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**International
Criminal
Court**

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Date: **22 May 2026**

THE APPEALS CHAMBER

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

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

**Public
With Confidential Annex A**

**Public Redacted Version of the “Yekatom Defence Response to the
‘Consolidated Victims’ Response to the Prosecution and Defence Appeals of
the Judgment and Sentence against Mr. Alfred Yekatom and Patrice-
Edouard Ngaïssona’, ICC-01/14-01/18-2884-Conf, 27 February 2026”, ICC-
01/14-01/18-2910-Conf, 20 April 2026**

Source: Defence for Mr. Alfred Rombhot Yekatom

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I. INTRODUCTION

1. Pursuant to the Appeals Chamber's directions,¹ the Defence for Mr. Alfred Rombhot Yekatom ('Defence') hereby submits its response to the 'Consolidated Victims' Response to the Prosecution and Defence Appeals of the Judgment and Sentence against Mr. Alfred Yekatom and Patrice-Edouard Ngaïssona'.²
2. This response is selective and is not intended to address each submission advanced in the CLRV Response. Rather, it addresses specific issues where the CLRV Response requires correction because it risks misdirecting the appellate inquiry. Throughout the CLRV Response, rather than answering the appeal as pleaded, the CLRV repeatedly recite the Trial Chamber's conclusions, characterise the Defence's complaints as mere factual disagreements, and fail to engage with the cumulative evidentiary and reasoning errors identified in the Appeal.³ This pattern is particularly apparent in relation to the treatment of P-1339's evidence and the assessment of events at Yamwara.
3. The Defence further addresses targeted issues concerning the scope of the confirmed charges, the attribution to Mr. Yekatom of alleged Anti-Balaka characteristics and conduct, the article 25(3)(a) liability framework, and the Chamber's treatment of the relevant IHL and security context. These submissions are made to preserve the proper framing of the Appeal and to prevent the CLRV Response from substituting a defence of the Judgment's findings for an answer to the errors pleaded.⁴ Silence on any particular issue should not be understood as agreement, concession or abandonment noting that Mr. Yekatom maintains his Appeal in full.
4. In this regard, the Defence does not address the CLRV's observations concerning the alleged leniency of sentence,⁵ save to note that those observations cannot alter the scope of the appeal properly before the Appeals Chamber. The Defence does not dispute that victims' views and concerns may be considered within the applicable statutory framework. The issue for present purposes, however, is whether the conviction and sentence are materially affected by the errors of law, fact or procedure pleaded on appeal. Those errors must be assessed by reference to the applicable appellate standards.⁶ Victims' views as to the gravity of the harm suffered cannot substitute for that legal analysis, nor can they provide a basis

¹ ICC-01/14-01/18-2859; ICC-01/14-01/18-2894.

² ICC-01/14-01/18-2884-Conf ('CLR V Response' or 'Response').

³ ICC-01/14-01/18-2848-Conf-Corr ('Appeal Brief' or 'Appeal').

⁴ ICC-01/14-01/18-2784-Conf ('Judgment').

⁵ CLR V Response, paras. 5-7.

⁶ Articles 81 and 83(2); see also Appeal Brief, para. 2.

for preserving convictions or sentencing determinations that are materially affected by error.

II. SUBMISSIONS

A. PART A: The CLRV repeatedly fail to answer the pleaded errors

5. At the outset, the Defence identifies a broader difficulty in the CLRV's approach to the Appeal. Across several grounds, the Response adopts identifiable patterns of non-engagement which do not cure, or even address, the errors pleaded. By proceeding at a level of generality which obscures the Defence's actual complaints, and at times misidentifying the nature or scope of those complaints, the Response substitutes reliance on the Chamber's conclusions for engagement with the legal, evidentiary and reasoning defects by which those conclusions were reached. The result is a circular approach whereby the findings under challenge are treated as if they were themselves an answer to the challenge.

1. A.1 – The CLRV substitute recital of the Chamber's findings for engagement with the pleaded errors

6. Throughout the Response, the CLRV repeatedly recite the very findings of the Chamber which the Defence challenges on appeal. In doing so, the CLRV do not engage with the Defence's submissions as to why those findings are erroneous. This is not a case where the Defence has overlooked or misrepresented clear findings, rather, the issue is that the CLRV do not grapple with the specific errors identified. As a result, significant portions of the Response fail to answer the Appeal as pleaded. This is particularly problematic where the errors concern the Chamber's failure to adopt a holistic approach or to provide sufficient reasoning, since those defects cannot be cured by mere repetition of the impugned findings.⁷
7. This pattern is illustrated by the CLRV's response to Ground 2.1, which concerned the Chamber's erroneous attribution of the collective characteristics and objectives of the broader 'Anti-Balaka movement' to Mr. Yekatom's alleged group, notwithstanding the manner in which the case was charged. The CLRV rehearse the Chamber's findings on the purported 'coordination and planning of the Bangui Attack',⁸ together with findings on Mr. Yekatom's alleged involvement on 5 December 2013 and along the PK9–Mbaïki Axis.⁹ The Response does not however engage with the core of the Defence's argument concerning the fact that the Prosecution's case was framed through specific article 25(3) constructs, and

⁷ Appeal Brief, paras. 361, 365 and authorities cited therein.

⁸ CLRV Response, paras. 195-196.

⁹ CLRV Response, paras. 197-199.

that the confirmed charges limited the available routes for attributing conduct to Mr. Yekatom. In particular, no article 25(3)(d) ‘common purpose’ mode was confirmed in respect of Mr. Yekatom, and no regulation 55 re-characterisation was pursued.¹⁰ In those circumstances, the Chamber could not, without a sufficient legal and evidentiary link to the confirmed modes of liability, rely on movement-level findings concerning the ‘Anti-Balaka’ to establish, *inter alia*, the identity of ‘anti-balaka’ perpetrators, attribution of criminal conduct to the RFACPP, control over an Anti-Balaka group or elements, or Mr. Yekatom’s *mens rea*.¹¹ Nor do the CLRV address the specific examples identified on appeal, whereby the Trial Chamber superimposed Mr. Yekatom’s movements onto those of other groups and then used that superimposition to establish his purported membership to the Anti-Balaka and, in turn, to impute liability across multiple elements of the crimes.¹²

8. A similar approach is adopted in response to Ground 2.2, which raises a distinct error concerning the Chamber’s finding that Mr. Yekatom was ‘Anti-Balaka’. The CLRV again confine themselves to rehearsing the Chamber’s findings as to Mr. Yekatom’s alleged presentation as an Anti-Balaka leader,¹³ without engaging with the Defence’s argument that the evidential basis for those findings was itself flawed.¹⁴ The same recycling of findings appears in the CLRV’s treatment of the Chamber’s conclusions on the RFACPP’s alleged coordination with the Anti-Balaka,¹⁵ and Mr. Yekatom’s purported membership in the National Coordination.¹⁶ Reciting the very findings under challenge does not render them correct, absent engagement with the Defence’s specific arguments.
9. The same approach is evident in the CLRV’s response to Grounds 2.4,¹⁷ 2.5,¹⁸ 2.6,¹⁹ and 2.7.²⁰ In particular, in relation to Ground 2.7, which concerns the Chamber’s findings on Mr. Yekatom’s alleged *mens rea*, the CLRV again rely on the Chamber’s findings without engaging with the specific errors identified on appeal. Those errors include, *inter alia*, the absence of any evidential basis for the finding that instructions were given to target sectors where Muslims were to be found;²¹ the reliance on the alleged reconnaissance mission of 4

¹⁰ Appeal Brief, paras. 26-34.

¹¹ Appeal Brief, paras. 35-49.

¹² Appeal Brief, para. 38; see further Part D.2 below.

¹³ CLRV Response, paras. 201-204.

¹⁴ Appeal Brief, paras. 57-58.

¹⁵ CLRV Response, para. 205; *cf.* Appeal Brief, paras. 59-72.

¹⁶ CLRV Response, paras. 208-209; *cf.* Appeal Brief, paras. 73-78.

¹⁷ CLRV Response, paras. 248-256 in relation to the purported control of Mr. Yekatom over the RFACPP.

¹⁸ CLRV Response, paras. 257-262 in relation to the alleged common plan between Mr. Yekatom, Alkanto and Cœur de Lion.

¹⁹ CLRV Response, paras. 263-279 in relation to the appeal on Mr. Yekatom’s essential contribution to the crimes.

²⁰ CLRV Response, paras. 280-289 in relation to Mr. Yekatom’s *mens rea*.

²¹ Appeal Brief, paras. 127-128, 242-243.

December 2013 to establish knowledge of the presence of unarmed civilians;²² the failure to address whether any proven conduct was directed at coercing civilians to depart;²³ the attribution of the alleged intent of purported subordinates to Mr. Yekatom;²⁴ and the circular and insufficient reasoning underpinning the findings on Counts 24–28, including the asserted existence of ‘specific instructions’, the characterisation of displacement as a foregone conclusion, and the absence of a reasoned basis for concluding that Mr. Yekatom knew of alleged acts of violence by RFACPP members.²⁵ None of these arguments is addressed in substance by the CLRV.

10. The Response’s treatment of P-1339’s evidence concerning the 5th December Operation illustrates the same defect. The CLRV present P-1339’s account as straightforward evidence of an instruction to kill Muslim civilians. However, such a position belies the evidentiary record and depends on isolating the most incriminating formulations from the manner in which they were obtained and from the witness’s own qualifying evidence.²⁶ On the training point, P-1339’s first explanation was not that the fighters were trained to kill Muslim civilians – instead he had stated that the elements were trained to defend themselves against the enemy and, when asked by the Presiding Judge who the enemy was, answered that the enemy was the Seleka.²⁷ When the Prosecution subsequently asked whether Mr. Yekatom had explained the purpose of the training, P-1339 said that he had not. He referred instead to the personal motives and spirit of revenge of those who joined the group, rather than to an instruction by Mr. Yekatom identifying Muslim civilians as targets.²⁸ The CLRV’s reliance on the later formulation that the fighters were instructed to kill all Muslims because they were Seleka therefore does not answer the Defence complaint. That formulation was not P-1339’s initial account; it followed repeated questioning and the use of his prior statement, notwithstanding the earlier answers which framed the training by reference to Seleka or armed enemies.²⁹
11. The CLRV’s selective approach equally emerges in relation to the evidence concerning the alleged speech of Mr. Yekatom on 4 December 2013.³⁰ The CLRV again treat that evidence

²² Appeal Brief, para. 244.

²³ Appeal Brief, paras. 246, 333-339, see also paras. 429-432.

²⁴ Appeal Brief, paras. 247-249 (5th December Operation); paras. 256-258 (Yamwara incident).

²⁵ Appeal Brief, paras. 275-280.

²⁶ CLRV Response, para. 235.

²⁷ P-1339: T-152, 4:18-5:3; T-152 (ENG), 4:13-5:1.

²⁸ P-1339: T-152, 15:14-16:7; T-152 (ENG), 14:23-15-17.

²⁹ Appeal Brief, paras. 124-132; P-1339: T-152, 4:18-5:3; 10:28-11-8; 18:12-20; P-1339: T-152 (ENG), 4:14-5:1; 10:12-19; 18:10-17; See also T-308 (ENG), 11:13-14:1.

³⁰ CLRV Response, para. 236.

as though P-1339 gave an unqualified account of purported instructions by Mr. Yekatom to target Muslim civilians. However, P-1339's evidence was more limited; stating that he was absent when part of the instructions was given, and that he did not hear the later instructions at Proget.³¹ Nor did P-1339's subsequent explanation cure that gap. When asked to clarify the order, he described a combat situation involving an armed enemy and relatives who might be harmed, before stating the order in the terms: 'If you encounter Seleka, kill them'.³² Even the passage concerning women and children was recalled only after the prior statement had been read to him and was explained by reference to those who were shooting, not by reference to an instruction to kill Muslim civilians.³³ This evidence was, at the very least, equivocal. It does not bear the clear meaning for which the CLRV rely upon it.

12. Nor do the CLRV's references to P-2232 and the video evidence clarify the matter. P-2232's evidence is no substitute for a reliable account of the alleged instructions: he was not offering direct evidence of what Mr. Yekatom said before the 5th December Operation, and the Response itself mischaracterises his evidence as a belief that Mr. Yekatom crossed from Zongo and began attacking Muslims in small villages before arriving in Bangui,³⁴ even though this is not borne out of the evidence and does not appear in the Judgment. The video evidence is further removed: it does not show Mr. Yekatom giving the alleged instructions and does not resolve the manner in which P-1339's evidence was elicited.³⁵ It therefore cannot convert P-1339's qualified and procedurally tainted account into clear evidence of an instruction by Mr. Yekatom to target Muslim civilians.

13. Nor does the CLRV's reference to the 'attack on Boeing market' address the errors raised on appeal.³⁶ The CLRV state that P-1339 gave evidence of an instruction to attack both Muslims and Seleka and that the market was attacked because Muslims were present.³⁷ The passage relied upon is materially more qualified. P-1339 explained that the initial objective was to [REDACTED].³⁸ That is a tactical explanation tied to a perceived armed threat. It is not a direct and reliable account of an order to attack Muslim civilians. The CLRV's further reliance on the fact that Muslim traders were killed at the market does not answer that point: the occurrence of killings is not proof of the alleged instruction, still less a response to the

³¹ P-1339: T-154, 40:19-43:2; T-154 (ENG), 36:13-39:12 T-159, 40:1-11; T-159 (ENG), 38:11-22.

³² P-1339: T-160, 8:1-4 ; T-160 (ENG), 8:1-4.

³³ P-1339: T-160, 7:21-9:6 ; T-160 (ENG), 7:21-9:3.

³⁴ CLRV Response, para. 237, fn. 575 citing Judgment, para. 2428.

³⁵ CLRV Response, para. 237 ; See T-308 (ENG), 10:11-14:1.

³⁶ CLRV Response, para. 238.

³⁷ *Ibid.*

³⁸ P-1339: T-154, 63:11-26; T-154 (ENG), 59:15-60-1; T-155, 9:2-13, 10:3-9 ; T-155 (ENG), 8:11-20, 10:10-15.

Defence's challenge to the evidential route by which that instruction was said to have been established.³⁹

14. The same pattern arises in relation to Ground 3 of the Appeal. The CLRV mischaracterise the Defence's submissions concerning the Chamber's treatment of the IHL and security context and appear to conflate them with the separate question as to whether a NIAC existed for the purpose of satisfying the contextual elements of war crimes.⁴⁰ That is not the pleaded error. The Defence's submission is that the Chamber failed to situate Mr. Yekatom's conduct within the realities of the ongoing NIAC in the CAR, and to analyse the relevant operations within that specific framework. Instead, the Chamber assessed the conduct as isolated acts, or characterised it from the outset as unlawful, without adequately considering the security and operational context in which it occurred.⁴¹
15. Nor is that error answered by the CLRV's assertion that the Judgment 'needs to be read as a whole'.⁴² The Defence's complaint is precisely that, *even read as a whole*, the Judgment failed to consider the security and operational context faced by the RFACPP at the Yamwara base, along the PK9-Mbaïki axis, and in relation to the 5th December Operation. General findings on the existence of an armed conflict do not answer the distinct question whether the Chamber properly assessed Mr. Yekatom's alleged conduct, intent and liability within that operational context.
16. Similar defects are also found in the CLRV's response to Ground 6 which relates to the determination of the sentence. Rather than engaging with the arguments advanced on Appeal⁴³ the CLRV largely restate the Chamber's findings on mitigating factors.⁴⁴ Repetition of the impugned findings does not answer the Defence's submissions, nor does it assist the Appeals Chamber in determining whether the Chamber's sentencing assessment was materially affected by error.

2. A.2 – The CLRV proceed on the false premise that no relevant challenge was advanced

17. The second recurring defect is that the CLRV repeatedly proceed on the premise that the Defence has not challenged the relevant findings, or the reliability of the evidence said to underpin them, when the Appeal does so expressly. This mischaracterisation is not

³⁹ CLRV Response, para. 238, fn. 580; Judgment, para. 2586; see Appeal Brief, paras. 129-131.

⁴⁰ CLRV Response, paras. 291-292, including fns. 683-684, citing Judgment, paras. 3898-3904, 3906.

⁴¹ Appeal Brief, paras. 283-285.

⁴² CLRV Response, para. 292.

⁴³ Appeal Brief, paras. 447-451.

⁴⁴ CLRV Response, para. 347.

incidental and allows the CLRV to avoid engaging with the pleaded arguments altogether.

18. For example, in response to Grounds 2.1 and 2.2, the CLRV assert that the Trial Chamber's findings in relation to the crimes committed in Bangui and those along the PK9-Mbaïki Axis are based on a substantial body of evidence establishing Mr. Yekatom's personal intent and individual acts, and that the Defence does not challenge the reliability of that evidence or the correctness of those factual findings.⁴⁵ That premise is plainly incorrect. As set out in the Appeal, the Defence directly challenges both the evidential basis and the resulting factual findings referred to by the CLRV,⁴⁶ including, *inter alia* the alleged instructions attributed to Mr. Yekatom, including the purported instruction to 'kill all Muslims' and to target sectors where Muslims were present; the alleged orders to destroy Muslim homes and related findings on coercive conduct; the Trial Chamber's treatment of the instructions evidence, including the failure to distinguish between armed and unarmed persons and the mischaracterisation of witness testimony (notably P-1339 and P-1839); the inference that any such instructions were understood or implemented in the manner found by the Chamber; and the attribution of conduct to the RFACPP on the basis of the nebulous 'anti-balaka' label and the failure to exclude alternative perpetrators.⁴⁷ These challenges go directly to the reliability of the evidence and the correctness of the findings said to be based upon it.
19. The same false premise recurs in the CLRV Response to Ground 2.3 whereby it asserts that the Defence failed to challenge the evidential basis for the Chamber's finding that Mr. Yekatom perceived Muslim civilians as collectively responsible for Seleka exactions.⁴⁸ Again, that is incorrect. The Appeal expressly challenges the Chamber's reliance on movement-level 'anti-balaka' perceptions to establish Mr. Yekatom's individual *mens rea*; the absence of any reasoned finding as to when such knowledge or perception was acquired; the misreading and selective use of key witness evidence, including P-1839's clarification that instructions distinguished between armed and unarmed persons; the failure to engage with exculpatory material, including evidence that Mr. Yekatom's stated objective was to fight the Seleka rather than target Muslim civilians; and the inferential leap from contested and incident-specific evidence to a generalised finding of discriminatory intent.⁴⁹ These are direct challenges to the evidential foundation and reasoning underpinning the Chamber's

⁴⁵ CLRV Response, paras. 198, 200, 217.

⁴⁶ Compare CLRV Response, paras. 197, 199, 216-217, with Appeal Brief, paras. 35-49, 97-128, 241-249.

⁴⁷ Appeal Brief, paras. 35-49, 97-128, 241-249, 303-339.

⁴⁸ CLRV Response, paras. 223-225.

⁴⁹ Appeal Brief, paras. 97-128.

findings. The CLRV's suggestion that no such challenge was advanced is therefore unsustainable.

20. Further, as addressed in Part D.2, the CLRV proceed on the same footing in relation to the findings concerning Mr. Yekatom's alleged control over the apparatus.⁵⁰ Grounds 2.4 and 2.6 challenge the Chamber's findings on Mr. Yekatom's purported control over the group, the supposed apparatus of power, automatic compliance, and the absence of reasoned findings capable of showing that Mr. Yekatom had the requisite power to frustrate the crimes.⁵¹ These are core errors raised in the Appeal and cannot be treated as omissions.

3. A.3 – The CLRV recast pleaded legal and reasoning errors as mere factual disagreement

21. The third recurring defect is that the CLRV repeatedly recast pleaded legal and reasoning errors as though the Defence were merely inviting appellate reweighing of the evidence.
22. For example, in response to Ground 3.2 of the Appeal, the CLRV seek to dismiss the Defence's submissions by invoking the Trial Chamber's discretion to weigh or discard parts of testimony, and by recasting the Defence arguments so that they appear answerable by reference to that discretion.⁵² This again fails to engage with the Appeal wherein the Defence's submissions were not directed at the Chamber's general evaluation of evidence, but at specific errors in reasoning and application of the applicable standards. In particular, Ground 3.2 challenges the Chamber's failure to apply those standards to discrete issues, including the adoption of an arbitrary or unsupported chronology of events, the treatment of identification and dating evidence, the assessment of cooperation and speech evidence, and the finding that the RFACPP 'continued' to harass.⁵³ These are reasoning errors, not mere disagreements with factual assessment.
23. The same is true of the Defence's submissions concerning the Chamber's dismissal of Mr. Yekatom's cooperative actions.⁵⁴ That evidence was not relied upon as a general character point, nor merely as an invitation to reweigh the evidence. It was relevant to the proper characterisation of Mr. Yekatom's conduct, the assessment of his intent, and the reasonableness of the adverse inferences drawn by the Chamber. The CLRV do not address that significance and seek to defend the Chamber's conclusions without engaging with the

⁵⁰ CLRV Response, para. 249.

⁵¹ Appeal Brief, paras. 150-208, 223-230.

⁵² CLRV Response, paras. 296-302.

⁵³ Appeal Brief, paras. 303, 312, 315, 320, 325.

⁵⁴ Appeal Brief, paras. 315-332.

Defence's complaint that the Chamber failed to give reasoned consideration to evidence which was inconsistent with those conclusions.⁵⁵

24. Similarly, the CLRV repeatedly rely on the number of pages, density of citations and abstract principles of evidentiary assessment as substitutes for engagement. In several instances, the Response proceeds on the basis that an issue was adequately addressed because the Chamber devoted a number of pages to it, 'noted' a Defence argument, or referred to a body of evidence.⁵⁶ Elsewhere, the Response lists witnesses or citations without explaining how that material answers the Defence's specific complaints.⁵⁷ Further, extensive challenges are met by general propositions regarding evidentiary assessment, with little or no application to the issues actually raised.⁵⁸ That is not a reasoned response to a pleaded error. The length of 'analysis', or the number of citations, does not in and of itself demonstrate that the Chamber engaged with the material point.
25. The same approach is evident in the CLRV's treatment of the bias and causation grounds.⁵⁹ In relation to bias, the Response reduces the Defence's submissions to a failure to rebut the presumption of impartiality, without meaningfully engaging with the cumulative nature of the complaint.⁶⁰ The issue raised on appeal is whether the pattern of errors, taken together, gives rise to a reasonable apprehension that the Chamber did not approach the Defence case with an open mind. That question is not answered by general reference to the applicable presumption. Similarly, in relation to causation,⁶¹ the CLRV rely on assertions of 'thorough analysis' without addressing the narrower complaint that the Chamber failed to establish the necessary temporal and geographical link between Mr. Yekatom's conduct and the departures attributed to him.⁶² In each case, the Response operates at a level of abstraction which leaves the pleaded error unaddressed.
26. The common thread is therefore not simply one of emphasis or brevity. It is that the CLRV repeatedly substitute the Chamber's findings, or general appellate language, for engagement with the reasoning errors actually advanced. Where legal and reasoning complaints are reduced to mere disagreement with fact-finding, the Response invites deference without first confronting the pleaded defect. Those parts of the CLRV Response do not meet the

⁵⁵ CLRV Response, paras. 243-244, 299-300; *cf.* Appeal Brief, paras. 315-332.

⁵⁶ See, e.g., CLRV Response, paras. 297, 301, 305, 318.

⁵⁷ See, e.g., CLRV Response, paras. 240, 244, 259, 315.

⁵⁸ See, in particular, CLRV Response, paras. 297-298, 311-314.

⁵⁹ CLRV Response, paras. 308-310, 337-338; Appeal Brief, paras. 368-371, 429-432.

⁶⁰ CLRV Response, paras. 308-310; *cf.* Appeal Brief, paras. 368-371.

⁶¹ CLRV Response, paras. 337-338.

⁶² Appeal Brief, paras. 429-432.

Appeal as pleaded and should be approached with caution.

B. PART B: The CLRV collapse the phases of the Yamwara incident and fail to answer the count-specific errors

27. The CLRV's treatment of the Yamwara incident illustrates the same aforementioned shortcomings in concrete form. Rather than engaging with the pleaded errors, the Response largely repeats the Chamber's impugned findings or undertakes the very same approach challenged by the Defence in that it seeks to collapse the chronology of distinct phases of the event and further still, treats contested findings as sufficient to sustain knowledge, control, discriminatory purpose, and principal liability across Counts 11–17.⁶³

1. B.1 – The CLRV do not answer the errors concerning Mr. Yekatom's alleged continued control over the Lapo Family Group

28. In addressing Mr. Yekatom's alleged role in the Yamwara events, the CLRV seek to sustain the Chamber's finding of continued control over the Lapo Family Group by relying on three propositions: that Mr. Yekatom was 'Anti-Balaka' during the commission of crimes, that he had 'used' Yagouzou, and that he had allegedly met the 'captives' on 25 December 2013 and said he would release them in the presence of an 'international opinion'.⁶⁴ That recital does not address or answer the pleaded errors. The Appeal challenged the factual basis for treating Yagouzou as an instrument of Mr. Yekatom, including evidence that Yagouzou led his own group, that his group and Mr. Yekatom's alleged group were distinct, that Yagouzou exercised authority at his M'Poko airport base, and that he presented himself independently to political authorities.⁶⁵

29. The CLRV also overstate the evidentiary basis for the alleged transfer of the Lapo Family Group on 25 December 2013.⁶⁶ Paragraph 3268 of the Judgment, as relied on by the CLRV, separates two matters: P-1811 placed Mr. Yekatom with the Lapo Family Group and identified him as the person who had questioned them the previous day,⁶⁷ whereas the alleged statement concerning release before an 'international opinion' came solely from P-1705.⁶⁸ Moreover, the CLRV ignore the objective explanation, confirmed by witness

⁶³ See also Part D.2 in relation to the broader defects of the CLRV's response to errors concerning the Chamber's article 25(3)(a) reasoning.

⁶⁴ CLRV Response, paras. 210-212.

⁶⁵ Appeal Brief, paras. 79-84.

⁶⁶ CLRV Response, para. 211 and fn. 506; Judgment, para. 3268.

⁶⁷ Judgment, para. 3268, fns. 8023-8024, citing P-1811 Statement, CAR-OTP-2058-0003-R05, para. 47, and P-1811: T-114, 33:14-25.

⁶⁸ Judgment, para. 3268, fn. 8025, citing P-1705: T-211, 49:13-23.

testimony, that the Lapo Family Group had remained at the base until 27 December 2013 due to the ongoing conflict which had prevented the Sangaris from collecting them.⁶⁹ The conclusion that Mr. Yekatom ‘still maintained control’ over the Lapo Family Group therefore rests on an overstated evidentiary link and an unreasoned treatment of Yagouzou’s group as an extension of Mr. Yekatom’s alleged control.⁷⁰ This is also reflected in relation to the CLRV’s contradictory position concerning P-0884 whereby the Response treats P-0884 as [REDACTED] whilst also stating that his evidence was not the ‘central pillar’ of the Chamber’s conclusion.⁷¹ Again, the point on appeal was that the Chamber had used P-0884 to [REDACTED] which was not supported by the evidence and which depended on the selective reliance on an account that the Chamber itself recognised as containing irreconcilable discrepancies.⁷²

30. The CLRV’s fallback materiality submission only further compounds that error.⁷³ The CLRV assert that, even if the Defence were correct in relation to the transfer of the victims and their detention at Yagouzou’s base, Mr. Yekatom would still have been convicted for the ‘comparatively more severe’ conduct under Counts 11, 13, 14 and 17.⁷⁴ This is not a proper answer to materiality. Not only does it fail to address Counts 12, 15 and 16 but it also does not explain why the errors identified by the Defence would have had no effect on the legal elements, the Chamber’s reasoning, the findings on *mens rea*, or whether particular acts could properly be attributed to Mr. Yekatom for each count.⁷⁵ The submission treats those errors as immaterial simply because other conduct is said to be more serious, even though the Chamber’s reasoning on Counts 11, 13, 14 and 17 did not isolate that allegedly more serious conduct from the phases challenged by the Defence. Rather, the Trial Chamber had relied on a broader course of alleged conduct, including deprivation of liberty, confinement, threats, lack of information, transfer and captivity.⁷⁶ The CLRV therefore cannot now remove those phases from the analysis in order to argue that the same convictions would necessarily have followed. In any event, that submission assumes, without answering, disputed questions as to when Mr. Yekatom knew what had happened, what conduct he allegedly controlled, and whether transfer and continued captivity could

⁶⁹ Appeal Brief, paras. 297-300; P-1811: T-115, 10:19-11:4; P-1704: CAR-OTP-2054-1136-R05, paras. 59-60.

⁷⁰ CLRV Response, para. 211; *cf.* Appeal Brief, paras. 79-84.

⁷¹ CLRV Response, paras. 212-213.

⁷² Appeal Brief, paras. 81-82.

⁷³ CLRV Response, paras. 213-214.

⁷⁴ CLRV Response, para. 214.

⁷⁵ Appeal Brief, paras. 253-272, 426-428.

⁷⁶ Judgment, paras. 4148-4152, 4157-4161, 4176-4205, 4223-4231; CLRV Response, para. 214.

properly sustain principal liability.

2. B.2 – The CLRV misapprehend the Defence’s arguments on IHL training and discriminatory purpose

31. The CLRV’s response to the IHL training issue seeks to answer a point the Defence did not make. The Appeal did not argue that Mr. Yekatom was charged with, or convicted of, failing to provide training to civilian members of his purported group.⁷⁷ Rather, the submission was that the Chamber used the alleged absence of training on the principle of distinction as a basis to infer that RFACPP members did not distinguish between Muslim civilians and Seleka elements, and then used that inference to find that Mr. Yekatom knew and shared that perception.⁷⁸ The Trial Chamber’s reasoning in that regard was relevant in relation to the Yamwara incident given that the Chamber had relied on the supposed absence of IHL training to find that ‘Mr. Yekatom knew that the Anti-Balaka perceived [...] the Muslims in CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka’,⁷⁹ and that ‘Mr. Yekatom as leader of his group did not demand or emphasise the need for such distinction when instructing his elements [...] in Yamwara’.⁸⁰ The CLRV do not address how the Chamber had relied on the IHL training finding and respond instead that Mr. Yekatom, as a FACA member, knew the applicable legal framework, and that any issue concerning training would be immaterial.⁸¹ That response misses the pleaded error - the issue is not whether Mr. Yekatom knew IHL in the abstract, but whether the Chamber could use the alleged lack of training to move from a finding about RFACPP members’ perceptions to a finding of Mr. Yekatom’s own discriminatory intent and *mens rea*.⁸²
32. The same problem arises in the CLRV’s response to the Defence argument concerning why the Lapo Family Group was apprehended and how that episode was used to prove discriminatory purpose. The Response repeats the Chamber’s finding that the arrest reflected a ‘combination of Alkanto’s negative feelings towards P-1811 and P-0967 because they were [REDACTED], and Muslims’.⁸³ However, that formulation does not answer the Defence’s complaint and simply restates the very conflation challenged on appeal. The

⁷⁷ *Contra* CLRV Response, paras. 228-229; see also Appeal Brief, paras. 105-117.

⁷⁸ Appeal Brief, paras. 105-117 in particular paras. 105, 110-117; see also paragraphs 148-149.

⁷⁹ Judgment, paras. 48, 74, 3939, 3999, 4024, 4227, 4337, 4352, 4368.

⁸⁰ Judgment, para. 1299; Appeal Brief, paras. 105-117.

⁸¹ CLRV Response, paras. 228-229.

⁸² Appeal Brief, paras. 105-117, 148-149; CLRV Response, paras. 227-229; Judgment, paras. 74, 1299, 2447, 2453-2454, 3939, 3999, 4024, 4227.

⁸³ CLRV Response, para. 232.

Defence case is that the record did not permit the Chamber to move from concrete and specific suspicions linked to Seleka affiliation arising during the incident to proof that the members of the group were targeted because they were Muslim, still less to proof of Mr. Yekatom's own discriminatory intent.⁸⁴ The evidence pointed to the family's links to [REDACTED] Seleka figures, the discovery of the Seleka card, accusations that the group were spies, Alkanto's own presentation of himself as Muslim, and the security context of the ongoing NIAC.⁸⁵ By treating those matters as part of a broader anti-Muslim policy, the Chamber, and now the CLRV, blur the distinction between suspicion of Seleka affiliation and religious identity. The CLRV therefore do not answer the Defence's complaint that movement-level findings were used to fill the evidentiary gap as to Mr. Yekatom's own intent in relation to this incident.

33. The treatment of the Seleka card is one concrete example of the same error. The CLRV state that the Chamber had 'no obligation' to address its role,⁸⁶ although on the Defence case the card was not a peripheral detail but one of the central facts underpinning why the group was stopped, searched and transferred.⁸⁷ It also reinforced why the incident required analysis through the prism of suspicion linked to the Seleka, rather than an assumption of anti-Muslim discriminatory purpose. If the card and the family's Seleka links provided an alternative explanation for the initial apprehension and transfer, the issue was why that inference was rejected, not whether later mistreatment could be justified. The CLRV's answer, framed in terms of 'no justifications for these criminal acts',⁸⁸ does not address the evidentiary significance of the card or explain how the Chamber could properly move from suspicion of Seleka affiliation to proof of discriminatory targeting.

3. B.3 – The CLRV conflate the initial security context with the later alleged mistreatment

34. The CLRV's response to the security and operational context at Yamwara similarly misstates the issue on appeal.⁸⁹ The Defence did not argue that any later mistreatment became lawful because the group was initially stopped in a conflict setting, or because there may have been a lawful basis for the checkpoints. Rather, the point was that the Trial

⁸⁴ Appeal Brief, paras. 118-123, 145-146, 250-258.

⁸⁵ Appeal Brief, paras. 118-123, 286-301; P-1704: T-128, 38:6-10; P-1839: T-173, 71:18-26, 73:14-16; P-1716: CAR-OTP-2053-0062-R05, para. 29; P-1811: CAR-OTP-2058-0003-R05, para. 36.

⁸⁶ CLRV Response, paras. 233-234.

⁸⁷ Appeal Brief, paras. 119, 121-123, 292-295.

⁸⁸ CLRV Response, para. 234.

⁸⁹ CLRV Response, paras. 293-295.

Chamber could not assess the Yamwara incident as one undifferentiated course of criminal conduct without first considering how the incident began, why the group was stopped and searched, what role the Seleka-linked suspicions played, what operational constraints existed at the time, and when any subsequent detention or mistreatment could properly be attributed to Mr. Yekatom.⁹⁰ By answering that Mr. Yekatom had no authority to subject the seven persons to mistreatment,⁹¹ the CLRV respond to a justification argument the Defence did not advance and leave unanswered the actual complaint concerning the Trial Chamber's failure to distinguish the relevant stages of the incident.

35. That distinction was material to the findings on lawfulness, Mr. Yekatom's alleged knowledge and intent, the attribution of particular acts to him, and the finding of continued control over the Lapo Family Group. The Chamber had to distinguish the initial stop and search at the checkpoint from the decision to transfer the group to Yamwara after discovery of the Seleka card and in light of the family's links to senior Seleka figures, and then from the later detention, mistreatment, transfer, release and death. The NIAC context, insecurity at Yamwara base, the suspicion of spying, the discovery of the concealed SIM card, and the reason why the Sangaris could not immediately retrieve the Lapo Family Group were all relevant to that assessment.⁹² The CLRV treat those matters as though they were relied upon to justify mistreatment,⁹³ when they were strictly relied upon to challenge the Chamber's reasoning on whether a discriminatory inference could properly be drawn, whether the initial detention and later delay were correctly characterised, and whether and when Mr. Yekatom acquired the knowledge, control or intent required for the counts at issue.⁹⁴

⁹⁰ Appeal Brief, paras. 227-230, 286-301.

⁹¹ CLRV Response, para. 293.

⁹² Appeal Brief, paras. 291-300; P-1811: CAR-OTP-2058-0003-R05, para. 36; T-115, 10:19-11:4; P-1704: CAR-OTP-2054-1136-R05, paras. 59-60; T-128, 38:6-10; P-1839: T-170, 28:20-29:1; T-173, 71:18-26, 73:14-16; P-1716: CAR-OTP-2053-0062-R05, para. 29.

⁹³ See CLRV Response, paras. 233-234, 293-295.

⁹⁴ Appeal Brief, paras. 286-301; T-308-CONF (FRA), 45:1-17, 50:24-27: « *Alors, entendons-nous bien, Monsieur le Président, Madame, Messieurs de la Chambre, je ne dis pas que le traitement qui a été réservé par la suite à M. Saint-Cyr Lapo était justifié. Ce n'est pas ce que je vous dis. Par contre, au moment où ils sont arrêtés au point de contrôle, oui, il y avait une source de suspicion légitime.* »; See also T-308-CONF (FRA), 45:1-17: « *Alors, je veux, Monsieur le Président, être parfaitement claire. Nous ne sommes pas, du côté de la Défense de M. Yekatom, dans une dénégation aveugle. Vous l'aurez certainement, d'ailleurs, compris au cours de nos interrogatoires sur cet incident particulier, il n'a jamais été question de dire qu'il ne s'est rien passé ce jour-là, le 24 décembre 2013, à Yamwara. Saint-Cyr Lapo a vécu des choses terribles, il a disparu et on se doute bien qu'il n'est plus en vie. Ce que nous soutenons, en revanche, c'est que les circonstances dans lesquelles les événements se sont déroulés ne sont pas celles qui vous ont été présentées par l'Accusation et que ça a forcément un impact sur les conclusions que vous allez pouvoir tirer car vous ne pourrez pas vous fonder sur de la preuve non fiable. Et pour être complet aussi, il n'est pas contesté que M. Yekatom est arrivé à l'école Yamwara plus tard dans la soirée le jour de cet événement. Mais il n'a jamais ordonné de mauvais traitements ni menacé qui que ce soit. À partir de son arrivée, au contraire, il a tout mis en œuvre pour que les personnes du groupe qu'il a pu voir ce jour-là puissent être*

4. B.4 – The CLRV do not engage with the witness-specific evidentiary errors underpinning the Yamwara findings

36. The CLRV Response to the Yamwara evidentiary ground is equally unresponsive to the numerous arguments raised on appeal. The Response says little more than that a trial chamber may accept some parts of a witness's evidence and reject others, and that whilst the Chamber devoted several pages to the contamination issue, it found no contamination amongst the witnesses.⁹⁵ However, the Defence's complaint was not made in the abstract and concerned the Chamber's failure to provide a coherent, reasoned explanation for treating P-1705, P-1704, P-1811, P-1716 and P-0967 as generally credible on the Yamwara incident while simultaneously finding some of them unreliable on core matters. The CLRV answer by invoking general principles of evidentiary assessment and by referring to the Chamber's discussion of contamination, but the Response does not explain how those general answers meet the specific inconsistencies and reasoning defects identified in the Appeal.
37. The same deficiency arises in relation to the witness evidence relied upon for Mr. Yekatom's alleged *mens rea*. The Response states that the Trial Chamber's Yamwara findings, and its assessment of P-1654, P-1839, P-0954 and P-1716, are 'entirely correct'.⁹⁶ That assertion leaves unanswered the Defence's challenges to the use of P-1654's untested Rule 68 statement on facts said to be decisive for Mr. Yekatom's knowledge of Saint-Cyr's condition,⁹⁷ the reliance on [REDACTED],⁹⁸ the selective use of P-0954 after the Chamber had stated it would not rely on him to determine how the Yamwara incident unfolded or when the [REDACTED],⁹⁹ P-1716's late correction naming Mr. Yekatom only on the eve of testimony,¹⁰⁰ or the fact that P-1716's testimony contradicts P-1654's narrative on the alleged discussion with Cœur de Lion and Mr. Yekatom.¹⁰¹ A statement that those assessments were 'entirely correct' does not engage with those witness-specific defects.¹⁰²
38. Nor can those errors be treated as immaterial. The impugned findings supplied the evidentiary route by which the Chamber moved from Mr. Yekatom's alleged later

confiées à la Sangaris. Cela ressort de la confrontation des témoignages, mais surtout, du témoignage de l'auteur des actes de violence lui-même — et on va y revenir en détails. »

⁹⁵ CLRV Response, paras. 317-318; Appeal Brief, paras. 406-409, 412.

⁹⁶ CLRV Response, para. 286.

⁹⁷ Appeal Brief, paras. 259-263; Judgment, paras. 3241-3245.

⁹⁸ Appeal Brief, paras. 266-267.

⁹⁹ Appeal Brief, paras. 268-270.

¹⁰⁰ Appeal Brief, paras. 271-273.

¹⁰¹ Appeal Brief, para. 260.

¹⁰² Appeal Brief, paras. 259-273, 406-412; cf. CLRV Response, paras. 284-286.

knowledge of conduct already carried out by others to the conclusion that he had the contemporaneous *mens rea* required for Counts 12, 13, 15 and 16. The CLRV's reliance on the proposition that physical absence from the scene does not, as a matter of principle, negate *mens rea* is therefore misplaced.¹⁰³ The Appeal does not depend on physical absence alone and challenges the evidentiary and inferential steps by which the Chamber moved from later or contested information to findings of knowledge, intent and approval in respect of particular acts at particular times.

5. B.5 – The CLRV assume rather than establish Mr. Yekatom's alleged control at Yamwara

39. The CLRV's reliance on article 25(3)(a) does not answer the Yamwara-specific challenge to Mr. Yekatom's alleged control. The broader defects in the Trial Chamber's findings on organised apparatus, automatic compliance, essential contribution and power to frustrate are addressed in Part D. For present purposes, the point is narrower. The Response assumes that Mr. Yekatom retained control over Alkanto, Cœur de Lion and the Yamwara elements from 'the moment of the capture' until the victims' death or release.¹⁰⁴ That is the very proposition challenged on appeal. An alleged ability to end detention or prevent further harm, even if established, does not by itself show control over the earlier capture, threats, strip-search, beatings, torture and killing. It required findings as to when Mr. Yekatom acquired knowledge, what conduct he was then able to control, what further conduct remained to be prevented, and how those matters related to each count.¹⁰⁵ The CLRV do not identify such findings.
40. The same difficulty arises from the Yamwara hierarchy findings. The CLRV characterise the Defence's arguments as mere disagreement with the Chamber's assessment of hierarchy and control,¹⁰⁶ but the Appeal challenged whether the evidence established a functioning hierarchy capable of securing compliance at the material time. The Response does not address the short period during which the group was at Yamwara,¹⁰⁷ the absence of concrete findings on how the alleged hierarchy operated in practice,¹⁰⁸ the limited probative value of titles such as 'chief' and 'deputy',¹⁰⁹ the evidence that Cœur de Lion could – and did –

¹⁰³ CLRV Response, para. 285.

¹⁰⁴ CLRV Response, paras. 271-274, in particular para. 271 and fn. 643.

¹⁰⁵ Appeal Brief, paras. 227-230, 251-272.

¹⁰⁶ CLRV Response, paras. 249-252, 270-274.

¹⁰⁷ Appeal Brief, para. 159.

¹⁰⁸ Appeal Brief, paras. 159-160, 168.

¹⁰⁹ Appeal Brief, paras. 164-168.

act without Mr. Yekatom's knowledge or agreement,¹¹⁰ or the evidence inconsistent with an 'unambiguous directional flow of authority'.¹¹¹ Those matters were central because the CLRV rely on hierarchy and control to sustain principal liability across Counts 11-17. Repeating that Mr. Yekatom was the leader does not establish that he had control over the specific crimes at the material time.

6. B.6 – The CLRV do not answer errors on the assessment of the severity threshold

41. Finally, the CLRV do not answer the Defence's challenge to the Chamber's severity findings concerning the six surviving members of the Lapo Family Group. The CLRV respond that the Chamber was not required to conduct a strictly atomised assessment, that it could consider the victims collectively where they endured the same events, and that it properly evaluated their treatment 'in its totality'.¹¹² However, the Defence did not argue that the Chamber was prohibited from considering the overall course of conduct or the shared features of the incident. Rather, the complaint – which is unanswered by the CLRV – was that the Chamber still had to explain, by reference to the evidence and the applicable standard, why the threshold of severe physical or mental suffering was met for each relevant victim and count, particularly in relation to the family members other than Saint-Cyr.¹¹³ Reliance on the sentencing discussion and on a collective description of harm does not answer the jurisprudence invoked in the Appeal, nor cure the absence of a reasoned application of the severity standard to the different experiences of the remaining captives.
42. For those reasons, the CLRV's response on Yamwara does not meet the Appeal as pleaded. By repeating the Chamber's narrative while treating distinct stages of the incident as a single course of conduct, the Response leaves unresolved the Defence's challenges to the security context and initial stop, the evidentiary basis for the findings on knowledge and intent, the materiality of those errors for each count, and the findings said to establish continued control and principal liability. Those omissions are material to Counts 11-17, and the errors raised in the Appeal therefore remain unanswered.

¹¹⁰ Appeal Brief, paras. 166-168

¹¹¹ Cf. Appeal Brief, paras. 158-168, 188-193, 203-205, 227-230; CLRV Response, para. 250.

¹¹² CLRV Response, paras. 333-335.

¹¹³ Appeal Brief, paras. 426-428 including fn. 1644 citing to ICC-01/12-01/18-2594-Red, *Prosecutor v Al Hassan*, Public redacted version of Trial Judgment, 26 June 2024 ('[Al Hassan Trial Judgment](#)'), paras. 1364-1372 and [IT-97-25-T](#), *Prosecutor v. Krnojelac*, Trial Judgment, paras. 189-307.

C. PART C: The CLRV do not establish that the Trial Chamber applied sufficient caution in its assessment of P-1339's accomplice evidence

43. In the Response, the CLRV challenge the Defence argument that the Trial Chamber erred in consistently failing to apply the relevant evidence assessment criteria, including in respect of the evidence of key Prosecution insider witness P-1339.¹¹⁴ In particular, the CLRV argue that the Chamber acted 'well within its discretion and reasonably assessed the evidence of P-1339', and that in respect of his 'status of accomplice', the Chamber 'applied the correct caution'.¹¹⁵
44. P-1339 claimed to have been a member of the RFACPP from shortly after its inception; [REDACTED] *inter alia* in the 5th December Operation, including the Boeing Market events and the destruction of the Boeing Mosque; and in RFACPP operations along the PK9-Mbaiki Axis.¹¹⁶ He thus qualified as an 'accomplice witness', having been 'involved in the criminal events' for which Mr. Yekatom was charged.¹¹⁷ The Trial Chamber was therefore obliged to exercise caution in its assessment of his evidence, as a matter of well-established law,¹¹⁸ consistent with the 'common sense' recognition that witnesses with vested interests 'may seek to inculcate others and exculpate' themselves.¹¹⁹ As the ECtHR has held,

[...] the use of statements given by witnesses in return for immunity or other advantages may cast doubt on the fairness of the proceedings against the accused and can raise difficult issues to the extent that, by their very nature, such statements are open to manipulation and may be made purely in order to obtain the advantages offered in exchange, or for personal revenge. The risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated.¹²⁰

45. In the circumstances, due caution entailed specific obligations on the part of the Trial

¹¹⁴ CLRV Response, paras. 308-318. See Appeal Brief, Ground 4.

¹¹⁵ CLRV Response, para. 315.

¹¹⁶ See below, para. 47; see also Judgment, para. 330.

¹¹⁷ ICC-01/04-02/06-2666-Red, *Prosecutor v Ntaganda*, Public redacted version of Judgment on the appeals of Mr. Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021 ('[Ntaganda Appeal Judgment](#)'), para. 655, citing [IT-05-88-T](#), *Prosecutor v Popović et al.*, Judgment Volume I, 10 June 2010, para. 26.

¹¹⁸ [Ntaganda Appeal Judgment](#), para. 655; ICC-01/05-01/13-2275-Red, *Prosecutor v Bemba et al.*, Public Redacted Judgment on the appeals of Mr. Jean-Pierre Bemba Gombo, Mr. Aimé Kilolo Musamba, Mr. Jean-Jacques Mangenda Kabongo, Mr. Fidèle Babala Wandu and Mr. Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018 ('[Bemba et al. Appeal Judgment](#)'), para. 1351; ICC-02/05-01/20-1240, *Prosecutor v Abd-Al-Rahman*, Public Trial Judgment, 6 October 2025 ('[Abd-Al-Rahman Trial Judgment](#)'), para. 180; [Al Hassan Trial Judgment](#), para. 77.

¹¹⁹ IT-95-14/2-T, *Prosecutor v. Kordić & Čerkez*, Judgment, 26 February 2001 ('[Kordić & Čerkez Trial Judgment](#)') para. 629.

¹²⁰ ECtHR, App. No. 19990/20, [Adamčo v. Slovakia](#), Judgment, 1 June 2023 ('[Adamčo v. Slovakia](#)'), para. 59.

Chamber.¹²¹ Namely, it was ‘essential’ for the Chamber to provide sufficient reasoning for its reliance on P-1339’s evidence, and to ‘consider any motives or incentives that he may have had to implicate’ Mr. Yekatom, in light of the vigorous challenges to P-1339’s credibility made by the Defence at trial; and it was obliged to have ‘carefully considered’ P-1339’s accomplice status when assessing the reliability of his evidence.¹²² These obligations are inter-related and overlapping: the Chamber’s heightened duty to provide sufficient reasoning necessarily extended to its obligatory careful consideration of P-1339’s accomplice status and any potential motives and incentives he may have harboured.

46. These obligations applied notwithstanding the Trial Chamber’s broad discretion in deciding whether to rely on P-1339’s testimony, as the CLRV effectively concede.¹²³ In this regard, and to be clear, it is not (nor has it ever been) the Defence’s position that evidence of accomplice witnesses requires corroboration as a matter of law.¹²⁴ That being said, the importance of an accomplice witness’s evidence *vis-à-vis* the factual underpinnings of a conviction – including whether and to what extent their evidence is supported by other evidence – is a matter which necessarily bears upon the determination as to whether appropriate safeguards accompanied a chamber’s reliance on said accomplice evidence.¹²⁵
47. In that respect, it is significant that the evidence of P-1339 was of sole or decisive importance for multiple counts of which Mr. Yekatom was convicted. Specifically, it underpinned the Trial Chamber’s material factual findings regarding the 5th December Operation on: preparations in the lead-up to the Operation,¹²⁶ the elaboration of a plan,¹²⁷ and the provision of training, weapons and instructions to the group;¹²⁸ the group’s cross-over and assembly in Projet ahead of the Operation¹²⁹ and arrival of other groups;¹³⁰ the

¹²¹ See also ICC-01/14-01/18-2737-Conf-Corr (‘Defence Closing Trial Brief’ or ‘Closing Trial Brief’), paras. 72-77.

¹²² [Bemba et al Appeal Judgment](#), para. 1531; [Ntaganda Appeal Judgment](#), para. 655, citing ICTR-99-46-A, *Prosecutor v Ntagerura et al*, Judgment, 7 July 2006 (‘[Ntagerura et al. Appeal Judgment](#)’), para. 203. See also Defence Closing Brief, paras. 106-135, 413-416.

¹²³ CLRV Response, para. 313 (in particular, ‘as long as’).

¹²⁴ See Defence Closing Brief, paras. 72-77; Defence Appeal, para. 373. See also, [Bemba et al. Appeal Judgment](#), para. 1531; [Ntaganda Appeal Judgment](#), para. 655.

¹²⁵ See [Adamčo v. Slovakia](#), para. 76; IT-95-14/2-A, *Prosecutor v Kordić & Čerkez*, Judgment, 17 December 2004 (‘[Kordić & Čerkez Appeal Judgment](#)’), para. 274; [IT-03-69-T](#), *Prosecutor v Stanišić & Simatović*, Judgment Volume I, 30 May 2013, para. 21; ICTR-2001-63-A, *Prosecutor v Nchamihigo*, Judgment, 18 March 2010 (‘[Nchamihigo Appeal Judgment](#)’), paras. 47-48; [Ntagerura et al. Appeal Judgment](#), para. 205.

¹²⁶ See Judgment, para. 2410 (where the Chamber ‘relied on P-1339’s firsthand account as [REDACTED] in Mr. Yekatom’s group at the time’).

¹²⁷ See Judgment, paras. 2416.

¹²⁸ See Judgment, paras. 2418, 2432-2433, 2435-2444, 2446-2447, 2531, 2533.

¹²⁹ See Judgment, paras. 2459-2462, 2464.

¹³⁰ See Judgment, paras. 2468.

reconnaissance mission conducted in preparation of the Boeing Market attack,¹³¹ the launch of the Operation at the Boeing Market,¹³² the identification of the perpetrators responsible for the killing of the Traders,¹³³ and the number of Traders killed,¹³⁴ the attack on the Boeing Mosque including Mr. Yekatom's instructions;¹³⁵ and the group's split and subsequent retreat.¹³⁶ With respect to Saleh's killing, P-1339's testimony also formed the basis of the Trial Chamber's findings as to the identity of the perpetrators.¹³⁷

1. C.1 – The CLRV cannot rely on the Trial Chamber's general credibility approach to establish due caution

48. The CLRV's assertion that the Chamber applied the correct caution is not established by the Chamber's general remarks on witness credibility.¹³⁸ In that section, the Trial Chamber provided an explanation of its general approach to witness credibility assessment, set out across several paragraphs.¹³⁹ It made no reference to its duty to apply caution in the assessment of accomplice witnesses, or to its corollary obligations.¹⁴⁰ As regards categories of individual circumstances of witnesses that the Trial Chamber generally stated it took into account: while it referred to factors such as 'the provision of assurances against self-incrimination' and 'indication of bias against the accused', it omitted to include key factors relevant to accomplice witnesses, namely, their 'involvement in the events under consideration' and 'any motives [...] for providing false testimony'.¹⁴¹ The Defence notes that, while these four factors may mutually overlap, they nonetheless remain distinct: a witness's involvement in criminal events and/or motives for providing false testimony are not *per se* subsumed within the fact that they have been provided self-incrimination assurances and/or harbour bias against an accused; each thus represent distinct risks *vis-à-vis* the reliability of that witness's evidence.

49. In any event, nothing in the Chamber's stated general approach indicates an awareness of

¹³¹ See Judgment, paras. 2465-2467, 2529.

¹³² See Judgment, paras. 2480-2481, 2530, 2537.

¹³³ See Judgment, paras. 2547, 2552.

¹³⁴ See Judgment, paras. 2579, 2586.

¹³⁵ See Judgment, paras. 2630-2640.

¹³⁶ See Judgment, paras. 2668-2670.

¹³⁷ See Judgment, paras. 3650, 3654.

¹³⁸ CLRV Response, para. 315.

¹³⁹ See Judgment, paras. 194-203.

¹⁴⁰ *Ibid.* Cf. [Abd-Al-Rahman Trial Judgment](#), para. 180 (where the Abd-Al-Rahman Trial Chamber stated that it exercised 'great caution' in assessing the evidence of witnesses 'who have, or may have, their own interests to serve in reducing their culpability for the crimes and ascribing blame thereof to others').

¹⁴¹ Judgment, para. 201. See, by way of illustrative contrast, [Ntaganda Appeal Judgment](#), paras. 656-657 (in respect of the Ntaganda Trial Chamber's explanation of its general approach).

the heightened nature of its duty to consider the relevant factors, as clearly established in the Court's appellate jurisprudence: i.e. to 'carefully' consider a witness's accomplice status, or the 'essential' nature of its duty to consider any potential motives to provide untruthful evidence, or to provide sufficient reasoning for reliance on accomplice evidence.¹⁴² Notably, 'assurances' and 'bias' were simply listed amongst other individual witness credibility assessment factors, such as a witness' 'age', in a manner that does not allow an understanding of the relative importance placed upon each factor by the Trial Chamber; not least in light of its express statement that it considered these factors 'by no means [...] a "check-list" of requirements for a witness to be relied upon'.¹⁴³

2. C.2 – The CLRV do not show that the Chamber's assessment of P-1339 addressed the accomplice witness risks

50. Whilst the CLRV rely on the Chamber's individual assessment of P-1339, that assessment does not actually demonstrate that the required caution was applied. As a preliminary matter, the Defence submits that the firm and logical distinction between awareness of the relevant standards, and their correct application, must be respected. Nor can trial chambers merely state that they 'took into account' relevant circumstances, or exercised sufficient caution, when assessing the evidence of accomplice witnesses; rather, they must actually establish that they in fact did so.¹⁴⁴ This is a logical function of their essential duty to provide sufficient reasoning for relying on such evidence.¹⁴⁵
51. By extension, to ensure the due exercise of an accused's right of appeal, appeals chambers must in turn meticulously examine such reasoning, in determining whether sufficient caution was in fact applied; they must not simply be content to accept statements to this effect. For one thing, it is self-evident that a judge may hold a good faith but nonetheless erroneous belief that she or he applied sufficient caution or duly considered relevant factors in the assessment of a witness's credibility. Thus in *Ntaganda*, the Appeals Chamber duly undertook a detailed examination of the manner in which Trial Chamber VI carried out its credibility assessments of specific accomplice witnesses – notwithstanding its preliminary finding that Trial Chamber VI was 'aware' of the applicable standards, reached on the basis

¹⁴² [Ntaganda Appeal Judgment](#), para. 655; [Bemba et al. Appeal Judgment](#), para. 1351. See also, [Abd-Al-Rahman Trial Judgment](#), para. 180; [Al Hassan Trial Judgment](#), para. 77. See also, [Ntagerura et al. Appeal Judgment](#), para. 204 (stating that chambers are 'bound to *carefully* consider the totality of the circumstances in which [accomplice witnesses evidence] was tendered' when assessing its probative value).

¹⁴³ Judgment, para. 203.

¹⁴⁴ See e.g. [Nchamihigo Appeal Judgment](#), para. 46; [ICTR-02-78-T](#), *Prosecutor v Kanyarukiga*, Judgment and Sentence, 1 November 2010, para. 52.

¹⁴⁵ See above, para. 45.

of the latter's stated general approach to witness evidence assessment.¹⁴⁶ The Appeals Chamber's approach is thus akin to that taken in *Adamčo v Slovakia*, wherein the ECtHR noted domestic courts' statements that they had examined accomplice witnesses' evidence 'particularly carefully' and looked 'especially carefully' into the internal logic and coherence of their statements and their consistency with other evidence, but held that '[n]evertheless [...] what matters is how the accomplice evidence was handled by the domestic courts, in light of the applicants objections, *in concreto*'.¹⁴⁷

52. At no point in the Judgment did the Trial Chamber expressly state that it applied caution specifically when assessing P-1339's accomplice evidence, or otherwise indicate any express awareness of its heightened duties in this regard,¹⁴⁸ despite express Defence arguments to this effect,¹⁴⁹ and noting the concrete reliability risks addressed below. While this does not *per se* mean that caution was not in fact applied, these omissions are nonetheless indicative, especially in light of the Trial Chamber having expressly stated that it applied caution – or indeed 'great caution' – in the assessment of multiple other witnesses, and in respect of Facebook Messenger evidence.¹⁵⁰ Despite this, the Chamber gave no comparable indication that it approached P-1339's evidence with heightened caution in light of the concrete reliability risks addressed below.

i) P-1339's personal grudge against Mr. Yekatom

53. The Trial Chamber omitted to specifically address the Defence argument that P-1339 held a personal grudge against Mr. Yekatom, despite this being a 'particularly relevant factor' in the assessment of accomplice witness evidence.¹⁵¹ As specifically reproduced in the Defence Closing Trial Brief, P-1339 had testified that what had motivated him to testify against Mr. Yekatom was the fact that, during the events, P-1339 had '[REDACTED]' but that Mr. Yekatom had not been sufficiently '[REDACTED]' for '[REDACTED]', notably breaking into tears at that point, thus prompting the Presiding Judge to take an early hearing

¹⁴⁶ See [Ntaganda Appeal Judgment](#), paras. 656-672. See also [IT-00-39-A](#), *Prosecutor v Krajišnik*, Judgment, 17 March 2009, paras. 146-148.

¹⁴⁷ [Adamčo v. Slovakia](#), para. 63.

¹⁴⁸ Cf. [Abd-Al-Rahman Trial Judgment](#), para. 180, [Al Hassan Trial Judgment](#), para. 77 ('The Chamber has carefully assessed the testimony of P-0150 bearing in mind throughout the caution necessary, given he was an insider witness[.]').

¹⁴⁹ See Defence Closing Brief, fn. 340; see also paras. 72-77.

¹⁵⁰ Judgment, paras. 399, 456, 468, 949.

¹⁵¹ See Defence Closing Brief, para. 76. IT-05-88-A, *Prosecutor v Popović et al.*, Judgment, 30 January 2015 ('[Popović et al. Appeal Judgment](#)'), para. 134; [Nchamihigo Appeal Judgment](#), para. 47.

break and to request that the VWU provide ‘psychological help’ to the witness.¹⁵² The Trial Chamber provided no reasoning that could indicate that it specifically analysed this argument or evidence of his personal grudge against Mr. Yekatom when assessing P-1339’s credibility, or that it otherwise took care to guard against the exercise of this express motive underlying his testimony.¹⁵³ These omissions stand in stark contrast with the *Ntaganda* Trial Chamber’s approach in its trial judgment, wherein it expressly addressed Mr. Ntaganda’s argument that accomplice witness P-0786 had held a grudge against him, specifically analysed its evidentiary basis, and provided its reasoning thereon.¹⁵⁴

ii) Benefits P-1339 received in exchange for his testimony against Mr. Yekatom

54. Likewise, while the Trial Chamber cursorily noted that P-1339 testified with in-court protective measures, it provided no reasoning that could indicate that it paid any discernible individual attention to the nature or scope of the concomitant advantages P-1339 received in return for his testimony against Mr. Yekatom.¹⁵⁵ These advantages were substantial and quite literally life-changing: P-1339 was relocated out of CAR in exchange for his cooperation with the Prosecution, having been granted inclusion in the Court’s witness protection programme.¹⁵⁶ A witness’s relocation in connection to their cooperation with the Prosecution might not, without more, affect their credibility.¹⁵⁷ These proceedings were particular however, in that the Defence had specifically alleged evidence fabrication on the part of multiple Prosecution and CLRV witnesses seeking to be awarded with relocation from CAR and concomitant benefits, in exchange for testifying against Mr. Yekatom and falsely claiming membership of the group and/or participation in the charged events, as argued by the Defence at trial.¹⁵⁸ In this context, the Trial Chamber had received extensive evidence establishing the coveted and highly valued nature of potential relocation through the Court’s witness protection programme for CAR-based individuals in particular.¹⁵⁹

¹⁵² See Defence Closing Brief, para. 106, fn. 340, citing P-1339: T-152, 57:5-11. See P-1339: T-152 (ENG), 57:20-58:5.

¹⁵³ See [Kordić & Čerkez Appeal Judgment](#), para. 274.

¹⁵⁴ See ICC-01/04-02/06-2359, *Prosecutor v Ntaganda*, Judgment, 8 July 2019 ([‘Ntaganda Trial Judgment’](#)), para. 163; see also [Ntaganda Appeal Judgment](#), paras. 659-662.

¹⁵⁵ See [Adamčo v. Slovakia](#), paras. 66, 73.

¹⁵⁶ See [REDACTED].

¹⁵⁷ See e.g. [Ntaganda Trial Judgment](#), para. 120.

¹⁵⁸ See Defence Closing Brief, paras. 55-71, 101-104. See also e.g., where the Defence sought the exclusion of the evidence of multiple witnesses involved in this scheme, ICC-01/14-01/18-2240-Conf, in particular paras. 13-31.

¹⁵⁹ See Defence Closing Brief, paras. 55-71 (in particular, para. 58, fn. 161; para. 60, fn. 167); ICC-01/14-01/18-2240-Conf; ICC-01/14-01/18-2611-Conf (tendering over 200 items of evidence demonstrating the extensive and long-running evidence fabrication scheme), para. 43, citing CAR-D29-0020-2006 and CAR-D29-0020-0611; ICC-01/14-01/18-2611-Conf-AnxA, see e.g. items #26, 29, 147, 148, 149, 154. See e.g., V45-0001: T-245, 41:6-9 (where evidence fabrication scheme participant V45-0001 asked to be relocated to a country in Africa);

55. In the circumstances therefore, and given the specific challenges made by the Defence at trial,¹⁶⁰ there was an ‘essential’ duty on the Trial Chamber to ‘carefully consider’ P-1339’s relocation, and the concomitant benefits he received, as a circumstance potentially giving rise to a motive for providing false testimony against Mr. Yekatom; and moreover, to provide sufficient reasoning thereon.¹⁶¹ This included keeping this potential incentive in mind while specifically assessing *inter alia* the inconsistencies in his account and the manner in which his evidence was elicited, *viz.*, through extensive reliance on his prior statement, discussed in detail below. However, despite noting the Defence submission that P-1339 displayed an ‘apparent incentive to secure personal gains from his testimony’ in its paragraph summarising of Defence challenges on P-1339’s credibility, the Trial Chamber again provided no reasoning to suggest it engaged with this argument and evidence or took into consideration this matter (not least given the above-noted omission in its stated general approach).¹⁶² Nor is there any indication that the Trial Chamber otherwise ruled out self-serving motivations on the part of P-1339 that might have affected the reliability of his evidence.¹⁶³

iii) P-1339’s status as accomplice and his ‘forthcomingness’ as an insider

56. In the Response, the CLRV argue that the Trial Chamber ‘repeatedly noted and properly considered, across the Judgment, P-1339’s status of accomplice’, thus showing that the Chamber ‘applied the correct caution’.¹⁶⁴ However, this is not borne out by the Judgment references they rely on. The Trial Chamber’s cursory noting of the fact that P-1339 was ‘a former Anti-Balaka element in Mr. Yekatom’s group’, and that he had ‘participated in the 5 December attack on Bangui and during this time also [REDACTED]’, manifestly does not meet this requisite threshold of careful consideration of his accomplice status, or otherwise

[REDACTED] (discussing the fact that relocation was the benefit sought in exchange for testifying against Mr. Yekatom); [REDACTED]; P-2084: T-235, 91:22-92:95 (admitting that he had improperly assisted in the fabrication of documents as part of the scheme); in this regard, see ICC-01/14-01/18-2240-Conf, para. 17. See also, ‘Model agreement on witness relocation’, Annex to ICC ‘[Cooperation Agreements](#)’, 2023, p. 28, article 5: ‘Nature of the relocation services’ listing facilities, benefits and services provided by the State hosting protected witnesses, including housing, education, health and social services, access to opportunities to obtain employment and identification and travel documents.

¹⁶⁰ Defence Closing Brief, para. 73. See also, T-253 (ENG), 30:1-5, 45:23-46:3; see also T-253 (ENG), 42:12-14, 44:16-18.

¹⁶¹ See [Ntaganda Appeal Judgment](#), para. 655.

¹⁶² See Judgment, para. 331; see above, para. 48 (regarding Trial Chamber omitting to include ‘motives [...] for providing false testimony’ as a relevant factor in its general approach to credibility).

¹⁶³ See [Adamčo v. Slovakia](#), para. 72.

¹⁶⁴ *Contra* CLRV Response, para. 315.

comprise sufficient reasoning.¹⁶⁵

57. In the same vein, the CLRV's reliance on the Trial Chamber's various references to evidence of P-1339's membership of the group, or his participation in relevant events, dispersed across evidentiary analysis and factual findings in the Judgment (and thus outside the context of P-1339's specific credibility assessment) is misplaced.¹⁶⁶ These references fail to show any consideration of P-1339's accomplice status as a potential credibility risk factor, or otherwise establish that due caution was applied by the Trial Chamber. In fact, at least one cited reference appears to indicate the opposite: *viz.*, where the Trial Chamber addresses its reliance on P-1339's testimony for its findings on the involvement of Mr. Yekatom in the 5th December events, notably describing his evidence as 'a firsthand account "as [REDACTED]" in Mr. Yekatom's group at the time'.¹⁶⁷ In noting P-1339's accomplice status, whereas the Trial Chamber appears to have accorded weight to its 'firsthand' accomplice nature, it entirely omitted to address any potential credibility risks intrinsic thereto.¹⁶⁸
58. The Defence notes that, within the Chamber's individual assessment of P-1339's credibility, a short paragraph alludes to P-1339's membership of the group.¹⁶⁹ Notwithstanding its brevity and ambiguous wording,¹⁷⁰ this paragraph and cited evidence appear to suggest that, for the Trial Chamber, the 'forthcoming' nature of P-1339's evidence about Mr. Yekatom weighed in favour of a positive credibility determination.
59. As a preliminary matter, the Defence notes that an accomplice witness's forthcomingness to provide information about an accused can only meaningfully be understood as a positive indication of credibility, as opposed to further reason to apply caution, if that information is exculpatory in some sense. This is consistent with the driving principle behind the requirement for due caution when assessing the credibility of accomplice witnesses: i.e. the fact that such witnesses may have a motive or incentive to 'inculpate others, exculpate

¹⁶⁵ See Judgment, paras. 330-337. The Chamber notably omits to specifically note his presence at the Yamwara School base or his [REDACTED] in the RFACPP's operations and advance along the PK9-Mbaiki Axis. *Contra* CLRV Response, para. 315, fn. 782. See [Ntaganda Appeal Judgment](#), paras. 656-672.

¹⁶⁶ *Contra* CLRV Response, para. 315, fn. 782.

¹⁶⁷ See Judgment, para. 2410; *contra* CLRV Response, para. 315, fn. 782.

¹⁶⁸ See also, Judgment, para. 2618 (where, in addressing its reliance on P-1339's testimony regarding the attack on the Boeing Mosque, the Trial Chamber expressly noted only that he was an 'eyewitness to the events').

¹⁶⁹ Judgment, para. 334 ('In addition, given his being part of Mr. Yekatom's group, the Chamber notes that the witness was forthcoming about the words and actions of Mr. Yekatom and Habib Beina. For example, he clearly distinguished between acts committed by Mr. Yekatom's group or the Anti-Balaka movement and others, such as the local population.').

¹⁷⁰ The Defence notes that the CLRV did not rely on this paragraph as proof that the Chamber applied the correct caution vis-à-vis P-1339; see CLRV Response, para. 315, fn. 782.

themselves, or protect the reputations of their [...] colleagues'.¹⁷¹ In the same vein, the mere fact that an accomplice witness does not inculcate an accused in every single criminal incident discussed, or otherwise take every possible opportunity to inculcate an accused, does not *per se* constitute a positive credibility indicator; such a simplistic, nuance-free understanding of an accomplice's potential motivations should not be countenanced.¹⁷² Consistent with basic evidence assessment principles, accomplice testimony must be assessed holistically and comprehensively.¹⁷³

60. An examination of the Trial Chamber's limited reasoning regarding P-1339's 'forthcomingness' does not indicate that due caution was correctly applied. For one, the Chamber does not explain why P-1339's evidence, that he had never personally heard certain specific statements made by his deceased former colleague Habib Beina in video footage, has any meaningful bearing on the credibility of his accusations inculcating Mr. Yekatom.¹⁷⁴
61. Nor does it explain why P-1339's evidence that the local population, as opposed to the 'Anti-Balaka movement' generally (as distinct from Mr. Yekatom's group specifically), was responsible for certain criminal acts could be understood as a positive indication of his credibility, as opposed to an indicating mere self-interest, given that P-1339 himself [REDACTED],¹⁷⁵ which fact the Trial Chamber does not appear to have considered here.¹⁷⁶ It is similarly unclear how P-1339's spontaneous recounting of the killing of a Muslim civilian by the local population – a killing not charged in this case – during his evidence illustrating the prevalence of anti-Muslim mob violence in CAR during the events, could reasonably have any bearing on his credibility *vis-à-vis* his evidence against Mr. Yekatom specifically.¹⁷⁷
62. The Trial Chamber's sparsely reasoned reliance on P-1339's evidence on the Boeing Mosque attack poses similar problems in this regard.¹⁷⁸ P-1339 ultimately testified that the group attacked the Boeing Mosque, first by firing a rocket at it, and then pouring petrol on it and setting it alight.¹⁷⁹ The Trial Chamber decisively relied on this highly incriminating

¹⁷¹ See [Kordić & Čerkez Trial Judgment](#), para. 629; see also above, para. 44.

¹⁷² See e.g. Judgment, para. 334 and fn. 444 (citing 'T-160 [...] p. 51, lines 7-15').

¹⁷³ See [Ntagerura Appeal Judgment](#), para. 204; [Popovic et al. Appeal Judgment](#), paras. 132, 134.

¹⁷⁴ Cf. Judgment, para. 344 and fn. 444 (citing 'P-1339: T-155, p. 49, line 17 – p. 56, lines 23 referring to Video, CAR-OTP-2065-0436'). The Defence notes that Habib Beina was not found by the Trial Chamber to be a co-perpetrator of Mr. Yekatom.

¹⁷⁵ See P-1339: T-151, 8:6-8; T-155, 86:3-5, 88:1-7.

¹⁷⁶ Cf. Judgment, para. 334.

¹⁷⁷ Cf. Judgment, para. 334 and fn. 445 (citing 'P-1339: T-154, p. 52, lines 1-7').

¹⁷⁸ Cf. Judgment, para. 334 and fn. 445.

¹⁷⁹ See Appeal Brief, para. 382; Judgment, paras. 2630-2631.

‘eyewitness’ account, despite its litany of manifest contradictions and *indicia* of unreliability,¹⁸⁰ to convict Mr. Yekatom of Count 6. In the circumstances, it is difficult to understand the logic in the Trial Chamber’s assessment of P-1339’s evidence as ‘forthcoming’ in a manner that weighed positively for the general credibility of his evidence against Mr. Yekatom, merely because P-1339 stated that local civilians dismantled what remained of the Mosque after the group allegedly attacked it with explosives and petrol on Mr. Yekatom’s orders.¹⁸¹

63. The Trial Chamber also cited a sequence in P-1339’s evidence whereby, under questioning by the Defence, P-1339 refused to confirm a passage in his prior statement that suggested that Mr. Yekatom did not issue orders to harm Muslim women, instead giving a convoluted and conclusory explanation; only to backtrack and state that Mr. Yekatom did not in fact give orders to harm women or children, *after* the Presiding Judge intervened to press him on this particular prior inconsistency.¹⁸² At the outset, this sequence objectively appears to demonstrate a selective lack of forthcomingness, if anything, *vis-à-vis* Defence counsel. Moreover, in deeming P-1339 ‘forthcoming’ on the basis of this sequence, the Trial Chamber appears to have failed to take into account the fact that previously in his testimony, P-1339 had in fact repeatedly and unambiguously alleged that Mr. Yekatom had issued express orders to kill Muslim women and children.¹⁸³ It hardly seems controversial that a reasonable trial chamber faced with such circumstances – i.e. an accomplice witness repeatedly making extremely incriminating allegations against an accused during Prosecution examination, refusing to backtrack during Defence cross-examination despite being confronted with his own prior inconsistent statement, before doing so only after being pressed by the Presiding Judge – would, at the bare minimum, recognise therein serious grounds to assess that accomplice evidence with due caution. In the circumstances, the Trial Chamber did not sufficiently explain why it understood P-1339’s contradictory incriminatory evidence on this subject, properly considered in its totality,¹⁸⁴ to constitute a

¹⁸⁰ See Annex A, ‘Boeing Mosque perpetrators’ rows 68-81. In Annex A, the Defence compiles for ease of reference select extracts of P-1339’s testimony that support the arguments made in this Part of this response. The contradictions have also been underlined by Presiding Judge’s own comments during the hearing, see Annex A, ‘Boeing Mosque perpetrators’, rows 70 and 71. *Contra* CLRV Response, para. 315, fn. 780. See Appeal Brief, paras. 381-382. See also, Defence Closing Brief, paras. 413-416.

¹⁸¹ Cf. Judgment, para. 334 and fn. 445.

¹⁸² See Judgment, para. 334 and fn. 444 (citing ‘T-160, p. 6, lines 3-22, p. 8, line 5 – p. 9, line 3).

¹⁸³ See P:1339: T-152, 71:11-20 (‘*Si c’est un musulman, vous le tuez. Que ce soit une femme, un enfant, il faut le tuer. [...] « Lorsque vous allez croiser les Séléka, les musulmans, que ça soit une femme, un enfant, il faut le tuer. »*’); T-154, 41:2-3 (‘*Si nous croisons les musulmans, nous allons les tuer. Y compris les enfants des musulmans.*’); cf. Judgment, para. 334 and fn. 444.

¹⁸⁴ See [Ntagerura Appeal Judgment](#), para. 204.

positive indication of his credibility as a purported member of the group.¹⁸⁵

iv) Treatment of explanations for discrepancies in P-1339's evidence

64. The Trial Chamber also failed to meet its obligation to provide sufficient reasoning in its consideration of the extent to which discrepancies in P-1339's testimony were explained (if at all) – another 'particularly relevant factor' in respect of accomplice witness credibility.¹⁸⁶
65. In its Closing Trial Brief, the Defence made extensive submissions on the explanations that P-1339 gave when he was confronted with the litany of prior inconsistent statements and other contradictions or inconsistencies that emerged during his evidence.¹⁸⁷ It specifically challenged P-1339's credibility on this basis, arguing that he evaded responsibility for these inconsistencies, sought to blame others, and provided unreliable evasive responses, citing his various 'explanations' in this regard.¹⁸⁸ These included his *inter alia* suggesting Prosecution investigators mis-transcribed his comments, despite his having signed and attested to its accuracy;¹⁸⁹ denying outright the content of his prior statement, despite his having had the opportunity to make corrections thereto prior to his testimony;¹⁹⁰ denying that he made certain corrections to his statement, despite a Registry report evidencing the contrary;¹⁹¹ denying that he made certain statements to Prosecution investigators, contrary to a Prosecution Investigation Note recording their conversation;¹⁹² [REDACTED];¹⁹³ simply reiterating his testimony, contradiction notwithstanding;¹⁹⁴ suggesting his statement was not exhaustive;¹⁹⁵ or challenging the authenticity of UNHCR documents.¹⁹⁶
66. In the Judgment, the Trial Chamber found that 'P-1339 showed a genuine disposition to answer the questions put to him truthfully, and did not hesitate to correct himself or admit that he had made a mistake when pointed out to him'; and that 'his explanations in this regard [were] generally reasonable and credible'.¹⁹⁷ While the Trial Chamber enjoyed broad discretion *vis-à-vis* its assessment of P-1339's evidence, this discretion was nonetheless

¹⁸⁵ See also [Adamčo v. Slovakia](#), para. 69.

¹⁸⁶ *Contra* CLRV Response, para. 315. See [Popovic et al Appeal Judgment](#), para. 134; [Nchamihigo Appeal Judgment](#), para. 47.

¹⁸⁷ See Defence Closing Brief, paras. 109-122, 125-126, 129-133, 135.

¹⁸⁸ See Defence Closing Brief, paras. 109-114, 135.

¹⁸⁹ See Defence Closing Brief, para. 110, citing 349-350; para. 108, citing 343-345; para. 132, citing 431-434; see further Annex A, rows 28 and 58. See also [Bemba et al. Appeal Judgment](#), para. 692.

¹⁹⁰ See Defence Closing Brief, para. 110, citing 351; paras. 117-118, citing 379.

¹⁹¹ Defence Closing Brief, para. 112, citing 356-359; see further Annex A, rows 1, 2, 3 and 16.

¹⁹² Defence Closing Brief, para. 117-118, citing 375-382; see further Annex A, row 30.

¹⁹³ Defence Closing Brief, para. 120, citing 388-390; see further Annex A, rows 35-36.

¹⁹⁴ Defence Closing Brief, para. 126, citing 409-411; para. 130, citing 422-424; see further Annex A, row 39.

¹⁹⁵ Defence Closing Brief, para. 132, citing 431-432; see further Annex A, rows 34-40.

¹⁹⁶ Defence Closing Brief, para. 135, citing 443.

¹⁹⁷ Judgment, para. 333.

conditional, as a matter of law, upon it providing sufficient reasoning for its reliance on P-1339's evidence, in light of his accomplice status.¹⁹⁸ However, the Trial Chamber does not provide reasoning that could allow a meaningful understanding of how these sweeping conclusions could be reconciled with the sheer litany and variety of excuses and evasions on P-1339's part, as set out above – in particular, where his explanations appear to be contradicted by documents produced by the Court itself, or are otherwise objectively contradicted by his own testimony. Nor are these conclusions accompanied by any reference to evidence, examples, or any specific Defence arguments.

67. In fact, in the entirety of its credibility assessment of P-1339, the sole specific example of what it deemed a 'reasonable' explanation on P-1339's part was raised in the Trial Chamber's treatment of Defence challenges in respect of a notebook that P-1339 claimed to [REDACTED] during the events, while he was a member of the group.¹⁹⁹
68. In particular, the Defence challenged P-1339's claim that [REDACTED] had written the notes therein in 2013, on the basis that the cover of the notebook depicted a football match that had taken place in May 2014.²⁰⁰ Over approximately 40 minutes of cross-examination on this issue, P-1339 provided numerous 'explanations' for this discrepancy, variously suggesting that [REDACTED];²⁰¹ suggesting that [REDACTED];²⁰² denying that [REDACTED];²⁰³ then immediately denying that he had said [REDACTED], and reiterating that [REDACTED];²⁰⁴ and, when confronted with his prior written statement, in which he had stated that [REDACTED], stating that [REDACTED].²⁰⁵
69. The Defence emphasises that, as a matter of law, the Trial Chamber was permitted to rely on certain aspects of P-1339's evidence and consider other aspects unreliable – provided it sufficiently explained why it considered the remainder of P-1339's testimony on this point to be reliable.²⁰⁶ In light of its heightened duties concomitant with P-1339's accomplice status, and the multiple Defence challenges on this point, this entailed meaningfully

¹⁹⁸ See above, para. 45.

¹⁹⁹ See Judgment, para. 335; Defence Closing Brief, paras. 120-121.

²⁰⁰ See Annex A, 'Notebook', rows 34-40. See also Defence Closing Brief, paras. 120-121.

²⁰¹ P-1339: T-160, 13:20-14:2; see further Annex A, 'Notebook', rows 35-36.

²⁰² P-1339: T-160, 14:4-12; see further Annex A, 'Notebook', row 36.

²⁰³ P-1339: T-160, 17:14-18-10; see further Annex A, 'Notebook', row 37.

²⁰⁴ P-1339: T-160, 18:11-17, 19:20-22; see further Annex A, 'Notebook', row 39.

²⁰⁵ P-1339: T-160, 20:7-8, 21:10-22:10; see further Annex A, 'Notebook', row 40.

²⁰⁶ See e.g. [Ntaganda Appeal Judgment](#), para. 736; [ICC-01/04-02/12-271-Corr](#), *Prosecutor v. Ngudjolo*, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015, para. 168; ICC-01/04-01/06-2842, *Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, 14 March 2012 ('[Lubanga Trial Judgment](#)'), para. 104; ICC-01/04-01/07-3436-tENG, *Prosecutor v. Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014 ('[Katanga Trial Judgment](#)'), para. 84.

addressing the evolution of P-1339's evidence on this point, in their entirety, and explaining why P-1339's credibility was unaffected by this evolution – not simply concluding that the ultimate explanation provided was 'reasonable'. These obligations go to P-1339's credibility itself, not merely to the reliability of the notebook; and thus remain unaffected by the Trial Chamber's decision not to rely on the latter.²⁰⁷

70. However, the Trial Chamber gave little indication that it actually grappled with these contradictory and implausible explanations. In fact, there is no indication that the Trial Chamber even considered that these explanations constituted discrepancies worthy of consideration in the first place.²⁰⁸ It did not even actually find that P-1339 gave multiple diverging explanations when confronted, instead merely noting 'the Yekatom Defence's suggestion' in this regard; nor did it actually enter findings as to whether it in fact considered these various explanations were contradictory, implausible, etc.²⁰⁹
71. While the Trial Chamber considered that P-1339's evidence shows that he 'did not understand the Yekatom Defence counsel's questions in the first place and appeared not to remember the photographs', it does not explain how this determination can be reconciled the fact that, even setting aside the first question and any potential misunderstandings thereunder, in response to the next question, clarified and posed pursuant to the Presiding Judge's direction, P-1339 expressly stated that [REDACTED], confirmed that [REDACTED], and nonetheless reiterated his first explanation – i.e. that [REDACTED].²¹⁰ Nor does this finding address the remainder of P-1339's differing explanations on this matter, provided over the remaining thirty minutes of cross-examination on this subject, as set out above.
72. Perhaps most importantly, the Trial Chamber does not explain how P-1339's final explanation – i.e. that [REDACTED] – could be considered 'reasonable' in light of its own finding that, pursuant to a request from MISCA, the group 'immediately' left Mbaïki in the aftermath of Djido Saleh's killing, which took place on 28 February 2014;²¹¹ that is, over two months before the images depicted on the cover of the notebook came into existence. It also does not explain how, in light of this apparent temporal impossibility at the heart of

²⁰⁷ Judgment, para. 335.

²⁰⁸ *Ibid.*

²⁰⁹ Judgment, para. 335 ('It further notes the Yekatom Defence's suggestion that when confronted with this discrepancy during his testimony, P-1339 provided various different explanations.').

²¹⁰ See P-1339: T-160 (ENG), 10:17-12:21 (in-court discussion following OTP counsel's suggestion that the witness did not understand the question); 12:22-13:23 (modified question with P-1339's reiterated explanation); see also 10:9-16 ([REDACTED]). See further Annex A, 'Notebook', rows 35-36.

²¹¹ Judgment paras. 125, 3679-3682; see above, para. 70.

P-1339's 'reasonable' explanation, it was able to rule out the possibility that P-1339 had fabricated the notebook to boost his 'value' as a witness and the credibility of his accusations against Mr. Yekatom, as argued by the Defence.²¹² Nor does it explain how his explanation was reasonable in light of his previous explanation that [REDACTED].²¹³

73. Lastly (while the Trial Chamber's treatment of P-1339's unreliable account of the Boeing Mosque attack is addressed in detail below), during his evidence, P-1339 was confronted with his failure to mention in his prior statement the involvement of multiple individuals in the incident, including Alkanto, whom he ultimately claimed was the individual who fired a rocket at the Mosque.²¹⁴ P-1339 sought to explain these omissions by claiming (twice) that in his prior interview he hadn't cited anyone by name – claims objectively disproven by his prior statement itself.²¹⁵ The Trial Chamber's characterisation of P-1339 as 'forthcoming', merely because he backtracked when confronted with this latter, new discrepancy, is therefore difficult to reconcile with the sequence viewed in its totality,²¹⁶ in particular his apparently objectively false initial response.

v) Treatment of discrepancies in P-1339's evidence

74. The Trial Chamber's treatment of P-1339's evidence on the notebook forms part of a pattern whereby little or no reasoning was provided to accompany the Trial Chamber's decision to rely on select aspects of his evidence on a specific subject while discarding others. Again, the Defence emphasises that a Trial Chamber's power to selectively rely on aspects of a witness's evidence is conditional upon due explanation of how that evidence remains credible despite the excising of aspects deemed non-credible. This is a logical and important safeguard. The coherence of a witness's narrative, its richness of detail, and its internal consistency are of fundamental importance in any assessment of its reliability,²¹⁷ and these factors inherently stand to be affected or distorted by the excising of portions from that narrative. It thus follows that a Trial Chamber must sufficiently and specifically address the impact of excising aspects of a witnesses' evidence on the remainder of their evidence.²¹⁸

75. In this regard, as set out above, the Trial Chamber provided no reasoning that could allow

²¹² See Yekatom Opening Statement: T-253 (ENG), 30:1-30:22; Defence Closing Brief, paras. 120-121.

²¹³ See above, para. 70.

²¹⁴ See Appeal Brief, para. 382, fn. 1399; see further Annex A, 'Boeing Mosque (perpetrators)', row 81.

²¹⁵ P-1339: T-160, 34:15-35:19, cited in Defence Closing Brief, para. 415, fn. 1379.

²¹⁶ See [Ntagerura et al. Appeal Judgment](#), para. 204.

²¹⁷ See e.g. [Al Hassan Trial Judgment](#), para. 37; [Abd-Al-Rahman Trial Judgment](#), para. 194; [Ntaganda Appeal Judgment](#), para. 735. See also, Judgment, para. 197.

²¹⁸ See e.g. [Lubanga Trial Judgment](#), para. 104; [Katanga Trial Judgment](#), para. 84.

an understanding of whether and to what extent the effective excising of P-1339's prior explanations as to the discrepancies in his evidence on the notebook impacted its assessment of the remainder of his evidence, both on the notebook and as a whole.

76. In the same vein, at trial, the Defence vigorously challenged P-1339's account as regards his alleged role [REDACTED] within the group.²¹⁹ In the Judgment, the Trial Chamber found that 'P-1339's account of when and how exactly he assumed the [REDACTED] in Mr. Yekatom's group is unclear', yet concluded that 'this did not discredit P-1339's remaining testimony, nor the fact that he did, at some point in 2013, [REDACTED]'.²²⁰ Per the Court's appellate case law, the Trial Chamber was not permitted simply to affirm that the remainder of his account, and in particular as regards his role [REDACTED], remained credible; rather, it was obliged to explain why this was the case.²²¹ Yet the Trial Chamber thus provided no explanation in this regard. In fact, the Trial Chamber did not even expressly find that P-1339's account on this matter contained inconsistencies or discrepancies, or that it was unreliable in any aspect.²²² It did not explain how it could consider that P-1339's account of assuming the role of [REDACTED] 'at some point in 2013', thus stripped of all other details, was sufficiently credible in light of the factors that the Trial Chamber stated it took into account when assessing the reliability of testimony generally, *viz.*, 'the richness of details and coherence of the narrative provided', or 'the coherence of the testimony with other evidence before the Chamber'.²²³
77. The Trial Chamber's treatment of P-1339's account on the procurement of weapons was similar.²²⁴ It noted Defence arguments on the litany of contradictions in this account, but concluded that these inconsistencies were 'minor and, in any event, not such that rendered his account on this aspect wholly unreliable'.²²⁵ It did not explain how it determined that these inconsistencies were 'minor', or how this determination was compatible with the Chamber's own summary of said inconsistencies namely, 'that P-1339 appeared to be contradicting himself on the number of trips, persons who accompanied him, how the

²¹⁹ Defence Closing Brief, paras. 115-121. See e.g. P-1339: T-151, 37:24-38:3; T-158, 20:19-21, 21:22-22:1 (regarding contradictions on whether he [REDACTED]); T-158, 22:12-24:15 (on whether he was [REDACTED]), 20:24-28; 22:16-27 (regarding the [REDACTED]).

²²⁰ Judgment, para. 332.

²²¹ See [Ntaganda Appeal Judgment](#), para. 736 ('The Appeals Chamber notes that a Trial Chamber may rely on certain aspects of a witness's evidence and consider other aspects unreliable provided that it explains why it considers the remainder of the testimony to be reliable.').

²²² See Annex A, '[REDACTED] Role', rows 4-13.

²²³ Judgment, para. 197.

²²⁴ See Annex A, 'Weapons Purchase', rows 14-24.

²²⁵ Judgment, paras. 336, 2418, fn. 6118. See also Defence Closing Brief, paras. 129-133.

weapons were paid for, and when they were obtained.’²²⁶ Indeed, this determination appears irreconcilable with the fact that the Trial Chamber was able to rely only on the bare bones of his account, i.e. only that on ‘two occasions [...] members of Mr. Yekatom’s group received weapons prior to the Bangui attack’.²²⁷ The Trial Chamber notably did not include in this summary inconsistencies on *inter alia* on P-1339’s own participation on these trips, or Mr. Yekatom’s involvement.²²⁸ In this sense, it is difficult to understand the logic behind the suggestion that these inconsistencies were insufficient to ‘render[] his account on this aspect wholly unreliable’, despite the Trial Chamber being consequently unable to enter findings on the most basic details from P-1339’s extensive evidence on this subject: for instance, who exactly was involved in these trips; what kind of weapons were procured; where (and/or from whom) weapons were procured; and how P-1339 knew of these trips, i.e. the source of his information; whether Mr. Yekatom was involved, and if so, in what capacity, or indeed to what extent he was even aware of them. Again, the Trial Chamber provides insufficient reasoning to allow how this conclusion could be consistent with its stated approach to evidence assessment, i.e. consideration of ‘richness of details and coherence of the narrative provided’, or of ‘the source of their knowledge’.²²⁹

78. As regards the impact of these discrepancies on P-1339’s credibility generally, the Chamber’s reasoning was limited to its impression that these ‘purported inconsistencies [...] appeared to be the result of the witness’s confusion when answering the counsel’s questions rather than of a deliberate intention to lie’.²³⁰ The extract referenced by the Trial Chamber spans over thirty pages of the hearing transcript and over more than two hours of the Defence’s cross-examination on this specific matter.²³¹ No reasoning is provided to explain how the Chamber discerned confusion specifically engendered by Defence questioning – for instance, by way of a single illustrative example extract. In this regard, again, this omission stands in contrast with Trial Chamber IV’s approach in *Ntaganda*, as affirmed by the Appeals Chamber, where its finding that an accomplice witness did not appear to have ‘sufficiently understood the scope of the Defence’s questioning’ was substantiated with reference to a specific suggestion posed to the witness by the defence.²³²

²²⁶ Judgment, para. 2418, fn. 6118.

²²⁷ Judgment, para. 2418.

²²⁸ See Annex A, ‘Weapons Purchase’, rows 14-15, 19-23 (on Mr. Yekatom’s alleged involvement); rows 17-20, 22 (on P-1339’s own involvement).

²²⁹ Judgment, paras. 197, 200.

²³⁰ Judgment, para. 336.

²³¹ Judgment, para. 336, fn. 450 (citing ‘P-1339: T-158, p. 42, line 25 – p. 75, line 4’).

²³² See [Ntaganda Appeal Judgment](#), para. 661, citing [Ntaganda Trial Judgment](#), para. 165, fn. 390.

79. Nor does the Chamber explain how it determined that the inconsistencies in P-1339's evidence were specifically the result of his 'confusion' engendered by Defence counsel's questions, rather than the manifestation of P-1339's deliberate intention to lie – a particularly pertinent determination in light of P-1339's accomplice status – and it gives no indication of the basis or criteria on which this determination was made.
80. As regards the cited extract of Defence questioning: the Defence notes that whereas the Chamber found that P-1339 was 'confused' when answering Defence counsel's questions specifically, throughout the Defence cross-examination, the Presiding Judge intervened extensively to question P-1339 himself on his account of the weapons procurement (as he was procedurally entitled to do), effectively directing questioning for distinct periods therein.²³³ On one occasion, he expressly remarked upon the clarity of the witness's response to his question – yet this evidence deemed 'absolutely clear' by the Presiding Judge does not in any event appear to have been relied on by the Trial Chamber,²³⁴ for unspecified reasons that are, in any event, not readily attributable to 'confusion' engendered by Defence counsel questioning. Moreover, on multiple occasions within the cited extract, Defence counsel expressed care to ensure her questions were clear.²³⁵
81. Elsewhere, the Trial Chamber simply asserted that certain discrepancies in P-1339's evidence were immaterial, with no explanation as to how this characterisation was reached. Specifically, discrepancies emerged in P-1339's evidence regarding the colour of the armbands distributed to the group prior to the 5th December Operation.²³⁶ The Trial Chamber's brief, unreasoned dismissal of this discrepancy as 'immaterial' does not appear to take into consideration the totality of his evidence on this point,²³⁷ and specifically, his outright denials of having made the correction to his statement, despite a Registry Report indicating the contrary.²³⁸
82. Other discrepancies in P-1339's account simply remained unaddressed. For instance, the Trial Chamber did not address major chronological inconsistencies in P-1339's accomplice account of the 5th December Operation;²³⁹ discrepancies regarding the preparations prior to

²³³ See P-1339: T-158 (ENG), 45:4-6; 46:3-4; 46:11-14; 46:20-21; 47:4-10; 55:4-6; 55:8-10; 59:12-20; 60:7-14; 60:17-18; 60:25-61:2; 61:8-9; 63:6-16; 64:3-5; 67:23-24; 68:1-3; 69:20-25; 72:25-73:3.

²³⁴ See P-1339: T-158 (ENG), 60:7-8 ('Well, Mr. Witness, that's absolutely clear. Thank you for the clarification.');

cf. Judgment, para. 2418, fn. 6118.

²³⁵ See P-1339: T-158, 42:22-24, 49:2-4, 72:2-3, 72:18-21.

²³⁶ Judgment, fn. 6217; see further Annex A, 'Armbands', rows 1-3.

²³⁷ [Ntagerura et al. Appeal Judgment](#), para. 204.

²³⁸ See Annex A, 'Armbands', rows 1-3; see also, Defence Closing Brief, para. 112, citing *inter alia* ICC-01/14-01/18-1584-Conf-AnxA: Email from VWU to the Chamber & Parties titled 'RE: Issue in relation to the correction of P-1339's statement' sent on 5 September 2022 at 12:14.

²³⁹ See Appeal Brief, para. 382; see Defence Closing Brief, para. 414.

said operation;²⁴⁰ the number of elements present during the Boeing Market events;²⁴¹ whether the group split before or after the Boeing Market;²⁴² the group's retreat;²⁴³ who had conducted training in the group;²⁴⁴ or [REDACTED].²⁴⁵

vi) The manner in which P-1339's evidence was elicited

83. In light of P-1339's accomplice status, the Trial Chamber had a duty to carefully consider the totality of the circumstances in which his evidence was tendered when assessing its reliability.²⁴⁶ As the ECtHR has held, the inquiry as to whether circumstances in which evidence was obtained cast doubt upon its reliability forms part of the assessment of the quality of that evidence.²⁴⁷
84. However, the Trial Chamber provided little or no reasoning in respect of the manner in which P-1339's evidence was elicited in court, despite the specific challenges brought on this issue by the Defence. As argued in the Appeal, despite Defence arguments to this effect,²⁴⁸ the Trial Chamber did not address the fact that P-1339's evidence on critical issues, including whether instructions were given prior to the 5th December Operation;²⁴⁹ the instructions given *vis-à-vis* the Boeing Market;²⁵⁰ and whether the group attacked the Boeing Mosque,²⁵¹ were elicited through the extensive use of P-1339's prior statement. The Trial Chamber provides no reasoning to suggest that it actually holistically took into account the cumulative effect of the lack of spontaneity of P-1339's evidence on these key matters, noting in particular that in its general approach to witness credibility, the Trial Chamber merely stated that 'spontaneity of [witnesses'] answers when responding' was a factor that 'might also have an influence [emphasis added]' on its assessment of their credibility.²⁵²
85. As regards his evidence on the Boeing Mosque, the Defence had made extensive submissions on the manner in which P-1339's evidence was elicited, and how it had evolved, in particular from his initially outright denying the group's involvement therein,

²⁴⁰ See Annex A, 'Instructions/Selection', rows 41-43; see Defence Closing Statement, T-308 (ENG), 11:13-12:20-13:1; see Judgment, paras. 2438, 2457.

²⁴¹ See Annex A, 'Boeing Market Number of Elements', rows 82-88; see Defence Closing Brief, paras. 124-125.

²⁴² See Annex A, 'Boeing Market Split', rows 89-90; see Defence Closing Brief, para. 126.

²⁴³ See Annex A, 'Retreat after 5th of December', rows 59-67; see Defence Closing Brief, para. 128.

²⁴⁴ See Annex A, 'Training (trainers)', rows 44-45; see Defence Closing Brief, para. 306.

²⁴⁵ See Annex A, 'Training (purpose)' rows 46-57; see Defence Closing Brief, para. 306.

²⁴⁶ [Ntagerura et al. Appeal Judgment](#), para. 204.

²⁴⁷ See [Adamčo v. Slovakia](#), para. 57.

²⁴⁸ See Defence Closing Brief, paras. 106-107; T-308 (ENG), 10:11-14:1.

²⁴⁹ See Appeal Brief, para. 375.

²⁵⁰ See Appeal Brief, para. 377.

²⁵¹ See Appeal Brief, paras. 381-382.

²⁵² Judgment, para. 202.

and including expressly denying his prior statement inculcating the group.²⁵³ While the Trial Chamber dismissed these discrepancies as ‘intricate details’, or summarised the progression of his evidence as ‘memory refreshing’, these characterisations are not reconcilable with their objective significance.²⁵⁴ Nor are they consistent with the Presiding Judge’s own comment following P-1339’s initial denials of the group’s involvement: ‘this answers the question that we cannot speak of an attack on the Boeing mosque by this Anti-Balaka group’.²⁵⁵ Regarding P-1339’s initial denials, the Defence had specifically addressed the Sango grammar of these denials – in particular, the manner in which the grammar excluded the speaker (akin to the third person plural pronoun ‘they’ in English), consistent with his initial denials of the group’s involvement.²⁵⁶ Yet the Trial Chamber dismissed this argument simply by asserting the opposite, with no reasoning whatsoever provided that could suggest any engagement therewith.²⁵⁷

86. The Trial Chamber also omitted to sufficiently explain how P-1339’s accomplice evidence of the attack on the Mosque could reasonably be understood as corroborative of or consistent with contradictory evidence of eyewitnesses to the dismantling of the Boeing Mosque.²⁵⁸ In particular, it omitted to address D29-4013’s specific and express denial of seeing any traces of the alleged petrol fire or explosives damage on the Mosque, and how that could be reconciled with P-1339’s account;²⁵⁹ itself a key challenge of the Defence at trial.²⁶⁰ It also stated, directly contrary to the evidence, that eyewitness D29-4011 did not have ‘full visibility’ of the Mosque from her house.²⁶¹ It also ignored satellite imagery analysis expert evidence contradicting P-1339’s account of the attack.²⁶²

87. The Trial Chamber also ignored express Defence arguments on P-1339’s demeanour during

²⁵³ See Appeal Brief, para. 381-382, fns. 1382, 1392-1396; see also Defence Closing Brief, paras. 413-414.

²⁵⁴ See Appeal Brief, para. 381. See [Adamčo v. Slovakia](#), para. 65.

²⁵⁵ P-1339: T-154 (ENG) 77:25-78:1; see Appeal Brief, para. 381, fn. 1384.

²⁵⁶ See Defence Closing Brief, para. 413, fn. 1374. See, by way of contrast, P-1339’s repeated reliance on the first person plural pronoun ‘*nous*’ (we) in his inculpatory statement, as read onto the record (which he initially denied under oath): P-1339: T-154 (FRA), 85:15-19 (*‘Je crois que nous avons attaqué le mosquée vers le... 10 heures, le 20 décembre [...] Nous avons utilisé des roquettes, des grenades pour détruire les murs de la mosquée. Nous avons mis le feu au toit à l’aide essence et d’allumettes.’*).

²⁵⁷ See Judgment, fn. 6522.

²⁵⁸ See Appeal Brief, para. 383-384; see also para. 385. See also, [Adamčo v. Slovakia](#), para. 71, where the ECtHR examined domestic courts’ treatment of accomplice evidence and found that they had ‘approached some of the applicant’s objections in a manner manifestly distorting the content of the evidence concerned and relied on reasoning clearly lacking in coherence’ as ‘demonstrated [...] by the suggestion that the credibility of the evidence from the cooperating [accomplice] witnesses was confirmed rather than undermined by inconsistencies between it and other objective evidence’.

²⁵⁹ See Appeal Brief, para. 383-384.

²⁶⁰ See Appeal Brief, para. 383, fn. 1408.

²⁶¹ See Appeal Brief, para. 384, fn. 1415.

²⁶² See Appeal Brief, para. 386, fn. 1422.

his testimony, and in particular, the extraordinary demeanour he assumed while he provided the version of his account in which he inculpated the group in the attack on the Mosque.²⁶³ Its silence on this point stands in contrast with its express assessment of the in-court demeanour of P-0487, whose evidence it found ‘wholly unreliable’.²⁶⁴

88. In light of the above, the CLRV position that the Trial Chamber ‘applied the correct caution’ in respect of P-1339’s accomplice evidence is without merit.²⁶⁵ On the contrary, an examination of both the Chamber’s general approach to the assessment of witness credibility and its specific assessment of P-1339’s credibility demonstrates a consistent failure to provide sufficient reasoning in its assessment of P-1339’s accomplice evidence. In the Judgment, there is little, if any, indication that the Trial Chamber was even aware of its heightened duties in this regard, let alone that it correctly fulfilled them. Relevant credibility factors or circumstances remained unaddressed; implausible or irreconcilable ‘explanations’ for discrepancies were effectively accepted; and fundamental discrepancies were glossed over or ignored. As a result, the Appeals Chamber simply cannot be satisfied that the Trial Chamber’s sole or decisive reliance on P-1339’s accomplice evidence was accompanied by the safeguards required under the Court’s appellate case law.

D. PART D: The CLRV’s treatment of the remaining pleaded errors cannot sustain the impugned findings

1. D.1 – The CLRV leave unresolved the pleaded errors concerning the scope of the case, article 25(3)(a) liability, and the PK9–Mbaiki chronology and causation findings

i) The CLRV misidentify the article 74(2) and fair-trial challenge (Ground 1.1)

89. In the Response, the CLRV seek summary dismissal of Ground 1.1 of the Appeal, on the basis that the Defence ‘does not identify the nature of the alleged error’ therein.²⁶⁶ The rationale for this position is not readily apparent. In Ground 1.1, the Defence clearly alleged that the Trial Chamber erred in law in relying on material factual findings that had not been properly pleaded at trial, in violation of article 74(2) and Mr. Yekatom’s fair trial rights.²⁶⁷ The CLRV argument that the Defence did not elaborate on the impugned findings were ‘contrary to logic, common sense, and experience or that the Chamber did not consider all

²⁶³ See Appeal Brief, para. 382, fn. 1391. Cf. [Nchamihigo Appeal Judgment](#), paras. 47-48.

²⁶⁴ Judgment, para. 232.

²⁶⁵ *Contra* CLRV Response, para. 315.

²⁶⁶ CLRV Response, para. 184.

²⁶⁷ Appeal Brief, paras. 4-11.

relevant and connected evidence’ is thus entirely beside the point.²⁶⁸

90. The CLRV’s misapprehension appears to extend to their treatment of P-2475.²⁶⁹ In Ground 1.1, the Defence argued *inter alia* that the Trial Chamber’s reliance on certain material factual findings on Mr. Yekatom’s individual criminal acts relating to the 5th December Operation (in the Appeal, collectively referred to as the ‘5 December Operation Material Facts’) exceeded the facts and circumstances described in the charges, contrary to article 74(2);²⁷⁰ and moreover, that Mr. Yekatom was not properly informed that these material facts, in their nature and/or cause, could ground his criminal liability.²⁷¹ While in certain circumstances, defective charges can be ‘cured’ if the Prosecution provides an accused with ‘timely, clear and consistent’ information detailing the factual basis underpinning the charges, no such possibility arises here.²⁷² For the effective entirety of trial, the Prosecution pointedly and expressly continued to rely on both P-1339 and P-2475 for their purported eyewitness accounts of the 5th December Operation, despite these accounts being fundamentally contradictory.²⁷³ In particular, P-2475’s evidence regarding the group’s preparation and conduct of the operation could not be reconciled with P-1339’s evidence on the alleged reconnaissance mission on the eve of the operation, and Mr. Yekatom’s launching of the attack at the Market – i.e. two of the three 5th December Operation Material Facts that grounded Mr. Yekatom’s convictions on multiple counts.²⁷⁴ Given that the Prosecution effectively ran two irreconcilable cases against Mr. Yekatom, there can therefore be no reasonable argument that the defective charges were ‘cured’ at trial through the provision of ‘timely, clear and consistent’ information. Contrary to the CLRV Response therefore, it is the Prosecution’s express reliance on P-2475’s fabricated account until the eleventh hour, rather than the Trial Chamber’s ultimate rejection *in toto* thereof, that is relevant for the purposes of the Defence argument.²⁷⁵

ii) The CLRV conflate direct perpetration with direct co-perpetration (Ground 1.2)

91. In the Response, the CLRV argue that the Defence ‘misrepresents’ the Confirmation Decision, and thus challenge the Defence position that direct perpetration, as a mode of

²⁶⁸ Cf. CLRV Response, para. 184.

²⁶⁹ Cf. CLRV Response, para. 183.

²⁷⁰ Appeal Brief, paras. 9-10.

²⁷¹ Appeal Brief, para. 11.

²⁷² Appeal Brief, para. 11.

²⁷³ Appeal Brief, para. 11.

²⁷⁴ See Appeal Brief, para. 9, fns. 17-18, and para. 11, fn. 26.

²⁷⁵ Cf. CLRV Response, para. 183. See Judgment, paras. 506-521.

liability, was not confirmed by the Pre-Trial Chamber in respect of Counts 1, 4, 5 and 8.²⁷⁶ At the same time however, the CLRV note that the Pre-Trial Chamber found ‘reasonable grounds to conclude [*sic*]’ that Mr. Yekatom committed the crimes charged under those counts ‘jointly with others or through other persons under article 25(3)(a)’ – thus effectively conceding that the Pre-Trial Chamber did not in fact confirm direct perpetration, i.e. commission ‘as an individual’, in respect of those counts.²⁷⁷ The inconsistency in the CLRV position thus appears to stem from a failure to recognise the distinction between direct perpetration (proper) and direct co-perpetration.²⁷⁸ This confusion is further manifested in the CLRV argument (made elsewhere in the Response), that Mr. Yekatom was convicted for Counts 1, 4, 5 and 8 as a direct co-perpetrator, citing the Trial Chamber’s summary finding that Mr. Yekatom ‘committed jointly with others’ the crimes charged under those counts.²⁷⁹

92. In any event, this latter argument unduly prioritises form over substance: it disregards the Chamber’s qualitative reasoning and conclusions within its substantive legal findings on Mr. Yekatom’s individual criminal responsibility, in favour of summary findings. Specifically, the CLRV ignore: the Chamber’s determination that Mr. Yekatom’s responsibility for Counts 1, 4, 5 and 8 was ‘best captured as a direct perpetrator’; its express contrasting of Counts 2, 3 and 6 (for which he was convicted as an indirect perpetrator) on the basis that crimes under those counts ‘were not committed directly by him’; and its finding that ‘it was the entirety of Mr. Yekatom’s conduct’ that created coercive conditions leading to the departure of Muslims from Boeing and Cattin²⁸⁰ – itself visibly an attempt to articulate (albeit imperfectly) the definitional element of direct perpetration liability: namely the physical and personal carrying out by an accused of all of the material elements of an offence.²⁸¹ The CLRV also omit to address the fact that, in its sentencing findings, the

²⁷⁶ CLRV Response, para. 186. See Appeal Brief, paras. 12-16.

²⁷⁷ CLRV Response, para. 186. See also, ICC-01/14-01/18-403-Conf-Corr, paras. 98-99. See also ICC-01/04-01/06-3121-Red, *Prosecutor v Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014 ([‘Lubanga Appeal Judgment’](#)), para. 464; [Abd-Al-Rahman Trial Judgment](#), paras. 790-793.

²⁷⁸ See also, CLRV Response, para. 187 and fn. 434 (where the CLRV appear to suggest, incorrectly, that Mr. Yekatom was convicted as an indirect co-perpetrator for the relevant Counts; and moreover, cites to the Confirmation Decision, and not the Judgment).

²⁷⁹ CLRV Response, para. 255, citing *inter alia* Judgment para. 4025 (summary findings on Mr. Yekatom’s individual criminal responsibility for the Boeing / Cattin crime base counts). See also Judgment, para. 4492 (where the Trial Chamber ‘recall[ed]’ in summary introductory findings on sentencing for the Boeing / Cattin crime base, that Mr. Yekatom was ‘convicted of committing the crimes underlying Counts 1 to 6 and 8 jointly with, or through others’).

²⁸⁰ Judgment, para. 4013.

²⁸¹ See e.g. [ICC-01/04-01/07-717](#), *Prosecutor v Katanga & Ngudjolo*, Public Redacted Decision on the confirmation of charges, 30 September 2008, para. 488; ICC-01/05-01/13-1989-Red, *Prosecutor v Bemba et al.*, Public Redacted Version of Judgment pursuant to Article 74 of the Statute, 19 October 2016 ([‘Bemba et al. Trial Judgment’](#)), para. 58; ICC-02/04-01/15-1762-Red, *Prosecutor v Ongwen*, Public Redacted Trial Judgment, 4

Trial Chamber repeatedly recalled ('[i]n particular') that it 'convicts' Mr. Yekatom as a 'direct perpetrator' for Counts 1, 4 and 5, expressly relying on this finding to determine the degree of Mr. Yekatom's participation and intent in relation to those counts, and '[n]otably [...] emphasis[ing]' its above-noted finding on the 'entirety of Mr. Yekatom's conduct' vis-à-vis Counts 4 and 5.²⁸²

93. Even setting aside the Trial Chamber's contradictory findings, the CLRV ignores the critical fact that the Chamber did not address the constitutive legal elements of co-perpetration liability in its findings on Mr. Yekatom's responsibility for Counts 1, 4, 5 and 8.²⁸³ It thus failed to enter conclusions on *inter alia* an agreement between two or more co-perpetrators involving a 'critical element of criminality';²⁸⁴ the co-perpetrators' control over the crime(s), by virtue of their coordinated essential contributions thereto and their resulting mutual power to frustrate the crime(s);²⁸⁵ the co-perpetrators' mutual awareness and acceptance that implementing the common plan would result in the fulfilment of the material elements of the crime(s);²⁸⁶ or their awareness of the factual circumstances enabling their joint control over the crime(s).²⁸⁷ The Trial Chamber's findings on Mr. Yekatom's control over those crimes do not show an application of the co-perpetration framework,²⁸⁸ and its findings under 'Mental elements' are confined to article 30 and the 'specific knowledge requirements' of the relevant crimes.²⁸⁹
94. In light of the above, the CLRV position that the Trial Chamber convicted Mr. Yekatom for Counts 1, 4, 5 and 8 as a direct co-perpetrator is without merit. The Defence notes that even if *arguendo* the CLRV were correct, the Appeals Chamber would in any event be required to find that those convictions were materially erroneous, on the basis of the Trial Chamber's failure to enter findings on the constitutive legal elements of co-perpetration liability.

February 2021 ('[Ongwen Trial Judgment](#)'), para. 2782; [Ntaganda Trial Judgment](#), para. 735; Kai Ambos, 'Article 25' in Kai Ambos (ed), Rome Statute of the International Criminal Court Article-by-Article Commentary (4th ed. Beck Hart Nomos 2022), p. 1199 (noting that, commission 'as an individual' within the meaning of article 25(3)(a) involves a 'direct perpetrator act[ing] on his or her own without relying on or using another person'); Gerhard Werle and Florian Jessberger, Principles of International Criminal Law (4th ed. Oxford University Press 2020), pp. 239-240.

²⁸² Judgment, paras. 4504, 4535.

²⁸³ Judgment, paras. 4007-4026; cf. CLRV Response, paras. 185-187, 255.

²⁸⁴ [Lubanga Appeal Judgment](#), paras. 445-451; [Abd-Al-Rahman Trial Judgment](#), paras. 794-795; [Bemba et al. Trial Judgment](#), paras. 64-67; [Ntaganda Trial Judgment](#), paras. 773-776; see also, [Ongwen Trial Judgment](#), para. 2786-2787 and fn. 7272.

²⁸⁵ [Lubanga Appeal Judgment](#), para. 469, 473; [Abd-Al-Rahman Trial Judgment](#), para. 796-799; [Bemba et al. Trial Judgment](#), paras. 68-69; [Ntaganda Trial Judgment](#), paras. 779-780; see also, [Ongwen Trial Judgment](#), para. 2787.

²⁸⁶ [Abd-Al-Rahman Trial Judgment](#), para. 800; [Bemba et al. Trial Judgment](#), paras. 70-71.

²⁸⁷ [Katanga Trial Judgment](#), paras. 1399.

²⁸⁸ Judgment, paras. 4008-4013.

²⁸⁹ Judgment, paras. 4014-4024.

iii) The CLRV do not answer the transformation of the confirmed co-perpetration case for Counts 24-28 (Ground 1.3)

95. In the Response, the CLRV claim that the Defence ‘misrepresents’ the Trial Chamber’s decision of 29 October 2020.²⁹⁰ This accusation appears to be based on a misreading of the Appeal. It is not the Defence’s position that the Trial Chamber ‘reshape[d] the parameters of the co-perpetration theory concerning Mr. Yekatom’ in its 29 October 2020 decision.²⁹¹
96. Further, while the CLRV argue that the Trial Chamber adhered to the defined scope of co-perpetration concerning Mr. Yekatom, this argument is belied by the CLRV’s selective, not to say misleading, synopsis of the Trial Chamber’s findings delineating the contours of the common plan and its co-perpetrators, as set out at the commencement of trial.²⁹² This synopsis omits entire paragraphs of the Trial Chamber’s findings, including its reference to plans hatched to return François Bozize to power following the Seleka coup, allegedly involving Messrs. Ngaissona, Bernard Mokom, and Maxime Mokom, in Yaoundé, Cameroon, starting in March 2013; or Maxime Mokom’s ‘regular’ meetings with Mr. Yekatom, Ouandjio and Beina in Zongo, DRC, in around April 2013, in the context of Mokom’s organising various different Anti-Balaka groups for attacks.²⁹³ The manner in which this synopsis drastically reduces in temporal, geographical, and personal scope of the material facts establishing the elements of Mr. Yekatom’s co-perpetration liability as confirmed in pre-trial only serves to underscore the Defence argument in Ground 1.3.
97. The CLRV further misrepresent the Judgment in compiling and repurposing factual findings and presenting them as the Chamber’s findings on Mr. Yekatom’s essential contributions.²⁹⁴ Again, the mere fact that the CLRV found it necessary to pad out the Trial Chamber’s findings in this manner is indicative of itself of their drastically reduced scope.
98. In reality, the factual basis on which Mr. Yekatom was convicted as an indirect co-perpetrator represented a drastic transformation from that on which the charges were confirmed, as delineated by the Trial Chamber at the start of his trial. In the Judgment, instead of materialising in March 2013 and spanning three different nations, the common plan underpinning Mr. Yekatom’s co-perpetration liability was found to have materialised at an unspecified location along the 100 km Pk9-Mbaïki Axis in CAR’s Lobaye prefecture,

²⁹⁰ ICC-01/14-01/18-703-Conf.

²⁹¹ *Contra* CLRV Response, para. 189. See Appeal Brief, para. 19.

²⁹² *Cf.* CLRV Response, paras. 189-190.

²⁹³ ICC-01/14-01/18-703-Conf, paras. 28-29; *cf.* CLRV Response, para. 190.

²⁹⁴ CLRV Response, para. 192, citing Judgment, paras. 4348-4356 (Trial Chamber findings on ‘Existence of an agreement’); compare, paras. 4360-4363 (findings on ‘Mr. Yekatom’s control over the crimes’).

at an unspecified date after 10 January 2014.²⁹⁵ Rather than comprising individuals from across the echelons of the Bozize government, or Habib Beina, Mr. Yekatom's co-perpetrators in the plan were limited to two members of the group – and now included Alkanto, despite his never having been identified as such at trial.²⁹⁶ Mr. Yekatom's essential contributions to this plan now were limited to his purported instructions to kill Muslims in the Axis area and his alleged 'undisputed' leadership over his elements, instead of the remainder of the twelve categories of contributions he had initially been alleged to have made since August 2013, from Zongo, DRC, to Kalangoi and Bangui, CAR.²⁹⁷

99. The CLRV position that these findings were 'squarely within the facts and circumstances described in the Confirmation Decision' is thus without merit.²⁹⁸

2. D.2 – The CLRV's attribution analysis reproduces the errors pleaded in Grounds 2.1 to 2.7

i) The CLRV fail to answer the pleaded attribution error raised in Ground 2.1

100. The limits of the CLRV's response to Ground 2.1, read together with its response to Ground 2.2, are evident from its own formulation of the issue. The CLRV assert that the Trial Chamber correctly found the Anti-Balaka to be 'one movement' and considered Mr. Yekatom's liability on the basis of his membership therein.²⁹⁹ That formulation is itself the point in issue. The Appeal does not contend that the Chamber was barred from making contextual findings concerning the Anti-Balaka. Rather, given the manner in which the case was pleaded and the subsequent narrowing of confirmed charges excluding article 25(3)(d), the Chamber could not without more use movement-level findings concerning the Anti-Balaka's objectives, perceptions and patterns of conduct as the bridge to Mr. Yekatom's own agreement to a common plan, purported control over the RFACPP, essential contribution, or *mens rea*.³⁰⁰ The CLRV's formulation therefore reproduces the very attribution error raised on appeal whereby membership in, or association with, a purportedly unified movement is treated as the starting point for individual criminal responsibility.³⁰¹

101. The doctrinal mismatch is reinforced by the CLRV's own submissions elsewhere. In addressing article 25(3)(d), the Response describes that provision as directed to contribution

²⁹⁵ Judgment, para. 4356. See Appeal Brief, paras. 18-19.

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ *Contra* CLRV Response para. 192.

²⁹⁹ CLRV Response, p. 78 and paras. 194-195.

³⁰⁰ Appeal Brief, paras. 25-34, 40-49 including submissions concerning the impermissibility of relying on mere membership for individual criminal responsibility in accordance with article 25(2).

³⁰¹ CLRV Response, paras. 194-195; Appeal Brief, paras. 25, 49.

to crimes by a group of persons acting with a common purpose, and distinguishes that form of collective-criminality reasoning from co-perpetration under article 25(3)(a), which requires a common plan capable of tying co-perpetrators together and justifying reciprocal imputation.³⁰² The Response also relies elsewhere on a functional and contextual understanding of ‘organisation’ for article 7 purposes.³⁰³ Those propositions expose the error here. The matters relied on by the CLRV in response to Grounds 2.1 and 2.2 are, in substance, contextual, organisational, or collective-criminality *indicia*. They do not, without further analysis, establish individual criminal responsibility under the confirmed article 25(3)(a) framework. Nor does the Response engage the procedural architecture emphasised in the Appeal with regard to the Prosecution’s pleaded common-purpose and common-plan mechanisms to connect decentralised Anti-Balaka actors and the subsequent procedural limitations with respect to article 25(3)(d).³⁰⁴

102. The CLRV’s reliance on Mr. Yekatom’s alleged conduct only further illustrates – and does not cure – the error raised. The Response first begins from the Chamber’s broader co-ordination narrative for the 5th December Operation – the alleged prior plan, movement of groups from the provinces, communications between ‘Anti-Balaka chiefs’, common staging points, arming and financing, and the asserted co-ordination of leaders, targets and objectives – and then moves from that wider Anti-Balaka frame to the alleged understanding, sentiments and conduct of the elements around Mr. Yekatom.³⁰⁵ It is on this basis that the Response relies on alleged training to kill Muslims, what ‘elements’ allegedly understood, and the sentiments of Cœur de Lion, Beina, Maidanda and Bodios as a basis for attributing liability to Mr. Yekatom.³⁰⁶ The Judgment adopted the same approach, finding that elements within the alleged group had not been instructed on the principle of distinction, bore strong anti-Muslim sentiment, and therefore would have understood Mr. Yekatom’s instructions as accepting that Muslim civilians would be killed.³⁰⁷ The pleaded error is that sentiments attributed to others, and to the wider Anti-Balaka movement, were used to supply the content of Mr. Yekatom’s own instructions and the meaning of his own conduct under article 25(3)(a). Restating those same findings does not answer the error.

103. Having relied on those Anti-Balaka features, the Response then seeks to minimise their

³⁰² CLRV Response, paras. 32-33.

³⁰³ CLRV Response, paras. 151-154.

³⁰⁴ Appeal Brief, paras. 26-34.

³⁰⁵ CLRV Response, paras. 195-197.

³⁰⁶ CLRV Response, para. 197.

³⁰⁷ Judgment, paras. 43, 48, 69-75, 2446-2454, 3926, 4010-4016, 4024.

materiality. It relies on Mr. Yekatom's alleged public Anti-Balaka presentation, the asserted common objective of different Anti-Balaka streams, and alleged co-ordination with other Anti-Balaka groups during the 5th December Operation.³⁰⁸ It then asserts that the Judgment would have been unaffected had the Chamber treated Mr. Yekatom as RFACPP only, and that co-ordination with other Anti-Balaka groups was immaterial because he was convicted only for what he personally committed.³⁰⁹ That is not a coherent answer to the error raised. Anti-Balaka status and inter-group co-ordination are first used to give content to the liability analysis and to minimise distinctions between different streams and yet then dismissed by the CLRV as immaterial once their legal significance is challenged. Nor is the difficulty cured by the CLRV's reliance on a 'substantial body of evidence' said to show Mr. Yekatom's 'personal animus and individual acts'.³¹⁰ The matters invoked for that purpose – including the alleged understanding of his elements, alleged instructions to kill Muslims, the movement and conduct of the alleged group, threats in Mbaïki, and flight caused by fear – derive their incriminating meaning from the prior attribution of Anti-Balaka wide characteristics to Mr. Yekatom and to the RFACPP. The Response therefore characterises the case as personal while relying on Anti-Balaka identity, common objective and co-ordination to make it so.

104. The CLRV's *mens rea* submissions further demonstrate the same transposition. The Response asserts that the Chamber identified the exact timeframe during which Mr. Yekatom became aware that the Anti-Balaka equated Muslims with the Seleka.³¹¹ However, the CLRV's, like the Trial Chamber's, starting proposition remains entirely contextual relying on the fact that: Anti-Balaka groups had, since September 2013, associated Muslims with the Seleka; that was said to be publicly known; and Mr. Yekatom therefore knew the context and how members of the alleged group would act.³¹² That is not an incident-specific finding of Mr. Yekatom's own state of mind but rather, is an (erroneous) inference from a movement-wide Anti-Balaka perception to his personal *mens rea*. Nor is the inferential leap cured by the audiovisual material invoked by the CLRV.³¹³ The Judgment records that the relevant videos were not securely dated and did not provide incident-specific proof of Mr. Yekatom's own state of mind at the relevant time.³¹⁴

³⁰⁸ CLRV Response, paras. 202-209.

³⁰⁹ CLRV Response, paras. 204, 206-207.

³¹⁰ CLRV Response, paras. 198-200.

³¹¹ CLRV Response, para. 219.

³¹² CLRV Response, para. 220; Judgment, paras. 48, 4024.

³¹³ CLRV Response, para. 221.

³¹⁴ Judgment, paras. 2448-2454; Appeal Brief, paras. 109, 117.

105. Moreover, the pleaded error under Ground 2.1 is not confined to the attribution of movement-level characteristics. It also arises where references to persons described generically as ‘anti-balaka’ are treated as references to RFACPP elements allegedly under Mr. Yekatom’s control.³¹⁵ The CLRV’s treatment of the findings concerning conduct along the PK9-Mbaiki Axis illustrates this second form of the error.³¹⁶ The Response submits that the Trial Chamber could not have misattributed the conduct of other Anti-Balaka because it traced the movement of the Anti-Balaka group allegedly led by Mr. Yekatom from Yamwara to Mbaiki.³¹⁷ Again, that assumes the matter in dispute. As raised on appeal, references to the ‘Anti-Balaka’, and fear of ‘the Anti-Balaka’, could not automatically be treated as references to RFACPP elements allegedly under Mr. Yekatom’s control,³¹⁸ noting the Judgment itself records local youths who had referred to themselves ‘anti-Balaka’, youths mixed with Anti-Balaka, and persons acting under Mr. Yekatom’s name without association to him or the RFACPP.³¹⁹

106. The attribution error is therefore twofold. First, movement-wide Anti-Balaka characteristics – including objectives, perceptions, patterns of conduct and co-ordination – are attributed to Mr. Yekatom for the purposes of article 25(3)(a). Second, conduct by persons described generically as ‘Anti-Balaka’ is treated as conduct of RFACPP elements allegedly under Mr. Yekatom’s control. The CLRV’s response merely reproduces both errors – the material consequences of which are further discussed below.

ii) The CLRV do not show that the attribution error was immaterial

107. Whilst the CLRV initially contend that the Trial Chamber correctly considered Mr. Yekatom’s liability based on his membership within the Anti-Balaka, it then subsequently asserts that the error raised by the Defence in Ground 2.1 lacks materiality on the basis that ‘the Chamber did not convict the Appellant on the basis of an alleged broader membership of the Anti-Balaka’.³²⁰ Notwithstanding the contradictory approach of the CLRV, the Response further misunderstands the materiality of the error raised on Appeal. Ground 2.1 does not assert that every surrounding fact falls away once the attribution of Anti-Balaka wide characteristics to Mr. Yekatom is removed. Rather, the core of the issue is that the

³¹⁵ Appeal Brief, paras. 85-90.

³¹⁶ CLRV Response, paras. 215-217. See also in relation to Cattin incident discussed at paragraph 111 below and Appeal Brief, paras. 39, 387-390.

³¹⁷ CLRV Response, paras. 216-217.

³¹⁸ Appeal Brief, paras. 85-94.

³¹⁹ Judgment, paras. 1218-1222, 2245, 3537, 3544-3545; Appeal Brief, paras. 91-94.

³²⁰ CLRV Response, para. 204.

incriminating meaning assigned to those facts depends on that very attribution. The Chamber repeatedly treats arming, training, movement toward Bangui, attacks on Seleka positions, the advance on the Axis, and the civilian population's fear of 'the Anti-Balaka' as proof of article 25(3)(a) liability only by superimposing Anti-Balaka wide characteristics onto them: the equation of Muslims with the Seleka, the attributed anti-Muslim sentiments of the elements around Mr. Yekatom, the assumed understanding of orders, the notion that the RFACPP was perceived as part of the Anti-Balaka, and the conclusion that the Anti-Balaka could rely on Mr. Yekatom to implement its policy.³²¹ Remove those characteristics, and the case is materially different and substantially weaker.

108. The 5th December 2013 findings provide the clearest illustration at the level of the operation as a whole. The Chamber did not simply find that an armed group advanced on Bangui to attack Seleka positions. It went further, treating disparate Anti-Balaka groups as co-ordinating within one movement; concluding that the Anti-Balaka objective of ousting the Seleka had, in practice, coalesced with attacks on Muslim civilians; finding that Mr. Yekatom's alleged group co-ordinated with other Anti-Balaka groups and was perceived as part of that wider movement; and relying on the proposition that, because the Anti-Balaka equated Muslims with the Seleka, it could rely on him to implement that policy.³²² That wider frame enabled the Chamber to reject the reasonable inference that the operation was directed at the military objective of ousting the Seleka or attacking Seleka positions.³²³ Once the Anti-Balaka-wide perception and policy are removed, that inference no longer stands on the same footing. Co-ordination for an attack on Seleka positions is not, without more, proof of an article 25(3)(a) plan to target Muslim civilians.

109. The Boeing Market findings further show how that wider frame was applied to a specific incident. The Chamber treated Boeing not merely as a point along an advance on Bangui, but as proof that Mr. Yekatom's orders included targeting areas where Muslims were to be found; that those instructions extended to Muslim traders at the market; and that the elements around him understood the orders in that sense because of their alleged anti-Muslim sentiments and the purported absence of training on the principle of distinction.³²⁴ That is the step by which the alleged order to fight Seleka positions is given an additional content, namely the targeting of Muslim civilians. Without that attributed Anti-Balaka

³²¹ Appeal Brief, paras. 35-49; Judgment, paras. 43, 63, 69-80, 2446-2454, 4010-4016, 4024, 4227, 4337, 4352, 4358.

³²² Appeal Brief, paras. 35-49.

³²³ Appeal Brief, paras. 35-42, 44, 49; Judgment, paras. 63, 69-75, 3930, 3939, 4010-4011.

³²⁴ Appeal Brief, paras. 105-117, 127-128; CLRV Response, paras. 220-229.

perception and understanding, the Trial Chamber's route to a finding that the Boeing Market attack was directed against Muslim civilians as such is materially weakened.³²⁵

110. The Boeing Mosque findings reflect the same underlying logic. The point is not answered by the Chamber's reference to named associates such as Cœur de Lion or Alkanto. The decisive step occurred earlier. The Chamber moved from a finding that the alleged RFACPP group was attacking areas where Muslims were located, and that the elements implementing those orders understood them through an Anti-Balaka lens of hostility to Muslims, to the conclusion that the mosque would be attacked as part of that advance.³²⁶ The critical issue, therefore, is not simply command over particular individuals. It is the attributed content of the orders and the attributed understanding of the members said to be executing them. Without that Anti-Balaka attribution, the Chamber still had to explain why the evidence relied upon to link named associates to the mosque attack was sufficient to establish that the attack on a religious building formed part of Mr. Yekatom's own article 25(3)(a) contribution and intent.³²⁷ The fact that the Chamber identified named associates and attributed a subordinate position to them does not, by itself, supply that missing step.
111. The Cattin killing sharpens the aforementioned identification problem. The direct perpetrators were not individually identified, yet the Trial Chamber attributed the killing of the unnamed Muslim man to elements of the alleged RFACPP group by reference to the group's movement through the area and to the broader narrative that it formed part of the Anti-Balaka attack moving through Boeing and Cattin.³²⁸ Once 'Anti-Balaka' is no longer treated as a proxy for RFACPP elements allegedly under Mr. Yekatom's control, that attribution requires more than the Judgment supplied. The Chamber had to establish beyond reasonable doubt, the basis for treating the perpetrators as RFACPP elements allegedly under Mr. Yekatom's control and for attributing their acts to him were under article 25(3)(a). Its route to that conclusion depended in substantial part on the prior assimilation of the alleged RFACPP group to the wider Anti-Balaka movement and attack narrative.
112. The displacement findings proceed on the same footing. In relation to Boeing/Cattin, the Chamber relied not only on the attack by the alleged RFACPP group, but also on the continuing fear created by the presence of the Anti-Balaka around PK5 and Bangui more generally.³²⁹ That causal chain runs through a broader Anti-Balaka fear, not through an

³²⁵ Judgment, paras. 74-76, 2446-2454, 3950, 3959, 4010, 4016; Appeal Brief, paras. 127-128.

³²⁶ Appeal Brief, paras. 42, 49; Judgment, paras. 75-76, 78, 3951, 3973, 4010, 4023.

³²⁷ Appeal Brief, para. 49; CLRV Response, paras. 266-269; Judgment, para. 4023.

³²⁸ Appeal Brief, paras. 39, 49; Judgment, paras. 79, 3940, 3962-3965, 4013, 4015, 4019-4020, 4024.

³²⁹ Appeal Brief, para. 394; Judgment, para. 80.

isolated set of acts by identified RFACPP elements. Once that broader attribution is removed, the basis for finding that Mr. Yekatom's own conduct created the coercive circumstances causing the later departures becomes materially narrower. That is why the conflation of Anti-Balaka generally with RFACPP elements allegedly under Mr. Yekatom's control is material to Counts 4 and 5.

113. The persecution findings for Count 8 depend on the same bridge from movement-wide perception to individual intent. The Trial Chamber did not infer discriminatory purpose solely from a specific statement personally uttered by Mr. Yekatom at a particular moment. Its central premise was broader and relied on the proposition that the Anti-Balaka perceived Muslims as collectively responsible for, or aligned with, the Seleka; that Mr. Yekatom knew of that perception; and that he himself perceived Muslims in the same way.³³⁰ Although the Judgment also invoked incident-specific conduct,³³¹ the pleaded error remains that the finding of discriminatory purpose depended on transposing an alleged Anti-Balaka wide perception into Mr. Yekatom's own intent. If that movement-to-individual inference is unavailable, the finding on discriminatory purpose for Count 8 is left without the necessary reasoning foundation.

114. Further still, the Trial Chamber's findings in relation to the conduct along the Axis make that dependence even clearer. The Chamber described Mr. Yekatom as the undisputed leader of the Anti-Balaka group on the PK9-Mbaïki axis, found that Muslims fled in fear of the Anti-Balaka and in particular because of the arrival of the alleged RFACPP group, relied on that group's place within the Anti-Balaka to support the agreement with Cœur de Lion and Alkanto, and then concluded that Mr. Yekatom could rely on the elements of that group to execute the agreement, such that their individual wills were immaterial.³³² As set out in the Appeal, that reasoning depends on the impugned attribution and its materiality is evident from the record. The Judgment itself refers to local youths who had declared themselves Anti-Balaka, youths mixed with Anti-Balaka groups, persons acting under Mr. Yekatom's name without mandate, and broader local pressures on Muslims which did not arise from any identifiable organised group. The additional findings relied upon by the CLRV – including the church meeting, the alleged 'foregone conclusion' of removal, and later threats in Mbaïki – do not answer that attribution point and do not explain how generic references to 'Anti-Balaka' violence and fear become conduct attributable to RFACPP elements

³³⁰ Appeal Brief, paras. 41-43, 97-104; Judgment, paras. 45, 48, 1218-1222, 3939, 4024.

³³¹ Judgment, paras. 4001-4003; see also Judgment, paras. 75, 78-80.

³³² Appeal Brief, paras. 87-89; Judgment, paras. 115, 121-122, 3466, 3477-3479, 3565, 3568, 3610, 4348-4358.

allegedly under Mr. Yekatom's control. Once those labels are disentangled, the Chamber's conclusions on causation, agreement and perpetrator identification for Counts 24-28 cannot simply be preserved by substituting 'RFACPP' for 'Anti-Balaka' as alluded by the CLRV.

115. Nor is it enough for the CLRV to say that the Chamber made findings on leadership, agreement and reliance on elements.³³³ The Appeal does not suggest that the Judgment never used those labels. The Defence's position is that those findings derived their content and probative force from the impugned Anti-Balaka attribution. The Chamber did not first reason, independently and with the necessary specificity, the identity of the executors, the content of the orders, the terms of the agreement, the discriminatory purpose of the operation, and the basis for treating the executors' individual wills as immaterial, and only then add the Anti-Balaka label by way of description. It reasoned in the opposite direction. The label, and the perceptions attached to it, supplied the meaning of the orders, the meaning of the conduct, the assumed understanding of the alleged group, and the basis on which conduct by others could be attributed upward to Mr. Yekatom.³³⁴ Once that premise is withdrawn, what remains is not the same article 25(3)(a) case. It is a narrower and factually weaker case.

iii) The CLRV fail to answer the pleaded Article 25(3)(a) defects in Grounds 2.4-2.7

116. The CLRV's response to Grounds 2.4 to 2.7 proceeds from the same basic flaw namely its treatment of the Trial Chamber's use of the terminology of article 25(3)(a) is sufficient, without addressing whether the required findings were actually made and reasoned. The Appeal does not assert that the Trial Chamber failed to use the language of control, common plan, essential contribution or *mens rea*.³³⁵ It asserts that the Trial Chamber used those labels without making the findings required by the article 25(3)(a) framework applied.³³⁶ Repetition of the Chamber's conclusions does not answer that pleaded error.³³⁷

117. On Ground 2.4, the Response submits that use of an organisation is only a factual consideration and not a legal requirement for indirect perpetration.³³⁸ This does not address the issue raised on appeal.³³⁹ The Trial Chamber's reasoning, on its own terms, purported to proceed through an alleged apparatus: it treated the will of the alleged executors as

³³³ CLRV Response, paras. 194-217.

³³⁴ Appeal Brief, paras. 35-49; Judgment, paras. 3939, 4011, 4024, 4358, 4368.

³³⁵ *Contra* CLRV Response, paras. 249-282.

³³⁶ Appeal Brief, paras. 150-278.

³³⁷ See above Part A.

³³⁸ CLRV Response, paras. 249, 255.

³³⁹ Appeal Brief, paras. 150-151, 188-206.

immaterial, found that Mr. Yekatom could rely on elements to execute crimes, and reasoned in terms of a power to frustrate commission.³⁴⁰ Having adopted that approach, the Trial Chamber had to identify the alleged apparatus, explain how it was organised, and show why it secured execution through almost automatic compliance.

118. The CLRV's reliance on immateriality in relation to those factors is therefore misplaced.

Voluntary membership, ability to leave, rudimentary defensive training, absence of live ammunition, lack of violent indoctrination, and no pattern of violent punishment for disobedience are not peripheral considerations.³⁴¹ They bear directly on whether the executors' wills were neutralised. In their absence, the conclusion that those wills were 'immaterial' lacks the necessary foundation.³⁴²

119. Ground 2.5 is answered by the CLRV in the same way. The Appeal did not assert that a common plan required direct evidence, minutes, or a formal meeting.³⁴³ It asserted that even an inferred plan requires findings on its existence, content, participants, criminal objective and evidential basis.³⁴⁴ The CLRV's reliance on the general permissibility of inference does not explain how, when, or on what terms Mr. Yekatom, Cœur de Lion and Alkanto allegedly agreed to remove all Muslims from the Axis, including by killing them.³⁴⁵

120. Nor does the assertion that no specific action by Cœur de Lion or Alkanto was necessary cure the defect.³⁴⁶ That may answer a different argument about whether a common plan can ever be inferred without direct evidence. It does not answer the point raised on appeal concerning the fact that once the Trial Chamber treated Cœur de Lion and Alkanto as co-perpetrators, their roles could not remain undefined.³⁴⁷ The Judgment had to explain what each contributed, how those contributions were co-ordinated, and why the alleged agreement, as inferred, tied the alleged co-perpetrators together in a manner capable of supporting reciprocal attribution. The jurisprudence invoked by the CLRV permits inference; it does not permit the content, participants and criminal object of the alleged common plan to remain unreasoned.³⁴⁸

121. Ground 2.6 exposes the same gap in the treatment of principal liability under article 25(3)(a). For the 5th December Operation, the Response relies on Mr. Yekatom's alleged

³⁴⁰ Judgment, paras. 3869-3875, 4012, 4242, 4358-4363.

³⁴¹ CLRV Response, para. 256; Appeal Brief, paras. 188-201.

³⁴² Judgment, paras. 3059-3061, 3087-3092, 4012, 4359.

³⁴³ *Contra* CLRV Response, paras. 257-260.

³⁴⁴ Appeal Brief, paras. 210-222.

³⁴⁵ Judgment, paras. 3874, 4345-4356.

³⁴⁶ CLRV Response, para. 260.

³⁴⁷ Appeal Brief, paras. 210-222.

³⁴⁸ CLRV Response, para. 260, fn. 625.

leadership, instructions, reconnaissance and firing of the starting shot.³⁴⁹ Taken at their highest, those findings show participation in, or leadership of, a collective operation. They do not establish, depending on the counts in issue,³⁵⁰ either a co-ordinated essential contribution in the co-perpetration sense or, within the indirect perpetration framework, an *ex ante* power to frustrate the crimes. At a minimum, they do not answer the Appeal's challenge to the Chamber's confused treatment of the same factual conduct as direct, joint and through-others commission across the Counts 1 to 8.³⁵¹

122. Nor do the CLRV's submissions concerning Cœur de Lion cure the pleaded error. The Response asserts that Mr. Yekatom 'instrumentalised' elements through Cœur de Lion and that the Yamwara findings fit indirect perpetration.³⁵² However, that submission does not address the timing and basis of control. On the Chamber's own narrative, the initial interrogation, beating and maiming of Saint Cyr were carried out in Mr. Yekatom's absence; Cœur de Lion was not present during the initial apprehension but was allegedly involved in the subsequent mistreatment and had encouraged the perpetrators and ordered them to 'do the job properly'.³⁵³ Those findings may explain Cœur de Lion's role. They do not, without further reasoning, establish how Mr. Yekatom's will was imposed on the direct perpetrators at the time those material acts were executed, or how he then retained an *ex ante* power to frustrate them.³⁵⁴ Later knowledge, inferred praise, failure to punish or continued detention do not, without more, establish commission through another for acts already initiated and substantially carried out by others.³⁵⁵

123. The problem is further compounded in relation to the alleged essential contribution along the Axis. The Response relies on Cœur de Lion's title as deputy at Yamwara, and Alkanto's title as a section leader under the overall command of Cœur de Lion and Mr. Yekatom, as if those findings defined their essential contributions in relation to Counts 24 to 28.³⁵⁶ They do not and nor can a title relied on at the Yamwara base be automatically treated as an essential contribution without more. The Judgment still had to identify precisely what Cœur de Lion and Alkanto did along the Axis, what control each exercised over the relevant executors, how their roles were allegedly co-ordinated with Mr. Yekatom's, and why that

³⁴⁹ CLRV Response, paras. 264-269.

³⁵⁰ CLRV Response, paras. 267-268; see further Part D.1 above.

³⁵¹ Appeal Brief, paras. 223-226 and more generally Ground 1. See also Part D.1 above.

³⁵² CLRV Response, paras. 271-274.

³⁵³ Judgment, paras. 4233-4249.

³⁵⁴ Appeal Brief, paras. 227-230.

³⁵⁵ Appeal Brief, paras. 227-230, 253-272.

³⁵⁶ CLRV Response, paras. 278-279.

arrangement was capable of yielding joint control over the charged crimes.³⁵⁷

124. That omission matters for a further reason. In relation to liability findings concerning events along the Axis, the Chamber did not merely place Cœur de Lion and Alkanto within a hierarchy; it attributed the conduct of the group's elements to Mr. Yekatom, Cœur de Lion and Alkanto as their own.³⁵⁸ That required more than titles or broad assertions of overall command.³⁵⁹ The Judgment still had to explain how the conduct of those elements became attributable to all three, what role Cœur de Lion and Alkanto played in that attribution, and how the alleged arrangement yielded joint control over the charged crimes. Without that analysis, the attribution of conduct is left resting on hierarchy and association rather than on identified control over the crimes.

125. Similarly, the CLRV's response to Ground 2.7 again misunderstands the pleaded point raised on appeal. In relation to events on 5th December 2013, the issue is not simply whether Mr. Yekatom was present or participated in a military operation.³⁶⁰ It is whether the Trial Chamber proved that he intended, or was aware that it would occur in the ordinary course of events, that the charged crimes against Muslim civilians would be committed. The CLRV do not answer the Appeal's challenge to the Trial Chamber's treatment of the alleged instructions: the Chamber first found that the instructions were to fight the Seleka and 'included targeting sectors where 'Muslims' were to be found', a finding challenged as an extrapolation from evidence concerning the broader Anti-Balaka objective rather than a specific order by Mr. Yekatom; it then relied, at the *mens rea* stage, on the broader formulation that he instructed elements to target 'all sectors' where Muslims were present.³⁶¹ That escalation remains unsupported by the reasoning identified in the Judgment.

126. For the Yamwara incident concerning Counts 11 to 17, the Response again reduces the point to physical absence.³⁶² Physical absence is not dispositive. The point is that the initial interrogation, beating and maiming of Saint Cyr were carried out by others before Mr. Yekatom's alleged later knowledge, approval or failure to intervene.³⁶³ The Response does not explain how those *ex post* matters establish that he possessed the required *mens rea* at the time the relevant material elements were executed through others.

127. In relation to Counts 24 to 28, the CLRV refer back to the alleged agreement between Mr.

³⁵⁷ Appeal Brief, paras. 231-239.

³⁵⁸ Judgment, paras. 4345-4363.

³⁵⁹ Appeal Brief, paras. 231-239.

³⁶⁰ CLRV Response, paras. 280-283.

³⁶¹ Appeal Brief, paras. 127-128, 241-243.

³⁶² CLRV Response, paras. 284-286; see also Part B above.

³⁶³ Appeal Brief, paras. 259-272.

Yekatom, Cœur de Lion and Alkanto and the alleged instructions to remove all Muslims.³⁶⁴ The Appeal does not suggest that findings relevant to common plan or control can never inform *mens rea*. Rather, the point is that, where the existence, content and implementation of the alleged agreement are themselves challenged under Grounds 2.5 and 2.6, the CLRV cannot answer Ground 2.7 by merely repeating those same conclusions. The Response still had to explain how those findings established Mr. Yekatom's awareness of the factual circumstances underpinning indirect co-perpetration, and his awareness that the charged crimes would occur in the ordinary course of events.³⁶⁵ It does not do so.

128. The CLRV therefore leave the pleaded article 25(3)(a) defects unanswered. The Response treats hierarchy as sufficient for control, leadership as sufficient for automatic compliance, inference as sufficient for a reasoned common plan, status as sufficient for essential contribution, and repetition of disputed conclusions as sufficient for *mens rea*. Those are precisely the errors articulated in Grounds 2.4-2.7 of the Appeal.

3. D.3 – The CLRV misapprehend the chronology and causation errors on the PK9-Mbaïki Axis

129. The CLRV seek to unduly diminish the Defence's argument by reducing it to a question of mere geographical location,³⁶⁶ thereby misstating the issue. The Appeal concerned the existence of two separate checkpoints controlled by different groups, one associated with the RFACPP and the other under the control of [REDACTED]. The issue was therefore not simply where the barrier was located, but which barrier P-1823 was referring to and who exercised authority over it. This distinction is of central importance and its significance is underscored by the evidence before the Chamber, in particular the testimony of CLRV's client P-2353. During his evacuation, P-2353 testified that he had encountered Mr. Yekatom [REDACTED], where Mr. Yekatom personally advised him not to go in exile. It is only upon reaching the east-side barrier at PK9 that P-2353 was threatened by armed individuals.³⁶⁷ That sequence of events illustrates why the two barriers and the actors controlling them had to be distinguished.

130. Moreover, the CLRV failed to engage with the various relevant factors identified by the

³⁶⁴ CLRV Response, paras. 287-289.

³⁶⁵ Appeal Brief, paras. 274-278.

³⁶⁶ CLRV Response, paras. 297-298.

³⁶⁷ Closing Trial Brief, paras. 487, 489, citing P-2353: CAR-OTP-2100-0226-R03, para. 67; T-162, 12:4-13:10. Regarding the presence of gendarmes and MISCA forces at the east side of the bridge, see, Appeal Brief, para. 312, fns 1038-1041; see e.g. P-1647: CAR-OTP-2050-0654-R02, para. 44 (where P-1647 states that the RFACPP PK9 checkpoint 'did not have a gendarme presence').

Defence demonstrating the irreconcilability of P-1823's account. As a result, the CLRV fail to address the Defence's contention that the Chamber erred in its assessment of P-1823's evidence.³⁶⁸

131. The same misapprehension informs the CLRV's treatment of the Defence application to admit P-1823's Application Form on appeal. The issue is not whether the Form proves P-1823's whereabouts on 1 January 2014, but whether it confirms the ordinary meaning of the clarification he gave in court.

132. The CLRV claim that the Defence 'acknowledges that the Application Form [...] could have been submitted into evidence' at trial; and that, having thus 'failed to exercise due diligence' in 'choosing' not to do so, its application for admission of the Form on appeal should be dismissed.³⁶⁹ First, this is a mischaracterisation: the Defence did not concede that the application form 'could have been submitted' at trial.³⁷⁰ The CLRV overlook the distinction between the form's 'availability' and its admissibility.

133. Moreover, the CLRV's premise is faulty: the CLRV itself argue that procedurally, application forms 'cannot be regarded as evidence'.³⁷¹ In this, the CLRV are, to an extent, correct: as a matter of procedure, victim application forms are not understood as evidence of the truth of what is stated therein.³⁷² It is for this reason that, as emphasised by the Defence, the Application Form is not tendered on appeal as evidence for the truth of what P-1823 stated therein, i.e. that he spent New Year's 2014 in Mbaïki; nor is the Appeals Chamber being requested to rely on the Form to factually establish P-1823's whereabouts on that date.³⁷³ Instead, the Form is relied on to address its argument that the Trial Chamber erred in determining: '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.'³⁷⁴ This particular determination turns on the simple question of what P-1823 meant by 'New Year's', when he clarified his evidence on this point during cross-examination. This is a distinct inquiry from where P-1823 was on New Year's 2014.

134. The Defence position is that no reasonable trial chamber would have determined that P-

³⁶⁸ Appeal Brief, para. 312.

³⁶⁹ CLRV Response, paras. 12, 15.

³⁷⁰ ICC-01/14-01/18-2830, para. 25.

³⁷¹ CLRV Response, paras. 19-20. See however, CLRV Response, para. 276, fn. 650, citing multiple victim application forms in support of its argument that 'a voluminous set of evidence' shows the dislocation of Muslims.

³⁷² *Ibid.*

³⁷³ ICC-01/14-01/18-2830, para. 27.

³⁷⁴ Judgment, para. 3403; see ICC-01/14-01/18-2830, para. 27; see Defence Appeal, para. 312.

1823's reference to 'New Year's' meant 'in the new year' rather than 1 January 2014.³⁷⁵ This conclusion is established first and foremost by recourse to the English and French dictionary definitions of the term; and it is considerably strengthened by reference to P-1823's own Victim Application Form, completed shortly after his testimony which, interpreted according to common-sense reading comprehension, confirms the plain language meaning of his in-court clarification: '*J'ai donc décidé de rentrer à Mbaïki passer les fêtes de fin d'année 2013 en famille*'.³⁷⁶

135. Lastly, the CLRV claim that the Trial Chamber would have reached the same conclusion on the purpose of the checkpoints is misplaced, in light of the challenges brought by the Defence to the remainder of the Trial Chamber's findings on this point.³⁷⁷ Again, P-1823's identification evidence, itself manifestly unreliable,³⁷⁸ is the centrepiece of the Trial Chamber's conclusions in this regard, which conspicuously fail to rely on a single RFACPP insider account.³⁷⁹ Moreover, this is the sole account that alleges Mr. Yekatom's involvement in any alleged attempts to identify Muslims at these checkpoints.

136. The same lack of engagement appears in the CLRV's treatment of the evidence concerning Mbaïki and the Sangaris and its failure to either sufficiently cite to the record or substantiate its submissions. For example, the CLRV selectively omit a material portion of P-1666's evidence when quoting footnote 722, namely: 'The explanation is this: They didn't attack because their leader had given them instructions. During the meetings at Jeanne d'Arc, he made a commitment. Secondly, the FOMAC and the Sangaris forces were present; so I believed that those things taken together, kept – or, rather ensured that no attack occurred'.³⁸⁰ Beyond reiterating the Chamber's findings, the CLRV do not articulate why it was reasonable or correct for the Chamber to find that the presence of international forces affected Mr. Yekatom's conduct in Mbaïki;³⁸¹ nor do they substantiate their submission with

³⁷⁵ Appeal Brief, para. 312.

³⁷⁶ ICC-01/14-01/18-2830, paras. 17-19.

³⁷⁷ *Contra* CLRV Response, paras. 16-18. See Appeal Brief, paras. 312-314.

³⁷⁸ See Appeal Brief, para. 312.

³⁷⁹ See Appeal Brief, para. 313-314.

³⁸⁰ CLRV Response, para. 299 [emphasis added on the part not quoted by the CLRV]. The Defence also notes that the CLRV quote to the English version of the transcript while the French is clearer, T-232 (FRA), 40:13-20: *L'explication que je peux donner est celle-là: parce que si les Anti-balaka n'ont pas attaqué, parce que le chef leur a donné une instruction. Lorsque... Lors de la réunion de Jeanne-d'Arc, il a pris l'engagement. Et, deuxièmement, il y avait la présence de la force de la FOMAC et de la Sangaris. Je crois que ce sont tous ces éléments qui ont empêché toute attaque de leur part. À cette époque, [REDACTED]; Alfred Yekatom Rombhot a tenu un discours; puis, avec la présence de la FOMAC et de la Sangaris, ce n'était pas possible de subir une attaque... quelque attaque que ce soit* [emphasis added].

³⁸¹ CLRV Response, para. 299: 'properly relied on P-1666's testimony' / 'correctly relied on P-2389's evidence' / 'the Chamber reasonably relied on P-2041'.

supporting evidence.³⁸²

137. In particular, the CLRV disregard the fact that the Chamber ignored or did not sufficiently rely on material evidence indicating that the Sangaris *mission de reconnaissance*: had as final destination Boda and stopped in Mbaïki only because the situation of extreme tensions did not allow them to go any further;³⁸³ departed Mbaïki for Boda following the meeting at Saint Jeanne d'Arc Church;³⁸⁴ and lacked capacity to intervene, and that it was precisely in this context that Mr. Yekatom was specifically requested to come to Mbaïki, i.e. because his assistance was considered necessary for security in the midst of inter-community tension.³⁸⁵

138. Similarly, the CLRV overlook evidence that the population of Mbaïki, which includes a CLRV client, felt reassured by Mr. Yekatom's speeches on 30 January 2014,³⁸⁶ as well as evidence of Mr. Yekatom's personal interactions with Muslim inhabitants of Mbaïki.³⁸⁷ P-1595, the Imam of Mbaïki, testified that when Mr. Yekatom arrived in Mbaïki by car, he slowed down in front of his Mosque, waved and smiled at him and the Imam was reassured and calmed his community.³⁸⁸ He also described the organisation of the meeting as reassuring.³⁸⁹ Moreover, the CLRV fail entirely to address the Defence's argument concerning P-1647; specifically, the Chamber's fragmentation of his evidence and its failure to consider the specific cooperation-related implications.³⁹⁰

139. The CLRV likewise do not answer the causation issue raised on appeal concerning departures along the Axis. The Response asserts that the conduct of Mr. Yekatom's alleged elements caused the departure of the Muslim population,³⁹¹ but it does not identify the evidence supporting that conclusion or engage with the evidence that Muslims had begun to leave localities in Lobaye as early as October 2013.³⁹²

³⁸² CLRV Response, para. 299.

³⁸³ CAR-OTP-2090-0373 at 0376: A compter du 28 janvier, une mission de reconnaissance est conduite sur l'axe Bangui-Mbaïki-Boda. Cette mission s'est arrêtée sur Mbaïki où la situation locale n'a pas permis de relancer l'action sur Boda en raison de risques forts d'exactions au départ de la force [emphasis added].

³⁸⁴ P-2389 (CLRV's own client): CAR-OTP-2104-0033-R03, para. 61.

³⁸⁵ D29-5013: T-285, 39:5-18: '[...] [REDACTED] il y avait un petit contingent de la Sangaris. Je m'étais rapprochée d'eux pour leur demander ce qu'ils faisaient là et s'ils étaient à pour protéger la population civile. À laquelle ils m'ont répondu « Non, on ne protège personne, on est juste là pour observation ». [...] [REDACTED]'; see also D29-5012: T-294, 61:21-62:9; D29-5015: T-255, 75:17-21; see Appeal Brief, para. 325.

³⁸⁶ P-1666: T-230, 50:15-28; T-232, 17:6-9; P-1595: T-106, 41:7-13; D29-5012: T-293, 65:23-28; 68:12-27; T-294, 11:11-12:6; D29-5015: T-254, 54:28-55:2; T-255, 7:9-17; see also Defence Closing Brief, para. 522, Appeal Brief, para. 327.

³⁸⁷ Appeal Brief, para. 327; D29-5014: T-257, 16:9-20:23, 22:4-16; P-2353: CAR-OTP-2100-0226, para. 66; T-161, 35:28-37-12.

³⁸⁸ P-1595: T-106, 7:9-21.

³⁸⁹ P-1595: T-106, 7:22-25.

³⁹⁰ Appeal Brief, para. 325.

³⁹¹ CLRV Response, para. 301.

³⁹² P-1666: T-231, 24:11-16; P-1595; P-1595: CAR-OTP-2104-0274-R02, paras. 41, 43; see also Appeal Brief, para. 335.

140. This omission is all the more significant because the CLRV themselves rely on victim application forms when seeking to defend the Chamber's causation finding, while omitting a form which is difficult to reconcile with that finding. In particular, the CLRV cite their clients' victim application forms as evidential support, in defending the Chamber's conclusion attributing the dislocation of 'thousands' of Muslim civilians to the 'personal actions' of Mr. Yekatom.³⁹³ Missing among these forms is that of P-2041 which, despite having been in the possession of the CLRV since October 2023, was only disclosed to the Defence in February 2026, in an apparent violation of the Dual Status protocol on the part of the CLRV.³⁹⁴ The CLRV's non-reliance on P-2041's form is unsurprising: in it, P-2041 states Muslims located along the PK9-Mbaïki Axis decided to gather in Mbaïki when the Bangui-Bouchia killings occurred – i.e. in October 2013, months prior to the RFACPP's emergence on the Axis.³⁹⁵ His form, while not itself evidence, is notably consistent in this regard with the litany of exculpatory evidence ignored or distorted by the Trial Chamber in its attribution of a causal link between the emergence of the RFACPP and the dislocation of Muslims from the Axis.³⁹⁶

III. CONCLUSION

141. A response to an appeal cannot enlarge the basis of conviction, supply reasoning absent from the Judgment, or recast the grounds on which appellate review has been sought. The convictions and sentence must stand or fall on the findings actually made, the reasoning actually provided, and the case as it was charged, confirmed and tried. The CLRV Response may seek to defend the Judgment, but it does not alter those limits and on that basis, the grounds advanced by Mr. Yekatom remain live and require determination.

142. That is particularly important in this appellate record, where the parties' appeals, responses and participants' submissions intersect on issues of notice, evidence, attribution, modes of liability, causation and sentence. The Defence has addressed the CLRV submissions to the

³⁹³ CLRV Response, paras. 276-277, fn. 650.

³⁹⁴ P-2041's dual status victim application form was disclosed on 13 February 2026; see CAR-OTP-00037721-R01 and accompanying metadata in Nuix. Per the Dual Status Witness Protocol adopted in these proceedings the CLRV were obliged to have informed the Prosecution of P-2041's dual status upon receiving his application form; see ICC-01/14-01/18-677-AnxII, para. 3(a). The CLRV informed the Defence *inter partes* that they had been in possession of P-2041's form since October 2023 but that the Prosecution was not made aware of this until 2 February 2026; see Email from CLRV to Defence, 24 March 2026 at 08:35 and Email from Prosecution to Defence, 20 February 2026 at 18:13 (available on request). At start of trial, the CLRV had undertaken to notify the Parties of dual status witnesses by providing lists following the issuance of decisions on victim participation; see T-014 (ENG), 18:14-19:25.

³⁹⁵ See CAR-OTP-00037721-R01, p. 2 ('[REDACTED].'); see Defence Appeal, para. 335.

³⁹⁶ See Appeal Brief, paras. 333-339, in particular, paragraph 335.

extent necessary in this written response. The extent of the overlap nevertheless underscores the need for the appellate inquiry to remain anchored in the pleaded errors and may require focused clarification where the written submissions intersect or diverge on material issues.

IV. CLASSIFICATION

143. This filing and the corresponding annex are classified as Confidential pursuant to regulation 23 as they contain confidential information and follow the classification of related filings, including the Response. A public redacted version of the filing will be filed in due course.

V. RELIEF SOUGHT

144. For the foregoing reasons, the Defence respectfully requests the Appeals Chamber to **REJECT** the CLRV Response, **GRANT** the Appeal and **REVERSE** the Trial Chamber's findings of guilt and acquit Mr. Yekatom of all charges.

RESPECTFULLY SUBMITTED ON THIS 22TH DAY OF MAY 2026



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