

Trial Hearing
Closing statements

(Open Session)

ICC-01/14-01/18

1 International Criminal Court
2 Trial Chamber V
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács,
7 Judge Chang-ho Chung and Judge Beti Hohler
8 Closing Statements - Courtroom 1
9 Wednesday, 11 December 2024
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:57] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SCHMITT: [9:31:21] Good morning, everyone.
15 Court officer, please call the case.
16 THE COURT OFFICER: [9:31:26] Good morning, Mr President, your Honours.
17 Situation in the Central African Republic II, in the case of The Prosecutor versus
18 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
19 And for the record, we are in open session.
20 PRESIDING JUDGE SCHMITT: [9:31:43] Thank you very much.
21 I think today it makes sense to ask for the appearances again, perhaps.
22 Mr Vanderpuye, please, for the Prosecution.
23 MR VANDERPUYE: [9:31:52] Thank you, Mr President. Good morning to you.
24 Good morning to everyone.
25 Today the Prosecution is represented by Olivia Struyven, Lucio Garcia, Yassin Mostfa,

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1 Manochitra Prathaban, Pierre Belbenoit Avich, Maria Berdennikova, Leila Haccius,
2 Sylvie Wakchom and myself, Kweku Vanderpuye. Good morning.
3 PRESIDING JUDGE SCHMITT: [9:32:13] Thank you.
4 Ms Massidda next for the victims.
5 MS MASSIDDA: [09:32:15] Good morning, Mr President, your Honours.
6 For the victims of the other crimes appearing today, Ms Elisabeth Rabesandratana,
7 Mr Orchlon Narantsetseg, Mr Innocent Mpoko, Mr Enrique Carnero Rojo, Ms Heijn
8 Kim, Mr Alexis Larivière and Ms Evelyne Ombeni, and myself, Paolina Massidda.
9 PRESIDING JUDGE SCHMITT: [9:32:41] Thank you.
10 Mr Suprun next.
11 MR SUPRUN: [9:32:47] Good morning, Mr President. Good morning, your
12 Honours.
13 The composition of the team representing the former child soldiers is the same as
14 yesterday. Thank you.
15 PRESIDING JUDGE SCHMITT: [9:32:53] Thank you.
16 And Ms Dimitri for the Defence of Mr Yekatom.
17 MS DIMITRI: [9:32:58] Good morning, Mr President. Good morning, your
18 Honours. Good morning, everyone.
19 Mr Yekatom is present in the courtroom. He's represented today by Ms Anta Guissé,
20 Ms Yousra Lamqaddam, Ms Sabrine Bayssat, Ms Sarah Bafadhel, Mr Gyo Suzuki,
21 Ms Alexandra Baer, Mr Florent Pages-Granier, Ms Léa Benoit, Ms Lina Hammi, and
22 myself, Mylène Dimitri.
23 PRESIDING JUDGE SCHMITT: [9:33:23] Thank you.
24 And then we turn to the Defence of Mr Ngaïssona, Mr Knoops, please.
25 MR KNOOPS: [9:33:27] Good morning, Mr President. Your Honours, good

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1 morning. Good morning, everyone in the courtroom.

2 The Defence team of Mr Ngaïssona this morning is composed of Ms Despoina
3 Eleftheriou, Lauriane Vandeler -- in the second row -- second row, Ms Antonina Dyk,
4 associate to counsel, Mathias Goffe, Melissa Beaulieu; on the left side,
5 Ms Sara Pedroso. Good morning.

6 PRESIDING JUDGE SCHMITT: [9:33:50] Thank you very much.

7 We give now the floor to Ms Dimitri for the Defence of Mr Yekatom and their closing
8 statement.

9 MS DIMITRI: [9:33:58] Thank you, Mr President. Before we start, just a few
10 housekeeping matters. The way we separated the closing statement, with your
11 Honours' leave, we will probably break maybe 10 to 15 minutes before 1, and then the
12 second part could be in the afternoon.

13 PRESIDING JUDGE SCHMITT: [9:34:17] We are fine with that. And we also
14 suggest today that we shorten the lunch break so we have our flexibility in the
15 afternoon, yeah.

16 MS DIMITRI: [9:34:24] Thank you.

17 PRESIDING JUDGE SCHMITT: [09:34:25] No problem.

18 MS DIMITRI: [09:34:27] And the second matter, Mr President, I spoke to
19 Mr Vanderpuye yesterday. So we have four hours and a half. With your Honours'
20 leave, I would have about 10 minutes in private session to fully address a point the
21 Prosecution made on P-1339.

22 PRESIDING JUDGE SCHMITT: [9:34:43] Well, I assume, when you suggest that,
23 that there is good reason for it. Ten minutes is okay, but you know, we have -- you
24 have, everybody has an interest to have the closing arguments as much in open
25 session than possible, yeah. But it's also fine, specifically when you have talked with

1 Mr Vanderpuye.

2 MS DIMITRI: [9:35:07] Thank you, Mr President.

3 Good morning, your Honours. Good morning, everyone. It's a privileged to
4 appear before you today and it's a privilege to have led this Defence team for the past
5 five years.

6 Through today's presentation I will seek to demonstrate why the Prosecution's
7 narrative in this case cannot be trusted, and this stems from the manner in which they
8 conducted their investigation, the way they questioned witnesses, and the approach
9 they adopted in constructing their final brief and their closing statement.

10 And a consistent pattern emerges in the Prosecution's conduct, a pattern driven by a
11 singular focus on securing a conviction, often at the expense of fairness and accuracy.

12 From the outset of their investigation, when witnesses provided clarifications or
13 nuanced responses, the Prosecution consistently opted for the most incriminating
14 interpretation. But it's only incriminating when they twist the evidence, when they
15 disregard context or clarifications provided by witnesses, clarifications that
16 undermine their narrative.

17 And I will substantiate today this first point by using witness statements compared to
18 court testimony referenced in the Prosecution's brief.

19 And I will then address my second point, where I will discuss how the Prosecution
20 used extensively the witness statement of P-1339 to feed him the evidence they
21 needed to construct their brief against Mr Yekatom. And this approach of exploiting
22 ambiguities while deliberately avoiding clarification that could undermine their case
23 was evident not only in the investigative phase, but also in the courtroom while they
24 were questioning witnesses.

25 And this observation will form part of the foundation of my third point, which I will

1 expand today by demonstrating how these ambiguities were similarly leveraged by
2 the Prosecution, in particular in relation to the north and the south coordination.

3 And, fourth, I will demonstrate how this tactic extended to their interpretation of
4 other types of evidence such as audio/video material or call data records.

5 And, fifth, I will also show how the same approach is reflected in their brief. They
6 made deliberate, selective choices, disregarding clear evidence during court
7 proceedings when it undermined their argument. And this is shown particularly on
8 their fixation of a conviction in relation to P-0954.

9 Following my presentation, my colleagues, Ms Guissé, Ms Bafadhel, and Mr Suzuki,
10 will further address your Honour.

11 Ms Guissé will address the Yamwara school base. Mr Suzuki will address the term
12 "Anti-Balaka". He will briefly address Cattin as well as the PK9-Mbaïki axis. And
13 Ms Bafadhel will address your Honours on Mr Yekatom's individual criminal
14 responsibility as alleged by the Prosecution.

15 At the end of our presentation I will conclude our submissions with a very brief
16 analysis of count 29 and where I'll highlight how the Prosecution's relentless pursuit
17 for a conviction and their deliberate avoidance of clarification that could weaken their
18 case was equally evident.

19 Your Honours will recall how, during my opening statement, I highlighted how,
20 throughout the trial, the Prosecution failed to rigorously test their evidence, and their
21 refusal to test or to thoroughly test their evidence or address ambiguities or even
22 acknowledge damaging evidence, underscores a calculated effort to gain a tactical
23 advantage. And they consistently employed deliberate obfuscation and conflated
24 terms such as "Muslim" and "Anti-Balaka". And when a witness attempted to clarify
25 a point, the Prosecution either tried to avoid addressing the clarification or

1 disregarded it altogether.

2 And I want to take the example of Prosecution Witness 1839 where the Prosecution
3 exploited her lack of clarity and the conflation of issues when she was discussing
4 Muslims and alleged instructions by Mr Yekatom. And you heard the Prosecution
5 on Monday, and Tuesday, repeating two extracts from P-1839 in relation to what
6 Mr Yekatom would have said in relation to Muslims.

7 And, fortunately, when P-1839 testified, your Honours will recall that her prior
8 recorded testimony was a full recorded transcript that allowed me to address and
9 clarify various points during our examination on behalf of Mr Yekatom. And you'll
10 recall, and you'll see this from the slide, the next slide before your Honours on slide 2,
11 that she admitted referring to "Muslim" during her interview with the Prosecution
12 while, in fact, she meant Seleka. She meant Seleka who were burning houses, she
13 meant Seleka who had weapons, but she used the term "Muslim".

14 And your Honours will also recall that because we had a full transcribed recorded
15 prior statement of P-1839, a significant portion of our examination was to have her
16 confirm key aspects of her evidence of her prior recorded testimony during the court
17 proceedings, key aspects that were avoided by the Prosecution.

18 And in contrast to the Prosecution's pattern, we addressed with P-1839 key points of
19 her evidence and the essential aspects of her testimony. You'll also recall that at
20 some point we repeatedly asked the same question three times to obtain a clear and
21 an unequivocal answer regarding Mr Yekatom's instructions. And this is at
22 transcript 174, from page 78 onwards.

23 But more troubling is the Prosecution actively sought to obstruct our attempt to
24 clarify her evidence, and this reveals a clear apprehension of potentially exculpatory
25 and damaging responses.

1 You will recall how at some point I was questioning 1839 on whether or not
2 Mr Yekatom or Mr Habib Beina had ever said to attack Muslim civilians, and they
3 objected. They didn't want me to obtain that clarification; and, fortunately, you, if
4 I can use that term, overruled the objection and allowed me to ask that question.
5 And she gave a damaging answer, damaging to the Prosecution's case despite their
6 attempt to obstruct it. And, today, that answer, they qualify it in their brief as a red
7 herring, showing how they're really not interested in the truth, but simply a
8 conviction, because they will give every attempt to put aside anything that can
9 disturb key findings of their case. And you can see that attempt at paragraph 446 of
10 the Prosecution's brief.

11 Now, these clarifications that we obtained from 13 -- I'm sorry, from 1839 during our
12 examination were made possible because her prior recorded testimony was fully
13 recorded.

14 But this advantage of having a full recorded prior testimony was absent from other
15 Prosecution witnesses. P-1339, for instance, waived his right to have his prior
16 recorded statement transcribed -- recorded. And other witnesses, they were not
17 suspects, so they provided statements which were a summary, sanitised by the
18 Prosecution investigators where it lacked essential context. And there's no detailed
19 references to the questions posed by Prosecution investigators, nor is there any
20 comprehensive *procès-verbal*. You don't even know how a specific subject was
21 approached by the Prosecution investigators in these summary statements.

22 And our objective today is to show that, how these prior recorded statements cannot
23 be trusted when relied upon by the Prosecution. And many witnesses recanted what
24 they said in their statement, or clarified what they said in their statement. And we
25 gave examples in our final brief at paragraph 152 and 536.

1 And others further clarified or recanted part of their prior recorded statement in this
2 courtroom while testifying. But the Prosecution disregarded this. They continued
3 to rely on the prior recorded statement made, sanitised, summarised by their
4 Prosecutor investigators, who sometimes were anglophones working in a
5 francophone country, because their focus was to secure a conviction, even at the
6 expense of live evidence presented before this Chamber.

7 And this will form part of my second point where I want to take three examples to
8 show how they continued to rely on prior recorded statements and disregard in-court
9 testimony.

10 And the first example is with Witness P-1990. And it's on slide 4 before your
11 Honours.

12 As you can notice from the left-hand side of the slide, the Prosecution relies on -- they
13 quote 1990, at paragraph 578 of their final brief, to support the sentence that "The
14 Yekatom Group attacked PK5 on several occasions". And this sentence, at
15 paragraph 578, is in the middle of a paragraph where they describe how PK5 is an
16 enclave -- where they describe how PK5 is an enclave where hundreds and hundreds
17 of internally displaced civilian Muslims seek refuge. So they're implying in
18 paragraph 578 that Mr Yekatom attacked PK5 and, therefore, attacked Muslim
19 civilians.

20 And they rely on paragraph 28 of 1990's statement, and paragraph 28 is where, in his
21 prior recorded statement, he claims that because of the bad behaviour of his elements,
22 Mr Yekatom was encouraging them to attack PK5.

23 Now, what did he say when he came and testified before your Honours? We
24 questioned him on paragraph 28. He said that he was not an eyewitness to any
25 attack on PK5 and he said that it was "*des gens*" -- some people were attacking PK5

1 and that's what he heard. He is incapable of stating who specifically, and he's not
2 saying that it's Mr Yekatom. But they disregarded that clarification because they
3 wanted paragraph 28, and that's what they quoted in their brief.

4 Now, a second example is with Witness P-0954, which is on the right-hand side of
5 your Honours' PowerPoint.

6 At paragraph 703 of the Prosecution's brief, they claim that 0954 confirmed that
7 Muslim civilians fled for fear of being violently attacked, targeted by Yekatom's
8 group. And they rely on paragraph 96 of P-0954's statement; and, in 96, he says in
9 his prior recorded statement that Mr Yekatom carried out attacks from one village to
10 another to attack Muslims.

11 Now, when he came to testify, we questioned him on this paragraph, on the term,
12 what did he mean by attacking village per village, and he specifies he agrees that he
13 meant Seleka, that Mr Yekatom was attacking village after village, the Seleka, to grab
14 their weapons, armed Seleka.

15 But the Prosecution disregards this clarification.

16 They continue to rely on paragraph 96, to claim that Mr Yekatom would have
17 attacked Muslim civilians and that's why they fled. But, worse, they say in
18 paragraph 703 of their final brief that P-0954 confirmed that it's Muslim civilians,
19 while paragraph 96 doesn't even have the word "civilians", in addition to having
20 clarified that he meant Seleka.

21 I want to use a third example with your Honours, and this is with Witness 1813,
22 slide 5.

23 In his statement, in his prior recorded statement, there was a sentence where he
24 would have said that young boys from 10 years and older were at the Sekia and Pissa
25 roadblocks, barriers. When he came and testified, it's you, Mr President, who seeked

1 clarification on paragraph 21. You wanted to know what was his base of knowledge
2 for saying that they were 10 years and older. And what did he say? He said there
3 were young people, younger than 18. That's what he says.

4 So you have 10 years and older, he testifies -- he says younger than 18. What do they
5 choose in their brief? 10 years and older, because that's more incriminating, and
6 they disregard the clarification you obtained when the witness testified.

7 And this is why we're saying, Mr President, your Honours, that they are attempting
8 to secure a conviction by avoiding clarifications, by avoiding witness live testimony.

9 And this is why you shouldn't trust prior recorded statements obtained by the
10 Prosecution in this case.

11 And it brings me to my next point: The excessive use of P-1339's prior recorded
12 statement by Prosecution counsel.

13 They cling tightly to P-1339's statement because they viewed him as essential to
14 achieving a conviction, regardless of his lack of credibility. And the
15 disproportionate weight they placed on 1339 in their brief, and during their closing
16 statement on Monday and Tuesday, exemplifies how the pursuit for truth has been
17 sidelined in favour of promoting 1339's credibility by even claiming that he showed
18 his commitment to telling the unvarnished truth.

19 This sentence alone at paragraph 589 of their brief shows how following the
20 Prosecution's agenda requires leaning on blatantly unreliable evidence. And your
21 Honours are familiar with our position on 1339. It's outlined in our brief and we
22 were very clear; we requested your Honours to completely disregard his evidence.

23 And I do not wish, today, to revisit the points we made in our brief on 1339. What
24 I want to do, though, is to approach him from a different angle, focusing on the
25 disproportionate reliance by the Prosecution on 1339, on his statement, and the

1 repetitive recycling of his testimony and the numerous instances where his evidence
2 is used in isolation by the Prosecution in their brief and during their closing
3 statement.

4 Your Honours, you highlighted more than once the importance of demeanor and of
5 spontaneous accounts from witnesses. And you also, and this is at filing 685 -- and
6 you also underlined that it's preferable not to introduce questions as if what's
7 contained in the prior recorded statement is the definite truth. And you said that
8 in transcript 154, page 57,
9 English version.

10 Now, I want to use those -- those words, those advice, those rulings, and conduct an
11 exercise by using paragraph 417 of the Prosecution's brief.

12 And it's on slide 7.

13 And you will a notice on paragraph 417, that they claim that Mr Yekatom instructed
14 his elements that the purpose of the training was so they could kill Muslims and
15 Seleka because all Muslims were Seleka.

16 Now, let's try and look at the source of that evidence. Prosecution counsel, completely
17 disregarding your ruling about spontaneity and about not introducing a question by
18 using the statement as the definite truth, he fed that answer to 1339, disregarding that,
19 a few minutes earlier -- and this is at the bottom of your Honours' screen, a few
20 minutes earlier, 1339, when talking about the training, was saying that he didn't give
21 details about the training. No explanations were provided about the purpose of the
22 training.

23 But Prosecution counsel didn't want that answer. So he fed him that the purpose of
24 the training was so he would "kill Muslims and Seleka". And that's the source of
25 paragraph 417 of their brief.

1 Let's take the second part of the sentence: "because all Muslims were Seleka". That,
2 too, was fed by Prosecution counsel, the same pattern of suggestive questioning, and
3 this assertion was presented to 1339, even though a few minutes earlier when he's
4 talking about an enemy, he's talking about an enemy capable of killing, an armed
5 adversary.

6 But Prosecution counsel wanted the answer, to then take it and put it in its final brief.

7 So he fed him the answer in a leading manner: Do you recall Mr Yekatom saying to
8 kill all Muslims because all Muslims were Seleka. That's the source of the evidence.

9 And then what did they do? And it's on the next slide, slide 9. Slide 9 serves as a
10 clear example of their unwavering reliance on P-1339's testimony, the same sentence
11 fed by Prosecution counsel, used repetitively in their final brief, recycled over and
12 over again, to cover a wide range of essential elements. And this over-reliance
13 underscores their strategy to overextended, limited evidence to support critical
14 aspects of their case. And you can also see this on slide 10, with another -- with
15 another sentence that was recycled over and over.

16 I want to move to slide 11. The instructions fed to 1339 by the Prosecution that the
17 directive would have been to kill all Muslims because Muslims were Seleka had to be
18 framed as a standing order for their case to sustain, as they claim, the remaining
19 charges against Mr Yekatom. That sentence, too, was fed by Prosecution counsel.
20 That's the source of the evidence.

21 And that sentence, too, you can see it on slide 12, was recycled in their brief -- to a
22 lesser extent, but it was recycled. And all those sentences, the one we just saw in the
23 previous slide and the standing instruction, were repeated Monday and Tuesday by
24 Prosecution counsel and by victims' counsel, Ms Massidda.

25 And in addition to that, we would invite your Honours to have a close look at

1 Prosecution's brief and to look at the number of occasions they use the evidence of
2 1339 as the sole source to support essential elements of their brief against Mr Yekatom.
3 On a number of occasions, there are several paragraphs where he's used as the sole
4 source.

5 And this, your Honours, the repeated recycling of the same sentence, fed by
6 Prosecution counsel, highlights, in our opinion, respectfully, the weakness of their
7 case against Mr Yekatom.

8 And the number of times Prosecution had to lead 1339 with the answers he wanted
9 demonstrates 1339's inability to independently provide a narrative. And this is the
10 witness they claim to be credible and coherent.

11 And this brings me to another point in relation to 1339, and it's on slide 14 and 15,
12 where they asked a similar question about instructions or a directive for the
13 5 December attack not less than nine times - nine times - because they needed him so
14 desperately to say that an order was given by Mr Yekatom to attack Boeing on
15 5 December.

16 And they repeated the question, not because it was not clear, not because the question
17 was ambiguous, not because the witness asked for the question to be repeated over
18 and over again. They repeated it because they did not get the answer they wanted.
19 And they repeated it despite the fact -- and I'm going to ask my colleague to go back
20 to slide 14 -- despite the fact that on the third occasion, 1339 said: "I keep repeating
21 you since Friday I did not hear..."

22 And, finally, as you can see from slide 16, having not been satisfied after nine times of
23 the answer they obtained, Prosecution counsel had to suggest again to 1339. He fed
24 him the answer: "So, Rombhot told us that we would attack the Muslim and the
25 Seleka at the Boeing market."

1 This is again a witness they call credible and coherent.

2 I want to make another point in relation to 1339, and I want to take paragraph 441 of

3 the Prosecution's brief, and it's on slide 17.

4 So, at paragraph 441, they claim that Mr Yekatom's elements killed Muslim civilians

5 in Boeing and Cattin on 5 December, and that this was pursuant to Mr Yekatom's

6 order which corroborates -- which is corroborated by 1339's testimony. So when

7 I was looking at the brief, I thought, let's see who corroborates this.

8 So, I looked at footnote 905 and it refers to paragraph 552 to 554 of the Prosecution's

9 brief, as you can see from your Honours' screen. And 552 to 554 has four footnotes.

10 So the first footnote refers to two videos. I watched those videos. There's nothing

11 in those videos that suggests that Mr Yekatom or his elements killed Muslim civilians

12 in Boeing and Cattin during the 5 December attack as alleged at paragraph 441.

13 That's not what those videos are about.

14 And then when you look at that footnote 1215, they refer to the evidence of 1786 and

15 1647. Now, the evidence of 1786 and 1647 that's quoted in that footnote 1215 only

16 serves to identify the individuals that we see on the two videos that are quoted in that

17 footnote, videos who have nothing to do with Mr Yekatom attacking Muslim civilians

18 in Boeing and Cattin on 5 December.

19 So I went to the next footnote, 1216. They referred to the evidence of 1705. That

20 extract of the evidence of 1705 talks about the 5 December attack in general and

21 Muslims being killed, not specifically about Yekatom attacking Muslim civilians in

22 Boeing and Cattin on 5 December.

23 So what are we left with? Two footnotes: 1217, 1218. And they both refer to who?

24 1339. So they manufacture an illusion of corroboration for 1339, but when you go

25 back to the source, they're actually referring to 1339. So he corroborates himself.

1 That's how weak their case is against Mr Yekatom.

2 To strengthen the non-credible evidence of 1339, especially on the Boeing market,

3 they resorted to eliminating obstacles. So, when the Prosecution was informed

4 about the existence of a crime-based witness who would contradict their star witness,

5 1339, they chose not to seize the opportunity to meet her - and this is Defence

6 Witness 4011 - although I had highlighted the importance of her testimony as early as

7 November '23 during my opening statement.

8 And, today, when you look at their brief, they made a selection. So they believe her

9 on the Boeing mosque, but they don't believe her on the Boeing market, on what she

10 has to say, what she saw about Hassan Mahamat, Hassan Delege's combatant status.

11 And they're saying that, "Well, we were deprived of questioning her." They had the

12 opportunity to meet her. There was a protocol in place. They didn't seize that

13 opportunity.

14 But even if your Honours were minded to give credit to their argument, what they

15 conveniently omit in this portion of their brief, where they discussed the Boeing

16 market and Hassan Delege -- so this is paragraph 553 to 564 of their brief. what

17 they omit to tell you is that there's another witness who is even more damaging to

18 their case in relation to the combatant status of Hassan Delege, and this is 0884,

19 Prosecution witness, who corroborates Defence Witness 4011.

20 But whether the omission was intentional or not is irrelevant. His absence from their

21 brief is significant because Prosecution Witness 0884 was fatal to their case in relation

22 to the Boeing market. And we discussed this further in our brief at paragraph 394.

23 But on Monday they made an attempt to have you disregard Prosecution

24 Witness 0884, by claiming that, "Well, when 0884 was talking about the combatant

25 status of Hassan Delege, he actually meant Bichar." He was not talking about

1 Hassan Delegue. And you can see that on slide 20 of their brief -- of our PowerPoint
2 presentation.

3 0884 was not confused. He knew very well who Hassan Delegue was, and he knew
4 very well who Bichar was. He didn't confuse the two. And this is a witness who
5 lived very close to the Boeing market. And this you can see in transcript 57, page 36
6 onwards.

7 The Prosecution's failure to clarify a critical aspect of their evidence instead of -- and
8 instead choosing to exploit ambiguities and capitalise on grey areas is also illustrated
9 in their brief in relation to the Boeing mosque.

10 The Prosecution claims the satellite image and the expert testimony of P-29 -- 2193
11 shows that the mosque was set on fire during the relevant time period.

12 Now, two points on this claim in their brief.

13 First, your Honours will remember that expert 2193, when he provided that answer,
14 he testified with a newly revised location of the mosque, a newly revised location that
15 he had changed the night before, further compounding the uncertainty in the answer
16 he provided. But your Honours will remember that at the end of the Defence
17 examination, he reverted to the original location of the mosque and he agreed with
18 the Defence.

19 Second, the Prosecution counsel never inquired whether that building, the original
20 structure, displayed any signs consistent with fire damage, nor was such a suggestion
21 made. And you can see this on slide 22.

22 So we would ask you to be very careful and to disregard the Prosecution's claim that
23 expert 2193 confirmed that the mosque displayed signs of fire.

24 And now this brings me to my second point in relation to the Boeing mosque. And
25 it's the manner in which the Prosecution is twisting the evidence to fit their narrative.

1 And in order to do that, they're downplaying the damages of the Boeing mosque
2 because this is the only manner -- if you downplay the damages, then they attempt to
3 reconcile the evidence of Defence Witnesses 4011 and 4013 with that of P-1339.
4 So their first attempt is at slide 23, when they claim at paragraph 581 of their brief that
5 Yekatom's element tried to set fire to the roof of the mosque, quoting 1339's testimony
6 in court. That's not what 1339 said. He claimed that fuel was used to destroy the
7 roof of the mosque. He even claimed that he would have seen the mosque burn
8 down. He says that the mosque was torched. And Prosecution counsel made again
9 that attempt on Monday by saying, and I quote in French: (Interpretation) "by
10 attempting to set it alight with a bit of fuel".
11 (Speaks English) So they disregard the evidence of 1339 and they downplay it because
12 they know he's contradicted by evidence -- by the evidence of 4011, 4013 and their
13 expert witness.
14 And they downplay it even more by claiming that 1339's account is reconcilable with
15 Defence Witnesses 4011 and 4013, because it's after the rocket and the fire on the roof
16 that the roof sheets and the mosque bricks were looted. That's not what 4011 and
17 4013 testified about.
18 So what they do, and can you see this on slide 25, is that they're saying that
19 paragraphs 45 and 46 of Defence Witness 4011 are reliable because it's in line with
20 1339 -- she would have seen somehow the destruction of the mosque and the looting
21 after the fire and the rocket that she missed. But they forget that at paragraph 43 she
22 says when she arrived the mosque was intact. And they forget that at paragraph 47
23 she also said she saw the destruction of the mosque from the beginning to the end.
24 And that's how they attempt to persuade your Honours at paragraphs 557 and 591 of
25 their brief that Defence witness's testimony aligns with that of 1339, despite their clear

1 contradiction.

2 And I want to now watch on slide 26 a short video, to illustrate how their attempt to
3 reconcile Defence evidence with that of 1339 is irreconcilable. And it's on slide 26 for
4 your Honours.

5 And we don't need interpretation because we are not going to put the sound. I just
6 want to have a look at the image.

7 The transcript is on the screen for your Honours to read.

8 (Viewing of the video excerpt)

9 MS DIMITRI: [10:20:10] This is Defence Witness 4011, and this is how close she lives
10 from the Boeing mosque.

11 And your Honours have evidence that the newly Boeing mosque was reconstructed
12 at the exact same location as the previous one. And somehow they claim that she
13 would have missed a rocket, that she would have missed a fire.

14 And they even go further. They're insinuating at paragraph 588 that the type and
15 the quality of ammunition is unknown, as well as the manner in which it impacted
16 the building. No matter how you want to describe it, a rocket is a rocket; and, with
17 this evidence, she would not have missed it.

18 And the same flawed approach applies to 4013. He testified to your Honours about
19 his observations of the burned church in Gbaya Doumbia. And he didn't see any
20 sign of fire whatsoever when he walked around the Boeing mosque.

21 They go further to salvage the credibility of their star witness, 1339. On the next
22 slide you'll see they claim now that we misled the expert by asking him whether what
23 he saw on the satellite images was consistent with grenades and rockets, because they
24 claimed that that was not the evidence of 1339. We didn't mislead the expert. This
25 is one of the numerous versions that 1339 gave here about the Boeing mosque. That

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1 is how incoherent and unclear he is.

2 Given the importance of demeanor in the credibility assessment of a witness, and
3 given that the Prosecution claims in their brief that 1339's account on the mosque was
4 the unvarnished truth, I would like, with your Honours' leave, to watch extracts
5 where we can clearly see 1339's demeanor while he's prompted to answer questions
6 on the Boeing mosque.

7 And this, Mr President, is the part where I would need to go into private session for a
8 maximum, and I timed it -- for a maximum of 11 minutes.

9 PRESIDING JUDGE SCHMITT: [10:23:22] Yeah. So we have already agreed to it.
10 So, for the audience, there will be 11 minutes of private session and then the audience
11 could again start to follow. So we go to private session.

12 (Private session at 10.23 a.m.)

13 THE COURT OFFICER: [10:23:49] We are in private session, Mr President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Open session at 10.35 a.m.)

6 THE COURT OFFICER: [10:35:05] We are in open session, Mr President.

7 MS DIMITRI: [10:35:13] If we can go back on evidence 2, your Honours.

8 Thank you.

9 I would like us to now have a look -- consider 1339 from a different perspective when
10 questioned at some point, and this was my point earlier, he's giving answers that are
11 not fed, where he's talking about -- and you can see it from the next slide, from slide
12 29, where in the first box on your left you'll see that when he refers to an enemy, he's
13 referring -- and he's referring to instructions in relation to an enemy. And he's
14 saying that the instruction relates to an enemy that's capable of killing you, so an
15 armed enemy. And in the bottom, you'll see that he claimed -- and again this was
16 not fed by the Prosecution. He claims that when instructions are given, he
17 remembered an important detail, and that detail is that the Muslims, when he
18 referred to instructions about the Muslims, it's the Muslims who are shooting.
19 And this is -- when you look at this, and you look at the three other insiders that
20 testified in this case, they, too, spoke about instructions that were precise. They, too,
21 said not to touch unarmed Muslims, that not to touch unarmed Muslims were the
22 instructions that were given. And this was said by 1839. It was also said by
23 Prosecution Witness 1786. And you see it on the right-hand side of the screen, where
24 he said that the instructions were not to target Muslim civilians. And he also said
25 that they were trained during the training not to fight -- not to target Muslim civilians.

1 And this was also said by Prosecution Witness 1647, who said that they were
2 instructed to fight the enemy and not the civilians.
3 But what the Prosecution does, they need to -- they need to eliminate the obstacle to
4 achieve their goal. So at paragraph 446 they are claiming that it's not because
5 Prosecution Witness 1839 did not hear such an order, an order to kill Muslim civilians,
6 that it doesn't mean that the order was not given.
7 But that's not what she told you. She heard the order, the instruction. It's not a
8 matter of not hearing it. She heard it, and the order was not to touch Muslim
9 civilians. "He was precise," she says.
10 But it's -- they -- it's not the only instance where a Prosecution witness provides
11 testimony that's unfavourable to the Prosecution's narrative and, again, they try to
12 eliminate the obstacle. They did that with Prosecution Witnesses 1786 and 1647, at
13 paragraph 488 of the Prosecution's brief, where they're saying that their evidence is
14 self-serving and should be treated with caution, given their position because they
15 were "exposed to criminal responsibility" given their position as subordinate
16 commanders.
17 These are Prosecution witnesses. They were never interviewed by the Prosecution
18 investigators as suspects. They were never told by Prosecution investigators or the
19 Prosecution that, "We believe you might be exposed to criminal responsibility, so
20 we're going to read you your rights." These were -- these individuals were the
21 Prosecution's own witnesses. They could have pressed them on the issue when they
22 called them. They didn't. They could have confronted them with these instructions.
23 They didn't.
24 And these witness demonstrated openness when they were presented with specific
25 video evidence of certain individuals, such as the one they rehearsed about

1 Max Maïdana, and they did not attempt to defend it or excuse such behaviour that
2 they saw on videos.

3 And, finally, your Honours, bearing in mind the Prosecution's consistent recycling of
4 the sentence that was fed to 1339, that Mr Yekatom would have said "to kill all the
5 Muslims because all Muslims were Seleka", I want to end this part of my presentation
6 on 1339 by recalling a contemporaneous video that's on your Honours' next slide,
7 slide 30.

8 And you'll recall this video was played over and over again in the course of the trial,
9 just before -- so the journalist goes -- he sees Mr Yekatom and he says Mr Yekatom is
10 together with Muslim Seleka Souleyman Daouda. And they're entering a hospital
11 hand in hand, and they're saying, "But you know -- you know each other? What's
12 happening? A few weeks ago you were both in military attire and shooting at each
13 other."

14 And Mr Yekatom says, "Well, yes, we know each other. But if he's shooting at me,
15 I need to defend myself."

16 This brings me, your Honours, to my next point of today's presentation -- the manner
17 in which the Prosecution distorted the video evidence in this case in their brief, not
18 only in their brief, but also in their closing statement on Monday and Tuesday, how
19 they selectively framed the material to align with their narrative.

20 And we're going to watch a few seconds of a video -- and so, just for your Honours to
21 understand, we're not going to watch all the videos that I selected because of time
22 constraints. We are going to watch the first one, a very short extract, an extract that
23 is cited at paragraph 62 the Prosecution's final brief, because that extract is recycled
24 twice in the Prosecution's brief, and it was also used on Monday by Prosecution
25 counsel. So we're going to watch that extract and then I will explain the point I want

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1 to make in relation to this video and the manner in which the Prosecution used it.

2 And for the interpreters, this time, the transcript is CAR-OTP-2122-2292, lines 22 to
3 29.

4 (Viewing of the video excerpt)

5 THE INTERPRETER: [10:43:25] (Interpretation of the video excerpt)

6 "Where were you when Djotodia arrived?

7 [...] Well, when he -- I had been in prison, but then I had -- I had fled to go -- to go
8 over to Zongo, which is on the other side, next to Zaire. And it was over there that
9 we had the idea of starting a movement with respect to the military abuses.

10 Journalist: So you started the movement in Zaire?

11 Answer: No, we crossed over there. That was it."

12 MS DIMITRI: [10:44:01] To support the assertion that Mr Yekatom would have met
13 his would-be deputy Ouandjio and Beina in Zongo. There's nothing of that sort in
14 that video. You can watch the entire video, he doesn't speak about them.

15 They use, again, that video at paragraph 63 of their brief, and this time they claim that
16 Mr Yekatom tacitly admitted their activities in Zongo. And you heard him; he said
17 the opposite. The journalist asked him, "So you started your movement in Zaire, in
18 DRC" - and this is at the bottom of the slide, of the screen - and he says, "No. We
19 started here, in Central Africa."

20 And they did it again on Monday. But what did they do? They stopped the video
21 just before that answer. This is how you cannot trust them on the manner in which
22 they use videos.

23 That video is used again, and this is on slide 34 of your Honours' screen. And this
24 time it's to support the assertion that several witnesses confirmed that youth from
25 Bangui, including from Boy-Rabe, COCORA or COAC, joined the Anti-Balaka on

1 5 December. There is nothing of that sort in that video. He doesn't speak about
2 Boy-Rabe. He doesn't speak about COAC. He doesn't speak about COCORA.
3 There's another example of misuse of video, and this is on slide 35, where you'll see
4 that they used the video that's on the right-hand side of your Honours' screen to
5 support the assertion that Yekatom and his commanders ordered the targeting and
6 killing of Muslims.
7 I'll invite your Honours to watch that video. There is nothing in that video about
8 ordering the killing of Muslims, about targeting the killing of Muslims or about
9 Mr Yekatom saying anything of that sort.
10 Neither can it support in any way the assertion at paragraph 690 of the Prosecution's
11 brief regarding the Anti-Balaka's common purpose and criminal organisational
12 policy.
13 I want to move to slide 36. So, in their brief they used the video that's on the
14 right-hand side of your Honours' screen. So, at paragraph 483 of their brief, they use
15 it to claim that this is the Gbangba base. And then at paragraph 486, so two
16 paragraphs further, they're saying so -- but now it's Yamwara school base. The same
17 video, same location.
18 You'll notice through our presentation, and this brings me to my next slide, slide 37,
19 the significant emphasis that the Prosecution puts on key terms such as I said earlier:
20 "Anti-Balaka" and "coordination". "Senior Anti-Balaka leader", that's a key term for
21 them. "Coordination", that's another one. And these are -- these concepts are very
22 central to their narrative. And the reliance on these concepts is evident in their
23 selective and often misleading use of videos.
24 So this video -- and again we're not going to play it because it's too long. So it's
25 Mr Yekatom who's over the phone, he's talking to someone, and the Prosecution uses

1 it to support this sentence at paragraph 263, that, "In the weeks after the 5 December
2 [...] attack, senior" - senior - "Anti-Balaka leaders continued to liaise and coordinate."

3 There is nothing in that video that enables you to know to whom Mr Yekatom is
4 talking to, let alone an Anti-Balaka leader, even less a senior Anti-Balaka leader. It's
5 pure speculation from the Prosecution's part.

6 Now, as you are aware, these are examples from a collection of raw video that's in the
7 Prosecution's possession. But there's also the main documentary, which was edited
8 because the main documentary was the one that was broadcast to the public. And at
9 times in their final brief, the Prosecution relies on the polished documentary because
10 it better suits their argument. So they completely ignore the raw video and they use
11 the main documentary, because it's consistent with their broader pattern to avoid
12 what's clear and to twist the evidence.

13 And they did that at paragraph 473, for example, of their brief, where they rely on an
14 extract of the main documentary to support a paragraph where they claim that, in the
15 presence of Sylvestre Yagouzou and Modibo, Mr Yekatom is called "chief". And this
16 sentence is in the middle of a paragraph where they talk about the Anti-Balaka from
17 Gobere, from Bossangoa. And the implication is that somehow someone on the
18 ground is calling Mr Yekatom "chief", either Yagouzou or Modibo, or someone from
19 the Anti-Balaka Gobere group.

20 Now, if you watch the main documentary, it's the voice-over that uses the word
21 "chief". And then if you go back to the raw collection of videos, it's actually the
22 journalist. And it's not written in the transcript, but I will ask your Honours to listen
23 very carefully to that raw video - 2065-2899 - and you'll notice that the journalist says,
24 *"(Caporal Chef) vous utilisez ça aussi comme technique"*.

25 (Interpretation) Use that as a technique.

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1 (Speaks English) That is where the word "chief" came from. She's referring to
2 Mr Yekatom with his military rank. But they are implying in that paragraph that
3 he's called "chief" because they want him somehow to be the chief of these individuals
4 in paragraph 473.

5 Even more disturbing, and this is the next slide, your Honours will recall - and this
6 extract was used more than once in the course of the trial - on the main documentary
7 there is an individual on his knees. And the voice-over says that he is punished and
8 that he would have been killed later that night -- a summary execution by
9 Mr Yekatom. And the Prosecution uses the main documentary, at paragraph 476 of
10 their brief, to support what? To support that Mr Yekatom enforced discipline
11 through violence, including by killing his own elements. And next to the word
12 "killing" there is a footnote, and the footnote refers to that extract of the main
13 documentary.

14 And your Honours will recall that we found evidence that this individual is still alive,
15 and this is on your next slide. Because your Honours will recall that when you look
16 at the raw video, not the main documentary, the face of the individual is not blurred.
17 And we found his mother who was shown the main documentary, who was shown
18 the picture and who confirms that it is -- it's her son and that he's alive. And this is
19 witness -- Defence Witness 3015.

20 And when we submitted her statement into evidence through a motion under 68(2),
21 the Prosecution said, "Well, it's of marginal relevance". And, today, they use this to
22 support the assertion that Mr Yekatom's discipline was as such that he was killing
23 elements. And this is the source of their paragraph.

24 This was the last video I wanted to use to make this demonstration with your
25 Honours.

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1 I cannot sit with you during your deliberation. I wish I could, but I can't. But what
2 I'm asking you to do is to exercise extreme caution when you look at the Prosecution's
3 interpretation of the audio/video material in this case. I hope that through these
4 examples I manage to show you how they distort the evidence. And I hope that
5 during your deliberations you can take aside our BTM motions and responses as a
6 guide through their erroneous interpretation of audio/video material.

7 I'm told that there is five minutes before the 11 break and I'm now moving to the
8 north and south coordination.

9 PRESIDING JUDGE SCHMITT: [10:55:24] I have the impression that it might be a
10 good point to stop here for the moment.

11 We have then the break until 11:30.

12 THE COURT USHER: [10:55:31] All rise.

13 (Recess taken at 10.55 a.m.)

14 (Upon resuming in open session at 11.31 a.m.)

15 THE COURT USHER: [11:31:16] All rise.

16 Please be seated.

17 PRESIDING JUDGE SCHMITT: [11:31:29] Ms Dimitri, you obviously still have the
18 floor.

19 MS DIMITRI: [11:31:35] Thank you, Mr President.

20 The Prosecution also capitalised on ambiguities and failed to address clear evidence
21 in the manner in which, in their brief, they address or fail to address the north and
22 south coordination. And their objective was to portray in their brief, as well as
23 Monday and Tuesday, a single, unified Anti-Balaka coordination, a hierarchical and
24 structured organisation with orders flowing seamlessly from the strategic leadership
25 to the operational level. That's how they sought to frame it.

1 And, as your Honours know, the evidence unfolded differently than expected,
2 although that outcome was anticipated when you look at the massive amount of
3 documentary audio-visual evidence that contradicts the Prosecution's position. And
4 this is further elaborated in our brief at paragraph 180 to 188.

5 But your Honours will also recall that the testimony were almost unanimously
6 consistent from all witnesses who testified on the north and the south. But the
7 Prosecution chose to rely on one single witness, and that's P-0992, among all the
8 witnesses who testified. They picked a sentence in isolation in its prior recorded
9 testimony and ignored the clarity that the witness provided in court and that the two
10 other witnesses he was referring to provided as well.

11 And you can see this from the next slide, slide 44.

12 So what they did, at paragraph 352, is that they claimed that Mr Yekatom reported to
13 and coordinated with the Anti-Balaka leadership, including Mr Ngaïssona, during the
14 relevant period. And then in the footnote, they referred to P-1552 and P-0992. Now
15 P-1552 is a 68(2)(c) witness, who speaks after 5 December, but is not more specific
16 because the question was obviously not put to him to be more detailed about this
17 answer.

18 Now 0992, he first said that he joined in June, the Anti-Balaka coordination, the
19 national general coordination. And when he speaks about Mr Yekatom being in that
20 coordination, he refers to two witnesses - their names appear on the bottom left of
21 your slide - and these are 0888, Prosecution witness, and 1193, Prosecution witness.
22 And the Prosecution disregards this in their brief. They don't quote these witnesses,
23 but they are linked together with 0992. And the fact that these witnesses appear in
24 the National Coordination or in the *bureau* is also conceded by Prosecution counsel
25 during his testimony of Prosecution Witness 1193. And you can see this, I believe,

1 from the next slide.

2 Sorry, you can see this, the concession, from slide 47.

3 Now what they did as well in paragraph 285 of their brief, and you can see that in
4 slide 45, so paragraph 285, they claimed that Yekatom sent persons close to him to the
5 National Coordination meetings. And again, they quote 0992. And when you look
6 at how this paragraph is framed, it's in a section, section r of the Prosecution's brief,
7 and section r is titled "14 January [2014] to March 2014", first attempt by the
8 Prosecution to imply that Mr Yekatom was sending people to those meetings during
9 that time frame of January to March 2014.

10 Second attempt is that paragraph 285 is located between two paragraphs, one that
11 starts with 6 February 2014, that's paragraph 284, and the following paragraph that
12 starts at 10 February 2014, paragraph 286. So they want to create an illusion for your
13 Honours that it's in February 2014, Mr Yekatom was sending persons to those
14 meetings because they want a unified National Coordination.

15 But when you look at the evidence of 0992, he said it's only in June. When you look
16 at the evidence of 0888 and 1193, they both denied being part of the National
17 Coordination prior to June 2014.

18 And you can see this on slide 46, where both witnesses categorically deny being part
19 of a National Coordination led by Mr Ngaïssona in February 2014, or before June
20 2014.

21 Now, this persistent failure to acknowledge the existence of two distinct visions or
22 coordination is also evident in the Yamwara meeting.

23 So your Honours will recall that a series of witnesses testified that two or three
24 meetings were held at the end of December 2013 at the Yamwara school, and all of the
25 witnesses, all of them, consistently conveyed that the purposes -- the purpose of those

1 meetings was to convince the north group to adhere to the south vision because the
2 south vision was -- the south group was a number of individuals, not moving along,
3 but sharing one distinct vision, which was, "We want dialogue for Djotodia to resign,
4 and we want a spokesperson to convey our demands and our dialogue and we do not
5 want the return to the constitutional order."

6 That was the south vision and that was the purpose of the end of December 2013
7 meeting at Yamwara school. And all of the witnesses were unanimous and they all
8 said that this attempt to convince the north ultimately proved unsuccessful.

9 But what does the Prosecution do? They rely on vague and overgeneralised claims
10 and they again use broad terms at paragraph 263 and 354 of their brief, such as it was
11 "Anti-Balaka activities". And at paragraph 354, they somehow throw Mr Mokom
12 into that paragraph while he was still sitting in Zongo.

13 And sometimes when you look at these paragraphs, not only do they overlook crucial
14 explanations and clarity provided by all Prosecution witnesses who testified on those
15 meetings, they throw into a footnote, the prior recorded testimony of a witness who
16 came and testified in court, P-0954, and agreed on every single suggestion about what
17 the purpose of those meetings was. But they disregard his in-court testimony and
18 they rely on paragraphs 34, 41, 42 and 45 of his prior recorded testimony because they
19 don't want the clarity. It's as if the trial didn't occur.

20 And this is further detailed in our brief at paragraph 177 to 184.

21 And on Monday, they went further, because they somehow claim that the CLPC was
22 also part of those Anti-Balaka activities, while you have several witnesses - and this is
23 displayed on slide 50 - who denied that the CLPC was involved in those meetings and
24 who also specifically said that there was a representative of the CLPC in N'Djamena
25 in January who was completely distinct from the spokesperson of the south group

1 that was also present in N'Djamena, P-0876.

2 And the same imprecise approach used by the Prosecution is applied to documentary
3 evidence presented to witnesses. And you can see this from slide 51.

4 This document, CAR-OTP-2001-3372, it's used in their brief to again desperately
5 portray a single and unique Anti-Balaka coordination. And they used it again, last
6 week, Monday or Tuesday. And they completely disregarded the fact that that
7 document, their document, a Prosecution document was shown to several witnesses
8 who all said in their words: "This coordination lasted two hours", or "This
9 coordination never took effect", or "I have never been associated with this
10 coordination".

11 But moreover, there is a contemporaneous video, where this document is discussed
12 and where, again, in that contemporaneous video the evidence is clear: This
13 coordination lasted a few hours, and the following morning, it was in the bin.
14 But they disregard the in-court evidence.

15 And what do they rely on at paragraph 278 to support this document? The evidence
16 of P-0889, who provided no meaningful answer on that document, apart from
17 saying -- or being asked if he recognises the signature at the bottom of the document.

18 And speaking of 0889, on Monday, this pattern continued with Prosecution counsel
19 referring to your Honours to document CAR-OTP-2030-0237, claiming that this
20 document, too, refers or supports the assertion that the Anti-Balaka was structured
21 and organised even before January 2014, using that document.

22 That document was provided by Witness 0889, he's the one who drafted it for the
23 DDR. So not prior to January 2014. And it is filled with incorrect information
24 because your Honours will recall that number 95 and number 96 that appear in that
25 document have never been ComZones. But the Prosecution didn't tell you that on

1 Monday.

2 At paragraph 303 of the Prosecution's brief, their overly simplistic and generalised
3 approach continues in relation to the 15 May 2014 meeting. Your Honours will recall
4 there's a series of contemporaneous videos on the gathering that occurred and
5 organised by the south group on 15 May 2013, where Mr Wenezoui was selected as
6 the Anti-Balaka national general coordinator. And what they're doing in paragraph
7 303, is they are trying to again imply that there was one single Anti-Balaka
8 coordination prior to January 2014 and that in May 2013 -- in May 2014, Wenezoui
9 simply replaced Mr Ngaïssona. And the next slide, again, shows you how the
10 Prosecution is ignoring documents in this case, audio-visual material in this case,
11 which all explains that the reason why the south selected Mr Wenezoui, that the
12 reason why the south had that meeting is because the government kept asking for one
13 person to be represented because the Anti-Balaka were fragmented and the south said:
14 We want to be the voice speaking with the government.

15 And this is on slide 54. And it's further elaborated in our brief at paragraph 195
16 and -- to 198.

17 And my last point on the north and the south coordination and the Prosecution's
18 attempt to portray Mr Yekatom as being under Mr Ngaïssona from day 1, is the
19 manner in which they use the document that's on your Honours' slide at -- slide 56.

20 It's used in several paragraphs of the Prosecution's brief, 306, 352, 434 and 459.

21 We're just asking you to exercise extreme caution when you look at this document
22 and not to give it much weight. His name is misspelt, the phone number written on
23 the top is not a phone number attributed to Mr Yekatom, and, most importantly, it's
24 dated July 2014. So it certainly doesn't support what the Prosecution portrayed in
25 section r, that Mr Yekatom was reporting to the National Coordination of Mr

1 Ngaïssona as early as February 2014.

2 I want to move to my next topic, your Honours, and it's call data records. If one
3 person calls another, the Prosecution's tactic is to group all individuals involved into
4 a single sentence or paragraph of their brief, without providing any concrete links or
5 context, and they attempt to create this artificial association that there was
6 a masterminded coordinated attack. So that you have these paragraphs of their brief,
7 where they put several names and they say: Well, they all agreed through phone calls
8 for the attack.

9 And I will give you an example of that. But first, to capitalise on ambiguities, in
10 certain footnotes of their brief - and, for example, footnote 1199 and 1200 - they assert
11 that two attributed phone numbers, so Mr Yekatom's attributed phone number and
12 Mr Mokom's attributed phone number, were in contact at least 22 times, or that
13 Mr Yekatom, and then they put a number, and Mr Ngremangou were in contact at
14 least 93 times. And they do that again with Dedane, by saying at least three times.
15 This phrasing is misleading. There's no "at least" when you talk about attributed
16 phone numbers calling each other. It's a simple matter of verification through
17 counting, and it's not subject to speculative embellishment as they tried to do. And
18 they're not helpful because what they do, is, in their footnotes, they bury their
19 footnotes of their final brief with extensive CDRs without explaining or without being
20 precise and there's a significant risk of overlooking the broad generalisation claims
21 that they're making.

22 And I want to take paragraph 546 of their brief, and it's slide 58, where they suggest
23 that Mr Yekatom, in preparation of the attack, agreed with Konaté and Andjilo in
24 conjunction with Mokom, and that Mr Yekatom, in the days leading up to the attack,
25 was in contact with Mokom, Konaté and Ngremangou.

1 Now, I want to dissect these allegations addressing each one of them individually.
2 So first, you have to go back to paragraph 227 of their brief, because that's where they
3 first put the CST that they claim support the evidence of contacts between
4 Mr Yekatom and Mokom.
5 And at paragraph 227, refers to filing 1296, table 9. So if we look at slide 60 and 61,
6 that's filing 1296, table 9, there are phone calls that they attribute to Mr Yekatom - and
7 it's the one highlighted in red - which don't belong to him. And they know that.
8 And they know that since July 2018, because Prosecution witness 0487 told them that
9 this number belongs to his wife.
10 But they don't update their evidence. They're not trying to be helpful to
11 your Honours.
12 Let's dissect even more -- and we can look at 61, let's dissect even more paragraph 446.
13 This is the first reason why you should ignore that paragraph.
14 The second reason, and it's on slide 62, is that they rely on a mere handful of calls that
15 Mr Yekatom would have had with Dedane, three calls on 1 December, to support the
16 assertion that somehow he agreed in the days leading up to the attack with
17 Mr Mokom. Three calls, less than a minute. And that's what they use to claim that
18 there was an agreement for an attack.
19 The second reason -- the third reason, sorry, why you should disregard paragraph 446,
20 is that there is no evidence that Mr Yekatom had phone calls with Mr Konaté. You
21 can look in the CDRs prior to 5 December, there are no calls.
22 And we went further, because in paragraph 361 of our brief, we provide you with
23 evidence showing that Mr Yekatom was not in possession of Mr Konaté's phone
24 number at that time.
25 The fourth reason why you should disregard paragraph 446, is that Mr Yekatom was

1 not in contact with Andjilo. This is unsupported by the evidence. You have an
2 individual that came and testified here who is very well positioned to tell you
3 whether or not Andjilo had calls with Mr Yekatom. And when asked about
4 Mr Yekatom, he specifically said - and you can see it on your slide - that he has no
5 information relating to Mr Yekatom. He shouldn't answer any question. This is at
6 transcript 068, and that he has nothing to say about Mr Yekatom.

7 The fifth reason why you should disregard paragraph 546 is that they rely on that
8 footnote on witness 0446. 0446 told you -- and it's also on your slide: "I really
9 couldn't know if [Mokom] called Yekatom." But somehow he appears in a footnote
10 supporting the claim that Mr Yekatom agreed for the attack in conjunction with
11 Mokom.

12 And six, the sixth reason why you should not rely on paragraph 546 is that they rely
13 on evidence that you, your Honours, prohibitively restricted them to use against Mr
14 Yekatom. And this is the evidence of P-1847, and you will recall that in your
15 decision, which is filing 2126, you specifically said that the prior recorded
16 testimony - which mentions alleged acts and conduct of Mr Yekatom - would be
17 unduly prejudicial to him and that you will not -- you, the Chamber, will not rely on
18 P-1847, specifically in paragraph 174, 181, and 183 and others against Mr Yekatom.

19 But they go against that ruling and they use it in a footnote to support that sentence.

20 And the seventh reason why you should ignore paragraph 546 is that there's
21 a witness who's very well positioned to know who Mokom was talking to, and that
22 witness specifically said - and it's P-0889 - at line 161: "Yekatom never -- was never
23 talking to Mokom." Never.

24 And in paragraph 430 of their brief, they refer to that evidence and they stop at line
25 160, because they don't want to have in their brief line 161. They quoted five

witnesses on Monday to refer to Mr Mokom as the coordinator. It's on the next slide, slide 63. All of them do not support the assertion that Mr Yekatom's alleged coordination with Mokom, Andjilo or Konaté; so their evidence in that regard falls apart.

I would like to use another example for your Honours to show you their misuse of CDR evidence and it's at slide 64. And it's a sentence where they claim that after 5 December, until his return to Bangui, on 6 February, Mokom remained in contact with Yekatom; paragraph 240.

Now, we had a look at Mokom's calls events as attributed by the Prosecution, and it's slide 65. Between that time frame, 5 December until 6 February, Mokom had 11,000 call events, five calls, five alleged calls with Mr Yekatom, all occurring on the same day.

9 January, the day where the south and the north are sending different representatives, because they have different visions, and instead of being precise, because they could have been precise, they could have said in their paragraph: "Mr Mokom called Mr Yekatom on five occasions on 9 January."

But no, they have to put that sentence between 5 December and 6 February, they remained in contact. This is how unhelpful to your Honours they are.

I would like to address another example from their brief, where they take an event and they tie it to a specific date and they artificially extend it, extend the time frame to create an illusion. And it's the email of Captain Ngremangou that they rely upon in their brief and in their closing statement.

So in paragraph 76, they claim that in May 2013, Ngremangou prepared for a military offensive in Bangui and that he circulated a list of available FACA, including Mr Yekatom. And so just for your Honours to understand, it's an email dated

1 May 2013, and in that email there is an attachment and in the attachment, there's a list
2 of FACA, and they claim that Mr Ngremangou was preparing for the military
3 offensive and they include Mr Yekatom because they want to somehow convince
4 your Honours that as of May 2013, Mr Yekatom was getting ready for the attack.
5 Let's look at the next slide. The first contact Ngremangou had - according to the
6 CDRs - with Mr Yekatom is several months later, 29 November. So on what basis do
7 they claim that somehow they imply Mr Yekatom is involved in the planning of 5
8 December attack as early as May 2013, simply because Mr Ngremangou sent a list of
9 available FACA who were residing in Boeing and Cattin?

10 Before I conclude with my last point on CDR and telecommunication evidence, I want
11 to underline that call events appearing in CDR don't mean an agreement. It's not
12 because you call someone that you're agreeing. You can fight over the phone. And
13 you have evidence of that. And you have evidence that certain individuals fought
14 over the phone with Mr Mokom. And you have evidence, and it's on slide 70, that
15 individuals fought over the phone with Mr Banoukepa, for example.

16 The Prosecution is asking you to speculate with CDRs. And that's what they're
17 trying to do when they are claiming that Mokom liaised with Yekatom regarding the
18 deployment of elements near the airport in preparation of the attack. The CDR don't
19 go that far.

20 And the final point I want to address in relation to CDR, is when a witness asserts
21 that he used his attributed phone number to call Mr Yekatom's attributed phone
22 number and CDRs don't show that call, the conclusion is straightforward: The witness
23 lied.

24 And this is what P-0954 did. He unequivocally specified, claimed under oath that on
25 5 December, he used his attributed phone number to call Mr Yekatom's attributed

1 phone number, and the details he provided are specific. He gives the date; he gives
2 the conversation; he says that it was the day of the attack. He even says that it's after
3 hearing the gunshots he called Mr Yekatom. But CDRs are unambiguous. No such
4 call occurred. And there is no plausible explanation for this inconsistency, other
5 than he lied and he fabricated that aspect of his evidence against Mr Yekatom.
6 But the Prosecution is avoiding addressing this. But even more so, he specified -- he
7 testified that he would have spoken to Mr Yekatom's alleged associates, Seda,
8 Goliatha, Habib Beina, Ouandjio. And this is at transcript 166, so it is in paragraph
9 34 of his prior recorded statement. And he says that according to his conversation
10 with them, that they discuss and he knows, through that conversation, that they
11 attacked Camp Kassai from behind the Gbazoubangui hill. Another lie.
12 And the Prosecution knows it, because that's not their case against Mr Yekatom.
13 They are not claiming that Mr Yekatom attacked Camp Kassai; nor are they claiming
14 that Mr Yekatom was based behind the Gbazoubangui hill. But they don't address
15 this regarding P-0954, because they have no explanation other than, again, he lied
16 against Mr Yekatom.
17 And there are additional instances where 0954 demonstrates a strong motivation to
18 vilify Mr Yekatom and portray him as a criminal. He uses inflammatory language
19 referring to a roadblock where Mr Yekatom and members of the movement were
20 stationed at was a "devil's post" or an "evil place". Or where "many bad things
21 happened", or where "many people killed -- were killed." Or "If you stay there, you
22 could end up dead", or "To go through this checkpoint, God needs to be with you."
23 Inflammatory language that counsel re-used on Tuesday. And this type of
24 exaggerated and highly prejudicial language. It reveals an intent to damage
25 Yekatom's credibility and character, and if there was any truth to that claim, you

1 would expect the individual to, at least, name one Muslim civilian that was killed at
2 that roadblock or that nearly escaped death.

3 But he provides none. Not only does he provide none, there is no evidence that this
4 individual travelled between the PK9 and Mbaïki area, a zone that he claimed was so
5 dangerous that you couldn't enter because there was no Muslim left. A zone where
6 he claimed Mr Yekatom seized houses in Kapou, in Mongoumba, in Mbaïki, in Pissa,
7 in Bossongo. Muslim houses, seized by Mr Yekatom, again, not a single name
8 provided of a house that would have been seized so we can check.

9 And not only that, you will recall that during his testimony, we made him specify that
10 Mr Yekatom was positioned with members of the movement -- of the RFACPP
11 movement at the Pissmiss roadblock, and that on the other side of the PK9 bridge, at
12 the level of where the Burundian soldiers were located - and it's on slide 72 - was the
13 other roadblock.

14 And we went -- we were even more specific. We showed him a video and he
15 identified that roadblock as being the roadblock that belonged to the other movement,
16 to the other group, the group he knew very well. And when we put to him that the
17 evidence was that individuals -- Muslim civilians encountered issues at that
18 roadblock, that other roadblock, but not at the Pissmiss roadblock, he panicked, he
19 recanted.

20 But this sequence of events underscores the lack of evidence linking Mr Yekatom to
21 incidents at the PK9 roadblock. Because even the Prosecution concedes that Pissmiss
22 is the roadblock where Mr Yekatom and his associates were positioned.

23 And when a witness resorts to exaggerated language, such as, "Mr Yekatom considers
24 others as dogs" or "he's a half-God", it signals an attempt to colour the evidence with
25 emotional bias. And when a witness resorts to exaggerated language and takes an

oath and subsequently provides false testimony that can be objectively checked, disproven through objective evidence, such as CDR, and that the Prosecution unquestionably accepts the witness statement at face value, without scrutinising it, it shows, it reflects a concerning disregard for credible evidence.

And on that point, with your Honours' leave, I'll leave the floor to Ms Guissé, who will address you on Yamwara school as well as P-0954.

PRESIDING JUDGE SCHMITT: [12:10:04] Thank you, Ms Dimitri.

Ms Guissé.

Take your time to arrange yourself.

MS GUISSÉ: [12:10:17](Interpretation) Your Honour, members of the Chamber, what my colleague, Mylène Dimitri, has said *about the way in which the Prosecution has handled the evidence *is perfectly illustrated in the way *that the evidence *was handled in relation to the Yamwara *incident, the Saint-Cyr Lapo incident.

*The illustration is perfect because, on this point, the Defence did not call any *witnesses, so all the Prosecution needed to do was to analyse its own evidence and to tell you what its final conclusions were based on the testimony *heard.

Now, your Honours, I know *you are professional judges, you are experienced, and I know that you are going to carefully examine the evidence and, of course, that you have already long since begun to do that. But, the principle of *adversarial proceedings, the principle of a trial *in which the parties confront each other, the objective of that is to assist you in uncovering the truth. That is the purpose of adversarial proceedings, or at least to uncover the judicial truth *that is as close as possible to the way in which the events *unfolded and that you have to judge.

*And so I am naive enough to think that the purpose of the closing briefs, the arguments, all these elements that the parties bring to you is to give you a precise

1 insight into the evidence, to draw your attention to this or that element. At the very
2 least, in any case, it will be the task or is the task of the Prosecution to prove the guilt
3 of the defendants beyond a reasonable doubt.

4 That means at this stage *of the proceedings, we can no longer just base ourselves on
5 generalities or to make statements that are not underpinned by evidence. However,
6 the fact of the matter is that there are deficiencies in what the Prosecution has
7 presented to you, and what is all the more problematic is that it is *on the basis of its
8 own evidence.

9 Here, in the courtroom, of course we have brilliant lawyers, brilliant legal minds, and
10 I'm sure they feel that they can change what is presented. But, your Honours, I
11 would say that one can churn out as many pages of closing brief as one wishes, one
12 can present wonderful rhetoric in the courtroom, but *there is nothing *we can do to
13 change the evidence that has been presented before you. And that, of course, has to
14 be done in the way the evidence is presented, without -- and I'm going to use a French
15 expression, I don't know if it has an equivalent in English -- without attempting to
16 sweep certain matters under the carpet. That is the crux of our concerns with the
17 presentation of the case given by the Prosecution, *and as you have understood from
18 the beginning of this day -- they're sweeping certain things under the carpet.

19 Now, regarding the Yamwara *incident, the case presented by the Prosecution has
20 changed drastically over the course of the trial and you will see this at page 2 in our
21 PowerPoint. There is a huge gulf between the pretrial brief in which it was said that
22 it was Yekatom who ordered the abuses *of Saint-Cyr Lapo - *"He was there, he's the
23 one who said it" - and the final version in the closing brief of the Prosecution, in
24 which they say that, "Well, even if he wasn't there, he was still responsible." And all
25 this is based on the same witnesses.

1 Why is it that the Prosecution's *case has changed? In *our closing brief, we have
2 presented paragraph 427 to 477 which deals with this matter. We have identified
3 various contradictions which *I will come back to which show *that their *initial case
4 *did not hold water.

5 *And I have spoken to you about change, but there is a lack of transparency, in fact,
6 about the changes in the Prosecution's case. *At the very least, the Prosecution must
7 prove *the guilt of the accused, and when they change their narrative *on what
8 allowed them to obtain a confirmation of the charges, *they have to tell you why and
9 they have to tell you exactly what the final case is.

10 If we look at the various witness statements and testimony that we have heard on this
11 particular *incident, we see that *some witnesses did not tell the truth. *This is an
12 undeniable fact which, of course, has consequences for the way in which you will be
13 able to use that evidence, or disregard that evidence. There are witnesses who have
14 testified before this Court under oath, but have not respected their oath.

15 First of all, witnesses may be mistaken, they are not infallible, but you must take that
16 into account. A witness may be confused, may not have a clear thinking on the
17 matter, or may no longer remember correctly. You must also bear this in mind when
18 you are considering his or her testimony, *by comparing it with the rest of the
19 evidence, with his previous statements.

20 And, as unfortunate as it may be, there are witnesses who lie, and lie with intent for
21 various reasons, as my colleague said earlier. There might be some animosity
22 between a witness and defendant, a longstanding animus between them, and *it is a
23 way to damage his honour and make his life difficult.

24 There *may be a witness who might think that he might gain some benefit if he adds
25 some spice to his testimony - he might be invited to travel, *to receive some

1 subsidies - and, *unfortunately, those *small benefits are something that might be
2 appealing to people in the Central African Republic *context.

3 And then there are perhaps more ambiguous reasons, ones that may have more *of a
4 human nature. If you have a witness who has been the victim of certain incidents,
5 well, he may well want somebody to pay, *whoever it may be.

6 *On this last point, and I'm not going to dwell on it at length because we developed it
7 in paragraphs 434 to 440 *of our Defence brief, but I would refer you to the matter of
8 collusion between witnesses and contamination of testimony and, notably, the
9 influence of P-1654 on the testimony of certain witnesses, and here I would refer you
10 to the *transcripts, T-200, T-212, and *T-128.

11 Now, the Prosecutor should have borne all this in mind in analysing and assessing
12 the evidence in his hands, but he has failed to do that and I'll come back to this
13 matter.

14 Now, your Honour, I want to be perfectly clear, we in the Yekatom Defence team are
15 not blindly defending our client. You, I think, will have understood from what we
16 have already presented on this *incident. *We are not arguing that nothing
17 happened on that particular day, *24 December 2013, in Yamwara. Saint-Cyr Lapo
18 went through something terrible. He has disappeared. He is considered to be dead.
19 However, what we believe is that the circumstances in which the events took place
20 *are not those presented to you by the Prosecution and that this necessarily has an
21 impact *on the conclusions that you will be able to draw, because you must not rely
22 on unreliable evidence.

23 *And to be complete, we don't contest that Mr Yekatom arrived later in the evening at
24 the Yamwara school on that day, but he never ordered maltreatment or *threatened
25 anyone. On the contrary, when he arrived on site, he did everything he could to

1 ensure that the *people in the group he saw that day could be handed over to
2 Sangaris. That is clear from the *testimonies, but above all from the testimony of the
3 perpetrator of the acts of violence himself. And we will come back to this in detail.
4 Your Honours, I'm obviously presenting my arguments in open court and, therefore, I
5 shall use pseudonyms, and when I wish to refer the Chamber and the other parties to
6 particular passages; I will refer to passages in our document.

7 Now, *before I go into detail about what is wrong with the Prosecution's submission
8 on the Lapo incident, I would like to say a few words about the Yamwara base and
9 regarding the omissions, the shortcuts and the erroneous presentation made of events
10 by the Prosecution.

11 At page 4 of our presentation, you will see that there are a number of items that have
12 been entirely left to one side by the Prosecution; *namely, that at the end of December,
13 the conflict was raging in Bangui, there was an exchange of fire and combat between
14 the armed groups. The RFACPP movement that was based at the school was
15 present and, therefore, the security of the base was of real concern because of the
16 ongoing fighting.

17 And let's remember that Yamwara is an open space; it's not a fenced-in compound.
18 People would visit the site to get supplies, et cetera. People moved in and
19 out - *you'll remember the videos and photos on this subject; it's an open space - so
20 the question of safety is all the more important.

21 Now, another point which is important, but which the Prosecution *completely
22 ignores, is that the movement did not stay at the Yamwara base for long. If you take,
23 let's say, 13 December as the start, as the videos *in the file seem to suggest, we have
24 the testimony of P-1839 who refers to the departure as being more or less at the point
25 in time when Mr Djotodia stepped down; therefore, we are talking about a maximum

1 of one and a half months *at the scene. *And this *relatively short presence at the
2 scene has an impact on the case. It is important. Why so? One might say: "Oh,
3 the Defence is making things up." Not at all. Mr Yekatom was very rarely present
4 at the Yamwara base at that point in time, and you will see *we deal with that at
5 page 6 of the presentation. You will see *the various witnesses testified that he was
6 very rarely there; he was there from time to time. *Caporal-chef* Ouandjio was
7 constantly present, however. You are told that sometimes *he would visit once
8 a week over the course of a month and a half. That is not much. So this is an
9 important omission on the part of the Prosecution.

10 There are also other *positions, presentations, or the evidence is presented in such
11 a way *that is erroneous. *In any event, unclear, ambiguous positions -- the
12 ambiguity that my colleague referred to.

13 Now, on page 7 of the presentation, there you have what was said by a witness
14 regarding the Gobere group that we referred to a little bit earlier there. At
15 paragraph 653 of the Prosecutor's closing brief, it is said that some Anti-Balaka from
16 Bossangoa joined the group *of Mr Yekatom, and their reference is made to P-1839
17 who is said to have said that. *Indeed, she did say it, but she also clarified stating
18 that they had come to the base for a period of time, but they had never joined the
19 RFACPP. But the Prosecution omits to tell you that or remind you of that; rather,
20 they give the impression of a *movement that was unified at a certain date, which is
21 not correct.

22 Let's turn now to the circumstances in which the group was stopped on that day at
23 the checkpoint. So let's look more closely at the incident of concern to us.
24 Yes, a group of people was stopped at a checkpoint, which was being manned by
25 a person called Alkanto, who was a member of the RFACPP. But, no, the

1 circumstances at the time are not in line with what the Prosecution refers to today.
2 They give you a shortened, limited version of events. And my colleague said -- said
3 the closing brief was produced as if there had never been a cross-examination by the
4 Defence; that in and of itself is problematic.
5 The Defence did question the witnesses. And this makes it clear that there is one
6 fundamental aspect that the Prosecution has not referred to and that is that it is not
7 the case that that group was stopped in its tracks because they were taken to be
8 Muslims or because there were Muslims in their midst. Because this is what is
9 said -- this is what the Prosecutor says at paragraph 655 of his closing brief.
10 On the contrary, a number of witnesses, P-1705 - and this is at page 9 of our
11 presentation - various witnesses told you that the same group was stopped on that
12 same day at that checkpoint. They were in a vehicle and were stopped for checks
13 because, of course, that's the point of such a roadblock, it's to check that there is no
14 danger. It was a witness who told you that at that point in time the Seleka were
15 using civilian vehicles to infiltrate. The vehicle was checked and it was allowed to
16 pass.
17 Another point on which the Prosecution tried to get evidence, but failed, was the way
18 in which the witnesses were dressed on that day. And I refer now to page 10 of the
19 presentation. *The way they were dressed did not *allow anyone to identify
20 whether *they were Muslims or not. The women were wearing traditional clothing,
21 and this is an important detail. The veil, the scarf that they were wearing, in fact,
22 was no different to that of a Christian. So that does not hold water.
23 So, the question is: What was the difference between the first time the group was
24 stopped and this second time? Well, the difference was the presence of Alkanto.
25 Alkanto - I would just remind you that his true first name is Abdoulaye, P-1839 - said

1 that he had grown up with the Muslims; he spoke Arabic.

2 You were told that the -- the RFACPP was full of people who hated Muslims. That
3 wasn't the case. It simply wasn't. As regards other details, one of the Prosecution
4 witnesses - you'll see it later - I'll just remind you that *1704 said that Alkanto
5 presented himself *that day as being a Muslim who had been mistreated by the army.
6 And that's important I believe.

7 And now at page 12 of the presentation, you will see the reason why the group was
8 stopped on that day. Within the group, a person was identified, somebody who
9 Alkanto knew very well. And if you consider what his post was at the time, you will
10 understand that it wasn't a low-ranking person of no interest. The witness -- it's not
11 that that was presented to you, but that is what the witness referred to as being the
12 key characteristic. And I refer to paragraph 430 of our closing brief.

13 Something else of which we are sure as regards the circumstances in which the group
14 was stopped was that Alkanto not only had a dispute with the person linked to the
15 group, but also with people who were members of the group, one of the members of
16 the group.

17 Now, I'm not just fantasising here; rather, this was stated very clearly by the witnesses.
18 At page 13 of our presentation, you have a -- set out the testimony which indicates
19 that there was a personal dispute between Alkanto and an individual *that was
20 clearly mentioned by Alkanto on that day.

21 Now, why is this not referred to by the Prosecution? Well, it's because it undermines
22 the thesis whereby -- or the thinking whereby religion was the key issue. And there
23 is another very important point, aside from these grievances that Alkanto had, there's
24 another arm of the evidence which has just been omitted by the Prosecution and that
25 was the discovery of a Seleka *card.

1 Now, yesterday, at transcript 307, page 7 - and you also have an extract on page 14 of
2 our presentation - the Prosecution states very clearly that, and I quote:

3 "These individuals were singled out solely because of their association with Muslims
4 and their perceived collective support for the Seleka." End of quotation.

5 Now, I will just stop here for a moment to refer you to a second part of a quotation
6 given by the Prosecution yesterday and that was on page 11, which was the definition
7 of criminal policy. But it's not the definition which you will find in the decision
8 confirming the charges, and here I would refer you to paragraphs 4 and 5, and to our
9 closing brief at 622 and 628. We never said that the policy was individuals
10 associated to Islam. We said that Muslims *were associated with the Seleka on the
11 basis of their religion or supposed religion. *Not just any Christian. *And by the
12 way, Saint-Cyr was not a Muslim. *My colleague Sarah Bafadhel will come back to
13 this point at greater length, but it was important to note it to show you the extent to
14 which the Prosecution is simply blind -- has certain blind spots when it comes to its
15 own evidence.

16 And now, I also have to underscore that there's a certain lack of transparency.

17 Sometimes there's a little bit of a semantic shift -- a shift here, notably, for instance, in
18 the definition of criminal policy with respect to what the charging decision said.

19 In any event, regardless of the definition provided by the Prosecution of its policy,
20 you have P-1839's statement, who, in that statement, as we see in transcript 306, the
21 Prosecutor argues that they provided reliable evidence to the Court.

22 Well, that reliable evidence came from a witness who says the following: "On that day,
23 *at the checkpoint we found a Seleka card." *In fact, she says two; but this issue has
24 never been clarified by the Prosecution, but that card, the Seleka card has been
25 described to you. Mr President, you asked what it was about and they provided

1 a description.

2 Yet, we have another witness in this case, P-2050, who explains that even before
3 December 2013, Seleka identity cards had been issued. But that does not seem to
4 interest the Prosecutor. Why? Because it doesn't dovetail with his case, which he
5 doesn't want to change in spite of his own *evidence.

6 By the way, *P-1839 also indicated that the discovery of a SIM card can also reinforce
7 suspicions against this group.

8 So, Mr President, your Honours, I am not saying in any way that what happened to
9 Mr Saint-Cyr Lapo was justifiable. That is not my argument. But at the time of the
10 activities at the checkpoint, there was a source of legitimate suspicion.

11 We mentioned this in paragraph *622 to *628 of our final brief.

12 I am not going to plead on all the various arguments in our closing brief relating to
13 this specific incident. We received the Prosecution brief at the same time we
14 submitted ours and for that reason, let me revisit the testimonies of three Prosecution
15 witnesses and point out that there is a lack of coherence in the processing of the
16 testimonies.

17 My learned colleague has pointed out that you must be careful, you must be vigilant
18 when dealing with Prosecution evidence as presented to you, because if you look
19 through the Prosecution brief, certain narratives are presented to you as established
20 facts; whereas, they are blatant lies. There are consequences to such blatant lies and
21 you cannot afford, your Honours, to be selective when dealing with these matters in
22 the way the Prosecution has done because it would lead to nonsense.

23 Let us take a first example, and it will be P-1716 at page 17 of the pleadings. They
24 affirm that women were undressed in the presence of men and they go as far - and,
25 this is important - to provide evidence that the young boys of *12 years had taken the

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1 clothes off those women.

2 You note that other details were not provided, except that one. Unfortunately, that
3 event pertaining to the undressing of women outside is totally contradicted by all the
4 other witnesses who testified on this event, P-1811, P-0967, P-1839, *P-1704, *P-1705
5 and all of these witnesses tell you that this is false and it is absolutely untrue.

6 However, whereas this event -- or this incident never occurred, it will be brought
7 forth several times by the Prosecutor to argue about the presence of child soldiers in
8 the RFACPP, and I refer you to the final brief of the Prosecutor - *paragraph 506,
9 *paragraph 748 and paragraph 754 - pointing to the selective use of the Prosecution
10 witness -- Prosecutor, rather, in relation to its own very witnesses, *that Mr Yekatom
11 was there when the group arrived at the Yamwara location and that he is the one who
12 gave orders *to beat the men.

13 And this is also contradicted by several other witnesses who were there on that day,
14 P-1811, *P-0967, P1839 and even P-1705.

15 The most blatant lie -- the most blatant untruth from P-1704 was when he told you
16 that Mr Yekatom gave orders for Mr Saint-Cyr to be mistreated; that he was there and
17 that he is the one who issued the orders. That you can find at page 19 of the brief.

18 Except that {ICR: (Redacted)}

19 (Redacted)

20 (Redacted)}

21 Let me recall that at page 20, the other witnesses also told you that Mr Yekatom was
22 not present at that time.

23 I also talked to you a short while ago about the testimonies of witnesses involved in
24 the collusion, and in our brief we explained to you why some witnesses were more
25 credible than others. In any event, one of the witnesses explained to you the

1 conditions under which Mr Yekatom arrived and at what time, particularly stating
2 that he had never *attempted, as did the witnesses involved in the collusion, to
3 attribute to him certain actions or statements that he never made.
4 This is important, because, Mr President, when you listen to these witnesses, you can
5 clearly see how things unfolded clearly without any additions or any subtractions.
6 As you can see on the screen, Mr Yekatom never attacked nor exercised violence on
7 anybody. He spoke calmly and simply argued that the group should be calmly
8 taken over by the Sangaris forces. So we see that there is corroboration, but there is
9 also invented corroboration.
10 And then we also have calls, Mr President, at page 23, where you can see the call that
11 was placed by Mr Yekatom on that day, that evening, to be specific at 22:04 hours,
12 and that is to be found in the call data records. It does appear. This call can be
13 verified, unlike that of *P-9054, and I will be revisiting this point when I speak to a
14 paragraph of the Defence brief; namely, paragraph *453, the paragraph which will be
15 mentioned in relation to the Yamwara base.
16 *Another key witness in this incident at the Yamwara base was, of course, the
17 perpetrator. This witness testified {ICR: (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)} it is your duty to question

1 and ask why, but the Prosecutor failed to do so, failed to seek to determine the motive.

2 And I refer you to the Celebici judgment, where the ICTY Appeals Chamber recalled
3 that the onus of proof is on the Prosecutor with regard to the clarification as to any
4 vital ambiguities in the case.

5 If the Prosecutor fails to do so, the deduction could therefore be that such
6 a clarification would not have benefited his case. So, Mr President, your Honours,
7 you must therefore be mindful of all this and take note that the Prosecutor failed to
8 obtain all possible clarifications relating to this testimony.

9 We cannot simply argue that there was violence undertaken by Mr Yekatom based on
10 a certain policy which has been redefined by them in order to support their charges.

11 We cannot say that the acts against Saint-Cyr Lapo as per the main perpetrator were
12 simply designed to meet the criteria for the crimes under the statute. The Celebici
13 case at paragraph 438 and follows, particularly, paragraph *452, which I have
14 paraphrased.

15 There is another point, namely, that the Prosecutor attempted to establish what
16 Mr Yekatom may or may not have known. You see, it is true that they raised
17 a number of questions on these points with the perpetrator of the acts.

18 At page 25: "Days after I had a discussion with Mr Yekatom and he told me that
19 'You've done a good job'."

20 But then what he says is important:

21 "I don't know whether he was referencing that."

22 Then goes on to make some suppositions without being clear as to what was being
23 referenced. The Prosecutor, therefore, cannot be more assertive than a witness who
24 simply makes suppositions. *There is only one solution, and that is to set aside the
25 peremptory assertion in the paragraph 692 of the Prosecution's case that this is why

1 Mr Yekatom congratulated him. That is not true; that is not what the witness is
2 saying.

3 There is also another point which needs to be highlighted and *that is the false
4 account of P-0954 which the Prosecutor uses as corroboration. Now here, we differ
5 with the Prosecutor when it comes to corroboration, because corroboration is
6 supposed to be something that confirms facts that have been established. P-954, as
7 my learned colleague spoke to you of already, on the Yamwara incident, said that
8 these statements must convince you that this witness is not reliable at all and that you
9 cannot base your decision on their testimony.

10 At page 27, you have various versions of P-954 relating to this incident and you have
11 heard evidence on this matter.

12 What P-954 addresses on this matter as to the identity of persons in Yamwara is false.

13 What they say about the circumstances, for example, people in a vehicle and some
14 having been killed, that is untrue, that is false.

15 Now, what refers to the a *posteriori* destination after Yamwara, is false. It's false, it's
16 false. But these falsehoods do not end there. You see, after providing you with the
17 various versions, particularly the first one in paragraph 86, they go on to say as
18 follows: I was informed by two members of Mr Yekatom's group, and confirmed in
19 *T-166, the names of the two persons involved. And then it becomes even more
20 interesting when we look into the detail.

21 Later, in that statement, they provide a list of various members of the FACA group in
22 the south axis. The question was put then to the witness to indicate the names of
23 persons who belonged to his own group. And strangely, the persons whom he said
24 were members of Mr Yekatom's group are identified on that document as members of
25 his own group. People who were supposed to have first-hand information based on

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1 what they narrated as having happened in Yamwara in their presence, these people
2 are false, fake.

3 And this can be confirmed. If you look at the third name on the screen, page 29, that is,
4 *P-1858, which confirms that these persons had always belonged to the group of P-954.
5 And that is why these statements do not correspond to the evidence that was given to
6 you. *So much for the testimony of P-0954, which supposedly was "so reliable".

7 There is so much that they have said, which is even more incriminating. And
8 furthermore, he testifies that on that day, "I talked to Mr Yekatom on the phone and
9 he made a confession." Well, again, you see the Prosecutor relying on this fact, but
10 once again as was the case with 5 December, there is no trace of that call in the CDRs,
11 and once again, the Prosecutor would argue that this is not significant *at paragraph
12 675 of the Prosecution's brief.

13 So the Defence begs to differ, not only because this so-called call has been highlighted
14 in paragraph *697 of the Prosecutor -- or because the Prosecutor relied on it in
15 transcript 307, *page 9, but, furthermore, we have two narratives of two calls that are
16 not supported or corroborated by any facts in this case. So this is extremely
17 important, because it points to the fact that P-954 lied.

18 *I have now concluded with the Lapo incident. But staying on Yamwara, but with
19 your indulgence, Mr President, in about 10 minutes, I should be able to conclude,
20 given five or so minutes, I should be able to conclude, Mr President

21 PRESIDING JUDGE SCHMITT: [12:52:49] I think Ms Dimitri begs to differ.

22 Perhaps you could consult with her first.

23 (Counsels confers)

24 MS GUISSÉ: [12:52:59](Interpretation) I have been told I should not go beyond five
25 minutes -- oh, I shouldn't go beyond the normal time. Well, I believe that if we

1 hadn't taken up some extra time, I would have been able to do with the time I had. I
2 was, in any event, trying to summarise.

3 PRESIDING JUDGE SCHMITT: [12:53:20] Then I think we simply stop at this point
4 in time and have the lunch break until 2 o'clock. Or not, or do you want to finish?

5 MS GUISSÉ: [12:53:29](Interpretation) I'm in your hands, Mr President, I was
6 hoping I could conclude in the short time I have by trying to summarise as best I can.

7 PRESIDING JUDGE SCHMITT: [12:53:39] That's not a problem at all. I will give
8 you the time to finish your point.

9 MS GUISSÉ: [12:53:48](Interpretation) Thank you, Mr President. I was saying that
10 I'm done with the Lapo incident. I will also now address another issue in Yamwara
11 and that is the bodies that were buried in Yamwara, referred to on several occasions
12 by the Prosecutor in their closing brief.

13 Paragraph 551 of the brief points out that *P-0487 testified about the discovery of a
14 dead body without a head. And, Mr President, you will remember that *P-0487 gave
15 extensive testimony on this issue, but that was not credible. *From his famous
16 strategic position, which no one quite understood, he told you a lot of things. He
17 also added to the incriminating evidence, so keen was he to distance himself from
18 Mr Yekatom.

19 And what is interesting is that at paragraph 551, *the Prosecution relies on the
20 testimony to say that *after 5 December, the RFACPP allegedly continued to commit
21 attacks against the Muslim population, particularly in Yamwara. And then, there is
22 talk about this individual who was decapitated.

23 What are the circumstances of this death? We do not know. *Nor do we know on
24 what basis the Prosecutor claims that this individual was a Muslim, but yet there is
25 mention of a source in support of the argument in the paragraph.

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1 *And, above all, once again, the Yamwara open base was mentioned, because they tell
2 us that this body was exposed in broad daylight. I'm not even talking about the
3 credibility of the testimony itself. But it has no probative value whatsoever for what
4 the Prosecutor intended to demonstrate.

5 So, Mr President, *at paragraph 576 of the Prosecution brief you are also told that
6 P-487 - and this is at page *33 of the brief - the argument is made that Muslims were
7 killed in Yamwara. Now, there's still no link between what he said and the idea that
8 there were Muslims who had been buried, but he corroborates what 1528 says and
9 1528 was corroborated in his witness -- at paragraphs 43, 44, 45 of his statement.

10 But if you look at paragraph 45, you will see he's not talking about Yamwara school at
11 all, but rather *Collège de la Paix*, which is in a totally different district of Bangui.

12 So here, once again, we have, you know, untrue corroborations, non-corroborations
13 presented by the Prosecution. That is another example of the vigilance that you
14 must have with respect to the closing brief of the Prosecutor.

15 Now, moving on to another point. P-1339, and regarding the *alleged attack by the
16 RFACPP and the fact that Muslim civilians are -- were *buried at Yamwara. Now,
17 P-1339 is quoted at paragraph 683 of the closing brief. We have already told you
18 about contradictions in this testimony and we have dealt with this notably in our
19 closing brief at paragraph 1 -- paragraphs 106 to 135.

20 However, one does have to take some account of what he said and what you see very
21 specifically on the screen at page 35. There, we are told, that P-1339 corroborates the
22 *fact that Muslim civilians are buried in Yamwara. That's not what he says.

23 *P-0159 clarifies what he is saying and he says he's referring to fighters.

24 Now, why is this important? Well, it's important because the Prosecution says - and
25 this is in the closing brief - that there was some dozen bodies buried at Yamwara and

1 that there is evidence underpinning this.

2 And now I'm moving to page *36 of the presentation to say to you -- so P-199 -- 1990
3 is referred to when it comes to the dozen bodies. And it's at paragraph 42 of his
4 testimony that we are told reference is made to the exhumation of some 10 bodies at
5 Yamwara. However, and in front of this Chamber, P-190 said, "There's an error in
6 that statement. I always said three bodies."

7 And three bodies is confirmed by the documents provided and which are in the case
8 file provided by an NGO which carried out the exhumation at Yamwara. The NGO
9 uncovered three bodies - and here, I would refer you to the *paragraphs 477 and 479
10 in our closing brief - one of those bodies being that of a trader who had been killed by
11 the Seleka and had been buried at the Yamwara base. *That is the Prosecutor's
12 evidence.

13 So this is the nature of the evidence before this Chamber. And this -- these are the
14 aspects that the judges of the Chamber must bear in mind when considering guilt and
15 innocence.

16 One cannot blindly follow the Prosecutor. This is the case as regards Yamwara, but
17 it is also the case regarding all of the charges before you.

18 As regards the legal characterisation, the legal qualifications that apply, it is my
19 colleague, Sarah Bafadhel, who will be referring to this matter, but we will get to this
20 after the break. And Mr Suzuki will be referring to the events of 5 December
21 specifically, and the evidence regarding the PK9-Mbaïki axis to demonstrate to you
22 that what -- the very shortcomings in what was presented to you by the Prosecution
23 and what is presented page in, page out over the closing brief.

24 Oh, I just -- having a look -- an eye on the clock. There I see that I -- I did finish the
25 morning right until 1 p.m. I hope that Ms Dimitri will not hold it against me.

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1 I hand over the floor.

2 PRESIDING JUDGE SCHMITT: [13:01:08] Indeed, it's 1 o'clock now, we have now
3 the break until 2 o'clock.

4 THE COURT USHER: [13:01:14] All rise.

5 (Recess taken at 1.01 p.m.)

6 (Upon resuming in open session at 2.01 p.m.)

7 THE COURT USHER: [14:01:29] All rise.

8 Please be seated.

9 PRESIDING JUDGE SCHMITT: [14:01:48] Good afternoon. I think Mr Suzuki
10 wants the floor; and, if so, he gets the floor.

11 MR SUZUKI: [14:01:57] Thank you, Mr President. And good afternoon. Good
12 afternoon, your Honours.

13 This afternoon, I propose to continue where counsel left off and I'd like to point out
14 the evidentiary deficiencies in the Prosecution brief. And I'll focus primarily on
15 PK9-Mbaïki axis charges. And I propose to do so while expounding on a particular
16 theme that your Honours will be familiar from our closing brief and that is the
17 nebulousness of the term "Anti-Balaka" and the impact of this on the Prosecution case.

18 And I'd like to start by taking two illustrative examples from the evidence that is
19 before your Honours. First of all, a very short clip from a documentary filmed in
20 CAR during the events. And, for the interpreters, that's CAR-OTP-2130-1332 at
21 page 1336, lines 87 to 89, which my colleague will now play.

22 (Viewing of the video excerpt)

23 THE INTERPRETER: [14:03:11] (Interpretation of the video excerpt)

24 "Welcome to us in the Central African Republic. We are the Anti-Balaka. We are
25 the sons of the country. You might not know them. I could be Balaka. I could

perhaps not be a Balaka. A woman could be a Balaka. You just can't tell."

MR SUZUKI: [14:03:29] And, secondly, your Honours, some testimonial evidence from Prosecution Witness Assane Issa, P-1676, a Muslim civilian and the deputy imam of the Ali Babolo Mosque in Bangui.

And in his statement Mr Issa recounted an incident where a group of Muslims and Red Cross personnel were travelling through Bangui on 7 December, and they encountered a group of what he described as overexcited young Christians, some armed with machetes and others with guns, insulting Muslims. And in his interview he stated, as you can see on your screen: "I don't know if they were Anti-Balaka because I wasn't able to distinguish them."

And he recounted another incident whereby a convoy that he was travelling in was nearly attacked by what he described as a group of Anti-Balaka in Combattant, carrying machetes and sticks. And, as you see on your screens, in a statement it is subsequently written, "For me, from the moment these overexcited youth take up machetes and batons, they are Anti-Balaka."

And these extracts reflect another closely related theme of my submissions today, your Honours, and that's the role of mass violence in the CAR crisis, the fact that, in this period, people rising up as individuals or as groups, formal, informal, and they were angry and hostile and they were committing violence against the Muslim population of CAR.

And Mr Issa's evidence in particular neatly illustrates the way that these two themes interplay, in our submission, because it illustrates the manner in which the term "Anti-Balaka" could be applied and demonstrably was applied to anyone who picked up a machete amidst the wave of popular violence that swept over CAR in 2013 and 2014.

1 Now, the Prosecution in its pretrial brief had defined the Anti-Balaka as any
2 subgroup or plurality of members or elements thereof, whether or not formally
3 organised or constituted. And at first glance this definition appears to encapsulate
4 the nebulousness of the term, so you could be forgiven for thinking that the
5 Prosecution recognises this dual reality, both of the term and of the role of mass
6 violence during the events. But by now, your Honours, I'd submit that it's clear that
7 the recognition is purely superficial. And the Prosecution case on the PK9-Mbaiki
8 charges, as investigated and prosecuted, either ignores this dual reality and fails to
9 meaningfully accommodate it, or it actually exploits it and seeks to use it to its
10 advantage.

11 And I propose to demonstrate that with some examples today.

12 Now, after having introduced that, I actually have to briefly diverge from the main
13 theme of my submissions, your Honour. I need to make two very brief points on the
14 Cattin charges.

15 First of all, contrary to what Prosecution counsel said earlier this week, it was not
16 P-1528's evidence that he heard the sounds of a man being beaten to death. And we
17 will refer your Honours to the transcript of his evidence as to what he actually heard,
18 what he specifically heard, and to the Defence submissions on this point in our brief.
19 And, secondly, again on the alleged killing in Cattin, the Prosecution relies on an
20 interview that was conducted by the United Nations Commission of Inquiry. It was
21 an interview with an anonymous individual, regarding the killing -- regarding, quote,
22 "the killing of his 22-year-old son, a Muslim civilian, by Anti-Balaka in Cattin during
23 the 5 December attack".

24 And that's paragraph 567 and 569 of the Prosecution brief.

25 And at the outset, your Honours, this is a mischaracterisation. The interview does

1 not state that the individual was skilled during the 5 December attack.

2 And your Honours have before you on the screen, the document the Prosecution

3 relies on is on the left, and the document on the right is also a UNCOI interview.

4 And the document on the right was tendered from the bar table by the Prosecution,

5 and your Honours rejected it on the basis that it was testimonial evidence. And

6 that's filing 2182.

7 And, as you can see, the document on the left, again relied on by the Prosecution, is a

8 verbatim copy of the document on the right.

9 And, in filing 1947, the Prosecution had previously argued that the document on the

10 left was not testimonial evidence. So you'll imagine our surprise, your Honours, to

11 see the Prosecution has now re-purposed this document and argues in its final brief

12 that this document comprises, quote, "credible testimony". That's paragraph 569.

13 Now, our position is that this document can't be relied upon at all, and we refer your

14 Honours to our submissions at paragraph 59 of Defence filing 1978.

15 I'm going to address the Prosecution allegations on the PK9-Mbaiki axis charges now,

16 your Honours, again, with a particular focus on these two themes of my submissions

17 today. And I'd like to demonstrate how the Prosecution ignored or actively

18 exploited these two factors by seeking to attribute to Mr Yekatom and the RFACPP

19 acts and incidents of individuals falling under this term "Anti-Balaka" despite they

20 being unrelated or unassociated to him or the RFACPP.

21 And, first of all, the Prosecution's allegation at paragraph 706 of its brief, which was

22 discussed yesterday by Prosecution counsel, and that is that "Armed elements from

23 Mr Yekatom's group regulated movement, targeting Muslims at roadblocks, and

24 preventing their circulation". And in support of this allegation the Prosecution cites

25 D29-5015, who testified about his efforts to evacuate a Muslim man and to transport

1 him to Mbaïki by vehicle, and about the need to take precautions because of the risk
2 of being stopped and searched at checkpoints.

3 But as you can see, your Honours, from the extract of this testimony in front of you,
4 D29-5015 was not referring to RFACPP checkpoints. He was concerned about
5 spontaneous, improvised checkpoints, which he had previously discussed in his
6 evidence, in the extract on the right, where he says, "A village which never had a
7 checkpoint, you would arrive and suddenly you'd find they had put one up. That's
8 the way it was. It was done on the initiative of the villagers."

9 And we also refer, your Honours, to Prosecution witness and RFACPP member
10 P-1647, who testified about checkpoints on that same axis, the Mbaïki-Boda axis, that
11 were manned by individuals who were not part of the RFACPP. And that's
12 transcript 196.

13 And, more broadly, your Honours, we refer you to paragraph 486 of the Defence brief
14 and especially the evidence of D29-5013 on the matter of checkpoints along the axis.

15 And we submit that this evidence should be kept in mind when your Honours assess
16 the Prosecution's repeated assertions in its brief that Mr Yekatom or the RFACPP
17 controlled the axis, or when they use phrases like the "zone of control". Because
18 despite these assertions, the Prosecution fails to explain to your Honours what control
19 of the axis would entail in practice, especially in the midst of this mass popular
20 uprising and the emergence of local independent self-defence groups along the axis.

21 The Prosecution relies on another document in support of this allegation, and it was
22 received from the French authorities in 2018, and it comprises Sangaris' reports in
23 various localities, including Mbaïki. And you see it -- you see page 376 on the screen
24 in front of you, your Honours. And you'll see that it refers to relatively large
25 groupings of Anti-Balaka having been observed manning checkpoints at the entry

1 and exits of Mbaïki aimed at stopping all movement of Muslims on 29 January 2014.

2 That is the day of the Seleka withdrawal.

3 But I'd also like to draw your Honours' attention to the entry of 1 February 2014, on
4 the right of your screen, in the middle. And it says in French, and I quote:

5 (Interpretation) "The day was marked by the arrival of *caporal chef* Rambo's elements
6 in Mbaïki."

7 (Speaks English) And the entry goes on to say that these elements established
8 themselves at the SOCATEL building. In other words, the Sangaris report appears
9 to distinguish between, on the one hand, the Anti-Balaka that it observes at the entry
10 and exits of Mbaïki on 29 January and, on the other hand, the arrival of elements it
11 expressly associates with the RFACPP or, rather, with Mr Yekatom, who based
12 themselves at SOCATEL on 1 February.

13 And in this respect your Honours will recall the evidence of P-1839, who stated that
14 the 30 January 2012⁴ church meeting was the first time the group arrived in
15 Mbaïki - and that's transcript 174 - and also the evidence of P-1786 and the evidence
16 of P-1647, both of whom confirmed that RFACPP elements arrived in Mbaïki after the
17 departure of the Seleka and established themselves at SOCATEL.

18 Now, I'd also like to draw your attention to the entry for 31 January, also on the right
19 of the screen but above. And the entry for 31 January reports that on the day around
20 50 ex-FACA, equipped with AK-47s and PKMs, arrived in Mbaïki aboard three
21 pickup trucks.

22 Now, your Honours have heard evidence about a FACA lieutenant named
23 Julius Gouga-Ymby, and he was the ComZone of the Damala Anti-Balaka base in the
24 north of Bangui. And, on the evidence, in this capacity he commanded a few
25 hundred ex-FACA and civilians. And, on the evidence, ComZone Gouga travelled

1 to Mbaïki in this period, along with Anti-Balaka, in three pickup trucks. And that's
2 paragraph 87 of this witness statement.

3 Now, as your Honours are aware, the Prosecution case on counts 24 and 25 is very
4 much premised on the idea that reference in the evidence to Anti-Balaka in Mbaïki
5 should automatically be attributed to Mr Yekatom or to the RFACPP. And it's on
6 this basis that the Prosecution seeks to attribute responsibility for the conduct of the
7 Anti-Balaka in Mbaïki to Mr Yekatom.

8 And so we would submit that the arrival of three pickup trucks full of Anti-Balaka,
9 along with the Anti-Balaka ComZone of Damala, in Mbaïki is something that impacts
10 the Prosecution case. And that's very simply because the Prosecution has failed to
11 link these Anti-Balaka with Mr Yekatom or the RFACPP, and especially given that the
12 Sangaris report again appears to distinguish between the arrival of elements
13 associated with Mr Yekatom on 1 February and the arrival of these three pickups of
14 ex-FACA in Mbaïki on 31 January.

15 And the Prosecution has opted to simply ignore this event not just in its brief, but also
16 at trial, because, as your Honours know, there is a Prosecution witness who was very
17 well placed to clear up any ambiguities about this -- about the arrival of and the
18 provenance of these three pickup trucks of Anti-Balaka. And, yet, at no point did
19 the Prosecution seek clarification of this incident -- of this issue when he appeared
20 and testified, despite the fact that this was a Prosecution witness and despite the fact
21 that this issue arises entirely out of Prosecution evidence.

22 And the Prosecution's treatment of this issue takes me to a different matter, your
23 Honours, and that's the incident -- an alleged incident that's relied on in the
24 Prosecution brief, and extracted in front of your Honours. And it was also raised by
25 Prosecution counsel yesterday.

1 And your Honours heard earlier Maître Guissé referred to the Celebici principle in
2 respect of evidentiary assessment. And I'd like to examine this incident with that
3 principle in mind.

4 Now, on the evidence, in respect of this incident, RFACPP elements were in the
5 twin-cab pickup truck, and from the back seat of that pickup truck an RFACPP
6 element gestured to a group of Muslims on the side of the road and made a
7 threatening remark to a person or to people in that group. And Mr Yekatom was
8 alleged to have been sitting in the front seat of that pickup truck and, according to the
9 evidence, he did not react to the element's gesture and this remark.

10 And I'd like to focus on the Prosecution's treatment of this incident, because you
11 heard Counsel Dimitri earlier refer to the Prosecution's tendency to operate in these
12 evidentiary grey areas and its tendency to avoid squarely confronting its own
13 ambiguous evidence, and to properly clarify its probative value and, by extension, its
14 failure to assist your Honours to determine the truth.

15 Now, first of all, the fact that on the evidence the element was sitting directly behind
16 Mr Yekatom obviously has implications as to whether Mr Yekatom was even in a
17 position to see him make that gesture in the first place.

18 And, secondly, in respect of the remark that was allegedly made, in our submission it
19 can't be controversial to suggest that a remark made by someone in the back of a
20 moving pickup truck would not necessarily be audible or comprehensible to someone
21 sitting in the front of that pickup truck. Any number of factors would affect that
22 determination.

23 And given the importance that the Prosecution places on this incident, it argues that
24 the incident shows that Mr Yekatom did not care if RFACPP elements threatened
25 Muslims and it shows that he did not actually seek reconciliation and peace.

1 And we would submit, therefore, your Honours, that it was incumbent on the
2 Prosecution to elicit clarifying information that would allow your Honours to safely
3 determine whether Mr Yekatom would have heard or seen the element make that
4 gesture, and information as to whether he would have seen or heard the element say
5 what he is alleged to have said. How loudly was the remark made, for one? What
6 was Mr Yekatom doing at the moment? What was happening in the car at the time?
7 Also what was happening outside the car? Because your Honours received evidence
8 about the manner in which inhabitants of Mbaïki celebrated the arrival of RFACPP
9 elements in Mbaïki, by surrounding their vehicles, singing, dancing and shouting.
10 And, in fact, your Honours have video evidence of this manner of celebrating the
11 arrival of the RFACPP in Pissa in particular. And that's transcript 174, pages 31 and
12 62.

13 And, yet, no such clarifying information was sought by the OTP from its own witness.
14 And we would submit that the inferences available to your Honours that the
15 Prosecution avoided asking these questions and avoided clarifying this ambiguity is
16 precisely because the Prosecution was afraid of the risk that the answers would not
17 assist its case. Because in this regard, your Honours, we have -- or, rather, your
18 Honours have evidence in front of you about the way that Mr Yekatom did, in fact,
19 react when he heard RFACPP elements insulting Muslims, because Prosecution
20 evidence indicates that when the Muslim convoys were passing through PK9 on their
21 way to Bangui and, according to a witness, the Muslims in the convoy and the
22 RFACPP elements started to exchange threats -- or, rather, insults, Mr Yekatom said
23 to the elements, "we mustn't insult them". And that's transcript 171.

24 I'm going to move on to the Prosecution allegation, your Honours, that Mr Yekatom's
25 elements threatened Muslims in Mbaïki, which you also heard Prosecution counsel

1 discuss yesterday.

2 Now, Prosecution counsel cited the evidence of P-2353, regarding threats made to
3 Muslims in Mbaïki. And, indeed, the Prosecution gives particular attention to this
4 witness, or to his evidence, in their brief. They cited verbatim in the body of their
5 brief, including his assertion that, quote, "The elements who were issuing threats were
6 Rambo's elements."

7 Now, what the Prosecution omits from this verbatim quote was the sentence that
8 followed, which states, quote: "I know this because Rambo stated at the church that
9 he was in charge of the Anti-Balaka." It's paragraph 53 of his statement.

10 Now, as your Honours are aware, P-2353 was not at the church meeting, and the
11 Chamber has received evidence that Mr Yekatom did not introduce himself as an
12 Anti-Balaka but as a FACA at that meeting.

13 But the point that I'd like to focus on is how this extract demonstrates that P-2353's
14 assertion, attributing the source of these threats to quote Rambo's elements, is in fact
15 the product of unsafe conclusory reasoning, because, obviously, even if Mr Yekatom
16 had said that he was in charge of the Anti-Balaka, it does not follow that the
17 Anti-Balaka that P-2353 saw threatening Muslims in Mbaïki were RFACPP
18 elements.

19 And more broadly throughout our brief we address this tendency prevalent among
20 Prosecution witnesses to make assertions that are demonstrably the product of this
21 kind of unsafe conclusory reasoning.

22 And P-2353's conclusory reasoning takes on extra significance here because it reflects
23 the broader themes of my submissions, because P-2353 actually specifically testified
24 that harassment of Muslims in Mbaïki by the Anti-Balaka had been ongoing well
25 before the killing of the imam of Bagandou. And, in fact, he states that this killing

1 only increased his fear. That's transcript 161.

2 And, on the evidence, the killing of the imam of Bagandou took place on 25 January
3 and the RFACPP had not yet reached Mbaïki by that day; in fact, they hadn't even
4 reached Pissa.

5 And so the evidence, his evidence, should be understood as retroactively attributing
6 the Anti-Balaka who made these threats to Mr Yekatom. And his evidence about
7 Anti-Balaka harassing Muslims in Mbaïki before the RFACPP can't just be dismissed
8 as an anomaly or an unreliable temporal recollection, because he is corroborated in
9 this regard by multiple Prosecution and Defence witnesses.

10 And, in fact, as we set out in our brief, it was because of the real risk of
11 intercommunity violence that was perceived on the ground by Mbaïki's local
12 authorities, its religious authorities and humanitarian personnel, that that was the
13 very reason that Mr Yekatom was asked to come to Mbaïki in the first place.

14 And we refer your Honours to 516 -- to 516-520 of our Defence brief.

15 And, in particular, your Honours, I note the evidence of the then prefect of Lobaye,
16 P-1813, who stated that at the time of the Pissa meeting with Mr Yekatom, and I quote
17 in French: (Interpretation) "Tension was high. The Anti-Balaka had become more
18 and more numerous, given those people who had joined off the hook."

19 (Speaks English) And that's transcript 182.

20 And, as your Honours are aware, the Pissa meeting took place a few days before the
21 Mbaïki church meeting and it took place while the Seleka were still present in Mbaïki.

22 And we also refer your Honours to the evidence of P-1595 whose evidence also
23 suggests the presence of Anti-Balaka threatening Muslims in Mbaïki sometime in
24 mid-January. And we note P-1595's own definition of Anti-Balaka which mirrors
25 that of the deputy imam of the Ali Babolo Mosque; and, that is, "According to me, the

1 Anti-Balaka are the armed people".

2 And we also refer Your Honours to P-1666, who referred to Anti-Balaka wielding
3 machetes, walking around Mbaïki and threatening Muslims. And he specifically
4 stated that the Mbaïki church meeting took place after the arrival of these Anti-Balaka.
5 And that's transcript 230.

6 And P-1666 was another witness that was referred to by Prosecution counsel
7 yesterday and his allegation about Anti-Balaka threats the Prosecution seeks to rely
8 on against Mr Yekatom.

9 And, as cited by Prosecution counsel yesterday, and this is also in the Prosecution
10 brief, P-166 stated -- 1666 stated that the Muslims were afraid of the Anti-Balaka who
11 had come in and might assault them at any time. They were not afraid of the local
12 people.

13 And we submit, your Honours, that the Prosecution's reliance on this evidence
14 against Mr Yekatom is misplaced for two reasons. First, because as I just referred to,
15 he referred to machete-wielding Anti-Balaka in Mbaïki before the church meeting and,
16 in this regard, he also referred to the fact that there was tension in the city of Mbaïki
17 well before the meeting. And he says, in the extract in the screen in front of your
18 Honours: (Interpretation) "The people of the town wanted, come what may, to deal
19 with the Muslims, to be done with it."

20 (Speaks English) And, secondly, your Honours, your Honours will recall his
21 testimony about the fact that during this meeting a large and hostile crowd had
22 gathered outside the church and they were vocally threatening the Muslims inside.
23 And P-1666 stated, quote: (Interpretation) "We started hearing the people outside
24 saying 'now the time had arrived. It was time to attack the Muslim leader here'."

25 (Speaks English) And as you can see in the slide in front of you, this same witness

1 referred to the fact that Christians from neighbouring areas had been present in
2 Mbaïki and were among the crowd.

3 And so the suggestion that P-1666's reference to the Anti-Balaka who had come in and
4 might assault them at any time should be understood as reference to the RFACPP
5 elements specifically is misguided.

6 I'm going to proceed to my final subject, your Honours, on the PK9-Mbaïki axis, and
7 that's two arguments that the Prosecution has made about the role of civilian violence
8 in their brief. And that's paragraph 718 and 719. And I propose to address them
9 each in turn.

10 First of all, your Honour, the Prosecution attempts to dismiss the role of civilians by
11 claiming that, quote, "many of them were integrated into Yekatom's group on their
12 arrival, and thus formed a part of it". And in support of this allegation, the
13 Prosecution cites, again, P-1666, who was asked how many Anti-Balaka were present
14 in Mbaïki by the time Mbaïki was evacuated of its Muslims, and he responded
15 "almost a thousand", citing the "young people from the locality who had joined their
16 ranks".

17 And this evidence, your Honour, we'd submit that it's revealing and it shows
18 inadequacy of this Prosecution attempt to gloss over the role of mass civilian violence
19 in Mbaïki at the time. And that's because your Honours received evidence from
20 Prosecution insider Witness P-1647, the deputy ComZone of Mbaïki, who said that
21 there were between 30 and 90 elements under their command in Mbaïki.

22 And you'll also recall Prosecution counsel referring to insider witnesses earlier this
23 week, and he said, "They are the ones who were there, they are the ones who
24 absolutely know what the Anti-Balaka did."

25 And in respect of P-1647's evidence, on this particular point we have to agree with

1 Prosecution counsel.

2 And when the question was put to Abbot Antaresse, D29-5012, as to whether at any
3 point there were 1,000 RFACPP members in Mbaïki, he said, and I quote in French,
4 (Interpretation) "A thousand men, no. It's a lot all the same."

5 (Speaks English) And we also refer your Honours to the evidence of the Lobaye
6 prefect. Again, I quote in French: (Interpretation) "It's true, a few rare Anti-Balaka
7 were close to the accused here. They were in the town. But a lot of young people
8 were interested in the whole thing and had spontaneously become Anti-Balaka."

9 (Speaks English) And, lastly, on this point I would like to address -- I would like to
10 return to the matter of the crowd that was gathered outside the church. And, in fact,
11 your Honours have a photograph of that moment, or that crowd. And I'd like to
12 recall the evidence of D29-5013, who explained what Mr Yekatom had said to this
13 crowd of agitated, hostile youth that had gathered outside the church waiting for
14 Mr Yekatom's green light to unleash violence upon the Muslims of Mbaïki. And she
15 said, and I quote -- well, she said that he said, rather: (Interpretation) "You're too
16 young. You don't belong here. You belong in the fields to help your relations work
17 the land or in school. But, with me, this is professional work. You don't belong
18 here."

19 (Speaks English) And that's transcript 285.

20 So the Prosecution paints a picture of the facts on the ground in Mbaïki that distort
21 the reality, your Honours, about the role of civilian violence in this period.

22 And the evidence of D29-5013 in this regard is also relevant to the Prosecution's
23 second argument on this matter. And, that is, that the arrival of Mr Yekatom and the
24 RFACPP created an environment that facilitated and encouraged the targeting of the
25 Muslim population.

1 And a number of witnesses have given evidence about this hostile crowd that
2 gathered outside the church and at the bus station, and on the evidence, Mr Yekatom
3 warned these civilians, much to their disappointment, that the RFACPP was not in
4 Mbaïki to harm the Muslims, and that if any Christian were to harm a Muslim, he
5 would kill them.

6 And I'll return to the evidence of P-1666, on the screen in front of you, a Muslim
7 representative of the community in Mbaïki, and he says, in French: (Interpretation)
8 "If he hadn't said that, undoubtedly, it would have degenerated into a very difficult
9 conflict."

10 (Speaks English) And we submit, your Honours, that the Prosecution argument that
11 Mr Yekatom's arrival facilitated and encouraged the targeting of Muslims by
12 Christian civilians is massively undermined by the fact that Mr Yekatom issued this
13 public warning to the people of Mbaïki.

14 And in that respect it's little wonder that the Prosecution sought simply to ignore
15 these particular speeches as if they never took place.

16 All the evidence from Mbaïki Muslims, also Prosecution witnesses, that Mr Yekatom
17 and Freddy Ouandjio provided their contact details to Muslims and urged them to
18 contact them if ever Muslims were harassed or threatened, or, indeed, your Honours,
19 the evidence of multiple Prosecution and Defence witnesses - local authorities,
20 Muslim, Christian religious authorities, Muslim community leaders and
21 humanitarian personnel - who testified about the positive impact of Mr Yekatom's
22 presence in Mbaïki on peace and security that we detail in our brief.

23 And, no, nobody did vote for Mr Yekatom, but they did ask Mr Yekatom. These
24 authorities and humanitarian personnel asked Mr Yekatom to come to the church
25 meeting to address the population in the hope of easing community tensions, and

1 they asked him to stay in Mbaïki to help ensure that the Muslims who had gathered
2 in Mbaïki, whose departure had already been decided, would not be victims of the
3 intercommunity violence that was ravaging the country. And Mr Yekatom complied.
4 And all of these witnesses, Defence witnesses and Prosecution witnesses, all of these
5 witnesses were willing to come before your Honours and give Mr Yekatom credit
6 where it's due. Nothing more and nothing less.

7 And the fact that the Prosecution has not been able to acknowledge this evidence, let
8 alone accommodate it in its case theory, we would submit is a very good indication of
9 the fragility of their case against Mr Yekatom.

10 Now, just to conclude, your Honours, my submissions can be boiled down to this:

11 We respectfully request that when your Honours are assessing the evidence before
12 you and you encounter reference to conduct of the Anti-Balaka, or even phrases like
13 "Mr Yekatom's Anti-Balaka", or "Freddy Ouandjio's Anti-Balaka", that your Honours
14 keep both the nebulousness of this term and the role of the civilians in the violence
15 during the CAR crisis, that your Honours keep this at the forefront of your minds,
16 and that you closely examine the foundation for these assertions. And we would
17 submit that if your Honours do, then the extent to which the Prosecution case on
18 these counts glosses over the ambiguities in the evidence, and unsafely seeks to
19 attribute responsibility for the conduct of anyone and everyone who can claim to be
20 an Anti-Balaka, who is labelled as Anti-Balaka, to the RFACPP and to Mr Yekatom,
21 that this will be clear to your Honours.

22 And now I'll give the floor to my colleague, Ms Bafadhel.

23 Thank you.

24 PRESIDING JUDGE SCHMITT: [14:40:42] Thank you, Mr Suzuki.

25 MS BAFADHEL: [14:41:17] Good afternoon, your Honours. As forecast, I will be

1 dealing with and addressing the individual criminal responsibility of Mr Yekatom. I
2 know that we heard Ms Guissé say that I will also be dealing with legal
3 characterisation, but, actually, having heard the general submissions of the
4 Prosecution on Monday and Tuesday and having read their broad arguments in their
5 brief, it is our position that our submissions on the legal characterisation of the facts
6 remains unchanged. And so I will merely refer your Honours to the relevant
7 sections of our brief, and that's sections IVA and VC, instead of rehashing it today.
8 Instead, your Honours, what I intend to do today and this afternoon is to focus on the
9 three broad themes that were emphasised in the Prosecution's closing and, in
10 particular, on Monday both in terms of the evidence led and the implications of what
11 it is that the Prosecution asks of you when it comes to Mr Yekatom's individual
12 criminal responsibility.

13 And so really just a reset, your Honours, there are three broad themes that were
14 emphasised: This being the anti-Muslim animus; the depiction of Mr Yekatom as a
15 hierarchical warlord, inasmuch as it goes to the common plan and the essential
16 contributions; and his mens rea, that is, the Prosecution's fallback position that
17 Mr Yekatom must have known in the ordinary course of events that the alleged
18 commission of crimes would have occurred.

19 Now, your Honours, I'll start with this anti-Muslim animus, and with your
20 indulgence, I'll be referring it to "animus" to save myself some time.

21 This notion or this sentiment of animus, as you can see on the slide, really props up
22 each component of the Prosecution's case against Mr Yekatom. And these
23 components can be seen on the slide.

24 And, in particular, we see that the requirement to prove this animus beyond a
25 reasonable doubt is -- necessarily is to establish the various spokes, that being the

1 criminal policy, the common plan, as well as the various components of the essential
2 contribution.

3 And, yet, despite these efforts, as I will get to, we submit that the Prosecution has not
4 demonstrated that Mr Yekatom has an iota of animus against or towards the Muslims.

5 And the result of this, naturally, means each of these spokes falls and the case against
6 Mr Yekatom is just not met.

7 And so I will turn now to the lack of evidence on this animus. And, your Honours,
8 really, my point is a simple one: Given the significance of the animus to the

9 Prosecution's case - and this was a deliberate choice to make it front and centre - you
10 would expect that the case itself was formulated around strong and overwhelming

11 evidence, particularly, as we heard on Monday, that it was -- it is the Prosecution's
12 position that Mr Yekatom is someone fuelled by vengeance and motivated by a

13 violent anti-Muslim animus. Surely then, amongst the 16,000 items submitted by the
14 Prosecution, amongst the hundreds of hours of video and audio footage that you

15 have before you, your Honours, you can imagine that surely there must be a plethora
16 of items then, a plethora of evidence for the Prosecution to present before you, and

17 that when it came to Monday we would be hearing an abundance of evidence that the
18 Prosecution would have available to it at its fingertips to show this crucial point of

19 their case, this animus. Perhaps we would have expected to see videos which
20 captured Mr Yekatom describing his apparent hatred of Muslims, maybe even
21 speeches rallying the elements against them to target Muslim civilians.

22 After all, you will recall that on Monday we were told that Mr Yekatom and the

23 RFACPP held no shame in repeating this apparent animus in public for all the world
24 to see. So what is this evidence? What is this overwhelming evidence that they

25 have to prove the animus against Mr Yekatom? It's a fair question, your Honour,

1 given that we neither heard nor -- your Honours, given that we neither heard nor saw
2 such evidence during the Prosecution's closing arguments on Monday or Tuesday.

3 And it was this absence of direct evidence, I will argue, that goes directly to the
4 animus hub that was striking towards the end of the close of the Prosecution's
5 argument.

6 The Prosecution does have, your Honour, and you see on the slide at paragraph 452,
7 it does direct you to -- in its brief to the -- to a video which you will recall has
8 Mr Yekatom stating, and I'll quote, that "in our army there are not even Chadians.

9 There is not a man Moussa, there is not a man Adam". That's it. That is all the
10 Prosecution provides you with in terms of so-called direct evidence of Mr Yekatom's
11 animus.

12 There is no violent anti-Muslim rhetoric which would substantiate the exaggerated
13 claims that we heard on Monday or set out in the Prosecution's brief; there is nothing
14 to support the alleged vengeful nature; and there is not a single utterance that
15 Mr Yekatom considered the Muslims to be his enemy, let alone the enemy.

16 What I want to do, your Honours, is take this video in context. And when you do so,
17 it becomes apparent that Mr Yekatom isn't even talking about Muslims. He's
18 speaking of Seleka and not even in general terms.

19 So let me put it in context, your Honour, this -- your Honours. This video was
20 captured on 7 December 2013. That is when Seleka were still in power and in charge
21 of the CAR national army, having disbanded the FACA soon after its takeover of
22 Bangui.

23 The army, which the Prosecution puts in quotation marks at paragraph 452 of its brief,
24 concerns the FACA and the fact that it was not made of foreign nationals. Again,
25 this was in contrast to December 2013.

1 The Moussa and Adam spoken of, your Honours, are in reference to two notorious
2 and high-ranking Seleka generals in the CAR national army. And you'll see that we
3 depicted this on the slide. To the left is Moussa Assimeh, who is well known to have
4 strong ties with the Sudanese Janjaweed. And on the right, Nouradine Adam, who
5 the Office of the Prosecutor, as a whole, alleges wielded more power than Djotodia
6 and is known to have strong Chadian links.

7 It's not quite the smoking gun evidence which would support by hyperbole set out by
8 the Prosecution on Monday.

9 So what is the evidential basis then - again, we have to ask this question - that the
10 Prosecution wants you to find Mr Yekatom guilty of? How is it trying to establish
11 this key component of its case?

12 And it's not as if, your Honours, that this was a situation for lack of opportunity.

13 The crisis took place when social media was prevalent. When we know that
14 journalists were running around on the grounds with their cameras, how is it not that
15 one journalist caught him on camera uttering the words of this animus, uttering his
16 hatred for Muslims? Perhaps he never said it.

17 And so what the Prosecution does - and this is my next point - in order to paper over
18 this crack, your Honours, is it asks you to instead infer, instead of looking at his actual
19 words and his actual conduct, it asks you to infer the animus from the words of others.
20 It's trying to attribute the words of other individuals and literally put their words into
21 his mouth.

22 So there are three main points that I will deal with here.

23 The first, and I set out some examples from the Prosecution brief at paragraphs 140,
24 169, 174, and 182, is the Prosecution extensively relies on the rhetoric of unknown
25 individuals and persons to attribute to the same animus to Mr Yekatom. These are

1 individuals, as we've heard Mr Suzuki just mention, with no demonstrable link to
2 Mr Yekatom.

3 And I want to flag here in particular one paragraph at paragraph 451 of the next slide,
4 if my colleague can take that. And I just emphasise, this is not an isolated example
5 and it's done for the purpose of this hearing alone, but here you'll see the Prosecution
6 asserts that "Yekatom's elements" - and I'm quoting here - "also expressed the same
7 anti-Muslim animus".

8 As already set out, your Honours, the use of the word "same" here is rather
9 misleading when the Prosecution is wanting to infer Mr Yekatom's animus from the
10 acts and words of others. This would presume a starting point, of course, that in the
11 first place they had established that Mr Yekatom had uttered the animus himself.
12 No such basis has been set out.

13 But I'll direct you to the right-hand side, and that's CAR-OTP-2065-002, and you'll
14 recall that this video in particular was played in court on Monday and it was
15 presented as a video - and I'm quoting again - that "demonstrated the alleged
16 anti-Muslim animus policy with counsel stating that the video depicted Rodrique
17 Momokama, who we described as 'Mr Yekatom's right-hand man'".

18 The video - and again I'm not replaying it - was played from the first minute, and I'm
19 sure it will not have escaped your Honours' attention that in the 45-second clip
20 played in court, Momokama was nowhere to be seen. We didn't stop on any clip, we
21 didn't see him appear. And that's because when you view the entire footage, your
22 Honours, in the very first seven seconds of that clip what we see is Momokama
23 literally walking away from the group that ends up spouting the anti-Muslim rhetoric
24 that was played by the Prosecution in court. This was, of course, we say,
25 intentionally glossed over by the Prosecution for dramatic license. That's not quite

1 how one should be dealing with the evidence, however.

2 Apparently, for the Prosecution, it's sufficient that Momokama would have been in
3 the vicinity of persons who then subsequently spoke of their hatred towards Muslims
4 to then, to the third degree, try and attribute that to Mr Yekatom.

5 And then this is not -- further compounded because it then makes it a central part of
6 its case. This is all that the Prosecution's case is built on. It's really a case of
7 desperate times when the evidence doesn't show you or present with what you want,
8 to call for desperate measures, that is to overstretch the evidence to a point where it
9 becomes unreasonable.

10 The second point with regard to the inference of anti-animus -- anti-Muslim animus is
11 that the Prosecution continues to take video footage again out of context. And
12 Ms Dimitri has already fleshed this out this morning. And really here it's the same
13 tactic, the same modus operandi when we come to look at the animus. Again, I don't
14 intend to show the video again because your Honours will have seen it. And if I can
15 use the shorthand, you will recall the Habib Beina genocide video. Again, they
16 make this a central part of their case. We were told that it spoke volumes of the
17 murderous intention of Mr Yekatom.

18 This single video, your Honours, is not even categorical of Beina's murderous
19 intentions, let alone Mr Yekatom's. If you take the video in context, when you look
20 at the actual words that Beina was using, he speaks of the Seleka, he speaks of the
21 Janjaweed, he speaks of the Sudanese, he speaks of the Chadians. He does not speak
22 of the Muslims. And this is not a case, that was dealt with by Ms Dimitri this
23 morning, where the use of the word "Muslim" intended -- was meant to intend Seleka.
24 This is quite literally Beina using the word "Seleka" in the context of other foreign
25 entities.

1 When Beina says "Seleka", he means the Seleka. And that's not my word, your
2 Honours. This is the word of two insider witnesses or two witnesses called by the
3 Prosecution who contextualise the speech in reference to political interferences in
4 CAR. Neither witness ascribed to the Prosecutor's inference that Beina would have
5 been discussing the commission of genocide against Muslims.
6 In contextualising the video, your Honours, it also matches the evidence before you of
7 Beina's provision of assistance and protection of Muslims in CAR during the charged
8 period. And I'm not going to go into this, but this is set out in paragraphs 236, 324
9 and 331 of our brief.
10 But all I will ask and put out right now is that this man, Beina, who is apparently
11 intent on committing genocide, not weeks later is then assisting the very same
12 Muslims, and yet we are being asked to use his words to attribute and to accuse
13 Mr Yekatom of holding the very same murderous intentions. It just does not add
14 up.
15 And then the third point, your Honour, on this inference aspect is that the
16 Prosecution has not led any evidence that would show that Mr Yekatom was
17 physically present in any of the videos where such animus is depicted, that he's quite
18 literally standing there as someone else is spouting the hatred for Muslims.
19 You will recall that we were told that Mr Yekatom promoted and encouraged this
20 animus. But where is the evidence of this? Where is the evidence that he promoted,
21 that he stood by while others spoke of such animus? Again, your Honours, it's
22 nowhere to be seen, despite the fact that this is front and centre in the Prosecution's
23 case.
24 And I refer here to the Prosecution's repeated use of the video in which you
25 saw - again, I'm not going to replay - on Monday the video of Max Maidanda, and

1 that's CAR-OTP-2065-3188. And your Honours will recall the attempt on Monday to
2 link this item with yet another video that shows Mr Yekatom would have been sat
3 next to Maidanda after he was filmed using anti-Muslim rhetoric. The inference
4 being then, of course, that Mr Yekatom would have heard Max Maidanda.

5 There is no proof of that, your Honours. There's no proof that Mr Yekatom knew
6 that Max Maidanda harboured such sentiments. And this is not just speculation, but
7 it's also supported by the fact that of other -- from evidence of other Prosecution
8 insider witnesses, including P-1839, P-1674 and P-1786. Each of them, when
9 confronted with the same video, had no clue that Max Maidanda harboured or
10 expressed this sentiment. They showed genuine shock when they were -- when they
11 were shown it.

12 We have also heard evidence, including from P-1839, that the RFACPP members were
13 not always transparent with Mr Yekatom. Their acts were often conducted without
14 his knowledge and behind his back.

15 In this context then, when the Prosecution is asking you to piecemeal a series of
16 videos to infer animus to Mr Yekatom, it is insufficient, it is insufficient to attribute
17 such a policy, such a sentiment to Mr Yekatom. And, in particular, it lacks any real
18 value. It does not amount to the exaggerated terms.

19 And I want your Honours to really remember the vengeful nature, the use of the
20 words used by the Prosecution to try and portray and depict Mr Yekatom as someone
21 that held such hatred for Muslims.

22 I'll move now on to the second general theme that was presented to us on Monday
23 and -- to your Honours on Monday and Tuesday and that's being the common plan
24 and essential contribution and this portrayal of Mr Yekatom as this hierarchical
25 warlord.

1 It's quickly become a recurring theme, and we've each touched on it today in our
2 closing, that in its brief and in its closing, the Prosecution repeatedly recycles the same
3 narrow set of facts to support a circular argument. In this case, in relation to
4 Mr Yekatom's individual criminal responsibility, the circular argument is: One, that
5 Mr Yekatom held an anti-Muslim animus; two, that this animus is why he entered
6 into the common plan; three, that he provided an essential contribution to the
7 common plan to further the alleged animus; and that, four, that this animus is proven
8 by the very existence of the common plan and is an essential contribution to it.
9 It is a roundabout argument.

10 And we are reasonable, your Honours, we understand that these cases often -- there is
11 a natural overlap, of course there is, between facts which underpin the common plan
12 and facts which underpin the essential contributions. However, it becomes
13 problematic when circular arguments are used to substitute for actual evidence and
14 actual facts or as a means to distract from their absence. This reasoning is not only
15 circular but it's also self-fulfilling. Your Honours are essentially being asked to
16 presume the very conclusion that they seek to prove.

17 So it's insufficient -- I don't have enough time to go through each of the essential
18 contributions, and in any case, this is all set out in our final brief. But I will focus on
19 key mischaracterisations in the Prosecution's closing concerning the alleged
20 structuring of the RFACPP, which neatly demonstrates the Prosecution's cognitive
21 disengagement from the evidence and which serve to break these circular arguments
22 that I refer to and that were mentioned to us and presented in this Court on Monday.
23 The structuring, this is a first limb of the charge essential contributions against
24 Mr Yekatom. During its closing, the Prosecution developed what I can only describe
25 as a mantra. It repeatedly described in absolute terms, there wasn't any qualification,

1 in absolute terms they describe Mr Yekatom as holding undisputed power, stating
2 over and over that he held the most important position of authority, that he was an
3 unchallenged leader, that his authority was uncontested, unopposed and that his
4 orders were obeyed to the letter.

5 Each phrase that I've just read out was repeated several times and that this was in the
6 space of less than an hour on Monday alone.

7 I'm not sure if counsel was attempting to manifest or conjure up some sort of evidence
8 by repeating these assertions, but the evidence to support these lofty claims remained
9 largely uncited in its closing, as is the case in its final brief.

10 And we provide examples of this, your Honours, at the current slide. That the same
11 exaggerated claims that we heard in court are also recycled in the brief, with no
12 supporting citations. Where there are cites, such as the case at paragraph 461 at the
13 bottom right-hand side, the reference is uncorroborated and directs your Honours to
14 evidence which by very nature cannot bear the load of such an exaggerated claim.

15 For example, and again this is just one example that I'm setting out, the allegation that
16 the elements did not do anything without Mr Yekatom's authorisation is supported
17 solely by P-2328. Even without assessing this witness's evidence, that's quite a task
18 for any witness to be able to prop up this huge claim, this unequivocal assertion. But
19 it's made worse here when your Honours will recall that Witness 2328 is an
20 individual who possesses no understanding of the operational structure of RFACPP,
21 given he was not part of the movement, and demonstrated by the intentional bias and
22 inconsistent claims with regards to the organisation of the group or the movement.

23 And this is set out in paragraph 461 of our brief.

24 How can a witness that unequivocally states that Mr Yekatom's authorisation was the
25 be all and end all also then in the same breath say that, actually, Mr Yekatom and the

1 movement would have been disorganised, unstructured and relying on handouts
2 from local villagers. It does not quite paint the picture that the Prosecution would
3 have us believe that presents Mr Yekatom as an all-powerful, all-encompassing
4 commander which oversaw a structured, automated movement in order to
5 demonstrate and discharge its burden of proof.

6 Again, this is not an isolated example of the OTP's approach, nor is it one that can
7 only be applied in relation to the alleged hierarchy of the movement.

8 You will recall claims on Monday that Mr Yekatom commanded through fear. And
9 the words that were chosen by counsel were that violence, aggressions and killings
10 were the hallmarks of Mr Yekatom's authority.

11 Again, I appreciate I may sound like I am on repeat, but what was the evidence that
12 supports these claims? What was the evidence that supports the Prosecution's
13 attempts to malign Mr Yekatom a fear mongering individual?

14 There were no cites on Monday and there is equal distortion on its final brief.

15 And I refer here to paragraph 478 of the Prosecution brief which refers to
16 Mr Yekatom - and I'm quoting here - as firing on P-1647 "for no apparent reason safe
17 to demonstrate his authority". "No apparent reason" again are the words chosen by
18 the Prosecution and that's quite a choice of words when you look at the actual
19 underlying incident that they are describing.

20 Your Honours will recall, this was the facts which underpin this incident is one where
21 the members in question were intent on killing Mr Yekatom which resulted in a
22 confrontation and which the Presiding Judge referred to as a duel.

23 It is this incident, your Honours, that P-1647 was injured and which -- and the death
24 of the two members which the Prosecution seeks to rely on in its brief to paint this
25 picture of a commander that instilled fear amongst the RFACPP members, members,

Trial Hearing
Closing statements

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1 of course, who were not afraid to shoot at Mr Yekatom.
2 Nor were the Prosecution's efforts on Monday to depict Mr Yekatom as a zealous
3 warlord matched in any reality. The Prosecution clings on to alleged titles given to
4 Mr Yekatom to point to his authority and then it makes sweeping conclusions as to
5 how such authority was exercised in reality.
6 And it's this that I want to spend a moment on and I want to play two videos to your
7 Honours to demonstrate the reality in which Mr Yekatom interacted with the
8 RFACPP and its members. And we'll play them back to back.
9 The first video to be played is CAR-OTP-2065-4512 and that's from 29 seconds to the
10 end -- 29 seconds to the end, please.
11 And for the translators, the reference is CAR-D29-0006-1186.
12 (Viewing of the video excerpt)
13 THE INTERPRETER: [15:10:01] (Interpretation of the video excerpt)
14 "Have you drunk anything? If you have any bottles, you should fill them."
15 MS BAFADHEL: [15:10:11] Thank you.
16 And to save time, I suggest that we play the second video at CAR-OTP-2065-4849.
17 And this, your Honours, is a longer video so I only ask that it's played from 30
18 seconds -- for 30 seconds from 1 minute 30 to 2 minutes.
19 And the translation is CAR-OTP-2118-5685 at 5688, lines 51 to 70.
20 (Viewing of the video excerpt)
21 THE INTERPRETER: [15:11:01] (Interpretation of the video excerpt)
22 "We don't have weapons. They -- we don't have the military means. We don't have
23 the means to attack. They -- they come to back up with us. If there was only one
24 base and if 10,000 or 100,000 attack a base, a battle to the death ..."
25 MS BAFADHEL: [15:11:34] Thank you to the interpreters.

1 So the first video, your Honours, we could see an animated Ouandjio who was
2 yelling at the RFACPP members and you could see Mr Yekatom stood right there.
3 You could see him stay silent and you could see him at the end awkwardly sit down
4 and then strike up conversation with a member next to him only once Ouandjio has
5 left. And it was something inconsequential about drinks.
6 You will recall only yesterday Prosecution counsel argued that the evidence
7 demonstrates that Mr Yekatom exercised authority over all elements, including
8 Ouandjio. We just saw. We were told that this was a top-down hierarchy with
9 Mr Yekatom sitting right at the top as an all-powerful - and again this is the
10 Prosecution's words - an all-powerful and feared commander.
11 The image that the Prosecution wants you to have is one where members observed
12 every word of Mr Yekatom. We heard and were told that Mr Yekatom's words were
13 engraved in the minds of the elements apparently and where members would sit
14 silently in his presence out of fear for their lives or violent repercussions.
15 And yet, your Honours, there's not a single repercussion for holding such an outburst,
16 not a single word was uttered by Mr Yekatom. Is this really the reality of a
17 hierarchical warlord that the Prosecution wants us to believe?
18 The second video equally demonstrates the same. And whilst only 30 seconds were
19 played, this is a longer five-minute footage which captures strategical discussions
20 being held between Mr Yekatom and other RFACPP members.
21 The discussion, and it was a discussion, centred as to whether the movement should
22 return to the bush given the lack of ammunition. Mr Yekatom's proposals were
23 repeatedly challenged by other members and a back and forth was essentially held.
24 Again, we are told by the Prosecution, your Honours, that every decision, every
25 directive flowed from the top from Mr Yekatom himself, that he dominated the will of

1 the others, that his word was accepted and followed, without challenge and without
2 exception.

3 Again, this does not play out in reality. We can literally see with our own eyes that
4 his proposals are challenged, that his words aren't necessarily listened to.

5 It's not a case of just taking the title and then understanding that the authority must
6 then match, and that we say is systematic of the Prosecution's case in this regard.

7 And it brings me to the third general theme that was discussed on Monday by
8 Prosecution counsel with respect to the mens rea.

9 And you will recall that we were told - and again I'm quoting - that Mr Yekatom,
10 "mindful of the context of hostilities against Muslims [... that] we", I'm assuming
11 talking about your Honours, "can only come to the conclusion that Mr Yekatom must
12 have known that his acts -- that the acts committed by his elements were going to
13 occur in the ordinary course of events."

14 Again, our arguments as to the actual structures and the chain of command and the
15 hierarchies are set out in our brief. But what I want to focus on here, your Honours,
16 is that we do not contest that there is an anti -- or was an anti-Muslim sentiment
17 which existed in CAR and that was held amongst CAR nationals. That's not what
18 we're doing. And this again is all set out in our brief and was explained by
19 Mr Suzuki.

20 But at the same time, one has to accept the reality that Seleka atrocities were being
21 committed against the civilian population, including against individuals of the
22 Muslim faith during the relevant period. Ignoring such crimes in order to appear
23 neutral, or for whatever reason, skews the realities of the conflict and the evidence of
24 the Prosecution witness.

25 We have heard Prosecution witnesses, both fact and experts, Defence witnesses, and

1 former President Samba-Panza testified as a Chamber witness, all of whom spoke of
2 the violence perpetrated by the Seleka and the fact that they had gutted the security
3 and civilian infrastructures. And we agree this isn't a referendum as led my
4 Prosecution counsel on who was to blame, but this was the context.

5 And so, your Honours, if the Prosecution's position is correct, that if Mr Yekatom
6 could really be held accountable for the fact that others, not him, held an anti-Muslim
7 animus, that it would mean no entity, no authority could undertake operations in
8 order to counter the extensive and indiscriminate atrocities committed by the Seleka.

9 It would mean there would be no hope to restore security structures all because of the
10 fact that to undertake such operations, whilst others held an anti-Muslim animus at
11 the same time, would find you individually criminally responsible under the
12 Prosecution's case. This is even in the case where the international community was
13 paralyzed from protecting civilians and where there was no forthcoming assistance.

14 The ICC framework is not designed in this way, your Honours. The Court does not
15 ascribe to the notion of guilt by association, which is what the Prosecution is asking
16 you to do. It is established on individual criminal responsibility. You have to
17 individually find that Mr Yekatom held that animus. This means in plain terms that
18 Mr Yekatom cannot be convicted for isolated criminal acts committed by prejudice
19 people beyond his control.

20 He undertook proven efforts to ensure directives to target Seleka forces and at the
21 same time protect the civilian population was specific and clear to all RFACPP
22 members and he adhered to the principle of distinction in all respects in the
23 operations, in the trainings and in the disciplinary structures.

24 When brought to his attention, as set out by Mr Suzuki, and where he had knowledge,
25 the evidence is again depicted in our brief, showed that he stamped it out, whether it

1 was potential or real threats, to the civilian population.

2 And we see from the evidence, including CAR-OTP-2065-3220, that Mr Yekatom was

3 adamant that the RFACPP's efforts to protect the civilians were distinguishable from

4 the acts and crimes committed by the Seleka, such that he was adamant that they

5 were not undone by any rogue members or by members of other Anti-Balaka groups

6 operating in the vicinity. He ensured this by distinguishing himself as a FACA

7 member at all times within the RFACPP movement and to outsiders.

8 More crucially, your Honours, he repeated it to Muslims and to non-Muslims alike

9 that he did not consider the Muslim population to be the enemy or his enemy. We

10 have him on film saying the Muslims are his brothers. These were his words, not the

11 words attributed to him from any other person. This was direct and repeated

12 evidence which came out of the hundreds of hours of footage collected in this case

13 and then attested to by witnesses. He freely worked with national, international, law

14 enforcement and religious leaders to secure his objectives to protect the people, each

15 of which recognised his legitimate efforts, as set out by Mr Suzuki, and each of whom

16 continued to work with Mr Yekatom well beyond the charged period.

17 It is amongst these acts, your Honours, that we submit war crimes and crimes against

18 humanity do not follow with virtual certainty from these actions, from Mr Yekatom's

19 actions. They were not what he wanted, they were not what he espoused, and he

20 could not stop them.

21 If crimes like those charged against Mr Yekatom could flow with virtual certainty

22 from conduct like this, then everything becomes virtually certain. It's back to guilt

23 by association, your Honours. And the Prosecution's case is premised on holding

24 Mr Yekatom to this impossible standard. There's just no way out. And they do this

25 because it's the only way that their case can work. And this stretch of the law of the

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1 evidence is seen in each of the presentations provided today.

2 We have heard from Ms Dimitri of the Prosecution's attempts to ignore the evidence
3 of the reality of the Anti-Balaka coordination. Why? Why does the Prosecution
4 need to do this? It's because it needs to for the policy to be met with respect to
5 Mr Yekatom.

6 You heard just now from Mr Suzuki how the role of the civilians was distorted.
7 Again, why? Because it needs to do this to broaden the scope of the perpetrators for
8 which Mr Yekatom can be held accountable for.

9 And you heard how the Prosecution has set to cast Mr Yekatom as this again
10 all-encompassing, violent leader in the absence of any evidence that this was a reality.
11 And the Prosecution's fallback on the mens rea under Article 30 is no different here.
12 It wants and requests you to broaden and lower the threshold of Article 30 to such an
13 extent because, if you were to apply to the reasonable standard, then a reasonable
14 doubt exists.

15 And that concludes my submissions today on the mens rea, your Honours.

16 If I can now pass the floor to Ms Dimitri.

17 PRESIDING JUDGE SCHMITT: [15:22:57] Thank you, Ms Bafadhel.

18 MS DIMITRI: [15:23:32] Good afternoon, your Honours.

19 I'm just going to ignore the technical issue.

20 I'm going to conclude, your Honours, with a few -- a very few minutes, less than 10,
21 on count 29 and then with my concluding remarks.

22 And I want to briefly address what I consider as the elephant in the room, P-2475.

23 This witness is glaringly absent from the Prosecution's brief. The Prosecution has
24 not demonstrated the transparency required to inform your Honours and the parties
25 and especially us in a timely manner that they're withdrawing their reliance on P-2475.

1 Although this omission is clearly noticeable from the absence of 2475 from their brief,
2 save for paragraph 808, where they merely state they don't rely on him regarding his
3 age.

4 Now yesterday they appeared to go a step further in their closing statement by saying
5 that they won't rely on him at all. And in stark contrast, the Legal Representative of
6 the alleged former child soldier, in his brief, he places significant reliance on the
7 evidence of 2475.

8 And he even goes as far as alleging in paragraph 64 and 71 of his brief that if someone
9 comes and testifies, claims to be of a certain age and brings a false document, that the
10 Prosecution recognise as fabricated and the Defence finds the original document
11 showing his true age, it doesn't matter, we should ignore the original document and
12 we should rely on the oral testimony, regardless of the fact that even the Prosecution
13 recognised its fabrication. So, in other words, it doesn't matter if a witness comes,
14 testifies, lies, you uncover that lie. He testified under oath and this should be
15 sufficient.

16 Imagine the message a representative of this Court is sending when presenting such
17 an argument and the weight on the accused having to face two Prosecutions, because
18 this is what it is when you read those paragraphs.

19 And if this approach is endorsed by the Legal Representative, it raises significant
20 concerns about the handling of their field team and the potential prevalence of false
21 identity among the 292 victims they represent.

22 And he's asking you to ignore the victims' forms, claiming that they contain errors,
23 they had no time. And irrespective of the debate surrounding the victims' forms,
24 more concerning is that according to the latest Registry filing, and you can see it on
25 slide 74, the Legal Representative of the alleged former child soldier represent 292

1 participating victims, and because of the ABC procedure, we only received seven
2 forms, seven victim participating forms. And the evidence before your Honours
3 demonstrates that all seven forms are false or contain false information. And the
4 forms appear on the slide before your Honours. Seven out of seven, this is a striking
5 ratio. And it's a disturbing indication on the remaining 292 clients he represents, for
6 which we do not have access to their victims' forms.

7 And more disturbing is in his closing remarks yesterday counsel indicated that he
8 was proud to have been part of the Lubanga case. This is the case where until the
9 very end victims representative continued to rely on witnesses who had fabricated
10 evidence in that case, continued to rely on the evidence of witnesses that were
11 disregarded by the Chamber in that case. This is the standard of truth he is asking
12 you to apply against Mr Yekatom on count 29.

13 And I now want to go back very briefly on how the Prosecution is capitalising on
14 ambiguities, including count 29. And a clear example of that is again the manner in
15 which they used in their brief under count 29 the evidence of P-1339.

16 And you can see on slide 75 that under the chapter of count 29 in the Prosecution's
17 brief, they use the evidence of 1339 to say that there was a child named Bougie Noire
18 at Yamwara school and they quote an extract of his evidence where he would have
19 said that this individual Bougie Noire was 14, 15 years old. And they used that
20 evidence again yesterday in their closing statement. And they completely
21 disregarded the clarifications you obtained, Mr President, when you confronted him
22 with his prior recorded testimony where he said that individual would have been 18
23 or 19 years old. And they also completely disregarded, and it's also on your screen,
24 when you specifically said that there's obviously an uncertainty with regard to the
25 age.

1 Despite your words, they rely on 1339 to support count 29.

2 And yesterday they went as far as claiming that the document we submitted in
3 relation to Bougie Noire stating that he was 17 years old should be disregarded by
4 your Honours because it's unreliable, according to them. They asked you, they
5 specifically said it's unreliable and we're asking the Chamber to be reminded of the
6 evidence demonstrating that official orders, including birth certificates, are easily and
7 routinely falsified in CAR. I wish they had reminded that to themselves when they
8 submitted the false baptism certificate of 2475 in this case.

9 And as your Honours know, it's no secret that we keep blaming the Prosecution for
10 their lack of diligence in relation to the child soldier charge in this case. And our
11 explanation for the Prosecution's inaction and silence is that they also wanted a
12 conviction at all cost on count 29. And we believe that this transpires from the
13 disparity in their dedication and the resources they put in their investigation in
14 relation to alleged interference after P-1847 testified when you compare it to the lack
15 of resources and dedication they put for Article 70 offences in relation to count 29.

16 When it serves their purpose, they will deploy time and resources.

17 After 1847 testified, they secretly went and recorded him. They obtained private
18 Facebook messages. They collected CDR against some of Mr Ngaïssona's team
19 members. When we wanted private Facebook messages, they objected. When we
20 wanted VWS to conduct a simple search, keyword search in phones of individuals
21 who were implicated in the fabrication, they objected. But when they wanted
22 something from VWS, such as the sources of a certain newspaper article in relation to
23 a witness from Mr Ngaïssona, they filed a motion. Why? Because they wanted to
24 be able to tell you yesterday that you can convict on count 29 because none of the
25 remaining witnesses is implicated in the fabrication of evidence.

1 They completely forget that 1974 and 2018 are surrounded by fabrication of evidence.
2 There are audio Facebook messages where they appear to be preparing an upcoming
3 witness, who was finally withdrawn, for his testimony where they are asking money
4 to beneficiaries. They also forget that these two witnesses are closely related and
5 collaborated with 2580 and 2638. They also rely on 2475, who is a family member of
6 P-1974, and that P-1974 told you how he was recruited in Pissa, which is not the
7 evidence of P-2475.

8 They asked you yesterday to convict on count 29, telling you that the remaining of the
9 witnesses is not implicated. They have the audacity not to dedicate time and
10 resources to investigate on Article 70 offences in relation to count 29 and they
11 dedicate an entire chapter of their brief relying primarily on the evidence of 1974 and
12 2018.

13 So I urge your Honours not to be misled by their action and to scrutinise the integrity
14 of their evidence and the approach they took in this case.

15 Counsel Vanderpuye concluded his presentation yesterday by emphasising the
16 profound suffering endured by the numerous victims in Central Africa in 2013-2014.

17 We agree entirely. He urged you to deliver justice. And we echo that call. But
18 justice demands the meticulous examination and the accurate citation of the evidence.
19 Justice requires acknowledging when a charge is not supported by credible evidence.
20 Justice requires not waiting until the eleventh hour to withdraw its reliance on a key
21 witness whose evidence was fabricated. And justice also entails resisting the
22 temptation to blame Mr Yekatom for the commissions of crimes for which he is not
23 culpable of purely to meet the demands of victims.

24 True justice is impartial, it's grounded in fact and unwavering in its commitment to
25 fairness. And this is why, because of the brief we presented, the evidence you heard,

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- 1 we're asking you to acquit Mr Yekatom on all charges.
- 2 This concludes the Yekatom Defence presentation.
- 3 PRESIDING JUDGE SCHMITT: [15:38:29] Thank you, Ms Dimitri.
- 4 This concludes also the hearing of today. Tomorrow we continue with the
- 5 presentation by the Defence of Mr Ngaïssona.
- 6 THE COURT USHER: [15:38:48] All rise.
- 7 (The hearing ends in open session at 3.38 p.m.)