

1 International Criminal Court  
2 Pre-Trial Chamber II  
3 Situation: Central African Republic II  
4 In the case of the Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka - ICC-01/14-01/22  
5 Presiding Judge Rosario Salvatore Aitala, Judge Tomoko Akane and  
6 Judge Sergio Gerardo Ugalde Godínez  
7 Confirmation of Charges Hearing - Courtroom 2  
8 Thursday, 24 August 2023  
9 (The hearing starts in open session at 9.30 a.m.)  
10 THE COURT USHER: [9:30:26] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE AITALA: [9:30:43] Good morning, everyone.  
14 Mr Court Officer, kindly call the case.  
15 THE COURT OFFICER: [9:30:54] Good morning, Mr President, good morning,  
16 your Honours. This is the second situation in the Central African Republic, in the  
17 case of the Prosecutor versus Maxime Jeoffroy Eli Mokom Gawaka, case reference  
18 ICC-01/14-01/22.  
19 And for the record, we are in open session.  
20 PRESIDING JUDGE AITALA: [9:31:11] Thank you very much.  
21 Like yesterday, I kindly ask the parties just to reconfirm whether the teams are the  
22 same or if there is any change, to state it for the records.  
23 Mr Prosecutor.  
24 MR NIANG: [9:31:26](Interpretation) Good morning, your Honours. The Office of  
25 the Prosecutor is in the same composition as yesterday. Thank you.

1 PRESIDING JUDGE AITALA: [9:31:34] Thank you very much.

2 MR LAROCHELLE: [9:31:39](Interpretation) Good morning, your Honours.

3 Nina Guilloux is with us today and Bonnie Johnston as well. Other than that, the  
4 composition of the Defence team is the same and I wish everyone a good day.

5 PRESIDING JUDGE AITALA: [9:32:02] Thank you very much.

6 THE INTERPRETER: [9:32:02] Overlapping.

7 PRESIDING JUDGE AITALA: [9:32:03] Good morning, Mr Representative of the  
8 Victims.

9 MR DANGABO MOUSSA: [9:32:05](Interpretation) Good morning, your Honour.

10 The Common Representatives of Victims are the same as yesterday. It's the same  
11 line-up, so to speak. Thank you.

12 PRESIDING JUDGE AITALA: [9:32:16] Thank you very much.

13 Okay. Today, we have an agenda continuing with the Defence submissions on the  
14 merits. According to our calculations, you have one hour left, 60 minutes. So the  
15 floor is yours.

16 MS GIBSON: [9:32:30] Good morning, Mr President, your Honours. And good  
17 morning to colleagues around the courtroom. It's a privilege to be appearing before  
18 you today on behalf of Mr Maxime Mokom.

19 As lead counsel said, I will be speaking about the modes of liability charged in the  
20 present case. How is Mr Mokom alleged to be responsible for the charged crimes,  
21 what are the elements that the Prosecution needed to prove, and have they done it?  
22 I don't anticipate needing to move in and out of private session.

23 And we want to start today with what we see as being the evolution of the  
24 Prosecution's case against Mr Mokom, as between the request for an arrest warrant in  
25 2018, as compared with the document containing the charges that was filed on 9

1 March 2023, as compared with the case that we heard from the Prosecution on  
2 Tuesday, where we can trace this significant reduction in the scope of the case against  
3 Mr Mokom.

4 And on Tuesday, we heard that the Prosecution's theory has narrowed right down to  
5 this central thesis that Mr Mokom should have known that the Anti-Balaka were  
6 committing crimes, because there were so much media that one could not escape it,  
7 and that he didn't walk away when a reasonable person would have.

8 And this is at the real-time transcript of 22 August, page 93, lines 2 to 13.

9 And this is how the Prosecution ended their submissions: Mr Mokom made his  
10 choice. He should have known and he didn't walk away.

11 This could not be further from the case that the Prosecution came with to this Court  
12 when it asked Mr Mokom to be found and arrested in 2018. At that point, the  
13 Prosecution's case was that Mr Mokom was committing the crimes and would be  
14 charged together jointly with others under Article 25(3)(a) of the Statute.

15 But this fell away when it became time for the Prosecution to frame a case for  
16 confirmation, presumably because nowhere in the evidence do we see Mr Mokom  
17 committing crimes.

18 There was never any suggestion, either in 2018 or now, that he was liable as  
19 a commander; that he had effective control over the Anti-Balaka troops. And that's  
20 right, there is no command case here.

21 Instead, the Prosecution has moved down through Article 25(3) and has framed  
22 Mr Mokom's liability not as committing, not as ordering, not as commanding the  
23 perpetrators, but as aiding and abetting under Article 25(3)(c) and contributing to  
24 a group acting with a common purpose, under Article 25(3)(d).

25 And it's not controversial to say that these forms of liability already indicate a more

1 remote or arm's-length contribution to the crimes or, as said by the Appeals Chamber  
2 in the Lubanga appeal judgment at paragraph 462, a lower form of blameworthiness  
3 than an accused who commits the crime themselves.

4 So we have Mr Mokom not commanding the troops. He is not in the mix  
5 committing the crimes, but he's away from the crimes -- including, during the critical  
6 period of the charged 5 December attacks -- across the border in Zongo.

7 The flip side of this kind of charging is that when you have a suspect that's more  
8 removed from the crimes, the obligation on the Prosecution is heightened to show  
9 how that link can be made between the suspect and the charged crimes.

10 Where does this link come from in this case if Mr Mokom isn't committing the crimes,  
11 he's not commanding the perpetrators, he's not giving orders? And this Pre-Trial  
12 Chamber in the Yekatom and Ngaissona confirmation decision recognised rightly the  
13 need for a link to be established between the suspect and the charged crimes, and  
14 found that where the evidence of that link is flimsy or otherwise inconsistent or  
15 inadequate, the charges cannot be confirmed.

16 So we are going to look at these two modes of responsibilities today, starting with  
17 aiding and abetting under Article 25(3)(c) and then moving to perhaps the more  
18 controversial common purpose liability under Article 25(3)(d).

19 But, firstly, I just wanted to address quickly the question of evidence. When we talk  
20 about the inadequacy of evidence or flimsy or inconsistent evidence, what do we  
21 mean?

22 The DCC in this case is 70 paragraphs long. It was disclosed on 9 March this year,  
23 together with this annex C1. Annex C1 lists the 70 pages of the DCC -- the 70  
24 paragraphs with each of the supporting accusations underneath, and then there's this  
25 second column, which lists all the evidence that the Prosecution says supports the

1 supporting allegations.

2 And we are confident that the Chamber has done the same exercise that we've done,  
3 which is to extract all this evidence and read it and look at the extent to which it  
4 supports the allegations.

5 To be clear, annex C1 is the Prosecution putting its case at its highest. This is not a  
6 complete picture of all of the evidence relevant to all of the allegations. This isn't the  
7 incriminating evidence. There isn't a third column which sets out all the evidence  
8 that would undermine the Prosecution case, which we now know exists.

9 We know in this case, there are 425 pieces of evidence that have been framed by -- as  
10 exonerating by the Prosecution itself. Annex C1 is just the incriminating evidence.  
11 This is the Prosecution's case at its absolute highest.

12 And we can see that a significant amount of the evidence cited in annex C1 comes  
13 from the statements of Prosecution witnesses, many of whom have now come to  
14 The Hague --

15 PRESIDING JUDGE AITALA: [9:39:48] Slow down, slow down, please.

16 MS GIBSON: [9:39:50] -- and testified in the Yekatom and Ngaissona trial. And  
17 they have been cross-examined. And where those Prosecution witnesses have said  
18 something different under oath, something favourable to Mr Mokom, or even  
19 something just inconsistent with their prior statements, that's not reflected here.  
20 That hasn't be captured in annex C1.

21 A concrete example: Going straight to the common purpose, the first major  
22 accusation in the DCC, annex C1, says, at line 6, that the Anti-Balaka targeted the  
23 Muslim population.

24 The first witness cited in support of that allegation is P-808, and his witness statement,  
25 CAR-OTP-2093-0010, where he says at paragraph 40, that's cited, that --

1 "... the Anti-Balaka killed many innocent Muslim[s] civilians, women and children."  
2 But when P-808 came to testify, he was cross-examined on this paragraph 40, on this  
3 very allegation, and he clarified this time under oath and in open session:  
4 Well, it's difficult for me to say whether or not it was civilians or the Anti-Balaka who  
5 committed the crimes, and, he said, "that['s] what caused all the confusion."  
6 And that's at transcript CAR-OTP-00001107 at pages 13 to 14.  
7 So, we have a Prosecution witness saying something incriminating in annex C1,  
8 which he then retracts or clarifies in his live evidence, but the Prosecution just stops at  
9 the statement. And so this annex doesn't reflect the actual state of the Prosecution  
10 evidence and so it's inaccurate. And we picked this example from other examples  
11 where statements relied on in this annex have been reversed or clarified, when the  
12 very same witnesses have come to testify.  
13 So we would, firstly, invite the Pre-Trial Chamber to consider the totality of  
14 a witness's evidence before they accept what's attributed to them in annex C1,  
15 particularly to see if they've said something different, because the Prosecution has not  
16 done that exercise for you.  
17 This is its case at its absolute highest. More examples to come.  
18 But coming back to the modes of responsibility, we are going to start with aiding and  
19 abetting under Article 25(3)(c). And the Prosecution is required to demonstrate that  
20 Mr Mokom aided, abetted or otherwise assisted in the commission or attempted  
21 commission of the charged crimes and that this assistance -- so what Mr Mokom did  
22 had a causal effect, so it furthered or advanced or facilitated the commission of the  
23 crime.  
24 And this is where we say there is a black hole in the Prosecution's case and it's the  
25 reason that the Prosecution presented, firstly, the crimes, and then made a separate

1 presentation on Mr Mokom's contribution, but didn't take that critical step of linking  
2 his alleged contribution back to a single charged crime, because that evidence doesn't  
3 exist.

4 And it's not enough for the Prosecution just to allege general assistance to the  
5 Anti-Balaka generally or even just assistance to the Anti-Balaka in a particular region.  
6 The Prosecution is required to demonstrate that Mr Mokom's assistance contributed  
7 specifically to the charged crimes in the DCC in those locations and on those dates.  
8 And what's useful is looking to other cases to see what sort of evidence has been  
9 accepted as demonstrating that link.

10 In the Taylor case at the Special Court for Sierra Leone, which is probably the most  
11 well-known aiding and abetting case, the Prosecution was able to demonstrate that  
12 President Taylor had provided arms and ammunition, specific and identifiable  
13 shipments to the RUF/AFRC, with details about where they went and to whom, and,  
14 more importantly, how they were used, in which attacks and by whom in what  
15 time frames to commit the charged crimes. And I'm referring to the evidence  
16 outlined in the Taylor trial judgment at paragraphs 5528 to 5573 and the finding in  
17 6911.

18 The same with military personnel. At paragraph 6922, the Prosecution was found to  
19 establish that President Taylor sent a group of 150 fighters to an RUF battalion, which  
20 was then deployed in particular attacks in December 1988 in Kemena, which  
21 contributed to the charged crimes.

22 PRESIDING JUDGE AITALA: [9:46:07] Madam, you need to slow down and  
23 observe pauses between sentences. Otherwise, the work of the court reporters and  
24 the interpreters will be very challenging.

25 MS GIBSON: [9:46:18] My apologies.

1 PRESIDING JUDGE AITALA: Thank you.

2 MS GIBSON: [09:46:18] I'll do my best.

3 This is the level of detail that has been required before aiding and abetting liability  
4 kicks in.

5 Similarly at the ICTR, in the Ngirabatware case, the Prosecution was found to have  
6 demonstrated that the accused, Augustin Ngirabatware, came to a roadblock on 7  
7 April 1994 and provided machetes to particular *Interahamwe*, two of whom are named,  
8 and the Trial Chamber was satisfied that at least some of these weapons were used  
9 during the attacks and killings in Nyamyumba commune to commit the charged  
10 crimes.

11 This is the Ngirabatware trial judgment at paragraphs 1335 to 1341.

12 So not just general support, not just general supply of weapons, there has to be a link  
13 between the assistance and the charged crime.

14 And you might think, Okay, well, that was the standard at the tribunals, and this is  
15 the ICC. But this level of evidential detail has also been required for aiding and  
16 abetting at this Court.

17 In the Bemba Article 70 case, the Trial Chamber was required -- the Trial Chamber  
18 required the Prosecution to demonstrate that specific assistance to a particular  
19 witness corruptly influenced their testimony, which was the charged crime. The  
20 accused, Fidèle Babala, for example, was held to be the general financier of the  
21 scheme to corruptly influence witnesses.

22 And in paragraphs 877 and 878 of the trial judgment, the Chamber said it's not  
23 enough to just rely on general assistance in financing the scheme. The Prosecution  
24 was required to establish that his particular assistance to particular witnesses would  
25 have influenced to give -- them -- false testimony. And for some witnesses, the



1 Prosecution had that evidence and for others it didn't.

2 And you might think, Well, those were all trials and this is a confirmation. The link  
3 doesn't need to be here -- or it doesn't need to be here with that level of detail, but we  
4 can see in the Yekatom and Ngaïssona case, this Pre-Trial Chamber correctly also  
5 required precisely this kind of evidence.

6 At paragraph 176 of the confirmation decision, the Pre-Trial Chamber held that the  
7 Prosecution evidence of aiding and abetting was too general for charges in particular  
8 regions, and it found that, and I quote:

9 "... the evidence presented by the Prosecutor does not allow the Chamber to trace  
10 Ngaïssona's financial contribution, or otherwise, to the Anti-Balaka groups operating  
11 in those locations."

12 So that's what's needed.

13 Where are we in this case? With Mr Mokom, we are nowhere near the level of detail  
14 needed. Annex C1, the Prosecution's case at its highest. No cross-examination of  
15 these witnesses, no exculpatory evidence.

16 In annex C1, the Prosecution says that Mr Mokom's contribution was, firstly, giving  
17 money to the Anti-Balaka, and this is from page 48 of annex C1. Mr Mokom  
18 allegedly funded the Anti-Balaka through selling his house in Zongo, and then  
19 channelled financial support from the Bozizé family to buy weapons and ammunition  
20 for the Anti-Balaka.

21 Lead counsel spoke to you yesterday about P-2232 and the problems with his  
22 evidence here. Apart from him, there is -- there is nothing, there is no direct  
23 evidence from anyone allegedly involved in these transactions. No witness claims to  
24 have seen or transferred or handled or received these funds in any way. There is no  
25 documentary evidence. There is no bank transfers, Western Union transfers or

1 documents from the sale of a house which would all leave a trace.

2 But even if there was credible evidence of funds being transferred from or by

3 Mr Mokom -- and remember that P-405 said that Mr Mokom was living in misery in

4 Zongo, you know, with nothing, with nowhere to sleep, people had to give him

5 clothes, and this is at CAR-OTP-2107-4722, at pages 4742 to 4743 -- even if there was

6 credible evidence that Mr Mokom was the conduit for millions of CFA to and from

7 Zongo, the Prosecution doesn't then make a link between these funds and the charged

8 crimes.

9 Nothing about where these alleged funds were sent, to whom, and why, and how

10 they then facilitated the specific charged crimes in the indictment, because there isn't

11 any evidence of that. And we presume that this is the reason that the evidence of

12 funding of the Anti-Balaka wasn't addressed during the Prosecution's submissions on

13 Tuesday.

14 What about weapons and ammunition? Lead counsel has gone through the

15 Prosecution's evidence here, explaining the problems caused by the details in the

16 evidence that was skipped over by the Prosecution, and that the Prosecution cannot

17 link any arms or ammunition allegedly from Mr Mokom to the charged crimes.

18 There's no attempt by the Prosecution to show that these guns, that this ammunition

19 came from the suspect to these groups and were used in the charged crimes, and were

20 used not to defend against Seleka combatants, or to attack military objects, but were

21 used to murder civilians on that date as charged, used to rape civilians on this date as

22 charged, because that evidence doesn't exist. It's not in the case file.

23 And this is the difficulty with this case. That you have this underlying armed

24 conflict, according to the Prosecution, that even if the Prosecution could demonstrate

25 that the Anti-Balaka were using weapons that had been supplied by the suspect, that's

1 not enough. They have to demonstrate that the weapons were being used to commit  
2 the crimes charged.

3 If the Prosecution had managed to show you that, then, maybe, we would need a trial,  
4 but we don't have anywhere near that kind of evidence. And this is just the  
5 *actus reus*.

6 The bigger problem for aiding and abetting comes with the *mens rea*. The  
7 Prosecution is required to establish that Mr Mokom gave this assistance for the  
8 purpose of facilitating the charged crimes with that purpose. This specific language  
9 was included in Article 25(3)(c) itself. It's not sufficient that Mr Mokom knew or  
10 should have known that his assistance would help the perpetrators.

11 That was the standard at the tribunals. At the ICC, the term "purpose" was included  
12 in this Article and goes beyond the ordinary *mens rea* standard in Article 30, and  
13 requires this higher subjective element to be satisfied. And we just don't know  
14 where that evidence is to show that Mr Mokom gave his assistance with the aim of  
15 facilitating murder, with the aim of facilitating rape.

16 The weight of the evidence shows the opposite. And we don't need to go any  
17 further than the Prosecution evidence. P-1961 saying that Mr Mokom wanted to  
18 eliminate all the illegal checkpoints; to stop the raids and stop the stealing; that he  
19 advised the Anti-Balaka not to take justice into their own hands, but to bring those  
20 who committed crimes to justice; that he gave people, including the witness,  
21 instructions on how to arrest fake Anti-Balaka and he organised trainings on how to  
22 work for social cohesion.

23 And this is CAR-OTP-2090-0067, paragraphs 90 and 109, marked by the Prosecution  
24 as PEXO.

25 I correct: Paragraph 91.

1 P-2503 describes a phone call that he had with Mr Mokom in December 2013, where  
2 Mr Mokom said that the aim of the movement was not to harm the population, but  
3 rather to save the population from its executioners, and Mr Mokom told the witness  
4 to make sure there was no disorder or anything like that. CAR-OTP-2118-8955 at  
5 pages 8980 to 8981, marked by the Prosecution as PEXO.

6 P-1521 testified in Yekatom and Ngaissona in open session about how precisely to  
7 avoid crimes, to avoid excesses; Mr Mokom was appointed as coordinator. This is  
8 the transcript CAR-OTP-00000911, page 22, lines 7 to 10.

9 P-405 said that after Mr Mokom arrived from exile in the DRC, he came back to the  
10 movement to try to organise things so that the crimes would stop. He said that  
11 Mr Mokom was also a victim; that he had suffered a lot. And he came back so that  
12 the Anti-Balaka could get organised and he took it into his own hands so that the  
13 crimes would stop. And this is CAR-OTP-2107-4580 at pages 6606, 4606 to 4608,  
14 marked by the Prosecution as PEXO.

15 Is there any direct evidence from Mr Mokom of his intent, what he was actually  
16 thinking? At line 153 of annex C1, the Prosecution cites to a document, which is  
17 called, in French, the "*projet d'appui*". And the Prosecution attributes this document  
18 to Mr Mokom. It has his signature on it and, on its face, it's a plan to rebuild the  
19 country from July 2015 onwards, it says, to bring it back to the peaceful times before  
20 the Seleka arrived.

21 And in this document, Mr Mokom talks about the importance of Central Africans  
22 realising that they are all one people, and that this understanding will allow them to  
23 see each other as brothers and sisters and as one nation, whether they are Christians  
24 or Muslims or animists or sect followers. And this is at CAR-OTP-2093-0344, at 0346.  
25 And it's not unusual in international criminal cases to have accused who have made

1 public statements calling for unity or calling for ethnic harmony. But this isn't  
2 evidence of public statements. This is Prosecution evidence. This is people who  
3 knew and interacted with Mr Mokom at the time of the events and who corroborate  
4 each other on the fact that he worked to discourage and stop criminal conduct.  
5 The Prosecution cannot establish on this evidence substantial grounds to believe that  
6 Mr Mokom aided and abetted the charged crimes. The links aren't there; so the  
7 *actus reus* isn't there and the *mens rea* isn't there.  
8 So turning then to common purpose liability under Article 25(3)(d) of the Statute,  
9 which again, allows an accused to be held liable for crimes that he didn't physically  
10 commit and that he didn't order, and where he didn't command the perpetrators. But,  
11 again, the trade-off for this broad net being handed to the Prosecution is the high  
12 threshold for establishing the link between the crimes and Mr Mokom.  
13 Again, there needs to be a contribution and there needs to be relevant intent, and  
14 there needs to be a group acting with a common purpose.  
15 So let's go there, first. The common purpose in this case is set out in the DCC at  
16 paragraphs 3 and 4. And what's important to, firstly, note with the framing of the  
17 common purpose, which is framed differently in a number of ways from the Yekatom  
18 and Ngaissona common purpose, what's important to note is that the Prosecution has  
19 gone nuclear and it has put all of the charged crimes into the common purpose itself.  
20 At paragraph 4 of the DCC, this common purpose included at least the charged  
21 crimes -- so all 20 of them -- which means, to start, the Pre-Trial Chamber has to be  
22 satisfied that there's a group of people acting together with a common purpose to  
23 commit all of these 20 charged crimes, acting together with a common purpose to  
24 commit rape, with a common purpose to commit murder.  
25 This is a huge burden that the Prosecution has set for itself. Who is said to have this

1 common purpose? The Anti-Balaka. The Anti-Balaka, so everyone. There is no  
2 nuance here. None. Reading these charges, everyone in the Anti-Balaka -- anyone  
3 who, at any point in time, considered themselves to be part of the Anti-Balaka -- is  
4 working together with a common purpose to commit all of the 20 charged crimes.  
5 That's the Prosecution's actual case.  
6 But, we then saw some incredibly important nuance coming into this case during the  
7 Prosecution's submissions on Tuesday. For example, at the real-time transcript of 22  
8 August, page 87, lines 12 to 14, the Prosecution said and I quote:  
9 "... many Anti-Balaka fighters would not distinguish between Seleka fighters and  
10 Muslim civilians."  
11 "Many" would not distinguish. So, logically, other Anti-Balaka fighters would  
12 distinguish between Seleka and Muslims.  
13 We saw the Prosecution referring carefully and deliberately when it talked about the  
14 common purpose not to the Anti-Balaka as an entire group having the common  
15 purpose, but, and I quote, the --  
16 "Anti-Balaka who committed [the] crimes against" the civilian population acting with  
17 "a common purpose".  
18 For example, at the real-time transcript of 22 August, page 67, lines 13 to 14; page 68,  
19 lines 24 to 25.  
20 And the Prosecution then cited at page 68, lines 18 to 24, to the evidence of P-2087,  
21 and his statement that --  
22 "In the lower ranks [...] the perceived enemy simply became Muslims in general."  
23 So, in the lower ranks the perceived enemy simply became Muslims in general. So  
24 in the lower ranks, so not throughout the Anti-Balaka.  
25 Same transcript, page 53, lines 5 to 7, the Prosecution then makes a massive

1 concession and it says, and I quote:

2 "For counts 2 to 4 there is evidence that Bangui civilians also took part in [...] these  
3 destructions [...] all destructions may not have been committed by [the] Anti-Balaka  
4 only ..."

5 So, we have the Prosecution recognising that some crimes were committed by  
6 Anti-Balaka; that others were committed by civilians, fake Anti-Balaka; recognising  
7 that there were some Anti-Balaka committing crimes in the lower ranks and others  
8 weren't, some assimilated Muslims with Seleka and others didn't. And these  
9 nuances are important, and they are honest, and they are entirely realistic and they  
10 are reflected in the evidence.

11 But the Prosecution now has an evidentiary problem because these concessions make  
12 it impossible for the Prosecution to make a case under Article 25(3)(d). This  
13 Chamber cannot safely conclude that the Anti-Balaka was a movement acting  
14 together with a common purpose to commit all of the charged crimes, which could  
15 never be established on the evidence anyway.

16 This Pre-Trial Chamber cannot safely conclude that when Mr Mokom was  
17 contributing to the Anti-Balaka, he was contributing to those parts of the Anti-Balaka  
18 that were committing crimes, those parts that he --

19 PRESIDING JUDGE AITALA: [10:10:22] Slow down, observe pauses between  
20 sentences, please.

21 MS GIBSON: [10:10:26] Thank you, your Honour.

22 Those parts of the Anti-Balaka that he himself designates as fake Anti-Balaka.

23 Mr Mokom talks in the evidence about giving instructions to arrest fake Anti-Balaka  
24 and bring them to justice.

25 Because the Prosecution doesn't give that level of detail -- it never says, These crimes,

1 on these dates, in these locations were committed by the Anti-Balaka that Mr Mokom  
2 was contributing to, and not by civilians, and not by fake Anti-Balaka for this reason  
3 or this reason -- this could never stand up at trial.

4 The Article 50(3)(d) charge would fall at this first hurdle.

5 MR LAROCHELLE: [10:11:50] "25" --

6 (Counsel confers)

7 MS GIBSON: [10:11:55] But, of course, there are other obstacles.

8 Next, the Prosecution has to prove that Mr Mokom contributed to the charged crimes,  
9 and here, it's useful to recall what the Prosecution said about this question of  
10 contribution in its oral submissions. And this is at the real-time transcript, on 22

11 August, starting at page 86, line 24. The Prosecution said, and I quote:

12 "Now, let me be clear: The Prosecution is not suggesting that it is a crime under the  
13 Statute simply to support the military activities of an armed group. But such  
14 support may lead to criminal responsibility if it contributes to the commission of  
15 crimes under the Statute ..."

16 So what contribution do we need? The Chambers in Katanga, in Ruto, in  
17 Mbarushimana have all set the standard of contribution for common purpose liability  
18 as a significant -- or, at least, significant contribution to the crimes. Not just to the  
19 group generally, but to the charged crimes.

20 What makes the contribution significant? Relevantly for Mr Mokom, the ICTY  
21 Trial Chambers, starting with the Kvočka case, have looked at a variety of factors,  
22 including, efforts made to prevent criminal activity.

23 And this same language was adopted at the ICC in Mbarushimana, which makes  
24 sense. How can you be making a significant contribution to crimes if you are  
25 making efforts to prevent them?



1 The Prosecution evidence shows Mr Mokom taking steps to prevent criminal activity.  
2 And let's talk about what the Prosecution said in its submissions about what  
3 Mr Mokom actually did when he came back to Bangui. Putting aside the selling of  
4 his house that he didn't have and the Facebook messages he didn't write, and the  
5 alleged money and the nine Kalashnikovs, how did the Prosecution itself actually  
6 frame his actions?  
7 And this is at the real-time transcript of 22 August, page 84 from line 13.  
8 The Prosecution says, and I quote:  
9 "... Mr Mokom then toured the different bases in Bangui. And at this time, when he  
10 was proximate to the crimes of the Anti-Balaka [...] he strove to make them more  
11 efficient, more structured. He was involved in a number of activities as Operations  
12 Coordinator -- including the set up of military police, [the] billeting of elements,  
13 measures to enlist -- and to assist in getting Anti-Balaka detainees released."  
14 Including, setting up military police.  
15 Why do you set up military police? Why do you try and make the groups more  
16 structured? Why do you billet troops and give them a place to live and something to  
17 eat? To stop crimes.  
18 And if the Prosecution won't say it, that's fine, because the Prosecution witnesses  
19 themselves say it; that Mr Mokom came back to take matters into his own hands and  
20 to stop crimes.  
21 The inferences that the Prosecution wants this Pre-Trial Chamber to draw, that  
22 Mr Mokom was intending crimes because he should have known about them and  
23 a reasonable person would have walked away, cannot just circumvent this evidence.  
24 And to talk about the fact that a reasonable person would have walked  
25 away -- remember that at this time, the Seleka was still raping and killing and

1 torturing Central African women and children -- to talk about what a reasonable  
2 person would have done has to take that into account.

3 And the Prosecution is asking you to draw an inference that Mr Mokom is guilty of  
4 these crimes because he knew about them and he didn't walk away, but it hasn't  
5 offered you a satisfactory path to deal with all the evidence that says the opposite,  
6 that he was working to commit [sic] crimes, it just designates all that as PEXO and  
7 then ignores it.

8 And this is why the Prosecution case has narrowed and narrowed and narrowed,  
9 right down to a "should have known" case, foreseeable consequences.

10 In 2018, it was he intended these crimes and he committed these crimes, right down  
11 today to, Well, he should have known, and he didn't walk away.

12 The elements of common purpose liability are also not present, Article 25(3)(d)  
13 liability cannot be established on these facts against this accused.

14 I want to come back around to the evidence in this case to finish up.

15 First, principles about the approach to evidence. And I'm not going to talk about the  
16 risk of relying on media reports or human rights reports, the Pre-Trial Chamber  
17 knows all of this, we are confident that you will assess the evidence in line with the  
18 proper standards.

19 But one thing that stands out in this case file, in all of the migrated and disclosed  
20 documents, is the lack of directly incriminating evidence against Mr Mokom. Put  
21 aside the Al Jazeera videos and the graphic, horrific photographs. What do the  
22 Prosecution witnesses themselves actually say about what Mr Mokom was doing?  
23 There is no direct evidence of Mr Mokom giving orders to commit crimes or  
24 committing crimes or being present and encouraging other people who are  
25 committing crimes. Instead, the Prosecution's case is built on circumstantial

1 evidence.

2 You are being invited to infer, to draw inferences that when Mr Mokom was doing  
3 anything to support or guide the Anti-Balaka troops, this Pre-Trial Chamber can  
4 safely infer that he was doing this with the purpose of facilitating or advancing the  
5 commission of crimes. And with that in mind, it's worth reflecting on what the  
6 purpose of this exercise is, what we've all been doing here in this courtroom over the  
7 last few days. We're engaged in an exercise, the goal of which -- as the  
8 Mbarushimana Pre-Trial Chamber said -- is to separate those cases which should go  
9 to trial from those which should not.

10 This confirmation hearing needs more than a case where the Prosecution still needs  
11 the Pre-Trial Chamber to make these leaps in reasoning -- to draw these inferences in  
12 order to get even to aiding and abetting and common purpose liability, the weakest  
13 forms of liability under the Statute -- to get to places that would be obvious, if  
14 Mr Mokom had actually been committing international crimes; where the Prosecution  
15 is relying on evidence that has been retracted by its own witnesses as part of the  
16 foundation of its case; where, in the Prosecution's own witness statements, we can see  
17 the suspect taking active steps to stop crimes.

18 We have seen what happens in this Court when cases are confirmed without  
19 sufficient evidence supporting them, and the results are not good for anyone. This is  
20 precisely the kind of case that should not make it past this next barrier and that the  
21 confirmation phase was designed to separate out.

22 Thank you very much, Mr President and your Honours. This concludes the  
23 presentation of the Defence submissions.

24 PRESIDING JUDGE AITALA: [10:24:36] Thank you very much.

25 Mr Larochelle.

1 MR LAROCHELLE: [10:24:41] If you allow me, your Honour, a quick correction.

2 The real live transcript at page 21, line 9, said that Mr Mokom, he was working to  
3 commit crimes, where the exact opposite was said: He was working to prevent  
4 crimes.

5 So the transcript here reflects the opposite of what Maître Gibson actually said.

6 PRESIDING JUDGE AITALA: [10:25:06] Thank you. They always check  
7 afterwards and I fully trust our -- the Registry staff. Thank you very much for  
8 pointing this out.

9 Now, we came then to the end of the submissions of the Defence on the merits.

10 Then, we shall proceed with the final statements, and the floor is to the Prosecution.

11 You have 30 minutes.

12 MR NIANG: [10:25:32](Interpretation) Thank you very much, Mr President, for  
13 giving me the floor again for a response to the Defence arguments.

14 The Defence has spent most of the time it was allocated -- three-quarters of their time,  
15 I would say -- delving into the details of the credibility of several Prosecution  
16 witnesses, challenging the circumstances and manner in which they were questioned  
17 by the Prosecution.

18 We shall respond to that. My young colleague to my left, Ms Gilg, will respond  
19 accordingly. But before she does so, I would like to recall some points that are  
20 obvious. I will do so by tackling it from the end point of the Defence counsel's  
21 statement; namely, what is the purpose of our gathering here over the last three days?

22 The procedure for the confirmation of charges -- or the confirmation of charges  
23 hearings is not a trial as such. What the Defence has attempted to do is to transform  
24 this hearing into a trial before the trial. Of course, we know that it is during the trial  
25 that the credibility of witnesses is tested based on a full presentation of the evidence

1 by the Prosecution and the Defence.

2 Mr President, your Honours, no witness has yet appeared here, and the reason for  
3 that is quite simple. The assessment of the charges is based on the documents  
4 submitted and the threshold for admissibility of evidence, and that is a relative  
5 exercise as the Defence itself has confirmed.

6 The confirmation of charges hearing, therefore, is not the appropriate forum for  
7 adequate responses to be provided to the questions that have been raised by the  
8 Defence.

9 During these hearings, what matters is the threshold which is not very low. This  
10 standard which can be referred to -- or, threshold, can be referred to as *prima facie*. I  
11 am not saying that it is not for the Chamber to exercise control. It is clear that the  
12 Chamber can assess inconsistencies, ambiguities and contradictions in the evidence,  
13 but it must be a circumspect exercise whereby the Chamber seeks to avoid any  
14 frivolous trials.

15 Now, Mr President, your Honours, even where there is doubt in your minds, your  
16 doubt should not necessarily be considered as the doubt that may arise in the mind of  
17 the trial judge or the mind of the judges of the Trial Chamber. The doubt that you  
18 may have should not lead *ipso facto* nor *ipso jure* to a rejection of the evidence. The  
19 caution that must be exercised is justified by the fact that the evidence here submitted  
20 is partial.

21 For example, the evidence that has been cited to you today, may be improved upon  
22 and developed upon during trial, particularly when witnesses are called to provide  
23 further clarification on some aspects.

24 It is also the case that the final determination on evidence lies with the trial judge. So  
25 let me simply therefore recall two basic requirements about this phase, and I'm

1 drawing from statements in the Yekatom trial.

2 On the one hand, you protect suspects against unfounded charges by ensuring that  
3 only those who have -- against whom sufficient evidence has been levelled to meet  
4 the threshold are then committed to trial.

5 Secondly, you are not expected to determine or prejudge the value of the evidence  
6 based on the presumption of innocence.

7 The Pre-Trial Chamber, as I just mentioned, recalled that at the confirmation of trial  
8 hearings, issues of credibility of witnesses should only be delved into if the response  
9 is obvious.

10 So the question we must raise at this level is whether the absence of witnesses is so  
11 manifest that we would seek to know more. What matters is to determine whether,  
12 looking at the documents that have been filed, we can come to the determination that  
13 they are devoid of any charges.

14 This is what the Defence would like you to think. We have a Defence that is  
15 shooting in all directions, which is talking about all types of things, such as, when the  
16 accused person himself talks about self-defence and so on and so forth.

17 Yesterday, you heard that this -- there is sufficient evidence in this case, and it should  
18 be said that it is actually evidence that is damning, because the problem the Defence is  
19 raising is that the witnesses providing this evidence are liars. But in its own  
20 arguments, they suddenly come up with moments of lucidity when they refer to the  
21 same witnesses as being honest.

22 So this Defence is shooting in all directions, rejecting the idea of coordination within  
23 the Anti-Balaka, but at the same time, here and there, talk about codes of conduct,  
24 instructions -- such as, do not kill, do not steal and so on and so forth in order to  
25 ensure that the code of conduct is respected.

1 The Defence seeks to present Mokom as an insignificant person, but here and there  
2 they will tell you that he is the same one who gave orders not to kill and to have order,  
3 as well as to set up a state police, and who went on to represent the Anti-Balaka in the  
4 peace talks.

5 So I have referred to all of these things, which my colleague will delve into further,  
6 but I just put this before you, not for the sake of polemics, but simply to indicate that  
7 we are very far removed from the hypothesis that our case is so devoid of evidence  
8 that the Chamber should come to the conclusion that there is nothing to hold on to.  
9 I just wanted to make these preliminary remarks before handing the floor to my  
10 young colleague to respond in greater detail to some of the submissions from the  
11 Defence. Thank you.

12 PRESIDING JUDGE AITALA: [10:34:46] Thank you, sir.

13 Madam Prosecutor, you have the floor.

14 MS GILG: [10:34:48] Good morning, your Honours. It is my privilege to appear  
15 before you today. I will continue the Prosecution's response to issues raised by the  
16 Defence during the hearing. I plan to address the following three issues in turn:  
17 First, whether Mr Mokom's conduct contributed to the crimes of the Anti-Balaka;  
18 second, whether Mr Mokom had the requisite *mens rea* at the time of his contributions;  
19 and third, witness credibility.

20 Turning to my first topic: Contributions.

21 Your Honours, you've heard what the Defence and even Mr Mokom himself had to  
22 say about his role. We heard about Mr Mokom supposedly being a *petite personne*,  
23 apparently only joining the Anti-Balaka in February 2014 when he returned to Bangui,  
24 and, purportedly, it seems, only ever working for peace.

25 But Mr Mokom was not just working for peace. The evidence relied on by the

1 Prosecution shows that Mr Mokom worked actively to help support Anti-Balaka  
2 military operations from as early as June 2013, and this contributed to the charged  
3 crimes.

4 Indeed, he was part of the Anti-Balaka well before February 2014, and the role as  
5 operations coordinator that he took on when he returned to Bangui in a formal way  
6 developed out of his prior actions supporting Anti-Balaka military operations.

7 The Defence themselves had relied on a witness, when he described how Mr Mokom  
8 visited the ComZones the very day of his return to Bangui, he addressed them and  
9 gave them instructions. I refer your Honours to yesterday's transcript, T-7, page 87.

10 Your Honours, this is the conduct of someone who has long been a person of  
11 influence, known to these ComZones already because of his previous interactions  
12 with them. Not someone who just joined up with the Anti-Balaka that day.

13 In relation to the charged crimes during the attacks in Bangui and Bossangoa, we  
14 have highlighted the evidence in support of his contributions yesterday.

15 Today, I would just like to draw your Honours' attention to a notebook with contacts,  
16 which Mr Mokom kept in Zongo --

17 (Counsel confers)

18 MS GILG: [10:38:01] -- prior -- this is a notebook kept prior to the 5 December 2013  
19 attack. It will be on evidence 2 and it should not be displayed to the public. The  
20 reference is CAR-OTP-2100-2602.

21 Your Honours, the five pages of this notebook are filled with names of known  
22 Anti-Balaka elements. And your Honours can see here names we heard about on  
23 Tuesday: Konaté; Ngaibona, that's Andjilo; Alfred Rombhot, that's Yekatom.

24 These are all key leaders of the 5 December Bangui attack.

25 And your Honours can also see here, Lieutenant Abel, that's Denamganai and Bruno



1 Semdiro. We also mention these. These are two of the fighters sent over from  
2 Mr Mokom's Zongo group for the Bangui attack.

3 Your Honours, call data records also contradict the Defence argument that  
4 Mr Mokom only worked for peace. The call data records alone cannot tell us what  
5 Mr Mokom was talking about, no. But they corroborate witness testimony. And on  
6 some occasions, there really is not any other reasonable alternative interpretation of  
7 the contacts, other than that Mr Mokom was, in that moment, supporting an  
8 Anti-Balaka operation.

9 Can it really be a mere coincidence that Mr Mokom happened to communicate  
10 multiple times with the two leaders of the Bossangoa attack, right before they lead the  
11 attack?

12 And can it really be just a coincidence that that same day, 5 December, Mr Mokom  
13 just happens to also communicate multiple times with key leaders of the Bangui  
14 attack, even while the attack was ongoing?

15 This is not mere coincidence. This is important evidence of Mr Mokom's direct link  
16 to the attacks during which the charged crimes were committed.

17 Before I move on to *mens rea*, I want to clarify a few points of law relevant to points  
18 raised by the Defence, especially today, in relation to the Defence argument that Mr  
19 Mokom's contributions, or at least some of them seem innocuous on their face.

20 These types of contributions can still be relevant contributions as a legal matter; and,  
21 as a matter of law, for liability under Articles 25(3)(c) and (d), the contributions do not  
22 have to be criminal as such. And there is jurisprudence on this. I can refer  
23 your Honours to the Bemba et al. appeal judgment, paragraph 810, in the context of  
24 co-perpetration.

25 The Defence's argument about the neutrality or the apparent innocuous, innocent

1 nature of Mr Mokom's contributions is, therefore, besides the point when assessing  
2 this element.

3 It is also not required that Mr Mokom was in the place of the crimes for his actions to  
4 contribute to their commission. I can refer you here to the Al Hassan confirmation  
5 decision, paragraph 945 and the Katanga trial judgment, paragraph 1636.

6 Also, the contribution as a legal matter does not have to be made directly to the  
7 physical perpetrator. Indirect contributions are sufficient. And I refer you to the  
8 same passage of the Al Hassan confirmation decision, and paragraph 1635 of the  
9 Katanga judgment. This also shows that proximity of the person to the crime is not  
10 required.

11 What is relevant is simply that Mr Mokom's conduct in its totality contributed in  
12 some way to the commission of the crimes, whether materially or by moral  
13 encouragement. The evidence we have presented shows that it did.

14 Also, for liability under Article 25(3)(c) and (d), it is irrelevant whether Mr Mokom  
15 was part of any grand criminal plan or himself part of a common purpose. Even if  
16 this were not the case, it would not undermine his responsibility. He is not charged  
17 as a co-perpetrator under 25(3)(a), for example. He, therefore, does not need to share  
18 a common plan, nor have contributed essentially or had control.

19 I'm going to turn now to my second point: Mr Mokom's *mens rea*.

20 Contrary to the Defence's argument, there is enough reliable evidence for  
21 your Honours to infer that Mr Mokom had the requisite *mens rea* at a minimum for  
22 25(3)(d)(ii).

23 And here, let me be clear: The Prosecution position is not that he should have  
24 known; the position is that he must have known. And I can refer you to our main  
25 presentation where, just as an example, the language is, he, Mr Mokom, could not

1 have failed to know this. So that's transcript 6, page 87.

2 The Defence were selective in focusing on specific evidence while ignoring much of  
3 the Prosecution's evidence. However, considered in its totality, the evidence is  
4 sufficient to infer Mr Mokom's *mens rea*.

5 I would like to highlight at this stage, another witness's evidence tested in the  
6 Yekatom and Ngaïssona case. It relates to what was known within Mr Mokom's  
7 inner circle, in particular.

8 The witness was asked by Judge Schmitt whether he had knowledge of killings of the  
9 civilian Muslim population by the Anti-Balaka. For the record, the reference of what  
10 I will read out is CAR-OTP-00000901 at pages 27 to 28.

11 "Yes" he says. "During the attacks people necessarily die. Seleka elements are  
12 killed. Muslim civilians are killed."

13 And he goes on:

14 "So when one came across a Muslim, that was the end of it for the Muslim."

15 This witness is further asked how he knew about what happened on the ground. He  
16 responded:

17 "Well, you know, everyone is aware of what was going on. We had contact with the  
18 leaders."

19 And he continues at line 25:

20 "Now, we also were able to call people on the ground, elements on the ground to  
21 provide us with more information."

22 In addition to the evidence about what different Anti-Balaka insiders knew,  
23 your Honours also have evidence about the additional information Mr Mokom, in  
24 particular, was receiving about Anti-Balaka operations because of his extensive  
25 contacts with the Anti-Balaka leaders and rank and file. And, your Honours, I also

1 have open source reporting, starting from well before the charged attacks.

2 In light of all the available evidence, it's clear that Mr Mokom must have known.

3 (Counsel confers)

4 MS GILG: [10:46:52] I am moving to my last point: Witness credibility.

5 Your Honours, the Defence is working hard to discredit P-2232. While, strictly  
6 speaking, this is a matter properly resolved at trial, let me just point out at this stage

7 that the Prosecution's case is not based solely on this witness. He is not the only

8 source for the majority of the Prosecution's main propositions. He is corroborated

9 by other evidence, both in relation to Mr Mokom's role in general, and the

10 contributions to the crime.

11 Moreover, while the Defence questions P-2232's credibility when inconvenient, they

12 rely on him in aspects that are favourable to them. In fact, many of the extracts

13 referred to by the Defence in their presentation yesterday demonstrate just how

14 measured this witness is.

15 And I can refer your Honours here, to extracts mentioned -- relied upon, were

16 credited -- where the witness is credited, pages 35, 41, 43, 51, 55, 57, 64, 87 and 89.

17 (Counsel confers)

18 MS GILG: [10:48:35] Your Honours, to be clear, the Prosecution does not purport

19 that any single source is the definitive authoritative account to the truth of this case.

20 No single witness has a complete vantage point and can tell your Honours everything  
21 you might want to know.

22 In the end, what is important is not any particular source in isolation but, rather, the

23 overall picture that emerges from the evidence when considered as a whole. And

24 the overall picture that emerges here -- this is my last point -- Mr Mokom was, first,

25 a person of influence within the Anti-Balaka from its earliest days and even more

1 prominently and officially in the February 2014 period onward; second, a person who  
2 made contributions, meaningful contributions, both in terms of material support and  
3 moral encouragement to the commission of the Anti-Balaka's crimes; and, finally, a  
4 person who was well-informed and well-connected both to Anti-Balaka leadership  
5 and rank and file, and who made his contributions with the requisite *mens rea*.

6 And with that, I conclude my submissions, your Honours. Thank you.

7 PRESIDING JUDGE AITALA: [10:50:03] Thank you very much.

8 Now, Common Legal Representatives of Victims, what is your plan? Is there going  
9 to be only one of you speaking or you're going to share the final statements?

10 MR DANGABO MOUSSA: [10:50:18](Interpretation) Yes, your Honour. We intend  
11 to present our final submissions. I pray that after the break, I will be speaking for  
12 10 minutes and then Mr Fall will be spending 10 minutes, and, finally, Ms  
13 Douzima-Lawson has 10 minutes.

14 PRESIDING JUDGE AITALA: [10:50:44] Well, then, sir, start your 10 minutes now.  
15 We have 10 minutes to 11, so you have the floor for the first part of the final  
16 statements of the Common Legal Representatives of Victims.

17 MR DANGABO MOUSSA: [10:50:57](Interpretation) Your Honour, good morning.  
18 This morning, I would like to offer a number of arguments in contradiction with the  
19 thesis of the Defence regarding the non-organisation of the Anti-Balaka. According  
20 to the Defence, they were not an organised group of people, not at all. Some  
21 Marxists looked down upon the general population, saying that they were inorganic  
22 in form.

23 The word "coordination" has two meanings. First of all, the meaning that one finds  
24 in the dictionary: A logical layout of a group of -- a number of parts leading to  
25 a whole, leading to a particular conclusion or result. So it can be seen as a synonym

1 of organisation.

2 The second meaning -- and "organisation" and "coordination" are similar words in the  
3 dictionary: A group of -- a group of professionals, momentaneous and spontaneous,  
4 aiming at a particular goal.

5 Now, your Honours --

6 PRESIDING JUDGE AITALA: [10:52:47] Sir, can you pause just one moment.

7 Do we have a problem with transcripts? I see that the transcripts are blocked on  
8 my ...

9 MR DANGABO MOUSSA: [10:53:03](Interpretation) Thank you, your Honour.

10 PRESIDING JUDGE AITALA: [10:53:10] Now it has resumed.

11 Please continue, sir. Thank you for waiting.

12 MR DANGABO MOUSSA: [10:53:14](Interpretation) Thank you, your Honour.

13 Your Honour, a good theory is already a practice. When the Rome Statute was  
14 prepared by a number of high-ranking legal experts over a period of many years, they  
15 thought considerably about the terminology, about words like "instigator".

16 I was a member of the international crime [...] and, actually, I was at a meeting  
17 chaired by an eminent professor from Chicago, and the task was to determine what  
18 principles should be set out in the Rome Statute.

19 Now, the Anti-Balaka group was indeed an organisation -- I wouldn't say a terrorist  
20 organisation, but it was a criminal organisation. Its goal was to ensure the return of  
21 President Bozizé to power and, at any cost, by the most horrid means possible,  
22 executions and the like, as Lenin himself said.

23 I would also call upon a number of experts in the area of organisational -- Mr Talcott  
24 Parsons, who said:

25 In organisational theory, one has the concept of goal to distinguish the organisation

1 from other forms of social entities.

2 And I make this point once again: As an analytical point of reference, the orientation  
3 towards the attainment of a specific goal is a characteristic of an organisation which  
4 distinguishes organisations from other social entities.

5 And this point has been the case since the year 1960.

6 Edgar Schein has offered a definition. He has said that an organisation is the  
7 rational organisation of the activities of a number of people with a view to attaining  
8 an explicit common goal by way of a division of labour and a hierarchy of authority  
9 and responsibility.

10 This is a point that he made in his book published in 1970. Thus, this concept of goal  
11 allows us to stress the point that an organisation is an artificial entity, not a natural or  
12 physical entity. An organisation is created with a view to reaching a specific goal or  
13 goals. If a pragmatic finality is attributed to an organisation, one must consider  
14 what leads the participants to work together towards the attainment of the common  
15 goal, the goal that is wished for.

16 Thus, let us look at the reality of the Anti-Balaka organisation. And yesterday's  
17 presentation, in my opinion, was a sign of excessive simplification. Nothing allows  
18 one to state, as was the case yesterday in the Defence's attempts, to say that an  
19 organisation is a place of consensus. No.

20 Alvin Gouldner would argue the contrary. He observed that saying that an  
21 organisation is directed towards the attainment of a particular goal is postulating the  
22 consensus, without seeing that it may be only a myth, could lead to possible  
23 pragmatic [...] At least, one must remember that the goal or the goals that justified  
24 the creation of the coordination -- or, the Anti-Balaka movement were not -- these  
25 things were not always the subject of consensus.

1 A definition of "organisation" that draws attention to this point can be seen as follows:  
2 The organisation, the coordination, this is a coalition of groups of interest that are  
3 different in nature; that agree upon a goal by way of negotiation. Yesterday, we saw  
4 it, your Honour, and we heard this from the Prosecution themselves here in the court,  
5 and from the Defence, that the -- well, the *rapprochement* between the Anti-Balaka and  
6 the transitional government for the decisions relating to high-level positions.  
7 If one looks beyond the various discussions or debates that can be held, I think we can  
8 see that the existence of a goal is not the only thing that allows one to characterise the  
9 organisation or a coordination as an entity. One must consider the structure of the  
10 organisation as well.  
11 There is a certain anthropology of the organisation. This is a cultural problem as  
12 well. I think of a particular -- Mr Gramsci, a philosopher, who developed the theory  
13 regarding culture and the role of culture and leadership in the political struggle.  
14 Here, the organisation, or the structure of the coordination, clearly seems to be an  
15 aggregate of various groups that have a number of common features, such as,  
16 ethnicity, and I thought it would be interesting to look at the number of ComZones  
17 and their ethnicities, and, 95 per cent of the ComZones were from the same ethnic  
18 group as President Bozizé.  
19 And, Mr President, three structural properties can be found in most organisations, if  
20 not all. The availability of resources, and we have seen this earlier, we saw some  
21 notes, most of the people -- with most of the people who were responsible within the  
22 Anti-Balaka group. They also had financial and human resources. They had  
23 material resources.  
24 PRESIDING JUDGE AITALA: [11:02:29] Sir, I will give you one more minute and I  
25 have to adjourn for the break. One more minute, please.



1 MR DANGABO MOUSSA: [11:02:40](Interpretation) Yes, thank you.  
2 There are -- there were boundaries within the Anti-Balaka movement. Boundaries.  
3 The coordination had a boundary that made it possible to distinguish members  
4 with -- by way of badges, membership cards and the like. And, furthermore, there  
5 were people who wore such badges and they also had the ability to take on roles that  
6 counted.  
7 And to conclude, your Honour, this concept of goal during the creation of the  
8 organisation is in keeping with the goals of the founder and, thus, goals can change.  
9 And negotiations can lead to other formulations -- and we have seen this. We have  
10 seen how this took the form of a desire to join the government.  
11 To conclude: The Anti-Balaka organisation -- or coordination, rather, led by  
12 Mr Mokom was a structured group, binding upon people who were taking part in it,  
13 and, at the same time, it was a dynamic, collective entity that was intended to attain  
14 a number of common goals.  
15 I thank you, your Honours, and I will now turn over to my colleague, Mr Yaré Fall.  
16 PRESIDING JUDGE AITALA: [11:04:32] Thank you very much, Maître.  
17 Now, I'm adjourning the hearing for half an hour. We will resume at 11:35.  
18 Thank you very much.  
19 THE COURT USHER: [11:04:48] All rise.  
20 (Recess taken at 11.04 a.m.)  
21 (Upon resuming in open session at 11.36 a.m.)  
22 THE COURT USHER: [11:36:26] All rise.  
23 Please be seated.  
24 PRESIDING JUDGE AITALA: [11:36:41] Good morning, again. Welcome back.  
25 The floor is of the Common Legal Representative of Victims.

1 Please proceed.

2 MR FALL: [11:36:55](Interpretation) Thank you, Mr President.

3 Mr President, your Honours, we listened to the Defence opening statements  
4 yesterday and today, and these have raised a number of questions in our minds  
5 which we would like to bring to your attention through this, our final submission.

6 Mr President, your Honours, thousands of applications to participate in this trial have  
7 been processed by us, several hearings have been organised here, we have received  
8 statements and heard testimonies by witnesses, but one thing stands out, namely that  
9 in all the narratives there is at least one constant element, namely the exactions to  
10 which Muslims from Chad were subjected were the result of the actions of  
11 the Anti-Balaka. And this is a certainty around which all witnesses are in agreement.

12 That is why, Mr President, when we heard Defence yesterday trying to circumvent  
13 this reality by breaking down the Anti-Balaka troops into true Anti-Balaka and fake  
14 Anti-Balaka, we were somewhat perturbed, Mr President.

15 To say that the true Anti-Balaka were saints who did not touch women, who did not  
16 steal and who did not kill, with a view to protecting the integrity of their amulets,  
17 Mr President, mindful of what we have just said, this is tantamount to some kind of  
18 lone ranging, if one may say so.

19 Mr President, we can even say that this is tantamount to some lack of -- of motivation  
20 or motive, so to speak, in the fame of reality.

21 Mr President, we are here to do justice and we all want to focus on the main thing  
22 rather than the subsidiary. You see, Mr President, it is the Anti-Balaka troops  
23 themselves who have asserted that they did not leave the Chadian Muslims any other  
24 alternative than for them to leave the country. We have heard several testimonies  
25 here wherein ComZones have stated that they no longer wanted to have any Muslims

1 on their territory, and going on to say that "If they decide to stay, we will massacre  
2 them. They have to leave our country. We no longer want them in our country."  
3 This is the context within which, Mr President, you must place the destruction of  
4 mosques. I am a Muslim, Mr President, myself and I sincerely believe that no -- no  
5 imam would ever accept to have an arms cache in his mosque, because that is  
6 contrary to the principles of Islam.  
7 When I heard this yesterday, Mr President, I, who have been on the ground, who  
8 have heard the witnesses, I was somewhat taken aback. We have heard witnesses  
9 and Anti-Balaka saying that "We have killed, we have destroyed mosques, these are  
10 foreigners, they need to leave our country, we are going to drive them out and we  
11 will occupy their homes" and so on and so forth. These are the things that have been  
12 said and they are verifiable, Mr President.

13 Mr President, your Honours, I was lucky enough to be in (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 Mr President, your Honours, I would also like to say a word on the remarks that  
2 think heard about the sale of land. Let us be clear on this point. We come from this  
3 country and we know how things happen there. A sale of land is not done there as it  
4 is done in The Hague or in Montreal. You see, things are different and all land is not  
5 registered. You see, Mr President, it is possible even in the city to buy land at  
6 a street corner under a tree, or something of that nature. You see, you don't need to  
7 go into all those technicalities, especially in a -- in a location like Zongo. You can  
8 buy a piece of land without any documents just by what we can refer to as  
9 a gentleman's agreement. That's how it happens, by word of mouth.  
10 Now we are given the impression that sale of land should be done in the same way as  
11 in organised countries. That would be a mistake, Mr President.  
12 The same applies to the idea about a Western Union office. You see, what happens  
13 is that money transfers are done by the roadside on a table. So when you argue that  
14 there was no Western Union office, I think that is somewhat of an observation. We  
15 are dealing here with African reality and we need to understand things in that  
16 context.  
17 You see, in several countries and in several African villages, money can be transferred  
18 from one person to another without any traceable evidence whatsoever. And this  
19 can be cross-checked.  
20 Mr President, your Honours, I also wanted to say to this Court that I fully share  
21 the remarks of the Prosecutor. I agree with him entirely regarding what he said  
22 earlier on.  
23 You see, when the argument is made as if we were at trial, one must say that it is, it is  
24 too early. This is a confirmation of charges hearing, Mr President, and you know  
25 better than we do what this is all about.

1 So, Mr President, I just simply wanted to draw your attention to the fact that reality  
2 differs from country to country. Things happen in Africa differently and those of us  
3 who are on the ground in Africa can testify that things do not always unfold normally.  
4 And one needs to have lived in those countries, in those circumstances, to be aware of  
5 the various anomalies, so to speak, that may happen.

6 Some people who have been referred to as liars, maybe they were not lying. They  
7 were probably telling the truth, but that truth may have been assessed from  
8 a different background.

9 So, in any event, Mr President, we hope that in this trial, in this case, the hope of  
10 the victims whom we meet on a daily basis will not be dashed. You see, the crimes  
11 charged in the DCC, Mr President, can reasonably be considered as having been  
12 committed because of the observations that we make on the field.

13 In that regard, therefore, Mr President, we believe that - and I said this  
14 yesterday - there is reasonable -- sufficient reason to believe that these charges will be  
15 confirmed. We are not saying that the accused person is guilty or not. We are  
16 simply saying, Mr President, that there is sufficient evidence pointing to  
17 the commission of these crimes and that the victims of these crimes are there. This is  
18 an incontrovertible reality that cannot be discarded.

19 I would like to conclude, Mr President, by offering these words: If there is a trial, if  
20 the charges are to be confirmed - and I'm saying this based on the principle of  
21 the presumption of innocence - if this were to happen, I think there will be a lot to  
22 submit by way of pleadings and arguments to substantiate the fact that these crimes  
23 were effectively committed and that the person who is being prosecuted is criminally  
24 responsible for the crimes charged by the Prosecutor.

25 Thank you, Mr President.

1 PRESIDING JUDGE AITALA: [11:51:29] Thank you very much, Maître Fall.  
2 Now the floor is yours, Madam.

3 MS DOUZIMA-LAWSON: [11:51:38](Interpretation) Thank you, Mr President.  
4 Thank you, your Honours.

5 Yesterday, we all heard Yekatom's Defence say the following. I'm referring to  
6 real-time transcript page 78, from line 25: So, what did the Anti-Balaka get? What  
7 was their compensation for delivering Bangui? What they got is a bad name.  
8 The victims who are following this trial -- this hearing are angry at these statements,  
9 they are offended by these statements. They say that they have never given Mokom  
10 mandate, nor have they given mandate to the Anti-Balaka elements, so they say that  
11 Mr Mokom is accusing them of being traitors and of being ungrateful.  
12 Mokom has never been -- has not mentioned at any time any single action that he and  
13 his troops perpetrated on the victims. So, victims in fact were offended by these  
14 statements on behalf of Mokom.

15 I refer to yesterday's transcript at page 79, line 25, where the Mokom Defence said:  
16 After having been designated as coordinator of operations, Mokom went to various  
17 bases and told the ComZones not to create disorder, to remain together and to wait  
18 for what would transpire next.

19 So, Mokom does not deny that he was the operations coordinator for the Anti-Balaka.  
20 He does not deny the crimes that were committed by the Anti-Balaka. And,  
21 apparently, he gave orders -- if there had been orders given in that regard, those  
22 orders were not obeyed and any outcome of exactions were not punishable either.  
23 So when we look at the transcript again at page 83, line 4, Mokom's Defence declared  
24 that Mokom went to Brazzaville to negotiate a ceasefire with the representatives of  
25 Seleka.

1 So let me recall, Mr President, your Honours, that the Rules of Procedure and  
2 Evidence describe victims as any physical individual who has suffered harm because  
3 of the commission of a crime falling within the jurisdiction of the Court.  
4 So is it possible to act on behalf of someone and subject them to harm such as rape,  
5 murder, persecution and other crimes? Can you so act on the behalf of these people?  
6 So, clearly, the Anti-Balaka were their henchmen in the end.  
7 You see, Mr President, the victims do not deny the atrocities committed by the Seleka,  
8 but rather than take it out on their enemy, the Seleka, they rather attacked  
9 a defenceless civilian population by using, by the way, the same approach as  
10 the Seleka, namely persecution, forcible transfers, forcible displacement. And this is  
11 what all the victims have been subjected to on a daily basis.  
12 The victims who were not killed in their homes were abducted and have disappeared  
13 to this very day. When one stood in the way of the abduction of one's father, mother,  
14 husband and son, that amounted to a crime or element of a crime for the Anti-Balaka,  
15 namely rape, gang rape, so to speak.  
16 There are several wings of the Anti-Balaka, led by specific individuals. Some of  
17 them have died. Others, (Redacted)  
18 (Redacted)  
19 So, the victims and their henchmen speak the same language, Sango. This is  
20 a language which is spoken and understood throughout the Central African Republic.  
21 The Central African Republic is a vast country of more than 600,000 square kilometres,  
22 with a population of only about 6 million inhabitants. This means that --  
23 PRESIDING JUDGE AITALA: [11:58:59] The time, the 30 minutes will have elapsed  
24 now, according to my calculations. I will give you five more minutes, out of respect  
25 for the victims. Thank you.

1 MS DOUZIMA-LAWSON: [11:59:14](Interpretation) Thank you very much,

2 Mr President.

3 Mr President, I would like to say, and what I meant when I said that is that everyone

4 knows one another, everyone knows who is who and who does what. The victims

5 have designated Mr Mokom, and they are not wrong, they have designated him and

6 others as being the people responsible for the harm they suffered, people such as

7 Mr Yekatom.

8 So saying that it was another person, "it wasn't me", as we heard yesterday, saying

9 why some other leader has been released, and then to turn around and say that is

10 why I should be released. Such an argument cannot be entertained.

11 Other than the victims, if we look beyond the victims, who can speak on behalf of

12 the victims?

13 The victims are in a better position to speak to what they experienced. No matter

14 how long the night may be, one day the dawn shall come.

15 Mr President, your Honours, the victims are counting on the Court so that one may

16 avoid the unending cycle of violence in the Central African Republic and they hope

17 that the victims will never become the executioners as part of the endless conflict.

18 Thank you.

19 PRESIDING JUDGE AITALA: [12:01:13] Thank you very much, Madam.

20 Now we shall continue with the final statements of the Defence.

21 The floor to the Defence.

22 MS GIBSON: [12:01:25] Thank you very much, Mr President, your Honours.

23 Just before lead counsel takes the floor, I'm going to respond to the Prosecution's

24 submissions from today on the law. And this is from the real-time transcript at

25 pages 30 to 31. I'm going to be very slow.



1 The Prosecution said that the Defence argued that Mr Mokom's contributions were  
2 neutral or innocuous, and then they submit as a matter of law that his contributions  
3 don't have to be criminal. As a matter of law, that's absolutely correct, but  
4 the Defence didn't assert that Mr Mokom's contributions were innocuous. Our point  
5 is that the evidence of what he did is not sufficient, but more importantly that  
6 the Prosecution hasn't shown any link between these contributions and the charged  
7 crimes. This is the black hole in this case.

8 The Prosecution has pulled out one alleged link at the last minute in reply, this  
9 notebook. And Maître Larochelle is going to enjoy talking about that document after  
10 me. But the problem is with these links and not the character of the contributions.  
11 It's not about the innocuousness or otherwise.

12 Next, the Prosecution said that they only have to demonstrate that Mr Mokom's  
13 conduct in its totality contributed in some way to the commission of crimes. And  
14 this was the real-time transcript of today, page 31, lines 8 to 10.

15 Let's be very precise here. The legal standard for contribution for Article 25(3)(d) is  
16 a significant, or at least significant contribution to the crime. And this is in  
17 *The Prosecutor v Mbarushimana*, decision on the confirmation of charges,  
18 16 December 2011 at paragraph 238.

19 That Pre-Trial Chamber said it cannot just be any contribution, it must be at least  
20 significant.

21 Aiding and abetting, the legal standard for contribution for Article 25(3)(c) is not just  
22 any contribution, it must have had a causal effect.

23 What does that mean? We see in the Bemba Article 70 trial judgment, paragraph 94,  
24 that the commission -- the contribution must have furthered, advanced or facilitated  
25 the commission of the crime.

1 So, not just to contribute in some way, there has to be more, more for the suspects  
2 who aren't committing, who aren't commanding, who aren't ordering. This is  
3 the safeguard, this contribution, which we haven't seen in the charging documents or  
4 anywhere over the last three days.

5 Next, the Prosecution said that it's irrelevant whether Mr Mokom is part of any grand  
6 criminal plan or part of the common purpose. This was at the real-time transcript,  
7 page 31, lines 11 to 15.

8 We agree and Mr Mokom was not part of that plan.

9 But, but, the Prosecution must demonstrate that he was contributing to a group of  
10 people acting with a common purpose. The Prosecution conceded that it's not  
11 a crime to contribute to the military activities of an armed group.

12 We will go one step further. What does that concession actually mean?

13 It means it was not a crime to contribute to the Anti-Balaka without showing that  
14 those contributions made the requisite contribution to the charged crimes in this case.  
15 Otherwise thousands and thousands and thousands of people would be standing in  
16 that box together with Mr Mokom.

17 And this is what's missing and this is why this case does not meet the standard for  
18 confirmation.

19 I'll now hand to lead counsel, who will close out the Defence submissions.

20 MR LAROCHELLE: [12:07:49] Thank you, your Honours.

21 We have heard the Prosecution in their reply begging you to run away from  
22 credibility determination. It's true, you don't need to decide conclusively at this  
23 stage about the credibility of witnesses, but you cannot ignore it.

24 And that's clear from the language, again, of the Mbarushimana appeal decision,  
25 a case that was not confirmed. A man who was participating in peace talks here in

1 Europe and charged with crimes committed in Congo by some militia there.

2 What did they say? At paragraph 46:

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

10 What were those last two bullets from the Prosecution?

11 A notebook, a notebook and a quote. Both coming from Witness 2232. So the last  
12 munitions are artisanal munitions, I submit to you, and I will demonstrate why.

13 The notebook, according to the Prosecutor -- and I'm at page 30 of the real-time  
14 transcript of this morning.

15 This is important evidence of Mr Mokom's direct link to the attacks during which  
16 the charged crimes were committed.

17 Finally, we have here a last attempt at showing a link. Finally, after three days there  
18 is a link, there is a notebook. There is also, they say, other evidence than 2232, but  
19 they still use that sword and they should fall on it. They still rely on 2232 up to  
20 the last minute.

21 Can I go 30 seconds in closed session?

22 PRESIDING JUDGE AITALA: [12:11:26] We will go in closed session,  
23 Mr Court Officer.

24 (Private session at 12.11 p.m.)

25 THE COURT OFFICER: [12:11:51] We're in private session, Mr President.

1 (Redacted)  
2 (Redacted)  
3 (Redacted)  
4 (Redacted)  
5 (Redacted)  
6 (Redacted)  
7 (Redacted)  
8 (Redacted)  
9 (Redacted)  
10 (Redacted)  
11 (Redacted)  
12 (Redacted)  
13 (Redacted)  
14 (Redacted)  
15 (Redacted)  
16 (Redacted)  
17 (Redacted)  
18 (Open session at 12.13 p.m.)  
19 THE COURT OFFICER: [12:13:58] We are back in open session, Mr President.  
20 PRESIDING JUDGE AITALA: [12:14:00] Please continue.  
21 MR LAROCHELLE: [12:14:03] First of all, at page 6 of the notebook, there is  
22 a number attributed to Mr Yekatom, 72640973. If you look at the list of  
23 the Prosecution's attributions at CAR-OTP-00001197, this notebook is not even relied  
24 upon for the attribution of phone numbers, including to Yekatom at page 20 and 21.  
25 And at page 20 and 21 the numbers attributed to Yekatom are different.

1 But it doesn't end there, because there is another person who spoke about  
2 the notebook and that is 446 at CAR-OTP-934000001 at page 24 to 26, I will read it,  
3 with being careful:  
4 Question by Mr Vanderpuye:  
5 "There's a document I wanted to show you. It's at tab 52, CAR-OTP-2100-2602.  
6 And it's a notebook that was produced by a witness. And I want to show you and  
7 ask you some questions about it. The first thing I'd like to do is to go to ... page 26 ...  
8 and I wanted to ask you about some of the names we see here, if we can just blow up  
9 the handwritten part of it so the witness can see it. That's very good.  
10 Can you see it, Mr Witness?  
11 Yes.  
12 ... [do] you recognise these names, [Mr Witness]?  
13 Yes. In fact, [it] is my writing.  
14 Is that right?" says Mr Vanderpuye:  
15 "It is my writing."  
16 Oof.  
17 "Where did all these names come from?"  
18 And then he talks about the name. The important part after that is found at page 26,  
19 line 6.  
20 Question: "That's very helpful. And when is it that you think you wrote this?"  
21 Answers the witness: Indeed, you have no idea how it is helpful. "This was before  
22 my arrest. I remember very well that notebook. It was before my arrest.  
23 The attack had already taken place. That is the attack of 5 December and it [is]  
24 subsequently" -- after the attack that earlier on this morning this book was meant to  
25 have helped coordinate.

1 It was after the attack of 5 December "that I had to write down the number of each  
2 authority or each leader so as to be keeping contact. That is my handwriting. I  
3 remember that we had already crossed back to the other side of the river. I think this  
4 must have been in January, February. I'm not very good with memory, but it was  
5 after the attack."

6 Can we go in closed session for 30 seconds?

7 PRESIDING JUDGE AITALA: [12:18:38] Let's move into closed session, please.

8 (Private session at 12.19 p.m.)

9 THE COURT OFFICER: [12:19:04] We're in private session, Mr President.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 12.19 p.m.)

17 THE COURT OFFICER: [12:19:50] We're back in open session, Mr President.

18 PRESIDING JUDGE AITALA: [12:19:53] Please continue.

19 MR LAROCHELLE: [12:19:54] Thank you.

20 So what I'm suggesting to you is that this last piece of evidence used by  
21 the Prosecution was something that was used to re-establish peace, to be able to  
22 contact more easily those people that had people under their orders. Not something,  
23 as suggested by the Prosecution, that was used as a tool to coordinate attacks.  
24 Your Honours, because - where's my paper? - I wanted to -- we spoke at length at  
25 2232 and the important -- the importance of the date of the Ndjo attack, because how

1 he used that attack to link Mokom to some crimes. And the news report we saw  
2 yesterday was produced on 22 September 2013 but does not establish the exact date of  
3 the Ndjo attack. And I mentioned to you that the exact date of the Ndjo attack exists  
4 in the evidence and I would like to move orally today by way of Rule 35 for  
5 the authorisation to put one more document on our list of exhibits, and that is  
6 document CAR-OTP-2066-1422 from which the date of the attack on Ndjo can be  
7 clearly established to happen on 16 September 2013.

8 And because of the importance the Prosecutor puts on the evidence of 2232, I would  
9 like you to take that document into consideration in your deliberation, because in that  
10 document you will find the exact same picture that was on the news report, and that  
11 document is a report prepared by two persons who were travelling back from  
12 Bossangoa to Bangui on 16 September 2013 and who ran into the battle of Ndjo. So,  
13 for me, it establishes beyond any discussion that this battle took place on that date.

14 And as we demonstrated yesterday, that on that date there were absolutely no  
15 contacts with Mokom and Dedane.

16 And one further argument to justify the inclusion of that document in our list of  
17 evidence is the fact that despite its crucial importance in assessing the credibility of  
18 Witness 2232, it is not marked as PEXO. A further demonstration, if you needed one,  
19 that the Prosecutor came before you without knowing its case. The fact -- and that  
20 document, your Honour, was disclosed to us on 20 July, one month after they were  
21 supposed to conclude and finalise the identification, that you had given them an extra  
22 delay to identify everything that is exculpatory in the case, we got this.

23 So I would conclude with this. I would ask you, in your deliberations, to accept,  
24 even if we have passed the deadline that was given to us to include evidence in our  
25 list, that you accept to consider also this document as part of the record.

1 Those conclude our submissions. I thank you very much for your attention. I  
2 would like to thank the Court personnel for their patience, for bearing with us,  
3 particularly with Ms Gibson, she was very fast, and I would like to thank  
4 the Prosecution and I wish you serene deliberations.  
5 Thank you.

6 PRESIDING JUDGE AITALA: [12:24:31] Thank you very much.

7 On your request on the Rule 35 of the Regulations of the Court, we will rule on this in  
8 the decision in due course.

9 Now, with the end of the Defence final statements, we come to the end of  
10 the confirmation of charges hearing, but we still have -- the Chamber still has to  
11 adjudicate a request from the Defence of 4 July 2023 by email for written submissions,  
12 which we have reserved to decide in the hearings.

13 So I will now adjourn the hearing and we will resume at 15.30.

14 The hearing is adjourned.

15 Thank you very much.

16 THE COURT USHER: [12:25:32] All rise.

17 (Recess taken at 12.25 p.m.)

18 (Upon resuming in open session 3.30 p.m.)

19 THE COURT USHER: [15:30:32] All rise.

20 Please be seated.

21 PRESIDING JUDGE AITALA: [15:30:54] Good afternoon.

22 So, first of all, I will start with the request of the Defence under Regulation 35 of the  
23 Regulations of the Court to include CAR-OTP-2066-1422 in its list of evidence, which  
24 is at page 56-57 of today's real-time transcript. The Chamber orders the Prosecution  
25 to provide its response, if any, by way of email, by no later than 25 August 2023 at



1 1400 hours.

2 The Chamber will rule on the request in due course.

3 Now, I will move to the Defence's request to file written submissions following the  
4 confirmation of charges hearing, which was submitted to the Chamber on 4 July 2023  
5 by way of email.

6 On 14 July 2023, in its "Order setting the schedule and directions for the confirmation  
7 of charges hearing", which is filing 244 in the records of the case, the Chamber has  
8 indicated that it would address the Defence's request at the end of the confirmation of  
9 charges hearing.

10 Having heard the submissions of the parties and participants at the hearing, the  
11 Chamber is of the view that such submissions would be of assistance for its  
12 adjudication of the Prosecution's request to confirm the charges against Mr Mokom as  
13 set out in the document containing the charges.

14 Accordingly, the Chamber orders the Defence and the Prosecution to expand on any  
15 issues set out during their submissions on the merits during the hearing and, in  
16 particular, Mr Mokom's alleged contribution to the charged crimes, and Mr Mokom's  
17 alleged *mens rea* in relation to the charged crimes.

18 Submissions regarding issues not raised at the hearing will be set aside by the  
19 Chamber.

20 These submissions shall be provided in accordance with the following schedule:

21 The Defence and the Prosecution shall provide the written submissions by no later  
22 than 14 -- one, four -- 14 September 2023 at 1600 hours.

23 The Defence and the Prosecution shall provide their responses by no later than 26  
24 September 2023 at 1600 hours.

25 The Defence may reply to the Prosecution's response without raising new issues not

1 arising from the Prosecution's response by no later than 2 October 2023 at 1600 hours.

2 The Prosecution shall not provide a reply.

3 The Chamber will not entertain additional submissions or requests to provide  
4 additional submissions.

5 Furthermore, as to the page limits, the initial submissions of the Defence and the  
6 Prosecution shall not exceed 25 pages. The responses shall not exceed 15 pages.

7 The Defence reply shall not exceed 10 pages. All page limits shall be calculated in  
8 accordance with regulation 36 of the Regulations of the Court.

9 The Common Legal Representatives of Victims may provide written submissions  
10 limited to the views and observations of the victims, not exceeding 25 pages, which  
11 will be calculated as well in accordance with Regulation 36 of the Regulations of the  
12 Court, and shall be submitted by no later than 14 September 2023 at 1600 hours.

13 Finally, the Chamber specifies that the 60-day time limit for the Chamber's decision  
14 on the Prosecutor's request to confirm the charges against Mr Mokom, as set out in  
15 Regulation 53 of the Regulations of the Court, shall start running following the expiry  
16 of the time limit for the final written submissions to be received by the Defence;  
17 namely, 2 October 2023.

18 This brings us to the end of the confirmation of charges hearing.

19 I wish to thank on behalf of the Chamber, the parties; the participants; Mr Mokom;  
20 and to thank very much the interpreters, the court reporters, the technicians, security  
21 officers and everyone of the Registry for their timely and professional cooperation.

22 I thank you again. And the hearing is adjourned. Thank you.

23 THE COURT USHER: [15:38:22] All rise.

24 (The hearing ends in open session at 3.38 p.m.)