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**International
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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

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

Public

Public redacted version of “Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Accused YEKATOM’s Individual Criminal Responsibility”, 7 July 2023, ICC-01/14-01/18-1973-Conf

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

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I. INTRODUCTION

1. Given the evidence now on the record at this stage of the proceedings, along with the facts and circumstances described in the charges, Trial Chamber V (“Chamber”) should give notice to the participants pursuant to regulation 55(2) of the Regulations of the Court (“RoC”). This will notify the Defence that the facts described in the charges regarding Alfred YEKATOM’s individual criminal responsibility may be re-characterised to accord with the modes of liability set out in articles 28(a) and 25(3)(c) and (d).

2. In this regard, *first*, the Chamber is not bound by the legal characterisations confirmed by the Pre-Trial Chamber, which were based on far less evidence, assessed both quantitatively and qualitatively.¹ The Chamber’s role and responsibility is fundamentally different from that of the Pre-Trial Chamber, and it now has the benefit of a substantial record of evidence including sworn testimony, which was not previously available. The Statute foresees that the Chamber’s prospective article 74 judgment should reflect *to the full extent* the Accused’s level of participation in, and responsibility for, the charged crimes.

3. *Second*, timely notice of possible additional or alternative modes of liability at this stage of the proceedings is in keeping with the objectives of regulation 55 to promote judicial efficiency. In particular, it enables the Chamber to fill in any potential impunity gaps that might arise, without risking undue prejudice to the Accused or to the Court’s mandate.

4. While the Prosecution recognises that the Chamber has previously declined to give notice under regulation 55(2) on two occasions,² it respectfully submits that the time is now ripe—especially given that the Prosecution has yet to close its case and the Defence will be able to fully avail itself of the rights provided in regulation 55(3)(b) of the RoC.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the RoC, this Application is filed as “confidential”, because it refers to sources and materials of the same classification.

¹ ICC-01/14-01/18-403-Corr-Red, para. 102.

² ICC-01/14-01/18-542. ICC-01/04-01/18-1482.

III. SUBMISSIONS

6. As the Prosecution argued in the Second Application: (i) regulation 55(2) notice should be given for articles 28 (a), 25(3)(c) and (d);³ (ii) there is no legal impediment to giving such notice;⁴ (iii) it is appropriate to give notice at this stage of the proceedings;⁵ and, last, (iv) there is no prejudice to the Accused.⁶ These submissions still remain valid, especially given that the Prosecution has yet to close its case and the evidentiary phase of these proceedings is still open. After more than two years of trial, the accumulated body of evidence now before the Chamber justifies the issuance of notice of possible re-characterisation to YEKATOM for the identified modes of responsibility.

7. If the Chamber grants the present Application, notice would be properly issued because it does “not result in an actual legal re-characterisation of any facts at this time [but is] simply a notice of the *possibility* of such re-characterisation.”⁷ While the Prosecution may request notice of legal re-characterisation of facts for a mode of liability that it did not plead in the document containing the charges,⁸ nothing prevents it from seeking notice of a legal re-characterisation which was pled but not confirmed by the Pre-Trial Chamber—as long as the facts and circumstances that could potentially be re-characterised were confirmed, as in this case.⁹ This does not amount to a reconsideration or circumvention of the confirmation decision because, as noted, the body of evidence available before the Chamber differs substantially—both qualitatively and quantitatively—from that considered by the Pre-Trial Chamber at the early (indeed preliminary) stage of the proceedings. Rather, notice of a possible re-characterisation of YEKATOM’s conduct under articles 28(a), 25(3)(c) and (d) serves the principal purpose of regulation 55, which is intended to close any potential accountability gaps that might arise as a result of legal qualifications adopted before the trial but which may turn out to be incorrect or incomplete, relative to the evidence ultimately presented.

8. Furthermore, issuing notice of the potential legal re-characterisation of YEKATOM’s individual criminal responsibility at this stage fully respects his rights and does not occasion

³ ICC-01/04-01/18-1345-Conf, paras. 21-22.

⁴ ICC-01/04-01/18-1345-Conf, paras. 7-9.

⁵ ICC-01/04-01/18-1345-Conf, paras. 10-14.

⁶ ICC-01/04-01/18-1345-Conf, paras. 15-20.

⁷ ICC-01/09-01/11-1334, para. 30 (emphasis added).

⁸ ICC-02/05-01/20-634, para. 9.

⁹ ICC-01/12-01/18-1211-Red, para. 90; ICC-02/11-01/15-369, para. 32.

any prejudice. In rejecting the previous two requests of the Prosecution, the Chamber did not discard the possibility of giving notice at a later stage of the proceedings.¹⁰ Moreover, the Prosecution's position that YEKATOM's contributions satisfy these different modes of liability has been clear since the pre-trial proceedings.¹¹ While it may remain possible to give such notice later in the proceedings, and the Chamber can still do so *proprio motu*, interests of judicial economy strongly favour doing so at this point. Issuing late notice may risk procedural fairness and, relatedly, may impair the Chamber's ability to discharge its statutory obligations.

9. For the present submissions, the Prosecution has focused on some of the more salient evidence heard by the Chamber since the filing of its Second Application.

Article 28 (a): Legal elements

10. Article 28(a) responsibility requires that: (a) a crime within the jurisdiction of the Court was committed; (b) the accused was a military commander or effectively acting as such; (c) forces under his or her effective command or authority and control committed crimes within the Court's jurisdiction; (d) the accused knew or should have known that these forces were committing or about to commit such crimes; and (e) the accused failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission, or submit the matter to the competent authorities for investigation and prosecution.¹²

The evidence supports an article 28(a) re-characterisation

11. The evidence on the record satisfies the legal requirements of article 28(a) insofar as it demonstrates that:

- (i) At all times during the relevant period YEKATOM was a military commander, or a person effectively acting as such, who exercised effective authority and control of an Anti-Balaka group (YEKATOM's group); and
- (ii) YEKATOM knew or should have known that his group was committing or about to commit the crimes charged in the relevant time period but failed to take all

¹⁰ ICC-01/14-01/18-542; ICC-01/04-01/18-1482.

¹¹ ICC-01/14-01/18-282-Conf-AnxB1, section VI.

¹² See also First Application, ICC-01/14-01/18-503-Conf, paras. 12-19, setting out the legal elements of article 28(a) in more detail.

necessary and reasonable measures within his power to prevent or repress the commission of these crimes (by his elements) or submit these crimes to the competent authorities for investigation and prosecution.

YEKATOM had effective command/authority and control over the perpetrators—in the sense that he had the material ability to prevent or repress subordinates' crimes

12. The following evidence establishes the existence of effective command/authority and control.

YEKATOM was the military commander of his Anti-Balaka group or acted as such

13. There is overwhelming evidence on the record that YEKATOM was indeed the military commander of an Anti-Balaka group, or was effectively acting as such, during the relevant time period.¹³

14. YEKATOM's group was organised in a military-like hierarchy with elements organised into companies and sections¹⁴ under a functioning command structure,¹⁵ with clear reporting lines between subordinates and superiors.¹⁶ Witness [REDACTED].¹⁷ Witness [REDACTED] provided evidence that the Anti-Balaka group at Yamwara base was composed of approximately 1,000 elements divided into ten companies with four sections per company.¹⁸ FACA members led the companies and sections.¹⁹

15. The sub-commanders, who were mainly FACA, oversaw the companies and the sections,²⁰ and reported directly to YEKATOM and to his Deputy (*caporal-chef* Freddy

¹³ [REDACTED]: T-166-CONF-ENG CT, p. 22, l. 1-7, p. 42, l. 2-9; [REDACTED]: T-185-CONF-ENG-ET, p. 15, l. 10-16, p. 29-30, l. 24-15; [REDACTED]; CAR-OTP-2012-0523 from [00:43:47] to [00:49:24:00]; CAR-OTP-2065-0396 from [00:01:11] to [00:01:40] and its translation CAR-OTP-2122-2284. *See also* CAR-OTP-2128-1373 (« *Décharge* » signed on 4 August 2014 by YEKATOM, « *[p]remier responsable du Haut Commandement Anti-Balaka de la Zone Sud (Ombella – M'Poko – Lobaye)* », to release 153 children associated to his movement, and « *de ne plus ré-enrôler dans l'avenir* »); [REDACTED].

¹⁴ [REDACTED], p. 34, l. 13-23 ; [REDACTED]; P-1647: CAR-OTP-2050-0654 at 0657-0658, paras. 31-34; [REDACTED]: T-170-CONF-ENG ET, p. 34, l. 13-23, [REDACTED]: T-129-CONF-ENG CT, p. 20-21, l. 22-9; CAR-OTP-2065-3448 from [00:00:00] to [00:00:43].

¹⁵ P-1786: T-197-CONF-ENG ET, p. 41, l. 5-14; [REDACTED]; ; CAR-OTP-2065-3220 and its translation, CAR-OTP-2127-3668 (*see*, in particular, at 3671, l. 52-53).

¹⁶ [REDACTED].

¹⁷ [REDACTED]: T-129-CONF-ENG CT, p. 20-21, l. 20-9.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

OUANDJIO (aka Coeur de Lion); then Habib BEINA following OUANDJIO's death.²¹ In this regard, [REDACTED] testified that YEKATOM and other commanders, such as OUANDJIO, communicated through mobile phones.²² Both OUANDJIO and BEINA were subordinate to YEKATOM - the Chief/Commander of the group.²³

16. As the Commander of his group, YEKATOM had the power to replace subordinates when needed. For instance, P-1647 provided evidence that after OUANDJIO was killed in Boda in February 2014, YEKATOM named BEINA as his "new deputy".²⁴ [REDACTED].²⁵

YEKATOM had the power to issue orders to his Anti-Balaka group including to engage in hostilities

17. Witness [REDACTED] testified that only YEKATOM, along with OUANDJIO and BEINA, had the power to issue or give orders to the members of their Anti-Balaka group.²⁶ However, OUANDJIO and BEINA were at all times subordinate to YEKATOM. As the "supreme leader",²⁷ YEKATOM's authority over his subordinates was such that [REDACTED].²⁸ [REDACTED] did not remember anyone ever disobeying YEKATOM.²⁹

18. YEKATOM's subordinates, including the civilian elements of his group, were trained and taught discipline.³⁰ They complied with his orders. [REDACTED].³¹ [REDACTED] testified that when YEKATOM gave orders his elements had to obey, if not "he would hit you or you would be killed".³² According to [REDACTED], YEKATOM's orders were obeyed

²¹ P-1647: CAR-OTP-2050-0654 at 0659, para. 35, at 0662, para. 51; CAR-OTP-2065-3220 from [00:01:40] to [00:03:20] and its translation, CAR-OTP-2127-3668 at 3670-3671, l. 23-54; CAR-OTP-2065-4849 from [00:00:00] to [00:01:20] and its translation, CAR-OTP-2118-5685, at 5687-5688, l. 5-43.

²² [REDACTED].

²³ [REDACTED]; P-1839: T-171-CONF-ENG ET, p. 18, l. 16-22; P-1647: CAR-OTP-2050-0654 at 0657-0658, paras. 31-35.

²⁴ P-1647: CAR-OTP-2050-0654 at 0662, para. 51.

²⁵ P-1647: CAR-OTP-2050-0654 at 0662, para. 52.

²⁶ [REDACTED]. See also CAR-OTP-2012-0523 from [00:36:57] to [00:38:01] and its translation, CAR-OTP-2118-5547 at 5576-5577, l. 943-969.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ CAR-OTP-2065-1015 from [00:00:00] to [00:01:00] and its transcription, CAR-OTP-00000834 at 000002, l. 4-8; CAR-OTP-2065-3220 from [00:00:00] to [00:00:26], from [00:02:02] to [00:02:36] and its translation, CAR-OTP-2127-3668 at 3670-3671, l. 5-7, 30-44; CAR-OTP-2065-0951 from [00:01:10] to [00:01:59] and its translation, CAR-OTP-2122-2297 at 2299, l. 13-24. See also P-0888: T-120-CONF ENG ET, p. 34, l. 20-24, p. 35, l. 1-6, p. 39, l. 2-14.

³¹ [REDACTED].

³² [REDACTED].

without question - even his FACA elements were afraid of him.³³ [REDACTED] testified that nothing was done without the approval of YEKATOM: [REDACTED].³⁴ Video evidence also shows YEKATOM's elements complying with his orders.³⁵

19. The evidence before the Chamber shows that YEKATOM had the power to issue orders to his elements, including that of engaging in hostilities.³⁶ YEKATOM's group obeyed his order to attack Bangui on 5 December 2013 and undertook the attack with the instruction of killing all "Muslims and Selekas" and destroying their property³⁷—as instructed by him.³⁸ YEKATOM's group followed these orders during their attack on Bangui³⁹ and subsequent advance and takeover of villages along the PK9-Mbaïki Axis,⁴⁰ as this was a standing order valid until they were able to "liberate the country".⁴¹ In this regard, [REDACTED] testified that the order to kill "Muslims" in relation to the 5 December attack was still "mandatory" [REDACTED].⁴² Similarly, P-1839 testified that, while on the Mbaiki road, YEKATOM and OUANDJIO instructed the elements to "kill all the Muslims" who were in the area.⁴³

YEKATOM disciplined his subordinates

20. YEKATOM had the capacity to discipline elements that disobeyed his orders or the rules of the group,⁴⁴ thus ensuring their compliance with his orders and maintaining his ultimate authority. [REDACTED]."⁴⁵ P-1647 stated that YEKATOM was "in charge of discipline" in the group and that for instance when elements would erect illegal checkpoints, he would find out who was responsible and would personally punish the commanders.⁴⁶

³³ P-1858: T-185-CONF-ENG ET, p. 29, l. 12-23.

³⁴ [REDACTED].

³⁵ CAR-OTP-2065-3220 from [00:01:46] to [00:04:30] and its translation, CAR-OTP-2127-3668 at 3670-3671, l. 30-71.

³⁶ [REDACTED]. P-1839: T-171-CONF-ENG ET, p. 35, l. 5-23; P-1786: CAR-OTP-2058-0200 at 0204, para. 23.

³⁷ P-1339: T-152-CONF-ENG CT, p. 71-72, l. 17-1.5; [REDACTED]; P-2475: T-129-CONF-ENG CT, p. 24, l. 3-12, p. 37-38, l. 6-5.

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED]; P-1339: T-156-CONF-ENG CT, p. 31-32, l. 23-18; P-2018: T-222-CONF-ENG ET, p. 13-14, l. 21-14.

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ P-1839: T-171-CONF-ENG ET, p. 35, l. 5-19.

⁴⁴ [REDACTED]; P-1839: T-171-CONF-ENG ET, p. 22-23, l. 5-16; P-1858: T-185-CONF-ENG ET, p. 26, l. 4-15 ; P-1647: CAR-OTP-2050-0654 at 0660, paras. 40-41; T-194-CONF-ENG-ET, p. 50-51, l. 20-16.

⁴⁵ [REDACTED].

⁴⁶ P-1647: CAR-OTP-2050-0654 at 0660, paras. 40-41.

21. YEKATOM's authority was such that he could order the killing of elements or others if he believed them to be thieves or traitors. YEKATOM made this clear to his elements.⁴⁷ P-1839 described how YEKATOM shot an element from his group who had stolen and then ordered his subordinates MOMOKAMA and BEINA to kill him.⁴⁸ [REDACTED].⁴⁹ Further, video evidence shows YEKATOM disciplining his elements.⁵⁰

YEKATOM controlled his groups' finances

22. The evidence demonstrates that YEKATOM controlled the finances of his group. [REDACTED]⁵¹ [REDACTED].⁵² [REDACTED].⁵³

23. [REDACTED],⁵⁴ [REDACTED].⁵⁵ [REDACTED].⁵⁶ Further, witness [REDACTED] states having seen YEKATOM's men armed with machetes, guns, AK-47s, and rocket launchers with petrol bombs attached to the rockets when they arrived in Mbaiki⁵⁷—during their advance and takeover of villages along the PK9-Mbaiki Axis. [REDACTED]⁵⁸ [REDACTED].⁵⁹

The remaining legal elements of article 28 are satisfied

24. The evidence on the record shows that the crimes charged fall within the Court's jurisdiction and were committed by YEKATOM's subordinates.⁶⁰

25. Further, evidence that YEKATOM directed his elements in the commission of the charged crimes⁶¹ demonstrates that he (a) knew or should have known that his forces were committing or about to commit such crimes and that he (b) failed to take all necessary and

⁴⁷ CAR-OTP-2065-4849 from [00:00:00] to [00:00:20] and its translation, CAR-OTP-2118-5685 at 5687, l. 5-7.

⁴⁸ P-1839: T-171-CONF-ENG ET, p. 22-23, l. 5-16.

⁴⁹ [REDACTED].

⁵⁰ CAR-OTP-2012-0523 from [00:49:33] to [00:51:29] and its translation, CAR-OTP-2118-5547 at 5587, l. 1308-1316; CAR-OTP-2065-3220 and its translation CAR-OTP-2127-3668.

⁵¹ [REDACTED].

⁵² [REDACTED]; P-1647: CAR -OTP-2050-0654 at 0665, para. 79.

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED]; P-1647: CAR-OTP-2050-0654 at 0665, para. 83.

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ P-1339: T-156-CONF-ENG CT, p. 31-32, l. 23-18, [REDACTED].

⁶¹ [REDACTED].

reasonable measures within his power to prevent or repress their commission, or to submit the matter to the competent authorities .

The evidence supports an article 25(3)(c) and (d) re-characterisation

26. The evidence on the record also warrants the re-characterisation of YEKATOM's modes of responsibility to accord with article 25(3)(c) and (d).

Article 25(3)(c) and (d): Legal elements

27. Article 25(3)(c) liability entails: (a) a crime within the jurisdiction of the Court was committed; (b) the Accused acted for the purpose of facilitating the crime and with knowledge; and (c) the act aided, abetted or otherwise assisted in its commission.⁶²

28. Article 25(3)(d) liability entails: (a) a crime within the jurisdiction of the Court was committed; (b) a group of persons acting with a common purpose committed such a crime; (c) the accused contributed to the crime in any way; (d) the contribution was intentional; and (e) the contribution was made either with the aim of furthering the criminal activity or criminal purpose of the group, or in the knowledge of the intention of the group to commit the crime.⁶³

The evidence supports an article 25(3)(c) and (d) re-characterisation

29. The evidence on the record substantiates the Pre-Trial Chamber's findings regarding YEKATOM's contributions to the charged crimes,⁶⁴ and further satisfies the legal element of providing a contribution to the commission of the crimes charged pursuant to 25(3)(c)⁶⁵ and (d).⁶⁶

30. Here, the evidence demonstrates that during the relevant time period, YEKATOM:

⁶² See also First Application, ICC-01/14-01/18-503-Conf, paras. 36-40, setting out the legal elements of article 25(3)(c) in more detail.

⁶³ See also First Application, ICC-01/14-01/18-503-Conf , paras. 41-49, setting out the legal elements of article 25(3)(d) in more detail.

⁶⁴ ICC-01/14-01/18-403-Conf-Corr, p. 107.

⁶⁵ See First Application, ICC-01/14-01/18-503-Conf, paras. 36-40, setting out the legal elements of article 25(3)(c) in detail.

⁶⁶ See First Application, ICC-01/14-01/18-503-Conf, paras. 41-49, setting out the legal elements of article 25(3)(d) in detail.

(i) Structured and equipped⁶⁷ his Anti-Balaka elements

31. YEKATOM 's group was organised in a military-like hierarchy with elements organised into sections and companies.⁶⁸ This enabled YEKATOM to order his elements to conduct attacks on the "Muslims and Selekas" during the relevant time period. YEKATOM also supplied his elements with the necessary war weaponry and ammunition to engage in these attacks including MAS 36 rifles, Ak-47s, and grenades.⁶⁹

(ii) Prepared the Anti-Balaka attacks and advances, and participated and led his group in their execution.

32. Under YEKATOM's authority, while still in the bush, section leaders provided military training to the members of the group including new recruits, which included instructions on hand-to-hand combat and how to use weapons such as the MAS-36 and Ak-47s.⁷⁰ Video evidence shows that the military training continued after the 5 December attack on Bangui: a video from around 7 December 2013 shows YEKATOM speaking about the military training for his elements including recruits.⁷¹

33. YEKATOM ordered that all the elements be assembled, told them to be prepared for the attack on Bangui and instructed them on how to conduct the attack. YEKATOM deployed—and personally led—one of the columns of his group's best elements [REDACTED] in preparation for the attack.⁷² It was YEKATOM—leading his elements—[REDACTED].⁷³ YEKATOM participated in the attack along with OUANDJIO, BEINA and ALKANTO ⁷⁴ [REDACTED].⁷⁵ YEKATOM remained the leader of his group throughout the relevant time period.

⁶⁷ [REDACTED].

⁶⁸ [REDACTED]; P-1647: CAR-OTP-2050-0654 at 0657-0658, paras. 31-34.

⁶⁹ [REDACTED]; P-1647: CAR-OTP-2050-0654 at 0665, para. 83.

⁷⁰ [REDACTED], T-152-CONF-ENG CT, p. 4, l. 2-17, p.68, l. 4-12, T-155-CONF-ENG CT, p. 50-52, l. 11-5; P-2475: T-129-CONF-ENG CT, p. 21, l. 10-24.

⁷¹ CAR-OTP-2065-0951 from [00:01:10] to [00:01:59] and its translation, CAR-OTP-2122-2297 at 2299, l. 13-24.

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ P-1339: T-155-CONF-ENG CT, p. 11-12, l. 24-9. [REDACTED].

⁷⁵ [REDACTED].

- (iii) Issued orders to Anti-Balaka members,⁷⁶ including patently illegal instructions.⁷⁷

34. YEKATOM issued orders to his group prior to and during their attack on Bangui⁷⁸ and subsequently during their advance and takeover of villages along the PK9-Mbaïki Axis.⁷⁹ YEKATOM ordered his group to attack Bangui on 5 December⁸⁰ [REDACTED].⁸¹ In this regard, [REDACTED] testified that YEKATOM instructed his elements to kill the Seleka and the “Muslims”, including their children as well No one was to be spared.⁸² [REDACTED].⁸³ YEKATOM and his commanders did not differentiate between “Muslims and Selekas”: the elements were instructed to kill all “Muslims” because they were all Seleka.⁸⁴ YEKATOM also ordered his elements to destroy their property.⁸⁵

- (iv) Conscripted and/or enlisted children under 15 years of age into his group⁸⁶ and used them to assist him in the camp-bases, ordering them to be stationed at barriers and checkpoints⁸⁷ as well as to actively participate in hostilities.

35. [REDACTED] joined YEKATOM’s group when he was less than 15 years of age⁸⁸ [REDACTED]⁸⁹—[REDACTED].⁹⁰ P-2084 stated that on 30 January 2014, he saw children—as young as 10 years old—who were with the Anti-Balaka wearing *gris-gris* and armed with knives and machetes amongst the adult Anti-Balaka members that were maintaining security in PISSA.⁹¹ [REDACTED].⁹² P-1974 testified that [REDACTED], he saw and/or spoke with

⁷⁶ P-0954: T-166-CONF-ENG CT, p. 26, l. 1-7, p. 35-36, l. 5-1, p. 36-37, l. 23-19; [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ P-1839: T-170-CONF-ENG ET, p. 41, l. 1-23, p. 45-46, l. 24-17; [REDACTED].

⁸⁰ P-1339: T-154-CONF-ENG CT2, p. 36-37, l. 22-12.

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED]; P-0487: T-0201-CONF-ENG ET, p. 54, l. 10-23, p. 55, l. 4-10 ; [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ P-2084: CAR-OTP-2094-0968 at 0985-0986, paras. 87-89.

⁹² [REDACTED].

Anti-Balaka members (children) under the age of 15 years old at the Sekia⁹³ and Pissa checkpoints—some of whom were manning the barrier.⁹⁴ [REDACTED].⁹⁵

36. [REDACTED].⁹⁶ [REDACTED].⁹⁷

Remaining elements of articles 25(3)(c) and (d)

A group of persons acting with a common purpose committed the crimes charged

37. The evidence cited above demonstrates that the crimes charged were committed by a group of persons acting with a common purpose.⁹⁸

The subjective elements are satisfied

38. The evidence in the record shows that YEKATOM acted with the requisite intent and knowledge (i) for the purpose of facilitating the commission of the crimes charged under 25(3)(c); and (ii) with the aim of furthering the criminal activity or purpose of his group and/or with knowledge of his group's intention to commit crimes of that kind under 25(3)(d)(i) and (ii).

⁹³ P-1974: T -227-CONF-ENG ET, p. 20-21, l. 7-3, [REDACTED].

⁹⁴ P-1974: T-227-CONF-ENG ET, p. 22, l. 3-22.

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ See paras. 13-23.

IV. RELIEF SOUGHT

39. For the reasons set out above, the Prosecution respectfully requests that the Chamber give regulation 55(2) notice to the Parties and Participants that the facts concerning YEKATOM's individual criminal responsibility for the charged crimes may be subject to legal re-characterisation to accord, additionally or alternatively, with articles 28(a), and 25(3)(c) and (d).

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 20th day of September 2023
At The Hague, The Netherlands