

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rambhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Rosario Salvatore Aitala
8 Confirmation of Charges Hearing - Courtroom 1
9 Friday, 11 October 2019
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:04] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:31:30](Interpretation) Good morning. I would
15 like to welcome you to the last day of the confirmation of charges hearing. I would
16 like to welcome all those individuals present in the courtroom as well as those present
17 in the public gallery.
18 Courtroom officer, would you please call the case.
19 THE COURT OFFICER: [9:31:59] Good morning, Mr President, your Honours.
20 The situation in the Central African Republic II, in the case of the Prosecutor versus
21 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
22 And for the record, we are in open session.
23 PRESIDING JUDGE MINDUA: [9:32:19](Interpretation) Thank you very much.
24 I would like to once again welcome the parties and participants as well as the
25 suspects, Mr Alfred Yekatom and Mr Patrice-Edouard Ngaïssona.

1 Now, I would like to call upon the parties and participants to introduce themselves,
2 starting with the Office of the Prosecutor. Please.

3 MS BENSOUA: [9:32:49] Thank you, Mr President. Mr President, the Office of
4 the Prosecutor is represented today by Mr Kweku Vanderpuye, senior trial lawyer;
5 Mr Olivia Struyven, trial lawyer; Mr Eric Iverson, trial lawyer; Mr George Mugwanya,
6 appeals counsel; Mr Nicholas Leddy, trial lawyer; Mr Pierre Belbenoit-Avich,
7 associate trial lawyer; Ms Sylvie Wakchom, assistant trial lawyer; Ms Lillian Robb;
8 Ms Irina Galupa, assistant legal officer; and Mr Yassin Mostfa, case manager. I am
9 Fatou Bensouda, Prosecutor.

10 PRESIDING JUDGE MINDUA: [9:33:42](Interpretation) Thank you very much,
11 Madam Prosecutor. I would like to welcome you once again.

12 Now I shall turn to the Defence teams, commencing with the Defence team for
13 Mr Yekatom. Maître, please.

14 MS DIMITRI: [9:33:57] Good morning, Mr President, your Honours. Good
15 morning to my colleagues. The Defence of Mr Yekatom this morning is represented
16 by Peter Robinson, Yuqing Liu, Florent Pages-Granier, Wilhelmina Whittingham, and
17 Lena Casiez, as well as myself, Mylène Dimitri.

18 PRESIDING JUDGE MINDUA: [9:34:18](Interpretation) Thank you very much,
19 Counsel Dimitri.

20 Now I would like to turn to the Defence team for Mr Ngaïssona. Counsel, please.

21 MR KNOOPS: [9:34:27] Good morning, Mr President, your Honours. Good
22 morning. The Defence team of Mr Ngaïssona is represented today by Ms Antonina
23 Dyk, Marion Carrin, who's not here, Sara Pedroso, and Maxime Le Heiget. I'm
24 Mr Knoops, I am counsel of Mr Ngaïssona. Thank you.

25 PRESIDING JUDGE MINDUA: [9:34:57](Interpretation) Thank you very much,

1 Mr Knoops.

2 Now, I turn to the Legal Representatives of Victims. Counsel, please.

3 MR SUPRUN: [9:35:06] (Interpretation) Good morning, Mr President. Good
4 morning, your Honours. The child soldiers are represented by myself -- Ludovica
5 Vetruccio and myself, Dmytro Suprun, Legal Representative of Victims.

6 MS MASSIDDA: [9:35:24] (Interpretation) Good morning, Mr President. Good
7 morning, your Honours. For the Legal Representatives of Victims of other crimes
8 today, the team comprises Mrs Asso, Mrs Pineau, Mrs Peña and I am Paolina
9 Massidda, lead counsel for the OPCV.

10 MS RABESANDRATANA: [9:35:51] (Interpretation) Good morning, your Honours.
11 For the representatives of the victims of the other crimes, Elizabeth Rabesandratana,
12 La Rochelle bar Rochefort.

13 PRESIDING JUDGE MINDUA: [9:36:03](Interpretation) Thank you very much,
14 indeed.

15 I note that there is nobody in the registry seating area this morning. There we have
16 it.

17 Now, on our side as you will have noted, the composition of Pre-Trial Chamber II
18 remains the same. It has remained unchanged.

19 Now for today's hearing, first of all, the Chamber would like to take note of the
20 requests filed by the parties since the end of the last session of this confirmation of
21 charges hearing. These are documents 363, that is the (Speaks English) Yekatom first
22 request for public redacted versions of decisions. (Interpretation) And document
23 36 -- 375 --

24 THE INTERPRETER: Corrects the interpreter.

25 PRESIDING JUDGE MINDUA: [9:37:05] (Speaks English) Prosecution's request

1 pursuant to Regulation 35 for variation of time limit to add two documents to its
2 amended list of evidence.

3 (Interpretation) Once the Chamber has received all the responses to said requests, it
4 will process them in due course. Then, I would like to recall that in keeping with our
5 schedule, we will today proceed with the final remarks on the part of the parties and
6 participants.

7 The Chamber has already received and analysed attentively the written conclusions
8 by the parties and participants and would like to recall its oral decision of 25
9 February 2019 in which it already stated that the final statements should comprise
10 specific responses to arguments put forward in the hearings and that they will only be
11 of use to the extent that they will bring answers to this effect and within this context.

12 The Chamber would therefore call upon the parties and participants to not
13 concentrate on general statement with regard to the facts with a view to specifically
14 responding to the allegations formulated during this hearing.

15 Lastly, the Chamber would like to also recall that according to the schedule, the
16 scheduling order for the confirmation of charges hearing, the parties will each have
17 one hour of time allocated in order to present their closing remarks. The legal
18 representatives of victims will collectively have an hour and a half.

19 I would like to now give the floor to the Office of the Prosecutor for its representatives
20 to provide their closing remarks. Madam Prosecutor, please, the floor is yours.

21 MS BENSODA: [9:40:01] Thank you, Mr President.

22 Mr President, your Honours, first of all, I would like to apologise for not having been
23 able to be present during the opening phase of this confirmation of charges hearing
24 and I was not able as a result to address your Chamber. The reason being that I was
25 travelling and I was not able to return to The Hague on time because my flight was

1 cancelled and postponed or delayed on a number of occasions.

2 I regret this force majeure and would like to seize this opportunity provided to the
3 parties and participants to address the Court in the closing stages of these
4 confirmation of charges proceedings in order to say a few words. Then, I will give
5 the floor to Mr Kweku Vanderpuye, senior trial lawyer in this case.

6 Mr President, your Honours, the Central African Republic throughout the successive
7 armed conflicts that has hit it was the theatre of operations -- or the theatre, correction,
8 of numerous repeated crimes upon the civilian African population. Impunity has
9 prevailed generally speaking, as the victims have neither been acknowledged nor
10 compensated.

11 From 2012, the CAR was once again struck with a wave of widespread violence
12 perpetrated on a massive scale by both the Séléka and the Anti-Balaka and a thirst for
13 justice was born amongst the victims and the general population in the country.
14 Justice became an indispensable vector for the restoration of peace and reunification
15 of Central African society.

16 It is with this mindset that Catherine Samba-Panza, president of the transitional
17 government, seized my office in May 2014 of the criminal situation prevailing in the
18 CAR from August 2012, and it was this very same logic that gave rise at a later stage
19 to the creation of the Special Criminal Court and the proceeding instituted in the
20 Central African Republic against a number of Séléka and Anti-Balaka criminals.

21 The activity of my bureau or of my office is complementary to those of national
22 jurisdictions. I would like to be clear when addressing the Central African
23 population. It is Mr Ngaïssona and Mr Yekatom who find themselves in this
24 courtroom today. But my office is working on prosecuting crimes committed by the
25 different parties, by the various parties to the conflict and therefore by the Séléka.

1 Let me now move to the English language.

2 (Speaks English) Mr President, I shall now continue in English.

3 Your Honours, the case before you is one of ethnic cleansing. After the Séléka set
4 about a rule of scorched earth and terror, targeting former Bozizé strongholds and his
5 supporters, a counter-movement began to build within Central African Republic.
6 Widespread atrocities drove people to defend themselves, their communities and
7 their families against the Séléka rule. It was also driven by a desire for vengeance
8 and revenge against those perceived responsible for the Séléka crimes and those
9 perceived and portrayed as traitors for having sided with them. Muslims, once
10 neighbours, friends, family, sons and daughters of Central African Republic were
11 seen as collaborators, as foreigners.

12 When President Djotodia resigned and the Séléka began its retreat, Muslim civilians
13 in the western part of the country were left vulnerable. The Anti-Balaka left them no
14 choice, no safe place in their own country. Fuelled with hatred, the Anti-Balaka
15 carried out widespread and systematic attacks against civilian villages -- civilians in
16 villages all across Central African Republic. They hunted down, killed, raped, and
17 injured members of the Muslim population, including those fleeing. Muslims all
18 over Central African Republic understood that they were the Anti-Balaka target, and
19 the Anti-Balaka made all Muslims their target.

20 In expelling the Muslim population, the Anti-Balaka also pillaged and destroyed most
21 of the mosques of the western Central African Republic. Entire Muslim
22 neighbourhoods were razed to the ground and burnt down.

23 The Anti-Balaka's violent attacks forced the flights of Muslims within the country and
24 to neighbouring countries en masse. Thousands were evacuated in humanitarian
25 convoys accompanied by United Nations agencies, MISCA, Sangaris, Chadian, and

1 other forces. Even then, the Anti-Balaka attacked the protected convoys.
2 Once others fled through the bush, with many walking for weeks before reaching the
3 border, all the while being hunted down by the Anti-Balaka elements.
4 And by March of 2014, nearly all of Bangui's Muslim residents were gone as well as
5 most of the western Central African Republic's Muslim population. And by the end
6 of 2014, 70,000 Muslim refugees had reached Chad, while 120,000 Muslim refugees
7 had reached Cameroon.
8 The Prosecution has presented evidence of Muslim civilians born and raised in
9 Central African Republic who had to leave everything behind. They had to leave
10 their lives behind and years later, most have still not been able to return to their
11 homes and resume what is left of their lives. They do not dare to.
12 Others remained. They stayed behind because they did not have the means to flee or
13 because they were too old or too weak. Parents were forced to leave their disabled
14 children behind when carrying them because they became too exhausting.
15 Those who stayed behind were forced into enclaves and endured the most deplorable
16 circumstances. They were subjected to a constant climate of fear and insecurity. In
17 the enclaves, they had limited access to the most essential facilities and commodities,
18 including basic health care, sanitation, food and water. Shortages of medicine and
19 access to medical treatment combined with unsanitary conditions led to many deaths.
20 Access to fresh water was limited and poor water quality led to the proliferation of
21 sickness and disease. Unable to leave without risking death, these enclaves were
22 described as an open air prison.
23 Mr President, your Honours, the nature and devastating impact of the crimes
24 committed in this campaign of ethnic cleansing established by the evidence justifies
25 the referral of this case to your Chamber, and further, justifies committing Ngaïssona

1 and Yekatom to trial.

2 As the minister of youth, Mr Yekatom (sic) had authority and influence over the
3 Christian youth. While systematically emphasising the Christian community's
4 victimization of Séléka crimes and atrocities, he and the other Anti-Balaka key figures
5 portrayed the Muslim population as traitors and collaborators. They equated the
6 Séléka with Muslims, even denying the legitimacy of Central African Republic's
7 native Muslims, who they labelled as foreigners.

8 Mr Ngaïssona encouraged the Christian youth to take up arms. He mobilised and
9 he coordinated them on the ground. Mr Ngaïssona played an essential role in the
10 strategic common plan, which he helped develop and implement, organising and
11 coordinating Anti-Balaka chiefs and ComZones, to transform the Anti-Balaka into
12 a force able to eventually defeat the Séléka regime, but also, and importantly, Mr
13 President, one capable of committing the charged crimes on the scale and the
14 magnitude in which they were perpetrated.

15 Although, Mr Yekatom, he was not a member of the Anti-Balaka National
16 Coordination or leadership, he was a powerful Anti-Balaka commander. He and his
17 group violently targeted the Muslim population in Bangui, Boeïng and other areas in
18 southwestern Central African Republic.

19 Mr Yekatom armed and trained his group, thousands of men strong. He told his
20 troops that the purpose of the training was so that they could kill Muslims and
21 Sélékas. None of his troops would dare disobey. They openly discussed
22 slaughtering of the Muslim population, babies and women alike. Mr Yekatom is
23 held responsible for the crimes committed by his troops in areas under his control.
24 In implementing the operational common plan, he deployed troops and commanded
25 them in their violent targeting of the Muslim civilian population.

1 He failed to prevent or punish the troops under his effective command or control,
2 knowing that they were committing or about to commit crimes -- these crimes.

3 Moreover, he personally participated in attacks and ordered or committed the crimes
4 of murder, torture, inhuman acts, cruel treatment.

5 Mr President, your Honours, the Prosecution has collected and submitted a wealth of
6 evidence, more than sufficiently demonstrating substantial grounds to believe
7 Ngaïssona and Yekatom are responsible for the crimes as charged in the DCC.

8 Mr President, the Anti-Balaka's victimization of the Muslim civilian population as
9 charged was unprecedented in Central African Republic's history. The crimes were
10 extremely serious, and their effects and impact are unabated to this day. Many
11 Muslim civilians have no home to return to, to raise their children in, to associate with
12 the family in Central African Republic, and many never will.

13 Mr President, the Document Containing the Charges sets out the evidence that
14 establishes substantial grounds to believe that Ngaïssona and Yekatom are
15 responsible for the crimes charged. My office therefore seeks the confirmation of
16 these charges and the commitment of this case to trial. This will pave the way and
17 make it possible eventually for all Central Africans to see justice done.

18 Your Honours, in closing, allow me to also add that the case against Mr Ngaïssona
19 and Mr Yekatom is the first, but not the last to emerge from the situation in the
20 Central African Republic. Our work in the Central African Republic continues and
21 our commitment to bring those responsible from both sides to the conflict to account
22 for the atrocities that occurred remains firm. We are committed to ensuring that
23 justice is done for the people of Central African Republic and that it is seen to be
24 done.

25 With your indulgence now, Mr President, your Honours, I will now hand over to my

1 senior trial lawyer in this case, Mr Kweku Vanderpuye. I thank you.

2 PRESIDING JUDGE MINDUA: [9:53:32](Interpretation) Thank you very much,
3 Madam Prosecutor.

4 Mr Vanderpuye, the floor is yours.

5 MR VANDERPUYE: [9:53:39] Thank you, Mr President. Good morning, your
6 Honours. Good morning to everyone. Just give me one minute to set up.

7 Your Honours, it's my privilege to appear before you on behalf of the Office of the
8 Prosecutor again. I think it is important to recall and underscore what this case is
9 about and what the evidence before you shows.

10 There are substantial grounds to believe that Mr Ngaïssona is responsible for the
11 charged crimes. The evidence provides overwhelming proof of his criminal
12 responsibility for their commission. He faces 111 counts of war crimes and crimes
13 against humanity committed by the Anti-Balaka in five of CAR's 16 prefectures and in
14 Bangui, between December 2013 and December 2014.

15 Mr Ngaïssona was the Anti-Balaka's national general coordinator, a role which he
16 assumed knowingly, purposefully and one which placed him at the helm of a political
17 military movement comprising tens and thousands -- tens of thousands of elements.
18 His designation as the national leader of the Anti-Balaka in January 2014 did not just
19 fall from the sky.

20 The evidence is that he was among a handful of influential individuals associated
21 with Bozizé's regime that was involved in the group's development in 2013. This is
22 why he came to be in a position to be the national general coordinator.

23 Ngaïssona was a key contributor to the strategic common plan, which is described in
24 the DCC as a plan to claim or reclaim power in CAR, using among others,
25 pre-existing self-defence groups and other individuals intent on revenge against

1 Muslim civilians for Séléka crimes.

2 Together with Bozizé, Mokom, members of the Anti-Balaka national leadership and
3 others, Ngaïssona exploited and co-opted these self-defence groups in order to
4 remove Djotodia from office and defeat the Séléka, paving the way for them to claim
5 power. Given the well-known history of the conflicts in Central African Republic in
6 which serious human rights abuses have invariably occurred, the members of the
7 strategic common plan knew that these pre-existing self-defence groups were bound
8 to commit the serious and violent crimes against the Muslim civilian population.

9 The charged crimes were inevitable in the circumstances. Circumstances which
10 pitted Christians against Muslims, circumstances which Ngaïssona, Bozizé, Yambeté
11 and others began laying the foundation for already as the Séléka approached Bangui
12 in late 2012.

13 These groups were motivated and they were primed to exact violent revenge against
14 Muslims, perceiving them as complicit with and supportive of the Séléka.

15 Ngaïssona and the National Coordination knew this, fully aware of the inevitable
16 consequence. That is what makes the strategic common plan inherently criminal.

17 The evidence concerning Yekatom equally provides substantial grounds to believe
18 that he is responsible for the crimes specifically charged against him. Not only does
19 the evidence show substantial grounds, but it comprises overwhelming proof of his
20 responsibility for the commission of these crimes, personally and by members of his
21 Anti-Balaka group.

22 Yekatom led some 3,000 elements who committed the crimes charged. He trained,
23 organised and commanded them. He and his group were tools of the strategic
24 common plan, that is, they put the plan into operation by violently targeting the
25 Muslim civilian population in the area under his control.

1 He and his group acted pursuant to this operational common plan in targeting the
2 Muslim civilian population in those areas. He did this just as other Anti-Balaka
3 ComZones and groups did in the areas under their control, such as in Yaloké, Gaga,
4 Zawa, Bossangoa, Bossempélé, Boda, Carnot, Berberati, Guen and of course in
5 Bangui, as the DCC alleges.

6 Those, through these ComZones -- I'm sorry. Although these ComZones operated
7 under their own operational common plan, they all acted to further the strategic
8 common plan because they shared its criminal purpose and that criminal purpose
9 was to violently target Muslim civilians. For his part, Mr Yekatom is charged with
10 21 counts of war crimes and crimes against humanity.

11 I will talk just a bit about the presentations of the parties earlier in these hearings. I
12 found the Defence oral presentations impressive. I found them interesting, and in
13 some cases creative. Their written submissions read likewise, but I think are equally
14 unavailing.

15 It is reassuring though to know that the Defence has clearly understood the nature
16 and the scope of the Prosecution's case and has been able to negotiate the voluminous
17 evidence that has been disclosed. But their arguments attend to only some of that
18 evidence and selectively at that.

19 As experienced advocates, counsel has tried to focus on narrow constructs to redirect
20 the Chamber's attention away from the core issues or to cloud them. They even
21 advanced some issues in their submissions which were not maintained by the
22 Prosecution at all. Notwithstanding this, what lies before the Chamber is a vast
23 amount of material supporting every allegation in the DCC.

24 Although fundamentally a document of notice, the DCC references nearly 1,400 items
25 of evidence. The Prosecution has tendered a list of evidence comprising several

1 thousand more. The Defence's submissions reference a fraction of that evidence and
2 Ngaïssona argues from this that the evidence contradicts, undermines, discredits or
3 even dismantles the Prosecution's case or theory. Most of the items, if not all,
4 however, were presented by the Prosecution. They form a part of the Prosecution's
5 case and the evidence we present to the Chamber.

6 You will recall the Defence's references to the Prosecution's own evidence, the
7 Prosecution's own witnesses. Meanwhile, the Yekatom Defence claims that the
8 Prosecution's evidence lacks credibility due to ambiguity or hearsay. Their
9 arguments are equally unavailing and unpersuasive.

10 While the Defence identifies certain inconsistencies in the evidence, it's important to
11 remember that these are inherent to any complex undertaking in a court. Different
12 witnesses perceive and recall things differently, particularly matters in the distant
13 past. Rather, it is the fabricated story, the one -- that's the one where you will find
14 that the details are in lockstep.

15 Here, there is consistency in the big picture. That is what carries the day. The
16 evidence taken as a whole is -- as you should take it, is what should guide the
17 Chamber, especially given that at this stage of the proceedings the credibility of
18 evidence is necessarily presumptive. For this reason, the Chamber should proceed
19 cautiously in seeking to resolve any apparent inconsistencies.

20 The fact that the Defence is able to argue their position from the evidence that we
21 presented shows, you that we have presented and made available to the Chamber
22 and to the parties and the participants the evidence as it is - unfiltered, and this is
23 how it should be.

24 We are officers of the Court. Our objective is to see justice done, the truth pursued
25 regarding the charged crimes and the Chamber assisted to ensure that the Court's

1 mandate to hold to account those most responsible for crimes under the Statute is
2 discharged.

3 The evidence underlying all of the material facts and allegations in the DCC is plain
4 for the Chamber to see and to evaluate on its own terms. And there is no need to,
5 quote, "reconstruct the facts", end quote, to borrow a phrase from Mr Knoops in
6 arguing his client's defence.

7 These two men are individually charged in this case as a result of a long investigative
8 process, which has yielded evidence establishing their roles, contributions, acts and
9 conduct, their omissions, their words, all of which demand that they be held to
10 account and which justify the imposition of criminal liability. That is why they are
11 here.

12 Mr Ngaïssona and Mr Yekatom are responsible for the crimes in the manner
13 described in the DCC. The evidence says so, and it says so well beyond the
14 substantial grounds to believe threshold that applies.

15 To be sure, they are not the only ones who are responsible for crimes committed
16 during the conflict in CAR on the Anti-Balaka side, or any other side. They are not
17 here because they are on one side or another side, but because the evidence
18 demonstrates their individual criminal responsibility.

19 I will turn briefly to some arguments raised by the Defence in their submissions.

20 As the Yekatom Defence's submissions deal largely with technical legal issues relating
21 to specific charges, I won't address them in any detail. Our response deals with
22 them, I think sufficiently.

23 While the evidentiary record is clear, as is our reliance on our previous oral
24 submissions, the evidence tendered and that specifically cited and discussed in the
25 DCC, there are a few points I would like to make clear.

1 The suggestion that the conflict comprised a religious war is something that the
2 Prosecution has never argued. It is, one, inaccurate and, two, oversimplifies the
3 DCC, the events on the ground, and ignores many complex political, social and
4 economic factors which contributed to it.

5 However, what the DCC alleges is that the Anti-Balaka targeted the Muslim civilian
6 population on the basis of their national, religious, ethnic affiliation because of their
7 perceived collective responsibility, complicity in, or support for the Séléka. This
8 occurred against a background of Séléka crimes and atrocities against mostly
9 Christians and other non-Muslims. This is a fact. And it's an integral part of our
10 case.

11 The conflict was not a war of religion, nor does the Statute require this. Muslims
12 were not targeted because they were of the Islamic faith per se, but because their faith,
13 ethnicity or national origins identified them with the enemy, as the Séléka's
14 sympathisers, supporters, collaborators and conspirators.

15 This is absolutely discriminatory and persecutory. It is absolutely prescribed under
16 the Statute and under international law.

17 The existence of a handful of Anti-Balaka members who may have been Muslim has
18 no legal impact on the fact that this discriminatory and persecutory policy and
19 common purpose was carried out by the Anti-Balaka as a group.

20 Still, that the conflict was not per se a religious one does not attenuate the impact of
21 the anti-Muslim animus that runs throughout this case.

22 Indeed the rhetoric, fearmongering and divisive messaging going back to 2012 by
23 Bozizé and his people, including Mr Ngaïssona, was promoted, accepted and
24 considered normal in the Anti-Balaka's ranks.

25 The Chamber no doubt recalls two videos presented in which the Anti-Balaka

1 elements talk openly about killing Muslim babies, quote, "*meme les bebe, on les tues.*"

2 End quote.

3 If there was any question that Muslim civilians were within the contemplated scope
4 of Anti-Balaka as targets and perceived as the enemy, those two videos dispel that
5 notion.

6 One video featured an element of Yekatom's group. You see him there in the red
7 shirt, describing how they used smoke grenades to drive Muslims from their houses
8 and then kill them when they ran out. He said, even the babies.

9 You see where Yekatom is sitting. You will remember how completely candid his
10 element was in describing this. He described it openly, no hesitation about how they
11 would kill babies.

12 The prevalence of an Anti-Balaka policy violently targeting Muslim civilians in
13 western CAR is not contestable. Moreover, the policy and narrative promulgated,
14 disseminated, reiterated and promoted by Bozizé, Ngaïssona, Yekatom, Mokom,
15 FROCCA and a host of other bona fide Anti-Balaka members and supporters is not in
16 doubt on the evidence before you. It would not be even if this were a trial. That
17 policy pervaded every aspect of the group's existence and it went from the top to the
18 bottom and back up.

19 It was a policy of vengeance; payback for the perceived Muslim civilian support of an
20 armed Séléka rebellion which victimized and terrorised the Christian population and
21 others. It arose out of a profound sense of betrayal, which I mentioned at the very
22 beginning of the Prosecution's presentation. "The wound they made in our hearts
23 hasn't healed quite yet", you heard one Anti-Balaka member say.

24 The motive for revenge and retribution - understandable as it may be - can never
25 justify the crimes against humanity and war crimes charged, nor can manipulating or

1 exploiting such people to the extraordinary harm and destruction of tens, if not
2 hundreds of thousands of civilian lives ever be a valid justified or legal means by
3 which to advance one's own interest or those of a relative few to reclaim power.
4 Ngaïssona's wealth, we addressed that in the DCC, and it is not on the basis of his
5 wealth that he's criminally responsible for the Anti-Balaka's crimes. Ngaïssona did
6 not "fund", in quotes, the Anti-Balaka, but he essentially contributed to the strategic
7 common plan and to their crimes, which were committed in -- to the crimes they
8 committed in many and diverse ways as set out in the DCC, including by providing
9 money to help support his elements.

10 His wealth, particularly in a poor country, contributed to the influence he had within
11 the Anti-Balaka from its inception. It helped gain him recognition, respect, loyalty
12 and provided support to members of the group and helped provide them access to
13 means needed to promote and sustain the group's efforts and agenda.

14 His monetary support comprises only a part of his contributions to the strategic
15 common plan. The use of his influence over the youth and others, his rhetoric and
16 justification of the Anti-Balaka's crimes, his engagement with the transition
17 government on behalf of the group, and his coordination of the Anti-Balaka itself,
18 which he opined in his own words as a big responsibility. That's his interview that
19 you see there with the CAR authorities.

20 Conversely, his role within the group was crucial. These contributions and others
21 cumulatively and individually were essential. They affected how the charged crimes
22 were committed because they enhanced the capacity of the group to commit them. It
23 affected the scope and the pervasiveness of the crimes and the Anti-Balaka's ability to
24 carry them out as widely and for as long as they did. That is the basis of
25 Mr Ngaïssona's criminal responsibility.

1 Similarly, it is not the Prosecution's position that Mr Ngaïssona's close relationship
2 with Bozizé alone renders him culpable as a member of the strategic common plan.
3 The Chamber has the evidence concerning Mr Ngaïssona's stay in Cameroon, who he
4 was living with, who he was in contact with, who the individuals he was living with
5 and/or in contact with and what their respective relationships were with other key
6 members of the Anti-Balaka movement, its leadership and the prospective leaders of
7 the formalised National Coordination. That evidence is set out and referenced
8 clearly in the DCC.

9 There is no real question that as a Bozizé political KNK partisan, a former elected
10 official from Boy-Rabe - a known Bozizé stronghold - and a minister of Bozizé's
11 deposed government, Ngaïssona was close to the former president.

12 There is no question of his relationship to others in the movement who were related
13 to Bozizé, and there is no question of the relationship of those persons to other
14 principals in the Anti-Balaka movement. There's just none.

15 As I mentioned, Mr Ngaïssona's Defence has referred to the evidence proffered and
16 the Prosecution's positions as nonsense, impossible or even that they've dismantled
17 the Prosecution's theory. That the Defence has not heard of this or that in
18 international law or this is what was argued in the Gbagbo case. With all respect to
19 the Trial Chamber in that case, this is not that case and the facts are distinguishable
20 and this Chamber is not bound by the trial level decisions in that case in any event.

21 Mr Ngaïssona's argument that there was no Anti-Balaka group as such, it did not
22 exist, is impossible on the evidence before you. You see numerous press
23 communiqués issued by Mr Ngaïssona, signed by him, stamped as National General
24 Coordinator. You have before you his public statements, those of other Anti-Balaka
25 leaders, including Yekatom, conceding their involvement in the group.

1 You have his references to the group, who he coordinates.
2 The group that he refers to when he says when he gives an order, it's followed with
3 immediate effect. The group of 70,000 Anti-Balaka elements that he claimed he
4 controlled. The group for whom he solicited and issued identification cards bearing
5 the name of the Anti-Balaka, signed by him or other principals in the National
6 Coordination. The group he proposed to the transition government to pay for the
7 cantonment. The group that he called to his residence and to other locations,
8 including the Hotel Azimuth in Bangui to meet and discuss strategy, their situations,
9 their needs, their demands, the security situation, press statements. The group of
10 individuals as he refers to as "*c'est enfants*". The group that he referred to as
11 ex-Anti-Balaka when he created his so-called political party at the end of 2014. You
12 see the list there: the ComZones, commanders, coordinators, prefectural
13 coordinators, regional coordinators, chiefs, some of whom he was in contact with
14 during the commission of crimes.
15 Here, you can see a list of a number of members of the National Coordination with
16 their signatures, that group. He was in contact with ComZones and commanders
17 during the commission of crimes, and I say this reminding the Chamber that certain
18 of the crimes that are charged in the DCC were continuing offences.
19 Muslims were unlawfully enclaved - under siege in several prefectures in western
20 CAR, not to mention their displacement and deportation. The suggestion that there
21 was no structure in the Anti-Balaka is for those who haven't yet seen the evidence
22 before this Chamber. Besides, it defies common sense. Looking at the scope, scale
23 and duration of the crimes committed, the level of victimization in this case just
24 cannot happen without organisation.
25 Even before the 14 February 2014 proposal -- I'm sorry, even before the

1 14 February 2014 document, a proposal was circulated indicating the members to be
2 part of the National Coordination. If you look at this document, you will see very
3 clearly Ngaïssona's name on there. It went around before he even arrived in Bangui.
4 You'll see other individuals which will no doubt be familiar to the Chamber.
5 Ngaïssona did not just drop out of the sky to lead the formalised Anti-Balaka
6 National Coordination. He was already known and trusted by its members; he
7 should have been given his place in its origins.
8 The Defence argues that if there was a group as such, they were impossible to control.
9 You've already seen Ngaïssona's own admissions about his control over the group.
10 About the orders that he gives that he says are followed with immediate effect.
11 You've seen mission orders, you've seen orders, you've seen communications to the
12 group barring certain members from representing the Anti-Balaka. You've seen
13 even his expulsion of his Deputy National Coordinator for violating the hierarchy in
14 a document in August 2014.
15 The claim that he was afraid of certain members, such as Andjilo who attacked his
16 residence twice - as I understood the Defence - is extraordinary. The same Andjilo
17 who was assigned to lead the Anti-Balaka military police on mission?
18 A peace coordinator serious about stopping Anti-Balaka violence against Muslim
19 civilians would not have been part of anything like this. Ngaïssona was because he
20 wasn't a peace coordinator. He was the leader of an organised political military
21 group. Equally implausible is that Ngaïssona never discussed the security situation
22 with his ComZones when they were involved in a state of conflict.
23 Your Honours, the question at this preliminary stage is whether there are substantial
24 grounds to believe that the suspects are responsible for the crimes as charged. Are
25 there substantial grounds to find that the material facts regarding the elements of the

1 crimes and the modes of liability specifically alleged are met.

2 We have done that. The evidence provides concrete and tangible proof
3 underpinning the allegations in the DCC.

4 The standard of proof at this stage is intended to ensure that only those persons
5 against whom sufficiently compelling charges - going beyond mere theory or
6 suspicion - have been brought are committed to trial.

7 Whereas, this Chamber has before it evidence of the type, nature and quantum
8 befitting a trial. These comprise statements from over 100 witnesses, insiders,
9 victims, others, videos, audio, photographs, CDR, transaction records, government
10 documents, Anti-Balaka documents, intelligence documents, public statements and
11 admissions of the suspects themselves, open-source material from reliable agencies,
12 such as, the UN, media outlets and NGOs.

13 Taken as a whole - as you should - the evidence provides ample proof of the charged
14 crimes in every mode of liability alleged against the suspects.

15 Before wrapping up, I want to turn to two important notions: cumulative charging
16 and alternative modes of liability. As you know, the DCC characterizes the same
17 conduct as different crimes cumulatively.

18 While Article 61(7) requires the Chamber to decline to confirm charges when the
19 evidence does not provide substantial grounds to believe that the person charged or
20 the person committed the charge crime, it does not require that the Chamber decline
21 confirmation when one possible legal characterization of the conduct might be
22 preferable to another equally viable on the same evidence.

23 Rather, Article 61(7) provides only that when the burden of proof is met, the
24 Chamber - quote "shall" end quote - confirm the charges as presented. That is our
25 request. Although, Regulation 55 may provide a safeguard at trial where the

1 evidence requires modification of the legal characterization of the facts confirmed by
2 a Pre-Trial Chamber, it does not address or otherwise concern situations where the
3 same facts could constitute more than one crime, that is, those situations warranting
4 cumulative charging or convictions.

5 Thus in line with the established practice of the Court's Pre-Trial Chambers on
6 meeting the requisite evidentiary standard, this Chamber should allow the
7 Prosecution to present cumulative charges at trial and defer to the Trial Chamber,
8 which is the venue best placed to resolve questions concerning the concurrence of
9 offences.

10 The same applies to the alternative modes of liability that are alleged. When the
11 evidence is sufficient to sustain each of the alternative modes for the same conduct on
12 an individual assessment, it is appropriate that the charges be confirmed with those
13 alternatives. This allows the Chamber -- the Trial Chamber rather to determine
14 which, if any, meets the burden of proof at trial consistently with the practice of the
15 Court's Pre-Trial Chambers.

16 And as other Chambers have recognised, confirming different applicable modes of
17 liability alternatively may reduce future trial delays and provide the Defence with
18 early notice of the different characterizations that a Trial Chamber may consider. I'll
19 shortly come to an end of this presentation.

20 The charges in this case, your Honours, should be confirmed on the evidence that is
21 presented. Its evaluation is not an exercise; it's real life. And it comes down to the
22 application of reason, human experience and common sense.

23 This case is about these two men. It's about their individual responsibility. It's
24 about what they did and what they didn't do. It's about whether their conduct
25 amounts to violations of the Rome Statute.

1 This case is not a referendum or an indictment of one side or another side of the
2 conflict or about what side was right or what side was wrong. It is about whether
3 Patrice-Edouard Ngaïssona and Alfred Yekatom are responsible for crimes committed
4 in this situation. The evidence says that they are and they should face justice.
5 Justice is a process. It doesn't always come in a convenient package. It's not always
6 tidy or timely or neat. The facts of this case and the truth of the matter by force of
7 logic and reason is that many individuals, many, many individuals should be held to
8 account for the vast crimes committed in the Central African Republic.

9 And I want to be clear that the Prosecution's investigation in this situation is ongoing
10 on all sides, as Madam Prosecutor has just said. Still the process of justice has to
11 start somewhere, and so it begins here.

12 This concludes our remarks, and I want to thank Mr President, your Honours,
13 everyone for your attention.

14 PRESIDING JUDGE MINDUA: [10:26:50](Interpretation) That is fantastic, thank
15 you very much, Mr Vanderpuye. I would like to congratulate you and Madam
16 Prosecutor for facilitating our task. You have complied with our schedule.

17 According to that schedule, we are now going to move to the observations of the
18 Legal Representatives of the Victims, and the Defence will come last.

19 So the Legal Representatives of the Victims, please, you have the floor.

20 MR SUPRUN: [10:27:31] (Interpretation) Thank you, Mr President. I shall start
21 by presenting my submissions for the child soldiers.

22 Mr President, your Honours, during my statement I shall not harp back to the other
23 aspects of the case, and in order not to be repetitive, I concur with the observations of
24 the Prosecution presented both in the oral and written form with regard to the
25 recruitment of child soldiers to the ranks of the Anti-Balaka and their active use in

1 hostilities.

2 I would also like to reiterate without repeating my statements of the first part of the
3 confirmation of charges hearings and respectfully request that the Chamber takes
4 them into account when making a determination.

5 I will limit myself to a number of questions raised by the Defence for Mr Yekatom
6 with reference to count 29 on the enlistment and conscription of children
7 aged -- under 15 years of age to the ranks of the Anti-Balaka and their active use in
8 hostilities.

9 Then, I will make some observations with regard to the presentation made by the
10 Defence for Mr Ngaïssona.

11 Firstly, the Defence for Mr Yekatom contends that with regard to count 29, the
12 document contained in the charges is vague and not sufficiently specific, indicating in
13 particular, and I quote:

14 "... in the document containing the charges, there is no element allowing for the
15 identification of the alleged 14 child soldiers. Neither is there any indication as to
16 when they were enlisted, when they took part in hostilities or where this took place."

17 And I'm referring here to transcript -- the transcript of 23 September hearing, page 59,
18 lines 4 to 7.

19 Firstly, with regard to the time and locations of the recruitment of children to armed
20 groups, I would like to recall the stance of the -- of Trial Chamber I in the Lubanga
21 case that was recently reiterated by Trial Chamber VI in the Ntaganda case.

22 According to this approach, the crime of enlistment and conscription of children
23 under the age of 15 and their active use in hostilities, and I quote:

24 "... are of an continuous nature. These offences only cease once the child reaches the
25 age of 15 or leaves the force or armed groups." End of quote.

1 And I am referring here to the judgment dated 8 July 2019, paragraph 1112.

2 In the Ntaganda case, Trial Chamber VI also stated that in view of the ongoing nature
3 of the crime in question, these charges are considered to be sufficiently substantiated
4 even when, I quote:

5 "... the time of the enlistment or conscription may remain unknown or impossible to
6 specify in the context of a charge." End of quote.

7 And especially when recruitment took place, and I quote once again:

8 "... in an institutionalised coercive environment in similar circumstances over a given
9 period of time and not as isolated acts."

10 And I refer here to the judgment I just referred to, paragraph 1112.

11 In the context of the instant case, the systematic and widespread nature of the
12 recruitment of children younger than 15 years of age to the ranks of the Anti-Balaka
13 and their active use in hostilities has been generally acknowledged by numerous
14 sources including, if I am not mistaken, eight witnesses on the Prosecution list of
15 witnesses. As well as mentioned in reports by the UN and NGOs, and once again
16 I'm referring to the report by the Secretary-General of the United Nations entitled,
17 The fate of children during times of armed conflict in the CAR, dated 12
18 February 2016, paragraph 20, according to which in 2014 alone, 2,347 child soldiers
19 were enlisted, particularly to the ranks of the Anti-Balaka.

20 With regard to the extensive nature of this phenomenon in keeping with international
21 case law, included that cited by the Defence, it is therefore not necessary for the
22 document containing the charges to identify all of the victims concerned because in
23 practical terms, this is extremely difficult, even impossible. I'm referring here to
24 paragraph 23 of the ICTR case, Ntageruru et al. of 7 July -- cited by the Defence, 7 July
25 2006, and I quote in English:

1 (In English) ... the "sheer scale of the alleged crimes makes it impracticable to require
2 a high degree of specificity in such matters as the identity of the victims and the dates
3 for the commission of the crimes". (Interpretation) End of quote.

4 I also make reference to paragraph 558 of the judgment in the ICTY case, Šainovic et
5 al., dated 23 January 2014, according -- and I quote once again in English:

6 (In English) ... although the identity of a victim is information that is valuable to the
7 preparation of a defence, convictions may" also "be entered" on "unspecified
8 victims ..." (Interpretation) End of quote.

9 Furthermore, and as the Defence continues to belabour this point in yesterday's
10 observations, the Defence observation according to which it is unaware of the identity
11 of 14 child soldiers to whom the Prosecution has referred is baseless, as the document
12 cited in footnote 79 of the DCC does indeed contain a list of the children concerned,
13 with their full names, age, gender, location of return, and even information on their
14 reference family. You only have to read the document.

15 With regard to the proximity of the crime to Mr Yekatom, the DCC provides further
16 evidence concerning the event of 4 August 2014, on the negotiations between local
17 NGOs, the UNICEF and Mr Yekatom, all of which attest that Mr Yekatom had
18 personally given his agreement to the demobilization of child soldiers from the
19 Anti-Balaka ranks and his support to the non-recruitment going forward of child
20 soldiers.

21 Furthermore, several child soldiers were members of the group guarding his own
22 residence.

23 And finally, once again with regard to the issue of proximity, it should be noted that
24 83 former child soldiers participating in the instant proceedings all recounted in their
25 requests having participated. How --

1 THE INTERPRETER: [10:35:42] Correction --

2 MR SUPRUN: [10:35:43] (Interpretation) How they were recruited to the ranks of
3 the Anti-Balaka and all make mention of Mr Rambo, aka Mr Yekatom, as the main
4 perpetrator of this crime.

5 What is more, several of them recounted how they were conscripted by Rambo in
6 person, how they were victims of additional crimes during their conscription at the
7 hands of Rambo himself; namely, acts of inhumane treatment and sexual violence.

8 Why are they all singing from the same hymn sheet? Could it be a coincidence
9 or maybe a plot? What additional elements could be brought at this stage for the
10 DCC to be considered sufficiently specific and detailed in the eyes of Defence?
11 In this regard, we should recall the case law of this Court, which is consistent
12 according to which -- and I quote paragraph 40 of the decision on the confirmation of
13 charges in the Ruto and Sango case, dated 23 January 2012. I quote:
14 "The purpose of the confirmation of charges hearing is to ensure that a case is only
15 committed to trial if there is sufficient evidence to establish substantial grounds to
16 believe that the individual has committed the crimes charged. This mechanism was
17 designed to protect the rights of the Defence against abusive and baseless
18 accusations." End of quote.

19 And furthermore, I quote paragraph 64 of the DCC in the Katanga case, dated 30
20 September 2008:

21 "The confirmation of charges hearing is of limited scope and should not be considered
22 as a mini-trial or a trial before the trial." End of quote.

23 Finally, I refer to paragraph 39 of the DCC in the Lubanga case of 29 January 2007,
24 according to which at the stage of the confirmation of charges, the Prosecution is
25 obliged, and I quote:

1 "To provide concrete and tangible proof in a clear direction in support of their specific
2 direct allegations."

3 With this regard, I refer to paragraph 31 in a judgment -- in the judgment of the Al
4 Bashir case, according to which at the pretrial stage, it is not necessary, I quote:

5 It is not necessary to be sure or certain that the individual has committed the alleged
6 offence. This certitude is required at the stage of the trial itself when the Prosecutor
7 has had the opportunity to present further evidence.

8 In light of the jurisprudence mentioned above, and given the evidence presented by
9 the Prosecution and taking into account the limited scope of the confirmation of
10 charges proceedings, the claims of the Defence that the evidence did not meet the
11 requisite evidentiary threshold should be rejected.

12 On the contrary, the Prosecution presented evidence that's sufficiently specific to
13 demonstrate that the crimes were committed by Mr Yekatom directly and by the
14 elements under his command. The Prosecution showed clear direction in its
15 reasoning, buttressing specific allegations.

16 And the Defence is not facing frivolous or totally unfounded charges. In fact, the
17 Defence of Mr Yekatom does not dispute the presence of children under 15 years
18 amongst its ranks, nor the involvement of Mr Yekatom in the demobilization of some
19 of these children. All they do is flag the lack of information to defend Mr Yekatom.

20 Let me now go on briefly to the presentation made by the Defence of Mr Ngaïssona.

21 I admit, Mr President, your Honours, that when I listened to the presentation of
22 the Defence of Mr Ngaïssona, I had the impression - and maybe not even just
23 myself - that we were in the wrong forum and that we were not even at an
24 international criminal court discussing the criminal responsibility of Mr Ngaïssona,
25 but rather at an event to honour Mr Ngaïssona for his meritorious acts and

1 supposedly exceptional qualities, despite the abundance of evidence to the contrary.
2 I stand to be corrected if I somehow missed certain portions. During the presentation,
3 the Defence of Mr Ngaïssona never referred to the issue of the enlistment of children
4 under 15 years old in armed groups in the CAR generally speaking and in the
5 Anti-Balaka groups in particular. It is as if this widespread phenomenon, which is
6 generally acknowledged, did not exist at all. It is ignoring the evidence.
7 This omission is all the more surprising because Mr Ngaïssona was for a long time
8 President of the Central African football association. He played an important role in
9 the coordination of the youth. He was even minister of youth in the CAR; so he was
10 supposed to be aware of the problem given his exceptionally -- its exceptionally
11 widespread nature.
12 Instead, we were told that Mr Ngaïssona could not have committed the crimes
13 charged against him because he was very occupied as President of the Central African
14 Football Federation and that he was on a mission for peacebuilding and reconciliation.
15 Mr President, I have difficulty understanding this argument. I'm sorry, but one can
16 do two things at the same time. You can manage a football organisation and
17 perpetrate atrocious crimes without having to be physically present at the scene of the
18 crime.
19 So you can do two things at the same time. The two things are not mutually
20 exclusive. They can exist alongside each other. And as we all know, the Rome
21 Statute explicitly provides for the criminal responsibility, not only of the direct
22 perpetrators of the crimes, but of those who contribute directly or indirectly to the
23 commission of crimes irrespective of their physical proximity.
24 If Mr Ngaïssona - as his Defence claims - was not associated to any Anti-Balaka group,
25 I'm wondering in what capacity he gave instructions to a representative of the

1 Anti-Balaka to attend a meeting devoted to the demobilization of children from the

2 Anti-Balaka group chaired by Mr Yekatom.

3 The Defence of Mr Ngaïssona did not provide an answer to that question.

4 Mr President, your Honours, in light of the evidence contained in the DCC and

5 presented by the Prosecution during the confirmation of hearings proceedings, the

6 child soldiers submit that there are sufficient elements of evidence leading to

7 substantial grounds to believe that Messrs. Yekatom and Ngaïssona indeed

8 committed the crimes charged against them in count 29, and we request respectfully

9 the Chamber to confirm the respective charges. Thank you.

10 PRESIDING JUDGE MINDUA: [10:44:35](Interpretation) Thank you very much,

11 Counsel. Thank you also for being concise.

12 Ms Massidda.

13 MS MASSIDDA: [10:44:46] (Interpretation) Thank you, Mr President. I would

14 like to suggest that we take a break now. I'm ready to start, but my presentation will

15 last about 30 minutes and if it is possible, I would like to do it in one go. If possible,

16 we break now and resume at 11.15? Otherwise, if you don't agree, I can start right

17 now. Thank you for your indulgence.

18 PRESIDING JUDGE MINDUA: [10:45:25](Interpretation) Counsel, the Chamber has

19 consulted and we have agreed to take the break now.

20 MS MASSIDDA: [10:45:35] (Interpretation) Thank you.

21 PRESIDING JUDGE MINDUA: [10:45:43](Interpretation) Court officer, we will take

22 the break now.

23 We will break for 30 minutes and resume at 11.15 a.m.

24 THE COURT USHER: [10:46:00] All rise.

25 (Recess taken at 10.46 a.m.)

1 (Upon resuming in open session at 11.16 a.m.)

2 THE COURT USHER: [11:17:10] All rise.

3 Please be seated.

4 PRESIDING JUDGE MINDUA: [11:17:22](Interpretation) Hello again. We shall
5 now proceed with our confirmation of charges hearing. We shall continue.

6 I would like to remind you of the schedule for today. This session should last two
7 hours. We are now commencing this session at 11.15 and it shall last until 1.15 p.m.

8 At the outset I had said that the LRVs have a total of one and a half hours to make
9 their submissions. Now, if I remember correctly, we have already used up half an
10 hour, I believe.

11 Madam courtroom officer, could you tell us how many minutes have already been
12 used by the LRVs?

13 Now, as I was calculating the number of minutes, I have been told that the English
14 transcript is not working.

15 (Pause in proceedings)

16 PRESIDING JUDGE MINDUA: [11:19:10](Interpretation) Could you please wait a
17 few moments because we're checking the situation of the English transcript.

18 (Pause in proceedings)

19 PRESIDING JUDGE MINDUA: [11:19:52](Interpretation) Counsel, with regard to
20 the Legal Representatives for Victims, you have one hour and 13 minutes remaining.

21 For the time being, we have an issue with the English transcript. With your leave,
22 we shall continue the proceedings in order to not waste any time.

23 But if there was any confidential information, we would be obliged to go into private
24 session or closed session.

25 Counsel, the floor is all yours.

1 MS MASSIDDA: [11:20:28](Interpretation) Thank you very much, Mr President. I
2 will not need to go into private session.

3 Mr President, your Honours, Mr Yekatom and Mr Ngaïssona are suspected of having
4 committed crimes of persecution, murder, torture and other inhumane acts,
5 mutilations, cruel and degrading treatment, forcible transfers, forced deportation and
6 displacements, directing intentionally attacks against civilian populations,
7 imprisonment or other serious forms of physical imprisonment, destruction of
8 mosques in the context of a non-international armed conflict, which happened in the
9 Central African Republic during the period of the DCC, that is between September
10 2013 and 2014.

11 Mr Ngaïssona is further suspected of committing crimes of extermination, rapes and
12 pillaging during the same period.

13 Their acts formed part of the implementation of a common plan to take over or
14 reconquer political power in the Central African Republic. This plan was
15 implemented through attacks against the civilian population, particularly Muslims
16 who, because of their religious affiliations, their national or ethnic groups, were
17 considered as responsible or accomplices for the atrocities of Séléka or supporters of
18 that movement.

19 Your Honours, despite the efforts of the Defence of Mr Ngaïssona to convince us that
20 there was no common plan, there is evidence showing that such a plan was indeed
21 conceived and implemented. Mr Ngaïssona equally made a significant or even
22 crucial contribution to that plan, despite the fact that, according to his Defence, he
23 was very occupied as president of the Central African Republic Football Federation.

24 In fact, Mr Ngaïssona exercised control over the Anti-Balaka groups, as explained in
25 the DCC, paragraphs 66 onwards. The Defence has tried to portray him as a man of

1 peace, whose objective was reconciliation, and I quote, "a committed citizen,
2 responsible and exemplary", but this does not tally with the evidence presented by
3 the Prosecution relating to his activities.

4 The evidence presented by Prosecution indicates that a widespread and systematic
5 attack was carried out against the civilian Muslim population in several localities of
6 the Central African Republic during the period charged in the DCC. The victims
7 that we represent all testified through their accounts of the events that affected them
8 of the particularly cruel nature of the attacks to which they were subjected, but also
9 the widespread and systematic nature of the attacks.

10 These attacks were widespread because of their scope and also widespread because of
11 the large number of victims which affected entire families and communities. The
12 widespread attacks were also because of the age and gender of the victims, and there
13 were no boundaries or consideration for the vulnerability of some of those victims.
14 The crimes were, lastly, widespread because of the nature of the crimes because they
15 degraded the humanity of all the victims and affected them morally, physically, and
16 materially.

17 The systematic nature of the attack is firmly established by the events acknowledged
18 by the Prosecution in the DCC and according to the accounts of the victims.

19 1002 victims of the other crimes are taking part in the confirmation of hearings in this
20 case. These are women, men, and children who suffered directly in relation to the
21 events that happened in the CAR during the charged period. Amongst the victims,
22 several of them are still in displaced people's camps inside the country and in refugee
23 camps outside of the country.

24 Your Honours, several victims state that in the night of the 3rd to the 4th, the
25 Anti-Balaka attacked the Bangui during a prepared attack which surprised everyone

1 because of its scope. There were attackers armed with machetes but also with
2 rockets and grenades. They charged into Bangui. Some of the victims relate that
3 they entered Bangui in Indian file during several hours. They went from door to
4 door and executed everyone they considered as Séléka. In a few days, hundreds of
5 civilians who were not participating in hostilities were killed in fighting or executed
6 in a summary manner because the attackers were exacting vengeance.

7 This plan was executed on the eve of the expected vote by the UN Security Council to
8 authorize a deployment of French forces of the Sangaris operation. The attack took
9 up all the appearances of a strategic offensive to guarantee the effect of surprise,
10 rapidity and execution. By attacking the capital on the eve of the entry of the
11 Sangaris forces in the CAR, the Anti-Balaka showed evidence of tactical and political
12 sophistication for a group that was supposed to be militias for self-defence which had
13 emerged spontaneously, and therefore supposed to be disparate or disorganised and
14 autonomous as the Defence of Mr Ngaïssona claims.

15 Bangui became the theatre of executions and daily murders against a backdrop of
16 systematic pillaging. The Anti-Balakas and their supporters stated that the Muslims
17 were foreigners and that they needed to leave the country.

18 In Bangui, the hunting down of Muslims became relentless and the objective was to
19 eliminate all of them. The houses of Muslims were pillaged and destroyed and
20 religious symbols attacked. The mosque of Fouh in Bangui was destroyed and
21 a furious crowd descended on these buildings and destroyed them. Relics were
22 destroyed as well as holy books.

23 The attack of Bangui of 5 December 2013 was a turning point in the conflict and led to
24 a vicious cycle of unprecedented violence which sent the country ablaze, provoking
25 three weeks of murders of thousands of people and several injured. The organised

1 Anti-Balaka groups under the control of Mr Yekatom and Mr Ngaïssona advanced
2 and attacked the town of Bozoum on 6, 23, 25 and 31 December 2013.

3 Further south in the Bossembélé and Boali region, the attacks multiplied between
4 December 2013 and February 2014.

5 The events that took place at the west of the country, at the border with Cameroon,
6 illustrate the strategy of the Anti-Balaka. In Berberati, prefecture of Mambéré-Kadei,
7 on 10 February 2014, several dozen Anti-Balaka coming from northern towns, such as
8 Carnot and Bouar, attacked the town, seizing the opportunity of the departure of the
9 French troops. During which -- during what looked like a hunting down of Muslims,
10 rather than a military attack, they killed, pillaged and set ablaze houses on 10 and 11
11 February 2014.

12 The Muslim population took refuge in enclaves. On 15 February 2014, there were 18
13 such enclaves in Bangui, particularly PK5 and pK12, but also in other localities in the
14 west of the country, Mbaïki, Boda, Beberati, Bossangoa, Sibut, Bozoum, Yaloké, Gaga,
15 Bossempaté, Bouar, Kagabandoro, and others.

16 In order to give you an idea of the scope of the phenomenon, according to the reports
17 of NGOs, the enclaves brought together a population estimated at between 15,000 and
18 20,000 people, the majority of whom were Muslims, out of the 800,000 Muslims who
19 were living in the Central African Republic before the crisis.

20 To flee or be killed, your Honours, this was a sad choice that hundreds of our clients
21 were confronted with. They fled the western part of the CAR in large organised
22 convoys, either to go to Bangui and take off in flights chartered by Chad and
23 countries evacuating their nationals, or in order to flee to Chad or neighbouring
24 Cameroon.

25 During these convoys, Muslims were regularly attacked by guns of Anti-Balaka who

1 killed, pillaged and raped. This was particularly the case for any truck which was
2 overloaded, in a poor state of repair and broke down on the way.

3 In this regard, I would like to come back to the issue raised by the Defence of
4 Mr Yekatom relating to the fact that to retain the crime of war of the displacement of
5 the civilian population, an express order to displace the civilian population is
6 necessary and that, for example, an order to attack a location or pillage a village
7 which led to the displacement of the civilian population would not be sufficient to
8 engage the responsibility of an individual. And yet, as underscored by the Defence
9 itself, Trial Chamber VI in its Ntaganda judgment indicated clearly, and I will quote
10 the judgment 2339 (sic) of 8 July 2019, paras 1081 and 1082.

11 The Defence is asking you to discard the interpretation of that Trial Chamber without
12 giving you any valid reason to justify your adoption of a different interpretation;
13 otherwise, this interpretation would be contrary to the letter of Article 8(2)(e)(viii).
14 This interpretation, which is restrictive, is contrary in our opinion to the spirit of the
15 Rome Statute, which is to put an end to impunity and to punish those responsible for
16 the crimes under the Statute.

17 In fact, if the interpretation of the Defence had to be retained, that would mean that
18 a military commander could issue an illegal order to attack the civilian population or
19 to pillage everything on the way of his troops, but cannot be convicted for the
20 displacement of the civilian population as a result, given that they did not specifically
21 order the civilian population to be displaced.

22 Reasonably, any order which effectively leads to the civilian population to be
23 compelled to displace themselves must be deemed as sufficient to refer the suspects to
24 trial.

25 In fact, regarding the absence of evidence, contrary to what the Defence has said, the

1 DCC contains sufficient evidence to conclude that Mr Yekatom ordered that Muslims
2 in Boeing should be attacked and that the Muslim mosque should be attacked. This
3 forced the civilian population to flee the town and to displace themselves.

4 Regarding the causal link or the link between the displacement of the civilian
5 population and the acts of Mr Yekatom, and this is a link with the forcible transfer,
6 the Defence alleges that the presence of other Anti-Balaka groups than those of the
7 suspects nullified the causal link, according to which the displacement of the civilian
8 population would be the result of the acts of Mr Yekatom.

9 In this matter, I simply would like to point out that nothing supports the statement of
10 the Defence, according to which the displacement of the civilian population must
11 entirely be the result of the acts of Mr Yekatom. The Defence of Mr Yekatom also
12 requests you to limit yourself to analysing the acts perpetrated by him and his troops
13 to the date of 5 December 2013 alone. And yet, the DCC does not limit itself to that
14 date and it mentions in paragraph 252, and I quote in English, (Speaks English) "from
15 5 December 2013 onwards". (Interpretation) End of quote.

16 Furthermore, in paragraph 253, the DCC mentions that the attack of 5 December 2013,
17 and in English (Speaks English) "and its aftermath" (Interpretation) end of quote, are
18 at the origin of the displacement of the civilian population.

19 There is therefore no reason to limit the temporal jurisdiction to the acts committed or
20 allegedly committed on 5 December 2013, and the Chamber has to assess the totality
21 of the conduct of the suspect and his troops, including the order to destroy the
22 mosque of Boeing on 20 December 2013, as stated in the DCC, paragraph 254.

23 During the attacks, places of worship were also targeted. After the events, there
24 were no longer any functional mosque in Boali. The three mosques of the town had
25 been destroyed. Some of our clients state that they saw the Anti-Balaka destroy

1 these buildings brick by brick on the road between Bangui and Boali, almost all the
2 mosques were attacked and partially or totally destroyed.

3 Most of the mosques in Bossangoa, Bossembélé and Bouar were targets of attacks or
4 destruction. In Bangui, out of the 23 mosques in the capital, only four have
5 remained standing: The central mosque in PK5, the Lakwanga mosque, the Bazanga
6 mosque, and the PK12 mosque. The other mosques were attacked, set on fire,
7 dismantled or destroyed.

8 In the Fouh and Miskine neighbourhoods in Bangui, at the place where the mosques
9 were destroyed, there were slabs of concrete that were laid and basketball hoops
10 installed where the mosques used to stand.

11 This evidence, as well as the evidence presented by the Prosecution, clearly show the
12 widespread and systematic nature of the attack launched against the civilian
13 population.

14 In this regard, Article 7(2)(a) of the Statute indicates, and I quote, "An attack directed
15 against any civilian population means a course of conduct involving the multiple
16 commission of acts referred to in paragraph 1 against any civilian population
17 pursuant to or in furtherance of a State or organisational policy to commit such acts."

18 Concerning this case, the repetition and the scope of the crimes perpetrated against
19 the Muslims - as well as the coordination of the attacks in accordance with planning,
20 the structure of the command, and the similarity of the methods of commission of the
21 crimes at different locations by different groups and at different times - give
22 reasonable grounds to believe that Anti-Balaka attacks are part of a systematic and
23 widespread attack.

24 The murders, extermination, displacement, deportation and forcible transfer,
25 persecution, rapes, torture, forcible disappearances of people and other inhumane

1 and degrading acts constitute systematic and widespread attacks against these
2 populations carried out in the west and southwest of the Central African Republic in
3 the zones where the Anti-Balaka were present and these are crimes against humanity.
4 In particular, regarding the crime of persecution, and I quote Article 2(a)(g) (sic) of the
5 Statute, persecution means the intention and severe deprivation of fundamental rights
6 contrary to international law by reason of the identity of the group or collectivity, the
7 crimes committed by the Anti-Balaka targeted a group or collective identity.

8 The religious factor, even though not necessarily the primary motivation of the
9 conflict, became a marker of the crimes perpetrated intentionally by the Anti-Balaka
10 against the Muslims. The repeated statements, which were heard in the videos
11 presented by the Prosecution, do not leave any room for doubt of this statement that
12 the Muslims were persecuted.

13 Today, it suffices to recall that with regard to these attacks, these were a campaign for
14 an operation directed against a civilian population within the meaning of Article
15 7(2)(a) of the Statute.

16 The civilian population was indeed the main target of the attack carried out in
17 implementation or in furtherance of the policy of organisation with the objective of
18 the attack.

19 The description of the events given by the victims corroborate the evidence presented
20 by the Prosecution, particularly those who referred to the recurrent attacks against
21 mosques, the murders of Muslims, the pillaging, the systematic pillaging and
22 destruction of Muslim property, and the rapes perpetrated under the threat of
23 weapons, and the brutalization and humiliation and degrading treatment given to
24 victims sometimes in front of members of their families.

25 Your Honours, it would be incorrect to tell the victims that they do not have any

1 expectations. They have legitimate expectations, just like any individual expecting
2 justice.

3 After having met with the victims and listened to their stories, we realised that the
4 right to justice is one of their main concerns. They are expecting attentive,
5 autonomous, impartial, transparent and effective justice, which listens to everyone
6 and respects each of the participants. A justice that is protective and a justice that is
7 restorative and able to ascertain the truth of the crimes perpetrated.

8 The victims are trying to ensure that justice is done and they hope that using their
9 courage to indicate that these crimes were committed will prevent them in the past
10 (sic).

11 I would like to recall that the victims are at the heart of the proceedings and so behind
12 all the legal and technical terms that we are using, we should not forget that hundreds
13 of children, women and men are following with keen interest the developments in
14 these proceedings.

15 We can reassure you that the victims that we represent today can express their voices
16 in the proceedings and this would be an element that qualifies as reparation, and is
17 also an aspect that would enable them to rebuild their lives or to continue their lives
18 after what happened to them and which has now become part of their history.

19 To conclude, Mr President, your Honours, as stated by my colleague, the Pre-Trial
20 Chambers of this Court have constantly interpreted the evidence threshold at this
21 stage of the proceedings as requiring the Prosecution to present concrete elements
22 that give a clear direction supporting the specific allegations.

23 It is our opinion that the Prosecution has clearly demonstrated that there are sufficient
24 grounds to establish that the suspects perpetrated the crimes charged against them
25 and they have reached the required threshold established by the Statute pursuant to

1 Article 61(5).

2 And so all the statements that we have heard, particularly in relation to the
3 interpretation of judicial issues by the Chamber, the Trial Chamber in the Blé Goude
4 and Gbagbo case, particularly the existence of common plans, cannot be applicable to
5 this stage of the proceedings.

6 The elements presented by the Prosecution in these proceedings make it possible for
7 your Chamber to take a decision on all the charges alleged against Mr Yekatom and
8 Mr Ngaïssona and for you to confirm those charges and refer them to trial.

9 Thank you.

10 PRESIDING JUDGE MINDUA: [11:50:30](Interpretation) Thank you very much,
11 Maître Massidda, for your observations and for your concision and punctuality.
12 Right now, I will give the floor to the last Legal Representative of Victims. You have
13 the floor.

14 MS RABESANDRATANA: [11:50:50] (Interpretation) Mr President, your Honours, I
15 shall conclude in following on from my brilliant observations by my learned
16 colleagues, the Legal Representatives of Victims and more specifically that of
17 Mrs Paolina Massidda, who gave a number of legal answers, expected legal answers
18 to the arguments furnished by the Defence, and these are very convincing indeed.
19 I would like to start off my conclusions by quoting Chad's first lady, Hinda Deby Itno,
20 who, when addressing a public gathering in the year 2014, on the occasion of
21 a fundraising event for the victims in the CAR, forcefully expressed her
22 incomprehension and dismay at the hatred and xenophobia underlying the actions of
23 the Anti-Balaka forces.
24 And I quote: "We never thought such barbarity possible at a time when African
25 leaders are advocating African integration. We never thought such repulsion and

1 hatred possible at a time when Africa is attempting to bring cultures closer. We
2 never thought that religious diversity, which should be a source of inspiration for
3 maintaining peace, security and social cohesion, would be used by visionaries and
4 fanciful spirits to foster division and xenophobia." End of quote.

5 However, this is indeed what occurred in the Central African Republic during the
6 events of December 2013 and beyond. These events that took place in the CAR, even
7 while the constitution of 27 December 2014 in its preamble declared its feelings of
8 pride with regard to the ethnic, cultural and religious diversity of the Central African
9 people and recalled, I quote, "the pressing need to preserve national unity, social
10 cohesion and peace as guarantees of economic and social progress." End of quote.

11 And lastly, we are light years from this today.

12 And it is this reality that the Prosecutor and his team has so successfully presented to
13 us. It is this reality that the victims through us, the Legal Representatives, would
14 like to share because it is the Rome Statute that confers upon the victims a voice and
15 a role in these proceedings.

16 Indeed Article 68(3) provides that, quote:

17 "Where the personal interests of the victims are affected, the Court shall permit their
18 views and concerns to be presented and considered at stages of the proceedings,
19 determined to be appropriate by the Court and in a manner which is neither
20 prejudicial to nor inconsistent with the rights of the accused and a fair and impartial
21 trial." End of quote.

22 You have heard from the Prosecutor and her team, you have heard from the Defence
23 counsels for Mr Yekatom and Mr Ngaïssona. We, the Legal Representatives of
24 Victims, are the third voice, the voice of those who were oppressed, of those who
25 suffered in silence against the backdrop of a strong and violent political context that

1 has been outlined to you and which goes beyond the individual.

2 This is why our voice is essential, as it is not influenced by the political context and its
3 sole objective is to defend the interests of the victims and combat impunity. This is
4 why our voice is actively associated with the judicial process and so important in this
5 courtroom today. It is actively associated with the judicial process and fully comes
6 into its own in this location.

7 Indeed, we are in a position to be able to provide you with a remarkable image of
8 reality and shed light on the various rationales at play in this tragic conflict.

9 The victims can also contribute to the manifestation of the truth as they have
10 a fundamental role to play in recontextualising these events and understanding the
11 reasons underlying them.

12 However, explaining is not forgiving. And this is what the victims have to say.

13 Quote, "We do not want to be the victims of simplification. We do not want to hear
14 stories or theories that do not reflect what we went through. Our presence in this
15 courtroom is a great source of satisfaction and hope for us." And we, the Legal

16 Representatives of Victims, are the bearers of this voice in unison with the diversity of
17 our sensibilities because we know or are aware of the very strong link between peace
18 on the one hand, to which we all aspire, and justice on the other. This is because as
19 you well know, peace is not only the absence of war. It must also involve justice and
20 the end of impunity for those committing the most serious crimes or suspected of
21 committing the most serious crimes, as is the case in this context.

22 Mr President, your Honours, for you to better grasp the extent of the suffering
23 endured by the victims, I shall dwell on the particular case of those who sought
24 refuge in Chad, whose situation seems to me to illustrate in the most compelling of
25 manners the harm suffered by the victims as a whole.

1 I would like to thank the Prosecutor for having recounted their ordeal, their forced
2 exile and the dissent into hell of those Central Africans who were targeted because
3 they came from Chad and because they were Muslim. Approximately 100 victims
4 sought refuge in Chad and are participating in proceedings today, and thousands of
5 others are looking on via their television screens.

6 Who are these victims? These victims hailed from Bangui, Bossangoa, Berbérati,
7 Mbaïki, Lobaye, Yaloké or Boda. For the most part they were women. Their
8 husbands, fathers, or brothers had, for the most part, lost their lives during the
9 conflict. They were refugees of Central African origin.

10 But more specifically and more particularly, these were people who were referred to
11 as the returnees because they hailed from Chad. These citizens who had Central
12 African -- who were Central Africans for several generations were living peacefully in
13 the city.

14 A study was conducted and published by the French development agency in 2018
15 entitled, "War in Central Africa in the shadow of Chad. A regional escalation of
16 conflict?" noted that a majority of the returnees were born in Central Africa and
17 belonged, before their deportation, to the second generation individuals of Chadian
18 origin, as their parents were born in the CAR. A fifth of the returnees belonged to
19 a third generation of migrants as their grandparents were also born in the
20 Central African Republic.

21 They felt profoundly Central African as a result. Yet, in the eyes of the Anti-Balaka,
22 they were foreigners and enemies to be expelled by all means possible by virtue of
23 their faith and origins.

24 Live or die was the choice these victims were up against, who today have sought
25 refuge in Chad. So the victims chose to flee.

1 During a mission to Chad, a woman confided in us and said, I quote, "I heard the
2 noise of the bullets, I saw the smoke from the fires and I fled into the bush with my
3 children." End of quote.

4 They fled, these women, because under Anti-Balaka attack, any plans of living in the
5 CAR were now out of the question. Their houses had been burnt down, their
6 businesses had come under attack, and their mosques had been devastated.

7 I would like to answer the Defence argument that says that if a group flees on their
8 own volition an area that was part of an attack, that this could not be referred to as
9 forcible transfer. These people, this displacement of individuals, the jurisprudence
10 does not require an explicit order. However, I would say that the fact that these
11 people had seen their houses burnt down and who were fearing for their lives, all of
12 these concrete and established facts in themselves suffice to show constraint and
13 allow for the characterisation of forcible displacement.

14 The Defence also contends that it has not been shown that this displacement and
15 forcible transfer of the population was one of the consequences of the acts of
16 Mr Yekatom and his alleged elements. The concomitance between the attacks and
17 the departures that ensued are in themselves sufficient to establish a nexus between
18 attack and departure. And as it was recalled in the DCC, one -- immediately
19 following the events of the attack of 5 December in Bangui, 100,000 individuals fled,
20 thereby increasing the number of internally displaced.

21 And in order to evacuate a maximum number of individuals in danger, 86 flights
22 were organised between Bangui and N'Djamena.

23 According to the report by the interministerial commission, tasked with taking
24 a census of the Chadian returnees, this report dates back to June 2014 and was drafted
25 on data of May 2014, there were many people in these sites of confinement along the

1 frontier. There were the sites of Sido, of Doyaba, one of the largest sites in the area
2 in which 337 children, unaccompanied children were residing. There was also in the
3 eastern Logone area the Goré site. And in Doba, there was a number, a large
4 number of unaccompanied children to the number of 671 at the time of the census in
5 2014. There was also the Mbitoye site.

6 In the western Logone region, there was the Moundou site, which is a transit site for
7 repatriates and returnees who have transited via Cameroon, another country that has
8 a common frontier with the CAR and Chad.

9 But the atrocity of deportation and forcible transfer was to take on a whole new side.
10 Indeed, in the document notifying the charges, it states that a number of convoys of
11 Muslims on their way to Chad or to Cameroon came under attack by the Anti-Balaka
12 forces, even in the presence of the armed forces of the international community, such
13 as the MISCA and the Sangaris operation.

14 In addition, the Anti-Balaka really undertook a manhunt against those who had
15 decided to flee into the forest. The accounts of the victims confirm the deplorable
16 conditions in which they were forced to leave the Central African Republic.

17 The returnees were, for the most part, tradesmen, collectors, artisans or individuals
18 who were the bedrock of the Central African economy.

19 They who were well-heeled yesterday, are today deprived of any form of social
20 existence. They have -- they are dependent on national hospitality and international
21 solidarity. They have lost their dignity.

22 The more lucky in their midst, the youngest that is, might I say, have, thanks to
23 national and international solidarity, managed to start reinserting themselves into the
24 economic and social life in Chad. However, the vast majority of them remain in
25 camps situated in far-flung areas that I have mentioned to you, living in deplorable

1 conditions as my learned colleague, Mr Yaré Fall mentioned in his opening
2 statements, far removed from the economic centres of the countries and they are
3 surviving on humanitarian aid.
4 These victims no longer want to depend solely on humanitarian aid, but they want to
5 retrieve their economic independence, their dignity, and also play a role in society.
6 What is more, in their flight, entire families were separated and torn apart. Many
7 men, heads of families were murdered during the atrocities committed and that is
8 why, as I said previously, the great majority of the victims in the Chadian camps are
9 women, and as a result, they are doubly victims because they find themselves in
10 a situation where they have to bring up the orphan children of their brothers, sisters,
11 cousins who were victims. And it should be taken into account that they are
12 particularly vulnerable, especially when they have lived through sexual violence.
13 For them, for all of these widows, this is double punishment.
14 Once they have arrived in Chad -- or once they had arrived in Chad, some of the
15 victims separated from their families during the flight could not find their parents.
16 In June 2014, according to information gathered from the repatriates or the returnees
17 by the interministerial commission tasked with taking the census of Chadian
18 returnees, several people died from assault and battery and 1106 non-accompanied or
19 separated children were enumerated.
20 Victim a/65057/19 lost their four brothers and sisters to exhaustion whilst they were
21 fleeing via N'Djamena.
22 Victim a/65011/19 lost her husband, killed by the Anti-Balaka by machete. Since the
23 end of the year 2013, she still has no idea where her children are and she is suffering
24 from serious psychological shock at the loss of her husband and disappearance of her
25 children

1 The outlook or their outlook on justice is simple. They are mistrustful of domestic
2 justice, but hopeful with regard to international solutions, notably that of the ICC.
3 Of course, the situation of the victims who sought refuge or those who are returnees
4 from Chad or Cameroon is not unique, but also applies to the thousands of Central
5 Africans confined to their Muslim neighbourhoods and enclaves, which brings me to
6 my second point: The harm suffered by all of the victims.
7 Within the Central African Republic, most Muslim victims, in inverted commas, live
8 in fear of stigmatization to which they would expose themselves if they were to leave
9 their neighbourhoods and enclaves where they are condemned to living in deplorable
10 conditions that favour the spread of disease.
11 The harm suffered by the victims is physical, mental, material, and financial.
12 Firstly, the harm suffered is physical as they have been deprived of water, food and
13 medical treatment. The incredible violence of the crimes committed is reflected in
14 the degree of physical harm suffered by the victims. Bodies were savagely cut to
15 pieces, skulls were broken by machetes, and sexual violence was used as a true
16 weapon of war.
17 The harm suffered was also mental to the extent that they were -- that they
18 experienced stigmatization, rejection and humiliation. This situation is dramatic for
19 the victims, especially when one considers that the family unit is a fundamental base
20 for numerous African societies. They live in constant anguish as they worry about
21 their family members whose fate remains a mystery. This mental harm in the form
22 of stress and anguish should also be acknowledged.
23 They have also suffered material loss, financial loss, and they have lost everything in
24 the conflict. The material lost is colossal.
25 Despite their suffering, the victims that we represent have accepted to share these

1 painful memories of forced displacement in the hope that one day they will live

2 a more peaceful future for themselves, their family and the generations to come.

3 It is because of the crimes with which the suspects are charged that you, honourable

4 Judges, have deemed that the victims should be able to take part in the proceedings

5 from the confirmation of charges, and this in itself is a great source of satisfaction for

6 them. Mr President, your Honours, the victims today, the victims expectations can

7 be summarised in three words: justice, truth and reparation.

8 They are hopeful that this confirmation of charges hearing and the ensuing decision

9 will open the way to a trial for justice to be done and for the truth to be established in

10 a bid to repair the past and pave the way for a constructive future for generations to

11 come, so that they will not have to experience the injustice their elders went through.

12 We, the Legal Representatives of Victims, are proud and honoured to be the bearer of

13 this ardent hope. You will confirm for the entirety of these reasons, Mr President,

14 your Honours, that the charges have been presented. Thank you.

15 PRESIDING JUDGE MINDUA: [12:14:19](Interpretation) Thank you very much,

16 Counsel. I note that you have taken less than your allocated time of 30 minutes, and

17 I thank you very much for your concision.

18 It would seem to me that there are no further candidates to take the floor on the side

19 of the LRVs. Counsel Massidda is nodding.

20 We shall now proceed, because we have the time ahead of us, to hear the final

21 submissions on the part of the Defence teams. We shall start with the Defence team

22 for Mr Yekatom.

23 Counsel Dimitri, please, the floor is all yours.

24 MS DIMITRI: [12:15:10] (Interpretation) Thank you, Mr President.

25 (Speaks English) Your Honours, just before we start, I would like to introduce on the

1 record three other members of the Defence team who joined us after the morning
2 break, Eva Daniel, Alexandra Chabaud and Justine Bernatchez.

3 Before I start, Mr President, I will give the floor to my colleague, Dr Lena Casiez, who
4 will address your Honours on two points. Thank you.

5 PRESIDING JUDGE MINDUA: [12:15:36](Interpretation) Thank you very much,
6 Counsel. I would like to welcome the new arrivals.

7 You have the floor, Madam.

8 MS CASIEZ: [12:15:49] Mr President, your Honour, you have everything in your
9 possession to dismiss count 11, other inhumane acts.

10 First of all, I will address a short answer to the Legal Representatives of Victims reply
11 on the Prosecution response at paragraph 66. Here, there is a reference to the Al
12 Bashir arrest warrant, it's footnote 128. Through this case, the Legal Representatives
13 of Victims tried to give an example before the International Criminal Court where
14 impermissible cumulative charges were allowed, namely, murder and extermination.
15 But, according to the Chambers Practice Manual, a warrant of arrest must contain
16 a specific reference to the crimes within the jurisdiction of the Court and a concise
17 statement of the fact which are alleged to constitute those crimes.

18 Any detailed discussion of the evidence or analysis of legal questions is premature at
19 this stage and should be avoided.

20 It is then according to the law that when the Pre-Trial Chamber issues an arrest
21 warrant, it doesn't deal with the question of cumulative charges. It doesn't mean at
22 all that the Judges already allowed impermissible cumulative charges. And you will
23 not find such decision.

24 Other than that, as a summary, at paragraph 627 of the DCC, the Prosecution said
25 clearly that this DCC presents cumulative charges against the suspects. And the

1 Defence argues that there is not a single trace of alternative charging in the DCC.

2 The Chambers Practice Manual is very well written on this specific issue. It permits
3 cumulative charges when, although based on the same set of facts, are not alternative
4 to each other but may all concurrently lead to a conviction.

5 In this case, the Pre-Trial Chamber will confirm cumulative charges when each of
6 them is sufficiently supported by the available evidence and each crime cumulatively
7 charged contain a materially distinct legal element.

8 The Appeals Chamber in Bemba et al. case has made it clear that, and I quote, "It is
9 the legal element of each statutory provision and not the specific facts of the case that
10 must be considered when applying the test for cumulative conviction."

11 Contrary to the Prosecution arguments and according to the Pre-Trial Chamber in
12 both Katanga and Muthaura case, other inhumane acts has no material distinct legal
13 element from torture, count 12 in our case.

14 Consequently, in application of the Chambers Practice Manual, which has the final
15 goal to contribute to the overall effectiveness and efficiency of the proceedings before
16 the Court, we ask you, your Honours, to dismiss count 11, other inhumane acts.

17 I thank you for your attention and I will give back the floor to Maître Dimitri.

18 PRESIDING JUDGE MINDUA: [12:20:34](Interpretation) Thank you very much,
19 Counsel, for your presentation.

20 Maître Dimitri.

21 MS DIMITRI: [12:20:45] Thank you, Mr President, your Honours.

22 I will first address the Legal Representatives' arguments in the observation filed
23 yesterday as well as the arguments they made this morning.

24 We note that the Legal Representatives of Victims do not claim, as the Prosecution did,
25 that a suspect may be convicted of imprisonment as a crime against humanity under

1 Article 7(1)(e), even if the conduct doesn't rise to the level of gravity for crimes against
2 humanity.

3 The Legal Representatives of Victims, however, seem to suggest that one person being
4 in prison would be sufficient to constitute imprisonment as a crime against humanity.

5 To support this argument, they make the analogy with murder as a crime against
6 humanity. While one murder may be of sufficient gravity to reach the threshold of
7 crime against humanity, there is no case where the imprisonment of one person has
8 been held to constitute a crime against humanity. This is because the inherent
9 gravity of murder is greater than the inherent gravity of imprisonment. And in that
10 regard we recall, as held in the Ntagerura case before the ICTR that, and I quote:
11 "It is not every minor infringement of liberty that forms the material element of
12 imprisonment as a crime against humanity; the deprivation of liberty must be of
13 similar gravity and seriousness as the other crimes enumerated as crimes against
14 humanity." End of quote.

15 As for displacement, the Legal Representatives of Victims argued that the Defence
16 interpretation requiring an order to displace is incorrect. They argue that the
17 restrictive interpretation advocated by the Defence runs contrary to the Statute and
18 that any order having the effect of forcing the civilian population to move would be
19 sufficient.

20 They finally argue that your Honours should not depart from the Ntaganda trial
21 judgment. We have three points in relation to those arguments.

22 First, the restrictive interpretation of that crime is not contrary to the Statute, but in
23 line with the Statute as stated in Article 22(2) of the Statute. A suspect cannot be
24 tried for violating the spirit of the Rome Statute. He must be tried for violating one
25 of the Rome Statute's express prohibition, which brings me to my second point, the

1 elements of crimes are clear. It's an order to displace a civilian population that is
2 required.

3 Third, as the Prosecution said a moment ago in relation to the Gbagbo case, this
4 Chamber is not bound by Trial Chamber level decisions in that case and that's why
5 we are asking you not to follow the Ntaganda trial judgment.

6 As for count 29, child soldiers, the Legal Representative for former child soldiers
7 argued that due to the systematic and widespread nature of the recruitment of
8 children, therefore it shall not be required that the DCC identifies the victims because
9 it's too difficult and impossible.

10 On that point, let me recall that this is not the Prosecution's case in relation to count 29
11 against Mr Yekatom. There is no such allegation of sheer scale or widespread and
12 systematic enlistment of child soldiers against Mr Yekatom.

13 The Legal Representative also seems to agree with the proximity allegation depicted
14 in the DCC against Mr Yekatom. Proximity should lead to the identification of the
15 victims in the DCC, and I invite your Honours to read our reply brief filed yesterday
16 in that regard.

17 Finally, the Legal Representative refers to 83 participating children who would have
18 alleged that Rambo was their commander. Those applications, your Honour, are not
19 evidence and have not been made available to the Defence. It would be a violation
20 of the Chamber's duty to base its decision in any way on those applications. And
21 given that these applications are not available to the Defence, they can hardly serve to
22 provide notice of what Mr Yekatom is charged with.

23 All this comes down to one point in relation to child soldiers: which child soldiers
24 Mr Yekatom is being charged with?

25 As a final remark, I would now like to point to some of the evidence in the DCC to

1 show that the Prosecution hasn't met its requisite threshold.

2 A witness said the following in relation to the 5 December 2013 attack in the area of
3 Boeing and Cattin, and I quote:

4 "The Séléka arrived in vehicles to the market as the Red Cross was about to leave.

5 The Séléka started shooting at the local population who fled towards the airport.

6 They then started searching houses. I ran away." End of quote.

7 As shown in a video I will broadcast in a moment, and as stated by some of the

8 Prosecution witnesses, the Séléka used rockets, grenades, heavy weapons to

9 randomly shoot on everything that was moving without distinction as to whether

10 they were civilians or not.

11 The Séléka randomly killed civilians and indiscriminately shot at the local population

12 who was forced to flee on 5 December as you will see on the following images.

13 With your permission, I would like to show a video extract of 1:14 that depicts the

14 Séléka in the area of Cattin on 5 December 2013. It can be publicly broadcasted and

15 starts at minute 18:46. It's in French and would require sight interpretation by the

16 interpreters, if possible.

17 (Viewing of the video excerpt)

18 THE INTERPRETER: [12:28:54] (Interpretation of the video excerpt)

19 "Unidentified speaker: Fire ...

20 Unidentified speaker: Moral, moral ...

21 Unidentified speaker: Oh ...

22 Unidentified speaker: We are going to clean up really good. Unidentified speaker:

23 Moral.

24 MJ: [Voice-over] With better weapons, the Séléka are progressing rapidly.

25 Unidentified speaker: That is clean, we are going to clean up.

1 MJ: [Voice-over] The commander is a young soldier of 36 years old, General Yaya,
2 this Muslim claims to have spent 20 years in the regular army before joining the
3 Séléka rebels.
4 Mahmat Yaya, Séléka General. During the *coup d'état* of March 2013. Suddenly,
5 men appear at the end of the road, the Séléka start firing a rocket in order to clear the
6 area, but it is a false alert, these people are civilians. The militiamen empty their
7 magazines, indiscriminately shooting at everything that moves. The last village
8 before the bushes has been totally deserted and the Christian inhabitants have fled
9 with the assailants to the other bank of the river.

10 Unidentified speaker: Well, they are already gone, everything is finished."

11 MS DIMITRI: [12:30:37] Mr Yekatom is charged with eight counts for the events of
12 December 2013 in that area. Needless to say that this footage paints a different
13 picture from what the Prosecution is trying to depict of what really happened on 5
14 December 2013.

15 If the civilian population was randomly shot at and killed regardless of whether they
16 were civilians or not, it's by the Séléka. This striking evidence is of material
17 importance for Mr Yekatom's ability to mount a defence. The civilians Mr Yekatom
18 is charged of murdering might well have been killed by the Séléka.

19 As shown in the video, when the Séléka launched a rocket or emptied their magazines,
20 they aimed at any target that was moving. No heed was paid to which religion the
21 targets belonged to.

22 Surely, you will run away, whether you're Christian or Muslim, when a rocket is
23 flying in your direction or a machine gun opens fire in your neighbourhood. This
24 very extract depicts and describes an entire village where the locals fled because of
25 the random shooting by the Séléka.

1 Yet again, it's Mr Yekatom who's charged with the removal of population, attacks
2 against civilians and murder of civilians in the very area shown in the video.

3 Another witness said the following regarding the traders at the Boeing market on
4 5 December 2013, which is subject to count 2 and 3 of the DCC, and I quote:

5 "The other Muslim traders that were also in the market said that it was not a good
6 idea to go and fight the Anti-Balaka because they did not attack us yet. Some of the
7 traders accepted to kill the Christians and they killed four Christians in the market
8 area. I witnessed the incident, it happened on 5 December 2013 before the
9 Anti-Balaka arrival at the Boeing market." End of quote.

10 Yet again, the Prosecution indicates that during the attack Mr Yekatom and his
11 elements would have led. There was no indication that any of the victims were
12 Séléka, armed or otherwise engaged in combat.

13 In relation to PK5, I would like to show your Honours another extract of the same
14 video. This portion is of about 30 seconds and it starts from minute 21:15. It's in
15 French and also requires sight interpretation, if possible.

16 Your Honours will again see the Séléka but this time in PK5, right next door to Boeing
17 and Cattin. I would invite you to watch how they shoot at an unarmed civilian tied
18 up on the ground.

19 (Viewing of the video excerpt)

20 THE INTERPRETER: [12:33:57] (Interpretation of the video excerpt)

21 "Unidentified speaker: We have already killed with them. Unidentified speaker:
22 They have already fled.

23 Unidentified speaker: We have them ... [Arabic] [incomprehensible].

24 MJ: [voice-over] In the Muslim quarter of PK5, the population is cheering the
25 members of the victorious militia group. There is a gunshot practically under our

1 very eyes, a militiaman shoots at a man who is lying on the ground tied up."

2 MS DIMITRI: [12:34:49] This is the tip of the iceberg of what we could have brought
3 you if the Prosecution had been required to share with us the result of the Séléka
4 material. The Prosecution claimed this morning that it had made available to the
5 Defence unfiltered evidence. Let me recall that a huge amount of material has been
6 kept from us to protect the Séléka investigation.

7 Mr Yekatom has been locked up for almost a year while the Séléka, despite the
8 evidence collected by the Prosecution, are still out there walking freely because the
9 Prosecution hasn't arrested any of them.

10 Had the Prosecution not sought the protection of their Séléka investigation, and had it
11 disclosed Séléka material to the Defence without redaction, your Honours would
12 have had the benefit of hearing the Defence on the factual substance of the charged
13 crimes and this confirmation hearing would have been very different.

14 In spite of the undermined ability to critically examine the Prosecution evidence, the
15 Defence of Mr Yekatom presented what we believe are precise legal and factual
16 elements for your Honours to assess during your deliberations.

17 The Defence arguments should lead your Honours to one conclusion: there is no
18 substantial ground to believe Mr Yekatom is criminally responsible for any of the
19 charges. The Chamber shall decline to confirm all counts.

20 Thank you.

21 PRESIDING JUDGE MINDUA: [12:36:41](Interpretation) Thank you very much,
22 Maître Dimitri. Is that the end of your presentation?

23 MS DIMITRI: [12:36:48](Interpretation) Yes, your Honour.

24 PRESIDING JUDGE MINDUA: [12:36:53](Interpretation) Thank you for being
25 concise and complying with the time limits.

1 We are going to continue until 1:15 p.m., so I will hand over the floor now to the
2 Defence team of Mr Ngaïssona.
3 Maître Knoops.
4 MR KNOOPS: [12:37:13] Good afternoon, your Honours.
5 I am assisted this afternoon by Mrs Knoops-Hamburger on my left side. She just
6 joined the team.
7 Mr President, your Honours, in the next hour, the next hour, we'll proceed to
8 illustrate how the actions taken by Mr Ngaïssona, which in our submission the
9 Prosecution mistakenly interprets as proving control over the crimes committed by
10 Anti-Balaka groups, were actually aimed at preventing the commission of crimes and
11 at contribution to the DDR process, demobilization and reconciliation process.
12 We are well aware that we are in a court of law, Mr President. We are well aware
13 about the reality that we are in a court of law. We are not making simple
14 representations. We do not make claims as the Prosecution has repeatedly
15 suggested. We have based ourselves on the evidence, which was sometimes
16 qualified as INCRIM evidence by the Prosecution, and based on that evidence we
17 have submitted our arguments. The same we will do in the next hour.
18 Mr President, control over the crime on the one hand and control over a DDR process
19 are factually and legally two different concepts, which in our submission the
20 Prosecution overlooks. As the Court may deduce from the Ntaganda trial judgment
21 and the way Claus Roxin's theory on control over the crime and how it has been
22 interpreted by the Trial Chambers, the Court may deduce from this jurisprudence
23 that control over the crime is intertwined with the element of an essential
24 contribution.
25 One of the last judgments in this regard is the Trial Chamber judgment of Ntaganda

1 of 8 July 2019, paragraph 774, where the Court said: "The accused ... must have
2 a control over the crime, by virtue of his or her essential contribution ..."

3 We will submit today by way of closing arguments that the fundamental mistake in
4 the Prosecution theory is that it confuses control over the crime with control over
5 a DDR process. That's, in our submission, the fundamental mistake in this case, on
6 the basis of which the evidence has been wrongfully interpreted.

7 Mr President, in our oral submissions as the Court might recall, and also in our
8 response of yesterday, we showed - based on the Prosecution's own material - that
9 there was no effective control of coordination on the part of Mr Ngaïssona of the
10 so-called Anti-Balaka movement.

11 We showed based on the Prosecution evidence itself, not simply claims by the
12 Defence, that Mr Ngaïssona's actions were attempts to set up a structure not to
13 commit crimes, but a structure for the DDR in CAR.

14 We will now display, Mr President, a table, a confidential document, that in our
15 submission convincingly shows all efforts made by Mr Ngaïssona in the time frame of
16 February, March, December 2014 in order to contribute to national reconciliation, not
17 to any operations in the field.

18 While actions such as the setting up of the National Coordination might have been
19 aimed at controlling or even exerting influence over a DDR process, such control, as
20 the table will show you in a minute, had nothing to do with the commission of crimes.

21 We can now display the table. It's a confidential document.

22 PRESIDING JUDGE MINDUA: [12:42:58] You said it is confidential.

23 MR KNOOPS: [12:43:02] So we have to go in private session.

24 PRESIDING JUDGE MINDUA: [12:43:06] Yes, indeed.

25 (Interpretation) Madam courtroom officer, please could we go into private session.

1 (Private session at 12.43 p.m.)

2 THE COURT OFFICER: [12:43:20] We are in private session, Mr President.

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21 (Open session at 12.53 p.m.)

22 THE COURT OFFICER: We are back in open session, Mr President.

23 PRESIDING JUDGE MINDUA: [12:54:01](Interpretation) Thank you very much,
24 court officer.

25 Mr Knoops, we are in open session now.

1 MR KNOOPS: [12:54:08] Thank you, Mr President.
2 Now, what is the relevance of this table for the closing arguments?
3 The table is based on the Prosecution's own material and it clearly shows that
4 Mr Ngaïssona was involved, in accordance with his task as peace coordinator, in
5 supervising, controlling the DDR programme rather than controlling any crime. It
6 also shows the lack of any *mens rea* in this regard.
7 The Prosecution's reliance on a video, CAR-OTP-2014-0749, that was the video
8 whereby Mr Ngaïssona in his speech actually told the audience that, When I speak to
9 children, I think that they will follow me, you know this is this famous speech, this
10 speech actually refers to his efforts with respect to mobilising and the DDR
11 programme. And his desire, his hope, that these young people would follow him in
12 his efforts with respect to this DDR programme. It was not, clearly, an invitation to
13 follow in combat as the Prosecution suggests.
14 With this speech, he ventilated that he needed his (sic) trust in order to have them
15 participating in all these mobilisation programmes we just saw in this table, and only
16 for this reason he took the floor to address this audience.
17 The actions displayed, Mr President, in this table represent some of many activities
18 undertaken by the Anti-Balaka Coordination from which Mr Ngaïssona was part of in
19 order to meaningfully contribute to the DRR and the pacification within CAR.
20 And the question arises in this closing argument: How can one attribute to
21 Mr Ngaïssona criminal liability if it's evident that the transitional government and the
22 international forces themselves in CAR were not willing to engage with the
23 Anti-Balaka to demobilise them and even disarm them? Also here, it's not a claim of
24 the Defence, it's not a representation by the Defence, it's the Prosecution's own
25 evidence who tells the Chamber this.

1 Witness P-0808 told the investigators that the transitional government had no
2 incentive to stop the violence because it allowed them to stay in government longer.
3 This is why they refused to negotiate with the Anti-Balaka. The FACA had to
4 arrange security in neighbourhoods. The international forces didn't do anything to
5 help. CAR-OTP-2025-0324-R03 at 0340, at paragraph 126.

6 Mr President, even more, in September 2015, more than a year after July '14, the
7 Brazzaville talks, a report was issued which showed that MINUSCA had put little
8 energy in the DDR programme, with funds still missing, armed groups still
9 uninformed about the process and thus unwilling to engage in it. It's document
10 CAR-OTP-2087-9062, also a Prosecution document.

11 (Redacted)

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16 The allegation therefore that Mr Ngaïssona frustrated the peace process and misused
17 it to control the Anti-Balaka to reinstate Mr Bozizé to commit crimes is therefore
18 refuted by the Prosecution's own evidence, its own witnesses, such as P-0808, who in
19 his statement in paragraph 66 told us the following:
20 "The international forces decided that the Anti-Balaka could not be part of the DDR
21 [process] because they were civilians. I disagreed ..." this Prosecution witness, "...
22 because the young people had weapons and knew how to use them."
23 Mr President, even the Prosecution's own witness, P-0952, gave at one point in time 4
24 million CFA to the Anti-Balaka to help in its mobilisation. That could point to the
25 fact that giving money to the Anti-Balaka in terms of the demobilization process is not

1 in itself proof of a criminal intent. You find the evidence for this observation in
2 P-1521, paragraph 74 of the Prosecution witness statement CAR-OTP-2046-0603-R01,
3 at 0615. You find the reference whereby other people gave money to the Anti-Balaka
4 to help in their demobilization.

5 Conclusion: All of this material, Mr President, refutes the allegation that
6 Mr Ngaïssona allegedly frustrated the demobilization process as suggested by the
7 Prosecution.

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18 Another Prosecution witness actually told the investigators the same: Mr Mokom's
19 support of Bozizé caused the division in the movement. P-0808 at paragraph 93 of
20 the witness statement.

21 And this is, Mr President, your Honours, the best evidence -- maybe the best evidence
22 to countervail the theory of the so-called inner circle, the mere fact that because
23 Mr Ngaïssona was not pro-Bozizé, he was chosen as a national coordinator; that was
24 the reason.

25 The proof, Mr President, that Mr Ngaïssona was not having any control over the

1 crimes, as required under the laws of this Court, nor had any incentive to do so in
2 order to have Mr Bozizé reinstated, also follows from other Prosecution's own
3 evidence, such as the mentioned witness, P-0889, the example we already gave.

4 Mr Ngaïssona, upon directions of the French embassy, didn't go to a meeting to meet
5 Bozizé. CAR-OTP-2027-2290 at 2300, paragraphs 61 and 62 of this statement.

6 And the most compelling evidence, Mr President, that Mr Ngaïssona had no close
7 relationship with Mr Bozizé and couldn't have been part of his so-called inner circle is
8 provided again by the Prosecution's own material, document CAR-OTP-2001-4818.

9 It's an article, Mr President, an article which is part of the Prosecution evidence, and
10 this is an article in which Mr Ngaïssona is interviewed and in this interview you find
11 that he categorically denies working towards Mr Bozizé's return to power:

12 Interviewer -- quote in French: (Interpretation)

13 "Many people are accusing you of being associated with François Bozizé and of
14 working for him. Is that true or not?"

15 Mr Ngaïssona: This is a monumental serious error. A power is a power. A power
16 is past: We need to turn the page and move forward." (Speaks English) End quote.

17 Therefore, Mr President, we can conclude that the Prosecution's own evidence refutes
18 the theory that Mr Ngaïssona, based on mere loyalty to Mr Bozizé, was willing to
19 enter into an alleged strategic command plan as suggested by the Prosecution.

20 And that of course raises the question whether he, Mr Ngaïssona, as suggested by the
21 Prosecution, was misusing his position as national coordinator to exert authority,
22 control or influence over the Anti-Balaka movement in order to serve an elite strategic
23 common plan.

24 Also here, you find in the Prosecution material evidence that clearly refutes its own
25 theory. One of the many examples is P-0889, in paragraphs 89 till 90, and we quote

1 this specifically, Mr President, because the Prosecution in its response suggested that
2 we didn't substantiate this claim, so-called claim of the Defence, which was not
3 a claim, that's why we quote from this statement, which is CAR-OTP-2027-2290-R01
4 at 2304. This witness speaking about Mr Andjilo, says the following: (Interpretation)
5 "He is frightened of nothing. He has also stolen cars and motorbikes. When
6 Ngaïssona called him, he would not come if he knew that he would be punished.
7 He thought that he was above everybody. He attacked the residence of Ngaïssona
8 on two occasions with weapons because he was not happy that Ngaïssona had
9 reproached him." (Speaks English) End of quotation.

10 Mr President, speaking about this Mr Andjilo, contrary to the Prosecution allegation,
11 he did not admit in his statement to the investigating judge in CAR that
12 Mr Ngaïssona was his chief. Rather he, in response to a specific question, mentioned
13 that Mr Ngaïssona was their coordinator. And he never stated that his elements
14 were under Ngaïssona's hierarchy, but that Mr Ngaïssona would be able, as
15 a coordinator, to determine which grade his elements were within the movement,
16 specifying that he was illiterate and did not know these things. In response, we say
17 this to paragraph 77 of the Prosecution submissions.

18 Now, after the destruction and pillaging of Mr Ngaïssona's house by the Séléka
19 groups, his house became occupied by different individuals, including at some stage
20 *douze Puissances*.

21 The Prosecution in its response now - paragraphs 59 and 61 - alleges that
22 Mr Ngaïssona allowed the same gentleman, Mr Andjilo, and the person with the
23 name Lebene to live in his house and to use it as a base. The Chamber might notice
24 that this interpretation of the Prosecution evidence is not correct.

25 There are two witnesses who refute this theory, P-0954 and P-0148. They both do

1 not confirm that Mr Ngaïssona allowed those individuals to live in his home or to use
2 it as a base. Your Honours can find more detailed arguments of these submissions in
3 our observations of yesterday, paragraphs 105 till 108.

4 Upon his return to Bangui, Mr Ngaïssona was forced to live in his father's house
5 because his own house was still destroyed, in Bafio Ouham, which is 1 to 2 kilometres
6 east from his father's home. This is therefore to say that the evidence does not
7 suggest that Mr Ngaïssona allowed people to use his former house as a base.

8 So how could Mr Ngaïssona therefore have controlled any alleged crime if members
9 of the so-called Anti-Balaka were even attacking him and pillaging his house like
10 Mr Andjilo? It doesn't make sense.

11 The answer lies again in the Prosecution's own evidence. One of the Prosecution
12 witnesses, P-0952, indicated that the two groups of the Anti-Balaka, those from the
13 north and from the south, suggested them to unify into one group and to just have
14 one leader for the meetings with the government. P-0952 then suggested that they
15 should become a political party.

16 So therefore also here you see, Mr President, these were not just initiatives which
17 were supported by Mr Ngaïssona.

18 When asked if the Anti-Balaka were structured, the witness, P-0952, replied that they
19 were not, and this witness clearly indicates to the Prosecution investigators that it was
20 a spontaneous movement. The witness also said that for sure they tried to, with the
21 coordination to set up a form of organisation, but the witness didn't feel that such
22 coordination on the field would have materialised.

23 Mr President, in conclusion, the Prosecution has failed to establish that Mr Ngaïssona
24 was in control of ComZones, let alone that he could appoint ComZones for military
25 operational purposes. In this regard, the Prosecution's own evidence, P-0405, is

1 consistent with the fact that it was not until 17 June 2014 that the ComZones from all
2 regions came to Bangui to attend the general assembly during which they officially
3 chose Mr Ngaïssona to speak in their names with the international community.

4 It is therefore consistent with the Defence submissions that, even assuming that
5 Mr Ngaïssona would have been asked by a few Anti-Balaka chiefs from Bangui to
6 represent these groups before the government and the international organisations in
7 January 2014, at that time, at that point in time, Mr Ngaïssona did not have concrete
8 connections with ComZones from all regions.

9 This can also be adduced from Witness P-0884, which clearly tells the Prosecution
10 investigators that Mr Ngaïssona was not directly in touch with the leaders at that
11 point in time.

12 PRESIDING JUDGE MINDUA: [13:16:47](Interpretation) Mr Knoops, we now need
13 to break for lunch.

14 I hope -- well I do understand, of course, that you have some arguments to develop, it
15 would be a good idea to do it after lunch, I think. Would you not agree?

16 MR KNOOPS: Yes, Mr President. Thank you.

17 PRESIDING JUDGE MINDUA: [13:17:12](Interpretation) Therefore, according to
18 my calculations shared with the courtroom officer, you have approximately
19 28 minutes outstanding, that is to say half an hour. That is correct.

20 (Speaks English) You still have half an hour for your submissions.

21 MR KNOOPS: [13:17:37] That's fine, Mr President.

22 PRESIDING JUDGE MINDUA: Yes.

23 MR KNOOPS: [13:17:39] Thank you very much.

24 PRESIDING JUDGE MINDUA: [13:17:40] So we are going to conclude after the
25 lunch.

1 (Interpretation) Court officer, we are going to break for lunch and we shall resume at
2 3 p.m. this afternoon.

3 THE COURT USHER: [13:17:55] All rise.

4 (Recess taken at 1.18 p.m.)

5 (Upon resuming in open session at 3.00 p.m.)

6 THE COURT USHER: [15:00:34] All rise. Please be seated.

7 PRESIDING JUDGE MINDUA: [15:00:58](Interpretation) Good afternoon to
8 everyone. We will now resume our confirmation of charges hearing.

9 And without further ado, I give the floor to the Defence team of Mr Ngaïssona for
10 their closing observations.

11 Maître Knoops.

12 MR KNOOPS: [15:01:28] Thank you very much, Mr President.

13 Good afternoon, your Honours.

14 Before the break, we, as Defence for Mr Ngaïssona, went into the arguments to show
15 there was no control over any crime, but rather a supervision or control over the DDR
16 programme.

17 We finished before the break with showing that the Prosecution failed to establish
18 substantial grounds to believe that Mr Ngaïssona was also in control of ComZones
19 and that he could appoint ComZones for military operational purposes.

20 The three arguments which refute this theory:

21 First, the coordination was set up after mediation with the NGO, MOUDA; we saw
22 already in the table on 16 June 2014. This is based on a Prosecution witness
23 statement P-0808, CAR-OTP-2063-0050-R01 at 0062, paragraphs 71-72.

24 Therefore, not in January, Mr President. Not in January.

25 The fact that Mr Ngaïssona might have been chosen as coordinator in January, as

1 alleged by the OTP, does not contradict the evidence showing that the coordination
2 was not effective in January 2014.

3 The Prosecution Witness 1521 informs the investigators, namely, that the coordination
4 was not functioning at that time in January as the situation at that moment was too
5 tense.

6 And also P-0884, another Prosecution witness, states that Mr Ngaïssona would only
7 meet the President alone, but would not give any feedbacks to anyone at that point in
8 time.

9 The second argument to show that Mr Ngaïssona was not in control of ComZones or
10 was able to appoint ComZone commanders follows from the argument that
11 Mr Ngaïssona would formally accept the various leaders satisfying -- that it would
12 satisfy the criteria for aiding and abetting.

13 This is the Prosecution's argument in its response in paragraph 66 till 67. The
14 Prosecution says, well, formal acceptance by Mr Ngaïssona of those various leaders is
15 sufficient for the requirements of aiding and abetting. The mere acknowledgment,
16 Mr President, of Mr Ngaïssona's potential pre-existing situation does not, however,
17 meet the threshold of Article 25(3)(c) of the statute, which requires a substantial
18 contribution to the crime itself, which can be derived from the decision on the
19 confirmation of charges in the Mbarushimana decision, 16 December 2011,
20 paragraph 279.

21 Rather, Mr President, the evidence submitted by the Prosecution shows that any
22 acknowledgment of the leadership by Mr Ngaïssona would have been made in the
23 context of the DDR and not in the context of control over the various ComZones.
24 And lastly, the fact that the Prosecution is able to present several documents with
25 names of ComZone leaders itself does not constitute knowledge on the part of

1 Mr Ngaïssona of the identity of those various persons. It is not to be equated with
2 knowing those ComZone leaders.

3 This concludes the part on the issue of control. There are two remaining questions in
4 our opening submissions, Mr President, your Honours. First, could Mr Ngaïssona
5 be held liable for not presenting or punishing alleged crimes? Also here, there is
6 a peculiarity in the Prosecution theory.

7 In one of their submissions, the Prosecution states that Mr Ngaïssona was
8 instrumental in assisting in the liberation of Mr Andjilo, and this is one of their
9 arguments to show that he was able to have control also on the liberation of several
10 individuals.

11 Before the break, Mr President, the Chamber has heard evidence based on
12 Prosecution material that the same individual, Mr Andjilo, attacked the home of
13 Mr Ngaïssona twice with arms because he was not happy with the way Mr Ngaïssona
14 dealt with the DDR process.

15 So it is really absurd to assume that Mr Ngaïssona was allegedly instrumental in
16 assisting in the liberation of Mr Andjilo in light of the threats he received - according
17 to a Prosecution witness - in assisting in the liberation of Andjilo, in light of these
18 threats and the fact that this person was even willing to kill him.

19 As for the coordination, Mr President, how could Mr Ngaïssona be held criminally
20 liable for not preventing or punishing the alleged crimes if the Prosecution's own
21 evidence show that he, himself, Ngaïssona, initiated several measures of exclusion
22 from the coordination? He installed several measures for exclusion of several
23 members of the coordination who didn't act correctly.

24 The Prosecution ignores therefore its own evidence, its own witness statements,
25 which suggests that Mr Ngaïssona alone could not decide and impose disciplinary

1 measures.

2 These witnesses speak of a disciplinary board and they speak about Mr Ngaïssona
3 actively seeking the exclusion of several members of the coordination when these
4 members were accused of serious crimes. This is not again a claim of the Defence,
5 your Honours. It is based on Prosecution so-called INCRIM material. We refer to
6 three sources. First, P-81 -- 801, that's CAR-OTP-2074-2722-RO1 at 2729. The
7 second source is Prosecution witness P-0876, CAR-OTP-2034-0463-RO1 at 0475; and a
8 document, the third source, its documentary evidence of the Prosecution, CAR
9 document OTP-2001-5386 at 5469.

10 So also here, the Court might conclude that Mr Ngaïssona had no power whatsoever
11 to prevent or punish alleged crimes.

12 The second question arises, which is: What should have been the so-called essential
13 contribution Mr Ngaïssona would have made to the alleged crimes if the
14 Prosecution's own evidence also shows, Mr President, that this contribution is absent?
15 Again, Prosecution witnesses refute this theory, despite that some of the investigators
16 tried to push one of the Prosecution witnesses to confirm the content of a document
17 about alleged purchase of weapons by Mr Ngaïssona.

18 The witness in question - who's confronted with this document - is not making any
19 linkage between Mr Ngaïssona and any weaponry which came into the possession as
20 suggested of the Anti-Balaka groups. Nor is this witness able to conclude that
21 Mr Ngaïssona contributed financially to the Anti-Balaka.

22 Interestingly, this witness of the OTP explains that there were actually - in the
23 submission of this witness - two types or two kinds of financing: One, by
24 Mr Ngaïssona, who merely tried to help the community with everyday life and the
25 other one by the so-called inner circle.

1 The witness explains that what is meant by, You are obliged to help each other, and
2 the idea is that, according to this witness statement, in Africa, when you have money
3 and you have a prominent position, you help the others. That is the mentality in
4 Africa, as this Prosecution witness suggests, and that is what this witness attributes to
5 Mr Ngaïssona. It's the first type of financial aid and not the second type which was
6 meant allegedly to support the Anti-Balaka groups in their operations, in their
7 actions.

8 Now, Mr President, we arrive at the final conclusions of our oral submissions and we
9 submit that the Prosecution was not able to provide substantial grounds to believe
10 that Mr Ngaïssona - first, was amongst the alleged members of the so-called inner
11 circle or triangle relationship as suggested by the Prosecution. And we submit that
12 there was not a - and I quote now from the majority opinion of Trial Chamber I in the
13 Prosecution versus Gbagbo and Blé Goude case, and that's paragraph 97, written by
14 the honourable Judge Henderson, the majority opinion, that there should be:
15 "... a minimal level of coordination within those who control the relevant state or
16 organisation ..."

17 And if we project, Mr President, this qualification of the majority of the Trial Chamber
18 I on the case of Mr Ngaïssona, the conclusion is there, that this Prosecution, the
19 Prosecution was not able to provide substantial grounds to believe that there was
20 a minimal level of coordination between those who control the relevant state or
21 organisation - if there was a control at all.

22 A second conclusion on the basis of the Prosecution material is the following: There
23 are no substantial grounds to believe that Mr Ngaïssona himself, even if the Court
24 would accept that there was a minimal level of coordination within those who control
25 the relevant said organisation - as meant by the majority opinion in the case of

1 Gbagbo, Blé Goude - even if the Court would arrive at that conclusion, there's yet no
2 substantial grounds to believe that Mr Ngaïssona was part of such a network and his
3 contribution was essential of and to this network.

4 And here, we refer, your Honours, to the ruling of Judge Fremr in the Prosecution
5 versus Ruto and Sang case. The reasons of Judge Fremr in the decision on no case to
6 answer motion of 16 June 2016, paragraphs 69 and 71 of the judgment, opinion of
7 Judge Fremr, where honourable Judge Fremr reasoned that the alleged contribution
8 of a certain individual in the commission of an alleged crime is not sufficient for the
9 purposes of proving a common plan.

10 According to honourable Judge Fremr, it still needs to be shown that this individual is
11 part of the network and that his contribution was part of the common plan. And
12 then, the honourable Judge Fremr says something very relevant, Mr President, for the
13 case of Mr Ngaïssona.

14 In his opinion, he says, quote:

15 The Prosecutor must be able to exclude that the acts or the plans are not the work of
16 one individual who is unconnected to the alleged network or, in the instant case, the
17 inner circle.

18 And we suggest on the basis of the Prosecution evidence that the activities of
19 Mr Ngaïssona, as illustrated by the table this afternoon, with all his actions and
20 contributions to the DDR, were totally unconnected to any alleged network or inner
21 circle in this case, and that these actions and even his control over certain individuals
22 in the context of the DDR was totally unrelated to any criminal network.

23 The Prosecution, Mr President, suggests in this regard in its response in paragraph 8
24 that it would be uncontested by the Defence that Mr Ngaïssona participated in
25 meetings. This is a misconstruction of the Defence submissions in all due respect.

1 First, the Prosecution fails to cite one single witness that was present at a meeting or
2 other exchange where Mr Ngaïssona, Mr Bozizé and either Bernard or Maxime
3 Mokom discussed using Anti-Balaka elements to reinstate Mr Bozizé as president.

4 There is not one witness who's saying this.

5 Secondly, the Prosecution suggests that the Defence did not contest that
6 Mr Ngaïssona participated in the meeting. This is again a total mischaracterisation
7 of our submissions.

8 We never stipulated this, Mr President. Our argument was that the evidence in the
9 footnotes 59 till 62 of the DCC only mentions three encounters and where allegedly
10 one -- where allegedly one witness was present with Mr Ngaïssona, and we have
11 sufficiently shown to the Chamber that these sources are not sufficient to qualify as
12 substantial grounds.

13 In addition to these submissions, the OTP included references to two witness
14 statements and two documents drawn by investigatory bodies. The mentioned two
15 documents do not rely, as the Court might notice, on tangible evidence and the two
16 witnesses - being P-1847 and P-0589 - cannot qualify for the test of substantial
17 grounds to believe because witness P-147 -- 1847 admits that he never attended
18 a meeting with Mr Ngaïssona or with any alleged members of Mr Bozizé's supposed
19 inner circle. And Witness 0589 is a crime-based witness, Mr President, with no
20 insider knowledge suggesting that Mr Ngaïssona gave an order to attack Muslims at
21 a meeting prior to the 5 December attack.

22 Yet, this witness was not present there and learnt about this alleged meeting from
23 a source whose name is redacted under category A.6.1. In other words, this relates
24 to indirect anonymous hearsay evidence without any other corroboration.

25 In a similar situation, Mr President, your Honours, the Pre-Trial Chamber in the Abu

1 Garda case refused - as you know - to confirm the charges for similar reasons. The
2 confirmation of charges proceedings in the Abu Garda case is really instructive also
3 for the case of Mr Ngaïssona.

4 In that case, as the Court knows, the Prosecution asked the Chamber to infer - in the
5 context of confirmation of charges - from circumstantial evidence, the existence of
6 a so-called common plan involving the suspect, including subsequent action on his
7 part.

8 Now similar to this case, Mr President, the Prosecution argued in the Abu Garda case
9 that the suspect's involvement in alleged meetings were indicative of the existence of
10 a common plan. Following a thorough review though of the evidence by the
11 Prosecution, the Chamber found that the witness testimonies did not definitively
12 place Mr Abu Garda at those meetings where this so-called common plan would have
13 been conceived.

14 And the Chamber in that case also found that Mr Abu Garda's participation in one of
15 those meetings, it was the second one, was based on uncorroborated evidence of an
16 anonymous witness, including statements of those witnesses who allegedly
17 participated in the attack.

18 All these findings -- and the Chamber went at length also to assess the credibility of
19 that evidence, despite it was a confirmation of charges hearing, these findings led the
20 Chamber to decline ultimately to confirm the charges against Mr Abu Garda.

21 Here, Mr President, like in Abu Garda, the Prosecution has failed to place -- to
22 position Mr Ngaïssona in a specific meeting with dates and time and witnesses where
23 the alleged strategic common plan to regain power of Mr Bozizé through the
24 instrumentalization of the Anti-Balaka to commit crimes was conceived.

25 Like in Abu Garda, the Prosecution relies here in Ngaïssona's case on uncorroborated

1 hearsay evidence to substantiate its case that Mr Ngaïssona allegedly gave an order to
2 attack Muslims prior to 5 December attack. And also here, like in Abu Garda, the
3 evidence is insufficient to establish those substantial grounds. And we just also saw
4 before the break that Mr Ngaïssona even in an interview, in a Prosecution document,
5 said that he was not in favour of the return of Bozizé because that time period had to
6 be closed.

7 Mr President, our third conclusion in our closing arguments is that the Prosecution's
8 assertion that Mr Ngaïssona was part of an alleged Anti-Balaka network, which was
9 set up to commit crimes to which he would have had contributed, cannot be derived
10 from the Prosecution materials. In specific, not from the CDR, the call data records.

11 I will not repeat our submissions, but we have one additional new observation. One
12 of the Prosecution's main allegations with respect to control on the part of
13 Mr Ngaïssona and his alleged contribution was that he was in frequent contact with
14 ComZones or key Anti-Balaka provincial leaders over the telephone.

15 To this end, the Prosecution relied extensively, as the Court knows, on those call data
16 records. See for instance, the paragraphs 59, 39, 42, 76, 146 and 333 of the DCC.

17 But we have also seen during those -- the hearings and the submissions by the
18 Defence, that the Prosecution's call sequence tables and the attribution tables, the
19 annexes G and I, failed to provide any tangible evidence to support a nexus between
20 Mr Ngaïssona and the alleged crimes. More importantly, that evidence can therefore
21 not meet the threshold of substantial grounds to believe.

22 Our fourth conclusion: When we speak about an analogy with other cases before the
23 ICC in terms of confirmation of charges, in -- where similar deficiencies in the
24 Prosecution case were to be detected, we can also refer to the Pre-Trial Chamber
25 decision in the Mbarushimana case of 16 December 2011, of Pre-Trial Chamber I.

1 In paragraph 45 of this decision, the Chamber expressly holds, I cite:

2 "There is no provision in the statutory framework of the Court which expressly states
3 that inconsistencies, ambiguities or contradictions in the evidence should be resolved
4 in favour of the Prosecution."

5 In other words, any of those inconsistencies et cetera should not be resolved in favour
6 of the Prosecution. That is the basic tenet of the ruling in the Mbarushimana case,
7 paragraph 45.

8 And in paragraph 47, your Honours, you find that the Judges of Pre-Trial Chamber I
9 also rule that it will and it has to "... assess the intrinsic coherence of each item of
10 evidence in light of the whole of the evidence ..."

11 The Prosecution asked the Chamber today to look at the whole and actually ignores
12 any of those inconsistencies or any potential deficiencies, but there is a whole bulk of
13 evidence and the Prosecution says you should assess the case on this bulk.

14 Now, this is actually contrary to the approach of the Judges in the Mbarushimana
15 case where it was said each item has to be assessed in light of the whole of the
16 evidence submitted for the purposes of the confirmation hearing.

17 And then the Court says:

18 "Where such evidence is found to contain inconsistencies, ambiguities or
19 contradictions, the Chamber will exercise caution" -- "caution in using it to affirm or
20 reject any assertion made by the Prosecution." End quote.

21 And Mr President, this also counts specifically for the case of Mr Ngaïssona in light of
22 the so-called INCRIM material of the Prosecution, which turns out to be exculpatory,
23 as we have illustrated with several and numerous examples.

24 Our fifth conclusion of our closing arguments and the whole hearing: If the
25 Chamber also takes into account that the Prosecution only went into about 104 of our

1 220 references, the Court might recall that our Defence team submitted all our
2 references last week -- two weeks ago, a list of 220 references we used in our oral
3 submissions. A list very specific in detail, which references we relied on on the basis
4 of the Prosecution material.

5 Our team has analysed the Prosecution response and in the response, in only 104
6 instances of the 220, the Prosecution goes into the Defence references which are again
7 Prosecution materials. And it's illustrative -- it's illustrative for the Prosecution case
8 and therefore the lack of any intrinsic coherence of its theory.

9 We refer the Chamber to the following striking example which relates to the way the
10 Prosecution has presented its allegation that Mr Ngaïssona gave orders that were
11 complied with according to the Prosecution. Instead of meeting its burden of proof,
12 as evidenced by the Mbarushimana ruling, it presents the Chamber a few excerpts of
13 statements of speeches taken out of context and predominantly based on indirect
14 information to show that Mr Ngaïssona allegedly gave orders.

15 While citing one sentence from P-1048 in relation to Mr Ngaïssona's appeal to cease
16 hostilities, the Prosecution does not address, Mr President, does not address all of its
17 own evidence we presented to the Chamber in our oral submissions based on the
18 Prosecution's own Witnesses P-0808, P-1193, P-0568, P-2326 and P-2327.

19 Therefore, five Prosecution witnesses, Mr President, five Prosecution witnesses do
20 show that Mr Ngaïssona's appeals to cease hostilities were ignored by the so-called
21 Anti-Balaka groups. And it also shows that he did everything in his power to stop
22 the hostilities.

23 Furthermore, the Prosecution also ignores the evidence by P-1193 and P-1077. These
24 witnesses, Mr President, told the investigators of the Prosecution that Mr Ngaïssona
25 would not give orders to the various ComZones. Did not give orders.

1 And this is also presented as evidence to the Court. In other words, these
2 inconsistencies - to quote the Mbarushimana ruling in its own case theory of the
3 Prosecution - cannot be interpreted in favour of its burden of proof in the context the
4 confirmation of charges. It's clear that the Mbarushimana Chamber did set the right
5 threshold: That those elements cannot be resolved in favour of the Prosecution.
6 And lastly, Mr President, the sixth conclusion: All of this is reinforced by our
7 observation - and also the observation the Chamber can take - that the Prosecution in
8 its response is trying to reverse the burden of proof in regard to other essential
9 elements of its case theory. We give just a few final examples.
10 First, in paragraph 12 of its response -- written response, the Prosecution says that
11 "Mr Ngaïssona's arguments", our oral arguments, "do not rule out evidence of other
12 forms and means of indirect communications used by the co-perpetrators in this case".
13 End quote.
14 Mr President, this is in clear contradiction to the standard which was set forth in the
15 Mbarushimana confirmation of charges decision that any ambiguities should not be
16 resolved in favour of the Prosecution at that stage, the confirmation of charges.
17 Second, the same counts for paragraph 93, where the Prosecution in its response to
18 the Defence oral submissions that the CDR, the call data records, do not prove that
19 Mr Ngaïssona himself was the person using his phone, that that argument would be
20 unconvincing, the Prosecution says, in paragraph 93.
21 However, also here the Prosecution reverses the burden of proof because it's not to
22 the Defence to convince the Chamber, it's the Prosecution who should convince the
23 Chamber that Mr Ngaïssona was indeed the person who used that phone.
24 Again, here, a reversal of the burden of proof and a violation of the principle as set
25 forth by the Appeals Chamber in the Mbarushimana case.

1 And lastly, the Prosecution contradicts itself in its response at paragraph 80 on the
2 one hand, claiming that Mr Ngaïssona would dismiss crimes, they admit, the
3 Prosecution admits that Mr Ngaïssona dismissed crimes as committed by so-called
4 fake Anti-Balakas, but on the other hand, its theory hinges on the claim that
5 Mr Ngaïssona purposefully would have acknowledged exactions and abuses
6 occurring within the Anti-Balaka. And therefore, Mr President, this is also a theory
7 which cannot be seen as having substantial grounds to believe.

8 Lastly, the Prosecution continues to misconstrue the Defence arguments in order to
9 evade its burden of proof. A last striking example the Chamber might find in
10 paragraph 80 of the Prosecution's response, saying that Mr Ngaïssona presented
11 a so-called false claim when we, Defence, demonstrated, on the basis of Prosecution's
12 own evidence, the existence of the notion of the so-called fake Anti-Balakas.

13 Contrary to the Prosecution's allegation that Mr Ngaïssona invented this argument to
14 evade responsibility, contrary to this argument, this is not a creation by Mr Ngaïssona
15 himself. Rather, it's based again on the Prosecution's own evidence, which we have
16 cited, as all our arguments were. We are not claiming anything; we are just using
17 the Prosecution's own materials.

18 Now based on all these numerous witnesses, Mr President, from different
19 backgrounds, from different religions, which we cited from the Prosecution's own
20 case docket, we have demonstrated that those witnesses testified to the fact that many
21 individuals presented themselves as Anti-Balakas and before that, as Sélékas in order
22 to be able to commit crimes which had nothing to do with any movement, officially or
23 unofficial.

24 The Chamber might notice that this argument directly, indeed, derives from the
25 Prosecution's own material. And in our oral submissions we have already referred

1 to Witnesses P-0876 and P-1947 as the basis of those arguments.

2 So indeed, to quote the LRV of this afternoon, we are mindful, our Defence team is
3 mindful that we are in a court of law. We don't have to be told by anyone here that
4 we are in a court of law and we are not here dealing with a football game.

5 When we say that Mr Ngaïssona was occupied for FIFA, it's not a self-serving
6 argument. It's simply an argument that the whole theory of the Prosecution cannot
7 hold water in light of the activities of Mr Ngaïssona in its totality, like the table you
8 just saw.

9 We know that we are in a court of law and we do not claim anything here. We have
10 used simply all the Prosecution's own materials and it leads us to the following
11 conclusion:

12 This Prosecution tries, Mr President, this man, Mr Ngaïssona, to impose criminal
13 liability, a person who accepted a key role in peace and reconciliation efforts in CAR,
14 who explained in interviews that only a meaningful dialogue with the government
15 could bring peace into his country. And that's also not our claim, it's the Prosecution
16 document CAR-OTP-2001-4818 at 4189.

17 Contrary, therefore, to the interpretation by the Prosecution of that interview, namely,
18 that it would suggest the so-called *actus reus* on the part of Ngaïssona, that is what the
19 Prosecution claims.

20 You can see, Mr President, also with this document that a fair and proper reading of it
21 shows that Mr Ngaïssona responds that the key, in his mind, to peace and
22 reconciliation in his country lies between the hands of the Anti-Balaka and the
23 government. That is what he told. It had nothing to do with any *actus reus* of
24 a crime. This is not an admission of guilt. It's not an admission of him being
25 capable of materially influencing the actions of Anti-Balaka groups, let alone any

1 essential contribution to the charged crimes as the Prosecution suggests.

2 I know I have one minute left, Mr President. Thank you very much. This is already
3 my closing paragraph.

4 If one intends, Mr President, to impose criminal liability on an individual based on
5 such a methodology, that methodology would amount to imposing guilt by
6 association, guilt by association on the part of Mr Ngaïssona. Unfortunately for the
7 Prosecution, this notion has been long abandoned in international criminal law.

8 The Prosecution said this morning in transcript page 14, line 14, that each ComZone
9 had its own operational common plan. And how on earth in a court of law are all
10 these operational common plans - maybe there were then 60, 70, 80, 80 groups - all to
11 be connected to Mr Ngaïssona on the basis of one strategic common plan?

12 Therefore, the Chamber should not accept any crime committed in the CAR during
13 the period to be attributed to Mr Ngaïssona simply because he was in a position of
14 peace -- in a position of peace coordinator and was in touch to this extent in the
15 context to the DDR with ComZones.

16 The control over the crime theory on the one hand - and this is where we started with
17 our submissions, the control over the crime theory of Roxin on the one hand and the
18 control over the DDR process by Mr Ngaïssona on the other hand are to be separated.
19 And we have proven, Mr President, that those two concepts should be separated by
20 this Chamber. And, if the Chamber accepts that there should be separation, there is
21 no other conclusion possible than not to confirm the charges. Thank you very much.

22 PRESIDING JUDGE MINDUA: [15:36:46](Interpretation) Thank you very much,
23 Mr Knoops, for your final remarks and for your concision. But I cannot congratulate
24 you in terms of punctuality because you exceeded your allocated time by eight
25 minutes. You had 28 minutes outstanding in total.

1 Now, this brings us to the end of confirmation of charges hearing. The Chamber
2 would now like to thank those present in the public gallery for having been so
3 disciplined.

4 Then the Chamber would also like to thank you and in particular the parties and
5 participants for their co-operation, their flawless co-operation, indeed. And lastly,
6 the Chamber would like to acknowledge the contribution of the interpreters, the court
7 reporters, the security officers and the representatives of the Registry for their
8 co-operation.

9 The decision on the confirmation of charges against Mr Alfred Yekatom and
10 Mr Patrice-Edouard Ngaïssona will be handed down at the latest in 60 days' time, 60
11 days, in compliance with Regulation 53 of the Regulations of the Court.

12 Once again, I would like to say thank you to everybody.

13 Madam courtroom officer, please, over to you. The hearing is suspended.

14 THE COURT USHER: [15:38:50] All rise.

15 (The hearing ends in open session at 15.38 p.m.)