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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

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

Public Redacted

**Public Redacted version of “Prosecution’s Response to Yekatom’s Motion for
Additional Details, ICC-01/14-01/18-554-Conf”
26 June 2020, ICC-01/14-01/18-572-Conf**

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby responds to YEKATOM’s Motion for Additional Details (“Motion”),¹ requesting Trial Chamber V (“the Chamber”) to instruct the Prosecution to provide certain information and making “a matter of record” that it intends to defend counts 2, 3 and 6 with respect to the GPS coordinates provided by the Prosecution. The Motion is moot or, in the alternative, should be dismissed. *First*, YEKATOM should have challenged the specificity of the charges, under rule 122(3) before the confirmation hearing. *Second*, the charges are sufficiently specific in accordance to regulation 52(b) of the Regulations of the Court and for the purposes of article 74(2) of the Statute. YEKATOM does not demonstrate otherwise. He has received proper notice of the charges and can adequately prepare his defence. *Third*, the Prosecution has complied with its disclosure obligations and provided all required information. Two additional statements related to charges concerning child soldiers will be disclosed [REDACTED]. Finally, the GPS coordinates disclosed by the Prosecution are only one item of evidence disclosed before the start of the trial, and YEKATOM should prepare his defence accordingly.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“Regulations”), this Response is classified as Confidential because it contains classified information.

III. SUBMISSIONS

3. The Motion should be denied for failure to substantiate the requested relief, that is, the provision of additional detail on the charges of murder set out in Counts

¹ ICC-01/14-01/18-554-Conf + Conf-Anx-A (“Motion”).

2 and 3,² and the identities of the children underlying the conscription, enlistment and use of child soldiers charged in Count 29.³

4. YEKATOM's justification for this information does not satisfy his burden of demonstrating any defect of notice, the specificity of the charges, or the material facts underlying them, set out in the Confirmation Decision and relevant provisions of the Document Containing the Charges ("DCC") incorporated therein. The Defence bears the burden of showing such a defect in the first instance, namely the absence of "adequate notice as to the nature, cause and content of the charges".⁴ Such notice necessarily comprises all information provided in the accusatory instrument, including the *content of all referenced evidence*. The Motion fails to particularise any deficiencies in that evidence, and should therefore be dismissed.

5. That said, the Prosecution is nevertheless providing the Defence with the information requested to the extent detailed below, and responds to the Defence's submissions concerning its reliance on GPS locations previously provided.

A. The Defence failed to challenge the specificity of the charges in accordance with rule 122(3)

6. Under Rule 122(3), any challenge to the specificity of the charges should have been lodged "[b]efore hearing the matter on the merits" at the Confirmation Hearing. The Defence raised such concerns with respect to the child soldiers (Count 29) *during* the Confirmation Hearing,⁵ and did not raise any concern with respect to the murders in Counts 2 and 3. The 2019 Chambers Practice Manual ("Practice

² Motion, paras. 18-25.

³ Motion, paras. 30-40.

⁴ Motion, para. 1.

⁵ Motion, paras. 5 and 8 (citing ICC-01/14-01/18-T-008-Conf, 23 September 2019, pp. 59-61; Public redacted version: ICC-01/14-01/18-T-008-Red2-ENG; ICC-01/14-01/18-T-011-Conf, 11 October 2019, p. 53; Public redacted version: ICC-01/14-01/18-T-011-RedENG).

Manual”) is clear that the Defence is precluded from raising objections to the form of the charges that it did not raise at the start of the Confirmation Hearing:

“At the commencement of the confirmation hearing on the merits, any questions on the form, completeness or clarity of the charges must be settled. If the Defence does not raise any challenge to the format of the charges at the latest as procedural objections under Rule 122(3) of the Rules, it is precluded to raise it at a later stage, being the confirmation hearing or the trial”.⁶

7. Accordingly, the Defence should be precluded from challenging the form or specificity of the charge of murder in Counts 2 and 3, at a minimum.⁷

B. The charges are sufficiently specific and the Accused has received adequate notice

8. To the extent that the Motion challenges both the specificity of the charges⁸ in the Confirmation Decision and the notice received under article 67(1)(a),⁹ neither challenge has merit. Although the Motion does not refer to rule 134(1) or (2),¹⁰ it incorrectly claims the Confirmation Decision lacks specificity for failing to identify

⁶ 2019 Chambers Practice Manual, para. 39.

⁷ ICC-02/04-01/15-1476 (“Ongwen Alleged Defects Decision”), para. 17 (“Suspects can – and often do – raise challenges before pre-trial chambers that certain charges fail to provide sufficient notice or are overbroad in scope. Such challenges arising from the document containing the charges should be raised by the confirmation hearing at the latest, and Rule 122(4) of the Rules confirms that the parties have no entitlement to a subsequent trial chamber ruling on such matters.”); *see also* ICC-01/04-01/15-1562 (“Ongwen Alleged Defects AD”), para. 130 (“objections concerning an issue related to the conduct of the proceedings prior to the confirmation hearing must be raised at that hearing”).

⁸ *See e.g.* Motion, para. 17.

⁹ Motion, para. 43.

¹⁰ If the Defences wishes to challenge the specificity of the charges (as concerning the conduct of proceedings) under Rule 134(1) and (2) either before or at the commencement of trial, it should cite the relevant Rule when doing so that the basis of their objection is clear for the record. *See* Ongwen Defects Decision, para. 19 (“All potential charges ‘defects’ arising from the confirmation decision can therefore be raised prior to trial. Rule 134(2) would then apply to all such challenges *not already time-barred by Rule 122(4) of the Rules*”) (emphasis added); *see also* Ongwen Alleged Defects AD, para. 130.

victims in Counts 2, 3, and 29.¹¹ To the contrary, the Confirmation Decision is sufficiently specific and conforms to the Court's legal framework and jurisprudence. YEKATOM has sufficient notice of the nature, cause and content of the charges to enable the adequate preparation of his defence. Further, as detailed below, notice can be provided through other documents than the Confirmation Decision, such as a Pre-Trial Brief.¹²

9. It is well-established that the required level of specificity of the charges depends on the nature and characteristics of each case,¹³ and "no threshold of specificity of the charges can be established *in abstracto*".¹⁴ To determine the requisite level of specificity in each case, Chambers have consistently considered factors such as: the nature of the case and scale of criminality;¹⁵ the mode of liability,¹⁶ including

¹¹ Motion, para. 17.

¹² ICC-01/04-01/06-3121-Red ("*Lubanga AJ*"), paras. 124-130. See also Keïta *et al.* in Fernandez, Pacreau and Ubéda-Saillard in "Statut de Rome de la Cour pénale internationale. Commentaire article par article", 2nd ed. (Pedone, 2019), "Article 67", p. 1826 ("[Article 67(1)(a)] implique en particulier la communication des éléments de preuve, la description précise des faits reprochés et de leur qualification pénale") ; see also Schabas, The International Criminal Court: A Commentary on the Rome Statute (OUP 2016), p. 1029 ("There may be no meaningful distinction between 'cause' and 'content', except perhaps a message of exhaustivity").

¹³ ICC-01/04-02/06-2359, para. 38 ("*Ntaganda TJ*"); *Prosecutor v. Ongwen*, ICC-02/04-01/15-T-6-ENG ET, p. 20, l. 7-9; *Prosecutor v. Prlić et al.*, IT-04-74-A, Judgement (Volume I), 29 November 2017, para. 28; *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgment, 22 February 2008, para. 37 (citing *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 89); *Prosecutor v. Taylor*, SCSL-03-01-A, Appeal Judgment, 26 September 2013, para. 40 (stating that whether a non-exhaustive pleading of locations is adequate or defective depends on whether the indictment provides the accused with sufficient notice to enable him to prepare his defence).

¹⁴ 2019 Chambers Practice Manual, para. 38 ("[...] In particular, the required specificity of the charges depends on the nature of the case, including the degree of the immediate involvement of the suspect in the acts fulfilling the material elements of the crimes, and no threshold of specificity of the charges can be established *in abstracto*. What the Pre-Trial Chamber must verify is that the charges enable the suspect to identify the historical event(s) at issue and the criminal conduct alleged, in order to defend him or herself.); see also *Prosecutor v. Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, para. 210.

¹⁵ *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, paras. 89 ("there may be instances where the sheer scale of the alleged crimes 'makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes'"); *Prosecutor v. Kvocka et al.*, IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 30; *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgment, 22 February 2008, para. 41; ICTY Manual on Developed Practices, Prepared in conjunction with UNICRI (Turin: UNICRI Publisher, 2009), p. 37, para. 10, available at <https://www.legal-tools.org/doc/0cc55d/>. Notwithstanding, as the identity of the victims is valuable to the preparation of the Defence case, if the Prosecution is in a position to name the victims, it should do so. See *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 90.

¹⁶ *Lubanga AJ*, para. 122 (quoting the *Prosecutor v. Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, paras. 210-213); *Prosecutor v. Sesay et al.*, SCSL-04-15-A, Judgment, 26 October 2009, paras. 48-49.

the accused's proximity the location of the crimes;¹⁷ the nature of the crime, for example, whether it is continuing and/or characterised by the movement of perpetrators and victims, and whether it is committed in numerous locations within a defined geographic area;¹⁸ and, if applicable, other case-specific considerations,¹⁹ such as the fallibility of witnesses' recollections.²⁰ As detailed below, both of the murders in Bangui (Counts 2 and 3) and the recruitment and use of child soldiers (Count 29) were pled and confirmed with sufficient specificity in light of the circumstances of this case.

10. Although the Confirmation Decision defines the parameters of the charges for trial,²¹ "further details about the charges, as confirmed by the Pre-Trial Chamber, may, depending on the circumstances, also be contained in other auxiliary documents".²² For instance, notice of the charges may be provided through a Pre-Trial Brief or DCC.²³

¹⁷ *Prosecutor v. Sesay et al.*, SCSL-04-15-A, Judgment, 26 October 2009, para. 830; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeal Judgement, AJ, 28 February 2005, para. 65, citing *Prosecutor v. Galić*, IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal, 30 November 2001, para. 15 ("Whether or not a fact is material depends upon the proximity of the accused person to the events for which that person is alleged to be criminally responsible [...] As the proximity of the accused person to those events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him"); *Prosecutor v. Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, para. 210.

¹⁸ *Prosecutor v. Sesay et al.*, SCSL-04-15-A, Judgment, 26 October 2009, para. 830; *Prosecutor v. Taylor*, SCSL-03-01-T, Judgement, 18 May 2012, paras. 119, 1018; ICC-01/04-02/06-309 ("Ntaganda Confirmation Decision"), para. 83; ICC-01/04-02/06-450 ("Ntaganda UDCC Decision"), para. 31.

¹⁹ For example, in the *Al-Hassan* case, the Victims Participation and Reparations Section "note[d] that it [was] unable to make a clear determination on certain applications for participation that do not include the precise date of the alleged crimes [and] 'explain[ed] that the victims may lack familiarity with the Western calendar or may not recall the precise date of events because of the trauma suffered'. See ICC-01/12-01/18-146-tENG ("Al-Hassan Victims' Participation Decision"), para. 17.

²⁰ *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005, para. 30.

²¹ *Lubanga* AJ, para. 124. See also ICC-01/05-01/08-3343 ("Bemba TJ"), para. 32; ICC-01/04-01/07-3436-tENG ("Katanga TJ"), para. 12; ICC-01/04-01/07-1547-tENG ("Katanga Summary Charges Decision"), paras. 22-23; ICC-01/05-01/13-992-Anx-Corr ("Bemba et al. Updated DCC Judge Eboe-Osuji Partly Dissenting Opinion"), para. 22 (further noting: "to the extent that 'defining parameters' is accepted as connoting circumscription of boundaries and limits"). See also 2019 ICC Chambers Practice Manual, para. 57.

²² *Lubanga* AJ, para. 124. See also *Ntaganda* TJ, para. 37.

²³ *Lubanga* AJ, paras. 124-128.

C. Counts 2 and 3: Murder in Boeing and Cattin

11. The Confirmation Decision describes the murders charged in Counts 2 and 3 with sufficient *specificity*. It identifies the incidents within confined temporal and geographical parameters and a number of victims. In addition, YEKATOM has adequate *notice* to prepare his defence. For example, the murders charged in Counts 2 and 3 occurred on a single date (5 December 2013) in specific locations within Bangui and its environs (that is, Boeing Market and Cattin).

12. Further, charges may be sufficiently specific even if the identity of the victims is not known. As the Appeals Chamber has found, “[w]ith respect to the underlying criminal acts and the victims thereof, [...] the Prosecutor must provide details as to the date and location of the underlying acts and identify the alleged victims *to the greatest degree of specificity possible in the circumstances*”.²⁴ The Appeals Chamber’s refusal to require a mandatory level of specificity for underlying acts and victims’ identification is consistent with the case-specific nature of such a determination. The Prosecution has provided all available information on that matter. As indicated in the DCC²⁵ and the Confirmation Decision, the murders charged in Boeing and Cattin comprise up to 18 persons: this includes a range of between five and thirteen persons at the Boeing Market, including [REDACTED]; four Muslims in Cattin; and separately, [REDACTED] also at the Boeing Market.²⁶ Six different witness statements cited in the Confirmation Decision support the finding that YEKATOM’s Group was specifically responsible for the murders of up to 13 shop owners at the Boeing Market.²⁷ One witness statement cited in the Confirmation Decision lists four

²⁴ *Lubanga AJ*, para. 123; see also ICC-01/04-01/10-465-Red, para. 112; *Bemba TJ*, para. 43; ICC-01/05-01/08-424 (“*Bemba CD*”), para. 134. See also *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 89-90; *Ntakirutimana et al.*, Appeal Judgement, ICTR-96-10-A & ICTR-96-17-A, 13 December 2004, para. 73. See e.g. *Sesay et al.*, Appeal Judgment, SCSL-04-15-A, 26 October 2009, para. 60.

²⁵ ICC-01/14-01/18-282-Conf-AnxB1 (“DCC”), paras. 250-251.

²⁶ ICC-01/14-01/18-403-Conf (“Confirmation Decision”), p. 104 (incorporating by cross-reference paras. 87-89, as well as paras. 250-251 of the DCC).

²⁷ Confirmation Decision, para. 87 and fn 214 (incorporated by cross-reference in operative portion, at p. 104) (citing P-1339 and P-2475 who saw six persons killed, as well as accounts from P-1528, P-1416, P-2125, and P-

additional names of traders killed by the Anti-Balaka during the attack.²⁸ Another witness statement obtained after Confirmation and being disclosed simultaneously with this response, contains identities of victims from the Anti-Balaka attack on the Boeing Market.²⁹ Both statements attribute the killings to the Anti-Balaka generally.

13. The two witnesses who corroborate the four murders in Cattin do not know the names of the victims.³⁰ These names are not presently known to the Prosecution, but the unavailability of such information to the Defence does not give rise to any failing of notice or specificity. Moreover, to the extent that YEKATOM argues that the murder victims are combatants,³¹ a contention with which the Prosecution disagrees, this is a matter of evidence to be litigated at trial.

D. Count 29: Enlistment and Use of Child Soldiers

14. The count of enlistment and use of child soldiers (Count 29) provides sufficient specificity of the charges, and YEKATOM has adequate notice before trial to prepare his defence.

15. Contrary to what the Defence alleges,³² the Appeals Chamber in *Lubanga* was clear that the Prosecution is not required to specify the identities of child soldier victims in the charging document. The characteristics of this crime, which is a continuous crime that is also systemic by nature, permit less specificity. With such crimes, it may not be possible to allege dates, locations, criminal incidents and/or

1437); see also P-1452: CAR-OTP-2048-0682, at 0693, para. 76 ([REDACTED] killed at the market); P-1442: CAR-OTP-2077-0520 at 0527, para. 42 (heard that 15 persons were killed in the market and identified 9 bodies coming from the market at the Ali Babolo Mosque); P-1342: CAR-OTP-2116-0304 at 0314, para.49 (observed not more than twenty bodies of Muslims at the Boeing Market).

²⁸ P-2125: CAR-OTP-2082-0299, at 0314, para. 86 (“[REDACTED]”), para. 88 (“[REDACTED]”); at 0315, para. 90, (“[REDACTED]”); at 0316, para. 93 (“[REDACTED]”).

²⁹ P-2682: CAR-OTP-2126-0205, at 0214, para. 54 (“[REDACTED]”; “[REDACTED]”; “[REDACTED]”; “[REDACTED]”).

³⁰ Confirmation Decision, para. 88 (incorporated by cross-reference in operative portion, at p. 104) (citing P-1339: CAR-OTP-2041-0741-R01, at 0752, para. 77; P-1528: CAR-OTP-2048-0757-R01, at 0762, para. 30).

³¹ Motion, paras. 20 and 25.

³² Motion, paras. 32-40.

number of victims exhaustively and with precision given their systematic and pervasive nature.³³ In addition, elements of these crimes might not all be satisfied at isolated locations or on certain dates, but rather, across a spectrum of locations and temporal periods.³⁴ As a result, and depending on the circumstances and context, the Prosecution is not always required to plead details about individual criminal acts as part of the charges.³⁵ Given that both of the accused in *Lubanga* and *Ntaganda* were as close to the ground as YEKATOM,³⁶ there should be no greater specificity in pleading required in the present case.

16. The DCC and Confirmation Decision refer to the “conscription and/or enlistment of children into his group at various locations including [REDACTED]”.³⁷ Although their respective texts do not identify child soldiers by name, the evidence specifically referenced in support clearly does.³⁸ Moreover, the charges are framed in sufficiently narrow geographic parameters, in that they are limited to specific locations in and around Bangui, and the Lobaye province of CAR. The Confirmation Decision references various roles and activities carried out by these child soldiers, such as their “participation in hostilities, including the 5 December 2013 attack, between December 2013 and August 2014.”³⁹ The Confirmation Decision further indicates that children were enlisted under YEKATOM’s command and in locations where he was present, and that they, *inter alia*, participated in hostilities.⁴⁰ All of these propositions are supported by expressly referenced evidence to which the

³³ See *Ntaganda* TJ, para. 1112.

³⁴ See *Ntaganda* TJ, paras. 42, 1112.

³⁵ For example, with enlistment, conscription and use of child soldiers (article 8(2)(e)(vii)), the *Ntaganda* Pre-Trial Chamber noted that in the right context, “it may be permissible for the Prosecutor not to identify specific locations and dates [...], provided it [was] demonstrated that a child [had been] integrated [into an] armed group or [] used to participate actively in hostilities within the temporal and geographical framework of the charges”. *Ntaganda* Confirmation Decision, para. 83; see also *Ntaganda* UDCC Decision, para. 72.

³⁶ *Contra* Motion, para. 35.

³⁷ ICC-01/14-01/18-403-Conf, p. 105 (incorporating by cross-reference paras. 144-152, as well as paras. 359-360 of the DCC).

³⁸ CAR-OTP-2071-0279; see also CAR-OTP-2068-0558.

³⁹ ICC-01/14-01/18-403-Conf, p. 105 (incorporating by cross-reference paras. 144-152, as well as paras. 359-360 of the DCC, where further activities are identified).

⁴⁰ See, e.g. Confirmation Decision, para. 153.

Defence has access, and which form an integral part of both the Confirmation Decision and the DCC.

17. The factual findings of the Confirmation Decision underlying this count, incorporated into the operative part by cross-reference, include citations to [REDACTED] witness statement,⁴¹ and at least seven other witnesses including three [REDACTED] witnesses,⁴² [REDACTED],⁴³ [REDACTED],⁴⁴ and [REDACTED],⁴⁵ corroborating the presence and use of child soldiers in YEKATOM's group, as well as a list from [REDACTED]⁴⁶ with names and ages (12-17) of children [REDACTED] Anti-Balaka groups in the Lobaye in [REDACTED], as noted. Furthermore, pictures⁴⁷ and videos⁴⁸ of some of these child soldiers are cited in the DCC and Confirmation Decision, providing YEKATOM visual confirmation of the individual child soldiers underlying the crimes charged. YEKATOM himself even participated in a child soldier [REDACTED].⁴⁹ To the extent that YEKATOM disputes that there were children under 15 in his ranks,⁵⁰ this evidence proves the opposite, and in any event, this is a matter of evidence to be decided at trial.

18. After the Confirmation Decision, the Prosecution disclosed the statements of [REDACTED] additional child soldiers whose names also appear on [REDACTED],⁵¹ as well as [REDACTED] new child soldier [REDACTED] witnesses with personal knowledge of YEKATOM's Group.⁵² As the Defence was made aware from a recent

⁴¹ P-2475: CAR-OTP-2110-0556-R01, at 0561-0563, 0566, 0568, 0580, 0584, paras. 34, 37-39, 40, 45, 69, 82-83, 163, 196-196.

⁴² P-1792: CAR-OTP-2115-0216, at 0223, para 42; P-2013: CAR-OTP-2075-1751-R01, at 1759; P-2442: CAR-OTP-2105-0940-R01, at 0945, 0947-0948, paras 33-34, and 46-56.

⁴³ P-1921: CAR-OTP-2081-0072-R01, at 0090, para. 94.

⁴⁴ P-1813: CAR-OTP-2083-0279-R01, at 0283, paras. 21-23.

⁴⁵ P-1974: CAR-OTP-2068-0222-R02, at 0225-0227, paras. 20-31; P-2018: CAR-OTP-2071-0259-R01, at 0267, 0269 and 0272-0274.

⁴⁶ CAR-OTP-2071-0279.

⁴⁷ CAR-OTP-2068-0558.

⁴⁸ CAR-OTP-2005-0129 [00:21:25 to 00:23:30]; CAR-OTP-2068-0586 [00:00:00 to 00:06:48].

⁴⁹ Confirmation Decision, para. 152.

⁵⁰ Motion, para. 31.

⁵¹ P-2476: CAR-OTP-2114-0149; P-2511: CAR-OTP-2114-0178.

⁵² P-2082: CAR-OTP-2109-0452; P-2083: CAR-OTP-2110-0333.

motion to amend the charges against YEKATOM to include the charges of [REDACTED],⁵³ the Prosecution also intends on disclosing [REDACTED] more child soldier statements once the requisite [REDACTED].

19. Count 29 is sufficiently specific and conforms to the Court's legal framework as shown above. YEKATOM has the names of child soldiers within the ranks of his Group which found the confirmed charges as expressly provided in the evidence to which both the DCC and Confirmation Decision directly refer. Thus, the Confirmation Decision and DCC provide YEKATOM with adequate notice of the charges, and more than sufficiently to prepare his defence, which does not require that he be provided with the names of *every* child soldier under his command.

E. Location information: Boeing and Cattin

20. The Prosecution is hereby confirming the accuracy of the coordinates provided of the Boeing Market, Boeing Mosque, and Cattin crossroads in its 2016 investigation report.⁵⁴

21. The Motion indicates that YEKATOM will prepare his defence with respect to those incidents considering those coordinates only.⁵⁵ To the extent that YEKATOM claims that he cannot be convicted for those crimes if they take place in the same location described in the charges but at another GPS coordinate, he is wrong. The GPS coordinates are but one piece of evidence the Prosecution will submit at trial, in addition to witness testimony. YEKATOM proceeds at his own peril should he restrict the preparation of his defence on the basis of the GPS coordinates alone, to the exclusion of other evidence referenced in the Confirmation Decision and the DCC describing the location at issue or to be adduced at trial. Moreover, YEKATOM

⁵³ ICC-01/14-01/18-518-Conf, at paras. 18-19.

⁵⁴ CAR-OTP-2043-0196-R01 at 0197.

⁵⁵ Motion, at para. 26.

is familiar with the Boeing Market and Boeing Mosque locations, as well as the neighbourhood of Cattin, having been to these places *himself*, and lived in the vicinity for some time.

22. Furthermore, since the Motion was filed, the Prosecution has disclosed additional details about the location of both the Boeing Market and Boeing Mosque, obtained in January 2020. In particular, the Prosecution has disclosed additional GPS coordinates of both locations,⁵⁶ a supplementary statement from a witness with personal knowledge of the Boeing Mosque [REDACTED],⁵⁷ as well as two pictures⁵⁸ and a video⁵⁹ [REDACTED].

IV. RELIEF SOUGHT

23. For the above reasons, the Prosecution requests the Chamber to consider the motion moot, or in the alternative, to deny the Motion. Further, the Prosecution requests the Chamber to confirm that the charges are sufficiently specific in accordance with regulation 52(b) of the Regulations and for the purposes of article 74(2) of the Statute.



Fatou Bensouda, Prosecutor

Dated this 2nd day of July 2020
At The Hague, The Netherlands

⁵⁶ CAR-OTP-2121-2839 at 2840; *See also* CAR-OTP-2122-4417, OTP Investigation Note explaining relationship between 2016 and 2020 reports.

⁵⁷ P-1528: CAR-OTP-2121-2831-R01 at 2835, paras. 27-30.

⁵⁸ CAR-OTP-2121-2857; CAR-OTP-2121-2858.

⁵⁹ CAR-OTP-2121-2859.