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PRE-TRIAL CHAMBER II

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala**

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

Public redacted version of

Corrected version of 'Decision on the confirmation of charges against
Alfred Yekatom and Patrice-Edouard Ngaïssona'

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

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PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision on the confirmation of charges against

Mr Alfred Rombhot Yekatom ('Yekatom'), a national of the Central African Republic (the 'CAR'), born on 23 January 1975 in Bimbo, the CAR, also known as 'Alfred SARAGBA', 'ROMBHOT', 'RAMBO', 'RAMBOT', 'ROMBOT', 'RHOMBOT', 'ROMBO' or 'ROMBOHT', reported to have resided in Mbaïki, Pissa and/or Bimbo, the CAR, currently detained at the seat of the Court; and

Mr Patrice-Edouard Ngaïssona ('Ngaïssona'), a national of the CAR, born on 30 June 1967 in Bégoua, the CAR, reported to have resided in the Boy-Rabe neighbourhood of Bangui, the CAR, currently detained at the seat of the Court.

1. The full text of the charges on which the Prosecutor seeks that Yekatom and Ngaïssona be committed for trial is available in the 'Document Containing the Charges' (the 'DCC') filed by the Prosecutor on 19 August 2019.¹

2. In accordance with article 19 of the Rome Statute (the 'Statute'), the Court shall satisfy itself that it has jurisdiction in any case brought before it. In this respect, the Chamber observes that the Prosecutor charges Yekatom and Ngaïssona with crimes against humanity under article 7 and war crimes under article 8 of the Statute (jurisdiction *ratione materiae*) committed on the western territory of the CAR (jurisdiction *ratione loci*) between September 2013 and December 2014 (jurisdiction *ratione temporis*) and that fall within the parameters of the situation referred by the CAR to the Prosecutor. Therefore, in accordance with article 19 of the Statute, the Chamber is satisfied that the Court has jurisdiction over the present case.

I. Background and procedural history

3. On 11 November 2018, the Chamber issued a warrant of arrest against Yekatom.² He was surrendered to the Court by the authorities of the CAR on

¹ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Document Containing the Charges, 19 August 2019, ICC-01/14-01/18-282-Conf-AnxB1 (a public redacted version was filed on 18 September 2019, see ICC-01/14-01/18-282-AnxB1-Red) annexed to Prosecution's Notification of Filing of the Document Containing the Charges and List of Evidence.

17 November 2018³ and his initial appearance before the Chamber took place on 23 November 2018.⁴

4. On 7 December 2018, the Chamber issued a warrant of arrest against Ngaïssona.⁵ He was surrendered to the Court by the French authorities on 23 January 2019⁶ and his initial appearance before the Chamber took place on 25 January 2019.⁷

5. On 20 February 2019, with a view to enhancing ‘the fairness and expeditiousness of the proceedings by avoiding the duplication of evidence, inconsistency in the presentation and assessment of evidence, undue impact on witnesses and victims, and unnecessary expense’, the Chamber joined the cases against the two suspects⁸ and set 18 June 2019 as the date of commencement of the confirmation of charges hearing (the ‘Confirmation Hearing’).⁹ On 15 May 2019, following the ‘Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines’, the Chamber postponed the commencement of the Confirmation Hearing until 19 September 2019.¹⁰

² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom*, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-Conf-Exp (public redacted version notified on 17 November 2018, *see* ICC-01/14-01/18-1-Red).

³ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Rapport du Greffe sur l’Arrestation et la Remise de M. Alfred Yekatom, 22 November 2018, ICC-01/14-01/18-17-US-Exp.

⁴ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom*, Transcript of Hearing, 23 November 2018, ICC-01/14-01/18-T-001-ENG.

⁵ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Warrant of Arrest for Patrice-Edouard Ngaïssona, 7 December 2018, ICC-01/14-01/18-89-Conf-Exp (public redacted version notified on 13 December 2018, *see* ICC-01/14-01/18-89-Red).

⁶ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Rapport du Greffe sur l’Arrestation et la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp.

⁷ Pre-Trial Chamber II, *The Prosecutor v. Patrice-Edouard Ngaïssona*, Transcript of Hearing, 25 January 2019, ICC-01/14-02/18-T-001-ENG.

⁸ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, 20 February 2019, ICC-01/14-01/18-87; Pre-Trial Chamber II, *The Prosecutor v. Patrice-Edouard Ngaïssona*, Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, 20 February 2019, ICC-01/14-01/18-121.

⁹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, 20 February 2019, ICC-01/14-01/18-87, p. 11; Pre-Trial Chamber II, *The Prosecutor v. Patrice-Edouard Ngaïssona*, Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, 20 February 2019, ICC-01/14-01/18-121, p. 11.

¹⁰ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the ‘Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines’, 15 May 2019, ICC-01/14-01/18-199.

6. During the period between the joinder of the cases and the Confirmation Hearing, the Chamber adopted several decisions relating to the conduct of the proceedings, including (i) the ‘Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant’, on 22 March 2019;¹¹ (ii) the first ‘Decision on Disclosure and Related Matters’¹² and the ‘Second Decision on Disclosure and Related Matters’,¹³ on 23 January and on 4 April 2019 respectively; and (iii) a number of decisions on victims’ participation (notably, the ‘Decision Establishing the Principles Applicable to Victims’ Applications for Participation’, on 5 March 2019;¹⁴ the ‘Decision on the Legal Representation of Victims’, on 23 May 2019;¹⁵ the ‘Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position’, on 21 June 2019;¹⁶ and the ‘Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation’, on 13 September 2019).¹⁷

¹¹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 22 March 2019, ICC-01/14-01/18-156-AnxA annexed to Decision on a Protocol on the Handling of Confidential Information and Contacts with Witnesses.

¹² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on Disclosure and Related Matters, 23 January 2019, ICC-01/14-01/18-64-Conf (public redacted version notified on the same day, see ICC-01/14-01/18-64-Red).

¹³ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Second Decision on Disclosure and Related Matters, 4 April 2019, ICC-01/14-01/18-163.

¹⁴ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 5 March 2019, ICC-01/14-01/18-141.

¹⁵ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Legal Representation of Victims, 23 May 2019, ICC-01/14-01/18-205.

¹⁶ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position, 21 June, 2019, ICC-01/14-01/18-227-Conf (public redacted version notified on the same day, see ICC-01/14-01/18-227-Red).

¹⁷ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation, 13 September 2019, ICC-01/14-01/18-338.

7. The Chamber admitted 1085 victims to participate in the proceedings.¹⁸ The victims were organised into two groups: the ‘Former Child Soldiers’ and the ‘Victims of Other Crimes’.¹⁹ Since the Former Child Soldiers might have been implicated in crimes against the Victims of Other Crimes, the Chamber found that the respective interests of the two groups diverged to such an extent that it would not have been appropriate to entrust their representation to the same common legal representative.
8. On 19 August 2019, the Chamber received the ‘Prosecution’s Notification of Filing of the Document Containing the Charges and List of Evidence’. On 5 September 2019, the Defence for Ngaïssona filed its list of evidence.²⁰ The Defence for Yekatom did not file a list of evidence.²¹
9. The Confirmation Hearing commenced on 19 September 2019.²²
10. On 25 September 2019, after consideration of the submissions heard during the first four days of the Confirmation Hearing, the Chamber, by oral ruling,²³ decided to (i) amend the schedule of the Confirmation Hearing; (ii) order the Prosecutor to

¹⁸ On 21 June 2019, the Chamber authorised the participation of 15 victims; *see* Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position, 21 June 2019, ICC-01/14-01/18-227-Conf. On 13 September 2019, the Chamber authorised 1070 victims to participate in the proceedings, 6 of whom were authorised to participate on a provisional basis; *see* Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation, 13 September 2019, ICC-01/14-01/18-338.

¹⁹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Legal Representation of Victims, 23 May 2019, ICC-01/14-01/18-205, para. 14. The ‘Former Child Soldiers’ group comprises victims of the alleged crime of ‘[...] enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities’ under article 8(2)(e)(vii) of the Statute, while the ‘Victims of Other Crimes’ group comprises victims of the other alleged crimes included in the Warrants of Arrest against Yekatom and Ngaïssona.

²⁰ Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Ngaïssona Defence Communication of its List of Evidence, 4 September 2019, ICC-01/14-01/18-322, with Confidential Annex 1; Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Ngaïssona Defence Communication of Disclosure of additional Evidence and additional List of Evidence, 16 September 2019, ICC-01/14-01/18-346, with Confidential Annex 1.

²¹ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Yekatom Defence Notice re List of Evidence, 4 September 2019, ICC-01/14-01/18-319; Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Yekatom Defence Second Notice re List of Evidence, 16 September 2019, ICC-01/14-01/18-345.

²² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG.

²³ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 25 September 2019, ICC-01/14-01/18-T-010-ENG, p. 3, line 24 to p. 5, line 12.

respond in writing to the issues raised by the Defence for Yekatom and the Defence for Ngaïssona; (iii) allow both Defence teams and the Common Legal Representatives of Victims (the ‘LRVs’) to subsequently respond to the Prosecutor’s written observations, should they so wish; and (iv) postpone the closing statements until 11 October 2019.

11. On 3 October 2019, the Prosecutor filed written submissions.²⁴ The Defence for Yekatom, the Defence for Ngaïssona, and the LRVs responded on 10 October 2019.²⁵

12. On 11 October 2019, the parties and participants presented their closing statements.²⁶

II. Preliminary and procedural matters

A. Nature and purpose of the present decision

13. In the present decision, the Chamber renders its determination under article 61(7) of the Statute as to whether there is sufficient evidence to establish substantial grounds to believe that Yekatom and Ngaïssona committed the crimes with which they are charged.

14. The purpose of the pre-trial proceedings, and specifically of the Confirmation Hearing, is to determine whether the case as presented by the Prosecutor is sufficiently established to warrant a full trial. The Statute mandates that this is decided by answering the question of whether there are substantial grounds to believe that the person committed the crimes charged. Therefore, it has been stated

²⁴ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Prosecution Response to the Defence’s Confirmation Submissions, 3 October 2019, ICC-01/14-01/18-376-Conf (corrected version notified on 7 October 2019, see ICC-01/14-01/18-376-Conf-Corr; public redacted version notified on 8 October 2019, see ICC-01/14-01/18-376-Corr-Red).

²⁵ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Yekatom Defence Reply to Prosecution Response to Defence Confirmation Submissions, 10 October 2019, ICC-01/14-01/18-383-Conf (public redacted version notified on the same day, see ICC-01/14-01/18-383-Red); Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Defence Observations to the ‘Corrected Version of the ‘Prosecution Response to the Defence’s Confirmation Submissions’ ICC-01/14-01/18376-Conf-Corr’, 10 October 2019, ICC-01/14-01/18-382-Conf (corrected version notified on 17 October 2019, see ICC-01/14-01/18-382-Conf-Corr); LRVs, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Common Legal Representatives’ Joint Observations on the Prosecution Response to the Defence Confirmation Submissions, 10 October 2019, ICC-01/14-01/18-380-Conf (public redacted version notified on 16 October 2019, see ICC-01/14-01/18-380-Red).

²⁶ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 11 October 2019, ICC-01/14-01/18-T-011-Red-ENG.

that the confirmation of charges procedure protects the suspect from wrongful and unfounded accusations,²⁷ by ensuring that ‘only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought’ are committed for trial.²⁸

15. The confirmation of charges procedure also ensures that the parameters of the case are set for trial and that the charges are clear and not deficient in form, and resolves possible procedural issues in order that such issues do not taint trial proceedings (rule 122(3)-(6) of the Rules of Procedure and Evidence (the ‘Rules’)).²⁹ The issues raised by the Defence for Yekatom and the Defence for Ngaïssona prior to the opening of the Confirmation Hearing on the merits will be addressed below.

16. In sum, the purpose of the pre-trial proceedings is to ensure that only charges which are sufficiently supported by the available evidence and which are clear and properly formulated, in their factual and legal aspects, are submitted to a Trial Chamber for its determination.³⁰

17. The evidentiary standard applicable at this stage of proceedings is a lower standard than that required at trial, and is met as soon as the Prosecutor offers

²⁷ Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 3 (the ‘Lubanga Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 63 (the ‘Katanga and Ngudjolo Confirmation Decision’); Pre-Trial Chamber II, *The Prosecutor v. Jean- Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 28 (the ‘Bemba Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 39 (the ‘Abu Garda Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Corrigendum of the ‘Decision on the Confirmation of Charges’, 7 March 2011, ICC-02/05-03/09-121-Corr-Red, para. 31 (the ‘Banda and Jerbo Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, para. 41 (the ‘Mbarushimana Confirmation Decision’); Pre-Trial Chamber II, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, para. 52 (the ‘Muthaura *et al.* Confirmation Decision’); Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, para. 14 (the ‘Ongwen Confirmation Decision’).

²⁸ Lubanga Confirmation Decision, para. 37; Abu Garda Confirmation Decision, para. 39; Banda and Jerbo Confirmation Decision, para. 31; Mbarushimana Confirmation Decision, para. 41.

²⁹ Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the date of the confirmation of charges hearing and proceedings leading thereto, 14 December 2012, ICC-02/11-01/11-325, para. 27.

³⁰ Ongwen Confirmation Decision, para. 16.

‘concrete and tangible proof demonstrating a clear line of reasoning underpinning [the] specific allegations’.³¹ The Appeals Chamber held that:

In determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.³²

18. At the same time, the Pre-Trial Chamber, by the very design of the pre-trial proceedings, is not in a position to conclusively determine issues relating to the probative value of evidence, including with respect to the credibility of witnesses, whose declarations are, as a rule, brought before it only in written form. Indeed, as indicated by the Appeals Chamber, ‘the Pre-Trial Chamber’s determinations will necessarily be presumptive’, and the Pre-Trial Chamber ‘should take great care in finding that a witness is or is not credible’;³³ the credibility of witnesses can only be properly addressed at trial, where the witnesses will be called to testify and their evidence properly tested.³⁴ Without the full presentation of the evidence, the Chamber should refrain from seeking to resolve any apparent contradictions in the evidence. Accordingly, the Chamber does not address in this decision all issues with respect to

³¹ Lubanga Confirmation Decision, para. 39; Katanga and Ngudjolo Confirmation Decision, para. 65; Bemba Confirmation Decision, para. 29; Abu Garda Confirmation Decision, para. 37; Mbarushimana Confirmation Decision, para. 40; Muthaura *et al.* Confirmation Decision, para. 52; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, ICC-01/04-02/06-309, para. 9 (the ‘Ntaganda Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Red, para. 19 (the ‘Gbagbo Confirmation Decision’); Pre-Trial Chamber II, *The Prosecutor v. Jean Pierre-Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala and Narcisse Arido*, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, ICC-01/05-01/13-749, para. 25 (the ‘Bemba *et al.* Confirmation Decision’); Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-02/11-186, para. 12 (the ‘Blé Goudé Confirmation Decision’).

³² Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’, 30 May 2012, ICC-01/04-01/10-514, para. 46.

³³ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’, 30 May 2012, ICC-01/04-01/10-514, para. 48.

³⁴ Gbagbo Confirmation Decision, para. 21; Blé Goudé Confirmation Decision, para. 14; Ongwen Confirmation Decision, para. 18.

credibility of witnesses or probative value of evidence, except where the answer is manifest.

19. Likewise, and also to avoid any pre-determination of issues or pre-adjudication regarding the probative value of evidence, the Chamber's discussion in this decision is limited to what it considers necessary and sufficient for its determination on the charges³⁵ – namely, whether there is sufficient evidence to establish substantial grounds to believe that Yekatom and Ngaïssona committed the crimes charged and therefore that the case brought by the Prosecutor warrants a trial.

B. Pending motions

1. Prosecution's requests pursuant to regulation 35 of the Regulations for variation of time limit to add eight documents to its Amended List of Evidence (filings no. 375 and 378)

20. On 3 October 2019, the Chamber received the 'Prosecution's Request pursuant to Regulation 35 for variation of time limit to add two documents to its Amended List of Evidence' (the 'First Regulation 35 Request'),³⁶ requesting the Chamber to extend the 19 August 2019 deadline for disclosure in order to add two documents³⁷ to its Amended List of Evidence (the 'LoE'). Regarding the first document, CAR-OTP-2115-0462, the Prosecutor alleged that, although it had been received it three days prior to the disclosure deadline, the document had not been included in the LoE because the significance of the information provided in it 'became apparent only following the arguments raised by the Ngaïssona Defence'.³⁸ As to the second document, CAR-OTP-2117-0389, the Prosecutor explained that it had only been received from the relevant national authorities on 17 September 2019.³⁹

³⁵ Lubanga Confirmation Decision, para. 39; Katanga and Ngudjolo Confirmation Decision, para. 69; Abu Garda Confirmation Decision, para. 45; Banda and Jerbo Confirmation Decision, para. 39; Mbarushimana Confirmation Decision, para. 48; Muthaura et al. Confirmation Decision, para. 60; Gbagbo Confirmation Decision, paras 22-23; Blé Goudé Confirmation Decision, paras 15-16.

³⁶ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Prosecution's Request pursuant to Regulation 35 for variation of time limit to add two documents to its Amended List of Evidence, 3 October 2019, ICC-01/14-01/18-375-Conf (public redacted version notified on 22 October 2019, *see* ICC-01/14-01/18-375-Red).

³⁷ CAR-OTP-2115-0462; CAR-OTP-2117-0389.

³⁸ First Regulation 35 Request, paras 4-5.

³⁹ First Regulation 35 Request, para. 7.

21. On 8 October 2019, the Prosecutor submitted the '*Requête de l'Accusation sur le fondement de la norme 35 aux fins de prorogation de délai en vue de l'ajout de six documents à son inventaire des preuves*' (the 'Second Regulation 35 Request'),⁴⁰ similarly requesting an extension of the deadline for disclosure to include in the LoE six additional documents,⁴¹ the relevance of which would only have become apparent in light of the submissions made by the Defence for Ngaiissona during the Confirmation Hearing.

22. On 21 October 2019, the Defence for Ngaiissona filed its 'Consolidated Defence Response to Prosecution Regulation 35 Requests ICC-01/04-01/18-375 and ICC-01/04-01/18-378', submitting that neither the First nor the Second Regulation 35 Request met the relevant requirements and that, accordingly, they should both be rejected.⁴²

23. Pursuant to regulation 35(2) of the Regulations of the Court (the 'Regulations'), the Chamber may grant an extension of a time limit 'if good cause is shown'; after the lapse of the relevant time-limit, the extension can only be granted if the requesting party demonstrates that its failure to comply with the time limit was due to 'reasons outside his or her control'. According to the well-established jurisprudence of the Court, the 'good cause' criterion is satisfied when there are 'sound reasons' which 'would objectively provide justification for the inability of a party to comply with his/her obligation'; as regards the reasons outside one party's control, they must amount to 'exceptional circumstances'.⁴³

⁴⁰ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiissona*, Requête de l'Accusation sur le fondement de la norme 35 aux fins de prorogation de délai en vue de l'ajout de six documents à son inventaire des preuves, 8 October 2019, ICC-01/14-01/18-378-Conf (public redacted version notified on 18 October 2019, see ICC-01/14-01/18-378-Red).

⁴¹ The six documents concerned are: CAR-OTP-2000-0658; CAR-OTP-2006-0739; CAR-OTP-2074-0411; CAR-OTP-2100-0042; P-1072: CAR-OTP-2090-0002; P-0952: CAR-OTP-2107-0754; CAR-OTP-2115-0462 and CAR-OTP-2117-0389.

⁴² Defence for Ngaiissona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiissona*, Consolidated Defence Response to Prosecution Regulation 35 Requests ICC-01/04-01/18-375 and ICC-01/04-01/18-378, 21 October 2009, ICC-01/14-01/18-388-Conf.

⁴³ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019, ICC-02/04-01/15-1591; see also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paras 7, 9.

24. The Chamber has already highlighted, in its email extending the time limit for the Defence to respond,⁴⁴ the tardiness of the First and the Second Regulation 35 Requests and their disruptive effect on the preparation of the Defence. It also notes that, upon the expiration of the disclosure deadline on 19 August 2019, the Prosecutor was in possession of seven out of the eight documents. The choice not to include those documents in the LoE is the result of a discretionary assessment as to their relevance; the fact that this discretionary assessment may change in light of the Defence's submissions cannot per se provide 'good reason' for the extension of a critical time limit such as the one for filing the list of evidence. As to the one document obtained by the Prosecutor after the expiry of the time limit, the absence of information as to the timing of the requests to the relevant authorities does not allow the Chamber to properly assess whether the Prosecutor can be considered as having acted with due diligence in the matter and that, accordingly, the delay was due to reasons outside of the Prosecutor's control.

25. Accordingly, the Chamber is not satisfied that the relevant requirements are met and therefore rejects the Prosecutor's First and Second Regulation 35 Requests.

2. Prosecutor's request to remedy 'typos' in the DCC by way of corrigendum

26. On 10 October 2019, by email,⁴⁵ the Prosecution informed the Chamber, parties and participants that it had 'noted three sets of typos' in the DCC relating to Counts 19, 29, and 12 and 59. As to the first set, relating to Count 19, both the text of the DCC and the schedule of charges refer to 'cruel treatment' instead of 'torture'; the second set relates to the time reference for Count 29 in the schedule of charges not being aligned with the text of the DCC (it 'should be "from at least December 2013 through August 2014"', in line with paragraph 359 at page 131, and not "between September 2013 and at least August 2014""); the third set relates to the schedule of charges which makes reference to 'indirect co-perpetration' as a mode of liability for Ngaïssona for Counts 12 and 59, instead of 'direct co-perpetration'. The Office of the Prosecutor submitted that the notification would be aimed at remedying, or avoiding,

⁴⁴ Email from Pre-Trial Chamber II, 10 October 2019, at 12:57.

⁴⁵ Email from the Prosecutor, 10 October 2019, at 15:21.

‘any misunderstanding’ and that it would be ‘willing to file a corrigendum if the Chamber so prefers’.

27. On 16 October 2019, also by email and pursuant to the Chamber’s order,⁴⁶ the Defence for Ngaiissona responded.⁴⁷ Noting the tardiness of the Prosecutor’s notification vis-à-vis the time of the notification of the DCC, as well as the absence of any explanation for the delay, the Defence for Ngaiissona submitted that (i) the Prosecutor’s lack of diligence had put them ‘in a fundamentally unfair position [...] given that it has prepared its oral and written submissions on the basis of the DCC as filed on 19 August 2019’; and (ii) while the third point might qualify as a ‘typo’, the nature of the first two ‘sets of typos’ was such as to amount to impermissible ‘disguised attempts to amend the DCC’ as regards the material and temporal scope of the charges. Accordingly, it requested the Chamber to reject the Prosecutor’s request in relation to the first and the second points.

28. The Chamber notes that the instances triggering the Prosecutor’s proposal to file a corrigendum consist of discrepancies between the text of the DCC and the content of the ‘schedule of charges’, a document ‘organised per incident, listing the crimes charged and applicable modes of liability with respect to each Suspect’⁴⁸ appearing at the end of the DCC. While the Office of the Prosecutor has, in the exercise of discretion as to the way to present the case, decided to prepare such table of its own will, the Chamber notes that a document of this type is only useful to the extent that it is perfectly mirroring the content of the narrative of the DCC. Inconsistencies affecting issues as critical as the nature of the charged crimes, the timing of the events or the modes of liability not only exceed the notion of a typo, but could adversely affect the clarity of those charges, thus possibly adversely impacting the suspect’s right to be informed of the nature and content of the charges and, ultimately, the Chamber’s determinations as to their confirmation.

⁴⁶ Email from Pre-Trial Chamber II, 11 October 2019, at 10:50.

⁴⁷ Email from the Defence for Ngaiissona, 16 October 2019, at 15:20. The Defence for Yekatom and the LRVs (by emails respectively sent on 16 October 2019 at 12:49 and 14:26) indicated that they had no observations and deferred to the Chamber’s discretion.

⁴⁸ DCC, para. 628.

29. The Chamber notes that, upon close review, there are additional instances of similar inconsistencies between the text of the DCC and the schedule of the charges.⁴⁹ By the same token, it also notes that, while errors, internal inconsistencies and omissions appearing in the DCC are the responsibility of the Prosecutor, who must bear any prejudice resulting therefrom,⁵⁰ the Defence for Ngaïssona only requests to reject the Prosecutor's request to file a corrigendum.

30. Accordingly, the Chamber considers that, since it cannot be said that those flaws resulted in undue prejudice as regards the ability of the Defence to defend against the charges, the dismissal of the relevant charges would be an excessive and disproportionate remedy. Furthermore, in light of the current stage of the proceedings, the filing of a corrigendum before this Chamber would not be of any meaningful assistance.

3. Defence joint request to exclude the evidence of Witness P-0801 (filings no. 301 and 349)

31. On 29 August 2019, the Defence for Yekatom filed its 'Motion for Finding of Disclosure Violation and for Remedial Measures', thereby (i) submitting that the Prosecution had violated its obligation to disclose exculpatory evidence with respect to Witness P-0801; and (ii) requesting that the Chamber make a finding to this effect, order the immediate disclosure of the relevant material and require this Witness to be heard *viva voce* at the Confirmation Hearing.⁵¹ On 30 August 2019, the Defence for Ngaïssona, through its 'Consolidated Ngaïssona Defence Response to "Motion for Extension of Time to File List of Evidence" and "Motion for Finding of Disclosure Violation and for Remedial Measures"', joined the request of the Defence for

⁴⁹ By way of example, *see* DCC, para. 445 (which mentions the Arabe and Bala neighbourhoods as attacked in Bossemptélé, while the schedule of charges only refers to the Arabe neighbourhood); DCC, para. 593 (which mentions 163 Muslim civilians removed from a compound, while the schedule refers to 'over several hundreds of Muslim civilians').

⁵⁰ Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the 'Defence request to exclude the Prosecution's amended document containing the charges and amended list of evidence', 22 July 2011, ICC-01/04-01/10-306.

⁵¹ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Motion for Finding of Disclosure Violation and for Remedial Measures, 29 August 2019, ICC-01/14-01/18-301-Conf.

Yekatom.⁵² On 2 September 2019, the Chamber received the ‘Prosecution’s Response to the Yekatom Defence’s “Motion for Finding a Disclosure Violation and for Remedial Measures”’.⁵³ On 10 September 2019, the Chamber further received the ‘Prosecution’s Notification Regarding the Order of Pre-Trial Chamber II in the Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions’ whereby the Office of the Prosecutor indicated, *inter alia*, that it was not in a position to disclose the material relating to the Witness without violating the protective orders issued by Trial Chambers III and VII in the *Bemba* case and the *Bemba et al.* case respectively.⁵⁴ On 17 September 2019, the Defence for Yekatom filed its ‘Response to Prosecution Notification Refusing to Disclose Exculpatory Material’, reiterating its request that the Chamber either (i) order the disclosure of evidence concerning Witness P-0801 before the conclusion of the Confirmation Hearing; or (ii) exclude the evidence relating to this Witness in the event of non-disclosure by that time.⁵⁵

32. The Chamber recalls that, in its ‘Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions’ dated 3 September 2019, it ordered the Prosecutor ‘to disclose any information pertaining to Witness P-0801 and falling under article 67(2) of the Statute that has not been disclosed to the Defence, while respecting the protective measures ordered in relation to this Witness in other proceedings before the Court’ by 9 September 2019.⁵⁶

⁵² Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Consolidated Ngaïssona Defence Response to ‘Motion for Extension of Time to File List of Evidence’ and ‘Motion for Finding of Disclosure Violation and for Remedial Measures’, 30 August 2019, ICC-01/14-01/18-303-Conf.

⁵³ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Prosecution’s Response to the Yekatom Defence’s “Motion for Finding a Disclosure Violation and for Remedial Measures”, 2 September 2019, ICC-01/14-01/18-311-Conf.

⁵⁴ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Prosecution’s Notification Regarding the Order of Pre-Trial Chamber II in the Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions, 10 September 2019, ICC-01/14-01/18-330 Conf.

⁵⁵ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Response to Prosecution Notification Refusing to Disclose Exculpatory Material, 17 September 2019, ICC-01/14-01/18-349-Conf.

⁵⁶ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions, 3 September 2019, ICC-01/14-01/18-315-Conf.

33. The Chamber reiterates its finding to the effect that the Office of the Prosecutor has failed to fully discharge its obligation ‘to disclose information relevant to Witness P-0801’, which obligation was not excluded, limited or otherwise affected either by the public nature of some of the relevant material or by the previous access by members of the Defence for Yekatom to some of it. By the same token, however, the Chamber recalls the limited scope and purpose of the confirmation proceedings and notes that (i) in spite of this Witness being referenced a number of times in the DCC, his evidence is not per se determinative of the suspects’ responsibility; and (ii) the Defence for Ngaïssona has relied upon Witness P-0801, both on its oral⁵⁷ and written submissions.⁵⁸

34. In light of this, the Chamber considers that excluding all of the material relating to Witness P-0801 from the confirmation of charges would be an excessive and disproportionate measure. However, the Chamber has refrained from entering findings based entirely on Witness P-0801 and has only referred to this Witness’ evidence for the purpose of corroborating findings otherwise established to the relevant standards.

4. Yekatom’s requests that the confirmation decision be issued simultaneously in public redacted form and that a summary be delivered in public hearing

35. On 11 November 2019, the Defence for Yekatom submitted the ‘Yekatom Defence Request for Public Delivery of Confirmation Decision’,⁵⁹ requesting the Chamber to (i) ‘issue a simultaneous public redacted version of its confirmation decision’ (the ‘First Request on the Delivery of the Confirmation Decision’); and

⁵⁷ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red-ENG, p. 117; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 24 September 2019, ICC-01/14-01/18-T-009-Red-ENG, pp. 9-10, 32.

⁵⁸ Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Corrigendum to the “Defence Observations to the “Corrected Version of the ‘Prosecution Response to the Defence’s Confirmation Submissions’, ICC-01/14-01/18-376-Conf-Corr,” (ICC-01/14-01/18-382-Conf) 10 October 2019, 17 October 2019, ICC-01/14-01/18-382-Conf-Corr, paras 26 (footnote 49), 107 (footnote 220), 110 (footnotes 232-234).

⁵⁹ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Yekatom Defence Request for Public Delivery of Confirmation Decision, 11 November 2019, ICC-01/14-01/18-394.

(ii) ‘hold a public hearing for the delivery of the summary of its confirmation decision’ (the ‘Second Request on the Delivery of the Confirmation Decision’).

36. Both the Prosecutor⁶⁰ and the LRVs⁶¹ responded, on 14 and 15 November 2019 respectively. As to the First Request, the Office of the Prosecutor – recalling having been given an opportunity to review the warrant of arrest for Yekatom prior to its publication – submitted that the Chamber should allow it ‘to review [the public redacted version] before release’. The LRVs indicated that, ‘as a matter of principle’, they support the option of the delivering the confirmation decision in confidential and public redacted form simultaneously, and that the Chamber does not need to consult with either the parties or participants prior to preparing both versions. In the alternative, should the Chamber opt not to proceed by issuing both versions simultaneously, the LRVs request that a public summary be provided, ‘detailing the underlying reasons and *rationale* of the Chamber’, with a view to increasing acceptance of the decision and avoiding the risk for controversy and speculation that could be potentially damaging for the Court. As to the Second Request, the Prosecutor and the LRVs defer to the discretion of the Chamber.

37. Throughout these proceedings, the Chamber has been mindful of the need to preserve their public nature while at the same time adequately and effectively honouring the Court’s responsibility to ensure the safety and security of victims and witnesses, which is all the more critical in light of the volatile situation in the CAR. At this stage, in the absence of updated security assessments for most of the witnesses relied upon, the Chamber finds it appropriate to allow the Prosecutor to submit proposals as to the redactions that, in the informed assessment of the Office of the Prosecutor, should be applied to this decision. By the same token, the Chamber considers it necessary that this exercise be completed on an expedited basis and that the time during which detailed information as to the Chamber’s reasoning is withheld from the public be as limited as possible. Accordingly, the Chamber orders the

⁶⁰ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*, Prosecution’s Response to the Yekatom Defence Request for Public Delivery of Confirmation Decision (ICC-01/14-01/18-394), 14 November 2019, ICC-01/14-01/18-395.

⁶¹ LRVs, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*, Common Legal Representatives’ Joint Response to the ‘Yekatom Defence Request for Public Delivery of Confirmation Decision’, ICC-01/14-01/18-396.

Prosecutor to submit any proposals for redaction by no later than by 16 December 2019 and the LRVs, the Defence for Yekatom and the Defence for Ngaïssona to provide theirs by no later than 19 December 2019.

38. As to the Second Request, the Chamber considers that holding a public hearing for the delivery of the decision on the confirmation of charges is neither required by the statutory texts nor in line with the practice of the Pre-Trial Chambers. Whilst entirely supportive of the desirability that the decision reach as wide an audience as feasible, the Chamber considers that the summary of the decision prepared and made available to the outreach units of the Court adequately serves those needs.

C. Objections and observations pursuant to rule 122(3) of the Rules

39. Pursuant to rule 122(3) of the Rules, at the beginning of the confirmation hearing and before the Chamber hears the matter on the merits, the Prosecutor and the person charged may ‘raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing’.

40. On 16 September 2019, following the Chamber’s suggestion,⁶² both the Defence for Yekatom⁶³ and the Defence for Ngaïssona⁶⁴ submitted in writing the rule 122(3) submissions they would raise orally at the hearing.

1. Defence for Yekatom

41. The Defence for Yekatom submits that (i) the amount and extent of redactions and/or non-disclosure of material related to the Prosecutor’s investigation regarding the Seleka is such as to adversely affect Yekatom’s rights;⁶⁵ (ii) the number of *ex parte* filings in the case has resulted in preventing Yekatom’s full participation in the

⁶² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Order Setting the Schedule for the Confirmation of Charges Hearing, 10 September 2019, ICC-01/14-01/18-327, para. 14.

⁶³ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Notice of Observations Pursuant to Rule 122(3), 16 September 2019, ICC-01/14-01/18-347.

⁶⁴ Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Defence Observations under Rule 122(1) of the Rules of Procedure and Evidence pursuant to the “Order Setting the Schedule for the Confirmation of Charges Hearing”, 16 September 2019, ICC-01/14-01/18-344.

⁶⁵ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 20, lines 18-19 and p. 21, line 3 to p. 25, line 23.

proceedings;⁶⁶ and (iii) the application of excessive standard redactions to the Prosecutor's evidentiary material prevented Yekatom from having a full understanding of the charges brought against him and from being able to efficiently defend himself.⁶⁷

42. As regards points (i) and (iii), the Chamber notes that the Defence reiterates arguments already brought before the Chamber in its 'Supplemental submissions in Support of Motion to Lift redactions' dated 13 September 2019, in which it requested the Chamber to order the Prosecutor to lift (i) specific B.2 and B.3 redactions applied to witness statements;⁶⁸ and (ii) all redactions on evidentiary material related to the ongoing Seleka investigation.⁶⁹

43. The Defence contends that the amount of material withdrawn from disclosure was so extensive that, as a result, Yekatom's ability to comprehend the allegations against him and effectively prepare for his defence has been undermined.⁷⁰ Therefore, it requests that the Chamber either (i) 'disregard all the statements of witnesses bearing unwarranted redactions' and order the Prosecutor to disclose evidentiary material related to the Seleka investigation;⁷¹ or (ii) that the proceedings be

⁶⁶ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 20, lines 20-21 and p. 25, line 24 to p. 29, line 1.

⁶⁷ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 20, lines 22-23, p. 29, line 2 to p. 33, line 16 and p. 36, line 7 to p. 37, line 3.

⁶⁸ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Supplemental Submissions in Support of Motion to Lift Redactions, 13 September 2019, ICC-01/14-01/18-340-Conf, para. 18 (public redacted version notified on the same day, *see* ICC-01/14-01/18-340-Red).

⁶⁹ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Supplemental Submissions in Support of Motion to Lift Redactions, 13 September 2019, ICC-01/14-01/18-340-Conf, para. 25 (public redacted version notified on the same day, *see* ICC-01/14-01/18-340-Red).

⁷⁰ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Notice of Observations Pursuant to Rule 122(3), 16 September 2019, ICC-01/14-01/18-347, para. 7; *See also* Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, ICC-01/14-01/18-T-004-Red-ENG, p. 19 lines 1-2, 12-13 and p. 20, lines 16-17.

⁷¹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 37, line 4 to p. 39, line 5.

discontinued, in the event that the Chamber finds that ‘access to such crucial information cannot be granted’.⁷²

44. The LRVs submit that the Defence has not demonstrated that Yekatom’s rights ‘have been violated to such an extent that the essential preconditions of a fair trial are missing’ and that ‘a permanent stay of proceedings [...] would entirely quash the legitimate rights and interests of the participating victims in this case’.⁷³ The Prosecutor asserts that the proceedings should not be postponed further since the Prosecutor has abided by its disclosure obligations in good faith, and the observations and objections raised by the Defence have already been decided upon by the Chamber.⁷⁴ Additionally, on 26 September 2019 the Prosecutor responded to the 13 September 2019 submissions by indicating that (i) some B.2 and B.3 redactions would be lifted; (ii) the other contested redactions were justified according to the standard redaction regime; and (iii) the request to lift redactions to information that relates to the ongoing Seleka investigation amounts to an impermissible application for reconsideration of previous decisions of the Chamber.⁷⁵

45. The Chamber observes that, while the *ex parte* classification of filings and redactions on evidentiary material may have an impact both on a suspect’s right to be fully informed about the charges brought against him or her and on the paramount principle of the publicity of the proceedings, they both are statutory instruments suitable to be adopted and/or allowed by the Chamber so as to meet its (and the Court’s) obligation to protect victims and witnesses pursuant to article 68(1) of the Statute whenever the circumstances are such as not to allow those competing interests to be simultaneously protected to the highest standards. In striking a balance between those interests, the Chamber is called to exercise a margin of discretion; as long as this discretion is adequately supported, it cannot be said that recourse to redactions

⁷² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 39, lines 6-17.

⁷³ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 47, lines 24-25 and p. 48, lines 1-9.

⁷⁴ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 52, line 21 to p. 54, line 2.

⁷⁵ Prosecutor, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Prosecution’s Response to the Yekatom Defence’s “Supplemental Submissions in Support of Motion to Lift Redactions”, 26 September 2019, ICC-01/14-01/18-361-Conf.

and/or to the *ex parte* classification amounts per se to a violation of the fairness and integrity of the proceedings. As developments in these proceedings clearly show, the Chamber has consistently been mindful of the need to lift redactions and restore the Defence's full access to relevant materials as soon as the circumstances would allow this to happen without jeopardising other relevant, conflicting interests.

46. First, following a request of the Defence for Yekatom,⁷⁶ on 16 September 2019 the Chamber (i) assessed and ascertained, pursuant to regulation 23*bis*(3) of the Regulations, whether the basis underlying the classification of all the *ex parte* filings in the case record remained applicable; and (ii) ordered reclassification of all filings for which this was no longer the case.⁷⁷

47. Second, throughout the proceedings the Chamber has taken all necessary measures to ensure that the disclosure process was duly conducted and the redactions applied to evidentiary material justified. The Chamber recalls its findings to the effect that (i) 'it is an established principle that the disclosure regime relies upon' the Office of the Prosecutor implementing its obligations in good faith; (ii) in light of 'the limited purpose of the confirmation hearing [...] the information already available to the Defence, along with the additional disclosure already ordered and provided [...] will sufficiently enable the Defence to exercise their rights in relation to the charges;⁷⁸ and (iii) 'the risk of prejudice to the Prosecutor's investigation and, incidentally, to the witnesses outweighs the interests of the Defence'.⁷⁹ The Chamber further finds that the Prosecutor, as mentioned above,⁸⁰ has shown both awareness of the statutory

⁷⁶ Defence for Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Motion for Review and Reclassification of Ex Parte Filings, 20 August 2019, ICC-01/14-01/18-283.

⁷⁷ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on Motion for Review and Reclassification of Ex Parte Filings, 16 September 2019, ICC-01/14-01/18-348.

⁷⁸ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Second Motion for Disclosure of Rule 76 Material, 13 September 2019, ICC-01/14-01/18-341-Conf, para. 27.

⁷⁹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, First Decision on the Prosecutor's Request for Authorisation to Withhold the Identities of Witnesses and Apply Non-Standard Redactions, 28 June 2019, ICC-01/14-01/18-232-Conf-Exp, para. 27 (confidential redacted version notified on 5 July 2019, see ICC-01/14-01/18-232-Conf-Red); see also Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions, 3 September 2019, ICC-01/14-01/18-315-Conf, para. 62.

⁸⁰ See para. 44, footnote 75.

obligations of disclosure and readiness and availability to reconsider and, as appropriate, lift some of the redactions, thereby rendering the Defence's request partially moot.

48. In light of the above, the Chamber reiterates its finding that it would be unwarranted to order the Prosecutor to lift additional redactions and/or disclose evidentiary material related to the Seleka investigation and that no prejudice to the integrity and fairness of these proceedings ensues from the fact that those redactions are maintained.

2. *Defence for Ngaïssona*

(i) *Request regarding the applicability of rule 122(4) of the Rules*

49. In its written rule 122(3) submissions, the Defence for Ngaïssona noted that it did not have 'sufficient time to conceive, prepare and raise meaningful and effective grounds of defence which are tailored to this case' as there was a violation of its right 'to have adequate time and facilities for the preparation of the defence'.⁸¹ More specifically, it observed that (i) 'insufficient time was afforded to the Defence to prepare for the confirmation of charges hearing', particularly in light of the length of the DCC and the Prosecutor's expansion of the case against Ngaïssona;⁸² and (ii) in the timeframe between the filing of the DCC and the Confirmation Hearing the Defence had to deal with several matters and filings, both regarding Ngaïssona's detention and submitted by the other parties and participants, depriving it of the effective time needed to prepare for the Confirmation Hearing.⁸³

⁸¹ Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Defence Observations under Rule 122(1) of the Rules of Procedure and Evidence pursuant to the "Order Setting the Schedule for the Confirmation of Charges Hearing", 16 September 2019, ICC-01/14-01/18-344, paras 3, 6-7, 12. *See also* article 67(1)(b) of the Statute.

⁸² Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Defence Observations under Rule 122(1) of the Rules of Procedure and Evidence pursuant to the "Order Setting the Schedule for the Confirmation of Charges Hearing", 16 September 2019, ICC-01/14-01/18-344, para. 8.

⁸³ Defence for Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Defence Observations under Rule 122(1) of the Rules of Procedure and Evidence pursuant to the "Order Setting the Schedule for the Confirmation of Charges Hearing", 16 September 2019, ICC-01/14-01/18-344, paras 9-10.

50. In light of such contextual peculiarities,⁸⁴ the Defence submitted that rule 122(4) of the Rules, which bars the parties from submitting rule 122(3) objections and observations at any point in time subsequent to the confirmation hearing,⁸⁵ should be interpreted in light of article 31(1) of the Vienna Convention on the Law of the Treaties (the ‘VCLT’) ‘in accordance with good faith, the context and the object and purpose of the [Statute] such that Mr Ngaiissona, if a confirmation of charges would be granted [...] will not have forfeited his right to raise any procedural or substantive arguments should they arise, if applicable, in a later stage of proceedings’.⁸⁶ Accordingly, the Defence requests the Chamber to make a ruling to the effect that rule 122(4) of the Rules does not apply in the present instance, in accordance with article 31(1) VCLT.⁸⁷

51. The LRVs responded that ‘the request specifically goes against the wording of Rule 122(4)’ and that ‘the Defence has not offered any valid or reasonable argument to depart from’ its ‘clear text’.⁸⁸ The Prosecutor has also opposed the request as inappropriate and exceeding the scope of observations to be made according to the express and unambiguous language of rule 122(3) of the Rules.⁸⁹

52. The Chamber recalls the Appeals Chamber finding to the effect that the purpose of rule 122(4) of the Rules consists in ‘safeguard[ing] the nature of the judicial process as an orderly succession of procedural acts provided by law that ensure the proper administration of justice, including the expeditious conduct of the proceedings’, which makes it necessary for the parties to ‘raise objections as a case

⁸⁴ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 40, lines 21-24.

⁸⁵ See rule 122(4) of the Rules: ‘At no subsequent point may the objections and observations made under subrule 3 be raised or made again in the confirmation or trial proceedings’.

⁸⁶ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 43, lines 9-16. See also p. 41, lines 1-10.

⁸⁷ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 40, lines 8-12 and p. 41, lines 1-6.

⁸⁸ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 46, line 22 to p. 47, line 21.

⁸⁹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 50, line 16 to p. 52, line 19.

moves through each anticipated stage of the proceedings'.⁹⁰ Accordingly, the Chamber finds that a textual interpretation of rule 122(4) renders clear that its wording and purpose are express and unambiguous. Consequently, the Chamber is of the view that none of the contextual elements pointed out by the Defence would justify a departure from the clear meaning and scope of applicability of this provision in the present case, to which it thus fully applies.

(ii) *Observations on the LRVs submission regarding Ngaïssona's alleged responsibility pursuant to article 28 of the Statute*

53. In their submission dated 13 September 2019,⁹¹ the LRVs noted that several elements in the DCC would provide grounds for holding Ngaïssona liable on the basis of article 28 of the Statute, in addition to article 25 of the Statute. In the view of the Defence, this submission would amount to an indirect request to amend the modes of liability charged to Ngaïssona; as such, it would be without legal basis, since it would not meet the requirements set forth in rule 121(4) of the Rules.⁹²

54. In response, the LRVs clarified that their submission did not amount to a request for amendment of the charges, but was a mere expression of the victims' legitimate concerns 'in relation to the possibility of eventually include [*sic*] liability under Article 28 of the Statute at the end of a confirmation of charges hearing, once all evidence has been heard by the Chamber'.⁹³ The Office of the Prosecutor pointed

⁹⁰ Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX's 'Decision on Defence Motions Alleging Defects in the Confirmation Decision', 17 July 2019, ICC-02/04-01/15-1562, paras 131, 163.

⁹¹ LRVs, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Soumissions écrites des Représentants légaux communs des Victimes en vertu de la règle 121-9 du Règlement de procédure et de preuve, 13 September 2019, ICC-01/14-01/18-336-Conf, paras 9-13 (IV(c)).

⁹² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 44, lines 1-22. See rule 121(4) of the Rules: 'Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing'.

⁹³ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 45, line 13 to p. 46, line 17.

out that it ‘has brought these charges based on the evidence as a result of the investigation [...] as it currently stands’.⁹⁴

55. The Chamber finds that the LRVs submission must be assessed in light of the victims’ right to present their views and concerns to the Chamber pursuant to article 68(3) of the Statute, which may well include concerns as to the choices made by the Prosecutor in the formulation of the charges. While deserving the utmost attention by the Chamber, including in the context and for the purposes of its deliberations on the confirmation of the charges, they cannot interfere with or otherwise affect the statutory procedures relating to the amendment of the charges and are not suitable to be considered in the context of or for the purposes of rule 121(4) of the Rules.

III. The Chamber’s approach

56. The Prosecutor’s case is based upon the allegation that both Ngaißona and Yekatom committed the alleged crimes ‘as members of two common plans – a broad one and a subsidiary one’, to which other individuals were also party. In the course of the DCC narrative, these ‘broad and subsidiary’ common plans are respectively defined as the ‘Strategic Common Plan’ and the ‘Operational Common Plan’. The objective of the Strategic Common Plan would have been ‘to claim and/or reclaim political power’ in the CAR ‘by using criminal means, in particular instrumentalising pre-existing “self-defence groups” and others, later collectively known as the Anti-Balaka’.⁹⁵ The objective of the Operational Common Plan would have been ‘to violently target the Muslim population [in Bangui and in areas in south-western CAR], who, based on their religious, national, or ethnic affiliation, were perceived as collectively responsible for, complicit with, and/or supportive of, the Seleka’;⁹⁶ in the Prosecutor’s submission, ‘[a]lthough different in their context and ultimate goals, they were identical in the criminal means that they employed’.⁹⁷ Because of this ‘identity’ and the overlap at the operational level, both the crimes allegedly committed by Yekatom and those committed by members of other Anti-Balaka sub-groups through

⁹⁴ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaißona*, Transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG, p. 50, lines 7-12.

⁹⁵ DCC, para. 3.

⁹⁶ DCC, para. 6.

⁹⁷ DCC, para. 2.

the Operational Common Plan would be imputable to the members of the Strategic Common Plan, and hence not only to Yekatom but also to Ngaissona.

57. The Chamber believes that it is conceptually and methodologically appropriate to address the issue of the individual criminal responsibility of the suspects by looking at their alleged contributions in respect of each of the charged incidents and at the evidence cited in support of those allegations. Furthermore, since the purpose of the pre-trial procedure consists of determining whether one or more individuals should be sent to trial, the Chamber considers it ‘critically important, for such determination to be made, that the pre-trial judge be in a position to establish a link between the historical events as charged and the alleged perpetrator(s) as identified by the Prosecutor’.⁹⁸

58. The Chamber notes that, as regards Counts 1 to 8, 11 to 17 and 24 to 29, the Prosecutor requests the Chamber to confirm, as a cumulative mode of liability for Yekatom, along with those pursuant to article 25(3) of the Statute, his responsibility under article 28(a) of the Statute, which refers to command responsibility. As previously observed in the jurisprudence of the Court, the form of criminal responsibility mirrored in article 28 is other than the one found in article 25 of the Statute: a superior may be held responsible for the prohibited conduct of his or her subordinates for failing to fulfil his or her duty to prevent or repress their unlawful conduct or submit the matter to the competent authorities.⁹⁹ While article 25 of the Statute establishes liability for one’s own crimes, article 28 establishes liability for violation of duties in relation to crimes committed by others.¹⁰⁰ In the view of the Chamber, the narrative of the relevant events as emerging from the available evidence is such that Yekatom’s conduct resulted in the realisation of the objective elements of the crimes, rather than only consisting in the mere failure to prevent or repress crimes committed by other persons. In accordance with the Chamber’s own understanding of

⁹⁸ Pre-Trial Chamber I, *The Prosecutor v. Bahr Idriss Abu Garda*, Separate Opinion of Judge Cuno Tarfusser in Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, pp. 99-103, para. 4 (the ‘Abu Garda Separate Opinion’).

⁹⁹ Bemba Confirmation Decision, para. 405; Gbagbo Confirmation Decision, para. 262; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343, paras 173-174; Ongwen Confirmation Decision, para. 45.

¹⁰⁰ Gbagbo Confirmation Decision, para. 262; Ongwen Confirmation Decision, para. 45.

the relevant facts at this stage, as outlined below, it shall not address the allegation of command responsibility nor, thus, retain for the relevant confirmed counts the cumulative mode of liability of article 28(a) of the Statute as requested by the Prosecutor.

59. The Chamber also believes that, whenever the evidence submitted by the Prosecutor does not allow for the establishment of a link between the charged events and the suspect, ‘due to its being flimsy, inconsistent or otherwise inadequate’, not only is the Pre-Trial Chamber under a duty to decline to confirm the charges, but it is also advisable ‘to refrain from delving into the legal analysis of the fact, including the correspondence between the objective features of the fact, on the one hand, and the objective and subjective elements of a given crime, on the other’.¹⁰¹ As stated in the Abu Garda Separate Opinion, the Prosecutor’s failure ‘in establishing a proper connection between a given event and a given individual results in making the analysis of the presence of the objective and subjective elements of criminal responsibility a matter of academic debate’;¹⁰² an exercise not only contrary to the principle of judicial economy,¹⁰³ but also possibly resulting ‘in unduly prejudicing, by way of pre-determination, legal issues which may be of relevance for future cases relating to the same event which might be brought before this or another Chamber at a subsequent stage’.¹⁰⁴ Considering the breadth and complexity of the situation in the CAR, where the Prosecutor’s investigation is still ongoing, it indeed cannot be excluded that this or another Chamber of the Court will be called in the future to adjudicate the facts or some of the facts underlying the charges in this case in respect of other suspects. Accordingly, the Chamber will enter no factual findings in respect of the events for which the evidence submitted allegedly supporting the link to either of the suspects is either missing or otherwise unsuitable to meet the relevant evidentiary threshold.

60. The notion of a common plan as a vehicle for imputing individual responsibility for the charged crimes has been a recurrent feature of the cases brought before the

¹⁰¹ Abu Garda Separate Opinion, para. 4.

¹⁰² Abu Garda Separate Opinion, para. 7(i).

¹⁰³ Abu Garda Separate Opinion, para. 7(ii).

¹⁰⁴ Abu Garda Separate Opinion, para. 7(iii).

Chambers since the Court's early days, in line with the jurisprudence of the ad hoc tribunals. Here, the Prosecutor relies on a variation of this notion, alleging the existence of a 'Strategic' and an 'Operational' common plan as two distinct and complementary aspects of a joint criminal design. Being aware of the limited and specific purpose of the confirmation of charges stage of the proceedings, the Chamber does not consider it necessary or appropriate, for the purposes of the present decision, to determine or otherwise address the extent to which either the notion of a common plan, or its specific variation used in this case, are compatible with the statutory framework. The Chamber is mindful of the jurisprudence of the Appeals Chamber to the effect that the common plan may be *one* of the shapes taken by a criminal agreement¹⁰⁵ and that, despite its apparent ubiquity, the very compatibility of the notion of a common plan with the statutory framework and its usefulness vis-à-vis article 25 of the Statute is far from being a foregone conclusion.¹⁰⁶ Departing from the model of the statutory frameworks of the ad hoc tribunals, the Statute lists in article 25 different modes of liability, thus making it a comprehensive provision, suitable to encompass any and all possible forms and manners of contribution to a crime. Accordingly, the Chamber will assess the evidence in light of the elements of each of the modes of liability listed in that provision.

IV. The Chamber's findings on confirmed charges

A. Contextual elements

1. Factual findings

61. According to the evidence, around August 2012, a coalition of armed groups opposing then President François Bozizé emerged in north-eastern CAR under the

¹⁰⁵ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 445.

¹⁰⁶ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Separate Opinion of Judge Adrian Fulford in Judgment pursuant to Article 74 of the Statute, 5 April 2012, ICC-01/04-01/06-2842; Trial Chamber II, *The Prosecutor v. Germain Katanga*, Dissenting Opinion of Judge Christine Van Den Wyngaert in Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons, 21 November 2012, ICC-01/04-01/07-3319-tENG/FRA, paras 38 and 43, footnote 59.

name of the ‘Seleka’.¹⁰⁷ From late 2012 to early 2013, the Seleka advanced southwards towards the capital – Bangui – attacking several towns and regional capitals, occupying military bases and targeting those suspected of supporting François Bozizé.¹⁰⁸ On 24 March 2013, the Seleka took control of Bangui (the ‘24 March 2013 coup’),¹⁰⁹ forcing François Bozizé to flee to Cameroon.¹¹⁰ Michel Djotodia, the leader of one of the factions making up the Seleka, proclaimed himself President of the CAR.¹¹¹ After the 24 March 2013 coup, the Seleka expanded their territorial control, suppressing resistance in regions associated with François Bozizé and his Gbaya ethnic group,¹¹² and subjecting the (mainly non-Muslim) civilian population to attacks and atrocities.¹¹³ It is estimated that the Seleka numbers grew from 5,000 elements in March 2013 to between 15,000 and 20,000 in November 2013.¹¹⁴

62. Soon after the 24 March 2013 coup, François Bozizé, together with Ngaïssona, Bernard Mokom, Maxime Mokom, and others, began planning a response to the Seleka offensive and Bozizé’s return to power.¹¹⁵ To this end, links were established between members of the *Forces Armées Centrafricaines* (the ‘FACA’) and the *Garde Présidentielle* who remained loyal to François Bozizé, on the one hand, and pre-

¹⁰⁷ P-0291: CAR-OTP-2034-0104-R02, at 0113, para. 51; CAR-OTP-2001-2890, at 2897-2898; CAR-OTP-2001-2769, at 2831; CAR-OTP-2001-1976, at 1989-1991; CAR-OTP-2001-7017, at 7067, paras 167-168.

¹⁰⁸ P-0291: CAR-OTP-2034-0104-R02, at 0113, para. 52; CAR-OTP-2001-5739, at 5758-5759; CAR-OTP-2001-2890, at 2898-2899; CAR-OTP-2001-0172, at 0180-0182.

¹⁰⁹ CAR-OTP-2001-0310, at 0310; CAR-OTP-2001-5739, at 5758-5759; CAR-OTP-2034-0270, at 0272, para. 12; CAR-OTP-2001-2890, at 2899; CAR-OTP-2001-0172, at 0176, para. 9; CAR-OTP-2030-0255, at 2055-2056.

¹¹⁰ P-0876: CAR-OTP-2046-0295-R01, at 0321, 933-951; CAR-OTP-2034-0270, at 0272, para. 12; CAR-OTP-2001-2890, at 2899.

¹¹¹ CAR-OTP-2034-0270, at 0272, para. 13, CAR-OTP-2001-2890, at 2899, 2903.

¹¹² P-0808: CAR-OTP-2093-0010-R01, at 0016, para. 34, explaining that ‘because BOZIZE was Gbaya, the Seleka targeted all the Gbaya’; P-0884: CAR-OTP-2072-1913-R01, at 1942-1943, 1034-1056; P-2027: CAR-OTP-2078-0059-R01, at 0063, para. 30.

¹¹³ CAR-OTP-2001-7017, at 7067-7085, paras 170-279; CAR-OTP-2001-0172 at 0183-0187, paras 51-82; CAR-OTP-2034-0226, at 0235-0262, paras 21-169; CAR-OTP-2001-1767, at 1782-1786; CAR-OTP-2001-1870, at 1913-1941. The Chamber notes that by 10 July 2014, the Seleka split in various ex-Seleka groups, but for ease of reference, it will refer to it as the ‘Seleka’ throughout the decision; CAR-OTP-2027-1631, at 1645; CAR-OTP-2091-0480; CAR-OTP-2001-5055.

¹¹⁴ CAR-OTP-2001-2890, at 2905; CAR-OTP-2001-1102, at 1103, para. 5.

¹¹⁵ P-2232: CAR-OTP-2100-2569-R01, at 2572-2573, paras 13-19; P-1847: CAR-OTP-2061-1534-R01, at 1540, 1546-1547, paras 32-36, 84-87; P-1074: CAR-OTP-2094-0228-R01, at 0238, paras 55-57; P-0801: CAR-OTP-2074-2021-R01 at 2058-2059, 1218-1263; P-0589: CAR-OTP-2029-0014-R01, at 0024-0025, para. 69.

existing self-defence groups which had formed in different parts of the CAR, on the other hand.¹¹⁶ From June 2013 onwards, the former members of the FACA and the *Garde Présidentielle* merged with the pre-existing and new self-defence groups, organised them into a military-like structure and assumed and/or shared command over them.¹¹⁷ Most notably, the self-defence groups were gathered in Gobere (near Bossangoa)¹¹⁸ where (i) the men were organised into companies, each numbering between 500 and 1000 members, further divided into sections;¹¹⁹ (ii) new recruits were registered and assigned to a company;¹²⁰ (iii) a command structure was set up, with Maxime Mokom as coordinator of operations;¹²¹ (iv) recruits received training from former FACA members;¹²² and (v) were provided with fetishes, known as *gris-gris*.¹²³ The movement came to be known as the ‘Anti-Balaka’.¹²⁴

63. From September 2013 onwards,¹²⁵ the Anti-Balaka engaged in attacks against the Seleka in and around Bossangoa and Bouca (Ouham Prefecture),¹²⁶ Beloko,

¹¹⁶ P-1847: CAR-OTP-2061-1534-R01, at 1546-1547, 1554, 1570, paras 80-87, 131, 227; CAR-OTP-2001-7017, at 7086-7087, paras 281-285; P-1719: CAR-OTP-2062-0039-R01, at 0045-0046, paras 36-44; P-2232: CAR-OTP-2090-0561-R02, at 0568-0570, paras 51-60; P-0966: CAR-OTP-2031-0241-R01, at 0244, 0246-0247, paras 22, 28-32; P-1074: CAR-OTP-2094-0228-R01, at 0255, paras 156-157; P-2328: CAR-OTP-2099-0165-R01, at 0180, para. 78; P-2012: CAR-OTP-2091-0127-R01, at 0134, 0136, paras 34, 45; P-0889: CAR-OTP-2027-2290-R01, at 2293-2294, paras 22-24; CAR-OTP-2001-5739, at 5782-5783; CAR-OTP-2001-0835, at 0845, para. 28, at 0875, para. 2; CAR-OTP-2001-2564, at 2578; CAR-OTP-2032-0034, at 0034.

¹¹⁷ P-0966: CAR-OTP-2031-0241-R01, at 0245-0246, paras 23-25, 28; CAR-OTP-2001-2769, at 2825-2827.

¹¹⁸ P-0966: CAR-OTP-2031-0241-R01, at 0245-0246, paras 23-25, 28; P-1521: CAR-OTP-2046-0603-R01, at 0608, paras 30-31; P-2232: CAR-OTP-2090-0561-R02, at 0570, para. 60; P-1951: CAR-OTP-2092-0089-R01, at 0091-0098 (*see also* CAR-OTP-2092-0433-R01, at 0462; CAR-OTP-2092-0507-R01, at 0525-0530); P-0975: CAR-OTP-2033-7885-R01, at 7888-7889, paras 25-26.

¹¹⁹ According to P-0966 and P-2115, there were about 14-15 companies at the time; P-0966: CAR-OTP-2031-0241-R01, at 0246, 0248, paras 29, 39; P-1521: CAR-OTP-2046-0603-R01, at 0608, para. 34; P-0975: CAR-OTP-2033-7885-R01, at 7889, para. 29.

¹²⁰ P-0966: CAR-OTP-2031-0241-R01, at 0247-0248, paras 35-39.

¹²¹ P-0966: CAR-OTP-2031-0241-R01, at 0247, paras 33-34; P-0975: CAR-OTP-2033-7885-R01, at 7889, para. 29; *see also* P-2232: CAR-OTP-2090-0561-R02, at 0569, para. 55.

¹²² P-0975: CAR-OTP-2033-7885-R01, at 7889, paras 26-29.

¹²³ P-0966: CAR-OTP-2031-0241-R01, at 0246, para. 30; P-2232: CAR-OTP-2090-0561-R02, at 0570, para. 60; P-0975: CAR-OTP-2033-7885-R01, at 7889, para. 27; *see also* P-0889: CAR-OTP-2027-2290-R01, at 2294, para. 30.

¹²⁴ P-0966: CAR-OTP-2031-0241-R01, at 0244, para. 22; P-0889: CAR-OTP-2027-2290-R01, at 2293, para. 23; CAR-OTP-2001-2564, at 2578; CAR-OTP-2001-0835, at 0875, paras 1-3.

¹²⁵ P-0519: CAR-OTP-2016-0652-R01, at 0668, para. 74; CAR-OTP-2055-1987, at 2241-2242.

¹²⁶ P-0966: CAR-OTP-2031-0241-R01, at 0248-0251, paras 40-55; P-1521: CAR-OTP-2046-0603-R01, at 0609, para. 35; CAR-OTP-2100-1790; CAR-OTP-2001-0835, at 0875, para. 1; *see also* P-0567: CAR-OTP-2059-0084-R01, at 0107, para. 154.

Bohong and Bouar (Nana-Mambéré Prefecture),¹²⁷ as well as Bossembélé and Gaga (Ombella-M'Poko),¹²⁸ with the aim of removing Michel Djotodia from power and ousting the Seleka from the CAR.¹²⁹ Hostilities between the Anti-Balaka and the Seleka¹³⁰ culminated on 5 December 2013 in a coordinated attack on the capital, Bangui (the '5 December 2013 Attack'),¹³¹ and later on the same day, on Bossangoa.¹³² More than 1500 Anti-Balaka elements – including the group commanded by Yekatom – attacked Bangui in the early hours of 5 December 2013, from different directions.¹³³ It is estimated that the clashes resulted in hundreds of deaths, including civilians.¹³⁴

64. Along with their primary and per se legitimate objective to overthrow the Seleka regime and oust them from the CAR, the Anti-Balaka also developed a criminal policy of targeting the Muslim population in western CAR. Based on their religious or ethnic affiliation, they were perceived as collectively responsible for the crimes allegedly committed by the Seleka, complicit with, or supportive of the Seleka.¹³⁵ As a result, from September 2013 onwards, the Muslim population became

¹²⁷ P-1847: CAR-OTP-2107-0102-R01, at 0123-0124, paras 136-142; CAR-OTP-2100-1790; CAR-OTP-2055-1987, at 2242.

¹²⁸ P-1521: CAR-OTP-2046-0603-R01, at 0609, para. 35; CAR-OTP-2001-0329, at 0338, para. 45; CAR-OTP-2001-0835, at 0875, para. 1; CAR-OTP-2055-1987, at 2242.

¹²⁹ P-1847: CAR-OTP-2061-1534-R01 at 1540, 1546-1547, paras 35, 84-87; P-1719: CAR-OTP-2062-0039-R02 at 0043, para. 28; P-1521: CAR-OTP-2046-0603-R01 at 0608, para. 31; P-0884: CAR-OTP-2080-1678-R01, at 1699-1700, 699-747.

¹³⁰ P-2232: CAR-OTP-2100-2569-R01, at 2574-2575, paras 26-28; P-1521: CAR-OTP-2046-0603-R01 at 0610, paras 39, 43; P-0975: CAR-OTP-2033-7885-R01, at 7890, paras 32-36; P-0966: CAR-OTP-2031-0241-R01, at 0250, paras 49-53; CAR-OTP-2001-0835, at 0875, para. 1; CAR-OTP-2055-1987, at 2241-2242.

¹³¹ See Section IV.B.1.(ii) below.

¹³² See Section IV.C.1. below.

¹³³ P-1847: CAR-OTP-2107-0102-R01, at 0130-0132, paras 180-183, 189-191; P-1339: CAR-OTP-2041-0741-R01, at 0750-0752, paras 66-80; P-0889: CAR-OTP-2034-0463-R01, at 0470-0471, paras 38-45; P-0808: CAR-OTP-2025-0324-R02, at 0332-0333, paras 56-59; P-1074: CAR-OTP-2094-0228-R01, at 0239-0240, paras 63-64.

¹³⁴ P-1847: CAR-OTP-2107-0102-R01, at 0130, para. 180; CAR-OTP-2001-0310, at 0310; CAR-OTP-2001-2769, at 2800; CAR-OTP-2001-7017, at 7089-7090, paras 302-303.

¹³⁵ From early 2013 onwards, anti-Muslim sentiments and inflammatory rhetoric were openly expressed, also through the means of television and radio, inciting hatred and violence against Muslim civilian communities and other perceived supporters of the Seleka; see P-1847: CAR-OTP-2061-1534-R01, at 1573-1574, paras 250-253; CAR-OTP-2001-7017, at 7065-7066, paras 157-164; CAR-OTP-2001-0409, at 0410, para. 8; CAR-OTP-2088-2034; CAR-OTP-2065-5468 [00:02:08 to 00:03:36]; CAR-OTP-2066-5312 [00:00:45 to 00:00:54]; CAR-OTP-2001-2769, at 2791. Such rhetoric was also expressed during meetings held in Cameroon between, in particular, François Bozizé, Bernard Mokom and Ngaïssona (see P-0627: CAR-OTP-2102-1265-R01, at 1285-1287, 699-782; CAR-OTP-2102-1506-R01, at 1523-1525, 570-633; P-0589: CAR-OTP-2029-0014-R01, at 0024-0025, para. 69), as

the target of deliberate attacks carried out by Anti-Balaka groups as a form of retributive violence throughout Bangui, including Boeing and Bimbo, and across western CAR Prefectures, including Ouham (Bossangoa), Mambere-Kadei (Berbérati, Carnot, Guen), Lobaye (Boda), Ouham-Pende (Bossemptélé) and Ombella-M'Poko (Yaloké, Gaga, Zawa, Boali). These attacks involved the commission of murder, deportation and forcible transfer of population, imprisonment and other forms of severe deprivation of physical liberty, torture, rape, persecution¹³⁶ and other inhumane acts.¹³⁷

65. On 10 January 2014, Michel Djotodia resigned and the Seleka forces retreated to the north and north-east of the CAR.¹³⁸ A transitional government under interim President Catherine Samba-Panza took office.¹³⁹ With a view to engaging with the transitional government, the existing de facto Anti-Balaka structure was formalised beginning in January 2014 through the establishment of a National Coordination.¹⁴⁰ The National Coordination included the positions of National General Coordinator (held by Ngaïssona),¹⁴¹ Deputy National Coordinator, National Coordinator of Operations (held by Maxime Mokom), Chief of Staff, Spokesperson and Secretary.¹⁴² Commanders of Anti-Balaka groups were formally appointed as Zone-Commanders (known as 'ComZones') to control specific areas and discipline their respective

well as by Ngaïssona or on his behalf (*see* CAR-OTP-2000-0680 [00:00:00 to 00:05:37]; CAR-OTP-2087-9789; CAR-OTP-2087-9863, at 9865, 2-15; CAR-OTP-2042-0976 [00:04:37 to 00:07:22]; CAR-OTP-2107-1473).

¹³⁶ Including in connection with attacks against mosques, the destruction or seizure of Muslim property and pillaging; *see* Sections IV.B-E. below.

¹³⁷ *See* Sections IV.B-E. below; CAR-OTP-2001-7017, at 7088-7109, paras 294, 296, 305-442; P-0567: CAR-OTP-2059-0084-R01, at 0107, para. 154.

¹³⁸ CAR-OTP-2001-4199; CAR-OTP-2001-0409, at 0410-0411, paras 8-9.

¹³⁹ CAR-OTP-2001-0835, at 0866, para. 17.

¹⁴⁰ P-0884: CAR-OTP-2072-1479-R01, at 1482-1484, 109-175; CAR-OTP-2001-3372.

¹⁴¹ P-2232: CAR-OTP-2090-0561-R02, at 0577, paras 99-100; CAR-OTP-2100-2569-R01, at 2580, paras 56-58; P-1847: CAR-OTP-2061-1534-R01, at 1565-1566, paras 198-199, 202; CAR-OTP-2107-0102, at 0133, para. 199; P-1074: CAR-OTP-2094-0228-R01, at 0241, paras 71-72; P-0889: CAR-OTP-2027-2290-R01, at 2299, paras 54-56; P-0884: CAR-OTP-2072-1440-R01, at 1467-1474, 905-1161; CAR-OTP-2072-1479-R01, at 1480-1482, 27-99; P-0808: CAR-OTP-2025-0324-R03, at 0336-0337, paras 82, 87; P-0405: CAR-OTP-2107-4580-R01, at 4608-4610, 4613-4614, 936-1027, 1121-1133; CAR-OTP-2101-4059, at 4059.

¹⁴² P-0808: CAR-OTP-2025-0324-R03, at 0336-0339, paras 83-97; CAR-OTP-2093-0010-R01, at 0030, para. 114; CAR-OTP-2001-5739, at 5785; CAR-OTP-2025-0380, at 0382, 0384, 0385; P-0966: CAR-OTP-2031-0241-R01, at 0256-0257, paras 89-90; P-2232: CAR-OTP-2090-0561-R02, at 0578-0579, paras 108, 110-112, 128, 129; CAR-OTP-2100-2569-R01, at 2581, para. 63, at 2582, para. 73; P-0889: CAR-OTP-2034-0463-R01, at 0466, 0468, 0478, paras 13, 25, 87.

groups.¹⁴³ One of them was Yekatom who, throughout the time relevant to the charges, reported to and coordinated with Ngaïssona.¹⁴⁴ He was in command of an active group of Anti-Balaka which at one point numbered 3,000 members, who were first located in Cattin, Boeing and Bimbo and, later on, in the Lobaye Prefecture along the Bangui- Mbaïki axis.¹⁴⁵ The National Coordination also issued ID Cards to Anti-Balaka members.¹⁴⁶ By February 2014, the Anti-Balaka numbered some 52,000 members throughout the entire country.¹⁴⁷

66. Notwithstanding the Seleka's retreat, the hostilities between the Seleka and the Anti-Balaka did not subside at any time throughout the period relevant to the charges, as shown by (i) the continuing attention dedicated by the United Nations Security Council to the situation in 2013-2014;¹⁴⁸ and (ii) several failed attempts to bring about the cessation of hostilities, including, the 16 June 2014 PARETO mediation agreement, the 23 July 2014 peace agreement signed by the Seleka and the Anti-Balaka in Brazzaville, Republic of the Congo, and the Nairobi Agreement signed in April 2015.¹⁴⁹ Furthermore, the number of internally displaced persons reached

¹⁴³ P-0884: CAR-OTP-2072-1739-R01, at 1752-1754, 1758, 1760-1762, 1764-1765, 433-509, 642-657, 721-789, 844-905; P-0966: CAR-OTP-2031-0241-R01, at 0254, paras 72-73; P-0889: CAR-OTP-2027-2290-R01, at 2301, para. 69; CAR-OTP-2072-1881-R01, at 1906-1907, 893-919; P-0808: CAR-OTP-2093-0010-R01, at 0031, para. 120.

¹⁴⁴ P-0487: CAR-OTP-2076-0146-R01, at 0159, 0162, 479-481, 585-587; P-1339: CAR-OTP-2041-0741-R01, at 750, para. 65.

¹⁴⁵ On Yekatom's group, see P-1521: CAR-OTP-2046-0603-R01, at 0610, para. 41; P-1339: CAR-OTP-2041-0741-R01, at 0745-0746, paras 29-39 (also reporting that '[t]he purpose of the training was so we could kill Muslims and Selekas. This was ROMBHOT's instructions'), at 0749-0750, paras 58, 60; P-0976: CAR-OTP-2056-0031-R01, at 0035, para. 25; P-0954: CAR-OTP-2048-0171-R01, at 0185, para. 80; CAR-OTP-2055-2610 [00:07:15 to 00:08:12]; CAR-OTP-2107-6906, at 6913-6914, 193-233. On the locations where Yekatom's group was present, see P-1839: CAR-OTP-2072-1101-R02, at 1103-1108, 48-240; CAR-OTP-2072-0914-R01, at 0931, 592-597; CAR-OTP-2072-1068-R01, at 1077-1078, 298-357; P-1647: CAR-OTP-2050-0654-R02, at 0660, para. 39; P-1528: CAR-OTP-2048-0757-R02, at 0766, paras 50-51; P-0954: CAR-OTP-2048-0171-R01, at 0184-0185, para. 79; P-0487: CAR-OTP-2076-0130-R01, at 0138, 272-273.

¹⁴⁶ By July 2014, the National Coordination had issued about 10,000 ID Cards; P-0889: CAR-OTP-2027-2290-R01, at 2302, paras 72-74; P-0884: CAR-OTP-2072-1913-R01, at 1922-1923, 316-367; P-0808: CAR-OTP-2025-0324-R03, at 0341-0342, paras 113-117; CAR-OTP-2030-0230.

¹⁴⁷ P-0966: CAR-OTP-2031-0241-R01, at 0246, para. 29; see also CAR-OTP-2001-5739, at 5782-5783.

¹⁴⁸ See S/RES/2088 (2013) (CAR-OTP-2001-0294); SC/RES/2121 (2013) (CAR-OTP-2001-0256); S/RES/2127 (2013) (CAR-OTP-2001-0275); S/RES/2134 (2013) (CAR-OTP-2051-0665); S/RES/2149 (2013) (CAR-OTP-2001-1043); S/RES/2181 (2013) (CAR-OTP-2091-0488).

¹⁴⁹ On the PARETO (NGO '*Paix, reconciliation et tolérance*') mediation agreement, see CAR-OTP-2001-5386, at 5445-5446. On the Brazzaville peace agreement, see CAR-OTP-2001-1057, at 1063, para. 32; CAR-OTP-2001-3405; CAR-OTP-2001-5013. Between December 2014 and April 2015, further peace discussions between the armed groups involved in the conflict were held in Nairobi,

825,000 in January 2014 and remained at 430,000 in November 2014. Similarly, the number of refugees reached more than 420,000 by November 2014.¹⁵⁰

2. *Legal findings*

(i) *Contextual elements of crimes against humanity*

67. The Chamber notes that the Defence for Ngaïssona has, during the Confirmation Hearing, submitted that the Anti-Balaka did not constitute an organisation pursuant to article 7(2) of the Statute,¹⁵¹ asserting that (i) the Anti-Balaka did not exist as such, but emerged as a resistance movement initiated by the population itself in a completely spontaneous way, which led to its scattered nature and the lack of control over it by any specific person;¹⁵² and (ii) the Anti-Balaka were not organised and did not constitute a unified group, since the movement was composed of self-defence groups which operated separately from one another and had no capacity to coordinate and carry out attacks: this coalition of different armed groups lacked any structure and command.¹⁵³

68. The Prosecutor responded to the Defence for Ngaïssona's submissions by affirming that (i) the Defence's argument that the aforementioned self-defence groups arose spontaneously is largely irrelevant, since the existence of an organisation is not dependent on the manner in which it arose; (ii) the evidence establishes that by September 2013 the Anti-Balaka were organised and structured under a de facto coordination, which outweighs the existence of certain isolated self-defence groups for the purpose of qualifying the Anti-Balaka as an 'organisation' within the meaning of article 7(2) of the Statute; and (iii) the formalisation of such de facto coordination

Republic of Kenya: P-0966: CAR-OTP-2031-0241-R01, at 0259, paras 100-101; CAR-OTP-2008-0606; CAR-OTP-2008-0615; CAR-OTP-2023-0032, at 0040.

¹⁵⁰ CAR-OTP-2001-7017, at 7108, para. 438.

¹⁵¹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red-ENG, p. 108, line 14 to p. 121, line 4.

¹⁵² Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red-ENG, p. 69, line 23 to p. 71, line 18 and p. 79, line 20 to p. 80, line 9. The Defence for Ngaïssona also cited Witness P-2027's statement, in which he referred to the Anti-Balaka as a 'brainless rebellion'; P-2027: CAR-OTP-2078-0059-R01, at 0085, para. 157.

¹⁵³ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transcript of Hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red-ENG, p. 69, lines 7-22.

from January 2014 through a National Coordination mirroring the former's structure also demonstrates that the Anti-Balaka can be qualified as 'organisation'.¹⁵⁴

69. The Chamber finds that there are substantial grounds to believe that the Anti-Balaka constituted an organisation within the meaning of article 7(2)(a) of the Statute throughout the time relevant to the charges for the following reasons (i) from June 2013 onwards, the Anti-Balaka developed a military-like structure, with elements organised into sections and companies, under a functioning command structure with clear reporting lines; (ii) a large number of members were recruited, reaching 52,000 by February 2014; (iii) recruits received training from former FACA members; (iv) from September 2013 onwards, the Anti-Balaka proved to have the capacity to carry out coordinated attacks,¹⁵⁵ the most notable being the 5 December 2013 Attack on Bangui; and (v) beginning in January 2014, the pre-existing de facto structure was formalised under the authority of the National Coordination.

70. The Chamber further finds that there are substantial grounds to believe that, from September 2013 until December 2014, the Anti-Balaka carried out attacks pursuant to an organisational policy of a criminal nature, targeting the Muslim civilian population in western CAR who, based on their religious or ethnic affiliation, were perceived as collectively responsible for the crimes allegedly committed by the Seleka, complicit with, or supportive of the Seleka (article 7(1) and (2)(a) of the Statute). The Chamber is satisfied to the required threshold that this attack was widespread¹⁵⁶ as it resulted in a large number of victims, in a broad geographical area comprising several western CAR prefectures and spanning a long period of time, from September 2013 to December 2014 (article 7(1) of the Statute). Lastly, as further detailed below, the Chamber is satisfied that the conduct underlying the charges of crimes against humanity confirmed by the Chamber was committed as part of the aforementioned widespread attack against the civilian population, in light of the

¹⁵⁴ Prosecutor, Corrected version of "Prosecution Response to the Defence's Confirmation Submissions", 3 October 2019, ICC-01/14-01/18-376-Conf, 7 October 2019, ICC-01/14-01/18-376-Conf-Corr, paras 52-57.

¹⁵⁵ Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 1119.

¹⁵⁶ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359, para. 691.

identity of the victims, the aims pursued, the nature of the acts and their consequences.¹⁵⁷

(ii) *Contextual elements of war crimes*

71. The Chamber notes that the Defence for Ngaiissona has, during the Confirmation Hearing, contended that placing the CAR conflict ‘in its proper historical, sociological and evidentiary context’ renders clear that it was characterised by a ‘popular resistance against the Seleka’ and, thus, ‘had nothing to do with the conception of a common plan to kill civilians based on regaining power or ethnic or religious affiliation’.¹⁵⁸

72. In light of the above factual findings, the Chamber considers that there are substantial grounds to believe that an armed conflict not of an international character, within the meaning of article 8(2)(d) and (f) of the Statute¹⁵⁹ was ongoing in the territory of the CAR from September 2013 until at least December 2014 between the Seleka and the Anti-Balaka. In reaching this finding, the Chamber has taken into account (i) the spread of the clashes between the two parties over several western CAR prefectures; (ii) the number of elements deployed; (iii) the number of deaths (most notably following the 5 December 2013 Attack on Bangui); (iv) the high number of refugees and internally displaced persons; (v) the fact that the conflict has attracted the attention of the United Nations Security Council; and (vi) the repeated attempts to bring about the cessation of hostilities.¹⁶⁰

73. Further, the Chamber is satisfied to the required threshold that both the Anti-Balaka and the Seleka constituted organised armed groups. Regarding the Anti-Balaka, the Chamber refers to its reasons provided above.¹⁶¹ Regarding the Seleka, the Chamber has taken into account (i) the group’s ability to carry out operations in an

¹⁵⁷ Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 1124.

¹⁵⁸ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiissona*, Transcript of Hearing, ICC-01/14-01/18-T-008-Red-ENG, p. 79, lines 1-8.

¹⁵⁹ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359, paras 701-703.

¹⁶⁰ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359, para. 716; ICTY, Trial Chamber, *The Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Judgment, 10 July 2001, IT-04-82-T, paras 177-178.

¹⁶¹ See para. 69 above.

organised manner, most notably the 24 March 2013 coup; (ii) its control over territory which expanded following the 24 March 2013 coup; and (iii) its logistical capacity, indicated among others by its ability to recruit new members.¹⁶²

74. Lastly, as further detailed below, the Chamber is satisfied that the conduct underlying the charges of war crimes confirmed by the Chamber took place in the context of and was associated with the aforementioned armed conflict not of an international character considering that (i) the Muslims in CAR were equated with the Seleka; (ii) the Anti-Balaka drew no distinction between persons not taking direct part in hostilities and persons who were; and (iii) buildings were destroyed, including religious buildings, for which no indication existed that they constituted military objectives.

B. Bangui (including Cattin) and Boeing

1. Factual findings

(i) The events preceding the 5 December 2013 Attack

75. The evidence establishes that Ngaïssona was appointed President of the Central African Football Federation in 2008.¹⁶³ In addition, Ngaïssona was elected to represent the town of Nana-Bakassa on behalf of then President Bozizé's political party, the *Kwa na Kwa*, in January 2011.¹⁶⁴

76. According to the evidence, following the advance of the Seleka, then President Bozizé addressed his supporters on 27 December 2012.¹⁶⁵ He *inter alia* called upon his supporters to be vigilant and to watch closely '*surtout les étrangers qui vivent dans les concessions clôturées*' because '*[i]ls ont l'habitude de cacher des gens*' and '*[i]ls attendent le désordre total avant de sortir et de passer à l'action en vue de tuer les gens*'.¹⁶⁶ The evidence further reveals that, on 4 January 2013, a radio

¹⁶² Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359, para. 704.

¹⁶³ P-2232: CAR-OTP-2100-2569-R01, at 2570, para. 5; P-1521: CAR-OTP-2046-0603-R01, at 0615, para. 72; CAR-OTP-2000-0540 [00:00:00 to 00:13:10] (*see* ICC-01/14-01/18-282-Conf-AnxG, p. 4); CAR-OTP-2003-1076, at 1117.

¹⁶⁴ CAR-OTP-2018-0069, at 0127; CAR-OTP-2018-0174, at 0231.

¹⁶⁵ CAR-OTP-2000-0630 [00:00:00 to 00:34:55].

¹⁶⁶ CAR-OTP-2060-0678, at 0685.

statement on behalf of Ngaïssona was issued.¹⁶⁷ He stated, *inter alia*, that ‘[c]ertaines personnes veulent utiliser l’islamisme pour détruire le pays’.¹⁶⁸

77. Witness P-2232 states that, following then President Bozizé’s speech, two militias or ‘auto-defence groups’ were created, namely the *comité d’organisation des actions citoyenne* (the ‘COAC’) led by Steve Yambeté and the *coalition citoyenne d’opposition aux rebellions armées* (the ‘COCORA’) led by Lévy Yakité.¹⁶⁹ Ngaïssona was involved in and supported the policy of COCORA.¹⁷⁰ These two groups soon merged with a view to mobilising the youth to erect barricades and checkpoints throughout Bangui to identify Muslims and avoid the infiltration of the Seleka.¹⁷¹ Certain Muslims who were stopped at the barricades and checkpoints disappeared.¹⁷²

78. In addition, the evidence indicates that, at some point prior to the 24 March 2013 coup, Ngaïssona became Minister of Youth, Sports, Arts and Culture in the administration of then President Bozizé.¹⁷³ Steve Yambeté was appointed

¹⁶⁷ CAR-OTP-2000-0680 [00:00:00 to 00:05:37].

¹⁶⁸ CAR-OTP-2087-9863, at 9865, 10-12. The Chamber notes the relevant submissions by the Defence for Ngaïssona; *see* ICC-01/14-01/18-T-008-Red-ENG, p. 84, line 11 - p. 86, line 20; ICC-01/14-01/18-T-009-Red-ENG, p. 63, line 23 – p. 70, line 24; ICC-01/14-01/18-382-Corr-Red, paras 45-61. The Prosecutor responds that these arguments should be rejected; *see* ICC-01/14-01/18-376-Corr-Red, paras 25-30. The Chamber is not persuaded by the submissions by the Defence for Ngaïssona since, at a minimum, Ngaïssona’s statement that ‘[c]ertaines personnes veulent utiliser l’islamisme pour détruire le pays’ amounts to Anti-Muslim rhetoric. This statement has to be viewed in light of the context prevailing at the time considering that it was issued shortly after then President Bozizé address in December 2012 and preceded similar statements, such as the FROCCA press release of August 2013. Both the statement by then President Bozizé and the FROCCA statement generally associate CAR Muslims with the Seleka.

¹⁶⁹ P-2232: CAR-OTP-2100-2569-R01, at 2571, para. 7.

¹⁷⁰ P-2232: CAR-OTP-2100-2569-R01, at 2571, para. 7. *See also* CAR-OTP-2001-0835, at 0876. The Chamber notes the relevant submissions by the Defence for Ngaïssona; *see* ICC-01/14-01/18-T-008-Red-ENG, p. 79, line 10 – p. 82, line 15; ICC-01/14-01/18-382-Corr-Red, paras 3-6. The Prosecutor responds that these arguments should be rejected; *see* ICC-01/14-01/18-376-Corr-Red, paras 3-4. The Chamber is not persuaded by the submissions by the Defence for Ngaïssona as Witness P-2232’s reference to Ngaïssona as a founder of COCORA is supported by CAR-OTP-2001-0835, a report by the UN Panel of Experts on the CAR. In this regard, the Chamber considers that, contrary to the submission of the Defence for Ngaïssona, the footnote appended to the relevant finding relates to the Panel’s reference to Ngaïssona’s role as President of the Football Federation and that it cannot be concluded that its finding as to Ngaïssona’s involvement in COCORA is unsubstantiated.

¹⁷¹ P-2232: CAR-OTP-2100-2569-R01, at 2571, para. 7.

¹⁷² P-2232: CAR-OTP-21002569-R01, at 2571, para. 8; P-1584: CAR-OTP-2056-0447-R01, at 0453-0454, para. 41.

¹⁷³ CAR-OTP-2098-0154, at 0154; P-0889: CAR-OTP-2027-2290-R01, at 2304, para. 86; P-1521: CAR-OTP-2046-0603-R01, at 0615, para. 72.

‘*Chargé de Missions*’ and, on behalf of Ngaïssona, told the youth of the CAR on 22 March 2013 that they would be called upon when needed.¹⁷⁴

79. In an interview, François Bozizé indicated that, following his departure from Bangui on 24 March 2013, he went to Yaoundé in Cameroon.¹⁷⁵ Several witnesses indicate that Ngaïssona and Bernard Mokom joined François Bozizé in Cameroon at one point after 24 March 2013.¹⁷⁶ The statements of Witness P-1847 and Witness P-0801 further establish that François Bozizé, Ngaïssona, Bernard Mokom and others met on different occasions to plan François Bozizé’s return to power.¹⁷⁷

80. In this regard, Witness P-1847 specifies that Anti-Balaka members [REDACTED] had received money from Bernard Mokom and Ngaïssona, including for attacks¹⁷⁸ [REDACTED].¹⁷⁹ [REDACTED] Ngaïssona verified whether the money he had made available to Anti-Balaka members had arrived and whether it was used as intended, such as for the purchase of weapons.¹⁸⁰ In addition, Anti-Balaka members informed Witness P-1847 that Ngaïssona coordinated the Anti-Balaka from the north together with Bernard Mokom, which means that the Anti-Balaka answered

¹⁷⁴ CAR-OTP-2098-0154, at 0154; CAR-OTP-2042-1783 [00:01:15 to 00:02:36]; CAR-OTP-2107-1475. The Chamber notes the relevant submissions of the Defence for Ngaïssona; *see* ICC-01/14-01/18-T-008-Red-ENG, p. 82, line 16 – p. 84, line 10; ICC-01/14-01/18-382-Corr-Red, paras 62-70. The Prosecutor responds that these arguments should be rejected; *see* ICC-01/14-01/18-376-Corr-Red, paras 31-38. The Chamber is not persuaded by the submissions by the Defence for Ngaïssona as, in combination with the preceding determination that Ngaïssona was involved in the creation of COCORA, his explicit calls to the youth demonstrate that Ngaïssona sought to use his influence to mobilise the youth in support of then President Bozizé.

¹⁷⁵ CAR-OTP-2001-4146, at 4147.

¹⁷⁶ P-2232: CAR-OTP-2090-0561-R02, at 0567, paras 39-40; P-2027: CAR-OTP-2078-0059-R01, at 0069-0070, paras 61-65; P-1847: CAR-OTP-2061-1534-R01, at 1551, para. 112.

¹⁷⁷ P-1847: CAR-OTP-2061-1534-R01, at 1546, para. 84; P-0801: CAR-OTP-2074-2021-R01, at 2052-2059, 2062, 1017-1274, 1372-1388. *See also* P-0589: CAR-OTP-2029-0014-R01, at 0024-0025, paras 68-69. The Chamber notes the relevant submissions by the Defence for Ngaïssona; *see* ICC-01/14-01/18-T-008-Red-ENG, p. 93, line 15 - p. 99, line 13; ICC-01/14-01/18-T-009-Red-ENG, p. 48, line 12 – p. 49, line 14; ICC-01/14-01/18-382-Corr-Red, paras 13-24. The Prosecutor responds that these arguments should be rejected; *see* ICC-01/14-01/18-376-Corr-Red, paras 7-11. The Chamber is not persuaded by the submissions by the Defence for Ngaïssona as the statements of P-1847 and P-0801 are mutually corroborative and are further supported by the statement of P-0589. Furthermore, this finding is further supported by the fact that, as established below, François Bozizé openly advocated for restoration of the constitutional order in the CAR through FROCCA, which effectively meant his return to power.

¹⁷⁸ P-1847: CAR-OTP-2061-1534-R01, at 1550, 1552, 1555 1563, paras 104-105, 116-117, 132, 135, 187. *See also* P-2328: CAR-OTP-2099-0165-R01, at 0192, para. 140; P-1719: CAR-OTP-2062-0039-R01, at 0042-0043, paras 23-25; P-0884: CAR-OTP-2072-1715-R01, at 1727-1729, 395-493.

¹⁷⁹ P-1847: CAR-OTP-2061-1534-R01, at 1552, para. 115.

¹⁸⁰ P-1847: CAR-OTP-2061-1534-R01, at 1551, para. 112.

to the two of them and took instructions from them, including in regard to attacks.¹⁸¹ Witness P-1847 further learned that Ngaïssona and Bernard Mokom contacted Anti-Balaka members in the field in order to advance the fight against the Djotodia regime.¹⁸² Furthermore, [REDACTED] Ngaïssona and Bernard Mokom had requested that an individual come to Cameroon to provide him with instructions to structure the Anti-Balaka in the field and to carry out attacks, [REDACTED].¹⁸³ Lastly, [REDACTED] the Anti-Balaka had set up a base at PK26 in view of preparing for the attack on 5 December 2013; he also believed that Ngaïssona had asked the troops to rest for a week after a long walk prior to attacking Bangui.¹⁸⁴ The evidence additionally reveals that, while in Cameroon, Ngaïssona was kept abreast of the developments in the CAR.¹⁸⁵

81. Witness P-2232 states that, following the Seleka coup d'état, [REDACTED].¹⁸⁶ According to the evidence, from Zongo, Maxime Mokom (i) organised different Anti-Balaka groups in the CAR;¹⁸⁷ (ii) secured money, weapons and ammunition for the Anti-Balaka, including for the 5 December 2013 Attack;¹⁸⁸ (iii) issued instructions to Anti-Balaka groups regarding attacks, including for the 5 December 2013 Attack;¹⁸⁹ and (iv) was in contact with different Anti-Balaka groups, including in relation to the 5 December 2013 Attack.¹⁹⁰ Maxime Mokom also communicated from Zongo with

¹⁸¹ P-1847: CAR-OTP-2061-1534-R01, at 1551, 1552, 1553-1554, 1555-1556, 1558, paras 112, 118, 126, 130, 138, 152.

¹⁸² P-1847: CAR-OTP-2061-1534-R01, at 1558-1559, para. 156.

¹⁸³ P-1847: CAR-OTP-2061-1534-R01, at 1561-1562, paras 175-177.

¹⁸⁴ P-1847: CAR-OTP-2061-1534-R01, at 1560, para. 165.

¹⁸⁵ P-0808: CAR-OTP-2093-0010-R01, at 0015-0016, 0020-0022; P-0884: CAR-OTP-2072-1616-R02, at 1645, 1647, 1005-1022, 1087-1093.

¹⁸⁶ P-2232: CAR-OTP-2090-0561-R02, at 0566-0567, paras 36-37, 41-45. *See also* P-0889: CAR-OTP-2027-2290-R01, at 2294-2295, paras 27-28; P-0446: CAR-OTP-2059-1626-R01, at 1640-1642, 532-618; P-1847: CAR-OTP-2061-1534-R01, at 1549, 1551, paras 102, 111.

¹⁸⁷ P-2232: CAR-OTP-2090-0561-R02, at 0568, para. 53.

¹⁸⁸ P-2232: CAR-OTP-2090-0561-R02, at 0570-0573, paras 63-64, 66, 68, 70-73, 76; P-2232: CAR-OTP-2100-2569-R01, at 2573, paras 17-18; P-0889: CAR-OTP-2027-2290-R01, at 2296, para. 35; P-0876: CAR-OTP-2046-0267-R01, at 0276-0277, 336-356; P-0876: CAR-OTP-2046-0295-R01, at 0301, 185-201; P-1339: CAR-OTP-2041-0741-R01, at 0747, paras 41-45; P-1847: CAR-OTP-2061-1534-R01, at 1549, 1555, 1558, paras 102, 134, 150; P-1858: CAR-OTP-2061-1534-R01, at 1549, para. 102.

¹⁸⁹ P-2232: CAR-OTP-2090-0561-R02, at 0569, 0574, 0575, paras 55, 86, 89; P-0966: CAR-OTP2031-0241-R01, at 0247, paras 33-34; P-0889: CAR-OTP-2027-2290-R01, at 2295, para. 31.

¹⁹⁰ P-0889: CAR-OTP-2027-2290-R01, at 2295-2296, paras 31-32, 34; P-1719: CAR-OTP-2062-0039-R01, at 0045-0046, paras. 37-43; P-1521: CAR-OTP-2046-0603-R01, at 0610, para.43.

Bernard Mokom and Ngaïssona in Cameroon.¹⁹¹ After unsuccessfully trying to mobilise the military from Cameroon, Bernard Mokom and Ngaïssona relied on the people in Zongo to organise the Anti-Balaka movement in order to fight the Seleka.¹⁹²

82. Furthermore, the evidence establishes that François Bozizé and others created the *Front pour le retour à l'ordre constitutionnel en Centrafrique* (the 'FROCCA') in August 2013 to advocate for François Bozizé's return to power.¹⁹³ According to Witnesses P-0884 and P-0801, Ngaïssona was a member of FROCCA.¹⁹⁴ In a press release dated 9 October 2013, the FROCCA coordinator asked '*[p]ourquoi moins de 10% de la population Centrafricaine, de confession musulmane, est entrée en conspiration avec des forces du mal, venues du Tchad, du Soudan et autres pays islamiques, imposent par la violence leur religion à nous majorité de la population Centrafricaine de confession chrétienne*'¹⁹⁵?

83. According to Witness P-2232, Yekatom fled to Zongo approximately one month after the Seleka coup d'état.¹⁹⁶ Together with Freddy Ouandjio and Habib Beina, Yekatom met regularly with Maxime Mokom in Zongo.¹⁹⁷ After having spent approximately one month in Zongo, Yekatom crossed into the Lobaye Prefecture in

¹⁹¹ P-1847: CAR-OTP-2061-1534-R01, at 1549, para. 102; P-2232: CAR-OTP-2090-0561-R02, at 0572, 0577, paras. 75, 99; P-2232: CAR-OTP-2100-2569-R01, at 2572-2573, paras 14, 15, 20. The Chamber notes the relevant submissions by the Defence for Ngaïssona; see ICC-01/14-01/18-T-008-Red-ENG, p. 101, line 19 – p. 103, line 18; ICC-01/14-01/18-382-Corr-Red, paras 25-28. The Prosecutor responds that these arguments should be rejected; see ICC-01/14-01/18-376-Corr-Red, paras 13, 15, 16. The Chamber is not persuaded by the submissions of the Defence for Ngaïssona as the statements of P-1847 and P-2232 are mutually corroborative.

¹⁹² P-2232: CAR-OTP-2100-2569-R01, at 2573, paras 16-17.

¹⁹³ CAR-OTP-2001-4048, at 4048; CAR-OTP-2091-1793, at 1794; CAR-OTP-2091-1804, at 1804.

¹⁹⁴ P-0884: CAR-OTP-2080-1678-R01, at 1707-1708, 985-1016; P-0801: CAR-OTP-2074-2065-R01, at 2077-2078, 385-447. The Chamber notes the relevant submissions by the Defence for Ngaïssona; see ICC-01/14-01/18-T-008-Red-ENG, p. 104, line 16 – p. 107, line 12; ICC-01/14-01/18-382-Corr-Red, paras 30-33. The Prosecutor responds that these arguments should be rejected; see ICC-01/14-01/18-376-Corr-Red, paras 14, 16, 18, 19. The Chamber is not persuaded by the submissions by the Defence for Ngaïssona as the statements of P-0884 and P-0801 are mutually corroborative. Furthermore, considering that the evidence establishes that Ngaïssona was a member of FROCCA, the Chamber considers that it is not necessary to determine whether he participated in founding FROCCA or whether he was physically present for its foundation.

¹⁹⁵ CAR-OTP-0075-2041, at 2055.

¹⁹⁶ P-2232: CAR-OTP-2100-2569-R01, at 2577, para. 41. See also CAR-OTP-2065-0716 [00:01:02 to 00:01:28]; CAR-OTP-2107-6924, at 6925, 13-29.

¹⁹⁷ P-2232: CAR-OTP-2100-2569-R01, at 2577, para. 43. See also P-1339: CAR-OTP-2041-0741-R01, at 0745, paras 29-30.

the CAR.¹⁹⁸ From the Lobaye Prefecture, Yekatom stayed in touch with Maxime Mokom and agreed to participate in the impending 5 December 2013 Attack.¹⁹⁹

84. Witness P-1339 explains that he travelled to the Kalangoï area around August 2013, where Yekatom, who had already been at this location for some time prior to the Witness' arrival, was organising Anti-Balaka elements,²⁰⁰ training them together with Freddy Ouandjio and Habib Beina,²⁰¹ and equipping them with weapons²⁰². Yekatom's group consisted of 3,000 persons at a certain point.²⁰³

85. Yekatom indicated that the purpose of the training was to 'kill Muslims and Selekas'.²⁰⁴ Moreover, in preparation for the 5 December 2013 Attack, Yekatom instructed his elements to, *inter alia*, 'kill Selekas and Muslims, even Central African Republic Selekas', 'attack the Muslims and break their houses', 'go to PK5 and find the Muslims and Seleka', and to 'destroy the Muslims [*sic*] houses so they will go back to their country'.²⁰⁵

(ii) *The 5 December 2013 Attack*

86. In the afternoon of 4 December 2013, Yekatom chose 1,000 of his bravest fighters and told them that they would move towards Bangui.²⁰⁶ The group arrived at 'Proget', which is situated near Bangui airport, in the evening.²⁰⁷ Yekatom told the elements that they would attack 'the Muslims and Seleka' at Boeing Market.²⁰⁸

¹⁹⁸ P-2232: CAR-OTP-2100-2569-R01, at 2577, para. 44.

¹⁹⁹ P-2232: CAR-OTP-2100-2569-R01, at 2578, para. 45. In addition, [REDACTED] spoke to Yekatom on the telephone on the day of the 5 December 2013 Attack; see P-2232: CAR-OTP-2100-2569-R01, at 2576, para. 38. See also ICC-01/14-01/18-282-Conf-AnxJ1, p. 108-109.

²⁰⁰ P-1339: CAR-OTP-2041-0741-R01, at 0745-0746, paras 32, 33, 35, 36. See also P-0976: CAR-OTP-2056-0031-R01, at 0035, para. 25.

²⁰¹ P-1339: CAR-OTP-2041-0741-R01, at 0746, paras 37-38.

²⁰² P-1339: CAR-OTP-2041-0741-R01, at 0747-0748, paras 41-49.

²⁰³ P-1339: CAR-OTP-2041-0741-R01, at 0750, para. 60. See also CAR-OTP-2055-2610 [00:07:52 to 00:08:12]; CAR-OTP-2107-6906, at 6913-6914, 220-233.

²⁰⁴ P-1339: CAR-OTP-2041-0741-R01, at 0746, para. 39.

²⁰⁵ P-1339: CAR-OTP-2041-0741-R01, at 0748, para. 51. See also [REDACTED]: CAR-OTP-2110-0556-R01, at 0571, para. 99.

²⁰⁶ P-1339: CAR-OTP-2041-0741-R01, at 0750-0751, para. 66.

²⁰⁷ P-1339: CAR-OTP-2041-0741-R01, at 0751, para. 67.

²⁰⁸ P-1339: CAR-OTP-2041-0741-R01, at 0751, para. 68. See also [REDACTED]: CAR-OTP-2110-0556-R01, at 0570, para. 98.

87. Witness P-1339 [REDACTED] state that, in the early morning hours of 5 December 2013,²⁰⁹ Yekatom's group attacked the Boeing market, specifically targeting the shops owned by Muslims.²¹⁰ Yekatom told the Anti-Balaka elements that the 'Arabs had many guns'²¹¹ and instructed them to 'shoot at the Muslims'²¹². Yekatom, Freddy Ouandjio and Habib Beina were in the front of the group and were shooting their AK-47 rifles.²¹³ Between five and thirteen Muslim shop owners were shot and then stabbed by Anti-Balaka elements,²¹⁴ including Hassan Mahamat²¹⁵.

88. According to Witness P-1339 and Witness P-1528, following the attack on Boeing Market, Yekatom and his elements moved to Cattin where they clashed with the Seleka around 07:00 hours.²¹⁶ Witness P-1339 further indicates that the Anti-Balaka elements killed four Muslims in Cattin, one of whom was shot on his motorbike and then burnt.²¹⁷ Witness P-1528 also states that, while the Anti-Balaka elements were retreating from Cattin to Boeing, he heard them shouting that 'they would kill [Djotodia] and then they would come back to kill all Muslims'.²¹⁸

89. Witness P-2125 explains that he saw Yekatom at the Boeing Market around 11:00 hours on 5 December 2013 together with more than 30 armed Anti-Balaka

²⁰⁹ P-1339: CAR-OTP-2041-0741-R01, at 0751, paras 69-70; [REDACTED]: CAR-OTP-2110-0556-R01, at 0569, 0571, paras 88, 102.

²¹⁰ P-1339: CAR-OTP-2041-0741-R01, at 0751, paras 69-71; [REDACTED]: CAR-OTP-2110-0556-R01, at 0571-0572, paras 88, 102-104.

²¹¹ [REDACTED]: CAR-OTP-2110-0556-R01, at 0571, para. 104.

²¹² P-1339: CAR-OTP-2041-0741-R01, at 0751, paras 69, 71.

²¹³ P-1339: CAR-OTP-2041-0741-R01, at 0751, para. 71; [REDACTED]: CAR-OTP-2110-0556-R01, at 0569, para. 89.

²¹⁴ P-1339: CAR-OTP-2041-0741-R01, at 0751-0752, para. 72 ('Six Muslims were killed that I saw'); [REDACTED]: CAR-OTP-2110-0556-R01, at 0572, para. 106 ('I saw six Arabs shot down and killed'); P-1528: CAR-OTP-2048-0757-R01, at 0762, para. 27 ('I later heard that the Anti-Balaka attacked the BOEING market area and that seven Muslim traders were killed'); P-1416: CAR-OTP-2045-0150-R01, at 0159, paras 76-77 ('I heard people speaking about the death of the Muslim merchants in the market' and '[t]he Anti-Balaka killed seven Chadian merchants'); P-2125: CAR-OTP-2082-0299-R01, at 0308-0309, 0311, paras 54, 73 ('Hassan Délégue was killed on 05 December 2013 in the morning' and '[o]n 05 December 2013, 4 Muslims [*sic*] traders were killed in the morning'); P-1437: CAR-OTP-2047-0257-R01, at 0263, para. 46 ('*Le 05 décembre 2013 jour de l'attaque je pense qu'il y a eu treize (13) personnes tuées à Boeing*').

²¹⁵ P-1339: CAR-OTP-2041-0741-R01, at 0751-0752, para. 72; P-2125: CAR-OTP-2082-0299-R01, at 0308-0309, para. 54; P-1437: CAR-OTP-2047-0257-R01, at 0266, paras 69, 71.

²¹⁶ P-1339: CAR-OTP-2041-0741-R01, at 0752, para. 77; P-1528: CAR-OTP-2048-0757-R01, at 0762, para. 30.

²¹⁷ P-1339: CAR-OTP-2041-0741-R01, at 0752, para. 77.

²¹⁸ P-1528: CAR-OTP-2048-0757-R01, at 0762, para. 30.

elements.²¹⁹ He first heard a woman screaming and then saw Nina Pascal, who was already dead, hanging from a tree, tied ‘*arbatacha*’ style, over a fire.²²⁰ Nina Pascal’s son told the Witness that Yekatom and Roma had done that to his mother because she was delivering porridge to the Muslims.²²¹

90. During the 5 December 2013 Attack, FROCCA issued a radio announcement, referring to the ongoing attack as ‘*[l]e rétablissement de l’ordre fonctionnel*’ and stating that ‘*[l]es ANTI-BALAKA sont des Centrafricains pour aller libérer leur pays des jougs des djihadistes venus de DARFOUR, du TCHAD, du SOUDAN*’.²²²

91. Witness P-1339 also describes the destruction of the Boeing mosque, which occurred by 20 December 2013 at the latest.²²³ Yekatom ‘personally ordered [Anti-Balaka elements] to attack the Mosque at BOEING’.²²⁴ The walls of the mosque were destroyed with rockets and grenades and the roof was burned using gasoline and matches.²²⁵ Yekatom was present during the destruction.²²⁶

92. The evidence also reveals that, following the 5 December 2013 Attack, nearly all the Muslim residents of Boeing and Cattin fled to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries. In this regard, Witness P-1339 states that ‘[t]here were many Muslims living in BOEING but after the attack on the 5th December 2013 they all fled to PK5’ and, according to

²¹⁹ P-2125: CAR-OTP-2082-0299-R01, at 0321-0322, paras 126-127.

²²⁰ P-2125: CAR-OTP-2082-0299-R01, at 0321-0322, para. 127.

²²¹ P-2125: CAR-OTP-2082-0299-R01, at 0322, para. 129.

²²² CAR-OTP-2088-2034 [00:00:00 to 00:02:04]; CAR-OTP-2107-1596, at 1597.

²²³ P-1339: CAR-OTP-2041-0741-R01, at 0749, para. 53. The Chamber notes the submission of the Defence for Yekatom that P-1339’s statement is not corroborated by Witnesses P-1437 and P-2125; *see* ICC-01/14-01/18-T-008-Red-ENG, p. 62, line 8 – p. 63, line 9; ICC-01/14-01/18-376-Corr-Red, para. 123; ICC-01/14-01/18-383-Red, paras 73-75. The Chamber is not persuaded by the submissions of the Defence for Yekatom. The Chamber notes that all three witnesses agree that the Boeing mosque was destroyed by the Anti-Balaka either around 8 December 2013 or around 20 December 2013. Furthermore, the Chamber observes that Witness P-1339 claims to have directly participated in the destruction of the Boeing mosque and gives a rather detailed account of this destruction and Yekatom’s involvement. However, Witness P-1437 was not an eye-witness to the destruction of the Boeing mosque. While Witness P-2125 states that he observed the destruction of the Boeing mosque, he did not know Yekatom personally (*see* P-2125: CAR-OTP-2082-0299-R01, at 0322, para. 130), did not take part in the destruction of the Boeing mosque, and saw 30 to 40 persons participating in the destruction of the Boeing mosque. In view of the current stage of the proceedings, the Chamber considers that the divergences between the witnesses’ accounts are not of such a degree as to warrant the conclusion that this charge should not be confirmed.

²²⁴ P-1339: CAR-OTP-2041-0741-R01, at 0749, paras 52-53.

²²⁵ P-1339: CAR-OTP-2041-0741-R01, at 0749, para. 53.

²²⁶ P-1339: CAR-OTP-2041-0741-R01, at 0749, 0750, paras 53, 63.

Witness P-1839, only Christians were left in Cattin around 5 – 7 December 2013 as the Muslims had fled ‘*pour leur vie [...] pour leur sécurité*’.²²⁷

2. *Legal findings*

93. In the view of the Defence for Yekatom, counts four and five should be dismissed as (i) ‘the element of crimes of displacement as a war crime require an order to displace the civilian population’; (ii) ‘there was no order by Mr Yekatom to perform an act or omission as a result of which such a displacement would occur’; and (iii) ‘there were intervening Anti-Balaka groups who were not under the control and command of Mr Yekatom and who participated in the alleged attack of 5 December’.²²⁸ The Prosecutor requests the Chamber to dismiss this challenge.²²⁹

94. The Chamber considers that article 8(2)(e)(viii) of the Statute is not limited to ‘[o]rdering the displacement of the civilian population’. The reference to ‘[o]rdering’ must be interpreted in light of paragraph 8 of the General Introduction to the Elements of Crimes, which specifies that the Elements of Crimes ‘apply to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute’.²³⁰ This means that the Elements of Crimes specify that article 8(2)(e)(viii) of the Statute does not exclude any mode of liability. A contextual reading of article 8(2)(e)(viii) of the Statute provides further support for this interpretation. Article 7(1)(d) of the Statute and article 8(2)(a)(vii) of the Statute, which concern the corresponding crimes of ‘deportation or forcible transfer of population’ and ‘[u]nlawful deportation or transfer’ respectively, do not contain a limitation to ‘[o]rdering’. However, even if article 8(2)(e)(viii) of the Statute must be interpreted as requiring an order, the Chamber is of the view that the relevant requirements have been met.²³¹ The Chamber recalls that it

²²⁷ P-1339: CAR-OTP-2041-0741-R01, at 0752, para. 74; P-1839: CAR-OTP-2072-0578-R01, at 0584-0585, 212-222. *See also* P-1394: CAR-OTP-2073-0775-R01, at 0781, para. 34; P-1528: CAR-OTP-2048-0757-R01, at 0764, 0765, paras 39, 49; P-1437: CAR-OTP-2047-0257-R01, at 0267, 0269, 0272, paras 78, 88, 111-115; CAR-OTP-2001-7017, at 7110-7111, para. 447.

²²⁸ ICC-01/14-01/18-T-008-Red-ENG, p. 39, line 1 – p. 43, line 22; ICC-01/14-01/18-383-Conf, paras 2-22.

²²⁹ ICC-01/14-01/18-376-Corr-Red, paras 96-99.

²³⁰ *See also* Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, para. 64.

²³¹ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, ICC-01/04-02/06-2359, 8 July 2019, para. 1081.

has found that Yekatom issued instructions to attack Muslims without distinction prior to and during the 5 December 2013 Attack and that, as a result of the attack, nearly all the Muslim residents of Boeing and Cattin fled. On this basis, the Chamber finds that Yekatom's orders also caused the displacement of Muslim persons from Boeing and Cattin.²³² Lastly, the Chamber finds that whether or not other Anti-Balaka groups also sought to displace Muslim persons does not detract from this conclusion in view of the fact that Yekatom's instructions were executed by his Anti-Balaka elements. Accordingly, this challenge must be rejected.

95. The Defence for Yekatom further argues that the Boeing Mosque cannot be qualified as the property of an adversary within the meaning of article 8(2)(e)(xii) of the Statute.²³³ The Prosecutor responds that this challenge should be dismissed.²³⁴

96. The Chamber considers that attacks against buildings dedicated to religion are specifically criminalised under article 8(2)(e)(iv) of the Statute and that such buildings do not constitute the 'property of an adversary' within the meaning of article 8(2)(e)(xii) of the Statute. Therefore, the Chamber is of the view that the destruction of the Boeing mosque must be qualified as 'intentionally directing attacks against buildings dedicated to religion' considering that there is no evidence indicating that it constituted a military objective.²³⁵

97. Accordingly, the Chamber considers that the conduct specified in the preceding paragraphs amounts to (i) intentionally directing an attack against the civilian population as such (article 8(2)(e)(i) of the Statute) (paragraphs 86 to 92);²³⁶

²³² In this regard, the Chamber considers that Yekatom was in a position to give such an order considering that, as arises from the Chamber's factual findings, he occupied a position of authority within his Anti-Balaka group.

²³³ ICC-01/14-01/18-T-008-Red-ENG, p. 55, line 16 – p. 58, line 3; ICC-01/14-01/18-383-Red, paras 64-70.

²³⁴ ICC-01/14-01/18-376-Corr-Red, paras 115-120.

²³⁵ See also Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Corr-Red, 13 November 2019, para. 522.

²³⁶ For the notion of 'attack', see Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, paras 45-47.

(ii) murder (articles 7(1)(a) and 8(2)(c)(i) of the Statute) (paragraphs 87 to 89);²³⁷
 (iii) intentionally directing an attack against a building dedicated to religion (article 8(2)(e)(iv) of the Statute) (paragraph 91); (iv) deportation or forcible transfer of population and displacement of the civilian population (articles 7(1)(d) and 8(2)(e)(viii) of the Statute) (paragraph 92);²³⁸ (v) persecution (article 7(1)(h) of the Statute) (paragraphs 86 to 92).

3. *Individual criminal responsibility*

(i) *Yekatom*

98. As described above, Yekatom was involved in the preparation of the 5 December 2013 Attack, led his Anti-Balaka elements in this attack and its aftermath, and issued patently illegal instructions.

99. On this basis, the Chamber considers that Yekatom committed the aforementioned crimes jointly with others or through other persons under article 25(3)(a) of the Statute or, in the alternative, ordered the commission of these crimes pursuant to article 25(3)(b) of the Statute²³⁹. The Chamber is further satisfied that Yekatom's acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

²³⁷ The Chamber notes that Witness P-1339 indicates that two Muslim shop owners shot at the Anti-Balaka during the Boeing Market attack. See P-1339: CAR-OTP-2041-0741-R01, at 0751-0752, para. 72. In addition, Witness P-2125 indicates that Hassan Délégue shot and killed a number of Anti-Balaka members. See P-2125: CAR-OTP-2082-0299-R01, at 0308-0309, para. 54. However, the Chamber also observes that Witness P-1339 and Witness P-2125 indicate that the Muslims shop-owners were first shot at by the Anti-Balaka and then stabbed. See [REDACTED]: CAR-OTP-2110-0556-R01, at 0572, para. 106; P-1339: CAR-OTP-2041-0741-R01, at 0751-0752, paras 71-72. Similarly, Witness P-2125 indicates that Hassan Délégue's throat was slit after he ran out of ammunition. P-2125: CAR-OTP-2082-0299-R01, at 0308-0309, para. 54. In light of the foregoing, the Chamber considers that a full presentation of the evidence before the Trial Chamber is required.

²³⁸ The Chamber considers that, as set out in its factual findings, Muslim persons from Boeing and Cattin were deported, forcibly transferred and/or displaced either by threat of force of coercion or fear of violence. In addition, in the view of the Chamber, the evidence neither indicates that these persons were not lawfully present nor that they were deported, forcibly transferred and/or displaced on the basis of grounds permitted under international law.

²³⁹ Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, para. 145.

100. Accordingly, the Chamber deems it unnecessary to address Yekatom's alleged individual criminal responsibility under article 25(3)(c) or (d) of the Statute.²⁴⁰

(ii) *Ngaïssona*

101. As demonstrated above,²⁴¹ Ngaïssona was close to François Bozizé prior to the Seleka coup d'état.²⁴² Ngaïssona perpetuated the anti-Muslim animus expressed by François Bozizé and persons close to François Bozizé. He also used his influence to mobilise the youth to identify Muslims and halt the infiltration of the Seleka. Following the Seleka coup d'état, Ngaïssona, together with others, assisted François Bozizé in planning his return to power from Cameroon. In this regard, Ngaïssona specifically (i) took steps to structure the Anti-Balaka; (ii) financed the Anti-Balaka, including for the purchase of weapons; (iii) issued instructions to Anti-Balaka members, including with regard to the 5 December 2013 Attack and preceding attacks; and (iv) liaised and coordinated with Anti-Balaka members exercising key functions, including Bernard Mokom and Maxime Mokom.

102. The Chamber is mindful of the fact that some of the witness statements underpinning these findings are based on second-hand information, consist of inferences, or omit to provide specific details. However, the Chamber notes that the evidentiary threshold applicable to this stage of the proceedings requires 'substantial grounds to believe' as opposed to the more exacting threshold of the trial stage. The Chamber further observes that these statements generally corroborate each other with regard to the Chamber's finding that Ngaïssona knowingly financed the Anti-Balaka and liaised with other key Anti-Balaka members. In addition, various additional aspects of these witness' statements are corroborated by other pieces of evidence.

²⁴⁰ DCC, paras 192-195.

²⁴¹ See paras 75-79 above.

²⁴² See also P-0808: CAR-OTP-2093-0010-R01, at 0022, para. 62; P-1074: CAR-OTP-2094-0228-R01, at 0241, paras 71-72. The Chamber notes the relevant submissions of the Defence for Ngaïssona; see ICC-01/14-01/18-T-008-Red-ENG, p. 85, lines 10-13, p. 91, line 12 – p. 92, line 14; ICC-01/14-01/18-382-Corr-Red, para. 8. See also ICC-01/14-01/18-376-Corr-Red, para. 6 (footnote 16). The Chamber is not persuaded by the submissions of the Defence for Ngaïssona. This conclusion arises from the fact that Ngaïssona was a member of François Bozizé's political party, a minister in his administration, and that he joined him in Cameroon following the Seleka coup d'état. Whether or not Ngaïssona would have been appointed as a result of a ceasefire agreement or whether or not he was related to François Bozizé does not affect this conclusion.

103. Contrary to the generic submission by the Prosecutor, however, Ngaïssona's role, as set out above, was not such as to allow for the conclusion that he was either a principal within the meaning of article 25(3)(a) of the Statute or that he could otherwise be held accountable under article 25(3)(b) of the Statute. Specifically, the evidence does not allow the Chamber to conclude that Ngaïssona was in control of the crimes or, stated differently, that his contribution was essential to the point that the crimes would not have been committed without his individual contribution.

104. The Chamber considers that, based on the evidence, Ngaïssona's role is appropriately defined as aiding, abetting or otherwise assisting in the commission of the aforementioned crimes pursuant to article 25(3)(c) of the Statute²⁴³ or, in the alternative, contributing in any other way to the commission of these crimes by a group of persons acting with a common purpose under article 25(3)(d)(i) or (ii) of the Statute.²⁴⁴ The Chamber is further satisfied that Ngaïssona's acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

C. Bossangoa

1. Factual findings

105. The evidence demonstrates that Anti-Balaka elements had been active in the Ouham Prefecture of the CAR since the summer months of 2013 by attacking several locations around Bossangoa,²⁴⁵ against which they mounted an offensive on

²⁴³ Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Corr-Red, 13 November 2019, paras 896-909.

²⁴⁴ Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Corr-Red, 13 November 2019, paras 937-953.

²⁴⁵ P-2200: CAR-OTP-2088-2146-R01, at 2151-2152, paras 27-28. Witness P-2200's statement is corroborated by Witnesses P-2049, P-0519 and P-2453. Witness P-2049 helped people fleeing from the attacked villages giving them refuge and asserts that the Anti-Balaka that carried out the attacks were under the authority of, *inter alia*, Florent Kema; P-2049: CAR-OTP-2088-2173-R01, at 2179-2182, paras 34-49. Witness P-0519 reports an Anti-Balaka's offensive on trucks heading to Bangui and transporting people fleeing from the attacks around Bossangoa; P-0519: CAR-OTP-2016-0652-R01, at 0668, para. 76. Witness P-2453 was himself a victim of an attack on the village of Bowaye, where he 'came to learn about Florent KEMA being an Anti-Balaka leader'; P-2453: CAR-OTP-2111-0415-R01,

17 September 2013 targeting Muslim residential neighbourhoods and killing at least seven civilians.²⁴⁶ Subsequently, according to Witness P-0966, on 5 December 2013 Anti-Balaka elements, divided into two groups respectively led by Florent Kema²⁴⁷ and by Dangba,²⁴⁸ carried out an attack on the town of Bossangoa that lasted approximately from 13:00 to between 17:00 and 18:30.²⁴⁹ They targeted residential areas, including Boro, which ‘was generally known as being the Muslim neighbourhood in BOSSANGOA’,²⁵⁰ with the clear intention of taking over Bossangoa in order to show that the Anti-Balaka were also attacking in the provinces and to free and cleanse the town for Christians to be able to live in peace, targeting Muslim civilians and drawing no distinction between them and the Seleka.²⁵¹

at 0420-0425, paras 27-46. *See also* CAR-OTP-2001-3302, at 3304; CAR-OTP-2001-6437, at 6454; CAR-OTP-2079-0622, at 0632; CAR-OTP-2001-0391, at 0394.

²⁴⁶ P-2200: CAR-OTP-2088-2146-R01, at 2152-2153, paras 29-38. Witness P-2200’s statement is corroborated by Witness P-2049, who witnessed the attack and also reports that seven civilians were killed [REDACTED]; P-2049: CAR-OTP-2088-2173-R01, at 2183-2185, paras 54-61. *See also* P-0567: CAR-OTP-2059-0084-R01, at 0096, para. 76; P-2453: CAR-OTP-2111-0415-R01, at 0426, paras 49-51; P-2462: CAR-OTP-2111-0452-R01, at 0457-0459, paras 27-34.

²⁴⁷ According to Witness P-1847, Florent Kema was the *adjoint* of Dedane, ComZone of the Anti-Balaka in Bossangoa, and was based with his men in Benzambé; after Dedane’s death, Florent Kema became ComZone of the Anti-Balaka in the Ouham Prefecture, which includes Bossangoa; P-1847: CAR-OTP-2061-1534-R01, at 1558, para. 151. Several witnesses refer to him as the ComZone of the Anti-Balaka in Bossangoa (*see* P-0966: CAR-OTP-2031-0241-R01, at 0251-0252, paras 59, 61, 65; P-2232: CAR-OTP-2090-0561-R02, at 0574, para. 84; P-2269: CAR-OTP-2111-0336-R01, at 0354, para. 135) and as their coordinator and leader in Bossangoa (*see* P-1521: CAR-OTP-2046-0603-R01, at 0609, para. 35; P-0314: CAR-OTP-2008-1188-R01, at 1208-1209, para. 100; P-0884: CAR-OTP-2080-1678-R01, at 1703, 854-872; *see also* CAR-OTP-2001-0835, at 0886). Witness P-0287 met Florent Kema on 18 April 2015 and found that Florent Kema was the leader of an ‘extremist faction’ of Anti-Balaka in Bossangoa; Florent Kema introduced himself to Witness P-0287 as the ‘regional coordinator of OUHAM province’, which includes Bossangoa; P-0287: CAR-OTP-2115-0239-R01, at 0264-0265, paras 125, 127, 131.

²⁴⁸ Witness P-0966 describes Dangba (whose first names appear to be Pissidy Téophil, *see* CAR-OTP-2030-0232, at 0234, 0238) as Florent Kema’s deputy; P-0966: CAR-OTP-2031-0241-R01, at 0247, 0251-0252, paras 36, 61; *see also* CAR-OTP-2001-0835, at 0886.

²⁴⁹ P-0966: CAR-OTP-2031-0241-R01, at 0251-0252, paras 59-61; P-2453: CAR-OTP-2111-0415-R01, at 0431, para. 75. On the date and time of the attack, Witness P-0966’s statement is corroborated by Witnesses P-2200 and P-2049; P-2200: CAR-OTP-2088-2146-R01, at 2155, para. 44; P-2049: CAR-OTP-2088-2173-R01, at 2187-2188, paras 75-77, 79. *See also* P-1577: CAR-OTP-2081-0769-R01, at 0790; CAR-OTP-2085-6486 [00:00:00 to 00:04:48]; CAR-OTP-2107-6999; CAR-OTP-2107-7148; P-2453: CAR-OTP-2111-0415-R01, at 0428-0430, paras 61-68; P-2269: CAR-OTP-2111-0336-R01, at 0344, para. 58.

²⁵⁰ P-2049: CAR-OTP-2088-2173-R01, at 2188, paras 77-78; P-2453: CAR-OTP-2111-0415-R01, at 0429, paras 65-66; P-2462: CAR-OTP-2111-0452-R01, at 0460-0461, paras 41-44; P-0287: CAR-OTP-2115-0239-R01, at 0264, para. 120.

²⁵¹ P-0966: CAR-OTP-2031-0241-R01, at 0251-0252, paras 60, 62-64. On the purpose of the attack, Witness P-0966’s statement is corroborated by Witness P-0287 reporting what Florent Kema himself told him about ‘the main objective of his group – the Anti-Balaka in OUHAM Prefecture –’, namely ‘to chase all the Muslims out of OUHAM and also to chase out all the Seleka’; P-0287: CAR-OTP-

106. In the course of the 5 December 2013 attack on Bossangoa, the Anti-Balaka killed 28 persons²⁵² who were not armed or taking part in hostilities.²⁵³ Also, Witness P-2462 reports having been raped by [REDACTED] Anti-Balaka' named [REDACTED] during the 5 December 2013 attack.²⁵⁴

107. The Chamber notes that the Prosecutor also alleges that '[a] second victim raped by Anti-Balaka elements during the 5 December 2013 attack on BOSSANGOA also reported the crime';²⁵⁵ however, the only evidence supporting this allegation is Witness P-2462's statement where [REDACTED].²⁵⁶ Absent any information as to the identity of the victim and/or the perpetrators, and in light of the fact that the evidence regarding the second rape is indirect and too vague, the Chamber finds that the factual allegation of the Prosecutor is not established to the relevant standard.

108. In the days following the attack on Bossangoa, according to Witnesses P-2200 and P-0314, the Anti-Balaka pillaged and looted the houses of Muslims before

2115-0239-R01, at 0265, para. 131. On the targeting of Muslim civilians, Witness P-2049 explains that there were no Seleka bases in the attacked neighbourhoods; P-2049: CAR-OTP-2088-2173-R01, at 2190, para. 93.

²⁵² P-2200: CAR-OTP-2088-2146-R01, at 2155-2157, paras 45-59; P-2049: CAR-OTP-2088-2173-R01, at 2189-2190, paras 81-90; P-2453: CAR-OTP-2111-0415-R01, at 0429-0430, paras 66-68; P-2462: CAR-OTP-2111-0452-R01, at 0463-0464, paras 55-57. Witnesses P-2200, P-2049, P-2453 and P-2462 report several names of Muslim victims murdered on 5th December 2013. The Chamber finds that this evidence demonstrates that the following persons were murdered: Khadidja Adjaro, Adaye Abakar, Atahir Abou, Atahir Djime (or Djimet), Halima Hisseini, Amadou (or Hamadou) Bouba, Salamatu Madji, Ismael Madji, Abakar Moussa, Koursi Abdelrahim, Koursi Mahamat, Abdallah Mahamat, Mariam Yamwha, Amadou Oumarou, Ila Adji, Sali Adji, Hamid Ali, Ahamat Zakaria, Mahamat Adam, Abdasamat Mounin, Ibrahim Hassan, Sale Adim, Adef Mahamat, Atahir Mahamat, a taxi driver nicknamed 'C-17' (probably named Abakar Moussa), a certain Abdelkhadir, a certain Abdaye and a certain Abakar. The Chamber also notes that the Prosecutor alleges that the Anti-Balaka 'attempted to kill at least one individual at BOSSANGOA 2 during the attack, shooting and leaving him for dead in his home where he fell unconscious. They set his house alight, but on regaining consciousness, he managed to escape'. However, the only evidence supporting this assertion is Witness P-1577's statement, in which he describes a picture of an unidentifiable man that he took at *École de la Liberté* as of that of a person who, during the 5 December 2013 attack, 'had been shot in the arm and shoulder by the Anti-Balaka and left for dead in his home. The Anti-Balaka then burned his home with him in it. He regained consciousness when the heat became intense and fled his home before he died'; P-1577: CAR-OTP-2081-0769-R01, at 0787-0788; CAR-OTP-2085-3092. In light of the absence of any information allowing identifying the victim and of the indirect nature of the evidence, the Chamber finds that the factual allegation of the Prosecutor is not established to the relevant standard.

²⁵³ P-2200: CAR-OTP-2088-2146-R01, at 2156, paras 56-57; P-2049: CAR-OTP-2088-2173-R01, at 2189, para. 81; *See also* P-2453: CAR-OTP-2111-0415-R01, at 0429, para. 66; P-2462: CAR-OTP-2111-0452-R01, at 0460-0461, paras 43-44.

²⁵⁴ P-2462: CAR-OTP-2111-0452-R01, at 0461-0463, paras 45-52.

²⁵⁵ DCC, para. 386.

²⁵⁶ P-2462: CAR-OTP-2111-0452-R01, at 0463, para. 53.

destroying them, including by setting them on fire, particularly in the Boro, Arabe and Fulbe neighbourhoods, sometimes writing the words ‘Anti-Balaka’ on the rubble.²⁵⁷ Satellite imagery dated January and March 2014 confirms that hundreds of buildings, reportedly at least 1,234 according to the United Nations Institute for Training and Research’s Operational Satellite Applications Programme (the ‘UNOSAT’), mostly of a residential nature and located in Muslim neighbourhoods such as Boro, were destroyed in Bossangoa by then.²⁵⁸ Witnesses P-2200 and P-2049 recount that the Anti-Balaka also destroyed Muslim places of worship, including Bossangoa’s central mosque, the roof and windows of which had been removed and the structure reduced to ruins.²⁵⁹

109. As a result, the Muslim population of Bossangoa fled the attacked neighbourhoods to seek shelter at a school named *École de la Liberté*,²⁶⁰ where their

²⁵⁷ P-2200: CAR-OTP-2088-2146-R01, at 2158, paras 64-65; P-0314: CAR-OTP-2008-1188-R01, at 1208, para. 99; CAR-OTP-2001-0835, at 0886-0889. *See also* P-2133: CAR-OTP-2093-0267-R01, at 0280, para. 97; P-2462: CAR-OTP-2111-0452-R01, at 0466-0467, para. 73; CAR-OTP-2088-2204 [00:00:00 to 00:12:50] with P-2049: CAR-OTP-2088-2173-R01, at 2190-2191, 2195, paras 95-97, 123 and P-2453: CAR-OTP-2111-0415-R01, at 0433-0434, paras 83-84, 86-89; CAR-OTP-2085-3122; CAR-OTP-2079-1151; CAR-OTP-2079-1153.

²⁵⁸ CAR-OTP-2001-5350; CAR-OTP-2079-0667; using satellite images of Bossangoa acquired on 22 January and on 28 February 2014, and comparing them to an image of 5 December 2013, UNOSAT reviewed the town of Bossangoa to locate signs of destroyed structures, which it evaluated at 1,120 (January 2014) and 1,234 (March 2014). The Chamber is mindful that this evidence does not allow to ascertain whether all the destructions of buildings in Bossangoa may be attributed to the Anti-Balaka or be considered as unlawful acts; however, it finds that it is corroborated by Witness P-0287’s statement, who visited Bossangoa between 30 April and 1 May 2014 and observed such destruction, especially in the Boro neighbourhood that he described in the following terms: ‘[...] I went to BORO where I confirmed that all the buildings in the BORO neighbourhood had recently been destroyed. I could see they were destroyed recently because there was no vegetation growing back yet, and the neighbourhood had not yet been occupied by other people. When I say ‘destroyed’, I mean that the windows, doors and roofs of the houses had been taken away and the contents of the houses looted. As I indicate in the report, I learned that local groups associated with the Anti-Balaka were responsible for the destruction and looting’; P-0287: CAR-OTP-2115-0239-R01, at 0263-0264, paras 118-120.

²⁵⁹ P-2200: CAR-OTP-2088-2146-R01, at 2158, para. 67; P-2049: CAR-OTP-2088-2173-R01, at 2191, 2195, paras 99-100, 123; CAR-OTP-2088-2204 [00:03:42 to 00:04:30]. Their statements about Bossangoa’s central mosque is corroborated by Witnesses P-2453 and P-2462 who ascertained its destruction passing before it while leaving Bossangoa in convoys in February and April 2014; P-2453: CAR-OTP-2111-0415-R01, at 0432-0433, paras 82, 85; P-2462: CAR-OTP-2111-0452-R01, at 0467, para. 74.

²⁶⁰ P-2200: CAR-OTP-2088-2146-R01, at 2155, 2158, paras 44, 64; P-2049: CAR-OTP-2088-2173-R01, at 2188, paras 77-78; P-2462: CAR-OTP-2111-0452-R01, at 0460, para. 42; P-1577: CAR-OTP-2081-0769-R01, at 0787 (referencing CAR-OTP-2085-5082; CAR-OTP -2085-5092). Witness P-0966 also affirms that the Anti-Balaka themselves had ‘put women and children in the “Liberté” neighbourhood of BOSSANGOA’ where they stayed under the protection of international forces; P-0966: CAR-OTP-2031-0241-R01, at 0252, para. 63. Before the 5 December 2013 attack on Bossangoa, *École de la Liberté* had already been a place of refuge for Muslims fleeing Anti-Balaka attacks on

number rose into the thousands in the days following the attack.²⁶¹ Muslims were forced to remain inside the *École de la Liberté*'s camp since they feared the Anti-Balaka who set up positions around it and sometimes approached the camp to threaten them.²⁶² Eventually, all Muslims staying at *École de la Liberté* were evacuated through international convoys that left Bossangoa mainly for Chad in February and April 2014,²⁶³ after which Bossangoa was completely emptied of its Muslim population.²⁶⁴

2. *Legal findings*

110. The Chamber considers that the conduct specified in the preceding paragraphs amounts to (i) intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute) (paragraphs 105 to 109); (ii) murder (articles 7(1)(a) and 8(2)(c)(i) of the Statute) (paragraph 106); (iii) rape (articles 7(1)(g) and 8(2)(e)(vi) of the Statute) (paragraph 106); (iv) intentionally destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute) (paragraph 108); (v) pillaging (article 8(2)(e)(v) of the Statute)²⁶⁵ (paragraph 108); (vi) intentionally directing an attack

various locations around Bossangoa; *see* P-0314: CAR-OTP-2008-1188-R01, at 1206, paras 85-86; P-2453: CAR-OTP-2111-0415-R01, at 0425, para. 48; P-2462: CAR-OTP-2111-0452-R01, at 0456, para. 23.

²⁶¹ P-1577: CAR-OTP-2081-0769-R01, at 0791 (referencing CAR-OTP-2085-4492; CAR-OTP-2085-4502; CAR-OTP-2085-4512; CAR-OTP-2085-4552; CAR-OTP-2085-4562; CAR-OTP-2085-4572). Several press and NGO's reports corroborate Witness P-1577's statement, affirming that *École de la Liberté* was hosting nearly 7,000 Muslims; *see* CAR-OTP-2079-1141, at 1141; CAR-OTP-2049-0261, at 0262; CAR-OTP-2079-1163, at 1163; CAR-OTP-2005-0197, at 0205; CAR-OTP-2079-0677 [00:00:51 to 00:01:16].

²⁶² P-2200: CAR-OTP-2088-2146-R01, at 2159, paras 72-73; P-2049: CAR-OTP-2088-2173-R01, at 2193, para. 112; P-2462: CAR-OTP-2111-0452-R01, at 0465, paras 61-62; P-2453: CAR-OTP-2111-0415-R01, at 0434, paras 93-94; CAR-OTP-2079-1170, at 1170. Witnesses P-2049, P-2462 and P-2453 recount that Yaya Makonzi was killed by the Anti-Balaka when she left the camp to go checking on her house as an example of the concrete and serious risk for Muslims leaving *École de la Liberté*.

²⁶³ P-2200: CAR-OTP-2088-2146-R01, at 2160, paras 76-80. Witness P-2200's statement is corroborated by Witnesses P-0249, P-2462 and P-2453 who recount how they left *École de la Liberté* for Chad in convoys. *See also* CAR-OTP-2001-2885, at 2885; CAR-OTP-2031-0157, at 0158.

²⁶⁴ P-2200: CAR-OTP-2088-2146-R01, at 2160, para. 80; P-0567: CAR-OTP-2059-0084-R01, at 0096, para. 76; P-2133: CAR-OTP-2093-0267-R01, at 0280-0281, paras 98-99. Witness P-0287 visited the Boro neighbourhood on 30 April 2014 and found it 'completely empty of people'; P-0287: CAR-OTP-2115-0239-R01, at 0264, para. 120. Witness P-0314 asserts that, after the Muslims' evacuation to Chad, Bossangoa became a 'one religion town'; P-0314: CAR-OTP-2008-1188-R01, at 1208, para. 98.

²⁶⁵ The Chamber notes that, under Count 34 regarding pillaging, the Prosecutor also alleges that '[a]fter taking control of BOSSANGOA, the BOSSANGOA Group established checkpoints throughout the town, to racketeer money from the population'; *see* DCC, para. 379. The only relevant piece of evidence in support of this allegation is Witness P-0966's statement in which he affirms that, after Bossangoa fall under the Anti-Balaka's control, Kema asked [REDACTED] to 'write a mission order

against a building dedicated to religion (article 8(2)(e)(iv) of the Statute)²⁶⁶ (paragraph 108); (vii) deportation or forcible transfer of population and displacement of the civilian population (articles 7(1)(d) and 8(2)(e)(viii) of the Statute) (paragraph 109); (viii) severe deprivation of physical liberty (article 7(1)(e) of the Statute) (paragraph 109); (ix) persecution (article 7(1)(h) of the Statute)²⁶⁷ (paragraphs 105 to 109).

3. *Individual criminal responsibility*

111. The Chamber considers that the attack on Bossangoa and the 5 December 2013 Attack on Bangui were essential components of the strategy to reclaim power by François Bozizé and others. Similar to the 5 December 2013 Attack on Bangui, Maxime Mokom played a key role in the attack on Bossangoa. He provided money and weapons to the Anti-Balaka in Bossangoa prior to the attack on 5 December 2013 and, in addition, defined the strategy for the attack.²⁶⁸ Furthermore, the dates of the attacks on Bangui and Bossangoa were synchronised. Witness P-2462 states that a member of the Bossangoa Anti-Balaka group told him that they ‘had initially prepared to attack [Bossangoa] on a Friday during the Muslims [*sic*] prayer of 13:00 but that they were called by their chiefs, in [Bangui], who told them they had already attacked [Bangui], so they decided to launch the attack earlier’.²⁶⁹ Lastly, the

to allow some FACA Anti-Balaka to establish checkpoints in BOSSANGOA’ and that [REDACTED] ‘saw these FACA then stealing from people at the checkpoints, abusing their authority’; P-0966: CAR-OTP-2031-0241-R01, at 0252, para. 65. However, the Chamber finds that such conduct does not qualify as pillaging within the meaning of article 8(2)(e)(v) of the Statute, in particular since the evidence (i) establishes no link between these crimes and the armed conflict; and (ii) does not provide useful elements for the purposes of qualifying as an international crime the aforementioned conduct, which thus simply qualifies as an ordinary crime of theft and/or extortion.

²⁶⁶ The Chamber recalls that it considers that attacks against buildings dedicated to religion are specifically criminalised under article 8(2)(e)(iv) of the Statute and that, therefore, such buildings do not constitute the ‘property of an adversary’ within the meaning of article 8(2)(e)(xii) of the Statute; *see* para. 96. For this reason, the Chamber is of the view that the destruction of the Bossangoa central mosque must be qualified only as ‘intentionally directing attacks against buildings dedicated to religion’, considering that there is no evidence indicating that it constituted a military objective. The Chamber thus does not find it appropriate to confirm Count 36.

²⁶⁷ *See* para. 105, footnote 251.

²⁶⁸ P-2232: CAR-OTP-2090-0561-R02, at 0571, 0575, paras 68, 70, 89-90; P-2269: CAR-OTP-21110336-R01, at 0345, paras 68-69.

²⁶⁹ P-2462: CAR-OTP-2111-0452-R01, at 0467, para. 77.

Chamber notes the identical aims of both attacks. Witness P-0966 states that, ‘[i]n [Bossangoa], whoever was a Muslim was a Seleka’ and no one was captured.²⁷⁰

112. The Chamber recalls that it has found that, from Cameroon, Ngaïssona assisted François Bozizé in planning his return to power by *inter alia* (i) taking steps to structure the Anti-Balaka; (ii) financing the Anti-Balaka, including for the purchase of weapons; and (iii) liaising with Anti-Balaka members exercising key functions, including Maxime Mokom.²⁷¹ Considering that the attacks on Bangui and Bossangoa were part of the same course of action, the Chamber considers that Ngaïssona’s acts in relation to the 5 December 2013 Attack on Bangui further entail that he is individually criminally responsible for the crimes committed during the attack on Bossangoa on 5 December 2013 pursuant to article 25(3)(c) of the Statute or, in the alternative, article 25(3)(d)(i) or (ii) of the Statute.²⁷² The Chamber is further satisfied that Ngaïssona’s acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

D. Yamwara School

1. Factual findings

113. The evidence establishes that Yekatom’s Anti-Balaka group established a base at the Yamwara School²⁷³ at one point in December 2013 following the 5 December 2013 Attack.²⁷⁴ According to Witnesses P-1704, P-1705 and P-1811, Yekatom was in charge of the Yamwara School base.²⁷⁵ Witnesses P-1647 and

²⁷⁰ P-0966: CAR-OTP-2031-0241-R01, at 0252, para. 64. *See also* P-0287: CAR-OTP-2115-0239-R01, at 0265, para. 131.

²⁷¹ *See* paras 79-80, 101 above.

²⁷² *See also* Section IV.B.3.(ii).

²⁷³ The Chamber notes that certain witnesses refer to this location as ‘YANWARA’ or ‘GNAWARA’. On the basis of the witnesses’ descriptions and considering the evidence as a whole, the Chamber considers that these references concern one and the same location.

²⁷⁴ P-1339: CAR-OTP-2041-0741-R01, at 0753, para. 85; P-1839: CAR-OTP-2072-0789-R01, at 0814-0815, 895-913; P-1647: CAR-OTP-2050-0654-R01, at 0658, para. 28; P-0954: CAR-OTP-2048-0171-R01, at 0176-0177, para. 36; P-1819: CAR-OTP-2065-0003-R01, at 0012, para. 45; P-1815: CAR-OTP-2058-0581-R01, at 0594, paras 76-77.

²⁷⁵ P-1704: CAR-OTP-2054-1136-R01, at 1142, paras 31-32; P-1705: CAR-OTP-2053-0086-R01, at 0090, para. 27; P-1811: CAR-OTP-2058-0003-R01, at 0008-0010, paras 27, 38. *See also* P-1815: CAR-OTP-2058-0581-R01, at 0595, para. 81; P-1819: CAR-OTP-2065-0003-R01, at 0028, para. 142.

P-1839 indicate that Anti-Balaka elements received military training at this base.²⁷⁶ Witness P-1647 also states that training on international humanitarian law was provided by outsiders at this base.²⁷⁷

114. Witnesses P-1704, P-1705 and P-1811 avow that, on or about 24 December 2013, Anti-Balaka elements stopped seven persons, including Saint Cyr Lapo N’Gomat and three Muslim women, at an Anti-Balaka checkpoint in or around Cattin.²⁷⁸ After threatening them with death, the Anti-Balaka elements took these persons to the Yamwara School.²⁷⁹

115. At the Yamwara School, Yekatom’s subordinate said that the captives ‘were from [REDACTED]’ and Yekatom told them that they ‘were the traitors and traitors deserve to die’.²⁸⁰ Yekatom then ordered his subordinates to tie up Saint Cyr Lapo N’Gomat, who proceed to tie his arms behind his back and together with his feet, and to beat him with brake cables and a bamboo stick.²⁸¹ The Anti-Balaka members subsequently cut off Saint Cyr Lapo N’Gomat’s ears.²⁸² Ouandjio also stabbed Saint Cyr Lapo N’Gomat in his neck with a knife.²⁸³ Saint Cyr Lapo N’Gomat was then taken away and has not been seen since.²⁸⁴

116. Yekatom’s subordinates also beat the three other male persons with sticks or clubs all over their bodies on the orders of Yekatom.²⁸⁵ The women were forced to

²⁷⁶ P-1647: CAR-OTP-2050-0654-R01, at 0658-0659, para. 33; P-1839: CAR-OTP-2072-0644-R01, at 0659-0660, 543-550, 562-565. *See also* P-1815: CAR-OTP-2058-0581-R01, at 0594, 0595 paras 76-77, 79; P-1819: CAR-OTP-2065-0003-R01, at 0012, 0028-0029, paras 45, 140-146.

²⁷⁷ P-1647: CAR-OTP-2050-0654-R01, at 0658-0659, para. 33. *See also* P-0487: CAR-OTP-2076-0130-R01, at 0138-0140, 279-346.

²⁷⁸ P-1704: CAR-OTP-2054-1136-R01, at 1140-1142, paras 25-30; P-1705: CAR-OTP-2053-0086-R01, at 0089, paras 22-24; P-1811: CAR-OTP-2058-0003-R01, at 0006-0007, paras 22-26.

²⁷⁹ P-1704: CAR-OTP-2054-1136-R01, at 1141-1142, paras 29-31; P-1705: CAR-OTP-2053-0086-R01, at 0090, paras 25-26; P-1811: CAR-OTP-2058-0003-R01, at 0007-0008, paras 26-28. *See also* P-1654: CAR-OTP-2053-0112-R01, at 0116-0117, paras 28, 31-35.

²⁸⁰ P-1704: CAR-OTP-2054-1136-R01, at 1143, para. 35. *See also* P-1705: CAR-OTP-2053-0086-R01, at 0090, paras 29-34.

²⁸¹ P-1704: CAR-OTP-2054-1136-R01, at 1143, para. 37.

²⁸² P-1704: CAR-OTP-2054-1136-R01, at 1143, para. 38. *See also* P-1654: CAR-OTP-2053-0112-R01, at 0117, para. 35.

²⁸³ P-1704: CAR-OTP-2054-1136-R01, at 1143, para. 38.

²⁸⁴ P-1704: CAR-OTP-2054-1136-R01, at 1143, para. 38; P-1705: CAR-OTP-2053-0086-R01, at 0091, para. 37; P-1811: CAR-OTP-2058-0003-R01, at 0009, para. 37. *See also* P-1654: CAR-OTP-2053-0112-R01, at 0118, para. 48.

²⁸⁵ P-1704: CAR-OTP-2054-1136-R01, at 1143-1144, paras 39-43; P-1705: CAR-OTP-2053-0086-R01, at 0091, para. 38.

undress to their underwear by Anti-Balaka elements and then searched.²⁸⁶ An Anti-Balaka element pointed a gun at them and interrogated them.²⁸⁷ [REDACTED] heard Saint Cyr Lapo N’Gomat being beaten by the Anti-Balaka and crying.²⁸⁸

117. The captives were subsequently moved to and held in different locations by the Anti-Balaka.²⁸⁹ Yekatom visited them at least once during their captivity.²⁹⁰ On or about 27 December 2013, the captives were released.²⁹¹

2. *Legal findings*

118. The Defence for Yekatom submits that Count 14 should be dismissed. In more specific terms, the Defence for Yekatom argues that the events, even if proven, do not rise to the level of gravity for a crime against humanity on the basis that (i) ‘the duration of the imprisonment, three days, was too short’; (ii) ‘the number of people allegedly in prison is too few for a crime against humanity’; and (iii) ‘the conditions of the imprisonment of four of the men do not raise this short imprisonment of a handful of people to a crime against humanity’.²⁹² The Prosecutor responds that the challenge of the Defence for Yekatom must be rejected.²⁹³

119. The Chamber is not persuaded by the submissions by the Defence for Yekatom. The Chamber considers that neither the duration of the imprisonment nor the number of persons imprisoned denies, as such, the severity of the deprivation of liberty.²⁹⁴ Furthermore, the Chamber notes that the captives were threatened, the men were beaten and mistreated, a captive was killed, and the women were forced to undress

²⁸⁶ P-1811: CAR-OTP-2058-0003-R01, at 0008, paras 31-32.

²⁸⁷ P-1811: CAR-OTP-2058-0003-R01, at 0008-0009, paras 33-34.

²⁸⁸ P-1811: CAR-OTP-2058-0003-R01, at 0009, para. 35.

²⁸⁹ P-1704: CAR-OTP-2054-1136-R01, at 1145-1146, paras 48, 52-59; P-1705: CAR-OTP-2053-0086-R01, at 0091-0092, paras 44-46; P-1811: CAR-OTP-2058-0003-R01, at 0010-0012, paras 40-51.

²⁹⁰ P-1704: CAR-OTP-2054-1136-R01, at 1145, para. 52; P-1705: CAR-OTP-2053-0086-R01, at 0092, para. 48; P-1811: CAR-OTP-2058-0003-R01, at 0011, para. 47

²⁹¹ P-1704: CAR-OTP-2054-1136-R01, at 1147, para. 60; P-1705: CAR-OTP-2053-0086-R01, at 0092, para. 50; P-1811: CAR-OTP-2058-0003-R01, at 0012, para. 52.

²⁹² ICC-01/14-01/18-T-008-Red-ENG, p. 44, line 4 – p. 46, line 20, p. 48, line 9 - p. 49, line 14; ICC-01/14-01/18-383-Red, paras 23-36.

²⁹³ ICC-01/14-01/18-376-Corr-Red, paras 100-104.

²⁹⁴ See also Pre-Trial Chamber III, *Situation in the Republic of Burundi*, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017, ICC-01/17-9-Red, para. 68.

and heard a male captive being mistreated. In these circumstances, the Chamber concludes that the deprivation of liberty is of sufficient gravity.

120. The Defence for Yekatom further requests the Chamber to ‘dismiss count 11, other inhumane acts, because the conduct is fully encompassed by count 12, torture’.²⁹⁵ The Prosecutor responds that the challenge of the Defence for Yekatom must be rejected.²⁹⁶

121. The Chamber is not persuaded by the submissions by the Defence for Yekatom. The Chamber considers that the Prosecutor has brought both alternative and cumulative charges. The Prosecutor submits that ‘[t]he facts and the evidence submitted may satisfy more than one [...] crime’.²⁹⁷ In the corresponding footnote, the Prosecutor refers to a previous decision under article 61(7) of the Statute stating that, ‘at this stage of the proceedings, [the Chamber] may confirm *alternative charges* presented by the Prosecutor’.²⁹⁸ The Chamber further considers that a Trial Chamber is better poised to fully assess the relevant circumstances and that, in light of regulation 55 of the Regulations, providing early notice as to the applicable legal qualifications is beneficial both for the rights of the Defence and judicial economy.

122. The Chamber is further satisfied that the conduct set out above was committed as part of a widespread or systematic attack against a civilian population and/or that it took place in the context of and was associated with an armed conflict not of an international character. In this regard, the Chamber specifically notes that the aforementioned events took place in the aftermath of the 5 December 2013 Attack and that Yekatom specifically accused the captives of being ‘traitors’.

123. Accordingly, the Chamber considers that the conduct specified in the preceding paragraphs amounts to (i) murder (articles 7(1)(a) and article 8(2)(c)(i) of the Statute) (paragraph 115); (ii) imprisonment and other forms of severe deprivation of physical liberty (article 7(1)(e) of the Statute) (paragraphs 114 and 117);

²⁹⁵ ICC-01/14-01/18-T-008-Red-ENG, p. 50, line 19 – p. 55, line 4; ICC-01/14-01/18-383-Red, paras 37-47.

²⁹⁶ ICC-01/14-01/18-376-Corr-Red, paras 105-108.

²⁹⁷ DCC, para. 625

²⁹⁸ DCC, para. 625 (footnote 1284), referring to Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, para. 100 (emphasis added).

(iii) torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute) (paragraphs 114-115);²⁹⁹
 (iv) cruel treatment (article 8(2)(c)(i) of the Statute) (paragraphs 114-116);
 (v) persecution (article 7(1)(h) of the Statute) (paragraphs 114 to 117);
 (vi) other inhumane acts (article 7(1)(k) of the Statute) (paragraphs 114-116).

3. *Individual criminal responsibility*

(i) *Yekatom*

124. As described above, Yekatom threatened at least some of the captives, issued patently illegal instructions to his Anti-Balaka elements, and was present during the mistreatment and captivity of the aforementioned persons.

125. On this basis, the Chamber considers that Yekatom committed the aforementioned crimes jointly with others or through other persons under article 25(3)(a) of the Statute or, in the alternative, ordered the commission of these crimes pursuant to article 25(3)(b) of the Statute. The Chamber is further satisfied that Yekatom's acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

126. Accordingly, the Chamber deems it unnecessary to address Yekatom's alleged individual criminal responsibility under article 25(3)(c) or (d) of the Statute.³⁰⁰

(ii) *Ngaïssona*

127. The Chamber notes that some of the direct perpetrators of the aforementioned crimes, including Ouandjio, were in contact with members of the Anti-Balaka coordination, including Sylvestre Yagouzou, during the captivity of the persons concerned.³⁰¹ The Chamber further observes that these crimes took place in the aftermath of 5 December 2013 Attack and that they were also perpetrated against Muslims or persons perceived to be affiliated with or supportive of the Seleka.

²⁹⁹ The Chamber considers that the mistreatment of Saint Cyr Lapo N'Gomat in the aggregate, including the cutting off of his ears, must be qualified as torture.

³⁰⁰ DCC, paras 192-195.

³⁰¹ P-0487: CAR-OTP-2076-0495-R01, at 0506-0508, 382-451; P-1811: CAR-OTP-2058-0003-R01, at 0012, paras 50, 52; P-1704: CAR-OTP-2054-1136-R01, at 1144, 1146-1147, paras 42, 56, 57, 60, 64; P-0952: CAR-OTP-2107-0784-R01, at 0808-0809, 1.828-884; P-0884: CAR-OTP-2072-1739-R01, at 1767-1771, 958-1108.

128. Accordingly, the Chamber considers that, by means of his acts described in relation to the 5 December 2013 Attack, Ngaïssona is responsible for aiding, abetting or otherwise assisting in the commission of the crimes at the Yamwara School pursuant to article 25(3)(c) of the Statute or, in the alternative, contributing in any other way to the commission of these crimes by a group of persons acting with a common purpose under article 25(3)(d)(i) or (ii) of the Statute.³⁰² The Chamber is further satisfied that it is established that, as the case may be, Ngaïssona (i) fulfils the specific *mens rea* elements pertaining to these crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

E. PK9 – Mbaïki Axis

1. Factual findings

129. From on or around 10 January 2014 onward, the Anti-Balaka took over a number of villages in the Lobaye Prefecture³⁰³ and set up checkpoints in various locations.³⁰⁴ Yekatom and his Anti-Balaka group also set up a new base at PK9.³⁰⁵

³⁰² See also paras 101-104 above.

³⁰³ The Lobaye Prefecture is located in the southwest part of the country, bordering the Republic of Congo and the Democratic Republic of Congo, see CAR-OTP-2070-0274. The Anti-Balaka took over Sekia, Ntangala, Bimon, Kapou, Bossongo, and Pissa. Sekia: P-0954: CAR-OTP-2048-0171-R01, at 0184-0185 para. 79. P-1647: CAR-OTP-2050-0654-R01, at 0659-0660, paras 37-39. P-1839: CAR-OTP-2072-0521-R01, at 0528, 272-297. [REDACTED]: CAR-OTP-2110-0556-R01, at 0578, para. 151. Ntangala: P-0954: CAR-OTP-2048-0171-R01, at 0184-0185 para. 79. P-1647: CAR-OTP-2050-0654-R01, at 0660 para. 39. See also CAR-OTP-2053-0567 and CAR-OTP-2045-0525. Bimon: P-1647: CAR-OTP-2050-0654-R01, at 0660 para. 39. See also CAR-OTP-2053-0567 and CAR-OTP-2045-0525. Kapou: P-0954: CAR-OTP-2048-0171-R01, at 0184-0185, para. 79. P-1647: CAR-OTP-2050-0654, at 0660, para. 39. Bossongo: P-1839: CAR-OTP-2072-1068-R01, at 1077-1078, 298-357. See also CAR-OTP-2014-0729-R01, at 740. Pissa: P-0954: CAR-OTP-2048-0171-R01, at 0184, para. 78. [REDACTED]: CAR-OTP-2110-0556-R01, at 0578, para. 151. P-1666: CAR-OTP-2059-0361-R01, at 0367, para. 32.

³⁰⁴ The Anti-Balaka set up checkpoints at PK9, Sekia, Bimon, Bossongo, and Pissa. PK9: P-0954: CAR-OTP-2048-0171-R01, at 0183-0184, 0186, paras 74 and 89. P-1647: CAR-OTP-2050-0654-R01, at 0660-0661, para. 44. P-1824: CAR-OTP-2094-1803-R01, at 1807, paras 25, 26 28. [REDACTED]: CAR-OTP-2110-0556-R01, at 0578, para. 151. In a video interview titled ‘Centrafrique chefs de guerre et reconstruction’, 17 March 2014, Yekatom speaks to a journalist at PK9; CAR-OTP-2055-2610 [00:07:27 to 00:08:44]; CAR-OTP-2107-6906, at 6913-6914, 193-233. See also CAR-OTP-2001-6251 at 6294. Sekia: P-1647: CAR-OTP-2050-0654-R01, at 0660-0661, para. 44. P-1858: CAR-OTP-2063-0050-R01, at 0058, para. 50. P-1839: CAR-OTP-2072-0822-R01, at 0824, 0829, 0832, 43-68, 227-255, 353-370. P-0487: CAR-OTP-2076-0495-R01, at 0511, 0512-0513, 570-573, 577, 611-614 and CAR-OTP-2076-0516-R01, at 0523-0525, 227-231, 265-269, 286-299. [REDACTED]: CAR-OTP-2110-0556, at 0578, para. 151. Bimon: P-1839: CAR-OTP-2072-0914-R01, at 0929, 534-535; see also CAR-OTP-2072-1068-R01, at 1077, 288-293. Bossongo: P-1839: CAR-OTP-2072-1068-R01, at 1077-1078, 298-357. See also CAR-OTP-2014-0729, at 0740. Pissa: P-1647: CAR-OTP-2050-0654, at 0660-0661, para. 44. Witness P-0487 states that the barrier in Pissa was under Yekatom’s control, CAR-OTP-2076-

130. Witness P-1647 indicates that the Anti-Balaka did not meet with resistance as they passed from Sekia to PK9, since the Seleka had fled these areas after learning that the Anti-Balaka were approaching.³⁰⁶

131. According to Witness P-1838, a number of Muslims in the Lobaye Prefecture also fled their villages, fearing attacks by the Anti-Balaka.³⁰⁷ Many of those who fled went to Mbaïki, substantially increasing the Muslim population of the town.³⁰⁸

132. The Anti-Balaka reached Mbaïki around early February 2014. According to Witness P-1813, the Seleka had already left Mbaïki when the Anti-Balaka arrived.³⁰⁹

133. According to Witnesses P-1666 and P-1839, members of the Anti-Balaka harassed and insulted Muslims in Mbaïki.³¹⁰ Witness P-1823 indicates that members

0495-R01, at 0503, 0512, 263-268, and 591. P-1813: CAR-OTP-2069-0035-R01, at 0046, para. 74. [REDACTED]: CAR-OTP-2110-0556, at 0578, para. 151. *See also* CAR-OTP-2064-0846; CAR-OTP-2064-0838-R01; CAR-OTP-2007-0925, at 0996; CAR-OTP-2001-0835, at 0876 and 0884; and CAR-OTP-2074-3246, at 3247.

³⁰⁵ Witness P-0954 states that when Djotodia stepped down, Yekatom moved to PK9 the next day, and took over a compound there; P-0954: CAR-OTP-2048-0171-R01, at 0186, para. 89. Witness P-1647 indicates that Yekatom's Anti-Balaka group left the school and attacked PK9 before 10 January 2014, and estimates that this was around 4-6 January 2014; P-1647: CAR-OTP-2050-0654-R01, at 0659, para. 37. In a video interview dated 17 March 2014, titled 'Centrafrique chefs de guerre et reconstruction', Henri-Wanzet-Linguissara, the Director General of the CAR *gendarmarie* is interviewed. Henri Wanzet-Linguissara indicates that the Anti-Balaka at PK9 is commanded by 'Rombot', and that 'Rombot' and his men settled there at the height of the crisis, six weeks earlier; CAR-OTP-2055-2610 and its transcript, CAR-OTP-2107-6906, at 6909-6910, 39-99. Witness P-1847 indicates that under the control of 'Rombot', the Anti-Balaka launched assaults on strategic points of the Seleka up to PK9; P-1847: CAR-OTP-2061-1534-R01, at 1564, para. 190.

³⁰⁶ P-1647: CAR-OTP-2050-0654-R01, at 0659-0660, paras 37-39.

³⁰⁷ P-1838: CAR-OTP-2100-0252-R01, at 0263, para. 56; [REDACTED]: CAR-OTP-2110-0556-R01, at 0578, para. 149; P-0954: CAR-OTP-2048-0171-R01, at 0187, para. 95. Witness P-1813 states that Muslims fled to Mbaïki from various villages, including Mbata, Scad, Dolobo, Pissa, Bagando, and Boboua; P-1813: CAR-OTP-2069-0035-R01, at 0040, 0041, paras 34 and 37; CAR-OTP-2053-0576, at 0576.

³⁰⁸ P-1666: CAR-OTP-2059-0361-R01, at 0363, 0374, paras 13 and 69; P-1823: CAR-OTP-2063-0369-R01, at 0375, para. 33; P-1813: CAR-OTP-2069-0035-R01, at 0040-0041, paras 34 and 37. In addition, Witness P-1813 indicates that 'all the Muslims in Mbata moved to Mbaïki' as they 'were concerned that they would be attacked by the Anti-Balaka after the Anti-Balaka attack on Bangui on 5 December 2013', and that Muslims from other remote towns and villages, such as Scad, Dologbo, Pissa, Bagando, and Boboua fled to Mbaïki, and that there were crimes committed by the Anti-Balaka in these areas as well; P-1813: CAR-OTP-2069-0035-R01, at 0040-0041, paras 34, 37, 38; *see also* CAR-OTP-2008-0923.

³⁰⁹ Witness P-1813 states that [REDACTED] According to Witness P-1813, 'Rombo' came to Mbaïki following the Seleka's departure with two or three assistants; P-1813: CAR-OTP-2069-0035-R01, at 0042-0043, para. 49.

³¹⁰ P-1666: CAR-OTP-2059-0361-R01, at 0368, 0370, paras 37 and 44. Witness P-1839 states that the Muslims in Mbaïki left because they thought that the Anti-Balaka would attack them, and that there were certain Anti-Balaka elements who would insult the Muslims. Even though Yekatom spoke of peace after the meeting at the church, Witness P-1839 did not think it was sincere, CAR-OTP-2072-

of the Anti-Balaka also began threatening Muslims in Mbaïki and telling them to leave the area.³¹¹ Witness P-1813 states that members of the Anti-Balaka also attacked a *gendarme* patrol in Mbaïki which was there to protect the population, taking the patrol's weapons and the service car that they were using.³¹²

134. On or around 6 February 2014, Chadian forces evacuated Muslims from Mbaïki to Chad and other locations in CAR.³¹³

(i) *Anti-Balaka checkpoints*

135. According to Witness [REDACTED], members of the Anti-Balaka were sent to install barricades in order to 'prevent the Arabs from moving back towards Bangui'.³¹⁴ The Anti-Balaka collected tolls at the established checkpoints. Witness P-1838 states that Yekatom patrolled the barricades on his motorbike, and that in addition to money, the Anti-Balaka collected goats, sheep, and whatever else they could extort from people.³¹⁵

1039-R01, at 1057-1060, 613 to 743. Witness P-1813 indicates that the Anti-Balaka in Mbaïki and surrounding areas committed a number of crimes, and harassed the people; P-1813: CAR-OTP-2069-0035-R01, at 0046, para. 74. *See also* CAR-OTP-2055-1987, at 2159, and CAR-OTP-2001-2308, at 2343-2344.

³¹¹ Witness P-1823 indicates that when he arrived in Mbaïki, the Anti-Balaka had started threatening Muslims and telling them to leave the area, CAR-OTP-2063-0369-R01, at 0375, para. 32.

³¹² P-1813: CAR-OTP-2069-0035-R01, at 0044, para. 58.

³¹³ Witness P-0954 indicates that for the area under Yekatom's control, there are almost no Muslims left, as they all fled. The Witness states that Yekatom's group killed many and took their properties, including in Kapou, Pissa and Mbaïki; P-0954: CAR-OTP-2048-0171-R01, at 0187, para. 95. Witness P-1588 also states that Chadian soldiers went to Mbaïki and escort Muslims to Chad on 14 February 2014; P-1588: CAR-OTP-2056-0412-R01, at 0433, para. 126. Witness P-1647 indicates that Muslims in Mbaïki were scared due to the presence of the Anti-Balaka and asked to be evacuated. About one week after the Anti-Balaka arrived in Mbaïki, trucks were sent and Muslims were taken to PK5, Chad, or Cameroon; P-1647: CAR-OTP-2050-0654-R01, at 0661, para. 48.

³¹⁴ [REDACTED]: CAR-OTP-2110-0556-R01, at 0579, para. 156.

³¹⁵ Witness P-1339 states that he [REDACTED]; P-1339: CAR-OTP-2041-0741-R01, at 0750, para. 59. According to Witness P-1647, the Anti-Balaka were financed by the checkpoints at PK9, Pissa, Mbaïki and Sekia, and everyone who wanted to pass had to pay some money. Some paid hundreds of CFA, others paid thousands; P-1647: CAR-OTP-2050-0654-R01, at 0665, para. 79. Witness P-1824 indicates that 'Rombhot' was in charge of the checkpoint at PK9, and that his elements demanded money at the checkpoints. Witness P-1824 paid between 5000 to 15000 CAF to pass through the checkpoint; P-1824: CAR-OTP-2094-1803-R01, at 1807, para. 26. According to Witness P-1838, the Anti-Balaka took over the Seleka barricades, and motorbikes had to pay 500 CFA each time they passed, while lorries paid between 5000 to 10000 CFA. Witness P-1838 indicates that he saw Yekatom making collections, and that Yekatom patrolled the barricades on his red motorbike, and that he would strap sheep and goats to his motorbike; P-1838: CAR-OTP-2100-0252-R01, at 0272, para. 109. [REDACTED]. The rest of the money would be given to 'Rambo' [REDACTED]; [REDACTED]: CAR-OTP-2110-0556-R01, at 0581, para. 172. *See also* CAR-OTP-2074-3246, at 3247 and CAR-OTP-2001-0835, at 0884.

(ii) *The killing of Djido Saleh*

136. Following the evacuation by Chadian forces, Djido Saleh and his family were among the few remaining Muslims in Mbaïki.³¹⁶ According to Witness P-1813, Anti-Balaka members went to Saleh's house to demand money, at which point they also threatened to kill him.³¹⁷ Days later, on or around 28 February 2014, Saleh's house was attacked by a number of individuals, including members of the Anti-Balaka. Saleh's family fled to safety, while Saleh ran towards the *gendarmerie*. The attackers chased Saleh, and killed him near the *gendarmerie*.³¹⁸

³¹⁶ Witness P-1813 indicates that all Muslims except for the Deputy Mayor of Mbaïki, Djido 'Sale', evacuated Mbaïki with the Chadian forces; P-1813: CAR-OTP-2069-0035-R01, at 0044, para 59. Two Amnesty International reports, dated 7 July 2014 and 18 February 2014, respectively, indicate that Saleh Dido remained in Mbaïki after the evacuation, along with his family, CAR-OTP-2001-2707, at 2728, and CAR-OTP-2001-2248, at 2249.

³¹⁷ Witness P-1813 states that Saleh told him that an Anti-Balaka woman came to his house at 23.00 on 25 February, 2014, asking for money and threatening to kill Saleh if he refused. Saleh removed the Anti-Balaka from his house and informed the prefect and the commander of the *gendarmerie* about what had happened; P-1813: CAR-OTP-2053-0576, at 0576. *See also* CAR-OTP-2069-0035-R01, at 0045, para. 64. In addition, in a United Nations Office of the High Commissioner interview note, a witness indicates that on 28 February Anti-Balaka and youth came to attack the second deputy mayor. At noon, they had asked the deputy mayor to leave his house, and he refused: CAR-OTP-2048-0129, at 0129-0130.

³¹⁸ Witness P-1838 indicates that according to the accounts he was given, the Anti-Balaka went to kill Saleh, and Saleh tried to defend himself with bow and arrow. Saleh then tried to run towards the *gendarmerie* or MISCA. Saleh reached the *gendarmerie* compound, where the *commandant de compagnie* of the *gendarme* was present. The Anti-Balaka threatened the *commandant* saying "your life or his", after which the *commandant* did not intervene, and the Anti-Balaka killed Djido in the *gendarmerie* compound. Saleh's body was then dragged to the roundabout, where an Anti-Balaka woman cut off his genitals with a knife: P-1838: CAR-OTP-2100-0252-R01, at 0270-0271, paras 98-106. Witness P-1813 indicates that he learned from someone in the community that the Anti-Balaka killed Djido 'Salle'. Prior to this, Witness P-1813 learned from individuals in the community that Saleh was going to be targeted, and the Witness advised Saleh to leave Mbaïki. Witness P-1813 was told that the Anti-Balaka took Saleh from his house to kill him, and that Saleh was killed in front of the *gendarmerie* building by stoning, after which his genitals were cut off; P-1813: CAR-OTP-2069-0035-R01, at 0044, 0045, paras 59, and 63-69. Witness P-1595 states on a Friday morning when Witness P-1595 was in Bangui, he received a call from a family member who remained in Mbaïki, who told him that she had heard that the Anti-Balaka were preparing to kill Saleh that day. The same family member called later to tell Witness P-1595 that they had witnessed an attack against Saleh at his house by the Anti-Balaka. According to the family member, someone cut a hole at the back of the corrugated iron sheet fence at Saleh's house through which Saleh's family escaped through the bush. Saleh ran away and was pursued by the Anti-Balaka who stoned him. Saleh fell down in front of the *gendarmerie*, and it was here that he was killed by the attackers. The family member told Witness P-1595 that Saleh's body was cut up in pieces; P-1595: CAR-OTP-2104-0274-R01, at 0292-0293, paras 95-99. *See also* CAR-OTP-2059-0384, a video titled '*Mort de Dido*' [00:00:00 to 00:14:37]; CAR-OTP-2107-3014, CAR-OTP-2107-3026. The video shows individuals desecrating a corpse. CAR-OTP-2058-0573, a video titled '*Road to Genocide*' [00:29:50 to 00:31:32], discussing the killing of Saleh. In the video clip, Alexander Kouroupe, the Mbaïki head of police, is interviewed. It is indicated that suspects were arrested in association with the killing of Saleh, but that they were ultimately released as there was no place to keep them. The Chamber notes that in the video clip, the suspects are not identified. In a

137. According to a witness interviewed by the UN, following Saleh's death, a meeting was held between the *gendarmerie* and MISCA, at which time Yekatom indicated that he knew who was responsible for the killing and had sanctioned him.³¹⁹

2. *Legal findings*

138. The Chamber considers that the conduct described above amounts to (i) forcible transfer and deportation (article 7(1)(d) of the Statute) (paragraphs 129 to 134); (ii) displacement (article (8)(2)(e)(viii) of the Statute) (paragraphs 129 to 134); (iii) murder (article 7(1)(a) of the Statute) (paragraphs 136 to 137); (iv) murder (article 8(2)(c)(i) of the Statute) (paragraphs 136 to 137); (v) persecution (article 7(1)(h) of the Statute) (paragraphs 129 to 137).

3. *Individual criminal responsibility*

(i) *Yekatom*

139. Following the 5 December 2013 Attack and its aftermath, in January 2014, Yekatom's Anti-Balaka group advanced through and took over numerous villages in the Lobaye Prefecture and set up various checkpoints in the region. During this timeframe, Anti-Balaka members threatened or harassed Muslims in the region. The Chamber has found above that the Muslim individuals in Cattin and Boeing were displaced. Yekatom's Anti-Balaka group continued this pattern of crimes and threats in the Lobaye Prefecture, where many Muslims fled their villages in fear; nearly all Muslims in Mbaïki were evacuated by Chadian forces. Subsequently, a group of individuals, including members of the Anti-Balaka, killed Djido Saleh, one of the few remaining Muslims in Mbaïki. Accordingly, the Chamber considers that the actions of the Anti-Balaka constituted a continuation of its targeting of the Muslim population in

Human Rights Watch report dated March 2014, it is stated that Saleh Dido was murdered recently by the Anti-Balaka, his throat slit as he tried to find shelter with the police: CAR-OTP-2001-2308, at 2316. In a United Nations Office of the High Commissioner interview note, a witness indicates that on 28 February Anti-Balaka and youth came to attack the second deputy mayor. At noon, they had asked the deputy mayor to leave his house, and he refused. Saleh left quickly to go to MISCA, and was followed. He stopped at the *gendarmerie*, and when leaving, he was caught by the Anti-Balaka, placed on the ground, and his throat cut: CAR-OTP-2048-0129, at 0129-0130. The Chamber notes that, as pointed out by the Defence for Ngaïssona, a statement of the Under Secretary-General, dated 14 March 2014, indicates that Djido Saleh was attacked by his own neighbours: CAR-OTP-2083-0433, at 0433. However, the Chamber finds that the preponderance of evidence does not support this version of events.

³¹⁹ CAR-OTP-2053-0576, at 0577.

retribution for the crimes and abuses committed by the Seleka, based on their religious or ethnic affiliation. Furthermore, the evidence demonstrates that Yekatom was present in the areas under his control during the relevant time period, and that he was in control of the established checkpoints.

140. On this basis, the Chamber considers that Yekatom committed the aforementioned crimes jointly with others or through other persons under article 25(3)(a) of the Statute. The Chamber is further satisfied that Yekatom's acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

141. Accordingly, the Chamber deems it unnecessary to address Yekatom's alleged individual criminal responsibility under article 25(3)(c) or (d) of the Statute.³²⁰

(ii) *Ngaïssona*

142. The Chamber considers that the advance through, and takeover of, villages in the Lobaye Prefecture were a continuation of the same course of action as the 5 December 2013 Attack. The Chamber observes that the aforementioned crimes took place shortly following the 5 December 2013 Attack, and that these crimes were also perpetrated against Muslims or persons perceived to be affiliated with or supportive of the Seleka. Yekatom and his group had been operating under the Coordination, including Ngaïssona.³²¹

143. On this basis, the Chamber considers that Ngaïssona is responsible for aiding, abetting, or otherwise assisting in the commission of the crimes committed in the Lobaye Prefecture pursuant to article 25(3)(c) of the Statute, or, in the alternative, contributing in any other way to the commission of these crimes by a group of persons acting with a common purpose under article 25(3)(d)(i) or (ii) of the Statute. The Chamber is further satisfied that it is established that, as the case may be, Ngaïssona (i) fulfils the specific *mens rea* elements pertaining to these crimes;

³²⁰ DCC, paras 192-195.

³²¹ P-0487: CAR-OTP-2076-0146-R01, at 0159, 479-481, at 0162, 585-587; P-1339: CAR-OTP-2041-0741-R01, at 750, para. 65.

and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

F. Enlistment and use of children under the age of 15 years

1. Factual findings

144. The evidence before the Chamber demonstrates that, between December 2013 and August 2014, children, some of whom were under 15 years of age, were present within the armed groups taking part in the CAR's conflict, including in the ranks of the Anti-Balaka. This has been (i) widely reported by national and international NGOs, which testify to having witnessed large numbers of child soldiers in the ranks of the Anti-Balaka during several missions in the field;³²² (ii) relayed in the media;³²³ and (iii) signalled by several international organisations, which reported about the 'waves of widespread child recruitment in villages by the Anti-Balaka'.³²⁴

145. Specifically, the evidence shows the presence of children, including those under the age of 15, among Yekatom's elements. [REDACTED] was 13 years old when he was forced to join the Anti-Balaka and brought from [REDACTED] to the [REDACTED] base, where he was introduced to the chiefs, including Yekatom. [REDACTED] there 'were about 20-25 children in the entire group in the camp', including at least four children who he asserts were under 15 years of age.³²⁵

146. Children were also present in several other locations under Yekatom's control or where Yekatom was present as well, including checkpoints and barricades established by his elements. Witness P-1792 indicates that children were present 'in

³²² CAR-OTP-2001-2043, at 2052.

³²³ P-1815: CAR-OTP-2058-0581-R01, at 0594-0595, para. 78; CAR-OTP-2005-0129 [00:21:25 to 00:23:30].

³²⁴ CAR-OTP-2001-0329, at 0337, para. 42. For instance, the United Nations International Children's Emergency Fund (the 'UNICEF') reported the 'presence of 53 children (46 boys and 7 girls) aged between 11 and 17 years associated with anti-Balaka groups in Bangui's PK10 neighbourhood' as of May 2014; CAR-OTP-2001-0782, at 0784. Together with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (the 'MINUSCA'), UNICEF came to identify '1,114 children associated with anti-balaka groups' in various locations as of October 2014; CAR-OTP-2001-5386, at 5438, para. 215.

³²⁵ [REDACTED]: CAR-OTP-2110-0556-R01, at 0561-0563, 0566, 0568, 0580, 0584, paras. 34, 37-39, 40, 45, 69, 82-83, 163, 195-196. On the fact that the [REDACTED] base was under Yekatom's control, Witness [REDACTED] statement is corroborated by Witness P-1792, who states that Yekatom 'was in overall command' at the [REDACTED] camp; P-1792: CAR-OTP-2115-0216, at 0217-0218, paras 9-13.

particular at the Yamwara School base', where there were five boys whom he believes were younger than 15 years of age.³²⁶ According to Witness P-1921, there were also children around 14 to 15 years of age operating checkpoints in Boeing.³²⁷ In February 2014, Yekatom decided to move all of his elements from the Yamwara School base to several bases along the PK9-Mbaiki axis: Witness P-1792 states that the children he met at Yamwara School were 'transferred along with the whole group' to the Sekia base.³²⁸ According to Witness P-1974, Witness P-2013 and Witness P-1813, children were also present in Pissa, both at checkpoints and at the Anti-Balaka base,³²⁹ where Yekatom was present.³³⁰ Finally, children under the age of 15 were stationed also in Batalimo.³³¹

147. The evidence adduced before the Chamber substantiates that children joined the ranks of the Anti-Balaka both by force and voluntarily.³³² [REDACTED] was coerced by an Anti-Balaka element to [REDACTED] base, where he was left no choice but to stay in the group since he was threatened that he would be killed should he try to go back home.³³³ Other children voluntarily joined the Anti-Balaka following their desire for revenge caused by the crimes committed by the Seleka, which often led them to lose their parents and relatives.³³⁴

148. Once enlisted, children were used to carry out a variety of tasks. They were given the role of messengers or spies, sent to operate checkpoints set up by Anti-

³²⁶ P-1792: CAR-OTP-2115-0216, at 0222, para. 37; [REDACTED]: CAR-OTP-2110-0556-R01, at 0568, 0572-0578, paras 82-83, 111-149.

³²⁷ P-1921: CAR-OTP-2081-0072-R01, at 0090, para. 94.

³²⁸ P-1792: CAR-OTP-2115-0216, at 0223, para. 42. The presence of children at the Sekia base is further corroborated by Witness P-2013's statement; P-2013: CAR-OTP-2075-1751-R01, at 1759. Witness P-1813 also reports having seen 'very young boys from 10 years old at the Sekia' barriers; P-1813: CAR-OTP-2083-0279-R01, at 0283, paras 21-23. *See also* [REDACTED]: CAR-OTP-2110-0556-R01, at 0578-0581, paras 149-159, 165-174.

³²⁹ P-1974: CAR-OTP-2068-0222-R02, at 0225-0227, paras 20-31; P-2013: CAR-OTP-2075-1751-R01, at 1759-1760, paras 33-35; P-1813: CAR-OTP-2083-0279-R01, at 0283, paras 21-23.

³³⁰ CAR-OTP-2068-0558, at 0559, 0562, 0564. *See also* paras 151-152 below.

³³¹ P-2442: CAR-OTP-2105-0940-R01, at 0945, 0947-0948, paras 33-34, and 46-56.

³³² CAR-OTP-2055-1987, at 2210.

³³³ [REDACTED]: CAR-OTP-2110-0556-R01, at 0561-0563, paras 34-40, 46-47.

³³⁴ P-1074: CAR-OTP-2094-0228-R01, at 0265, para. 208; CAR-OTP-2066-5307 [00:06:20 to 00:06:39] and [00:20:42 to 00:21:26]; CAR-OTP-2073-0871, at 0876, 0880-0081.

Balaka groups, or simply used as a free workforce,³³⁵ taking part, for instance, in [REDACTED].³³⁶

149. Children were also forced to participate in military-style training aiming at teaching them how to behave in combat.³³⁷ [REDACTED] these training sessions were ordered by Yekatom: children were taught how to use weapons and were subjected to physical violence, which was meant to toughen them.³³⁸ [REDACTED] children were then used to injure and weaken captured enemies, prior to Anti-Balaka elements killing them.³³⁹ Finally, children were mobilised to directly participate in hostilities, including in the 5 December 2013 Attack because Yekatom considered that ‘children had to be involved’ in it.³⁴⁰

150. Anti-Balaka elements subjected children to physical and mental violence, in particular during the military-style training or with threats to take their lives if they did not to follow their orders.³⁴¹ In order to offset the sense of fear and hunger, children were given drugs at the Anti-Balaka camps, as well as during the execution of enemies and in combat.³⁴²

151. The evidence before the Chamber also shows that, starting from 2014, several demobilisation projects had been implemented by international organisations and NGOs in partnership with Anti-Balaka groups.³⁴³

152. In August 2014, Yekatom himself engaged with a local NGO, *Enfants sans frontières* (the ‘ESF’), and UNICEF in order to negotiate the demobilisation of children within the groups under his control. [REDACTED].³⁴⁴ Eventually, a demobilisation ceremony took place at the Pissa town hall on 4 August 2014:

³³⁵ CAR-OTP-2072-1202, at 1203; CAR-OTP-2075-0602, at 0607; CAR-OTP-2073-0871, at 0877, 0883; [REDACTED]; CAR-OTP-2110-0556-R01, at 0574, 0581, paras 118, 172.

³³⁶ [REDACTED]; CAR-OTP-2110-0556-R01, at 0568, para. 84, at 0579, para. 156.

³³⁷ CAR-OTP-2066-5307 [00:07:05 to 00:07:15].

³³⁸ [REDACTED]; CAR-OTP-2110-0556-R01, at 0565-0566, paras 59-66.

³³⁹ [REDACTED]; CAR-OTP-2110-0556-R01, at 0569, 0572, 0575, paras 89, 91, 92, 111, 125, 128, 129, 132, 133.

³⁴⁰ [REDACTED]; CAR-OTP-2110-0556-R01, at 0568-0569, 0574, 0581, paras 84-89.

³⁴¹ CAR-OTP-2073-0871, at 0877; [REDACTED]; CAR-OTP-2110-0556-R01, at 0565, 0566, paras 62-63, 66-68.

³⁴² CAR-OTP-2066-5307 [00:07:15 to 00:07:30] and [00:11:40 to 00:12:26]; [REDACTED]; CAR-OTP-2110-0556-R01, at 0563, 0566, 0572, 0574, 0575, paras 45, 48, 49, 109, 123, 124, 126.

³⁴³ CAR-OTP-2072-1213, at 1214; CAR-OTP-2072-1202, at 1202; CAR-OTP-2072-1210, at 1210.

³⁴⁴ P-1974: CAR-OTP-2068-0222-R02, at 0228, paras 37-41.

representatives of ESF, Yekatom and 60 children attended the ceremony, during which Yekatom signed a document freeing children associated with the movement in, *inter alia*, Pissa and Batalimo and agreeing not to re-enrol them.³⁴⁵ [REDACTED].³⁴⁶ Among these children who were released from Anti-Balaka groups in Lobaye in August 2014, at least 15 were under the age of 15 years at the moment of the demobilisation.³⁴⁷

2. *Legal findings*

153. In light of the above, the Chamber finds that children under the age of 15 years were enlisted in the ranks of the Anti-Balaka, including groups under Yekatom's command and in locations where he was present, and that they *inter alia* participated in hostilities. While some of these children have eventually been demobilised, the Chamber considers that the objective elements of the war crime of conscripting and/or enlisting children under the age of 15 years into armed groups and using them to participate actively in hostilities (article 8(2)(e)(vii) of the Statute) (paragraphs 144 to 152) are sufficiently established by the evidence.

3. *Individual criminal responsibility*

(i) *Yekatom*

154. Yekatom was aware of the presence of children, including those under 15 years of age, among his Anti-Balaka elements, since, *inter alia*, (i) newly enlisted children were introduced to him as the chief;³⁴⁸ (ii) he directly saw the children among his ranks when inspecting his elements;³⁴⁹ and (iii) he directly saw the children stationed at the Pissa and Sekia bases when visiting them.³⁵⁰ Also, Yekatom directly contributed to the perpetration of the alleged crime by, for instance, (i) using children,

³⁴⁵ P-1974: CAR-OTP-2068-0222-R02, at 0229, paras 42-46; P-2018: CAR-OTP-2071-0259-R01, at 0267, 0269; CAR-OTP-2068-0586 [00:00:00 to 00:06:48]; CAR-OTP-2107-3148; CAR-OTP-2107-3152; CAR-OTP-2068-0558, at 0559-0560.

³⁴⁶ [REDACTED]: CAR-OTP-2110-0556-R01, at 0582-0583, paras 177-180, 184.

³⁴⁷ P-2018: CAR-OTP-2071-0259-R01, at 0267, 0269, 0272-0274; CAR-OTP-2071-0279-R01; CAR-OTP-2071-0285, at 0291; CAR-OTP-2071-0302-R01, at 0303-0306; CAR-OTP-2071-0308.

³⁴⁸ [REDACTED]: CAR-OTP-2110-0556-R01, at 0562, para. 40.

³⁴⁹ P-1792: CAR-OTP-2115-0216, at 0222, para. 38.

³⁵⁰ P-2013: CAR-OTP-2075-1751-R01, at 1760, para. 36.

including those under 15 years of age to assist him at the camp bases;³⁵¹ (ii) giving orders for children to be stationed at barriers and checkpoints;³⁵² and (iii) giving orders for children to actively participate in hostilities, including in the 5 December 2013 Attack on Bangui.³⁵³

155. On this basis, the Chamber considers that Yekatom committed the aforementioned crimes jointly with others or through other persons under article 25(3)(a) of the Statute or, in the alternative, ordered the commission of these crimes pursuant to article 25(3)(b) of the Statute. The Chamber is further satisfied that Yekatom's acts establish that, as the case may be, he (i) fulfils the specific *mens rea* elements pertaining to the aforementioned crimes; and (ii) had intent and knowledge in relation to these crimes under article 30 of the Statute.

156. Accordingly, the Chamber deems it unnecessary to address Yekatom's alleged individual criminal responsibility under article 25(3)(c) or (d) of the Statute.³⁵⁴

(ii) *Ngaïssona*

157. Regarding Ngaïssona's individual criminal responsibility with respect to the crime charged, the Chamber finds that the Prosecution has not discharged its duty to demonstrate the existence of substantial grounds to believe that a link exists between the facts and Ngaïssona, in order to conclude that the latter's involvement, intent, and knowledge are established to the relevant standard.

158. The Prosecutor mainly adduces general evidence, which is neither specific to such crime nor to Ngaïssona's role in its regard, to support equally broad allegations intended to demonstrate Ngaïssona's criminal liability. Indeed, the Prosecutor asserts that (i) Ngaïssona was aware of the presence of child soldiers among the Anti-Balaka as he 'was in direct contact' with Yekatom in June 2014, as shown by CDR;³⁵⁵ (ii) the situation regarding child soldiers within the organisation was widely reported both in the media and in NGOs and international organisations' reports;³⁵⁶ (iii) Ngaïssona

³⁵¹ [REDACTED]: CAR-OTP-2110-0556-R01, at 0578, paras 152-153.

³⁵² [REDACTED]: CAR-OTP-2110-0556-R01, at 0579, para. 156.

³⁵³ [REDACTED]: CAR-OTP-2110-0556-R01, at 0568, para. 84.

³⁵⁴ DCC, paras 192-195.

³⁵⁵ DCC, para. 369.

³⁵⁶ DCC, para. 370.

would have known about the situation since Yekatom was operating under the de facto Coordination and the National Coordination, meeting and coordinating with Anti-Balaka leaders, including Ngaïssona, during the time relevant to the charge;³⁵⁷ and (iv) Ngaïssona's conduct allegedly validating Yekatom's role within the organisation, e.g. allowing him to represent the Anti-Balaka in national and international fora, demonstrates his intent and endorsement of the alleged crime.³⁵⁸

159. As it will explain in further detail below, the Chamber finds that CDR alone, in the absence of indicia as to the content and purpose of the conversation, are inadequate to support a conclusive finding; similarly, media and reporting are of very limited relevance for the same purpose.³⁵⁹ In the present instance, the Chamber notes that the Prosecutor merely refers to CDR that would demonstrate telephone contacts between Yekatom and Ngaïssona only in June 2014, which give no indication as to whether the presence of child soldiers within the Anti-Balaka and/or their use in hostilities was evoked or otherwise addressed.

160. The Chamber is also of the view that intent under article 30 of the Statute may not be supported on the sole basis that the suspect would have, 'despite his knowledge' of the alleged crime, 'validated YEKATOM's actions', in particular when the evidence does not allow one to reach this very conclusion. The Prosecutor only adduces indirect evidence, by referring to other general sections and paragraphs of the DCC regarding Yekatom's role and status within the Anti-Balaka.³⁶⁰ The evidence does not support the allegation that Ngaïssona was aware of the alleged crimes and that he nevertheless validated Yekatom's criminal conduct, nor that this alleged validation led Yekatom to achieve and/or maintain his status within the Anti-Balaka. Additionally, by merely demonstrating Yekatom's role as a representative of the Anti-Balaka on several occasions,³⁶¹ the Prosecutor does not demonstrate how this leads to the inference that Ngaïssona endorsed Yekatom's actions with regard to this specific crime.

³⁵⁷ DCC, paras 371-372.

³⁵⁸ DCC, para. 373.

³⁵⁹ See paras 179-181 below.

³⁶⁰ DCC, footnote 760.

³⁶¹ DCC, footnote 761.

161. Similarly, the Chamber finds that alleging that Yekatom was operating under the authority of the de facto Coordination and National Coordination, including with Ngaïssona as its leader, through references to other general sections and paragraphs of the DCC³⁶² is insufficient for the purpose of demonstrating that Ngaïssona was aware of the perpetration of the alleged crime. The allegations and the evidence being unrelated to the facts as outlined above, the Chamber finds that they are too broad and general in order to show a link between Ngaïssona and the Prosecutor's factual allegations.

162. Finally, the Chamber notes that the only item of evidence submitted by the Prosecutor that is specifically related to [REDACTED].³⁶³ At the outset, the Chamber stresses that such evidence is not corroborated by any additional piece of evidence and that it does not support the Prosecutor's allegation to the effect that Ngaïssona 'was aware that children below the age of 15 were present within Anti-Balaka ranks'.³⁶⁴ First, the evidence shows, at best, that Ngaïssona was made aware of the situation when it first began to be addressed through demobilisation processes in the field, and not that he possessed knowledge throughout the entire time relevant to the crime charged: parts of Witness P-0808's statement not cited by the Prosecutor reveal that he 'learned that there were children associated with Rombhot's group' only during [REDACTED] and that he didn't know if 'others in the Coordination knew that there were children in his group'.³⁶⁵ Second, this is confirmed by the fact that the evidence relates more to Ngaïssona's knowledge about the solution adopted to solve the problem of the enlistment of children within the Anti-Balaka than about such situation itself: according to Witness P-0808, referring to demobilisation procedures Ngaïssona always 'said that it was a good practice' and, together with Witness P-0808, he 'wanted to see in what regions [they] had children who were associated with armed groups. [They] thought that this could be the model [they] would use to reintegrate them back into society. However, it took a lot of resources to identify children, find NGOs to cater for them, and seek funding from international

³⁶² DCC, footnotes 758-759.

³⁶³ DCC, para. 368; P-0808: CAR-OTP-2093-0010-R01, at 0033-0035, paras 130-140.

³⁶⁴ DCC, para. 367.

³⁶⁵ P-0808: CAR-OTP-2093-0010-R01, at 0034, para. 136.

organisations which [they] could use to take care of them. This is why [they] did not continue on with it'.³⁶⁶ Accordingly, the Chamber is not persuaded that the evidence supports the Prosecutor's allegation and thus considers it insufficient to make a conclusive finding on Ngaïssona's criminal responsibility.

163. In light of the above, the Chamber is of the view that the evidence adduced by the Prosecutor does not allow it to find that Ngaïssona had knowledge of the recruitment of children within the ranks of the Anti-Balaka and/or that the de facto or National Coordination was involved in, let alone had control over, the perpetration of the alleged crime. Accordingly, the Chamber is not satisfied that the connection and/or flow of information between the direct perpetrators and either Ngaïssona or the National Coordination is established to the relevant standard.

V. The Chamber's findings on non-confirmed charges

164. In the following sections, the Chamber will address the remaining incidents charged by the Prosecutor in relation to which the Chamber does not find, for the reasons that follow, substantial grounds to believe that Ngaïssona bears individual criminal responsibility. In essence, the Chamber considers that the Prosecutor has failed to prove that the Anti-Balaka groups operating in areas far removed from the capital of Bangui were under the effective control of members of the National Coordination, including Ngaïssona. While the concerned Anti-Balaka groups were formally and politically under the umbrella of the National Coordination, as will be shown below, they retained a high degree of autonomy in terms of operational matters, so much so that the members of the National Coordination – most notably Ngaïssona – had limited, if any, knowledge and control over their criminal actions.

165. Before turning to its analysis of the evidence, the Chamber recalls its stated approach that whenever the evidence submitted by the Prosecutor does not allow for a link to be established between the charged events and the suspect, the Chamber will not address the Prosecutor's submissions regarding the alleged crimes committed by the Anti-Balaka. Therefore, in what follows, the Chamber will address strictly (i) the Prosecutor's submissions regarding Ngaïssona's contribution in relation to *all*

³⁶⁶ P-0808: CAR-OTP-2093-0010-R01, at 0033-0034, para. 130.

remaining incidents; and (ii) Ngaïssona's knowledge and intent in relation to *each* specific incident, mirroring the Prosecutor's presentation of the evidence in the DCC.

A. Ngaïssona's contribution

166. The Prosecutor asserts that Ngaïssona contributed to the charged crimes by (i) participating in the formation, organisation and development of the Anti-Balaka; (ii) coordinating, controlling, directing and/or instructing the Anti-Balaka in and around Bangui and in at least five western prefectures in CAR; (iii) providing the Anti-Balaka with means and/or money, including for the preparation of attacks and the purchase of weapons; (iv) procuring, storing and/or making ammunition available to the Anti-Balaka; (v) assisting in formulating, supporting, encouraging and promoting Anti-Balaka national policies, objectives and agendas; (vi) falsely denying, justifying and/or providing misleading information about the Anti-Balaka crimes against Muslims; (vii) permitting, condoning, ratifying, or encouraging the Anti-Balaka's use of force or the threat of use of force, coercion, and/or intimidation to unlawfully create, maintain or contribute to the persistence of enclaves in western CAR; (viii) tolerating, accepting, recognising, promoting, deploying, assigning and/or maintaining members of the Anti-Balaka who were undisciplined, harboured anti-Muslim animus, or had committed or intended to commit violent acts against Muslim civilians; and (ix) failing to take action within his ability to impede, obstruct, or frustrate the Anti-Balaka's commission of crimes against Muslim civilians.³⁶⁷

1. Ngaïssona's position as National General Coordinator and the relationship between the National Coordination in Bangui and ComZones in the field

167. The Chamber finds that some of the allegations presented by the Prosecutor are established by the evidence, as follows. On 14 January 2014,³⁶⁸ following Djotodia's resignation, Ngaïssona returned to Bangui from Cameroon and was designated

³⁶⁷ DCC, paras 127-169.

³⁶⁸ P-0808: CAR-OTP-2093-0010-R01, at 0023, para. 69; CAR-OTP-2098-0107, at 0110; P-1521: CAR-OTP-2046-0603-R01, at 0614, para. 68.

National General Coordinator of the Anti-Balaka.³⁶⁹ With a view to structuring and formalising the Anti-Balaka,³⁷⁰ a number of other positions were also created as part of a National Coordination, which included: a National Coordinator of Operations (Maxime Mokom),³⁷¹ a Deputy Coordinator of Operations,³⁷² Chief of Staff,³⁷³ Deputy Chief of Staff,³⁷⁴ Spokespersons³⁷⁵ and a Secretary General.³⁷⁶ According to Witness P-0884, the National Coordination fell under Ngaïssona's authority.³⁷⁷

168. The evidence further establishes that, as National General Coordinator, Ngaïssona designated or confirmed as ComZones the de facto leaders of the Anti-Balaka groups in Bangui and the provinces.³⁷⁸ In this regard, the Chamber notes the evidence provided by Witnesses P-0884, P-0889 and P-1521, who explain that the ComZones had their own men and once they drove the Seleka out of an area and had control over it, Ngaïssona designated them as ComZones in that area.³⁷⁹

169. According to Witnesses P-2232, P-0808, P-0966, P-0884, P-2328, P-1074, P-1847 and P-1521, Ngaïssona (i) together with other members of the National Coordination, convened meetings at his father's house in Bangui, once a month or every few weeks, with the ComZones from Bangui and the provinces to discuss the

³⁶⁹ P-0884: CAR-OTP-2072-1440-R01, at 1461-1474; P-2232: CAR-OTP-2090-0561-R02, at 0577, paras 99-100; CAR-OTP-2100-2569-R01, at 2580, paras 56-58; P-0808: CAR-OTP-2025-0324-R02, at 0337, para. 87; P-1847: CAR-OTP-2107-0102, at 0133, para. 199.

³⁷⁰ P-1521: CAR-OTP-2046-0603-R01, at 0614-0615, paras 67, 73, 75; P-1847: CAR-OTP-2107-0102, at 0133, para. 197; *see also* P-0808: CAR-OTP-2093-0010-R01, at 0027, para. 94.

³⁷¹ P-0966: CAR-OTP-2031-0241-R01, at 0256, para. 89; P-2232: CAR-OTP-2090-0561-R02, at 0578, para. 108; P-0808: CAR-OTP-2025-0324-R02, at 0338, para. 93.

³⁷² P-2232: CAR-OTP-2090-0561-R02, at 0579, para. 129; P-0808: CAR-OTP-2093-0010-R01, at 0030, para. 114.

³⁷³ P-2232: CAR-OTP-2100-2569-R01, at 2581, para. 63; CAR-OTP-2090-0561-R02, at 0578, para. 111; P-0966: CAR-OTP-2031-0241-R01, at 0257, para. 90; P-0808: CAR-OTP-2093-0010-R01, at 0030, para. 114.

³⁷⁴ P-2232: CAR-OTP-2100-2569-R01, at 2581, para. 63.

³⁷⁵ P-2232: CAR-OTP-2090-0561-R02, at 0578-0579, paras 110, 128; P-0808: CAR-OTP-2025-0324-R02, at 0337, para. 91; P-0889: CAR-OTP-2034-0463-R01, at 0468, para. 25, at 0478, para. 87.

³⁷⁶ P-2232: CAR-OTP-2090-0561-R02, at 0578, para. 112; CAR-OTP-2100-2569-R01, at 2582, para. 73; P-0889: CAR-OTP-2034-0463-R01, at 0466, para. 13.

³⁷⁷ P-0884: CAR-OTP-2072-1739-R01, at 1753, 484.

³⁷⁸ P-0884: CAR-OTP-2072-1739-R01, at 1753, 462-466, at 1763-1766, 832-916.

³⁷⁹ P-0884: CAR-OTP-2072-1739-R01, at 1763-1766, 832-916; P-0889: CAR-OTP-2034-0463-R01, at 0475, para. 69; P-1521: CAR-OTP-2046-0603-R01, at 0620, para. 100.

situation in the field and the condition of their elements;³⁸⁰ (ii) ComZones both in Bangui and the provinces reported regularly, by phone, to Ngaïssona and Maxime Mokom³⁸¹ on what was happening in their sectors, including if they were under attack or carried out an attack;³⁸² (iii) ComZones were required to obtain the approval of the National Coordination if they wanted to organise an attack against the Seleka and had to wait for a decision from Ngaïssona or Maxime Mokom;³⁸³ (iv) both Ngaïssona and Maxime Mokom made decisions and gave orders and Maxime Mokom received orders from Ngaïssona;³⁸⁴ and (v) when Maxime Mokom gave orders regarding an attack,³⁸⁵ he updated Ngaïssona (Ngaïssona, Maxime Mokom and Bernard Mokom were permanently in contact and had private meetings [REDACTED]).³⁸⁶ In addition, Ngaïssona had the power to discipline and replace ComZones, which he did, at times.³⁸⁷

170. While the aforementioned evidence does confirm the Prosecutor's allegations as to the role of Ngaïssona as National General Coordinator, the Chamber nevertheless

³⁸⁰ P-2232: CAR-OTP-2100-2569-R01, at 2588, paras 108, 111; P-0808: CAR-OTP-2025-0324-R02, at 0336-0337, para. 86, at 0342, para. 120; CAR-OTP-2093-0010-R01, at 0027, para. 94, at 0036, para. 145; *see also* P-0884: CAR-OTP-2072-1739-R01, at 1756-1758.

³⁸¹ When neither Ngaïssona nor Maxime Mokom could be reached, other members of the National Coordination could receive the reports and were responsible to relay the information, on the same day, to Ngaïssona or Maxime Mokom; P-2232: CAR-OTP-2100-2569-R01, at 2583-2584, paras 78-81; Corroborated by P-0808: CAR-OTP-2093-0010-R01, at 0030, para. 114.

³⁸² P-2232: CAR-OTP-2100-2569-R01, at 2581, para. 66, at 2583, para. 78, at 2584, para. 82, at 2591, para. 131. Corroborated by P-0808: CAR-OTP-2093-0010-R01, at 0029-0030, paras 105-106, 114; P-0966: CAR-OTP-2031-0241-R01, at 0257, para. 89, at 0260, para. 107; CAR-OTP-2100-2569-R01, at 2591, paras 130-131; P-0884: CAR-OTP-2072-1739-R01, at 1761, 742-749; P-2328: CAR-OTP-2099-0165-R01, at 0178, para. 66; P-0801: CAR-OTP-2074-2369-R01, at 2375-2376, 196-224.

³⁸³ P-2232: CAR-OTP-2100-2569-R01, at 2585, para. 87.

³⁸⁴ P-2232: CAR-OTP-2100-2569-R01, at 2580, para. 59, at 2582-2583, paras 71, 74; CAR-OTP-2090-0561-R02, at 0582, para. 165; P-0884: CAR-OTP-2072-1739-R01, at 1756-1757; CAR-OTP-2072-1913-R01, at 1919-1920; P-1074: CAR-OTP-2094-0228-R01, at 0241, para. 75; P-0808: CAR-OTP-2093-0010-R01, at 0029, para. 106; CAR-OTP-2025-0324-R02, at 0338, para. 93, stating that Maxime Mokom oversaw and gave orders to the ComZones in the country and reported directly to Ngaïssona; P-1847: CAR-OTP-2107-0102, at 0133, para. 198, stating that 'After NGAÏSSONA's arrival in BANGUI, all the Anti-Balaka gathered at his residence in BOY-RABE where they were given clear instructions about what they had to do from NGAÏSSONA, who was their coordinator'.

³⁸⁵ P-2232: CAR-OTP-2100-2569-R01, at 2578, para. 48 [REDACTED]; *see also* at 2494, [REDACTED].

³⁸⁶ P-2232: CAR-OTP-2100-2569-R01, at 2579-2580, paras 54-55, at 2587, para. 97. Corroborated by P-0808: CAR-OTP-2025-0324-R02, at 0338, para. 93, stating that Maxime Mokom 'wouldn't have carried out any significant operation without Ngaïssona's knowledge and approval'; P-1521: CAR-OTP-2046-0603-R01, at 0616, para. 80.

³⁸⁷ P-1858: CAR-OTP-2063-0050-R01, at 0068, para. 109; P-0884: CAR-OTP-2072-1739-R01, at 1763, 832-833, at 1766, 917-943.

considers that the Prosecutor has not proven to the required threshold that a sufficiently strong link existed between Ngaïssona and the National Coordination in Bangui, on the one hand, and the ComZones in the field, particularly in the provinces, on the other hand. This conclusion is based on the following considerations.

171. First, according to Witnesses P-0884, P-0889 and P-1521, Ngaïssona designated the ComZones in the provinces *after* the Anti-Balaka drove out the Seleka and took control of an area.³⁸⁸ In other words, Ngaïssona designated the *de facto* leaders of the Anti-Balaka groups on the ground as ComZones *after* the attacks took place. Witness P-1962, who provides evidence on the attack on Boda, confirms that Ngaïssona officially appointed the *de facto* ComZones and Coordinators in Boda in late June/July 2014, well after the attack on Boda took place.³⁸⁹

172. Second, according to Witness P-2232, ComZones were required to obtain the approval of the National Coordination if they wanted to organise an attack and had to wait for a decision from Ngaïssona or Maxime Mokom.³⁹⁰ However, the statement of Witness P-2232 on this point is general and it is contradicted by the evidence which relates specifically to the incidents charged by the Prosecutor. Witness P-1962, who provides evidence on the attack on Boda, states that the leaders of the attack did not have any contact with Ngaïssona before the attack (only after) and were therefore not acting under instructions from him.³⁹¹ Similarly, according to Witness P-2232, the leaders of the attack on Guen attacked the village without having received orders from Maxime Mokom.³⁹²

173. Last, the Chamber observes that the evidence tendered by the Prosecutor, as summarised above, is general in nature, describing the role of Ngaïssona and the relationship between the National Coordination and ComZones in broad terms. As such, it does not allow the Chamber to establish the link between Ngaïssona and the National Coordination in Bangui, on the one hand, and the Anti-Balaka in each specific location charged by the Prosecutor, on the other hand. What is more, when

³⁸⁸ See para. 168.

³⁸⁹ P-1962: CAR-OTP-2068-0037-R01, at 0046, para. 40, at 0055, para. 90, at 0057-0060, paras 99-111.

³⁹⁰ See para. 169.

³⁹¹ P-1962: CAR-OTP-2068-0037-R01, at 0056-0057, para. 95.

³⁹² P-2232: CAR-OTP-2090-0561-R02, at 0576, para. 94.

more specific evidence exists, it tends to contradict the more general statements. The Chamber recalls at this juncture its above stated approach that ‘it is conceptually and methodologically appropriate to address the issue of the individual criminal responsibility of the suspects by looking at their alleged contributions in respect of each of the charged incidents’.³⁹³ The Chamber is not in a position to do so on the basis of the evidence presented by the Prosecutor.

2. *Ngaïssona’s role as of January 2014*

174. According to the evidence presented by the Prosecutor, after becoming National General Coordinator, Ngaïssona (i) contributed money to ComZones in Bangui and the provinces for food, fuel, funerals, medical treatment, transportation, weapons and ammunition;³⁹⁴ (ii) sought to secure the supply of ammunition, on at least one occasion;³⁹⁵ (iii) together with Mokom, coordinated the flow of supplies (such as ammunition or medication) between ComZones, by distributing or redistributing the supplies according to the needs of the different ComZones as they arose on the ground;³⁹⁶ and (iv) together with Mokom and Yekatom, sent Anti-Balaka elements from Bangui to the provinces as reinforcements, who brought with them weapons, ammunition and military expertise.³⁹⁷

175. Having assessed the aforementioned evidence, the Chamber considers that the Prosecutor has not proven to the required threshold that Ngaïssona contributed to the crimes committed at the Boeing Muslim Cemetery, in Boy-Rabe (Bangui), Yaloké, Gaga, Zawa, Bossemtélé, Boda, Carnot, Berbérati and Guen for the following reasons.

³⁹³ See para. 57.

³⁹⁴ P-2232: CAR-OTP-2090-0561-R02, at 0577-0583, paras 102-136, 146, 159-163, 168-171; CAR-OTP-2100-2569-R01, at 2585-2586, paras 89-91; P-0808: CAR-OTP-2093-0010-R01, at 0023, para. 71; CAR-OTP-2025-0324-R02, at 0336-0337, para. 86; P-0966: CAR-OTP-2031-0241-R01, at 0255, para. 78, at 0257, para. 91; P-0884: CAR-OTP-2072-1715-R01, at 1731-1732, 550-604; CAR-OTP-2072-1739-R01, at 1740-1749; CAR-OTP-2072-1773-R02, at 1774-1777; CAR-OTP-2072-1814-R01, at 1816-1818, 55-115; P-1074: CAR-OTP-2094-0228-R01, at 0256, para. 162; P-1521: CAR-OTP-2046-0603-R01, at 0615, para. 73; P-0954: CAR-OTP-2048-0171, at 0189, para. 106; P-1339: CAR-OTP-2041-0741-R01, at 0755, para. 99, stating that, in 2016, Ngaïssona was no longer giving money for weapons and ammunition, suggesting that before he had.

³⁹⁵ P-2328: CAR-OTP-2099-0165-R01, at 0187-1088, paras 113-116 and Annex 4 to the statement.

³⁹⁶ P-2232: CAR-OTP-2100-2569-R01, at 2584-2586, paras 83-84, 88-93; see also P-2328: CAR-OTP-2099-0165-R01, at 0174, paras 47-48.

³⁹⁷ P-2328: CAR-OTP-2099-0165-R01, at 0178, para. 65.

176. The Chamber has before it numerous witness statements and transcripts of witness interviews according to which Ngaïssona continued to finance the Anti-Balaka after his appointment as National General Coordinator. According to some of these witnesses, albeit fewer, this included the purchase of weapons and ammunition. However, once again, the evidence tendered by the Prosecutor is general in nature and does not allow the Chamber to establish, to the required threshold, that Ngaïssona contributed specifically to the alleged crimes committed by the Anti-Balaka in the charged locations mentioned above. More specifically, the evidence presented by the Prosecutor does not allow the Chamber to trace Ngaïssona's financial contribution, or otherwise, to the Anti-Balaka groups operating in those locations. Furthermore, to the extent that the Chamber is in possession of more specific evidence, such evidence either (i) links Ngaïssona to other Anti-Balaka groups than the ones in the aforementioned locations; or (ii) it contradicts the more general statements. In this regard, the Chamber notes, for example, that according to Witness P-1962, Ngaïssona and the National Coordination did not contribute anything to the local Coordination in Boda, neither money, nor weapons.³⁹⁸ Further, Witnesses P-0889, P-1521 and P-1719 also state that the National Coordination made no provision of arms, ammunition, money, fuel or food and the ComZones were responsible for procuring their own ammunition.³⁹⁹

177. Similarly, while several witnesses state, in general terms, that Ngaïssona issued orders and instructions, the evidence tendered by the Prosecutor does not reveal any examples relating to the crimes allegedly committed in the aforementioned locations. Rather, such orders and instructions relate to:

- destroying a mosque in Bangui's PK12 neighbourhood in April 2014;⁴⁰⁰
- fighting patrols of MINUSCA, Sangaris and the police and attacking the *Gendarmerie Nationale*;⁴⁰¹

³⁹⁸ P-1962: CAR-OTP-2068-0037-R01, at 0055, para. 89, at 0057, para. 97.

³⁹⁹ P-0889: CAR-OTP-2034-0463-R01, at 0478, para. 75; P-1521: CAR-OTP-2046-0603-R01, at 0617, para. 84; P-1719: CAR-OTP-2062-0039-R01, at 0061, para. 138.

⁴⁰⁰ P-2232: CAR-OTP-2090-0561-R02, at 0588, paras 205-207.

⁴⁰¹ P-2232: CAR-OTP-2090-0561-R02, at 0582, para. 165; P-2328: CAR-OTP-2099-0165-R01, at 0195, para. 154.

- erecting roadblocks;⁴⁰²
- recovering weapons in Bangui;⁴⁰³
- conducting military police operations;⁴⁰⁴
- conducting missions in the provinces (e.g. as part of peace and reconciliation efforts);⁴⁰⁵ or
- permitting the free flow of people and goods in CAR in accordance with international humanitarian law.⁴⁰⁶

B. Ngaïssona's intent and knowledge: general considerations

178. The Chamber will make general remarks concerning its approach to the evidence before turning to its assessment of Ngaïssona's intent and knowledge in relation to the alleged crimes in each of the following locations: the Boeing Muslim Cemetery, Boy-Rabe (Bangui), Yaloké, Gaga, Zawa, Bossempaté, Boda, Carnot, Berbérati and Guen.

179. The Chamber notes that the Prosecutor relies extensively on (i) Call Data Records (CDRs); (ii) media reports; and (iii) post facto validation of members of the Anti-Balaka to argue that Ngaïssona intended and knew or would have been aware of the alleged crimes concerned.⁴⁰⁷

180. First, regarding to the CDRs, the Chamber observes that such records do not provide the Chamber with any kind of indicia as to the content and purpose of the conversations between Ngaïssona and the ComZones or de facto leaders of the Anti-Balaka groups on the ground. They only allow the Chamber to establish that Ngaïssona had telephone conversations with such persons, at a particular point in

⁴⁰² P-0966: CAR-OTP-2031-0241-R01, at 0258, para. 99; P-0884: CAR-OTP-2072-1814-R01, at 1818-1819; CAR-OTP-2008-0805; P-0954: CAR-OTP-2048-0171-R01, at 0183-0184, paras 70-74; P-1961: CAR-OTP-2090-0067-R01, at 0082, para. 89.

⁴⁰³ P-2328: CAR-OTP-2099-0165-R01, at 0194, para. 150.

⁴⁰⁴ CAR-OTP-2025-0356, at 0356-0360.

⁴⁰⁵ P-1858: CAR-OTP-2063-0050-R01, at 0068, para. 112; CAR-OTP-2108-0050; P-1962: CAR-OTP-2068-0037-R01, at 0061, para. 115.

⁴⁰⁶ P-0808: CAR-OTP-2093-0010-R01, at 0029, para. 107; CAR-OTP-2029-0171; P-1048: CAR-OTP-2094-0654-R01, at 0658-0662.

⁴⁰⁷ DCC, paras 289, 294, 333, 369, 370, 373, 434, 437, 440, 464, 471, 501, 506, 509, 531, 537, 565, 574, 607, 608, 611.

time. However, this alone does not allow the Chamber to make any conclusive findings to the required threshold that Ngaïssona knew about the alleged crimes being committed. When not accompanied by further evidence as to the content and purpose of the conversations concerned, CDRs are inadequate to prove that there are substantial grounds to believe that Ngaïssona knew about the alleged crimes. This is even less so when the CDRs only establish contact between members of the National Coordination other than Ngaïssona and the ComZones or de facto leaders of the Anti-Balaka groups on the ground.

181. Second, the Chamber finds that media reports are also of limited relevance to support a finding to the required threshold that Ngaïssona knew of the alleged crimes committed as (i) there is no indication that such reports reached Ngaïssona; (ii) the information contained in them is limited; and (iii) it has not been demonstrated that they are sufficiently reliable, especially as regards their assumptions as to which groups were responsible for the events.

182. Finally, the Chamber notes that the Prosecutor argues, at different points throughout the DCC, that Ngaïssona's intent is proven, *inter alia*, by the fact that he validated the conduct of the direct Anti-Balaka perpetrators by, for example, sanctioning their continued membership in the group, affirming their positions as ComZones, or appointing them as representatives of the Anti-Balaka at peace negotiations. However, the Chamber notes that this alleged validation occurred *after* the attacks in the locations concerned took place, sometimes even several months later, as will be further highlighted below. The Chamber considers that such post facto validation is inadequate to prove that Ngaïssona had the required intent in relation to the crimes allegedly committed.

C. Boeing Muslim cemetery

183. Pursuant to the approach set out above,⁴⁰⁸ the Chamber considers that it is not required to address the Prosecutor's submissions regarding the alleged crimes committed by the Anti-Balaka at the Boeing Muslim Cemetery, seeing as the

⁴⁰⁸ See para. 59.

Prosecutor has not established that there are substantial grounds to believe that Ngaïssona bears individual criminal responsibility for these alleged crimes.

184. The Prosecutor asserts that Ngaïssona knew of the blockade at the Muslim cemetery in Boeing, either ‘directly or through members of the National Coordination from its inception and throughout its duration until 2016’.⁴⁰⁹ In this regard, the Prosecutor specifically submits that (i) the Anti-Balaka perpetrators were members of the de facto Coordination, National Coordination or linked to them; (ii) Ngaïssona would have been made aware of the blockade by Anti-Balaka commanders or ComZones, Maxime Mokom, international forces (notably, MINUSCA/MISCA) or the transitional government; and (iii) Ngaïssona would have been made aware of the blockade from media reports and given his proximity to the Muslims confined in PK5 who were being denied access to the cemetery.⁴¹⁰ The Prosecutor further submits that Ngaïssona intended and endorsed the blockade of the Muslim cemetery which is shown by (i) his statements referring to the Muslims confined in PK5 as ‘*malfrats*’; (ii) his disciplining of Sébastien Wenezoui when he sought to secure access to the cemetery for Muslims; (iii) his participation together with Maxime Mokom in negotiations in mid-2015 regarding the access to the cemetery; and (iv) his failure to condemn or withdraw the Anti-Balaka forces blocking access to the cemetery.⁴¹¹

185. First, the Chamber observes that the evidence tendered by the Prosecutor does not clearly establish that the Anti-Balaka leading the elements who blocked access to the cemetery were indeed members of the de facto Coordination, or later, the National Coordination. While Witness P-1847 states that ‘WENEZOUÏ and his men [...] blocked access to the Muslim cemetery in BOEING’,⁴¹² according to Witness P-1074 it was ‘Rambo and his men’ who did so⁴¹³ and one video tendered by the Prosecutor shows Anti-Balaka lieutenant Yvone Donoh in charge of the area.⁴¹⁴

⁴⁰⁹ DCC, paras 284-285.

⁴¹⁰ DCC, paras 286-289.

⁴¹¹ DCC, paras 290-294.

⁴¹² P-1847: CAR-OTP-2107-0102-R01, at 0131, para. 182.

⁴¹³ P-1074: CAR-OTP-2094-0228-R01, at 0259, para. 178, at 0273-0274, para. 261.

⁴¹⁴ CAR-OTP-2065-3228 and video transcript CAR-OTP-2107-0016, at 0018, 16-17 (on Yvone Donoh, *see* CAR-OTP-2070-0467-R01).

186. Second, while Witnesses P-0801 and P-0884 state that MINUSCA and the transitional government were in regular contact with Ngaïssona and kept him informed,⁴¹⁵ the evidence does not establish that the blockade at the Muslim cemetery was discussed at any point in time. Further, the mere fact that Ngaïssona was living in Bangui throughout the time of the blockade is insufficient to establish that he had knowledge of the blockade.

187. Third, the Chamber notes that the evidence related to Sébastien Wenezoui having been considered a traitor for seeking to open access to the cemetery, makes no mention of Ngaïssona. Rather, it states in general that ‘[Wenezoui] *a été considéré comme un traître*’ and ‘[h]e was called a traitor for this by those in [Boeing]’.⁴¹⁶ The Prosecutor further presents a decision signed by Ngaïssona suspending Sébastien Wenezoui from his functions for high treason and insubordination, among others.⁴¹⁷ However, this decision is dated 18 August 2014 and, according to Witness P-1193, Sébastien Wenezoui sought to open access to the cemetery sometime before mid-May 2014.⁴¹⁸ Given the time span between the two events, the Chamber finds it difficult to link his suspension with his efforts to open access to the cemetery.

188. Lastly, the Chamber refers to the statement of Witness P-1394 relied upon by the Prosecutor to support the allegation that Ngaïssona intended the blockade of the Boing Muslim cemetery. According to Witness P-1394, Ngaïssona and Mokom indeed participated in meetings during which the issue of the enclave in PK5 was raised, but the Witness further refers to discussions about opening access to the cemetery in Bimbo 3, not the Boeing Muslim cemetery.⁴¹⁹

D. Boy-Rabe base

189. With regard to the alleged crimes in Boy-Rabe, the Chamber finds that Ngaïssona’s individual criminal responsibility is not established to the relevant

⁴¹⁵ P-0801: CAR-OTP-2074-2335-R01, at 2347-2348; CAR-OTP-2074-2195-R01, at 2199, 126-132; P-0884: CAR-OTP-2072-1479-R01, at 1483, 124-148; CAR-OTP-2072-1440-R01, at 1459, 635-654.

⁴¹⁶ P-1193: CAR-OTP-2045-0048-R02, at 0054, para. 36; P-0888: CAR-OTP-2031-0217-R01, at 0225, para. 49.

⁴¹⁷ CAR-OTP-2101-4166, at 4169.

⁴¹⁸ P-1193: CAR-OTP-2045-0048-R02, at 0054, paras 36-37.

⁴¹⁹ P-1394: CAR-OTP-2073-0775-R01, at 0783, paras 45-60.

standard as the available evidence does not demonstrate the existence of an actual link between the Prosecutor's factual allegations and the suspect.

190. The Prosecutor asserts that the direct perpetrators of the alleged crimes committed in Boy-Rabe were Anti-Balaka elements under the command of Thierry Lebene (also known as '12 Puissances'), a notorious member of the organisation who was a ComZone, represented the Anti-Balaka at various talks and meetings and who would have instructed his men to carry out the crimes charged.⁴²⁰

191. As regards Ngaïssona's involvement, intent, and knowledge of the alleged crimes, the Prosecutor submits that (i) Thierry Lebene was close to Ngaïssona and reported to him, as proven by the fact that they attended meetings together and that Thierry Lebene would seek Ngaïssona's advice;⁴²¹ (ii) the alleged crimes were committed by Thierry Lebene and his men at Ngaïssona's house in Boy-Rabe, which he allowed Thierry Lebene to use as his base;⁴²² (iii) Thierry Lebene was in contact with the National Coordination, including with Ngaïssona, Mokom and Yekatom, during the period when the crimes were allegedly committed;⁴²³ and (iv) Ngaïssona validated Thierry Lebene's actions by accepting his continued membership in the organisation, by recognising him as a key member of the Anti-Balaka and by inviting him to represent them at high-level meetings and negotiations.⁴²⁴

192. The Chamber observes that, to support the allegation that Ngaïssona and Thierry Lebene were close, the Prosecutor relies on the fact that Thierry Lebene used to attend meetings at Ngaïssona's house, as reported by Witnesses P-2232, P-1962 and P-1961, with Witness P-1961 drawing his own inference as regards their closeness.⁴²⁵ In the view of the Chamber, Thierry Lebene's presence at these meetings alone, in the absence of any information as to the topics discussed during such meetings, is insufficient to find that Ngaïssona knew about the crimes allegedly committed by Thierry Lebene and his elements in Boy-Rabe. This is even more so in

⁴²⁰ DCC, paras 324-327, 331.

⁴²¹ DCC, paras 331-332.

⁴²² DCC, para. 330.

⁴²³ DCC, para. 333.

⁴²⁴ DCC, para. 334.

⁴²⁵ P-2232: CAR-OTP-2090-0561-R02, at 0577-0578, paras 102-115; P-1962: CAR-OTP-2068-0037-R01, at 0057-0058, paras 99-103; P-1961: CAR-OTP-2090-0067-R01, at 0087, para. 124.

light of the fact that the meetings referred to in the evidence are either anterior (January 2014) or posterior (June 2014) to the time relevant to the crimes charged.

193. Similarly, the available evidence is too vague and lacking of detailed information about the allegation that Thierry Lebene reported to Ngaïssona and used to seek advice from him. The Prosecutor relies, *inter alia*, on (i) Witness P-0287's statement, in which Thierry Lebene stated that he reported to Ngaïssona, although '[h]e did not explain how';⁴²⁶ (ii) Thierry Lebene's statement in which he recounts once having acted upon Ngaïssona's instructions to keep a prisoner captive,⁴²⁷ and having requested Ngaïssona's advice on how to support his elements, to which Ngaïssona only responded in general and abstract terms;⁴²⁸ and (iii) a press article in which it is inferred from the assumption that Thierry Lebene was 'directing operations' from Ngaïssona's house that Thierry Lebene reported to Ngaïssona.⁴²⁹ The Chamber finds that these statements do not go beyond mere assertions: their vagueness and lack of concrete information as regards the relationship between Thierry Lebene and Ngaïssona, as well as the absence of any link between these statements and the alleged crimes, make it impossible for the Chamber to determine that the former reported to the latter. Additionally, the Chamber recalls its findings to the effect that media and open source reporting alone are of very limited relevance to support a conclusive finding, especially when no other pieces of evidence are found to demonstrate the Prosecutor's allegations to the relevant standard.⁴³⁰

194. The Prosecutor also states that Ngaïssona knew about the alleged crimes since they would have taken place at Ngaïssona's house in Boy-Rabe.⁴³¹ However, the Chamber finds that, irrespective of any finding on the place of commission of the alleged crimes, the evidence does not demonstrate that Ngaïssona had any knowledge about the alleged crimes that Thierry Lebene was carrying out at his house in Boy-Rabe, nor does it suggest that Ngaïssona intended Thierry Lebene to stay at that house

⁴²⁶ P-0287: CAR-OTP-2115-0239-R01, at 0256, para. 78.

⁴²⁷ P-1048: CAR-OTP-2094-0734-R01, at 0755-0759, 735-915; CAR-OTP-2094-0761-R01, at 0762-0765, 8-142.

⁴²⁸ P-1048: CAR-OTP-2094-0573-R01, at 0579-0580, 211-263.

⁴²⁹ CAR-OTP-2001-4441, at 4442.

⁴³⁰ See para. 181.

⁴³¹ DCC, paras 329-330.

in order for him to be able to commit the alleged crimes. As to the Prosecutor's allegation that during the time relevant to the crimes charged Thierry Lebene was in contact with the National Coordination, including Ngaïssona who, thus, would have known about their commission,⁴³² the Chamber notes that this allegation is only supported by CDRs which, as already stated, in absence of any information as to the content and purpose of the conversation, are inadequate to support any conclusive finding.⁴³³

195. Finally, regarding the arguments submitted by the Prosecutor relating to Ngaïssona's intent and endorsement of the crimes charged, the Chamber underlines anew the inadequacy of post facto validation conducts.⁴³⁴ The evidence adduced to support the claim that Ngaïssona 'recognised Lebene as a key-member of the Anti-Balaka' does not demonstrate that the rank of Thierry Lebene within the organisation was actually a result of such recognition on Ngaïssona's behalf. Moreover, while the Prosecutor states that Ngaïssona 'invited LEBENE to represent the Anti-Balaka at high-level meetings and negotiations', the evidence does not reveal more than Thierry Lebene's participation in these events, namely meetings with interim president Samba-Panza in January 2014 and the July 2014 Brazzaville summit: no proof is given of Thierry Lebene's role as representative of the Anti-Balaka or of Ngaïssona's invitation to that end.

196. Additionally, the Chamber notes that the evidence is insufficient to demonstrate that the alleged crimes were perpetrated pursuant to an anti-Muslim criminal policy; rather, they may, at best, amount to isolated acts.

197. Accordingly, the Chamber is not satisfied that the connection and/or flow of information between the Anti-Balaka direct perpetrators on the ground in Boy-Rabe and Ngaïssona are established to the relevant standard.

⁴³² DCC, para. 333.

⁴³³ See paras 179-180.

⁴³⁴ See para. 182.

E. Yaloké, Gaga and Zawa

198. Pursuant to the approach set out above,⁴³⁵ the Chamber considers that it is not required to address the Prosecutor's submissions regarding the alleged crimes committed by the Anti-Balaka in Yaloké, Gaga and Zawa,⁴³⁶ seeing as the Prosecutor has not established that there are substantial grounds to believe that Ngaïssona bears individual criminal responsibility for these alleged crimes.

199. The Prosecutor asserts that Ngaïssona 'knew either directly or through members of the National Coordination about the situation in [Gaga, Zawa] and [Yaloké] from the initial attack throughout the duration of the [Yaloké] enclave'.⁴³⁷ In this regard, the Prosecutor specifically submits that (i) Severin Ndoguia (also known as 'Le Bleu') and Richard Bozando, the alleged leaders of the Yaloké Anti-Balaka Group, were in contact with the Anti-Balaka National Coordination and Ngaïssona; (ii) Maxime Mokom was informed that Severin Ndoguia had attacked Yaloké; (iii) members of the National Coordination visited Severin Ndoguia in Yaloké and key Anti-Balaka ComZones conducted official missions to Yaloké; (iv) an Anti-Balaka National Coordination Facebook account refers to the events in Yaloké; and (v) the situation in Yaloké was extensively covered in the media.⁴³⁸

200. The Chamber notes that the Prosecutor has not tendered any evidence indicating that Ngaïssona was informed about any contacts between members of the Anti-Balaka National Coordination and Severin Ndoguia or Richard Bozando. The Chamber also

⁴³⁵ See para. 59 above.

⁴³⁶ The Prosecutor alleges that the Yaloké Anti-Balaka group (i) attacked Gaga on or about 17 January 2014 and that '[t]he attack claimed the lives of several Muslim civilians'; (ii) attacked Zawa on or about 20 January 2014 and 'killed Muslims civilians and forced the survivors to flee to neighbouring towns'; (iii) attacked Yaloké on or about 22 January 2014 and again on or about 26 January 2014, and that, over the course of the two attacks and in the following days, 'several Muslim civilians' were killed and 'several civilians' were shot; (iv) issued renewed ultimatums, as a result of which MISCA and the Chadian military evacuated the Muslim population mainly to Cameroon and Chad; and (v) '[pillaged] and [burned] any property left behind by the fleeing Muslims'. In addition, the Prosecutor argues that (i) in or about April 2014, the Yaloké Anti-Balaka group attacked a group of displaced Peuhls in the bush 'killing several men' and eventually taking 'some 500-600 of them, mostly elderly, women, and children, [...] to an enclave in the quartier sous-manguier in [Yaloké]'; and (ii) these Peuhls 'were subject to dire conditions', resulting in 'over 40 people [dying] of malnourishment and pulmonary and other infections over a few months'. Lastly, the Prosecutor submits that '[a]pproximately two weeks after the attacks on [Yaloké] elements of the [Yaloké Anti-Balaka] Group raped a Muslim girl'. See DCC, paras 407-421.

⁴³⁷ DCC, para. 433.

⁴³⁸ DCC, paras 434-437.

recalls that, in the absence of any specific indication as to the nature and content of the alleged conversations, the Call Data Records are of limited relevance, even assuming *arguendo* that they demonstrate contact between Ngaïssona and Severin Ndoguia or Richard Bozando. Furthermore, Witness P-2232, who states that Maxime Mokom told [REDACTED] that ‘YALOKE ‘has fallen’ after LE BLEU, PAPA LENDI and others had successfully attacked YALOKE’, indicates that Maxime Mokom would inform Bernard Mokom of a village falling into the hands of the Anti-Balaka, but does not mention Ngaïssona being informed of or otherwise involved in these events.⁴³⁹

201. The Chamber further considers that the evidence does not establish that the visits by a member of the Anti-Balaka National Coordination to Yaloké were connected to the alleged crimes. The aim of one such visit was to settle a dispute between two Anti-Balaka members and, as confirmed by the Sangaris representative, to promote peace.⁴⁴⁰ For the other alleged visits by a member of the Anti-Balaka National Coordination to Yaloké, the Prosecutor relies on Call Data Records,⁴⁴¹ which carry limited weight for the reasons set out above. In addition, these visits would have occurred in March 2014 and May 2014, i.e. after the majority of the alleged crimes had already been committed. As to the allegation that Anti-Balaka ComZones conducted official missions to Yaloké, Witness P-0808 indicates that he ‘believe[s] that some missions took place to [...] YALOKE’ and Witness P-2251 states that Thierry Lebene ‘would also travel to [...] YALOKE’.⁴⁴² These statements are too general to support the inference that the alleged missions were related to the alleged crimes. In any event, the Prosecutor has not pointed to any evidence establishing that Ngaïssona was either involved in, or informed of, any of these visits or missions.

202. Lastly, the Chamber considers that Facebook entries must be assigned limited weight in the absence of evidence led as to the identity of the person using the account

⁴³⁹ P-2232: CAR-OTP-2100-2569-R01, at 2578, para. 48.

⁴⁴⁰ CAR-OTP-2092-1018, at 1018; *see also* P-2282: CAR-OTP-2106-0759-R01, at 0780-0781, paras 114-119.

⁴⁴¹ DCC, para. 435, footnote 890.

⁴⁴² P-0808: CAR-OTP-2093-0010-R01, at 0026, para. 90; P-2251: CAR-OTP-2093-0045-R01, at 0074, para. 190.

entitled ‘coordination des Anti-balaka’.⁴⁴³ The Chamber also recalls that it has found that media reporting about the alleged crimes are of limited relevance.⁴⁴⁴

203. The Prosecutor further alleges that, as opposed to condemning or acting against the crimes allegedly committed by the Yaloké Anti-Balaka group, Ngaïssona ‘validated the YALOKE Group’s actions and accepted NDOGUIA’s and BOZANDO’s continued membership in the Anti-Balaka by officially recognising them within the group’s ranks and by inviting them to Anti–Balaka meetings’.⁴⁴⁵

204. In the view of the Chamber, the evidence brought forward by the Prosecutor is too indeterminate to support the inference that the appointment of Severin Ndoguia and Richard Bozando had any connection to the alleged crimes. Witness P-0884, who states that ‘colonel RICHARD’ and ‘LEBLEU’ were the Yaloké ComZones, indicates that he was not aware of an attack on Yaloké on 10 January 2014, as they were focused on the N’Djamena summit and had no knowledge of the events in the provinces.⁴⁴⁶ Furthermore, the Chamber observes that Witness P-1847 and Witness P-2232 state that ‘*LEBLEU rendait compte à Bernard MOKOM et à NGAÏSSONA*’ and that ‘‘RICHARD’’ was [...] reporting to MOKOM even when [REDACTED] in ZONGO’, respectively.⁴⁴⁷ However, in view of the general nature of these statements, the Chamber is not persuaded that the evidence establishes that these attacks were planned or coordinated by either Maxime Mokom or Ngaïssona. Lastly, the

⁴⁴³ In addition, the Chamber notes that the Prosecutor alleges that ‘a 25 March 2014 entry confirms the Anti Balaka having “chased away” Peuhls in the areas of YALOKE-SIBUT-GAGA-BOSSEMPTELE-BOZOOM’. However, the relevant entry reads as follows: ‘*j’etais en déplacement vers yaloke sibute gaga bosempatéle bozoum dont j’ai fait sortir les peules de leurs cachète*’. See CAR-OTP-2066-1601, at 1698. In the view of the Chamber, this entry does not refer to Peuhls being chased away.

⁴⁴⁴ The Chamber further observes that the media reports invoked by the Prosecutor either post-date the majority of the crimes allegedly committed in Yaloké or do not reflect a date. See CAR-OTP-2066-0430 (11 June 2014); CAR-OTP-2016-0968 (1 April 2015); CAR-OTP-2031-0157, (2 April 2015); CAR-OTP-2042-4620 (6 July 2014); CAR-OTP-2023-2771 (27 September 2014); CAR-OTP-2079-0784 (no date indicated); CAR-OTP-2079-0789 (no date indicated).

⁴⁴⁵ DCC, paras 439-440.

⁴⁴⁶ P-0884: CAR-OTP-2072-1881-R01, at 1906-1908, 863-933. In addition, while Witness P-0884 indicates that Peuhls fleeing Boda were ‘victim of aggression’ when they arrived, especially in Gaga, he does not specify who was responsible and further indicates that, as a member of the government, he took part in reconciliation efforts with the Muslims, the Peuhls and the entire population. See P-0884: CAR-OTP-2072-1881-R01, at 1908-1909, 935-975.

⁴⁴⁷ P-1847: CAR-OTP-2061-1534-R01, at 1569, para. 223; P-2232: CAR-OTP-2100-2569-R01, at 2594.

recognition of Richard Bozando as the Yaloké ComZone took place in December 2014,⁴⁴⁸ that is, well after the first alleged attack in January 2014.⁴⁴⁹

205. The Chamber considers that the evidence is also too tenuous to conclude that the participation of Severin Ndoguia and Richard Bozando in meetings organised by the National Coordination was connected to the alleged crimes. Witnesses P-0884 and P-1961 refer, in general, to the participation of ComZones in meetings in Bangui, including at Ngaïssona's place, but they do not provide any further particulars.⁴⁵⁰ While Witnesses P-2232 and P-1962 state that 'Le Bleu' took part in two meetings, there is no indication that these meetings were related to the alleged crimes.⁴⁵¹ In fact, Witness P-1962 specifically indicates that, at a meeting in June 2014, Ngaïssona told the participants 'to lay down [their] weapons and to reconcile with the Muslims who were born in CAR since they are our brothers. He told [them] to not kill the Muslims, to bring back peace, and to wait for the DDR'.⁴⁵²

206. Accordingly, in light of the foregoing, the Chamber considers that the evidence does not establish that Ngaïssona bears individual criminal responsibility pursuant to articles 25 and 30 of the Statute for the alleged crimes in Yaloké, Gaga and Zawa.

F. Bossemptélé

207. Pursuant to the approach set out above,⁴⁵³ the Chamber considers that it is not required to address the Prosecutor's submissions regarding the alleged crimes committed by the Anti-Balaka in Bossemptélé,⁴⁵⁴ as it has not been established that there are substantial grounds to believe that Ngaïssona bears individual criminal responsibility for these alleged crimes.

208. With regard to the direct perpetrators of the crimes charged, the Prosecutor submits that the Anti-Balaka elements on the ground were led by Noel Tenguede (also

⁴⁴⁸ CAR-OTP-2030-0445, at 0445, 0446, 0454. *See also* CAR-OTP-2030-0232, at 0234.

⁴⁴⁹ DCC, para. 407.

⁴⁵⁰ P-0884: CAR-OTP-2072-1739-R01, at 1756-1758, 558-634; P-1961: CAR-OTP-2090-0067-R01, at 0082, para. 86.

⁴⁵¹ P-2232: CAR-OTP-2090-0561-R02, at 0574, paras 85-86; P-1962: CAR-OTP-2068-0037-R01, at 0058, paras 103-104.

⁴⁵² P-1962: CAR-OTP-2068-0037-R01, at 0058, para. 102.

⁴⁵³ *See* para. 59 above.

⁴⁵⁴ DCC, paras 444-456.

known as ‘Ndourou’), his first Deputy Gervain Yapende (also known as ‘Gervain’) and Secretary and second Deputy Rodrigue Banafei (also known as ‘Rodrigue’), who were later joined by Nono.⁴⁵⁵ The Prosecutor also asserts that the leaders of the Bossemptélé Group ‘were in contact’ and ‘publicly acknowledged receiving instructions’ from the National Coordination.⁴⁵⁶

209. The Prosecutor further contends that Ngaïssona knew about the situation in Bossemptélé ‘either directly or through members of the National Coordination from the initial attacks throughout the duration of the enclave which remained in place until July 2014’. In this regard, the Prosecutor specifically submits that (i) the attack on Bossemptélé was coordinated by Mokom from Zongo; (ii) Deputy Gervain Yapende (also known as ‘Gervain’) and Nono were in contact with the National Coordination and Ngaïssona; (iii) the leadership of the Bossemptélé Group participated in several National Coordination meetings, including a meeting at Ngaïssona’s Boy-Rabe house which was attended by Gervain; (iv) Gervain, acting on behalf of the National Coordination, prepared official Anti-Balaka badges for the elements in the Bossemptélé area; (v) an Anti-Balaka National Coordination Facebook account refers to the events in Bossemptélé; and (vi) Ngaïssona himself claimed to be in contact with the Anti-Balaka leaders in every municipality.⁴⁵⁷

210. The Chamber considers that the evidence introduced by the Prosecutor does not establish that Mokom coordinated the attack on Bossemptélé. More precisely, the Prosecutor relies, *inter alia*, on Witness P-2027, who merely states in general that ‘Mokom was organizing all the attacks from Zongo’⁴⁵⁸ and that the ComZones of Bossemptélé ‘supported’ Mokom.⁴⁵⁹ The Chamber finds that these statements are vague and lack detailed information relating to the exact nature of Mokom’s relationship and contacts with the Bossemptélé Group. As to the alleged communication between the leadership of the Bossemptélé Group and the National

⁴⁵⁵ DCC, paras 457. According to Witnesses P-2192, P-2205 and P-2444, Nono was not present during the attack on Bossemptélé but came to the city at least five days later; P-2192: CAR-OTP-2088-0782-R01, at 0799, paras.100; P-2205: CAR-OTP-2108-0465-R01, at 0501, para.204; P-2444: CAR-OTP-2108-0422-R01, at 0440-0441, para.106.

⁴⁵⁶ DCC, para 459-460.

⁴⁵⁷ DCC, paras 462-468.

⁴⁵⁸ P-2027: CAR-OTP-2078-0059-R01, at 0077, para.105.

⁴⁵⁹ P-2027: CAR-OTP-2107-0330-R01, at 0339-0341.

Coordination, the Chamber recalls that, in the absence of any specific indication as to the nature and content of the alleged conversations, the Call Data Records are inadequate to support any conclusive findings. Moreover, the Chamber observes that, to support the allegation that Ngaïssona was aware of the situation in Bossemptélé, the Prosecutor relies on the fact that Gervain and other members of the Bossemptélé leadership participated in several National Coordination meetings, including one meeting at Ngaïssona's Boy-Rabe house attended by Gervain, as reported by Witness P-2232.⁴⁶⁰ In the view of the Chamber, these meetings alone, in the absence of any information as to the topics discussed, do not allow to reach any conclusion as to Ngaïssona's knowledge of the crimes allegedly committed by the Bossemptélé group.

211. Regarding the issuance of Anti-Balaka badges to the elements in the area of Bossemptélé, Witness P-2173 clarifies that badges were issued to facilitate the identification and compensation of the Anti-Balaka elements who 'had gone and fought'.⁴⁶¹ In this regard, the Chamber finds that the issuance of badges is per se neutral vis-à-vis the intent and purpose of Ngaïssona as to the charged incidents. Furthermore, Facebook entries must be assigned limited weight in the absence of evidence as to the identity of the person using the account entitled 'coordination des Anti-balaka'. Lastly, the Chamber finds that media reports alone are of limited relevance and cannot support a conclusive finding on Ngaïssona's knowledge.⁴⁶² In any case, it emerges from the evidence submitted by the Prosecution that the purpose of the National Coordination meetings, in which the leaders of the Bossemptélé Group allegedly participated, was to advance and contribute to the national reconciliation and the restoration of peace in CAR.⁴⁶³

212. The Prosecutor finally asserts that, despite of his knowledge of the crimes allegedly committed by the Bossemptélé Anti-Balaka Group, Ngaïssona did not condemn the Group's participation in the attack but rather 'validated the Anti-

⁴⁶⁰ P-2232: CAR-OTP-2100-2569-R01, at 2590, para.122.

⁴⁶¹ P-2173: CAR-OTP-2099-1010-R01, at 1031; CAR-OTP-2099-1069-R01, at 1092.

⁴⁶². The Chamber further notes that the article provided by the Prosecutor to support these allegations does not cite a source. Moreover, according to the same article, Ngaïssona states that "we have nothing against our Muslim brothers" and that "we should put down the guns" while at the same time he calls for the immediate implementation of the DDR process. *See* CAR-OTP-2105-0086.

⁴⁶³ CAR-OTP-2101-4138, at 4141-4142, 4145; *see* also CAR-OTP-2092-1735.

Balaka's actions and accepted Gervain's and Rodrigue's continued membership in the group, later officially recognising Gervain and Rodrigue as the ComZones for Bossemptélé'.⁴⁶⁴ However, in the view of the Chamber, post facto conduct, such as the official appointment of Gervain and Rodrigue in December 2014⁴⁶⁵ - well after the attack on Bossemptélé on 18 January 2014 - does not adequately establish the relevant intent of the accused.

213. Accordingly, the Chamber is not satisfied that the connection and/or flow of information between the group on the ground in Bossemptélé and Ngaïssona are established to the relevant standard.

G. Boda

214. The Chamber considers that the Prosecutor has not established that there are substantial grounds to believe that Ngaïssona bears individual criminal responsibility for these alleged crimes. Accordingly, as set out above,⁴⁶⁶ the Chamber shall not address the Prosecutor's submissions regarding the alleged crimes herein.

215. The Prosecutor alleges that Ngaïssona knew about the situation in Boda, either directly or through members of the National Coordination, from the initial attacks throughout the duration of the enclave which remained in place throughout 2014. In support of this argument, the Prosecutor submits that (i) telephone contact between the Boda Group and the de facto coordination was made on numerous occasions, as early as December 2013, and that leaders of the Boda Group reported about the situation in Boda to Ngaïssona; (ii) in March 2014, key members of, and under, the National Coordination visited Boda, including Bara, Kamezolai, and Yekatom; (iii) Anti-Balaka representatives from Boda attended several meetings in Bangui with Ngaïssona, at his house; (iv) Ngaïssona ordered and organised the dismantling of the roadblocks in Boda after the Brazzaville Summit, and individuals like Thierry Lebene reported back to Ngaïssona on the situation; (v) Ngaïssona assisted the Anti-Balaka leadership, based in Boda, in the creation of Anti-Balaka badges; and (vi) the National

⁴⁶⁴ DCC, paras 470-471.

⁴⁶⁵ CAR-OTP-2030-0445, at 0447.

⁴⁶⁶ See para. 59.

Coordination was also apprised of the situation through the heavy national and international media coverage.⁴⁶⁷

216. At the outset, the Chamber finds that the call data records relied upon by the Prosecutor to establish contact between the Boda Group and the de facto Coordination are of limited relevance, considering the lack of information regarding the nature and content of any alleged conversations. Furthermore, even if the call data records were considered to be reliable, the Chamber notes that the records cited do not indicate that any calls were placed to or from Ngaïssona. In addition, according to Witness P-1962, Habib Soussou did not have contact with Ngaïssona until after the attack on Boda.⁴⁶⁸

217. The Chamber further considers that the evidence does not establish that (i) the visits by members of the National Coordination to Boda and (ii) meetings between Boda Anti-Balaka representatives and Ngaïssona in Bangui were connected to the alleged crimes. The Chamber notes that the Prosecutor relies in part on the evidence of Witness P-0808. However, this Witness states that the objective of missions to the provinces was to provide information to the Anti-Balaka about the peace process.⁴⁶⁹ The Chamber considers that the evidence of Witness P-1858, who indicates that the missions were to check on how the Anti-Balaka were doing, and that of Witness P-0884, who states that Yekatom went to Boda to communicate with individuals there, including the mayor and the chief of the neighbourhood,⁴⁷⁰ is too general to support the inference that the missions were related to the alleged crimes. In addition, based on the information provided by Witnesses P-0808 and P-1858, it appears that these missions first took place around April 2014, well after the attack on Boda.⁴⁷¹

218. Similarly, the Chamber finds that the evidence does not establish that the meetings in Bangui between Ngaïssona and Anti-Balaka representatives from Boda were related to the alleged crimes. The Chamber notes in particular the evidence of Witness P-1962, who states that Ngaïssona did not provide Habib Soussou and the

⁴⁶⁷ DCC, paras 500-506.

⁴⁶⁸ P-1962: CAR-OTP-2068-0037-R01, at 0056-0057, para. 95.

⁴⁶⁹ P-0808: CAR-OTP-2093-0010-R01, at 0026, paras 88-90.

⁴⁷⁰ P-1858: CAR-OTP-2063-0050-R01, at 0068, para. 112; P-0884: CAR-OTP-2072-1913-R01, at 1923-1926, lines 369-451.

⁴⁷¹ P-0808: CAR-OTP-2093-0010-R01, at 0026, paras 88-90; P-0884: CAR-OTP-2072-1913-R01, at 1923-1926, lines 369-451.

Witness with weapons or money, and that during these visits, Ngaïssona would ask them to bring peace to Boda.⁴⁷²

219. As to the role of Ngaïssona in dismantling roadblocks in Boda, the Chamber finds that this evidence does not establish a connection to the alleged crimes. Furthermore, Witness P-1048, the Witness upon whom the Prosecutor relies on this point, indicates Ngaïssona's role in dismantling the roadblocks reflected his efforts to bring about peace.⁴⁷³ Turning to the National Coordination's issuance of badges to Anti-Balaka members, the Chamber recalls that such post facto conduct is inadequate to establish the relevant intent and knowledge of the accused. Finally, the Chamber also recalls its finding that media reports about the alleged crimes are of limited relevance, and are not sufficient to establish Ngaïssona's knowledge of the alleged crimes.

220. Accordingly, in light of the foregoing, the Chamber considers that the evidence does not establish that Ngaïssona bears individual criminal responsibility for the alleged crimes in Boda.

H. Carnot

221. As regards the crimes allegedly committed in Carnot, the Chamber takes the view that the evidence is too weak and the link between the facts and Ngaïssona too tenuous to conclude that the latter's involvement and intent and knowledge are established to the relevant standard.

222. As regards the direct perpetrators of the crimes charged, the Prosecutor alleges that Anti-Balaka elements on the ground were led by ComZone Aimé Blaise Zaoroyanga (also known as 'Zoworo'), together with his 'Mission Chiefs' Sylvestre Sinakolo and Barthélémy Namsenmo, who were all 'present in CARNOT during the attack and throughout the existence of the enclave'.⁴⁷⁴ The Prosecutor also asserts that they 'engaged with' and 'fell under the National Coordination'.⁴⁷⁵

⁴⁷² P-1962: CAR-OTP-2068-0037-R01, at 0057, paras 97-100.

⁴⁷³ P-1048: CAR-OTP-2094-0593-R01, at 0599-0606, 154-496.

⁴⁷⁴ DCC, paras 512, 523.

⁴⁷⁵ DCC, paras 525-528.

223. The Chamber notes that in support of the allegations to the effect that Ngaïssona knew about and intended the crimes charged, the Prosecutor fails in providing specific evidence clearly showing Ngaïssona's contributions for the purposes of holding him criminally liable. Indeed, the Prosecutor submits that (i) the situation in Carnot 'was heavily covered in the media', including video-reportages and Witness [REDACTED] of which Barthélémy Namsenmo and other Anti-Balaka had knowledge;⁴⁷⁶ (ii) Carnot's Anti-Balaka, including Barthélémy Namsenmo and Sylvestre Sinakolo, participated in meetings at Ngaïssona's house in Bangui;⁴⁷⁷ (iii) Ngaïssona validated Sylvestre Sinakolo, Barthélémy Namsenmo and Aimé Blaise Zaoroyanga's actions by 'officially recognising them as CARNOT's ComZones'.⁴⁷⁸

224. The Chamber restates that it is of the view that reliance on media and open source reports are of very limited relevance for the purposes of formulating a conclusive finding.⁴⁷⁹ Additionally, the Chamber finds that the mere fact that the alleged leaders of the direct perpetrators in the Anti-Balaka used to attend meetings at Ngaïssona's house, as Witnesses P-1042, P-2393 and P-1961 testify,⁴⁸⁰ is insufficient, in the absence of any information as to the nature of the exchanges that took place during such meetings, to find that Ngaïssona knew beforehand about the crimes allegedly committed by their elements in Carnot. This is even more so in light of the fact that the evidence does not even allow one to identify the date of the meetings referred to by the Witnesses. Finally, the evidence adduced by the Prosecutor to support that Ngaïssona intended and endorsed the situation in Carnot solely demonstrates that Aimé Blaise Zaoroyanga, Barthélémy Namsenmo and Sylvestre Sinakolo were ComZones and/or *coordonnateurs* in Carnot:⁴⁸¹ however, nothing reveals the existence of an official recognition of such status on behalf of Ngaïssona.

⁴⁷⁶ DCC, paras 531-532. See [REDACTED]: CAR-OTP-2024-0288-R01, at 0303, paras 84-85.

⁴⁷⁷ DCC, paras 525, 533.

⁴⁷⁸ DCC, paras 535-537.

⁴⁷⁹ See para. 181.

⁴⁸⁰ P-1042: CAR-OTP-2107-0262-R01, at 0274-0275, 0280, 383-415, 579-586; CAR-OTP-2107-0297-R01, at 0302, 148-171; CAR-OTP-2107-0330-R01, at 0360-0362, 0365, 0367-0368, 1013-1051, 1064-1072, 1169-1192, 1235-1280; CAR-OTP-2107-0496-R01, at 0537-0538, 1385-1401; P-2393: CAR-OTP-2108-0140-R01, at 0154, para. 77; P-1961: CAR-OTP-2090-0067-R01, at 0079, 0081 paras 68-70, 82.

⁴⁸¹ CAR-OTP-2030-0445, at 0453; CAR-OTP-2101-0217, at 0217; CAR-OTP-2032-1221, at 1228; CAR-OTP-2090-0487, at 0488.

Furthermore, even in the event that there were such an official recognition by Ngaïssona, this would not be sufficient to hold Ngaïssona liable for the crimes allegedly committed in Carnot.

225. The Chamber notes that the only allegation submitted by the Prosecutor that is specifically relevant to the incidents in Carnot is to the effect that ‘throughout the enclave’s existence the leadership of the CARNOT Group informed NGAÏSSONA and the National Coordination of the situation of Muslims’.⁴⁸² However, the Chamber observes that the only, and thus uncorroborated, piece of evidence supporting this allegation consists of Witness P-1042’s statement, who only states in a general way [REDACTED].⁴⁸³ It is the view of the Chamber that such statement is too vague and broad to sufficiently substantiate the Prosecutor’s assertion to the relevant standard: accordingly, the Chamber considers this evidence as insufficient to make a conclusive finding on Ngaïssona’s criminal responsibility.

226. In light of the above, the Chamber is not satisfied that the connection and/or flow of information between the Anti-Balaka group on the ground in Carnot and Ngaïssona is established to the relevant standard.

I. Berbérati

227. As regards Berbérati, the Prosecutor alleges that the connection between the incident and Ngaïssona is supported by the following elements (i) around the beginning of exodus of Muslims from Berbérati, the Anti-Balaka were led by Rocco Mokom, Bernard Mokom’s son and Maxime Mokom’s brother; (ii) the Berbérati group was coordinated by Yapelet, who became the Anti-Balaka leader after the attack and was joined by Zokoue in the following weeks; and (iii) the leadership of the Berbérati group was in contact with the National Coordination from December 2013 and throughout 2014.

228. In support of these allegations, the Prosecutor mainly relies on (i) CDR records; and (ii) witness testimonies. As regards CDR entries, the Chamber recalls its general approach as to their inadequacy, in the absence of information as to the content and

⁴⁸² DCC, para. 534.

⁴⁸³ P-1042: CAR-OTP-2107-0496-R01, at 0538, 1411-1432.

purpose of the conversation, to support a conclusive finding, albeit at the lower evidentiary threshold applicable at this stage, Even more significantly, most⁴⁸⁴ of these contacts do not seem to have happened before, during or in the immediate aftermath of the attack but rather at a later (sometimes much later) stage; in particular, the only direct contact alleged between the Berbérati leadership and Ngaïssona, through (neither Rocco Mokom nor Yapelet but) Zokoue, took place as late as on 12 September 2014;⁴⁸⁵ contact between Yapelet and (Maxime) Mokom is alleged to have occurred in March, October and December 2014.

229. As to the witness testimonies, they are either as little conclusive as the CDRs, or seem rather to point to the absence of a meaningful link between Ngaïssona and/or the National Coordination, on the one hand, and Anti-Balaka elements and events in Berbérati, on the other. When an association between Yapelet and Ngaïssona⁴⁸⁶ is mentioned, it is with specific reference to the sharing of a political ambition;⁴⁸⁷ when Ngaïssona's specific attention to Berbérati is evoked, it is in connection with his concerns that Muslims might become victims. Witness P-2404 states that Ngaïssona's envoy Jean-Louis Ngaidjiounou 'was worried they would start carrying out attacks like they were doing in PK5 in Bangui'.⁴⁸⁸ On the whole, rather than sealing a connection between Ngaïssona and the events in Berbérati suitable to ground his criminal responsibility, the evidence on missions dispatched there on Ngaïssona's initiative or behalf not only indicates that they took place at a considerable distance from the charged events,⁴⁸⁹ but also seems to suggest an intent of pacification and remedy on his part.⁴⁹⁰ Witness P-2326 states that, notwithstanding Ngaïssona's appeal

⁴⁸⁴ Contacts with Wenezoui are alleged to have taken place between second half of February and on 1 March 2014; Rocco Mokom's contacts with his brother Maxime Mokom as alleged on the basis of CDR date between December 2013 and February 2014.

⁴⁸⁵ DCC, para. 560, footnote 1143.

⁴⁸⁶ DCC, para. 561, footnote 1156.

⁴⁸⁷ P-2404: CAR-OTP-2102-1558-R01, at 1593, para. 148.

⁴⁸⁸ P-2404: CAR-OTP-2102-1558-R01, at 1591, para. 141.

⁴⁸⁹ P-2325: CAR-OTP-2100-2386-R01, at 2402, para. 65.

⁴⁹⁰ P-1521: CAR-OTP-2046-0603-R01, at 0616, para. 82, recounting that [REDACTED] because Ngaïssona wanted [REDACTED] 'to pacify the situation in the provinces'; *see also* P-2325: CAR-OTP-2100-2386-R01, at 2402, para. 65.

to depose weapons, ‘nothing really changed after that, Yapele’s elements continued to commit crimes and attack people’.⁴⁹¹

230. Witness P-1858 seems also to point to a fracture between Ngaïssona and Mokom: the latter ‘would visit the Anti-Balaka in the Provinces without Ngaïssona’s orders’, including Berbérati, and there were ‘tensions’ between the two;⁴⁹² this testimony seems to signal a weakening of the link between Ngaïssona and Maxime Mokom as time wore on.

231. Neither are witness testimonies univocal in pointing to an actual and effective subordination of the Berbérati group to the National Coordination. More than one witness refers to a variety of groups coming and going throughout and beyond the period relevant to the charges. Witness P-2325 refers to a group arriving in Berbérati in May 2014 which ‘did not seem very organized’, even if they claimed they were,⁴⁹³ maintains that ‘things were happening in Berbérati, not Bangui’, and that the local leadership had to assume responsibility.⁴⁹⁴ Witness P-2404 states that, when Ngaïssona’s envoy told them they ‘had to be better organised and have a local Bureau with only one leader who would be the one in contact with the Coordination’, they refused to implement the instruction, explaining that the organisation of the Anti-Balaka in Berbérati ‘was different from the one in Bangui because we had several leaders’.⁴⁹⁵

232. Witness P-2296, whilst believing that there was a hierarchy and coordination within the Anti-Balaka, also concedes that ‘this is only an assumption on my part since I was never close to their movement’.⁴⁹⁶ Statements to the effect that the Berbérati group did inform the National Coordination in Bangui⁴⁹⁷ are very general and broad; similarly, the Anti-Balaka *communiqués* which would point to a link between the National Coordination and the events on the ground in Berbérati date to a period significantly subsequent to those events.

⁴⁹¹ P-2326: CAR-OTP-2100-2178-R01, at 2191, para. 63.

⁴⁹² P-1858: CAR-OTP-2063-0050-R01, at 0067-0068, para. 105.

⁴⁹³ P-2325: CAR-OTP-2100-2386-R01, at 2401, para. 64.

⁴⁹⁴ P-2325: CAR-OTP-2100-2002-R01, at 2027, para. 88.

⁴⁹⁵ P-2404: CAR-OTP-2102-1558-R01, at 1592, para. 145.

⁴⁹⁶ P-2296: CAR-OTP-2093-0225-R01, at 0249, para. 173.

⁴⁹⁷ P-2133: CAR-OTP-2093-0267-R01, at 0291, para. 169.

233. Finally, the Chamber recalls its findings as to the limited relevance of media and open source reporting, as well as to the inadequacy of post facto conduct (such as the invitation to Yapelet to represent the Anti-Balaka at the July 2014 Brazzaville summit)⁴⁹⁸ to establish the relevant intent and knowledge of the suspect. Accordingly, the Chamber is not satisfied that the connection and/or flow of information between the Anti-Balaka group on the ground in Berbérati and Ngaissona is established to the relevant standard.

J. Guen

234. As regards Guen, the Prosecutor submits that (i) ‘MOKOM was in contact with persons in GUEN alleged to be elements of the GUEN Group or closely linked to it’ (collectively referred to as ‘the Guen Anti-Balaka leadership’) from at least 1 February 2014 to at least 23 February 2014; (ii) the National Coordination ‘endorsed and/or rewarded the Guen group’; and (iii) the GUEN Group ‘received instructions and directions from the National Coordination (MOKOM)’.

235. In support of these allegations, the Prosecutor relies on (i) CDRs of telephone contacts between Mokom and ‘an anti-Balaka member or conduit in Guen concerning Anti-Balaka operations’;⁴⁹⁹ (ii) media reports;⁵⁰⁰ and (iii) the fact that ‘members of the Anti-Balaka National Coordination, including NDOGUIA, as well as an official delegation from the Coordination, visited the village in the days following the 4 February 2014 executions’.⁵⁰¹ An additional inference is drawn from the fact that the National Coordination ‘rewarded the GUEN Group after it had departed from GUEN by endorsing the continued Anti-Balaka membership of its members through issuing them with Anti-Balaka identification badges’.⁵⁰²

236. The Chamber recalls its findings on the inadequacy of CDRs alone, in the absence of indicia as to the content and purpose of the conversation, to support a

⁴⁹⁸ DCC, para. 574.

⁴⁹⁹ DCC, para. 607.

⁵⁰⁰ See DCC, footnote 1248, referencing the following: CAR-OTP-2070-0963 (BBC article), CAR-OTP-2001-4401 (Al-Jazeera article); CAR-OTP-2001-4330 (AP press release) CAR-OTP-2001-2299 (Human Rights Watch press release); CAR-OTP-2019-1337 (AP webpage); CAR-OTP-2002-0504 (Human Rights Watch press release).

⁵⁰¹ DCC, para. 609.

⁵⁰² DCC, para. 603.

conclusive finding, albeit at the lower evidentiary threshold applicable at this stage, as well as on the very limited relevance of media and open source reporting for the same purpose. The Prosecutor submits that assuming that the phone calls emerging from the CDRs ‘were made to or from MOKOM directly and indirectly concerning Anti-Balaka operations taking place there’ is ‘the only reasonable inference arising from the timing of the contacts, the stature of the persons involved, their respective locations, and the circumstances on the ground at the time’.⁵⁰³ Even if the Chamber were to agree with this assumption, concluding that instructions to commit crimes were imparted during and by means of those contacts would be taking this inference several steps too far. Furthermore, the Chamber notes that many of the contacts between the local Anti-Balaka leadership and Mokom were not to the latter but to his deputy.

237. As to the ‘official delegation’ visiting the village in the aftermath of the events, and even leaving aside the ‘sensibilisation’ nature of its mission (as acknowledged by Witness P-1598),⁵⁰⁴ the Chamber does not find that the circumstances of this visit, as resulting from the available evidence, allow to reach any conclusion as to its official nature and hence as to its link to Ngaïssona. In the words of Witness P-1598, ‘*[i]ls étaient cinq Anti-Balaka qui disaient venir de Bangui*’,⁵⁰⁵ a statement too vague to support the inference that the emissaries would be visiting in an official capacity, that they would be doing so on behalf of Ngaïssona or the National Coordination and/or would be reporting back. The uncoordinated nature of the Anti-Balaka presence in Guen seems also to surface from some of the testimonies, referring to ‘*plusieurs groupes*’ or ‘*équipes*’ having been there at various moments in time.⁵⁰⁶ As to the issuance of Anti-Balaka badges to those who had been in Guen, Witness P-2173 clarifies that badges were issued to the benefit of all those ‘who had gone and fought’;⁵⁰⁷ the Chamber also recalls its findings as to the neutrality of the issuance of badges vis-à-vis the intent and purpose of Ngaïssona as to the charged incidents, as

⁵⁰³ DCC, para. 604.

⁵⁰⁴ P-1598: CAR-OTP-2057-0892, at 0906, para. 64.

⁵⁰⁵ P-1598: CAR-OTP-2057-0892, at 0905, para. 62.

⁵⁰⁶ P-2173: CAR-OTP-2099-0890-R01, at 0896, 0919, 190-197, 228-239.

⁵⁰⁷ P-2173: CAR-OTP-2099-1010-R01, at 1031.

well as, more broadly, as to the inadequacy of post facto conduct to establish the relevant intent and knowledge of the accused.

238. Furthermore, the very formulation of the Prosecutor’s allegation seeking to establish Ngaïssona’s knowledge of the events is telling: ‘[a]s General National Coordinator, Ngaïssona *would* have been informed’⁵⁰⁸ (emphasis added): the Chamber finds that a hypothetical assumption, merely based on Ngaïssona’s formal role and role as coordinator, does not constitute adequate foundation for a finding to this effect.

239. Accordingly, the Chamber is not satisfied that the connection and/or flow of information between the group on the ground in Guen and Ngaïssona is established to the relevant standard.

VI. Suspension of the time limit for requesting leave to appeal pending notification of the French translation of this decision

240. The Chamber recalls that neither Yekatom nor Ngaïssona were found to be proficient in English. For the purposes of these proceedings, Yekatom was found to be proficient in French⁵⁰⁹ and Ngaïssona indicated that he only speaks French.⁵¹⁰ The Chamber underlines the importance of the decision on the confirmation of the charges, one of the few the translation of which in the language of the accused is mandated by the statutory texts, and finds that, in line with the established practice of the Court,⁵¹¹ counsel must be able to rely on their client’s contribution to properly assess the advisability and feasibility of applying for leave to appeal. Accordingly, with a view to enhancing the efficiency of the proceedings, the Chamber finds it

⁵⁰⁸ DCC, para. 607.

⁵⁰⁹ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on language proficiency of Alfred Yekatom for the purposes of the proceedings, 11 January 2019, ICC-01/14-01/18-56-Conf.

⁵¹⁰ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Second Decision on Disclosure and Related Matters, 4 April 2019, ICC-01/14-01/18-163.

⁵¹¹ Bemba Confirmation Decision, p. 185, g); Abu Garda Confirmation Decision, p. 98; Mbarushimana Confirmation Decision, p. 150. *See also* Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the “Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu’elle puisse déposer une éventuelle demande d’autorisation d’interjeter appel de la « Decision on the confirmation of charges against Laurent Gbagbo » (ICC-02/11-01/11-656-Conf) et/ou pour qu’elle puisse déposer une éventuelle réponse à une éventuelle demande d’autorisation d’interjeter appel déposée par le Procureur”, 16 June 2014, ICC-02/11-01/11-658.

necessary to decide *motu proprio* that the time limit for filing an application for leave to appeal shall be suspended until the translation of this decision into French is submitted by the Registry in the record of the case.

VII. The confirmed charges

241. The Chamber finds it appropriate to include in the operative part of the decision a concise reference to the charges as confirmed; each of those charges makes reference to the relevant part of this decision, where the entirety of the Chamber's findings and reasoning in respect of each of them is to be found.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecutor's First and Second Regulation 35 Requests;

REJECTS the Prosecutor's request to remedy 'typos' in the DCC by way of corrigendum;

REJECTS the request to exclude the evidence of Witness P-0801 by the Defence for Yekatom and the Defence for Ngaïssona;

REJECTS the First and Second Requests on the Delivery of the Confirmation Decision by the Defence for Yekatom;

REJECTS the requests arising from the objections and observations pursuant to rule 122(3) of the Rules by the Defence for Yekatom and the Defence for Ngaïssona;

ORDERS the Prosecutor to submit proposals as to the redactions which, in their view, should apply to this decision, by no later than 16 December 2019;

ORDERS the LRVs, the Defence for Yekatom and the Defence for Ngaïssona to provide their proposals as to the redactions which, in their view, should apply to this decision, by no later than 19 December 2019;

CONFIRMS the charges against Alfred Yekatom and Patrice-Edouard Ngaïssona as follows

Alfred YEKATOM, a national of the CAR, born on 23 January 1975 in Bimbo, the CAR, also known as 'Alfred SARAGBA', 'ROMBHOT', 'RAMBO', 'RAMBOT', 'ROMBOT', 'RHOMBOT', 'ROMBO' or 'ROMBOHT', is criminally responsible for the war crimes of:

- (i) **directing attacks against the civilian population**, pursuant to and prohibited by article 8(2)(e)(i) of the Statute, in Bangui, including Cattin and the Boeing market, starting on 5 December 2013, on the basis of the conduct

pertaining to Counts 2 to 6 and 8, as set out in paragraphs 246-256 of the DCC and paragraphs 86-92 of the present decision (Count 1);

- (ii) **murder**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for:
- a. the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the present decision (Count 3);
 - b. the killing of Lapo N’Gomat at the Yamwara School Base on or about 24 December 2013, as set out in paragraphs 298 and 300 of the DCC and paragraph 115 of the present decision (Count 16);
 - c. the killing of Deputy Mayor Saleh on or about 28 February 2014 in Mbaïki, in the context of the Anti-Balaka’s advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndongala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 344-345 of the DCC and paragraphs 136-137 of the present decision (Count 27);
- (iii) **displacement**, pursuant to and prohibited by article 8(2)(e)(viii) of the Statute, for:
- a. the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the present decision (Count 5);
 - b. the dislocation of the majority of the Muslim population from their towns and villages between on or about 10 January 2014 and on or about 6 February 2014, in the context of the Anti-Balaka’s advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndongala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 340-343 of the DCC and paragraphs 129-134 of the present decision (Count 25);
- (iv) **directing an attack against a building dedicated to religion**, pursuant to and prohibited by article 8(2)(e)(iv) of the Statute, for the destruction of the Boeing mosque by 20 December 2013 at the latest, as set out in paragraph 254 of the DCC and paragraph 91 of the present decision (Count 6);
- (v) **cruel treatment**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where six of them were subjected to severe physical and mental injury, including by threatening them with death or otherwise, forcing them to undress, and/or beating them, as set out in paragraphs 296-297 and 299 of the DCC and paragraphs 114-116 of the present decision (Count 13);
- (vi) **torture**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where Lapo N’Gomat was subjected to severe physical and mental injury, including by threatening him with death, tying him up, beating

him, cutting of his ear, and stabbing him, as set out in paragraphs 296-300 of the DCC and paragraphs 114-115 of the present decision (Count 13);

(vii) **conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities**, pursuant to and prohibited by article 8(2)(e)(vii) of the Statute, for the conscription and/or enlistment of children into his group at various locations, including Boeing, Sekia and Pissa along the PK9-Mbaïki axis and in Batalimo along the Pissa-Mongoumba axis, and the assignment of a variety of tasks to them, such as, inter alia, participating in hostilities, including the 5 December 2013 Attack, between at least December 2013 and August 2014, as set out in paragraphs 359-360 of the DCC and paragraphs 144-152 of the present decision (Count 29);

all committed in the context of and associated with an armed conflict not of an international character ongoing in the territory of the CAR from September 2013 until at least December 2014 between the Seleka and the Anti-Balaka, including Yekatom's group, as set out in paragraphs 50-52 and 115-118 of the DCC and paragraphs 61-66 of the present decision.

Yekatom is also criminally responsible for the crimes against humanity of:

- (i) **murder**, pursuant to and prohibited by article 7(1)(a) of the Statute, for:
 - a. the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the present decision (Count 2);
 - b. the killing of Lapo N'Gomat at the Yamwara School Base on or about 24 December 2013, as set out in paragraphs 298 and 300 of the DCC and paragraph 115 of the present decision (Count 15);
 - c. the killing of Deputy Mayor Saleh on or about 28 February 2014 in Mbaïki, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndongala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 344-345 of the DCC and paragraphs 136-137 of the present decision (Count 26);
- (ii) **forcible transfer and deportation**, pursuant to and prohibited by article 7(1)(d) of the Statute, for:
 - a. the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the present decision (Count 4);
 - b. the dislocation of the majority of the Muslim population from their towns and villages between on or about 10 January 2014 and on or about 6 February 2014, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndongala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 340-343 of the DCC and paragraphs 129-134 of the present decision (Count 24);

(iii) **other inhumane acts**, pursuant to and prohibited by article 7(1)(k) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where six of them were subjected to severe physical and mental injury, including by threatening them with death or otherwise, forcing them to undress, and/or beating them, as set out in paragraphs 296-297 and 299 of the DCC and paragraphs 114-116 of the present decision (Count 11);

(iv) **torture**, pursuant to and prohibited by article 7(1)(f) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where Lapo N’Gomat was subjected to severe physical and mental injury, including by threatening him with death, tying him up, beating him, cutting of his ear, and stabbing him, as set out in paragraphs 296-300 of the DCC and paragraphs 114-115 of the present decision (Count 12);

(v) **imprisonment and other forms of severe deprivation of physical liberty**, pursuant to and prohibited by article 7(1)(e) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013 and the transfer of six of them to other locations until their release on or about 27 December 2013, as set out in paragraphs 296 and 300 of the DCC and paragraphs 114 and 117 of the present decision (Count 14);

(vi) **persecution**, pursuant to and prohibited by article 7(1)(h) of the Statute, for the severe deprivation of the fundamental rights of persons in Bangui, including Cattin and Boeing, the Yamwara School Base, and the villages along the PK9-Mbaïki Axis, by targeting them on the basis of political, ethnic and/or religious grounds by virtue of the conduct pertaining to counts 1-7, 11-16, 24-27 as set out in paragraphs 246-256, 296-302, 340-347 of the DCC and paragraphs 86-92, 114-117, 129-137 of the present decision (Counts 8, 17, 28);

all committed as part of a widespread attack conducted by the Anti-Balaka, including Yekatom’s group, between September 2013 and December 2014, against the Muslim civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions, as set out in paragraphs 90-114 of the DCC and paragraphs 62-65 of the present decision.

Yekatom’s contribution to the charged crimes consisted in:

- (i) structuring, training and equipping his Anti-Balaka elements;
- (ii) preparing the Anti-Balaka attacks and advances, and participating and leading his group in the execution of these attacks and advances;
- (iii) issuing orders to Anti-Balaka members, including patently illegal instructions; and
- (iv) conscripting and/or enlisting children under the age of fifteen years into his group and using them to assist him in the camp-bases, giving orders for them to be stationed at barriers and checkpoints as well as to actively participate in hostilities.

Accordingly, Yekatom is criminally responsible under the following modes of liability:

- (i) committing the aforementioned crimes jointly with another or through another under article 25(3)(a) of the Statute; or

- (ii) ordering the commission of the aforementioned crimes under article 25(3)(b) of the Statute.

Patrice-Edouard Ngaissona, a national of the CAR, born on 30 June 1967 in Bégoua, the CAR, is criminally responsible for the war crimes of:

- (i) **directing attacks against the civilian population**, pursuant to and prohibited by article 8(2)(e)(i) of the Statute, at the following locations and times:

a. in Bangui, including Cattin and the Boeing market, starting on 5 December 2013, on the basis of the conduct pertaining to Counts 2 to 6 and 8, as set out in paragraphs 246-256 of the DCC and paragraphs 86-92 of the present decision (Count 1);

b. in Bossangoa, on 5 December 2013, approximately from 13:00 to between 17:00 and 18:30, on the basis of the conduct pertaining to Counts 31-33, 35, 37 and 39-42, as set out in paragraphs 378-388 of the DCC and paragraphs 105-109 of the present decision (Count 30);

- (ii) **murder**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for:

a. the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the present decision (Count 3);

b. the killing of 28 persons, including Khadidja Adjaro; Adaye Abakar; Atahir Abou; Atahir Djime (or Djimet); Halima Hisseini; Amadou (or Hamadou) Bouba; Salamatou Madji; Ismael Madji; Abakar Moussa; Koursi Abdelrahim; Koursi Mahamat; Abdallah Mahamat; Mariam Yamwha; Amadou Oumarou; Ila Adjji; Sali Adjji; Hamid Ali; Ahamat Zakaria; Mahamat Adam; Abdasamat Mounin; Ibrahim Hassan; Sale Adim; Adef Mahamat; Atahir Mahamat; a person known by his nickname, 'C-17', probably named Abakar Moussa and taxi-driver by profession; a certain Abdelkhadir, a certain Abdaye and a certain Abakar, in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 378 of the DCC and paragraph 106 of the present decision (Count 32);

c. the killing of Lapo N'Gomat at the Yamwara School Base on or about 24 December 2013, as set out in paragraphs 298 and 300 of the DCC and paragraph 115 of the present decision (Count 16);

d. the killing of Deputy Mayor Saleh on or about 28 February 2014 in Mbaïki, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndangala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 344-345 of the DCC and paragraphs 136-137 of the present decision (Count 27);

- (iii) **displacement**, pursuant to and prohibited by article 8(2)(e)(viii) of the Statute, for:

a. the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin

and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the present decision (Count 5);

b. the dislocation of Bossangoa's Muslim population to the *École de la Liberté*, before being evacuated to other locations, in the context of the attack on Bossangoa on 5 December 2013 and in the days following the attack, as set out in paragraphs 381-383 of the DCC and paragraph 109 of the present decision (Count 38);

c. the dislocation of the majority of the Muslim population from their towns and villages between on or about 10 January 2014 and on or about 6 February 2014, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndangala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 340-343 of the DCC and paragraphs 129-134 of the present decision (Count 25);

(iv) **directing attacks against buildings dedicated to religion**, pursuant to and prohibited by article 8(2)(e)(iv) of the Statute, for:

a. the destruction of the Boeing mosque by 20 December 2013 at the latest, as set out in paragraph 254 of the DCC and paragraph 91 of the present decision (Count 6);

b. the destruction of the central mosque of Bossangoa, in the context of the attack on Bossangoa on 5 December 2013 and in the week following the attack, as set out in paragraph 380 of the DCC and paragraph 108 of the present decision (Count 35);

(v) **cruel treatment**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where six of them were subjected to severe physical and mental injury, including by threatening them with death or otherwise, forcing them to undress, and/or beating them, as set out in paragraphs 296-297 and 299 of the DCC and paragraphs 114-116 of the present decision (Count 13);

(vi) **torture**, pursuant to and prohibited by article 8(2)(c)(i) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where Lapo N'Gomat was subjected to severe physical and mental injury, including by threatening him with death, tying him up, beating him, cutting of his ear, and stabbing him, as set out in paragraphs 296-300 of the DCC and paragraphs 114-115 of the present decision (Count 13);

(vii) **destruction of the adversary's property**, pursuant to and prohibited by article 8(2)(e)(xii) of the Statute, for the destruction of Muslim houses, especially in the predominantly Muslim neighbourhoods of Boro, Arabe and Fulbe, in the context of the attack on Bossangoa on 5 December 2013 and in the days after the attack, as set out in paragraph 379 of the DCC and paragraph 108 of the present decision (Count 33);

(viii) **pillaging**, pursuant to and prohibited by article 8(2)(e)(v) of the Statute, for the pillaging and looting of the houses of Muslims, particularly in the Boro, Arabe and Fulbe neighbourhoods, sometimes writing the words 'Anti-Balaka' on the rubble, in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 379 of the DCC and paragraph 108 of the present decision (Count 34);

(ix) **rape**, pursuant to and prohibited by article 8(2)(e)(vi) of the Statute, for the rape of a 19-year-old woman, in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 385 of the DCC and paragraph 106 of the present decision (Count 41);

all committed in the context of and associated with an armed conflict not of an international character ongoing in the territory of the CAR from September 2013 until at least December 2014 between the Seleka and the Anti-Balaka, including Yekatom's group, as set out in paragraphs 50-52 and 115-118 of the DCC and paragraphs 61-66 of the present decision.

Ngaïssona is also criminally responsible for the crimes against humanity of:

- (i) **murder**, pursuant to and prohibited by article 7(1)(a) of the Statute, for:
- a. the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the present decision (Count 2);
 - b. the killing of 28 persons, including Khadidja Adjaro; Adaye Abakar; Atahir Abou; Atahir Djime (or Djimet); Halima Hisseini; Amadou (or Hamadou) Bouba; Salamatou Madji; Ismael Madji; Abakar Moussa; Koursi Abdelrahim; Koursi Mahamat; Abdallah Mahamat; Mariam Yamwha; Amadou Oumarou; Ila Adj; Sali Adj; Hamid Ali; Ahamat Zakaria; Mahamat Adam; Abdasamat Mounin; Ibrahim Hassan; Sale Adim; Adef Mahamat; Atahir Mahamat; a person known by his nickname, 'C-17', probably named Abakar Moussa and taxi-driver by profession; a certain Abdelkhadir, a certain Abdaye and a certain Abakar, in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 378 of the DCC and paragraph 106 of the present decision (Count 31);
 - c. the killing of Lapo N'Gomat at the Yamwara School Base on or about 24 December 2013, as set out in paragraphs 298 and 300 of the DCC and paragraph 115 of the present decision (Count 15);
 - d. the killing of Deputy Mayor Saleh on or about 28 February 2014 in Mbaïki, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndangala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 344-345 of the DCC and paragraphs 136-137 of the present decision (Count 26);
- (ii) **forcible transfer and deportation**, pursuant to and prohibited by article 7(1)(d) of the Statute, for:
- a. the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the present decision (Count 4);
 - b. the dislocation of Bossangoa's Muslim population to the *École de la Liberté*, before being evacuated to other locations, in the context of the attack on Bossangoa on 5 December 2013 and in the days following the

attack, as set out in paragraphs 381-383 of the DCC and paragraph 109 of the present decision (Count 37);

c. the dislocation of the majority of the Muslim population from their towns and villages between on or about 10 January 2014 and on or about 6 February 2014, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki Axis (including Sekia, Ndagala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 340-343 of the DCC and paragraphs 129-134 of the present decision (Count 24);

(iii) **other inhumane acts**, pursuant to and prohibited by article 7(1)(k) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where six of them were subjected to severe physical and mental injury, including by threatening them with death or otherwise, forcing them to undress, and/or beating them, as set out in paragraphs 296-297 and 299 of the DCC and paragraphs 114-116 of the present decision (Count 11);

(iv) **torture**, pursuant to and prohibited by article 7(1)(f) of the Statute, for the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013, where Lapo N'Gomat was subjected to severe physical and mental injury, including by threatening him with death, tying him up, beating him, cutting of his ear, and stabbing him, as set out in paragraphs 296-300 of the DCC and paragraphs 114-115 of the present decision (Count 12);

(v) **imprisonment and other forms of severe deprivation of physical liberty**, pursuant to and prohibited by article 7(1)(e) of the Statute, for:

a. the abduction of seven persons, including three Muslim women, in or around Cattin and their transfer to the Yamwara School Base on or about 24 December 2013 and the transfer of six of them to other locations until their release on or about 27 December 2013, as set out in paragraphs 296 and 300 of the DCC and paragraphs 114 and 117 of the present decision (Count 14);

b. maintaining the Muslims at *École de la Liberté* by preventing them from leaving, including by shouting threats towards the families inside the compound, in the context of the attack on Bossangoa on 5 December 2013 and the weeks following the attack, as set out in paragraph 384 of the DCC and paragraph 109 of the present decision (Count 39);

(vi) **rape**, pursuant to and prohibited by article 7(1)(g) of the Statute, for the rape of a 19-year-old woman, in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 385 of the DCC and paragraph 106 of the present decision (Count 40);

(vii) **persecution**, pursuant to and prohibited by article 7(1)(h) of the Statute for the severe deprivation of fundamental rights of persons in Bangui, including Cattin and Boeing, Bossangoa, the Yamwara School Base, and the villages along the PK9-Mbaïki Axis of their fundamental rights by targeting them on the basis of political, ethnic and/or religious grounds by virtue of the conduct pertaining to Counts 1-7, 11-16, 24-27, 30-41, as set out in paragraphs 246-256, 296-302, 340-347, 376-388 of the DCC and paragraphs 86-92, 105-109, 114-117, 129-137 of the present decision (Counts 8, 17, 28, 42);

all committed as part of a widespread attack carried out by the Anti-Balaka, including Yekatom's group, between September 2013 and December 2014, against the Muslim

civilian population and those perceived as collectively responsible for, complicit with, or supportive of the Seleka, pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR Prefectures in retribution for Seleka exactions, as set out in paragraphs 90-114 of the DCC and paragraphs 62-65 of the present decision.

Ngaïssona's contribution to the charged crimes consisted in:

- (i) taking steps to structure the Anti-Balaka;
- (ii) financing the Anti-Balaka, including for the purchase of weapons;
- (iii) issuing instructions to Anti-Balaka members, including with regard to the 5 December 2013 Attack and attacks preceding it; and
- (iv) liaising with Anti-Balaka members exercising key functions, including Bernard Mokom and Maxime Mokom.

Accordingly, Ngaïssona is criminally responsible under the following modes of liability:

- (i) facilitating the commission of the crimes as set out in the confirmed charges by aiding, abetting or otherwise assisting in their commission under article 25(3)(c) of the Statute; or
- (ii) contributing in any other way to the commission of those crimes by a group of persons acting with a common purpose under article 25(3)(d)(i) or (ii) of the Statute.

DECLINES to confirm the remainder of the charges;

COMMITS Alfred Yekatom and Patrice-Edouard Ngaïssona to a Trial Chamber for trial on the charges as confirmed;

DECIDES that the time limit for filing an application for leave to appeal this decision shall be suspended until its translation into French is submitted by the Registry in the record of the case and **ORDERS** the Registry to make appropriate arrangements so as to ensure that the translation is completed without delay.

Done in both English and French, the English version being authoritative.

/Signed/

Judge Antoine Kesia-Mbe Mindua

Presiding Judge

/Signed/

/Signed/

Judge Tomoko Akane

Judge Rosario Salvatore Aitala

Dated this 28 June 2020

At The Hague, The Netherlands