

Confirmation of Charges Hearing

(Open Session)

ICC-01/14-01/18

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and
5 Patrice-Edouard Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Rosario Salvatore Aitala
8 Confirmation of Charges Hearing - Courtroom 1
9 Thursday, 19 September 2019
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:10] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:35:46](Interpretation) Good morning, I would
15 like to welcome all of the individuals in the courtroom today and also in the public
16 gallery.
17 Madam Courtroom Officer, could you please call the case.
18 THE COURT OFFICER: [9:36:20] Good morning, Mr President, your Honours.
19 The situation in the Central African Republic II in the case of the Prosecutor versus
20 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:36:43](Interpretation) Thank you very much,
23 courtroom officer.
24 At the last moment, the Chamber received two requests and for the examination of
25 the said applications, I would like to go into closed session for approximately

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1 10 minutes.

2 I would request - and also apologise to the public gallery - we are going to go into
3 closed session for approximately 10 minutes.

4 Madam Courtroom Officer, could we please go into closed session. Thank you.

5 (Private session at 9.37 a.m.) * Reclassified entirely into public.

6 THE COURT OFFICER: [9:37:27] We are in private session, Mr President.

7 PRESIDING JUDGE MINDUA: [9:37:37] It's okay? We are in private session?

8 Thank you.

9 (Interpretation) We received, as I said at an earlier stage, two applications. Firstly,
10 on the part of the Defence for Mr Yekatom, and a second application for the
11 reclassification of said request or application.

12 I would like to give the floor to the Defence for Mr Yekatom in order for them to
13 provide us with further information on the matter and then we shall examine it.

14 But I should request now that the courtroom officer reclassify this application, for it to
15 be reclassified as "confidential" please, Madam Courtroom Officer.

16 Now I will hand the floor to the Defence team for Mr Yekatom.

17 MS DIMITRI: [9:39:30] (Interpretation) Mr President, good morning, Mylène Dimitri.

18 Mr Robinson is going to address the Court with regard to this application with your
19 leave.

20 MR ROBINSON: [9:39:39] Good morning, Mr President, members of the
21 Trial Chamber, colleagues, I'm Peter Robinson, associate counsel for Alfred Yekatom.

22 Mr President, we learnt at the very last minute that there was an apparent conflict of
23 interest on behalf of one of the counsel for the victims, and in our filing that was filed
24 this morning, we have brought that matter to the Court's attention.

25 Simply - as we stated in our pleading - the facts are that Ms Christine Priso

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1 Ouamballo had represented two suspects when they were interviewed by the
2 Prosecution as witnesses in this case, both of them are relied on here at the
3 confirmation hearing by the Prosecution.
4 She was then assigned to represent Mr Yekatom for the proceedings in his transfer
5 from the Central African Republic and then subsequently, she has been assigned as
6 a legal representative for victims. And we believe that her prior representation of
7 Mr Yekatom creates a conflict of interest within the meaning of Article 12 of the
8 Code of Professional Conduct and we wanted to bring that matter to the Court's
9 attention.
10 We are ready to answer any questions that the Court might have about this.
11 Thank you.
12 PRESIDING JUDGE MINDUA: [9:41:06](Interpretation) Thank you very much,
13 Counsel.
14 I will now give the floor to the OTP.
15 MR VANDERPUYE: [9:41:13] Good morning, Mr President, good morning,
16 everyone.
17 Mr President, first, let me just say that I'm appearing on behalf of the Prosecutor,
18 Madam Bensouda, who could not join us this morning due to unforeseen
19 circumstances.
20 In respect of the instant matter, I have reviewed the Defence filing. I have no
21 objection to the positions taken by the Defence. I believe that it is within the proper
22 constraints and requirements of Article 12 of the Code of Professional Conduct and so
23 our position is neutral and we defer to the Chamber to make the determination as
24 appropriate concerning Ms Ouamballo's continued representation of victims in the
25 case.

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1 Thank you, Mr President, your Honours.

2 PRESIDING JUDGE MINDUA: [9:42:09](Interpretation) Thank you very much,
3 counsel.

4 I will now give the floor to the LRVs.

5 MS MASSIDDA: [9:42:20] (Interpretation) Good morning, Mr President,
6 your Honours. First of all, may I introduce myself, I am Paolina Massidda. I am
7 part of counsel representing the victims or the category of victims of other crimes in
8 these proceedings.

9 We have no observations whatsoever to make as a team and we are going to leave

10 Maître Priso -- Counsel Priso to address the Chamber on the matter.

11 PRESIDING JUDGE MINDUA: [9:42:52](Interpretation) Thank you, Madam.

12 I'm going to give the floor to Maître Priso.

13 MS OUAMBALLO: [9:43:04] (Interpretation) Yes, thank you, Mr President. I
14 would like to relay the circumstances under which I found myself in the transfer of
15 Mr Yekatom to the Court.

16 I was called within the context of Regulation 73, relative to duty counsel regarding the
17 ad hoc counsel out in the field, with a view to assisting the transfer or the handover of
18 Mr Yekatom to the Court as a representative of the Court.

19 When I arrived, Mr Yekatom requested the presence of his counsel. From the prison
20 where he was to be found until he got to the airport, he requested and underscored
21 that his counsel should be present.

22 His counsel finally arrived. He felt somewhat reassured and then he talked to his
23 counsel, and it was when he was getting into the aeroplane that he requested the
24 number of his counsel, he asked my number.

25 Never did I have access to Mr Yekatom's file. Never did I have any personal contact

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1 with Mr Yekatom. I was never his counsel before -- before the national jurisdiction
2 or before the court. So I had no difficulty whatsoever in accepting the position of
3 counsel for victims when the Court appointed me as such. Because in all due faith, I
4 do not recognise or acknowledge myself as being counsel for Mr Yekatom.

5 Those are the facts in a nutshell.

6 So the question that I would like to put is as follows: When one is acting within the
7 framework of Regulation 73 with regard to duty counsel, can one then find with
8 oneself in a position of conflict of interest? That's the question that I would like to
9 put in this instance, in the instance of this question being raised at all.

10 And as regards the two witnesses, Mr President, I was also appointed within the
11 same context with a view to assisting them and I believe that to date, these witnesses
12 remain witnesses. They are not suspects. They do not have the status of suspects
13 before the Court and as such, I did not feel myself concerned by this Article 16 of the
14 Code of Professional Conduct for counsel. Thank you.

15 PRESIDING JUDGE MINDUA: [9:45:57](Interpretation) Thank you very much,
16 Madam Priso.

17 Now I would like to hand the floor to the Defence for Mr Ngaissona. Maybe his
18 Defence team has something to say on the matter.
19 Counsel, please.

20 MR KNOOPS: [9:46:12] Good morning, Mr President, my name is Geert-Jan
21 Alexander Knoops, counsel for Mr Ngaissona. We have no observations for the
22 Chamber, but in light of the explanation of Mr Robinson, we will support his request
23 on a legal basis, but we leave it in the hands, ultimately in the hands of the Court.
24 Thank you.

25 PRESIDING JUDGE MINDUA: [9:46:45](Interpretation) Thank you very much,

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1 Mr Knoops.

2 Now we need to rule on the matter. The Chamber has already ordered the
3 reclassification of the application on the part of the Defence for Mr Yekatom and the
4 Chamber is so minded to receive any possible submissions in relation to this
5 application. And in the meantime, the Chamber orders the temporary suspension of
6 Madam Priso, Christine Priso Ouamballo, so that the Chamber will have the time to
7 take a decision in the most expeditious manner, probably during the pause during the
8 break or maybe a little later.

9 For the time being, we will simply order for the temporary suspension of
10 Maître Priso first to be able to move back into open session.

11 (Pause in proceedings)

12 PRESIDING JUDGE MINDUA: [9:47:54] Madam Courtroom Officer, may we go
13 back into open session, please.

14 (Open session at 9.48 a.m.)

15 THE COURT OFFICER: [9:48:08] We are back in open session, Mr President.

16 PRESIDING JUDGE MINDUA: [9:48:37](Interpretation) Thank you very much,
17 courtroom officer.

18 Once again, good morning. We are back in open session and I would like to
19 welcome all parties and participants as well as the suspects, Mr Alfred Yekatom and
20 Mr Patrice-Edouard Ngaïssona.

21 I would like now formally to call upon the parties and participants to introduce
22 themselves, starting with the Office of the Prosecution, please.

23 MR VANDERPUYE: [9:49:24] Good morning, again, Mr --

24 PRESIDING JUDGE MINDUA: [9:49:29](Interpretation) But before so doing,
25 Mr Prosecutor, I would like to remind everybody that in view of our logistical

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1 constraints, you will need to speak slowly. You will need to observe a pause before
2 answering any questions put to you during the hearing with a view to enabling the
3 best possible transcription of the proceedings. And I will call upon the parties and
4 participants to not speak too quickly, to observe a pause of approximately five
5 seconds after each sentence.

6 May I now call upon Mr Vanderpuye to introduce himself and the members of his
7 team.

8 MR VANDERPUYE: [9:50:24] Thank you, Mr President, your Honours. Good
9 morning again. Today the Office of the Prosecutor is represented by Olivia Struyven,
10 Eric Iverson, Nicholas Leddy, Maria Berdennikova, Claire Henderson, Marie Davoise,
11 Zoe Brereton, Yassin Mostfa and myself Kweku Vanderpuye. Good morning.

12 PRESIDING JUDGE MINDUA: [9:51:01](Interpretation) Thank you very much,
13 Mr Kweku.

14 Now I shall move to the Defence teams, starting with the Defence team for
15 Mr Yekatom.

16 Counsel, could you please introduce yourself and the members of your team, please.

17 MS DIMITRI: [9:51:18] Good morning, Mr President, your Honours, good morning
18 to my colleagues in the courtroom. Today, the Defence of Mr Yekatom is
19 represented by Peter Robinson, Yuqing Liu, Florent Pages-Granier, Wilhelmina
20 Whittingham, Jean-Michel Kola and myself, Mylène Dimitri.

21 PRESIDING JUDGE MINDUA: [9:51:47](Interpretation) Thank you very much,
22 Ms Dimitri.

23 I will now move to the Defence team for Mr Ngaissona.

24 Counsel, please, you have the floor.

25 MR KNOOPS: [9:52:00] Good morning, Mr President, your Honours. The Defence

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1 team of Mr Ngaïssona is represented by the following assistants to counsel:
2 Mr Seri Zokou, admitted to the bar of Brussels; Madam Marion Carrin, lawyer;
3 Madam Lauriane Vandeler, lawyer; Madam Antonina Dyk, lawyer, admitted to the
4 bar of Texas; to my left side, Mr Timeleon Kokongo, admitted to the bar of Central
5 Africa; and on my right side, Ms Sara Pedroso, lawyer and case manager of the team.

6 Thank you very much.

7 My name is Geert-Jan Alexander Knoop, I'm counsel admitted to the bar of
8 Amsterdam, the Netherlands. Good morning.

9 PRESIDING JUDGE MINDUA: [9:52:59](Interpretation) Thank you very much,
10 Mr Knoop.

11 Yes, indeed, the Chamber did receive your application for the admission of
12 * Mr Timeleon Kokongo and of course we would like to welcome him with great
13 pleasure to these proceedings. Now I would like to pass the floor to the Legal
14 Representatives of the Victims for them to also introduce themselves.

15 Counsel, please.

16 MR SUPRUN: [9:53:27] (Interpretation) Good morning, Mr President, your Honours.
17 The former child soldiers are represented by the LRVs, Joseph -- Ludovica Vetrucchio
18 and myself, Dmytro Suprun.

19 PRESIDING JUDGE MINDUA: [9:53:50](Interpretation) Thank you very much.

20 MS MASSIDDA: [9:53:50] (Interpretation) Good morning, Mr President,
21 your Honours. The victims of the other crimes are represented by a team of six
22 counsel. The various colleagues are going to introduce themselves, but of course
23 now they are five following your decision.

24 With regard to myself, I am Paolina Massidda from the Genoa bar in Italy and I am
25 assisted this morning in the hearing by Maître Innocent Mpoko who is based in

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1 Bangui; Ana Peña who is case manager, and my various colleagues are assisted by
2 case managers who are also present this morning, that is, Madam Evelyne Ombeni
3 and Madam Mouhia Asso.

4 PRESIDING JUDGE MINDUA: [9:54:51](Interpretation) Thank you very much,
5 Counsel.

6 MS RABESANDRATANA: [9:54:58] (Interpretation) Mr President, your Honours,
7 good morning, my name is Maître Elizabeth Rabesandratana from the *La Rochelle*
8 *Rochefort* bar in France and I am one of the legal representatives for one of the other
9 crimes in the case.

10 PRESIDING JUDGE MINDUA: [9:55:12](Interpretation) Thank you very much,
11 Counsel.

12 MS DOUZIMA-LAWSON: [9:55:19] (Interpretation) Mr President, your Honours, I
13 am Marie-Edith Douzima-Lawson and I am legal representative of victims for the
14 other crimes in this case. Thank you very much.

15 PRESIDING JUDGE MINDUA: [9:55:33](Interpretation) Thank you very much,
16 Counsel.

17 MR DANGABO MOUSSA: [9:55:38] (Interpretation) Good morning, Mr President,
18 good morning. My name is Abdou Dangabo Moussa, I am a lawyer from the
19 Central African bar and I am representing the victims here in the proceedings for the
20 other crimes.

21 PRESIDING JUDGE MINDUA: [9:55:57](Interpretation) Thank you very much,
22 Counsel.

23 MR FALL: [9:56:00] (Interpretation) Good morning, Mr President, my name is
24 Yaré Fall and I'm from the Senegalese bar. Good morning.

25 PRESIDING JUDGE MINDUA: [9:56:09](Interpretation) Thank you very much,

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1 Counsel.

2 There we are, I think we are done with the introductions from the legal
3 representatives of victims and I would like now to introduce myself and also
4 my -- the other members of the Bench from Pre-Trial Chamber II. My name is Judge
5 Antoine Kesia-Mbe Mindua, I am the presiding Judge in this case. To my right, we
6 have Judge Tomoko Akane and to my left, we have Judge Rosario Salvatore Aitala.
7 I believe that I have forgotten to ask the representatives of the Registry to introduce
8 themselves. Please.

9 MR LEWIS: [9:57:26] Mr President, your Honours, we of course wait patiently to
10 serve you. Can I introduce from the Registry, on my right, the Director of Judicial
11 Services, Marc Dubuisson, and on my left, Natalie Wagner, associate judicial
12 coordinator and I am Peter Lewis, the Registrar of the Court. Thank you.

13 PRESIDING JUDGE MINDUA: [9:57:52](Interpretation) Thank you very much,
14 Mr Registrar for your patience.

15 I would now like to provide some clarification with regard to the nature of these
16 proceedings or this hearing in fact and the role of this preliminary chamber or
17 Pre-Trial Chamber.

18 Indeed, we are at the pretrial stage of this case and this Chamber will not issue any
19 decision as to the guilt or possible innocence of Mr Yekatom and Mr Ngaïssona. Our
20 duty consists in determining whether * there is sufficient evidence to establish
21 substantial grounds to believe that Mr Yekatom and Mr Ngaïssona have committed
22 the crimes with which they have been charged, pursuant to Article 61(7) of the Rome
23 Statute.

24 It is important for us to reiterate the general principles underlying this hearing.
25 Firstly - and in compliance with Article 66 of the Rome Statute - the principle of the

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1 presumption of innocence will apply. Secondly, the burden or onus is upon the
2 Prosecution and as a result, the Prosecution will have to provide sufficient evidence in
3 order to prove the charges that have been leveled against Messrs Yekatom and
4 Ngaïssona in compliance with the administration of evidence, Regulation 47 of the
5 Rome Statute.

6 Thirdly, the Defence will benefit from all of the rights guaranteed in Article 61(6) and
7 Article 67 of the Rome Statute. Then, as to the manner in which the hearing itself
8 will unfold, the Chamber would like to specify that despite the fact that generally this
9 hearing should be held in open session, it might occur that with a view to protecting
10 private or confidential information regarding the witnesses, we will be obliged to
11 move into private session or into closed session.

12 According to the order of the Chamber, (Speaks English) confirmation of charges
13 hearing, (Interpretation) dated 10 September 2019 --

14 One, the parties and participants will have a session of one and a half-hours to make
15 all their submissions under Rule 122 of the Rules of Procedure and Evidence as well
16 as all relevant responses.

17 Second, the Prosecutor shall have a total of six hours to make their oral submissions
18 in relation to the two suspects.

19 Three, the Defence teams of Mr Yekatom and Mr Ngaïssona shall have six hours each
20 for the purpose of making their oral submissions.

21 Four, the Legal Representatives of the victims shall collectively have a total of three
22 hours to make their submissions.

23 Lastly, the Prosecutor and the Defence teams will have one hour each to present their
24 closing submissions.

25 With regard to the Legal Representatives of the Victims, they will collectively have

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1 a total of one and a half hours.

2 I would also like to recall for your interest, certain technical specifications for the
3 good conduct of the proceedings.

4 Whenever parties and participants shall refer to evidence, they must indicate the level
5 of confidentiality of the said evidence and specify whether it is necessary to go into
6 private or closed session.

7 The Chamber would also like to remind the parties and participants that during
8 public hearings, they must not use the names of the victims and witnesses. They
9 should refer only to the codes or pseudonyms.

10 Lastly, pursuant to Rule 122, paragraph one of the Rules of Procedure and Evidence, I
11 will now ask the court officer to read out the charges as presented by the Prosecutor.
12 However, the Defence teams have already informed the Chamber of their decision to
13 waive that formality.

14 So let me now turn to Mr Yekatom and Mr Ngaïssona to confirm that they do not
15 want the charges to be read and that they are already very familiar with the charges
16 against them. Mr Yekatom, please.

17 Mr Yekatom, do you confirm that you would like to waive the public reading of the
18 charges against you?

19 MR YEKATOM: [10:06:47] (Interpretation) Yes, I have fully understood all the
20 charges.

21 PRESIDING JUDGE MINDUA: [10:06:54](Interpretation) I think we have
22 interpretation problems.

23 (Trial Chamber confers)

24 THE INTERPRETER: [10:07:10] The Sango booth: "Yes, I have understood all the
25 charges."

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- 1 PRESIDING JUDGE MINDUA: [10:07:14] (Speaks English) Mr Ngaïssona.
2 (Interpretation) Thank you very much. (Overlapping speakers)
3 MR NGAÏSSONA: [10:07:16] (No interpretation)
4 PRESIDING JUDGE MINDUA: [10:07:19] (Interpretation) Can -- there was a gap in
5 interpretation. But Mr Ngaïssona confirmed that he has understood all the charges.
6 Thank you very much, Mr Ngaïssona. Thank you both for your answers and the
7 Chamber duly notes them.
8 That being the case, reading the charges in public is not exclusively in the interests of
9 the suspects, but it is also intended to enable the members of the public to follow
10 what is going on.
11 So I will ask the court officer to proceed with the reading of a summary of the
12 Prosecutor's charges against the suspects.
13 Court officer, please, you have the floor.
14 THE COURT OFFICER: [10:08:34] Mr President, your Honours. The Prosecutor
15 brings against Patrice-Edouard Ngaïssona 111 charges. In particular --
16 One, charges 1 to 8 concern crimes in relation to the attacks in Bangui, including
17 Cattin and Boeing between 5 December 2013 and 20 December 2013.
18 Two, charges 9 to 10 concern crimes in relation to the blockade of the Boeing Muslim
19 cemetery on 5 December 2013 through at least December 2014.
20 Three, charges 1 (sic) to 17 concern crimes committed in Yamwara School Base in
21 Boeing on 24 December 2013.
22 Four, charges 18 to 23 concern crimes committed in Boy-Rabé base in a house in
23 Bangui in April 2013 (sic).
24 Five, charges 24 to 28 concern crimes in relation to the attacks in PK9 and Mbaiki axis
25 in Lobaye prefecture from around 11 January 2014 to the end of February 2014.

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- 1 Six, charge 29 concern crimes in Lobaye prefecture from at least December 2013
2 through August 2014.
- 3 Seven, charges 30 to 42 concern crimes in relation to the attacks in Bossangoa in
4 Ouham prefecture from 5 December 2013 to April 2014.
- 5 Eight, charges 43 to 56 concern crimes in relation to the attacks in Yaloké, Gaga and
6 Zawa in Ombella-M'Poko prefecture from around 17 January 2014 to at least
7 December 2014.
- 8 Nine, charges 57 to 66 concern crimes in relation to the attacks in Bossemptélé in
9 Ouham-Pendé prefecture between 18 January 2014 to at least July 2014.
- 10 Ten, charges 67 to 78 concern crimes in relation to the attacks in Boda in Lobaye
11 prefecture from 28 January 2014 to at least December 2014.
- 12 Eleven, charges 79 to 85 concern crimes in relation to the attacks in Carnot in
13 Mambéré-Kadéï prefecture between early February 2014 to at least December 2014.
- 14 Twelve, charges 86 to 99 concern crimes in relation to the attacks in Berbérati in
15 Mambéré-Kadéï prefecture from around 10 February 2014 to at least December 2014.
- 16 Thirteen, charges 100 to 111 concern crimes in relation to the attacks in Guen in
17 Mambéré-Kadéï prefecture between 1 February 2014 to at least April 2014.
- 18 The Crimes charged as part of these attacks are the following: Intentionally directing
19 attacks against the civilian population as such as a war crime;
20 Murder as a crime against humanity and as a war crime;
21 Attempted murder as a crime against humanity and as a war crime;
22 Forcible transfer and deportation as a crime against humanity; Displacement of the
23 civilian population as a war crime;
24 Attacks against buildings dedicated to religion as a war crime; Destruction of the
25 adversary's property as a war crime; Persecution as a crime against humanity;

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- 1 Committing outrages on personal dignity as a war crime;
- 2 Inhumane acts as crime against humanity;
- 3 Torture as a crime against humanity;
- 4 Mutilation, cruel treatment and torture as a war crime; Imprisonment and other forms
- 5 of severe deprivation of liberty as a crime against humanity;
- 6 Pillaging as a war crime;
- 7 Degrading treatment as a war crime;
- 8 Extermination as a crime against humanity.
- 9 Charges 21 to 22, charges 40 to 41, charges 54 to 55, charges 73 to 74 and charges 105
- 10 to 106 concern sexual and gender-based crimes committed between 5 December 2013
- 11 and April 2014. These are the crimes of rape and attempted rape as a crime against
- 12 humanity and as a war crime.
- 13 Charge 29 is for the enlistment and use of children under the age of 15 in hostilities as
- 14 war crimes committed from at least December 2013 through August 2014 in Lobaye
- 15 prefecture.
- 16 The Prosecutor brings against Alfred Yekatom 21 charges.
- 17 In particular --
- 18 One, charges 1 to 8 concern crimes in relation to the attacks in Bangui, including
- 19 Cattin and Boeing between 5 December 2013 and 20 December 2013.
- 20 Two, charges 11 to 17 concern crimes committed in Yamwara School Base in Boeing
- 21 on 24 December 2013.
- 22 Three, charges 24 to 28 concern crimes in relation to the attacks in PK9 and Mbaiki
- 23 axis in Lobaye prefecture from around 11 January 2014 to the end of February 2014.
- 24 Four, charge 29 concern crimes in Lobaye prefecture from at least December 2013
- 25 through August 2014.

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- 1 The crimes charged as part of these attacks are the following: Intentionally directing
2 attacks against the civilian population as such as a war crime;
3 Murder as a crime against humanity and as a war crime;
4 Forcible transfer and deportation as a crime against humanity;
5 Displacement of the civilian population as a war crime;
6 Attacks against buildings dedicated to religion as a war crime;
7 Destruction of the adversary's property as a war crime;
8 Persecution as a crime against humanity;
9 Inhumane acts as a crime against humanity;
10 Torture as a crime against humanity;
11 Mutilation, cruel treatment and torture as a war crime;
12 Imprisonment and other forms of severe deprivation of liberty as a crime against
13 humanity.
14 Charge 29 is for the enlistment and use of children under the age of 15 in hostilities as
15 war crimes, committed from at least December 2013 through August 2014 in Lobaye
16 prefecture. Thank you, your Honour.
17 PRESIDING JUDGE MINDUA: [10:18:20](Interpretation) Thank you very much,
18 Madam Court Officer.
19 The Chamber would like to recall that pursuant to Rule 122(3) of the Rules of
20 Procedure and Evidence, the parties have the possibility of raising preliminary
21 objections or making submissions relating to all procedural aspects preceding the
22 commencement of the hearings.
23 The Chamber also wants to remind the parties that pursuant to Rule 122(4) of the
24 Rules of Procedure and Evidence, the objections that are raised or observations made
25 under the provisions of Rule 122(3) can no longer be made subsequently either during

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1 the continuation of the confirmation hearings or during the trial itself if applicable.

2 Consequently, I would like to ask the parties to indicate to us whether they would

3 like to make any interlocutory motions or to make observations pursuant to

4 Rule 122(3) of the Rules of Procedure and Evidence.

5 Mr Prosecutor, you have the floor.

6 MR VANDERPUYE: [10:20:17] Thank you, Mr President. We have no observations

7 with respect to the regularity of the proceedings heretofore. We stand ready to

8 address any concerns that are raised by the Defence. I note that they have made

9 submissions, I don't know if they intend to elaborate on them, but to the extent that

10 they have, we consider that they have not raised anything that seriously or materially

11 affects or concerns the fairness of the proceedings or the regularity of their conduct to

12 this point.

13 If the Chamber has any questions in respect of the Defence filings that it would like

14 the Prosecutor to -- the Prosecution to address, I'll be happy to address them, but as

15 far as I can see, there's -- there's not much to address to be frank.

16 PRESIDING JUDGE MINDUA: [10:21:24](Interpretation) Thank you very much,

17 Mr Vanderpuye. The Chamber duly notes that the Office of the Prosecutor does not

18 wish to make any objections or observations pursuant to Rule 122(3) of the Rules of

19 Procedure and Evidence.

20 Now I will turn to the Defence teams.

21 Maître Dimitri, do you have any observations or interlocutory motions?

22 MS DIMITRI: [10:21:54] (Interpretation) Thank you, Mr President. Now I have

23 observations to make under Rule 122(3).

24 PRESIDING JUDGE MINDUA: [10:22:07](Interpretation) Please, proceed, Counsel.

25 MS DIMITRI: [10:22:09] (Interpretation) Thank you, Mr President, your Honours.

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1 Today before you, only Mr Yekatom and Mr Ngaïssona, allegedly affiliated to the
2 Anti-Balaka, are facing serious charges of crimes against humanity and war crimes.
3 No one from the Séléka is presently prosecuted before the ICC.
4 In a press release dated September 24, 2014, the ICC Prosecutor announced that she
5 made the decision to open a second investigation in the Central African Republic and
6 indicated that information available to her office provided a reasonable basis to
7 believe, notably, that the Séléka had committed crimes against humanity and war
8 crimes, including murder, rape, forced displacement, persecution, pillaging, attacks
9 against humanitarian missions and the use of children under 15 in combat. She
10 insisted on the fact that the list of atrocities was endless and that she could not ignore
11 these alleged crimes.
12 Today, five years later, the Prosecution has not prosecuted or arrested any members
13 of the Séléka alleged armed groups. Whilst the decision to prosecute belongs to the
14 Prosecutor, in this case this decision is hampering Mr Yekatom's right to a fair
15 confirmation hearing, as the Prosecution is using her delay to prosecute Séléka to
16 withhold from Mr Yekatom material that would be otherwise subject to disclosure on
17 the basis that disclosure will reveal the direction and targets of the Séléka
18 investigation, such as alleged in filing 232, paragraph 15.
19 The Prosecutor had five years to decide whether or not she could proceed with the
20 prosecution and arrest of those who are considered being Séléka's subjects.
21 Today, the Prosecution only decided to prosecute what she considers to be the
22 Anti-Balaka actors. This is problematic in itself, but what makes this process unfair
23 is that the Prosecution has refused to disclose the evidence of Séléka crimes that are
24 material to Defence preparation in light of the charges presented against Mr Yekatom,
25 which I will deal with in a short while.

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1 This refusal to disclose is placing Mr Yekatom in a position of defending himself
2 without all the necessary materials. And what is worse is that through multiple
3 confidential decisions ruling on ex parte motions - that I will address as my second
4 point - and over our strenuous objections, your Honours have allowed the
5 Prosecution to get away with it.

6 While we accept the Chamber's determination, I will nevertheless address the impact
7 on the fairness of the confirmation process pursuant to Rule 122(3).

8 However, before outlining the three points that I intend to address during my
9 observations this morning, the Defence of Mr Yekatom would like to thank the
10 Chamber for having ruled rigorously on the applications that we have made so far.

11 These raised important issues linked to the fairness and regularity of the charges.

12 Now I will raise three points to indicate that there was unfairness and Mr Yekatom
13 was not able to exercise all his statutory rights enshrined in Article 61(6).

14 Before I outline those three points, let me first recall the goal and background behind
15 the confirmation of charges process.

16 In the Mbarushimana judgment on the appeal of the confirmation decision dated
17 30 May 2012, the Appeals Chamber underscored and, I quote:

18 "... attaches considerable significance to the fact that article 61(6) of the Statute
19 enshrines the rights of the person charge to challenge the evidence presented by the
20 Prosecutor and to present his/her own evidence. If these rights are availed of, the
21 evidence inevitably will be contested."

22 Paragraph 40 of Mbarushimana.

23 The Appeals Chamber also recalled, and I quote:

24 "The drafters of article 61 specifically rejected the idea of an indictment procedure ...
25 conducted in the absence of the defence by one judge." "Which had appeared in

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1 earlier drafts ..."

2 And that is paragraph 43.

3 The confirmation of charges hearing in comparison was deliberately established as

4 a hearing before a Pre-Trial Chamber of three judges at which the person charged has

5 the right to be present and to contest the evidence following which the Pre-Trial

6 Chamber must assess the evidence.

7 In order to fully exercise its statutory rights to be present and to contest the evidence

8 produced by the Prosecutor and to produce their own evidence, Mr Yekatom must

9 have those materials.

10 If we don't know what's the evidence against us, we don't know what to change and

11 how to present our own evidence. The substance and amount of material that is

12 undisclosed and redacted for the Defence in this case made it very difficult for

13 Mr Yekatom to know what evidence he needed to challenge or the evidence he could

14 present.

15 Furthermore, on various occasions the Defence was not per se present as it was

16 excluded from the Prosecutor's filings. We will therefore demonstrate how

17 Mr Yekatom cannot have a fair confirmation hearing through three main points.

18 First, the redaction of Séléka investigation material to protect the Prosecution

19 investigation to the detriment of Mr Yekatom's rights.

20 Secondly, the excessive number of ex parte filings prevent Mr Yekatom from fully

21 participating in the proceedings.

22 And thirdly, the excessive redactions applied by the Prosecution go beyond the

23 redaction regime.

24 And with the Chamber's leave, I would like to use a PowerPoint presentation in

25 support of my submissions.

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1 PRESIDING JUDGE MINDUA: [10:31:04](Interpretation) Go ahead.

2 MS DIMITRI: [10:31:07] (Interpretation) Thank you, your Honour.

3 Now, going to the redactions that run to the detriment of Mr Yekatom's rights, the

4 document containing the charges, the DCC in short, alleges that Mr Yekatom directed

5 attacks against civilians simply because they were Muslims.

6 Paragraph 3 of the DCC, the Prosecution describes the Anti-Balaka as:

7 "a formidable fighting force able to effectively oppose the Séléka, would, in the

8 ordinary course of events, result in the violent targeting of the Muslim civilian

9 population in western CAR and the commission of the Charged Crimes."

10 At paragraph 6 of the document containing the charges, the Prosecution alleges that,

11 Mr --

12 "Yekatom and members of his group thereby participated in a subsidiary common

13 plan to violently target the Muslim population there and in areas in southwestern

14 CAR, who, based on their religious, national, or ethnic affiliation, were perceived as

15 collectively responsible for, complicit with, and/or supportive of, the Séléka."

16 The Prosecution asserts that the Séléka was a fighting force, and that the Anti-Balaka

17 wanted to effectively oppose the Séléka. However, the Prosecution claims that the

18 fight to effectively oppose the Séléka would, in the ordinary course of events, result in

19 targeting the civilian population. Paragraph 3 of the DCC.

20 In order to mount an effective Defence, in order to meaningfully challenge the

21 evidence and the Prosecution's allegations that Mr Yekatom's intention was to target

22 the civilian population, rather than effectively oppose the Séléka fightings who were

23 committing atrocities throughout CAR, the Defence must have access to the evidence

24 the Prosecution gathered throughout its Séléka investigations.

25 The Prosecution cannot isolate the Séléka evidence from these procedures when it

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1 claims that the Anti-Balaka were engaged in a sustained and intense armed conflict
2 against the Séléka in western CAR. I refer you to paragraph 50 of the DCC.
3 An armed conflict per se requires at least two sides. The crimes and the criminal
4 intention the Prosecution purports to lay on Mr Yekatom in the document containing
5 the charges cannot be assessed in isolation without taking into consideration the
6 alleged criminal acts of the Séléka.
7 The evidence in the Prosecution's possession regarding the crimes committed by the
8 Séléka, regarding the identity of the Séléka leaders and the members of this alleged
9 armed group, is material for Mr Yekatom's Defence preparation to enable him to
10 meaningfully challenge the charged crimes.
11 At this stage of the proceedings, the Prosecution should be ordered to turn over the
12 evidence in its possession regarding the Séléka crimes. Mr Yekatom cannot have
13 a fair confirmation hearing because the Séléka are not here and their absence is used
14 to justify the withholding of material, information material to the Defence.
15 Indeed, in order to avoid prejudice to the investigation into crimes allegedly
16 committed by the Séléka, the Prosecution has been disclosing witness statements
17 which are potentially exculpatory, but with substantial parts that are redacted
18 completely. Completely blacked out.
19 I have two slides in illustration to my comments, but these cannot be shown to the
20 public.
21 The substantial areas that have been redacted are these.
22 In its DCC, the Prosecution is also relying on witnesses, such as P-0291, with large
23 parts of the statement extensively redacted. Pages. Entire pages have been blacked
24 out, such as this one.
25 The Defence is unable to exploit this evidence, to assess the credibility of this

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1 witness or such witnesses when several pages of their statements are blacked out in
2 this way.

3 The Prosecution seeks to charge Mr Yekatom with war crimes of intentionally
4 directing attacks against the civilian population or against individual civilians not
5 taking direct part in hostilities pursuant to Article 82(e) of the Statute.

6 To confirm this count, the Prosecution has the burden of proof for stating the
7 following:

8 The objective of the attack was a civilian population generally; or the object of the
9 attack was against the individual civilians who weren't taking direct part in the
10 hostilities; and that the perpetrator intended the civilian population as such to be the
11 object of the attack; or that the perpetrator intended against individual civilians not
12 taking direct part in the hostilities to be the object of the attack.

13 Withholding material subject to disclosure on the basis that it would put at risk its
14 Séléka investigation is prejudicial to Mr Yekatom when assessed, for example, in the
15 specific context of count 1 of the attacks; namely, in attacks directed against the
16 civilian population of Boeing and Cattin on 5 December 2013.

17 The material is even more relevant given that the Séléka fighters were engaged in
18 combat against the Anti-Balaka during that same 5 December 2013 attack.

19 But some Prosecution witnesses describe 5 December 2013 as being a very difficult
20 day because Anti-Balaka retaliated against Séléka abuses. I refer you to P-1416,
21 CAR-OTP-2045-0150, paragraph 74.

22 The Prosecution even contends in its DCC and I quote:

23 "There was no indication that any of the victims were Séléka ..."Members. Nor that
24 they were "... armed, or otherwise engaged in combat." Paragraph 248 of the DCC.

25 Mr Yekatom should be given a fair opportunity to challenge effectively paragraph 248

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1 of the document containing the charges that -- the allegation therefore that says, and I
2 quote:

3 "There was no indication that any of the victims were Séléka, armed, or otherwise
4 engaged in combat."

5 Mr Yekatom is not able at this stage in the proceedings to assess fully the
6 Prosecution's contention since the Prosecution continues to withhold Séléka material
7 from the Defence.

8 Mr Yekatom and his elements during the course of the 5 December attack are also
9 suspected by the Prosecution for having killed four Muslims in Cattin. Paragraph
10 247 and 251 of the document containing the charges.

11 The Prosecution also claims that during the attack on Boeing, Mr Yekatom's elements
12 allegedly killed at least six civilians, including traders at the Boeing market.

13 Paragraph 250 of the DCC.

14 Part of the disclosed material discredits the Prosecution claims that there was no
15 indication that any of the victims were Séléka or armed. I give an example. One of
16 the victims that Mr Yekatom is suspected of having killed in Boeing had a weapon,
17 according to P-1437, CAR-OTP-2047-0257, paragraph 70 and P-1416,
18 CAR-OTP-2045-0150, paragraph 80.

19 Another Prosecution witness claims for his part that that same victim allegedly killed
20 or -- sorry, shot at --

21 THE INTERPRETER: [10:41:16] Corrects the interpreter --

22 MS DIMITRI: [10:41:17] (Interpretation) -- Anti-Balaka during 5 December 2013
23 despite the Prosecution contending that there is no indication that any of the victims
24 were engaged in combat. See P-1339, CAR-OTP- --

25 PRESIDING JUDGE MINDUA: [10:41:30](Interpretation) Counsel, I have an

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1 observation. The Chamber is consulting and thinking about Rule 122(3) of the Rules
2 of Procedure and Evidence. It strikes me that you should confine yourself to the
3 regularity of the proceedings, but it's my feeling that you are looking at the substance.
4 Could you please confine yourself to the procedure per se. If you wish to address
5 the substance, we will have the requisite time to do just that. What are your
6 thoughts, Counsel?

7 MS DIMITRI: [10:42:15] (Interpretation) Thank you, your Honour. I understand
8 your comment. I'm not addressing the substance in fact. My attempt is to give you
9 two examples which explain the importance of this Séléka material. I have
10 concluded in my second example, which serves simply to illustrate -- using the DCC
11 examples, to illustrate how withholding Séléka evidentiary material affects the
12 fairness of the proceedings.

13 PRESIDING JUDGE MINDUA: [10:42:48](Interpretation) Thank you, Counsel.
14 Please continue, but be mindful of the time.

15 MS DIMITRI: [10:42:53] (Interpretation) Thank you for your guidance, your Honour.
16 These short extracts were discovered among inculpatory material that the Prosecution
17 is relying on. The Prosecution is, however, holding additional evidence going to
18 crimes committed by the Séléka, the identity of their leaders and the combatants as
19 well as their whereabouts.

20 But the Prosecution systematically refuses to disclose them to avoid putting at risk its
21 ongoing investigations considering it had not led to any arrest so far of the Séléka.
22 The nonstandard redaction of Séléka material has been done without giving the
23 Defence a genuine opportunity to respond and be an integral part of this process,
24 which brings me to the second point, the excessive number of ex parte filings,
25 your Honours.

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1 A month prior to the confirmation hearing, as many as 76 ex parte filings were filed in
2 this case and the Defence didn't have access to these; although, the intention of the
3 Statute's drafters was to proceed with *inter parte* confirmation of charges to include
4 the Defence throughout the entirety of the proceedings.

5 Despite that intention, Mr Yekatom has been deprived in part of his right to be part of
6 the proceedings due to the vast number of ex parte filings. With the Prosecution's
7 application, for example, with the deliverance of a warrant of arrest, the document
8 that triggered his transfer to the seat of the Court, Mr Yekatom's, that is.

9 This document has not yet been served upon the Defence to my knowledge and
10 that - I think - is unprecedented in the history of this Court. The Chamber held that,
11 and I quote:

12 "Even if non-disclosure is authorised, this determination must be kept under review
13 and altered should changed circumstances make that appropriate. In this regard, the
14 Prosecutor should assist the Pre-Trial Chamber by bringing to its attention factors that
15 may cause it to reconsider its ruling on non-disclosure. The overriding principle is
16 that full disclosure should be made. It must always be borne in mind that the
17 authorisation of non-disclosure of information is the exception to this general rule."

18 The confirmation hearing of Mr Yekatom is now open. The Prosecution's DCC has
19 been filed. The Prosecution seeks to accuse Mr Yekatom and bring him to trial and
20 yet again, it still has not disclosed a redacted version of its application for warrant of
21 arrest, let alone reclassify the ex parte version, your Honour.

22 The application for warrant of arrest was the first of many filings, a long line of filings
23 and documents that the Defence of Mr Yekatom has never been privy to despite the
24 fact that he is a party to these proceedings.

25 After the Defence filed its motion to review and reclassify the 76 ex parte filings, the

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1 Prosecution responded by simply asking the Chamber to maintain the ex parte status
2 for the majority of the filings. The Prosecution didn't even provide reasons to justify
3 the maintaining of the ex parte classification when ordered to.
4 For example, one -- well, the Prosecution said that a filing should be kept ex parte
5 until the arrest of Mr Ngaïssona, after his arrest in December 2018. 16 December,
6 nine months later, was the date when the Prosecution deemed to disclose this to the
7 Defence and only after being prompted by a filing on our part.
8 On 29 March 2019, the Prosecution filed a request, filing 162. The Defence answered
9 on -- jointly on 8 April 2019, filing 165.
10 The decision was handed down on 5 July, number 232. The decision took into
11 account the Defence's arguments based on the Prosecution request, filing 162.
12 However, it transpired from the decision that the Prosecution -- the Chamber asked
13 for the Prosecution to provide additional information. This decision, 261 (sic), from
14 the Chamber was made ex parte. In other words, the Defence didn't have access to
15 that document.
16 The Prosecution responded to 217 (sic) of the Chamber with a new ex parte decision,
17 but the Defence still doesn't have access to that. This was filing 21 -- filing 219 (sic),
18 including 10 ex parte annexes where the Prosecution included a number of
19 modifications to its initial filing 162. It transpired that the decision of 162 took into
20 consideration the modified application, but the Defence had no opportunity of
21 presenting its own submissions.
22 The decision 232, flowed from the request from the Prosecution and authorised
23 non-disclosure to the Defence of certain material going to the Séléka investigations.
24 It was only at the beginning of a raft of fruitful attempts from the Prosecution to be
25 dispensed of disclosing evidential material flowing from its Séléka investigations that

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1 seemed to suggest that protecting the investigation were more important than the
2 effective rights of Mr Yekatom, who's been in custody for more than a year.
3 Similar things happened in April 2019. On 18 April 2019, the Prosecution put
4 forward a similar application, 179, filing 179 of 14 June 2019. Prosecution 179 filing
5 was reclassified so the Defence could respond.
6 The Defence did respond. On 26 June 2019 with filing 230, the 149 (sic) decision was
7 handed down on 18 July 2019. It was only at that juncture that the Defence was
8 mindful or became mindful of the fact that the underline of 179 had been modified by
9 a new ex parte filing, 217, filing 217 filed on 31 May 2019. The Prosecution sought to
10 deprive the Defence of certain information in order to safeguard once again its Séléka
11 investigations.
12 All of the 249 decision was relying on presentation arguments set out in 217, filing 217,
13 but the Defence had no access to that. The Defence never had the opportunity to
14 respond. The arguments by Defence -- set out by Defence had become superfluous
15 given the ex parte filing 217, which replaced the initial filing, filing 179.
16 But this was a request for nonstandard redactions on the part of the Prosecution,
17 going to the Séléka investigations, arguing that some material in the witness
18 statements would reveal the direction of the Séléka investigations were the Defence to
19 have knowledge of them.
20 But there was no valid reason to stop the Defence to have an opportunity -- a genuine
21 opportunity to respond to filing 217 of the Prosecution because it was filed on
22 31 May 2019, two weeks before the reclassification of filing 179, which is the initial
23 Prosecution filing to which the Defence had replied on 26 June 2019.
24 This shows that Mr Yekatom is precluded to have access to Séléka material, whereby
25 the Prosecution's entire case is built on a conflict that doesn't involve the Anti-Balaka

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1 alone, but a conflict between the Séléka and the Anti-Balaka.

2 This brings me to my third and last point. By the imperilling of the fairness of the

3 proceedings given the continuous Prosecution's abuse of the standard redaction

4 regime - indeed, the standard redaction the Prosecution has been applying for months

5 in witness statements is equally prejudicial for Mr Yekatom's Defence preparations.

6 Even though the Prosecution is obliged to revise the requirement of maintaining

7 redactions, we're going to be showing that it has not met its obligations to that end.

8 While applying standard redactions through its witness statements, the Prosecution

9 literally painted with B.2 redaction code, every single family member a witness would

10 mention. This was done regardless as to whether or not the family member in

11 question was an alleged victim or an eyewitness to events related to Mr Yekatom.

12 An example, while Mr Yekatom is accused of displacement and forcible transfer

13 during 5 December 2013 attack, pursuant to count 4 and 5 of the DCC, the location

14 where the family of a witness allegedly moved to after the attack was redacted,

15 hidden from the Defence and replaced by the B.2 code. P-1528, CAR-OTP-2048-0757,

16 paragraph 48.

17 While counts 1, 4 and 5 relate to attacks against civilian population in Cattin as well as

18 displacements of that same population, the Prosecution nevertheless chose to hide

19 from the Defence, via the B.3 code, the name of an individual who had an active role

20 in moving Prosecution witnesses and moving them out of Cattin. P-1528,

21 CAR-OTP-2048-0757, paragraph 37.

22 PRESIDING JUDGE MINDUA: [10:55:10](Interpretation) Counsel, do forgive me, I

23 don't want to put you under pressure, but in seven minutes' time we'll be rising. I'd

24 like you to be able to conclude your submissions in the next seven minutes.

25 Thank you.

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- 1 MS DIMITRI: [10:55:32] (Interpretation) With your leave, your Honour, I have
2 10 minutes and then I will have finished. If I can have those 10 minutes?
3 PRESIDING JUDGE MINDUA: [10:55:46](Interpretation) Very well, you have
4 10 minutes.
5 MS DIMITRI: [10:55:48] (Interpretation) Thank you.
6 Similarly, counts 2 and 3 of the DCC lay against Mr Yekatom several Boeing market
7 murders. The name of a person allegedly seeing the victims' murder was hidden by
8 the Prosecution under code A.6.1. (No interpretation) ... 0299, paragraph ...
9 THE INTERPRETER: Missed by the interpreter.
10 MS DIMITRI: [10:56:30] (Interpretation) Count 29 of the DCC, (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 The B.2 redaction code was also used - and unjustifiably so - so that the Defence now
21 has to mount a defence to challenge that at this late stage in the proceedings.
22 A B.2 redaction code was used to hide from the Defence the name of a witness's
23 brother who was a Séléka, who took part in the conflict and was allegedly a victim of
24 Mr Yekatom. This is Witness 2442, paragraph 19, 20, 22, 85 to 87.
25 The Prosecution went as far as redacting the name of all alleged child soldiers

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1 mentioned by 28, but -- 2018. In its DCC, it states that between September 2013 and
2 August 2014, not less than 14 children at the age of 18 were enlisted in Mr Yekatom's
3 group, and when asked to lift the redaction in July 2019, the Prosecution responded
4 a month later; namely, 27 August 2019 to say that the redactions were warranted and
5 would be maintained. P-2018, CAR-OTP-2071-0259 and P-2084, CAR-OTP-2094-0968,
6 paragraph 93.

7 As for counts 1 to 5 and count 8, they also contain a striking example of an
8 unwarranted redaction. The location of a witness's accommodation during 5
9 December attack was redacted using code B.1, while that same witness allegedly saw
10 armed Séléka shooting at people. P-1416, CAR-OTP-2045-0150, paragraph 42.
11 In Mbaiki, where Mr Yekatom is facing counts 24 through to 28, the Prosecution
12 redacted under B.3 code for innocent third parties, the names of some traders who
13 were members of the Séléka armed group and who allegedly received weapons at the
14 relevant time in Mbaiki. Witness P-1838, paragraph 33.

15 Bearing in mind the persecution count Mr Yekatom is facing in Mbaiki, the
16 Prosecution nevertheless decided to redact and therefore hide from the Defence the
17 names of several individuals who were allegedly victimised by Mr Yekatom and his
18 elements in Mbaiki. Once again, P-1838, paragraph 107.

19 Redaction code A.6.1 that are used for lead and sources was also misapplied at large
20 by the Prosecution.

21 The Prosecution was applying A.6.1 redaction without self-recognising after five
22 years of investigation - at the eve of the confirmation hearing, after filing its document
23 containing the charges with its list of witnesses - that the leads and sources it had
24 redacted under A.6.1 could no longer be considered as such.

25 For example, one of the witnesses the Prosecution is relying on in its document

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1 containing the charges provides hearsay evidence prejudicial to Mr Yekatom. The
2 source of this hearsay is an informant.

3 While the Defence may well opt to challenge the reliability of the informant, it can't as
4 he is redacted under code A.6.1. P-2328, paragraph 131 in CAR-OTP-2099-0165.

5 A more striking example is the evidence of P-1705 - on whom the Prosecutor is
6 relying for count 11 to 14 of the DCC - bears such redaction.

7 The Prosecution is charging Mr Yekatom with imprisonment and severe deprivation
8 of liberty of seven abductees. However, the Prosecution went as far as redacting the
9 names of those same abductees Mr Yekatom is being charged through count 11 to 14,
10 P-1705.

11 Mr Yekatom is also charged with the killing of the second deputy man, Mr Djido
12 Saleh in Mbaiki. The code -- B.3 redaction code was also used to hide the identity of
13 a person who was present during or in the aftermath of the alleged killing of Mr Djido
14 Saleh. See P-1588, paragraph 133 and P-1666, paragraph 85.

15 These examples simply demonstrate that the Prosecution was redacting without
16 paying heed to the interests of the Defence. Such evidence is clearly material for the
17 preparation of the Defence.

18 Without the names of the abductees, Mr Yekatom is defending himself in the dark.

19 If Mr Yekatom is deprived of the location where a family would have been displaced
20 or transferred to, it is unfair as he cannot properly investigate the allegation.

21 If Mr Yekatom is deprived of the identity of alleged victims of -- this is also unfair
22 because he cannot investigate nor can he challenge the present evidence against
23 anonymous alleged victims.

24 The same applies that if Mr Yekatom cannot know who accompanied an alleged child
25 soldier who would have participated in hostilities with an Anti-Balaka group. It is

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1 unfair once again. If Mr Yekatom cannot have the identity of the alleged child
2 soldiers he is said to have enlisted or have used to actively participate in the hostilities
3 supporting count 29, if he cannot have the name of an eyewitness who was present
4 during the killing of Mr Djido Saleh, if Mr Yekatom cannot have the names of the
5 eyewitnesses who were present during the killing of Mr Djido Saleh for whom he is
6 facing count 26 and 27, Mr Yekatom cannot challenge the evidence. Cannot
7 meaningfully investigate in order to present his evidence.

8 As a consequence, the Pre-Trial Chamber cannot properly exercise its duty as outlined
9 in the Mbarushimana Appeals Chamber, that is, to resolve any ambiguities,
10 contradictions, inconsistencies or doubts as to the credibility introduced by the
11 contestation of the evidence.

12 This, however, is the purpose of the confirmation of charges, despite the Prosecution's
13 refrain that the Defence should take into consideration, and I quote, "the limited scope
14 and purpose of the confirmation" process. End of quote.

15 The Prosecution might say that the Defence made a high number of redaction lift
16 requests --

17 PRESIDING JUDGE MINDUA: [11:05:12](Interpretation) Counsel, you have
18 requested 10 minutes. We are at the end of those 10 minutes. You have one minute
19 to wrap up, please.

20 MS DIMITRI: [11:05:38] (Interpretation) Mr President, if you would like to take the
21 break now and then I shall complete my presentation after the break -- with your
22 leave, that is?

23 PRESIDING JUDGE MINDUA: [11:05:46] (Interpretation) It is five minutes past 11.
24 We shall take our break of 30 minutes and at 11.35, we shall resume the hearing.
25 The Chamber shall rule on your request, Counsel Dimitri.

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1 Madam Courtroom Officer, could we please rise.

2 THE COURT USHER: [11:06:15] All rise.

3 (Recess taken at 11.06 a.m.)

4 (Upon resuming in open session at 11.41 a.m.)

5 THE COURT USHER: [11:41:30] All rise.

6 Please be seated.

7 PRESIDING JUDGE MINDUA: [11:41:53](Interpretation) The hearing is resumed.

8 I shall now give the floor to Maître Dimitri, but beforehand I would like to recall
9 something.

10 Counsel, we have already received the filings from all parties, so I will request of all
11 the parties and especially to you, not to repeat what we have already read.

12 In addition, we had foreseen that the first session would be given over to examining
13 the observations on Rule 122(3) of the Rules of Procedure and Evidence. I'm
14 becoming somewhat worried because we are exceeding the time limit.

15 So, Counsel, could you please summarise. You have three minutes to round up and
16 then I shall hand the floor over to other parties. Please. Thank you so much.

17 MR KNOOPS: [11:43:02] Mr President.

18 PRESIDING JUDGE MINDUA: [11:43:06](Interpretation) Maître Knoops.

19 MR KNOOPS: [11:43:08] Apologies, just to assist the Chamber and my learned
20 friends, the Defence of Mr Ngaïssona has probably not more than 15 minutes to take
21 the time of the Court for the 122(3) observations. So we have no objection if the
22 Chamber allows to lend some of our time to our friends of the Yekatom team, if that
23 would accelerate the proceedings.

24 Thank you.

25 PRESIDING JUDGE MINDUA: [11:43:40](Interpretation) Very well, Counsel,

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1 Mr Knoops.

2 Can I know how many minutes Mr Vanderpuye would like to use?

3 MR VANDERPUYE: [11:43:51] Thank you very much, Mr President.

4 I don't anticipate that I will have much or use much time to respond to the arguments

5 of Ms Dimitri or with respect to any response to Mr Knoops' arguments that I

6 anticipate. I know that the Legal Representatives of the Victims may have some

7 observations as well that they wish to make.

8 PRESIDING JUDGE MINDUA: [11:44:25](Interpretation) Yes, Mr Vanderpuye, but

9 are you not going to be using just at least five minutes? I just want to assess the time
10 that's going to be used.

11 MR VANDERPUYE: [11:44:39] I think that I wouldn't imagine more than -- yes,

12 about five or 10 minutes.

13 Thank you, Mr President.

14 PRESIDING JUDGE MINDUA: [11:44:47](Interpretation) Thank you very much.

15 And the Legal Representatives of Victims, please.

16 MS MASSIDDA: [11:44:49] (Interpretation) Thank you, Mr President. I'm going to

17 be presenting the observations for both teams and I foresee that in view of what the

18 OTP might say, but I do not believe that I will be using more than 15 minutes.

19 Thank you.

20 PRESIDING JUDGE MINDUA: [11:45:04](Interpretation) Thank you very much,

21 Counsel.

22 (Pre-Trial Chamber confers)

23 PRESIDING JUDGE MINDUA: [11:46:10](Interpretation) The Chamber would like

24 to thank the Defence of Mr Ngaïssona for their generosity and the Chamber would

25 also like to the thank the OTP and the LRVs. Nevertheless, we are running behind

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1 on our schedule.

2 So Maître Dimitri, you are given five minutes in order to wrap up your presentation
3 because we have already read your filings.

4 MS DIMITRI: [11:46:39](Interpretation) Thank you very much, Mr President,
5 your Honours.

6 I shall do -- I shall go as fast as I can.

7 The Prosecution might say that the Defence made a high number of redaction lift
8 requests that could not be addressed swiftly with its limited resources.

9 The Prosecution is solely responsible for the delay caused in resolving the redaction
10 disputes, not only because the burden to justify redaction falls on them, but also for
11 the following reasons:

12 First, we should recall that the Defence started *inter partes* interaction with the
13 Prosecution for the first time on 30 April 2019, followed by a series of letters a few
14 weeks later, more than three months later -- three months ago.

15 The Prosecution did not answer. So things gathered, accumulated to a point where
16 the Prosecution lacked time to timely address them. So, because the Prosecution was
17 going to delay in promptly responding, the Defence -- the Defence had specifically
18 asked the Chamber to shorten the deadlines when the redaction regime was litigated.
19 See filing 47, paragraphs 68 and 69.

20 Thirdly, after the Chamber had determined that a time schedule was not necessary
21 and that it counted on the professionalism of both parties to cooperate in good faith,
22 the Defence initiated meetings and follow-ups through phone calls in April and May
23 2019. The Prosecution nevertheless decided to delay a prompt resolution of the
24 matters raised.

25 Given that at paragraph 31 of its decision, filing 64, the Chamber stated, and I quote:

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1 (Speaks English)

2 "in its decision on the confirmation of charges, the Chamber shall take into account
3 only the version of evidence that was disclosed between the parties."

4 (Interpretation) The Defence is hereby asking the Chamber to disregard all the
5 statements of witnesses bearing unwarranted redactions that the Prosecution is using
6 to support the various counts against Mr Yekatom.

7 The level -- or high level of redaction as demonstrated by the examples I have given
8 impeded Mr Yekatom's ability to investigate, to present evidence and challenge the
9 evidence. The Prosecution had ample time to address these issues prior to the
10 confirmation hearing and to promptly cooperate in good faith with the Defence. It
11 chose not to do so.

12 Any adjournment would equally prejudice Mr Yekatom who has been detained for
13 almost a year now and who has objected more than once to any postponement of the
14 confirmation of charges hearing.

15 The Defence cannot address issues of credibility and reliability. The exercise of the
16 rights of the Defence has been impeded upon when the identity of eyewitnesses or
17 alleged victims are redacted if Mr Yekatom had been able to have the rights as
18 outlined in the Statute.

19 Given the inability of the Defence to properly exercise those rights due to
20 Prosecution's lack of diligence and failure to properly balance the need for redactions
21 and the interests of Mr Yekatom, the Prosecution should be deprived of using said
22 statements.

23 If the Prosecution exercised the same diligence -- lack of diligence in her review of the
24 Séléka material than in her review of the standard redaction, the obvious conclusion
25 is that they probably are in possession of extensive material collected from the Séléka

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1 investigation that has not been disclosed to the Defence. Extensive material that
2 would enable Mr Yekatom, notably, to demonstrate that those civilians of whom the
3 Prosecution has accused him of attacking were armed, engaged in combat and
4 are -- or were members of the alleged Séléka armed group.

5 Today, the Prosecution should be ordered to make a choice. Today, in order to
6 safeguard the integrity of the proceedings in fairness to Mr Yekatom's right to fully
7 challenge the Prosecution's evidence and/or present his own evidence, the
8 Prosecution should be ordered to put an end to the nondisclosure of Séléka material.

9 The Prosecution had ample time to determine whether or not she had collected
10 enough evidence that the Séléka had committed crimes against humanity and war
11 crimes, especially in light of her statement of 24 September 2014.

12 Today, the Prosecution should either arrest and prosecute members of the Séléka that
13 she considers suspects of the crimes falling under the jurisdiction of the Court and
14 fulfil her disclosure obligations towards Mr Yekatom -- or, she should be ordered to
15 disclose the material if she continues to delay the outcome of her Séléka investigation.

16 Mr Yekatom and the Defence are not sitting in the public gallery. Mr Yekatom is
17 sitting right here in this courtroom facing serious charges of war crimes and crimes
18 against humanity. He is part of the proceedings and should be able to fully take part
19 in the proceedings.

20 We invite the Chamber to join the issues raised with the examination of the charges
21 and the evidence and to adjourn and to deliberate on the impropriety of redactions
22 applied by the Prosecution and our reliefs in its decision on the confirmation of
23 charges.

24 The Defence recognises that the Chamber determined that the interest of the Defence
25 was outweighed by the ongoing and future Prosecution investigation, and that no

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1 redaction pertaining to the Séléka investigation could be lifted.

2 However, there must be a breaking point where the rights of Mr Yekatom, especially

3 since he is detained, outweighs the protection of the Prosecution's ongoing

4 investigation. This breaking point has passed now that Mr Yekatom's confirmation

5 hearing is being held.

6 The proceedings cannot be pushed forward at all cost. If the access to such crucial

7 information cannot be granted, the confirmation proceedings have no chance of being

8 fair. If the proceedings cannot be fair, they must be discontinued.

9 The Prosecution already claimed as an argument to a previous request, and I quote,

10 (Speaks English) "the unexpected speed at which the suspects were arrested".

11 (Interpretation) This argument should not and cannot serve as a justification for

12 denying Mr Yekatom a fair confirmation hearing until the Prosecution is ready.

13 The Chamber can order the immediate release of Mr Yekatom, transfer him back to

14 the Central African Republic, and when the Prosecution is ready to proceed without

15 any prejudice to Mr Yekatom's rights, they can proceed. In the meantime,

16 Mr Yekatom should not have to wait in detention until the Prosecution is ready to

17 proceed fairly.

18 Thank you.

19 PRESIDING JUDGE MINDUA: [11:53:59](Interpretation) Thank you very much,

20 Counsel Dimitri, for your co-operation and for your efforts to wrap up.

21 Now I would like to give the floor to Mr Knoops for his observations with regard to

22 what Ms Dimitri just had to say, but especially his own observations with regard to

23 Rule 122(3) of the Rules of Procedure and Evidence.

24 You have the floor.

25 MR KNOOPS: [11:54:31] Thank you very much, Mr President, your Honours.

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1 Mr President, I will not repeat our submissions of 16 September. I will raise one
2 additional procedural point, which is in line with our submissions of 16 September,
3 and this relates to the scope of Rule 122(4).

4 Mr President, you raised this procedural point this morning by saying - it's page 18 of
5 the transcript, lines 1 to 6 - that observations in accordance with Rule 122(3) cannot
6 longer be made subsequently, either during the confirmation of charges hearing or
7 during the trial itself if applicable. That's of course a very valid observation.

8 We submit -- we ask the Chamber, based on Article 31(1) of the Vienna Convention
9 on the Law of Treaties, to apply this Rule 122(4) such that Mr Ngaïssona, after this
10 hearing is over, has not forfeited his right to raise procedural or substantive
11 observations on the proceedings itself -- if, of course, the Court would at all confirm
12 the charges.

13 Now why I'm asking the Court to make such a ruling, Mr President, Mr Ngaïssona
14 faces 111 charges covering 16 alleged crimes. His team had 30 days to prepare the
15 hearing after the issuance of this DCC, which ranges 249 pages with annexes over 700
16 pages and 1,291 footnotes.

17 On top of this, the Defence had to deal within the 30-day time limit with 1,546 pages
18 of disclosures, seven disclosures. Of course this raises the point, the procedural
19 point regarding the scope, the interpretation of Rule 122(4), as your Honours
20 explained this morning.

21 It is in light of this observation that we have submitted on 16 September to the
22 Chamber our request, our notification that, first of all, Mr Ngaïssona cannot be
23 deemed to have forfeited any right to raise procedural matters in case the
24 confirmation of charges would be granted by this Court.

25 And secondly - and this is a new point which is not in our submission as such, but it

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1 follows quite logically from our submissions - we ask the Chamber to make a ruling
2 that in this specific situation, Rule 122(4) will not apply in light of Article 31(1) of the
3 Vienna Convention on the Law of Treaties, which says - and as we all know the Rome
4 Statute is a treaty - that:
5 "A treaty" should "be interpreted in good faith in accordance with ..." its purpose and
6 object and in the proper context.
7 And we submit that in the instant case, it would be in contravention to Article 31(1) of
8 the Vienna Convention on the Law of Treaties to hold against Mr Ngaïssona, if the
9 confirmation of charges would be granted at all, to hold against him that he didn't
10 raise any procedural points within the 30 -- time limits of -- before the hearing.
11 Mr President, why we are also saying this? Your Honours have seen in our
12 submissions very briefly that Regulation 38(3)(g) of the Regulations of the Court
13 stipulates that a description of the charges should not exceed 30 pages, and that
14 pursuant to Rule 121(3) of the RPE, that document not exceeding 30 pages should be
15 provided no later than 30 days before the date of the confirmation of charges hearing.
16 Your Honours can simply observe that this time frame was considerably shorter than
17 provided under the statutory framework of the Court in light of the actual number of
18 the DCC, 249, with annexes over 700 pages.
19 I refer here, Mr President, your Honours, to the Al Hassan case where the Chamber
20 required the Prosecution to inform the Defence at the earliest opportunity - and this
21 was well in advance of 60 days leading to the date of the confirmation of charges
22 hearing - and the Court stipulated that the notification should include any material
23 change in the factual basis of the allegations, which were to be found in the arrest
24 warrant, so as to satisfy the requirements of Article 67(1) of the Statute.
25 You find this at paragraph 31, Mr President, of the Al Hassan decision

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1 ICC-01/12-01/18-143, the English version.

2 Interestingly, the Judges cited in their ruling on this point the Practical Manual of

3 May 2017 where you can find the rationale of this time limitation.

4 My second point, Mr President, why we asked the Court to make a ruling in the case

5 of Mr Ngaïssona that Rule 122(4) will not be applied in his case based on the Vienna

6 Convention on the Law of Treaties, this relates to two observations:

7 First, the Chamber must have observed that; first, there is considerable expansion in

8 terms of quantity of the charges and the geographical areas which cover those charges;

9 and secondly, there is a change in the qualification of certain alleged crimes.

10 First element you find several examples. I give you one example, the location of

11 Zawa, which did not previously feature in the arrest warrant, has been added to the

12 DCC and comprises four new counts.

13 Five new counts on its face appear to the locality of Bangui; four new counts,

14 locations, Boda; four additional counts to the Lobaye prefecture, Berbérati and Carnot.

15 There are many other examples, just to give you some of them.

16 In this regard, Mr President, the Chamber must also have observed that despite your

17 ruling that there was insufficient evidence to support the finding that Mr Ngaïssona

18 beared criminal responsibility for alleged crimes committed in the region, Guen - and

19 this was already decided by the Chamber before - the Prosecution nonetheless

20 included this location in the DCC in the paragraphs 575 and further.

21 In sum, in total, around 34 additional new charges have been added to the DCC,

22 including the counts in relation to the mentioned district, Guen.

23 Secondly, as observed, there is a change in the qualification of the crimes. Just two

24 examples, Mr President, the count of rape, attempted rape, both as an alleged crime

25 against humanity as well as an alleged war crime, did not feature in the arrest

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1 warrant but does appear now in the DCC in different locations like Bangui, Boda,
2 Yaloké, Bossangoa.

3 Other crimes also feature for the first time in the DCC of Mr Ngaïssona, including
4 alleged war crimes of committing outrages on personal dignity in Bangui as well as
5 the alleged war crime of degrading treatment in Boda, Berbérati, Carnot, Yaloké.

6 Conclusion: The Chamber is confronted with a DCC which, both geographically in
7 terms of quantity but also in terms of qualification of crimes, reflects a considerable
8 expansion of the case of Mr Ngaïssona.

9 And this is why, Mr President, we submit that the Chamber should in this specific
10 case, based on the elements of Article 31(1) of the Vienna Convention on the Law of
11 Treaties, interpret Rule 122(4) such in accordance with good faith, the context and the
12 object and purpose of the treaty - whereby the rules in my submissions are
13 a derivative of the treaty - such that Mr Ngaïssona, if a confirmation of charges would
14 be granted, which will be disputed by the Defence, will not have forfeited his right to
15 raise any procedural or substantive arguments should they arise, if applicable, in
16 a later stage of proceedings.

17 That would be, as your Honours will observe, a deviation from the principle of
18 Rule 122(4), but in light of this specific context and the time frame which was, in our
19 submission, not honoured in line with the statutory framework of the Court and in
20 light of the huge amount of new charges and documents, would be in accordance
21 with the proper interpretation of the Rule 112(4) (sic).

22 So this is what we ask in addition to the request we submitted to the Chamber on
23 16 September.

24 My last observation, Mr President, and to conclude, is a second point of procedural
25 law which you will not find in our submissions of 16 September.

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1 The LRV submission of 13 September 2019 with respect to Mr Ngaïssona's alleged
2 liability - in the paragraphs 9 till 13, the LRV addresses this point - in our submissions,
3 this submission has no legal basis.

4 You'll find in these submissions by the LRV an indirect request for an expansion of
5 a certain criminal liability mode indirectly seeking for an amendment of those liability
6 modes in the case of Mr Ngaïssona, and in our submission, that would contravene the
7 rationale of Rule 121(4) of the RPE, which says that any amendment of the charges
8 should be notified to "the Pre-Trial Chamber and the person no later than 15 days
9 before the date of the hearing ..."

10 Now, of course, the LRV will submit in their response that this rule is addressed to
11 the Prosecution. But we submit that in light also here of the purpose and object of
12 this Rule 121(4), it should equally apply to the position of the LRV.

13 In this regard, we - as we submit - find support for this proposition in the partially
14 dissenting opinion of Judge Georgios Pikis in the Appeals Chamber decision of
15 Thomas Lubanga, 11 July 2008, paragraph 41 and paragraph 16. In particular,
16 paragraph 16, where Mr -- the Honourable Judge Pikis stated that:

17 "It is not the victims' domain to either reinforce the prosecution or dispute the
18 defence."

19 We submit that the submission of the LRV of this -- on this point is therefore beyond
20 the realm of their procedural rights and this, in our submission, also expands to any
21 arguments seeking for an amendment of the charges in this stages of the confirmation
22 of charges proceedings.

23 We thank you very much for your attention, Mr President.

24 PRESIDING JUDGE MINDUA: [12:10:26](Interpretation) Thank you very much,
25 Mr Knoops.

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1 Now I will give the floor to the Legal Representatives of the Victims, before moving
2 on to the Prosecutor who shall conclude, following the observations of the Defence for
3 Mr Ngaïssona.

4 You have the floor.

5 MS MASSIDDA: [12:10:56](Interpretation) Thank you, Mr President, I -- if I
6 understand correctly, I should speak to what Mr Knoops has said?

7 PRESIDING JUDGE MINDUA: [12:11:07](Interpretation) Yes, and then you
8 continue with Rule 122.

9 MS MASSIDDA: [12:11:11](Interpretation) Very well.

10 (Speaks English) Thank you, Mr President. I will start with the last submission by
11 my learned colleague, Maître Knoops, and then I will provide a few observations on
12 the other observations by the Defence of Mr Yekatom.

13 Starting with the last point, which was just raised by Mr Knoops, I think that there is
14 fundamentally a misinterpretation of what -- the purpose of the submission by the
15 legal representative filed on 13 September.

16 In our submissions, we clearly indicated that victims have some concern in relation to
17 the fact that Article 28 of the Rome Statute does not appear per se as a possible mode
18 of liability of Mr Ngaïssona in the document containing the charges.

19 It appears, that mode of liability in the document containing the charges in respect of
20 Mr Yekatom. So, first of all, it is a legitimate concern by the victims to understand
21 why this mode of liability was not put forward.

22 Second - going more to the substance of the objection - the legal representatives are
23 not asking any amendment of the charges. We are fully aware that this is not our
24 role and that we cannot even activate this request before the Pre-Trial Chamber.

25 But the inherent power of a Pre-Trial Chamber could allow that Chamber to

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1 eventually change the mode of liability as pleaded by the Prosecution if, at the end of
2 a confirmation of charges hearing, the evidence will show that Mr Ngaïssona could
3 also be inculpated with Article 28 of the Rome Statute.

4 It was -- by the way, already the case in a previous case, also concerning the Central
5 African Republic, in the Bemba case, ab origine, the Prosecution did not include it in
6 the document containing the charges, responsibility of Mr Bemba under Article 28 of
7 the Rome Statute.

8 In that case, at the end of the confirmation of charges hearing, the Pre-Trial Chamber
9 asked expressly the Prosecution to also foresee liability of Mr Bemba under Article 28
10 of the Rome Statute.

11 The hearing was adjourned in order for the parties and participants to submit
12 observation on that mode of liability. Therefore, it's our submission, your Honour,
13 that there is nothing in the text of the Court impeding legal representatives to put
14 forward before the Chamber their concerns, legitimate, by the victims in relation to
15 the possibility of eventually include liability under Article 28 of the Statute at the end
16 of a confirmation of charges hearing, once all evidence has been heard by the
17 Chamber.

18 Now, your Honour, I have a few submissions in relation to the Defence observation of
19 Mr Yekatom and I could maybe first conclude with the Defence of Mr Ngaïssona, it
20 could be more, more easier for me. I'm sorry, I was just reshuffling my submission
21 following the hearing.

22 As far as the second point of the Defence of Mr Ngaïssona is concerned, I'm referring
23 to Rule 122(4) of the Rules of Procedure and Evidence and the request by the Defence
24 of Mr Ngaïssona to not bar the Defence from eventually submit further objection after
25 the confirmation of the charge hearing - well, I have essentially two comments.

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1 The first one is that the request specifically goes against the wording of Rule 122(4) of
2 the Rules of Procedure and Evidence. And this has been confirmed as recent as
3 17 July 2019 by the Appeals Chamber in the Ongwen case, which was actually dealing
4 with the interpretation of Rule 122(4), because Mr Ongwen pleaded before the
5 Trial Chamber that he was not barred from presenting some objections at the trial
6 stage.

7 The Trial Chamber ruled that he was barred and this was confirmed by the
8 Appeals Chamber. For the record, it could be useful to state the full decision,
9 ICC-02/04-01/15-1562 OA04, 17 July 2019, specifically paragraph 130.

10 Second, and still on the objection by the Defence of Mr Ngaïssona, the Legal
11 Representative consider that the Defence has not offered any valid or reasonable
12 argument to depart from the clear text of Rule 122(4).
13 Incidentally, I don't see why we should use Article 31(1) of the Vienna Convention
14 when it's clearly set, the rule, in the text of the Court and confirmed by the practice of
15 the Court itself.

16 I think I will leave the Prosecutor to deal with the 30-day period. The only remark
17 that I would like to make in that respect is that it is our opinion that the Defence
18 should have reasonably expected a lengthy document and prepared accordingly.
19 And the Defence should also have reasonably expected filings coming at the eve of a
20 confirmation of charges hearing, particularly because Mr Knoops is, in any case,
21 a learned colleague already used to litigation before the ICC.

22 Turning briefly to the submissions by the Defence for Mr Yekatom.

23 Your Honour, our first concern is in relation to the request for a permanent stay of
24 proceedings. Now a permanent stay of proceedings - allow me to be clear on that,
25 your Honour - would entirely quash the legitimate rights and interests of the

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1 participating victims in this case.

2 The Defence in any case has not demonstrated that the proposed relief to discontinue
3 the proceedings against Mr Yekatom is the right one at this point of the proceedings.

4 In particular, it's our submission that the Defence has not demonstrated -- one, that
5 the rights of the suspect have been violated to such an extent that the essential
6 preconditions of a fair trial are missing; and two, there is no sufficient indication that
7 this will be resolved during the trial process.

8 These two cumulative elements have been considered by the general practice of the
9 Court as cumulative in order to arrive to a possible discontinuance of proceedings.

10 It's not the case here.

11 In this regard, it could may be useful to recall the Lubanga judgment of 2006, the
12 Appeals Chamber judgment, and I'm referring to paragraph 24, which indicate, and I
13 quote, it is the responsibility of a relevant Chamber:

14 "to remedy breaches of the process in the interest of justice."

15 "using the tools available within the trial process ..."

16 We submit this applies *mutatis mutandis* to pre-trial proceedings --

17 "to cure the underlying obstacles to a fair trial, thereby allowing the" ... proceedings

18 "to proceed speedily to a conclusion on its merits. Doing so, rather than resorting to
19 the significantly more drastic remedy of a stay of proceedings, is in the interests, not
20 only of the victims and of the international community as a whole who wish to see
21 justice done, but also the accused, who is potentially left in limbo, awaiting a decision
22 on the merits ..." before the ICC.

23 Now, we submit that in this vein, exactly applying that principle, this Chamber has
24 recently issued decisions preventing any possible breach of fair trial.

25 I'm referring to the decision in relation to the ex parte filings on which the Chamber

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1 has ruled recently, including with a decision of yesterday granting the request by the
2 Yekatom Defence.

3 And I'm also referring to the allegations in relation to the excessive use of
4 nonstandard redactions, which the Chamber also ruled upon as recently as
5 13 September 2019 indicating expressly, and I quote:

6 "the information already available to the Defence, along with the additional
7 disclosure already ordered and provided, including the disclosure ordered in the
8 present" ruling, "will sufficiently enable" -- I underline -- "sufficiently enable the
9 Defence to exercise their rights in relation to the charges." The reference, your Honour,
10 is to the decision of this Chamber 01/14-01/18-341, 13 September 2019, paragraph 27.

11 And the previous decision I quoted, for the correctness of the record, is in the
12 Lubanga appeal, number ICC-01/04-01/06-772, 14 December 2006, paragraph 24.

13 In any case, your Honour, we wish to recall that the suspects' and accuseds' rights to
14 disclosure is not absolute. There are competing interests to be taken into account
15 and at stake that the Chamber has to weigh before taking any decision, including the
16 obligation to protect victims and witnesses.

17 To conclude, your Honour, granting the suspect a stay of proceedings on the grounds
18 that Mr Yekatom's rights were overwhelmingly derogated - to use the words of the
19 Defence - by authorising excessive nonstandard redactions and misuse of ex parte
20 proceedings would result, in our submission, in the irreparable prejudice to victims
21 awaiting justice in this case. Not only would they have awaited prosecution of the
22 suspects for many years, but their hopes of seeing these proceedings moving forward
23 expeditiously and conclude would be shattered and any reasonable expectation to
24 justice buried with this case. Thank you, your Honour.

25 PRESIDING JUDGE MINDUA: [12:26:12](Interpretation) Thank you very much,

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1 Counsel, for your observations pursuant to Rule 122(3) of the RPE.

2 Now I will hand the floor to the Prosecutor for his own observations.

3 Mr Prosecutor, please.

4 MR VANDERPUYE: [12:26:27] Thank you very much, Mr President, your Honours.

5 I'll be brief and if -- with your permission, I would like to go in reverse order so that I

6 can address the observations of my colleagues.

7 First, with respect to the Legal Representatives for Victims, with respect to the

8 observation concerning the application of Article 28 to Mr Ngaïssona, I will say that

9 the Prosecution has brought these charges based on the evidence as a result of the

10 investigation it has carried out and which it is carrying out. To that extent, the

11 charges that are brought against these suspects represent the fruits of that

12 investigation as it currently stands.

13 I will leave it there with respect to the application of Article 28 in respect of

14 Mr Ngaïssona.

15 I agree with a number of observations that have been made by my colleague

16 Ms Massidda. I will point out a couple of things. First, in respect of the Ngaïssona

17 Defence's application at this stage to the Chamber to refer to the Vienna Convention

18 on the Law of Treaties as a means to countermand the express language of

19 Article -- rather, Rule 121 -- 122(4) of the Rules of Procedure and Evidence, I think is

20 not appropriate and it exceeds the scope of appropriate observations to be made

21 within the dictates of the Rules.

22 The express language of the Rule is as follows:

23 "At no subsequent point may the objections and observations made under sub-rule 3

24 be raised or made again in the confirmation or trial proceedings."

25 There's simply no ambiguity there and the reference to Rule 122(3) refers to objections

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1 or observations concerning an issue related to the proper conduct of the proceedings
2 prior to the confirmation hearing.

3 With respect to Mr Ngaïssona's argument concerning the time or length of time
4 provided under the Rules for the preparation of the Defence in relation to the
5 confirmation hearing, I would note that the Ngaïssona Defence, and if I'm not
6 mistaken, the Yekatom Defence as well, specifically opposed the extension of time
7 that was sought by the Prosecution in order to proceed with the confirmation hearing.
8 So it is a bit ironic that at this stage, on the day of the hearing itself or shortly before,
9 the Ngaïssona Defence is raising the inadequacy of the time that is allotted to them in
10 order to prepare. And yet still, even as of today, has not made an application to the
11 Chamber to adjourn the proceedings in order to accommodate that need or alleged
12 need to prepare adequately for the confirmation process.

13 So I don't believe that there is any merit in respect of that application, if it is an
14 application at all as opposed to a mere observation concerning the time.

15 As to the scope of the case itself, the number of charges that are pled in the document
16 containing the charges derive from almost the identical facts and circumstances which
17 are specified in the warrant of arrest. The number of crimes and the characterisation
18 of those crimes is clearly inferable from the decision of this Chamber in the issuance
19 of the warrant for Mr Ngaïssona's arrest, which was effectuated in December of last
20 year.

21 His transfer to the Court was in January of this year. And between then and now,
22 our position is that the Defence of Mr Ngaïssona has had ample time to anticipate
23 what the document containing the charges was likely to contain on the basis of the
24 warrant itself.

25 It is true that there have been other charges added in respect of -- in respect of the

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1 document containing the charges that are not contained in the warrant of arrest.
2 That of course is well within the right of the Prosecution to do and is specifically
3 provided for under the regulatory framework of the Court.
4 Notwithstanding, the Prosecution has signalled to the Defence that it intended to
5 bring charges in addition to those specified in the arrest warrant in previous filings
6 and in conversations with Defence counsel. So we don't believe that there is any
7 merit with respect to that application as well.
8 Moreover, the length of the document containing the charges is one thing, the
9 substance and the evidence which supports the charges is another. The fact that
10 a document shouldn't be more than 30-pages long has no bearing on the 30 days that
11 is foreseen under the Rules for the preparation of the Defence, because the
12 preparation of the Defence is dependent upon the quantum of evidence which
13 supports those charges or the quantum of evidence to be adduced during the course
14 of the confirmation hearing.
15 In these circumstances, the document containing the charges makes specific reference
16 to that evidence, which explains its length, and will reduce in fact the length of the
17 confirmation hearing at which such evidence is foreseen to be produced before the
18 Chamber.
19 So there's no argument with respect to that.
20 I will turn now, if I may, to the Yekatom Defence, briefly.
21 The Yekatom Defence has raised several issues with respect to its access to the record
22 concerning ex parte filings, with respect to the nature and extent of redactions and
23 with respect to the disclosure that has occurred until this point.
24 There is nothing in the observations or objections put forth by the Yekatom Defence
25 that has not already been put before this Chamber and this Chamber has decided

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1 upon.

2 As my colleague Ms Massidda indicated, the Chamber has already decided all of the
3 issues that have been raised by the Yekatom Defence. The extent of the redactions
4 that have been raised and which we have been dealing with the Yekatom Defence on
5 an *inter partes* basis as well as through the intervention of the Chamber, has already
6 been determined in the Chamber's recent decision bringing to a close the necessary
7 disclosure for the purposes - and limited purposes, I add - of the confirmation hearing
8 or the confirmation process.

9 The Chamber as I recall also pointed out that should the case be confirmed,
10 disclosures that may be necessary for the preparation of trial will continue - as it
11 should - given the limited nature and scope of these proceedings.

12 The Chamber has also dealt with the issue of ex parte, ex parte proceedings and
13 ex parte filings, and has also dealt with a number of disclosure requests that have
14 been made by the Yekatom Defence and disposed of all of them.

15 In fact, there's one pending for which a response is not due until 27 - I think - of this
16 month and so we will respond to that in due course. That application has no bearing
17 whatsoever on the sufficiency or the fairness of these proceedings.

18 In addition, the Yekatom Defence has sought leave to appeal an issue arising in
19 respect of the scope of the redactions that have been made, which this Chamber has
20 considered and appropriately denied.

21 The Office of the Prosecutor has abided by its disclosure obligations entirely and in
22 good faith, as I believe the Defence on both sides is well aware. We have abided by
23 the Rules, by the Statute itself, by the precedent of the Court and by the orders and
24 directions of this Chamber scrupulously and without failing. We believe that that is
25 a sufficient enough basis to guarantee and ensure the fairness of these proceedings

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1 and I see no reason raised by the Defence or anyone to postpone these proceedings
2 any further.

3 That is our submission, Mr President, your Honours.

4 If there is any question that you would like me to answer, I am at your disposal.

5 PRESIDING JUDGE MINDUA: [12:36:46](Interpretation) Thank you very much,

6 Mr Prosecutor.

7 For the time being, I think we have covered everything. We have heard from the

8 parties and the participants, they have laid out their observations and have

9 responded to those of the other side.

10 I just ask left and right of me whether there is any judicial questions to be had in order

11 to allow the Pre-Trial Chamber to come to a determination.

12 (Pre-Trial Chamber confers)

13 PRESIDING JUDGE MINDUA: [12:37:40](Interpretation) My colleagues have no

14 questions. Neither do I.

15 So, the Chamber has duly noted all the submissions and all the answers provided.

16 Accordingly, the Chamber will rule under 122(6) of the Rules of Procedure and

17 Evidence. The Chamber will make a ruling upon the submissions in its confirmation

18 of charges decision.

19 For the time being, therefore, without further delay, we will continue with our

20 hearing.

21 I therefore turn to the Prosecution Bench to invite the Prosecutor to lay out his

22 submissions going to the merits.

23 I recall that the Office of the Prosecutor has six hours, six hours to lay before the Court

24 its submissions.

25 I remind the participants and the parties that to facilitate the work of the interpreters,

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1 it is desirable to not speak too quickly and to observe a brief pause after each of your
2 sentences.

3 Over to you, Mr Prosecutor.

4 MR VANDERPUYE: [12:39:15] Thank you, Mr President, your Honours.

5 As I mentioned earlier today, would you like me to -- would you like me to pause or
6 wait?

7 PRESIDING JUDGE MINDUA: [12:39:40](Interpretation) No, it's all -- it's all good.

8 You may continue. But I would remind you that we have received your filings and
9 that it is not necessary therefore to go over orally what we have already read. You
10 can provide a summary and you then put forward before us any new material, if
11 necessary (Overlapping speakers)

12 MR VANDERPUYE: [12:40:04] Thank you again. I do apologise in advance insofar
13 as our submissions are pre-prepared to some extent -- or rather, a great extent I would
14 say in anticipation of today's hearing. So there may be some repetition, but I think it
15 is necessary repetition and is in full accord with the purposes and object of the
16 confirmation hearing.

17 As I mentioned a bit earlier, unfortunately, the Prosecutor of the International
18 Criminal Court, Madam Fatou Bensouda, who would normally be giving an address
19 at the opening of the Prosecution's submissions, is unavailable and unable to attend
20 today due to unforeseen circumstances. On her behalf, I will read in her
21 submissions in just a moment.

22 The first part of these submissions will be in French, Mr President, just so that the
23 interpreters are aware and I will do my best to do them justice.

24 (Interpretation) Your Honour, Honourable members of the Bench,

25 Patrice-Edouard Ngaïssona and Mr Yekatom appear before you today due to their

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1 criminal involvement in a campaign of violence and terror brought against
2 civilians - including children - this campaign by the Anti-Balaka between December
3 2013 and December 2014 in the framework of an armed conflict, which ravaged the
4 Central African Republic from 2012.

5 As the document notifying the charges asserts, Mr Ngaïssona and Mr Yekatom have
6 together committed or provided assistance to the perpetration of serious crimes
7 charged in this case perpetrated by the Anti-Balaka.

8 Mr Yekatom also personally committed certain crimes, ordered them or failed to take
9 the requisite and reasonable measures within his power to prevent or punish crimes
10 committed by his subordinates within his effective command and control.

11 Before 2012, Muslims and Christians in the Central African Republic lived together
12 peacefully. They grew up together. They intermarried. They were neighbours,
13 friends and indeed members of the same family. The chronic violence that had
14 plagued their country for decades had never divided them along religious lines.

15 However, this changed in late 2012. An armed group known as the Séléka emerged
16 in north-eastern CAR. The Séléka, which was a coalition made up of predominantly
17 Muslim combatants, rebelled against President François Bozizé's regime. This
18 insurgency started in the north-east of the country, gathered momentum on its way to
19 Bangui.

20 On the 24 March 2013, the Séléka finally descended on the capital ousting the
21 incumbent government. As Bozizé and those loyal to him fled into exile, the Séléka
22 co-opted the resources, structures and military apparatus of the Central African state.

23 Once in power, the Séléka set about a rule of scorched earth and terror, targeting the
24 former Bozizé strongholds and his supporters.

25 With your leave, your Honour, Honourable members of the Bench, I will now

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1 continue in English.

2 PRESIDING JUDGE MINDUA: [12:45:02](Interpretation) Please do.

3 MR VANDERPUYE: [12:45:04] During the months following the 24 March 2013

4 coup, a counter-movement began to build within the country. Widespread atrocities

5 drove people to defend themselves, their communities and their families against the

6 Séléka's rule. It was also driven by a desire for vengeance and revenge against those

7 perceived responsible for the Séléka's crimes and those perceived as traitors for

8 having sided with them -- the Muslim population.

9 One Anti-Balaka fighter describes that, quote:

10 "Under the Séléka rule, people felt helpless and this triggered the creation of the

11 Anti-Balaka. It came from everywhere, not one person. Initially, people only

12 gathered to protect themselves. When the Séléka entered villages, they killed men,

13 women and children. Some of the boys managed to escape and they organised to

14 defend themselves. If you take 100 Anti-Balaka, everyone has their reasons for

15 joining. They can tell you what the Séléka did to them in order to turn them into the

16 Anti-Balaka."

17 For another witness, it was his mother's murder that led him to fight, quote:

18 "When I heard my mother was killed and her body was left out on the street, I left to

19 see my brothers and we buried her next to her house. When somebody kills your

20 mother you don't feel like yourself anymore. I was angry and" I "did anything that

21 came into my mind, I couldn't forgive. I decided to create a rebellion. When my

22 mother was killed I got very angry and" I "wanted to avenge her death."

23 Many victims of Séléka crimes held all Muslims responsible.

24 One witness said, quote, in French: (Interpretation)

25 "The Arabs alone there, they killed my mother, my father ... it's too much. It's too

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1 much. The Arabs have to go. The Arabs must leave Central Africa. This is my
2 country ... All the Arabs, whatever. Otherwise, I am going to have to kill -- continue
3 to kill and even the Arabs and take revenge."
4 The Central African Republic has a tradition whereby civilians have formed
5 community-based self-defence groups. These groups have long been used in Central
6 African politics - able to be activated when the need arises. Ngaïssona knew of them.
7 And, in the context of this case, he knew of their motivation to exact revenge and
8 retribution against Muslims for Séléka atrocities.
9 From exile, Mr Ngaïssona and other members of Bozizé's inner circle used these
10 groups. They exploited the vengeance and hatred felt by the people to create
11 a formidable force which could defeat the Séléka, opening the way for them to
12 reclaim power - what we describe in the document containing the charges as the
13 strategic common plan.
14 The evidence submitted demonstrates that Mr Ngaïssona and his co-perpetrators
15 enhanced the capabilities of these insular self-defence groups, coordinating them,
16 resourcing them and promoting their collective action.
17 In doing so, Mr Ngaïssona knew that the fighting force to which he had contributed
18 to forming and developing would, in the ordinary course of events, violently target
19 the Muslim civilian population in western CAR and commit the war crimes and
20 crimes against humanity with which he is charged.
21 From mid-2013, the Anti-Balaka ranks swelled as Mr Ngaïssona encouraged,
22 portrayed and promoted them as liberators, national heroes. They saw -- they say
23 themselves, and were seen by Central Africans as saviours, freeing people from the
24 bloody reign of the Séléka. Mr Ngaïssona called them his children.
25 At first, the Anti-Balaka was celebrated. One witness explains, quote:

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1 "Women in the neighbourhood were rubbing metal pot lids together, egging the
2 young men on. They were chanting: 'Alla la, alla gaawe!', which means in Sango,
3 'they are here, they arrived!'"
4 But soon after, the Anti-Balaka -- like the Séléka, they murdered and oppressed.
5 They betrayed the freedom struggle values and the hope once held out for them.
6 A Christian tells, quote:
7 "We believed that they were here to liberate us from the Séléka. I was not aware that
8 they intended to target Muslim civilians. Soon I became frightened of them and
9 started detesting them as they quickly changed their behaviour." End quote.
10 As news of Anti-Balaka attacks upon Muslims spread throughout the country,
11 another witness explains how some refused to leave. Quote:
12 "they could not believe that their Christian brothers would turn against them." End
13 quote.
14 Yet, the Muslim rhetoric of Bozizé and his inner circle pitting Christians against
15 Muslims as perceived supporters of the Séléka was the reality. Muslims were seen
16 as traitors, collaborators, foreigners. The Anti-Balaka made all Muslims their targets.
17 They destroyed mosques. They looted and burnt down their shops and homes.
18 They decimated communities, expelling Muslims on an unprecedented scale. They
19 murdered. They raped women and children. The harsh reality for Muslims was
20 that there was no place for them in CAR, their own country.
21 In their pursuit to oust the Séléka and reclaim power, Mr Ngaïssona and other
22 members of the strategic common plan enhanced the capacity of Anti-Balaka groups
23 to commit the charged crimes.
24 As Minister of Youth, Sports, Arts and Culture, Mr Ngaïssona wielded authority and
25 influence. He encouraged the youth to take up arms. He mobilised and

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1 coordinated groups on the ground. He was wealthy and he could resource them.

2 Mr Ngaïssona provided the Anti-Balaka with money. He helped to support them.

3 He assisted their access to weapons and ammunition. These and other essential

4 contributions helped transform the Anti-Balaka into a force that was eventually able

5 to defeat the Séléka regime, but also and importantly, a force capable of committing

6 the charged crimes on the scale and magnitude in which they were perpetrated.

7 Mr Yekatom led one such Anti-Balaka group. Styling himself as Commander

8 Rambo, he, together with his group, violently targeted the Muslim population in

9 Bangui, Boeïng and other areas in south-western CAR. They expelled Muslims.

10 They murdered them. And Mr Yekatom personally committed crimes.

11 Mr Yekatom armed and trained his group, thousands of men strong. In his words to

12 one of his soldiers, quote:

13 "the purpose of the training was so we could kill Muslims and Sélékas." End quote.

14 His soldiers obeyed. They openly voiced their intention to slaughter the Muslim

15 population.

16 One witness, a Central African Muslim, was one of many victims forced to flee his

17 home in the seminal 5 December 2013 Anti-Balaka attack on Bangui. Mr Ngaïssona

18 and Mr Yekatom are both charged with crimes which arise from this coordinated

19 offensive, among others.

20 Watching from a hole in the wall of his compound, the witness describes this, quote:

21 "Between 8:00-9:00" a.m. "the Anti-Balaka chased a Muslim man and caught him in

22 the road in front of my house. The attackers were shouting 'This is an Arab.' I

23 could hear the man pleading for help but the Anti-Balaka beat him up and killed

24 him ... I saw the body of this man lying on the road ... I was calling everywhere for

25 help to get my family safely out of the neighbourhood ... I feared for the safety of

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1 my family and I was desperate to get them out to a safe location... I believe we had
2 no option but to flee from my neighbourhood. The consequence of staying in the
3 house would have been us all being killed."

4 The violent targeting of Muslims was an Anti-Balaka policy, repeated in the western
5 provinces.

6 There were Anti-Balaka elements spread from village to village. They came in
7 armed convoys or on foot, looting, killing and pillaging as they went. Huge swathes
8 of the country were emptied through the flight and expulsion of their Muslim
9 populations.

10 Fearing for their lives, massive columns of displaced Muslims left their towns and
11 villages. They fled wherever they could, including to neighbouring countries.

12 These unarmed men, women and children were left highly vulnerable. They lacked
13 protection and were often exposed and targeted on their desperate journey to safety.

14 Men were frequently separated from women and children and away from their male
15 relatives, women were especially vulnerable. They were subjected to violence on the
16 basis of their ethnicity, including violence of a sexual nature as one of the most
17 degrading and humiliating forms. Defenceless civilians were confronted with
18 Anti-Balaka elements who knew that they could act with near impunity.

19 One witness, a young Muslim girl, was part of a group who ran from the attacking
20 Anti-Balaka. She ran with her family to seek refuge with their imam. Four
21 members of her family died on their way. Hiding alone in an abandoned house, she
22 was cornered by five Anti-Balaka elements. As she was raped, she told them, quote,
23 "I would rather be killed." End quote.

24 Many who did not -- or could not flee their hometowns were corralled into enclaves;
25 they were unable to leave without risking death. These enclaves were described by

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1 some as, quote, "an open-air prison", end quote. Those inside were often left to
2 starve and die of preventable diseases.

3 Your Honours, the Anti-Balaka's attack on Muslim civilians in western CAR, whether
4 in Bangui or in the provinces, was not random. It was not spontaneous but rather,
5 the evidence is that it occurred over a large territory and over a long period. It
6 emerged from a singular common purpose and policy and that was the violent
7 targeting of the Muslim population and their perceived supporters in retribution for
8 Séléka crimes and atrocities.

9 The Anti-Balaka was an organised militia; it was effective and Mr Ngaïssona was atop
10 the group's National Coordination.

11 The Anti-Balaka had full communication ability with respect to the lines of authority,
12 as the evidence demonstrates. Anti-Balaka ComZones, zone commanders, they
13 received instructions about planned future attacks, they reported back to the National
14 Coordination on disciplinary issues, their positions and the outcomes of those attacks.
15 Trained soldiers reinforced the group's ranks and were needed to implement the
16 strategic and operational common plans. Yekatom's role and group were an
17 important part of those plans. He was a military commander; he had charge of
18 thousands of men and he organised his group in a military-like hierarchy. He was
19 respected, he was feared and his orders would be obeyed. Whether on the ground
20 or coordinating from a distance, both Mr Yekatom and Mr Ngaïssona knew that the
21 charged crimes were occurring or that they would occur in the ordinary course of the
22 events that they set in place and put in motion.

23 Both knew that the recruitment campaigns -- recruitment, rather, campaigns, and
24 deployment of troops filled with hatred and vengeance against Muslims would be
25 directed not only towards the armed Séléka, but also Muslim civilians.

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1 They knew that these attacks would involve children not yet 15 years old. Those
2 children, enlisted and used in hostilities, were also inhumanely treated and subjected
3 to violence. Children were also ordered to commit crimes against civilians. One
4 child describes his experience in the Anti-Balaka and he said that when their chiefs,
5 quote, "caught an Arab alive" --
6 "they will order us to stab him ... We were instructed to stab or cut his ear off by the ...
7 section chiefs. When the prisoner was exhausted we would dig a shallow grave,
8 about a knee height, put him in and then the chiefs will come back and kill him ..."
9 End quote.

10 These children - exploited, violated, and forced to participate in atrocities - are victims
11 of Mr Yekatom's and Mr Ngaïssona's crimes. They stand alongside countless of
12 Central Africans turned against one another to serve the political aims of powerful
13 men.

14 Mr President, your Honours, the charges before you today are serious and the
15 evidence submitted requires their confirmation. The Muslim residents of the Central
16 African Republic were relentlessly terrorised. Perceived as complicit with the Séléka,
17 they were victimised by a violent group intent on their elimination.

18 On the evidence before you, substantial grounds exist to believe that Mr Ngaïssona is
19 responsible for the charged crimes. He played a key role in and essentially
20 contributed to the strategic common plan. He helped develop it. He assisted its
21 implementation - organising and coordinating Anti-Balaka chiefs and ComZones,
22 leading tens of thousands of Anti-Balaka elements. He held status, authority and
23 influence, which he wielded over these groups in Bangui and in the western
24 provinces.

25 The evidence submitted also shows substantial grounds to believe that Mr Yekatom is

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1 responsible for the crimes committed by his troops in areas under his control. In
2 implementing his operational common plan and to effect the purpose common to all
3 the charged Anti-Balaka crimes, Mr Yekatom deployed troops and commanded them
4 in their violent targeting of the Muslim civilian population.
5 He failed to prevent or punish troops under his effective command and control,
6 knowing that they were committing or about to commit these crimes. Moreover, he
7 personally ordered and committed crimes.
8 Mr President, your Honours, Patrice-Edouard Ngaïssona and Alfred Yekatom must
9 be held to account and this matter bound over for trial. I thank you.
10 That concludes the submission of Madam Prosecutor, Mr President. I see that it's
11 1 o'clock and I would defer to the Chamber as to how to proceed. I have
12 a presentation that I will make myself, which I anticipate will take about 45 minutes
13 or 50 minutes; so I wonder if it might be a good time to break and then we can resume,
14 as the Chamber wishes, in an hour or so.
15 (Pre-Trial Chamber confers)
16 PRESIDING JUDGE MINDUA: [13:05:02](Interpretation) Thank you very much,
17 Mr Vanderpuye. The Chamber would like to thank you for your presentation.
18 The Chamber understands only too well that Madam Prosecutor is not present today.
19 And with regard to your request as to the unfolding of events today, I think - as do
20 my colleagues - that it is a good time for us to rise now and we shall resume at 2.35,
21 2.35 this afternoon for the rest of the hearing of today.
22 So we shall rise now.
23 Madam Courtroom Officer, please.
24 THE COURT USHER: [13:06:16] All rise.
25 (Recess taken at 1.06 p.m.)

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1 (Upon resuming in open session at 2.37 p.m.)

2 THE COURT USHER: [14:37:18] All rise.

3 Please be seated.

4 PRESIDING JUDGE MINDUA: [14:37:42] (Interpretation) We shall resume the

5 hearing. Good afternoon to all.

6 Before giving the floor to the OTP I shall be handing down an oral decision with

7 regard to the submissions of this morning.

8 I shall do so in English.

9 (Speaks English) This is the Chamber's oral ruling on the notice of conflict of interest

10 as regards Ms Christine Priso Ouamballo, submitted by counsel for Mr Yekatom,

11 filing number 358.

12 Having considered the notice, having heard the additional submissions presented in

13 private session at the commencement of the confirmation of charges hearing and by

14 Maître Christine Priso Ouamballo in a confidential filing number 359, the Chamber

15 issues the following decision:

16 At the outset, the Chamber notes that as early as 21 June 2019, it ordered the Registry

17 to proceed with the appointment of Maître Christine Priso Ouamballo, filing 227, and

18 regrets that this matter was brought to its attention at this late stage.

19 However, the Chamber will consider the matter in light of the interests protected by

20 the provisions in matters of conflict of interest for counsel, with particular regard to

21 the need to protect and preserve the integrity of the proceedings.

22 It is uncontested that, prior to her appointment as one of the Common Legal

23 Representatives of Victims of other crimes, Maître Christine Priso Ouamballo

24 represented two witnesses during interviews with the Prosecutor and assisted

25 Mr Yekatom during the process of his transfer to the Court from the Central African

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1 Republic. Accordingly, the Chamber considers that it can and must adjudicate this
2 matter.

3 The Chamber has heard the submissions by Maître Christine Priso Ouamballo at the
4 opening of the hearing to the effect that she would only have acted as a duty counsel,
5 either to the benefit of Mr Yekatom or of the relevant witnesses. However, the very
6 nature of the role of counsel makes it impossible for the Chamber to determine the
7 exact scope and content of the assistance delivered.

8 Accordingly, the Chamber finds that Maître Christine Priso Ouamballo's involvement
9 prior to her appointment as one of the Common Legal Representatives of Victims of
10 other crimes, as detailed in the notice, qualifies as a conflict of interest within the
11 meaning and for the purposes of Article 12(1)(a) of the Code of Professional Conduct
12 for counsel. The Chamber further notes that Mr Yekatom, by submitting the notice,
13 has made it clear that he feels an issue of conflict of interest may arise and does not
14 consent to the continued role of Maître Christine Priso Ouamballo as one of the
15 Common Legal Representatives of Victims of other crimes.

16 For these reasons, the Chamber decides that its earlier decision to temporarily exclude
17 Maître Christine Priso Ouamballo from the present proceedings shall be confirmed
18 and become permanent.

19 Furthermore, the Chamber finds that there are no reasons to maintain the
20 confidentiality of either filings number 358 and number 359 or of the portion of this
21 hearing conducted in private session, page 2, line 6 to page 6, line 25. Accordingly,
22 the Chamber orders the reclassification of both as public.

23 This concludes the Chamber's oral ruling. Thank you.

24 (Interpretation) Now, let's come back to the matter of concern.

25 Mr Vanderpuye, the floor is yours.

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1 MR SUPRUN: [14:44:46] (Interpretation) Mr President, I do apologise. Just for the
2 transcript, I would like to announce that Mr Joseph Akem-Mevoungou, who is
3 counsel for child soldiers, has just joined us in the courtroom.

4 PRESIDING JUDGE MINDUA: [14:45:04] (Interpretation) Thank you very much for
5 that piece of information, which is very useful.

6 Mr Prosecutor, please.

7 MR VANDERPUYE: [14:45:11] Thank you, Mr President. Just before I get started, I
8 just wanted to clarify something with respect to the Chamber's decision concerning
9 the disposition of filing 358, which I believe was the Defence application in respect of
10 disqualification of Maître Christine Priso Ouamballo.

11 There were some concerns that we had in respect of making that filing public. I'm
12 not sure if I've shared it with the Chamber. Now wouldn't be the best time to do that,
13 so I would ask if we could perhaps stay the execution of the Chamber's decision until
14 we can provide the Chamber staff with our reasons concerning the publication of that
15 filing. I think it can be done with relatively minor -- a small redaction or something
16 of that nature, but ...

17 (Pre-Trial Chamber confers)

18 PRESIDING JUDGE MINDUA: [14:46:34] (Interpretation) Yes, Mr Prosecutor, the
19 Chamber accepts your suggestion, but it would be a good thing to explain all of this
20 to us in 30 minutes' time because of course this is going out live.

21 MR VANDERPUYE: [14:46:49] Thank you, Mr President. We will provide the
22 Chamber's staff perhaps with an email explaining -- an explanatory email in a few
23 minutes.

24 PRESIDING JUDGE MINDUA: [14:46:56] (Interpretation) Thank you very much.
25 Perfect.

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1 MR VANDERPUYE: [14:47:07] We are ready to get started, Mr President. We just
2 want to make sure the equipment is working. We have a few slides that we will
3 show in connection with the presentation. Most of it will be in open session;
4 however, there may be one or two slides that we would ask not be publicly
5 disseminated.

6 PRESIDING JUDGE MINDUA: [14:47:32] (Interpretation) There is no issue. You
7 will be telling the courtroom officer as you go along and she will be mindful of the
8 fact.

9 THE COURT OFFICER: [14:47:46] Counsel, you have the floor, evidence channel 2.

10 MR VANDERPUYE: [14:47:58] Very well. We're ready to start.

11 Mr President, your Honours, the evidence submitted establishes substantial grounds
12 to believe that Mr Ngaïssona and Mr Yekatom are responsible for the crimes charged
13 in the Prosecution's Document Containing the Charges and should be committed to
14 trial.

15 Patrice-Edouard Ngaïssona, together with other members of former President
16 François Bozizé's inner circle and others, participated in a strategic common plan to
17 claim or reclaim power in the Central African Republic using self-defence groups
18 intent on exacting revenge against Muslims for Séléka crimes in order to defeat the
19 incumbent Séléka regime. He, like his co-perpetrators, knew that in galvanizing,
20 organising, leading and coordinating these groups and in exploiting their vengeance
21 as this end could only result in the violent targeting of the Muslim civilian population
22 in western CAR and in the commission of the charged crimes.

23 The evidence demonstrates that Mr Ngaïssona's contributions to this plan were
24 essential. It shows that he assisted in the commission of crimes and played a critical
25 role in organising and coordinating the Anti-Balaka movement, in planning attacks,

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1 in procuring money, weapons and ammunition, and by condoning and justifying the
2 deadly violence unleashed by the Anti-Balaka against Muslim civilians in western
3 CAR.

4 Alfred Yekatom was a military figure, he was a trained soldier, he led thousands of
5 elements to commit major attacks in and around Bangui, Bimbo and southwestern
6 CAR. And in doing so, Mr Yekatom participated in a subsidiary common plan, what
7 we call an operational common plan. The plan was to violently target the Muslim
8 civilian population throughout that region. The crimes committed by Yekatom and
9 his elements as part of this subsidiary plan are imputable to the members of the
10 strategic common plan.

11 Yekatom participated in his operational plan with members of the command of his
12 group and essentially contributed to it. His role was critical. He ordered crimes
13 and assisted in his group's commission of them. He planned attacks, secured
14 weapons and ammunition, recruited, trained and deployed his elements. He
15 directly took part in hostilities, commanding his forces in the field, and personally
16 committed crimes.

17 As a military commander with effective command and control over his elements,
18 Yekatom knew that they were committing or about to commit crimes and he failed to
19 prevent, repress or punish them.

20 Today and tomorrow the Prosecution's presentation will comprise the following:
21 I will present an overview of the context in which the charged crimes took place. I
22 will describe the origins of the Anti-Balaka and the deep seeded sense of victimisation
23 that impelled the movement and its elements. I will describe how a sense of
24 profound betrayal in the context of crimes committed by the Séléka fuelled
25 anti-Muslim sentiment and vengeance against Muslims. And I will describe how

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1 that understandable outrage against the Séléka transformed into a policy of
2 destruction and tragedy for the Muslim civilian population in western CAR.
3 I will go over some of the evidence before you regarding the contextual elements of
4 war crimes and crimes against humanity, and I will explain how the charged crimes
5 were committed as part of a protracted non-international armed conflict.
6 I will then outline the attack against the Muslim civilian population, its widespread
7 and systematic nature, and the Anti-Balaka's organisational policy.
8 Finally, I will briefly describe the two common plans I have mentioned, the strategic
9 common plan and the operational common plan, which my colleagues will further
10 detail.
11 Ms Struyven will present the evidence on the modes of liability and criminal
12 responsibility of Ngaïssona for the charged crimes.
13 Mr Iverson will present the evidence on the modes of liability and criminal
14 responsibility of Mr Yekatom for the crimes with which he is charged.
15 Mr Leddy will present the evidence on the crimes charged concerning the Bangui,
16 Boeing, and Yamwara School Base incidents under counts 1 to 17.
17 Ms Berdennikova will present the evidence on the crimes charged concerning the
18 Boy-Rabé base incident, along the PK9 Mbaiki axis in Lobaye prefecture and the
19 enlistment of children under the age of 15 and use in hostilities in counts 18 through
20 29.
21 Ms Henderson will present the evidence on the crimes charged concerning incidents
22 in the western prefectures of Ouham, Ombella M'poko, and Ouham-Pendé,
23 specifically in Bossangoa, Yaloké, Gaga, Zawa, and Bossemptélé under
24 counts 30 to 66.
25 Mr Leddy will present the evidence on crimes charged concerning Boda in the Lobaye

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1 prefecture under counts 67 to 78.

2 Ms Galupa will present the evidence on the crimes charged concerning Carnot in the

3 Mambéré-Kadéï prefecture under counts 79 to 85.

4 And Mr Belbenoit Avich will then present the evidence concerning the crimes

5 charged regarding the incidents in Guen and Berbérati, also in Mambéré-Kadéï, under

6 counts 86 to 111.

7 Our presentation today, your Honours, assisted by visual aids and demonstrative

8 exhibits, is intended to highlight only certain evidence before the Chamber.

9 The Prosecution relies on the 1400 items of evidence referenced in its Document

10 Containing the Charges and the exhibits on our list of evidence, which is tendered

11 into the record of these proceedings.

12 The events of this case occurred in the Central African Republic from around

13 June 2013 through December 2014.

14 The Central African Republic is bordered by Chad to the north, the Republic of Congo

15 and the Democratic Republic of Congo to the south, Cameroon to the west, and

16 Sudan and South Sudan to the east. Its six million inhabitants comprise many ethnic

17 and religious groups. And before the conflict CAR's population was around

18 15 per cent Muslim, 25 per cent Roman Catholic, 25 per cent Protestant, and

19 35 per cent followed indigenous beliefs.

20 For some perspective, the territory of the Central African Republic covers some

21 623,000 square kilometres. The country is about the size of Nigeria or France, or

22 roughly 15 times the size of The Netherlands. It is divided into 14 prefectures, of

23 which the charged crimes involve five, spread throughout the west. In particular in

24 Ouham prefecture, Mambéré-Kadéï prefecture, Lobaye prefecture, Ouham-Pendé,

25 and Ombella M'poko. In 2012, President François Bozizé was in power. In around

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1 August of that year Michel Djotodia's Séléka rebel coalition began emerging in the
2 northeast of the country. Made up of fluctuating alliances between various armed
3 groups, the Séléka was mainly a Muslim group, mixing CAR nationals with Chadian
4 and Sudanese mercenaries.

5 The fracture in CAR's political landscape deepened when in around December 2012
6 the Séléka began an offensive to dislodge President Bozizé from power, starting with
7 the 10 December attack on the strategic town of Ndélé.

8 Their advance was stopped before taking Bangui. And on 11 January 2013,
9 President François Bozizé signed a ceasefire agreement with the Séléka in Libreville,
10 Gabon.

11 Despite this, the Séléka resumed its offensive, culminating in the 24 March 2014 coup
12 d'état. With Bangui fallen, Séléka leader Michel Djotodia was installed as president
13 and Bozizé was forced into exile.

14 Séléka forces expanded their territorial control, attacking and suppressing resistance
15 in former Bozizé strongholds, including targeting members of his Gbaya ethnicity.
16 Séléka forces subjected civilians in these regions, mainly non-Muslims, Christians, to
17 violent attacks and unspeakable acts and atrocities. In a few months, the Séléka
18 sowed the seeds of vengeance as they left non-Muslims brutalised, devastated and
19 humiliated.

20 To understand the context in which the charged crimes occurred in this case, it's also
21 important to understand briefly how the Anti-Balaka movement grew and became
22 organised in the preceding period.

23 The Anti-Balaka emerged in response to the Séléka offensive. They came from
24 various groups, unified by their hatred of the Séléka and search for revenge and
25 retribution.

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1 As I mentioned, President Bozizé and many members of his political party called
2 *Kwa na Kwa*, KNK, were involved in the movement. His inner circle was at its heart.
3 They comprised members of his former government, as well as his presidential guard.
4 And he also had the support of certain members of the Central African armed forces
5 or FACA, *forces armées centrafricaines*.
6 In response to the December 2012 Séléka offensive, two militias affiliated with the
7 KNK were created: *Comité d'organisation des actions citoyennes*, or COAC, and the
8 *Coalition citoyenne contre les rébellions armées*, or COCORA. The latter, COCORA, was
9 led under the patronage of Mr Ngaïssona. The ostensible aim of COAC and
10 COCORA was to foster self-defence against the Séléka. A few months later, after the
11 March 2013 coup and with the Séléka in power, members of Bozizé's inner circle and
12 others started organising what ultimately became the Anti-Balaka. They did this
13 from three main locations: Cameroon, the Democratic Republic of Congo, and
14 France.
15 The first group, the Cameroon group, my colleague Ms Struyven will describe in her
16 presentation.
17 Soon after the 24 March 2013 coup, members of Bozizé's inner circle regrouped in
18 Cameroon. From there they planned together with others the ouster of the Séléka in
19 their claim to power. General Bozizé was there, as were members of his presidential
20 guard, the FACA members, and other central Anti-Balaka figures. Ngaïssona was
21 one of them. Ngaïssona, Bozizé and other influential actors in the movement met in
22 Yaoundé and in Douala to devise their plan. Meetings were held in various places
23 from a suite at the Hilton Hotel to the Cité Golf Club in Yaoundé.
24 In Cameroon, Ngaïssona gave instructions and sent money for weapons and
25 ammunition to be used in attacks against Séléka positions. He kept apprised of

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1 developments on the ground in Bangui. He continued his efforts to mobilise the
2 country's youth, over whom he held substantial influence through his previous
3 high-profile positions.
4 After the coup, a key group of Bozizé loyalists fled to Zongo in northwestern DRC.
5 It's situated only 2 or 3 kilometres from Bangui's centre, just across the Ubangui river.
6 Among them was Maxime Mokom, who would become the Anti-Balaka operations
7 coordinator in the formalised National Coordination. Members of the former
8 presidential guard were there as well, as were FACA members and others. Some
9 would later become key members of the Anti-Balaka National Coordination.
10 From Zongo, Mokom was a de facto Anti-Balaka coordinator. He secured money,
11 weapons and ammunition, organised the deployment of Anti-Balaka elements and
12 gave them instructions on when and where to attack. He was in contact with
13 Ngaïssona and other central figures among Bozizé's inner circle in Cameroon. He
14 was in contact with ComZones in Bangui and the provinces.
15 Around the same time a third group fled to Kalangoi, DRC. It included Yekatom
16 and other FACA members. According to Yekatom himself, he first fled to Zongo,
17 where the idea of an organised military movement against the Séléka took root.
18 If I may, I will now show the Chamber a video recorded in early December 2013 in
19 which Yekatom is interviewed.

20 (Viewing of the video excerpt)

21 PRESIDING JUDGE MINDUA: [15:05:05] (Interpretation) It's okay. We can see it
22 on the screen now. Thank you.

23 (Viewing of the video excerpt)

24 * Journalist: Where did you go when Djotodia arrived?

25 Unidentified speaker: Tell him about being in prison and about your escape from

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1 prison.

2 AYR: Yes, when I ... When he arrived, I had gone to the bank to get my pay, and he
3 had arrested me, and I had fled to cross over to Zongo. Eh? On the other side ---

4 PRESIDING JUDGE MINDUA: [15:05:05] (Interpretation) It's okay. We can see it
5 on the screen now. Thank you.

6 (Viewing of the video excerpt)

7 AYR: ... it used to be Zaire. And it was from there that we got ideas to start our
8 movement, in relation to the violence and abuse of the soldiers.

9 MR VANDERPUYE: [15:05:25] Yekatom went to Kalangoi, where he led a group of
10 thousands of Anti-Balaka elements. He armed them and prepared them to fight,
11 training them rigorously. According to one witness, also in Kalangoi at the time,
12 Yekatom's instructions to his troops were clear. They were to kill not just Sélékas,
13 but Muslims. In Kalangoi Yekatom began preparing for the offensive which
14 eventually took place in Bangui on 5 December 2013.

15 After the March 2013 coup, an alliance of core individuals started assembling groups,
16 the sum total of which would ultimately compose the Anti-Balaka. First, as I
17 mentioned, was the creation of COAC and COCOR. Then the gatherings in
18 Cameroon, in Zongo and Kalangoi.

19 In the meantime, after the coup, Séléka forces fanned out across the country,
20 repressing rebellion and consolidating power. In response, by June 2013 Anti-Balaka
21 groups began resisting Séléka attacks, engaging them militarily and with the influx of
22 former FACA members becoming more and more fortified and organised.

23 In early August 2013, General Bozizé, members of his inner circle, and supporters met
24 in Paris where they formed *Front pour le retour à l'ordre constitutionnel en Centrafrique*
25 (Interpretation) the country has returned to constitutional order.

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1 (Speaks English) Or FROCCA. Ngaïssona was among them. FROCCA was
2 essentially a political action group which aimed to reclaim Bozizé's power.
3 As Ms Struyven will describe in further detail, FROCCA fanned the flames of ethnic
4 hatred and division in the Central African conflict through mendacious propaganda
5 and anti-Muslim rhetoric supporting the Anti-Balaka in order to regain political
6 control of the capital.
7 As I mentioned, the 5 December attack on Bangui was the seminal Anti-Balaka
8 offensive which marked the beginning of the end for the Séléka regime.
9 In the early morning December 5, around a thousand of Anti-Balaka elements,
10 coordinated by Mokom from Zongo, together with Yekatom's elements, attacked
11 from several directions. The well-coordinated effort targeted Séléka positions Camp
12 Kassai, *Camp de roux*, *Camp des sapeurs pompiers*, *l'Assemblée nationale* and the *Centre*
13 *protestant pour la jeunesse*.
14 Although Séléka positions were targeted first, Anti-Balaka attacks on Muslim civilians
15 soon followed. Make no mistake, this was not just a military attack against the
16 Séléka, but part of a broader Anti-Balaka campaign to violently target Muslims in
17 western CAR.
18 Christians were warned in advance and told to place palm branches in front of their
19 house. This is a custom, a Christian custom, mourning tradition in CAR that
20 signalled to the Anti-Balaka to spare non-Muslim households. As you will hear
21 during the course of our presentations, this *modus operandi* was also used in
22 Anti-Balaka attacks in Carnot, in Berbérati and in Guen. The attack left Bangui
23 reeling, many civilians were killed and injured, thousands were displaced. And for
24 Muslims, things would only get much worse.
25 After the 5 December attack, violence against civilians by both sides continued for

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1 several weeks, eventually forcing Djotodia's 10 January 2014 resignation under
2 international pressure.

3 On 20 January, then Bangui mayor Catherine Samba-Panza was elected interim
4 president of the transition government.

5 Djotodia's resignation failed to stabilise the country. And the Séléka's withdrawal
6 from Bangui and other parts of western CAR created a vacuum, leaving the Muslim
7 population vulnerable to escalating sectarian violence and especially the vengeance of
8 the Anti-Balaka.

9 What followed was the realisation of a violent Anti-Balaka campaign to remove from
10 western CAR every vestige of the Muslim population and those perceived to have
11 supported the Séléka. This campaign comprised forced displacement, summary
12 executions, targeted and opportunistic killings, sexual offences, assaults, and the
13 destruction of religious property across the western prefectures.

14 Almost immediately after Djotodia's resignation, Ngaïssona came back to CAR on
15 14 January 2014. He had fled following the March 2013 coup. On his return, the
16 Anti-Balaka adopted a formalised structure. And this was done to better organise
17 the group and to engage with the transition government. Ngaïssona was designated
18 Anti-Balaka national coordinator at a meeting that he organised in Boy-Rabé. This
19 gave him *de jure* control and authority over Anti-Balaka groups in Bangui and in the
20 provinces.

21 I'd like to turn very briefly to the contextual elements of war crimes. The evidence
22 submitted provides substantial grounds to believe that the charged crimes were
23 committed in the context of a protracted, non-international armed conflict which
24 started in CAR in at least March 2013 and it lasted until at least December 2014. The
25 conflict took place between armed groups with a sufficient degree of organisation,

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1 notably between the Séléka forces and the incumbent Bozizé government and then
2 later between the Séléka and the Anti-Balaka.

3 The protracted nature of the conflict was widely reported on and acknowledged,
4 including by the United Nations Security Council in a mandated mapping report,
5 which states that confrontations between the Anti-Balaka and the Séléka were
6 conducted, quote, "with an intensity and a level of organisation sufficient to warrant
7 the finding of the existence of an armed conflict."

8 In fact, the UN Security Council passed at least six resolutions recognising the
9 existence of an armed conflict in CAR. In January, October, and December of 2013,
10 and in January, April, and October of 2014. The violence in CAR remained at such a
11 level of intensity throughout this period that the Security Council ultimately
12 authorised foreign military intervention under Chapter VII of the Charter of the
13 United Nations.

14 The period encompassing the armed conflict was also marked by several ceasefire
15 agreements between the Séléka and their opponents, including the Anti-Balaka.

16 There was the January 2013 Libreville agreement between the CAR government and
17 the Séléka, which I mentioned earlier; the June 2014 PARETO mediation agreement
18 between the Séléka and the Anti-Balaka, signed by Ngaïssona as national coordinator;
19 the July 2014 summit agreement between the Séléka and Anti-Balaka, again signed by
20 Mr Ngaïssona.

21 Similar commitments were also made between the Séléka and the Anti-Balaka at the
22 Nairobi summit in April 2015, this time signed by other key members of the
23 Anti-Balaka, including Maxime Mokom.

24 Finally, in May 2015, the Bangui forum for disarmament, demobilisation and
25 reintegration resulted in an agreement signed by Ngaïssona as Anti-Balaka

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1 coordinator. And you'll see his signature close to the bottom on the right of that
2 document.

3 Despite these agreements, no peaceful settlement was ever actually reached and the
4 conflict continued through 2013, 2014 and 2015 regardless.

5 Also the second element, the sufficient degree of organisation of armed groups. The
6 evidence establishes an existing structure, reporting mechanisms, and indicia of
7 command and control within the Anti-Balaka leadership. The evidence also
8 demonstrates that these factors extended to the Anti-Balaka elements in Bangui and in
9 certain provinces.

10 First, the Anti-Balaka had an internal hierarchy. The group, which by February 2014,
11 comprised between 50,000 and, according to Ngaïssona, 70,000 elements, was marked
12 by zone commanders, or ComZones, appointed as chiefs of Anti-Balaka groups and
13 operating within defined territorial areas. ComZones in the provinces sometimes set
14 up a structure mirroring the National Coordination, establishing a local committee,
15 coordinator, deputy coordinator, spokesperson and so on. An example of one such
16 regional structure can be seen in this document which should not be broadcast, if we
17 could.

18 THE COURT OFFICER: [15:16:44] It's confirmed, it's not going to be broadcasted.

19 MR VANDERPUYE: [15:16:48] Thank you.

20 What you see here, your Honours, is a document which shows the command
21 structure of the Anti-Balaka leadership in Boda. In it you can see certain defined
22 titles, prefectural coordinator, coordinator, ComZone and so forth.

23 You have the ERN, it's CAR-OTP-2001-5386.

24 We can continue in open session.

25 The document you have in front of you now is dated February 2014 and it is an

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1 example of the hierarchy that was in place with the Anti-Balaka coordination. It is a
2 declaration that's signed by over 20 high-level members of the movement, including
3 the operations coordinator. It shows their names, as well as their official role within
4 the movement, such as spokesman, battalion commander and so forth.

5 I'll show you another document. In this third document, which was provided by a
6 former senior military adviser with direct access to Mr Ngaïssona, you see a list of
7 Anti-Balaka members in Bangui, you can see their grades, their functions, their areas
8 of control, and also their status, whether they are FACA members or otherwise,
9 presidential guards or some other function.

10 In this next slide -- I'm sorry, ComZones organised and commanded their elements.
11 They issued orders, they distributed weapons, they controlled movements, and they
12 regulated communication. They also meted out discipline.

13 FACA members in the Anti-Balaka leadership positions often organised their groups
14 in a military-like form. Yekatom's group was organised in this way. He even
15 implemented an administrative structure, assigning a secretary to maintain the
16 group's official records, including members' registrations, orders and weapons
17 distribution.

18 The evidence shows that the Anti-Balaka employed certain aspects of command and
19 reporting structures, conventional ones. ComZones reported to Ngaïssona or the
20 operations coordinator. When they were unreachable, they provided information to
21 other members of the National Coordination to be passed on, such as the chief of staff,
22 and others. ComZones also reported to local coordinators or prefectoral
23 coordinators.

24 Likewise, the National Coordination monitored the Anti-Balaka in the provinces.
25 Missions were sent for that purpose. The document you now have on your screen is

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1 a mission order dated from April 2014 and it is signed by Mr Ngaïssona in his
2 capacity as a coordinator. The ERN is CAR-OTP-2087-9108, which is in front of you
3 now.

4 The Anti-Balaka had the ability to plan and carry out military operations, that's clear.
5 FACA members provided elements with direction, with leadership and rudimentary
6 military training, including on weapons use. As my colleague Mr Iverson will show,
7 Yekatom organised his group's training at various bases in the DRC and in CAR.
8 Each of the charged incidents you will hear about readily demonstrates the capacity
9 of the Anti-Balaka to plan and effectively execute a military campaign. Discipline
10 was also implemented within the Anti-Balaka structure. As I mentioned, ComZones
11 could and did punish recalcitrant elements. They were likewise held accountable
12 and subject to discipline by the National Coordination.

13 In February 2014, Ngaïssona set up a military police unit. The unit under the
14 coordinator for operations was headed by notoriously criminal Anti-Balaka elements.
15 Unsurprisingly, the unit itself contributed to a climate of insecurity and impunity.
16 The military police and similar units set up by local ComZones were never intended
17 to punish Anti-Balaka atrocities and crimes against Muslim civilians. Instead, they
18 were directed at curbing criminality against non-Muslims, which corroded the
19 group's image and eroded its national support.

20 The group also maintained public relations, acting as any organised political group
21 would, as is clear from the many documents, including press communiqués issued on
22 National Coordination letterhead, interviews that were given by its representatives
23 and speeches that were made.

24 Both suspects often represented the Anti-Balaka at high-level meetings and
25 negotiations, including, for example, with the transition president Samba-Panza in

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1 January 2014 and the Brazzaville summit later that year. They played key and
2 public roles in representing the movement.

3 In this April 2014 statement, Ngaïssona called on the Anti-Balaka to support the
4 transition government. The Anti-Balaka might not have looked like an archetypal
5 army, but they were an organised political and military force in CAR, and this by
6 design.

7 The Anti-Balaka had a clear group identity. They wore distinctive accessories
8 during operations, armbands and headbands. They underwent traditional rituals
9 and initiation rites. They wore distinctive fetishes or amulets called *gris-gris*. In
10 this document dated June 2014 issued by the National Coordination, it refers to
11 Anti-Balaka's being identifiable by their *gris-gris*. Several Anti-Balaka insiders noted
12 that in order to join the Anti-Balaka, quote, "I went ... to get some *gris-gris*" or "I wore
13 *gris-gris* to protect myself" or if they wanted to join the Anti-Balaka, they had to get it
14 as a first step.

15 In this photo you will see what a *gris-gris* looks like and in the next one as well.

16 In January 2014 the Anti-Balaka coordination began issuing ID cards. You see
17 examples of these on the screen. They were signed by Ngaïssona and sometimes by
18 other senior members of the group such as the chief of staff. By July 2014 the
19 National Coordination had issued about 10,000 IDs.

20 The Séléka, on the other hand, were also sufficiently organised throughout the period
21 covered in the DCC.

22 Following the March 2013 coup, Séléka forces took over existing state structures,
23 resources, its military. They operated under military framework in which prominent
24 Séléka commanders controlled groups of foot soldiers within their respective bases in
25 Bangui and in geographic areas of responsibility. The Séléka controlled military

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1 equipment, heavy weapons, and demonstrated the ability to plan and carry out
2 sustained military operations over a prolonged period. The 24 March 2013 coup
3 itself shows this.

4 Despite their official disbanding in mid-September 2013, the Séléka forces were not
5 disarmed and they were not demobilised. The factions that constituted the group
6 remained essentially intact. The UN estimated that Séléka numbers grew to between
7 15 to 20,000 fighters in November 2013 from only around 5,000 in March of that year.
8 The armed groups involved the protract -- involved in the protracted conflict that
9 engulfed CAR between 2012 to 2015 therefore had a sufficient degree of organisation
10 and the ability to plan and carry out sustained military operations.

11 Turning to the evidence supporting the contextual elements of crimes against
12 humanity.

13 There are substantial grounds to believe that the charged crimes were committed as
14 part of a widespread or systematic attack against the Muslim civilian population of
15 the Central African Republic. The attack took the form of a relentless campaign,
16 sub-attacks, if you will, against Muslims in Bangui and in western CAR from 2013 to
17 at least December 2014.

18 First, the large number of victims and violent targeting of the Muslim community at
19 each discrete incident location as well cumulatively across the different locations
20 illustrates the widespread nature of the attack. Similarly, the many crimes
21 attributable to the group across at least five prefectures in western CAR demonstrate
22 the vast territorial breadth and scope of the attack.

23 The attack's systematic nature is equally demonstrated by the consistent pattern of
24 violence used by the Anti-Balaka groups in targeting Muslim civilians. The charged
25 incidents involve similar conduct, tactics and crimes such as forced displacement,

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1 killing, torture, cruel treatment and the destruction of mosques, homes, businesses
2 and indeed the Muslim community itself. This pattern of violence is consistent
3 within any given incident location and across them. And the scale of the crimes
4 committed alone easily shows that they were not isolated or random, but coordinated.
5 The evidence shows that the attack was conducted in furtherance of an organisational
6 policy. The Anti-Balaka movement was structured. It was organised, certainly not
7 perfectly, but indeed it was organised. And the group controlled territory, as the
8 evidence shows. It has the means and the capacity to carry out violent military
9 operations against Muslim civilians. And their conduct and rhetoric betrayed a
10 policy which entailed the violent targeting of Muslims throughout western CAR
11 based on their religious, national or ethnic affiliation who were perceived as
12 collectively responsible for, complicit with and/or supportive of the Séléka.
13 This policy can be inferred from the systematic nature of the attack, but was also
14 expressed in the statements of Anti-Balaka elements and leaders, essentially to rid the
15 country of Muslims.
16 The Anti-Balaka used statements, interviews, press releases, public addresses and
17 other means to disseminate their message of betrayal by the Muslim population and
18 of vengeance and retribution. Hate speech was endorsed and even promoted within
19 the Anti-Balaka leadership. Its sponsors like FROCCA systematically focussed
20 public statements on the victimisation of the Christian community at the hands of the
21 Séléka, undoubtedly true, but deliberately omitted to mention or even justify the
22 crimes committed against Muslims as a whole.
23 Your Honours, in the next presentation you will see how the Anti-Balaka's narrative
24 conflated the Séléka and the Muslim population in CAR. You will hear from
25 Ms Struyven how it denied the legitimacy of the Central African Muslim community,

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1 associating it with, quote, "Islamist foreigners" end quote, colluding with the Séléka to
2 enslave the country. This was in the context of real atrocities committed by the
3 Séléka against a wounded Christian civilian population. Lives were destroyed
4 throughout the country at the hands of the Séléka, and the Anti-Balaka leadership
5 knew this and exploited it. The thirst for revenge was a time bomb and all it took
6 was a spark to ignite the hatred, fear and violence which lie at the heart of the charges
7 before you now.

8 General Bozizé and his inner circle, the Anti-Balaka leadership, and these two
9 suspects personally did more than that. My colleagues will provide specific
10 examples and details in their respective presentations on their roles and on the
11 charged crimes.

12 Briefly, on the ground, anti-Muslim animus prevailed. This next video is from
13 Bossangoa on 5 December 2013. It is CAR-OTP-2066-5308, the transcript is
14 CAR-OTP-2107-6935. And it's going to require a sight interpretation. Thank you.
15 What you'll see in this video is an Anti-Balaka describing how the Séléka killed and
16 decapitated his brother and how he had to flee the village. Once the Séléka left, he
17 had to collect his brother's mutilated body parts. Another Anti-Balaka explains how
18 his group kills Muslim civilians because, I quote, "they do the same to us".

19 We can play it.

20 (Viewing of the video excerpt)

21 *Interpreter: [off-camera] The Seleka took a sword, they put out his eyes, they cut off
22 his head, they cut him here and there. I had fled, and when they left the village, I
23 came back. I took a sheet and I picked up the pieces of my brother and I put them in a
24 pit.

25 [Interpreter] Amongst those of you who can ...

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- 1 [00:02:57. A series of cuts-to-view showing a number of young men]
- 2 Journalist: [off-camera] Youth thirsty for revenge are also attacking Muslim civilians
- 3 deemed to be too closely linked to the former rebels.
- 4 [00:03:06 Cut to view: shot of Jean-Pierre, who is speaking to the camera, with the
- 5 following text displayed on the screen: "Jean-Pierre - Anti-Balaka"]
- 6 Jean-Pierre: [incomprehensible]
- 7 Interpreter: [off-camera] So when we find the Muslims in the bush, we kill them
- 8 because they do the same thing to us.
- 9 MR VANDERPUYE: [15:34:04] This next video, only a few days later on
- 10 7 December 2013, this is CAR-OTP-2065-0802 is the transcript -- okay, that's the video.
- 11 CAR-OTP-2107-3042 is the transcript. The message is: This is our country, not the
- 12 Muslims'. Muslims are Séléka, they are foreigners, jihadists, Janjaweed,
- 13 *grand boubous*.
- 14 (Viewing of the video excerpt)
- 15 * Unidentified speaker: We are asking for three days for Djotodia to leave our country!
- 16 We are asking for three days for Djotodia to leave our country! Unidentified speaker:
- 17 Yes.
- 18 Unidentified speaker: It's our country, it's our country!
- 19 Unidentified speaker: 72 hours!
- 20 Unidentified speaker: It's our country! It's not the Muslims' country! It's not the
- 21 Muslims' country! The country belongs to Central Africans!
- 22 [00:01:10. Shot of an unidentified person brandishing a machete and speaking to the
- 23 camera.
- 24 Everyone is yelling, and several people are brandishing machetes. Many people
- 25 speaking at the same time.]

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1 MR VANDERPUYE: [15:35:16] This 31 January 2014 comment posted on behalf of
2 the Anti-Balaka account could not be clearer:
3 "We are ready to sacrifice them all, because Muslims are only 3% of the population in
4 the north - they are about to disappear ... because they are trapped and targeted for a
5 counter-offensive."
6 As I've explained, the events that my colleagues will describe took place in the context
7 of a non-international armed conflict.
8 The nexus between the charged crimes and the non-international armed conflict is
9 evident from their commission by the same group, the Anti-Balaka, a party to the
10 conflict. And they occurred within its temporal and geographical scope.
11 They were carried out in furtherance of a criminal plan to claim or reclaim power in
12 CAR by galvanizing, developing, and coordinating groups and individuals bent on
13 revenge, which inevitably would result in the charged crimes before you now.
14 These were bound to occur through the Anti-Balaka's violent targeting of the Muslim
15 civilians in western CAR, based on their religious, national and ethnic affiliation and
16 because they were perceived, indeed promoted and portrayed as collectively
17 responsible, complicit and supportive of the Séléka by the Anti-Balaka leadership.
18 As you will hear, the strategic common plan was implemented throughout western
19 CAR by various Anti-Balaka groups, including Yekatom's, who in pursuing their
20 subsidiary operational plans committed the crimes in furtherance of the same
21 purpose and this is to violently target Muslim civilians in their respective areas of
22 control.
23 Your Honours, this concludes my presentation. I will cede the floor to my colleague
24 Ms Struyven who will continue presenting evidence on the individual criminal
25 responsibility of Mr Ngaïssona.

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1 If we could just have a minute to reshuffle, we will continue with your leave.

2 PRESIDING JUDGE MINDUA: [15:37:53] (Interpretation) Thank you very much,

3 Counsel. Give yourself enough time to hand over to your colleague.

4 MS STRUYVEN: [15:38:26] Good afternoon, your Honours.

5 Your Honours, the evidence submitted establishes substantial grounds to believe that

6 Mr Patrice-Edouard Ngaïssona is responsible for the charged crimes and should be

7 committed to trial.

8 Ngaïssona is charged with three alternative modes of liability: As a direct

9 co-perpetrator under Article 25(3)(a); as an aider and abettor under Article 25(3)(c);

10 and for contributing to the crimes of the Anti-Balaka, acting with a common purpose,

11 under Article 25(3)(d).

12 The Prosecution seeks the Pre-Trial Chamber's confirmation of all three modes of

13 liability at this stage, leaving it to the Trial Chamber to make its own determination

14 based on the evidence before it.

15 In respect of Article 25(3)(a), there are substantial grounds to believe that from at least

16 June 2013 Ngaïssona, Bozizé, Levy Yakité, Maxime Mokom and others perpetrated in

17 a common plan, which we refer to as the strategic common plan, to claim or reclaim

18 political power in the Central African Republic by ousting Djotodia, the Séléka regime,

19 and their perceived supporters. To that end, they mobilised youth and preexisting

20 self-defence groups, later known at the Anti-Balaka. The co-perpetrators knew that

21 mobilising and using these Anti-Balaka groups, who were fuelled by vengeance and

22 hatred of Muslims who they blamed for the Séléka atrocities, would in the ordinary

23 course of events result in the violent targeting of the Muslim population and the

24 commission of the charged crimes.

25 Ngaïssona, by virtue of his role, acts and omissions, contributed to the strategic

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1 common plan. As I will develop, Ngaïssona's contributions, whether taken
2 separately or jointly, were essential. They were aimed to further the Anti-Balaka's
3 criminal activity and they were made with knowledge of their intention to commit
4 crimes in the Court's jurisdiction.

5 Without Ngaïssona's contributions, the charged crimes would not have occurred or
6 would not have occurred in the same manner. Ngaïssona's contributions also
7 alternatively establish his criminal responsibility under Articles 25(3)(c) and (d).

8 Your Honours, in my presentation I will first address Ngaïssona's contributions
9 before moving to his intent and knowledge.

10 In respect of his contributions, I will cover four main types of contributions. First, I
11 will explain how Ngaïssona's elite role in CAR society and politics was essential to
12 mobilising the youth. Second, I will address how, after the coup, he was
13 instrumental in developing the strategy to reclaim power in CAR. Third, I will
14 explain how he, together with his co-perpetrators, enhanced the Anti-Balaka's
15 capacity, transforming them into a capable fighting force, ready to attack Bangui on
16 5 December 2013. Last, I will explain Ngaïssona's essential contributions after his
17 return to Bangui by coordinating the Anti-Balaka groups, promoting their collective
18 action, and by giving them political legitimacy, a face and a voice.

19 Let me start with Ngaïssona's first main contribution.

20 Ngaïssona's preexisting stature, fame and influence were essential to realising the
21 strategic common plan. They ensured that the participants in the common plan had
22 access to and the loyalty of the youth who would become the fighting force needed to
23 oust the Séléka and reclaim power.

24 In order to understand Ngaïssona's contribution, it is important to have a look at his
25 earlier elite role in CAR society and politics.

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1 Ngaïssona was a wealthy, successful businessman. In CAR, one of the world's
2 poorest countries, this is significant.
3 From 2008 he held the esteemed public role of president of the Central African
4 Football Federation. The position brought him money, fame and with it access to the
5 country's youth. People looked up to him. Asked to describe him, one witness said,
6 and I quote, he is "a great man. He had businesses all over the country". Another
7 elaborated, and I quote, "Ngaïssona was very influential, and I heard that he could
8 easily go to see Bozizé."
9 As president of the football federation, Ngaïssona secured influence over youth
10 coordinators throughout the country. Their popular football activities depended
11 upon his sponsorship.
12 Ngaïssona's link to the youth was reinforced by his position as an elected
13 representative of Bozizé's KNK political party. The youth coordinators, who headed
14 youth councils, worked closely with this political party, acting as a focal point
15 between the government and local communities. The structure, which had been
16 established under Bozizé, provided formal channels through which to coordinate and
17 mobilise the youth. They were so embedded within the government that they were
18 nicknamed the youth of Bozizé.
19 Both in his own right and as one of Bozizé's trustees, Ngaïssona too benefited from
20 their loyalty.
21 Your Honours, you need to see the structure and Ngaïssona's involvement with the
22 youth through the lens of the median age in the CAR. The median age is the age that
23 divides a population into two numerically equal groups, that is, half the population
24 are younger than this age and half are older. The median age in CAR is
25 approximately 20 years old, making it one of the youngest demographics in the world.

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1 Compare this to The Netherlands where the median age is 42 years old. In this
2 context, these youth coordinators and youth councils must be seen for what they are,
3 organised groups comprising very large chunks of the population, easily reached and
4 easily mobilised. And that is exactly what the members of the strategic common
5 plan did, they reached and mobilised the youth to implement their plan to reclaim
6 power in CAR.

7 As you've heard from my colleague, in response to the Séléka advance on Bangui in
8 December 2012, two KNK-based militias were formed by Ngaïssona and his close
9 associates which called upon the youth. Those two KNK militias were called COAC
10 and COCORA.

11 As one witness explains, and I quote, "At the end of 2012 ... Ngaïssona started
12 mobilising and organising the youth into auto-defence groups to stop the Séléka
13 advance towards Bangui. While Steve Yambété (a lieutenant in Bozizé's presidential
14 guard) created COAC, Ngaïssona and Levy Yakité created COCORA. The two
15 groups soon merged. Their purpose was to mobilise the youth to erect barricades
16 and checkpoints throughout Bangui and Bimbo." End of quote.

17 As this witness makes clear, the presence and dominance of the youth within the
18 ranks of the two groups was no accident. It was their purpose. At these barricades
19 the youth were tasked with identifying Muslims perceived to be aligned with the
20 Séléka. The leaders of COAC and COCORA, including Ngaïssona, encouraged and
21 fuelled their effort. As one witness explains, "They would distribute coffee and
22 bread every night to the youths manning the barriers." End of quote.

23 The youth installed at these checkpoints by Ngaïssona were armed. And when they
24 came across Muslims assumed to be Séléka, I quote, "they would call [their chiefs] to
25 come to the checkpoint to pick them up, or they would make them disappear."

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1 Indeed, as one witness explained, some of these Muslims were arrested and never
2 seen again.

3 Your Honours, the creation of these groups, COAC and COCORA, marked the
4 beginning of a centralised effort to hold on to political power. The members of these
5 groups were part of a core alliance of those loyal to Bozizé, linked by various
6 attributes: Their Gbaya ethnicity, a shared history as *libérateurs* who fought to install
7 him as a president a decade earlier, a political alliance in the KNK, or as loyal
8 members of his presidential guard.

9 Ngaïssona was a part of this core alliance, which used existing political platforms and
10 constructed new ones to shape public discourse.

11 The public discourse that they would soon disseminate was one of hatred against the
12 Muslim population as a whole.

13 Your Honours, in an effort to hold on to power in the face of the advancing and
14 highly weaponised Séléka, on 27 December 2012 Bozizé delivered an influential
15 speech to his supporters at the *Place de la République* in Bangui. This speech would be
16 the first in a sequence of speeches which would begin to blur the line between Séléka
17 and Muslims, equating Séléka with Islam and branding all Muslims foreigners.

18 In this speech Bozizé did exactly this, saying about the Séléka, and I quote in French:
19 (Interpretation) "They are all foreigners" or "there is not a Central Africa among
20 them."

21 (Speaks English) End of quote. In an insulting manner, Bozizé referred to them as
22 Janjaweed or Toro Boro.

23 He told the population to be vigilant of the foreigners who live in the fenced houses, a
24 thinly veiled reference to the Central African Muslims who he declared had assisted
25 the Séléka to kill.

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1 He said this, and I quote in French: (Interpretation)

2 "Keep your eyes open in the various districts; watch particularly the foreigners who

3 live in the fenced compounds. They generally hide people in their compounds.

4 They wait until chaos reigns before coming out and entering into actions to kill people,

5 to kill people, to kill people ... "

6 (Speaks English) End of quote.

7 Your Honours, let me repeat this: In his speech, Bozizé told his constituency, the

8 Christian population to put it simply, that the Muslims living in Bangui were hiding

9 people in their houses and that it was only a matter of time until those people would

10 kill them.

11 Despite several references to so-called peaceful resistance, Bozizé called on the

12 population, especially the youth, to take up weapons and to go to war against the

13 enemy.

14 At this rally, Yakité insisted that they were surrounded by traitors, *des Judas*, but that

15 the foreigners would have to walk over their dead bodies before they would every

16 cede power. In short, and I quote, (Interpretation) "The nation or death".

17 (Speaks English) Just days later, Bozizé repeated his divisive rhetoric, declaring that

18 the CAR had become two countries, one belonging to the Janjaweed and the other one

19 to the true Central Africans. I quote, "*les vrais Centrafricains*".

20 These speeches were broadcast extensively. And the rhetoric left no doubt that there

21 was a difference between Muslims, the foreigners, and the Christians, the real CAR

22 nationals, regardless of whether these Muslims had in fact been born and raised in

23 CAR and regardless whether these Muslims were civilians or combatants.

24 Aligning Muslim civilians with the Séléka as their accomplices and as foreigners drew

25 them into a path of the populations' rage and violence.

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1 Your Honours, the youth was asked to fight, or as Yakité put it, and I quote in French:

2 (Interpretation)

3 "That's why we call on Central African young people to not be frightened, and if you
4 must die, then die for your country, die for freedom, die for your little brothers, die
5 for the future of your children, die for the future."

6 (Speaks English) In the following weeks, Bozizé, Ngaïssona, Yakité and Yambété

7 repeated and reinforced the same anti-Muslim rhetoric. On 4 January 2013,

8 Ngaïssona called for support against the, and I quote, "enemies of the nation who

9 decided to bring trouble by bringing Sharia law" and who want to, and I quote, "they

10 want to use Islamism to destroy the country."

11 In radio interviews Ngaïssona used his influence to reach out to the youth for their

12 support against the foreign invaders who had committed atrocities against them. He

13 said, and I quote him, (Interpretation) "The Central African Republic mustn't be

14 overrun by foreigners."

15 (Speaks English) Given his influence over the youth, Ngaïssona was appointed as

16 Bozizé's minister for youth in February of 2013. Ngaïssona recruited Yambété, the

17 fellow COAC creator, as his *chargé de mission*.

18 In this capacity as a minister of youth, on 15 March 2013, Ngaïssona publicly affirmed

19 the youth's readiness to devote themselves to defend the country. The next week he

20 had Yambété deliver a message on his behalf to the youth, and I quote in French:

21 (Interpretation)

22 "The minister for youth, sport, arts and culture instructed me to come and deliver you

23 this message, to not be frightened. Stay calm where you are. As soon as needs

24 must, we will call on you."

25 (Speaks English) Ngaïssona told the youth in no uncertain terms to wait until he

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1 would call upon them.

2 With the youth primed for action and desperate for vengeance, it was clear that they

3 would set upon the Muslim population. One witness, part of the core alliance, who

4 had been one of Bozizé's liberators in 2003, drew a comparison with the liberators

5 stating, and I quote in English, "God can be my witness that I foresaw everything that

6 was happening ... When I came back from exile I saw the Anti-Balaka actions and I

7 told some of them to respect humanitarian law because they will end up dead or in

8 prison." End of quote.

9 Ngaïssona's access to such an easily mobilised force made him essential to the

10 Anti-Balaka movement. As he himself would later explain, and I quote him: "I

11 agreed to be the spokesman for the Anti-Balaka, the people's emancipation movement,

12 because they were unrepresented. I said: Why me? They said: Because you

13 stand with the youth."

14 Your Honours, let me now turn to Ngaïssona's second main contribution.

15 In addition to his role harnessing the youth, Ngaïssona was essential in developing

16 the strategy to reclaim power in CAR.

17 Once the Séléka seized Bangui on 24 March 2013, forcing Bozizé into exile, Ngaïssona

18 joined him in Cameroon.

19 From Cameroon the strategic common plan took shape. The core alliance we spoke

20 of earlier, including, among others, Bozizé, Ngaïssona and Yakité, started organising

21 their resistance. They held meetings in Yaoundé and Douala, attended by members

22 of the former government and presidential guard, as well as members of the FACA.

23 Those involved at the start would come to play important roles in the Anti-Balaka

24 National Coordination later on.

25 Describing a meeting which took place at the Hilton Hotel in April 2013, one insider

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1 explains, and I quote in French: (Interpretation)

2 "The objective of this meeting was very clear: That of organising a response to the

3 violent acts on the part of the Séléka and to ascertain how one could bring back

4 constitutional order to the CAR. That is to say, the return of Bozizé to power."

5 (Speaks English) Over the course of the meetings, it was clear that a key component of

6 reclaiming power was to oust, not only the Séléka, but their perceived supporters, the

7 Muslim population. Indeed, the anti-Muslim rhetoric expressed a few weeks earlier

8 by Bozizé, Ngaïssona, and Yakité in Bangui was now repeated at these meetings.

9 As one witness put it, and I quote in French: (Interpretation)

10 "The Anti-Balaka were recruited and trained in Douala, and then there was a final

11 meeting in Yaoundé. Ngaïssona's final watchword during that meeting was that one

12 should destroy all the property of the Muslims and kill them."

13 (Speaks English) End of quote.

14 Your Honours, this brings me to his third main contribution: Ngaïssona's

15 contribution to the enhancement of the Anti-Balaka's capacity, transforming them into

16 a capable fighting force ready to attack Bangui on 5 December 2013.

17 From Cameroon the plan to reclaim power was not only articulated but began to be

18 put into practice. It was Ngaïssona who instructed FACA members and members of

19 Bozizé's presidential guard to move to the border area of Garoua-Boulai, Bertoua and

20 Bohong. And it was there that they started preparing attacks against Séléka

21 positions.

22 Ngaïssona would later refer to this group as the first Anti-Balaka. When questioned

23 by the judicial authorities, Ngaïssona explained, and I quote in French:

24 (Interpretation)

25 "This organisation bore the name of the Anti-Balaka and came into being in the

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1 locality of Bohong in the Ouham-Pendé prefecture during the month of June 2013
2 before spreading across the country."
3 (Speaks English) End of quote.
4 This marked the first of the Anti-Balaka and, your Honours, Ngaïssona was at the
5 heart of their formation.
6 Not only did Ngaïssona transfer money to those first Anti-Balaka in the Bohong
7 group, but from Cameroon he also funded those preparing for the planned attacks
8 throughout the rest of the western CAR. For example, one witness explains, and I
9 quote in English:
10 "The investigators asked if Ngaïssona helped us when we were in Gobéré. Yes, he
11 helped us there. Three times we received money from Ngaïssona when he was in
12 Cameroon and we were in Gobéré". End of quote.
13 Ngaïssona's essential role in the movement continued as he expanded the platforms
14 from which the members of the strategic common plan could propagate their message
15 to the youth, the wider public, and the international community.
16 In August 2013, members of the core alliance I mentioned, including Bozizé,
17 Ngaïssona and Yakité, founded FROCCA. This group advocated the removal of the
18 Séléka regime by force, as well as Bozizé's return to power.
19 As you can see from the sequence of public statements, you can see on your screen,
20 FROCCA promoted and disseminated an anti-Muslim agenda, urging the CAR
21 population to chase out so-called Islamists and jihadists. The anti-Muslim sentiment
22 was explicit. They claimed *inter alia* that local Muslims were in collaboration with
23 Séléka forces, whose intent was to Islamise the country.
24 This alarmist and inflammatory rhetoric repeated what Bozizé, Ngaïssona and Yakité
25 expressed earlier that year, as well as the tenor of the Cameroon meetings.

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1 On 9 October, the FROCCA coordinator went one step further. He explicitly blamed
2 Muslim civilians for the Séléka crimes, stating, and I quote, that "those of Muslim
3 confession" had "entered into a conspiracy with the forces of evil" coming from
4 Islamic countries. They needed to be expelled.
5 That, your Honours, is what in fact materialised.
6 By September 2013, the Anti-Balaka engaged in a first series of systematic attacks in
7 western CAR. The attacks, which targeted not just the Séléka but also the Muslim
8 civilian population, were vindicated by FROCCA.
9 Despite increasing reports of Anti-Balaka violence, including against civilians, on
10 19 and 27 November 2013 FROCCA's coordinator called on Central Africans to rise
11 up and chase the Islamists and jihadists out of CAR.
12 The circle was complete. In the words of FROCCA, Séléka equalled Islam and
13 therefore each and every Muslim in CAR.
14 Your Honours, this rhetoric, repeated, reinforced and championed by Ngaïssona
15 personally through the organisation he represented or through his close associates,
16 had a real effect on the youth. They responded, the youth responded, as was
17 expected. They conflated Muslims and the Séléka.
18 You have heard and you will continue to hear in the videos shown and in the quotes
19 read out by my colleagues Anti-Balaka commanders and their elements saying that
20 every Muslim, even a school child, even a baby was a Séléka, would become a Séléka
21 or had assisted the Séléka and was therefore a legitimate target of attack.
22 The sheer force of the momentum generated by inciting the public to action, rallying
23 the youth and coordinating them, was channelled towards the first major attack on
24 the capital and taking back political power from the Séléka.
25 In line with FROCCA's stance, Anti-Balaka groups from Bossangoa, Bouca, Bouar,

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1 Bossembélé and Zongo marched towards Bangui to carry out the 5 December 2013
2 attack.
3 In the early hours of 5 December thousands of Anti-Balaka elements mounted a
4 coordinated, armed attack on Bangui.
5 You will hear from my colleagues how they proceeded from different directions,
6 attacking multiple locations under different commanders, all the while in constant
7 phone contact with one another. Although Séléka provisions were targeted first,
8 Anti-Balaka attacks on Muslim civilians soon followed.
9 Ngaïssona was of course fully aware of the attack. Not only was he in contact with
10 the Anti-Balaka on the ground, FROCCA, declaring itself to be Anti-Balaka's political
11 arm, also immediately claimed responsibility for the attack.
12 As the attack was under way FROCCA, who, remember, was founded by Ngaïssona,
13 made a radio announcement stating, and I quote in French: (Interpretation)
14 "We today lay claim to the part we played with our young brothers and sisters in
15 action. So we are together as one and we represent the political lead. On this day
16 of 5 December I call upon all young Central Africans to rise up as a single man and to
17 kick out of our territory the foreign Islamic component that is invasive, criminogenic,
18 and committing abuses which humiliates us, this is the object of our call to support
19 the liberating action of this 5 December of our youth sisters and brothers of the
20 Balaka."
21 THE INTERPRETER: [16:09:55] Overlapping the speakers.
22 MS STRUYVEN: [16:10:03] (Overlapping speakers) of Ngaïssona's main
23 contribution, mainly those made in his official capacity as the general coordinator of
24 the Anti-Balaka.
25 The leadership role and influence that Ngaïssona had enjoyed while he was in exile

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1 was formalised and strengthened upon his return to Bangui on 14 January 2013.

2 That day all Anti-Balaka chiefs attended a meeting at Ngaïssona's home in Boy-Rabé

3 where he was officially designated *coordonateur général*. There had been no vote,

4 there had been no need.

5 Outside his house a crowd had gathered in the street to celebrate the return of, and I

6 quote, "the boss in Boy-Rabé". End of quote.

7 Upon his return to Bangui, Ngaïssona continued to provide essential contributions to

8 the strategic common plan by coordinating the Anti-Balaka. First, he provided the

9 Anti-Balaka with a permanent physical structure. Second, he became the public face

10 and voice of the movement, representing their interests and providing a platform for

11 their demands. Third, he secured the Anti-Balaka's loyalty. Fourth, he proactively

12 consolidated the Anti-Balaka structure, implementing a line of authority through

13 which he could give orders and instructions to the Anti-Balaka elements in Bangui

14 and in the provinces.

15 Let me start with the first. Ngaïssona provided the leadership with a permanent

16 physical base. His home in Boy-Rabé became the movement's headquarters.

17 Using his home as the seat of the Anti-Balaka coordination served many important

18 purposes. It provided the Anti-Balaka with a stable base from which to strategise,

19 coordinate, disseminate orders, host Anti-Balaka meetings, issue press communiqués

20 or otherwise broadcast information publicly. It also provided shelter and protection

21 to Anti-Balaka members and enabled or facilitated the commission of crimes. It also

22 served as a physical symbol of Ngaïssona's authority and leadership. A witness

23 explains that, and I quote in French: (Interpretation)

24 "Ngaïssona even transformed part of his residence in Boy-Rabé into a prison, where

25 people that the Anti-Balaka arrested were detained. Ngaïssona was administering

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1 justice at his home. I think that Ngaïssona wanted to show through his actions that
2 he was a true leader, he wanted to show that he was charismatic and capable of
3 giving orders."
4 (Speaks English) Turning to his second main contribution, acting as the face and the
5 voice of the Anti-Balaka.
6 With his official designation as *coordonateur général*, Ngaïssona saw himself and in
7 turn was seen by the wider community as the public face and voice of the movement.
8 As you can see in this video in meetings Ngaïssona would speak, and I quote, "in the
9 name of the Anti-Balaka movement and in my capacity as coordinator of the said
10 movement". End of quote.
11 He spoke on behalf of the Anti-Balaka, not only to the press, but as their
12 representative and leader in formal meetings. This formalised role provided the
13 group with a semblance of legitimacy and a platform through which to place
14 demands to the CAR government.
15 In terms of demands, for example, upon his return to Bangui, Ngaïssona represented
16 the Anti-Balaka in a meeting with President Catherine Samba-Panza, and at this
17 meeting he provided the transition government with this list, demanding specific
18 positions for himself and other high-level Anti-Balaka coordination members in the
19 government. The positions which would, pursuant to the strategic common plan,
20 allow him and others to reclaim political power in CAR.
21 Let me turn to the third contribution. Ngaïssona continued to ensure the youth
22 allegiance.
23 As a wealthy businessman, Ngaïssona took care of the personal welfare and basic
24 needs of those loyal to him, sometimes paying for funeral expenses, medical care or
25 other personal needs. As one witness explained, and I quote:

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1 "After he became coordinator, I visited his house. I went there maybe more than five
2 or six times. Sometimes, I went there to receive money. At times, I had no money
3 for food for my people and I would ask him for support. I also went there when I
4 lost an element and I went to see him to receive some money to organise the funeral."
5 End of quote.

6 Ngaïssona's generosity to the cause as well as to the elements at a personal level
7 secured and maintained their loyalty. One witness explains, and I quote:
8 "Ngaïssona gave money to the Anti-Balaka chiefs in order to support destitute
9 combatants who came from the provinces. For the chiefs who had no houses,
10 Ngaïssona paid for them to have houses. This encouraged people to support him as
11 the Anti-Balaka coordinator. By accepting his money, they were accepting his orders
12 as well."

13 Turning to the last and main contribution, far from being a symbolic figurehead or
14 mouthpiece for the movement, Ngaïssona was proactive in building and reinforcing
15 the Anti-Balaka structure. He personally documented and formalised positions of
16 ComZones and appointed National Coordination committee members, including his
17 deputy coordinator. As you can see here, he affixed these appointment letters with
18 his *coordinateur général* seal.

19 Ngaïssona imposed order and structure upon otherwise diffuse local groups. He
20 summoned local leaders to Bangui and issued them with mandates to return to their
21 municipalities and replicate the National Coordination structure at their local level.
22 He organised the issuance of ID cards. As you can see here, throughout the country,
23 formal identity documents of local Anti-Balaka elements bore his signature and seal.
24 This formal structure ensured that the Anti-Balaka had a clear line of authority.
25 Ngaïssona was seated at its head. The troops knew him as "our coordinator, his

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1 excellency".

2 Fortified with a structure and hierarchy, Ngaïssona effectively communicated his

3 orders and communiqués down the line to the Anti-Balaka in the field, either in

4 writing, via press releases, personally or via National Coordination members.

5 His reach was extensive. On 10 February 2014 he affirmed his -- he affirmed his

6 contact with Anti-Balaka leaders in every municipality, *dans chaque commune*. He

7 was in frequent telephone contact with leaders in the field and personally visited the

8 leadership of provincial Anti-Balaka groups or sent delegation from the National

9 Coordination in his stead.

10 With Anti-Balaka troops spanning huge parts of western CAR, including Bangui,

11 Ngaïssona wielded enormous power over the livelihoods of all Central Africans

12 living in these areas.

13 He demonstrated that he could affect the free flow of people, goods and vital

14 humanitarian aid throughout the country. Conversely, he could order elements to

15 erect roadblocks and cause chaos. As an insider explains, and I quote:

16 "As the general coordinator of the Anti-Balaka, Ngaïssona coordinated the actions of

17 the movement. If something went wrong in the country, he would call the

18 ComZones and would for example order them to erect roadblocks. When he said

19 something, everyone had to execute. I received plenty of orders from him to erect

20 roadblocks or to create disorder."

21 As the senior leader, Ngaïssona had the final say on Anti-Balaka activities. He

22 signed off on mission orders occurring in the field. As one element explains, no

23 significant operation could be carried out without Ngaïssona's knowledge and

24 approval.

25 In late 2014, Ngaïssona summoned his zone commanders to a meeting at his house in

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1 Boy-Rabé. Speaking of their plan to seize control of the airport and the radio station,
2 Ngaïssona instructed his zone commanders, and I quote, "We will organise a
3 large-scale reaction ... I will give the order, when the time to act has come." End of
4 quote.

5 Ngaïssona expected compliance from those engaging in combat. His influence was
6 such that he could at will order for an immediate cessation of all hostilities. For
7 example, in April 2014, in an effort to prevent his imminent arrest, Ngaïssona gave
8 such order. In a statement accompanying this order he said, and I quote in French:
9 (Interpretation)

10 "The Anti-Balaka that I coordinate are one and the same movement that is spread
11 over the entirety of the territory. When I give an order to these children, I believe
12 that it is immediately put into effect."

13 (Speaks English) One Anti-Balaka describes that "after this order, things changed:
14 People listened, theft and pillaging started subsiding."

15 Your Honours, the evidence shows that Ngaïssona could and did influence the
16 conduct of those in combat. You just heard an example of his executive order to
17 cease all hostilities.

18 In this part of my presentation I will address Ngaïssona's knowledge and intent.
19 I will show that Ngaïssona knew about his role and his essential influence over the
20 Anti-Balaka. He also knew about the anger and hatred that propelled them to action.
21 And he knew not only that the commission of crimes was a virtual certainty, but that
22 they were actually occurring. Yet, even with this knowledge, Ngaïssona made no
23 meaningful attempt to influence the Anti-Balaka committing crimes against the
24 Muslim civilian population.

25 In respect of his influence, your Honours, Ngaïssona not only knew but was proud of

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1 his essential influence over the youth. He knew he could tell them to stay put or
2 rise -- or rise up as needed. To use his own words in April 2014, and I quote in
3 French: (Interpretation) "When I give the order to these children, I think that that is
4 sufficient immediately."
5 (Speaks English) Ngaïssona also knew that his influence over the youth extended to
6 an influence over the Anti-Balaka as a whole. The Anti-Balaka were the youth.
7 And the National Coordination recognised this. Again, in their own words, the
8 Anti-Balaka were, and I quote in French, (Interpretation) "Self-defence groups
9 composed uniquely of Central African youth that had been exasperated by the violent
10 acts committed by the Séléka coalition."
11 (Speaks English) Not only did Ngaïssona know that the youth were exasperated and
12 angry, as I have explained earlier, through his own speeches and press releases,
13 Ngaïssona fuelled this anger. From December 2012 onwards, he publicly incited the
14 Christian youth through hateful anti-Muslim rhetoric.
15 The fact that the Anti-Balaka's anger caused them to attack Muslims was explicitly
16 recognised by Ngaïssona.
17 In February 2014, the group's political adviser was interviewed at Ngaïssona's home.
18 On Ngaïssona's behalf he publicly reported "we had no intention [of] killing Muslims,
19 but we later noticed that so many Muslims in the country were supporting the Séléka
20 rebels ... they were against us ... [t]his angered the Anti-Balaka, as well as the
21 majority-Christian population in the country, hence the attacks you're seeing on
22 Muslims."
23 Your Honours, Ngaïssona knew that the implementation of the strategic common
24 plan and his contribution to the formation, the organisation and the use of the
25 Anti-Balaka groups would result in the violent targeting of the Muslim population.

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1 After all, the plan to reclaim political power required mobilising these Anti-Balaka
2 groups. Their desire for revenge was not only notorious, but essential. In this
3 respect the crimes committed by setting the Anti-Balaka loose upon the Muslim
4 civilian population in western CAR were not only foreseeable, but inevitable.

5 PRESIDING JUDGE MINDUA: [16:26:47] (Interpretation) Madam Prosecutor, I do
6 apologise for interrupting you, but just to remind you that today we shall be rising at
7 16.37 and that you have 10 minutes left, so try and organise yourselves.

8 And I would also like to ask the courtroom officer whether she would be so kind as to
9 calculate the minutes and ascertain how many hours or minutes the Office of the
10 Prosecutor has left. Thank you.

11 MS STRUYVEN: [16:27:24] Thank you.

12 PRESIDING JUDGE MINDUA: (Interpretation) Please continue, Madam Prosecutor.

13 MS STRUYVEN: [16:27:26] Your Honours, as I was saying, not only did Ngaïssona
14 know that the Anti-Balaka would commit crimes, the evidence shows that Ngaïssona
15 had actual knowledge that crimes were happening. He had this knowledge both
16 before and after his official designation as general coordinator in January 2014. He
17 gained this knowledge first through members of the Anti-Balaka and second through
18 national and international interlocutors and press.

19 While in Cameroon Ngaïssona received direct information about events on the
20 ground from key Anti-Balaka figures. This is how one witness describes the end
21 of 2013:

22 "It is difficult to remember particularly attacks - at times there were four or five
23 attacks per day. However, we were aware of what was going on". An Anti-Balaka
24 insider "was giving orders regarding the attacks ... Ngaïssona was also aware of these
25 attacks: Ngaïssona and" this Anti-Balaka insider "would permanently be in contact

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1 with each other ... I myself saw" the Anti-Balaka insider "update Ngaïssona".

2 Upon his return to Bangui, evidence that crimes were being committed was on his

3 doorstep. One witness describes, and I quote in French: (Interpretation)

4 "In the 4th *arrondissement*, where Ngaïssona resided, Muslims were massacred.

5 These killings could not have been carried out without the consent of the Anti-Balaka

6 leaders such as Ngaïssona and others."

7 (Speaks English) With the formalisation of the national coordination structure,

8 cementing Ngaïssona's authority, the lines of communication about Anti-Balaka

9 crimes to Ngaïssona were only strengthened.

10 Your Honours, today and tomorrow -- no, tomorrow you will hear about the specific

11 crimes that took place throughout western CAR. Those crimes were committed

12 under the leadership of local Anti-Balakas who were in regular contact with the

13 National Coordination in Bangui, whether by phone or in person at meetings. They

14 were committed in places which hosted National Coordination missions and

15 delegations whose purpose was to report back to Ngaïssona. Ngaïssona's

16 knowledge of the charged crimes in those incident locations is particularised in our

17 DCC and will be detailed in my colleague's submissions.

18 Second, your Honours, after his formal designation as the Anti-Balaka national

19 coordinator, Ngaïssona was the authority to whom peacekeepers, journalists and

20 NGOs went to notify the crimes. In February 2014, a media organisation which

21 reported the lynching of Muslims by Anti-Balaka, stated that, and I quote, "Ngaïssona

22 was evasive when asked pointblank if his militiamen planned to stop killing

23 Muslims."

24 Your Honours, the fact that the National Coordination had knowledge of the crimes

25 that were committed is not controversial. The National Coordination themselves

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1 documented Ngaïssona's knowledge of Anti-Balaka crimes.

2 As you can see on the slide, from January 2014 until June 2014, Ngaïssona signed or

3 authorised press releases, publicly acknowledging exactions and abuses occurring

4 throughout the country.

5 The press releases acknowledged that, and I quote in French: (Interpretation)

6 "Abuses have been observed amongst the ranks of the Anti-Balaka" or

7 "Counter-productive patterns of behaviour are still observable amongst the

8 Anti-Balaka."

9 (Speaks English) Crimes, however, were minimised as mere blunders,

10 counter-productive behaviours or isolated incidences.

11 When confronted with undeniable evidence of crimes against Muslim civilians,

12 Ngaïssona simply denied their existence, like in this 2 April 2014 radio interview in

13 which Ngaïssona states, and I will actually just quote, and this is on 2 April 2014:

14 (Interpretation) "I was very surprised to hear over radio RFI, that is the national radio,

15 the accusations against the Anti-Balaka. I say no, no, no and no."

16 (Overlapping speakers) (Speaks English) the occurrence of crimes, Ngaïssona pointed

17 the finger to the commission by fake Anti-Balaka.

18 With no distinguishing qualities, other than their commission of crimes, the

19 Anti-Balaka name was not to be tarnished by the wrongdoing of these fakes who had

20 infiltrated their ranks.

21 Your Honours, the Anti-Balaka crimes were real and were not mere blunders.

22 Ngaïssona knew it. Ngaïssona knew that these crimes were so serious that, as one

23 witness recounts, he advised unruly Anti-Balaka elements to be careful as they might

24 one day be prosecuted by the International Criminal Court.

25 Your Honours, faced with this knowledge of Anti-Balaka crimes, Ngaïssona had the

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1 ability to intervene, but he didn't. He used his influence only when it suited him,
2 misled the public and the international community, and with his tacit approval,
3 encouraged widespread atrocities against Muslims to continue.

4 Ngaïssona had the power to discipline the troops and to replace leaders who
5 committed crimes, even senior leaders.

6 In August 2014, as you can see from this document, he exercised his power to replace
7 his deputy national coordinator, who had failed to respect the internal hierarchy.

8 But those who committed crimes against Muslims knew that they could act with near
9 impunity.

10 Ngaïssona could intervene to protect Muslim civilians. While he did so in a handful
11 of isolated cases, he left thousands of Muslims to be expelled, enclaved, to starve and
12 to die at the hand of Anti-Balaka elements under his coordination for months and
13 months on end.

14 Instead of intervening to halt the commission of crimes, he portrayed the Anti-Balaka
15 as national heroes. In public and to the Anti-Balaka or *les enfants*, as he called them,
16 who looked up to him and rose up to his call, Ngaïssona held on to a narrative of
17 Christian suffering and sacrifice. He justified the Anti-Balaka's action, saying that
18 they brought hope to the Central African people.

19 In his words, the youth, and I quote in French: (Interpretation)

20 "The young Central Africans rose up and sacrificed their lives for the cause of the
21 people. They paid the price for the liberation of our country from the claws of the
22 sanguinary members of Séléka."

23 (Speaks English) In conclusion, your Honours, Ngaïssona's fortification of
24 Anti-Balaka groups was disastrous for Central African Muslims. The consequences
25 of his failures to act were equally severe. His refusal to acknowledge crimes and his

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1 defence of Anti-Balaka heroism served to endorse and encourage Anti-Balaka
2 misconduct when Ngaïssona was one of the few who had the power to affect it, if not
3 to stop it.

4 Your Honours, this concludes my submissions on Ngaïssona's individual criminal
5 responsibility. And I think it's exactly 37 past.

6 PRESIDING JUDGE MINDUA: [16:36:31] (Interpretation) Thank you very much,
7 Madam Prosecutor. That is actually fantastic and it is precisely 16.37.

8 Now, looking at the calculations made by the court officer, I added 10 minutes that I
9 used, the OTP has used 2 hours and 9 minutes. So they have 3 hours and 51 minutes
10 left, which they are going to use tomorrow.

11 For the time being we are going to adjourn. But prior to that I would like to thank all
12 the parties and participants. I would like to thank the public for attending the
13 proceedings. And I would also like to thank the interpreters for their assiduity, as
14 well as the court reporters and the security officers.

15 Court shall rise and we will resume tomorrow in this same room at 9.30 a.m.

16 THE COURT USHER: All rise.

17 (The hearing ends in open session at 4.37 p.m.)

18 ~~RECLASSIFICATION REPORT~~

19 Pursuant to the Pre-Trial Chamber' II's email instructions, dated 19 December 2019,
20 the public ~~reclassified and~~ lesser redacted version of this transcript is filed in the case.