976-3979.
[1354] *Contra* Yekatom Appeal, para. 429.
[1355] *Contra* Yekatom Appeal, para. 430.
[1356] Judgment, paras. 4314-4316. *See further* paras. 3297-3335 (conduct in advancing on the PK9-Mbaïki axis and Yekatom's instruction to kill all the Muslims in their area), 3360-3382 (conduct in taking over checkpoints and setting up new bases). *See also paras.* 3533-3564 (express threats to Muslim civilians in Mbaïki by Yekatom's group and related harassment); 3628-3642 (Yekatom's group harassing remaining Muslim civilians, such as Djido Saleh and his family), 3643-3682 (killing of Djido Saleh by a group including some of Yekatom's elements). *See also above* section II.2.d. (paras. 65-68); section II.2.e.ii. (paras. 72-76); section III.3 (paras. 249-284); section IV.6 (paras. 320-331).
[1357] *Contra* Yekatom Appeal, para. 431.
[1358] *See above* para. 349. *Contra* Yekatom Appeal, para. 432. While Yekatom now adds that these operations were conducted also for reasons of civilian security, he does not substantiate this but likewise only cross-refers to his Ground 5.3 (addressing imperative military reasons only).
[1359] *Contra* Yekatom Appeal, para. 432.

RESPONSE TO NGAÏSSONA'S CONVICTION APPEAL

VI. Ground 1: The Chamber correctly applied the evidentiary framework and made reasonable factual findings

VI.1. Ground 1.1: The Chamber applied the correct evidentiary standards

361. Ngaïssona claims abstractly that the Chamber erred in assessing the evidence, yet fails to identify the affected findings, explain why such findings were unreasonable, or explain how any such error materially affected the Judgment. Such submissions should be dismissed *in limine*.[1360] In any event, the Chamber correctly applied the relevant evidentiary standards and the standard of proof. It properly assessed circumstantial evidence, hearsay evidence, rule 68(2) statements, and insider witness testimony. The Judgment is coherent and properly reasoned.[1361]

VI.1.a. The Chamber properly assessed circumstantial evidence

362. The Chamber correctly applied the "beyond reasonable doubt" standard,[1362] requiring such proof for "any facts indispensable for entering a conviction, namely those constituting the elements of the crimes or modes of liability charged".[1363] It correctly explained that findings based on circumstantial evidence meet this standard if the conclusion drawn is the only reasonable inference from the relevant facts.[1364] Ngaïssona's vague and unsubstantiated submission that "the Judgment is replete with instances where such inferences were not the only reasonable ones"[1365] shows no error. Very often, Ngaïssona overlooks that this standard of review applies *only* where the fact in question must be proved beyond reasonable doubt.[1366] Ngaïssona fails to identify any fact that the Chamber should have established beyond reasonable doubt but did not.

VI.1.b. The Chamber properly assessed hearsay evidence

363. Ngaïssona shows no error in the Chamber's cautious assessment of hearsay evidence, let alone one materially affecting the Judgment.[1367] It is well established, including by Ngaïssona's own sources, that "as a matter of law, it is permissible to base a conviction on circumstantial or hearsay evidence."[1368] While Ngaïssona seems to contend that caution is

[1360] *See above* para. 3.
[1361] *Contra* Ngaïssona Appeal, paras. 10-24.
[1362] *Contra* Ngaïssona Appeal, paras. 11-12.
[1363] Judgment, para. 127. *See also* paras. 126-129.
[1364] Judgment, para. 136 (cited in Ngaïssona Appeal, para. 12).
[1365] Ngaïssona Appeal, para. 12.
[1366] *Contra* Ngaïssona Appeal, para. 11. *See Bemba et al.* AJ, para. 868.
[1367] *Contra* Ngaïssona Appeal, paras. 13-15.
[1368] *Muvunyi First* AJ, para. 70 (cited in Ngaïssona Appeal, fn. 18).

warranted whenever hearsay evidence is even *discussed*, the law requires caution before *basing convictions* on hearsay evidence.[1369] Ngaïssona's reliance on how other chambers assessed hearsay evidence is misplaced, as differences in evidentiary assessment do not establish error in this case. Ngaïssona's general submission that the Chamber repeatedly failed to uphold the principles of hearsay evidence and thereby "fundamentally infringed on Mr Ngaïssona's fair trial rights"[1370] is thus unconvincing.[1371] Rather, the Chamber consistently demonstrated the proper approach, recognising that hearsay may carry lesser probative value (depending on the circumstances) and assessing such evidence accordingly.[1372] The Chamber correctly recognised and considered witnesses' source of knowledge as a relevant factor.[1373]

364. The Chamber assessed hearsay evidence, as necessary, individually. For example, the Chamber: (i) found P-0487 unreliable, noting that parts of his evidence were based on speculation and hearsay;[1374] (ii) noted Ngaïssona's argument that Demafouth and Poussou relied largely on anonymous hearsay, but explained why it still found their evidence generally credible and relied on specific aspects,[1375] and; (iii) found P-1839 fully credible, notwithstanding some hearsay, and carefully explained the factors supporting that conclusion.[1376] Ngaïssona cites two witnesses as examples of the alleged error—P-1847 and P-2673—yet fails to show (or even explain) how the Chamber erred in those respects.[1377] The Chamber's approach to these witnesses does not show a lack of consistency, but rather underscores its careful and case-specific approach to the evidence.

VI.1.c. The Chamber properly applied the law on corroboration and untested evidence

365. The Chamber correctly stated the law on corroboration.[1378] It considered Defence submissions on uncorroborated evidence first when assessing witness credibility, and then as necessary in its evidentiary analysis.[1379] While rule 63(4) does not require corroboration, Ngaïssona is over-broad in contending that "specific circumstances *often require* corroboration

[1369] *Muvunyi* First AJ, para. 70; *Rutaganda* AJ, para. 34 (cited in Ngaïssona Appeal, fn. 18).
[1370] *Contra* Ngaïssona Appeal, paras. 13-15.
[1371] To the limited extent Ngaïssona asserts concrete errors in the Chamber's approach to hearsay evidence, these are addressed where they arise: *see below e.g.* paras. 420, 426, 440, 451, 463, 470, 475.
[1372] Judgment, para. 135.
[1373] Judgment, para. 200.
[1374] Judgment, para. 230.
[1375] Judgment, paras. 279-285, 295-296.
[1376] Judgment, paras. 358-364.
[1377] Ngaïssona Appeal, para. 15 (recognising that the Chamber did not make findings based on anonymous hearsay evidence from these two witnesses but arguing that this shows inconsistency in its approach).
[1378] Judgment, para. 138. *Contra* Ngaïssona Appeal, paras. 16-19.
[1379] Judgment, paras. 138-139.

of witness testimony, such as where there are reservations with respect to a witness' credibility".[1380] The sources he cites do not support this claim.[1381]

366. Ngaïssona incorrectly alleges that the Chamber relied on 'untested' evidence—in the sense of evidence which he did not have the *opportunity* to test—for findings crucial to his criminal responsibility.[1382] However, reliance on such evidence is permitted as long as it is not the *sole or decisive* basis for conviction; it may still carry some weight in the evidentiary assessment without unfairness.[1383] This was the rule in both cases cited by Ngaïssona, where the ECtHR found that trials were unfair because untested evidence was decisive in determining guilt.[1384] Yet in this case, by contrast, the Chamber correctly assessed untested evidence, which was *not* itself decisive in concluding guilt.[1385] The Chamber properly noted that prior recorded testimony under rule 68(2) precluded Defence examination,[1386] and did not err in assessing the witnesses identified by Ngaïssona, such as P-1847, P-2269 or P-2200.[1387]

367. *First*, Ngaïssona simply repeats his unsuccessful trial arguments on P-1847.[1388] P-1847 appeared before the Chamber but failed to provide evidence on material aspects incriminating Ngaïssona, but which were contained in his prior recorded testimony. The Chamber received P-1847's prior recorded testimony under rule 68(2)(d), finding *inter alia* that (i) he had been "materially influenced by improper interference"; and (ii) Ngaïssona was "in a position to fully and meaningfully question" P-1847 when he testified in person.[1389] The Appeals Chamber affirmed this approach,[1390] rejecting Ngaïssona's reliance on *Ruto* and *Sang*—an argument Ngaïssona now impermissibly seeks to relitigate.[1391]

[1380] Ngaïssona Appeal, para. 16 (emphasis added).
[1381] Ngaïssona Appeal, paras. 16-17 (fn. 39: citing *Bemba et al.* AJ, para. 1084 ("A trial chamber may find, in the specific circumstances […], that corroboration of a particular witness's testimony—or part thereof—is needed […] this does not mean that corroboration is required as a matter of law when evaluating the testimony of any witness"); fn. 40: citing *Ntaganda* AJ, para. 672 ("chambers enjoy broad discretion […] in deciding whether corroboration is necessary")).
[1382] Ngaïssona Appeal, para. 18.
[1383] *Contra* Ngaïssona Appeal, para. 17.
[1384] *Schatschaschwili v. Germany*, paras. 76, 163-165; *Keskin v. The Netherlands*, paras. 49, 64.
[1385] *Contra* Ngaïssona Appeal, paras. 18-19.
[1386] Judgment, para. 196.
[1387] Ngaïssona Appeal, paras. 18-19.
[1388] Ngaïssona Appeal, paras. 18-19.
[1389] *See* Judgment, para. 368 (fn. 512: citing Rule 68(2)(d) AD, para. 103). *See also* Judgment, paras. 369-373; Rule 68(2)(d) AD, paras. 54-63, 110-117.
[1390] *See* Judgment, para. 368 (fn. 513: citing Rule 68(2)(d) AD, p. 3).
[1391] Rule 68(2)(d) AD, paras. 114-115. *See generally* paras. 111-117.

368. *Second*, the Chamber properly relied on the statements of P-2269 and P-2200 under rule 68(2)(c).[1392] P-2269 addressed matters including: (i) the groups in Gobere; (ii) the planning and execution of the 5 December 2013 attacks in Bangui and Bossangoa, and; (iii) Ngaïssona's appointment as General Coordinator, and provision of financial assistance.[1393] However, no finding on facts essential to establishing Ngaïssona's conviction was based solely or decisively on P-2269's evidence. As the Chamber noted, his evidence on the first two points was not unique, and his evidence on the third point was assessed "together with other evidence before it."[1394] Likewise, Ngaïssona's conviction for adding and abetting murder was not based solely or decisively on P-2200's evidence regarding certain murders.[1395]

VI.1.d. The Judgment is sufficiently reasoned

369. Ngaïssona shows no breach of the Chamber's article 74(5) duty to provide "a full and reasoned statement of [its] findings on the evidence and conclusions" in the Judgment.[1396] A Chamber need not mention every item of evidence or argument of the parties, but must identify with "sufficient clarity" the basis of its decision.[1397] Moreover, a Chamber is presumed to have evaluated all the evidence before it. In this case, that is supported by the Chamber's express confirmation that it did so.[1398] The Defence fails to demonstrate the opposite, and thus fails to meet its burden.[1399]

370. Despite recognising this high threshold, Ngaïssona identifies no clearly relevant evidence disregarded by the Chamber. Rather, without elaboration, he merely lists (in footnotes) certain examples of paragraphs or even footnotes in the Judgment that he considers to be insufficiently reasoned. Such undeveloped arguments are insufficient to show error. Ngaïssona merely:

- criticises the Judgment for its alleged lack of specificity on irrelevant matters, on which the Chamber did not need to be more specific;[1400]

[1392] *Contra* Ngaïssona Appeal, paras. 18-19.
[1393] Judgment, para. 416. *See generally* paras. 415-423.
[1394] Judgment, para. 421. *See also* para. 420.
[1395] *See below* paras. 434-435.
[1396] *Contra* Ngaïssona Appeal, para. 21.
[1397] *See e.g. Bemba* AJ, para. 53. *See also* Ngaïssona Appeal, para. 21.
[1398] Judgment, para. 133. *See also* paras. 130-132, 137.
[1399] *See Bemba et al.* AJ, para. 105 (citing *Haliloviæ* AJ, paras. 121, 188; *Kvočka et al.* AJ, para. 23; *Kalimanzira* AJ, para. 195). *See* Ngaïssona Appeal, para. 21. *See also Delalić* AJ, para. 498; *Kvočka et al.* AJ, para. 23; *Kalimanzira* AJ, para. 195; *Simba* AJ, para. 152; *Case 002/01* AJ, para. 304.
[1400] *Contra* Ngaïssona Appeal, fn. 75.

- cites findings in the "Legal Findings " or "Sentence" sections (complaining that they lack evidentiary support), while overlooking that the evidentiary basis for those findings is fully developed in the "Factual Findings and Evidentiary Analysis" section;[1401]
- takes parts of the Judgment out of context by citing concluding sentences that are not footnoted, while overlooking the Chamber's detailed analysis in related preceding sentences;[1402]
- discusses alleged inconsistencies in witness evidence without showing error.[1403]

371. The Judgment is sufficiently reasoned. The Chamber first summarised its findings of fact (section II), and then set out its careful approach to the core evidentiary considerations—the lens through which it viewed and assessed the evidence (section III). The Chamber defined its approach to assessing witness credibility and reliability, and conducted a detailed review of witnesses on this basis when making relevant factual findings (section III.B.2). For certain witnesses, as appropriate, the Chamber conducted a detailed analysis of credibility before relying upon or excluding their testimony, or part of it. The Chamber then set out its evidentiary analysis and factual findings according to a structure matching the initial summary—thus facilitating a better understanding of each material fact on which its decision was based (section IV). The Chamber finally considered its factual findings under the applicable law, cross-referring to the relevant findings as required (section V).

VI.1.e. The Chamber did not reverse the standard of proof or misapply it

372. Ngaïssona shows no error in the Chamber's application of the burden or standard of proof. His claim that the Chamber impermissibly reversed the burden by requiring the Defence "to present evidence that is more convincing than that presented by the Prosecution" misunderstands the Judgment.[1404] References to the fact that Defence evidence did not "negate" or "undermine" findings establishing Ngaïssona's criminal responsibility does not imply a reversed burden but merely demonstrates that the Chamber was unable to identify a *reasonable* doubt arising from the evidence in the record.[1405]

373. Indeed, the fact that the Chamber was unconvinced by evidence that Ngaïssona considers exculpatory does not itself establish any error. To the contrary, provided its

[1401] *Contra* Ngaïssona Appeal, fn. 76.
[1402] *Contra* Ngaïssona Appeal, fn. 76.
[1403] *Contra* Ngaïssona Appeal, fns. 79-80.
[1404] *Contra* Ngaïssona Appeal, para. 25. *See also* paras. 23-24.
[1405] Ngaïssona Appeal, para. 25.

assessment was reasonable—as it was—the Chamber was entitled to find such evidence weak or inconsistent, and to reject it. This is a normal aspect of fact-finding, and integral to the Chamber's role in assessing the totality of the evidence. As the Appeals Chamber has recalled, where "the Trial Chamber correctly articulated the burden and standard of proof", it "must be assumed that it proceeded on the basis of a correct understanding of these concepts."[1406] In particular, using the term "refute" does not imply reversal of the burden of proof. Notably, in in the example provided by Ngaïssona, the Chamber did not reverse the burden of proof but, rather, weighed relevant witness evidence and gave weight to the witness specifying the source of information.[1407]

VI.2. Ground 1.2: The Chamber properly assessed witness credibility

374. The Chamber correctly applied the law concerning the assessment of witness credibility, and reasonably carried out these assessments, including of accomplice witnesses. Ngaïssona merely disagrees with certain credibility assessments in the Judgment, when they do not adopt his preferred position, showing no error.

VI.2.a. The Chamber properly assessed the evidence of "accomplice witnesses"

375. Ngaïssona shows no error in the Chamber's reasoned credibility assessments of Kokaté (P-0801), P-0306 and P-0965 which materially affects his convictions.[1408]

i. The Chamber properly assessed the credibility of Kokaté, P-0306, and P-0965

376. The Chamber provided sufficient reasoning for relying on Kokaté (P-0801), P-0306, and P-0965, as explained below. It properly considered the three witnesses' status as "accomplices" when assessing the reliability of their evidence, including any motives they had to implicate Ngaïssona.[1409] This accords with the approach affirmed by the Appeals Chamber in *Ntaganda*.[1410] While Ngaïssona overstates the law in submitting that "[t]he starting point is a presumption of caution",[1411] the Chamber nevertheless did demonstrate appropriate caution where necessary. Its careful approach also conformed with the acknowledged principle that a

[1406] *Ongwen* AJ, para. 321. *See also* para. 320. *See further* Judgment, paras. 126-129.
[1407] Judgment, para. 1374. *Contra* Ngaïssona Appeal, para. 25.
[1408] *Contra* Ngaïssona Appeal, paras. 26-43.
[1409] *Contra* Ngaïssona Appeal, paras. 26, 31-32.
[1410] *Contra* Ngaïssona Appeal, para. 28. In particular, "[t]he condition of a witness as an 'accomplice' is a circumstance that needs to be carefully considered when assessing the reliability of his or evidence, but […] does not make this evidence unreliable *per se* or in need of corroboration as a matter of law": *see e.g. Ntaganda* AJ, paras. 655, 735.
[1411] *See* Ngaïssona Appeal, para. 29 ("The starting point is a presumption of caution, due to the witness' role or interest in the events"). No authority is cited. *See also* para. 27 (fns. 95-96: citing *Abd-Al-Rahman* TJ, para. 180: referring to "great caution"). This is not a legal requirement, but merely Trial Chamber I's stated approach.

witness may be reliable in one part of their testimony, but not in another.[1412] At all times, it acted within the parameters of its broad discretion.[1413] Ngaïssona simply disagrees with the conclusions properly reached by the Chamber in assessing the three witnesses.[1414]

377. The Chamber carefully explained its assessment of Kokaté's credibility,[1415] expressly rejecting the concerns raised by Ngaïssona.[1416] Specifically, it rejected as speculative the suggestion that Kokaté sought to incriminate Ngaïssona,[1417] and explained why "the inconsistencies pointed out by the Ngaïssona Defence are not such that they would render his account unreliable."[1418] While acknowledging Kokaté's tendency to downplay his own involvement at times,[1419] the Chamber found him "nonetheless, generally credible".[1420]

378. Likewise, the Chamber set out sufficient reasons for finding P-0306 to be generally credible,[1421] again addressing but rejecting Ngaïssona's concerns.[1422] Specifically, it rejected the suggestion that P-0306 had been coached or had fabricated evidence,[1423] or that his testimony reflected a bias against Ngaïssona or the Anti-Balaka.[1424] It acknowledged that "certain portions of his testimony were not consistent with other evidence", and explained why these were "not such that they rendered his evidence wholly unreliable."[1425] It also explained why it found P-0306 "nonetheless, generally credible",[1426] and—significantly—why "none of the inconsistencies raised by the Ngaïssona Defence were such that threw into question his first-hand account of participating in the attacks on Bouca and Bangui."[1427]

379. Finally, the Chamber set out sufficient reasons for its assessment of P-0965's credibility,[1428] expressly rejecting Ngaïssona's concerns.[1429] It explained why the

[1412] Judgment, para. 203 (fn. 193: citing *Ongwen* TJ, para. 260; *Ngudjolo* AJ, para. 168, *Al Hassan* TJ, paras. 37, 43). *See also* *Ntaganda* AJ, paras. 772-776 (approving Trial Chamber VI's approach).
[1413] *See* *Ntaganda* AJ, para. 672 ("trial chambers enjoy broad discretion in assessing inconsistencies within the evidence and in deciding whether corroboration is necessary").
[1414] *Contra* Ngaïssona Appeal, paras. 33-37.
[1415] *See* Judgment, paras. 233-247.
[1416] *See* Judgment, paras. 234-236.
[1417] *See* Judgment, para. 245.
[1418] *See* Judgment, para. 239. *See also* paras. 240-244.
[1419] *See* Judgment, para. 246. *See also e.g.* paras. 1024, 1597.
[1420] Judgment, para. 237. *See also* para. 247.
[1421] *See* Judgment, paras. 206-218.
[1422] *See* Judgment, paras. 208-210.
[1423] *See* Judgment, paras. 216-217.
[1424] *See* Judgment, para. 212.
[1425] Judgment, para. 214.
[1426] *See* Judgment, para. 211. *See also* para. 213.
[1427] Judgment, para. 215.
[1428] *See* Judgment, paras. 308-314.
[1429] *See* Judgment, paras. 309, 311-313.

inconsistencies in P-0965's testimony were "not such that rendered his testimony wholly unreliable",[1430] and gave reasons why it found him "nonetheless, generally credible."[1431]

ii. There was no material impact on the Chamber's essential findings

380. Even if the Chamber had erred in assessing Kokaté's (P-0801), P-0306's and P-0965's credibility, this would not materially affect the Chamber's essential findings.[1432] *First*, with respect to P-0306, Ngaïssona merely asserts without elaboration that "(p)assages from […] P-0306, and […] formed the sole basis for certain factual findings."[1433] This is plainly insufficient.

381. *Second*, in claiming that the Chamber relied on Kokaté's and P-0965's testimony for essential findings, Ngaïssona misreads the Judgment by: (i) referring only to passages in which their testimony is mentioned but not necessarily relied upon, and; (ii) overstating the extent of the Chamber's reliance on their testimony.[1434] A holistic reading of the Judgment shows that the Chamber would have reached the same findings even absent the challenged portions of Kokaté's and P-0965's testimony. For example:

- Kokaté's allegations about Ngaïssona's specific actions in FROCCA were not relied upon in the Chamber's findings on FROCCA.[1435]
- Kokaté's testimony that Ngaïssona claimed to have organised the attack on Bouar was not relied upon in the findings on provincial attacks as the Anti-Balaka advanced on Bangui.[1436]
- Kokaté's testimony on Ngaïssona's 2013 financial assistance to the benefit of the Anti-Balaka was just one source among "overwhelming" evidence.[1437]

[1430] Judgment, para. 311. *See also* paras. 312-313.
[1431] Judgment, para. 310.
[1432] *Contra* Ngaïssona Appeal, paras. 38, 261.
[1433] *See* Ngaïssona Appeal, para. 38.
[1434] *See* Judgment, paras. 4027-4048, 4109-4132, 4278-4299, 4370-4383 (concerning Ngaïssona's criminal responsibility for the four incidents for which he was convicted). *See further* section II (summary of findings).
[1435] *See* Judgment para. 39 (based on evidential analysis at paras. 989-1058). *Contra* Ngaïssona Appeal, para. 39 (fns. 126-127: referring to Judgment, para. 1041).
[1436] *See* Judgment, paras. 50-56 (based on evidential analysis at paras. 1306-1495). *Contra* Ngaïssona Appeal, para. 40 (fn. 131: referring to Judgment, para. 1460).
[1437] *See* Judgment, paras. 35, 38 (based on evidential analysis at paras. 828-851, including the testimony of P-1719, P-2673, P-2269, P-0992, P-1847, P-0291, P-0876 and P-2012), para. 828 ("overwhelming"). *Contra* Ngaïssona Appeal, para. 40 (fn. 133: referring to Judgment, para. 847). *See also below* section VI.3.c. (paras. 456-484).

- Kokaté's testimony relevant to the existence by 30 November 2013 of a plan to attack Bangui was part of a much broader body of evidence.[1438]
- Kokaté's testimony that Ngaïssona claimed responsibility for the 5 December 2013 Bangui attack was not relied upon in the Chamber's findings on coordination of the attack.[1439]
- P-0965's testimony about Konaté's contact with Ngaïssona was not relied upon in the Chamber's findings on the coordination of the 5 December 2013 attack.[1440]
- P-0965's testimony about Ngaïssona's 2014 financial assistance to the benefit of the Anti-Balaka was just one source for that finding (and the purpose of that money was not an essential fact).[1441]

VI.2.b. The Chamber properly declined to find certain witnesses generally untruthful

382. Ngaïssona shows no error in the Chamber declining to find four witnesses "untruthful" as a consequence of its credibility assessment, in a way which materially affects his convictions.[1442] Ngaïssona does not challenge any of the factors or circumstances considered by the Chamber,[1443] nor dispute that "the same witness may be reliable in one part of the testimony, but not in another",[1444] but merely disagrees with the Chamber's conclusions.[1445]

[1438] *See* Judgment, para. 69 (based on evidential analysis at paras. 2125-2131, including the testimony of P-0884 and P-2625, as well as the Chamber's assessment of the evidence on other meetings and communications: *see especially* para. 2131). *Contra* Ngaïssona Appeal, para. 40 (fn. 134: referring to Judgment, para. 2127).
[1439] *See* Judgment, paras. 69-72 (based on evidential analysis at paras. 2122-2406). *Contra* Ngaïssona Appeal, para. 40 (fn. 134: referring to Judgment, para. 2127).
[1440] *See* Judgment, paras. 69-72 (based on evidential analysis at paras. 2122-2406). *Contra* Ngaïssona Appeal, para. 41 (fn. 135: referring to Judgment, para. 2334). More generally, the Chamber did not make any conclusion about Konaté's contact with Ngaïssona (which was addressed by multiple sources, not limited to P-0965): *see e.g.* Judgment, paras. 2333 (summarising P-0306's relevant testimony), 2334 (reciting P-0965's evidence on Konaté's role in coordinating the Bangui Attack, for the purpose of analysing common leadership as the "eleventh indicator of coordination": *see also* para. 2328).
[1441] *See* Judgment, paras. 62 (based on evidential analysis at paras. 1563-1893), 1683-1695 (*especially* paras. 1685, 1687, and fn. 4427). *Contra* Ngaïssona Appeal, paras. 42 (fns. 136-137: referring to Judgment, paras. 1691, 1694), 43.
[1442] *Contra* Ngaïssona Appeal, paras. 44-51.
[1443] Judgment, paras. 197-203.
[1444] Judgment, para. 203.
[1445] *Contra* Ngaïssona Appeal, para. 51 (arguing that the Chamber should have found these witnesses to be wilfully untruthful rather than inaccurate).

i. The Chamber did not err in finding the witnesses "generally credible"

383. The Chamber properly assessed the credibility of the testimonies of Kokaté, P-0306, Poussou, and P-0965 individually,[1446] consistent with the Court's established practice.[1447]

Kokaté was generally credible

384. Ngaïssona shows no error in the Chamber's finding that Kokaté was "generally credible", despite having been found to have influenced witnesses in an earlier case before the Court and having made certain false statements in the current case.[1448] The Chamber reasonably evaluated his statements given under oath in the proceedings, including in the context of all other relevant evidence.[1449] It reasonably concluded that Ngaïssona's allegations of inconsistencies in Kokaté's testimony were not such as to render him unreliable[1450]—especially as some of his arguments were speculative.[1451] The Chamber did not overlook Kokaté's denial that he authored certain documents, or his attempts to downplay his own involvement in this case, which it clearly did not believe.[1452]

385. The Chamber properly assessed the relevant parts of Kokaté's testimony in light of other evidence on the record, as it explained. In particular, Kokaté's testimony about meetings in Cameroon and his phone call with Ngaïssona were not assessed in isolation, but together with other relevant evidence.[1453] Furthermore, the Chamber's decision not to rely on P-0487 for the purposes of determining any factual allegations reveals no error in its assessment of Kokaté's testimony.[1454] To the contrary, it demonstrates that the Chamber assessed each witness individually, taking into account all relevant credibility factors. As noted, for instance, the Chamber took account of the number and nature of P-0487's inconsistencies and his demeanour in the courtroom in finding his testimony unreliable.

[1446] *See also* Judgment, para. 205.
[1447] *See e.g. Ntaganda* AJ, para. 774. *See also Abd-Al-Rahman* TJ, paras. 219-220 (cited in Ngaïssona Appeal, fns. 170-171). The *Abd-Al-Rahman* Trial Chamber recognised that witnesses may be truthful in some respects and untruthful in others.
[1448] *Contra* Ngaïssona Appeal, paras. 45-47.
[1449] Judgment, para. 236.
[1450] Judgment, paras. 239-244.
[1451] Judgment, para. 245.
[1452] Judgment, para. 246.
[1453] Judgment, para. 247 (cross-referencing Judgment, paras. 772-792, 1001-1024, 2127).
[1454] *Contra* Ngaïssona Appeal, para. 47.

P-0306 was generally credible

386. Ngaïssona shows no error in the Chamber's finding that P-0306 was "generally credible".[1455] The Chamber properly distinguished between anomalies affecting part of his testimony and his overall credibility. It carefully assessed the notes provided to the Prosecution, reasonably concluding that "they did not render [P-0306's] evidence wholly unreliable," and reflected a lack of familiarity with the legal process rather than any dishonesty.[1456] The Chamber also addressed and reasonably rejected allegations that the notes showed improper motive, fabrication, or coaching, and found arguments to this effect to be speculative and unsupported by evidence.[1457]

Poussou was generally credible

387. Ngaïssona shows no error in the Chamber's finding that Poussou was "generally credible".[1458] Ngaïssona incorrectly argues that the Chamber should have made an adverse credibility finding against Poussou because: (i) he was allegedly untruthful about his stay at the Hôtel des Députés, and; (ii) his account about Ngaïssona's conduct during a second meeting held at that hotel was not corroborated.[1459] However, the Chamber did not rely on Poussou's alleged stay at that hotel, nor on his specific account regarding Ngaïssona's role at a second meeting held there.[1460] It was therefore not required to resolve disputes about these issues. The Chamber instead relied on his consistent evidence that meetings involving CAR nationals, including François Bozizé, Ngaïssona, Bernard Mokom, and others, took place at the Hilton Hotel in Yaoundé. The discussions there concerned opposition to the Seleka coup and plans to ensure Bozizé's return to power by all means possible.[1461] In that context, the Chamber reasonably found that the accounts of Kokaté, Poussou, and P-1847 were compatible, with differences of detail reflecting different levels of participation and knowledge.[1462] The Chamber reasonably considered that evidence of witnesses who were unaware of the meetings could not negate consistent evidence of those who did know of them.[1463]

[1455] Judgment, para. 211. *Contra* Ngaïssona Appeal, para. 48.
[1456] Judgment, para. 216. The Chamber explained that P-0306 was illiterate and had prepared the notes as a memory aid, without appreciating legal requirements such as chronology and dating. On this basis, it excluded the notes from its factual analysis.
[1457] Judgment, para. 217.
[1458] Judgment, para. 290. *Contra* Ngaïssona Appeal, para. 49.
[1459] Ngaïssona Appeal, para. 47.
[1460] *See* Judgment, paras. 780-781 (merely summarising Poussou's evidence on these topics and not including any finding in that regard).
[1461] Judgment, para. 769.
[1462] Judgment, para. 792. *See also* paras. 769-791.
[1463] Judgment, para. 793. *See also* paras. 769-791.

P-0965 was generally credible

388. Ngaïssona shows no error in the Chamber's finding that P-0965 was "generally credible".[1464] In particular, Ngaïssona mischaracterises P-0965's evidence [REDACTED]. The evidence [REDACTED].[1465] In this context, Ngaïssona shows nothing "fanciful" in P-0965's evidence nor any error in the Chamber's view that it "cannot reach a conclusion on direct contacts between Bozizé and individuals on the ground."[1466]

ii. There was no material impact on the Chamber's essential findings

389. In any event, Ngaïssona fails to show that any of these alleged errors would have materially affected his convictions, but rather misunderstands or disagrees with the Chamber's approach to assessing credibility.[1467] In particular, Ngaïssona overlooks that, while the Chamber first addressed certain individual issues of credibility and reliability on a general basis, this was not the end of its assessment. Even if a witness' evidence was "generally credible", and having regard to any inconsistencies, the Chamber still assessed their evidence on material issues specifically in light of other evidence in the record, in its evidentiary analysis.[1468]

390. Ngaïssona only concretely addresses the question of material impact on his convictions with respect to two witnesses: Kokaté and Poussou.[1469] He misreads the Chamber's reasoning in both respects. Thus, the Chamber's findings regarding Ngaïssona's contributions were not based substantially on Poussou's evidence.[1470] Likewise, the Chamber's conclusion that Ngaïssona was involved in planning Bozizé's return to power by all means, including violence, did not rest simply on the evidence of Kokaté and Poussou. In any event, the ultimate conclusion—that Ngaïssona contributed to the charged crimes knowing that the Anti-Balaka would violently target the Muslim civilian population in the west of the CAR—was supported by multiple strands of evidence.[1471]

[1464] Judgment, para. 310. *Contra* Ngaïssona Appeal, para. 50. The Prosecution notes that it placed limited reliance on P-0965's evidence: Judgment, para. 309.
[1465] *See* Judgment, para. 2307 ([REDACTED]). *Contra* Ngaïssona Appeal, para. 50.
[1466] Judgment, paras. 310, 2214 (the Chamber assessed the reliability of P-0965's evidence in light of the Parties' submissions and other evidence, before reaching its conclusion). *Contra* Ngaïssona Appeal, para. 50.
[1467] *Contra* Ngaïssona Appeal, paras. 52-57.
[1468] Judgment, para. 205. *See e.g.* Judgment, paras. 217 (for P-0306), 247 (for Kokaté), 296 (for Poussou), 314 (for P-0965).
[1469] *See* Ngaïssona Appeal, para. 57.
[1470] *See e.g.* Judgment, paras. 823-923 (under section titled "Ngaïssona's financing and coordinating activities").
[1471] *See e.g.* Judgment, paras. 1210-1305.

VI.2.c. The Chamber did not conflate reliability and credibility in evaluating testimony

391. Ngaïssona shows no error in the Chamber's assessment of the credibility and reliability of witnesses nor that it conflated the two concepts.[1472] Ngaïssona shows no basis to contradict the Chamber's approach in relying at times only on part of a witness' testimony.[1473] The sources cited by Ngaïssona permit a chamber to assess "what effect [a finding of a lie] has on the overall credibility of that witness' evidence on an issue in the case" and to "ascertain whether there is a reason revealed for untruthful evidence."[1474] None of these authorities prescribes a specific outcome if a witness is untruthful in parts of their testimony.

392. Ngaïssona misreads the Judgment in claiming that the Chamber conflated reliability and credibility. Rather, the Chamber properly addressed instances of untruthfulness or apparent inconsistency, and reached conclusions regarding *both* the general credibility and the reliability of the witnesses' evidence.[1475] Ngaïssona's disagreement with the finding that certain witnesses were generally credible demonstrates no conflation of concepts.[1476]

393. Defence and Prosecution witnesses were not treated differently.[1477] Where the Chamber found a witness not to be credible—whether called by the Prosecution[1478] or the Defence—the Chamber did not rely on their evidence. Nor did it automatically rely on their evidence even if they *were* found to be generally credible. The same standard was applied to all witnesses. Ngaïssona mischaracterises the Chamber's approach to D30-4914's evidence.[1479] The Chamber found that the witness did not appear truthful *in certain aspects*, and that some evidence was speculative or based on anonymous hearsay. However, the Chamber then proceeded to assess the reliability of D30-4914's remaining evidence on a case-by-case basis, in light of all the other evidence available.[1480] As with Prosecution witnesses, therefore, the Chamber excluded certain evidence—but provided that the witness did not entirely lack credibility, it consistently assessed their remaining evidence in light of the totality of the evidence.

[1472] *Contra* Ngaïssona Appeal, paras. 58-67.
[1473] *Ntaganda* AJ, para. 774. *See also above* paras. 292, 333, 376, 382.
[1474] Ngaïssona Appeal, para. 52 (citing *Abd-Al-Rahman* TJ, para. 220).
[1475] *See e.g.* Judgment, paras. 197, 205. *See also* paras. 218, 228, 285, 299, 302, 307, 312-314, 350, 423, 427. *See also generally* section III.B.2 ("Assessment of individual witnesses' credibility").
[1476] *Contra* Ngaïssona Appeal, paras. 58-60. In paragraphs 61–62, Ngaïssona merely repeats his disagreement with the Chamber's assessment of Kokaté and P-0965, disregarding the Chamber's express finding that these witnesses were generally credible but then assessing specific evidence on material issues in light of all the evidence.
[1477] *Contra* Ngaïssona Appeal, para. 63.
[1478] *See above* para. 364 (addressing P-0487).
[1479] *Contra* Ngaïssona Appeal, paras. 64-65.
[1480] Judgment, paras. 469-474.

VI.2.d. The Chamber properly assessed D30-4914's evidence

394. Ngaïssona shows no error in the Chamber's assessment of D30-4914's evidence in relation to alleged efforts [REDACTED], in a way which materially affects his convictions.[1481]

i. Ngaïssona's meritless claim of procedural error should be dismissed

395. As a preliminary issue, Ngaïssona's attempt to raise an undeveloped claim of procedural error within his wider ground alleging legal and factual error is impermissible and should be dismissed *in limine*.[1482] This procedural error is not specified in Ngaïssona's Notice of Appeal,[1483] nor argued elsewhere in this Appeal, and was not alleged by Yekatom as the most directly affected party. Furthermore, Ngaïssona fails to explain the nature of the "separate and subsidiary procedural error" allegedly committed in the Chamber's decision rejecting Yekatom's request to exclude certain evidence,[1484] or how it relates to the investigation of D30-4914's claims.

396. Likewise, the alleged procedural error concerning the Chamber's response to D30-4914's claims should be dismissed *in limine* or in any event on its merits. Ngaïssona's own (unexplained) inaction regarding D30-4914's claims undermines his criticisms of the Prosecution and the Chamber.[1485] Faced with the witness' offer in cross-examination [REDACTED] [1486][REDACTED] [1487]—Ngaïssona himself took no such steps. Counsel did not attempt to elicit the witness' source(s), and did not re-examine on the topic.[1488] Ngaïssona likewise made no application for measures under article 64(6)(b) or (d) following D30-4914's testimony, and took no steps to verify his claims—despite apparently meeting with the witness thereafter.[1489]

397. In any event, neither the Chamber nor the Prosecution was obliged to follow up potential leads arising from D30-4914's evidence. The Appeals Chamber's jurisprudence is clear that, while the Prosecution bears the burden of proof, it is for the accused to present evidence capable

[1481] *Contra* Ngaïssona Appeal, paras. 68-80.
[1482] *See* Ngaïssona Appeal, paras. 68-80. *See especially* paras. 68 ("The Judgment erred in fact and law"), 68-75 (subsequent arguments alleging procedural error).
[1483] *See* Ngaïssona NoA, paras. 23-29 (corresponding to Ground 2 as framed in the Ngaïssona NoA, re-ordered as Ground 1 in the Ngaïssona Appeal).
[1484] *See* Ngaïssona Appeal, para. 70 (referring to Yekatom Evidence Exclusion Decision).
[1485] *Contra* Ngaïssona Appeal, paras. 68-72.
[1486] T-303-CONF, p. 64:11-12.
[1487] *See* Ngaïssona Appeal, para. 68.
[1488] *See* T-303-CONF, pp. 90:7-92:8.
[1489] *See* T-303, p. 92:12-15.

of discrediting the Prosecution's evidence once that burden is met.[1490] Moreover, a chamber that decides to follow up apparent leads arising from oral testimony from a witness would risk violating the established "measure of deference" to the parties to "shape their presentation of evidence in a manner that best fits their overall theory of the case."[1491] Similarly, Ngaïssona's reliance on article 54(1)(a) of the Statute is inapposite,[1492] since this largely relates to the Prosecution's obligations in the investigation phase, as the Chamber affirmed.[1493]

398. In any event, even if some kind of relevant 'follow up' duty were to apply, D30-4914's testimony was not of such a nature to trigger it. Rather, as argued below, D30-4914's evidence was equivocal and, even taken at its highest, made no concrete allegations against Prosecution witnesses.[1494] In the circumstances, D30-4914's testimony did not provide a reasonable basis to trigger any duty to collect potentially exculpatory information outside the Prosecution's possession.[1495] Rather, the Chamber and parties could reasonably conclude that nothing further could be usefully obtained from D30-4914. Notably, he failed to name his source(s) even when asked, first, by the Presiding Judge,[1496] and then directly by Prosecution counsel, to whom he answered non-responsively with a vague offer [REDACTED].[1497]

ii. The Chamber's approach to D30-4914's evidence was cogent and reasoned

399. Ngaïssona shows no error in the Chamber's assessment of D30-4914's testimony [REDACTED], for which it gave cogent reasons including: (i) the lack of clarity in D30-4914's responses;[1498] (ii) D30-4914's ignorance about whether [REDACTED];[1499] (iii) the "entirely speculative" nature of his evidence, and reliance "on anonymous hearsay",[1500] and; (iv) D30-4914's failure to provide "any further information that could assist the Chamber in evaluating

[1490] *Ntaganda* AJ, para. 586 ("if the Prosecutor presents evidence meeting the 'beyond reasonable doubt' standard of proof, the accused may be convicted if he or she does not present evidence capable of raising reasonable doubt regarding the Prosecutor's case").
[1491] *Bemba* Witness Schedule Decision, para. 25.
[1492] Ngaïssona Appeal, para. 70.
[1493] *See* Yekatom Evidence Exclusion Decision, para. 28.
[1494] *See below* para. 399.
[1495] *Contra* Ngaïssona Appeal, paras. 70 (fn. 215: citing *Abd-Al-Rahman* TJ, para. 126), 71.
[1496] *See* T-303-CONF, p. 45:1-5.
[1497] *See* T-303-CONF, p. 64:4-12. *Contra* Ngaïssona Appeal, para. 68 ("D30-4914 explicitly offered the Chamber the name of his source of information [REDACTED].
[1498] *See* Judgment, para. 473 ("when asked about the content of these meetings, D30-4914 used very qualified language that did not suggest a clear answer").
[1499] *See* Judgment, para. 473 ("Importantly, D30-4914 said 'I became aware [REDACTED] in the corridors, but I don't know [REDACTED]").
[1500] Judgment, para. 472.

the weight to be given to these claims."[1501] Ngaïssona thus overstates the significance of D30-4914's testimony as demonstrating [REDACTED]."[1502]

400. D30-4914's testimony on the topic was often hard to follow, and equivocal in its meaning.[1503] Taken at its highest, his evidence amounted to:

- hearing [REDACTED];[1504]
- about [REDACTED];[1505]
- [REDACTED];[1506]
- in circumstances where it was unclear whether [REDACTED].[1507]

401. Taken at its highest, nothing in D30-4914's testimony [REDACTED]. Indeed, nothing clearly indicates that [REDACTED].[1508] Despite efforts to lead the point by Ngaïssona's counsel, D30-4914 declined to testify that [REDACTED].[1509] However, in neither his prior statement nor his oral testimony to that point did D30-4914 allege [REDACTED]. Rather, the portion of the prior statement led by Counsel referred to a different allegation, which did not involve [REDACTED].[1510] It was Counsel who attempted to conflate the two allegations.[1511] The Chamber properly rejected this, and confined its analysis of D30-4914's testimony on [REDACTED] to the limited portion of the witness's oral testimony squarely addressing that topic.[1512]

iii. There was no material impact on the Chamber's essential findings

402. Even if the Chamber had erred in disregarding D30-4914's evidence on [REDACTED], this would have no impact on its essential findings. As demonstrated above,[1513] D30-4914's testimony [REDACTED] was equivocal, and even at its highest [REDACTED] [1514] As such,

[1501] Judgment, para. 473.
[1502] *Contra* Ngaïssona Appeal, para. 68.
[1503] *See* Judgment, para. 473 ("D30-4914 used very qualified language that did not suggest a clear answer").
[1504] T-303-CONF, p. 45:1-5.
[1505] T-303-CONF, p. 46:12-17.
[1506] T-303-CONF, p. 47:7-10.
[1507] T-303-CONF, p. 46:14-16.
[1508] *Contra* Ngaïssona Appeal, paras. 68, 75, 79 (*especially* fn. 235).
[1509] *See* T-303-CONF, pp. 39:23-44:2 (*especially* two highly leading questions at pp. 39:23-40:7 and 43:11-17).
[1510] The portion of the prior statement on which Counsel relied to try and lead D30-4914 stated simply that [REDACTED].
[1511] In addition to the two leading questions set out above at fn. 1509, *see also* T-303-CONF, p. 45:19-25 (in which Counsel attempted [REDACTED]). *See further* T-303-CONF, pp. 51:16-52: [REDACTED].
[1512] *See* Judgment, para. 472 (fn. 738: [REDACTED] T-303, pp. 43:11-47:12).
[1513] *See above* para. 401.
[1514] *Contra* Ngaïssona Appeal, paras. 79-80.

even if D30-4914's testimony were to be accepted on its face, it could not have affected [REDACTED].

403. Moreover, even Ngaïssona recognises that he cannot articulate concretely how the Chamber's rejection of D30-4914's testimony [REDACTED] would have impacted its essential findings.[1515] He merely speculates that, but for the rejection of D30-4914's testimony, the Chamber would have "changed [its] appreciation of other testimony and evidence".[1516] Arguments about the Chamber's treatment of D30-4914's general observations [REDACTED] are unrelated and immaterial, exceeding the scope of the alleged error.[1517] Rather than warranting appellate intervention, they merely reflect Ngaïssona's disagreement with the Chamber's well-reasoned [REDACTED], showing neither error nor how it would have materially affected his convictions.[1518]

404. Finally, Ngaïssona's submissions concerning [REDACTED] should likewise be dismissed in *limine* as extraneous to the error alleged in relation to D30-4914.[1519] Ngaïssona provides no reference for his unsupported claim that D30-4914 testified that "[REDACTED]."[1520] The Chamber found "no evidence on the case record" for such a claim.[1521] Ngaïssona's passing attempt to challenge this assessment, in an unrelated sub-ground, should be rejected without further consideration.

VI.2.e. The Chamber properly approached CDR evidence affecting credibility assessments

405. Ngaïssona shows no error in the Chamber's approach to CDR evidence, which was consistent and reasoned. Furthermore, Ngaïssona identifies no inconsistency in its approach to CDR evidence bearing upon its credibility assessment of D30-4505 or Kokaté (P-0801). Nor does Ngaïssona demonstrate how any such error materially affected his convictions.[1522]

[1515] Ngaïssona Appeal, para. 74 ("assessing the impact is inherently speculative").
[1516] Ngaïssona Appeal, para. 75. *See also* para. 76.
[1517] *Contra* Ngaïssona Appeal, paras. [REDACTED].
[1518] *See* Judgment, paras. [REDACTED].
[1519] *See* Ngaïssona Appeal, para. [REDACTED].
[1520] Ngaïssona Appeal, para. [REDACTED].
[1521] *See* Judgment, para. 268, fn. 320.
[1522] *Contra* Ngaïssona Appeal, paras. 81-92.

i. The Chamber did not err in assessing D30-4505's credibility

406. Ngaïssona shows no error in the Chamber's approach to assessing CDR evidence affecting its assessment of D30-4505's credibility, in a way which materially affects his convictions.[1523]

407. *First*, Ngaïssona misreads the Judgment, which—despite his claim that the relevant paragraph is not "conclusively decipherable"[1524]—makes no clear finding "that the CDRs indicated Mohi was dishonest".[1525] Ngaïssona likewise misunderstands the Chamber's reasoning in footnote 1776 of the Judgment—which, on a plain reading, does not address whether D30-4505's testimony undermines P-1719's testimony.[1526] Rather, the Chamber considered the possibility of any contradiction between P-1719's claim to have been called by D30-4505 and the absence of available CDR to support this call.[1527] On this, the Chamber found it unnecessary to resolve whether such a call took place, recalling that P-1719 had testified in any case [REDACTED].[1528]

408. *Second*, Ngaïssona overstates the significance of paragraph 454 of the Judgment in the Chamber's assessment of D30-4505's credibility.[1529] Even if this passage is not entirely clear, the Chamber provided detailed reasons—unrelated to CDR evidence—for its largely negative assessment of D30-4505's credibility.[1530] As such, even if the reasoning in paragraph 454 were considered to be erroneous, it did not materially affect the Chamber's credibility assessment of D30-4505. Nor does Ngaïssona show any impact on the Chamber's essential findings stemming from its approach to D30-4505. His arguments that the Chamber's negative credibility assessment of D30-4505 led it to "elevate" or "over-value" P-1719's evidence are speculative, unsubstantiated, and ignore the Chamber's independent and well-reasoned positive assessment of P-1719's evidence.[1531] Rather, Ngaïssona simply disagrees with the Chamber's assessment of P-1719's evidence.[1532]

[1523] *See* Ngaïssona Appeal, paras. 82-83.
[1524] Ngaïssona Appeal, para. 82.
[1525] *Contra* Ngaïssona Appeal, paras. 82, 86. *See* Judgment, para. 454.
[1526] *Contra* Ngaïssona Appeal, para. 82 ("footnote 1776, addressing whether Mohi's testimony undermines P-1719's").
[1527] *See* Judgment, para. 815, fn. 1776 ("The Chamber notes that it was suggested that CDR relating to numbers associated with the witness and [REDACTED] do not show any contacts").
[1528] *See* Judgment, fn. 1776 ("The Chamber recalls in this regard that the witness [P-1719] spoke [REDACTED]").
[1529] *See* Ngaïssona Appeal, para. 86.
[1530] *See* Judgment, paras. 446-456.
[1531] *See* Judgment, paras. 348-354. *Contra* Ngaïssona Appeal, paras. 87-88.
[1532] *See* Ngaïssona Appeal, para. 89.

ii. The Chamber did not err in assessing Kokaté's credibility

409. Ngaïssona shows no error in the Chamber's approach to assessing CDR evidence affecting its assessment of Kokaté's (P-0801) credibility, in a way which materially affects his convictions.[1533]

410. *First*, Ngaïssona concedes there was no inconsistency in approach to CDR evidence.[1534] His arguments that specific factors pertaining to Kokaté required departure from the Chamber's consistent approach to CDR evidence are undeveloped and self-serving.[1535] To the contrary, the supposed factors he identifies reflect his mere disagreement with the Chamber's well-reasoned assessment of Kokaté's credibility,[1536] including by:

- Repeating his unconvincing claim concerning alleged "accomplice" testimony;[1537]
- Overlooking the Chamber's careful analysis of his argument that Kokaté only gave certain incriminatory evidence during his in-court testimony (and not in his prior interview);[1538]
- Overlooking that evidence of Ngaïssona's involvement in the Bouar attack was provided by P-2673 and P-1847, even if Ngaïssona's utterances to Kokaté were uncorroborated.[1539]

411. *Second*, in any event, Ngaïssona overstates the significance of Kokaté's testimony about their phone call.[1540] The Chamber relied on several witnesses to find that "Ngaïssona was involved in liaising with the groups executing the [Bouar] attack beforehand".[1541] Moreover,

[1533] *Contra* Ngaïssona Appeal, paras. 84-85.
[1534] *See* Ngaïssona Appeal, para. 84 (conceding that the Chamber applied in this instance its stated approach that the absence of available CDR supporting contact between two persons does not exclude the possibility that the communication took place, yet arguing that it was "unreasonable and incorrect" to apply in the specific situation). *See further e.g.* Judgment, paras. 189-190.
[1535] *Contra e.g.* Ngaïssona Appeal, para. 85. *See also* para. 90.
[1536] *See* Judgment, paras. 233-247 (broad assessment of P-0801's credibility). *See also above* paras. 384-385.
[1537] *See especially* Ngaïssona Appeal, paras. 34-35. For the Prosecution's response to these arguments, *see above* paras. 376-377.
[1538] *See* Judgment, paras. 239 ("In the Chamber's view, the inconsistencies pointed out by the Ngaïssona Defence are not such that they would render his account unreliable"), 242, 244 (on the explanations given by P-0801 when confronted with his prior interview), 1460 (fn. 3888: "The Chamber considers of no further import in this regard that the witness had not mentioned this call during his initial interview").
[1539] *Contra* Ngaïssona Appeal, para. 85 ("Kokaté's testimony is the only direct evidence of Mr Ngaïssona's alleged involvement in the Bouar attack."). *See* Judgment, paras. 1461 (referring to P-2673's evidence that those in Bouar had told him that Ngaïssona had sent them money), 1462 (referring to P-1847's evidence that [REDACTED] the attack was prepared following the instructions of Ngaïssona, and that Ngaïssona was certainly informed of the attack in Bouar). *See also* paras. 914-923 (on P-2673, P-2841 and P-1847's evidence showing that Ngaïssona travelled to the Cameroon-CAR border with a view to liaising with Ndale (the Bouar ComZone)), 1465 (incorporating paragraphs 914-923 by reference).
[1540] *Contra* Ngaïssona Appeal, paras. 90-92.
[1541] Judgment, para. 1467. *See also above* fn. 1539. *Contra* Ngaïssona Appeal, para. 91 ("Kokaté's uncorroborated claim of a phone call with Mr Ngaïssona is the lynchpin of the Chamber's conclusion that Mr Ngaïssona liaised with the Anti-Balaka groups before the Bouar attack").

even if Kokaté was not credible in this respect, Ngaïssona's liaison with the Bouar groups is no more than a subsidiary aspect of the broad evidential analysis supporting the Chamber's conclusion that Ngaïssona "knew and was informed of the advance of the groups towards Bangui as well as of the hostilities during this advance".[1542]

VI.2.f. The Chamber did not rely on speculation or make inconsistent credibility findings

412. The Chamber reasonably found that "the money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona",[1543] and provided clear reasons for reaching this conclusion. Ngaïssona merely disagrees with, and misreads, the Chamber's assessment of the evidence, including of the credibility of D30-4914 and D30-4197. He shows no error materially affecting his convictions.[1544]

i. The Chamber reasonably found that Ngaïssona funded P-1719 and his group

413. The Chamber reasonably found that "the money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona". It reached this conclusion based on the combined testimony of P-1719 and P-2673.[1545] The Chamber recalled P-1719's direct evidence that, *inter alia*, he and his group had attended the *Cité Golf* ("*Golf*") in Yaoundé, where Ngaïssona was staying; that Ngaïssona greeted them briefly from the balcony before going back inside; and that Bernard Mokom came out and gave them money.[1546] It then recalled P-2673's testimony that he heard that, "if one went to the Golf residence, one could get money from [Bernard Mokom], Mr Ngaïssona gave money to [Bernard Mokom] who was in charge of giving it out, and reported back to Mr Ngaïssona afterwards."[1547] It was thus open to the Chamber to infer that the event P-1719 described was one instance of a practice by which

[1542] Judgment, para. 56. Notably, the Chamber did not reproduce this subsidiary finding on liaising with the Bouar groups in the relevant part of its essential findings on the provincial attacks committed by the Anti-Balaka during its advance upon Bangui: *see e.g.* Judgment, paras. 50-56 (based on the evidential analysis contained at paras. 1306-1495). *Contra* Ngaïssona Appeal, para. 91 (fn. 279): the punctuation in this footnote implies that the Judgment cross-refers to paragraphs 1459-1467 as the basis of the entire quoted finding in paragraph 827. However, on a clear reading, this cross-reference only relates to the last sentence of the paragraph: Judgment, para. 827 ("The Chamber will address further below the question of *whether Mr Ngaïssona was involved in issuing instructions* in the context of attacks carried out by Anti-Balaka groups", emphasis added).
[1543] Judgment, para. 830.
[1544] *Contra* Ngaïssona Appeal, paras. 93-105.
[1545] Judgment, para. 830 ("Bearing in mind this witness's [P-1719] evidence, as well as the evidence of P-2673 as outlined below, the Chamber concludes that the money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona").
[1546] *See* Judgment, para. 829.
[1547] Judgment, para. 831.

Bernard Mokom distributed money—coming from Ngaïssona—to persons attending the *Golf* in Yaoundé.

414. The Chamber did not "accept" speculation or inference on the part of either witness. P-1719 testified on the basis of his direct observations of attending the *Golf* in Yaoundé.[1548] That P-2673's basis of knowledge about the wider practice of money distribution from the *Golf* was from information he received, rather than direct observation, does not render his evidence "speculative".[1549] Nor does it diminish the mutually reinforcing effect between his and P-1719's respective evidence. Finally, the Chamber properly referred to evidence of P-2027, supporting P-2673's evidence.[1550] P-2027's account of visiting Ngaïssona in Yaoundé and receiving money from him[1551] was one confined instance of the broader practice to which P-2673 testified.

415. The Chamber reasonably assessed the credibility of P-1719 and P-2673, engaging directly with the arguments made by Ngaïssona at trial and largely repeated in this appeal.[1552] Likewise, it reasonably assessed the credibility of [REDACTED], whose account it found "did not appear truthful on certain aspects".[1553] While the Chamber did not dedicate a specific section of the Judgment to assessing [REDACTED], it still expressed its negative assessment clearly, applying the general credibility criteria that it had articulated.[1554] In particular, [REDACTED] was vague,[1555] and skewed towards distancing Ngaïssona from any involvement with the events, even concerning well-known and uncontested matters.[1556] Ngaïssona's claim that the Chamber [REDACTED] is baseless.[1557]

[1548] *Contra* Ngaïssona Appeal, paras. 94 ("the Chamber unreasonably accepted P-1719's inference"), 95 ("the only reasonable conclusion of P-1719's testimony is that it was speculative"), 99 ("P-1719's impressions of what occurred in 2013 were also formed from things he heard, speculative in nature"), 100 ("the Chamber accepted P-1719's speculations about Mr Ngaïssona"). At various points, Ngaïssona attributes reasons to the Chamber for allegedly accepting "P-1719's inference" drawn from disparate parts of the Judgment which do not reflect the Chamber's express reasoning in reaching the impugned finding: *see e.g.* Ngaïssona Appeal, fns. 284-285, 308, 317.
[1549] *Contra* Ngaïssona Appeal, paras. 96 ("P-2673's evidence is equally speculative"), 97 ("His speculative reasoning is evident in court").
[1550] *Contra* Ngaïssona Appeal, para. 98. *See* Judgment, para. 831 (fn. 1841).
[1551] *See* CAR-OTP-2078-0059, at 0069, para. 61.
[1552] On P-1719's credibility, *see* Judgment, paras. 348-354. On P-2673's credibility, *see* Judgment, paras. 428-433.
[1553] Judgment, para. [REDACTED].
[1554] *See* Judgment, para. [REDACTED] (referring to "[REDACTED]"). *Compare* Judgment, paras. 204 ("not all the witnesses who provided evidence in this case required an assessment of the credibility of their evidence, separate to the holistic assessment made, in any event, in the context of the evidentiary analysis below"), 205.
[1555] *See* [REDACTED].
[1556] *See* [REDACTED].
[1557] *See* Ngaïssona Appeal, paras. [REDACTED]. *See also above* para. [REDACTED].

ii. There was no material impact on the Chamber's essential findings

416. Even if the Chamber had erred in concluding that "the money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona", this would not have materially impacted its essential findings. This was merely one of many instances which led to the Chamber's finding that Ngaïssona provided financial assistance to the benefit of the Anti-Balaka in 2013,[1558] based on "overwhelming evidence".[1559] Ngaïssona overstates the importance of P-1719's and P-2673's testimony,[1560] and speculates about alternative conclusions in disagreement with the Chamber's well-reasoned assessment.[1561] Finally, as previously noted, Ngaïssona exaggerates the impact of the Chamber's negative evaluation of [REDACTED].[1562]

VI.3. Ground 1.3: The Chamber's factual findings are safe

417. Ngaïssona shows no error in any of the seven "key factual findings" which he claims were "reached on an unsound evidentiary basis or without satisfying the requisite standards".[1563]

VI.3.a. The Chamber reasonably characterised the Anti-Balaka attack on Bossangoa as an attack directed against the civilian population

418. In the afternoon of 5 December 2013, in the attack on Bossangoa, the Anti-Balaka targeted residential areas, particularly those predominantly inhabited by Muslims such as Boro. This attack did not distinguish between Seleka members and the civilian population, aiming "to 'free' the town from Seleka and all Muslims".[1564] While some Muslims in Bossangoa may have joined the Seleka and/or collaborated with them, the Chamber found that "the great majority of

---

[1558] *See* Judgment, para. 35 ("*During his time outside of the CAR in 2013, Mr Ngaïssona was actively involved in planning steps to respond to the Seleka violence in the CAR and to ensure Francois Bozizé's return to power* by meeting and liaising with Francois Bozizé, Bernard Mokom and others to discuss strategies and plans, reaching out to individuals within and outside of the CAR with a view to gathering support for their cause, and *providing financial assistance to those willing to assist in their activities*", emphasis added).
[1559] *See* Judgment, para. 828 ("The Chamber has received overwhelming evidence, as further outlined below, on Mr Ngaïssona providing financial assistance to individuals willing or meant to assist the efforts in bringing Francois Bozizé back to power already while still in Cameroon, both before and after the coordinated attacks of 5 December 2013"). *See further below* section VI.3.c. (paras. 456-484); section VI.3.d. (paras. 485-491).
[1560] *See* Ngaïssona Appeal, paras. 103-104.
[1561] *See* Ngaïssona Appeal, para. 104 ("multiple reasonable conclusions exist").
[1562] *Contra* Ngaïssona Appeal, para. [REDACTED].
[1563] *Contra* Ngaïssona Appeal, para. 106.
[1564] Judgment, paras. 81-82. *See also* paras. 2777 ("the goal of the Bossangoa Attack, conducted in coordination with the Bangui Attack, was to chase away the Seleka as well as all Muslims from the town, and from the Ouham prefecture more generally"), 2861 ("while Seleka bases were located in the centre in Bossangoa, the Anti-Balaka attacked the areas mentioned in pursuit of unarmed individuals who were identifiable as Muslims"), 2864 (there was no legitimate military objective in the vicinity of Imam Naffi's house, where attacks took place). *See further* paras. 4051, 4053-4055, 4121-4124.

Muslims […] did not join and were not otherwise armed at the time".[1565] During the attack, at least 18 Muslims were killed,[1566] and P-2462 and P-2657 were raped.[1567]

419. To support these findings, the Chamber relied primarily on the evidence of witnesses whom it considered "particularly reliable":[1568] two Anti-Balaka insiders (Dana[1569] and P-2602[1570]), and four Muslim civilians who lived in Bossangoa at the relevant times (P-2462,[1571] P-2657,[1572] P-2049,[1573] and P-2200).[1574] It also referred to:

[1565] Judgment, para. 2782. *See also* paras. 2789 (further considering that "this is underscored by the evidence showing that thousands of Muslims indeed fled" from the Bossangoa attack), 2814 (finding that, "while some Muslim civilians may have been armed during the Bossangoa Attack, the large majority were not"), 4053.
[1566] Judgment, paras. 84, 4051. *See also* paras. 2858-2895, 4062.
[1567] Judgment, para. 4051. *See also* paras. 2840-2842.
[1568] Judgment, para. 2766. *See also* paras. 2832 (recalling the Chamber's "direct impression" of witnesses P-2462 and P-2657, who testified "in an open manner and replete with individual details"), 2843-2857 (addressing and where relevant resolving alleged inconsistencies in the accounts of P-2462 and P-2657). *See further* paras. 424-427 (assessment of P-2602), 475-488 (assessment of P-2049), 730 (fn. 1436: assessment of P-2200).
[1569] *See* Judgment, paras. 2778 (the objective was "to free Bossangoa" so "Christians could live in peace"), 2791-2792 (the Bossangoa attack was coordinated and designed to show that the Anti-Balaka had national reach), 2797-2799, 2801 (unfolding of the Bossangoa attack), 2805 (Anti-Balaka went to Boro because "this location had been indicated to them as a Seleka post or base, and they found the Seleka there and attacked", but Dana "did not know whether there were Muslims in Boro because he did not know the town"), 2811 (the Anti-Balaka elements participating in the attack "assumed that if someone stayed in a house as opposed to fleeing, the person had a weapon to defend himself" and could not distinguish "who was military or civilian"), 2863 (the Anti-Balaka did not capture anyone in the Bossangoa attack), 2897 (Anti-Balaka elements were forced to retreat from Boro when they came under fire), 2914 (after the Bossangoa attack, the Anti-Balaka reported their casualties, including two chief corporals).
[1570] *See* Judgment, paras. 2793-2795 (the Bossangoa attack was coordinated), 2797-2801 (unfolding of the Bossangoa attack), 2806 (Seleka were shooting at the Anti-Balaka as they progressed through Boro; some Seleka were "at their secondary positions, others at home, but had weapons"), 2810 (considering the weapons carried by the Anti-Balaka), 2813 (P-2602 saw the flight of the Muslim civilian population, and some were armed with the same weapons as the Seleka), 2821 (most of the Muslim civilian population fled to the *École de la Liberté*), 2898 (Anti-Balaka elements attacked from Kafa to Boro to Sembé to the *École de la Liberté*), 2902 (the Anti-Balaka successfully chased the Seleka away, to the *École de la Liberté*), 2915-2916 (the Anti-Balaka suffered some casualties, including two chief corporals).
[1571] *See* Judgment, paras. 2822-2824, 2828 (Anti-Balaka attacks on unarmed civilians around Imam Naffi's house), 2832-2839, 2842 (the rape of P-2462 by five Anti-Balaka elements), 2868-2869 (killing of Khadidja Adjaro), 2871-2873 (killing of Koursi Abdelrahim), 2876 (killing of Atahir Abou), 2882 (heard of corpses brought to the *École de la Liberté* following the Bossangoa attack). *See also above* fn. 1568.
[1572] *See* Judgment, paras. 2825-2829 (Anti-Balaka attacks on unarmed civilians around Imam Naffi's house), 2840-2842 (the rape of P-2657), 2868 (killing of Khadidja Adjaro), 2871-2872 (killing of Koursi Abdelrahim), 2875 (killing of Abdel aka Adaye Abakar), 2876 (killing of Atahir Abou), 2882 (burials at the *École de la Liberté* following the Bossangoa attack), 2885 (killing of Halima Hisseini). *See also above* fn. 1568.
[1573] *See* Judgment, paras. 2783 (P-2049 "saw some Muslims of Bossangoa join the Seleka"), 2807 (P-2409 heard that the Anti-Balaka went to the Arabe and Fulbe quarters to neutralise the Seleka), 2815-2816 (Imam Naffi's house was near the Boro neighbourhood, and the Imam warned P-2049 about the attack before it started, urging him to shelter in the *École de la Liberté*), 2829 (14 injured Muslims were taken to hospital), 2868 (killing of Khadidja Adjaro), 2871-2872 (killing of Koursi Abdelrahim), 2875 (killing of Abdel aka Adaye Abakar), 2876 (killing of Atahir Abou), 2877, 2879 (names of other persons killed in Bossangoa), 2883 (killing of 'C-17'), 2885 (killing of Halima Hisseini), 2886 (killing of Hamadou Bouba).
[1574] *See* Judgment, paras. 2784 ("the Christian population was not happy to see the Seleka arrive because they were predominantly opposed to the new Seleka government"), 2810 (P-2200 saw the weapons carried by the Anti-Balaka, who were more heavily armed than in September 2013), 2812 ("as there were not many Seleka at the time of the attack on 5 December 2013, in the afternoon, the Seleka distributed weapons to certain Muslim men"), 2817

- P-1577's view of the "harder" anti-Muslim rhetoric in the Anti-Balaka after the attack;[1575]
- P-2453's recollection of previously hearing Anti-Balaka discuss orders from Florent Kema—a leader of the Bossangoa attack[1576]—to "kill all Muslims";[1577]
- Llorca's subsequent interview with Kema in April 2015, when he confirmed that he "'still'" aimed "to chase all the Muslims out of Ouham",[1578] and;
- evidence of several witnesses concerning the popular "'feeling'" that the Muslim civilian population was closely affiliated with the Seleka.[1579]

420. Ngaïssona now incorrectly claims that the Chamber "erred in fact" in concluding that the Anti-Balaka attack on Bossangoa was directed against the civilian population.[1580] However, none of his three arguments—concerning the goal of the attack,[1581] the Chamber's approach to hearsay,[1582] and its assessment of whether the Anti-Balaka distinguished between fighters and civilians[1583]—shows that the Chamber's understanding of the evidence was unreasonable. Accordingly, Ngaïssona shows no error in his convictions for participating in directing an attack against the civilian population (count 30), destruction of the property of the adversary (count 33), forcible transfer and deportation (counts 37 to 38), imprisonment (count 39), and persecution (count 42).[1584]

(Muslims sought refuge at his residence, and subsequently they were escorted by "'UDAC' soldiers" to the school which only housed Muslims), 2868 (killing of Khadidja Adjaro), 2871-2872 (killing of Koursi Abdelrahim), 2875 (killing of Abdel aka Adaye Abakar), 2877-2878 (names of other persons killed in Bossangoa), 2884 (killing of Atahir Djime), 2888 (killing of Abdallah Mahamat), 2889 (killing of Abdelkhadir), 2890 (killing of Mariam Yamwha), 2891 (killing of Amadou Oumarou).

[1575] Judgment, para. 2779.

[1576] *See* Judgment, paras. 2770-2776, 4051. *See also* para. 2797 (during the attack, Kema led one group, and Ndangba led the other).

[1577] Judgment, para. 2780.

[1578] Judgment, para. 2781 (further noting that, "while Florent Kema spoke about this as an ongoing objective, he did not mention from when this had been their main aim").

[1579] *See* Judgment, paras. 2785-2788 (referring to the evidence of Namsona, D30-4608, and Ningando).

[1580] *Contra* Ngaïssona Appeal, para. 110. *See also* paras. 107-109.

[1581] *See* Ngaïssona Appeal, paras. 111-115.

[1582] *See* Ngaïssona Appeal, paras. 116-117.

[1583] *See* Ngaïssona Appeal, paras. 118-119.

[1584] *Contra* Ngaïssona Appeal, paras. 120-122. Concerning Ngaïssona's argument that the Chamber erred in "lower[ing] the evidentiary threshold by treating mere *conduct* or the *consequences of the attack* as sufficient to prove an order to displace", because it is only "an *order* to attack indiscriminately that establishes an order to displace", Ngaïssona misses the point—the Chamber found that the Bossangoa attack was directed against the civilian population, not merely that civilians were harmed as a consequence of the attack: *contra* para. 120 (emphasis added). *See further above* section V.2.a. (paras. 345-348).

i. The Chamber reasonably concluded that the goal of the Bossangoa attack was to expel the Seleka and all Muslims

421. Ngaïssona's criticisms of the Chamber's assessment of the evidence regarding the objective behind the Bossangoa attack reflect his own selective and decontextualised reading of the Judgment.[1585] *First*, Ngaïssona claims that the Chamber "distorted" Dana's evidence when it referred to his evidence that the Anti-Balaka's "task was to occupy the centre of Bossangoa and free Bossangoa so Christians could live in peace".[1586] According to Ngaïssona, Dana clarified that "the objective was to capture Seleka bases and drive out the Seleka so that people could move freely, without limiting this to Christians."[1587]

422. Yet this overstates Dana's testimony, which was more equivocal in this respect and never framed as correcting or clarifying his original statement. For example, in the same passage cited, Dana stated that, "during our attack, the objective was to capture the bases occupied by the Seleka *and* also to take control of Bossangoa town".[1588] Likewise, Ngaïssona overlooks the Chamber's careful analysis showing that it was alert to the question whether Dana understood the objective as the "liberation of Christians" or not.[1589] He thus shows nothing unreasonable in the Chamber's analysis, but merely disagrees with its approach. Furthermore, and in any event, the Chamber did not rely simply on Dana's understanding of the Anti-Balaka objectives in attacking Bossangoa, but on how the attack actually unfolded[1590]—as well as on all the other evidence it considered reliable on such questions.[1591]

423. *Second*, Ngaïssona alleges that the Chamber gave insufficient weight to the evidence of Dana and P-2602, whom he suggests "testified unequivocally that the objective of the attack was to attack and chase the Seleka", supported by one aspect of Llorca's evidence.[1592] He

---

[1585] *Contra* Ngaïssona Appeal, paras. 111-115.
[1586] Ngaïssona Appeal, para. 111 (citing Judgment, para. 2778 (citing CAR-OTP-2031-0241-R03, at 0252, para. 62)).
[1587] Ngaïssona Appeal, para. 111 (citing T-117, p. 40:3-23; T-118, p. 7:4-9)
[1588] T-118, p. 7:4-9 (emphasis added). *See also* T-118, pp. 5:9-6:23 (responding to questioning as to whether Dana knew that the Anti-Balaka entered Bossangoa "from the north to attack the Muslim quarters", asserting that he "did not know the town" and that "we advanced as we were told" and attacked the Seleka "at the point that it had been indicated to us"). Similarly, in the other passage cited by Ngaïssona, Dana was asked in cross-examination to clarify whether Bossangoa was attacked "so that the Christians could live in peace" *or* in order for the Anti-Balaka "to receive material"—it was in that context that he stated "[i]t was urgent for us to drive out the Seleka who were there so that the people could move about freely in their own town": T-117, p. 40:3-23. In this context, there is little reason to consider that Dana would have seen his choice of the word "people" as significant.
[1589] *See* Judgment, para. 2778 (fn. 6841: noting a potential discrepancy between the English and French transcripts of Dana's testimony which might suggest that Dana was "negating that liberating the Christians was one of the motives to attack Bossangoa").
[1590] *See above* fn. 1569.
[1591] *See above* para. 419. *See further below* para. 424.
[1592] Ngaïssona Appeal, para. 112.

suggests that the Judgment instead relied on witnesses "who did not participate in the attack"—namely, a different aspect of Llorca's evidence, P-2453's recollection of an incident preceding the Bossangoa attack, and P-1577's recollection of an incident following the attack.[1593]

424. These arguments mischaracterise the Judgment. In particular, Ngaïssona overlooks that the Chamber gave weight to the evidence of Dana and P-2602, but *did not* consider that this demonstrated that the Bossangoa attack was directed exclusively against fighters and military objectives—to the contrary, it expressly relied on these witnesses, and others, to reach the opposite conclusion that the Bossangoa attack was in fact directed against the civilian population.[1594] Moreover, while the Chamber noted Llorca's interview with Kema and passages of P-2453's and P-1577's evidence (now criticised by Ngaïssona),[1595] it relied on a far more extensive body of evidence to support its conclusion concerning the objective of the attack—in particular, the evidence of witnesses such as Dana, P-2602, P-2462, P-2657, P-2049, and P-2200 that Muslim residential areas were targeted, that most Muslims were civilians not taking direct part in hostilities, and that numerous individual Muslim civilians were attacked.[1596]

425. *Third*, Ngaïssona asserts that the Chamber ignored "direct evidence" of P-2251, Dana, and P-2602 pertaining to Anti-Balaka operations in September 2013 which, in his view, "reveal a consistent operational focus on Seleka combatants rather than civilians."[1597] However, he fails to show that the Chamber was unreasonable in this regard. As noted above, the Chamber expressly relied upon Dana and P-2602 in assessing the December 2013 Bossangoa attack.[1598] It also properly relied upon P-2251, notably with regard to aspects of the attack on Bangui—but also bearing in mind the Chamber's observation that (while "generally credible") P-2251's denial of any crimes committed against Muslim civilians "stood out in complete contrast to other evidence" before the Chamber.[1599] In any event, there was no contradiction in the Chamber's reasonable interpretation of the evidence concerning the events of both September

[1593] Ngaïssona Appeal, para. 113.
[1594] *See above* para. 419 (*especially* fns. 1569-1570). *See also above* para. 422 (noting that the Chamber did not rely simply on these witnesses' subjective understanding of the Anti-Balaka objectives, but on their evidence of how the attack actually unfolded, allowing the Chamber to form its own objective view).
[1595] *See above* para. 419 (*especially* fns. 1575-1578).
[1596] *See above* para. 419 (*especially* fns. 1569-1574).
[1597] Ngaïssona Appeal, para. 114.
[1598] *See above* paras. 419, 422, 424.
[1599] *See* Judgment, paras. 406, 408, 410, 414.

and December 2013, since the Chamber found that the Anti-Balaka operations in September 2013 had likewise targeted Muslim civilians.[1600]

ii. The Chamber did not err in its approach to hearsay evidence

426. Ngaïssona repeats his misconception that the Chamber preferred "non-contemporaneous double hearsay, and anonymous hearsay" (referring to the evidence of Llorca, P-2453, and P-1577), over the evidence of Dana and P-2602.[1601] Yet in fact, as noted above,[1602] the Chamber primarily relied upon the direct evidence of Dana, P-2602, P-2462, P-2657, P-2049, and P-2200, and also made reference to consistent aspects of the evidence of Llorca, P-2453, and P-1577. Ngaïssona shows no error in this respect.

iii. The Chamber reasonably concluded that the Anti-Balaka did not distinguish between the Seleka and the civilian population

427. Ngaïssona incorrectly claims that the Chamber inferred the indiscriminate nature of the attack from one single sentence in Dana's written statement: ''whoever was a Muslim was a Seleka' in Bossangoa'"—which he considers was inconsistent with the broader context of Dana's statement and his evidence as a whole.[1603] Yet to the contrary, in the very passage criticised by Ngaïssona, the Chamber did not refer only to "one single sentence" of Dana's statement, but instead expressly considered the immediate context, as well as relevant passages of oral testimony—from which it could be inferred "that no distinction was made between Muslim civilians and members of the Seleka."[1604] The Chamber further considered this to be corroborated by the evidence of Michel Ningando,[1605] and its conclusion was likewise consistent with its other findings based on reliable evidence.[1606] Further, Ngaïssona incorrectly suggests that the Chamber erroneously read Dana's testimony "through the lens of his written statement instead of reading it as corroborative of his consistent oral evidence".[1607] This is a distinction without a difference—Ngaïssona fails to show that the Chamber did not consider

[1600] *See e.g.* Judgment, paras. 1407, 1423 (concerning the deaths and dislocation of Muslim civilians that took place as a result of the September 2013 attack on Bossangoa).
[1601] *Contra* Ngaïssona Appeal, paras. 116-117.
[1602] *See above* paras. 423-424.
[1603] *Contra* Ngaïssona Appeal, para. 118 (citing Judgment, para. 2811, citing CAR-OTP-2031-0241-R03, at 0252, para. 64).
[1604] *See* Judgment, para. 2811 (*especially* fns. 6921-6924, citing CAR-OTP-2031-0241-R03, at 0252, paras. 62-64; T-117, pp. 56:25-57:5).
[1605] Judgment, para. 2811 (fn. 6925).
[1606] *See above* paras. 419, 422, 424.
[1607] *Contra* Ngaïssona Appeal, para. 119.

Dana's evidence as a whole, recognising that it was reliable for the purposes set out in the Judgment.

VI.3.b. The Chamber reasonably attributed crimes at Bossangoa to Anti-Balaka elements

428. The Chamber correctly and reasonably found that the Anti-Balaka committed murder as a war crime and crime against humanity (counts 31 and 32), destruction of the adversary's property as a war crime (count 33), and displacement as a war crime (count 38) in Bossangoa.

i. The Chamber reasonably found that the Anti-Balaka committed murder (counts 31-32)

429. Ngaïssona alleges that the Chamber erred in fact, law, and procedure in attributing the alleged murders of all 18 individuals killed in Bossangoa to the Anti-Balaka.[1608] His submissions misapply principles of law and evidence, misconstrue the evidence and the Chamber's analysis, and offer alternative interpretations unsupported by the evidence.

The Chamber's reasoning was adequate

430. Ngaïssona suggests that the Chamber fails to provide a reasoned opinion for its finding that the Anti-Balaka killed eight individuals in Bossangoa.[1609] However, the jurisprudence he relies on does not support his position.[1610]

431. In *Lubanga*, the Appeals Chamber held that a "Trial Chamber should set out with clarity which factual findings are the basis for each of the elements of a crime, including the subjective elements."[1611] As the Appeals Chamber has elucidated further "although the Trial Chamber has an obligation to provide a reasoned opinion, it is not required to individually set out each and every factor that was before it provided that it indicated with sufficient clarity the basis of the decision."[1612] The Chamber satisfied this requirement. It explained that the first legal element of murder as a crime against humanity and as a war crime was met based on its finding that "in the course of the attack on Bossangoa, the Anti-Balaka killed at least 18 persons" including the 8 individuals referred to by Ngaïssona.[1613] As set out further below,[1614] it explained the basis for this factual finding: providing detailed findings on the Anti-Balaka's attack on

[1608] Ngaïssona Appeal, paras. 124-149; Judgment, para. 84.
[1609] Ngaïssona Appeal, paras. 125-126 (referring to Abakar, Ismael, Salamatou, Sale Adim, Abdallah Mahamat, Abdelkhadir, Mariam Yamwha and Amadou Oumarou).
[1610] Ngaïssona Appeal, para. 126 (citing *Lubanga* AJ, para. 313; *Liakat Ali Alibux v. Surinam*, para. 86).
[1611] *Lubanga* AJ, para. 313.
[1612] *Bemba et al.* AJ, para. 1049.
[1613] Judgment, para. 4057 (citing para. 84). *See also* para. 2858.
[1614] *See below* paras. 436-441, 446-448.

Bossangoa;[1615] indicating proof-of-death evidence relied on in relation to the eight challenged killings;[1616] and addressing Defence counter-arguments, such as that the Anti-Balaka did not target Muslim civilians during the attack.[1617]

432. The passage cited by Ngaïssona in the case of *Liakat Ali Alibux* relates to the procedural accessibility of appellate proceedings under article 8(2)(h) of the American Convention on Human Rights and has no relevance to the present ground of appeal.[1618]

433. Ngaïssona thus shows no procedural error. His separate factual challenge of this finding is addressed below.[1619]

The Chamber did not err in relying on P-2200's prior recorded testimony

434. Ngaïssona argues that the Chamber erred in law by relying solely on P-2200's prior recorded testimony admitted under rule 68(2)(c), invoking the *Ntaganda* Appeals Chamber's holding that prior recorded testimony "must not form the sole or decisive basis for the conviction for a particular crime as such."[1620] However, Ngaïssona misapplies the principle.

435. The Chamber did not rely solely on P-2200's prior recorded statement to convict Ngaïssona of murder during the Bossangoa Attack but also substantially relied on the oral testimony of other witnesses for similar acts of killing by the Anti-Balaka in Bossangoa forming the basis of the underlying charge.[1621] Thus, the Chamber's use of P-2200's prior recorded testimony was fully consistent with the *Ntaganda* Appeals Judgment, which permits such use where "[o]ther instances of similar *criminal acts* [are] established on the basis of oral testimony such that the right of the accused to challenge the evidence grounding his conviction for that *crime* is not prejudiced."[1622] Moreover, as the *Ntaganda* Appeals Judgment further holds that "there is no legal impediment to prior recorded testimony admitted pursuant to rule 68(2) of the Rules being relied upon to establish individual criminal acts in circumstances in which they are not the direct acts of the accused,"[1623] the Chamber's reliance on P-2200's evidence in

[1615] Judgment, paras. 2760-2789, 2796-2831.
[1616] Judgment, paras. 2878, 2880, 2888-2895.
[1617] Judgment, paras. 2860-2864.
[1618] Ngaïssona Appeal, fn. 387 (citing *Liakat Ali Alibux v. Surinam*, para. 86).
[1619] *See below* paras. 436-441, 446-448.
[1620] Ngaïssona Appeal, paras. 127-129 (citing *Ntaganda* AJ, para. 630).
[1621] Judgment, paras. 2868-2870, 2872-2876, 2880-2887, 2892-2895 (citing, for example, oral testimony from P-2657, P-2049, P-2453, P-2462, and P-1577).
[1622] *Ntaganda* AJ, para. 630 (emphasis added).
[1623] *Ntaganda* AJ, para. 629. *See also* para. 628 (noting that "the criteria established in rule 68(2) of the Rules appear to make the admission of prior recorded testimony *in lieu* of oral testimony particularly apt for the purpose of establishing individual criminal acts" in such cases").

establishing the acts and conduct of the Anti-Balaka for which Ngaïssona was found responsible[1624] was entirely correct.

The Chamber reasonably found that the Anti-Balaka killed 17 individuals

436. Ngaïssona claims that no reasonable trier of fact "could have established the identity of the perpetrators" of the killings of Abdallah Mahamat, Abdelkhadir, Mariam Yamwha, Amadou Oumarou, Abakar, Ismael, Salamatou, and Sale Adim based on P-2200 and P-2453's evidence. Separately, Ngaïssona also alleges that the Chamber erred by attributing to the Anti-Balaka the killings of Khadidja Adjaro, Koursi Abdelrahim, Abdel (a.k.a. Adaye) Abakar, Atahir Abou, Atahir Djime or Djimet, Halima Hisseini, Hamadou Bouba, Ousman Abacar, and Ousman Abacar's mother "without any direct or reliable identification of perpetrators."[1625] Ngaïssona fails to show an error in the Chamber's reasonable and correct assessment of the totality of the evidence in relation to all these victims.

437. *First*, as the Chamber correctly held, "as a matter of law, it is not necessary to identify the specific perpetrator(s) within the Anti-Balaka responsible of the killings, as long as it is otherwise satisfied beyond reasonable doubt that it was Anti-Balaka elements who committed these killings.[1626] *Second*, the Chamber reasonably found that the Anti-Balaka killed the 17 individuals in question during the Bossangoa Attack.[1627] These findings are supported by the Chamber's extensive analysis of the Anti-Balaka's attack on Bossangoa and mutually corroborating evidence on the killing of these individuals during such attack.

438. The Chamber provided detailed factual findings on the 5 December 2013 attack on Bossangoa during which the Anti-Balaka targeted Muslim civilians, drawing no distinction between them and the Seleka.[1628] Based on a comprehensive assessment of the evidence, the Chamber found that, during the attack, the Anti-Balaka: (i) aimed to chase out the Seleka as well as all Muslims;[1629] (ii) attacked residential areas in Bossangoa;[1630] and (iii) pursued

[1624] *See e.g.* Judgment, para. 4132.
[1625] Ngaïssona Appeal, paras. 130-131, 134-140. This sub-section responds to Ngaïssona's arguments under the corresponding sub-sections c and e. For Ngaïssona's submissions regarding the killing of 'C-17', *see below* paras. 446-448.
[1626] Judgment, para. 4059 (citing *Bemba* TJ, para. 8[8]; *Ongwen* TJ, paras. 297[7], 3011, 3116; *Boškoski & Tarčulovski* TJ, paras. 312, 346, 577-578, 607).
[1627] Judgment, paras. 2858, 2870, 2874-2876, 2884-2895.
[1628] Judgment, paras. 81-82, 2760-2789, 2796-2831.
[1629] Judgment, para. 2861 (citing section IV.C.1.iii).
[1630] Judgment, para. 2861 (citing paras. 2796-2809).

unarmed individuals who were identifiable as Muslims, injuring and raping Muslim civilians.[1631]

439. In relation to Anti-Balaka killings, the Chamber considered the Defence's arguments at trial, including that the Anti-Balaka distinguished between Seleka forces and Muslim civilians and that fighting would have been 'particularly intense' at the imam's house.[1632] It reasonably discounted these on the basis of the evidence.[1633]

440. As for identifying the individuals killed, the Chamber assessed relevant evidence and arguments made by the parties and reasonably found that the following individuals were killed by the Anti-Balaka during the Bossangoa Attack:[1634]

- Abdel (a.k.a. Adaye) Abakar, Atahir Abou, Atahir Djime (or Djimet), Halima Hisseini, Hamadou Bouba, Abakar, Ismael, Salamatou, and Sale Adim:[1635] the Chamber relied on evidence, corroborated by multiple witnesses, that these individuals were killed in the vicinity of the imam's house, where the Anti-Balaka were found to have injured and killed other Muslim civilians on 5 December 2013, absent any fighting against the Seleka.[1636] In particular, P-2453 identified the victims based on information collected from relatives in Bossangoa, specifying they were Muslims who did not manage to flee that area.[1637] This is corroborated by evidence on their killing from P-2657, P-2462, P-2049, P-2200.[1638] The Chamber further relied on evidence ascribing the attack on Muslims around the imam's house to the Anti-Balaka, including from: P-2462, who stated that she saw the Anti-Balaka surrounding the imam's residence and firing at the group of Muslim civilians gathered there, and heard Abdel (a.k.a Adaye) Abakar shout that he had been shot;[1639] P-2453, who recounted that injured Muslim civilians arriving at the *École de la Liberté* reported having been shot at by the Anti-Balaka;[1640] and P-1577, who testified that a man told him he had

[1631] Judgment, para. 2861 (citing paras. 2815-2831).
[1632] Judgment, paras. 2860-2864.
[1633] Judgment, paras. 2860-2864. *See also below* paras. 442-445.
[1634] Judgment, paras. 2867-2895.
[1635] Ngaïssona Appeal, paras. 130-131, 135-137.
[1636] Judgment, paras. 2822-2831.
[1637] Judgment, paras. 2880, 2892-2895 (citing CAR-OTP-2111-0415-R04, at 0429-30, para. 67).
[1638] Judgment, paras. 2875-2876, 2884-2886 (fns. 7173-7175).
[1639] Judgment, paras. 2822-2824, 2875 (citing T-059, pp. 22:19-21, 23:16-22, 29:11-30:2; T-060, p. 30:5-13). The Chamber considered P-2462's testimony regarding the attack at the imam's residence credible, reliable and generally consistent with other accounts: Judgment, para. 2853.
[1640] Judgment, para. 2830 (citing CAR-OTP-2111-0415-R04, at 0429, para. 65; T-136, pp. 84:7-13, 87:9-22; T-138, pp. 39:23-41:19, 4[3]:6-14).

been shot at by the Anti-Balaka and left for dead.[1641] Thus, even though the witnesses did not identify the Anti-Balaka as responsible for each of these killings, this was the only reasonable inference available on the totality of the evidence.

- Khadidja Adjaro and Koursi Abdelrahim:[1642] the Chamber relied on mutually corroborating evidence from multiple witnesses to find that the Anti-Balaka killed these individuals while they sought refuge from the attack on Bossangoa.[1643] This included compelling evidence from *inter alia*: P-2657, who witnessed Khadidja Adjaro getting shot by Anti-Balaka and confirmed they followed her to finish her off, and saw Koursi Abdelrahim slaughtered on the road;[1644] P-2462, who was part of the same group of Muslims as Khadidja Adjaro that was attacked by the Anti-Balaka and heard the victim shout that she had been shot;[1645] and P-2049, who testified that [REDACTED] Koursi Abdelrahim's throat was "slit as if he were a cow."[1646] As set out further below, there is no procedural bar to the Chamber relying (in-part) on hearsay evidence,[1647] nor was the Chamber unreasonable in its findings on the basis of the totality of the evidence.

- Ousman Abacar and Ousman Abacar's mother:[1648] the Chamber relied on the evidence of P-1577, who testified that the man who picked up the bodies told him that Ousman Abacar's family had all been killed inside or around the imam's house on 5 December 2013.[1649] This individual told P-1577 that he had witnessed and survived the Anti-Balaka attack.[1650] P-1577 further testified that he had seen Ousman Abacar and his mother inside the imam's house moments before the Anti-Balaka attack on the area.[1651] This evidence is not uncorroborated;[1652] rather it is consistent with the substantial body of evidence on the Anti-Balaka attack on Muslim civilians in and around the imam's residence on 5 December 2013.[1653] As set out further below, there is no procedural bar to the Chamber relying (in-

[1641] Judgment, para. 2831 (citing T-027, p. 57:15-23; CAR-OTP-2085-3092; CAR-OTP-2085-3093; CAR-OTP-2085-5547-R01).
[1642] Ngaïssona Appeal, paras. 135-138.
[1643] Judgment, paras. 2868-2870, 2872-2874.
[1644] Judgment, paras. 2868, 2872 (citing T-104, pp. 18:13-19:11, 19:20-20:10, 25:14-26:5 26:17-27:7).
[1645] Judgment, para. 2868 (citing T-059, p. 23:16-22).
[1646] Judgment, para. 2872 (citing T-101, pp. 7:11-8:17, 9:6-23).
[1647] Judgment, para. 135 (citing *Ntaganda* TJ, paras. 67-68, and the references cited therein). *See below* para. 451.
[1648] Ngaïssona Appeal, para. 138.
[1649] Judgment, para. 2887 (citing T-027, p. 58:12-23).
[1650] T-027, p. 57:10-14.
[1651] T-027, p. 56:8-12.
[1652] *Contra* Ngaïssona Appeal, para. 138.
[1653] *See above* para. 440 (first bullet point)

part) on hearsay evidence,[1654] nor was the Chamber unreasonable in its findings on the basis of the totality of the evidence.

- Abdallah Mahamat, Abdelkhadir, Mariam Yamwha, and Amadou Oumarou:[1655] the Chamber relied on P-2200's evidence that these individuals were killed during the Bossangoa attack, and that they were Muslims who were neither Seleka nor soldiers, and not armed or fighting when they were killed.[1656] P-2200 participated in the burial of these and other victims, and saw the bodies with wounds and blood on their clothes.[1657] Contrary to Ngaïssona's claim, P2200 *did* testify that the Anti-Balaka were responsible for these killings, even if he did not witness the killings directly.[1658]

441. Based on the foregoing, Ngaïssona fails to demonstrate that, on the totality of the evidence, no reasonable trial chamber could have found that the Anti-Balaka was responsible for killing these 17 Muslim civilians during the Bossangoa Attack.

The Chamber reasonably found no battle by the Imam's residence

442. Ngaïssona shows no error in the Chamber's reasonable finding that "no battle […] took place in the vicinity of the imam's residence" as other inferences were available from the evidence.[1659] His submissions merely disagree with the Chamber's findings and offer an alternative interpretation unsupported by the evidence.

443. The Chamber properly considered Ngaïssona's submission that "intense fighting between the Anti-Balaka and the Seleka would have taken place in the area of the imam's residence."[1660] It assessed P-1577's evidence, which Ngaïssona also relies on in his appeal,[1661] including his reference to an "intense battle" in the area of the imam's house.[1662] However, the Chamber correctly noted that P-1577's reference was made in relation to spent cartridges, bullet holes, and blood splatters that were seen days after the attack, and not because he was aware of

[1654] Judgment, para. 135 (citing *Ntaganda* TJ, paras. 67-68, and the references cited therein). *See below* para. 451.
[1655] Ngaïssona Appeal, paras. 130-131.
[1656] Judgment, paras. 2878, 2888-2891 (citing CAR-OTP-2088-2146-R04, at 2155-56, paras. 45, 49-52, 56, 59).
[1657] Judgment, paras. 2878, 2888-2891.
[1658] CAR-OTP-2088-2146-R04, at 2155, para. 45 (*« Au cours de cette attaque, 18 Musulmans de BOSSANGOA, dont trois femmes, ont été tués par les Anti-Balaka. »*), at 2156, para. 58.
[1659] Ngaïssona Appeal, paras. 132-133.
[1660] Judgment, paras. 2862, 4058 (citing Ngaïssona Closing Brief, paras. 334-335).
[1661] Ngaïssona Appeal, para. 132.
[1662] Judgment, para. 2862.

any battle at that location.[1663] It thus reasonably considered the suggestion that victims would have been killed 'in cross or friendly fire' "with nothing further, purely speculative."[1664]

444. Ngaïssona also claims that the Chamber failed to consider evidence from Dana,[1665] P-2049,[1666] and P-2602.[1667] Yet none of these witnesses identified the imam's residence as the location of fighting during the Bossangoa attack, despite cross-examination aimed at eliciting such a response.[1668] Their evidence demonstrates no error in the Chamber's finding.

445. Finally, Ngaïssona refers to evidence of Seleka bases in Bossangoa.[1669] However, as Ngaïssona acknowledges,[1670] the Chamber considered this evidence, but found, in light of other evidence, that "the Anti-Balaka attacked the areas mentioned in pursuit of unarmed individuals who were identifiable as Muslims."[1671] In sum, Ngaïssona points to no evidence demonstrating that no reasonable trial chamber could have reached the impugned finding.

The Chamber reasonably found that the Anti-Balaka killed 'C-17'

446. Ngaïssona shows no error in the Chamber's finding that the Anti-Balaka killed 'C-17'. The Chamber relied on P-2453's evidence that, during the attack, the Anti-Balaka killed his friend 'C-17', a 23-year-old moto-taxi driver;[1672] P-2049's testimony that 'C-17' was killed in front of the mosque; and a HRW report listing "a 'popular motorcycle taximan' called 'Hamidou 'Seize-Dix-Sept' among the killed."[1673]

447. Ngaïssona's first claim that P-2453 did not see the actual killing of 'C-17'[1674] should be summarily dismissed as it merely repeats an argument already advanced at trial and considered by the Chamber.[1675] As Ngaïssona himself notes,[1676] the Chamber found that "even if P-2453 did not see the actual killing", "he specified that the individual was his friend and he described

[1663] Judgment, para. 2862 (citing T-027, pp. 56:14-19, 60:1-19).
[1664] Judgment, para. 2862.
[1665] Ngaïssona Appeal, para. 132 (citing T-118, pp. 7:23-25, 8:9-14; CAR-REG-0001-0004).
[1666] Ngaïssona Appeal, para. 132 (citing T-103, pp. 65:7-9, 66:11-21).
[1667] Ngaïssona Appeal, para. 132 (citing CAR-OTP-2118-9705-R01, at 9709, lns. 109-121).
[1668] *See* T-118, pp. 3:21-9:14 (in which the witness described engagements between his Anti-Balaka group and the Seleka, but was unable to identify the location specifically: *see* in particular questioning at p. 7: 10-16); T-103, p. 66:11-21 ("Q. [A]ccording to the information that we have, at the beginning of the attack a Seleka group heavily armed went to the imam's compound. Were you aware of that? A. Are you talking about 5 December? No, I didn't see them.").
[1669] Ngaïssona Appeal, para. 132.
[1670] Ngaïssona Appeal, para. 132 (fn. 411: citing Judgment, para. 2763).
[1671] Judgment, para. 2861 (citing paras. 2762-2765, 2815-2831).
[1672] Judgment, para. 2883 (citing CAR-OTP-2111-0415-R04, at 0429, para. 66).
[1673] Judgment, para. 2883 (citing T-101, pp. 7:11-8:17, 30:13-24; CAR-OTP-2001-2043, at 2056).
[1674] Ngaïssona Appeal, para. 142.
[1675] Judgment, para. 2883 (citing Ngaïssona Closing Brief, para. 333, fn. 1151).
[1676] Ngaïssona Appeal, para. 142.

the circumstances in which he was killed."[1677] Based on this *and* corroborating evidence, the Chamber reasonably found that the Anti-Balaka killed 'C-17'.[1678]

448. Ngaïssona's remaining arguments are based on an alleged "major inconsistency" between P-2453's prior recorded statement and his oral testimony, claiming that reliance on the former allegedly violated principles of publicity and orality,[1679] the presumption of innocence and *in dubio pro reo*,[1680] and the requirement to provide adequate reasoning.[1681] Yet P-2453's prior statement is entirely reconcilable with his oral testimony. The witness asserts in his prior statement that "the Anti-Balaka came very close to the school", "shooting in our direction", killing C-17.[1682] In his oral testimony—in which neither party asked the witness about C-17—he was forthright in admitting that he did not see who the aggressors were, as he was lying on the ground once the explosions started.[1683] However, Ngaïssona overlooks an essential part of the witness's oral testimony: that a group of displaced persons (who had just arrived) had told him that it was the Anti-Balaka who were shooting at them.[1684] Accordingly, it was open to the Chamber to take into account P-2453's evidence, among other sources, to find that the Anti-Balaka killed C-17.

ii. The Chamber reasonably found that the Anti-Balaka destroyed property (count 33)

449. Ngaïssona alleges that the Chamber erred in fact, law, and procedure in attributing the destruction of the adversary's properties in Bossangoa to the Anti-Balaka, because it gave undue weight to hearsay evidence, failed to account for exculpatory evidence, and did not explain its inconsistent approach *vis-à-vis* other property crimes.[1685] Ngaïssona misconstrues evidentiary standards and the Chamber's assessment of the evidence, and his submissions show no error.

450. The Chamber reasonably found that the Anti-Balaka burned and destroyed residential structures, lived in by Muslims, in the immediate vicinity of the imam's residence.[1686] This finding is supported by (i) P-1577, [REDACTED] who was told the Anti-Balaka had looted

[1677] Judgment, para. 2883.
[1678] Judgment, para. 2883. *Contra* Ngaïssona Appeal, para. 144 (arguing incorrectly that P-2453's evidence alone sustained the finding that C-17 was killed by the Anti-Balaka).
[1679] Ngaïssona Appeal, para. 143.
[1680] Ngaïssona Appeal, para. 144.
[1681] Ngaïssona Appeal, para. 145.
[1682] CAR-OTP-2111-0415 at 0429, para. 66.
[1683] *See e.g.* T-138, p. 42:5-8.
[1684] T-138, p. 41:7-19.
[1685] Ngaïssona Appeal, paras. 146-153.
[1686] Judgment, para. 4065 (citing para. 85).

and set them on fire during the Bossangoa Attack;[1687] (ii) P-2200's evidence that children at the *École de la Liberté* told him they saw the Anti-Balaka destroying houses;[1688] (iii) P-2049's testimony that Muslim homes were destroyed and burned in the 'Arabe' neighbourhood, where the imam's residence was located;[1689] and (iv) satellite imagery analysis of destroyed or damaged structures in north-eastern Bossangoa between 4 and 12 December.[1690]

451. The Chamber did not err in relying on P-1577's and P-2200's corroborating hearsay evidence for this purpose.[1691] Ngaïssona's claims that "at least one piece of direct evidence is needed" and that "anonymous hearsay evidence *must* be given low probative value, if any" are unsupported.[1692] To the contrary, as the Chamber correctly recalled, "there is no procedural bar to the introduction or reliance on hearsay evidence in the Court's legal framework."[1693] "While the weight or probative value afforded to it *may* be lower", "[t]he fact that evidence is hearsay does not necessarily deprive it of probative value."[1694] Furthermore, while Ngaïssona states that "[g]eneral caution" is warranted in considering hearsay evidence, he fails to show that the Chamber did not apply such caution.[1695] As part of its general approach to assessing evidence, the Chamber assessed the evidence in the context and conditions in which it was obtained, and in light of other evidence on the record.[1696] For P-1577's evidence, this included the fact that individuals who collected bodies from the imam's house [REDACTED] the Anti-Balaka was responsible for the attack during which the residential buildings were burnt.[1697] P-2200's corroborating evidence of Anti-Balaka destroying houses is based on contemporaneous accounts of [REDACTED], who directly witnessed the conduct.[1698] Ngaïssona's submissions merely challenge the Chamber's reasonable and proper exercise of its discretion in weighing evidence and show no legal or factual error.

452. The Chamber also properly assessed exculpatory evidence.[1699] It considered Dana's claim that "the Anti-Balaka could not have set alight houses and schools on the day of the

[1687] Judgment, para. 2921 (and the references cited therein).
[1688] Judgment, para. 2923 (citing CAR-OTP-2088-2146-R04, at 2158, para. 65).
[1689] Judgment, paras. 2815, 2924 (citing T-101, pp. 26:12-27:5).
[1690] Judgment, paras. 2920, 2922 (citing CAR-OTP-2127-6626, at 6629).
[1691] *Contra* Ngaïssona Appeal, paras. 146-147, 150-151.
[1692] Ngaïssona Appeal, para. 146.
[1693] Judgment, para. 135 (citing *Ntaganda* TJ, paras. 67-68, and the references cited therein).
[1694] Judgment, para. 135.
[1695] Ngaïssona Appeal, para. 146.
[1696] Judgment, para. 133.
[1697] CAR-OTP-2081-0769-R01, at 0789-90. *Contra* Ngaïssona Appeal, para. 151.
[1698] CAR-OTP-2088-2146-R04, at 2158, para. 65.
[1699] Judgment, paras. 2926, 2934-2937. *Contra* Ngaïssona Appeal, para. 152.

Bossangoa Attack" on 5 December 2013,[1700] but correctly did not rely on this aspect of Dana's testimony as it did not exclude the possibility of the Anti-Balaka destroying property at another time between 5 and 8 December.[1701] Furthermore, the Chamber duly considered Dana's testimony that the Seleka set fire to grassland,[1702] as well as evidence similar to that of P-2602[1703] suggesting that Seleka members or civilians were also involved in looting or in the destruction of structures.[1704] In light of such exculpatory evidence, the Chamber reasonably found that "some destruction and looting in Bossangoa either took place at some point after the time period relevant to the charges, or was committed by individuals other than Anti-Balaka members."[1705] Accordingly, aside from the destruction of homes around the imam's residence for which there was no conflicting evidence, the Chamber explained that it did not consider the remaining evidence[1706] sufficient to attribute the destruction of other property in Bossangoa, pillaging (count 34), and the destruction of Bossangoa central mosque (count 35) to the Anti-Balaka, and acquitted him of those charges.[1707] Ngaïssona fails to show that these findings were unreasonable or insufficiently reasoned.[1708]

iii. The Chamber adequately reasoned its findings on displacement (count 38)

453. Ngaïssona alleges that the Chamber "erred in procedure in failing to provide reasons on the position of the person giving the order to displace", because it failed to identify the person from whom the order emanated and to identify whether they were in a position to effect such displacement.[1709] This misconstrues the elements of the crime under article 8(2)(e)(viii) and the Chamber's analysis, and should be dismissed. The Chamber's approach is fully consistent with this Court's jurisprudence on this crime, which has been confirmed by the Appeals Chamber.[1710]

[1700] Judgment, para. 2926 (citing T-117, pp. 62:18-64:15). *Contra* Ngaïssona Appeal, para. 152.
[1701] Judgment, para. 2926.
[1702] Judgment, para. 2937. *Contra* Ngaïssona Appeal, para. 152.
[1703] Ngaïssona Appeal, para. 152 (citing CAR-OTP-2118-9785, at 9802, lns. 582-583; CAR-OTP-2118-9705-R01, at 9712, lns. 221-226).
[1704] Judgment, paras. 2931, 2934-2936.
[1705] Judgment, para. 2938.
[1706] Judgment, para. 2938. *See also* paras. 2924-2925, 2927-2933.
[1707] Judgment, paras. 2924-2938 (other destruction and looting), 2939-2955 (destruction of Bossangoa's central mosque).
[1708] *Contra* Ngaïssona Appeal, paras. 148-149.
[1709] Ngaïssona Appeal, paras. 154-155.
[1710] *Ntaganda* AJ, para. 559.

454. To establish this crime, it must be shown that a perpetrator ordered the displacement of a civilian population while in a position to effect such displacement.[1711] Neither article 8(2)(e)(viii) nor the corresponding Elements of Crimes require the Chamber to identify the individual who issued the order to displace. Like other crimes,[1712] and consistent also with the jurisprudence of the *ad hoc* tribunals,[1713] an accused may be convicted for aiding and abetting a crime even where the principal perpetrator(s) have not been identified.

455. The Chamber established the first and third elements of the war crime of displacement and explained its reasons with sufficient clarity.[1714] It explained that: (i) as a matter of law, a person can give an order within the meaning of this crime by instructing another person "in any form", and that "conduct alone can constitute an order",[1715] and; (ii) its findings on the Anti-Balaka's aim of freeing Bossangoa of all Muslims, considered with the Anti-Balaka's attack on residential areas and its targeting of Muslim civilians, established conclusively that Anti-Balaka groups were 'ordered' to perform acts which would necessarily lead to the displacement of the Muslim civilian population in Bossangoa.[1716] Furthermore, the Chamber was satisfied that the perpetrator was in a position to effect the displacement, given that the Anti-Balaka gave effect to the actual displacement of civilians in attacking Bossangoa and targeting Muslims.[1717]

VI.3.c. The Chamber reasonably found that Ngaïssona provided financial assistance to the Anti-Balaka before the attacks of 5 December 2013

456. The Chamber reasonably found that Ngaïssona provided financial support to Anti-Balaka members before the 5 December 2013 attacks on Bangui and Bossangoa.[1718] The Chamber's findings are clear, reasoned, and grounded in the evidence, which it analysed in three key passages of the Judgment concerning: Ngaïssona's activities whilst in Cameroon

[1711] *See* Elements of Crimes, art. 8(2)(e)(viii), elements 1, 3. *See also* Judgment, paras. 3804-3805 (citing *Ntaganda* TJ, para. 1080). This approach was confirmed by the Appeals Chamber: *Ntaganda* AJ, para. 559.
[1712] For example, the Chamber correctly held, in relation to the crime of murder and relying on ICC jurisprudence, that "it is not necessary to identify the specific perpetrator(s) within the Anti-Balaka responsible for the killings, as long as it is otherwise satisfied beyond reasonable doubt that it was Anti-Balaka elements who committed these killings": Judgment, para. 4059 (citing *Bemba* TJ, para. 88; *Ongwen* TJ, paras. 2977, 3011, 3116; *Boškoski & Tarčulovski* TJ, paras. 312, 346, 577-578, 607). The same reasoning would apply *mutatis mutandis* to this crime.
[1713] *Brđanin* AJ, para. 355 (citing *Krstić* AJ, para. 143). *See also Ngirabatware* AJ, para. 149; *Akayesu* TJ, para. 531; *Musema* TJ, para. 174.
[1714] Judgment, paras. 4082-4084.
[1715] Judgment, paras. 3985, 4083 (citing *Ntaganda* TJ, para. 1081). *See also* Judgment, paras. 3805, 3987.
[1716] Judgment, para. 4084. *See also* para. 4082.
[1717] Judgment, para. 4085.
[1718] *See e.g.* Judgment, paras. 35, 38, 827, 4028-4031, 4034-4043, 4113-4120, 4281-4282, 4290-4292, 4372-4378. *Contra* Ngaïssona Appeal, paras. 160-198. Concerning the significance of this finding for the Chamber's conclusion on Ngaïssona's criminal responsibility, *see below* section VII.1 (paras. 528-552).

(when the Anti-Balaka were 'emerging'), before he returned to Bangui in January 2014;[1719] his activities after he returned to Bangui in January 2014,[1720] and; his specific involvement in financing the supply of arms and ammunition to Anti-Balaka forces leading up to the 5 December 2013 attacks.[1721]

457. Ngaïssona shows no error in the Chamber's approach to corroboration,[1722] or that it was unreasonable in finding that he made financial contributions to the benefit of the Anti-Balaka.[1723] Rather than demonstrating any error, Ngaïssona merely discusses the evidence of certain witnesses in isolation, disagreeing with the Chamber's assessment and failing to engage with its actual reasoning. His claims of error thus rest on a misunderstanding of the Judgment. The Chamber's findings were supported by the evidence, and this was not undermined or contradicted by cross-referencing between passages of the Judgment setting out legal findings and those in which the Chamber set out its appreciation of the evidence.[1724]

458. Furthermore, the Chamber was entitled to regard separate individual instances of financial assistance (each arising from evidence) as mutually corroborative. These represented subsidiary "linked facts" which were in turn relevant to establishing the broader fact ultimately essential for the Chamber's analysis[1725]—that Ngaïssona engaged in financing and coordination activities to the benefit of the Anti-Balaka. As the Appeals Chamber has affirmed, whether evidence is corroborative (and of what fact or pattern of facts) is "a matter of appreciation on a case by case basis."[1726] Importantly, the Chamber was not required to establish any individual instance of financial assistance beyond reasonable doubt, as no such instance was itself the basis

[1719] Judgment, paras. 823-923. *See especially* para. 828 (referring to "overwhelming" evidence of Ngaïssona's financial assistance to individuals who would support returning Bozizé to power, both before and after the attacks of 5 December 2013).
[1720] Judgment, paras. 1683-1695. *See further below* section VI.3.d. (paras. 485-491).
[1721] Judgment, paras. 2249-2278.
[1722] *Contra* Ngaïssona Appeal, paras. 161-163, 167.
[1723] *Contra* Ngaïssona Appeal, paras. 160, 163-167.
[1724] *Contra* Ngaïssona Appeal, para. 164.
[1725] *See e.g.* *Gatete* AJ, paras. 125 ("two testimonies corroborate one another when one *prima facie* credible testimony is *compatible* with the other *prima facie* credible testimony regarding the *same fact* or a sequence of *linked facts*", emphasis added, with no requirement that "both testimonies be identical in all aspects or describe the same fact in the same way"), 205; *Nahimana et al.* AJ, para. 428 ("corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony"). *Contra* Ngaïssona Appeal, paras. 161-163, 167.
[1726] *Gbagbo and Blé Goudé* AJ, para. 358. *See also* paras. 355-357.

for Ngaïssona's criminal responsibility.[1727] Nor was it required to determine that Ngaïssona's financial assistance went specifically to the perpetrators of alleged crimes.[1728]

459. Ngaïssona shows no error in any of his specific complaints concerning: (i) assistance to persons in Gobere and the Bossangoa area; (ii) assistance to persons in Bangui hill; (iii) assistance to persons in Zongo; (iv) other allegations of financial assistance, or; (v) the provision of means and military equipment. Notably, Ngaïssona does not seem to challenge all of the instances of financial assistance identified in the Judgment.[1729]

i. Assistance to persons in Gobere and the Bossangoa area

460. As part of the "overwhelming" evidence of Ngaïssona's financial assistance to individuals willing to help restore Bozizé to power,[1730] the Chamber referred *inter alia* to: P-2269's account of regularly receiving substantial sums while he was in Gobere, transferred from Ngaïssona (who was in Cameroon) via MoneyGram,[1731] and; P-1847's testimony that he had heard that Dedane (who led the Gobere group) received money from Ngaïssona when he travelled through Bertoua.[1732] Ngaïssona merely disagrees with the Chamber's assessment of the evidence of witnesses P-2269 and P-1847,[1733] which was not "pivotal" to the Chamber's ultimate analysis and did not require any heightened consideration.[1734]

461. *First*, while P-2269's evidence was introduced under rule 68(2)(c), this did not require its corroboration.[1735] As noted above, this is only legally required for untested evidence where it is the *sole or decisive* basis for conviction[1736]—which was not the case here, concerning a single instance of Ngaïssona's financial assistance to the benefit of the Anti-Balaka.[1737]

[1727] *See e.g.* *Ongwen* AJ, para. 321 (recalling that "the 'beyond reasonable doubt' standard is to be applied to the facts that are indispensable for entering a conviction, namely, those constituting the elements of the crimes or modes of liability charged. It follows that not each and every fact in the Conviction Decision must be proved beyond reasonable doubt"). *Contra* Ngaïssona Appeal, paras. 163 ("unacceptably diluting the standard of proof"), 164 (alleging that evidence of Ngaïssona's financial support was "crucial to the Chamber's finding of guilt"). *But see e.g.* Judgment, paras. 35, 38, 4028-4031, 4034 (Ngaïssona contributed to the crimes of the Anti-Balaka not only by financial contributions for the benefit of the Anti-Balaka but also by engaging in activities pertaining to the organisation and coordination of groups). *See further below* section VII.1 (paras. 528-552).
[1728] *Contra* Ngaïssona Appeal, paras. 160, 165-166. *See e.g.* Judgment, paras. 4040-4041. *See also below* section VII.1 (paras. 528-552).
[1729] *See e.g.* Judgment, paras. 829-830 (concluding that "money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona").
[1730] *See* Judgment, para. 828.
[1731] Judgment, para. 836.
[1732] Judgment, paras. 842-846.
[1733] *Contra* Ngaïssona Appeal, paras. 168-172.
[1734] *Contra* Ngaïssona Appeal, para. 168.
[1735] *Contra* Ngaïssona Appeal, para. 168.
[1736] *See above* paras. 365-366.
[1737] *See above* paras. 368, 458.

Furthermore, the Judgment expressly addressed and rejected Ngaïssona's allegation of inconsistencies in P-2269's account of events in Gobere, concluding that it is "largely internally consistent", that P-2269 was "forthcoming and truthful" and "generally credible", and that in any event the Chamber would "assess[] P-2269's evidence together with other evidence before it."[1738] Ngaïssona shows nothing unreasonable in this analysis, but merely repeats his subjective disagreement with it.[1739]

462. *Second*, Ngaïssona incorrectly claims that the Chamber erred in fact when summarising P-1847's evidence that [REDACTED] Dedane [REDACTED] received funds from Ngaïssona.[1740] This turns on Ngaïssona's assertion that P-1847[REDACTED] "[REDACTED]".[1741] However, [REDACTED].[1742] In the relevant passage of the testimony P-1847 simply referred [REDACTED] receiving funds from Ngaïssona in the context of a paragraph of his statement [REDACTED].[1743]

463. *Third*, even if P-1847 had meant to refer [REDACTED], this implies no lack of caution on the Chamber's part.[1744] To the contrary, having found that P-1847 was subject to interference,[1745] the Chamber expressly noted that it would consider inconsistencies in his evidence holistically, as appropriate, in the context of all the other evidence before it.[1746] The Chamber expressly identified that P-1847's evidence changed when discussing "financial assistance to armed groups by Mr Ngaïssona" and in particular noted "an obvious change in the attitude of the witness" on the second day of his testimony when "he was asked more detailed questions in particular about Mr Ngaïssona."[1747] Thus, even if P-1847's statement in this respect entailed a greater degree of hearsay than the Chamber understood, or was otherwise internally inconsistent in some respects, this was harmless and could not have affected the Judgment, given the very limited use to which this evidence was put.[1748]

[1738] *See* Judgment, paras. 417-421.
[1739] *Contra* Ngaïssona Appeal, para. 169. *Compare further* Ngaïssona Closing Brief, para. 216.
[1740] *Contra* Ngaïssona Appeal, para. 170. *See* [REDACTED].
[1741] Ngaïssona Appeal, para. 170.
[1742] *See e.g.* T-23-CONF, p. 43:22 [REDACTED].
[1743] *See* T-23-CONF, pp. 55:22-56: [REDACTED].
[1744] *Contra* Ngaïssona Appeal, para. 170.
[1745] Judgment, paras. 365, 368.
[1746] Judgment, para. 373. *See also above* para. 367.
[1747] Judgment, para. 843. *See also* para. 846.
[1748] *Contra* Ngaïssona Appeal, para. 170. *See above* paras. 458, 460.

464. Nor was it necessary for evidence of "financing of the Gobere group and the Bossangoa area" to be corroborated,[1749] since this was not legally required for P-2269's evidence.[1750] The Chamber's finding that Ngaïssona provided money to elements in the Bossangoa area thus remains unaffected[1751]—even though, as a matter of law, there was no requirement to establish beyond reasonable doubt any particular instance of Ngaïssona's financial assistance.[1752] To the contrary, as noted above, *all* of the evidence of Ngaïssona's financial assistance is simply relevant to the overall conclusion that he contributed financing to the benefit of the Anti-Balaka, and mutually corroborative for that purpose.[1753]

ii. Assistance to persons around Bangui hill

465. For this instance of financial assistance—again, just another aspect of Ngaïssona's financial assistance to individuals willing to help restore Bozizé to power[1754]—the Chamber recalled Jacob Mokpem-Bionli's (P-0992) testimony that Anti-Balaka youth members gathered around Bangui hill received financial assistance from Ngaïssona in Cameroon "before the offensive of 5 December 2013" and "long before Mr Ngaïssona's return".[1755] In this regard, the Chamber expressly acknowledged that the witness had later sought to distinguish between asking Ngaïssona for the money (before 5 December 2013) and receiving the money (suggesting it was *after* 5 December 2013), but considered "the witness's clear initial testimony that Mr Ngaïssona sent money before 5 December 2013" to be more reliable.[1756]

466. Ngaïssona merely disagrees with the Chamber's assessment, without showing that it was unreasonable. Thus he claims that Mokpem-Bionli's initial evidence as to the timing of the financial assistance was not "clear", and that his evidence was in any event contradicted by Alfred Ngaya (P-0808), nor corroborated by Brice Emotion Namsio (P-0446) or P-1521.[1757] Yet the Chamber was entitled to rely on Mokpem-Bionli's initial unequivocal oral testimony

[1749] *Contra* Ngaïssona Appeal, para. 171.
[1750] *See above* para. 461.
[1751] *Contra* Ngaïssona Appeal, para. 172 (citing Judgment, paras. 2267, 4042, 4710).
[1752] *Contra* Ngaïssona Appeal, para. 171.
[1753] *See above* para. 458.
[1754] *See* Judgment, para. 828.
[1755] Judgment, para. 839.
[1756] Judgment, para. 839 (fn. 1896: citing T-092, pp. 36:11-22, 48:13-19; T-093, p. 30:4-20).
[1757] Ngaïssona Appeal, para. 173.

clarifying his statement,[1758] notwithstanding his subsequent qualification.[1759] It is well established that the Chamber is entitled to deference on such matters, given its advantage in observing the demeanour and manner of Mokpem-Bionli first-hand.

467. Furthermore, Ngaïssona asserts without evidence that it was "not tenable" for money to have been transferred in "less than 24 hours".[1760] He also overlooks the Chamber's assessment that, while Ngaya's evidence was not "wholly unreliable",[1761] he "appeared to present a favourable and passive view of Mr Ngaïssona's role […] which often led him to contradict himself".[1762] As the Chamber noted, his evidence on Ngaïssona's financial assistance was a case in point.[1763] Thus, Ngaya recalled that "at some point money was sent to me [by Ngaïssona] to help the Anti-Balaka" (seemingly distinguishing this from his own efforts to collect money),[1764] whereas Ngaïssona relies on Ngaya's account that (only on a later occasion) he "once called Ngaïssona and asked him to donate" and received "about 80,000 or 1000,000 CFA".[1765] Likewise, the Chamber noted that Brice Emotion Namsio (P-0446) "[o]n occasion […] appeared to diminish his own role"[1766] and that P-1521 "appeared to present a one-sided, favourable and passive view of Mr Ngaïssona's role".[1767] The Chamber was thus reasonable to find Mokpem-Bionli's evidence more reliable,[1768] especially for the purpose of establishing Ngaïssona's overall financial assistance to the benefit of the Anti-Balaka.[1769]

iii. Assistance to persons in Zongo

468. The Chamber noted the evidence of P-2232 and P-2841 concerning financial assistance to persons in Zongo, channelled through Maxime Mokom. In particular, P-2232 stated that Maxime Mokom received money from Cameroon, from a "Mr Camerounais", which was used to prepare the 5 December 2013 attack. P-2841 likewise affirmed that Maxime Mokom

[1758] *Compare e.g.* T-092, pp. 36:15 ("it was before the offensive"), 36:25-37:1 ("He sent money before the offensive of 5 December. It was before he was asked for help. He got to Bangui in 2014, very early in 2014"), 48:17 ("it was before the offensive"), *with* CAR-OTP-2118-0288, para. 122 ("*À ma connaissance cette remise s'est faite après le 5 décembre 2013*"). *See also* T-092, p. 30:10-25 (taking the witness to paragraph 122 of his statement, which he acknowledges: "Yes, I can see it. If you want, I can read it out for you").
[1759] *See e.g.* T-093, p. 30:4-20 ("We didn't receive the money before 5 December. It was after 5 December. That is when Mr. Ngaya began to receive the money"). *See further* Judgment, para. 839 (fn. 1896).
[1760] Ngaïssona Appeal, para. 173.
[1761] Judgment, para. 254.
[1762] Judgment, para. 252. *See also* paras. 251-255.
[1763] Judgment, para. 252.
[1764] T-069, p. 19:2-12. *See also* Judgment, paras. 837-838, 873-875, 855.
[1765] CAR-OTP-2093-0010, para. 43. *See also e.g.* T-069, pp. 37:8-40:3.
[1766] Judgment, para. 221.
[1767] Judgment, para. 342.
[1768] *Contra* Ngaïssona Appeal, para. 173 ("unreasonable and contrary to logic and common sense").
[1769] *Contra* Ngaïssona Appeal, para. 174. It was not legally necessary to establish that Ngaïssona specifically funded elements participating in the Bangui attack: *see e.g. above* paras. 458, 461, 464.

transferred funds to him. [REDACTED], Prince Lakouetene and Doguela [REDACTED] Ngaïssona sent food and money to Zongo. Brice Emotion Namsio (P-0446) also stated that he received money from Ngaïssona, through Alfred Ngaya (P-0808).[1770] The links between Lakouetene, Doguela, [REDACTED], Maxime Mokom, Ngaïssona, and others in organising financial and material support to the benefit of the Anti-Balaka were further corroborated by e-mails in the summer and autumn of 2013.[1771] The "clear and unequivocal content"[1772] of these e-mails shows, "at the very least," that Ngaïssona acted "as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make requests for weapons and ammunition".[1773]

469. Ngaïssona states that "no reasonable trier of fact" could have found that his "financing of the Zongo group […] was proven beyond a reasonable doubt", asserting that the "[e]vidence was scarce and of negligible probative value."[1774] This is incorrect for several reasons. *First*, since Ngaïssona's financial assistance to persons in Zongo was not essential to his conviction, this did not need to be proven beyond reasonable doubt.[1775] To the contrary, as stated, this was merely one evidentiary strand contributing to broader factual findings.[1776] *Second*, Ngaïssona shows no fault in the Chamber's analysis. For example, he assumes that the Chamber must have inferred that the source of funding known to P-2232 as "Mr Camerounais" was Ngaïssona, and again asserts that such an inference was not the only reasonable inference available on the evidence.[1777] Yet not only did the Chamber refrain from making such an inference in terms—but, rather, merely noted P-2232's evidence neutrally.[1778] It was not required to preclude other reasonable inferences since the criminal standard of proof did not apply to this question.

470. Ngaïssona's further criticisms of P-2841's hearsay evidence (identifying him as the source of funds transferred to Maxime Mokom) and Namsio's evidence (of receiving funds

[1770] *See* Judgment, paras. 840-841, 2259-2260, 2267-2269. *See also* paras. 850, 961.
[1771] *See* Judgment, paras. 865-889.
[1772] Judgment, para. 870. *See also* paras. 883 ("unequivocal"), 886 ("unambiguous").
[1773] Judgment, para. 889. *See also* para. 883 ("requests were sent to Mr Ngaïssona in the belief that he could, and would, provide the relevant assistance, […] Mr Ngaïssona clearly did intend to establish contact with the individuals requesting such assistance").
[1774] Ngaïssona Appeal, para. 179. *See also* para. 175.
[1775] *See above* para. 458.
[1776] *See e.g. above* paras. 458, 461, 464, 467. *Contra* Ngaïssona Appeal, paras. 175, 179.
[1777] Ngaïssona Appeal, para. 176.
[1778] *See* Judgment, para. 840. To show the contrary, Ngaïssona relies only on the Chamber's conclusion with regard to the *totality* of the evidence, finding that he provided the relevant financial assistance, before and after 5 December 2013.

from him for rent) again show no error.[1779] There is no necessary inconsistency [REDACTED] Lakouetene and Doguela that Maxime Mokom received money from Ngaïssona,[1780] and Maxime Mokom denying this assertion [REDACTED].[1781] It remained open to the Chamber, in these circumstances, to consider which account was more likely—including in the context of all the other evidence in the record suggesting Ngaïssona's provision of financial assistance to the benefit of the Anti-Balaka. Likewise, the Chamber expressly noted that the "exact timing" of Namsio's attempt to secure Ngaïssona's assistance with his Zongo rent was "uncertain", but that it understood "these calls may have taken place anywhere between early September 2013 […] to end-November 2013".[1782] While the Chamber did not express a view as to the weight to be given to this particular evidence, it was entitled to consider it as part of its holistic assessment of Ngaïssona's alleged financing activities.

iv. Other financial assistance

471. The Chamber noted other testimony relevant to showing Ngaïssona's financial assistance to the benefit of the Anti-Balaka including from Poussou (P-2625),[1783] Kokaté (P-0801),[1784] Nicholas Tiangaye (P-0291),[1785] P-0876,[1786] and Kasper Agger (P-2012).[1787] In these respects, Ngäissona merely repeats his complaints about the lack of corroboration—which was not legally required[1788]—and "unacceptable lowering of the standard of proof", which was

[1779] *Contra* Ngaïssona Appeal, paras. 177 (suggesting contradictions in P-2841's testimony, as well as inconsistency in the Judgment to the extent it also refers at paragraph 858 to P-2841 stating that Ngaïssona had promised to supply Maxime Mokom but that he did not receive anything), 178 (suggesting that Namsio's evidence is too vague "to draw any conclusions on Mr Ngaïssona's funding of the Anti-Balaka").
[1780] *See e.g.* T-29-CONF, pp. 42:11-43:8.
[1781] *See e.g.* T-30-CONF, pp. 14:13-15:13 [REDACTED].
[1782] Judgment, para. 2269 (fn. 5817). *See also* para. 955.
[1783] *See e.g.* Judgment, para. 862 ("Poussou […] did not recall clearly if Mr Ngaïssona ever told him that he was involved in financing the Anti-Balaka to purchase arms, but he did [say] that he had spent a great deal of money on the 'upkeep of the men' […] at the end of 2018, they had a discussion in his office at the Central African football association in the context of which he said that he had contributed to the purchase of weapons for the Anti-Balaka", citing T-190, pp. 35:22-37:8; T-193, pp. 70:5-73:4). *See also* paras. 901, 1011; T-189, pp. 35:16-24, 36:24-37:5, 46:3-12.
[1784] *See e.g.* Judgment, para. 847 ("Ngaïssona told him [Kokaté] during some telephone conversations that he was financing the movement […] During a meeting in Bangui at the residence of the president, the Anti-Balaka who were present said that they were funded by Mr Ngaïssona, that he gave them funds to organise for the events which took place on 5 December 2013", citing T-034, pp. 51:22-53:9; T-035, pp. 29:22-30:19, pp. 31:24-32:4; T-036, p. 14:8-14; T-037, pp. 79:17-82:16).
[1785] *See e.g.* Judgment, para. 849 ("Tiangaye received information according to which Bozizé sent money to Mr Ngaïssona to distribute to the Anti-Balaka", citing CAR-OTP-2024-0036-R05, para. 120; T-051, p. 120; T-51, pp. 37:1-38:25).
[1786] *See e.g.* Judgment, para. 850 ("Mr Ngaïssona was one of the 'financiers' of the Anti-Balaka because throughout his efforts up to N'Djamena, P-0876 had not heard of him, but once Djotodia left […], he saw Mr Ngaïssona [REDACTED] from his arrival, things changed radically. P-0876 could not say through whom Mr Ngaïssona financed", citing CAR-OTP-2046-0455-R01, pp. 0465-66 (lns. 367-386), 0466-67 (lns. 409-441); T-085, pp. 14:20-15:11, 57:11-58:8; T-088, pp. 30:6-24, 48:14-49:22).
[1787] *See e.g.* Judgment, para. 851.
[1788] *Contra* Ngaïssona Appeal, para. 180. *See above* paras. 365-366, 457-458.

inapposite for the Chamber's reasoning on subsidiary matters of this kind.[1789] While he apparently disagrees even with the Chamber's reliance on this evidence as part of its holistic assessment, he shows nothing unreasonable in its approach. To the contrary, his deprecation of Poussou's evidence as "too vague" about the funding recipients simply takes the evidence out of context.[1790] Likewise, while the Chamber acknowledged reason for caution in considering Kokaté's (P-0801) evidence, it expressly addressed Ngaïssona's concerns and concluded that it remained appropriate to consider this evidence as part of its holistic assessment.[1791] Ngaïssona's curt dismissal of the remaining evidence shows no error.[1792]

v. Provision of means and military equipment

472. In assessing Ngaïssona's financial assistance to the benefit of the Anti-Balaka,[1793] the Chamber also took account of evidence concerning his involvement in the provision of weapons and military equipment.[1794] Ngaïssona challenges the Chamber's approach to four aspects of the evidence: the provision of ammunition and Thurayas to Anti-Balaka groups;[1795] his admission of purchasing weapons;[1796] certain e-mail exchanges,[1797] and; promises of the provision of materiel.[1798] However, he fails to show error in any of these respects.[1799] Importantly, the Chamber only considered this evidence as part of its overall assessment in determining that Ngaïssona provided financial assistance to individuals enlisted to help return Bozizé to power—which was just one means through which he contributed to the charged

[1789] *Contra* Ngaïssona Appeal, para. 180. *See above* paras. 458, 469.
[1790] Notably, this refers to at least two meetings. *Contra* Ngaïssona Appeal, para. 180 ("Poussou's evidence that Mr Ngaïssona said he was 'financing the children out in the field' and spent money on their 'upkeep', lacks any detail about the supposed recipients", citing T-189, pp. 35-38, 46; T-190, pp. 23-24, 35-36; T-193, pp. 60-61). *But see e.g.* T-189, p. 35:21-24 ("during our discussions, Mr Ngaïssona informed us that he was financing the children out in the field, *and he considered these Anti-Balaka combatants out in the field as being his children*. So he said to us that he was responsible for their upkeep", emphasis added); T-190, pp. 23:23-24:1 ("Ngaïssona told us […] that he was financing and had spent a great deal of money on the upkeep of these soldiers out in the field. So clearly, it logically followed that he was part of the armed struggle for taking power back"); T-190, pp. 35:22-37:8 (confirming that Ngaïssona told Poussou about financing the purchase of weapons in a later meeting at the Central African football association in 2018). *See also generally* Judgment, paras. 1011-1014, 1029, 1047. *See also below* para. 476.
[1791] *Contra* Ngaïssona Appeal, paras. 181-182. *See* Judgment, paras. 233-247, *especially* paras. 235-239, 241-242, 246-247.
[1792] *Contra* Ngaïssona Appeal, para. 183.
[1793] *See* Judgment, paras. 35, 38, 827, 4028-4031, 4034.
[1794] *See e.g.* Judgment, paras. 832-833, 835, 852-889.
[1795] *See* Ngaïssona Appeal, paras. 185-190.
[1796] *See* Ngaïssona Appeal, para. 191.
[1797] *See* Ngaïssona Appeal, paras. 192-194.
[1798] *See* Ngaïssona Appeal, paras. 195-198.
[1799] *Contra* Ngaïssona Appeal, para. 184.

crimes. While relevant, and like the instances of financial assistance discussed above, none of the following instances was essential to his convictions.

Provision of ammunition and Thurayas

473. Among other aspects of his evidence, P-2673 stated that: (i) he was told that Ngaïssona "'must' have" provided a consignment of money and hunting ammunition (stored in "Maggi Cube" boxes) before the Bangui attack,[1800] and; (ii) Ngaïssona instructed that a consignment of Thuraya satellite phones was distributed to Bossangoa, Gobere, and Bouca.[1801] The Chamber noted that the witness provided differentiated answers, distinguishing between events he knew himself and events he heard from others, and acknowledging that some information he received from others turned out to be incorrect when he tried to verify it.[1802] Accordingly, the Chamber did not rely on P-2673's statement concerning the provision of ammunition because it was "solely based on the information that he received from [REDACTED]", and this was insufficient for P-2673's conclusion about Ngaïssona's conduct in this respect.[1803] By contrast, it did not expressly reject P-2673's evidence concerning the provision of Thurayas, but merely noted this within the context of its holistic assessment of the evidence of Ngaïssona's financial assistance to the benefit of the Anti-Balaka.[1804] More generally, the Chamber carefully considered and rejected Ngaïssona's claim that P-2673's evidence should be afforded no weight, noting those aspects which "reinforced the witness's credibility" and determining that it would assess P-2673's testimony holistically, in light of the other evidence".[1805]

474. Ngaïssona shows no error in the Chamber's approach,[1806] let alone an error which materially affected the Judgment.[1807] *First*, there is no legal or procedural error in a chamber recognising certain evidence (among a large body of other evidence relevant to a particular subsidiary fact) without expressly resolving every alleged inconsistency.[1808] Here, the Chamber sets out its reasoning with sufficient clarity,[1809] bearing in mind the wealth of evidence relevant

[1800] *See* Judgment, paras. 832, 2273-2275. *But see further* T-041-CONF, p. 52:11-14 ("According to what I know, I don't know whether the munition must come from Ngaïssona. I don't know that. [REDACTED]. I cannot confirm that Ngaïssona sent it or did not send it. I just got this information from [REDACTED], who was in contact with these people").
[1801] *See* Judgment, paras. 833-835.
[1802] Judgment, para. 430.
[1803] Judgment, para. 2276. *See also* paras. 2277-2278.
[1804] *See* Judgment, paras. 833-835.
[1805] *See* Judgment, paras. 428-433.
[1806] *Contra* Ngaïssona Appeal, paras. 185-189.
[1807] *Contra* Ngaïssona Appeal, para. 190.
[1808] *Contra* Ngaïssona Appeal, para. 185. *See also* para. 188.
[1809] *See e.g. Bemba* AJ, para. 53; Judgment, para. 131.

to establishing Ngaïssona's financial assistance to the benefit of the Anti-Balaka—which is not even the sole basis on which his contribution to the charged crimes is founded.

475. *Second*, there is no inconsistency in the Chamber's approach to the different aspects of P-2673's evidence.[1810] Not only was it entitled to accept a witness' evidence in one respect but not another,[1811] but P-2673 openly acknowledged the limits of his knowledge. Thus, P-2673 expressly stated that his hearsay evidence concerning the "Maggi Cube" ammunition consignment depended *entirely* on what he was told by another person.[1812] By contrast, while some of his information concerning the Thuraya satellite phones was hearsay, he was personally involved in some aspects of this matter.[1813] As the Chamber expressly noted, it took account of such considerations in assessing the witness evidence.[1814] It was entitled to rely on hearsay information in these circumstances, without corroboration, and Ngaïssona shows nothing unreasonable in the Chamber's approach by merely re-emphasising his unsuccessful trial arguments.[1815]

Admission of purchasing weapons

476. As noted above, the Chamber recalled Poussou's evidence that, some years after the charged events, Ngaïssona admitted he helped to purchase weapons for the Anti-Balaka.[1816] Ngaïssona shows no error in the Chamber noting this evidence even though it was elicited by refreshing Poussou's memory with his prior written statement—a fact that was expressly noted in the Judgment.[1817] Ngaïssona merely disagrees with the Judgment.[1818]

Certain e-mail exchanges

477. As part of its overall assessment of the evidence of Ngaïssona's financial assistance to the benefit of the Anti-Balaka, the Chamber referred to certain e-mail exchanges which it considered "show[s] that Mr Ngaïssona, at the very least, acted as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make

[1810] *Contra* Ngaïssona Appeal, paras. 186-189.
[1811] *See e.g.* Judgment, para. 203 (including references in fn. 193).
[1812] *See above* fn. 1800.
[1813] *See* Judgment, para. 833. *See also* para. 835. *Cf.* Ngaïssona Appeal, para. 187 (accepting that "the witness might have had direct information on the procurement of these Thurayas").
[1814] Judgment, para. 430. *See also* paras. 200, 203, 432-433.
[1815] *Contra* Ngaïssona Appeal, paras. 187-188.
[1816] Judgment, para. 862. *See also above* para. 471.
[1817] *See* Judgment, para. 862 ("When confronted with his prior statement which suggests that Mr Ngaïssona did confirm to him that he financed the purchase of arms […]"). *See further* paras. 197-199. *Contra* Ngaïssona Appeal, para. 191.
[1818] *Contra* Ngaïssona Appeal, para. 191.

requests for weapons and ammunition, for purposes of engaging in armed hostilities."[1819] The Chamber was careful both: (i) to consider the reliability and probative value of the e-mails on their face,[1820] and; (ii) to consider the e-mails within the context of relevant witness evidence, such as P-2843, Alfred Ngaya (P-0808), and P-2841.[1821]

478. Ngaïssona claims that the Chamber "erred in fact by giving excessive weight" to these e-mails, but fails to show that the Chamber was unreasonable.[1822] *First*, by emphasising one passage in isolation, which he claims to be irrelevant, he takes the Chamber's assessment out of context.[1823] When read as a whole, it is plain that the Chamber did not treat the interlocutors' beliefs as dispositive.[1824] Rather, it assessed: (i) the fact and content of the e-mails to Ngaïssona; (ii) Ngaïssona's responses, including seeking contact details, forwarding requests, and engaging with intermediaries; and (iii) witness evidence of the context in which those e-mails were sent.[1825] Accordingly, the Chamber did not treat the e-mails purely as evidence of what others *thought* of Ngaïssona, but also of his own actions.[1826]

479. Furthermore, Ngaïssona repeats his unsuccessful claim that the Chamber "failed to properly appreciate that the individuals involved in the sending of these emails sought to extort money from Mr Ngaïssona", which was expressly considered and rejected by the Chamber.[1827] The Chamber could reasonably consider that the operational details in the requests, their frequency, consistency with events on the ground, and the identity and affiliation of the interlocutors, was incompatible with Ngaïssona's theory of opportunism or deception.[1828]

480. *Second*, Ngaïssona fails to show any error in the Chamber's understanding that the evidence suggested he "acted as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make requests for weapons and ammunition".[1829] Contrary to Ngaïssona's claim, the Chamber did not suggest that he "took on a 'liaison' role

---

[1819] Judgment, para. 889. *See also* paras. 865, 883. *See generally* paras. 865-889.
[1820] *See* Judgment, paras. 866-870.
[1821] Judgment, paras. 871-889.
[1822] *Contra* Ngaïssona Appeal, paras. 192-193.
[1823] *Contra* Ngaïssona Appeal, para. 192 (citing Judgment, para. 883).
[1824] *See also* Judgment, para. 883 ("In light of the unequivocal text of the e-mails sent to Mr Ngaïssona, as well as the further context provided by both P-2843 and P-2841 regarding why such requests for materiel and financial assistance would have been sent to Mr Ngaïssona, the […] fact remains that these requests were sent to Mr Ngaïssona in the belief that he could, and would provide the relevant assistance, *as well as that Mr Ngaïssona clearly did intend to establish contact with the individuals requiring such assistance*", emphasis added).
[1825] Judgment, paras. 865-889.
[1826] *Compare e.g.* Judgment, para. 883, *with* para. 889. *See also above* fn. 1824.
[1827] *Contra* Ngaïssona Appeal, para. 192.
[1828] *See* Judgment, paras. 877-883. *See also* paras. 436-440.
[1829] Judgment, para. 889.

vis-à-vis the entire Anti-Balaka movement". Rather, the Judgment describes the evidence as presented to the Chamber, assessed as a whole—that is, that Ngaïssona was not a passive recipient of the e-mails but rather sought to engage with relevant individuals on the subject matter concerning requests for materiel and funds for the group.[1830] Ngaïssona merely offers his own subjective view (and shows no error) when he asserts that P-2843's and P-2841's evidence implies a "lack of any follow-up or fulfilment", which in turn he suggests undermines the view that Ngaïssona acted as a liaison to whom requests should be directed.[1831] To the contrary, the Chamber observed that Ngaïssona communicated this and other requests to Eric Danboy, [1832] a member of Bozizé's close protection.[1833] Moreover, the Chamber also observed that "P-2843 had very limited direct information about Mr Ngaïssona's involvement with the Anti-Balaka."[1834] Likewise, the Chamber made no error in its careful analysis of P-2841's evidence, concluding that his explanations relevant to this issues were "[REDACTED], and in any event inapt to create doubt as to the unambiguous content of the emails."[1835]

481. *Third*, again, the Chamber did not—and was not obliged to—make any determination concerning the import of these e-mails beyond reasonable doubt.[1836] Rather, this was a subsidiary aspect of the evidence, considered by the Chamber in the context of assessing Ngaïssona's financial assistance as a whole to the benefit of the Anti-Balaka. Even the promise of such assistance, whether provided or not, was relevant and probative in assessing Ngaïssona's conduct and his criminal responsibility.

Promises of the provision of materiel

482. In discussing the evidence supporting its finding about the coordinated nature of the attacks on 5 December 2013,[1837] the Chamber noted that "the evidence suggests that some Anti-Balaka elements considered that they had been promised materiel by Mr Ngaïssona before the Bangui Attack."[1838] In this regard, it referred to the evidence of P-0306 and P-2658.[1839] In

[1830] *Contra* Ngaïssona Appeal, para. 193.
[1831] *Contra* Ngaïssona Appeal, para. 193.
[1832] *See* Judgment, paras. 884, 1541.
[1833] *See* Judgment, paras. 716, 756, 794 (noting his presence in Yaoundé along with other members of Bozizé's inner circle).
[1834] Judgment, para. 438.
[1835] *See* Judgment, para. 886. *Contra* Ngaïssona Appeal, para. 193 (alleging that the Chamber erred "by relying on a Facebook message by P-2841" but failing "to take into account P-2841's clarification regarding that Facebook exchange").
[1836] *Contra* Ngaïssona Appeal, para. 194. *See above* para. 458.
[1837] *See e.g.* Judgment, bold text preceding para. 2122. *See further* paras. 69-72.
[1838] Judgment, para. 2262.
[1839] Judgment, paras. 2263-2266.

summarising the basis for its conclusion that the 5 December 2013 attacks were coordinated, the Chamber made no further reference to this particular evidence.[1840]

483. Ngaïssona claims incorrectly that the Chamber erred by failing to determine "whether it was established beyond a reasonable doubt that it was Mr Ngaïssona who made these promises", and by "failing to properly evaluate the evidence".[1841] Yet the Chamber simply did not address or refer to this evidence in finding that Ngaïssona provided financial assistance to the benefit of the Anti-Balaka (which was based on a large quantity of other evidence, to which it did refer). As such, the evidence of Ngaïssona's promises is irrelevant to this ground of appeal, and cannot have materially affected the Chamber's finding.[1842]

484. Furthermore, in any event, it was not essential to Ngaïssona's conviction to establish whether he made promises to provide materiel. As this was only a subsidiary aspect of the evidence, the Chamber was not obliged to make any finding in this respect beyond reasonable doubt. Nor does Ngaïssona show anything unreasonable in the Chamber's approach to the evidence of P-0306 and P-2658. To the contrary, with regard to P-0306, Ngaïssona simply disagrees with the Chamber's assessment of his credibility, without showing error.[1843] Similarly, he shows no error in the Chamber's mere reference to P-2658's evidence simply because it was hearsay.[1844]

[1840] *See* Judgment, paras. 2394-2406.
[1841] *Contra* Ngaïssona Appeal, paras. 195-198.
[1842] *Contra* Ngaïssona Appeal, para. 198. Notably, this evidence is discussed in an entirely different section of the Judgment, concerned with the evidence relevant to the Chamber's finding on the coordinated nature of the 5 December 2013 attacks: *see above* fn. 1837.
[1843] *Contra* Ngaïssona Appeal, para. 197 ("[P-0306's] evidence was plagued by such credibility concerns that it was entirely unreasonable for the Chamber to rely on his evidence", referring also to "the witness' evasiveness and lack of truthfulness concerning who ordered him to go to Bangui", citing Judgment, paras. 2155-2162). *Compare* Judgment, paras. 206-218 (assessing the reliability and credibility of P-0306's evidence carefully, and finding that he was "generally credible", "did not show a tendency to incriminate Mr Ngaïssona at all costs" or exhibit "a bias against Mr Ngaïssona or the Anti-Balaka generally", and that Ngaïssona's arguments concerning his alleged "improper motives" or alleged "coach[ing]" were "entirely speculative"; consequently, resolving to assess "the reliability of P-0306's evidence on a case-by-case basis in light of other evidence before it"). *See also above* para. 378. In the same vein, and irrelevantly, Ngaïssona expresses similar concern with regard to "P-0306's allegation that he was offered money in exchange for his participation [in] the Bangui attack", but acknowledges that "the Chamber does not appear to have relied on this allegation for its conclusions on Mr Ngaïssona's financial assistance or promise thereof": *see* Ngaïssona Appeal, para. 197 (citing Judgment, para. 1083). This passage of the Judgment sets out evidence relevant to the Chamber's finding concerning the formation or re-activation of self-defence groups following the take-over of the CAR by the Seleka: *see e.g.* Judgment, bold text preceding para. 1059. *See further* paras. 40-44.
[1844] *Contra* Ngaïssona Appeal, para. 197. *Compare* Judgment, paras. 492, 495 (finding that P-2658's evidence was "largely consistent and internally coherent" and that he "clearly differentiated between his personal experiences and information he came to learn from others and was able to explain and point out the sources of his knowledge", and concluding that his testimony was "generally credible"), 2264 (noting P-2658's explanation that "he got information through Dedane's elements because those elements said they were waiting for the materiel", citing T-134, p. 61). *See also above* para. 363.

VI.3.d. The Chamber reasonably determined that Ngaïssona's 2014 financial assistance went to weapons and ammunition

485. The Chamber reasonably found that, following his return to Bangui on 14 January 2014 and designation as Anti-Balaka National General Coordinator, Ngaïssona continued to provide financial assistance to the Anti-Balaka.[1845] For the purpose of establishing Ngaïssona's criminal responsibility for the charged crimes, it was "not alone determinative" whether he acted with "the specific purpose of providing money for purchase of weapons or ammunition".[1846] Yet on the facts, alongside evidence of Ngaïssona's continuing general financial assistance to the Anti-Balaka,[1847] the Chamber relied on the evidence of three witnesses (P-0954, P-0965, and P-2232) to conclude that Ngaïssona's assistance did encompass this purpose.[1848]

486. Ngaïssona shows no error in the Chamber's assessment, nor that the Judgment would be materially affected even if it had erred.[1849] As the Chamber noted, it was not legally required to establish that Ngaïssona's financial assistance was intended and/or used to purchase weapons or ammunition.[1850] The vast evidence of Ngaïssona's more general financial assistance to the Anti-Balaka—both before and after 5 December 2013, which he does not appear to challenge in its entirety[1851]—would itself have sufficed.[1852] Thus, even if the Chamber had erred in its approach to the evidence of Ngaïssona's assistance in the purchase of weapons and ammunition in 2014, his convictions remain unaffected.

487. *First*, Ngaïssona fails to show that no reasonable chamber could have placed weight on the evidence of the three witnesses. He merely offers his own interpretation of P-0954's

---

[1845] Judgment, paras. 60, 62, 1685, 1694-1695, 4281, 4372-4378. *See also* paras. 4282, 4290-4292.
[1846] Judgment, para. 1685.
[1847] *See* Judgment, paras. 1685-1688.
[1848] *See* Judgment, paras. 1689-1695. On appeal, Ngaïssona also addresses the evidence of P-0306, to which the Judgment briefly referred when considering the evidence of Ngaïssona's financial assistance before 5 December 2013: *see* Judgment, para. 854; Ngaïssona Appeal, para. 202. Ngaïssona's criticism of this evidence as "implausible and uncorroborated" shows no error concerning the Chamber's assessment of the evidence of Ngaïssona's contributions *after* 5 December 2013, which does not refer to P-0306. Nor in any event does Ngaïssona's mere subjective disagreement with evidence show any error concerning the Chamber's assessment of the "overwhelming" evidence concerning Ngaïssona's financial assistance *before* 5 December 2013.
[1849] *Contra* Ngaïssona Appeal, paras. 199, 205. *See also* paras. 200, 203.
[1850] *See* Judgment, para. 1685. *See also* paras. 4038 ("financial or psychological assistance generally to the Anti-Balaka, without identifying any specific element or group, was sufficient"), 4040 ("financial assistance provided for purposes other than purchase of weapons or ammunition, or other matters not directly linked to specific hostile acts, can amount to a form of assistance through which liability under the Statute can be incurred").
[1851] *See e.g.* Judgment, paras. 823-923, 1685-1688. *See also above* paras. 456, 459 (*especially* fn. 1729).
[1852] Concerning the Chamber's more general reference to the evidence that "Ngaïssona continued to provide financial assistance to the Anti-Balaka also following his return to Bangui in 2014" (Judgment, para. 1685), Ngaïssona asserts that Mokpem-Bionli's evidence actually related to the period prior to 5 December 2013: Ngaïssona Appeal, para. 199 (citing T-092, pp. 34-36). This shows no error, since it neither necessarily excludes the continuation of these measures, nor in any event was Mokpem-Bionli's evidence the only basis for considering that Ngaïssona continued to provide financial assistance to the Anti-Balaka in 2014.

evidence, which he suggests "reflects at most a speech about preparedness, not specific payments made by Mr Ngaïssona for weapons or any intent to facilitate the commission of crimes."[1853] This shows no error. Nothing in the Chamber's summary suggests that it understood P-0954's evidence as establishing anything more than it said—that is, reflecting Ngaïssona's view that the Anti-Balaka should ensure that they were adequately armed in case of further fighting.[1854] This was relevant context, especially in circumstances where Ngaïssona clearly sought to provide the Anti-Balaka with financial assistance for their needs.

488. Ngaïssona likewise dismisses P-0965's evidence as "vague and uncorroborated", lack[ing] probative value", and suggests that "the absence of corroboration or concrete details" made "the Chamber's finding that Mr Ngaïssona funded weapons purchases or acted with the requisite intent […] clearly unreasonable."[1855] Again, this criticism is misplaced. The Chamber was not required to identify discrete, transaction-specific payments. Nor is Ngaïssona correct to equate probative value exclusively with "dates, amounts, recipients, or any link to a crime committed".[1856] Rather, having regard to the actual purpose for which the Chamber considered P-0965's evidence,[1857] his recollection that "he heard Mr Ngaïssona say […] he was looking to buy" arms, and that "Ngaïssona was able to obtain those weapons and give them to 'the children' who would work with them" was plainly relevant and probative.[1858]

489. The Chamber noted P-2232's recollection of an incident in which Maxime Mokom paid for weapons with what he understood was Ngaïssona's money.[1859] By contrast, Ngaïssona refers to the evidence of P-0889 allegedly concerning the same incident, but recalling only that Maxime Mokom made an unspecified payment. This does not show that the Chamber was unreasonable.[1860] To the extent that Ngaïssona assumes that the Chamber's conclusion concerning his assistance in the purchase of weapons for the Anti-Balaka relied exclusively on this incident, he is incorrect.[1861] Furthermore, he fails to acknowledge that the Chamber specifically addressed P-0889's evidence, [REDACTED] "[REDACTED]".[1862] With regard to

[1853] *Contra* Ngaïssona Appeal, para. 199.
[1854] *See* Judgment, para. 1690.
[1855] Ngaïssona Appeal, para. 200.
[1856] *Contra* Ngaïssona Appeal, para. 200. *See also* para. 202.
[1857] *See above* para. 486.
[1858] Judgment, para. 1691.
[1859] Judgment, para. 1692.
[1860] *Contra* Ngaïssona Appeal, para. 201.
[1861] *See e.g. above* paras. 485-488.
[1862] Judgment, para. 1693 (fn. 4443).

the reliability and credibility of P-2232's evidence in general, the Chamber had also observed that, "if anything, [P-2232] attempted not to incriminate Mr Ngaïssona at all costs".[1863]

490. More generally, the Chamber reasonably concluded that the evidence of P-0954, P-0965, and P-2232 could not be "weakened by generic assertions of other witnesses who stated not having heard or seen of Mr Ngaïssona providing financial means for the purchase of weapons or ammunition."[1864] This was self-evidently correct in principle, since other witnesses' professed ignorance of a person's activity is not necessarily incompatible with positive evidence that the activity occurred, of which they might simply be unaware.[1865] As such, Ngaïssona's mere repetition of this generic evidence on appeal can show no error.[1866]

491. *Second*, the Chamber's reasoning provided sufficient clarity.[1867] As explained above, Ngaïssona not only overstates his claim about the contradictory nature of the evidence, but the Chamber adequately addressed such matters where appropriate.[1868] It was not required to resolve every alleged inconsistency in detail.

VI.3.e. The Chamber reasonably found that Ngaïssona contributed to the charged crimes including through organising and coordinating relevant groups

492. Ngaïssona shows no error in the Chamber's finding that he contributed to the charged crimes through activities relating to the organisation and coordination of groups.[1869] He either discusses a select number of witnesses in isolation (based on his own subjective view of their lack of credibility) or contests claimed findings never in fact made by the Chamber.

493. Ngaïssona incorrectly claims that the Chamber's finding on his organisational and coordinating activities "entirely overlaps" with the finding that he "liaised with various individuals, including groups at the border".[1870] To the contrary, the Chamber's finding on Ngaïssona's efforts to coordinate and organise groups formed only one strand of its broader assessment of his organisational role.[1871] The Chamber's conclusion was further supported by additional factual findings, such as:

[1863] Judgment, para. 402.
[1864] Judgment, para. 1693.
[1865] *Contra* Ngaïssona Appeal, para. 203.
[1866] *Contra* Ngaïssona Appeal, para. 202 (referring to the evidence of Vivien Beina (P-0888)). *Compare* Judgment, para. 1693 (fn. 4443).
[1867] *Contra* Ngaïssona Appeal, para. 204. *See also Bemba* AJ, para. 53; Judgment, para. 131.
[1868] *See above* paras. 487-490.
[1869] *Contra* Ngaïssona Appeal, paras. 206-240, 261.
[1870] *Contra* Ngaïssona Appeal, para. 206.
[1871] Judgment, paras. 34-38. *See further* paras. 823-923 (*especially* paras. 890-913, 914-923), 924-934, 935-988.

- Ngaïssona's role in the meetings to establish FROCCA, of which he was a member.[1872]
- Ngaïssona's awareness of Anti-Balaka activities after the 5 December 2013 attacks until his return to Bangui on 14 January 2014, and contacts with various persons in that regard.[1873]
- Ngaïssona's appointment as National General Coordinator of the Anti-Balaka on his return to Bangui, representing the group as a whole before national and international authorities.[1874]

494. Moreover, the Chamber was not required to enter specific findings concerning each alleged act of liaison, or to highlight its relevance to the charged crimes.[1875] Ngaïssona shows no basis for his suggestion that the Chamber should have taken such an approach.[1876]

i. Liaison with Maxime Mokom

495. The finding that Ngaïssona liaised with Maxime Mokom is not essential to his conviction. This was just one aspect of the evidence supporting the Chamber's finding that Ngaïssona participated in the organisation and coordination of certain groups.[1877] The Chamber clearly identified the evidence in support of its finding that Maxime Mokom "liaised with 'individuals in Cameroon'".[1878] Ngaïssona's contention that the Judgment cross-referenced a section "that does not even exist" is unfounded. The section exists and is even hyperlinked, despite a typo in the footnote.[1879]

496. Ngaïssona shows no error in the Chamber's assessment of his liaison with Maxime Mokom but merely disagrees with the Chamber's assessment of certain evidence, taken in isolation.[1880] Following a detailed assessment of the evidence[1881]—including testimony of P-2232, P-0306, and Didier Ouebio, as well as Facebook messages—the Chamber reasonably

[1872] Judgment, para. 39. *See further* paras. 989-1058.
[1873] Judgment, para. 57. *See further* paras. 1496-1553, *especially* paras. 1527-1553 (continued liaison by Ngaïssona in the lead up), 1648-1708 (Ngaïssona's role in the Anti-Balaka). The Chamber considered evidence showing that Ngaïssona exercised control over the Anti-Balaka as an additional factor to assess his contributions to their activities.
[1874] Judgment, paras. 60-61. *See further* paras. 1563-1618, *especially* paras. 1564-1574.
[1875] *Contra* Ngaïssona Appeal, para. 208.
[1876] *See below* paras. 501, 505, 514 (fourth and fifth bullet points).
[1877] *Contra* Ngaïssona Appeal, paras. 209, 215.
[1878] *Contra* Ngaïssona Appeal, para. 209.
[1879] The reference should have been to IV.A.2.**v.** ii. B of the Judgment, rather than IV.A.2.ii.b. The relevant paragraph range is 961-988.
[1880] *Contra* Ngaïssona Appeal, paras. 210-215.
[1881] Judgment, paras. 2206-2213.

found that Ngaïssona communicated with Maxime Mokom about the Bangui attack.[1882] Ngaïssona's attempt to relitigate the matter is unavailing. He merely disagrees with the weight attributed by the Chamber to P-2232's evidence, and criticises as 'speculative' evidence that the Chamber did not even rely upon in assessing his contact with Maxime Mokom.[1883]

ii. Contact with Konaté and Andjilo

497. Ngaïssona shows no error in the Chamber's finding that he was in contact with Konaté and Andjilo before the Bangui attack, reasonably relying on P-0306 and P-0965.[1884]

498. *First*, and as noted above,[1885] the Chamber carefully assessed P-0306's evidence individually and found him generally credible.[1886] Rather than engaging with the Chamber's assessment of P-0306's evidence, Ngaïssona merely cites selective passages of the Judgment and invites the Appeals Chamber to compare them with portions of P-0306's testimony, without identifying any material discrepancy or explaining why the Chamber's findings were unreasonable.[1887] Ngaïssona then challenges the weight provided by the Chamber to P-0306's and P-0965's evidence and substitutes his own interpretation for that of the Chamber, falling well short of the standard of appellate review.[1888]

499. For example, in assessing P-0306's understanding of Ngaïssona's instructions to advance to Bangui, the Chamber noted that P-0306 had understood that it was on Ngaïssona's instructions, relayed through Konaté, that Andjilo had gone to Bangui. While the Chamber found that Konaté instructed Andjilo to advance to Bangui, it was unable to conclude that those instructions originated with Ngaïssona.[1889] Ngaïssona argues that the Chamber should have concluded that P-0306 lied and should therefore have entirely disregarded his evidence that Konaté was relaying messages between Ngaïssona and Andjilo's group. Yet Ngaïssona's preferred assessment of the evidence disregards the Chamber's cautious but holistic approach. Thus, although the Chamber did not rely on P-0306's evidence regarding the *content* of the instructions, it nonetheless found his evidence probative in explaining *how* P-0306 understood

[1882] Judgment, para. 2213. The Chamber also referred to the discussion of P-1719, P-2625, and P-2673.
[1883] *Contra* Ngaïssona Appeal, paras. 211-214.
[1884] *Contra* Ngaïssona Appeal, paras. 216-221.
[1885] *See above* para. 386.
[1886] Judgment, para. 211. The Chamber acknowledged that certain portions of his testimony were inconsistent with other evidence on the records and expressly identified and excluded those portions on which it did not rely: Judgment, para. 216. With respect to P-0306's testimony that Ngaïssona [REDACTED] gave military instructions, the Chamber stated that it would assess this evidence in the context of other evidence received: Judgment, para. 218.
[1887] Ngaïssona Appeal, para. 217.
[1888] Ngaïssona Appeal, paras. 217-219.
[1889] Judgment, para. 2162.

the situation since, after meeting Ngaïssona, there was no doubt in his mind that Ngaïssona was involved in the coordination.[1890]

500. *Second*, the evidence of P-2673—namely that he heard that, when Ngaïssona was in Yaoundé, he had contact with all the Anti-Balaka including Andjilo and the chiefs in Bossangoa[1891]—did not require any specific assessment beyond that undertaken by the Chamber.[1892] The paragraphs cited by Ngaïssona do not show that the Chamber had concluded that his contact with Andjilo *only began after* Andjilo had left Bouca and was joined by Konaté.[1893] Moreover, the evidence of P-2673 is not inconsistent with P-0306 and P-0965, in that one does not exclude the other.[1894] Nor was the Chamber required to reconcile every alleged inconsistency between witnesses.

501. Finally, the Chamber's finding that contacts took place, even in the absence of findings on the precise content of those communications, reasonably supports its broader conclusion that Ngaïssona engaged in activities pertaining to organisation and coordination. The context, timing, and individuals involved in these contacts are all factors upon which a Chamber may reasonably rely, particularly when considered with other evidence on the record.[1895]

iii. No finding concerning the Gobere and Bossangoa area

502. Ngaïssona acknowledges that the Chamber did *not* make a finding that Ngaïssona liaised with the Gobere group and Anti-Balaka in Bossangoa. This notwithstanding, he still seeks to assert that the Chamber relied on such allegations and erred in doing so. The Appeals Chamber should summarily dismiss these arguments.[1896]

[1890] Judgment, paras. 2161, 2309, 2315.
[1891] Contra Ngaïssona Appeal, para. 220. *See also above* paras. 363-364, 475.
[1892] *Contra* Ngaïssona Appeal, para. 220.
[1893] *Contra* Ngaïssona Appeal, fn. 676 (citing Judgment, paras. 2155, 2160). The Chamber considered P-0306's evidence, together with evidence from Jo-Brice Ouabiro Dana, P-2602, P-0889, Thierry Tribunal Ndokobanda, and P-1521's evidence (*see* Judgment, para. 2154) to conclude that "During Konaté's time with Andjilo's group, the former was in contact with Mr Ngaïssona and would relay messages from him. Andjilo met Mr Ngaïssona after the Bangui Attack in which the latter acknowledged and accepted the role of a coordinator": Judgment, para. 2160.
[1894] *Contra* Ngaïssona Appeal, para. 220.
[1895] *Contra* Ngaïssona Appeal, para. 221.
[1896] *Contra* Ngaïssona Appeal, paras. 222-223 (referring to summaries of evidence that do not include any finding).

iv. Travel to the border area with Bernard Mokom

503. The Chamber did not err in finding that Ngaïssona and Bernard Mokom travelled to the border area between Cameroon and the CAR with a view to liaising with groups that were to engage in armed efforts aimed at bringing Bozizé back to power.[1897]

504. The Chamber properly relied on the evidence of P-2673, P-2841, P-1847,[1898] including in this respect.[1899] Ngaïssona argues that the Chamber should have disregarded their evidence and relied on the evidence of D30-4914 instead. In doing so, Ngaïssona merely disagrees with the limited weight the Chamber attributed to D30-4914's testimony and fails to demonstrate that the Chamber erred in that regard.[1900] Indeed, the Chamber explicitly addressed Ngaïssona's argument, finding that the evidence it relied upon[1901] is not "negated by the information provided by D30-4914".[1902]

505. Furthermore, the Chamber was not required to determine that Ngaïssona's and Bernard Mokom's activity at the border led to any particular result. Nor was it required to make findings regarding "the composition or affiliation of the groups" which were engaged in armed efforts aimed at bringing Bozizé back to power.[1903] Since these findings were not required, there is no merit in the suggestion that the Chamber erred in failing to make them.

506. Similarly, the Chamber did not err in finding that the Anti-Balaka attacked Bouar in late October 2013, and that Ngaïssona liaised with the groups executing that attack.[1904] The evidence relied upon by the Chamber concerning the attack on Bouar is extensive, including witness statements, minutes of a meeting, and a press release.[1905] With regard to Ngaïssona's involvement in the Bouar attack, the Chamber relied in particular on evidence from Kokaté (P-0801), P-2673 and P-1847.[1906] The Chamber carefully analysed this evidence and found "without merit" D30-4914's "generalised claim" denying Ngaïssona's involvement.[1907] Ngaïssona takes issue with the Chamber's reliance on P-1847, alleging that the Chamber

[1897] Judgment, para. 914. *Contra* Ngaïssona Appeal, paras. 224-227.
[1898] *See above e.g.* paras. 363-364, 367, 470.
[1899] Judgment, paras. 914-923.
[1900] Ngaïssona Appeal, para. 224.
[1901] *See* Judgment, para. 914 ("Mr Ngaïssona and Bernard Mokom travelled to the border area between Cameroon and the CAR with a view to liaising with groups that were to engage in armed efforts with the then-ultimate aim of bringing François Bozizé back to power").
[1902] Judgment, para. 923. *See further* para. 934.
[1903] *Contra* Ngaïssona Appeal, para. 225.
[1904] *Contra* Ngaïssona Appeal, paras. 226-227.
[1905] *See* Judgment, paras. 1445-1467.
[1906] *See* Judgment, paras. 1459-1464.
[1907] Judgment, para. 1466. *See also* para. 1456.

disregarded clarifications of inconsistencies in P-1847's evidence.[1908] In doing so, Ngaïssona ignores, *first*, that the Chamber explicitly and reasonably found P-1847 not credible regarding those clarifications,[1909] and *second*, that, in any event, the Chamber did not rely on the portion of the testimony he contests (namely, the allegation that Ngaïssona ordered the attack on Bouar).[1910]

507. Ngaïssona also claims incorrectly that the Chamber did not find the Bouar self-defence group to be affiliated with the Anti-Balaka.[1911] Rather, the Chamber explicitly found that "the *Anti-Balaka* attacked Bouar in late October 2013."[1912] It is irrelevant that the Chamber could not conclude that the elements who participated in the Bouar attack indeed travelled along the Boali axis to arrive in Bangui for the Bangui Attack.[1913]

v. Involvement in planning the Bangui attack

508. Ngaïssona shows no error in the Chamber's assessment of the evidence that Ngaïssona met with certain individuals in Yaoundé in relation to a future Bangui attack, or its reliance on this (with other evidence) to establish his involvement in the planning and organisation of the charged crimes.[1914] Rather than engaging with the Chamber's actual findings, Ngaïssona alleges errors based on a mischaracterisation of the Judgment.

509. *First*, the Chamber gave sufficient reasons for concluding that the meetings in Yaoundé related to the Bangui attack. Contrary to Ngaïssona's allegation, the Chamber did not only refer to the entire section on meetings in Cameroon,[1915] but instead also cross-referenced specifically its analysis on "the *Meetings in Yaoundé*",[1916] and further discussed the evidence of Kokaté (P-0801), P-0884, and Poussou, as well as the limited probative value of the Facebook message.[1917]

[1908] Ngaïssona Appeal, para. 226.
[1909] Judgment, paras. 1463-1464.
[1910] *See* Judgment, paras. 1445-1467, 2169-2171. *See* Ngaïssona Appeal, fn. 695.
[1911] *Contra* Ngaïssona Appeal, para. 226.
[1912] Judgment, para. 1467 (the Chamber further found that Ngaïssona "was involved in liaising with the groups executing the attack beforehand, and then informed of this attack"). *See also* paras. 1445-1466. *See further* paras. 914-923 (the Chamber's discussion of the evidence showing that Ngaïssona and Bernard Mokom travelled to the Cameroon-CAR border to liaise with the groups led by Achille and Ndale").
[1913] Judgment, para. 2171. *Contra* Ngaïssona Appeal, para. 226.
[1914] *Contra* Ngaïssona Appeal, paras. 228-232.
[1915] *Contra* Ngaïssona Appeal, para. 228.
[1916] Judgment, paras. 2126 (fn. 5479), 2131 (fn. 5490).
[1917] Judgment, paras. 2127-2131.

510. Nor was the Chamber unreasonable in relying in part on Kokaté's evidence.[1918] Contrary to Ngaïssona's argument, Kokaté's testimony (that, in November 2013, Ngaïssona would have met individuals in Yaoundé in relation to a future attack in Bangui) does not contradict the evidence that Maxime Mokom was handling and coordinating the Bangui attack.[1919] These accounts are not mutually exclusive. The Chamber found that Maxime Mokom relayed the order to launch the Bangui attack,[1920] while simultaneously finding that his father Bernard Mokom and Ngaïssona met with certain individuals in Yaoundé in relation to it.[1921]

511. *Second,* the Chamber did not "unduly" focus on Ngaïssona informing other individuals of an upcoming attack in Bangui. The evidence relied upon by the Chamber in finding his involvement in planning the attack was in no way limited to his awareness of it.[1922] Ngaïssona's awareness of the upcoming Bangui attack was, of course, a relevant factor in assessing, *inter alia*, his *mens rea*, and the Chamber was fully entitled to address it as it did.[1923]

512. *Third,* Ngaïssona mischaracterises the Judgment by claiming that the Chamber erred when relying on P-1847's allegations that Ngaïssona asked the elements to rest for a week before the Bangui attack.[1924] In citing the evidence, the Chamber merely noted that the record showed that the purpose of the assembly around the M'Poko airport and Boeing was to rest and prepare for an upcoming attack, citing P-1847's evidence (among other evidence).[1925] Nowhere in the Judgment did the Chamber find that Ngaïssona asked the elements to rest and, as Ngaïssona acknowledges, the Chamber did not reach a conclusion as to why the Bangui attack was postponed.[1926]

vi. Other allegations

513. This section illustrates Ngaïssona's failure to identify any error meeting the appellate standard. Rather than demonstrating any error materially affecting his convictions, Ngaïssona seeks to relitigate the case by further challenging the Chamber's assessment of individual

[1918] *See above* paras. 383-385.
[1919] *Contra* Ngaïssona Appeal, para. 229.
[1920] Judgment, paras. 2205, 2316.
[1921] Judgment, para. 2126. *See also* para. 2213.
[1922] Judgment, paras. 2125-2231.
[1923] *Contra* Ngaïssona Appeal, para. 230.
[1924] *Contra* Ngaïssona Appeal, para. 231.
[1925] Judgment, paras. 2242-2245 (noting that the witness also added similarly that "'Mokom' and 'Bozizé' had called upon them [the elements] to stop and rest and wait for some equipment and for the sun before launching the attack").
[1926] Judgment, para. 2293. *See* Ngaïssona Appeal, para. 231 (fn. 712).

witnesses, alleging seven purported errors across seven paragraphs. Such arguments should be dismissed *in limine*. In any event, the Chamber committed no error.[1927]

514. Ngaïssona fails to demonstrate the impact of each alleged error on his convictions. The Chamber's finding of Ngaïssona's role in liaising with individual or groups involved in the resistance against the Seleka is part of a broader assessment establishing that Ngaïssona engaged in coordination and organisational activities. Such finding does not depend on the testimony of any single witness. This is implicitly acknowledged by Ngaïssona himself, who alleges errors in relation to multiple witnesses. Ngaïssona further takes issue with the alleged lack of corroboration and the Chamber's reliance on hearsay evidence, without establishing that corroboration was required or that reliance on such evidence was unreasonable.[1928] In any event, the Chamber did not err with respect to any of the individual witnesses. Thus:

- Poussou's testimony was considered as part of the evidentiary record, after a careful assessment of his evidence in light of Ngaïssona's arguments and the Chamber's conclusion that he was overall credible.[1929]
- The Chamber was not required to corroborate P-0974's evidence as it was not the *sole or decisive* basis for any of Ngaïssona's convictions.[1930]
- The Chamber did not mischaracterise the evidence of Mokpem-Bionli. It reasonably found that "Ngaïssona liaised with persons that, at that time or later, were involved in efforts to remove Michel Djotodia and the Seleka from power and bring François Bozizé back to power".[1931] Mokpem-Bionli's evidence was merely one element of the evidentiary record considered by the Chamber and was clearly not central to its finding.[1932]
- The Chamber could rely on the evidence of P-0884 and Namsio regarding contact with Ngaïssona in the months before the Bangui attack, without speculating on the precise content of the communications.[1933]

[1927] *Contra* Ngaïssona Appeal, paras. 233-240.
[1928] *Contra* Ngaïssona Appeal, paras. 233-240.
[1929] *Contra* Ngaïssona Appeal, para. 234. *See above* para. 387.
[1930] *Contra* Ngaïssona Appeal, para. 235. *See above* para. 366.
[1931] *Contra* Ngaïssona Appeal, para. 236. *See* Judgment, para. 913. *See also* para. 890.
[1932] *See* Judgment, paras. 890-913 (discussing evidence from Brice Emotion Namsio, P-2232, P-2658, P-0884, P-1719, P-0306, P-2673, Adrien Poussou, P-0974, P-2673, P-1847, and Alfred Legrand Ngaya). Mokpem-Bionli testified that "he 'never heard' of such a thing to bring François Bozizé back to power": Judgment, para. 893.
[1933] *Contra* Ngaïssona Appeal, para. 237.

- The Chamber neither suggested nor was required to find that every individual with whom Ngaïssona liaised—including Eugène Ngaikosset—played a role in the commission of the crimes. Moreover, the Chamber was clearly aware that the testimonies of P-2673 and P-1847 included hearsay with regard to Ngaikosset liaising with Ngaïssona,[1934] and was not precluded from taking this into account.[1935]
- Ngaïssona's conviction was not based on the Chamber finding that "Mr Ngaïssona was 'not a mere bystander' to the Anti-Balaka movement and that he had 'a valid interest therein'."[1936]
- Ngaïssona's arguments regarding Kokaté (P-0801) are repetitive and without merit.[1937]

VI.3.f. The Chamber reasonably found Ngaïssona to have been involved in the Anti-Balaka prior to January 2014

515. Ngaïssona claims that "[t]he Chamber erred in finding that [his] designation as the Anti-Balaka general coordinator in January 2014 was an indicator of his prior involvement."[1938] However, this ground should be dismissed *in limine* since Ngaïssona does not challenge a finding essential to his criminal responsibility, but merely takes issue with a passing observation of the Chamber in the course of its reasoning.[1939]

516. Even though Ngaïssona does not specify which finding in the Judgment he impugns,[1940] the Prosecution considers that he may impugn the following italicised passage:

> "1651. The Chamber recalls that Mr Ngaïssona became general coordinator of the Anti-Balaka immediately upon his return to Bangui on 14 January 2014. In the Chamber's view, *this is, by itself, an indication that Mr Ngaïssona was familiar with and involved in at least parts of the movement before his officially becoming coordinator*."[1941]

517. The passage belongs to the Chamber's wider evidential analysis of Ngaïssona's role in the Anti-Balaka, especially in the time period before his designation as general coordinator,

---

[1934] *Contra* Ngaïssona Appeal, para. 238. *See e.g.* Judgment, paras. 903 ("P-2673 *heard* that [Eugène Ngaikosset] had come to meet with Mr Ngaïssona", emphasis added), 907 (P-1847 "*heard* from [REDACTED] that Ngaïkosset had discussions with Mr Ngaïssona", emphasis added).
[1935] *See above* para. 363.
[1936] *Contra* Ngaïssona Appeal, para. 239.
[1937] *Contra* Ngaïssona Appeal, para. 240. *See above* paras. 383-385.
[1938] Ngaïssona Appeal, para. 241.
[1939] *Contra* Ngaïssona Appeal, paras. 241-250.
[1940] Ngaïssona Appeal, para. 241 (stating without reference: "The Chamber erred in finding that Mr Ngaïssona's designation as the Anti-Balaka general coordinator in January 2014 was an indicator of his prior involvement").
[1941] Judgment, para. 1651 (internal footnote omitted; emphasis added).

under the section titled "Ngaïssona's role in the Anti-Balaka".[1942] Yet this extract is simply one strand in the Chamber's reasoning as to Ngaïssona's prior involvement with the Anti-Balaka movement.[1943] It is further apparent from the directly following passages, which consider in turn other indications of Ngaïssona's prior involvement,[1944] often expressly.[1945]

518. To the extent that other unarticulated (or insufficiently articulated) arguments may be read into the ground, the Chamber made no error in its approach to assessing the evidence of Ngaïssona's involvement in the Anti-Balaka prior to his designation. *First,* the Chamber displayed no error of reasoning by viewing Ngaïssona's designation as one indication of his prior involvement. This is a logical inference that it was entitled to make in its broad assessment of the evidence. *Second,* it was open to the Chamber to find, implicitly, that Ngaïssona was previously involved in the Anti-Balaka on the basis of the multiple indications listed and discussed within the relevant section (*i.e.*, "Ngaïssona's role in the Anti-Balaka"). To the extent that Ngaïssona argues that the Chamber's reasoning in this regard was flawed,[1946] he merely disagrees with the Chamber's approach to assessing and weighing the evidence before it. *Third,* in any case, the wider body of evidence—including the evidence discussed and analysed in sections IV.A.2 and IV.A.3 of the Judgment[1947]—confirms Ngaïssona's prior involvement with the Anti-Balaka movement. The Chamber's analysis of this evidence led to its findings of Ngaïssona's activities throughout 2013.[1948] Against this backdrop, the indications of prior involvement considered by the Chamber in the relevant section, including Ngaïssona's 2014 designation as General Coordinator, are inconsequential as to the fact and extent of his prior involvement.

[1942] *See* Judgment, paras. 1648-1708.
[1943] Although no explicit factual finding on Ngaïssona's prior involvement is made under this sub-section of the Judgment, it is clearly intended as a subject of evidential analysis: *see e.g.* Judgment, paras. 1648 ("following his return to Bangui […] Mr Ngaïssona *remained involved* with the group's activities", emphasis added), 1649 ("his activities in the context of the Anti-Balaka before he became general coordinator of the movement in January 2014"), 1650 ("the fact that some individuals did not know of Mr Ngaïssona's involvement with the Anti-Balaka before he became general coordinator in January 2014 does not mean that such involvement did not exist"), 1655 ("the role he played therein already in 2013").
[1944] *See e.g.* Judgment, paras. 1652-1653, 1655-1661.
[1945] *See e.g.* Judgment, para. 1655 ("In addition to the above, the Chamber considers an indication for Mr Ngaïssona's role within the Anti-Balaka, as well as for the role he played therein already in 2013, the reasons for which he was chosen to be the Anti-Balaka general coordinator").
[1946] *See* Ngaïssona Appeal, paras. 244-246.
[1947] *See* Judgment, section IV.A.2 "Individuals and their activities in Cameroon and the Democratic Republic of the Congo", *in particular* section IV.A.2.i.b.iii ("Mr Ngaïssona's financing and coordination activities"), paras. 823-923; section IV.A.3 "Front pour le retour à l'ordre constitutionnel en Centrafrique (FROCCA)".
[1948] *See* Judgment, paras. 34-35, 38 (corresponding to the evidence analysed in section IV.A.2), 39 (corresponding to the evidence analysed in section IV.A.3).

VI.3.g. The Chamber reasonably found that Ngaïssona engaged in inflammatory rhetoric concerning Muslim civilians

519. Ngaïssona misunderstands the Chamber's reasoning in its findings about his use of rhetoric. It was open to the Chamber, based on the abundant evidence before it, to reach the conclusion that Ngaïssona, among others, had engaged in inflammatory rhetoric against Muslim civilians. In any case, Ngaïssona fails to demonstrate how this conclusion, even if erroneous, materially affected his convictions.[1949]

i. Ngaïssona shows no error in the Chamber's reasoning

520. Ngaïssona misunderstands the Chamber's reasoning.[1950] The Chamber made clear that the speeches of Bozizé and his supporters, including Ngaïssona, did not *alone* demonstrate the Anti-Balaka's Anti-Muslim animus. Ngaïssona ignores that the impugned passage regarding rhetoric[1951] is preceded by an important explanation of the Chamber's reasoning. First, the Chamber underscores the importance of how the Anti-Balaka understood their aim in practice, as demonstrated by the group's targeting of the Muslim civilian population.[1952] Then, after analysing more general evidence on the Anti-Balaka's anti-Muslim animus, its retaliation motive in light of Seleka crimes, its assimilation of the Seleka with the Muslim population, and the propensity in particular for uneducated Anti-Balaka elements to equate Muslims with the Seleka,[1953] the Chamber specifies that "[i]t is in this context that the Chamber has considered the evidence before it, as outlined below, regarding the rhetoric used by Francois Bozizé, Mr Ngaïssona and others".[1954] By ignoring this important aspect of the Chamber's reasoning, Ngaïssona consistently overstates the importance of singular speeches (and utterances therein) in the Chamber's much broader assessment.

521. The Chamber's subsequent analysis of speeches made by Bozizé, Ngaïssona and others is clearly reasoned, logically sound and appropriately nuanced.[1955] The Chamber engages throughout its analysis with Ngaïssona's trial arguments about alternate interpretations to be

[1949] *Contra* Ngaïssona Appeal, paras. 251-261.
[1950] Judgment, section IV.A.5. "Objectives and policies of the Anti-Balaka", paras. 1210-1305 (corresponding to the Material Factual Findings contained in paras. 45-49).
[1951] *See* Ngaïssona Appeal, para. 251, fn. 775 ("It particularly found that the local population was 'primed' through the expression of anti-foreign sentiments and inflammatory rhetoric", referencing Judgment, para. 1241 of the Chamber's evidential analysis).
[1952] *See* Judgment, paras. 1217-1219. *See in particular* para. 1219 ("In this overall framework of Seleka violence and resulting perceptions, the Anti-Balaka equated the Muslim civilian population with the Seleka and its acts, targeting it accordingly. This was another factor considered by the Chamber that cumulatively played into the evolution of the Anti-Balaka and its objectives and policies", footnote omitted).
[1953] *See* Judgment, paras. 1220-1239.
[1954] Judgment, para. 1240.
[1955] *See* Judgment, paras. 1241-1296.

afforded to the speeches, and gives its reasons for discounting them.[1956] As such, and especially in light of the Chamber's holistic assessment of the evidence,[1957] Ngaïssona's arguments about other available interpretations of the speeches amount to a mere disagreement with the Chamber's clear reasoning.[1958] In particular:

- In light of the Chamber's broader reasoning,[1959] including its findings on the inability of Anti-Balaka to meaningfully distinguish between the Seleka and Muslim civilians, the Chamber did not fail to give weight to the "nuanced passages" as urged by Ngaïssona.[1960] Indeed, the passages pointed to by Ngaïssona are ambiguous and open to interpretation.[1961]
- The Chamber's finding that the reference to "foreigners" in Bozizé's speech of 27 December 2012 also included "those considered 'foreign' *within* the CAR who would support the Seleka"[1962] is extensively reasoned,[1963] and does not hinge on "one inconclusive fragment of speech" about people in fenced compounds.[1964]
- It was open to the Chamber to situate Ngaïssona's speeches among those of Bozizé and others priming vigilance against Muslim civilians.[1965] It reasonably made this assessment on the totality of the evidence, as analysed throughout the relevant section of the Judgment.[1966] To the contrary, an approach that looked only at the content of Ngaïssona's speeches in isolation would have been unreasonable.

[1956] *See e.g.* Judgment, paras. 1246-1247, 1255-1263 (on Bozizé's speech of 27 December 2012), 1282-1283 (on Yambété's speech of 22 March 2013), 1287-1288 (on the interpretation of the speeches in general).
[1957] *See above* para. 520. *See also* Judgment, para. 1264 (emphasising as a "further cumulative factor" that the message of Bozizé's speech of 27 December 2012 was repeated by others prior to the Seleka coup of March 2013, including by Ngaïssona, as subsequently outlined).
[1958] *See e.g.* Ngaïssona Appeal, paras. 253 ("another reasonable interpretation of Bozize's speech was possible, namely that he meant to refer to actual foreigners"), 255 ("An alternative and equally reasonable inference was that public speeches emphasising the Seleka's foreign and "Islamist" component sought to spark outrage and attract the attention of the international community"), 258 (in relation to the utterance to P-2012 that "we cannot accept these attacks by the Muslims", "Mr Ngaïssona was not making a statement, but rather describing, in objective terms, the thought process behind the actions of self-defence groups, without legitimizing their actions").
[1959] *See above* para. 520.
[1960] Ngaïssona Appeal, para. 252. *See also* para. 257 ("The Chamber failed to give sufficient weight to clear evidence: Mr Ngaïssona's public addresses in 2013 unequivocally called for national unity […] in his public addresses, Mr Ngaïssona consistently distinguished between foreign and local Seleka, as well as local Muslims").
[1961] *See* Ngaïssona Appeal, paras. 252 (fn. 779), 257 (fn. 795).
[1962] Judgment, para. 1263.
[1963] *See* Judgment, paras. 1247-1263, *especially* paras. 1256 (on Bozizé knowingly providing false information when stating that the Seleka were all foreigners, and included no Central Africans), 1257-1259 (on how the Muslim community understood the speech).
[1964] *Contra* Ngaïssona Appeal, para. 253.
[1965] *Contra* Ngaïssona Appeal, para. 257 ("No reasonable trier of fact could ever have concluded, on the plain content of Mr Ngaïssona's public speeches and declarations, that he engaged in rhetoric targeting the Muslim population in CAR").
[1966] *See above* para. 520.

522. Finally, as to the two passages involving specific words with unclear meanings,[1967] Ngaïssona simply prefers his own suggested meaning (or, as applicable, translation) over that of the Chamber, without showing error. Even if the Chamber misapprehended the meaning of specific words in these two instances, the two impugned passages are so relatively minor in the Chamber's overall reasoning that they do not undermine the conclusions it reached in its extensive evidential analysis of the rhetoric employed by Bozizé and his supporters.[1968]

ii. There was no material impact on the Chamber's essential findings

523. Even if the Chamber had erred in concluding that Ngaïssona, among others, had engaged in inflammatory rhetoric inciting vigilance against Muslim civilians, this would have no impact on its ultimate factual findings.[1969] *First*, as argued above,[1970] when read in its proper context in the Judgment, this impugned finding is but one identified "cumulative factor" among others pointing to the Anti-Balaka's anti-Muslim animus. *Second*, it is clear from the Chamber's relevant essential findings[1971] that such rhetoric as expressed in public speeches was but one factor leading to its conclusion that "(t)he implementation and execution of the Anti-Balaka's core objective was primed by anti-foreign sentiments and inflammatory rhetoric".[1972] The Chamber goes on to refer to such rhetoric being "reflected in meetings of Francois Bozizé, Mr Ngaïssona and others in Cameroon and repeated in a radio statement issued by FROCCA on 5 December 2013."[1973]

524. For the reasons set out above, Ground 1 of Ngaïssona's Appeal should be rejected.

VII. Ground 2: The Chamber correctly convicted Ngaïssona under article 25(3)(c)

525. In Grounds 2.1 to 2.3 of his appeal, Ngaïssona challenges the Chamber's legal and factual findings under article 25(3)(c), both regarding his *actus reus* and his *mens rea*.[1974] Ngaïssona's submissions, which largely reiterate arguments already rejected at trial, fail to demonstrate any error. They misrepresent the Chamber's findings and the applicable law,

[1967] *See* Ngaïssona Appeal, paras. 254 (on the translation of a Sango word into the French "*marchandises"* (merchandise) in one translation (CAR-OTP-2060-0740 at 0747, ln. 228), and into the French "*pick-up"* (pick-up truck) in another translation (CAR-OTP-2130-1099 at 1114, ln. 578)), 259 (on the meaning of the French word "*occupation"* as referring to either work/employment or to armed occupation).
[1968] On the "*marchandises*" / "*pick-up*" ambiguity, *see* Judgment, para. 1278 (considering the reference to "*marchandises*" to be a "further identifier"). On the meaning of "*occupation*", the impugned paragraph 1848 appears in an entirely different section of the Judgment with no bearing on the impugned portion.
[1969] *Contra* Ngaïssona Appeal, para. 260.
[1970] *See above* para. 520.
[1971] *See* Judgment, paras. 46-47.
[1972] Judgment, para. 46.
[1973] Judgment, para. 47.
[1974] Ngaïssona Appeal, paras. 262-384.

attempt to present factual challenges as legal ones, and advance factual claims based on an incorrect legal standard. Ultimately, despite being framed through multiple legal and factual arguments—at times inconsistent and repetitive—Ngaïssona in essence asserts that he was too remote from the crimes for his conduct to constitute a legally relevant contribution (*actus reus*) and for him to have possessed the requisite knowledge and purpose to facilitate their commission (*mens rea*).

526. In Ground 2.4, Ngaïssona challenges the Chamber's finding that the Anti-Balaka had sufficient bearings of an organisation for the purposes of finding an organisational policy within the meaning of article 7 of the Statute throughout the period relevant to the charges.[1975] These submissions should be rejected, as they misstate the 'organisation' requirement under article 7 and the Chamber's application of it to the evidence. Ngaïssona merely repeats his trial submission, expresses disagreement with the Chamber's findings, but demonstrates no error.

527. As explained in the following sections, Ngaïssona fails to show any error in the Chamber's finding that he aided, abetted or otherwise assisted in the commission of the charged crimes under article 25(3)(c). Ground 2 should therefore be rejected.

VII.1. Ground 2.1: *Actus reus*: The Chamber correctly found that Ngaïssona's conduct aided, abetted or otherwise assisted in the commission of the crimes

VII.1.a. The Chamber's findings

528. The Chamber correctly set out the law of article 25(3)(c)[1976] and reasonably established on the evidence that Ngaïssona's conduct assisted in the commission of the charged crimes.[1977]

529. *First*, the Chamber found that Ngaïssona was involved in creating and organising the Anti-Balaka. He was actively involved in planning steps to respond to the Seleka violence and efforts to ensure François Bozizé's return to power "by all means possible, including through armed violence."[1978] The Chamber discussed in detail the evidence regarding Ngaïssona's coordination activities to achieve this goal, finding that he met and liaised with François Bozizé, Bernard Mokom, and others to discuss strategies and plans;[1979] he reached out to individuals to gather support for their cause;[1980] he travelled to the border area between Cameroon and CAR

[1975] Ngaïssona Appeal, paras. 385-410.
[1976] Judgment, paras. 3876-3883.
[1977] Judgment, paras. 4034, 4115, 4281, 4373.
[1978] Judgment, paras. 34-35, 38.
[1979] Judgment, paras. 34-35, 38, 769-812.
[1980] Judgment, paras. 890-913. *See also* paras. 35, 827.

to meet, support, and encourage elements that were to engage in armed efforts;[1981] and he "remained in contact with individuals who were 'in the field' organising efforts in response to the Seleka violence".[1982] The Chamber further found that "Mr Ngaïssona, at the very least, acted as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make requests for weapons and ammunition, for purposes of engaging in armed hostilities."[1983]

530. *Second*, the Chamber found that Ngaïssona and others met in Paris in August 2013 to create FROCCA,[1984] of which he was an active member,[1985] in an effort to galvanise "groups eventually known collectively as the Anti-Balaka."[1986]

531. *Third*, the Chamber found that Ngaïssona provided financial contributions to promote the formation and operationalising of the Anti-Balaka.[1987] His financial contributions "were regular and related to the Anti-Balaka manoeuvring or continuing to function."[1988] The Chamber recalled the "overwhelming evidence" of Ngaïssona funding "individuals willing or meant to assist the efforts in bringing François Bozizé back to power"[1989] as well as Anti-Balaka elements that ultimately carried out coordinated attacks against the Muslim civilian population.[1990]

532. The Chamber then assessed, for each individual location—Bangui, Bossangoa, Yamwara, and the PK9–Mbaïki Axis—whether Ngaïssona's conduct assisted the Anti-Balaka in the commission of the crimes. Accordingly, it reasonably found across all four locations that "Mr Ngaïssona provided financial contributions and engaged in activities pertaining to the organisation and coordination of groups for the purpose of facilitating the commission of criminal acts targeting the Muslim population."[1991] In each location-specific assessment, the

[1981] Judgment, paras. 35, 827, 914, 1465, 1467. *See also* paras. 915-923.
[1982] Judgment, para. 1013. *See also* para. 865, 871-889.
[1983] Judgment, para. 889.
[1984] Judgment, para. 39. *See also* paras. 989, 992, 1058, 4110.
[1985] Judgment, para. 39. *See also* paras. 992, 1058, 4110.
[1986] Judgment, para. 39. *See also* paras. 992-1058.
[1987] Judgment, paras. 35, 38. *See also* paras. 828-851, 863.
[1988] Judgment, para. 1695.
[1989] Judgment, para. 828. *See also* paras. 827, 830, 863.
[1990] *See e.g.* Judgment, paras. 70, 827-889, 2249, 2267-2272, 4042, 4710, 4734.
[1991] Judgment, paras. 4031, 4113, 4279 (referring to para. 4031). In relation to Yamwara, the Chamber also found that, following the coordinated attacks in Bangui and Bossangoa, Ngaïssona "remained informed of the continued activities related to the Anti-Balaka, and continued liaising with various individuals in this regard". *See* paras. 4280, 4371 (referring to para. 4031). In relation to the PK9-Mbaïki Axis, the Chamber also found that, following the coordinated attacks in Bangui and Bossangoa, Ngaïssona "remained informed of the continued activities related to the Anti-Balaka, and continued liaising with various individuals in this regard" and that "he continued

Chamber concluded that through his active involvement in planning the concrete steps to respond to the Seleka violence in the CAR and ensure François Bozizé's return to power by all means, including by armed violence, Ngaïssona aided, abetted, or otherwise assisted in the commission of the crimes carried out by Anti-Balaka elements. Specifically, Ngaïssona's conduct assisted in the Anti-Balaka's commission of the crimes by providing financial aid, organisational assistance and psychological support and/or encouragement.[1992]

533. As explained in detail below, Ngaïssona largely premises his *actus reus* arguments on the incorrect claim that the Chamber convicted him "without establishing that his conduct contributed to the commission of the charged crime".[1993] Further, despite being framed through multiple, at times inconsistent and repetitive, legal and/or factual arguments, Ngaïssona essentially asserts that his contributions were too remote. *Legally*, he argues that the Chamber impermissibly expanded liability under article 25(3)(c) by not requiring evidence of a direct effect on each specific crime. However, Ngaïssona's submission ignores the Chamber's finding that his conduct in fact assisted in the Anti-Balaka's commission of the charged crimes and thus necessarily had an effect on them. In any event, his argument is legally flawed and the alleged error has no impact on the Chamber's conclusions. *Factually*, he contends that the Chamber failed to assess his contributions properly by not requiring proof of a direct effect on each specific crime. Yet, Ngaïssona's factual claims are largely predicated on the same erroneous legal premise, and mischaracterise the Chamber's factual findings. Ngaïssona's challenges to the Chamber's finding on his *actus reus* should be dismissed.

VII.1.b. The Chamber did not expand liability under article 25(3)(c)

534. Ngaïssona contends that the Chamber erroneously expanded liability under article 25(3)(c) by failing to require evidence of an effect of his conduct on each crime specifically.[1994] At the outset, Ngaïssona fails to specify whether he alleges this as a legal or factual error, and thus fails to demonstrate that the alleged errors meet the applicable standard of review.[1995] Moreover, he later contradicts himself by *agreeing* that proof of an effect on each specific crime is not legally required.[1996] Ngaïssona's failure to clearly set out the alleged error warrants the

---

to provide financial assistance to the Anti-Balaka and actively engaged in formalising the structure of the Anti-Balaka, the Chamber": *see* para. 4372.

[1992] Judgment, paras. 4034, 4115, 4281, 4373. *See also* paras. 4709-4710, 4734, 4789, 4808.

[1993] Ngaïssona Appeal, paras. 262, 266.

[1994] Ngaïssona Appeal, section II.A.1, paras. 262-275.

[1995] *See e.g.* Ngaïssona Appeal, paras. 270, 273-275 (arguing that the Chamber erroneously assessed the facts). *See below* para. 546.

[1996] Ngaïssona Appeal, para. 277 ("The Trial Chamber did not err in concluding that a causal effect is not legally required", referring to Judgment, para. 4037).

dismissal of his arguments *in limine*.[1997] In any event, as explained below, the Chamber did not err in defining and applying article 25(3)(c).[1998]

(i) The Chamber did not err in law

535. In its legal analysis,[1999] the Chamber correctly found that "[a]rticle 25(3)(c) of the Statute requires 'that the assistance in the commission (or attempted commission) of the crime be provided for the purposes of facilitating such commission' […] 'without indicating whether the conduct must have also had an *effect* on the commission of the offence'".[2000] Following the Appeals Chamber's reasoning, the Chamber correctly concluded that *as a matter of fact* "such an effect [on the offence] indicates that the person indeed assisted in its commission." However, *as a matter law*, proof of a direct effect on each offence specifically is not required. Consistently, the Chamber further correctly concluded that the "contribution under Article 25(3)(c) of the Statute does not need to meet a specific, minimum, threshold".[2001]

536. When applying the law to the facts, the Chamber correctly rejected Ngaïssona's submission at trial[2002] that article 25(3)(c) requires proof of a causal link understood as requiring evidence of a *direct* effect of Ngaïssona's assistance on each specific crime.[2003] Nevertheless, it found that Ngaïssona's general contributions in fact assisted in the commission of the Anti-Balaka's crimes,[2004] which is *per se* sufficient. Ngaïssona's legal arguments should be dismissed for the following three reasons:

537. *First*, to the extent that Ngaïssona argues that the Chamber was legally required to make findings on a causal link understood as evidence of a *direct* effect of his assistance regarding each crime, that argument fails because the Chamber was under no such obligation. By

[1997] *Ongwen* AJ, paras. 88-89; *Ntaganda* AJ, paras. 48-49.
[1998] *Contra* Ngaïssona Appeal, paras. 262-275.
[1999] Judgment, paras. 3876-3883.
[2000] Judgment, para. 3879 (quoting *Bemba et al.* AJ, para. 1327, emphasis added).
[2001] Judgment, para. 3879 (citing *Bemba et al.* AJ, para. 1327; *Bemba et al.* TJ, para. 93; Al Hassan CD, paras. 897 ("[t]he assistance need not be "substantial"; nor need it be characterised by anything other than the specific intent to facilitate the commission of the crime), 906 ("the Statute does not require a specific threshold to be met"), *Ongwen* CD, para. 43 ("[i]t is nowhere required […] that the assistance be 'substantial' or anyhow qualified other than by the required specific intent to facilitate the commission of the crime").
[2002] Judgment, paras. 4037-4038 (rejecting Ngaïssona Closing Brief, paras. 399-400, 402-406, arguing that the Chamber should adopt "a narrow interpretation" of article 25(3)(c)).
[2003] Judgment, para. 4038 ("Consistent with the jurisprudence of the court, *and contrary to the Ngaïssona Defence arguments* [at paragraph 399-400, 404-406 of Ngaïssona Closing Brief] the Chamber need not require a causal link between Mr Ngaïssona's aid and assistance to the Anti-Balaka and the crimes committed by them", emphasis added). *Contra* Ngaïssona Appeal, paras. 262-265.
[2004] Judgment, paras. 4034, 4115, 4281, 4373.

repeating his trial argument on appeal,[2005] Ngaïssona merely disagrees with the Chamber's correct interpretation and application of the law.

538. In his appeal (and trial) submissions,[2006] Ngaïssona conflates the need for a "general causal requirement" with the purported need to show the accused's conduct had a direct effect on each offence specifically,[2007] which is not required under article 25(3)(c). This distinction was clearly set out in the reasoning of the Trial and Appeals Chambers in *Bemba et al*.[2008] In that case, the Trial Chamber clarified that while a general causal link is required, this requirement is met when "the assistance […] furthered, advanced, or facilitated the commission of the offence,"[2009] and that "Article 25(3)(c) of the Statute does not require the meeting of any specific threshold."[2010] The Appeals Chamber later recalled the Trial Chamber's reasoning and further explained that article 25(3)(c) only requires the accused to assist in the commission of the crimes while evidence of a direct effect on the crimes is not legally required.[2011]

539. As a matter of law it is thus only required that the accused provided assistance in the commission or attempted commission of the crime.[2012] A general causal effect requirement is implicit: "if the assistance was not causal, the conduct of the perpetrator" would not *assist* in the commission of the crimes.[2013] The *manner* in which this assistance is proven—whether through evidence that the accused's conduct had a direct effect on each specific crime, or through evidence of an indirect contribution to their commission by supporting the organisation that carried them out—is a matter of evidence. It should be assessed on a case-by-case basis by the trial chamber, which exercises its discretion in evaluating the totality of the evidence available at trial. In this case, based on the totality of the evidence, the Chamber reasonably found that Ngaïssona assisted in the commission of the crimes in each location[2014]—and was

[2005] Ngaïssona Appeal, paras. 262-265, 287-288 (arguing that the Chamber adopted "an overly broad interpretation" of article 25(3)(c)).
[2006] Ngaïssona Appeal, para. 265 (referring to *Bemba et al.* TJ, para. 90; Ngaïssona Closing Brief, paras. 399-406).
[2007] *See e.g.* Ngaïssona Appeal, paras. 265, 271, 274-277, 280, 282, 295, 303, 309 (effectively seeking to measure the impact on each crime).
[2008] *See* Ngaïssona Appeal, para. 265 (recalling *Bemba et al.* TJ, paras. 85, 90, 94-95).
[2009] *Bemba et al.* TJ, paras. 90, 94 ("The first argument lies in the causality requirement. The Chamber holds that even though the contribution of the accessory need not be *conditio sine qua non* to the commission of the principal offence, the assistance must have furthered, advanced or facilitated the commission of such offence. Clearly, if the assistance was not causal, the conduct of the perpetrator does not fall within the ambit of Article 25(3)(c) of the Statute").
[2010] *Bemba et al.* TJ, para. 94. The Appeals Chamber in the same case when discussing these findings of the Trial Chamber clarified that that no effect on the commission of the offence need to be proved as a matter of law (*see* *Bemba et al.* AJ, para. 1327).
[2011] *Bemba et al.* AJ, para. 1327.
[2012] *Bemba et al.* AJ, para. 1327.
[2013] *Bemba et al.* TJ, para. 94.
[2014] Judgment, paras. 4034, 4115, 4281, 4373.

not required to assess whether his conduct had a direct effect on each specific crime. Ngaïssona's argument that the Chamber erred by relying on "general contributions that are not specifically linked to any specific crimes" should be dismissed.[2015]

540. *Second*, Ngaïssona's claim that the Chamber made no findings at all on the effect of his assistance on the crimes misrepresents the Judgment. The Chamber found that Ngaïssona coordinated, encouraged and financed the Anti Balaka, and that his conduct thereby assisted their commission of the charged crimes.[2016] This necessarily amounted to any required effect, and the Chamber need not have found anything more.[2017] Ngaïssona's legal arguments should therefore be dismissed.

541. *Third*, even if the Chamber erred in law in its interpretation of the *Bemba et al.* precedent in concluding that no general causal link is required as a matter of law,[2018] such an error would have no impact. This is because the Chamber's factual finding that Ngaïssona assisted the Anti-Balaka in the commission of the charged crimes at each of the four locations[2019] necessarily meets the "general causal requirement": [2020] to be of assistance, his acts must have had an effect on the crimes.

542. Ngaïssona's extensive reliance on the manner in which other chambers assessed the evidence in different cases[2021] is inapposite. Such assessments are tied to the specific evidentiary record and factual circumstances arising in those cases. In the same vein, Ngaïssona's reliance on purported legal findings from courts applying different legal standards for aiding-and-abetting liability is unpersuasive.[2022]

543. Further, contrary to Ngaïssona's submission, the Chamber did not "conflate[] the *actus reus* with *mens rea*" by "effectively treat[ing] elevated intent alone as sufficient to establish causation".[2023] As discussed above, the Chamber correctly defined the law and properly applied it to the evidence by finding, *first*, that Ngaïssona aided, abetted or otherwise assisted in the

[2015] *Contra* Ngaïssona Appeal, para. 271 (emphasis added). *See also* paras. 270, 272-275.
[2016] *See above* paras. 528-532.
[2017] *Bemba et al.* TJ, para. 94.
[2018] *See* Judgment, para. 4038.
[2019] *Bemba et al.* AJ, para. 1327.
[2020] *Bemba et al.* TJ, para. 90.
[2021] Ngaïssona Appeal, paras. 265, 267-268, 273, 288, 313-314, 344-346.
[2022] Ngaïssona Appeal, paras. 268-269. *See Bemba et al.* AJ, para. 1326.
[2023] Ngaïssona Appeal, paras. 266. *See also* para. 294.

commission of the crimes,[2024] and, *second*, that he did so for the purpose of facilitating such crimes.[2025]

(ii) The Chamber did not err in fact

544. Based on the proper legal standard under article 25(3)(c),the Chamber established that Ngaïssona aided, abetted or otherwise assisted in the commission of the crimes during the attacks on Bangui, Bossangoa, Yamwara, and PK9-Mbaïki Axis.[2026] In particular, contrary to Ngaïssona's argument,[2027] the Chamber assessed whether his organisational, financial and psychological contributions assisted in the commission of the crimes, but rejected Ngaïssona's submissions at trial suggesting that the assistance should be made to specific persons or a specific group.[2028]

545. Further, the Chamber made *actual*, not *hypothetical* findings:[2029] it found that financial assistance aimed at sustaining an armed group amounted in this case assistance under article 25(3)(c) "because […] such financial assistance contributes to maintaining such armed group in existence and operation".[2030] The Chamber concluded for each location that Ngaïssona contributed to the commission of the crimes by "provid[ing] financial contributions and engag[ing] in activities pertaining to the organisation and coordination of groups for the purpose of facilitating the commission of criminal acts targeting the Muslim population".[2031] In addition, in relation to Bangui and Bossangoa, the Chamber also found that the financial support made it possible for at least some of the elements to participate in the attacks.[2032]

546. Finally, to the extent that Ngaïssona suggests that the Chamber erred in its *assessment* of the evidence,[2033] he fails to show that no reasonable trial chamber could have reached the same conclusions. In particular, the Chamber did not conclude, as Ngaïssona suggests, that supporting the general functioning of a group is "*automatically* equivalent to assistance in the

[2024] Judgment, paras. 4034, 4115, 4281, 4373.
[2025] Judgment, paras. 4042, 4119-4120, 4291-4292, 4377-4378.
[2026] Judgment, paras. 4034, 4115, 4281, 4373. *See also* paras. 4709-4710, 4734, 4789, 4808. *See also above* paras. 528-532.
[2027] Ngaïssona Appeal, para. 271.
[2028] Judgment, para. 4038 (addressing Ngaïssona Closing Brief, paras. 399-400, 403-406).
[2029] Ngaïssona wrongly suggests that the Chamber found that financial contribution *can* assist the crimes but failed to assess whether it actually *did* so: Ngaïssona Appeal, paras. 271-272 ("Crucially, stating contributions *can* amount to assistance is not the same as finding that they *do* amount to assistance", emphasis supplied).
[2030] Judgment, para. 4040. *See also* para. 1695.
[2031] Judgment, paras. 3943, 4031, 4113, 4279, 4371.
[2032] Judgment, para. 4042. *See also* paras. 4119, 4710, 4734.
[2033] Ngaïssona Appeal, paras. 270, 273-275.

commission of crimes".[2034] Nor was the Chamber required to apply the incorrect legal standard proposed by Ngaïssona[2035] and assess for each specific crime whether the evidence shows any direct effect.[2036] Rather, on the totality of the evidence, the Chamber found that Ngaïssona's support to the Anti-Balaka assisted in the commission of their crimes.[2037] That Ngaïssona disagrees with this conclusion does not show that the Chamber's evidentiary assessment was unreasonable.[2038]

VII.1.c. The Chamber correctly established the actus reus *under article 25(3)(c)*

547. In his second sub-Ground against the Chamber's finding on *actus reus*,[2039] Ngaïssona—in contradiction with his earlier arguments regarding the causal effect[2040]—acknowledges that article 25(3)(c) does not legally require the conduct to have a direct effect on the specific crimes.[2041] He nonetheless submits that the Chamber erred in *law* either by not making findings on such effect or by failing to explain why such findings were unnecessary in light of the facts of this case.[2042] In his view the Chamber should have "justified and motivated the standard it applied *in lieu* of impact".[2043] Ngaïssona's argument distorts the logic of the Appeals Chamber's ruling in *Bemba et al.*[2044] as well as the Chamber's findings. By suggesting that the *law* required the Chamber to justify "why such a showing [of effect] was unnecessary in light of the specific facts of this case",[2045] he effectively seeks to introduces the very legal requirement that the Appeals Chamber has expressly excluded. There is simply no basis for Ngaïssona's reading of the Appeals Chamber's ruling in *Bemba et al.* As discussed above, while the law requires that the accused assist in the commission or attempted commission of a crime, the *manner* in which this is shown is a matter of evidence.[2046] A chamber need not justify the absence of an element (a direct effect on each crime) that the law does not require; nor need it justify application of a standard required by law.

[2034] Ngaïssona Appeal, paras. 274 (emphasis added). *See also* para. 280 ("the Trial Chamber erroneously *assumed* that general support to the Anti-Balaka groups *automatically* amounted to assistance in the commission of the charged crimes" (emphasis added)) .
[2035] *See above* paras. 537-539.
[2036] Ngaïssona Appeal, paras. 274-275.
[2037] *See above* paras. 528-532.
[2038] *Contra* Ngaïssona Appeal, paras. 273-275.
[2039] Ngaïssona Appeal, paras. 276-295.
[2040] Ngaïssona Appeal, paras. 263-265.
[2041] Ngaïssona Appeal, paras. 277-278.
[2042] Ngaïssona Appeal, paras. 276-280.
[2043] Ngaïssona Appeal, para. 289. *See also* Ngaïssona Closing Brief, paras. 400-404 (advancing the same argument at trial). The Chamber addressed and dismissed this argument: *see* Judgment, para. 4038.
[2044] *See above* paras. 537-539.
[2045] Ngaïssona Appeal, paras. 276-277, 280.
[2046] *See above* paras. 537-539.

548. To support his argument, Ngaïssona relies extensively on factual findings from the *ad hoc* tribunals—operating under a different legal framework—in an attempt to derive a legal principle.[2047] In his submission, assistance may be established "without the need to prove a measurable effect on the specific crimes" only when the contributions are "inherently connected" to those crimes, as opposed to remote, diffuse, limited in nature, or capable of legitimate or neutral use.[2048] Ngaïssona's suggestion that the legal test should differ based on the nature of the assistance—drawing an artificial distinction on the basis of 'remoteness'—is not supported by the case law.

549. In particular, Ngaïssona attempts to resurrect the overturned holding of the ICTY Appeals Chamber in *Perišić* which required that conduct constituting aiding and abetting must be *specifically directed* at the commission of the crimes.[2049] However, this holding is immaterial for two reasons. *First*, under ICTY and customary international law on aiding and abetting, the accused's contribution must have a substantial effect on the crime—an element not in article 25(3)(c).[2050] *Second*, the holding in *Perišić* was soon rejected by the ICTY Appeals Chamber in *Šainović*[2051] as well as the SCSL Appeals Chamber in *Taylor*.[2052] Drawing on an extensive analysis of *ad hoc* tribunals, post-WWII, and domestic jurisprudence as well as relevant international instruments,[2053] the ICTY Appeals Chamber "unequivocally reject[ed] the approach adopted in the *Perišić* Appeal Judgment as it is in direct and material conflict with the prevailing jurisprudence on the *actus reus* of aiding and abetting liability and with customary international law".[2054] Ngaïssona's reliance on the *Perišić* 'specific direction' requirement is thus not persuasive.

550. As discussed above,[2055] and contrary to Ngaïssona's submissions,[2056] the Chamber reasonably found that he assisted in the commission of the charged crimes, applying the correct standard. Ngaïssona's contention that the Chamber "inadequately engage with the factual

[2047] *Contra* Ngaïssona Appeal, paras. 278-279, 281.
[2048] Ngaïssona Appeal, para. 281.
[2049] Ngaïssona Appeal, paras. 281, 291 (relying on *Perišić* AJ, para. 38). *See also* Ngaïssona Appeal, para. 301 (recognising that the concept was ultimately rejected by the ICTY Appeals Chamber).
[2050] *Bemba et al.* TJ, para. 94. *See above* para. 538.
[2051] *Šainović et al.* AJ, paras. 1618-1650.
[2052] *Taylor* AJ, paras. 466-481.
[2053] *Šainović et al.* AJ, paras. 1618-1650. In its analysis, the ICTY Appeals Chamber noted that "some scholars considered that, compared to the ILC Draft Code, the ICC Statute may have lowered the threshold of the *actus reus* requirement, while apparently adopting a higher *mens rea* standard": *Šainović et al.* AJ, para. 1648.
[2054] *Šainović et al.* AJ, para. 1650.
[2055] *See above* paras. 528-532.
[2056] Ngaïssona Appeal, paras. 282-288.

impact of his conduct"[2057] is premised on an incorrect understanding that evidence of a direct impact or effect on each specific crime is legally required.[2058] In any event, it fails to show that the Chamber's conclusion is one that no reasonable trial chamber could have reached on the totality of the evidence. *First,* Ngaïssona's argument that the Chamber should have articulated an "alternative framework to justify dispensing with the requirements of actual facilitation"[2059] is obscure and in any event fails to take into account that the Chamber did find that Ngaïssona's conduct assisted in the commission of the crimes and thus necessarily had an effect on them.[2060]

551. *Second,* Ngaïssona recognises that no threshold of assistance is required under article 25(3)(c).[2061] However, he argues that, even if "not strictly required," such threshold *could* be relevant to distinguish those who can "make a real difference" from those whose "contributions are remote".[2062] He submits that "[w]ithout such threshold, remote neutral, or *de minimis* contributions […] may be improperly treated as criminally significant undermining the principle of legality".[2063] Ngaïssona's argument again effectively seeks to reintroduce a threshold requirement that is different and goes beyond the "general causal requirement" encompassed in the concept of assistance under article 25(3)(c). His considerations on what may or may not be a relevant factor fail to demonstrate that the Chamber erred in law or in fact in its evidence assessment. Similarly, Ngaïssona's disagreement with the Chamber's assessment of some of the factors he put forward at trial,[2064] equally fails to show any error.

552. For the reasons set out above, Ground 2.1 of the Ngaïssona's Appeal should be rejected.

VII.2. Ground 2.2: *Mens rea*: The Chamber correctly found that Ngaïssona acted for the purpose of facilitating the commission of the crimes under article 25(3)(c)

VII.2.a. The Chamber's findings

553. The Chamber correctly set out the law in relation to the *mens rea* under article 25(3)(c)[2065] and reasonably established on the evidence that Ngaïssona acted for the purpose of

[2057] Ngaïssona Appeal, para. 282.
[2058] *See above* paras. 537-539.
[2059] Ngaïssona Appeal, para. 290.
[2060] *See above* paras. 528-532.
[2061] Ngaïssona Appeal, para. 291. *See* also *Bemba et al.* TJ, para. 94. *See above* para. 538.
[2062] Ngaïssona Appeal, para. 291 (relying on *Perišić* AJ, para. 38). *See above* para. 549.
[2063] Ngaïssona Appeal, para. 292.
[2064] Ngaïssona Appeal, paras. 290, 293.
[2065] Judgment, paras. 3882-3883.

facilitating the commission of the crimes. Ngaïssona's arguments regarding the Chamber's assessment of his *mens rea* under article 25(3)(c) should be rejected.[2066]

554. For all locations—Bangui, Bossangoa, Yamwara, and the PK9–Mbaïki axis[2067]—the Chamber correctly and reasonably found that "Mr Ngaïssona was […] aware that the Anti-Balaka would commit these crimes in the ordinary course of events, […] intended for them to commit these crimes […] and lent his assistance with the aim of facilitating such crimes."[2068] The Chamber found that Ngaïssona provided assistance "for the purposes of facilitating the crimes against the Muslim civilian population."[2069] It reasoned throughout that he "made his contributions […] fully aware that the Anti-Balaka would violently target the Muslim civilian population," that "he knew and was informed" of their advance "including the killings and dislocation of Muslim civilians," and that "the Anti-Balaka perceived, and himself 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 civilian population […] on this basis."[2070] The Chamber further considered that he provided his support "in the context of anti-foreign sentiments and inflammatory rhetoric […] against those perceived to support the Seleka, in particular Muslim civilians."[2071] On this basis, and considering that "it is clear on the facts that Ngaïssona" provided his support "with the knowledge of the crimes", the Chamber concluded across all four locations that "Ngaïssona's assistance was such that it could only have been provided intentionally with the aim of facilitating the concerned crimes."[2072]

555. Ngaïssona's legal and factual claims largely reiterate arguments already rejected at trial, and misrepresent the Chamber's findings and the applicable law. As explained in detail below, Ngaïssona's challenges to the Chamber's finding on his *mens rea* should be dismissed.

[2066] Ngaïssona Appeal, paras. 296-339.
[2067] Judge Kovács dissented, with regard only to the torture and murder of Saint Cyr in Yamwara.
[2068] Judgment, paras. 4043 (*see also* paras. 4035-4047 for Bangui), 4120 (*see also* paras. 4016-4125 for Bossangoa), 4292 (*see also* paras. 4282-4297 for Yamwara), 4378 (*see also* paras. 4374-4382 for PK9-Mbaïki).
[2069] Judgment, paras. 4042, 4119, 4291, 4377. *See also* paras. 4709, 4734, 4789, 4808.
[2070] Judgment, paras. 4035, 4116, 4119, 4282 (in relation to Yamwara, the Chamber did not mention the relocation of Muslim civilians), 4374, 4377.
[2071] Judgment, paras. 4037, 4116, 4282, 4374.
[2072] Judgment, paras. 4041, 4118 (recalling its prior findings, including findings made at paras. 4037-4041), 4290 (recalling its prior findings, including findings made at paras. 4037-4041), 4376 (also recalling its prior findings at paras. 4037-4041). *See also* paras. 4709, 4734, 4789, 4808.

VII.2.b. The Chamber did not conflate knowledge under article 30(2)(b) with purpose under article 25(3)(c)

556. The Chamber correctly defined the law on the required *mens rea* for accomplice liability under article 25(3)(c).[2073] It found that "Article 25(3)(c) of the Statute provides for a higher subjective element: the aider and abettor must act 'for the purpose of facilitating the commission of a crime.'"[2074] The Chamber then added that under article 30 "the aider or abettor must at least be aware that the principal perpetrator's offence will occur in the ordinary course of events."[2075] Ngaïssona's submission that the Chamber erred in law by conflating the knowledge requirement under article 30(2)(b) with the "purpose" requirement under article 25(3)(c)[2076] is misplaced and attempts to present factual arguments as legal ones. Rather than identifying an appealable legal error, Ngaïssona challenges the way in which the Chamber assessed the evidence and *how* it inferred that he acted with the purpose of facilitating the crimes.[2077]

557. *First*, Ngaïssona's argument that the Chamber's approach was legally flawed[2078] rests on his incorrect claim that it "derived from mere foresight" his purpose to facilitate the commission of the crimes.[2079] He contends that the Chamber considered "knowledge alone [to] impl[y] purpose"[2080] and that it inferred the purpose only "on a diluted awareness standard."[2081] This misrepresents the Chamber's findings. As explained above,[2082] the Chamber found that Ngaïssona acted with the requisite purpose based on multiple strands of evidence, including (i) his sustained commitment throughout much of 2013 and well into 2014 to financing, organising and coordinating the Anti-Balaka; (ii) his knowledge that the Anti-Balaka would violently target the Muslim civilian population; (iii) his knowledge that the Anti-Balaka—and he himself—sought to retaliate against the Muslim civilian population; and (iv) his knowledge of the crimes committed during the Anti-Balaka's advance.[2083] The Chamber also took into account that these events occurred against a backdrop of anti-foreign inflammatory rhetoric directed at Muslim civilians.[2084] Ngaïssona knew that the Anti-Balaka would commit a

[2073] Judgment, paras. 3882-3883.
[2074] Judgment, para. 3882.
[2075] Judgment, para. 3883 (emphasis added).
[2076] Ngaïssona Appeal, para. 304.
[2077] Ngaïssona Appeal, para. 304.
[2078] *Contra* Ngaïssona Appeal, para. 305.
[2079] Ngaïssona Appeal, paras. 306, 315, 329.
[2080] Ngaïssona Appeal, para. 314.
[2081] Ngaïssona Appeal, para. 315.
[2082] *See above* paras. 553-554.
[2083] Judgment, paras. 4035, 4116, 4119, 4282 (in relation to Yamwara, the Chamber did not mention the relocation of Muslim civilians), 4374, 4377.
[2084] Judgment, paras. 4037, 4116, 4282, 4374.

widespread attack against the Muslim civilian population,[2085] yet he continued financing, organising and coordinating them. Considering these evidentiary strands for each location, read in the context of the totality of the evidence, the Chamber reasonably concluded that his assistance "could only have been provided intentionally with the aim of facilitating the concerned crimes".[2086]

558. *Second*, Ngaïssona contends that the purpose to assist "cannot be inferred" absent evidence showing the assistance had a discernible effect on the offences.[2087] He argues that the Chamber failed to "examine whether his contributions were made with the aim of facilitating *a specific* crime" and to "identify any *crime-specific direction* in his actions."[2088] This argument, premised upon his submissions on the *actus reus*,[2089] is legally flawed as it effectively seeks to reintroduce the specific threshold requirement and level of specificity that article 25(3)(c) does not require.[2090] As explained above,[2091] article 25(3)(c) requires only that the accused's conduct assists in the commission of the crime. Once this is established, no additional proof of direct effect on the specific crime is required, neither as a matter of law nor as a factual prerequisite for concluding that Ngaïssona acted with the required purpose. Again, Ngaïssona's reliance on the manner in which other chambers assessed the evidence in different cases is immaterial.[2092]

559. In the same vein, Ngaïssona's reliance on the ICTY Appeals Chamber's holding in *Perišić* in relation to the *mens rea*[2093] should be rejected for the reasons set out above.[2094] Article 25(3)(c) does not require a chamber to establish that assistance was given for the purpose of facilitating *a specific* crime, nor must it determine whether the assistance was *specifically directed* at the commission of a crime.[2095] Rather, under article 30, "it is not necessary for the accessory to know the precise offence which was intended and […] committed, but he or she must be aware of its essential elements".[2096] Consistently, the purpose requirement under article 25(3)(c), which relates to the accessory's facilitation and not the offence, need not be directed

[2085] Judgment, para. 49.
[2086] Judgment, paras. 4041, 4118, 4290, 4376.
[2087] Ngaïssona Appeal, paras. 307-308.
[2088] Ngaïssona Appeal, para. 309 (emphasis added).
[2089] *See* Ngaïssona Appeal, paras. 276-277, 288, 292.
[2090] Ngaïssona himself acknowledges that evidence of an effect on a specific crime is not legally required: Ngaïssona Appeal, paras. 277, 308.
[2091] *See above* paras. 537-539.
[2092] Ngaïssona Appeal, paras. 313-314.
[2093] Ngaïssona Appeal, paras. 305, 307, 309-312, 325.
[2094] *See above* para. 549. In addition, the holding of the ICTY Appeals Chamber in *Perišić* related to the *actus reus* and not the *mens rea* of the accused.
[2095] *Contra* Ngaïssona Appeal, para. 309.
[2096] *Bemba et al.* TJ, para. 98 (cited in *Bemba et al.* AJ, para. 1391). *See also Bemba et al.* AJ, para. 1308.

at facilitating a *specific* crime either, but merely to facilitating the commission of the *type* of crime charged.[2097]

560. Based on these two flawed premises,[2098] Ngaïssona's assertion that the Chamber erred in law by failing to establish the required mental element[2099] should be rejected. The Chamber was not required to establish a specific volitional link, as Ngaïssona understands it,[2100] between each form of assistance and each specific crime. Instead, the Chamber correctly found, drawing on various strands of evidence, that Ngaïssona's multifaceted assistance—coupled with his knowledge—could only have been provided intentionally, for the purpose of facilitating the commission of the crimes,[2101] as required under article 25(3)(c).

VII.2.c. The Chamber correctly established purpose under article 25(3)(c)

561. Ngaïssona argues that the Chamber erred in fact by failing to consider other reasonable alternatives when finding that he had the required purpose under article 25(3)(c).[2102] By reiterating his unsuccessful trial arguments, and mischaracterising the Chamber's findings, Ngaïssona fails to demonstrate that no reasonable trial chamber could have reached this conclusion.

562. *First*, Ngaïssona mischaracterises the Judgment by wrongly suggesting that the Chamber predominantly relied on media reports and on "what other witnesses may have known" to conclude that he knew of a campaign targeting Muslim civilians.[2103] To the contrary, the Chamber's detailed analysis of the evidence led it to find that Ngaïssona himself perceived the Muslim population as collectively responsible, knew that the Anti-Balaka shared in this perception, and targeted the Muslim population for this reason. This includes evidence regarding the objectives and policies of the Anti-Balaka, as well as Ngaïssona's role in creating, organising and financing the Anti-Balaka's operations.[2104] His further suggestion that the Chamber "cannot reasonably claim to draw accurate inferences about Mr. Ngaïssona's state of

---

[2097] *Bemba et al.* TJ, para. 97. *See also Šainović et al.* AJ, para. 1491.
[2098] That the Chamber only relied on "diluted" awareness to infer his purpose and that it was instead legally required to establish a *specific* causal and volitional link between each instance of assistance and each crime.
[2099] Ngaïssona Appeal, paras. 310-315.
[2100] Ngaïssona Appeal, paras. 312, 315.
[2101] Judgment, paras. 4041, 4118, 4290, 4376. *See above* paras. 553-554.
[2102] Ngaïssona Appeal, para. 317.
[2103] *Contra* Ngaïssona Appeal, para. 318.
[2104] Judgment, paras. 47 (with evidence discussed at para. 1240, 1273, 1288, 1292, 1301-1303), 49 (with evidence discussed at paras. 1217-1229, 1239, 1297-1299, 1301, 1304). *See also e.g.* paras. 780, 783, 794, 796, 797, 804, 809, 827, 863, 865.

mind" merely because he alleges it erred in assessing two unrelated testimonies concerning the names of the victims in Benzambe is without merit.[2105]

563. *Second*, the Chamber considered Ngaïssona's trial submissions regarding his alleged motives[2106] but concluded, "on the facts", that irrespective of those motives, he provided support to the Anti-Balaka with knowledge of their crimes and, "overall" (in light of the totality of the evidence) acted with the aim of facilitating the commission of the crimes.[2107] Contrary to Ngaïssona's assertion,[2108] this assessment did not amount to a "blanket dismissal" or a "refusal to balance the relevant considerations", but was a reasonable evaluation of (and conclusion based upon) the evidence.

564. *Third*, the Chamber did not "establish purpose to facilitate crimes" based on his military/logistical assistance "alone".[2109] As explained above,[2110] the Chamber reached its conclusion based on multiple strands of evidence. Ngaïssona's argument—which considers certain evidence in isolation while ignoring other relevant evidence considered by the Chamber—fails to demonstrate any error.

565. *Fourth*, Ngaïssona misrepresents the Judgment when arguing that the Chamber failed to establish that his "intent extended beyond organisational support to encompass facilitation of specific crimes".[2111] When assessing the *actus reus*, the Chamber found that Ngaïssona's financial contributions to Anti-Balaka activities were regular and related to the organisation's manoeuvring and ongoing functions.[2112] The Chamber also noted that, even if these financial contributions were "aimed also, or even mainly, at daily subsistence or reimbursement of travel costs for meetings, they inter-locked with the inter-operability of the Anti-Balaka."[2113] It further held that "financial assistance provided for purposes other than purchase of weapons or ammunition, or other matters not directly linked to specific hostile acts, can amount to a form of assistance through which liability under the Statute can be incurred, as long as the required elements under the Statute are fulfilled."[2114]

[2105] Ngaïssona Appeal, para. 319.
[2106] Judgment, paras. 4039-4041 (addressing Ngaïssona Closing Brief, paras. 458, 510-512, 566, 571-575). *Contra* Ngaïssona Appeal, paras. 321-322.
[2107] Judgment, para. 4041.
[2108] Ngaïssona Appeal, paras. 321-322.
[2109] *Contra* Ngaïssona Appeal, para. 325.
[2110] *See above* paras. 553-554.
[2111] Ngaïssona Appeal, paras. 325-326.
[2112] *See* Judgment, paras. 38, 828-889, 1683-1695, 4031, 4113, 4372.
[2113] Judgment para. 1695.
[2114] Judgment, para. 4040.

566. In other words, contributions to the organisation can lead to criminal liability if they assist in the commission of the crimes and are provided for the purpose of facilitating their commission. In addressing Ngaïssona's *mens rea*, the Chamber clearly found that he provided his contributions for the purpose of facilitating the commission of crimes, as required under article 25(3)(c).[2115] Further, Ngaïssona misstates the law by suggesting that under article 25(3)(c) the Chamber should have established his purpose to be *specifically directed* toward facilitating *specific* crimes,[2116] but fails to show any legal or factual error in the Chamber approach.

VII.2.d. The Chamber correctly established that Ngaïssona made his contribution with the required mens rea

567. The Chamber correctly and reasonably established that Ngaïssona had the required *mens rea* when he assisted the commission of the crimes. Contrary to his submission,[2117] the Chamber established for all four locations that, at the time of his assistance: "Ngaïssona's assistance was such that it could only have been provided intentionally with the aim of facilitating the concerned crimes."[2118] The Chamber found that "Mr Ngaïssona made his contributions fully aware that the Anti-Balaka would violently target the Muslim civilian population in the west of the CAR, committing the widespread attack that ultimately took place from September 2013 through February 2014, including the seminal coordinated Anti-Balaka attacks of Bangui and Bossangoa on 5 December 2013".[2119] Ngaïssona disagrees with these conclusions, but fails to show that they were incorrect or unreasonable.

568. As recalled above, to establish Ngaïssona's *mens rea* the Chamber relied on multiple strands of evidence and subsidiary findings including that he knew of: the anti-foreign (understood as anti-Muslim) sentiments and inflammatory rhetoric used from December 2012 and throughout 2013 by Bozizé and his circle (including Ngaïssona himself);[2120] the equation made by the Anti-Balaka (including Ngaïssona himself) between Muslim civilians and the Seleka throughout 2013 and well into 2014;[2121] the instrumentalisation of the low level of

[2115] Judgment paras. 4043, 4120, 4292, 4378. *See also above* paras. 553-554. *Contra* Ngaïssona Appeal, paras. 325-326.
[2116] Ngaïssona Appeal, paras. 324-326. *See above* para. 549.
[2117] Ngaïssona Appeal, paras. 329-330 (arguing that the Chamber *failed* to make such finding).
[2118] Judgment, paras. 4041, 4118 (recalling its prior findings, including findings made at para. 4041), 4290 (recalling its prior findings, including findings made at para. 4041), 4376 (also recalling its prior findings at paras. 4037-4041).
[2119] Judgment, para. 49.
[2120] *See e.g.* Judgment, paras. 1240-1298, 1301-1302, 1304.
[2121] *See e.g.* Judgment, paras. 1297-1298, 1301-1304.

education across Anti-Balaka's elements throughout 2013;[2122] the overall context and how it developed, through his meetings in Cameroon and concerning FROCCA throughout 2013;[2123] the plan developed throughout 2013 by Bozizé and his circle (including Ngaïssona himself) to ensure Bozizé's return to power "by all means possible, including through armed violence";[2124] the widespread attack against Muslim civilians from September 2013 to February 2014.[2125] By September 2013, Ngaïssona was also aware of the crimes committed by the Anti-Balaka during their advance.[2126] The Chamber also found that Ngaïssona remained informed of the activities related to the Anti-Balaka from September 2013 to February 2014.[2127]

569. Ngaïssona's *mens rea* coincides in time with his assistance to the commission of the crimes. The Chamber found that Ngaïssona made financial contributions between September and December 2013;[2128] he continued to provide financial assistance following his return to Bangui in January 2014;[2129] he acted as a liaison being a link to which the Anti-Balaka would make requests for weapons and ammunition[2130] from at least June 2013;[2131] he liaised with persons involved in efforts to bring Bozizé back to power[2132] from at least May 2013;[2133] he liaised with groups between Cameroon and the CAR with the aim to bring Bozizé back to power before December 2013;[2134] he undertook other coordination activities in the border areas as early as March 2013,[2135] and; he liaised with other persons across borders before December 2013.[2136] Significantly, throughout 2013 Ngaïssona was actively involved in planning steps to respond to the Seleka violence and efforts to ensure François Bozizé's return to power, "by all means possible, including through armed violence."[2137]

570. Contrary to Ngaïssona's understanding of the Judgment, the Chamber made sufficient findings as to the timing of his *mens rea* and *actus reus*.[2138] It reasonably considered that they

[2122] *See e.g.* Judgment, paras. 1235-1239.
[2123] *See e.g.* Judgment, paras. 1299, 1302.
[2124] *See e.g.* Judgment, paras. 34-35, 38.
[2125] *See e.g.* Judgment, paras. 49, 3945, 4035, 4116, 4282, 4374.
[2126] *See e.g.* Judgment, paras. 56, 4035.
[2127] *See e.g.* Judgment, para. 57.
[2128] *See e.g.* Judgment, paras. 38, 828-863, 4031, 4113, 4281, 4373.
[2129] *See e.g.* Judgment, para. 1684.
[2130] *See e.g.* Judgment, paras. 865-889.
[2131] Judgment para. 871 (assessing the evidence of the earliest relevant email exchange on 24-25 June 2013).
[2132] *See e.g.* Judgment, paras. 890-913.
[2133] Judgment para. 891 (assessing the evidence of the earliest relevant email exchange on 10 May 2013).
[2134] *See e.g.* Judgment, paras. 914-923.
[2135] *See e.g.* Judgment, paras. 924-934.
[2136] *See e.g.* Judgment, paras. 935-950, 1459-1467.
[2137] Judgment, paras. 34-35, 38.
[2138] *Contra* Ngaïssona Appeal, paras. 329-330, 336.

coincided, and thus concluded that his assistance was provided intentionally with the aim of facilitating the charged crimes.[2139] Ngaïssona fails to show that this conclusion was one no reasonable trial chamber could have reached.

571. Further, Ngaïssona's argument that the timing of his *mens rea* and *actus reus* under article 25(3)(c) should coincide with the timing of the formation of criminal plans under article 25(3)(a) is legally flawed.[2140] It is irrelevant whether Ngaïssona provided his contribution before the principal perpetrators' criminal plan under article 25(3)(a) crystallised, provided that, at the time of his contribution, he knew that in the ordinary course of events the *type* of crime(s) committed would occur.[2141]

572. For Bangui, Ngaïssona argues that, based on the evidence of P-0446 and P-0992, his "alleged assistance […] postdates the commission of the crime".[2142] Ngaïssona takes this evidence in isolation and overlooks the Chamber's reliance on multiple corroborative evidence concerning his financial contributions between September and December 2013, before the commission of the crimes.[2143] Further, the Chamber expressly acknowledged that the precise timing of Ngaïssona's financial support to P-0446 could not be determined with certainty, but found that it occurred between September and November 2013,[2144] that is, prior to the commission of the charged crimes. With respect to P-0992, the Chamber was fully aware—and explicitly found—that while the financial support was promised before the attack, it was provided only afterwards.[2145]

573. Similarly, Ngaïssona's arguments that the Chamber erred in fact in concluding that he provided his assistance with the required *mens rea* and before the commission of the crimes on

[2139] Judgment, paras. 4041, 4118 (recalling its prior findings, including findings made at para. 4041), 4290 (recalling its prior findings, including findings made at para. 4041), 4376 (also recalling its prior findings at paras. 4037-4041).
[2140] Ngaïssona Appeal, para. 338 (arguing that the Chamber failed to established that Ngaïssona's *actus reus* and *mens rea* temporarily coincide with the criminal plan). *See also* paras. 331-332 (arguing that the Chamber erred in finding that Ngaïssona had the required *mens rea* for the crimes committed in Bangui under article 25(3)(c) before a common purpose was crystalised under 25(3)(a)), 333 (arguing that the Chamber erred in finding that Ngaïssona had the required specific *mens rea* and *actus reus* for the crimes committed in the PK9-Mbaïki axis since the plan to remove Muslims there formed only later in January 2014), 334 (arguing that Ngaïssona did not have "contemporaneous awareness" of the incidents), 336 (arguing the Chamber erred in reaching its findings given the "uncertainty about when the criminal purpose crystallized").
[2141] *Bemba et al.* TJ, para. 98.
[2142] Ngaïssona Appeal, paras. 331-332.
[2143] Judgment, para. 2272 (referring to its prior findings at paras. 827-889).
[2144] Judgment, para. 2269, fn. 5817.
[2145] Judgment, para. 2270.

the PK9-Mbaïki axis,[2146] Yamwara[2147] and Bossangoa,[2148] should be dismissed. They are premised on the same misapprehension concerning the specificity of the *mens rea* required under articles 30(2)(b) and 25(3)(c), as well as Ngaïssona's misrepresentation of the evidence relied upon by the Chamber in its conclusions. For the reasons set out above, Ground 2.2 of Ngaïssona's Appeal should be rejected.

VII.3. Ground 2.3: *Mens rea*: The Chamber correctly found that Ngaïssona had the required knowledge under article 30(2)(b) and (3)

574. The Chamber correctly found that under article 25(3)(c) and article 30(2)(b) and (3), in addition to having acted for the purpose of facilitating the commission of the crimes, the accused needs to know that the charged crimes would be committed in the ordinary course of the events.[2149] Consistent with the jurisprudence of the Appeals Chamber, it also found that "the aider and abettor does not [necessarily] have to know all the details of the crime in which they assist; a person may be said to be acting for the purpose of facilitating the commission of a crime even if they do not know all the factual circumstances in which it is committed".[2150]

575. Ngaïssona argues that the Chamber erred in law and in fact by considering and relying upon evidence of pattern criminality to infer his knowledge under article 30. This argument should be rejected.

VII.3.a. The Chamber did not err in law when considering evidence of crime pattern

576. Ngaïssona submits that the Chamber erred in law by inferring knowledge under article 30(2)(b) from crime pattern evidence, thereby "treating macro-level awareness of group conduct as a substitute for individualized knowledge of specific crimes."[2151]

577. This argument appears to conflate the Chamber's legal analysis with its factual assessment. Ngaïssona treats two distinct inquiries as one and the same. *First*, the legal requirement under article 30(2)(b) can be satisfied by knowledge of the *type* of crimes that will be committed in the ordinary course of events, assessed at a "macro-level"[2152] rather than "individualised knowledge of specific crimes" (understood as knowledge of the detailed

[2146] *Contra* Ngaïssona Appeal, para. 333.
[2147] *Contra* Ngaïssona Appeal, para. 334.
[2148] *Contra* Ngaïssona Appeal, para. 335.
[2149] Judgment, paras. 3883, 4038.
[2150] Judgment, paras. 3882 (referring to *Bemba et al.* AJ, para. 1400). *See also* para. 4038.
[2151] Ngaïssona Appeal, para. 340. *See further* paras. 341-384.
[2152] Judgment, para. 4038.

circumstances of each charged offence).[2153] *Second*, the Chamber can rely on pattern of conduct evidence as a basis to find such knowledge. Ngaïssona appears to misunderstand the Chamber's reference to the "macro-level"[2154] assessment as synonymous with its reliance on evidence of "pattern of criminal conduct".[2155]

578. In any event, this argument misconstrues both the Chamber's factual findings and legal reasoning. Factually, Ngaïssona disregards that the Chamber's findings on *mens rea*—including knowledge under article 30(2)(b)—rest on multiple, mutually reinforcing strands of evidence, of which prior crime pattern evidence is only one component.[2156] The Chamber did not find that "any prior crimes committed against the Muslim civilian population *automatically* renders all further crimes against that group virtually certain."[2157] Ngaïssona's submission—which misrepresents the Chambers finding, addresses pattern evidence in isolation and ignores other relevant evidence—fails to demonstrate any error in the Chamber's ultimate conclusion that he acted with the required knowledge. Further, to the extent that Ngaïssona suggests that a trier of fact is barred as a matter of law[2158] from relying on evidence of a prior criminal pattern to infer knowledge—whether alone or in conjunction with other evidence, as in the present case—he fails to identify any legal basis for the contention. On the contrary, it is well within the Chamber's prerogative to freely assess all the evidence before it including evidence of a prior criminal pattern.

579. Ngaïssona's contention that the Chamber was required to establish "individualized knowledge of specific crimes"[2159] is contrary to the Appeals Chamber's jurisprudence—expressly recalled by the Chamber—that an "aider and abettor does not [necessarily] have to know all the details of the crime in which they assist" and that "a person may be said to be acting for the purpose of facilitating the commission of a crime even if they do not know all the factual circumstances in which it is committed".[2160] Thus, the Chamber correctly observed that "Mr. Ngaïssona need not have known all the details of the crimes", and that it suffices that he knew "that the Anti-Balaka will commit the crimes in the ordinary course of events."[2161] In this

[2153] Ngaïssona Appeal, para. 340.
[2154] Judgment, para. 4038.
[2155] Judgment, para. 4131.
[2156] *Contra* Ngaïssona Appeal, paras. 340-341, 343. *See above* paras. 553-554.
[2157] *Contra* Ngaïssona Appeal, para. 351 (emphasis added).
[2158] *See* Ngaïssona Appeal, paras. 340-341, 343, 346-347 (asserting that the Chamber erred in law).
[2159] Ngaïssona Appeal, para. 340. *See also* paras. 341-342. Later in his brief, Ngaïssona concedes that an accessory under article 25(3)(c) need not have knowledge of all the details of the factual circumstances of the crime he assists: *see* paras. 357-358.
[2160] Judgment, para. 3882 (referring to *Bemba et al.* AJ, para. 1400).
[2161] Judgment, para. 4038.

respect, the Chamber may "look[] at such crimes on a macro-level and not the specific details of these crimes".[2162] Further, Ngaïssona's reliance on the manner in which other Chambers assessed the evidence in different cases is unpersuasive.[2163]

580. For these reasons, the Chamber was not precluded from relying on pattern of conduct evidence, nor was it required to establish knowledge of the detailed circumstances of each charged crime.[2164] Accordingly, the Chamber did not "lower the Article 30 *mens rea* standard from virtual certainty to mere probability."[2165]

VII.3.b. The Chamber reasonably assessed evidence of crime pattern

581. Alternatively, Ngaïssona argues that, if pattern evidence could be relevant, the Chamber erred by not considering it consistently.[2166] While the Chamber found that the pattern of prior comparable instances was insufficient to conclude that Ngaïssona had the required knowledge that rape would occur in the ordinary course of events,[2167] it convicted him of the crimes of torture (by majority) and directing an attack upon a building dedicated to religion, despite the absence of evidence of prior comparable instances.[2168] He argues that "the same logic should apply to all other types of crimes lacking comparable precedent" and that "knowledge of a general pattern of targeting Muslims civilians cannot be relied upon to establish 'virtual certainty' of particular criminal acts."[2169] Ngaïssona again erroneously presents factual arguments as legal ones, and further misstates the Chamber's findings.

582. The different findings made by the Chamber merely reflect its prerogative to freely assess all the evidence before it, and do not represent a "fundamental inconsistency."[2170] Ngaïssona's argument of "inconsistency" does not pertain to the "*legal* coherence of the Chamber's findings"[2171] but, at its core, constitutes a challenge to the Chamber's factual assessment. However, Ngaïssona fails to show that no reasonable trial chamber could have

[2162] Judgment, para. 4038.
[2163] Ngaïssona Appeal, paras. 344-346. *See above* para. 542.
[2164] Ngaïssona Appeal, paras. 340-346.
[2165] *Contra* Ngaïssona Appeal, para. 347. *See* Judgment, para. 3883.
[2166] Ngaïssona Appeal, para. 349.
[2167] Judgment, para. 4131.
[2168] Ngaïssona Appeal, paras. 349-355. In its Appeal, the Prosecution did not challenge the Chamber's factual findings on rape, but argued that Ngaïssona was aware of the substantial risk that rape and persecution through rape formed part of the range of crimes that the Anti-Balaka would commit in pursuit of its criminal purpose under article 25(3)(d).
[2169] Ngaïssona Appeal, para. 353.
[2170] Ngaïssona Appeal, para. 353.
[2171] *Contra* Ngaïssona Appeal, para. 354 (emphasis added).

concluded that at the time of making his contribution he knew that the crimes of torture and attacking a religious building would be committed in the ordinary course of events.[2172]

583. Ngaïssona argues that, while the Chamber found that he knew that the Anti-Balaka would commit acts of torture in the ordinary course of events, it failed to assess whether he also knew that those acts would be committed with the specific intent required for torture.[2173] In his submission, his knowledge of the Anti-Balaka's "contextual targeting" of Muslim civilians does not amount to knowledge of their requisite specific intent for torture.[2174]

584. However, although knowledge of the discriminatory nature of the Anti-Balaka's attack, and knowledge of the Anti-Balaka's specific intent for torture are, in principle, conceptually distinct, they are not so on the facts of the present case.[2175] For torture, the Chamber found that the Anti-Balaka inflicted pain and suffering "for the purpose of punishment, intimidation, and *discrimination based on religion*."[2176] It further found that Ngaïssona knew that the Anti-Balaka perceived Muslims in the CAR as collectively responsible and targeted the Muslim civilian population for retaliation on that basis.[2177] Thus, the Chamber concluded that Ngaïssona knew of the Anti-Balaka's discriminatory and retributive targeting on religious grounds. This necessarily entailed knowledge that the Anti-Balaka would commit acts of torture with the same discriminatory and retaliatory purposes.

585. For these reasons, Ngaïssona fails to show that the Chamber adopted an improperly low knowledge threshold.[2178] Rather, based on multiple strands of evidence, it inferred that he knew of the essential elements of each type of charged crime, including the principal perpetrator's specific intent, when legally required.

VII.3.c. The Chamber did not err in fact in relation to specific counts

586. Ngaïssona argues that the Chamber erred in fact by finding that he had the requisite knowledge in relation to certain crimes absent evidence of a pattern of prior comparable incidents.[2179] He argues that, "[h]ad the Chamber *properly required* that the pattern include

[2172] *See below* paras. 588-591.
[2173] Ngaïssona Appeal, para. 359.
[2174] Ngaïssona Appeal, para. 359.
[2175] *Contra* Ngaïssona Appeal, paras. 359-360.
[2176] Judgment, para. 4267 (emphasis added).
[2177] Judgment, paras. 4282, 4296 (citing para. 49).
[2178] *Contra* Ngaïssona Appeal, para. 361.
[2179] Ngaïssona Appeal, para. 362. *See also* paras. 363-373.

comparable prior incidents," it would have concluded that he lacked knowledge that certain crimes would occur in the ordinary course of events.[2180]

587. Yet, this argument appears to contradict Ngaïssona's earlier argument that a Chamber may not rely on crime-pattern evidence of prior comparable incidents to infer knowledge.[2181] In any event, his argument should be dismissed, as it rests on the erroneous premise that the Chamber relied solely (or at all) on evidence of a pattern of prior comparable incidents to establish his knowledge. To the contrary, as explained above[2182] and further detailed below, the Chamber relied on multiple, mutually reinforcing strands of evidence to reach its conclusions on Ngaïssona's *mens rea*. In particular, in relation to the crimes specifically addressed by Ngaïssona,[2183] the Chamber was aware of the alleged limited evidence of prior comparable incidents, and yet it reasonably based its inference on other evidence and considerations, as set out below. Accordingly, any alleged absence of evidence of prior comparable incidents in relation to the following counts is immaterial and does not show that the Chamber's conclusion was one that no reasonable trial chamber could have reached.

588. *First*, in relation to the war crime of attacking a religious building in Boeing under count 6,[2184] the Chamber recalled that: Ngaïssona was "fully aware that the Anti-Balaka would violently target the Muslim civilian population […] committing the widespread attack […] including the seminal coordinated Anti-Balaka attacks of Bangui and Bossangoa on 5 December 2013";[2185] he "knew and was informed" of killings and dislocations of Muslim civilians during the Anti-Balaka advance[2186] on seven different locations in and around Bossangoa prior to the attack;[2187] he knew that the Anti-Balaka targeted Muslim civilians considered collectively responsible, complicit, or supportive of the Seleka crimes;[2188] he intended for Muslim civilians to be attacked, killed, and dislocated;[2189] and he provided his assistance with the aim of facilitating the concerned crimes against Muslim civilians.[2190] Based on these findings, the Chamber reasonably "infer[red] that Mr. Ngaïssona would have known that, during the ordinary course of these attacks, the Anti-Balaka would also attack buildings

[2180] Ngaïssona Appeal, para. 373 (emphasis added).
[2181] *See e.g.* Ngaïssona Appeal, paras. 341, 343.
[2182] *See above* paras. 553-554.
[2183] Ngaïssona Appeal, paras. 363-370.
[2184] *See* Ngaïssona Appeal, para. 363.
[2185] Judgment, para. 4035 (citing para. 49).
[2186] Judgment, para. 4035 (citing para. 56).
[2187] Judgment, para. 4042 (citing paras. 52-53).
[2188] Judgment, para. 4035 (citing para. 49).
[2189] Judgment, para. 4036.
[2190] Judgment, para. 4041.

dedicated to the Muslim religion".[2191] Ngaïssona fails to demonstrate that it was unreasonable for the Chamber to reach this conclusion on the basis of this evidence, and in the context of an attack against Muslim civilians grounded in religious discrimination, anti-foreign sentiments, and inflammatory rhetoric.

589. *Second*, in relation to the crime of torture in Yamwara under counts 12 and 13,[2192] the Chamber similarly recalled its findings that Ngaïssona was "fully aware that the Anti-Balaka would violently target the Muslim civilian population";[2193] he "knew and was informed" of killings of Muslim civilians during the Anti-Balaka advance;[2194] he knew that the Anti-Balaka targeted Muslim civilians considered collectively responsible, complicit, or supportive of the Seleka crimes;[2195] he knew that they would inflict great suffering, or serious injury to body or mental or physical health by means of inhumane acts on Muslim civilians;[2196] he intended for Muslim civilians to be severely deprived of physical liberty;[2197] he intended for Muslim civilians to be killed;[2198] and he provided his assistance with the aim of facilitating the concerned crimes against Muslim civilians.[2199] On this basis the Chamber, by majority, reasonably concluded that "Ngaïssona knew that the Anti-Balaka would also torture and kill Muslim civilians within the context of the Yamwara Incident".[2200]

590. Judge Kovács dissented, noting that "the particular cruelty involved […] namely the cutting off of Saint Cyr's toes, fingers, and ear did not take place in the ordinary course of events".[2201] In addressing his concerns, including the absence of prior comparable incidents, the Majority noted that "the Chamber's assessment of torture was not limited to the cutting off of Saint Cyr's body parts and extended to the entire circumstances concerning his mistreatment" and found that "Ngaïssona was aware that the Anti-Balaka would inflict great suffering, or serious injury to body or to mental or physical health on […] [and] would kill Muslim civilians."[2202] On this basis it reasonably found that "this awareness of mistreating and killing

[2191] Judgment, para. 4042.
[2192] *See* Ngaïssona Appeal, paras. 364, 366-367.
[2193] Judgment, para. 4282 (citing para. 49).
[2194] Judgment, para. 4282 (citing para. 56).
[2195] Judgment, para. 4282 (citing para. 49).
[2196] Judgment, paras. 4283, 4288.
[2197] Judgment, para. 4283.
[2198] Judgment, para. 4283.
[2199] Judgment, para. 4289.
[2200] Judgment, para. 4284. For the same reasons, the Chamber concluded that Ngaïssona had the required *mens rea* in respect to Saint Cyr's murder under counts 15 and 16: *see* Judgment, paras. 4284, 4292. *Contra* Ngaïssona Appeal, para. 365.
[2201] Judgment, para. 4286.
[2202] Judgment, para. 4288.

Muslim civilians included within its ambit, cutting off of body parts, regardless of whether such specific incidents of comparable nature would have taken place, prior to the Yamwara Incident".[2203]

591. In light of these findings and reasoning, the Chamber found that "the only reasonable conclusion in these circumstances is that Mr. Ngaïssona was […] aware that the Anti-Balaka would commit these crimes in the ordinary course of events".[2204] Contrary to Ngaïssona's submission,[2205] the Majority directly engaged with the issues raised by Judge Kovács, including whether the absence of pattern of prior comparable incidents and personal motives of the perpetrators made this incident unforeseeable.[2206] Ngaïssona fails to demonstrate that no reasonable trial chamber could have reached this conclusion.

592. *Third*, with respect to the crimes of imprisonment and severe deprivation of liberty at Yamwara and in Bossangoa under counts 14 and 39,[2207] Ngaïssona's argument once again rests on the erroneous assumption that the Chamber relied solely (or at all) on evidence of a "coherent criminal pattern"[2208] of prior comparable incidents to establish his knowledge. In fact, the Chamber does not refer to a pattern of prior comparable incidents of imprisonment,[2209] and reached its conclusion on the basis of multiple, mutually corroborating strands of evidence. For the Yamwara incident under count 14 the Chamber relied on the same evidence just discussed in relation to torture[2210] and concluded that Ngaïssona intended and was aware that the Anti-Balaka would commit imprisonment and severe deprivation of liberty in the ordinary course of events.[2211]

593. For the imprisonment at *Ecole de la Liberté* in Bossangoa under count 39, the Chamber similarly found that Ngaïssona was "fully aware that the Anti-Balaka would violently target the Muslim civilian population";[2212] he knew that the Anti-Balaka targeted Muslim civilians considered collectively responsible, complicit, or supportive of the Seleka crimes;[2213] he "knew and was informed" of killings and dislocations of Muslim civilians during the Anti-Balaka

[2203] Judgment, para. 4288.
[2204] Judgment, para. 4292. As discussed above, the Chamber also reasonably found that Ngaïssona knew that the perpetrators acted with the required specific intent for torture. *See above* paras. 583-584.
[2205] Ngaïssona Appeal, paras. 366-367.
[2206] Judgment, paras. 4286, 4288.
[2207] *See* Ngaïssona Appeal paras. 368-369.
[2208] Ngaïssona Appeal para. 368.
[2209] Judgment, para. 4131; Ngaïssona Appeal para. 369.
[2210] *See above* para. 589.
[2211] Judgment, paras. 4283, 4292.
[2212] Judgment, para. 4116 (citing para. 49).
[2213] Judgment, para. 4116 (citing para. 49).

advance on seven different locations in and around Bossangoa;[2214] and he provided his support in the context of anti-foreign sentiments and inflammatory rhetoric.[2215] On this basis the Chamber reasonably concluded that Ngaïssona intended and was aware that the Anti-Balaka would commit imprisonment and severe deprivation of liberty in the ordinary course of events.[2216]

594. *Fourth*, with respect of the crime of other inhumane acts and cruel treatment under counts 11 and 13, Ngaïssona once again misrepresents the Chamber's findings.[2217] The Chamber did not rely only (or at all) on evidence of a pattern of prior comparable incidents of inhumane acts and cruel treatment to establish his knowledge. Instead it relied on the same strands of evidence just discussed in relation to torture[2218] and concluded that Ngaïssona was aware that the Anti-Balaka would commit other inhumane acts and cruel treatment in the ordinary course of events.[2219]

595. Ngaïssona's arguments either incorrectly assume that the Chamber relied on evidence of a pattern of prior comparable incidents, when it did not, or contend that such evidence constituted the sole basis for the Chamber's findings on Ngaïssona's *mens rea*. In either case, Ngaïssona mischaracterises the Judgment and fails to demonstrate that the Chamber's findings were so unreasonable that no reasonable trier of fact could have reached them. They should be dismissed.

596. In any event, even if, *arguendo*, the Chamber erred in finding that Ngaïssona was aware that the Anti-Balaka would have committed the charged crimes in the ordinary course of events pursuant to article 25(3)(c), the facts as found establish Ngaïssona's responsibility under 25(3)(d)(i). As discussed in the Prosecution Appeal Brief,[2220] the degree of awareness under 25(3)(d)(i) (awareness of a *substantial risk* of the crime occurring) is *lower* than that under article 30(2)(b) and (3) (awareness of the crime occurring in the ordinary course of events). The Chamber's findings on Ngaïssona's *mens rea*[2221] certainly establish beyond reasonable doubt that he was aware of the substantial risk of the charged crimes occurring. If necessary, the

[2214] Judgment, paras. 4119 (citing paras. 50-53), 4121 (citing para. 56).
[2215] Judgment, para. 4116 (citing para. 46).
[2216] Judgment, paras. 4117, 4120.
[2217] Ngaïssona Appeal, paras. 370-373.
[2218] *See above* para. 589.
[2219] Judgment, paras. 4283, 4288, 4290-4291, 4798.
[2220] *See* Prosecution Appeal, paras. 36-54.
[2221] *See above* paras. 553-554.

Appeals Chamber may amend the Judgment accordingly under article 83(2)(a). In the circumstances of this case, this is not to Ngaïssona's detriment.

VII.3.d. The Chamber correctly applied the legal standard under article 25(3)(c) liability and properly considered the factual circumstances of this case in finding that Ngaïssona had the requisite mens rea

597. As set out above, the Chamber applied the correct legal standard under article 25(3)(c) and 30(2)(b) and considered the specific circumstances of this case to reach its conclusion about his knowledge.

598. Ngaïssona argues that the Chamber erred in law as it failed to assess his knowledge "in light of his mode of liability as an accessory",[2222] and "conflated the distinction between principal and accessory liability".[2223] He submits that assessing knowledge based on awareness of the Anti-Balaka's conduct, as the Chamber did, is appropriate only for principal liability but not for accessorial liability[2224] because accessories "cannot know something yet to occur when it relates to the intentions of another".[2225] The Prosecution understands Ngaïssona to argue that *virtual certainty* under article 30(2)(b) can be established based on "macro-level" awareness of the group's crimes only if the accused is a principal who has a "central role and authority, which gave him control over the execution of the common plan"[2226] or where the principal "co-designed and controlled the criminal plan, issued explicit targeting orders, and operated within a hierarchical structure that guaranteed obedience."[2227] For accessory liability, Ngaïssona submits that the accused must be directly involved and their conduct must be "integral to the execution of the crimes, making foreseeability much stronger."[2228] He argues that, in this case, the Chamber erred in law in inferring his virtual certainty from his awareness of macro-level Anti-Balaka conduct.[2229]

599. Ngaïssona's opaque submissions attempt to derive purported legal principles from factual assessments made by other chambers in different cases and on different evidentiary records.[2230] In doing so, he effectively recasts what are, in substance, factual disagreements as legal arguments. There is neither a legal nor a logical basis for the proposition that, as a matter

---

[2222] Ngaïssona Appeal, para. 374.
[2223] Ngaïssona Appeal, para. 375.
[2224] Ngaïssona Appeal, para. 375.
[2225] Ngaïssona Appeal, para. 376.
[2226] Ngaïssona Appeal, para. 376 (referring to the factual findings in *Lubanga*).
[2227] Ngaïssona Appeal, para. 376 (referring to the factual findings in *Ntaganda*).
[2228] Ngaïssona Appeal, para. 380 (referring to the factual findings in *Al Hassan*).
[2229] Ngaïssona Appeal, para. 382.
[2230] *Contra* Ngaïssona Appeal, paras. 376, 379-380.

of law, a Chamber cannot infer the knowledge required under article 30(2)(b) for an aider and abettor from his or her "macro-level" awareness of crimes committed by the group to which they contribute. Moreover, leaving aside the lack of support for—and internal inconsistency of—Ngaïssona's position, such a proposition would unduly restrict aiding and abetting liability under article 25(3)(c) to individuals who are directly involved in the physical commission of crimes or present in close proximity to the crime scene. According to his submission, persons who support the criminal activity of a group, even if aware that the group has committed and intends to commit crimes, could be held responsible only as principals if they satisfy all the other requirements under article 25(3)(a). They could not be held accountable as aiders and abettors under article 25(3)(c), since awareness that crimes will occur in the ordinary course of events could not be established, as a matter of law. This is legally unsupported, logically untenable, and in contrast with the Court's jurisprudence.[2231]

600. Further, Ngaïssona appears to suggest that the Chamber's reasoning supports his argument, relying on the Chamber's statement that "[t]he mental element must be assessed 'in relation to the individual criminal responsibility of the specific accused'."[2232] This takes the Chamber's reasoning out of context. The Chamber merely observed—after acknowledging that sexual violence is not an exceptional occurrence in armed conflicts[2233]—that "it must base its conclusions on the specific evidence and charges as presented and confirmed before it, and in relation to the individual criminal responsibility of a specific accused."[2234] The purpose of this observation was to clarify that a Chamber cannot base its conclusions on an accused's *mens rea* solely on the general proposition that sexual violence commonly occurs in armed conflict, but must rely on the specific evidence and charges of the case before it. To suggest that the Chamber endorsed a general principle according to which "macro-level awareness" is relevant only for principal perpetrators would be incorrect.

601. Ngaïssona fails to show that the Chamber erred in law or fact and Ground 2.3 of the Ngaïssona's Appeal should be rejected.

[2231] *See* *Bemba et al.* AJ, para. 1400; *Bemba et al.* TJ, para. 98. *See also* *Karera* AJ, para. 321; *Blaškić* AJ, para. 50.
[2232] Ngaïssona Appeal, para. 378 (citing Judgment, para. 4131).
[2233] Judgment, para. 4130.
[2234] Judgment, para. 4131.

VII.4. Ground 2.4: The Anti-Balaka constituted an organisation within the meaning of article 7

602. The Chamber correctly and reasonably found that "the Anti-Balaka had sufficient bearings of an organisation for the purposes of finding an organisational policy within the meaning of Article 7 of the Statute."[2235] In so concluding, the Chamber correctly applied the definition of 'an organisation' under article 7 and reasonably found the Anti-Balaka displayed a set of structures and mechanisms under that definition throughout the period relevant to the charges. Ngaïssona fails to show any error.

VII.4.a. The Chamber correctly applied the definition of 'an organisation' under article 7

603. Ngaïssona argues that the Chamber applied an incorrect legal test by allegedly relying on factual findings that were wrongly focused on the 5 December attacks.[2236] Contradicting his immediately preceding argument, he also claims that the Chamber relied on "the mere existence of a shared objective to oust Djotodia and the Seleka" and "to inflict retributive violence on Muslim civilians" to designate the Anti-Balaka as an organisation.[2237] Ngaïssona further suggests under factual sub-grounds to Ground 2.4, that article 7 requires an organisation to have a "unified structure",[2238] a strict command chain,[2239] or the need for "orders, liaison structures, or logistics coordination across groups".[2240] These submissions should be rejected, as they misstate the 'organisation' requirement under article 7 and the Chamber's application of it to the evidence.

604. The Chamber correctly endorsed the definition of 'an organisation' under article 7(2)(a) established by the *Katanga* Trial Chamber and applied in subsequent cases, that:

> "the connection of the term "organisation" to the very existence of the attack and not to its systematic or widespread nature presupposes that the organisation has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute. It therefore suffices that the organisation [has] a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population."[2241]

[2235] Judgment, para. 3926.
[2236] Ngaïssona Appeal, para. 386.
[2237] Ngaïssona Appeal, paras. 387-388.
[2238] Ngaïssona Appeal, para. 390.
[2239] Ngaïssona Appeal, para. 398.
[2240] Ngaïssona Appeal, para. 397.
[2241] Judgment, para. 3774 (citing *Katanga* TJ, para. 1119). *See also* *Al Hassan* TJ, para. 1109; *Ongwen* TJ, para. 2677; *Bemba* TJ, para. 158; *Kenya* Article 15 Decision, para. 90.

605. As the Chamber clearly and correctly set out in response to analogous Defence arguments during trial, "there is no requirement, as a matter of law, that an organisation for the purposes of Article 7 of the Statute be homogenous, or otherwise a strictly hierarchical, top-down organisation, as such" and "may well include a variety of groups".[2242] Consistent with established jurisprudence requiring only an organisation's practical ability to implement an attack,[2243] the Chamber correctly held that it suffices for the groups making up an organisation to "have 'mechanisms' sufficiently efficient to ensure 'coordination' necessary to carry out such an attack."[2244]

606. In any event, as shown in further detail in the subsequent section, in applying the law to the facts, the Chamber correctly relied on a range of factual findings on the Anti-Balaka's cooperation, communication, and implementation within an overarching goal to identify relevant markers of Anti-Balaka structures and mechanisms spanning the charged period.[2245] These markers—themselves referenced by Ngaïssona[2246]—go beyond the coordinated attacks on 5 December 2013[2247] and the mere existence of a shared objective,[2248] and relate *inter alia* to general organisational features of the Anti-Balaka,[2249] coordination and communication in the months *preceding* the 5 December attacks,[2250] and the further evolution and actions of the Anti-Balaka *following* those attacks. [2251]

VII.4.b. The Chamber reasonably found that the Anti-Balaka was an organisation

607. Ngaïssona argues that the Chamber erred in law, fact, and procedure by concluding that the Anti-Balaka was an organisation within the meaning of article 7 throughout the period relevant to the charges.[2252] These arguments merely repeat his trial submission, express disagreement with the Chamber's findings, but fail to show that they were unreasonable.

608. The Chamber reasonably found that "the Anti-Balaka had sufficient bearings of an organisation for the purposes of finding an organisational policy within the meaning of Article

[2242] Judgment, para. 3925.
[2243] *Katanga* TJ, para. 1119. *See also Al Hassan* TJ, para. 1109; *Ongwen* TJ, para. 2677; *Bemba* TJ, para. 158.
[2244] Judgment, para. 3925.
[2245] *See below* paras. 608-613. *See also* Judgment, paras. 3910-3911, 3913-3919, 3921-3923, 3926.
[2246] Ngaïssona Appeal, para. 386.
[2247] *Contra* Ngaïssona Appeal, para. 386.
[2248] *Contra* Ngaïssona Appeal, paras. 387-388.
[2249] *See below* para. 608. *See also* Judgment, paras. 3911, 3926.
[2250] *See below* para. 610. *See also* Judgment, paras. 3914-3915, 3926.
[2251] *See below* para. 613. *See also* Judgment, paras. 3921-3923, 3926.
[2252] Ngaïssona Appeal, paras. 390-410.

7 of the Statute."[2253] In reaching this conclusion the Chamber relied, among other things, on "common organisational forces underlying all Anti-Balaka attacks".[2254] This marker finds support *inter alia* in factual findings that: individuals and local groups converged and joined together in Gobere where they "organised into various sub-groups with a leader each"; set up or maintained communication lines with groups and individuals elsewhere; organised trainings in weapon handling and combat; and developed plans for armed action.[2255] In other localities, the forces were similarly organised into "military-like structures" with functional command.[2256] During the subsequent advance on Bangui and the attacks on Bangui and Bossangoa, Anti-Balaka groups indeed operated with common leaders "who coordinated their actions and instructed them."[2257] As the Anti-Balaka structure further formalised in 2014, it continued to rely on 'ComZones', namely leaders of Anti-Balaka groups assigned certain zones that did not act fully autonomously.[2258]

609. Aside from common organisational features, the Chamber considered specific markers of the Anti-Balaka's structures and mechanisms that appeared (i) during the Anti-Balaka's advance towards Bangui from September 2013, (ii) in the period immediately preceding the Bangui and Bossangoa attacks of 5 December 2013, (iii) during these coordinated operations, and (iv) throughout the continuation of hostilities in early 2014.

610. *First*, the Chamber found that, in their advance towards Bangui from September 2013, the Anti-Balaka groups communicated across localities and with individuals abroad with a view to coordinating attacks against the Seleka and localities with Muslim civilians.[2259] In early September 2013, Anti-Balaka elements were assigned to attack different locations in Bossangoa and surroundings pursuant to a coordinated strategy, remaining in active contact during these operations.[2260] From October 2013 onwards, Anti-Balaka attacks in other regions of the CAR

[2253] Judgment, para. 3926. Further, based on the same factual findings, the Chamber also found, in assessing the *chapeau* requirement under article 8, that the Anti-Balaka "had all the relevant bearings to constitute one armed group": Judgment, para. 3897. Ngaïssona himself did not dispute at trial that the Anti-Balaka, as an entity, was engaged in an armed conflict with the Seleka: Judgment, para. 3888 (citing Ngaïssona Closing Brief, paras. 293-296, 355-359).
[2254] Judgment, para. 3926.
[2255] Judgment, para. 3911 (citing paras. 40-41). *See also* paras. 1101, 1106, 1130, 1132, 1144, 1151, 1161, 1314, 3895.
[2256] Judgment, para. 3911 (citing para. 42).
[2257] Judgment, para. 3918 (citing para. 71). *See also* paras. 1308, 1314, 1339-1340, 1349, 1386, 1436, 1438, 2140, 2162, 2395, 2768, 2770. *See below* fn. 2270.
[2258] Judgment, para. 1738. *See also* paras. 1739-1756.
[2259] Judgment, paras. 50-51, 1306, 2192-2193, 2201-2202, 3914-3915, 3926.
[2260] Judgment, paras. 1306, 1328, 1332-1333, 1343, 1384. *See also* paras. 1307-1311, 1315, 1325-1326, 1336, 1355, 1357, 1386.

demonstrated "a clear overarching and coordinated movement of Anti-Balaka from the Bossangoa region in the direction of Bangui".[2261]

611. *Second*, the Chamber found that the Anti-Balaka coordinated in developing a plan and preparing for the seminal attack on Bangui of 5 December 2013,[2262] launched together with the attack on Bossangoa that same day.[2263] In the lead-up to these attacks, "Anti-Balaka chiefs communicated across their groups, kept and maintained records or lists of elements, armed themselves, and waited at common locations and prepared for an attack on Bangui."[2264]

612. *Third*, the Chamber relied on detailed factual findings showing that, on the same day, the Anti-Balaka successfully launched coordinated attacks in Bangui and Bossangoa, sharing the goal to attack Seleka positions and systematically target Muslim civilians.[2265] The Chamber, having considered evidence on "mutual assistance, cooperation, communication, and implementation within an overarching goal",[2266] found that—"despite claims of certain witnesses that the various Anti-Balaka groups were independent"[2267]—these attacks were highly coordinated.[2268] The attacks were carried out as planned,[2269] with Anti-Balaka groups led by common leaders with assigned targets,[2270] and each involved a common pattern of crimes.[2271]

613. *Fourth*, the Chamber assessed the period of early 2014 and concluded that the Anti-Balaka "continu[ed] to engage in hostilities […], at least, following the same pattern of conduct underlying the discussed Anti-Balaka attacks in 2013."[2272] The Chamber found that, during attacks against localities in western CAR, Anti-Balaka groups killed and injured Muslim civilians, looted and destroyed their belongings, and often placed them in enclaved positions under difficult circumstances, eventually leading to Muslims having to leave these areas."[2273]

[2261] Judgment, para. 1429. *See also* paras. 1424, 1430, 2132, 2134, 2138-2139, 2144.
[2262] Judgment, para. 3915 (citing para. 69). *See also* paras. 2125-2131, 2395.
[2263] Judgment, para. 3918 (citing para. 81). *See also* paras. 54, 72, 2790-2795.
[2264] Judgment, para. 3915 (citing para. 70). *See also e.g.* paras. 2192-2193, 2198-2199, 2205, 2215, 2221, 2248, 2249, 2395.
[2265] Judgment, para. 3916 (citing paras. 71, 82). *See also* paras. 3897 (finding, in its assessment of the *chapeau* requirement under article 8 of the Statute, that, through its military operations, the Anti-Balaka demonstrated its operations capacity and its ability to carry out large-scale and coordinated attacks), 3926.
[2266] Judgment, para. 2405.
[2267] Judgment, para. 2399.
[2268] Judgment, paras. 2394, 2399, 2406. *See also* paras. 2115, 2123.
[2269] Judgment, para. 3918 (citing para. 71). *See also* paras. 2356, 2364.
[2270] Judgment, para. 3918 (citing paras. 71-72, 81). *See also e.g.* paras. 2328, 2343, 2345, 2350, 2353, 2396.
[2271] Judgment, para. 3919 (citing paras. 72, 77-80, 82-88).
[2272] Judgment, para. 3926. *See also* para. 3923 (citing para. 68).
[2273] Judgment, paras. 1922-1923. *See also* paras. 1925, 1936, 1951, 1959, 1967, 1971, 1978, 1989, 1999-2000, 2003, 2013-2015, 2023, 2035, 2056, 2059, 2074, 2080, 2091-2093, 2103, 2106, 2110, 2112.

The Anti-Balaka thus maintained the practical ability to continue implementing the attack against the Muslim civilian population in early 2014.

614. The Chamber gave due consideration to Ngaïssona's submissions at trial that the Anti-Balaka "were not a 'top-down organisation' but a 'myriad of self-defence groups that spontaneously rose out of the Seleka's" crimes;[2274] were "'diffuse' and 'often indistinguishable from the general population, and fundamentally elusive due to its constantly fluctuating expansion and evolution'";[2275] were not a homogenous group that shared a common objective throughout the entire period of the charges and across the country;[2276] and did not have a "minimum level of coordination among those who control the relevant alleged organisation" and "within 'each alleged geographical group'."[2277] The Chamber also considered Yekatom's trial submissions—repeated by Ngaïssona on appeal[2278]—that "the 'Anti-Balaka' is a nebulous term', and that […] Mr Yekatom's group was not Anti-Balaka."[2279]

615. As discussed above, the Chamber correctly held that "there is no requirement, as a matter of law, that an organisation for the purposes of Article 7 of the Statute be homogenous, or otherwise a strictly hierarchical, top-down organisation, as such."[2280] On the facts, the Anti-Balaka "did not have to be a monolithic or singular entity and/or ideologically homogeneous at any stage of the events".[2281] The Chamber further acknowledged that "the Anti-Balaka was no static structure that already existed before the time relevant to the charges or remained unchanged throughout that period."[2282] Nevertheless, it held that "during the period relevant to the charges, the Anti-Balaka groups exhibited clear signs of structure, operational capability and coordination that remained present even if evolving in its details over time."[2283]

616. Ngaïssona alleges that the Chamber made various errors in its findings on the Anti-Balaka specific to the periods before and after the 5 December attack, as well as from early 2014-June 2014. As shown below, these submissions fail to demonstrate any error.

[2274] Judgment, para. 3924 (citing Ngaïssona Closing Brief, paras. 163, 231-233).
[2275] Judgment, para. 3924 (citing Ngaïssona Closing Brief, para. 231).
[2276] Judgment, para. 3924 (citing Ngaïssona Closing Brief, para. 222).
[2277] Judgment, para. 3924 (citing Ngaïssona Closing Brief, paras. 164-200).
[2278] Ngaïssona Appeal, paras. 391 (referring to the "Anti-Balaka label"), 393-394, 399, 404.
[2279] Judgment, paras. 3924, 4354 (citing Yekatom Closing Brief, paras. 211-227, 243-244, 681-686).
[2280] Judgment, para. 3925. *See above* section VII.4.a. (paras. 603-606).
[2281] Judgment, para. 1624. *See also* paras. 1216, 1526, 1581.
[2282] Judgment, para. 1729.
[2283] Judgment, para. 1729.

i. Before the 5 December attack: the Chamber reasonably found that the Anti-Balaka began organising and developing structures and mechanisms

617. Ngaïssona asserts that the Chamber erred in fact in finding that an organisation existed before the 5 December attack.[2284] Specifically, he claims that the Chamber erroneously found that heterogeneous self-defence groups, including individual groups that took no part in the Bangui advance, operated as a single Anti-Balaka organisation throughout 2013.[2285] These submissions misrepresent the Chamber's findings, repeat trial arguments, and fail to show that the Chamber's findings were unreasonable.

618. The Chamber did not designate the Anti-Balaka as an organisation for the purposes of article 7 "throughout 2013".[2286] Rather, as set out above, the Chamber reasonably found that "some individuals and the local self-defence groups […] began organising and developed structures and mechanisms over time", markers of which appeared during the Anti-Balaka's advance towards Bangui from September 2013 and the subsequent period covering the charges.[2287]

619. Regarding the emergence of the Anti-Balaka, the Chamber expressly considered allegations that it was made up of self-defence groups that spontaneously arose and pursued their objectives in isolation and without coordination, or that the group was divided into separate "clusters".[2288] As the Chamber correctly held, the fact that such groups started out separately "does not exclude their coordinated action thereafter."[2289] Rather, "[t]he evidence on record is unequivocal in showing that [self-defence groups in various localities] in sharing a common enemy, set aside whatever individual motivation may have existed […] and through coordinated efforts acted towards the same goals."[2290] Based on the Anti-Balaka's objectives and policies, the Chamber established that these self-defence groups coalesced as the Anti-Balaka in pursuit of its core objective that involved the violent targeting of Muslim civilians.[2291] Further, as set out above,[2292] these groups were not just united on an ideological basis,[2293] but

[2284] Ngaïssona Appeal, paras. 390-392.
[2285] Ngaïssona Appeal, paras. 390-392.
[2286] *Contra* Ngaïssona Appeal, para. 390.
[2287] *See above* para. 610.
[2288] Judgment, paras. 1202-1209 (citing Ngaïssona Closing Brief, para. 163: arguing that the Anti-Balaka is "a myriad of self-defence groups that spontaneously rose out of the Seleka's heinous and continuous crimes against the civilian population"). *See also* Ngaïssona Closing Brief, paras. 228-237; T-309, p. 53:2-25). *See further above* para. 614.
[2289] Judgment, para. 1208.
[2290] Judgment, para. 1208.
[2291] Judgment, paras. 45, 1216.
[2292] *See above* paras. 607-615.
[2293] *Contra* Ngaïssona Appeal, paras. 387-388. *See above* para. 615.

"communicated, with each other and also with individuals in other localities in the CAR and abroad, and coordinated with a view to descending towards Bangui and eventually launching the coordinated attacks against Bangui and Bossangoa on 5 December 2013."[2294]

620. Ngaïssona's reference to "separate local leaders, coordinating a specific campaign from their respective bases"[2295] shows no error in the Chamber's findings on the Anti-Balaka's level of coordination in this period. As the Chamber correctly held, "coordination is not a function of singular command […], neither is it prefaced on strict military hierarchy or political leadership."[2296] Indeed, "[b]y its very definition, 'coordination' implies different elements that are organised to work together by one or more entities."[2297]

621. Ngaïssona further refers to individual groups which he claims were "wrongly included in the 'organisation'".[2298] In relation to three of the groups he mentions, he ignores evidence relied on by the Chamber in considering that: (i) an Anti-Balaka group attacked the Seleka in Beloko on 20 January 2014; (ii) FRAPPE was among "various groups [that] […] were eventually all associated with the Anti-Balaka"[2299]; and (iii) 'CLPC' and 'Anti-Balaka' were one and the same.[2300] Regarding the Bouar "archers", Ngaïssona ignores testimony that this group became affiliated with the Anti-Balaka,[2301] as well as evidence referenced by the Chamber that it was led by Adambou Ndale, an Anti-Balaka chief, commanding Anti-Balaka elements in Bouar.[2302] In, any event, the formal affiliation of the Bouar "archers" is immaterial to Ngaïssona's conviction. The Chamber found that Ngaïssona liaised with groups in the border area between Cameroon and the CAR, including the "archers" in Bouar, that "were to engage in armed efforts with the then-ultimate aim of bringing François Bozizé back to power" at that time.[2303] It relied on evidence that the "archers" were mobilised "in support of the Anti-Balaka" and "to accelerate the struggle".[2304] Regardless of their formal incorporation into the Anti-

[2294] Judgment, para. 1208. *See also* para. 1210.
[2295] Ngaïssona Appeal, para. 390.
[2296] Judgment, para. 2405.
[2297] Judgment, para. 2405.
[2298] Ngaïssona Appeal, para. 391.
[2299] Judgment, para. 1166. *See also* para. 1508.
[2300] *See* Judgment, paras. 1171-1176.
[2301] *See e.g.* CAR-OTP-2127-4238, at 4263, para. 140 ("When I say 'the Anti-Balaka at the border', I am referring to all of them: the archers"); T-041, p. 22:4-9 ("[T]hey called on [the archers] to support the Balaka. So Ndale is the chief of the archers in Bouar. […] So when they became Anti-Balaka combatants, that is when they were provided with ammunition in Bouar").
[2302] Judgment, paras. 900, 916, 921, 1095-1096, 1193, 1462.
[2303] Judgment, paras. 914, 916-917 (referring to evidence that the "archers" were called on to support the Anti-Balaka).
[2304] Judgment, paras. 915-922

Balaka at the time or later, the Chamber thus correctly found that Ngaïssona "travelled to the border between Cameroon and the CAR with a view to liaising with groups meant to assist their efforts"[2305] and, ultimately, that he "engaged in activities pertaining to the organisation and coordination of groups for the purpose of facilitating the commission of criminal acts".[2306]

622. Finally, Ngaïssona's arguments regarding the Chamber's reliance on certain e-mail exchanges[2307] are unsubstantiated and should be dismissed, also for the reasons set out in response to Ground 1.3.[2308]

ii. After the 5 December attack: the Chamber reasonably found that Yekatom and Andjilo's Groups were Anti-Balaka

623. Ngaïssona claims that evidence of the aftermath of the 5 December attacks shows that Yekatom's and Andjilo's groups were distinct from the Anti-Balaka.[2309] He offers alternative interpretations unsupported by the evidence, but fails to show that the Chamber's findings regarding these groups and their activities after the 5 December attack were unreasonable.

624. *First*, Ngaïssona shows no error in the Chamber's detailed findings that Yekatom's group belonged to the Anti-Balaka and that he controlled the Anti-Balaka elements at Yamwara. His cursory submissions that Yekatom's so-called 'RFACPP group' was distinct from the Anti-Balaka and Gobere elements at Yamwara largely overlap with Grounds 2.2 and 4.7 of Yekatom's appeal and should be rejected for the same reasons.[2310]

625. *Second*, Ngaïssona suggests that Andjilo's group was "entirely distinct" from the Anti-Balaka, based on its withdrawal following the 5 December attack to Cité Jean XXIII and its relocation to Boy-Rabe, alongside other leaders.[2311] However, Ngaïssona's undeveloped submissions fail to demonstrate any error in the Chamber's finding that "Andjilo was an element and group leader within the Anti-Balaka, considered himself as such, and was seen by others as such".[2312] The Chamber's conclusion is based on a range of factual findings demonstrating that Andjilo was (i) one of the initial members of the self-defence groups that coalesced into the Anti-Balaka, (ii) one of the individuals who descended with his group

[2305] Judgment, para. 35. *See also* paras. 923, 1465.
[2306] Judgment, para. 38.
[2307] Ngaïssona Appeal, para. 391.
[2308] *See above* paras. 477-481.
[2309] Ngaïssona Appeal, paras. 393-395.
[2310] *See above* section II.2 (paras. 35-76); section IV.7 (paras. 332-336). *Contra* Ngaïssona Appeal, paras. 393-394.
[2311] Ngaïssona Appeal, para. 395.
[2312] Judgment, para. 1797. *See also* para. 1795.

through the provinces towards Bangui, and participated in attacks in this advance, including against Muslim civilians, and (iii) one of the individuals who participated with his group in the coordinated attack on Bangui on 5 December 2013.[2313] Ngaïssona also fails to specify the material effect of the alleged error.

iii. Early 2014: the Chamber reasonably found that the Anti-Balaka maintained structures and mechanisms

626. Ngaïssona further claimed that the Anti-Balaka was characterised by fragmentation and fluid representation in the period from early 2014 to June 2014.[2314] His submissions selectively or inaccurately portray the evidence, and misrepresent the manner in which the Chamber evaluated that evidence.

627. In early 2014, the organisational structure of the Anti-Balaka became *more* formalised. The Chamber reasonably found that, following the coordinated attacks on 5 December 2013, individuals "engaged in efforts to re-consolidate Anti-Balaka groups."[2315] This finding was based on corroborating evidence of meetings held at Yamwara in late December 2013 centred around what would happen once Michel Djotodia and the Seleka were removed from power.[2316] The Chamber reasonably considered these meetings as reflecting "attempts at pivoting the Anti-Balaka's combined force towards securing political leverage and, in some cases, ministerial positions in a potential future government."[2317] Following Ngaïssona's return to Bangui on 14 January 2014,[2318] he and others "undertook steps to formalise the structure of the Anti-Balaka groups"[2319] and "to be taken into account in the transition process."[2320]

628. The Chamber properly assessed evidence detailing varying political and personal interests and tussles for leadership within the Anti-Balaka at various moments in 2014, including allegations of a north-south split.[2321] Ngaïssona's claim that the Chamber provided insufficient reasoning on the north-south split and other issues[2322] misstates the level of

[2313] Judgment, para. 1794.
[2314] Ngaïssona Appeal, paras. 396-410.
[2315] Judgment, para. 1496. *See also* para. 1207.
[2316] Judgment, paras. 1497-1526.
[2317] Judgment, para. 1499. *See above* para. 67.
[2318] Judgment, para. 1564.
[2319] Judgment, para. 1563. *See also* paras. 1565-1574.
[2320] Judgment, para. 1575. *See also* paras. 1576-1581, 1601-1618.
[2321] *Contra* Ngaïssona Appeal, paras. 396, 398-400, 404.
[2322] Ngaïssona Appeal, paras. 407, 409.

reasoning that a chamber is required to demonstrate[2323] and ignores the Chamber's treatment of this issue as set out below.

629. *First*, the Chamber considered the participation of different Anti-Balaka 'streams' during the transition process in early 2014.[2324] The Chamber reasonably held that "different Anti-Balaka groups, of 'north', 'south' or other designation, coming together to be represented towards the new transitional authorities and international forces does not signify that there were many different groups."[2325] Moreover, it found that "the question of there having been varying super-imposed interests within the Anti-Balaka does not lead the Chamber to conclude that there existed several movements seen as different parties to the conflict."[2326] Rather, the evidence makes clear, and the Chamber correctly found, that these groups "continued to cooperate with a view to being represented towards the new transition government and international forces".[2327]

630. *Second*, the Chamber directly addressed Defence submissions and witness evidence suggesting a lack of cooperation or hostile relations between Anti-Balaka from the 'north' and 'south' prior to the coordination set up in June 2014.[2328] The Chamber disregarded this theory on the totality of the evidence before it, including on various coordination efforts before, during, and following the Bangui attack.[2329] It thus reasonably concluded that "even if there was no formalised coordinated entity with a pre-existing hierarchical structure, and even if various political and personal interests superimposed the activities over time, […] this did not mean that the Anti-Balaka groups did not engage in coordinated activities."[2330]

631. *Third*, the Chamber assessed evidence of discussions in the first half of 2014 as to who should be the Anti-Balaka's leader and subsequent mediation,[2331] and reasonably considered

[2323] *Lubanga* First Redactions AD, para. 20; *Lubanga* Second Redactions AD, para. 30; *Bemba et al.* AJ, para. 103. *See also* Triffterer and Kiss, p. 1850 (mn. 65: "what is required is that reasons are fully and transparently provided to clearly show how the evidence evaluated by the judges supports all the findings of the Chamber underpinning the decision").
[2324] Judgment, paras. 1581, 1625.
[2325] Judgment, para. 1581.
[2326] Judgment, para. 1618.
[2327] Judgment, para. 1625.
[2328] Judgment, paras. 1622, 1728.
[2329] Judgment, para. 1729 (referring to sections IV.A.6.i, IV.B.1, IV.D.1, and paras. 1575-1618). *See further* paras. 1720 (referring to P-0884's evidence as an Anti-Balaka leader from the 'south' stream who confirmed that "there was no Anti-Balaka 'south', no Anti-Balaka 'north', but one Anti-Balaka with one objective, namely to 'drive Djotodia and his mercenaries out'"), 1722 (referring to an interview with Sébastien Wenezoui in March 2014, in which he reiterated there was no 'north' or 'south' Anti-Balaka).
[2330] Judgment, para. 1729.
[2331] Judgment, paras. 1717-1727, 1730-1737.

that "such discussions were but a further illustration of various individuals superimposing different personal and political ambitions on the group".[2332] Contrary to Ngaïssona's claim, the Chamber did not rely on "May-June 2014 reconciliation to confirm a unitary narrative and representation under Mr Ngaïssona's claims."[2333] Instead, the Chamber correctly specified, "the discussions about leadership happened after the events as charged in the current case took place", and are thus of indirect relevance.[2334]

632. Based on these and other findings, the Chamber reasonably concluded that the Anti-Balaka "always remained represented towards the national and international authorities as one entity through Mr Ngaïssona"[2335] and "the various streams within the Anti-Balaka continued to cooperate, coordinate and align during the period relevant to the charges."[2336] Regarding any alleged north-south split, it reasonably rejected that "any 'north' and 'south' streams within the Anti-Balaka acted entirely independently and separately from each other at any time during the period relevant to the charges."[2337] Contrary to Ngaïssona's claim, the Chamber did not rely on his "unified control" over the Anti-Balaka for these purposes.[2338]

633. In sum, Ngaïssona fails to show that the Chamber erred in law, fact or procedure, in finding that the Anti-Balaka had sufficient means to promote or encourage the attack directed against a civilian population and thus constituted an organisation within the meaning of article 7.[2339] For the above reasons, Ground 2.4 of Ngaïssona's appeal should be dismissed.

VIII. Ground 3: Ngaïssona had a fair trial

634. Ground 3 should be dismissed *in limine.* Ngaïssona merely disagrees with three of the Chamber's rulings[2340] and fails to identify any impact on the reliability of the Judgment.[2341] In the alternative, Ground 3 should be rejected on its merits. The Chamber did not err in making the Three Rulings in relation to witnesses common to the *Yekatom & Ngaïssona* and *Mokom* cases. To the contrary, the Three Rulings were properly decided and caused no unfairness.

[2332] Judgment, para. 1717.
[2333] Ngaïssona Appeal, para. 408.
[2334] Judgment, para. 1717.
[2335] Judgment, para. 64. *See also* paras. 1600, 1625.
[2336] Judgment, para. 1209. *See also* para. 1211.
[2337] Judgment, para. 1626.
[2338] *Contra* Ngaïssona Appeal, para. 406.
[2339] *See above* para. 604.
[2340] Disclosure Decision; Contact Protocol Decision; Reconsideration Decision. These decisions are collectively referred to as the "Three Rulings".
[2341] *See* Statute, art. 83(2).

Ngaïssona in any event fails to show how any alleged error affected the reliability of the Judgment.

VIII.1. Ground 3 should be dismissed *in limine*

635. An appellant raising claims of unfairness at trial "is required to set out not only how it was that proceedings were unfair, but also how this affected the reliability of the conviction decision."[2342] According to the Appeals Chamber's established jurisprudence, failure to do so may lead to dismissal of an appellant's argument *in limine*.[2343] As Ngaïssona fails to show either that the Chamber committed any error amounting to unfairness, or that he was occasioned any prejudice that affected the reliability of the Judgment, his argument under Ground 3 should be dismissed *in limine*.

636. *First*, Ngaïssona merely repeats his failed trial arguments without identifying any errors in the Chamber's Three Rulings.[2344] As such, Ground 3 amounts to a mere disagreement with the rulings. The arguments raised in Ngaïssona's Appeal have been comprehensively dealt with by the Chamber, including through addressing and rejecting a request for reconsideration.[2345] Ngaïssona's attempt to relitigate before the Appeals Chamber arguments thoroughly examined and disposed of by the Chamber at trial should be rejected *in limine*.

637. *Second*, Ngaïssona fails to explain how the alleged unfairness affected the reliability of the conviction decision. His arguments in this respect are so speculative that they fail to provide the basic showing of an effect on the disposition required for appellate intervention. Indeed, in a circular argument, Ngaïssona concedes his "inability to identify the specific impact of any compromised witness credibility on the Judgment", admitting that it is "impossible to pinpoint which findings may have been tainted or rendered unreliable".[2346] He fails to state whether the reliability of the Judgment was affected at all, let alone to what extent. This failure alone should be fatal to his arguments under Ground 3.

[2342] *Ongwen* AJ, para. 89; *Ntaganda* AJ, para. 49; *Bemba* AJ, para. 62; *Bemba* AJ Minority Opinion, para. 386.
[2343] *Ongwen* AJ, para. 89; *Ntaganda* AJ, para. 49; *Bemba* AJ Minority Opinion, para. 386; *Abd-Al-Rahman* Appeal Decision on Interim Release, para. 16.
[2344] *See* *Ntaganda* AJ, para. 95.
[2345] In its Reconsideration Decision, the Chamber rejected Ngaïssona's request for reconsideration of its Disclosure Decision.
[2346] Ngaïssona NoA, para. 33. *See also* Ngaïssona Appeal, para. 413 (arguing that the ability to contact "overlapping" witnesses, "in order to assess *whether* and how their withdrawal impacted the credibility of their evidence" against him (emphasis added), would have partially secured his rights).

VIII.2. Ground 3.1: The Three Rulings were properly decided and occasioned no unfairness

638. The Three Rulings were properly decided as a matter of law, and in the proper exercise of the Chamber's discretion. Accordingly, no unfairness was occasioned to Ngaïssona. Underpinning Ngaïssona's approach to the litigation, both at trial and now before the Appeals Chamber, is an assumption lacking any basis: that the reasons for the unavailability of some—albeit unknown to him—witnesses relevant to the *Mokom* case would in some way undermine the testimony given by the same witnesses in the *Yekatom & Ngaïssona* proceedings. Across its Three Rulings, the Chamber properly rejected this assumption as speculative and lacking in merit.[2347] To the extent that Ngaïssona now renews his disclosure request at this appellate stage,[2348] the Appeals Chamber should reject his arguments on the same basis.

VIII.2.a. The Chamber properly rejected Ngaïssona's requests for disclosure

639. The Chamber properly dismissed Ngaïssona's request for disclosure of material related to the withdrawal of charges in the *Mokom* case in its Disclosure Decision, and his related request for reconsideration in its Reconsideration Decision. There was no denial of Ngaïssona's right to disclosure,[2349] and thus no denial of his corollary rights to be heard, to confront the evidence, and to effective and meaningful appellate review.[2350]

640. In its Disclosure Decision, the Chamber committed no error of law. It properly identified and applied the law in relation to the Prosecution's disclosure obligations under article 67(2) and rule 77.[2351] It recalled, in particular, that "the determination of whether an object is material to the preparation of the defence depends upon the specific circumstances of the case and is performed by the Prosecution."[2352] Ngaïssona's reliance on selected portions of disclosure-related jurisprudence[2353] is inapposite. These authorities relate to a chamber's duties in situations where disclosure obligations clearly exist,[2354] at least some element of doubt is

[2347] *See* Disclosure Decision, para. 8; Contact Protocol Decision, para. 11; Reconsideration Decision, para. 9.
[2348] *See* Ngaïssona Appeal, para. 432.
[2349] *Contra* Ngaïssona Appeal, para. 414.
[2350] *Contra* Ngaïssona Appeal, paras. 418-420.
[2351] Disclosure Decision, para. 7.
[2352] Disclosure Decision, para. 7 (internal citations omitted).
[2353] *See* Ngaïssona Appeal, fns. 1145, 1159, 1160, 1176.
[2354] The litigation in *Lubanga* (*Lubanga* Article 54(3)(e) Decision, and the related decision on appeal, *Lubanga* Article 54(3)(e) AD) related to materials determined to be exculpatory.

involved,[2355] or competing interests are at stake.[2356] They are inapplicable to the situation at hand. As previously noted by the Prosecution[2357] and acknowledged by the Chamber,[2358] the Prosecution reviewed all material in its possession and has not identified any additional disclosable materials in relation to Mokom's withdrawal of chares.[2359] Ngaïssona presents nothing new relative to his prior rejected motion for disclosure.[2360] Indeed, in the *Bemba* Disclosure Decision, Trial Chamber III refused the Defence disclosure request on the basis that "there are no *prima facie* reasons to doubt the prosecution's disclosure decisions within the context of these applications".[2361] Such was the situation before the Chamber in this instance.

641. Nor did the Chamber's reasoning in its Disclosure Decision evince any error in the exercise of its discretion.

642. *First*, Ngaïssona has failed to articulate how information he was denied was either material to his preparation under rule 77, or potentially exonerating under article 67(2). His broad claim that the materiality of the requested information was "evident" and had the "potential to mitigate [his] guilt"[2362] is unconvincing in the absence of concrete arguments. He even appears to concede this to an extent, when complaining of being "deprived[…] of a genuine opportunity to articulate a disclosure request with a more reasonable prospect of success".[2363] Many of Ngaïssona's arguments are further premised on factual assumptions about matters beyond his knowledge, such as which witnesses were unavailable in the *Mokom*

[2355] *See* *Bemba* Disclosure Decision, para. 30 (limiting the Chamber's role to "resolving instances of 'doubt'").
[2356] The line of Appeals Chamber jurisprudence cited in Ngaïssona Appeal, fn. 1176, relates to applications for non-disclosure of information under rule 81(4), which are to be assessed with specific regard for the rights of the suspect/accused.
[2357] Prosecution Disclosure Response, paras. 2, 6.
[2358] Disclosure Decision, para. 8 (referring to the Prosecution's stated assessment at *inter alia* Prosecution Disclosure Response, para. 2).
[2359] *See* Disclosure Decision, para. 8 (referring to the Prosecution's stated assessment at *inter alia* Prosecution Disclosure Response, para. 2).
[2360] *See* Disclosure Decision.
[2361] *Bemba* Disclosure Decision, para. 37.
[2362] Ngaïssona Appeal, para. 412.
[2363] Ngaïssona Appeal, para. 418.

case,[2364] and the reasons for their unavailability.[2365] These assertions should be dismissed as purely speculative and in any case are irrelevant to this appeal.

643. *Second*, Ngaïssona has failed to demonstrate that the Chamber erred in its discretion by declining to independently assess the material sought. Given the Prosecution's confirmation that it had "reviewed all material in its possession and not identified any disclosable material in relation to the [w]ithdrawal",[2366] and that Ngaïssona had failed to identify any reason to doubt this stated compliance, the Chamber was entitled to rule as it did.[2367] Ngaïssona's submission that the Chamber was required to "independently assess the materials for disclosability" is unsubstantiated.[2368]

644. The Chamber's Reconsideration Decision similarly evinces no error of law, or in the exercise of its discretion. It properly identified the applicable law on the threshold for reconsideration.[2369] Its subsequent findings that Ngaïssona had failed to demonstrate (i) a clear error of reasoning; or (ii) that reconsideration was warranted to prevent an injustice, were made within the proper exercise of its discretion and entirely in consonance with its sound reasoning in the Disclosure Decision. For the same reasons underpinning that decision, this was the only proper disposition available to it, applying the law.

VIII.2.b. The Chamber properly rejected Ngaïssona's request for [REDACTED]

645. [REDACTED], the Chamber properly dismissed Ngaïssona's request [REDACTED] and committed no error of law. [REDACTED][2370] [REDACTED][2371] [REDACTED]. [REDACTED].[2372] This approach demonstrates no error. To the contrary, it protects the integrity, efficiency and—ultimately—finality of proceedings, while allowing for necessary accommodations only in exceptional circumstances.

[2364] *See e.g.* Ngaïssona Appeal, paras. 419 ("The sought material constituted information pertaining to key insider witnesses who provided incriminating testimony against Mr Ngaïssona, whose credibility was highly contested by the Defence, and whose evidence the Trial Chamber ultimately relied upon to convict Mr Ngaïssona"), 428 ("Poussou's [*i.e.* P-2625's] potential withdrawal of cooperation in the parallel proceedings in *Mokom*"), 429 ("witnesses who appeared "unavailable" to testify in the *Mokom* case—but provided incriminating testimony against Mr Ngaïssona—appeared available to testify in the *Saïd* case").
[2365] *See* Ngaïssona Appeal, para. 425 ("Disclosure of the sought material could also have supported lines of argument relating to overlapping witnesses' withdrawal of cooperation, *such as witnesses recanting their prior testimonies in the present case*, leading the Prosecution to withdraw them in the *Mokom* case", emphasis added).
[2366] Disclosure Decision, para. 8.
[2367] *See above* para. 640.
[2368] *Contra* Ngaïssona Appeal, paras. 413, 416.
[2369] Reconsideration Decision, para. 7 (citing Conduct of Proceedings Reconsideration Decision, para. 4).
[2370] [REDACTED].
[2371] [REDACTED].
[2372] [REDACTED].

646. There was no error in the Chamber's exercise of its discretion. The Chamber rightly considered that Ngaïssona did not provide any tangible information to substantiate his submission that [REDACTED].[2373] Faced with this highly speculative argument, the Chamber properly considered that Ngaïssona had failed to show exceptional circumstances, and that it was not appropriate in any case for the Defence to [REDACTED].[2374]

VIII.3. Ground 3.2: The reliability of the Judgment was not affected by any alleged error

647. According to the Court's well-established jurisprudence, the applicable test for an appeal under article 81(1)(b)(iv) is that any alleged unfairness affected the reliability of the conviction decision.[2375] It is not sufficient to argue that the alleged unfairness affected or undermined the reliability of the *proceedings*.[2376] Instead, article 81(1)(b)(iv) must be read in conjunction with article 83(2) and the appellant must show "that the *proceedings* were unfair in such a way as to affect the reliability of the decision or sentence."[2377] Further, the Appeals Chamber has consistently held, particularly in relation to the exercise of discretion, that its intervention is only warranted when it is "satisfied that the improper exercise of discretion materially affected the impugned decision."[2378]

648. As argued above under the reasons for *in limine* dismissal,[2379] Ngaïssona fails to demonstrate how any alleged errors affected the reliability of the Judgment. Far from showing any effect, let alone a material one, Ngaïssona's claim that he was convicted on the basis of a manifestly unfair trial process is undermined by his failure to identify a link between the alleged unfairness and his ultimate conviction. Instead, he speculates on: (i) matters beyond his knowledge, such as which witnesses were unavailable and the reasons for unavailability;[2380] (ii) what effect, if any, the requested information may have had on his trial strategy; [2381] (iii) what effect, if any, the requested information may have had on the Chamber's approach to assessing witness credibility, [2382] and; iv) what effect, if any, this may have had on the Chamber's ultimate

---

[2373] [REDACTED].
[2374] [REDACTED].
[2375] *Ongwen* AJ, para. 89; *Ntaganda* AJ, para. 49; *Bemba* AJ, para. 62; *Bemba* AJ Minority Opinion, para. 386.
[2376] *Contra* Ngaïssona Appeal, para. 422. *See also* paras. 423-426 ("First, the unfairness significantly undermines the reliability of the trial proceedings").
[2377] *Bemba* AJ, paras. 60-62, *especially* para. 60.
[2378] *See Ntaganda* AJ, para. 45 (internal citation omitted). *See also* para. 46 (explaining where a discretionary decision amounts to an abuse of discretion, that is "when the decision is so unfair or unreasonable as to 'force the conclusion that the Chamber failed to exercise its direction judiciously'").
[2379] *See above* section VIII.1 (paras. 635-637).
[2380] *See above* fns. 2364-2365.
[2381] Ngaïssona Appeal, para. 425.
[2382] Ngaïssona Appeal, para. 428.

disposition.[2383] Similarly, Ngaïssona's arguments about the different outcomes in the present case and the *Mokom* case should be dismissed as speculative and inappropriate for consideration in this appeal. All cases turn on their own facts and evidence, in spite of any overlapping components. Relatedly, Ngaïssona's arguments as to the different disclosure characterisations of evidence between the cases[2384] is speculative and non-dispositive. In any event, it demonstrates no effect on the reliability of the Judgment.

649. For the reasons set out above, Ground 3 of the Ngaïssona's Appeal should be rejected.

[2383] Ngaïssona Appeal, para. 427 (arguing that the Chamber's rejection of the disclosure requests "impacted the body of evidence it ultimately relied upon in the Judgment to convict Mr Ngaïssona, rendering it incomplete").
[2384] *See* Ngaïssona Appeal, para. 429 ("if evidence is exculpatory for Mr Mokom, it is even more so for Mr Ngaïssona, against whom the Prosecution's case was much more tenuous").

RESPONSE TO YEKATOM'S SENTENCING APPEAL

IX. Ground 6: The Chamber correctly and reasonably determined Yekatom's sentence

650. The Appeals Chamber should reject Yekatom's appeal[2385] against the Sentencing Decision (Ground 6 of his appeal)[2386] and uphold each of his individual sentences, as well as the joint sentence of 15 years' imprisonment.

651. In his Appeal, Yekatom fails to develop sufficiently several of the alleged errors raised in his Notice of Appeal.[2387] These alleged errors should be dismissed *in limine*, as Yekatom has not discharged his burden to present "cogent arguments" that clearly demonstrate the nature of the alleged errors, explain how the Chamber erred, or establish that the alleged errors materially affected the Sentencing Decision.[2388]

IX.1. Ground 6.1: The Chamber correctly interpreted and applied article 76(2)

652. Yekatom asserts that the Chamber erred in law by jointly issuing the Conviction Decision under article 74 and the Sentencing Decision under article 76. He claims that this approach unfairly denied him the opportunity to present additional evidence following the Conviction Decision.[2389]

653. Article 76(2) provides as follows:

> the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence […].

654. The Chamber correctly applied this provision. In the circumstances of this case, the Chamber determined that it was in the interest of justice to issue the Sentencing Decision simultaneously with the Conviction Decision. Accordingly, it scheduled a hearing pursuant to article 76(2) to provide the parties an opportunity to make further submissions and request the submission of additional evidence relevant to the sentence, in the event of a conviction.[2390] When rejecting Yekatom's request for reconsideration of this decision, the Chamber further explained its *rationale*, reiterating that Yekatom's interpretation of article 76(2) "runs counter

---

[2385] Yekatom Appeal, paras. 437-456.
[2386] Judgment, paras. 4387-4845.
[2387] Yekatom Appeal, paras. 3, 437. Yekatom maintains that further errors were committed as set out in his Notice of Appeal, which he purports to preserve but cannot be fully developed in his Appeal.
[2388] *Ntaganda* AJ, paras. 48-49; *Bemba et al.* AJ, para. 109.
[2389] Yekatom Appeal, paras. 438-443.
[2390] Sentencing Procedure Decision, paras. 2, 4.

to the Court's legal framework, which provides for both options of simultaneous decisions or bifurcated proceedings."[2391]

655. Yekatom's argument that a post-conviction judgment hearing is mandatory under article 76(2) if requested, is not supported by the plain text of the provision.[2392] Article 76(2) does not specify *when* such a hearing must take place, nor particularly that it must be convened only occur after a conviction.

656. Furthermore, Yekatom's argument is contradicted by established jurisprudence. The Appeals Chamber in the *Ongwen* case has held that "article 76(2) allows for either a bifurcated system or the possibility of the sentence being pronounced together with the conviction decision. Although in practice, separate sentencing proceedings have been preferred, joint proceedings with one decision are also possible."[2393] This position is also consistent with the Presidency's decision in the *Al Hassan* case.[2394] Thus, while the Trial Chamber *shall* hold a further sentencing hearing if the accused requests it, article 76(2) does not prescribe that such a hearing must necessarily be conducted after entering a conviction.[2395]

657. In any event, Yekatom fails to demonstrate any prejudice resulting from the procedure adopted by the Chamber.[2396] Yekatom was allowed to request the presentation of additional evidence, to make written submissions relevant to sentencing, and to attend a sentencing hearing.[2397] Yekatom's argument should therefore be rejected.

[2391] Yekatom Reconsideration Decision, paras. 13-16. In rejecting this application, the Chamber found that the issue whether there should be a post-judgment hearing amounts to a mere disagreement with the chamber's decision, and that the jurisprudence cited by the Defence in support of its submissions is inapt to the circumstances: Yekatom Reconsideration ALA Decision, para. 7.
[2392] *Contra* Yekatom Appeal, paras. 439-441.
[2393] *Ongwen* SAJ, para. 56.
[2394] *Al Hassan* Decision Replacing Judges, para. 5 ("Of course, article 76 of the Rome Statute does not exclude the possibility of article 74 and 76 decisions being handed down simultaneously, so long as all requirements for the hearing of evidence and submissions relevant to the sentence have been met"). *See also* para. 10 ("in circumstances where a trial chamber decides to render the article 74 and article 76 decision simultaneously, […] this timing of the article 74 and article 76 decisions would necessarily coincide").
[2395] *Contra* Yekatom Appeal, paras. 439-441. *See also* *Ongwen* Sentence Hearing Schedule ALA Decision, para. 9.
[2396] *Contra* Yekatom Appeal, paras. 442-443.
[2397] Sentencing Procedure Decision, paras. 5-14. In relation to Yekatom's argument that his right to receive a translation and to respond to the Conviction Decision was violated, *see* *Ongwen* SAJ, para. 74. *See also* paras. 54-73.

IX.2. Ground 6.2: The Chamber correctly and reasonably assessed aggravating factors

658. The Trial Chamber correctly treated Yekatom's discriminatory motive as an aggravating factor and avoided any double-counting.[2398] The Chamber was mindful of the principle that a legal element of a crime or mode of liability cannot be taken into account as an aggravating circumstance[2399] and therefore did not consider discriminatory motive as an aggravating factor in relation to his convictions for the crimes against humanity of persecution and the war crime of torture.[2400]

659. Moreover, the fact that the criminal policy and the "common agreement" in this case had a discriminatory component shows no error.[2401] The discriminatory nature of a policy and of a "common agreement" is not a legal element under article 7 or article 25 of the Statute. Rather, consistent with the Appeals Chamber's jurisprudence,[2402] the Chamber properly treated it as a factual and case-specific consideration for the purposes of establishing the existence of the policy and the common plan or agreement among the Anti-Balaka.[2403] Accordingly, the Chamber did not double count discriminatory motive when determining Yekatom's sentences. Yekatom's arguments merely reiterate his prior submissions that were duly considered and rejected.[2404]

IX.3. Ground 6.3: The Chamber correctly and reasonably assessed mitigating factors

660. Yekatom's arguments that the Trial Chamber erred in fact and in law in assessing his efforts to promote peace, reconciliation, and social cohesion should be rejected.[2405]

661. *First*, the Chamber accorded weight to Yekatom's peace efforts undertaken *after* the period relevant to the charges.[2406] His cursory submissions that the Chamber should have attributed greater weight to those efforts largely overlap with Ground 4 of Ngaïssona's appeal and should be rejected for the same reasons, particularly as the Chamber's factual findings in respect of both convicted persons were largely the same.[2407] Moreover, the Chamber correctly

---

[2398] Judgment, paras. 4422-4424. *Contra* Yekatom Appeal, paras. 444-446.
[2399] Judgment, para. 4405. *Contra* Yekatom Appeal, para. 444.
[2400] Judgment, paras. 4424-4425. *See also* paras. 4499, 4550, 4595, 4604, 4645, 4655.
[2401] *Contra* Yekatom Appeal, paras. 445-446 (referring to Judgment, paras. 3934, 4356).
[2402] *See* Judgment, fn. 10205 (citing *Ongwen* SAJ, paras. 319, 341-344; *Bemba et al.* SAJ, para. 128). *See further* *Ntaganda* SAJ, para. 123; *Al Hassan* SJ, para. 25; *Ongwen* SJ, para. 53.
[2403] Judgment, para. 4425. *See also* para. 3874.
[2404] Judgment, paras. 4420, 4425.
[2405] *Contra* Yekatom Appeal, paras. 447-451.
[2406] Judgment, paras. 4471-4473.
[2407] *See below* section X (paras. 673-688).

found that Yekatom's marginal role in the broader peace negotiations did not warrant additional mitigation.[2408] The Chamber did not conclude that Yekatom lacked authority in general; rather, it found that the peace negotiations were not primarily driven by him. Accordingly, the Chamber could not credit Yekatom for efforts that he did not make, irrespective of his authority over his Anti-Balaka troops or his alleged intentions.[2409]

662. *Second*, Yekatom fails to advance cogent reasons demonstrating that the Chamber should have accorded mitigating weight to his other post-offence conduct.[2410] He merely reiterates arguments previously raised[2411] and expresses disagreement with the Chamber's factual findings. In any event, the Chamber correctly held that Yekatom's economically and politically motivated activities—such as organising football matches, constructing schools and a health centre, and establishing a company—were not relevant to the promotion of peace and reconciliation.[2412] The Chamber so concluded based on the facts of the case, and Yekatom fails to demonstrate any error in the Chamber's exercise of discretion. His submissions partially mirror those advanced by Ngaïssona under Ground 5 of his appeal and should be rejected for the same reasons.[2413]

663. *Third*, the Chamber correctly declined to accord any mitigating weight to Yekatom's alleged efforts *during* the period relevant to the charges,[2414] finding that such efforts were not concrete, but rather disingenuous, motivated by ulterior purposes, or factually unsupported. In distinguishing these alleged acts from Yekatom's post-offence conduct and giving them no mitigating weight, the Chamber properly exercised its broad discretion.[2415] Yekatom fails to identify any discernible error and merely disagrees with the Chamber's decision.

IX.4. Ground 6.4: The Chamber correctly and reasonably assessed the gravity of the crimes

664. By asserting that the Chamber erred in law by applying inconsistent and arbitrary categorisations of the gravity of the crimes, and by failing to articulate a hierarchy among them,[2416] Yekatom mischaracterises the Chamber's findings and the legal framework.

[2408] Judgment, para. 4473.
[2409] *Contra* Yekatom Appeal, para. 449.
[2410] Yekatom Appeal, para. 450.
[2411] *See* Judgment, para. 4474, fn. 10312 (referring to the *Yekatom* Sentencing Brief).
[2412] Judgment, para. 4474.
[2413] *See below* section XI (paras. 689-708).
[2414] *Contra* Yekatom Appeal, para. 451.
[2415] Judgment, paras. 4467-4470.
[2416] Yekatom Appeal, paras. 452-454.

665. *First*, the Chamber assessed the gravity of Yekatom's crimes both *in abstracto*—by reference to the constitutive elements of each crime—and *in concreto*—by reference to the specific quantitative and qualitative circumstances of the case.[2417] The Chamber's approach to the twenty crimes for which Yekatom was convicted was consistent, coherent, and reasoned. *In abstracto*, the Chamber uniformly characterised the various categories of crimes as particularly serious,[2418] or their gravity to be very high,[2419] high[2420] or substantial.[2421] *In concreto*, the Chamber differentiated between certain crimes on the basis of the particular facts of the case, while maintaining an internally consistent and logical methodology, ultimately characterising the gravity of the crimes as particularly high,[2422] high[2423] or low.[2424] Yekatom's argument that the Chamber was required to establish a "hierarchy" between the crimes of conviction is unsupported.[2425] The Statute provides no scale or hierarchy of the gravity of offences and prescribes no pre-set sentencing ranges for any crime; nor was the Chamber required to articulate such hierarchy based on the facts of the case.[2426]

666. *Second*, none of the Chamber's findings can be characterised as arbitrary or abstract.[2427] On the contrary, the Chamber provided clear reasons for its assessment of gravity both *in abstracto* and *in concreto*.[2428] In particular, the Chamber's observation that a person may reasonably expect to suffer less harm when in their own property[2429] properly recognises that an attack occurring within a victim's own shelter or zone of safety is a relevant factor when

[2417] Judgment, paras. 4401-4402.
[2418] Persecution - counts 8, 17, 28 (Judgment, paras. 4547, 4601, 4642).
[2419] Murder - counts 2, 3, 15, 16, 26, 27 (Judgment, paras. 4507, 4596, 4632); Torture - counts 12, 13 (Judgment, para. 4588).
[2420] Attack against a civilian population - count 1 (Judgment, paras. 4501-4502); Forcible transfer and deportation - counts 4, 24 (Judgment, paras. 4517, 4610); Inhumane acts and cruel treatment - counts 11, 13 (Judgment, paras. 4576-4578).
[2421] Displacement - counts 5, 25 (Judgment, paras. 4518, 4610); Attack against a building dedicated to religion - count 6 (Judgment, para. 4537); Severe deprivation of physical liberty - count 14 (Judgment, para. 4566).
[2422] Murder - counts 2, 3, 15, 16, 26, 27 (Judgment, paras. 4508-4513, 4596-4598, 4633-4637); Torture - counts 12, 13 (Judgment, paras. 4589-4592).
[2423] Attack against a civilian population - count 1 (Judgment, para. 4503); Forcible transfer/deportation and displacement - counts 4, 5, 24, 25 (Judgment, paras. 4519-4527, 4611-4623); Persecution - counts 8, 17 and 28 (Judgment, paras. 4548-4549; 4602-4603, 4643-4644); Sever deprivation of physical liberty - count 14 (Judgment, para. 4567-4571); Inhumane acts and cruel treatment - counts 11, 13 (Judgment, paras. 4579-4583).
[2424] Attack against a building dedicated to religion - count 6 (Judgment, paras. 4538-4543).
[2425] *Contra* Yekatom Appeal, para. 452.
[2426] The Preamble and article 5(1) of the Statute recognise that the Court has jurisdiction for "the most serious crimes of concern to the international community", which supports a presumption that all the crimes listed in the Statute are grave without any hierarchy between them. *See also* *Bemba et al.* SAJ, para. 44. The ICTY jurisprudence confirms that there is no hierarchy under customary international law between war crimes, crimes against humanity and genocide: *see e.g.* *Stakić* AJ, para. 375; *Tadić* SAJ, para. 69 (opining that "[t]he position is similar under the Statute of the International Criminal Court").
[2427] *Contra* Yekatom Appeal, para. 453.
[2428] *See above* para. 665 (and references therein).
[2429] Judgment, para. 4510.

assessing the gravity of a crime *in concreto*. Moreover, the Chamber's reference in the Sentencing Decision to Yekatom's unlimited control over his forces is firmly grounded in, and consistent with, its factual findings in the Conviction Decision, notwithstanding minor differences in terminology between the two decisions.[2430]

667. In sum, Yekatom fails to demonstrate any legal or factual error in the Chamber's assessment of his sentence. Ground 6 of the appeal should therefore be rejected.

IX.5. The alleged errors under Ground 6 do not materially affect the sentences

668. In any event, Yekatom fails to demonstrate that the alleged errors under Ground 6 materially affected either his individual sentences or his joint sentence.[2431] None of his three arguments is substantiated; all are speculative. He does not identify with sufficient precision how any alleged error had a material impact on the sentences imposed.[2432]

669. Even assuming *arguendo* that his arguments were supported, Yekatom's contention that a post-conviction sentencing hearing would have afforded him an opportunity to present targeted mitigating evidence, and that the Chamber "may have imposed a different and lower sentence"[2433] is insufficient to discharge his burden. Speculations about the possibility of a different outcome do not establish material impact.[2434]

670. Similarly, Yekatom does not explain how the Chamber's consideration of the discriminatory nature of the criminal policy or the "common agreement" as factual considerations resulted in a higher sentence. Nor does he show how the alleged errors relating to the assessment of mitigating circumstances or the gravity of the crimes materially affected the sentences.[2435] His bare assertions that these errors skewed the Chamber's assessment and would otherwise have led to lower sentences is insufficient to establish material impact.[2436]

671. For the reasons set out above, Ground 6 of Yekatom's appeal should be rejected.

[2430] Judgment, para. 4494 (referring to prior findings at paras. 3906, 4012). *See also* para. 4553 (referring to prior findings at paras. 92, 3193). *Contra* Yekatom Appeal, para. 454.
[2431] Yekatom Appeal, paras. 455-456.
[2432] *Kony et al.* Admissibility AD, para. 48; *Gbagbo* Third Detention AD, para. 18.
[2433] Yekatom Appeal, para. 455.
[2434] *Ngudjolo* AJ, para. 285.
[2435] Yekatom Appeal, para. 456.
[2436] *Kony et al.* Admissibility AD, para. 48; *Gbagbo* Third Detention AD, para. 18.

RESPONSE TO NGAÏSSONA'S SENTENCING APPEAL

672. The Appeals Chamber should reject Ngaïssona's appeal[2437] against the Sentencing Decision[2438] and uphold each of his individual sentences, as well as his joint sentence of 12 years' imprisonment.

X. Ground 4: The Chamber correctly and reasonably weighed Ngaïssona's post offence conduct

673. Under Ground 4, Ngaïssona argues that the Chamber erred in law and fact in its application of rule 145(2)(a)(ii) by giving his post-offence peace and reconciliation activities only "some" or "limited" weight. He claims that his participation in the Brazzaville process, his orders to dismantle roadblocks, his reconciliation initiatives in Boda, and his collaboration with national and international actors should have been accorded "tangible mitigating weight".[2439]

674. This Ground should be rejected. The Chamber correctly and reasonably applied rule 145(2)(a)(ii). It found that some of his post-offence peace and reconciliation activities were relevant; and gave them "some", albeit "limited", weight.[2440] The Chamber thus appropriately exercised its broad discretion. Ngaïssona's submissions misstate the Chamber's findings, reiterate arguments the Chamber rejected in the Sentencing Decision, express disagreement with the Chamber's discretionary assessment, and ultimately fails to identify any error in the Chamber's reasoning and conclusions. In any event, even assuming *arguendo* that the Chamber erred as Ngaïssona alleges, such error would not have materially affected his sentences.

X.1. Ground 4.1: The Chamber applied the correct legal standard under rule 145(2)(a)(ii)

675. Ngaïssona argues that the Chamber applied an incorrect legal test by allegedly discounting mitigating weight from his post-offence activities because they (i) occurred after the charged period, (ii) took place in a broader political context, and (iii) were motivated by self-interest and accompanied by discriminatory rhetoric.[2441]

676. This is incorrect. Under rule 145(2)(a)(ii) a Chamber must consider post-offence conduct in determining whether the person's sentence should be mitigated.[2442] However, the

[2437] Ngaïssona Appeal, paras. 433-519.
[2438] Judgment, paras. 4387-4845.
[2439] Ngaïssona Appeal, paras. 433-457.
[2440] Judgment, paras. 4688-4692, 4699.
[2441] Ngaïssona Appeal, paras. 442-446.
[2442] *See e.g.* *Katanga* SJ, para. 115.

rule does not require a Chamber necessarily to give post-offence conduct any weight in mitigation, much less the significant weight that Ngaïssona urges.[2443] Rather, the weight given to an individual factor and the balancing of all relevant factors in arriving at the sentence is at the core of a trial chamber's exercise of discretion.[2444] A trial chamber, having "intimate knowledge of the case",[2445] has broad discretion in "deciding how much weight, *if any*, to be accorded to the mitigating circumstances identified".[2446]

677. Moreover, the evaluation of a convicted person's post-offence conduct—like the sentencing process as a whole—is inherently case-specific. Comparisons to other cases at this Court are of limited relevance, if any.[2447] Thus, findings made in different cases and on different evidentiary records, cannot establish generally applicable "legal standards" or "principles for the assessment of post-offence mitigation". [2448] Nor do they demonstrate any legal error by the Chamber in giving limited mitigating weight in the present case.

678. Ngaïssona's submissions also mischaracterise the Chamber's reasoning. *First*, the Chamber acknowledged Ngaïssona's conduct after the charged period and gave it some mitigating weight.[2449] Its express reference to his conduct *after* the period relevant to the charges [2450] was not to diminish its weight,[2451] but to distinguish it from his alleged peace efforts during the period relevant to the charges, to which the Chamber gave no mitigating value.[2452]

679. *Second*, the Chamber did not discount the weight given to Ngaïssona's efforts simply because they occurred in a political multi-party context.[2453] Instead, it appropriately contextualised his conduct, noting that it occurred in the context of broader peace negotiations *after* large-scale active hostilities had ended, the Seleka had mostly retreated and after many Muslim civilians had been forced to flee.[2454]

[2443] Judgment, para. 4409.
[2444] *Ntaganda* SJ, para. 12; *Lubanga* SJ, para. 3; *Lubanga* SAJ, paras. 40, 43. *See also* paras. 66, 68, 70, 73.
[2445] *Lubanga* SAJ, para. 34. *See also* paras. 66, 68, 70, 73.
[2446] *Bemba et al.* SAJ, para. 187 (emphasis added). *See also* para. 188; *Lubanga* SAJ, paras. 40, 43.
[2447] *Lubanga* SAJ, paras. 76-77. The Trial Chamber correctly followed this approach in this case: Judgment, paras. 4648, 4825.
[2448] *Contra* Ngaïssona Appeal, paras. 435-441.
[2449] Judgment, para. 4688. *See also* paras. 4689, 4692, 4699.
[2450] Judgment, para. 4699.
[2451] *Contra* Ngaïssona Appeal, para. 443.
[2452] Judgment, paras. 4684-4687.
[2453] *Contra* Ngaïssona Appeal, para. 444.
[2454] Judgment, para. 4692.

680. *Third,* the Chamber did not discount the mitigating weight given to Ngaïssona's relevant actions because they were motivated by self-interest or were viewed as "political spin".[2455] Those findings relate to Ngaïssona's involvement in the DDR program and other initiatives to which the Chamber gave no mitigating weight,[2456] and are addressed under Ground 5. Moreover, the Chamber did not apply a legal standard of "motive purity" by discounting the weight given to Ngaïssona's peace efforts. Rather, it found that his efforts were undermined by repeated contemporaneous statements by the Anti-Balaka National Coordination under his leadership which equated Seleka or other violence-committing individuals with Muslims in general.[2457]

X.2. Ground 4.2: The Chamber correctly and reasonably assessed and weighed the facts

681. Ngaïssona further argues that the Chamber erred in fact by failing to give adequate weight to consistent evidence of his post-offence peace efforts.[2458]

682. Based on the evidence, the Chamber correctly found that Ngaïssona attended the Brazzaville Forum in 2014 where he expressed commitments to peace, and that within the context of the Brazzaville negotiations, he and the Anti-Balaka organised missions to the provinces to inform elements regarding the peace process. It found that after the Brazzaville agreement, the Anti-Balaka under Ngaïssona engaged in various initiatives removing roadblocks and that Ngaïssona was involved in peace initiatives in Boda.[2459] The Chamber also noted that after the period relevant to the charges Ngaïssona and his faction of the Anti-Balaka called for peace.[2460] But, the Chamber equally considered the context in which these initiatives took place, including the fact that they occurred at a time when no more large-scale hostilities took place, the Seleka had mostly retreated and many Muslim civilians had been forced to flee their localities.[2461] Accordingly, it gave his post-offence efforts "some",[2462] albeit "limited"[2463] mitigating weight.[2464]

[2455] *Contra* Ngaïssona Appeal, para. 445.
[2456] Judgment, paras. 4693-4694. Referring to these findings, *see* Ngaïssona Appeal, fn. 1212.
[2457] *Contra* Ngaïssona Appeal, paras. 445-446 (referring to Judgment, para. 4692).
[2458] Ngaïssona Appeal, paras. 447-452.
[2459] Judgment, para. 4689.
[2460] Judgment, paras. 4690-4691.
[2461] Judgment, para. 4692.
[2462] Judgment, para. 4688.
[2463] Judgment, para. 4699.
[2464] Ngaïssona's arguments regarding his regular contact with the transitional government on matters of disarmament and security (Ngaïssona Appeal, para. 452) concern his efforts to support the DDR and billeting

683. These findings were based largely on the same evidence now referred to by Ngaïssona in support of his appeal.[2465] His arguments merely relitigate matters already adequately addressed by the Chamber, submitting that the Chamber should have given "tangible" mitigating weight to his post-offence conduct.[2466] As such, he merely disagrees with the Chamber's findings and fails to demonstrate any appealable error, including that the Chamber disregarded critical evidence, erred in assessing the evidence, or erred in exercising its discretion by according limited mitigating weight to his post-offence peace efforts.

684. In sum, Ngaïssona fails to demonstrate any legal or factual error in the Chamber's assessment of his post-offence peace activities. Ground 4 of his Appeal should therefore be rejected.

X.3. The alleged errors do not materially affect the sentences

685. In any event, Ngaïssona fails to show that the alleged errors under Ground 4 materially affected his sentences. He argues that had the Chamber applied the correct legal standard for mitigation, it would have given "genuine weight" to his post-offence peace efforts, which would have resulted in substantially lower individual and joint sentences.[2467] This argument should be rejected.

686. *First*, the Chamber *did* give "genuine" mitigating weight to these efforts. Ngaïssona's argument that the Chamber should have reduced his sentences by another one or two years[2468] is speculative and unsupported.

687. *Second*, even if more weight had been given, this would not "automatically"[2469] have lowered Ngaïssona's sentences. Sentencing is not a mathematical process. It requires a chamber to carefully balance all factors it considers relevant, and then to exercise its broad discretion to determine the appropriate sentence.[2470] Ngaïssona's argument that the sentences are "manifestly

---

programs to which the Chamber gave no weigh: *see* Judgment, paras. 4693-4698. They are irrelevant to the Chamber's findings challenged under Ground 4 of this appeal and will be dealt with in response to Ground 5.

[2465] Regarding the Brazzaville process, *compare* Judgment, paras. 1890 (fn. 4873), 1888 (fns. 4868-4869), *with* Ngaïssona Appeal, paras. 448-449 (fn. 1214-1223). Regarding the removal of roadblocks, *compare* Judgment, para. 1891 (fn. 4874), *with* Ngaïssona Appeal, para. 450 (fns. 1224-1229). Regarding the peace initiative in Boda, *compare* Judgment, para. 2114 (fn. 5450), *with* Ngaïssona Appeal, para. 451 (fns. 1230-1233). The Chamber further noted Ngaïssona's sentencing submissions and his unsworn statements regarding these issues: Judgment, fns. 10745-10748 (referring to *Ngaïssona* Sentencing Brief, paras. 30, 34).

[2466] Ngaïssona Appeal, para. 433.

[2467] Ngaïssona Appeal, paras. 454-456.

[2468] Ngaïssona Appeal, para. 454.

[2469] Ngaïssona Appeal, para. 454.

[2470] *Lubanga* SAJ, para. 34. *See also* paras. 66, 68, 70, 73.

disproportionate",[2471] fails to account for the gravity of the crimes—several of which were particularly serious[2472]—the fact the crimes were committed with discriminatory intent,[2473] and that they resulted in the violation of numerous fundamental protected interests.[2474]

688. For the reasons set out above, Ngaïssona's Ground 4 should be rejected.

XI. Ground 5: The Chamber correctly and reasonably assessed Ngaïssona's involvement in DDR and related measures

689. Under Ground 5, Ngaïssona argues that the Chamber erred in law and fact by declining to treat his DDR proposals, badges initiative, and the creation of the "military police" as mitigating factors. He submits that the Chamber's findings—that these initiatives were politically motivated, insincere, or unrelated to the crimes—improperly demanded results and "motive purity" in violation of rule 145(2)(a)(ii). He further claims that the Chamber overlooked evidence showing that these initiatives were objectively peace conducive.[2475]

690. These arguments should be rejected. The Chamber correctly and reasonably applied rule 145(2)(a)(ii) and considered and evaluated all relevant evidence.[2476] In any event, even assuming *arguendo* that the Chamber erred in the manner alleged by Ngaïssona, any such error would not have materially affected his sentences.

XI.1. Ground 5.1: The Chamber did not apply an incorrect legal test for genuineness under rule 145(2)(a)(ii)

691. Contrary to Ngaïssona's submission,[2477] there is no binding legal test governing the assessment of the genuineness of a person's post-offence conduct under rule 145(2)(a)(ii). Ngaïssona argues that "[t]he Appeals Chamber has consistently held" that such conduct warrants mitigation where it is "palpable and genuine", meaning that the efforts are concrete, voluntary, and directed toward peace or harm-reducing—even if it does not achieve its intended results.[2478] The Appeals Chamber has not made any such explicit finding. Instead, Ngaïssona relies on a single decision in the *Katanga* case, according to which genuine efforts to promote

[2471] Ngaïssona Appeal, para. 455.
[2472] *See e.g.* Judgment, paras. 4716, 4799, 4801, 4817.
[2473] *See e.g.* Judgment, paras. 4715, 4718, 4723, 4729, 4744, 4752, 4757, 4773, 4783, 4796, 4798, 4800, 4802, 4816, 4819.
[2474] Judgment, para. 4835.
[2475] Ngaïssona Appeal, paras. 458-485.
[2476] Judgment, paras. 4693-4698.
[2477] Ngaïssona Appeal, paras. 458-460, 468.
[2478] Ngaïssona Appeal, para. 459.

peace and reconciliation "*must* be taken into account and *could potentially* mitigate the sentence".[2479]

692. Accordingly, while a chamber must consider a person's post-offence conduct—including any peace and reconciliation efforts—as a potentially mitigating circumstance pursuant to rule 145(2)(a)(ii),[2480] it is not required to assign such conduct any weight. As held by the Appeals Chamber, the evaluation of evidence relevant to sentencing is an inherently case-specific exercise[2481] and a trial chamber, having "intimate knowledge of the case",[2482] has broad discretion in "deciding how much weight, if any, to be accorded to the mitigating circumstances identified".[2483]

693. The Chamber followed this approach. It acknowledged that within the first months of becoming general coordinator, Ngaïssona provided the transitional government with a plan for the billeting and inclusion of Anti-Balaka elements in a DDR programme.[2484] It also accepted that Ngaïssona oversaw an initiative to identify Anti-Balaka elements and provided them with badges[2485] and that the general coordination under Ngaïssona set up a "military police" unit.[2486] However, the Chamber explained in detail why, in the circumstances of this case, it gave these initiatives no mitigating weight. It found that Ngaïssona's involvement in the DDR proposals and the badges initiatives were not genuine, and were primarily motivated by financial and/or political reasons.[2487] It further declined to mitigate his sentences for his involvement in setting up a "military police" unit because that initiative was merely intended to "track down and hand over to the gendarmerie 'fake' Anti-Balaka" and Anti-Balaka that were "acting out of bounds".[2488]

[2479] Ngaïssona Appeal, para. 459 (referring to *Katanga* SJ, para. 91, emphasis added). Similarly, the alleged "principles guiding the assessment of post-offence mitigation" referred to in Ground 4 are case-specific findings of trial chambers that do not set out general or binding principles for the assessment of genuineness relevant to Ground 5: *contra* Ngaïssona Appeal, paras. 436-440. *See in particular* *Katanga* SJ, paras. 114-115. These findings do not establish a principle that "mixed motives are not fatal." *See also* *Ongwen* SJ, para. 54 (stating that mitigating circumstances "need not to relate to the crimes of which the person was convicted" and emphasising a chamber's broad discretion in deciding how much weight, if any, to be accorded to the mitigating circumstances identified).
[2480] *See e.g.* *Katanga* SJ, para. 115.
[2481] *Lubanga* SAJ, paras. 76-77.
[2482] *Lubanga* SAJ, para. 34. *See also* paras. 66, 68, 70, 73.
[2483] *Bemba et al.* SAJ, para. 187. *See also* para. 188; *Lubanga* SAJ, para. 43.
[2484] Judgment, para. 4693.
[2485] Judgment, para. 4695.
[2486] Judgment, para. 4697.
[2487] Judgment, paras. 4693-4695.
[2488] Judgment, para. 4697.

XI.2. Ground 5.2: The Chamber did not err in fact in assessing the evidence

XI.2.a. The Chamber correctly assessed the evidence regarding the DDR program

694. Ngaïssona argues that the Chamber erred in fact by failing to consider evidence that his role in the DDR program was genuine and objectively peace conducive.[2489] However, the Chamber properly examined the evidence on his role in reconciliation-related initiatives, including in the DDR.[2490] His arguments misrepresent the Chamber's reasoning and simply disagree with its conclusion that his activities were not genuine.[2491]

695. *First*, the Chamber did not find that the DDR initiative itself was personal or partisan,[2492] but that Ngaïssona's participation in it was not genuine and was primarily motivated by ulterior motives, including financial and political considerations.[2493]

696. *Second*, the Chamber did not fail to appreciate that Ngaïssona took steps toward the DDR.[2494] It expressly acknowledged that he provided the transitional government with a plan for the billeting and inclusion of Anti-Balaka elements in a DDR program.[2495] It nevertheless concluded that his role was not genuine and therefore did not warrant mitigation. Ngaïssona fails to demonstrate any error in the Chamber's conclusion that any of his DDR activities were not genuine.

697. *Third*, the Chamber did not hold it against Ngaïssona that disarmament was not achieved at the time.[2496] In fact the Chamber noted that the DDR program was eventually set up some years later.[2497] Rather, the Chamber's decision not give weight to this in mitigation stemmed from its conclusion that Ngaïssona's involvement in the DDR proposals was not genuine.[2498]

698. *Fourth*, the Chamber did not establish and apply an impermissible requirement that Ngaïssona's motive had to be "pure" to be considered in mitigation.[2499] It did not discount his involvement in the DDR process as a mitigating factor only because he was primarily motivated by ulterior motives, including financial and political reasons,[2500] but, "most importantly",

---

[2489] Ngaïssona Appeal, paras. 461-462, 469-470.
[2490] Judgment, paras. 1853-1893, 4693-4698. *See also* paras. 1530, 1601, 1603-1605, 1607, 1612, 1720.
[2491] Ngaïssona Appeal, para. 463.
[2492] *Contra* Ngaïssona Appeal, para. 464.
[2493] Judgment, paras. 4693-4694.
[2494] *Contra* Ngaïssona Appeal, paras. 465-466.
[2495] Judgment, para. 4693.
[2496] *Contra* Ngaïssona Appeal, paras. 466-467.
[2497] Judgment, para. 4693.
[2498] Judgment, paras. 4693-4694.
[2499] *Contra* Ngaïssona Appeal, para. 468.
[2500] Judgment, paras. 4693-4694.

because his conduct was not genuine.[2501] As an example in support of this conclusion, the Chamber noted the testimony of Catherine Samba-Panza, who said that Ngaïssona's statement of being ready to put down weapons was a "political spin".[2502]

XI.2.b. The Chamber correctly assessed evidence regarding badges and the "military police"

699. Ngaïssona argues that the Chamber erred by characterising the badges initiative and the creation of the "military police" as acts of self-promotion or "branding," and by requiring proof of their full effectiveness before granting mitigation.[2503] However, he does not identify any error in the Chamber's exercise of its discretion. The Chamber accepted that Ngaïssona's badges initiative served both to distinguish the "real" Anti-Balaka from "fake" ones, and for an eventual DDR.[2504] It nevertheless accorded no mitigating weight because it found Ngaïssona's involvement was not a genuine peace effort.[2505] Similarly, while acknowledging his role in establishing the "military police," the Chamber reasonably concluded that this initiative did not constitute a relevant peace related effort for sentencing purposes in this case.[2506] Ngaïssona's arguments mischaracterise or simply disagree with the Chamber's findings.[2507]

700. *First*, the Chamber did not conclude that the badges initiative was objectively not genuine.[2508] Rather, it concluded that Ngaïssona's involvement in this initiative—and in any other DDR initiatives—was not genuinely aimed at advancing peace. The Chamber based this conclusion on evidence that Ngaïssona was not prepared to lay down weapons, and that his statements to the contrary amounted to mere "political spin."[2509] It also relied on evidence that through his involvement in the badges initiative, Ngaïssona was merely trying to have more personal political leverage by buying allegiance from local groups.[2510] In doing so, the Chamber distinguished between DDR initiatives in general and Ngaïssona's role in them, which it found was not genuinely aimed at advancing peace.

[2501] Judgment, para. 4694.
[2502] Judgment, para. 4694.
[2503] Ngaïssona Appeal, para. 471.
[2504] Judgment, para. 4695. *Contra* Ngaïssona Appeal, para. 472.
[2505] Judgment, para. 4695.
[2506] Judgment, para. 4697. *Contra* Ngaïssona Appeal, para. 473.
[2507] Ngaïssona Appeal, paras. 475-479.
[2508] *Contra* Ngaïssona Appeal, para. 476.
[2509] Judgment, paras. 4694-4695. In finding that Ngaïssona's 'badges' initiative was not genuine, the Chamber implicitly incorporated its reasoning when determining that his other DDR initiatives were also not genuine: Judgment, para. 4694.
[2510] Judgment, para. 4695. *See also* para. 1808.

701. *Second*, while a convicted person's conduct after the criminal acts need not be related to the crimes for which he was convicted in order to qualify as a mitigating circumstance,[2511] this does not mean that *any* positive post-offence conduct warrants mitigation.[2512] The "military police" he helped establish addressed either the conduct of individuals unconnected to Ngaïssona or the misconduct of Anti-Balaka elements acting "out of bounds," particularly through theft and looting. Neither addressed the types of criminality for which Ngaïssona was convicted, nor could these measures prevent similar crimes or contribute to peace and reconciliation after those crimes were committed.[2513]

702. *Third*, the Chamber did not require proof of measurable results such as the cessation of violence or complete disarmament.[2514] It declined to find mitigation because Ngaïssona's personal involvement in the initiatives was not genuine,[2515] and because they were unrelated to the types of crimes for which he was convicted.[2516]

703. *Fourth*, even if national authorities welcomed the badges initiative and the establishment of the "military police," this does not mean that Ngaïssona's sentence should be mitigated.[2517] Given the Chamber's findings that his involvement in the badges initiative was not genuine and that the "military police" initiative was unrelated to addressing the types of crimes for which he was convicted, it properly declined to give them mitigating weight, regardless of whether they may have been viewed favourably by others.

704. In sum, Ngaïssona has not demonstrated any legal or factual error in the Chamber's assessment of his involvement in the DDR processes and related organisational measures. Ground 5 of his Appeal should therefore be rejected.

XI.3. The alleged errors do not materially affect the sentences

705. In any event, Ngaïssona has not shown that the alleged errors under Ground 5 materially affected his sentences. He argues that the alleged legal and factual errors inflated his culpability thereby undermining the principle of proportionality. According to him, even a modest acknowledgment of his peacebuilding efforts in the DDR program, the badges initiative, and

[2511] Ngaïssona Appeal, para. 477.
[2512] The Chamber correctly held that reducing sentences for the crimes for which Ngaïssona was convicted based on unrelated organisational activities was inappropriate: Judgment, para. 4697.
[2513] Judgment, para. 4697. *See also* para. 1874.
[2514] *Contra* Ngaïssona Appeal, paras. 478, 481.
[2515] Judgment, paras. 4693-4694.
[2516] Judgment, para. 4697.
[2517] *Contra* Ngaïssona Appeal, paras. 479-480.

the establishment of the "military police" would have justified a reduction of one to two years per affected count and in the joint sentence.[2518] These arguments should be rejected.

706. An appellant is required to specify, with sufficient precision, how the alleged error would materially affect the impugned decision.[2519] The Appeals Chamber has previously observed that this is a high standard: it must be shown that the decision *would*—not merely *could* or *might*—have been substantially different absent the error.[2520]

707. Ngaïssona does not meet this standard. His speculation that the sentences would have been further reduced by one or two years lacks support. He also ignores that the Chamber already accorded some mitigating weight to his post-offence peace and reconciliation efforts, namely his participation in the Brazzaville process, his orders to dismantle roadblocks, and his reconciliation initiatives in Boda.[2521] He further disregards the complexity of sentencing, which requires careful balancing of multiple competing factors, including the gravity of the crimes the discriminatory intent involved in them, and the substantial harm caused. Ngaïssona provides no argument on how the Chamber would necessarily have imposed lower sentences after considering all these factors in context.

708. For the reasons set out above, Ground 5 of Ngaïssona's Appeal should be rejected.

XII. Ground 6: The Chamber correctly assessed Ngaïssona's degree of participation and intent

709. Under Ground 6, Ngaïssona contends that the Chamber's findings on his degree of participation and intent were impermissibly general. He argues that the Chamber failed to assess and articulate, for each of the four relevant locations, his specific level of participation and intent in relation to each crime. In his view, this omission resulted in non-individualised sentences, contrary to rule 145(1)(c). He further submits that the Chamber's approach undermined the principle of proportionality and impeded meaningful appellate review, thereby amounting to both an error of law and an error of reasoning that materially affected the sentence.[2522]

710. This Ground of appeal should be rejected. Ngaïssona misrepresents the Chamber's factual findings concerning his degree of participation and intent in relation to the crimes of

[2518] Ngaïssona Appeal, paras. 482-485.
[2519] *Gbagbo* Third Detention AD, para. 18.
[2520] *Ngudjolo* AJ, para. 285.
[2521] Judgment, paras. 4688-4692, 4699. *See also above* section X (paras. 673-688).
[2522] Ngaïssona Appeal, paras. 486-519.

conviction.[2523] In any event, even assuming *arguendo* that the Chamber erred in the manner he alleges, any such error would not have materially affected either the highest individual sentences or the joint sentence imposed.

XII.1. Ngaïssona misrepresents the Chamber's factual findings

XII.1.a. The Chamber's findings are sufficiently detailed

711. Ngaïssona argues that the Trial Chamber erred by limiting its finding to the conclusion that his contribution had a "positive effect" on the commission of the crimes, without making sufficiently detailed findings regarding the degree of his participation.[2524] This argument is unfounded. In the Conviction Decision, the Chamber made detailed findings concerning Ngaïssona's degree of participation, concluding that his conduct had, at a minimum, a "positive effect" on the commission of the crimes, which clearly satisfies the *actus reus* requirement under article 25(3)(c).[2525] In the Sentencing Decision, the Chamber recalled and summarised these underlying factual findings and conclusions and relied on them in assessing Ngaïssona's degree of participation for the purposes of rule 145(1)(c).[2526] The Chamber was not required to expressly repeat all its prior findings to assess Ngaïssona's degree of participation for the purpose of sentencing and it could rely on them by reference.

712. Ngaïssona further submits that the Chamber erred in law by finding that his degree of participation and intent was not "particularly high or low".[2527] This submission misapprehends the purpose of the Chamber's finding. The Chamber did not make this assessment to qualify his degree of contribution or intent in relation to the crimes of conviction; those findings had already been made elsewhere in the Conviction Decision.[2528] Rather, the Chamber considered whether the previously established degree of contribution and intent warranted aggravation or mitigation of sentence under rule 145(1)(c). In finding that it was not "particularly high or low", the Chamber concluded that this was not the case.[2529] Again, the Chamber was entitled to reach

[2523] Ngaïssona Appeal, paras. 486, 494-513.
[2524] Ngaïssona Appeal, paras. 486, 489.
[2525] On the sufficiency of these findings for the purpose of the Conviction Decision, *see above* section VII (paras. 525-633).
[2526] Judgment, paras. 4708-4710 (Bangui), 4733-4735 (Bossangoa), 4788-4790 (Yamwara), 4807-4809 (PK9-Mbaïki).
[2527] Ngaïssona Appeal, para. 486. *See also* para. 489.
[2528] *See e.g.* Judgment, paras. 4709-4710 (Bangui), 4734 (Bossangoa), 4790 (Yamwara), 4809 (PK9-Mbaïki). In these paragraphs of the Sentencing Decision, the Chamber incorporated by reference its earlier findings in the Conviction Decision.
[2529] *See further below* paras. 720-723.

this conclusion without expressly repeating all underlying findings concerning Ngaïssona's degree of participation and intent, and could properly rely on those findings by reference.

XII.1.b. The Chamber made location-specific findings on Ngaïssona's degree of participation and intent

713. Ngaïssona's argument that the Chamber failed to make sufficient location-specific assessments of his contribution and intent for the crimes committed in Bangui, Bossangoa, Yamwara, and along the PK9-Mbaïki axis misrepresents the Sentencing Decision[2530] and should therefore be rejected.

714. At the outset, the Chamber made clear that, for sentencing purposes, it addressed crime-specific considerations in relation to each of the 28 crimes of conviction across the four locations. To avoid duplication, each section included general considerations applicable to all crimes within the relevant incident,[2531] including those concerning Ngaïssona's degree of participation and intent.[2532] For all four locations, the Chamber underscored that the crimes shared a number of features, particularly concerning Ngaïssona's individual responsibility under article 25(3)(c).[2533] It then set out location-specific findings, fully grounded in the conclusions reached in the Conviction Decision.

715. For Bangui, the Chamber recalled its findings that Ngaïssona was actively involved in planning the concrete steps to respond to the Seleka and to secure Bozizé's return to power by all means, including armed violence. He provided financial aid, organisational assistance and psychological support to the Anti-Balaka.[2534] The Chamber further noted that the Bangui Attack was planned and that Ngaïssona provided funds to the Anti-Balaka elements that participated in it.[2535] It concluded that his contributions had a positive effect on the commission of the crimes during the Bangui Attack at a minimum, and his financial support enabled at least some Anti-Balaka elements to participate.[2536]

716. Regarding intent, the Chamber concluded that Ngaïssona acted for the purpose of facilitating the commission of criminal acts targeting the Muslim population, fully aware that

[2530] Ngaïssona Appeal, paras. 486, 491, 494-499.
[2531] Judgment, para. 4707.
[2532] Judgment, paras. 4708-4712 (Bangui), 4733-4737 (Bossangoa), 4788-4792 (Yamwara), 4807-4811 (PK9-Mbaïki).
[2533] Judgment, paras. 4708, 4733, 4788, 4807.
[2534] Judgment, para. 4709.
[2535] Judgment, para. 4710.
[2536] Judgment, para. 4710.

the Anti-Balaka would violently attack Muslim civilians in western CAR.[2537] It also noted that he was informed of the groups' advance towards Bangui and the hostilities during that advance, yet continued funding the Anti-Balaka. Further, it found that Ngaïssona intended for the Anti-Balaka to commit these crimes within the context of the Bangui Attack and lent his assistance with the aim of facilitating such crimes.[2538]

717. For Bossangoa, Yamwara and the PK9-Mbaïki axis, the Chamber recalled its findings in relation to Bangui, which it held applied equally to Ngaïssona's degree of participation and intent in relation to crimes committed in Bossangoa,[2539] Yamwara,[2540] and along the PK9-Mbaïki axis.[2541] Moreover, for each of these three locations, the Chamber set out additional location-specific facts regarding Ngaïssona's participation and intent, delineating the factual basis for his participation in these crimes in each location.[2542]

718. Ngaïssona himself acknowledges that the Chamber distinguished between his involvement in Bangui and Bossangoa on the one hand, and Yamwara and the PK9-Mbaïki axis on the other,[2543] though he disagrees with the Chamber's evaluation of his participation.[2544] The significant overlap in the factual bases for his contributions across locations does not detract from the Chamber's accurate and location-specific analysis.[2545] His argument should be rejected.

XII.1.c. The Chamber calibrated Ngaïssona's degree of participation and intent

719. The Chamber found that Ngaïssona's contributions had "in the very least, a positive effect on the commission of the crimes" in Bangui,[2546] Bossangoa,[2547] Yamwara[2548] and along the PK9-Mbaïki axis.[2549] Ngaïssona's argument that the Chamber failed to make such findings for the latter three locations[2550] misrepresents the Judgment. The Chamber also made findings

[2537] Judgment, para. 4709.
[2538] Judgment, paras. 4709-4710.
[2539] Judgment, para. 4734.
[2540] Judgment, para. 4789.
[2541] Judgment, para. 4808.
[2542] Judgment, paras. 4734-4735 (Bossangoa), 4789-4790 (Yamwara), 4808-4809 (PK9-Mbaïki).
[2543] Ngaïssona Appeal, para. 507-510.
[2544] Ngaïssona Appeal, para. 506-513.
[2545] *Contra* Ngaïssona Appeal, para. 499.
[2546] Judgment, paras. 4037, 4710.
[2547] Judgment, para. 4734 (recalling the findings in relation to the Bangui attack, which "equally apply to Mr. Ngaïssona's involvement in the Bossangoa Attack and events in its aftermath").
[2548] Judgment, para. 4789 (recalling the findings in relation to the Bangui attack, which "equally apply to [Ngaïssona's] involvement in the Yamwara Incident").
[2549] Judgment, para. 4808 (recalling the findings in relation to the Bangui attack, which "equally apply to [Ngaïssona's] involvement in the Anti-Balaka's advance along the PK9-Mbaïki axis").
[2550] Ngaïssona Appeal, para. 492.

regarding Ngaïssona's awareness of the crimes in Bossangoa, Yamwara and along the PK9-Mbaïki axis.[2551] His argument to the contrary[2552] should equally be rejected.

720. Moreover, for each of the four locations, the Chamber held that it could not find any circumstances which, for the purposes of sentencing, would qualify Ngaïssona's degree of participation and intent "as particularly high or low".[2553] Ngaïssona's arguments that this formulation "effectively collapses the full spectrum of culpability into a neutral midpoint" and therefore fails to qualify the degree of participation[2554] should be rejected for the following reasons.

721. *First*, Ngaïssona misunderstands the Chamber's findings. The Chamber did not decline to qualify his degree of participation and intent.[2555] Rather, it concluded—within the framework of rule 145(1)(c)—that his degree of participation and intent as previously established[2556] did not justify aggravation or mitigation of sentence because it was not particularly high or low. This contrasts with the Chamber's treatment of certain crimes, which it found particularly serious or grave and warranting higher sentences.[2557]

722. *Second*, even if the Chamber reached the same conclusion regarding Ngaïssona's degree of contribution to the crimes at all four locations, this does not indicate that it treated his culpability as "constant", failed to appreciate factual distinctions,[2558] or applied indistinguishable reasoning.[2559] It simply means the Chamber exercised its discretion and determined that, despite these distinctions, his participation at none of the four locations justified either aggravation or mitigation and should be treated the same. This is also because the Chamber determined that many of Ngaïssona's contributions were relevant to the crimes committed at all four locations.

[2551] Judgment, paras. 4734 (Bossangoa), 4789 (Yamwara), 4808 (PK9-Mbaïki).
[2552] Ngaïssona Appeal, para. 499.
[2553] Judgment, paras. 4711 (Bangui), 4736 (Bossangoa), 4791 (Yamwara), 4810 (PK9-Mbaïki).
[2554] Ngaïssona Appeal, para. 492.
[2555] Ngaïssona Appeal, paras. 493, 501. Ngaïssona's argument that the degree of participation should have been qualified as limited, significant or high is unsupported and nothing but a disagreement with the Chamber's approach.
[2556] *See e.g.* Judgment, paras. 4709-4710 (Bangui), 4734 (Bossangoa), 4790 (Yamwara), 4809 (PK9-Mbaïki). In these paragraphs of the Sentencing Decision, the Chamber incorporated by reference its earlier findings in the Conviction Decision.
[2557] *See e.g.* Judgment, paras. 4716, 4799, 4801, 4817.
[2558] *Contra* Ngaïssona Appeal, paras. 499, 503.
[2559] *Contra* Ngaïssona Appeal, para. 500.

723. *Third*, the Chamber's approach does not prevent the Appeals Chamber from verifying that the sentences reflect Ngaïssona's culpability.[2560] The Chamber's findings are well reasoned, supported by evidence. They set out how it assessed Ngaïssona's degree of participation and intent and how those evaluations were reflected in the sentences. That similar conclusions were reached across locations is not sufficient to substantiate any unfair prejudice.

724. In sum, Ngaïssona has not demonstrated any legal or factual error in the Chamber's assessment of his degree of participation and intent. Ground 6 should therefore be rejected.

XII.2. The alleged errors do not materially affect the sentences

725. In any event, Ngaïssona has not shown that the alleged errors under Ground 6 materially affected the sentences.[2561] He argues that his involvement in the crimes diminished over time. According to him, a properly individualised assessment would have resulted in lower highest individual sentences, and thus a lower joint sentence. This argument should be rejected.

726. *First*, the Chamber imposed individual sentences of 11 years for the murders committed at each of the four locations.[2562] Had the Chamber differentiated the sentences, it could equally have imposed higher individual sentences for the murders in Bangui and Bossangoa, where Ngaïssona argues that his degree of participation was greater.

727. *Second*, even if lower sentences had been imposed for the murders in Yamwara and along the PK9-Mbaïki axis, this would not have affected the joint sentence. In determining the joint sentence, the Chamber used as its baseline the highest individual sentence—which would have remained 11 years for the murders in Bangui and Bossangoa—and added one additional year.[2563] Ngaïssona appears to have acknowledged this.[2564]

728. For the reasons set out above, Ngaïssona's Ground 6 should be rejected.

[2560] *Contra* Ngaïssona Appeal, paras. 493, 501.
[2561] Ngaïssona Appeal, paras. 514-519.
[2562] Counts 2 and 3 (Bangui); counts 15 and 16 (Yamwara); counts 26 and 27 (PK9-Mbaïki); counts 31 and 32 (Bossangoa).
[2563] Judgment, para. 4836. *See also* paras. 4823-4835.
[2564] Ngaïssona Appeal, para. 453.

RESPONSE TO YEKATOM'S ADDITIONAL EVIDENCE REQUEST

XIII. Yekatom's request to present additional evidence should be rejected

XIII.1. Introduction

729. Yekatom's request to present the victim application form of P-1823 as additional evidence on appeal under regulation 62 of the RoC[2565] should be rejected. Yekatom fails to establish the cumulative criteria for its admission. In fact, he concedes that two of the criteria are not met: *first*, the Form was available at trial,[2566] yet he chose not to seek its admission at that stage; and *second*, the Form could not have impacted the Chamber's verdict.[2567] Nor does Yekatom show that the Form is sufficiently relevant to his grounds of appeal, or has probative value given its non-evidentiary purpose. Having failed to meet the requisite criteria, Yekatom also does not establish any compelling reasons for the Appeals Chamber to exercise its discretion in admitting the Form. In any event, there are none. The criteria for the admission of additional evidence on appeal are strictly confined to prevent attempts to re-litigate trial issues *de novo*, and focus only on those errors that were capable altering the verdict, in line with the corrective nature of appellate proceedings. Yekatom's request falls far short of this standard.

730. Specifically, Yekatom alleges that the Form shows that the Chamber misstated the witness's evidence as to when he left Bangui for Mbaïki and passed through a checkpoint at the PK9 bridge manned by Yekatom and his elements, where Yekatom instructed his elements to search for and identify Muslims.[2568] As a result of this and other alleged errors, Yekatom claims the Chamber erroneously relied upon the witness's account to find that Yekatom and his group aimed at searching and identifying Muslims at checkpoints along the PK9-Mbaïki axis.[2569] While Yekatom correctly highlights certain discrepancies in the witness's timeline of events, the information in the Form was already elicited from the witness during his in-court testimony.[2570] Moreover, Yekatom miscomprehends the Chamber's reasoning in addressing the discrepancies. The Form provides no information beyond what was already available in the trial record, and would not have altered the Chamber's finding regarding the witness's timeline of events, much less the verdict. It does not rise to the level of relevance, probative value or

[2565] Yekatom Additional Evidence Request, paras. 1, 38; CAR-OTP-00001790 ("Form").
[2566] Yekatom Additional Evidence Request, para. 25.
[2567] Yekatom Additional Evidence Request, para. 32.
[2568] Yekatom Additional Evidence Request, paras. 11-20, 27.
[2569] Yekatom Additional Evidence Request, paras. 19, 27, 31. *See* Judgment, paras. 117, 3397-3405.
[2570] *See below* paras. 743-744.

importance to be able to impact the verdict, and its admission in the appeal proceedings is not justified.[2571]

XIII.2. The criteria for the admission of additional evidence on appeal are not met

731. In his interview with OTP investigators,[2572] P-1823 (a Muslim) stated that he had gone to Bangui on 3 December 2013, and stayed there for "almost a month" after the 5 December 2013 attack because it was not safe to travel back to Mbaïki to rejoin his family.[2573] He decided to leave Bangui after an incident in the Petevo neighbourhood where the Imam was attacked by youths, because of anti-Muslim hostility.[2574] When he testified,[2575] P-1823 did not give a precise date for his return journey to Mbaïki. During examination-in-chief, he stated that he left Bangui after Djotodia's resignation[2576] (*i.e.* 10 January 2014).[2577] During cross-examination when pressed by Yekatom's counsel the witness stated that he left "a few days" after the Petevo incident,[2578] but could not confirm whether this incident took place on 13 December 2013 as suggested by Yekatom's counsel.[2579] When Yekatom's counsel asked the witness (via French interpretation), "*est-il exact de dire que, par exemple, vous avez passé le nouvel an vous étiez à Bangui pour les fêtes du Nouvel An* […]?" the witness responded, "*Le nouvel an, je pouvais pas résister à Bangui, parce que là, il fallait partir rejoindre ma petit famille*".[2580] The Chamber noted this evidence, but ultimately gave greater weight to the witness's testimony that he travelled to Mbaïki after Djotodia's resignation.[2581] Subsequently, in his Form, P-1823 wrote, "*J'ai donc decidé de rentrer à Mbaïki passer les fêtes de fin d'année 2013 en famille*".[2582]

732. Contrary to Yekatom's assertions, the Form does not meet the stringent criteria for the admission of additional evidence on appeal, which are strictly confined to ensure that appellate proceedings do not re-open trial issues for a *de novo* assessment, but rather focus only on those issues that were capable of altering the verdict, in-keeping with the corrective nature of appellate proceedings.[2583] This recognises the principle that evidence should, as far as possible,

---

[2571] *Lubanga* AJ, para. 59.
[2572] CAR-OTP-2063-0369 (dated 17 October 2017).
[2573] CAR-OTP-2063-0369 at 0373-0374, para. 24; Judgment, para. 3402.
[2574] CAR-OTP-2063-0369 at 0374, para. 26.
[2575] T-183-ENG; T-183-FRA (dated 2 December 2022). The witness testified in French and received French interpretation.
[2576] T-183-ENG, p. 11:15-22; T-183-FRA, p. 11:19-28; Judgment, para. 3402.
[2577] Judgment, para. 58.
[2578] T-183-ENG, pp. 55:23-56:12; T-183-FRA, p. 58:2-15; Judgment, para. 3402.
[2579] T-183-ENG, pp. 56:17-57:16; T-183-FRA, pp. 58:23-59:24; Judgment, para. 3402.
[2580] T-183-FRA, p. 60:1-4; T-183-ENG, p. 57:21-22.
[2581] Judgment, paras. 3402-3403.
[2582] Form at 000005 (dated 23 January 2023).
[2583] *Lubanga* AJ, para. 56.

be presented before the Trial Chamber, which has the primary responsibility for evaluating the evidence.[2584] There is no reason, therefore, to admit evidence on appeal that is not of sufficient importance and could not have changed the verdict.[2585] In this context, the Appeals Chamber has required the following *cumulative* conditions to be met in admitting additional evidence on appeal: (i) the additional evidence must have been unavailable at trial or, with due diligence, could not have been produced;[2586] (ii) the evidence must be shown to be relevant to a ground of appeal,[2587] have probative value and not be unduly prejudicial to a fair trial or the fair evaluation of the witness testimony;[2588] and (iii) it must be shown that the evidence could have led the trial chamber to enter a different verdict, in whole or in part.[2589] Even if one or more of these requirements are not met, the Appeals Chamber may exercise its discretion and admit the additional evidence if there are compelling reasons for doing so.[2590] Yekatom's request fails to meet these criteria and fails to establish compelling reasons for admitting the Form.

XIII.2.a. The Form was available at trial

733. Yekatom concedes that the Form was available at trial.[2591] P-1823 completed it on 23 January 2023, a few weeks after giving his in-court testimony on 2 December 2022.[2592] However, Yekatom submits that the reason he did not tender it at trial was not due to a lack of due diligence, but rather because the specific relevance of the Form only became apparent following the Chamber's issuance of the Judgment.[2593] This is unconvincing as the version which the Chamber ultimately adopted—only now contested—was on the record.

734. Yekatom was thus alert to the alleged inconsistency in the witness's testimony as to the timeline of his journey to Mbaïki. At trial, he submitted that the witness travelled between 13 and 31 December 2013,[2594] which contradicted the witness's answer that he left Bangui after Djotodia's resignation.[2595] If Yekatom considered that the Form provided either greater

[2584] *Ntaganda* Additional Evidence Decision, para. 15; *Bemba et al.* AJ, para. 509; *Lubanga* AJ, paras. 55-57, 59.
[2585] *Lubanga* AJ, para. 59.
[2586] *Ntaganda* Additional Evidence Decision, para. 15; *Bemba* Second SAJ, paras. 21, 25; *Bemba et al.* AJ, para. 509; *Lubanga* AJ, para. 54.
[2587] *Bemba* Second SAJ, para. 22; *Bemba et al.* AJ, para. 509.
[2588] *Ntaganda* Additional Evidence Decision, para. 15; *Bemba* Second SAJ, paras. 21, 25; *Bemba et al.* AJ, para. 509; *Lubanga* AJ, para. 54.
[2589] *Ntaganda* Additional Evidence Decision, para. 15; *Bemba* Second SAJ, paras. 21, 25; *Bemba et al.* AJ, para. 509; *Lubanga* AJ, para. 54.
[2590] *Ntaganda* Additional Evidence Decision, para. 15; *Lubanga* AJ, paras. 54, 62.
[2591] Yekatom Additional Evidence Request, para. 25.
[2592] Form at 000002.
[2593] Yekatom Additional Evidence Request, paras. 26-28.
[2594] Yekatom Closing Brief, para. 489.
[2595] T-183-ENG, p. 11:15-22; T-183-FRA, p. 11:19-28; Judgment, para. 3402.

precision than the evidence already on the record to confirm his interpretation of P-1823's timeline of events,[2596] or was otherwise material and/or compelling, then he should have sought its admission at trial, which closed over a year later in 2024.[2597] While he has the right to challenge any allegedly erroneous findings against him by the Chamber on appeal, having elected not to present certain evidence at trial, he must bear the consequences of that strategy.[2598] Moreover, his failure to seek the introduction of the Form, given its asserted relevance to the interpretation of the witness's timeline, belies its claimed significance.

735. Failing to meet the first criteria, Yekatom's request can be rejected on this basis alone.

XIII.2.b. The Form is of minimal relevance to Yekatom's appeal

736. Yekatom fails to establish that the Form has sufficient relevance to his appeal and probative value, and ignores the prejudice that would be caused by its admission.[2599]

737. *First*, he overstates the Form's relevance to his appeal. He claims that it is relevant to *nine* sub-grounds in his Notice of Appeal.[2600] Ultimately, however, he only addresses the issue: (i) in *one* sub-Ground of his appeal brief (Ground 3.2(d)) on the Chamber's alleged error in failing to consider the security/operational context on the PK9-Mbaïki axis, where he challenges the witness's timeline in a mere two sentences;[2601] and (ii) lists the Chamber's finding on the witness's timeline as one example out of fifty-four in Annex 5 of his brief to support his broad claim in Ground 4.1 of his appeal that the Chamber "systematically misstated the evidence",[2602] without further elaborating on this in his brief. The issue cannot in these circumstances be said to be of significance to the appeal, let alone to the Chamber's verdict (as discussed below).

738. *Second*, as noted, the Form has minimal probative value.[2603] The Form does not amount to, and does not contain testimony or a statement of evidence. Nor was it provided by the witness to assist in the determination of the substantive issues and charges in the case.[2604] Unlike

---

[2596] Yekatom Additional Evidence Request, paras. 13-14, 17-18; Form at 000005.
[2597] Closure of Evidence, p. 4.
[2598] *Lubanga* AJ, para. 75.
[2599] *Ntaganda* Additional Evidence Decision, para. 15; *Bemba* Second SAJ, paras. 21, 25; *Bemba et al.* AJ, para. 509; *Lubanga* AJ, para. 54.
[2600] Yekatom Additional Evidence Request, paras. 3, 19-20 (citing Yekatom NoA, sub-Ground A.3, A.5, D.4, D.5, D.7, D.8, G.4, G.11, G.12).
[2601] Yekatom Appeal, para. 312.
[2602] Yekatom Appeal, para. 369 (fn. 1317); Annex 5, pp. 13-14, row 17.
[2603] *Contra* Yekatom Additional Evidence Request, paras. 19-21; *Bemba* First Evidence Admission Decision, para. 100.
[2604] *Bemba* First Evidence Admission Decision, para. 101.

evidence collected to support or challenge the substantive criminal charges in the case, victim application forms are administrative in nature and serve the limited purpose of providing the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to rule 89. As such, no formal requirements govern their creation.[2605] For these reasons, discrepancies between a witness's testimony and their victim application form have also been found to be of low probative value.[2606]

739. *Third*, the admission of the Form would unduly prejudice P-1823. The witness provided the information in the Form in a relationship of confidence with the Registry, and was not put on notice when submitting it that the information he provided may be used as evidence.[2607] The admission of the Form would therefore amount to the unfair use of documentation that was provided to the Court for a discrete purpose.[2608] By contrast, Yekatom suffers no potential prejudice if the Form is not admitted. His counsel's questioning of the witness on the potential inconsistencies in his timeline is already reflected in the transcripts, as shown above.[2609]

740. The second criteria for the admission of the Form is therefore not met and Yekatom's request may be rejected on this ground.

XIII.2.c. The Form could not (and would not) have resulted in a different verdict

741. It must be shown that the additional evidence, had it been presented at trial, could have led the Chamber to enter a different verdict, in whole or in part.[2610] To meet this criteria, the evidence must be shown to be of such importance that, considered in the context of the entirety of the evidence at trial, it could demonstrate that the conviction was unsafe,[2611] and this possibility must be a realistic one.[2612] For the purposes of this assessment, the proposed evidence should not be assessed in isolation, but in the context of the evidence presented at

[2605] *Bemba* First Evidence Admission Decision, para. 100.
[2606] *Ntaganda* TJ, para. 85.
[2607] *Bemba* First Evidence Admission Decision, para. 101.
[2608] *Bemba* First Evidence Admission Decision, para. 102.
[2609] T-183-ENG, pp. 55:20-57:22; T-183-FRA, pp. 58:9-60:4. *See* *Bemba* First Evidence Admission Decision, para. 102.
[2610] *Bemba et al.* AJ, paras. 509, 514; *Ntaganda* Additional Evidence Decision, paras. 19-20; *Lubanga* AJ, paras. 58-59, 95, 104-105, 113; *Bemba* Second SAJ, para. 21.
[2611] *Nahimana et al.* Second Additional Evidence Decision, para. 8; *Sesay et al.* Additional Evidence Decision, para. 9; *Popović et al.* Additional Evidence Decision, para. 9. *See also* *Šainović et al.* Additional Evidence Decision, para. 9; *Simić* Additional Evidence Decision, para. 12.
[2612] *Simić* AJ, para. 226. *See also* *Popović et al.* Additional Evidence Decision, para. 9; *Nahimana et al.* First Additional Evidence Decision, para. 6; *Case 002/01* AJ, paras. 27-30; *Kupreškić et al.* Additional Evidence Decision, para. 6.

trial.[2613] Relevant in this context is whether similar evidence had already been considered by the Chamber.[2614]

742. Moreover, the *ad hoc* tribunals have confirmed that the standard for this criteria is even higher if the evidence was *available* at trial, in which case the applicant must show that the exclusion of the evidence would lead to a miscarriage of justice, in that if it had been available at trial it *would* have affected the verdict.[2615] This higher standard should apply in this instance, given that, as Yekatom concedes, the Form was available at trial.[2616] Regardless of which standard applies (*could* or *would*), Yekatom fails to establish both. To the contrary, he *concedes* that the additional evidence, had it been presented at trial, could not have led the Chamber to enter a different verdict, in whole or in part.[2617] This is correct, and the third criteria is not established.

743. *First*, the Chamber already considered similar evidence elicited from the witness at trial, and did not rely on it. On the Form, P-1823 wrote, "*J'ai donc decidé de rentrer à Mbaïki passer les fêtes de fin d'année 2013 en famille*" (emphasis added).[2618] This, as Yekatom concedes,[2619] *mirrors* the answer that he gave in Court after hearing Yekatom's counsel's question via French interpretation as follows:

> Q. *Si vous dites avoir quitté Bangui quelques jours après cet incident, est-il exact de dire que, par exemple, vous avez passé le nouvel an vous étiez à Bangui pour les fêtes du Nouvel An, est-ce que je…j'ai bien compris?*
>
> A. *Le nouvel an? Qui pouvait même passer le nouvel an avec cette situation? C'est pas ce qui est sorti de moi. Le nouvel an, je pouvais pas resister à Bangui, parce qua là, il fallait partir rejoinder ma petit famille. Même s'il s'agissait de mourir, je mourai ensemble avec ma petit famille.*[2620] (Emphasis added.)

[2613] *Šainović et al.* Additional Evidence Decision, para. 12; *Popović et al.* Additional Evidence Decision, para. 39; *Simić* Additional Evidence Decision, para. 14.
[2614] *See e.g. Ntaganda* Additional Evidence Decision, paras. 19-20.
[2615] *Popović et al.* Additional Evidence Decision, para. 39; *Simić* Additional Evidence Decision, para. 13; *Krstic* Additional Evidence Decision, p. 4; *Nikolić* Additional Evidence Decision, para. 24; *Naletilić & Martinović* Additional Evidence Decision, para. 13. The ICC Appeals Chamber has held that the jurisprudence of the *ad hoc* tribunals provides relevant guidance on the criteria for the admission of additional evidence on appeal: *Lubanga* AJ, para. 63.
[2616] *See above* para. 733.
[2617] *Bemba et al.* AJ, para. 509 (citing *Lubanga* AJ, para. 58-59); *Bemba* Second SAJ, para. 21; *Kupreškić* AJ, paras. 68-69.
[2618] Form: CAR-OTP-00001790 at 000005.
[2619] Yekatom Additional Evidence Request, paras. 17-18.
[2620] T-183-FRA, pp. 59:26-60:4; T-183-ENG, p. 57:16-22.

744. The Form therefore provides no additional information that was not already available at trial. Moreover, Yekatom made submissions on this evidence at trial,[2621] and the Chamber considered his submissions, and the witness's evidence (both in English and French).[2622]

745. *Second*, the Chamber's finding on the witness's timeline did not depend upon its interpretation of his answer to the question about New Year's Eve/Day alone. In addressing the apparent inconsistencies in the witness's timeline, the Chamber also took into account: that the witness stayed in Bangui for almost a month as it was not safe to travel; the witness's "clear and concise" answer that he left Bangui for Mbaïki following Djotodia's resignation; that he was hesitant when asked repeatedly by the Defence whether he left Bangui a matter of days after the Petevo incident;[2623] that when asked by the Defence whether the date of 13 December 2013 for the Petevo incident refreshed his memory, the witness stated it was difficult to sum up those memories given everything that they had gone through since 2013; and that the witness seemed to refer to "not wanting to stay in Bangui in 'the new year' rather than not spending 'New Year's in Bangui'".[2624] In light of these factors, the Chamber (reasonably) gave more weight to the witness's affirmation that he left Bangui after Djotodia's resignation[2625]—an event which evidently provided a clearer temporal reference for the witness than the New Year period which he expressly downplayed, stating that, "*Le nouvel an? Qui pouvait même passer le nouvel an avec cette situation?*"[2626] Thus, even if the Form had been considered by the Chamber, it was not new information that would have altered the Chamber's assessment of the multiple factors that led it to find that his journey to Mbaïki occurred after Djotodia's resignation.

746. *Third*, Yekatom mischaracterises the Chamber's reasoning in alleging that it misstated the witness's evidence.[2627] The Chamber found that "when asked whether he spent New Year's in Mbaïki, P-1823 seemed to make reference to *not wanting to stay* in Bangui in 'the new year' rather than *not spending* New Year's in Bangui".[2628] While Yekatom emphasises the Chamber's distinction between "the new year" and "New Year's", he ignores the Chamber's distinction between the witness's evidence of *not wanting to remain* in Bangui or of *deciding to leave*,[2629]

[2621] Yekatom Closing Brief, para. 489 (fn. 1701). *See also* Yekatom Additional Evidence Request, paras. 12-13.
[2622] Judgment, paras. 3401 (fn. 8334), 3402 (fn. 8339), 3403 (fn. 8342).
[2623] *See* T-183-ENG, pp. 55:23-56:12.
[2624] Judgment, paras. 3402-3403.
[2625] Judgment, para. 3403.
[2626] T-183-FRA, pp. 11:20-28, 60:1-2; T-183-ENG, pp. 11:15-22, 57:20.
[2627] Yekatom Additional Evidence Request, paras. 15-19, 27.
[2628] Judgment, para. 3403 (emphasis added).
[2629] CAR-OTP-2063-0369 at 0374, para. 26 (describing his decision to leave Bangui after the Petevo incident); T-183-ENG, p. 57:20-22 (describing how he "couldn't stay in Bangui" and "had to leave"); T-183-FRA, p. 60:1-3 ("*je pouvais pas résister à Bangui*," and, "*il fallait partir rejoinder ma petite famille*").

and Yekatom's interpretation that the witness *actually left* Bangui.[2630] The Form, which also describes the witness's *decision* to return, rather than his actual return to Mbaïki,[2631] adds no new information that would have altered the Chamber's characterisation of the witness's evidence.

747. *Fourth*, as Yekatom acknowledges, his convictions rested on extensive factual and legal findings, such that the Form is not capable of impacting his verdict.[2632] In particular, the Chamber relied on the evidence of multiple witnesses in addition to P-1823 to find that Yekatom and his group used the checkpoints along the PK9-Mbaïki axis to search for and identify Muslims and to raise money to finance the group.[2633] This included evidence that Yekatom instructed his elements to kill Muslims along the Mbaïki road[2634] and extorted money at the checkpoints,[2635] that he was present at and instructed others to collect money from the roadblocks,[2636] and that others in his group chased away the Muslims from PK9 to Mbaïki.[2637] Thus, even if the Chamber had found that it could not rely on P-1823's experience of passing through the PK9 checkpoint, this could not (and would not) have disturbed its finding regarding the use of the checkpoints by Yekatom and his elements to search for Muslims and raise money. Moreover, this finding was but one factor in the Chamber's comprehensive assessment of Yekatom's conduct in relation to the crimes committed along the PK9-Mbaïki axis.[2638]

748. The Form therefore could not and would not have impacted the verdict, and the third criteria is not established.

XIII.3. There are no compelling reasons to admit the Form

749. Absent meeting the above criteria, Yekatom fails to show that compelling reasons exist to nevertheless admit the Form, such as that it would cause a miscarriage of justice.[2639] As shown above, not only was the Form available at trial, but it provides no additional evidence that was not already elicited from the witness in his testimony and considered by the Chamber.

[2630] Yekatom Closing Brief, para. 489.
[2631] Form at 000005.
[2632] Yekatom Additional Evidence Request, paras. 31-32.
[2633] Judgment, paras. 3397, 3406-3416 (citing P-1839, P-2419, Guerrino Perin, Gérard Ouambou, P-0954, P-1962, P-1839, Stéphane Chrisostome Dawili, Roger Okoa-Penguia, Raymond Mongbandi).
[2634] Judgment, para. 3397 (citing P-1839).
[2635] Judgment, para. 3414 (citing P-0954).
[2636] Judgment, para. 3412 (citing P-1839).
[2637] Judgment, para. 3410.
[2638] Judgment, paras. 113-119.
[2639] *Lubanga* AJ, para. 62; *Popović* Additional Evidence Decision, para. 10. The Appeals Chamber has however underscored that it would only admit evidence available or discoverable with the exercise of due diligence in wholly exceptional situations: *Kupreškić* Additional Evidence First Decision, para. 18.

It could not and would not have impacted the verdict, which was based on an extensive framework of factual and legal findings based on the corroborated evidence of multiple witnesses. Moreover, it concerns an issue which is evidently of minimal relevance to Yekatom's appeal, meriting only two sentences of discussion in his 200-page appeal brief. The Form, which does not amount to testimony or a statement of evidence and which was provided by the witness for an administrative purpose is also of very low probative value and its admission would be prejudicial to the witness. In the circumstances, no compelling reasons exist for the Appeals Chamber to exercise its discretion in admitting the Form.

750. Yekatom's request should be rejected for these reasons.

CONCLUSION

751. For all these reasons, the Appeals Chamber should reject Ngaïssona's Appeal against his convictions and sentence, Yekatom's Appeal against his convictions and sentence, and Yekatom's Additional Evidence Request.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 8th day of May 2026

At The Hague, the Netherlands