

1 International Criminal Court  
2 Trial Chamber V  
3 Situation: Central African Republic II  
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard  
5 Ngaïssona - ICC-01/14-01/18  
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács and  
7 Judge Chang-ho Chung  
8 Opening Statements - Courtroom 1  
9 Wednesday, 17 February 2021  
10 (The hearing starts in open session at 9.30 a.m.)  
11 THE COURT USHER: [9:30:15] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE SCHMITT: [9:30:41] Good morning, everyone.  
15 Could the court officer please call the case.  
16 THE COURT OFFICER: [9:30:48] Good morning, Mr President and your Honours.  
17 Situation in the Central African Republic II, in the case of The Prosecutor versus  
18 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.  
19 And for the record, we are in open session.  
20 PRESIDING JUDGE SCHMITT: [9:31:12] Thank you.  
21 I ask for the appearances of the parties. I think Mr Vanderpuye first for  
22 the Prosecution.  
23 MR VANDERPUYE: [9:31:20] Thank you, Mr President. Good morning to you.  
24 Good morning, your Honours. Good morning, everyone. Today the Prosecution is  
25 represented by Claire Henderson, seated in front of me; Yassin Mostfa, seated ahead

1 of her; and myself Kweku Vanderpuye. Good morning.

2 PRESIDING JUDGE SCHMITT: [9:31:35] Good morning. Thank you very much.

3 And now we proceed to the victims' representatives.

4 MR SUPRUN: [9:31:39] Good morning, Mr President. Good morning,

5 your Honours. The former child soldiers are represented by myself Dmytro Suprun,

6 counsel at the Office of Public Counsel for Victims. Thank you.

7 PRESIDING JUDGE SCHMITT: Thank you.

8 And then Ms Massidda.

9 MS MASSIDDA: [9:31:51] (Interpretation) Good morning, President. Good

10 morning, your Honours. I'll see if I can do better than yesterday in terms of

11 introducing the members of the team.

12 Regarding victims of other crimes, the team is made up of five counsel: Myself

13 Paolina Massidda and my colleague Elisabeth Rabesandratana, who are present here

14 in the courtroom.

15 In Dakar, I think that my colleague would like to introduce himself.

16 MR FALL: [9:32:26](Via video link)(Interpretation) Good morning, your Honours.

17 I am indeed one of the members of the Legal Representatives for Victims and I will be

18 attending these proceedings from this office in Dakar.

19 Your Honours, please allow me to speak while seated. I'm quite a tall gentleman

20 and if I do stand up, I think it will be difficult for the camera to catch my image

21 correctly. So if you would be so good as to allow me to address the Court seated.

22 Thank you.

23 PRESIDING JUDGE SCHMITT: [9:33:03] Of course we do. We prefer that we see

24 you, and this is above formality, of course.

25 You may proceed, there are others from your team.

1 MS MASSIDDA: [9:33:13] Thank you, your Honour. (Interpretation) And from  
2 the Bangui office in the Central African Republic I see my colleague  
3 Abdou Dangabo Moussa.

4 MR DANGABO MOUSSA: [9:33:31](Via video link)(Interpretation) Good morning,  
5 your Honours. I am Abdou Dangabo Moussa, Legal Representative of Victims here  
6 in the Central African Republic.

7 MS MASSIDDA: [9:33:43](Interpretation) And we also have  
8 Ms Marie-Edith Douzima, who is in the Bangui field office.

9 PRESIDING JUDGE SCHMITT: [9:33:55](Overlapping speakers) you may be seated.  
10 You may be seated because this is (Overlapping speakers)

11 MS DOUZIMA LAWSON: [9:34:02](Via video link)(Interpretation) Thank you,  
12 your Honour. Yes, thank you, your Honour. Good morning, your Honours. I am  
13 Ms Marie-Edith Douzima Lawson and I am a Legal Representative for the victims of  
14 other crimes. Thank you.

15 PRESIDING JUDGE SCHMITT: [9:34:21] Thank you. This was obviously proof  
16 that it's better when you are with us with the video link then you remain seated. So  
17 this was the really ultimate proof to say so.  
18 I think this was it, Ms Massidda?

19 MS MASSIDDA: [9:34:39] Yes. Thank you, your Honour. And I may have a  
20 career as a journalist in presenting people.

21 PRESIDING JUDGE SCHMITT: [9:34:40] Thank you.

22 And we now proceed to the Defence, the Defence for Mr Yekatom.

23 MS DIMITRI: [9:34:44] Good morning, Mr President. Good morning,  
24 your Honours. Good morning, everyone. This morning Mr Yekatom is  
25 represented by Mr Thomas Hannis, associate counsel; Ms Sabine Bayssat, case

1 manager. In the public gallery we have Mr Jean-Michel Kola, from Central Africa, a  
2 linguistic assistant; and Ms Wilhelmina Whittingham, case manager in charge of  
3 investigations. And myself Mylène Dimitri, lead counsel. Thank you.

4 PRESIDING JUDGE SCHMITT: [9:35:10] Thank you very much.

5 And we proceed now to the Defence for Mr Ngaïssona.

6 MR OMISSÉ-NAMKEAMAÏ: [9:35:19](Interpretation) Your Honours, I wish you  
7 a good morning. The team for Mr Ngaïssona is represented or constituted this  
8 morning by myself Mr Omissé-Namkeamaï; Ms Sara Pedroso, who is the assistant to  
9 counsel; and Ms Barbara Szmatura, who is our case manager. Thank you.

10 PRESIDING JUDGE SCHMITT: [9:35:48] Thank you. And now we continue -- yes,  
11 we continue now with the presentation by the Prosecution. And who will proceed?  
12 Okay, then you have the floor.

13 MS HENDERSON: [9:35:59] Thank you very much.

14 Mr President, your Honours, my name is Claire Henderson and may it please  
15 the Court, I appear for the Prosecution this morning.

16 To give your Honours a little road map for this session, I'll be appearing before you  
17 for the next 10 minutes approximately to present one of the crime-base incidents.

18 My colleague Ms Berdennikova will then substitute with me to present two incidents,  
19 the final two, and we will conclude with some final remarks from Mr Vanderpuye.

20 So, your Honours, moving now to the coordinated attack led by the Anti-Balaka on  
21 Bossangoa on 5 December 2013.

22 Mr Ngaïssona stands charged for this incident on counts of attacking a civilian  
23 population, murder, property destruction and pillaging, forcible transfer and  
24 displacement, severe deprivation of physical liberty, rape and persecution. That  
25 represents counts 30 through to 35 and 37 through to 42 for your Honours' reference.

1 Your Honours, Bossangoa is the capital of Ouham prefecture. As at 2003, its

2 population was approximately 36,000, including about 8,000 Muslims.

3 Just one moment, your Honours.

4 Just a technical issue, your Honour, so if I can take a moment.

5 PRESIDING JUDGE SCHMITT: [9:37:49] Do you want to set up the evidence

6 channel, or what is it about? I think so, yeah.

7 We now see the map. I think you can continue.

8 MS HENDERSON: [9:37:59] Thank you, your Honours.

9 The town is located -- the town of Bossangoa is located around 300 kilometres north

10 of Bangui and 200 kilometres south of the Chadian border. It is also the closest town

11 to Gobéré, where the Anti-Balaka self-defence groups first formed. Remember, as

12 my colleague Ms Struyven told you yesterday, that Mr Ngaïssona was in contact with

13 Gobéré leaders and was helping them by providing money, food, weapons and

14 ammunition.

15 In the months leading up to the 5 December attack, these Anti-Balaka groups

16 terrorised the Muslim population in the area surrounding Bossangoa in an attempt to

17 dislodge the Séléka.

18 In an initial attack on Bossangoa on 17 September 2013, the Anti-Balaka killed several

19 Muslim civilians but ultimately failed to take the town from the Séléka on that day.

20 They were not deterred. On 5 December they returned stronger, hitting Bossangoa

21 a matter of hours after the early morning attack on Bangui that same day.

22 The timing was no coincidence. As my colleague Ms Struyven has said,

23 the Anti-Balaka launched coordinated attacks on both Bangui and Bossangoa under

24 the coordination of Maxime Mokom from Zongo. In the weeks leading up to

25 the 5 December attack, the Gobéré-based elements had split up. Your Honours will

1 recall that some of them had travelled to Bangui to prepare for the attack there, while  
2 some remained behind to attack Bossangoa. Furthermore, your Honours, an  
3 Anti-Balaka fighter who participated in the attack on Bossangoa will tell this Court  
4 that he was in contact with the elements attacking Bangui. These elements, who had  
5 already begun their attack on Bangui in the early morning, wanted to know why  
6 the Bossangoa attack had not yet begun.

7 The Anti-Balaka's attack on Bossangoa was ultimately launched in the early afternoon  
8 of 5 December 2013. This time, the Anti-Balaka successfully overcame the Séléka in  
9 Bossangoa. They went on to attack the town's Muslim civilian population in  
10 residential areas, killing and injuring several.

11 In the course of this trial, the Court will hear from a Muslim woman who was shot at  
12 by the Anti-Balaka while attempting to flee to the local imam's house. She was with  
13 female relatives who were dressed in traditional Muslim attire.

14 You will also hear from Anti-Balaka members who participated in the attack.

15 The evidence in its totality will show that for the attackers, there was no distinction  
16 between Séléka forces and Muslim civilians. Their aim was to remove all Muslims  
17 from the town of Bossangoa, whether by death or displacement.

18 The Prosecution will present evidence of the Anti-Balaka's killing of at least 18  
19 Muslim civilians shot while trying to flee to safety.

20 In one instance, the Anti-Balaka fired upon Muslims trying to flee to a local  
21 school-turned refuge protected by international forces. And, your Honours, I'll  
22 return to that refuge shortly. They killed one of the Muslim civilians as well as  
23 a Congolese peacekeeper.

24 Anti-Balaka elements also raped Muslim women in Bossangoa during the course of  
25 the attack. Your Honours will hear evidence that in one such instance

1 the Anti-Balaka discovered a Muslim woman hiding in a house. They pointed their  
2 weapons at her. One threatened to kill her. The leader told the victim that he  
3 would not kill her but that he would take her as his wife. He raped her. After  
4 the rape, the group left and the victim was able to reach the school to seek refuge.  
5 This rape was unfortunately not isolated. The evidence will show that such sexual  
6 violence was symptomatic of the Anti-Balaka's wider attack on the towns and villages  
7 of western CAR. The Anti-Balaka raped, they raped Muslims in retribution for  
8 Séléka crimes. As so often in armed conflict, rape was about revenge. One victim  
9 was told by her rapist: "You are Muslims, it's your brothers who killed our families."  
10 In some instances, the Anti-Balaka forced men to watch their wives being raped  
11 before killing the men. They even singled out non-Muslims for rape based purely on  
12 the victim's association with Muslims.

13 The Prosecution's evidence will show that the Anti-Balaka committed sexual violence  
14 in Guen, in Boda, in Yaloké, and that it was reported in many other places.

15 But, your Honours, to come back to the 5 December attack on Bossangoa. In  
16 Bossangoa the Anti-Balaka also pillaged, destroyed property and attacked protected  
17 objects. During the course of the attack, Muslim houses were systematically set on  
18 fire or otherwise destroyed, especially in the predominantly Muslim neighbourhoods  
19 of Boro, Arabe and Fulbe. In the first week after the attack began, the Anti-Balaka  
20 dismantled and destroyed several mosques, including the central mosque of  
21 Bossangoa. And by the end of January 2014, they had destroyed an estimated 1,500  
22 Muslim houses.

23 Your Honours, I referred earlier to a school turned into a refuge and I'll return to that.  
24 This school was protected by international forces. The site is known as the *École de la*  
25 *Liberté*, the School of Freedom. As of 5 December, it already housed Muslims who

1 had fled earlier Anti-Balaka violence committed in the villages surrounding  
2 Bossangoa. Almost immediately after the attack began in Bossangoa, the number of  
3 displaced Muslims at the school swelled into the thousands. In the course of the trial,  
4 the Prosecution will produce satellite imagery analysed by the United Nations  
5 showing the sudden appearance of tent shelters at the school at this time.  
6 If your Honours look to the screen, you can compare this image taken on  
7 4 December 2013 with this image taken on 12 December 2013.  
8 By the end of December 2013 the school sheltered over 7,000 displaced persons,  
9 mostly women and children from the Muslim neighbourhood of Boro. Some of  
10 them had been forcibly taken by the Anti-Balaka from their homes to the school, so  
11 that they could be removed from the town by international forces, which they later  
12 were.  
13 Your Honours, in spite of its name, the school of freedom was anything but.  
14 The Muslim population of Bossangoa was unable to leave due to the real threat of  
15 being killed by the Anti-Balaka. Even within the school there was insecurity.  
16 The Anti-Balaka would sometimes pass by the school shouting threats towards  
17 the families inside. As one witness put it, and the evidence will show, it was like  
18 living in a prison. Not unlike many other areas in western CAR, about which  
19 your Honours will hear, this imprisonment for the Muslims of Bossangoa lasted for  
20 months until approximately April of 2014.  
21 In the meantime, in mid-January 2014, Mr Ngaïssona was formally designated  
22 Anti-Balaka national coordinator at a meeting called at his house in Bangui. Present  
23 at this meeting, among the ComZones from the provinces and within Bangui, was one  
24 of the leaders of the 5 December attack on Bossangoa. At the time of this meeting,  
25 that leader's elements continued to control the town of Bossangoa. From that point

1 on, Mr Ngaïssona exercised *de jure* authority over the Anti-Balaka's Bossangoa  
2 leadership. Remember also at that point, your Honours, the school housed over  
3 7,000 displaced Muslims. They would continue to be enclaved there for several  
4 more months under siege by the Anti-Balaka. The evidence of their suffering was  
5 open and notorious.

6 By April 2014, virtually the entire 8,000-strong Muslim population of Bossangoa had  
7 been effectively expelled. Under threat, they were evacuated by international forces,  
8 mainly to Chad. The removal of the Muslim population was no by-product of the  
9 Anti-Balaka's sustained attack against them, but, your Honours, it was its very  
10 objective.

11 That concludes my presentation, your Honours.

12 And with your leave, I will substitute with my colleague Ms Berdennikova.

13 PRESIDING JUDGE SCHMITT: [9:48:07] Yes, of course. And we have patience.

14 MS HENDERSON: [9:48:10] Thank you, your Honours.

15 (Pause in proceedings)

16 MS BERDENNIKOVA: [9:49:28] Good morning, Mr President, your Honours. My  
17 name is Maria Berdennikova and I will continue the Prosecution's submissions of its  
18 case this morning.

19 I will continue with the presentation covering two topics: First, counts 24 to 28,  
20 along the PK9-Mbaïki axis; and second, count 29 on the enlistment and use of child  
21 soldiers.

22 Your Honours, let's begin with counts 24 to 28.

23 We will be moving away from Bossangoa and following Yekatom's group into  
24 the Lobaye prefecture. As you can see on your screens, it is located in  
25 the south-western part of CAR and borders the Republic of the Congo and the DRC.

1 Its capital is Mbaïki.

2 In today's presentation we will be speaking about the area of Lobaye located along

3 the axis between PK9, about 9 kilometres away from Bangui's city centre, and Mbaïki.

4 This area covers the distance of approximately 110 kilometres.

5 As the evidence will show, on or about 10 January 2014, so just a few weeks after

6 the 5 December attack, Yekatom ordered Anti-Balaka elements under his command to

7 take over and gain control of this area.

8 In carrying his orders, Yekatom's group advanced from their base at the Yamwara in

9 Boeing, south to the PK9 bridge in Bimbo, and beyond, until they reached Mbaïki

10 approximately three weeks later, on or about 30 January 2014.

11 Prosecution witnesses, including insiders and crime-base witnesses, will describe how,

12 in their advance towards Mbaïki, Anti-Balaka elements led by Yekatom gained

13 control over towns and villages along the PK9-Mbaïki axis, including Sekia, Ndangala,

14 Bimon, Kapou, Bossongo and Pissa. You will hear from an insider witness who,

15 when speaking about this progression, explained, I quote in French:

16 (Interpretation) "Rombhot, he wanted to take every village. In other words, that

17 when we came to Sekia, we occupied the Bimbo station. After Bimbo, we took

18 Bossongo. After Bossongo, it was Pissa, Pissa, in order that we might take all

19 the places until we had all of Lobaye. So that was it. Bimon too, we took it,

20 et cetera."

21 (Speaks English) Your Honours, evidence will show that as Yekatom's group

22 progressed towards Mbaïki, they established checkpoints along their route, where

23 armed Anti-Balaka elements regulated movement and targeted Muslims. They also

24 confiscated cattle and goods and extorted money from those passing these

25 checkpoints.

1 The villages along the PK9-Mbaïki axis were taken over by the Anti-Balaka without  
2 resistance, as the Séléka had already withdrawn from the area by the time Yekatom's  
3 group had arrived.

4 But evidence will show that it was not just the Séléka who fled towns and villages  
5 along the PK9-Mbaïki axis. Muslim civilians, fearing for their lives, fled the area  
6 en masse upon learning about Anti-Balaka's advancement.

7 Many Muslim civilians initially sought refuge at the provincial capital, Mbaïki. At  
8 trial, your Honours will hear evidence, testimony of some of these individuals,  
9 including a crime-base witness who explains that, I quote: "As Yekatom progressed  
10 through Lobaye, all the Muslims fled towards Mbaïki. All were fleeing Yekatom's  
11 Anti-Balaka."

12 A member of Yekatom's group confirms that these civilians' fears were not  
13 unfounded. He explained that, I quote: "When the Muslims heard about  
14 the Anti-Balaka all the Muslims from Sekia, Pissa, Yamboro fled to Mbaïki, because  
15 they feared that we would kill them."

16 This witness further recalls, and I quote:

17 "That was the general instruction, if we found any there we would have killed them  
18 as being Séléka enemies. This was the general instruction given by our chiefs,  
19 Rambo and Coeur de Lion, at our gatherings. These chiefs told us that we should  
20 not allow any Muslims to stay as they had sided with the Séléka."

21 Another insider witness from Yekatom's group will confirm that the Anti-Balaka saw  
22 all Muslims as their enemy. The witness explains, and I quote in French:

23 (Interpretation) "All Muslims are enemies, because when we were in it, we would say  
24 there are not little Muslims and not big Muslims ... All Muslims are the same.

25 Whether ... whether they are armed or not, they can also be like intelligence agents ...

1    huh ... on the Séléka side, and also ... well, there you go. So we do not accept them."  
2    (Speaks English) The same insider witness will testify that during a meeting in Sekia,  
3    one of the villages along the PK9-Mbaïki axis, Yekatom's deputy, Coeur de Lion,  
4    explicitly instructed their Anti-Balaka group to kill any Muslims passing along  
5    the Mbaïki axis route. The instruction was, I quote in French: (Interpretation) "We  
6    kill all Muslims taking this Mbaïki road."  
7    (Speaks English) This is confirmed by yet another witness, who explained that, I  
8    quote: "Coeur de Lion didn't hide the fact that he wanted to chase the Muslims  
9    away. I heard him saying it. He wanted to chase the Muslims out of CAR and to  
10   their country of origin. Whoever was praying as a Muslim had to go, whether they  
11   were born in CAR or not."  
12   The witness adds: "Coeur de Lion had chased away the Muslims from PK9 to  
13   Mbaïki and along the road to Boda. He heard that there were still Muslims left in  
14   Boda and he wanted to chase them out. Coeur de Lion's elements told us this. As  
15   We drove to Mbaïki, we could still see burning houses." Villages from  
16   Bossongo -- "Villagers from Bossongo, Sekia, Pissa and others along the road to  
17   Mbaïki told me that all the Muslims left because of Coeur de Lion."  
18   Your Honours, evidence will further show that as a result of the mass influx of  
19   Muslims fleeing from neighbouring towns and villages, Mbaïki's Muslim population  
20   swelled significantly by the end of January 2014. As previously stated by my  
21   colleague Mr Iverson, it reached 10 to 15,000 at this time. This number will be  
22   corroborated by others, including a resident of Mbaïki, who estimates that  
23   the number of Muslims in Mbaïki increased from approximately 2,000 to 15 or 16,000  
24   by the beginning of February 2014.  
25   Now, around 30 January 2014, Yekatom's Anti-Balaka elements entered Mbaïki.

1 When Yekatom's group arrived, a reconciliation meeting, where evacuation of  
2 Chadian Muslims was discussed, was organised by local authorities at the St Jeanne  
3 d'Arc church in Mbaïki. Yekatom and the members of his command, including  
4 Habib Beina and his deputy Coeur de Lion, attended, along with representatives from  
5 the Muslim and Christian communities, members of local authorities, and MISCA  
6 and French Sangaris forces.

7 Evidence will show that Yekatom's message, ostensibly calling for peace between  
8 Christians and Muslims, given during this meeting was hollow. Your Honours will  
9 hear the testimony of several Prosecution witnesses, including an insider from  
10 Yekatom's group who will explain why this message was insincere and that Yekatom  
11 made it in order to shield himself from possible future prosecutions.

12 In context, the evidence will demonstrate that his words were a sham, with his  
13 elements having targeted Muslim civilians at his direction and forcing their flight, in  
14 fear for their lives, to Mbaïki to begin with.

15 Witnesses will testify how, in the days following the arrival of Yekatom's group,  
16 the Anti-Balaka openly threatened Muslim civilians.

17 For instance, a Muslim resident of Mbaïki recalls how the Anti-Balaka threatened  
18 Muslims, saying, I quote: "You are stupid people; we're going to kill you if you stay.  
19 We told you to leave our areas but you don't leave. If you continue to stay, we are  
20 going to kill you."

21 Another crime-base witness from Mbaïki recalls that, I quote: "The Anti-Balaka were  
22 threatening our children, women and elders with their machetes. They said they  
23 were going to kill us, cut us in pieces. They threatened that they would destroy our  
24 houses. They threatened me as well."

25 He then adds: "The Anti-Balaka kept threatening Muslims and behaving in

1 a threatening manner, brandishing their machetes at us and making many different  
2 hand gestures indicating that they would cut my throat or cause me injury. These  
3 threats and menacing gestures were made when Rambo was in Mbaïki as well as  
4 when he was away."

5 These and other witnesses' testimonies will be corroborated by documentary  
6 evidence.

7 Your Honours, evidence will also show that the Anti-Balaka's threats were not empty  
8 rhetoric. Anti-Balaka elements actively undermined even the small measures  
9 adopted by local authorities to help secure the civilian population, such as by  
10 attacking a security patrol.

11 The evidence will show that their determination to drive out Muslims from the area  
12 was unrelenting. Beginning on 6 February 2014, Chadian forces began  
13 the evacuation of thousands of Muslims under threat from the Anti-Balaka in Mbaïki.  
14 They were taken to Chad or to other parts of CAR. Convoys with these displaced  
15 Muslims passing through Bangui to Chad were further attacked by the Anti-Balaka  
16 along the way.

17 Within two weeks, almost the entire Muslim population of Mbaïki had been removed,  
18 except its deputy mayor Djido Saleh and his family, who refused to leave their  
19 hometown.

20 This forcible transfer, deportation and displacement of the Muslim population along  
21 the PK9-Mbaïki axis constitute counts 24 and 25 of the charged crimes against both  
22 accused.

23 Your Honours, in February 2014, after thousands of Muslims fled from Mbaïki, an  
24 Amnesty International delegate met Djido Saleh during their mission to the city.

25 Djido Saleh told them that he and his family were born in Central African Republic

1 and had no reason to flee. He was wrong. Days later, on 28 February 2014,  
2 Djido Saleh, one of the only remaining Muslims in Mbaïki, was murdered and his  
3 dead body horribly mutilated, constituting counts 26 and 27 of the charged crimes.  
4 Evidence will show that Djido Saleh's home was attacked by a group of perpetrators,  
5 including members of Yekatom's Anti-Balaka group. While Saleh attempted to  
6 defend his home, his family managed to flee to safety. When he attempted to flee to  
7 save his own life, he was caught within metres of the local gendarmerie and brutally  
8 killed. Your Honours will hear evidence of how the perpetrators chased Saleh,  
9 threw stones at him and cut his throat. A video of the brutality vested on him will  
10 be before you, showing his body being dragged through the street and horribly  
11 mutilated.  
12 A screenshot from this video is on your screens.  
13 After Saleh's murder and the barbaric mutilation of his body, one of his killers says,  
14 and I quote the transcript of the video in French: (Interpretation) "I would have  
15 liked other Muslims to be present to see this with their own eyes."  
16 (Overlapping speakers) (Speaks English) another perpetrator also says in the video,  
17 quote in French: (Interpretation) "We told him to flee and to go to their country, but  
18 they didn't want to."  
19 (Speaks English) Your Honours, Yekatom knew about the involvement of his  
20 elements in this murder. Evidence will show that during a meeting with  
21 the gendarme and MISCA held on 2 March 2014 he stated that he knew who was  
22 responsible for the killing and had sanctioned them. There is no evidence that any  
23 sanctions against his elements were in fact implemented by Yekatom.  
24 In addition, one Prosecution witness will explain how Yekatom referred to this killing  
25 as, I quote, "an accident." Your Honours, the events I just described can hardly begin

1 to be characterised in such a way.

2 The evidence will show that Yekatom and his Anti-Balaka elements committed  
3 the crimes and acts I just outlined in a coordinated effort to cleanse the towns and  
4 villages along the PK9-Mbaïki axis of their Muslim population.

5 These acts further deprived the victims of fundamental rights such as the rights to life,  
6 liberty, mental and bodily integrity, dignity and religious freedom, and constitute  
7 Count 28, the crime against humanity of persecution.

8 Turning now to Ngaïssona's knowledge. Evidence will show that he knew and  
9 accepted that such crimes would take place in the Lobaye prefecture. During  
10 the relevant time period, Yekatom and his group operated under the Anti-Balaka  
11 national coordination under Ngaïssona's authority. Evidence will show that after  
12 the 5 December attack, Yekatom also continued to meet and coordinate with senior  
13 Anti-Balaka leaders, including Ngaïssona.

14 Evidence will further show that, although it was well known that Yekatom's group  
15 controlled the PK9-Mbaïki axis, it was only after the Muslim population was  
16 essentially gone and the July 2014 Brazzaville agreement signed that Ngaïssona took  
17 part in a mission to dismantle roadblocks along that axis.

18 In addition, the situation and crimes committed by Yekatom's group in  
19 the Lobaye prefecture were widely and contemporaneously reported in the media.  
20 On 10 February 2014, just days after the mass evacuation of Muslims from Mbaïki,  
21 the Sangaris commander Francisco Soriano condemned Anti-Balaka as the main  
22 enemy of peace in the country.

23 Ngaïssona responded to this statement the next day, calling it inflammatory and  
24 defended the Anti-Balaka and their actions. He also criticised the statement made by  
25 Catherine Samba-Panza during her visit to Mbaïki during the same period on

1 12 February 2014, in which she also denounced the violent acts committed by  
2 the Anti-Balaka.

3 Your Honours, it's also important to remember that at this time there was still an  
4 attack on the western provinces in CAR and people continued to be under siege in  
5 Bossangoa.

6 Despite knowledge of crimes committed by Yekatom and his group, Ngaïssona did  
7 not condemn their commission or act to end them.

8 Instead, he validated Yekatom's actions by encouraging his criminal conduct and  
9 accepting and endorsing his continued membership in the group.

10 Your Honours, I will now turn to count 29, enlistment and use of children in  
11 hostilities.

12 Yekatom and his subordinates enlisted and conscripted children under the age of 15  
13 into Yekatom's Anti-Balaka group from at least December 2013 through August 2014.

14 They used these children for a variety of tasks, including manning checkpoints,  
15 gathering intelligence and taking active part in hostilities.

16 Your Honours will hear from a number of different witnesses, including former child  
17 soldiers who will testify in detail about their involvement with the Anti-Balaka.

18 Insider witnesses and journalists will describe the presence and use of children,  
19 including those under the age of 15, by Yekatom and his group. In addition to this

20 testimonial evidence, corroboration of the recruitment and use of children by

21 Yekatom will come in the form of documents, an expert report, photographs and  
22 videos.

23 The evidence will show that there were children under the age of 15 stationed at the

24 Yamwara school base and at other bases and checkpoints controlled by Yekatom and

25 his subordinates, including along the PK9-Mbaïki axis and the Pissa-Mongoumba axis,

1 which will both appear on your screens.

2 When speaking about children within the Anti-Balaka, one eyewitness observed, and  
3 I quote:

4 "I often travelled between Bangui and Mbaïki and I would see very young boys from  
5 10 years old at the Sekia and Pissa Anti-Balaka barriers ... The children wore a mix of  
6 military uniforms and civilian clothes. Some of them wore *gris-gris* around their  
7 necks and arms. I saw the children, even the younger ones, carrying traditional  
8 weapons like knives, bows and arrows."

9 Children joined Yekatom's group through forcible conscription or voluntarily.

10 Your Honours will hear from several insider witnesses who will explain that Yekatom  
11 was personally introduced to and even directly interacted with at least some of the  
12 underage children in his group.

13 Child soldiers received military-type training. One child soldier within Yekatom's  
14 group explains that children were mixed with adults during the training. They were,  
15 I quote, "taught fighting tactics, how to hide, when to lie down and how to duck from  
16 bullets." They also received instructions on how to assemble and disassemble a gun  
17 and they were beaten with sticks as part of the training to become strong.

18 Your Honours will hear from another insider witness who confirms that these  
19 trainings took place and often in Yekatom's presence.

20 As I mentioned, children were used for various tasks such as manning checkpoints,  
21 spying and guarding Yekatom's house.

22 A member of Yekatom's group explains that children were sent to man barricades  
23 together with adults. When describing activities at these checkpoints, he further  
24 elaborates, and I quote:

25 "We looked and if you were Central African we let you pass. If the person is

1 a Muslim we stopped them and we assumed he is either a traitor or stubborn.  
2 Generally when they capture and bring a person back from a barricade they will give  
3 him to the children to stab him, cut off his ear and then it was for an adult to kill him."  
4 The witness clarifies that Muslims seen at the barricades were treated as traitors and,  
5 quote, "could only be killed and not released."  
6 Evidence will show that children also guarded Yekatom's house. As one witness  
7 explains, this guard was a combination of adults and children.  
8 Your Honours, evidence will further show that children within Yekatom's group also  
9 actively participated in hostilities.  
10 Yekatom personally ordered the children's participation in attacks, with blatant  
11 disregard for their age.  
12 Thus, one child explains that in preparing for the 5 December 2013 attack on Boeing,  
13 quote: "Coeur de Lion did not want children to take part in the attack but Rambo  
14 said that the children had to be involved as the Arabs are killing our people."  
15 The witness then goes on to describe the day of the attack, clarifying his role as a child  
16 soldier.  
17 I quote: "My role was when they shot somebody, for example in the leg, and  
18 the person falls, I was to stab and beat him until he becomes weak through his injuries.  
19 The children were instructed by Coeur de Lion and Rambo to stay at the rear and not  
20 the front. The chiefs who had guns stayed at the front. We had machetes and  
21 knives. By this time we, the children, had all been given knives." The witness then  
22 adds that the children also carried AK-47 ammunition.  
23 This account will be corroborated by another child soldier who explains that children  
24 were given machetes in preparation for the 5 December attack on Bangui and told  
25 that their job would be to kill. They were told that they were, quote, "going to fight

1 the Arabs and that everybody had to be alert ... there was no difference between  
2 the men, women and children and we had to kill them all."  
3 You will also hear evidence that children in Yekatom's group were supplied with  
4 drugs to control their fear and hunger. They were also given drugs during  
5 the execution of enemies and in combat. These drugs included marijuana and Rouge  
6 or Tramol, which is an opiate.  
7 Several child soldiers will describe being given the drugs, including one who recalls, I  
8 quote: "We were given tablets and marijuana to keep us going. The tablets were  
9 red in colour and small. It was called 'Rouge' and we had to take 5 at a time. It  
10 helped us to stay awake ... The tablets were brought to us by Rambo."  
11 Your Honours, evidence will show that recruitment and use of child soldiers by  
12 the Anti-Balaka was a well-known phenomenon. Multiple public reports of their  
13 recruitment and use will be corroborated by witness testimony at trial.  
14 Cessation of the recruitment and use of child soldiers by armed groups was a distinct  
15 condition of the Brazzaville agreement, which was signed by Ngaïssona on behalf of  
16 the Anti-Balaka on 23 July 2014. As previously stated by my colleague Mr Leddy,  
17 Yekatom was also present at Brazzaville as one of the senior representatives of the  
18 Anti-Balaka.  
19 At trial you will hear evidence about the demobilisation of child soldiers from  
20 the Anti-Balaka in the months that followed, including from Yekatom's group.  
21 Evidence will demonstrate that a few months prior to the Brazzaville summit, around  
22 March 2014, UNICEF identified child soldiers within the Anti-Balaka ranks in the  
23 Lobaye prefecture. As their leader, Yekatom was approached to negotiate their  
24 release. Evidence will also demonstrate that he gave permission to his subordinates  
25 to identify and register children from the group for demobilisation, as they were

1 costing him a lot of money.

2 Evidence, including an Amnesty International report, will further show that as a  
3 result of these negotiations, in August 2014, eight months after the 5 December attack,  
4 Yekatom agreed to the demobilisation of 153 children in his group, including of those  
5 under the age of 15. He also agreed to refrain from re-recruiting them and signed  
6 a document to confirm the agreement.

7 A copy of this very agreement, carrying Yekatom's signature below his undertaking  
8 to release and refrain from re-recruiting the children appears on your screens.

9 Your Honours, this concludes my presentation.

10 With your leave, I will hand the floor back to Mr Vanderpuye.

11 I thank you very much for your attention.

12 PRESIDING JUDGE SCHMITT: [10:19:00] Thank you.

13 Of course, Mr Vanderpuye, you have the floor then.

14 MR VANDERPUYE: [10:19:32] Good morning again, Mr President, your Honours.

15 If I may continue, I should be brief. I know it's been a long presentation and there is  
16 a lot to digest. So you'll be happy to know I only have about 10 minutes or so before  
17 we conclude.

18 Your Honours, the cases against these two accused are not the same. They are not  
19 interchangeable and they are not coextensive.

20 And, as you know, Mr Ngaïssona is charged for his responsibility for the Anti-Balaka  
21 crimes, including those committed by Yekatom and his elements, as well as crimes  
22 committed by other Anti-Balaka ComZones and their elements in other areas.

23 Their roles in respect of the Anti-Balaka as a group are different. They're distinct.

24 Yekatom functioned at an operational level, a commander of 3,000 elements.

25 The evidence will show that he was present, he was on the ground, he was with his

1 elements, and he is charged with ordering crimes that were committed by those  
2 elements and with committing crimes together with his elements pursuant to  
3 a common plan which implemented the same criminal policy which characterise all of  
4 the Anti-Balaka crimes against the Muslim civilian population in western CAR.

5 Yekatom is thus charged as a principal perpetrator in this case.

6 Mr Ngaïssona, on the other hand, was more distant. He did not get his hands dirty,  
7 so to speak, at least not as obviously. He operated under the radar, or that's what he  
8 thought.

9 The evidence will show that his position was more of a strategic one, intrinsic to  
10 the group's formation and its coordination. And he is charged essentially as an  
11 accomplice in the crimes of the Anti-Balaka committed as a group. And you will  
12 remember my earlier reference to his complicity in the charges and this is what I  
13 mean.

14 He is effectively charged with criminal responsibility beyond the crimes  
15 charged -- beyond those committed by Yekatom and his group, to include the crimes  
16 of other ComZones and leaders in the Anti-Balaka in Bossangoa and in Bangui and in  
17 the aftermaths of those attacks on 5 December 2013. We believe that the evidence  
18 shows that his contributions to the commission of crimes by the Anti-Balaka, again as  
19 a group, amounted to much more than aiding and abetting and contributing to their  
20 commission in any other way.

21 And on that basis it is important to recall that the commission of a crime entails not  
22 just its planning, it's preparation, its attempt and its achievement or execution,  
23 the objective elements of a crime that everyone can see; but it also entails  
24 the subjective elements, its conception, the formation or perpetuation of a mindset,  
25 predisposition or intent in regard to the commission of the crimes.

1 A contribution to a perpetrator's intention to commit a crime is just as valid and  
2 important a contribution as to its commission through its physical accomplishment.  
3 This is something I would urge the Chamber not to lose sight of as you hear  
4 the evidence in this case. The criminal policy and the common purpose established  
5 within the rank of the Anti-Balaka goes to the evidence of the mental element of  
6 the charged crimes in this case, its development, promotion and perpetuation.  
7 We believe that the evidence in this case shows both contributions to the objective  
8 elements of the charged crimes and the subjective elements of the charged crimes:  
9 encouragement, moral support, backing, incentive, reassurance, motivation.  
10 As the evidence will show, the offensives in Bangui and Bossangoa on  
11 5 December 2013 had lasting effects. And they also comprised continuing offences.  
12 As was noted, at Bossangoa Muslim civilians were enclaved under the siege of the  
13 Anti-Balaka through April 2014. And as the evidence will show, in Bangui, Muslim  
14 civilians were displaced to PK5 or expelled as a result of the Anti-Balaka attack on  
15 5 December. They're still there now, enclaved in PK5. Their plights did not end  
16 shortly after the militarised attacks that are described in the evidence in this case and  
17 which you will hear. Rather, the attack lasted for as long as the mistreatment of the  
18 population, the Muslim population, for as long as they were forcibly transferred, for  
19 as long as they were deported - and they are still - and for as long as they were  
20 severely deprived of physical liberty, and for as long as they were persecuted.  
21 The same fate inured to the victims of forced expulsion along the PK9-Mbaïki axis, as  
22 you've just heard.  
23 The conduct of the accused, and particularly Mr Ngaïssona after he became  
24 the national general coordinator of the Anti-Balaka in January 2014, was not  
25 ex post facto to the charged crimes which occurred on 5 December 2013. On

1 the contrary, his conduct as the leader of the Anti-Balaka National Coordination took  
2 place during the continued commission of the crimes which occurred back in  
3 December, because they comprised continuing offences.

4 The evidence will show that his actions and inaction played a crucial part in  
5 the continuation of Anti-Balaka crimes committed against Muslim civilians in  
6 the context of those attacks and in their aftermaths. And that conduct, during  
7 the commission of the continuing offences, is also quintessential evidence of his intent  
8 in the first place in contributing to the Anti-Balaka. Back in Cameroon, back in  
9 France, in October on the border of Cameroon providing Thurayas, giving  
10 instructions, sending money, giving financing.

11 If Ngaïssona did not intend to contribute to the crimes undeniably committed by  
12 the Anti-Balaka under the umbrella of his National Coordination, he would have tried  
13 to stop them, he would renounce his leadership of the group, he would have assisted  
14 international forces or the transition government to protect Muslim civilians, not  
15 condemn the transition government for decrying the conduct of the Anti-Balaka. He  
16 would have and could have reported perpetrators under his coordination to ensure  
17 that they were brought to justice or sought out assistance in doing so, perpetrators  
18 such as Mr Yekatom.

19 The evidence is that he did not, just as sure as an arsonist would not try to stop a fire  
20 that they helped to start or that they started in the first place.

21 The evidence will show that Mr Ngaïssona is no peacemaker. He was not saving  
22 anyone. The evidence will show that he was a self-interested, political opportunist.  
23 Not only did his conduct take place during the commission of the charged crimes, but  
24 the evidence will show that his conduct took place during the commission of multiple  
25 uncharged crimes in the western provinces during the same period and with his

1 knowledge. Ngaïssona's actions in making arms available to the Anti-Balaka,  
2 instructing them, financing them, defending them, lying to the international  
3 community for them, to provide them with political cover and championing their  
4 demands - *les revendication*, as he refers to them - and lobbying the government for  
5 their benefit. All those actions must be evaluated in light of the continuation of  
6 the group's commission of serious crimes against civilians. They must be evaluated  
7 in light of the context of their effect on the group as a collective, whether it  
8 encouraged them, whether it promoted their practical or ideological objectives.  
9 We submit that the evidence shows this and will prove that.  
10 As their leader, as the national general coordinator, this was his job, was to promote  
11 the ideological and practical objectives of the group. And it was one that he took on  
12 voluntarily and even fought within the ranks of the Anti-Balaka to hold on to.  
13 The idea that Ngaïssona's conduct after the 5 December offences in Bangui and  
14 Bossangoa is irrelevant is simply untenable. And I'm sure you'll hear that argument  
15 from his Defence.  
16 As for Mr Yekatom, the evidence will show, clearly, that he was no freedom fighter.  
17 And more than a 100,000 displaced Muslim civilians, their families, communities  
18 destroyed, who are living proof of the unrelenting and unmitigating victimisation of  
19 the Anti-Balaka attack, which included the charged crimes in which these two  
20 accused participated, is a living testament to the destructive power of that group.  
21 On the evidence in this case there can be no reasonable doubt about their individual  
22 responsibility for the crimes charged, having been complicit in them on the one hand  
23 and having perpetrated them on the other.  
24 Mr President, your Honours, this concludes the Prosecution's opening statement and  
25 our presentations. I wanted to thank you for your indulgence and for your

1 undivided attention.

2 PRESIDING JUDGE SCHMITT: [10:31:23] Thank you very much, Mr Vanderpuye.

3 I think it is better to have now the coffee break and then start with the first victims'

4 presentation, opening presentation at 11.

5 THE COURT USHER: [10:31:36] All rise.

6 (Recess taken at 10.31 a.m.)

7 (Upon resuming in open session at 11.01 a.m.)

8 THE COURT USHER: [11:01:32] All rise.

9 Please be seated.

10 PRESIDING JUDGE SCHMITT: [11:01:57] Who will start with the presentation?

11 MR SUPRUN: [11:02:15] I will start presentation on behalf of the former child  
12 soldiers and then my colleagues representing victims of other crimes will continue.

13 PRESIDING JUDGE SCHMITT: [11:02:24] You have the floor.

14 MR SUPRUN: [11:02:28] Thank you, Mr President. And I will make my  
15 presentation in French.

16 (Interpretation) Your Honours, 59 former child soldiers from the Anti-Balaka group  
17 led by Mr Yekatom have been admitted to participate in this trial to date. That  
18 number, however, is far from representative of the total number of children under  
19 the age of 15 years who were recruited into the Anti-Balaka in 2013 and 2014, with  
20 respect to the extremely large-scale phenomenon, which has been --

21 PRESIDING JUDGE SCHMITT: [11:03:13] May I ask you, of course I don't like to  
22 interrupt you, but there is already -- (Overlapping speakers)

23 MR SUPRUN: [11:03:17] My apologies to the (Overlapping speakers)

24 PRESIDING JUDGE SCHMITT: [11:03:19] -- an indication that you are a little bit too  
25 quick.

1 Please try to slow down a bit.

2 MR SUPRUN: [11:03:24](Interpretation) This large phenomenon is corroborated by  
3 the many witnesses presented by the Prosecution and corroborated by reports  
4 produced by the United Nations and various nongovernmental organisations.  
5 Furthermore, the number of victims participating in these proceedings will certainly  
6 rise over the course of the trial, as the Chamber has stated that new victims may come  
7 forward or may be admitted into these proceedings until the Prosecution has  
8 completed the presentation of its case.

9 The situation of former child soldiers, which I will return to a little later, is one which  
10 dissuades child soldiers from coming forward to participate as victims. They fear for  
11 their safety, their well-being and that of their families.

12 We want truth to be told and we want justice to be done, but we also want aid and  
13 support in order to recover and also to find our own place, our own standing in  
14 society, away from war and violence.

15 Your Honours, that is the key message that the former child soldiers have asked me to  
16 deliver to the Court as this trial opens.

17 Now, we all know that the primary remit of the International Criminal Court set out  
18 in the Rome Statute is to bring an end to the impunity enjoyed by those who  
19 perpetrate heinous crimes of an international nature and also to contribute to  
20 preventing new crimes of that type being committed in the future. But  
21 the Rome Statute also sets obligations on the Court as regards victims. One of these  
22 is to enable victims to participate in the proceedings and also to ensure that their  
23 participation is meaningful and not just simply symbolic. This needs to be done in  
24 order to allow victims to fully realise their right to justice and to the truth, the key  
25 components of that being, *inter alia*, the opportunity to positively contribute to

1 the discovery, the uncovering of the truth and the right to speak and to be heard.  
2 Now, that last component is particularly important for the former child soldiers.  
3 Often they prefer to say nothing at all or say very little when they leave -- or, when  
4 they find themselves in civilian life. They like to say little about the crimes that they  
5 have seen or have been obliged to commit whilst in the army. They also fear being  
6 accused as traitors and they also fear their persecutors, they fear being stigmatised,  
7 harassed and even rejected by their family and their community, but at the same time,  
8 they continue well after demobilisation to feel attached by links of loyalty to their  
9 former commanders.  
10 Now, experts are in -- are excellently equipped to inform us on this paradox, this  
11 phenomenon of loyal -- loyalty which exists in former child soldiers, both in  
12 a psychological and sociocultural context. Former child soldiers have practically no  
13 voice and are barely heard. The International Criminal Court is practically the only  
14 opportunity for them to speak out and to express themselves openly in a way which  
15 is safe and respectful of their well-being.  
16 Former child soldiers need to speak out and they need to be heard in this trial and to  
17 do so as widely as they can, not only to establish the truth regarding the events which  
18 have affected their lives, but also in order, through telling their story, as painful as  
19 that might be and as shocking as that might be to hear, to explain the consequences  
20 that they have suffered through their recruitment and their experiences in the ranks of  
21 the Anti-Balaka so that the victimisation of which they have -- which they have  
22 suffered be established and be fully recognised.  
23 Now this is not the first time that this Court is dealing with the matter of the  
24 recruitment of child soldiers aged under 15 years into armed forces and their  
25 use -- their active use in hostilities. The practice of the Court in other cases has

1 shown that those crimes have a wide range of devastating consequences of a physical  
2 and psychological nature, sometimes in the immediate term and sometimes in  
3 the long term. These consequences have an impact at the individual level but also  
4 the familial and community level.

5 The first harm suffered when a child is recruited is that that child is separated from  
6 their family and their schooling ends or at least is interrupted. Once they are in  
7 the army, those children who are already vulnerable, given their age, are exposed to  
8 a violent environment which causes them further bodily harm and psychological  
9 trauma. Through their experiences in the army, children often have had to undergo  
10 inhumane and degrading treatment, torture and sexual violence, be they boys or girls,  
11 and that has simply exacerbated their vulnerability.

12 The active use of child soldiers in hostilities, often on the front line, exposes them to  
13 the risk of imminent death, but also leads them to commit atrocities, often under  
14 the influence of drugs and alcohol which is provided to them. And those acts are  
15 perpetrated by them on people who were labelled by their commanders as being  
16 the enemy, without those children really understanding the reasons behind  
17 the clashes and the violence.

18 Many children do not return from the battlefield. Those who do return are -- often  
19 bear -- are wounded, they can be handicapped, they are affected by the bullets and  
20 explosions which they have heard and the images of their dead comrades.

21 Children who have also been victims to sexual violence in the army suffer additional  
22 harm, for instance, unwanted pregnancies, infections, sexually transmissible diseases,  
23 injuries to the genitals; and, in the long term, sexual dysfunction, a feeling of shame,  
24 of humiliation, of guilt and of self-hate.

25 Your Honours, the suffering of children aged under 15 years does not end when they

1 are disarmed and demobilised, unfortunately. That is because the atrocities of war  
2 and the violence that those children have survived change their lives forever. They  
3 haunt their daily life and that for the long term.

4 The Court's practice has shown that, thanks to the testimony of various experts, it is  
5 known that due to continued exposure to violence, to fear, anxiety and inhumane  
6 treatment and to often sexual violence, that combined with systematic use of drugs  
7 and alcohol, former child soldiers as a general rule suffer psychological trauma which  
8 continues long beyond they are demobilised from the army and which often  
9 transforms into post-traumatic stress disorder. Now, that disorder has -- is  
10 prejudicial to the development of the brain and it has an impact on the cognitive  
11 capacity of young people and on their behaviour. Often, it leads not only to  
12 depression, but also to aggression, suicidal ideation, dissociation and derealisation.

13 In the Lubanga case, the Appeals Chamber identified, not exhaustively, but identified  
14 the main types of consequence which are suffered over the long term by former child  
15 soldiers in terms of psychological and social consequences. These include  
16 psychological disorders, suicidal tendencies, depression, dissociative behaviour,  
17 difficulties in controlling aggressive impulses, difficulties in maintaining relationships  
18 with family and the community, a failure to acquire life skills, which cause the victim  
19 some disadvantage, particularly when it comes to finding work.

20 The Appeals Chamber also specified that the various types of harm suffered by  
21 former child soldiers is such to seriously prejudice their life plans. And if that were  
22 not enough, former child soldiers, once demobilised, face the major challenges of  
23 integrating into society, because they find themselves stigmatised and even rejected  
24 by their family and community, unable to marry and without access to opportunities  
25 to develop.

1 According to Dr Wessells, an expert in the Ongwen case, social stigmatisation is one  
2 of the worst consequences suffered by former child soldiers when they return to their  
3 families.

4 The consequences of being recruited as a child soldier under the age of 15 years into  
5 an armed group affects not only the children themselves, but also has an impact on  
6 the integrity and cohesion of their families and their communities and it even has an  
7 impact on future generations through trans-generational harm. Dr Schauer, an  
8 expert on this matter in the Lubanga case, set out this phenomenon of  
9 trans-generational harm and the phenomenon by which social violence is in fact  
10 transmitted to the descendants of those suffering trauma.

11 Children born of rape and sexual slavery not only inherit the trauma of their mother,  
12 but they also face stigmatisation themselves, being mocked and socially excluded.  
13 They are labelled for life as being shameful, born of hate and even as being snake  
14 spawn.

15 Your Honours, the former child soldiers who have been admitted to participate in this  
16 trial have all suffered in one way or another the various types of harm and long-term  
17 consequences which I have referred to.

18 Indeed, they have all been -- suffered inhumanly and degradingly in one way or  
19 another. In some instances they have suffered torture in the ranks of the Anti-Balaka,  
20 they have suffered through the dreadful circumstances in which they received their  
21 military training, they have suffered through severe discipline and punishments, and  
22 they have suffered because they have been forced to take drugs and alcohol before  
23 going into battle.

24 Amongst the 59 former child soldiers:

25 Seven were raped and sexually enslaved, girls and boys.

1 Twelve bear physical scars and the consequences of wounds caused by gunfire,  
2 explosions or machete blows. This has caused permanent handicap in several cases,  
3 including the use of an arm or a leg, the loss of an eye or difficulties in walking.  
4 Thirty-five continue to suffer psychological trauma, they experience emotional  
5 difficulties, behavioural problems, including anxiety, fear, anger and aggression,  
6 which is constant, feelings of guilt, insomnia, nightmares, recurring migraine,  
7 memory problems, addiction to drugs or alcohol.  
8 And finally, and to this day they are all the subject of stigmatisation and face  
9 difficulties of one type or another or on one scale or another when it comes to their  
10 reintegration into society.  
11 Seven years after the events which touched their lives, the former child soldiers  
12 continue to suffer. Nobody has received psychological support and very few of  
13 them have benefited from basic medical care, and that is because, aside from the fact  
14 that there is practically no psychological support system in the Central African  
15 Republic, the demobilisation programmes for former child soldiers do not include  
16 this component, as essential as it is.  
17 They have been abandoned to their psychological problems. The former child  
18 soldiers find themselves unable to enjoy the opportunities enjoyed by others or to  
19 benefit from life in society in the same way as others because they have been rejected.  
20 Without work and marginalised, former child soldiers continue to spend their time  
21 with their old Anti-Balaka associates. They are an easy prey for remobilisation  
22 campaigns by the various armed groups, which are numerous in the Central African  
23 Republic. Indeed, by rejecting and stigmatising the former child soldiers, their  
24 families and their respective communities leave them with no other choice than to  
25 rejoin armed groups battling in the Central African Republic, thereby contributing,

1 without wanting, to the lack of security that has reigned in the country for a number  
2 of years now. And this is paradoxical, because the families and the communities  
3 who stigmatise them today because they are former Anti-Balaka child soldiers, that  
4 stigmatisation and rejection in fact leads -- simply encourages them to rejoin groups.  
5 To illustrate, I'm going to cite the experiences of certain former child soldiers.  
6 We have victim a/65131/19, who was conscripted into the Anti-Balaka when he was  
7 only 12 years old, and he was obliged to attend summary executions of civilians.  
8 Victim a/65122/19 was also enrolled at the age of 12 years and tells how that victim  
9 was obliged to watch and learn how to cut up people.  
10 Similarly, victim a/65384/19, barely 12 years old, was forced to take part in, and I cite,  
11 "decapitating Muslims".  
12 Victim a/65125/19 was conscripted into the Anti-Balaka when she was 12 years old.  
13 More specifically, Anti-Balaka soldiers entered her home, raped her sisters and then  
14 attacked her. She fell pregnant following the rapes to which she was subjected.  
15 Today, she is 18 years old and takes care of the family who was not wanted and does  
16 so without family support. She is stigmatised and rejected by her own community.  
17 Victim a/65395/19, aged 13 at the time, was -- became a sexual slave to one of  
18 the Balaka commanders. She still bears physical scars of the sexual violence that she  
19 suffered. She also suffers psychological trauma and suffers anxiety and behavioural  
20 problems.  
21 Victim a/65234/19, a boy of 12 years old at the time of his conscription into  
22 the Anti-Balaka, tells how he killed people and committed cannibalism after being  
23 forced to take drugs. He suffers psychological trauma and depression and is  
24 obsessed with suicidal thoughts. He constantly feels anxious and hate for himself,  
25 and that on top of being marginalised by his community.

1 Victim a/65121/19 was enlisted into the ranks of the Anti-Balaka at the age of 11 years  
2 old. Since his or her demobilisation, she or he feels constantly guilty for having  
3 killed people and wishes to resume his or her education, to recover psychologically  
4 and forget the past. However, this person continues to be stigmatised by their  
5 community. As does victim a/65127/19, who in addition to having suffered  
6 psychological trauma, tells that he or she has been unable to find a job, stating that  
7 even NGOs do not want to employ him or her due to his or her experience.

8 Victim a/65185/19, a boy of 13 years of age at the time of his conscription into  
9 the Anti-Balaka, was very heavily beaten about the head by -- with a stick by his  
10 commander and has developed mental problems and has been unable to resume his  
11 schooling since.

12 Victim a/65228/19 joined the Anti-Balaka at the age of 12 years old to avenge  
13 the murder of his or her elder brother. She, it's a girl, she suffered -- or bears scars  
14 on her face which she suffered on the battlefield and has suffered psychological  
15 trauma, which takes the form of aggression and permanent anger. She has been  
16 abandoned with her psychological problems and her addiction to drugs. She has  
17 been marginalised by her community. She needs psychosocial assistance to put  
18 the memories of war behind her and violence behind her. She wishes to re-enter  
19 society fully.

20 Your Honours, we often hear about the collective commitments made by States and  
21 the international community with respect to children who have been involved with  
22 armed groups. However, commitments which only exist on paper and which are  
23 not actually put into practice certainly do not suffice.

24 With reference to the Paris Commitments and Principles which were adopted in 2007,  
25 we need to remember that our commitment to former child soldiers is not limited to

1    disarming and demobilising them, but rather it requires putting in place a number of  
2    necessary measures within communities to facilitate full and effective reintegration of  
3    former child soldiers into civil society.

4    The reintegration of former child soldiers and the process which should allow  
5    the individuals concerned to transition into civilian life and to adopt a positive role  
6    and a civilian identity which is accepted by their families and their community and  
7    reconciliation at the local and national level, that is what is required.  Rehabilitation  
8    is sustainable when the political, legal, economic and social conditions are in place  
9    which are necessary for these children to survive, to subsist correctly and to enjoy  
10   dignity.  Such a process needs to be provided to children, they must be allowed to  
11   exercise their rights, receive a formal education and a non-formal education.  Their  
12   families need to be united and they need to be given the means to lead a respectable  
13   life and to be free of danger.

14   Reinserting former child soldiers is a complex process and involves adaptation and  
15   negotiation with families and communities.  It's a long-term project which needs  
16   various stakeholders to play their role.  It involves putting in place long-term  
17   structural projects and providing resources which are at the level required.  Former  
18   child soldiers are capable of adaptation and resilience.  They can certainly make  
19   a success of their life if they receive the help, the support and the encouragement that  
20   they need.

21   In light of the precarious situation and the extreme vulnerability of former  
22   Anti-Balaka child soldiers, and this seven years after they were demobilised, leads us  
23   to face the fact that their -- the efforts made to rehabilitate them and reincorporate  
24   them into society hitherto have quite apparently been insufficient.

25   Your Honours, I spoke about commitments.  The primary remit of the International

1 Criminal Court also includes an undertaking to help rehabilitate victims. The former  
2 child soldiers participating in these proceedings understand that the Court will not be  
3 able to provide an immediate remedy to assuage their suffering. Nonetheless, they  
4 are confident that by having their status as victims recognised, by throwing light on  
5 the events that took place, and by punishing those who are responsible for the crimes  
6 which touched their lives, the Court will contribute to their recovery and their return  
7 to normal life, and also to reconciliation with their families and their communities.  
8 And, at the end of the day, to achieving a durable peace.  
9 Thank you.

10 PRESIDING JUDGE SCHMITT: [11:31:17] Thank you very much.

11 I give the floor to Ms Massidda.

12 MS MASSIDDA: [11:31:21] Thank you very much, your Honour.

13 (Interpretation) Mr President, your Honours, the Legal Representatives of Victims of  
14 other crimes will make their opening statements as follows:

15 I will first give a general overview of the interests of the victims in these proceedings.

16 I will be followed by Mrs Douzima Lawson, who will outline the current situation for  
17 victims in the Central African Republic.

18 Then, Mr Dangabo Moussa will expand upon the impact of the crimes on the life of  
19 the victims which are represented in the Central African Republic.

20 Mr Fall will follow on and explain the views and concerns of the victims in  
21 the diaspora and in particular in Chad.

22 And finally, Ms Rabesandratana will conclude by outlining the victims' expectations  
23 and some thoughts on their access to justice.

24 PRESIDING JUDGE SCHMITT: [11:32:43] Can we stop here for a moment.

25 I understand that your client is, at the moment, not in the courtroom.

1 MS DIMITRI: [11:32:56] Thank you, Mr President. I hadn't noticed. Can I have  
2 a --

3 PRESIDING JUDGE SCHMITT: [11:33:01] Yes, of course, we would also -- ah, he is  
4 already back. No problem at all.

5 MS DIMITRI: [11:33:06] Thank you. Apologies.

6 PRESIDING JUDGE SCHMITT: [11:33:07] No, no, no. It was obviously not some  
7 attitude, it -- we understand.

8 Please continue, Ms Massidda. Thank you.

9 MS MASSIDDA: [11:33:15] Thank you. Your Honour.

10 (Interpretation) Mr President, your Honours, break the silence. This is largely what  
11 the victims want today. Break the silence which envelops the terrible events they  
12 had to face and choose to speak out. This is the first step to re-establish the truth to  
13 get justice.

14 Break the silence, put words to the acts by identifying the crimes that can be related to  
15 the suffering and also providing an answer to what actually happened.

16 My Lords, this is the second time that the Court has to judge crimes committed in  
17 the Central African Republic since 2003.

18 Indeed, the recent history of the Central African Republic is littered with turmoil and  
19 violence, with lost opportunities and chances which they had and which they may  
20 have and will have a lasting impact on future generations. Theirs is a history of  
21 violence, of hatred and instability which has forced thousands of victims into exile  
22 and has forced them to live under deplorable conditions.

23 Because of its geography and history, the Central African Republic is at the junction  
24 of two regions and two people. In the north, the pastoralists and traders who are  
25 mainly Muslim, and in the south, Central Africa, the people of the savannah and

1 the river who were initially animists and now predominantly Christian.

2 When the Séléka came to power in March 2013, for the first time since independence  
3 there was a strong force from the Muslim population in the north and east of the  
4 country. Strong clashes between Séléka and Anti-Balaka led to tensions between  
5 the communities and that was made worse by their different religions.

6 This case deals with a widespread and systematic attack in many areas in the Central  
7 African Republic between September 2013 and December 2014 on a civilian  
8 population, mainly Muslims, who, because of their religion, their national or ethnic  
9 affiliations, were considered responsible or complicit in or supporters of Séléka or  
10 parties to this movement or persons assimilated to Muslims because of their  
11 commercial and/or friendly links to them.

12 The victims which we represent all testify through their counts of the events that have  
13 affected them to the particularly cruel nature of the attacks they suffered, but also to  
14 its widespread and systematic nature. Widespread because of the scope of the attack  
15 and the crimes committed. Widespread due to the large number of victims, entire  
16 families and communities have been affected.

17 Generalised because of the age and gender of the victims, without taking into account  
18 any vulnerabilities of some of the victims.

19 Generalised, finally, because of the nature of the crimes perpetrated which affected  
20 every aspect of the victim, be it human, morally, physically or materially.

21 As far as this is concerned, the victims which we represent wish to express their  
22 concern about the restrictive interpretation of the geographical scope of this case,  
23 particularly with regard to the targeted neighbourhoods of Bangui.

24 Indeed, some victims, originally permitted to participate in the proceedings, were  
25 then denied the opportunity to participate in the trial because of the fact that

1 the events they recounted took place in neighbourhoods of Bangui that were not  
2 sufficiently close to the locations mentioned in the decision confirming the charges or  
3 in villages that were not exactly located on the PK9-Mbaïki axis.

4 However, according to them, this interpretation is far too restrictive and cannot be  
5 applied to the events covered by the trial that has just started. Indeed, by their  
6 nature, the events that concern us involve the commission of crimes over a vast  
7 geographical area, which the Prosecution office also mentioned yesterday. In  
8 particular, we recall that the charges against the accused include the crimes of  
9 persecution, forced displacement and deportation. For these types of crimes, it is not  
10 necessary for a person to be targeted, harassed, or otherwise deprived of his or her  
11 fundamental rights in his or her place of residence. Victims may also have been  
12 targeted while they were moving because of these events or were already moved to  
13 another location because of the events. Moreover, the crimes were committed  
14 during intense and indiscriminate unrest. This certainly does not allow for precise  
15 targeting of certain places, as if it were possible to stop the abuses at the exact border  
16 of a village, neighbourhood or sub-neighbourhood.

17 The victims therefore hope that this hearing will expose the scope of the crimes,  
18 paying particular attention locations and the degree of victimisation.

19 During this trial, your Honours, the victims we represent will help to establish  
20 the truth by providing their understanding on recent events in the Central African  
21 Republic and by recounting their personal stories, explaining the cultural and  
22 political context and explaining the impact of these events on their lives and their  
23 suffering.

24 Many victims still live in camps for internally displaced persons or in refugee camps  
25 outside the country. Some have suffered physical and sexual violence and have

1 been humiliated and still bear the scars of this humiliation, which also stigmatises  
2 them. Others have been traumatised by the murder of their loved ones, including  
3 family members. Some of them were able to return to the family home after  
4 the events and saw the destruction of their homes. Their homes still bear the marks  
5 of the attack today because they do not have the means to carry out repairs and  
6 refurbish them. Many of the victims have had to move from their place of origin and  
7 they are still living today in exile, without knowing when they will be able to return  
8 to their countries and their families. All have suffered moral damage and  
9 psychological suffering. In addition to this, most of them have also suffered  
10 physically.

11 Your Honours, many victims report that during the night of December 4 and 5,  
12 the Anti-Balaka attacked the capital Bangui during a coordinated action that  
13 surprised them both by its scale and its preparation. Hundreds of fighters, often  
14 armed with machetes, but also with rockets, grenades and heavy weapons, swept  
15 over Bangui. Some victims report seeing them enter Bangui's neighbourhoods, and I  
16 quote, "in single file" for several hours and go -- and I quote again, go "door to door"  
17 executing all those they regarded as Séléka. In a few days hundreds of civilians who  
18 were not taking part in the hostilities were killed in the fighting or summarily  
19 executed in retaliation. Some were never seen again by their families.

20 Carried out on the eve of the expected vote on -- by the United Nations Security  
21 Council resolution authorising the deployment of the French forces, it took  
22 the appearance of a strategic offence of guaranteeing the surprise effect, speed of  
23 execution, and the state of affairs of a planned military offensive. By attacking  
24 the capital on the eve of the Sangaris forces entry into the Central African Republic,  
25 the Anti-Balaka demonstrated a tactical and political sense, surprising for a popular

1 self-defence militia.

2 Bangui became the scene of daily executions and murders against the backdrop of

3 systematic looting. The Anti-Balaka and their sympathisers maintain that Muslims

4 were foreigners and that they should leave the country. In Bangui, the hunt for

5 Muslims - or assimilated as such because of their commercial and/or friendly

6 affinities - was relentless. The desire to suppress and destroy Muslims knew no end.

7 Muslim houses were looted or destroyed, religious objects attacked. The mosque in

8 the Fohu neighbourhood of Bangui was destroyed. Other buildings were covered

9 with offensive graffiti, ransacked or burned. Relics were ransacked, holy books

10 destroyed.

11 The attack in Bangui of 5 December 2013 was a turning point in the conflict and gave

12 rise to a cycle of unprecedented violence which engulfed the country, causing

13 thousands of deaths and leaving many wounded in a period of three weeks.

14 5 December 2013, Anti-Balaka organised groups under the leadership of the accused,

15 attacked the town of Bossangoa in the Ouham prefecture shortly after the attack of

16 Bangui. Anti-Balaka forces killed several hundred Muslims, particularly in the Boro

17 neighbourhood, set fire to their homes and robbed or killed their livestock which was

18 a valuable source of income and wealth. Most of the city's mosques were destroyed.

19 The Anti-Balaka advanced and attacked the city of Bozoum on 6, 23, 25 and 31

20 December 2013. Further south, in the region of Bossemptélé and Boali, attacks

21 increased between December 2013 and February 2014.

22 The events that took place in the west of the country, bordering Cameroon, illustrate

23 the strategy of the Anti-Balaka. On 10 February 2014, several dozens of Anti-Balaka

24 from the towns of Carnot and Bouar located further north attacked the town of

25 Berbérati, prefecture of Mambéré-Kadéï, taking advantage of the departure of the

1 French troops. In what is more akin to a hunt for Muslims than a military attack,  
2 they killed, looted and burnt houses on 10 and 11 February 2014.

3 The targeted Muslim population gathered in enclaves. On 15 February 2014, there  
4 were 18 of them in Bangui, PK5, PK12 in particular, and in the largest localities in  
5 the west of the country, Mbaïki, Boda, Berbérati, Bossangoa, Sibut, Bozoum, Yaloké,  
6 Gaga, Bossempaté, Bouar, Kaga Bandoro and others.

7 Just to give you an idea of the number, if you look at nongovernmental organisations,  
8 the enclaves were home to an estimated population between 15,000 and 20,000 people,  
9 mostly Muslims, out of an estimated 800,000 Muslims living in the Central African  
10 Republic before the crisis.

11 The victims express their deep regret with a restrictive interpretation of the confirmed  
12 charges, which excludes those who found refuge in the PK5 enclave in Bangui.

13 The Prosecution office came back to this by quoting the words of Yakete and today  
14 when they mentioned what happened in PK5.

15 The victims who sought refuge suffered, amongst other things, severe deprivation of  
16 liberty. Life in the enclave was very hard for security reasons, of course, but also  
17 because it was difficult to find food and basic necessities, as well as running water.

18 Such deprivation of liberty may be an underlying act of persecution because of its  
19 gravity. By creating an intolerable situation with no security and no hope of survival  
20 for civilians, by limiting aid to the enclaves where they were, and then by carrying  
21 out military attacks and, finally, by terrorising them in order to force them to leave  
22 the territory, this is undoubtedly an act of persecution.

23 The victims who sought refuge because of other crimes committed elsewhere but who  
24 were subsequently subjected to acts of persecution committed against Muslims in  
25 the PK5 enclaves should be considered to objectively meet the criteria for admissions

1 to participate in these proceedings, because the crime was committed against them  
2 while they were present in this neighbourhood of Bangui.  
3 Flee or be killed. That, your Honour, was the stark choice which hundreds of our  
4 clients had to face, either to go west of the Central African Republic in large organised  
5 convoys to reach Bangui and to take one of the Chartered plans to Chad or other  
6 countries, or to flee to the neighbouring Chad or Cameroon by road.  
7 Fleeing in these convoys, the Muslims, or those assimilated as such, were regularly  
8 attacked by hordes of Anti-Balaka who killed, pillaged or raped them.  
9 The overloaded trucks in bad condition and often defective often broke down along  
10 the way.  
11 The Anti-Balaka controlled the roads and access to the ports where whaling ships  
12 transported traders. They also controlled checkpoints where they took advantage.  
13 Many victims reported being stopped at checkpoints and forced to pay money.  
14 Some were raped and/or tortured under the pretext that they were working for  
15 Muslims or that they were hiding money entrusted to them by Muslims.  
16 During the attacks, places of worship were systematically targeted. After the attacks,  
17 there was no functioning mosque left in Boali, all three mosques were destroyed.  
18 Victims reported seeing Anti-Balaka destroying them stone by stone. On the road  
19 between Bangui and Boali, almost all mosques were attacked and partially or  
20 completely destroyed. Most mosques in Bossongo, Bossembélé and Bouar were  
21 attacked or destroyed. In Bangui, of the capital's 23 mosques, only four remain  
22 standing: The Central Mosque of PK5, the Lakwanga mosque, the Bazanga mosque,  
23 and the PK12 mosque. The other mosques were attacked, burnt down, dismantled  
24 or destroyed. In the district of Fouh and Miskine in Bangui, in the place of  
25 the destroyed mosques, concrete slabs were poured and basketball boards were

1 installed in place of the -- instead of the place of worship.

2 The repetition and scale of the crimes perpetrated against Muslims or assimilated as  
3 such, as well as the coordination of the attacks in the light of the planning,  
4 the command structure and the similarity of the operation methods used by different  
5 groups in different places and at different times reasonably suggest that the actions of  
6 Mr Yekatom and Mr Ngaïssona are accused as a part of a widespread and systematic  
7 attack.

8 In particular, with respect to persecution, understood as the intentional and serious  
9 denial of fundamental rights in violation of international law on grounds of relating  
10 to the identity of the group or collectivity subjected to such persecution, the crimes of  
11 the Anti-Balaka under the command of the accused were aimed at an identifiable  
12 group or collectivity on religious grounds as well as at persons assimilated to that  
13 group through commercial or friendly ties, or even simply assumed to be wrongly  
14 assimilated to them.

15 Religious factor, while not necessarily the primary motivation of the conflict, became  
16 a marker of the crimes intentionally perpetrated by the Anti-Balaka against Muslims  
17 or those perceived to be linked to them. This was a campaign or operation directed  
18 against a civilian population in the sense of conduct as referred to Article 7(2)(a)  
19 of the Statute. The civilian population was the primary target of the attack carried  
20 out in pursuit of this organisation planned to carry out such attacks.

21 Descriptions of the events made by the victims confirm the nature and extent of the  
22 attacks against the Muslim civilian population or persons assimilated. The accounts  
23 include recurring attacks on mosques, the killing of Muslims or persons associated  
24 with Muslims, systematic looting and destruction of Muslim or associated property,  
25 rape, often at gunpoint, including illegally erected roadblocks which brutalised,

1 humiliated and degraded the victims, sometimes in front of family members who  
2 were left powerless. And torture and other inhumane and degrading acts against  
3 Muslims or persons associated with them. These systematic and recurring acts  
4 resulted in forced displacement and deportation.

5 As I said at the beginning of my presentation, this is the second time that this Court  
6 has dealt with crimes committed in the Central African Republic in the last 15 years.  
7 Unfortunately, the search for justice for the victims who suffered the events in 2002  
8 and 2003 did not succeed, since the crimes committed by Banyamulenge remain  
9 unpunished and the victims were left feeling abandoned by the Court as to justice  
10 having been done.

11 Some victims of the events of 2002/2003 are also victims in this process today and  
12 hope that their quest for justice will finally come to fruition.

13 Let us remember that it is the victims who are at the heart of these proceedings.

14 They are the sad reason for the existence of this Court. So behind the legal and the  
15 technical terms which we use, let us not forget that there are hundreds of children,  
16 women and men who are anxiously waiting for the outcome of the proceedings.

17 We can assure you, your Honours, that the fact for the victims to be represented  
18 today and to be able to express their voices in these proceedings is, in itself, an  
19 element of what we can call reparation in the general sense of the term and more  
20 tangibly will help them in their daily struggle to re-establish their lives, bearing in  
21 mind what they have suffered and which they have -- and which has now become an  
22 integral part of their history.

23 This is the end of my presentation, Mr President.

24 (Speaks English) With your leave, we will need to give the floor to Bangui so that my  
25 colleague Maître Douzima Lawson could continue with her observation.

1 I thank you very much for your attention.

2 PRESIDING JUDGE SCHMITT: [12:01:18] Thank you.

3 And I give the floor to faraway Bangui.

4 (Pause in proceedings)

5 PRESIDING JUDGE SCHMITT: [12:02:07] I am just told that the connection will

6 soon be established, so we can remain here in the room and wait.

7 If the connection is established, you may start, please.

8 (Pause in proceedings)

9 MS DOUZIMA LAWSON: (No interpretation)

10 PRESIDING JUDGE SCHMITT: [12:03:44] So if you can hear us and if you can hear

11 me, we would appreciate it if you would simply start with your presentation. We

12 also heard you.

13 MS DOUZIMA LAWSON: [12:03:59](Via video link)(Interpretation) Yes, I hear you.

14 PRESIDING JUDGE SCHMITT: [12:04:00] And since we also hear you, please start

15 your presentation.

16 MS DOUZIMA LAWSON: [12:04:03](Via video link)(Interpretation) Thank you,

17 Mr President.

18 Mr President, your Honours, at the opening of the confirmation of charges I pointed

19 out that for at least two decades the conflicts in the Central African Republic have

20 been systematically settled by violence, with the civilians as main victims.

21 As a general observation, it seems that the main aim of the warring parties is to gain

22 access to power, whatever it costs.

23 The slogan, and I quote, "Never again" remains empty. One only has to look at what

24 is currently going on in the Central African Republic recently, particularly from

25 December 2020 to the present day.

1 Victims reiterate their fervoured wish that the Court could give a strong signal to  
2 criminals of all kinds in order to deter them from committing similar crimes which  
3 continue to be victims by armed groups. Central Africans continue to demand  
4 justice for the serious and massive crimes and human violations which have been  
5 committed in the Central African Republic for decades.

6 In the present case, 11 December 2019, the Pre-Trial Chamber II issued its decision  
7 partially confirming the charges of war crimes and crimes against humanity brought  
8 by the Prosecutor against Alfred Yekatom and Patrice-Edouard Ngaïssona and  
9 arranged for them to stand trial.

10 However, as has already been said by my colleagues, the victims are very concerned  
11 about the Pre-Trial Chamber's decision not to confirm all the charges for the violence  
12 suffered by the accused, in particular through Yekatom or his elements. This means  
13 that a significant number of victims have been excluded from the scope of this case, in  
14 particular, those from Lobaye, including Boda and its surroundings, Mambéré-Kadéï,  
15 including Berbérati and its surroundings, as well as part of the capital Bangui,  
16 including the Boy-Rabe neighbourhood.

17 They feel that the Chamber should have asked the Prosecution to review or provide  
18 additional evidence about the geographical areas in question rather than  
19 systematically dismissing them.

20 Indeed, they have expressed a willingness to provide the Prosecutor with additional  
21 evidence. They maintain that there is a causal link between the actions of the  
22 accused and the violence they suffered in the areas not covered by the decision  
23 confirming the charges.

24 The victims maintain that the accused intentionally directed attacks against them  
25 during the period covered by the confirmation of charges and that they were victims

1 of murder, of rape and other crimes, they were forced to leave their homes as a result  
2 of persecution, inhuman and degrading acts prior to the looting or confiscation of all  
3 their assets, tangible -- real or ...

4 The victims believe that by reducing the geographic scope, the likelihood of  
5 a conviction of the accused is also reduced.

6 By not taking into account certain geographic zones, some of Yekatom's cells, called  
7 Rambo, and has allowed his elements to continue looting, abductions, indeed, to go  
8 against the return of victims so that they cannot return home.

9 In summary, the elements of Rambo continue to sow terror and desolation in this  
10 zone which is still in their control, as well as in areas such as Yaloké, Bossembélé and  
11 Boali.

12 All of the victims in these locations have submitted applications to participate in  
13 the proceedings. I repeat the names of Rambo, the Coeur de Lion and Beina come  
14 up with all the victims in the area, in particular Boda. I said this because I myself, I  
15 met more than 300 victims of Boda and Pissa during the year 2019.

16 As regards Ngaïssona, he also continues to operate through his representatives in  
17 the country to do harm. His involvement is felt in the most recent events which  
18 have taken place in the country since December 2020.

19 The movement called the Ngaïssona wing of the Anti-Balaka represented by  
20 Sylvain Béorofei is a signatory of the Kamba Kota declaration, which is head of  
21 Ngaïssona, Bozizé. This declaration, which is dated 15 December 2020, whose  
22 purpose is the denunciation of the political agreement for peace and reconciliation in  
23 the Central African Republic signed on 6 February 2019, as well as the declaration  
24 number 1 of the CPC called Collation of Patriots for Change, bringing together this  
25 time Séléka and Anti-Balaka, whose goal is to seize power by force.

1 After the attack of several towns in the north, in the centre and in the west of  
2 the country by the CPC, which, while sowing terror and boasting about impunity,  
3 they once again caused hundreds of deaths and massive displacement of the civilian  
4 population. They have recently attacked the capital of Bangui with heavy weapons,  
5 resulting in loss of many human lives and thousands of internally displaced persons.  
6 Because these people without faith or law banded together in this deathly coalition,  
7 the Central African population is still in a state of perpetual psychosis.  
8 The measures taken by the Central African government, namely to install a curfew at  
9 6 p.m. and a declaration of a state of emergency, bears witness to this.

10 According to the UN statement published by the Agence France-Presse on  
11 29 January 2021, more than 200,000 people living in Central African Republic have  
12 been displaced in less than two months.

13 According to the UNHCR, more than 92,000 refugees have arrived in the DRC,  
14 the Democratic Republic of the Congo, and some 1,340 have fled to the Cameroon, to  
15 Chad and to the Congo since the December launch of an offensive.

16 PRESIDING JUDGE SCHMITT: [12:15:04] Please allow me shortly to interrupt,  
17 Ms Douzima. I think the Chamber would appreciate it if you would perhaps  
18 concentrate more on the charges and what the case is here about. I understand that  
19 you want to talk about that, but we would appreciate it if you, like in the beginning, if  
20 you would focus exactly on the confirmed charges and what the case here is about.  
21 We have some, as you said, some temporal and geographical scope of the case and we  
22 should not, I think, extend it too much. I know it's an opening. When it would be  
23 evidence, it would be even more critical, so to speak. But please concentrate yourself  
24 on the events that took place at the time of the case what we are talking about here.

25 MS DOUZIMA LAWSON: [12:16:01](Via video link)(Interpretation) Thank you,

1 Mr President.

2 The victims would request that the Court take note of these latest developments to  
3 ensure that their voices are heard about the situation so that they give a strong signal  
4 that you bear in mind that it has an influence on their elements, as the Prosecution  
5 raised in their opening statement.

6 So the victims rely on the Court to shatter the culture of impunity, as well as the spiral  
7 of violence which engulfs the Central African Republic, which is a source of  
8 unhappiness, and they hope that there will be a deterrent decision by the Court, and  
9 they have expressed this by saying "enough is enough".

10 Many victims keenly follow the development of the proceedings. Even the event of  
11 the coronavirus did not stop more than 500 victims from travelling to meet their legal  
12 representatives to get more information, to exchange views, and to put forward their  
13 views and concerns.

14 Many of them, since the confirmation of charges, want to participate in  
15 the proceedings and have filled in the requisite participation and/or reparation  
16 application.

17 The victims expect the Judge to find those who are guilty. They are relieved by  
18 the opening of this case. They are awaiting for a decision in this case which could  
19 not be undertaken at a national level.

20 The victims hope to find their dignity again. They hope that this will stop impunity  
21 in the Central African Republic by setting an example in its final decision.

22 To this end, victims wish to be accessible to the Judges during this trial within  
23 the framework of Article 68(3) of the Rome Statute, particularly as this regards  
24 them -- allows them to produce evidence; to call and examine witnesses in order to  
25 discover the truth; to file submissions on issues relating to evidence; to receive

1 exhibits from the Prosecution relating to their personal interests; and to submit final  
2 statements at the end of the presentations and the submission of evidence.

3 My Lords, hearing the voices of victims will contribute to end impunity for  
4 the perpetrators of the most serious crimes and thus contribute to the prevention of  
5 new crimes as stipulated in the preamble of the Rome Statute.

6 In conclusion, Mr President, your Honours, the victims would like to receive a broad  
7 range of assistance from the Trust Fund for Victims, bearing in mind the very  
8 precarious situation in which they find themselves at this moment, as I have already  
9 explained. Justice be done.

10 Thank you.

11 PRESIDING JUDGE SCHMITT: [12:20:24] Thank you very much, Ms Douzima.

12 MS MASSIDDA: [12:20:28] Mr President, the floor should continue in Bangui  
13 because our colleague Maître Dangabo Moussa should be ready to present his  
14 observations.

15 PRESIDING JUDGE SCHMITT: [12:20:41] May I ask you if you have an estimate  
16 how long this presentation will last.

17 MS MASSIDDA: [12:20:45] I would say a maximum of 15 minutes, if my estimation  
18 is correct.

19 PRESIDING JUDGE SCHMITT: [12:20:50] And then the presentation of, for your  
20 evidence -- excuse me, your opening would be finished?

21 MS MASSIDDA: [12:20:57] No. Then we will have Maître Fall in Dakar and  
22 Maître Rabesandratana here in courtroom.

23 We estimate a maximum of one hour and a half, maybe. We will not use the entire  
24 three hours allocated to us.

25 PRESIDING JUDGE SCHMITT: [12:21:12] Okay. So the question would be if we

1 now hear the presentation from Bangui first or if we first have the break and start  
2 perhaps at half past 1.

3 MS MASSIDDA: [12:21:23] If I may, your Honour.

4 PRESIDING JUDGE SCHMITT: Yes.

5 MS MASSIDDA: [12:21:25] We encountered some issue with the network in Bangui  
6 in the previous days. Now that we have a network, may I suggest that we continue,  
7 if I may?

8 PRESIDING JUDGE SCHMITT: [12:21:36] That is of course a very good argument.

9 Then of course we continue with Bangui.

10 So you have the floor, please.

11 MS MASSIDDA: [12:21:43](Overlapping speakers)

12 PRESIDING JUDGE SCHMITT: [12:21:44] Yes, of course.

13 I think there is no audio coming through at the moment.

14 But I may perhaps say in the meantime that under the circumstances and given  
15 the situation, we can be quite satisfied with how it works with the Registry these days.  
16 It's very, very good.

17 So I think -- I heard that you have to -- that you are muted now from, from there in  
18 Bangui. So if you unmute, perhaps we could hear you. Perhaps you give it, please,  
19 a try.

20 MR DANGABO MOUSSA: [12:23:07](Interpretation) The microphone is on.

21 PRESIDING JUDGE SCHMITT: [12:23:14] That sounds very promising.

22 MR DANGABO MOUSSA: [12:23:16](Via video link)(Interpretation) Thank you,  
23 your Honour. Thank you, your Honours.

24 The years have passed, but the horrendous memories remain.

25 Before I speak to you about the victims' expectations, I would like to remind you of

1 what they have lived through.

2 We have visited the field on a number of occasions. These visits have been

3 organised and funded by the Court. The victims have told us that during their flight

4 they have seen people massacred, they have seen victims' bodies, people who have

5 been beaten and burnt. The wounds of the 2013, 2014 civil war have not healed.

6 You might see a victim with a wound on his or her shoulder the size of a small coin,

7 where that person has been struck by a bullet. You will see victims who have lost

8 a leg, or you will encounter women who have suffered miscarriages and people who

9 will tell you about deaths. Most of the victims lived in the Central African Republic

10 for generations.

11 Now the victims find themselves, for instance, unable to pay rent. They have been

12 displaced and live out in the bush 45 kilometres from Bangui, for instance, where they

13 have no electricity, no tap water, they only have outdoor toilets. They need to walk

14 to a spring which is 2 kilometres away to get water, but they cannot carry large

15 aluminium basins full of water, nor can they set bushfires in the dry season because

16 they fear being spotted by armed groups. They don't have enough money. They

17 eat grasshoppers and insects instead of treats. They cannot grow cassava. They are

18 reduced to eating tubers of various types. They live not -- not alone with poisonous

19 snakes, but with illness, poverty and death.

20 One victim said: "My heart breaks for the Central African Republic, my heart breaks

21 because of the war which disseminated its residents and have filled men's hearts with

22 hate for their Muslim and Christian neighbours, people with whom they lived in

23 peace and have done since as far as one can remember." Everyone has their own

24 responsibility. The Central African Republic is a country which has been forgotten

25 by Europe. Yes, there was war, but it was not just religious war, but, rather, it was

1 rooted also in the coveting of natural resources and that coveting has caused or  
2 produced orphans, widows, homeless, displaced people.  
3 In Bangui today life is expensive, but victims are happy if they have a roof over their  
4 head, a mattress on the floor, and something to eat. All of the victims want to find  
5 peace and they want their emotional wounds to be healed one day.  
6 Those who are responsible for these crimes are blind to this world of beauty and  
7 variety.  
8 Your Honours, Judge Chile Eboe-Osuji stated at one point in time that the particular  
9 challenges -- that we are faced with particular challenges this year. He said that it  
10 was to the Court to acquit its remit for humanity and that that lay in seeing justice  
11 done and ensuring the rule of law. The victims of the world over have placed their  
12 hope in the ICC.  
13 Your Honours, the victims are poor and that is manifested in various ways. They  
14 are weak. They have little income. They suffer precarious logging conditions.  
15 They have poor health. They are insufficiently educated. They are undernourished.  
16 They live in poor circumstances.  
17 There are different types of victims. There are those who work but earn very little,  
18 the working poor; they certainly don't earn enough to send their children to school.  
19 Then there are those who cannot find work or only temporary work. There are those  
20 who raise their children alone, the father of the child having disappeared without  
21 leaving an address or having been killed during the events of 2013-2014. Many are  
22 not qualified to, to be employed in the jobs that are available on the market and they  
23 also are poorly equipped to operate in an urban environment. There are those who  
24 are sick, those who are handicapped and of course those who have died. There are  
25 those who have to fund a household alone. And there are those who live in

1 makeshift huts.

2 Aside from the poverty linked to a lack of resources, there is also the social dimension  
3 of that poverty, there is isolation and exclusion. There is also -- there are cultural  
4 aspects, their identities are not recognised. There are also ethical aspects, their  
5 values are not recognised.

6 Your Honours, the victims have asked me to tell you that they are desperate. They  
7 have asked me to tell you that they, they hope to hear the truth about the horrendous  
8 crimes that took place and that that would in fact assuage some of their sufferance.  
9 But they also want to contribute to bringing an end to such crimes, that such horrors  
10 not be repeated again in the history of the Central African Republic.

11 These victims have asked me to ask you to punish those who were responsible for  
12 these heinous crimes.

13 The victims of Berbérati, Bossangoa, Mbaïki, Cattin and Boeing have asked me to tell  
14 you also that they expect reparation for the sufferance that they have endured and  
15 the loss that they have suffered.

16 We wish to hear the truth.

17 Thank you.

18 PRESIDING JUDGE SCHMITT: [12:30:12] Thank you very much.

19 So it's now half past 12. I think one hour of a break, lunchbreak is enough since we  
20 can't have so much anyway, so we come together again at half past 1.

21 THE COURT USHER: [12:30:30] All rise.

22 (Recess taken at 12.30 p.m.)

23 (Upon resuming in open session at 1.44 p.m.)

24 THE COURT USHER: [13:44:09] All rise.

25 Please be seated.

1 PRESIDING JUDGE SCHMITT: [13:44:34] I trust that the connection is established  
2 now and we can continue then.

3 MS MASSIDDA: [13:44:39] Good afternoon, your Honour. Thank you.  
4 The connection is now okay, so Maître Yaré Fall will proceed with his observations.  
5 Thank you very much.

6 MR FALL: [13:44:57](Via video link)(Interpretation) Good afternoon, your Honours.  
7 My colleagues asked me to speak to you about the victimisation of the diaspora in  
8 this case.  
9 If we set aside the historical connotation of that word "diaspora", we can understand  
10 that the word means today: The dispersion of a community throughout the world or  
11 the dispersed community as an entity.  
12 In this case that brings us together, there is indeed a diaspora. Based on the most  
13 widely circulated information - and this has been repeated several times this  
14 morning - a systematic attack was directed against the Muslim populations in  
15 the course of the events that occurred in the Central African Republic.  
16 The massacres that ensued were of such a degree that some people described them as  
17 pre-genocidal and led to massive exodus of civilians to neighbouring countries.  
18 Many reliable sources indicate that there are more than 600,000 refugees who today  
19 make up what we have been referring to as the diaspora. 600,000 is an astronomical  
20 figure. And yet, in the statistics at our disposal, only a few hundred people amongst  
21 them were authorised to participate in the proceedings. Given this situation - and at  
22 the risk of sounding obsolete - we still have to take into account the important  
23 progress that has been made ever since the Rome conference and the Kampala  
24 conference, but I have no choice but to reiterate the heartfelt appeal of the NGOs to  
25 the decision-makers, they said: "Punishing criminals is of course important. But it

1 is not enough. There can be no justice as long as justice is not given to the victims  
2 and to all the victims."

3 There is no gain in saying that huge efforts have been made in the area of  
4 the provision, protection and defence of the rights of victims, and I seize this  
5 opportunity to pay tribute to all the competent organs of the Court that have made  
6 those efforts. I also acknowledge all the counsel, the teams in the fields and who  
7 have been, on a daily basis, constituted the indispensable interface between the Court  
8 and those who have suffered in their flesh and their souls the consequences of the  
9 most reprehensible crimes.

10 The fact is that there is a lot of work still to be done that needs to take into account  
11 the complete and efficient interests of the victims.

12 It is crucial for us to bear in mind that even if the legal sanctions, especially before  
13 your jurisdiction, in light of the retributive and deterrent effects of your  
14 decisions - and I will have to point out here that ever since the inception of the Court,  
15 there are certain things that are no longer happening on our continent. However,  
16 the fact remains that the crimes that we are concerned with today have already been  
17 perpetrated and there is no longer anything we can do about it. And as  
18 the anglophones say, "what is done is done."

19 The crucial question that remains to be resolved, of course after a conviction, will be  
20 the fair management of the unspeakable and immeasurable consequences that these  
21 atrocities caused and continue to cause on the victims.

22 In order to be convinced and to -- to be convinced and to take a very close look at the  
23 aspects related to this case, we have to visit the refugee camps like those in Chad,  
24 which we know, we are absolutely convinced that, given the physical and mental  
25 distress, anxiety, stress, permanent desolation and all the rest, it is still possible to do

1 something. And this is the very difficult task that we are called upon to do.

2 The idea that is underlying this commitment and which reassures us is that, to begin

3 with, the provisions of Article 68(3) of the Statute stipulate, and I quote here,

4 Mr President, as follows:

5 "Where the personal interests of the victims are affected, the Court shall permit their

6 views and concerns to be presented and considered at stages of the proceedings

7 determined to be appropriate by the Court and in a manner which is not prejudicial to

8 or inconsistent with the rights of the accused and a fair and impartial trial. Such

9 views and concerns may be presented by the legal representatives of the victims

10 where the Court considers it appropriate, in accordance with the Rules of Procedure

11 and Evidence." End of quote.

12 Also, when you look at this text, to me it is a type of a puzzle because it is extremely

13 complex. It is an article which is not easy to interpret, but we have to make do with

14 it because it is the legal framework within which we must work.

15 The second idea that reassures us is part of Rule 85(a) of the Rules of Procedure and

16 Evidence, which stipulates that:

17 "'Victims' means natural persons who have suffered harm as a result of

18 the commission of any crime within the jurisdiction of the Court".

19 These two texts would lead us to understand that victims, whatever their category,

20 have a general right to access the proceedings. But, as it has already been mentioned

21 before, only a very minor portion of those victims were authorised to participate and

22 most of them are people who are still living in the CAR, so these are the residual

23 numbers of people who were able to escape the extermination, as well as a few people

24 who went into exile and then voluntarily accepted to return home.

25 I'm insisting on this word "home" because most of the people that we have met

1 consider the Central African Republic as their motherland.

2 Out of the other thousands, tens of thousands of those exiled in Cameroon,

3 the Democratic Republic of Congo, Congo-Brazzaville, Chad, Senegal, Mali and

4 others, only a handful were admitted to the proceedings. But the question that we

5 must ask is, where are those dozens of thousands of refugees repatriated by entire

6 convoys that we saw on world television stations?

7 We can legitimately ask this question because it is paradoxical. It appears very

8 clearly that most of those who suffered these atrocities as a result of the vicissitudes

9 and intricacies of legal proceedings are today absent because of the fact that they are

10 not considered to belong to the category of people affected by the case, and so their

11 fate is largely dependent on the various interpretations and understandings based on

12 the various levels of decision-making.

13 In addition to the Defence and the Prosecution, they are full parties, but legal

14 representatives are only participants - and not even automatically - because their

15 participation is very limited. Given the generality of the language, Article 68(3) is

16 very elastic and opens the door to broad-based interpretations and assessments which

17 may introduce uncertainty and unfairness in the treatment of victims.

18 And yet, your Honours, the fundamental place occupied by the victims in the system

19 of the Court is one of the best guaranteed criteria, an unquestionable attribute of

20 the Court's legitimacy.

21 The essence of your institution and the *raison d'être* of the Court, which we refer to as

22 its *causa prima*, is of course the fight against impunity, but especially the victims.

23 What is certain is that, as far as the diaspora is concerned, their state of victimhood as

24 defined in Rule 85 of the RPE is intangible. They are at least victims of forcible

25 deportation, and yet we have the impression that so far the discussions that followed

1 the Rome and Kampala conferences, as well as the comments made on the various  
2 decisions handed down by the international jurisdictions relative to the notions of  
3 victims and the situation of the victims in all those cases, have not lost their urgency.  
4 Obviously, it is absolutely necessary to refrain from a utilitarian vision of the notion  
5 of victim, that is a victim who is merely there to be used as a witness by  
6 the Prosecutor to prove his or her case and by the Defence to exculpate their clients.  
7 They have to resolutely engage in the humanitarian aspect.  
8 During our various missions that we carried out, we realised that the victims were in  
9 an untenable situation, because after the agony and exactions suffered in the CAR,  
10 they are also suffering the agony of the complexity of the proceedings.  
11 As far as those of us counsel are concerned, it is very difficult to come face to face and  
12 explain the situation, the legal situation to the victims. Quite frequently, we were  
13 completely helpless in the face of the relevant questions put to us.  
14 How can you make someone understand? That is someone who, because of the  
15 situation, was plundered, brutalised and sometimes raped and today they are  
16 confined for several years in refugee camps. And how can you explain to those  
17 people that they are excluded from the proceedings? It is not easy.  
18 And this is a situation that cannot be set apart from the victims' participation because  
19 simply the forms that they filled were inaccurately filled and fraught with errors and  
20 incoherence. Those were rejected.  
21 Can one expect coherence and a good memory from these people whom, for the most  
22 part, lost their faculties, including their reason? We met people who were mentally  
23 handicapped, people who because of the events became like fools. I'm sorry for  
24 using that word.  
25 Despite all the efforts made and all the progress made, both in the area of legal

1 instruments and jurisprudence, one must admit that the place of victims in  
2 the proceedings continues to be problematic and borders on the enigmatic.  
3 The mandate that we have received from the Court is centred on the representation of  
4 the interests of the victims that have been authorised to participate.  
5 But if in addition to the instruments or texts that have been mentioned, we refer to  
6 the decision of Pre-Trial Chamber II, we can understand that we may take care of  
7 anyone who is a victim, and these people have missed no opportunity to tell us about  
8 their concerns.  
9 Despite our commitment and the relentless support of the case managers, other field  
10 officers and intermediaries, we can reassure you that there is still a lot of work to be  
11 done.  
12 And I'm talking specifically on the applications for participation filled by  
13 the intermediaries, many of them were rejected because of incomplete and incorrect  
14 information.  
15 The task is very difficult and almost insurmountable.  
16 With these people who have lost all their reference points, we have found  
17 the situation unimaginable.  
18 So how can one rectify such situations, especially given that the refugee cards are  
19 the only identification documents in the possession of these victims who rely on other  
20 victims to tell people what has happened?  
21 And to conclude I will talk about the structure and the function of legal  
22 representation, which constitutes a window through which the jurisdiction sees  
23 the victims.  
24 Within this framework, we have the impression that we are in the presence of  
25 a representation within a representation. What was decided is that each counsel

1 should be present in the hearing for a period of one month and on a rotational basis  
2 representing the entire team and on behalf of all the victims.

3 When it came to practice, this became very difficult.

4 It is true that before our appointment we all accepted to work within the same team,  
5 in perfect symbiosis and in perfect collaboration representing all the victims,  
6 notwithstanding their place of residence. But the reality in the field, which has been  
7 compounded by the health pandemics, despite our efforts, this has led to a difficulty  
8 that is difficult to overcome. And, as I said, we have tried everything and it is  
9 difficult.

10 And to conclude, Mr President, your Honours, I would like to say the following:

11 Justice is of course very powerful because it is the justice system that determines  
12 the mandate and hands down convictions. But it should not use its power only in  
13 that area.

14 It has to be credible. That is, it has to be understood and accepted by the justice or  
15 the people to whom justice is rendered.

16 So we must not lose sight of the fact that all victims, including those who are present  
17 and those who are not present, should be alert. We know that they are alert and  
18 listening to everything that is happening and will happen here. They should be able  
19 to say "Justice has been done."

20 This is a heartfelt appeal and this is something we have heard throughout all  
21 the missions that we have carried out and, more than everything else, this constitutes  
22 the core concerns of the victims that we have met with.

23 Thank you very much for your kind attention.

24 PRESIDING JUDGE SCHMITT: [14:05:44] Thank you very much.

25 Ms Massidda.

1 MS MASSIDDA: [14:05:49] Your Honour, Ms Rabesandratana will conclude  
2 the opening remark for the team. Thank you.

3 MS RABESANDRATANA: [14:06:02](Interpretation) Your Honours, as legal  
4 representatives of the victims -- as legal representatives of the victims, we are  
5 the third voice, the voice which as you have heard this morning listening to my  
6 learned friends, the voice that expresses the reality in the field.

7 We are the voice of those who are oppressed, those who suffer in silence, those who  
8 survive in a political context which is violent and beyond the control of any one of us.

9 It is important that our voice is actively incorporated into the judicial process and that  
10 it is heard in the trial which is about to open, that it have a place there and that it be  
11 heard.

12 Your Honours, allow me to address the issue of defending victims and to put the key  
13 question, and that is:

14 What is the International Criminal Court's ambition for victims?

15 We recall the words of President Philippe Kirsch, who led the diplomatic negotiations  
16 on the Statute of the International Criminal Court and the first president of our Court.

17 Regarding the condition of victims before the Court, he said, and I quote: "It is  
18 a case of constructive ambiguity."

19 The situation of victims before the International Criminal Court is paradoxical. They  
20 are not at the centre of investigations and the trial, but, rather, they find themselves  
21 on the periphery, overshadowed by one relationship which is in the spotlight, that is  
22 to say, the relationship between the Prosecution and the Defence in connection with  
23 the accused. This position of the victims is somewhat disadvantageous and, in fact,  
24 is a type of secondary victimisation.

25 Now, I would refer to the opening statement by my colleague Yaré Fall, who

1 explained the calvary that victims must go through in order to be able to participate  
2 in these proceedings, filling out forms, encountering practical and psychological  
3 difficulties of various types to do that, and having to overcome a number of obstacles  
4 simply to arrive at the point where they can file a request to participate.  
5 You have also heard descriptions given this morning by my colleague  
6 Dangabo Moussa regarding victims in the Central African Republic who found  
7 themselves in enclaves and feared for their security.  
8 Ms Douzima also sketched for you the current political situation and the way in  
9 which the civilian population are treated against a backdrop of political struggle,  
10 a political struggle for power, and why she is -- she regrets so that the territorial scope  
11 for participation of victims has been so limited. As she intimated, a disastrous signal  
12 is being sent to the supporters of Messrs Ngaïssona and Yekatom.  
13 Yes, indeed, we can talk about secondary victimisation right at the outset of this trial.  
14 That said, the International Criminal Court and the Statute of Rome is somewhat  
15 more advanced when it comes to the role accorded to victims than international  
16 criminal justice hitherto. Neither the International Military Tribunal for -- at  
17 Nuremberg, nor the ad hoc criminal courts for Yugoslavia and Rwanda  
18 accommodated the victims in the way which they are accommodated at the Court.  
19 They focused rather more on the cause and not so much on the consequence -- or,  
20 rather, there was a dislocation between their examination of the cause of the crimes  
21 and a concentration of the consequences of the crimes.  
22 When the causal link disappears in this way, one ends up with a very  
23 consequence-focused approach.  
24 Thanks to the International Criminal Court and the Rome Statute, that is no longer  
25 the thinking nor the practice of the Court.

1 Nonetheless, the victims do find themselves on the sidelines of such a trial.

2 The question that the Court and we as Legal Representatives of Victims need to put to  
3 ourselves is, what is one to expect from criminal justice? This case has the means to  
4 carve out a better position for victims.

5 The ICC must serve as an example to all courts and to international law in general.

6 It seems to us that it is important that general principles, general legal principles  
7 which are common to all legal orders are derived which can guide the interpretation  
8 of the various disciplines of law as regards participation of victims.

9 The Court also needs to contribute to interactions between international law and  
10 domestic law and bring about unicity of law. It also needs to support the primacy of  
11 law over force and corruption and it must also favour the struggle against impunity.

12 It must allow a country to reconstruct itself, to rebuild.

13 We wish to see positive international justice which does not cause law to further  
14 fragment. Unicity of law is -- involves granting a sufficient position to victims and  
15 to move away from this binary relationship, Prosecution-Defence, and to move  
16 towards a triangular relationship, Prosecution-Victims-Defence.

17 The Court must not contribute to fragmentation because winning the peace is more  
18 complicated than winning the war.

19 This noble and ambitious responsibility which the Statute of the Court captures in its  
20 preamble where it alludes to present and future generations as being an essential  
21 continue for endurable peace is one that we need to embody.

22 The Legal Representatives for Victims must do so and we must contribute to bringing  
23 about a long-term peace, stability and fair development for this country which is  
24 emerging from crisis.

25 So let's have a look at the Statute and, specifically, what it says about this third voice

1 which we represent.

2 First of all, we note the poverty, if you like, of the exegetical approach to the Statute  
3 reading it in isolation.

4 Now, my colleague read the article to you, that is to say, Article 68, and it really  
5 merits our attention.

6 So Article 68(3) states that:

7 "Where the personal interests of the victims are affected, the Court shall permit their  
8 views and concerns to be presented and considered at stages of the proceedings  
9 determined to be appropriate by the Court and in a manner which is not prejudicial to  
10 or inconsistent with the rights of the accused and a fair and impartial trial."

11 Et cetera, et cetera.

12 So here the Statute accords a status to the victims and their right to express their  
13 views and opinions, provided that they have a personal interest, that their personal  
14 interests have been affected.

15 Now, that is a particularly restrictive clause because the concept of personal interests  
16 of the victims being affected is one which can be interpreted in very ways -- in a more  
17 or less limitative fashion by different Chambers and Judges.

18 Now, thankfully for us there is Article 75, Reparations for victims, which makes it  
19 crystal clear that the victims are -- participate fully in the trial and that they have  
20 fully-fledged rights. Now, that article, important as it is, comes into play at the very,  
21 very end of the proceedings after a judgment has been arrived at and after a sentence  
22 has been delivered.

23 It is not relevant to us today. If you like, it pulls back, draws back something for  
24 the victims and the principles, but one cannot say that its application has been a real  
25 success for victims hitherto, given that since 2005 only two reparation orders have

1 been issued in the case of Al Mahdi and Katanga.

2 So, you might say, what to do? Well, our first proposal is not to limit oneself to an  
3 exegetical reading of the Statute. Rather, the Statute must be interpreted in the light  
4 of international law. In other words, based on a teleological approach.

5 An exegetical reading is not in line with any of the canons of interpretation of  
6 the international Law of Treaties.

7 Now, there are two courses here, you have the Vienna Convention and the texts of the  
8 United Nations.

9 As regards the Vienna Convention on treaty law of 23 May 1969, its Article 31(1)  
10 states that:

11 "A treaty shall be interpreted in good faith in accordance with the ordinary meaning  
12 to be given to the terms of the treaty in their context and in light of its object and  
13 purpose."

14 Object and purpose.

15 The object and purpose here is that justice be done, full justice, not partial justice.

16 For instance, only punishing but without fully taking account of the victims, or only  
17 awarding reparations without dealing with those accused of the crimes.

18 These two things are two parts of bringing about justice, punishing and affording  
19 reparation, and they place the victim at the heart of the trial and not on its periphery.

20 This is important.

21 Now, Article 31(3) of the Vienna Convention on treaty law is also important. It says  
22 that:

23 "There shall be taken into account, together with the context: ... any relevant rules of  
24 international law applicable in the relations between the parties."

25 Now, Article 31 of the Vienna Convention on treaty law is fundamental when it

1 comes to the position of the Legal Representatives for Victims and that is

2 the provision to victims of their true place in legal proceedings.

3 Now, what does that mean? It means interpreting the Statute in the light of

4 international law.

5 The International Criminal Court can no longer ignore Article 31(3)(c) of the

6 Vienna Convention, nor can it ignore the steps taken by the United Nations to give

7 access to victims to justice at the domestic and the international level.

8 And here I'm going to take you to the Declaration of Basic Principles of Justice for

9 Victims of Prime and Abuse of Power, adopted by the General Assembly as

10 resolution 40/34 of 29 November 1985, which defines the concept of victim in a very

11 full, full and rounded way.

12 So it states, firstly, that:

13 "'Victims' means persons who, individually or collectively, have suffered harm,

14 including physical or mental injury, emotional suffering, economic loss or substantial

15 impairment of their fundamental rights, through acts or omissions that are in

16 violation of criminal laws operative within Member States, including those laws

17 proscribing criminal abuse of power."

18 And that declaration goes on to further define victims by stating that:

19 "A person may be considered a victim, under this Declaration, regardless of whether

20 the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of

21 the familial relationship between the perpetrator and the victim. The term 'victim'

22 also includes, where appropriate, the immediate family or dependents of the direct

23 victim and persons who have suffered harm in intervening to assist victims in distress

24 or to prevent victimisation."

25 And then it is further specified that:

1 "The provisions contained herein shall be applicable to all, without distinction of any  
2 kind, such as race, colour, sex, age, language, religion, nationality, political or other  
3 opinion, cultural beliefs or practices, property, birth or family status, ethnic or social  
4 origin and disability."

5 Finally, and this is the most important thing, the declaration states that:

6 "Victims should be treated with compassion and respect for their dignity."

7 And it states:

8 "They are entitled to access to the mechanisms of justice and to prompt redress".

9 Prompt redress.

10 So those are the UN texts.

11 The Statute of the ICC is lower than these requirements and the reasons put forward  
12 for limiting the position of the victims are based on an isolationist vision  
13 of the Statute.

14 This *pro victis* position, which takes into account all of international law and our  
15 current, our current epoch, is one which is shared by the independent expert, Diana  
16 Orentlicher, who is an independent expert responsible for updating the set of  
17 principles to combat impunity.

18 And I quote:

19 "Although the decision to prosecute lies primarily within the competence of the State,  
20 victims, their families and heirs should be able to institute proceedings, on either an  
21 individual or a collective basis, particularly as *parties civiles* or as persons conducting  
22 private prosecutions in States whose law of criminal procedure recognise these  
23 procedures. States should guarantee broad legal standing in the judicial process to  
24 any wronged party and to any person or non-governmental organisation having a  
25 legitimate interest therein."

1 When a state is not capable of providing access to the law, the Court must step in.  
2 Whence, of course, the need to further bolster the standing of victims in international  
3 trials.  
4 Allow me during these opening statements to give some food for thought, some  
5 avenues to be considered. The status of victims at this Court is both impressive but  
6 also rather partial, a little patchy. There are differences between the Chambers.  
7 There are tensions.  
8 The question which I put to myself is, why does -- do -- sorry, why do international  
9 criminal proceedings place victims in a corner, in an outlying location in the trial  
10 framework?  
11 And I'd like to provide two explanations for that which strike me as particularly  
12 important:  
13 First of all, the victims represent the field, suffering, abuses and their views being  
14 expressed at trial render the psychological forces at play rather complex, terribly  
15 complex, bringing in this emotive contribution.  
16 Secondly, the victims threaten the dual relationship between the Prosecution and  
17 the Defence.  
18 So how can one associate the victims in the legal process?  
19 Proceedings at the Court require a finding beyond reasonable doubt and this leads to  
20 legal paradoxes. Let us remember paragraph 36 of the *obiter dictum* of the Court's  
21 judgment of 18 December 2012 acquitting Mathieu Ngudjolo. And I quote:  
22 "Finding an accused person not guilty does not necessarily mean that the Chamber  
23 considers him or her to be innocent. Such a finding merely demonstrates that  
24 the evidence presented in support of the accused's guilt has not satisfied the Chamber  
25 'beyond reasonable doubt'."

1 To find somebody guilty, that finding must be based on evidence, evidence which  
2 must be weighed and reweighed by the Prosecution and by the Defence. That said,  
3 it is damaging when justice is not done, as the judgment, the Ngudjolo judgment  
4 indicates.

5 As you know, the threshold to be met for you is beyond reasonable doubt and not  
6 *intime conviction*, or to -- or that judges be thoroughly satisfied of guilt, as is the case in  
7 some criminal jurisdictions. That latter threshold is sometimes said to be excessively  
8 subjective. Here, the system of beyond reasonable doubt is applied.

9 Involving victims in the judicial process allows them to contribute to uncovering  
10 the truth and to establishing it beyond any reasonable doubt, whether that leads to  
11 acquittal or to conviction.

12 It is not acceptable, we believe, that in the interests of the so-called equality of arms,  
13 that truth escape us due to the victims not being involved as they should.

14 The victims are present in the field, they have lived through the events and the crimes  
15 that have taken place. Why leave them on the sidelines?

16 What we have to say is not the same as what the Prosecution has to say. What we  
17 say, we say in an autonomous fashion to inform the Chamber and to speak to  
18 the causes. Understanding barbarity allows one to explain it.

19 The role played by the victims is not unconditional. It takes place under  
20 the supervision of the judges. We, the Legal Representatives for Victims, play a dual  
21 role. We are the advocates of the victims but we are also mediators between  
22 the judges -- between them and the judges, the Prosecution and the Defence.

23 We, the Legal Representative of Victims, based on legal reasoning and the science of  
24 the law, and through our abilities and what we, we bring in terms of the intelligence  
25 of our minds and the compassion of our hearts, contributes to overall justice,

1 achieving the overall justice expected by the victims.

2 We listen to what they have to say, we find agreements, we work with our partners in  
3 the Defence and in the Prosecution, trying to seek out the truth and to have it  
4 expressed and recognised.

5 This legal truth is something that the victims need.

6 It's not a matter of the victims simply spilling out their grief and sorrow, as one might  
7 see in the case of a justice and truth commission, but rather involving the victims in  
8 obtaining justice, a justice which is comprehensive and inclusive and will help to  
9 assuage their inner demons, will help them to rebuild their lives individually and  
10 collectively.

11 One does not happen without the other. They need justice to be done and they need  
12 the truth to be stated.

13 A nation, a people cannot be built on a vacuum, on a hole, something which is not  
14 a firm foundation, and it can't -- it cannot be built on lies or on denying history.

15 In achieving justice and truth, the victims -- the victims cannot choose between one  
16 and the other, justice or truth. Rather, simply transplanting them in their -- in their  
17 home country, the country of their birth, is impossible. The verdict which will  
18 emerge at the end of these proceedings will allow them to feel better understood and  
19 better accepted and it will allow them to enjoy and live through their collective and  
20 individual resilience.

21 Peace is learnt, it has to be discussed, it has to be built.

22 Thank you for having heard me out.

23 PRESIDING JUDGE SCHMITT: [14:32:35] Thank you.

24 I think, Ms Massidda, this concludes the presentation by the victims' representatives?

25 MS MASSIDDA: [14:32:41] Yes, your Honour, this concludes the presentation by

- 1 the common legal representative, both teams. Thank you very much.
- 2 PRESIDING JUDGE SCHMITT: [14:32:48] Thank you.
- 3 And this also concludes the hearing for today because we have assured the Defence of
- 4 Mr Ngaïssona that they can start on Thursday, and we will do that tomorrow
- 5 morning at 9.30.
- 6 THE COURT USHER: [14:33:01] All rise.
- 7 (The hearing ends in open session at 2.33 p.m.)