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TRIAL CHAMBER V

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

**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 Response to “Yekatom Defence Request
to Present Additional Evidence for Potential Sentencing”
(ICC-01/14-01/18-2678-Conf)”,
ICC-01/14-01/18-2692-Conf , 13 September 2024**

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I. INTRODUCTION

1. The Prosecution opposes the Yekatom Defence's Request to Present Additional Evidence for Potential Sentencing,¹ in part. To the extent that it seeks to submit the statements of 12 proposed additional witnesses ("Proposed Statements"), it should be limitedly considered and/or rejected altogether in accordance with Trial Chamber V's exercise of its authority to limit submissions on sentencing where they are not clearly relevant to, or manifestly exceed the reasonable scope of recognised sentencing factors, as well as where they may be unnecessarily duplicative. Apart, the Defence's incidental requests to protect the identity of certain witnesses should be rejected, for lack of any plausibly objective basis to do so.

2. In respect of the Defence's further requests, to the extent that Rule 68 of the Rules of Procedure and Evidence does not apply in the context of sentencing proceedings, the Defence's further application to submit the proposed statements pursuant thereto is unnecessary. As such, the related request for an extension in which to file any declaration or certification pursuant to the provision is a moot issue, and should thus be rejected.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is filed as "Confidential", as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Chamber's consideration of the Proposed Statements should be limited to those matters strictly relevant to its determination of the appropriate sentence to be imposed against YEKATOM, should he be convicted. Sentencing submissions are not

¹ See ICC-01/14-01/18-2678-Conf ("Request").

meant to relitigate the merits of the case. Instead, they should be clearly tied to factors clearly defined in the Court's jurisprudence and regulatory framework. Articles 76 and 78, and Rule 145 of the Rules principally define the relevant scope of sentencing evidence and submissions that a Chamber may and/or must consider.

5. However, several of the Proposed Statements exceed these well-defined limits in parts, are irrelevant, unnecessarily duplicative of one another, or amount to the surrogate self-serving declarations of the Accused. As elaborated below, in such circumstances, the Prosecution considers that the Chamber may not properly take account of those statement or aspects thereof, as the case may be.

A. The Proposed Statements Should be Received Limitedly or Rejected

a. D29-3010

6. In respect of the substance of D29-3010's proposed statement, the Prosecution defers to the Chamber in respect of its tender, notwithstanding the Defence's strained characterisation of its import.

7. The Prosecution however opposes the Defence's further request for the non-publication of D29-3010's identity. The assertion that D29-3010 [REDACTED]² is *pro forma* – and the claim has been advanced in identical language for a number of proposed witnesses. It is furthermore insufficiently substantiated and implausible.

b. D29-1317

8. The Chamber should only limitedly consider the proposed statement of D29-1317. The statement largely rehearses evidence on the merits of the case, if not charges, without any definite relationship to appropriate sentencing factors. The assertion that D29-1317 [REDACTED]³ is remote, unsubstantiated, and far too conclusory for the

² [REDACTED].

³ [REDACTED].

Chamber to draw any reliable inferences from it with respect to YEKATOM's actual conduct. D29-1317's purported [REDACTED]⁴ is wholly irrelevant to the propriety of any eventual sentence pertaining to YEKATOM or any identifiable factor under Rule 145. Similarly, the witness's observation of [REDACTED]⁵ has no objective relationship to YEKATOM from which the Chamber can infer any causal or other consideration arising from this post-offence conduct.

9. The Defence's contention that "YEKATOM's efforts in deterring the local population from attacking Muslim civilians should be considered in the Chamber's evaluation in the event of conviction, as somehow "reducing Mr YEKATOM's degree of participation and intent pursuant to Rule 145(1)(c)"⁶ is misguided. The actions of an Accused after the fact – in this case, by years – cannot logically mitigate their 'degree of participation' at the time of the crime for which they are found responsible. Nor, can it logically reduce the level of intent relative to its commission, as proved by the evidence underpinning the conviction.⁷ While such information may demonstrate an Accused's efforts to make up for prior criminal conduct or atone for their behaviour – it does not in any way demonstrate mitigating circumstances in respect of their earlier participation in crimes, as the Request suggests.

10. Likewise, the contention that D29-1317's [REDACTED]⁸ more than a year after YEKATOM's alleged crimes, do not speak to the harm and displacement caused by YEKATOM insofar as the circumstances of their living in [REDACTED] after the fact are not inferably ascribable to him. Clearly an Accused may not reasonably benefit from the actions of another in mitigating the harm directly linked to their criminal conduct.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ ICC-01/14-01/18-2678-Conf, para. 28.

⁷ *Contra* ICC-01/14-01/18-2678-Conf, para. 28.

⁸ [REDACTED].

11. The Prosecution opposes the request for the non-publication of the witness's identity. As noted, the *pro forma* assertion that P-1317 [REDACTED] is manifestly insufficient and speculative.⁹

c. D29-8022

12. Although D29-8022's proposed statement attends to recognised sentencing factors, the Prosecution considers that the arguments advanced by the Defence are nevertheless tenuous and/or unsubstantiated. While certain evidence may go to YEKATOM's character, it is important to distinguish between evidence of *character* in relation to his propensity to commit the crime and/or his *intent* related thereto.

13. To the extent that the proposed statement bears on his character, for the purposes of sentencing, such an analysis is presumptively limited to the circumstances prevailing at the time that the determination is to be made. Normatively, this will address matters such as the Chamber's assessment of the risk of recidivism, the potential for future harm to the community, and the need for correction and/or retribution. However, it should not be considered – as the Defence seems to urge – as a matter going to YEKATOM's participation in the crimes for which he may be convicted.¹⁰ YEKATOM's conduct *after the fact* does not – nor may it – “reduc[e] his degree of responsibility and intent”¹¹ established in respect of the time of the crime.

d. D29-8017

14. Although D29-8017's claims fall within the parameters of Rule 145(2), the arguments advanced by the Defence in respect of them are weak, if not untenable.

15. YEKATOM's alleged work with affected communities may be a relevant factor for the Chamber to consider at sentencing. However, this conduct does not extend

⁹ [REDACTED].

¹⁰ See e.g. ICC-01/14-01/18-2678-Conf, paras. 31-33.

¹¹ ICC-01/14-01/18-2678-Conf, para. 32.

retrospectively to the time in which the Accused is alleged to have committed the crimes.¹² Here, D29-8017 purports to [REDACTED].

16. YEKATOM's conduct at that time, particularly in the role of an elected official and member of the National Assembly are of marginal relevance (if at all) to his conduct prior thereto, and should be evaluated only in that light. Moreover, the Chamber may equally consider that the crimes allegedly perpetrated by YEKATOM actually enhanced his capacity to reach political office and claim the power associated with it – thus, his criminal conduct served as or means or benefit – a path not at all different than other notorious Anti-Balaka Comzones who committed crimes in the relevant period, such as Florent KEMA¹³ (Comzone involved in the BOSSANGOA attack); Séverin NDOGUIA¹⁴ (aka '*Le Bleu*'), (Comzone involved in the YALOKÉ attack on YALOKÉ), as well as other persons, benefitting from their links to Anti-Balaka leaders such as Honorable Beatrice TEPA (relative of Amadou NDALE – BOUAR Comzone).¹⁵

17. The Prosecution opposes the request for the non-publication of the witness's identity. The *pro forma* assertion that P-1317 "[REDACTED] and that he [REDACTED] is manifestly insufficient and speculative.¹⁶

¹² *Contra* ICC-01/14-01/18-2678-Conf, paras. 36-37.

¹³ See ICC-01/14-01/18-T-108-Red-Eng, p. 10, ln. 17-23 (noting of KEMA, "[h]e's Anti-Balaka. And after he integrated the PCUD party, he gave up the fight as Anti-Balaka and joined the PCUD. And after that, he became a deputy").

¹⁴ See Corbeaunews, "Death of the major criminal-militia leader Anti-Balaka of Yaloké", 30 December 2022, (reporting « *Monsieur Ndoguia Séverin alias « Le bleu », un ex-chef milicien Anti-Balaka de Yaloké, élu député de la sixième législature par un jeu de passe -passe en 2016, vient de décéder à la suite d'une longue maladie [...] en 2014, c'était lui qui est à l'origine de la création de la milice Anti-Balaka à Yaloké. C'est cette milice qui menait une sanglante opération contre les Centrafricains de la confession musulmane à Yaloké et ailleurs*») <https://corbeaunews-centrafrique.org/centrafrique-deces-du-grand-criminel-chef-milicien-anti-balaka-de-yaloke/> [Last accessed: 13/09/2024]; see also ICC-01/14-01/18-723-Red, para. 154, and accompanying footnote references.

¹⁵ See e.g., [REDACTED].

¹⁶ [REDACTED].

e. D29-8012

18. D29-8012's proposed statement transparently exceeds the bounds of the factors going to the Chamber's determination of the appropriate sentence. For instance, the assertion that [REDACTED]¹⁷ is a transparent attempt by the Yekatom Defence to introduce evidence contemplated to exonerate YEKATOM on the *merits* of the case. In any event, legally it is clear that regardless of who requested the convoys, this has absolutely no factual or legal impact on YEKATOM's culpability or the gravity of his crimes.¹⁸

19. The Defence's argument fails. And, in any event, the Chamber may not properly consider such evidence in respect of the merits of YEKATOM's criminal responsibility in any event, one; and two, the point presented in the proposed statement has no independent import to the sentencing proceedings.

20. Similarly, whether [REDACTED] is unconnected to the Chamber's determination of an appropriate sentence. Nor is does it have any rational bearing on any assessment of YEKATOM's degree of participation in the crimes with which he is charged or his intent.¹⁹

21. Finally, YEKATOM's purported acts to prevent youth from committing crimes and to "address lawlessness"²⁰ *after the fact* has nothing to do with any consideration regarding his prospective sentencing for the crimes charged, in the event of his conviction. Moreover, it does not serve even to counter the violence and lawlessness for which he is known – as shown by the evidence of his murder of two of his subordinates, among others, during the relevant period,²¹ and the violent offence

¹⁷ [REDACTED].

¹⁸ See *e.g.* *Prosecutor v. Popovic et al*, IT-05-88-T, Judgement (Volume 1), 10 June 2010, paras. 897-898, 903, 905 (*internal citations omitted*), *contra* ICC-01/14-01/18-2678-Conf, para. 41 (arguing incorrectly that "organisation of the Muslims' departure by the Chadian authorities is a factor that minimises Mr YEKATOM's degree of participation and intent"); see also *e.g.*, [REDACTED].

¹⁹ [REDACTED].

²⁰ ICC-01/14-01/18-2678-Conf, para. 39.

²¹ See *e.g.* CAR-OTP-2050-0654-R02, at 0662-0663, paras. 53-60.

which led directly to his arrest in CAR prior to his transmission to the seat of the Court on entirely separate warrant.²²

f. D29-8014

22. D29-8014's proposed statement similarly exceeds the bounds of the appropriate factors for the Chamber to consider at the sentencing stage of the proceedings.

23. For instance, YEKATOM having been allegedly assaulted by SELEKA elements, is not relevant to his motive, intent, participation in, or circumstances regarding the crimes charged.²³ YEKATOM's supposed affability or conversational proclivity does not demonstrate relevant character evidence or otherwise attend to any substantive matter for sentencing purposes. The arguments advanced by the Defence in respect of what the Chamber may derive from D29-8014's proposed statement are precatory and moreover, unreasonable. Indeed, nothing in the proposed statement legitimately dispels YEKATOM's demonstrated dedication not only to targeting Muslims – and not just the Seleka – in the relevant time, as his own unfiltered utterances and orders show,²⁴ but his acceptance of key members of his Anti-Balaka group who would make genocide against Muslims,²⁵ and those who openly admit killing Muslim children.²⁶

24. D29-8014's evidence is of such a marginal nature, that the Chamber should preclude the proposed statement altogether in accordance with its exercise of discretion to regulate the evidence to be submitted on sentence.²⁷

²² See CAR- OTP-2093- 0830 (video) (showing YEKATOM firing a weapon in the National Assembly in October 2018).

²³ *Contra* ICC-01/14-01/18-2678-Conf, para. 44.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED]

²⁷ ICC-01/14-01/18-2600-Conf, para. 6 (noting that “any additional evidence authorised by the Chamber, especially oral evidence, will be limited”).

25. The Prosecution opposes the request for the non-publication of the witness's identity. The unsubstantiated claim that P-8014 [REDACTED]²⁸ is manifestly insufficient. The suggestion that D29-8014 could face [REDACTED]²⁹ should his identity and cooperation with the Defence become known is conclusory, and is, in any case, speculative.

g. D29-8021

26. D29-8021's proposed statement is not appropriate for submission. As to the events of 5 December 2013 in CATTIN,³⁰ it is clear that the recitations comprise yet another attempt by the Defence to litigate the merits of the case under the guise of sentencing evidence. While YEKATOM's conduct during those events can be relevant to the Chamber's determination of an appropriate sentence, the conduct of the SELEKA in respect of *other people* not tied in any way to YEKATOM so as to explain his actions or motivations, is not a relevant sentencing consideration. The Defence cannot claim, as it appears to do here, that YEKATOM's actions were motivated or can be explained by the alleged conduct of the SELEKA regarding particular incidents not otherwise shown to be *known* to him at the time. In short, the Request fails to connect D29-8021's proposed narrative to the Accused.

27. Similarly, D29-8021's personal fear of the SELEKA is irrelevant to YEKATOM – just as is her claim that [REDACTED]³¹ has no discernible connection to any potentially relevant sentencing issue before the Chamber. As such, they should be disregarded. The stated relevance advanced – namely, “for the purpose of mitigation”,³² like the several preceding submissions is conclusory. It is unclear at best how YEKATOM [REDACTED], has any bearing on “fostering peace and stability with in the community reflecting a genuine intention to ensure the well-being of all

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ ICC-01/14-01/18-2678-Conf, para. 49.

³¹ [REDACTED].

³² ICC-01/14-01/18-2678-Conf, para. 49.

community members”,³³ more so after the relevant events and in a manner that could reasonably impact an appropriate sentence. By contrast, relevant sentencing evidence relates to the disposition of the defendant as connected to the events, such as [REDACTED].³⁴

28. Finally, as concerns the Defence’s contentions regarding the relevant factors of YEKATOM’s participation in the forcible transfer and displacement of the Muslim population, the Prosecution refers to its submissions above on the Defence’s mistaken application of the relevant law.

29. The Prosecution opposes the request for the non-publication of the witness’s identity. The assertion that P-8021 [REDACTED] is not persuasive. Moreover, the claim is *pro forma* – pasted in the Request from arguments concerning one proposed witness to the next – and should be rejected. The claim that P-8021 [REDACTED]³⁵ is not sufficiently substantiated and speculative.

h. D29-8013

30. The Chamber should reject the proposed statement of D29-8013. The proposed statement is of such marginal relevance (if at all) to the issues at sentence as to be of no plausible value to the Chamber’s determination.

31. As noted above, the Defence’s apparent thesis that the SELEKA’s or others having warned Muslims of their impending targeting by the Anti-Balaka – including members of YEKATOM’s group – that they would be killed if they remained where they were – is of no legal or factual consequence to YEKATOM’s prospective sentence. The Accused’s responsibility or participation in the forcible transfer and/or deportation attributed to his conduct (whether affirmative or omissive) perpetrated

³³ ICC-01/14-01/18-2678-Conf, para. 49.

³⁴ [REDACTED].

³⁵ [REDACTED].

directly or through his militia's use of physical force, coercion, or their creation of coercive conditions,³⁶ is not mitigated by the involvement of others intervening to render assistance to those they have imperilled.³⁷ Further, the law is clear – “[m]ilitary commanders or political leaders cannot consent on behalf of the individual. In addition, the assistance by humanitarian agencies, such as UNPROFOR, ICRC, and NGOs, in facilitating displacements, does not of itself render an otherwise unlawful transfer lawful.”³⁸

32. YEKATOM's claim as reported by the witness, that “he did not come to harm Muslims” in MBAIKI – after having already been publicly implicated in crimes well before his arrival there³⁹ – are also self-serving, and attempt to serve as a surrogate for the Accused's testimony. In any case, it is of such marginality to the determination of his sentence in the event of conviction, that the Chamber cannot reasonably entertain, let alone credit the proposed submission. Likewise, D29-8013 having *heard* that YEKATOM prevented the local population from harming Muslims plainly does not speak retroactively to his intent, participation, or disposition at the relevant time in respect of the crimes charged. Even taking the Defence's arguments as plausible – which they are not – the fact that others may have “contributed to the harm and displacement experienced by the Muslims”⁴⁰ does not negate or even attenuate the harm caused by YEKATOM and his elements. It cannot be argued that, because others might have *also* harmed Muslims that the harm caused by YEKATOM and his group is thereby diminished – it is merely distinct and additional. The Defence's arguments on the significance of D29-8013's proposed statement to relevant sentencing factors

³⁶ See *Prosecutor v. Popovic et al*, IT-05-88-T, Judgement (Volume 1), 10 June 2010, para. 893, 896 (internal citations omitted).

³⁷ ICC-01/14-01/18-2678-Conf, para. 54.

³⁸ See *Prosecutor v. Popovic et al*, IT-05-88-T, Judgement (Volume 1), 10 June 2010, para. 897, *contra* ICC-01/14-01/18-2678-Conf, para. 56.

³⁹ See ICC-01/14-01/18-T-255-ENG-CT, p. 32, ln. 18 - p. 33, ln. 10 (D29-5015 noted his refusal to allow YEKATOM to come to MBAIKI out of concern that “I didn't want war to come to MBAIKI”).

⁴⁰ ICC-01/14-01/18-2678-Conf, para. 56.

are wishful and distort its import. The Chamber should thus reject them for what they are, and the proposed statement along with them.

33. The Prosecution opposes the request for the non-publication of the witness's identity. The assertion that P-8013 [REDACTED], is not sufficiently substantiated and again, a merely *pro forma* statement. The Chamber should reject it.

i. D29-8016

34. As concerns D29-8016's proposed statement, the Chamber should not consider those parts of it which (a) attempt to relitigate the case on the merits; and (b) exceed the scope of the appropriate sentencing factors.

35. A prime example of the Yekatom Defence's tactic here is demonstrated in D29-8016's claim that [REDACTED].⁴¹ D29-8016's claim about [REDACTED], has no reasonable probative value in respect of YEKATOM's criminal responsibility in relation to his possible sentencing. The claim, like others, is a purely and transparently self-serving surrogate for the Accused, who elected *not to testify* in his own behalf.

36. In addition, with the [REDACTED],⁴² only further establishes that it occurred after September 2014 and well-after the charged crimes had taken place in respect of YEKATOM and his group. The denial of criminal responsibility of a would-be co-perpetrator (even through another witness) cannot reasonably carry any weight with the Chamber as concerns the Accused's sentencing.⁴³ This is even more stark here, where BENA is captured on video confirming his intention to commit genocide.⁴⁴ The Defence's suggestion that the statement "shows Mr YEKATOM's ... dedication to

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ ICC-01/14-01/18-2678-Conf, para. 60.

⁴⁴ See *supra*, paragraph 24 and accompanying note.

ensure that Muslims could live without fear of being harmed by the Christian population”⁴⁵ is practically incomprehensible.

37. Apart, as noted above, YEKATOM’s involvement in [REDACTED] is of marginal relevance, if at all. Similarly, these activities and others related in the statement, [REDACTED], are not probative of any valid sentencing consideration. Even assuming *arguendo* that they are - they are barely relevant or equivocal. Indeed, such activities (taken in context) are just equally susceptible to demonstrating YEKATOM’s consistent aspiration to obtain power in CAR, following the well-trodden path among other Anti-Balaka leaders, from obscure, to Comzone, to MP.⁴⁶

j. D29-1600

38. The Chamber should reject D29-1600’s proposed statement insofar as it attempts to recite the events in MBAIKI without any connection to the conduct of YEKATOM bearing on a relevant sentencing consideration. This includes his recitation of an incident in [REDACTED] – and P-1600’s [REDACTED].⁴⁷ Similarly, the witness’s recitation of [REDACTED]⁴⁸ is not linked to YEKATOM’s conduct in any way. To the extent that the statement has bearing on YEKATOM’s conduct or the circumstances in which he acted that may be reasonably inferable from it, the Prosecution considers that it may fall within the scope of the applicable regulatory framework and jurisprudence of the Court. However, YEKATOM’s acts to employ [REDACTED]⁴⁹ do not, and they are emblematic of the minimal value of the proposed statement.

⁴⁵ ICC-01/14-01/18-2678-Conf, para. 59.

⁴⁶ See *e.g.*, Corbeaunews, RCA: Appel d’un Comzone des Antibalaka de Yaloke sur la Situation des Peules, 15 January 2015, reporting « Séverin Ndoqué alias Colonel le Bleu, un Comzone de la ville de Yaloke lance un appel à ses pairs de l’ancien mouvement Anti-balaka à faciliter la libre circulation des Centrafricains de la minorité peule dans la région », <https://corbeaunews-centrafrique.org/rca-appel-dun-comzone-des-antibalaka-de-yaloke-sur-la-situation-des-peules/> [Last accessed: 13/09/2024]. Pursuing an identical tactic to obtain political office as YEKATOM.

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

39. Should YEKATOM be convicted of any of the 21 counts of serious crimes that he faces, it is difficult to see how his collaboration with MISCA – after having been directed to leave the area together with his elements immediately following the murder of Djido SALEH,⁵⁰ that his [REDACTED]⁵¹ [REDACTED],⁵² could reasonably inform the Chamber’s determination of an appropriate sentence within the meaning of article 78.

40. To the extent that the Defence attempts to argue the evidence going to the merits of the charges, the Request should be disregarded.⁵³ Moreover, to the extent that the conclusions drawn from D29-1600’s proposed statement are unsubstantiated or speculative, these should be equally discarded as a basis for its consideration. For instance, the self-serving assertion that [REDACTED]⁵⁴ is incongruent and conjectural. Even assuming *arguendo* that not all individuals being forcibly transferred were civilians, this clearly does not lessen the harm *caused by* YEKATOM to civilians who were in fact victims. Moreover, it is clear that “there is no requirement nor is it an element of a crime against humanity that the victims of the underlying crime be civilians or predominantly civilians, provided the acts form part of a widespread or systematic attack directed against a civilian population.”⁵⁵ As such, the position advanced by the Defence on the relevance of the proposed statement (indeed several statements) on this matter fails.

k. D29-8019

41. The Chamber should disregard D29-8018’s proposed statement insofar as it exceeds the proper scope of relevant sentencing issues. For example, [REDACTED]⁵⁶

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ *Contra e.g.*, ICC-01/14-01/18-2678-Conf, para. 63.

⁵⁴ [REDACTED].

⁵⁵ *Prosecutor v. Popović et al*, IT-05-88-T-A, Appeal Judgement, 30 January 2015, para. 773; *See also Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A Appeal Judgement, 5 May 2009, paras 36-37

⁵⁶ [REDACTED].

– irrespective of the reason – has no place before the Court on the matter of determining an appropriate sentence in this case. The matter comprises an *ex post facto* occurrence with no apparent relevance to the events in which YEKATOM allegedly took part in 2013 and 2014 as an Anti-Balaka leader and with which he is charged. So too, is his alleged [REDACTED].⁵⁷ Some parts of the proposed statement go to proper sentencing issues, such as the Accused's reported willingness to help the injured may bear on conduct which the Chamber may reasonably assess goes to, for instance, the risk of recidivism, public danger, or possibly an acknowledgement of the defendant's prior misconduct. However, other parts of the proposed statement which involve the Accused's conduct *after the fact*, have no clear bearing on his status, intent, participation, or even character. Accordingly, they should not be countenanced for the purposes of sentencing, should YEKATOM be convicted.

1. D29-8020

42. The Prosecution defers to the Chamber's discretion with regard to D29-8020's statement. Notably however, like several other Proposed Statements, D29-8020 presents claims that are totally irrelevant to any sentencing factor. The witness's observation of [REDACTED]⁵⁸ is clearly not a circumstance of the Accused, nor does it comprise any other salient factor going to the Chamber's determination of the appropriate sentence. Similarly, YEKATOM's [REDACTED]⁵⁹ do not plausibly bear on any material sentencing factor. Despite the Defence's best attempts to bring these irrelevancies under the umbrella of articles 76 and 78, and Rule 145, the arguments fall flat and well short of the minimal threshold to demonstrate relevance.

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

43. Although the Defence emphasises that [REDACTED],⁶⁰ it bears noting that during the relevant period purported in the statement, [REDACTED]⁶¹ – [REDACTED].⁶²

44. The Prosecution opposes the request for the non-publication of the witness's identity. The assertion that P-8020 [REDACTED], is not sufficiently substantiated and again, merely *pro forma*. The Chamber should thus reject it.

45. As explained above, the the Prosecution opposes the Proposed Statements, and respectfully requests their limited consideration and/or rejection accordingly.

B. Rule 68 is not a pre-requisite to the submission of testimonial evidence on sentencing

46. As the Request acknowledges, the Court's case law holds that strict evidentiary qualification is not necessary to provide material relevant to sentence for the Chamber's consideration.⁶³ A Chamber's sentencing determination may be based on "evidence or *submissions* relevant to the sentence [..]".⁶⁴ Thus, Trial Chamber VII in the *Bemba et al* case interpreted article 76(1) – which similarly requires the Chamber to take into account "the evidence and submissions presented and submissions made during the trial that are relevant to the sentence" – as empowering it to dispense with the evidentiary pre-requisites of Rule 68 of the Rules at the sentencing stage.⁶⁵

47. Insofar as Rule 68 need not be met with respect to the Proposed Statements, the Prosecution does not consider that it need further address the Request as to the

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ Note the Prosecution's prior submissions, ICC-01/14-01/18-2679-Conf, paras. 19-21.

⁶⁴ Article 76(2) [emphasis added].

⁶⁵ ICC-01/05-01/13-2025, paras. 6-7.

Defence's submissions regarding the relevant criteria in satisfaction of the conditions of admissibility otherwise applicable.

C. The Requested Extension is Unnecessary

48. Finally, given that the Chamber may duly take account of the Proposed Statements without the further condition that Rule 68 is satisfied, the Defence's request for an extension of time to obtain certifications and/or accompanying declarations under rule 68(2) is unnecessary. Moreover, given the Defence's acknowledgement that any delay related to sentencing could bear on the proceedings,⁶⁶ the request to set a deadline to obtain and/or file any such certifications to after the scheduled sentencing hearing⁶⁷ is untenable. As the Defence concedes, it would "only prolong the proceedings."⁶⁸ In fact, it would undermine their efficiency, if not the very purpose of the consolidated approach pursued by the Chamber in this case.

⁶⁶ See Yekatom Defence email of 12 September 2024, at 3:08 pm (citing ICC-01/14-01/18-2618, para. 13).

⁶⁷ See e.g. ICC-01/14-01/18-2678-Conf, paras. 77, 94, 96.

⁶⁸ See ICC-01/14-01/18-2678-Conf, para. 14.

IV. CONCLUSION

49. For the reasons above, the Prosecution requests that the Chamber limitedly consider and/or reject altogether the Proposed Statements as indicated; reject the Defence's incidental requests for the non-publication of witness identities; and reject the further request for an extension of time to obtain and/or file certifications or declarations further to the requirements of Rule 68 of the Rules.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 25th of November 2024

At The Hague, The Netherlands