

Trial Hearing  
Opening Statement

(Open Session)

ICC-01/14-01/18

1 International Criminal Court  
2 Trial Chamber V  
3 Situation: Central African Republic II  
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard  
5 Ngaïssona - ICC-01/14-01/18  
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Chang-ho Chung  
7 Trial Hearing - Courtroom 1  
8 Tuesday, 28 November 2023  
9 (The hearing starts in open session at 9.31 a.m.)  
10 THE COURT USHER: [9:31:04] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE SCHMITT: [9:31:26] Good morning, everyone.  
14 Court officer, please call the case.  
15 THE COURT OFFICER: [9:31:31] Good morning, Mr President, your Honours.  
16 Situation in the Central African Republic II, in the case of The Prosecutor versus  
17 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.  
18 And for the record, we are in open session.  
19 PRESIDING JUDGE SCHMITT: [9:31:47] Thank you very much.  
20 I ask for the appearances of the parties.  
21 We start with the Prosecution first, Mr Vanderpuye.  
22 MR VANDERPUYE: [9:31:52] Good morning, Mr President, your Honours.  
23 Good morning, everyone. Today the Prosecution is represented by Olivia Struyven,  
24 Lucio Garcia, Yassin Mostfa and myself, Kweku Vanderpuye. Good morning.  
25 PRESIDING JUDGE SCHMITT: [9:32:06] Thank you very much.

1 We turn to the representatives of the victims.

2 Ms Massidda first.

3 MS MASSIDDA: [9:32:11] Good morning, Mr President, your Honours. Good  
4 morning, everybody. For the victims of the other crimes appearing today  
5 Mr Enrique Carnero Rojo at my right; behind me, Mr Merouane Chenaifa and  
6 Ms Mouhia Asso; and myself, Paolina Massidda.

7 PRESIDING JUDGE SCHMITT: [9:32:28] And Mr Suprun next.

8 MR SUPRUN: [9:32:30] Good morning, Mr President. Good morning, your  
9 Honours. The former child soldiers are represented by Tayssir Othmani and myself,  
10 Dmytro Suprun. Thank you.

11 PRESIDING JUDGE SCHMITT: [9:32:40] Thank you.

12 I turn to the Defence.

13 We start with the Defence of Mr Yekatom. Ms Dimitri first.

14 MS DIMITRI: [9:32:45] Good morning, Mr President. Good morning, your  
15 Honours. Good morning, everyone. Mr Yekatom is present in the courtroom today.  
16 He is represented by, and I will start with my left-hand side,  
17 Ms Laurence Hortas-Laberge, Mr Florent Pages-Granier; we have our visiting  
18 professional from Canada, Mr Simon Ruel; we have Mr Gyo Suzuki; behind me we  
19 have Ms Alexandra Baer, Mr Narek Chakhalyan, Ms Sabine Bayssat; on my right,  
20 Ms Yousra Lamqaddam; on my left, Ms Anta Guissé; remotely, with half an hour  
21 delay, Mr Régis Tiangaye; and myself, Mylène Dimitri.

22 PRESIDING JUDGE SCHMITT: [9:33:27] Did you mention Ms Baer? I'm not sure.  
23 Okay, you did. Good.

24 Then we turn to the Defence of Mr Ngaissona. Ms Proulx.

25 MS PROULX: [9:33:31] Good morning, Mr President. Good morning, your

1 Honours and everyone in the courtroom. Mr Ngaïssona is represented today by  
2 Despoina Eleftheriou, Clémence Fontaine, Sorenza Bangaya and myself,  
3 Marie-Hélène Proulx. And he is, of course, present in the courtroom. Thank you.

4 PRESIDING JUDGE SCHMITT: [9:33:48] Thank you very much.

5 We all know that we are here to listen to the opening statement by the Defence of  
6 Mr Yekatom. And I give the floor to Ms Dimitri for that.

7 MS DIMITRI: [9:33:57] Thank you, Mr President.

8 PRESIDING JUDGE SCHMITT: [9:34:12] With regard to the scheduling, so to speak,  
9 it's no problem at all when you think you have finished a certain topic that you want  
10 to address and it's close to 11 o'clock, then we have the break then and we continue  
11 afterwards.

12 MS DIMITRI: [9:34:26] Thank you for this.

13 Just before I start, Mr President, we're going to have a PowerPoint presentation, and  
14 just to reassure my colleagues from the other side, the PowerPoint is going to be  
15 confidential, it's not going to be displayed to the public, but the entire opening is  
16 going to be in public session. Some of the videos, and we've already informed the  
17 court officer, are going to be broadcast to the public.

18 PRESIDING JUDGE SCHMITT: [9:34:56] We appreciate that. Thank you very  
19 much.

20 MS DIMITRI: [9:35:00] Good morning. It's a privilege and an honour to appear  
21 before you today.

22 I first want to thank every member of my team, including those who left us, who  
23 worked tremendously hard in trying to investigate, prepare Mr Yekatom's defence,  
24 scrutinise and question all the evidence disclosed by the Prosecution, and I could not  
25 have done this without them.

1 The team you saw for the past three years and the team members you've heard of  
2 represent Mr Yekatom's Defence in every single aspect of it.

3 During the next hours, I intend to discuss how the Defence case will show that even  
4 with basic investigations and diligence, by studying the evidence and paying  
5 attention to it, the actual truth is very different to that presented by the Prosecution.

6 During my presentation this morning, I will address the crimes committed by  
7 uncontrolled civilians. The Prosecution, through the trial, presented you with a  
8 simplistic approach, trying to convince your Honours that if a crime is committed in a  
9 certain area where Mr Yekatom was present, he's automatically responsible for it.

10 The Defence evidence will therefore address the crimes committed by civilians  
11 bearing this aspect in mind.

12 I will also address the limit of international forces and the crimes committed by some  
13 international forces like FOMAC which had an impact on who could be trusted to  
14 bring back security in the country if those who had the international mandate to do so  
15 couldn't.

16 During the presentation of our Defence case, we will bring evidence to show that  
17 Mr Yekatom's conduct as described by the Prosecution, did not contribute to the  
18 charged crimes.

19 You know the Prosecution's case against Mr Yekatom is weak, but we will present to  
20 your Honours how he was not part of a common plan to violently target the Muslim  
21 population, as charged by the Prosecution.

22 The truth is, and you've already heard some evidence to that effect, Mr Yekatom, a  
23 *caporal chef* of the Central African army, the FACA, continued his military duties for  
24 some time, even under the Seleka regime, until he fled to Zongo because he was  
25 kidnapped, too, like other FACAs.

1 The evidence so far showed, and the Defence evidence will show, that once  
2 Mr Yekatom was back in his country, his objective was to oust the Seleka. He did  
3 not target the Muslim civilian population, be it in PK9-Mbaiki axis, in Cattin or in  
4 Boeing. Mr Yekatom was not part of a common plan to violently target the Muslim  
5 population. There was no common plan in Mr Yekatom's group.  
6 I will address the Lobaye prefecture and more specifically the PK9-Mbaiki axis and  
7 the meeting at the St Jeanne d'Arc church in Mbaiki. And I will give you an  
8 overview of the main Defence witnesses who will testify on Mr Yekatom's message in  
9 Mbaiki.  
10 I will then address the Boeing mosque, and by doing so I will recall the Prosecution's  
11 evidence on the mosque by comparing it to the evidence you will hear from two main  
12 Defence witnesses on the Boeing mosque.  
13 I will continue to address the 5 December by discussing the Cattin neighbourhood  
14 and the Seleka in that area on 5 December.  
15 And I will then move on to the Boeing market and, more specifically, how Defence  
16 evidence shows that the only two Prosecution witnesses on the Boeing market  
17 tampered and fabricated evidence that was submitted to your Honours.  
18 I also intend to give your Honours an overview of our Defence case on count 29 and  
19 present you again with the truth, that Mr Yekatom did not enlist, conscribe or use  
20 children under the age of 15.  
21 Despite all the years the Prosecution had ahead of us and all the evidence they  
22 presented, they were negligent and they lacked diligence also with count 29. They  
23 did not take any lesson from the alarming mistake they made in Lubanga, delegating  
24 their investigative activities without meaningful supervision. They did not want to  
25 test their evidence, and the Defence evidence will show that we had to pick up where

1 the Prosecution disregarded its statutory obligations. In contrast, the Defence case  
2 will reveal the fabrication of evidence by a Prosecution intermediary and witnesses.  
3 Your Honours, I will briefly address the context in which the Prosecution's  
4 investigations led to the case against Mr Yekatom as this is at the root of what we say  
5 is where the Prosecution's theory went wrong. Rather than correct the course of  
6 their investigations, as is required of any prosecutorial and investigative body, to take  
7 a step back and own where the evidence they collected did not match their case  
8 theory, they just pushed on. It is within this context that mistake after mistake was  
9 made, and it is such conduct that frames the Defence case and will show your  
10 Honours that the evidence you will hear in the next few months was readily available  
11 for the Prosecution to investigate and test.

12 After nine years of investigations, the Prosecution closed its case against Mr Yekatom.  
13 But they managed to go from a confirmation hearing with many allegations against  
14 him to a trial where those allegations were never presented.

15 I will also address the evidence that the Prosecution promised your Honours during  
16 their opening statement but nevertheless never presented.

17 As early as March 2013, the Prosecution was drawing attention to the situation in  
18 Central Africa due to the massive crimes and attacks.

19 The specific situation in Central Africa, starting in August 2012, was referred to the  
20 Court in May 2014 by President Samba-Panza. The Prosecution was investigating as  
21 early as September 2014, the same month the alleged child soldiers in Mr Yekatom's  
22 group were having an ESF training in Mbaiki.

23 The Prosecution even sent some investigators to attend the Bangui forum in 2015.  
24 They were present -- they were present as the events were unfolding at a very early  
25 stage and they had nine years of investigations. They had that luxury.

1 Meanwhile, for some of the evidence presented in this case against Mr Yekatom, the  
2 Defence, with much shorter time and much less human resources, were able to  
3 conduct due diligence, which raises question about the thoroughness and diligence of  
4 the Prosecution's investigations.

5 Ten days ago Mr Yekatom reached his fifth year of detention.

6 While the Prosecution had nine years to investigate, while they started as early as  
7 September 2014, the Prosecution was still not ready when Mr Yekatom was arrested.  
8 They asked in February 2019 for a marginal delay to postpone the confirmation of  
9 hearing and they justified that delay on the basis of Mr Ngaïssona's arrest. This led  
10 to a first postponement of Mr Yekatom's confirmation hearing, despite Defence  
11 objection.

12 In May 2019, the Prosecution asked for a second postponement of the confirmation of  
13 charges hearing, as if they did not have enough time. But this time they complained,  
14 and I quote, about "the unexpected speed at which the suspects were arrested".  
15 They were the one issuing an application for a warrant of arrest against Mr Yekatom  
16 and they complained that he was arrested too fast because they were not ready  
17 despite the luxury of having had many years of investigation.

18 The Prosecution is expected to have largely completed its investigations prior  
19 to the confirmation of hearings. Your Honours reminded them, so did  
20 Pre-Trial Chamber II. So you have to ask yourself if the reason for the Prosecution to  
21 ask for more time is not hiding a reality. They could not find witnesses to support  
22 the allegations they intended to present before your Honours and they needed more  
23 time to investigate as they did not have credible and reliable witnesses and evidence  
24 supporting their allegations, their common plan.

25 Nine years of investigations, your Honours, with a Prosecution office that has many

1 divisions, including investigators based in Bangui in a country office at the heart of  
2 the evidence.

3 The Defence case will show that Prosecution investigations suffered from tunnel  
4 vision. They ignored exculpatory evidence.

5 They failed time and time again to meet their obligations towards the Defence most of  
6 the time because of their misunderstanding of the materiality of the evidence. They  
7 were found to be in violation of their disclosure obligation in this case not less than  
8 12 times. And the email decision issued by Pre-Trial Chamber II last week regarding  
9 access to exculpatory material in the Mokom case was also telling in that regard.

10 During their opening statement, the Prosecution stated that only systematic  
11 conviction of these crimes and abuses will help protect the civilian population. They  
12 were not calling for the truth. They were asking you for a systematic conviction, a  
13 conviction that they wanted so much that it led them into a tunnel vision which  
14 guided them through the trial. And we intend to show you how during the  
15 presentation of our Defence case and through today's presentation.

16 So, your Honours, let's now go back at the beginning and see how the CAR situation  
17 came before this Court.

18 As I mentioned at the beginning of my opening, the Prosecution of the ICC made a  
19 statement in March 2013 and another one in April 2013, one month after the Seleka  
20 took power. The Prosecution stated that the people of the Central African Republic  
21 have already suffered too much. The Prosecution was drawing attention to the  
22 massive killings against the civilians by the Seleka.

23 The United Nations also called for an urgent need to establish law and order  
24 throughout the country and to protect civilians from abuse. You heard the evidence  
25 on the Seleka committing mass killings, burning down villages, systematically killing



1 members of the Central African military forces, the FACA. You heard how they  
2 raped women, pillaged entire communities. You've seen on pictures and videos  
3 entire populations hidden, living in the bush by fear of being killed or tortured by the  
4 Seleka.

5 And you heard how Mr Yekatom a *caporal chef* from the FACA, who received no  
6 special treatment from Bozize, continued to work even under the Seleka regime.  
7 You heard the evidence that at some point they also tried to kidnap him, kill him, and  
8 that he fled, but he came back. He came back even though all the officers of the  
9 army had fled. You heard witnesses telling you that he came back to oust the Seleka.  
10 The Prosecution is now charging him with several modes of liability for crimes  
11 committed against the Muslim population in the area where Mr Yekatom was.

12 And I want to pause here for a second and acknowledge the suffering of the Central  
13 African people, the Christians, the animists, the Muslims. So for the next few  
14 minutes I will speak in French because I want to have a few words for the people who  
15 lived through the events, who suffered and who are listening from Bangui and  
16 elsewhere in CAR.

17 (Interpretation) The people of the Central African Republic saw horror. All of them  
18 lost people close to them. Before their very eyes they saw family members and  
19 friends massacred. They saw their wives, their sisters, their mothers being raped.  
20 They saw their houses going up in flames. Crimes were committed on both sides.  
21 Crimes were committed by people, by crowds that were out of control, by  
22 Anti-Balaka members, by Christians, by Muslims, by Seleka members, by animists  
23 and even by peacekeepers.

24 But today, this is Mr Yekatom's trial, Alfred Rombhot Yekatom. Today this is his  
25 trial, not the trial of all the Anti-Balaka members, all the self-defence groups, all those

1 who took up arms, and yet the Prosecution is accusing him of all crimes committed in  
2 Boeing, Cattin and Lobaye, without specifically identifying those who were  
3 responsible. The Prosecutor is simplifying the crisis in the Central African Republic,  
4 trying to convince the judges that it was a mere question of the Anti-Balaka members  
5 versus Muslims, Seleka versus Christians. But this is a very simplistic vision of a  
6 complex situation. This is not rendering justice to the victims by charging and  
7 condemning a person who is not responsible for their suffering.

8 Throughout the entire process, the Prosecution has blamed Mr Yekatom, who is  
9 seated behind me. They have accused him of crimes even when civilians who were  
10 out of control committed crimes against Muslims, even when young people said that  
11 they were Anti-Balaka and committed crimes against Muslims.

12 Mr Yekatom was not responsible for all the people. He did not have the control over  
13 the people who were not able to control their anger and who attacked Muslims. For  
14 each crime committed against Muslim civilians, the Prosecutor is the one who has the  
15 burden of proving beyond reasonable doubt that Mr Yekatom was responsible for the  
16 crime and intended to do so.

17 Even international forces were powerless when they faced the uncontrolled anger of  
18 non-Muslims who had gone through nine months of suffering, suffering that cannot  
19 be described, that cannot be imagined.

20 So how can one ask a man like Mr Yekatom to deter all the people who were in the  
21 various places where he was? I want to be clear, this is -- I'm not trying to present  
22 Mr Yekatom as a saviour and you don't even have to think that Mr Yekatom is a nice  
23 man. You have heard the evidence to the effect that in his own way he tried to  
24 dissuade civilians from committing crimes against Muslims. You will hear Defence  
25 witnesses telling you how he tried to protect the Muslims.

1 (Overlapping speakers)

2 (Speaks English) The hatred of the civilian population, the lynching of the Muslim  
3 civilians by civilians is my next topic. And it's an important one because through the  
4 Defence case you will hear evidence that not only Mr Yekatom was not part of a  
5 common plan to target Muslims, but he intervened time and time again to stop people  
6 who had no link with -- who he had no link with, civilians, angry civilians who  
7 wanted to harm Muslim civilians.

8 The hatred of the civilian population kept growing and it divided communities.

9 Defence Witness 5014 will talk about it. She will mention how she had to dress up to  
10 dissimulate her faith. How difficult can it be for someone to deny their own culture,  
11 their own tradition, their faith by changing their religious clothing appearance in their  
12 own country to avoid being attacked? She will mention how neighbours threatened  
13 her because of her faith. And she will mention how Mr Yekatom saved her and how  
14 he helped other Muslims as well.

15 You have seen it on a number of videos and our Defence witnesses will testify on  
16 some of them as well, as we intend to show you the chaos, the hatred of the  
17 non-Muslim civilian population, and our Defence witnesses will also describe how  
18 the uncontrolled civilians became towards the Muslim population.

19 You heard former Prime Minister Tiangaye telling you that the country was in a  
20 situation that was out of control and how, and I quote, "very difficult it was to have a  
21 handle of these people", meaning the civilian population.

22 You heard it from President Samba-Panza, telling you there was no state, no justice,  
23 no army, it was total chaos.

24 You heard President Samba-Panza calling for her FACA. She needed her FACA.

25 She needed law and order. She fought against the *mesures de confiance*. She wanted

1 her FACA and interior security forces to be armed. Why? Because, otherwise, the  
2 chaos would continue. Why? Because the international forces were insufficient,  
3 because they couldn't depart from the main roads. They didn't go in the inside of  
4 the country and, remember, Lobaye is in the inside of the country. In fact, she says it  
5 was even less secure in the inlands.

6 So when Prosecution uses crimes committed in a location where Mr Yekatom or his  
7 group were, the evidence has to be scrutinised. Remember how the Prosecution  
8 showed you during their opening statement a small video from 7 December 2013 in a  
9 small village with houses all around. And on that video you could hear people say,  
10 "This is our country, not that of the Muslims". You cannot distinguish the identity of  
11 the speakers. No evidence was brought by the Prosecution to show that they were  
12 members of Mr Yekatom's group, those speakers.

13 The video your Honours will have on your screen in a second is also part of the  
14 Defence evidence, because you always have to keep in mind how uncontrolled the  
15 civilians were.

16 (Viewing of the video excerpt)

17 The images you just saw should be kept in mind at all times when the Prosecution is  
18 alleging crimes committed in an area where Mr Yekatom was. The situation at the  
19 time in Bangui in the hinterlands was much more complex than to simply say that the  
20 perpetrator must belong to Mr Yekatom's group because the crime was committed in  
21 the Lobaye or in Boeing or in Cattin. Every incident alleged by the Prosecution that  
22 led to the fear and displacement of Muslims must be analysed with precision. The  
23 Defence should not have to disprove every allegation. The Prosecution bears its  
24 burden at all times.

25 And the Prosecution is seeking to blame Mr Yekatom or Mr Yekatom's men for any

1 alleged crimes that occurred in the Lobaye or Boeing, and that if a crime happened in  
2 the Lobaye, then it must be Mr Yekatom's men. But this approach ignores the reality  
3 on the ground and this approach ignores the videos you just saw.

4 The widespread violence against Muslim civilians by the population cannot be  
5 ignored. And in addition to that, and this is what also the Defence case will show,  
6 small Anti-Balaka groups everywhere throughout the country were present, such as  
7 the video your Honours will have on your screen.

8 (Viewing of the video excerpt)

9 There were various Anti-Balaka groups that had nothing to do, no links at all with  
10 Mr Yekatom.

11 Defence Witness 1989 will also testify about the presence of a different Anti-Balaka  
12 group coming from another area and committing crimes in the Lobaye.

13 All these unknowns, all these unidentified perpetrators committing crimes against the  
14 Muslim population should be enough to raise reasonable doubts when it comes to  
15 Mr Yekatom and the area the Prosecution claims was under his control. Because in  
16 reality, at the time, chaos was not allowing a lot of control. It was a crisis situation.

17 We will present you with a December 2013 video which is on our Defence list of  
18 evidence and which shows what many witnesses testified so far and which also  
19 supports what Defence witnesses will testify about. The helplessness of the limited  
20 gendarmes in Bangui facing a non-Muslim population that was so uncontrolled that  
21 they didn't even fear the consequences of committing a crime in front of law  
22 enforcement, such as the video your Honours now have on your screen.

23 (Viewing of the video excerpt)

24 THE INTERPRETER: [10:03:58] (Interpretation of the video excerpt)

25 "There's a new movement in the crowd, two Muslims dressed in white passing by on

1 their motorbikes and are picked up.

2 The gendarmerie has stepped in to prevent them from being lynched. They end up  
3 fleeing."

4 MS DIMITRI: [10:04:21] And let's not forget another important reality that also  
5 played a role in the suffering of the Central African people, the fact that some of the  
6 international forces who had the mandate to bring back peace and security were in  
7 fact doing the exact opposite, such as the video you will now see on your screen and  
8 which is also part of the Defence list of evidence.

9 (Viewing of the video excerpt)

10 THE INTERPRETER: [10:06:21] (Interpretation of the video excerpt)

11 "... they are going to kill everyone here. The FOMAC has already done this ..."

12 MS DIMITRI: [10:06:55] You saw the FOMAC creating chaos, killing civilians,  
13 creating fear and despair. How can you ask someone in that context to accept that  
14 only the international forces can be armed, as they are the one with the mandate of  
15 bringing back security? How can you charge someone like Mr Yekatom for keeping  
16 his FACA military equipment? And the Defence case will explain the reasons  
17 behind the lack of disarming.

18 PRESIDING JUDGE SCHMITT: [10:07:40] Actually, Mr Vanderpuye, it's now the  
19 hour of Ms Dimitri. I don't want an interruption, please.

20 MR VANDERPUYE: [10:07:50] Thank you, Mr President. I just take note of our  
21 email from earlier, please.

22 PRESIDING JUDGE SCHMITT: [10:07:53] Yes. And we have taken note of it, but I  
23 don't see any, let's say, reason at the moment to interrupt here.

24 So, Ms Dimitri, it's your time and your hour, so to speak, please continue.

25 MS DIMITRI: [10:08:08] Thank you, Mr President. I appreciate it.

1 For what purpose did he keep his equipment? He wanted to liberate the country  
2 from the Seleka mercenaries. You heard Prosecution Witness 1839 say it:  
3 (Interpretation) "The aim above everything else was to free the country."  
4 (Speaks English) So during the Defence case you will hear that through his attempts  
5 to re-establish order, he tried to protect the civilians. He went in the Lobaye. He  
6 re-established checkpoints that existed before. He went and tried to fetch the  
7 gendarmes and interior state authority to re-establish order to secure the population.  
8 What the United Nations had asked as early as April 2013: law and order. What  
9 President Samba-Panza was not able to do because the international community was  
10 limiting her, controlling her.  
11 You will hear the evidence of Defence Witness 5015. He will explain how  
12 Mr Yekatom's intention was to bring back security and peace. Defence Witness 5015  
13 will explain how some international forces like MISCA were sending Mr Yekatom in  
14 small villages to fulfil their mandate to bring back security and peace because they  
15 could not do it themselves.  
16 Did the Prosecution understand that? No. Because they ignored the exculpatory  
17 evidence from the outset and they held on their common plan. They're charging  
18 Mr Yekatom through an essential contribution for ordering his elements to commit  
19 the charged crimes, as well as leading, training, equipping them and structuring them.  
20 But remember what President Samba-Panza said, a country cannot live without its  
21 army. So there was no common plan for Mr Yekatom to target the Muslim civilians.  
22 So you can't charge him for structuring, training and equipping his elements when his  
23 goal, which you will hear during the Defence case, is to oust the Seleka and  
24 mercenaries, to try to bring back peace and security for civilians.  
25 It's that same equipped and trained Mr Yekatom who saved Defence Witness 5014

1 and her family from being lynched. You will hear, Mr President, your Honours,  
2 from Defence Witness 5014, who will confirm that as early as December 2013  
3 Mr Yekatom was telling individuals out of control not to harm the Muslim population.  
4 She will describe how she was so scared of the non-Muslims who were ready to lynch  
5 as many Muslims they met on their way.  
6 But the Prosecution keeps insisting that Mr Yekatom was part of a common plan to  
7 violently target the Muslim population, that Mr Yekatom and members of his group  
8 espoused and participated in a plan or agreement to violently target the Muslim  
9 civilians in Bangui and Lobaye.  
10 The Defence case will show that not only Mr Yekatom did not espouse or participate  
11 in any such plan, but that such plan did not exist. Your Honours have already seen  
12 contrary evidence from a range of Prosecution witnesses, but you will hear more from  
13 Defence witnesses.  
14 I cannot talk about the common plan without saying a few words about  
15 Maxime Mokom whose charges were dropped by the Prosecution. Maxime Mokom  
16 who, according to the Prosecution, was a subset of this trial because him and  
17 Mr Yekatom were both apparently linked through the Prosecution's so-called  
18 strategic common plan and operational common plan. The Prosecution was alleging  
19 that Mr Yekatom picked himself weapons from Maxime Mokom in Zongo. That  
20 part of the Prosecution's case collapsed.  
21 During the course of the entire Prosecution evidence there was no evidence at all of  
22 Mr Yekatom obtaining weapons and ammunitions from Maxime Mokom in Zongo,  
23 nor that he himself picked up ammunitions from Mokom in Zongo.  
24 You will also recall a notebook that was relied upon by the Prosecution to support the  
25 links between Mr Yekatom and Mr Mokom.



1 The phone book that your Honours now have on your screen contains the name of  
2 Mr Yekatom and a phone number next to it. The Defence evidence will show that  
3 this phone number did not belong to Mr Yekatom at the time. It belonged to  
4 Marius Hena, as you can see from the Defence evidence on the top right of your  
5 screen. Marius Hena, being an element of Basile Mbomon.

6 This piece of Defence evidence that's on the top of your screen comes from Orange  
7 telephone company. It was easy to obtain. Our team simply sent a cooperation  
8 request to the Central African Republic asking who was the holder of that phone  
9 number at the relevant time and they responded.

10 The Prosecution could have done the same. From day one the Prosecution was  
11 relying on telecommunication evidence in this case with a table of phone numbers  
12 and phone calls annexed to their Document Containing the Charges. They sent  
13 numerous requests for cooperation to obtain phone numbers, phone data, phone calls  
14 or to ask under which names certain phone numbers were registered on. How  
15 could they have neglected to check this one, a notebook allegedly belonging to  
16 Maxime Mokom, against whom they had filed an application for a warrant of arrest,  
17 and in that notebook a phone number allegedly belonging to Mr Yekatom, against  
18 whom they had also filed an application for a warrant of arrest. A basic step when  
19 sending all those requests for information to obtain a phone number attribution  
20 would have been to test that simple piece of evidence.

21 The Prosecution also failed to show the links between the strategic common plan and  
22 the operational common plan. They promised you a number of witnesses who  
23 would talk about how Mr Yekatom participated into high level meetings with the  
24 Anti-Balaka National Coordination and they had alleged that there was from the start  
25 one single Anti-Balaka group. You heard the evidence, they had it wrong as a

1 number of witnesses explained it was not the case. But I will not dwell on this  
2 further.

3 So now that the parentheses on Mr Mokom is closed, let's come back to the  
4 nonexistence of the common plan against Muslims.

5 During the period of the charges, Mr Yekatom spoke out against violence against the  
6 population. You will recall the evidence of Prosecution Witness 1595 who specified  
7 on his own during his familiarisation process when he was rereading his statement,  
8 he added a sentence and the sentence said (Interpretation) "We must not touch any  
9 Muslim, no imam should be attacked."

10 (Speaks English) And according to him, Mr Yekatom had said those words. And he  
11 added that Mr Yekatom stated during the gathering in Mbaiki, and I quote again, that  
12 Mr Yekatom "came ... against Djotodia and his elements and since they had gone, he  
13 would not harm anybody".

14 He went further, and still at St Jeanne d'Arc meeting, he said that Mr Yekatom started  
15 saying "You the Muslims ... I have no problem with you. When I was young, the  
16 Muslims took care of me and educated me. I only have problems with Djotodia, but  
17 he has already left."

18 And another Prosecution witness, 2041, added about Mr Yekatom:

19 (Interpretation) "He wasn't there to fight the Muslims, nor to destroy their mosques,  
20 nor to take the possessions of anybody."

21 (Speaks English) You've seen the evidence, you've heard it from insiders like  
22 Prosecution Witness 1839 to Muslim civilians who either testified publicly or with  
23 protective measures: Mr Yekatom was specific not to kill the Muslim civilians that  
24 were not armed. He was against the Seleka, not against the Muslim civilians.

25 The Prosecution's case was that when Mr Yekatom progressed towards the Mbaiki

1 axis, he had established checkpoints to regulate movements and target civilians.  
2 You will hear from Defence witnesses that Mr Yekatom did not come into the Lobaye  
3 to harm the Muslim civilians or the imams. He came to chase the Seleka.  
4 And before I describe the Defence witnesses that will come and testify about the  
5 PK9-Mbaiki axis, let me just remind your Honours that you've already heard it from  
6 Prosecution witnesses, including six Muslim civilians who came and testified  
7 themselves about Mr Yekatom's intention and objective.  
8 Many of them spoke about the St Jeanne d'Arc meeting, which is my next topic.  
9 Many of them spoke about the message Mr Yekatom gave and how he called for the  
10 civilians to be protected, Muslims and non-Muslims.  
11 And this is what the Prosecution said during their own opening statement about that  
12 message: That Mr Yekatom was not sincere, that his message was hollow, that his  
13 words were a sham.  
14 Of all the several Prosecution witnesses that you were promised, not one made such  
15 an allegation. In fact, 12 Prosecution witnesses testified about the St Jeanne d'Arc  
16 meeting, among them half of which were Muslims. And this is what they said, that  
17 the aim of the meeting was to get organised in order to protect the Muslims and the  
18 Christian population, the entire population.  
19 And it was not only his words, his conduct that also had a positive and concrete effect.  
20 As some of the Prosecution said after Mr Yekatom's speech that subsequently there  
21 was peace and there was calm. And had he not given his speech, then it's quite sure  
22 that there would have been a very tricky conflict.  
23 And not only did the Prosecution never bring any witness to say that Mr Yekatom's  
24 message was hollow or not sincere, but even one witness testified that in private  
25 Mr Yekatom really cared about Muslims. Prosecution Witness 2353 said that

1 Mr Yekatom told him he should not leave the country, not to go in exile.  
2 So since the Prosecution brought many Muslims who confirmed Mr Yekatom's real  
3 intention not to touch the Muslim population, we will present your Honours with  
4 other key figures of the Lobaye to explain all the circumstances surrounding the  
5 evacuation of the Muslim population in Mbaiki on 6 February 2014.  
6 And to demonstrate to your Honours how an important part of the Mbaiki history  
7 was missing from the Prosecution's narrative, I want to go back in time, back to  
8 Mr Yekatom's warrant of arrest.  
9 Although the Prosecution never agreed to share with the Defence the application for  
10 Mr Yekatom's warrant of arrest, which is a first in the history of the ICC, we  
11 nevertheless know that the 2018 application for warrant of arrest included a reference  
12 to the Mbaiki meeting at the end of January 2014 with Bishop Rino. In fact, the  
13 Prosecution learned of the existence of what will become a key figure in Mbaiki,  
14 Bishop Rino, as early as mid-2017. Not less than 11 Prosecution witnesses mention  
15 Rino one way or another in their statement. Ten of those Prosecution witness  
16 statements, that are now up on your screen, mentioned Rino's role in the Mbaiki  
17 meeting.  
18 So nobody can ignore that Rino was an important religious figure in Mbaiki and part  
19 of the so-called January 30, 2014 meeting where the evacuation of Muslim population  
20 in Mbaiki will be discussed, which is also part of Mr Yekatom's charges for  
21 displacement and forcible transfer.  
22 Regardless and despite nine years of investigations, the first time ever the Prosecution  
23 asked to meet Rino is when the Defence announced him as being a Defence witness  
24 on its preliminary list.  
25 We do care for the truth. We do want you to hear from witnesses who were present

1 at the time. So your Honours will hear from Rino in less than two weeks. He will  
2 describe Mr Yekatom's words and behaviour and Mr Yekatom's collaboration with  
3 MISCA. He will explain how when the Seleka left, the non-Muslim population saw  
4 it as an opportunity for revenge. He will explain and testify that the Muslim  
5 population converged to Mbaiki by fear of what would happen when the Seleka left  
6 and how they were afraid to try to take revenge -- that people would try to take  
7 revenge.

8 Bishop Rino will speak about the meeting of 30 January where Mr Yekatom presented  
9 him as a *caporal chef* and said that he was not an Anti-Balaka. Mr Yekatom expressed  
10 that he worked to protect everyone, not a particular community, and that he had no  
11 negative sentiments towards the Muslim community. He will also describe that  
12 thugs present in Mbaiki were threatening peace and security and how he asked  
13 Mr Yekatom to go speak in public to bring back order in the city.

14 You will also hear from another key figure in the Lobaye region, Defence Witness  
15 5013, who was part of the Danish Refugee Council, DRC. The DRC was also  
16 mentioned by several Prosecution witnesses. The key role of DRC in the Lobaye,  
17 and more specifically in Mbaiki, was highlighted by the préfet of the Lobaye,  
18 Alexandre Kouroupe-Awo, in a contemporaneous video that your Honours are going  
19 to have on your screen. And before you hear him speak about DRC and their role in  
20 the Lobaye and in the security meetings, remember the Prosecution had that video in  
21 their possession since 2016.

22 (Viewing of the video excerpt)

23 THE INTERPRETER: [10:26:48] (Interpretation of the video excerpt)

24 "... an attempt of reconciliation of the point of being well known between the Seleka  
25 and the Anti-Balaka who came from Bangui, there was a preparation hand in hand

1 between the HCR, DRC and the inter-religious platform which took place up to  
2 January 2014."

3 MS DIMITRI: [10:27:09] He's speaking about the 30 January meeting and about the  
4 role of DRC.

5 Defence Witness 5013 was part of the protection cluster for DRC. Had the  
6 Prosecution been thorough, they could have met her to seek her recollection of what  
7 she witnessed in Mbaiki and in Lobaye. In fact, your Honours, they did meet her as  
8 early as November 2016, but no questions were put to her regarding Mr Yekatom's  
9 charged crimes.

10 In any event, she's among the Defence witnesses that we intend to present and she  
11 will explain the meeting at St Jeanne d'Arc church in Mbaiki, and more specifically  
12 how she asked Mr Yekatom to go talk to the local population outside of the church to  
13 calm them down because there was no state authority to do so. She will echo the  
14 words of Mr Yekatom who addressed the crowd, saying that they should not be here  
15 as this is a matter for the military and that they should go back to work in the fields or  
16 at school.

17 While the Prosecution is still trying to convince you beyond a reasonable doubt that  
18 Mr Yekatom is criminally responsible for the displacement of the majority of the  
19 Muslim population along the villages of PK9-Mbaiki axis, notably by threatening or  
20 harassing Muslims in the region, we will present evidence showing that Mr Yekatom  
21 was not threatening them or harassing them. Mr Yekatom was in fact trying to save  
22 them from people already present in Mbaiki.

23 The Prosecution claims that Freddy Ouandjio, Coeur de Lion, was a member of the  
24 alleged common plan. You will recall Prosecution Witness 1962's evidence which  
25 was also quoted by the Prosecution during their opening statement. And they said

1 the following about Prosecution Witness 1962, and I quote: "Coeur de Lion didn't  
2 hide the fact that he wanted to chase the Muslims away. I heard him saying it."  
3 And he added: "Cour de Lion had chased away the Muslims from PK9 to Mbaiki  
4 and [all] along the road to Boda."  
5 Now that same Prosecution witness, 1962, testified that he had got this information  
6 when he had accompanied Coeur de Lion and a number of his elements when they  
7 travelled from Mbaiki to Boda to join the fighting in February 2014. It is the  
8 Defence's submission that Prosecution Witness 1962 fabricated this account. He  
9 never participated in this trip to Boda and therefore he never heard Coeur de Lion or  
10 his element saying anything of the sort.  
11 This should be clear enough from the trial record, as it currently stands, for instance,  
12 from the fact that he wasn't even able to recognise Coeur de Lion when he was shown  
13 a photograph of him during his testimony, or from the evidence of the two  
14 Prosecution witnesses who were in fact on that trip to Boda, Prosecution Witnesses  
15 1786 and 1647. But I'm not going to go into detail at this stage. During our Defence  
16 case, however, we will call additional evidence to prove that 1962 fabricated this  
17 account.  
18 Your Honours will recall that 1962 made reference to an individual who was involved  
19 in gathering FACA from Boda in Bangui with the aim of having them return to Boda  
20 to defend the city and that meetings were organised to this effect on the eve of their  
21 travel, first to Mbaiki and then to Boda with Coeur de Lion and his elements.  
22 Now, we met the individual in question. It's Defence Witness 3014. And we intend  
23 to rely on his witness statement as part of our Defence case, and this -- and in this  
24 statement he refuted several key claims of Prosecution 1962 regarding the  
25 organisation of this trip to Boda.

1 And Defence Witness 3014 contradicts other falsifications of 1962. For example, his  
2 claim to have worked alongside Mr Yekatom in the mines of Boda or his claim to  
3 have grown up with Mr Yekatom in Boda, all seemingly peripheral lies which in fact  
4 were fed to the Prosecution's investigators to embellish his statement for relocation  
5 purposes by falsely implying that he knew Mr Yekatom well and to lend credibility to  
6 his broader claims.

7 And again, Defence Witness 3014 wasn't hard to find. Like Prosecution Witness 1962  
8 told the Prosecution, he was a public figure. Again, we submit that the Prosecution  
9 simply didn't wish to test its evidence, even with its own insider witnesses, 1647 and  
10 1786, whom it knew were on this trip to Boda that 1962 claims to have participated in.  
11 We've explained how the Prosecution did not, after their nine years of investigations,  
12 hear from witnesses such as Defence Witnesses 5015, 5013 or 3014. We submit that  
13 the similar pattern appears to have been applied for the 5 December attack and the  
14 Boeing mosque, which would be my next subject.

15 The statement of Prosecution Witness 1339 was an important part of the Prosecution's  
16 opening statement against Mr Yekatom. The Prosecution quoted it and said that  
17 Prosecution Witness 1339 would come and testify that, I quote, "We used rocket and  
18 grenades to destroy the walls of the mosque. We burned the roof using gasoline and  
19 matches. I saw people with canisters of gasoline bought in Boeing."

20 One witness was supposed to testify on this. Only one. Nine years of  
21 investigations and one witness only.

22 And I want to rewind on a point I made earlier because it's an important one.

23 Remember, the Prosecution asked for more time before the confirmation hearing.

24 They got it twice. And still, they fail to bring a single witness to corroborate 1339

25 because he had lied about it. Not because the Prosecution didn't have enough time



1 to bring witnesses to corroborate him, not because nobody witnessed the destruction  
2 of the mosque and how it was destroyed. Because we, our Defence team found  
3 people who did see the destruction of the mosque. And these are Defence  
4 Witnesses 4011 and 4013.

5 The Prosecution even visited the area where the mosque was as early as 2016, seven  
6 years ago, and they took GPS coordinates, as you can see from the image on your  
7 Honours' screen. And they went again in 2020 with Prosecution Witness 1528 and  
8 they took again GPS coordinates, as you can see from your Honours' screen. And  
9 this time they took a video footage, which is on the right-hand side of your Honours'  
10 screen.

11 (Viewing of the video excerpt)

12 Some of our Defence witnesses will testify on that video screen. The Prosecution  
13 was there on the field, a few metres away next to several houses of people living next  
14 to the mosque. You can see from that video screen the residential area surrounding  
15 the mosque. The Prosecution had time, they had the facilities, they had the means  
16 and they went there, and they were never able to bring you a single witness to  
17 corroborate their insider witness, 1339, who described this horrific destruction of the  
18 mosque, supposedly watching it burn down.

19 Not even satellite imagery corroborates this account. You heard the expert, the  
20 satellite expert in response, who said, and I quote, "I would expect more debris to be  
21 visible if there was explosives being used like that, and ... you wouldn't see the roof a  
22 hundred per cent gone."

23 But the Defence went there. It's not far. It's next to the airport. I went there.

24 Mr Tiangaye went there and we walked around. We did the basics, meet the direct  
25 neighbours of the mosque. And what will they come tell you? That it was

1 destroyed by hand, the population, not Mr Yekatom. The population pillaged it,  
2 removed the nails, removed the metal roof. There was no rocket. There was no fire  
3 and it didn't burn down. So you'll hear the description of the destruction by Defence  
4 Witnesses 4011 and 4013. They didn't see a rocket and they didn't see it burn down  
5 because that never happened. And that's why Prosecution Witness 1339 was never  
6 corroborated and that's why Prosecution 1339's story is inconsistent with the accounts  
7 of Defence Witnesses 4011 and 4013. But remember, the Defence witnesses'  
8 testimony is consistent with that of Prosecution Witnesses 2682 and 0884 who also  
9 said that the bricks were removed little by little and that the roof was taken away by  
10 hand, no rockets.

11 And when you hear the testimony of Defence Witnesses 4011 and 4013, you will  
12 understand, you will understand why the Prosecution expert said that what he saw  
13 on the satellite imagery was not consistent with the rocket as you wouldn't see the  
14 roof a hundred per cent gone. Defence Witnesses 4011 and 4013 will explain how  
15 the roof was removed. And you will understand why there were no debris of the  
16 roof seen on the satellite imagery and why on the satellite imagery the roof was a  
17 hundred per cent gone, because Defence witnesses will explain in detail how locals  
18 removed the roof with their hands, with nail pullers, not with a rocket.

19 The Prosecution missed another basic, important exculpatory material,  
20 contemporaneous videos in the Prosecution's possession depicting the 5 December  
21 early moments. The 5 December attack, what did they tell you? That Mr Yekatom  
22 was responsible, that he displaced the population of Boeing and Cattin to PK5.  
23 So we had noticed that a certain Prosecution witness had videos of 5 December. So  
24 we asked for them. I mean, the main event in this trial is the 5 December attack so  
25 the least we could do is to have a look at those videos. So we asked for them. The

1 Prosecution first said they don't fall under Rule 76. And then they said they're  
2 irrelevant. So we negotiated for eight months, was told that the videos went  
3 through a review process but deemed irrelevant. But finally, after much persistence,  
4 we got them. So let's look at those videos that the Prosecution did not disclose for  
5 months while Mr Yekatom was suspected for crimes committed in Cattin and  
6 Boeing --

7 PRESIDING JUDGE SCHMITT: [10:42:36] Mr Vanderpuye.

8 MR VANDERPUYE: [10:42:38] Mr President, there is an established and normal  
9 scope for an opening statement which attends to the evidence the Defence intends to  
10 put. I've sat here patiently listening to argument on the facts, argument on the law,  
11 now even argument concerning disclosure process. I would ask the Court to advise  
12 counsel to stick to the appropriate scope of an opening statement, which is the  
13 evidence the Defence intends to introduce in response to the Prosecution case.

14 PRESIDING JUDGE SCHMITT: [10:43:12] So, please, please, Mr Vanderpuye. The  
15 Chamber is aware of the purpose of an opening statement. The situation here that  
16 we have is that we had already the Prosecution case and that is a situation that cannot  
17 be compared to an opening statement that is given at the beginning.

18 Ms Dimitri consistently and constantly puts forward and mentions the witnesses that  
19 they are going -- that she is going to present and of course she is going to present that  
20 in front of the background, so to speak, of what has already happened. So this is the  
21 nature of events.

22 Well, that Defence counsel is not very nice to Prosecution, that is part of the game too  
23 sort of and I fully understand that you don't like it. And perhaps, Ms Dimitri, you  
24 could tone a little bit down. But in principle, it is still in the purview, still in the  
25 framework of an opening statement at this specific stage.

1 So really -- and let's not forget, and for everyone, also for the audience, opening  
2 statements are not evidence. We should not, we should not forget that. The  
3 evidence by the Defence will be presented in due course.

4 And, Ms Dimitri, on that please continue.

5 MS DIMITRI: [10:44:46] Thank you very much, Mr President.

6 So let's look at those videos that are on the Defence list of evidence and that the  
7 Prosecution did not disclose for months while Mr Yekatom was suspected for crimes  
8 committed in Cattin and Boeing on 5 December.

9 And before we look at those videos, there's a reason why we put them on our Defence  
10 list of evidence. Because after we got them, after our first review process, it was  
11 obvious to us that they were highly relevant to this case because they show the Seleka  
12 on 5 December in the neighbourhood of Cattin.

13 So let's watch them, bearing in mind Mr Yekatom is charged with displacement of the  
14 Muslim civilian population in the neighbourhoods that you're going to see on those  
15 videos on 5 December.

16 (Viewing of the video excerpt)

17 This is what they showed, the Seleka in Bangui. But where? In Cattin. Randomly  
18 shooting on everything that moves. Clearly the Prosecution had failed to  
19 understand what was really happening in Boeing and Cattin that day, even though it  
20 was obvious, from now the image you have on your screen, that this was Cattin area.  
21 The fact that the Prosecution didn't recognise these videos as relevant, let alone  
22 exculpatory, shows the degree to which the Prosecution had failed to understand the  
23 reality on the ground during the crisis and the charged events.

24 The Defence Witness 4011 will come and explain how the door-to-door killing by the  
25 Seleka made them flee. Defence witnesses will testify about what the Seleka were

1 doing causing civilians to flee.

2 You've already heard part of it from the Prosecution's case, the Seleka indistinctly

3 shooting on everyone and everything, in addition to the uncontrolled civilian

4 population, it scared off the civilians, the Christians, the animists, the Muslims, who

5 all had to abandon their houses and who fled.

6 Prosecution Witness 2475 was also part of the Prosecution's narrative for 5 December.

7 Like Prosecution Witness 1339, he also claimed he was present, but both accounts are

8 irreconcilable.

9 I'm going to recap in a very few words on how both witnesses are irreconcilable

10 before moving to the Defence witnesses against them.

11 Prosecution Witness 1339 claims that there were no women during the attack.

12 2475 says the opposite.

13 2475 claims that there were many children during the attack. 1339 says there were

14 no children in the group at any time.

15 1339 said that the group stayed together on 5 December attack and that they only split

16 at the Fundamental Church in Bangui. 2475 said that they split and lost track of

17 Mr Yekatom before entering Bangui.

18 1339 says that over 750 people participated in the Boeing market attack. 2475 says

19 that there were less than 50.

20 And more importantly, 1339 says Mr Yekatom is present at the Boeing market during

21 the attack. 2475 says he was not.

22 2475 says the only person with a firearm was Coeur de Lion. And 1339 initially

23 claimed that 611 firearms were distributed to those elements who were heading

24 towards the market.

25 1339 says the Muslim traders were armed. 2475 says they were not.

1 As your Honours know, and as will be developed later on, the Defence uncovered an  
2 extensive network of fabrication of evidence on count 29 and the fabrication of  
3 evidence was not limited to child soldiers, but it was also used by Prosecution  
4 Witness 1339, key to the Prosecution's narrative for the 5 December attack, who also  
5 benefited from relocation.

6 The Prosecution insisted that Witness 1339 would talk about the administrative  
7 structure of Mr Yekatom's group and that Mr Yekatom would have been assigned  
8 with a secretary to maintain the group's official records. And he had given a  
9 notebook to the Prosecution claiming that that notebook was written by someone  
10 before 5 December 2013.

11 The Prosecution neglected to look at the basics. It was there in their hands. The  
12 picture on the notebook was a famous football match of 2014, which is now in our  
13 Defence list of evidence. And it's now on your screen. That image on the notebook  
14 on the right-hand side of your screen was so notorious that even you, Mr President,  
15 commented on it. So the notebook could not have been written in 2013. You  
16 nevertheless asked the witness various questions to see if there was any plausible  
17 explanation to provide the Prosecution a notebook with a picture of 2014 although  
18 written supposedly in 2013. But Prosecution Witness 1339 insisted. He got caught  
19 in all sorts of contradictions. He claimed he wrote -- he claimed the notebook was  
20 written in 2013 but that it was bought with the image on it in Mbaiki, which of course  
21 was not possible, because given that picture, the notebook could not have existed in  
22 2013. It had to be issued and on the market late 2014.

23 But there's another reason why your Honours shouldn't rely on any of this evidence  
24 on 5 December and it's the evidence you will hear from Defence witnesses. Defence  
25 Witnesses 6018 and 6036.

1 Prosecution Witness 2475 claimed to have entered the group before June 2013. I  
2 won't say it in public, but June 2013 was a key moment in that individual's life. He  
3 claimed he spent six months with the group prior to 5 December and that he was  
4 kidnapped and nobody could leave the group once in it or they would be killed.  
5 Both Defence Witnesses 6018 and 6036 will say that Prosecution Witness 2475 was in  
6 Lobaye living with his family, doing activities with his friends, doing little jobs and  
7 attending an important event, a wedding.  
8 So if your Honours agree, Mr President, I could break now and after the break move  
9 to the topic of the evidence fabricated in this case which involves many witnesses,  
10 starting with Prosecution Witness 2475.

11 PRESIDING JUDGE SCHMITT: [10:55:42] That's no problem. I think we have a  
12 break now until 11:30.

13 THE COURT USHER: [10:55:48] All rise.

14 (Recess taken at 10.55 a.m.)

15 (Upon resuming in open session at 11.32 a.m.)

16 THE COURT USHER: [11:32:08] All rise.

17 Please be seated.

18 PRESIDING JUDGE SCHMITT: [11:32:34] Ms Dimitri, please continue.

19 MS DIMITRI: [11:32:38] Thank you, Mr President.

20 Your Honours, as I said earlier, my next topic is the evidence we submit was  
21 fabricated in this case, and, we submit, it's a result of the Prosecution's negligence.  
22 And this, your Honours, is an important part of the Defence strategy and the Defence  
23 theory. So for the next hour, I will use several items of evidence that are on our list  
24 of evidence and several Defence witnesses who will illustrate what we submit  
25 happened.

1 And before I continue, I'm reminded that two of our interns joined us, Lison Grunhut  
2 and Alexia Legault.

3 So before I go into detail on those items of evidence that we submit were fabricated  
4 and submitted to your Honours, let's go back in time, because we believe the same  
5 mistake happened again.

6 In March 2012, the Trial Chamber issued its judgment against Mr Lubanga, who was  
7 charged with enlisting children under the age of 15. And the Chamber said that it  
8 was "of the view that the Prosecution should not have delegated the investigative  
9 responsibilities to the intermediaries in the way set out above, notwithstanding the  
10 extensive security difficulties" the Prosecution faced.

11 But they did it again. They delegated their investigative responsibilities to  
12 Prosecution witness 2018 and to intermediary 2580 without meaningful supervision.  
13 And, like in Lubanga, the intermediaries worked simultaneously for the Prosecution,  
14 for an NGO that worked with children and assisted victims to participate in these  
15 proceedings. The same modus operandi.

16 Did they learn any lesson? No. Because -- and we believe that they were more  
17 negligent because your fellow judges in Lubanga warned them not to do it again,  
18 informed them to look into an Article 70 investigation, so they had to apply more  
19 scrutiny given the past experience.

20 And to illustrate their negligence and lack of diligence, I will use an item of evidence  
21 that is now on your Honours' screen and that is also on our Defence list of evidence.

22 So on our Defence list of evidence we have included the following report from the  
23 Bangui forum, the same Bangui forum the Prosecution attended.

24 In 2012 when the Lubanga trial judgment was issued, the Prosecution was already  
25 aware that fraud and falsification of birth certificates was something to be alerted to



1 when charging someone with enlisting and conscripting children under the age of 15.  
2 So when they attended the Bangui forum, they should have seen this red flag. They  
3 should have been alerted to the issue. Fraud and falsification of birth certificates  
4 was something to be aware of in Central Africa. It was a factor affecting the  
5 reliability or quality of the Central African administrative record, something to keep  
6 in mind when they were receiving documents, birth certificates, by CAR nationals.  
7 And bearing that in mind, I want to show your Honours another item of evidence that  
8 is up on your screen, an item provided to the Prosecution by intermediary 2580 but  
9 that concerned Prosecution witness 2475.  
10 The Prosecution had delegated its investigative activities to intermediary 2580. They  
11 had tasked him with collecting various documents to show the age of Prosecution  
12 witness 2475. And they delegated their investigative activities without meaningfully  
13 supervising him.  
14 When intermediary 2580 brought this tampered baptism certificate, they should have  
15 immediately suspected something was wrong.  
16 I remember when it was first disclosed. I opened it and I thought to myself, "It's  
17 suspicious". I actually used the same words you did, Mr President, when they first  
18 used it in court -- suspicious. But I did not want to influence any member of my  
19 team, so I called Ms Whittingham and I told her we'd received something, I wanted to  
20 have a look at it. She came to my office a few minutes later and she said, "Well,  
21 there's something wrong. This is tampered with."  
22 So we went back to the basics. Where did the document come from? A specific  
23 parish in the Lobaye. So we sent a member of our team there and what did we find?  
24 The book where all the baptisms were recorded with the corresponding number.  
25 And, indeed, the year 1994 was written, and not 1999 like the tampered document the

1 Prosecution submitted.

2 The document that is now on your screen is also on the list of Defence evidence.

3 And when you, Mr President, asked was this book available to the Prosecution, I said,

4 "Yes." It was there all along. The basics. But they were not diligent. They let

5 themselves be fooled by their intermediary 2580.

6 Although Lubanga should have been a lesson regarding intermediaries and

7 fabrication of child soldiers, they did not learn their lesson.

8 So Prosecution intermediary 2580 spread the virus. The virus spread like a nasty

9 infection. He infiltrated VPRS. He infiltrated LRV. And, worse, worse,

10 Mr President, your Honours, because on the basis of that falsified year of birth 1999,

11 VWU made a passport containing false information such as this one. The passport is

12 on your screen -- an official document at the request of the Court.

13 But at least you asked the Prosecution to investigate, because you were concerned.

14 So it was only after being ordered by you that the Prosecution went back to the basics.

15 They sent a team to the exact same place as we went and they took a copy of the same

16 registry book, which is also on our Defence list of evidence. And the book confirmed

17 that our evidence was authentic and that theirs was false.

18 You have on your screen the copy the Prosecution obtained after Prosecution

19 witness 2475 testified, once you asked whether this was available to the Prosecution.

20 But this was not enough for them. The fact that their star witness, alleged child

21 soldier, had fabricated evidence and lied under oath was not enough to convince

22 them. Remember, they wanted a systematic conviction on all charges, so they

23 continued to suffer from the tunnel vision.

24 And just before I move on to the insider witnesses with whom they did not want to

25 test their evidence, the evidence of 2475, I want to pause here for a second and draw

1 your Honours' attention to another point.

2 The Prosecution confirmed, as you saw from the document, that Prosecution  
3 Witness 2475's baptism certificate was dated 1994, although the intermediary brought  
4 one with the year 1999, the same year Prosecution Witness 2475 had given them when  
5 they took his statement and the same year he had testified again and again.

6 And in addition to that, the Prosecution had informed the Defence that they had not  
7 given the intermediary the year 1999 when they tasked him to go and collect  
8 documents to prove the year of birth of 2475.

9 So when they confirmed that the intermediary had brought them a document that  
10 was tampered with, they could have gone further and started to check into 2475 to see  
11 if he was involved with tampering of evidence that would affect the integrity of these  
12 proceedings.

13 We would at least have expected the Prosecution to obtain Facebook records of 2475,  
14 phone data. We would have expected the Prosecution to make equal efforts as the  
15 ones they did when they suspected Prosecution Witness 1847 with interference.

16 They went to such an extent with Prosecution Witness 1847. They obtained call data  
17 records, Facebook records. They dedicated resources, because they believed  
18 Prosecution Witness 1847 did not deliver its incriminating evidence contained in his  
19 statement because of interference.

20 But, to date, we've received not a single disclosure to show they looked into  
21 Prosecution Witness 2475 after realising that his baptism certificate was tampered  
22 with.

23 The integrity of the proceedings, Mr President, your Honours, should be protected  
24 whether it means bringing incriminating or exonerating evidence.

25 Let's now move on to the insider witnesses with whom they did not want to test

1 2475's evidence, and this will again inform you of what would have been revealed  
2 had the Prosecution verified its sources.  
3 They asked insider witness 1647 whether he knew the name of 2475. He answered,  
4 "No". So the Prosecution panicked and they moved on and they didn't ask the same  
5 question to the following insider, Prosecution Witness 1786. Instead, they put to  
6 Prosecution Witness 1786 the alleged nickname of 2475. I won't give the nickname  
7 because we're in open session, but the nickname is on your screen. And 2475, being  
8 very intelligent, picked an extremely generic nickname in Central African  
9 Republic -- nothing unique.  
10 So insider witness 1786 says, "Well, I heard that name, but" and I quote, "if you  
11 showed me", a picture, "a photo I'd be able recognise him".  
12 But the Prosecution moved on. They did not want to show the picture of  
13 Prosecution Witness 2475, although they had it, because 2475 had self-identified  
14 himself on that picture. They did not want to test their evidence. And this is what  
15 we intend to show you during the Defence case as well.  
16 They could have shown a picture to all three Prosecution insiders, 1647, 1786 and 1839,  
17 but they didn't. And this is not a simple oversight. It's a pattern. We saw the  
18 Prosecution doing it during its investigations.  
19 We saw the Prosecution doing it during its interview with 1839, an insider. In  
20 March 2020, they showed her a blurry picture of Prosecution Witness 2475. It's the  
21 one on the left-hand side of your screen.  
22 So she answered that she was unable to identify the individuals due to the bad  
23 quality of the picture, so the Prosecution moved on, not showing the clear picture of  
24 Prosecution witness 2475 to test their evidence. And they had the clear picture. It's  
25 on the right-hand side of your screen.

1 It was in the Prosecution's possession, and Prosecution Witness 2475 had recognised  
2 himself a year prior, in May 2019.

3 Searching for the truth means testing your evidence. The Prosecution kept dancing  
4 around this issue, failing to meaningfully test 2475's central claim to have been a child  
5 soldier in the group with its own insider witnesses, it's three Prosecution insiders.  
6 Following -- failing to show the picture of 2457 that they had from the beginning  
7 because it was a Prosecution exhibit.

8 It's not a coincidence. It's a strategic decision from the Prosecution not to test their  
9 evidence.

10 But Defence witnesses -- Defence Witness 6016 will recognise 2457 on this picture, the  
11 one on the right-hand side. But she will add an important detail -- that he was born  
12 in 1994, and that his mother was not dead as he claimed she was. Defence  
13 Witness 6016 will also confirm that 2475's mother provided additional pictures of her  
14 son, pictures of him at the time he claimed his mother passed away, pictures he gave  
15 himself to her mother -- to his mother.

16 In addition, in addition to the Defence witnesses, we also intend to submit to your  
17 Honours various evidence, various items that will show how Prosecution  
18 Witness 2475 and other former Prosecution witnesses fabricated evidence in this case.  
19 To discover this network of individuals who fabricated evidence we went back to the  
20 basics. So we, in addition to calling the key figures of Mbaiki that were mentioned  
21 by several Prosecution witnesses and in addition to going and searching for  
22 neighbours of the Boeing mosque, we also went to search for school archives, parish  
23 archives, because they formed part of basic investigative steps which the Prosecution  
24 neglected to take.

25 We, we had learned the lessons from Lubanga. The Defence case in Lubanga

1 challenged the age of certain witnesses by searching for school records, so we did the  
2 same.

3 We started to look for school records ourselves and, unlike the Prosecution, we didn't  
4 delegate our investigative activities to intermediaries without control and meaningful  
5 supervision.

6 So we will present to your Honours during our Defence case various school records  
7 relevant to count 29, and relevant to our submissions that the evidence in this case  
8 related to child soldiers was fabricated.

9 Our Defence list of evidence contains a certain number of school records, and a  
10 number of Defence witnesses who are school officials will testify on the identity of the  
11 school grade of Prosecution Witness 2475, or CLRV 1 witnesses. Their evidence also  
12 authenticates several items of Defence evidence that we intend to submit to your  
13 Honours.

14 What other basic information was out there for us to search for? Public Facebook.  
15 Public Facebook pages. And we found interesting information; for instance, that the  
16 main Prosecution alleged child soldier, Prosecution Witness 2475, opened his  
17 Facebook page in 2019 and recorded his year of birth as 1994, not 1999 as he claimed  
18 in order to pretend having been a child soldier.

19 The item is on your screen and is also part of our Defence list of evidence.

20 The main Prosecution witness who was cited 43 times in the document containing the  
21 charges and 76 times in the Prosecution trial brief, and relied upon heavily during the  
22 Prosecution's opening statement, had that information out there, available to the  
23 public in his Facebook account.

24 The Prosecution neglected to look, wasn't diligent. Although when it came to build  
25 its case and search for incriminating information, the Prosecution did make an effort.

1 They sent numerous cooperation requests and they obtained nearly 50,000 pages of  
2 private Facebook material.

3 But it's on the basis of these basic means, the public Facebook pages, that we  
4 eventually discovered the real identity of another alleged child soldier, former  
5 Prosecution Witness 2620. And it's on the basis of these basic means, the public  
6 Facebook pages, that we eventually discovered that former Prosecution Witness 2582  
7 had recorded in her Facebook page that she was born in 1992, which made her over  
8 20 years old in 2013, far from being a child soldier.

9 So we were using basic Facebook searches on publicly available material to discover  
10 the same pattern as Lubanga, that child soldiers, alleged victims, have been lying on  
11 their age.

12 So, Defence Witness 6039 will say that she was born in 1995 and that former  
13 Prosecution witness 2582 was older than her, which corroborates 2582's Facebook  
14 showing her year of birth as 1992.

15 The other basic step the Prosecution neglected to take is that they didn't properly  
16 investigate the relatives. Sometimes they never even looked into it at all; for  
17 Prosecution witness 2475, for instance. And even when they did interact with  
18 relatives, they failed to do so in accordance with their statutory investigative duties,  
19 due diligence, such as with 2582's mother.

20 The name of the relatives of Prosecution witness 2475, such as Defence Witness 6018,  
21 were indicated in his statement. The Prosecution neglected to go meet Defence  
22 Witness 6018 and ask him about 2475 before bringing 2475 as a witness.

23 In fact, they neglected to meet any family members of this witness. But we did. It  
24 was one of the first things we did. But before doing so, we had to ask the  
25 Prosecution to lift the redactions of the names of the relatives of their alleged child

1 soldiers, because most of them, if not all, were redacted. Again, not testing their  
2 own evidence and creating additional steps for the Defence to test it.  
3 We, nevertheless, managed and our Defence team obtained a statement from Defence  
4 Witness 6018 and also from Defence Witness 6016, another relative of 2475, who will  
5 confirm that Prosecution Witness 2475 was born in '94 and not in '99, as he claimed  
6 time and time again under oath. Both statements are part of the Defence case.  
7 And, again, these are the basics -- meeting the relatives of an alleged child soldier. It  
8 was there, under their nose in the first statement, but they did not meet them to test  
9 their evidence.  
10 The same with Prosecution witness -- former Prosecution Witness 2582.  
11 The Prosecution submitted her birth certificate into evidence and, again, they  
12 delegated its investigative steps, this time to the mother of 2582. They could have  
13 asked Prosecution Witness 2084, their own witness, to confirm the authenticity of the  
14 birth certificate before submitting it to your Honours, because 2084 could. He had  
15 extensive knowledge about the town hall where that birth certificate was issue and he  
16 could recognise the signature on those same birth certificates, and because the mother  
17 had specifically said that she had obtained it from him, as you can see from the  
18 document on your Honours' screen.  
19 But Prosecution Witness 2084 had the honesty to tell your Honours when he came to  
20 testify that they were false. But he did so during the Defence examination. So not  
21 only did the Prosecution neglect to ask him about those birth certificates once they  
22 obtained them in the field, but they did not even care about asking him when he came  
23 here to testify.  
24 We discussed how the Prosecution strategically chose not to test his evidence with its  
25 three insider witnesses. But the Prosecution doesn't want the Defence to test it



1 either.

2 You will recall -- and several of those birth certificates are now part of the Defence list  
3 of evidence. You will recall that during the Prosecution -- the testimony of  
4 Prosecution Witness 2082, Ms Guissé put to the witness multiple authentic birth  
5 certificates that are now on our list of evidence.

6 The Prosecution objected at the time, saying, and I quote: "[...] I don't think [...] it's fine  
7 to predicate questions on material that's not in evidence yet before the Chamber". It  
8 "hasn't been tested". End of quote.

9 And then the Prosecution went on regarding electoral cards that we had on our list of  
10 evidence and birth certificates that we had on our list of evidence, and said, and I  
11 quote: "That's not the evidence in the case as yet [...] that's not fair", they said.

12 So, basically, the Prosecution's strategy is not to test their evidence during their  
13 investigations, not to test it during their examination-in-chief, and to object when the  
14 Defence is testing it.

15 But the Defence case will test the Prosecution's evidence and we will demonstrate  
16 during our Defence case that the Prosecution's failure to test its evidence distorted the  
17 narrative of the relevant events that were presented to your Honours.

18 And the Prosecution will tell you it's not relevant because 2582 did not testify and  
19 2620 did not testify: "It doesn't matter. We withdrew them."

20 It does matter. Why? Because, first of all, it shows a pattern when it comes to  
21 charge 29 and related evidence, a pattern that should have alerted the Prosecution,  
22 and, second, because of Mr Yekatom's statutory rights.

23 The Statute provides him with time and facilities to prepare his defence. So for over  
24 two years he used time and resources provided to him by the Statute investigating  
25 these witnesses not only on their age, but on the various locations and events

1 described in their statements, on the various individuals referred to in their  
2 statements. And your Honours will recall that the Prosecution withdrew them at a  
3 very late stage of the trial.

4 We investigated the publicly available material. During our defence, we  
5 investigated and met with witnesses in the field and consulted archives. That's how  
6 we were building our defence. We drafted and filed cooperation motions when we  
7 started to see the collusion and the scheme among those witness and intermediaries.  
8 And the allegations of those individuals were different from the statements they had  
9 given to the Prosecution, different from the applications for victims they had signed,  
10 and different from some investigation reports that we had received.

11 So we had to orient our investigations to build our defence in various directions.  
12 Time and resources on witnesses who, we will submit during our Defence case,  
13 fabricated evidence against Mr Yekatom because they wanted a better life, relocation.  
14 There's another reason why it matters. It matters because in Lubanga the Trial  
15 Chamber proprio motu stated that "It would be unsustainable to allow victims to  
16 continue participating if a more detailed understanding of the evidence has  
17 demonstrated they no longer meet the relevant criteria."

18 So the Prosecution could have been transparent because 2582 and 2620 are still  
19 participating victims, and Prosecution witness 2475 recently became one. They are  
20 still CLRV 1's clients and the Prosecution continued to let them participate in these  
21 proceedings, and that is also what the Defence evidence will show.

22 You will hear from Defence Witnesses 6024 and 6039 who will corroborate that  
23 former Prosecution Witness 2582 was part of a scheme. And you will also hear other  
24 Defence witnesses like 6010, 6012, 6019, 6017 discussing the extent of evidence -- the  
25 extent of fabrication of evidence and collusion, and stolen identity in which former

1 Prosecution Witness 2620 took part of.  
2 And the Defence evidence, the Defence case will demonstrate without any doubt that  
3 these participating victims no longer meet the relevant criteria as they were never  
4 under the age of 15, or they were never part of Mr Yekatom's group. But, somehow,  
5 they're still benefiting from public funds of this Court, and most importantly  
6 Mr Yekatom is still charged with count 29 and being detained, notably because of  
7 accusations from those witnesses.  
8 So during the Defence case you will also hear about Prosecution intermediary or  
9 Prosecution witnesses or sources who went to such an extent to fabricate evidence in  
10 this case.  
11 You've already heard about Prosecution Witness 2018 as well as 2580 and 2638.  
12 They were a virus that infected this case, a virus that spread and infected the  
13 Common Legal Representatives of Victims of child soldiers, the Victims Participation  
14 and Reparations Section, and the Victims and Witnesses Unit.  
15 And Defence witnesses we will present to your Honours, like Defence Witnesses 6025,  
16 6036, know that Prosecution witness 2475, 2582 and 2620 left Central Africa.  
17 And the Prosecution didn't even inform the legal representatives of victims that there  
18 was an issue -- and I'm not going to spell it out in public, but it's on your screen -- an  
19 issue with their common intermediary 2580.  
20 Meanwhile, the other virus was spreading and creating another infection, 2638. He  
21 introduced his relative 2620 to the Prosecution. She claimed she was raped by  
22 someone I will not name in public, and that he forced her to be his wife for over a  
23 year. And she described the alleged perpetrator, gave his first name, specified his  
24 position in the group, and said he had died in a road accident after 2014.  
25 So the Prosecution showed a picture of the alleged perpetrator to her. The picture is

1 on your screen. She couldn't recognise him.

2 So given her very prejudicial allegation that she would have had a baby after having  
3 been raped, we asked questions to Prosecution Witness 0888 regarding his relative  
4 who had died in a road accident. But the Prosecution objected, saying the rape  
5 victim was not talking about 0888's relative.

6 So if 2620, if the person she was referring to is not the person on your screen, with  
7 that position in Mr Yekatom's group, who had died in a road accident after the  
8 charged crime, then who was it? Because, remember, we were not the only ones  
9 who came to that conclusion that it was him. The Prosecution did as well, otherwise  
10 they would not have shown that picture to 2620.

11 But given her answer, they created another individual out of nowhere with that first  
12 name, close to Mr Yekatom, who would also have died in a road accident.

13 Regardless, we investigated to find her relatives. So Defence Witness 6010, will  
14 explain who the father is, who the father of that baby is. And he will explain that  
15 2620 has no other child and that the only child she has, a son, was left behind when  
16 she left Central Africa. This is how priceless it is for these witnesses to be relocated  
17 by the Court, so much as to leave your own child behind and travel with another one,  
18 which is what several Defence witnesses will also testify about, such as 6012 and 6019.

19 The fact that she did not leave the country with her child is also part of our Defence  
20 evidence, as you can see from the piece of evidence that's on your Honours' screen.

21 It's a Facebook message where she confirms that her child was left in Bangui with her  
22 mother, which was also a Prosecution witness, 2671.

23 Defence Witnesses 6012, 6019, 6025 will show that she travelled with 2638's  
24 daughter -- 2638 who had been in contact with the Prosecution as early as  
25 November 2019, and who was VPRS and CLRV 1's intermediary.

1 And, remember, 2638 also managed to have another of his children, this time a son,  
2 accepted as a participating victim and a witness in this case -- CLRV 1 witness P-001,  
3 who travelled all the way to The Hague to come and testify before your Honours.  
4 This will also be confirmed by Defence evidence. Although P-0001 was very  
5 insistent in denying his own identity, his real identity, even when his own picture  
6 was shown to him, with his real name next to the picture, he refused to recognise  
7 himself on that picture. But, luckily, his fellow traveller, other CLRV 1  
8 Witness P-0002, did manage to recognise him on that picture.  
9 The evidence of all those Defence witnesses is an important part of the Defence case,  
10 because they not only show you that the Prosecution did not meet its burden for  
11 count 29, but it also shows you how Mr Yekatom was facing an injustice because of  
12 the extent of fabrication.  
13 While the Defence should have spent its time and resources finding evidence to raise  
14 a reasonable doubt on the charged crimes, the Defence was instead uncovering stolen  
15 identities and fabricated documents. The Defence was doing what the Prosecution  
16 should have done all along.  
17 The Defence was spending a considerable amount of time to disprove, to disprove  
18 evidence disclosed, brought and used by the Prosecution, and this should not be the  
19 Defence burden. And there's no other words than scandalous that this happened  
20 again. And it's because it's so scandalous and because we want to preserve -- we  
21 want to preserve the integrity of these proceedings that we will file a motion for  
22 exclusion of evidence.  
23 The Defence case is also that the Prosecution underestimated the value of relocation  
24 for one of the poorest countries in the world. For a witness like former Prosecution  
25 Witness 2620 to leave her own child behind, it shows how important relocation was.

1 And to get relocation, the Prosecution knew -- the Prosecution witnesses knew that  
2 their story had to be attractive for the Prosecution. They had to be in a unique  
3 position -- the holder of a notebook like 1339, or an insider under the age of 15  
4 like 2475.

5 And it's our submission, and it's part of our Defence case, that the importance of  
6 relocation is also the motive behind 2475, behind his untruthful testimony and  
7 fabrication of evidence.

8 The Defence evidence will show that 2475 -- and this is my next topic. The Defence  
9 evidence will show that 2475 was behind the fabricated baptism certificate that was  
10 submitted into evidence by the Prosecution.

11 The Defence evidence will also show the collusion between 2475 and Prosecution  
12 intermediaries and Prosecution witnesses.

13 And to give you an overview, I want to draw your attention to the following Defence  
14 evidence. It's on your screen.

15 Remember what I said earlier. Prosecution Witness 2475 knows very well that he  
16 was born in 1994 because we went back to the books in Lobaye, which clearly shows  
17 his year of birth as 1994. And the accuracy of this baptism certificate that your  
18 Honours have on your screen will also be confirmed by Defence Witnesses 6016  
19 and 6018.

20 But your Honours will remember that Prosecution Witness 2475 insisted -- when he  
21 was testifying here in Court, insisted to look at the baptism certificate which was  
22 tampered with the one that was initially shown by the Prosecution. There's a reason  
23 why he was insisting, and this is what the Defence evidence will show to your  
24 Honours.

25 The reason why he was insisting was because he was behind the fab -- the tampering

1 of that baptism certificate. And this is what you can now see on your Honours'  
2 screen.

3 There's a Facebook exchange between him and his partner who was in the Lobaye at  
4 the time. And twice he's asking her to put the year 1999, knowing very well he's  
5 born in 1994.

6 And now there's something else that's very important. The baptism certificate  
7 submitted by the Prosecution -- remember the one that was -- that's tampered with,  
8 the 1991, was given by intermediary 2580 to the Prosecution, as you can see from the  
9 metadata.

10 This Facebook conversation where 2457 is asking his partner to put "1999" occurred  
11 while the Prosecution intermediary 2580 was on his Prosecution mission to Lobaye to  
12 collect the tampered certificate.

13 So, therefore, the exchange where the Prosecution Witness 2475 is specifying to his  
14 partner that the baptism should reflect the year 1999 should be enough to convince  
15 your Honours that the only reasonable conclusion is that Prosecution Witness 2475 is  
16 behind and planned with intermediary 2580 the fabrication of his own evidence.

17 But there's additional Defence evidence that will demonstrate that little to no weight  
18 should be given to the evidence of 2475. Additional evidence that shows your  
19 Honours that he was untruthful time and time again, although he was under oath and  
20 although you asked him to tell the truth and nothing but the truth.

21 And I will use, in the next five minutes, several items of Defence evidence to show  
22 you why.

23 2475 knew very well he was born in 1994, because that's the year of birth he had put  
24 himself on his Facebook account. That Facebook account was open on 2019.

25 When this was put to him, and this is our submission, he also came up with another

1 untruthful answer when confronted with his Facebook page.

2 And he said the following: I had put 1999 because otherwise Facebook would

3 reject -- "if I had put [...] 1999 [...] Facebook would reject the creation of the page."

4 So that's why he had put 1994, because he was claiming Facebook had a rule and that

5 had he put his real year of birth, Facebook would have rejected the creation of the

6 page. And he was quick to bring that answer.

7 But Defence evidence will show again that he chose to be untruthful under oath. So

8 although he claimed that he registered under the date of 1994, because he had to

9 make himself older because Facebook would reject the page, we know it's not true

10 because the account was created in 1999. So whether he's 20 years old at the time, or

11 25 years old as we know he was, Facebook would not have rejected the page. And

12 the second reason is that in any event the rule is 13 years old, so Facebook would not

13 have rejected the page.

14 You also have to remember how -- and it's our submission -- Prosecution

15 Witness 2457 was very intelligent. You said it yourself.

16 First, he wanted to reread his statement more than once to get used to it, so he

17 pretended to be sick according to a victim and witnesses message on your screen.

18 But the Defence evidence will show that he was not, because during that period he

19 was publicly posting on social media videos of himself lip-singing to music and later

20 exercising at the hotel gym during the familiarisation and statement reading

21 procedure immediately thereafter.

22 And remember in court he gave a different version. Did he not say he was sick. He

23 said he was not asked to come in and read the statement here at the court, that he was

24 simply asked to go through the statement and correct any errors. There's another

25 court rule that he didn't follow.



1 As per the protocol, VWU informs the witnesses, and this also applies to 2475, not to  
2 contact any other person from the start of the familiarisation until the end of the  
3 testimony.  
4 Defence evidence will show that during his testimony he was in contact with a  
5 Prosecution witness who at the time was scheduled to testify in the coming months.  
6 And he also made sure that the upcoming witnesses would not have to face a Defence  
7 examination by being confronted with various Facebook pages. You'll recall that an  
8 important part of our examination of Prosecution 2475 covered his relation and  
9 knowledge of Witness 2582, and I had used several Facebook pictures of her that  
10 I had showed to Prosecution witness 2475.  
11 After the first day of Defence examination, Prosecution Witness 2475 -- and this is  
12 what you'll see among the Defence evidence -- Prosecution Witness 2475 arranged a  
13 call with former Prosecution Witness 2582 through a mutual friend. This will also be  
14 part of Defence evidence.  
15 In addition, within a day of the conclusion of 2475's evidence, Prosecution  
16 Witness 2582, who was still a Prosecution witness at the time, appears to have made  
17 her public Facebook status private, the same pictures that I had used during my  
18 examination. Now her Facebook page was private, further evidence of collusive  
19 contact between these individuals.  
20 So it's our Defence submission, and it's what we intend to show during our Defence  
21 case through several items of evidence that 2475 communicated with 2582 about  
22 Defence questioning, because, as you can see from the picture on the screen, a few  
23 days after 2475 testified, 2582 deleted the Facebook pictures that were used in court in  
24 closed session examination. This is not a coincidence.  
25 But that was not it, Mr President, your Honours. You will recall that during the

1 examination of 2475, I showed him a picture of Prosecution Witness 2620, who was  
2 still a Prosecution witness at the time, and I asked whether or not he knew that  
3 person. And once again, it's our submission, he chose not to be truthful. His  
4 answer was: "I don't know her".

5 In fact, not only did he know her very well, but Defence evidence will show that  
6 five hours after I showed him the picture of 2620 and he claimed that he did not know  
7 her, five hours after, he had a minimum of a two-hour-and-30-minute phone call with  
8 her.

9 That item of evidence it on your screen.

10 We showed you that Prosecution Witness 2475 had accomplices in the Lobaye to help  
11 him fabricate his own baptism certificate. But he had other accomplices to inform  
12 him on Defence activities to make sure we wouldn't uncover his fake story.

13 Your Honours will remember how the main part of his alleged abduction was with  
14 another individual that I will not mention because we're in open session but whose  
15 name is written on your Honours' screen. And, surprisingly, when he came to  
16 testify, he changed that part of the story. And you even made a comment about it,  
17 Mr President.

18 And there's a reason for that. There was a reason why he changed that part of the  
19 story. Defence had met with this individual on 19 May 2020 as shown on the  
20 Defence exhibit depicted on your Honours' screen. But because Prosecution

21 Witness 2475 was very smart, because he had prepared his plan, one of his  
22 accomplices told him on Facebook: "Please, my brother, stop connecting with people  
23 from this area". I'm not going to mention the area -- "Stop connecting with people  
24 from this area. There's an investigation. You have to be careful."

25 This message was sent about 10 days after our team met with the individual on your

1 screen.

2 So notice the date of that message now on your screen and the date we met the  
3 individual. This is why, and it's our submission, Prosecution Witness 2475  
4 decided -- was smart enough to change his narrative on the abduction of his friend.  
5 Let's just set aside the testimony of Prosecution Witness 2475 and come back to the  
6 basics.

7 The Prosecution had at its disposal about 600 videos of Mr Yekatom's group in  
8 December. This is notwithstanding the number of journalists that took pictures of  
9 Mr Yekatom's group when they visited Mr Yekatom's base. 2475 doesn't appear on  
10 any of those videos, not a single one.

11 The Prosecution spent time going through some of those videos with insiders of  
12 Mr Yekatom, some who testified, some who didn't. They went image per image,  
13 screenshot per screenshot, and they never identified 2475. Nowhere to be found.  
14 And, yet again, he claimed having joined the group six months prior to 5 December.  
15 You can see Manoumana, Dawili, Davy, Odimba, Goliatha. But you don't see the  
16 person who would have been so close to Coeur de Lion. And there is a reason why  
17 he doesn't appear on these videos. And you'll hear that reason from Defence  
18 witnesses. They'll explain why.

19 Defence Witnesses 6018, 6036, 6039 will testify that, while Prosecution Witness 2475  
20 claims he was abducted prior to June 2013 and stayed with the Anti-Balaka until at  
21 least Coeur de Lion's death because nobody could leave the group, he was, instead, in  
22 the Lobaye living with his family and friends, attending a wedding, doing little jobs  
23 here and there. That's why he doesn't appear on those videos.

24 And you will hear from Defence Witness 6036 that he did not arrive with the  
25 Anti-Balaka in the Lobaye in January 2014. He was already there. He was hanging

1 around them and he got to know them.

2 The town where he was in the Lobaye is a small town. Like many of those towns in  
3 the Lobaye, it's one street with the mayor's office, the gendarme's post and the market.  
4 And this is why he was able to recognise certain members of Mr Yekatom's group  
5 who were based there. He got to know the important names, such as Seda. But  
6 when it comes to how Seda died, he could not get the story right. He started to say  
7 that Mr Yekatom was sitting in the pirogue on the river and shot at him. That's why  
8 the Prosecution never asked him any questions on Seda in court, knowing very well  
9 the narrative was very wrong. Although Seda's death was quoted in the document  
10 containing the charges in the Prosecution trial brief and referred to in court, the  
11 Prosecution did not want to test its evidence with 2475.

12 It appears that even the Prosecution was not very confident about his -- the evidence  
13 of 2475.

14 Your Honours, the assessment you will make of this evidence and the decision you  
15 will take upon this basis will be part of your legacy to this Court and to international  
16 justice.

17 With the witnesses we intend to call and the evidence we intend to present for the  
18 defence of Mr Yekatom, we're not taking anyone by surprise.

19 You already had an overview of what is the Defence case during our examination of  
20 Prosecution witnesses.

21 Our witnesses will share with you not only their experience of the events in Central  
22 Africa, but what they lived through in their communities in 2013 and 2014. Some of  
23 them will also share their interactions with Mr Yekatom at the time of the crisis.

24 And these testimonies and the evidence we will present go beyond the one-sided  
25 vision of the Prosecution and, therefore, will show that whether in public or in private,

1 whether behind the camera or not, Mr Yekatom did not want to violently attack the  
2 Muslim population.

3 And as you hear the Defence evidence, I ask you to keep in mind the lessons the  
4 Prosecution should have learned from Lubanga. I ask you to recall the importance  
5 of testing the evidence before you so that when a doctored record is presented, it's  
6 scrutinised.

7 I ask you to recall the importance of objectively investigating to seek the truth so that  
8 all relevant actors are met and investigated and not only a select few who hold up one  
9 theory.

10 And, lastly, I ask you to recall the importance of ensuring that the fairness and the  
11 integrity of these proceedings are protected so that when falsified evidence is  
12 apparent, it's addressed and it's withdrawn.

13 And my client who is at the heart of this trial trusts that you listen and assess with an  
14 open mind the evidence he brings before you in defence of the serious allegations  
15 against him.

16 Thank you.

17 PRESIDING JUDGE SCHMITT: [12:35:21] Thank you very much, Ms Dimitri.

18 This concludes our hearing today.

19 The Court is adjourned.

20 THE COURT USHER: [12:35:29] All rise.

21 (The hearing ends in open session at 12.35 p.m.)