

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/22**

Date: **13/10/2023**

PRE-TRIAL CHAMBER II

**Before: Judge Rosario Salvatore Aitala, Presiding
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

**Public Redacted Version of “Defence Post-Confirmation Submissions”,
ICC-01/14-01/22-270-Conf, 14 September 2023**

Source: Philippe Larochelle, Counsel for Mr. Mokom

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

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I. INTRODUCTION

1. These submissions expand on issues relevant to Mr Mokom's alleged contribution and *mens rea*,¹ presented during the confirmation of charges hearing, and should therefore be read together with the transcripts of the Defence submissions during that hearing.

2. Like the Defence oral pleadings, this filing relies on the Prosecution evidence, and the words of Prosecution witnesses themselves. In addition, the Defence invites and encourages a full review of all Prosecution evidence and, unlike the Prosecution,² welcomes the assessment of the credibility of this evidence. The deeper the Pre-Trial Chamber descends into the evidence, the clearer the picture becomes: the link between the charged crimes and Mr Mokom is absent.

3. When considering whether this case should go to trial, it is significant that at least 33 alleged Anti-Balaka members have already testified in the *Yekatom & Ngaïssona* proceedings.³ Had Mr Mokom been contributing to the crimes, or intending their commission, the evidence of these 25 witnesses combined with the nine years of Prosecution investigation in the Central African Republic, would have allowed the Prosecution to craft the kind of case that survives the confirmation procedure. It has not. This is because the evidence, particularly that coming from the insiders themselves, demonstrates that Mr Mokom is not individually criminally responsible for crimes and should be immediately released.

II. LEVEL OF CONFIDENTIALITY

4. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, the Defence files these submissions as confidential, since they refer to confidential documents and information. A public redacted version will be filed.

¹ [ICC-01/14-01/22-T-008-CONF-ENG ET](#), 49:14-17.

² [ICC-01/14-01/22-T-008-CONF-ENG ET](#), 20:12-22:13.

³ P-0306, P-0487, P-0446, P-0801, P-0808, P-0876, P-0884, P-0888, P-0889, P-0954, P-0965, P-0966, P-0974, P-0992, P-1042, P-1077, P-1193, P-1339, P-1521, P-1647, P-1719, P-1786, P-1839, P-1847, P-1858, P-1962, P-2027, P-2232, P-2251, P-2475, P-2556, P-2673, P-2841. This list does not include P-2476, who indicates he was only an Anti-Balaka for a week, or P-2625 and P-2843, who were only "affiliated" with the Anti-Balaka.

III. SUBMISSIONS

A. MR MOKOM DID NOT CONTRIBUTE TO THE CHARGED CRIMES

a. Participating in planning the implementation of the Common Purpose

5. The Common Purpose is framed as “including at least the charged crimes”, being the 20 counts in this case.⁴ There is no evidence that Mr Mokom came together with others to conceive or implement a Common Purpose that entailed the commission of any of the charged crimes. The Prosecution evidence is far more limited:⁵ Mr Mokom being in Zongo; being with (or in contact with) Bozizé’s “inner circle”; allegedly being “amongst the founders of the movement”; or admitting to P-2012 that he was part of a group “organising the resistance” against the Seleka to push them out of Bangui, and that it was his duty to bring back the exiled former President Bozizé. Even if all this evidence is accepted, it is not evidence of planning and implementation of some Common Purpose that would involve rape, murder, persecution.

6. **The Anti-Balaka was not created by Mr Mokom**, it was a reaction by the Central African population to crimes being committed, relentlessly, against them. Fathers, sons, brothers, sisters, forced into defending themselves out of fear, exhaustion, and terror; coming together in their villages, and communities.⁶ As throughout history, “when a people is oppressed, manhandled, martyred, there is a birthright? within those people a genus of resistance to put an end to oppression. So that is what happened.”⁷ **P-2269** joined the Anti-

⁴ [ICC-01/14-01/22-174-Conf-AnxA](#), para.4.

⁵ [ICC-01/14-01/22-174-Conf-AnxC1](#), at sections 121-123.

⁶ **P-0446**, CAR-OTP-2118-6278-R01, ll.216-226 “[REDACTED].”, ll.368-370; CAR-OTP-2059-1433-R01, ll.415-517”; **P-0808**, CAR-OTP-2025-0324-R01, para.50: “[REDACTED].”; **P-0876**, CAR-OTP-2046-0249-R01, ll.293-300: “[REDACTED] [...]”; **P-0992**, CAR-OTP-00000930, 11:9-12:21: The resistance was made of “all types of ethnic groups” and was independent of any political affiliation; **P-1074**, CAR-OTP-2094-0228-R01, para.53: “[REDACTED].”; **P-1719**, CAR-OTP-2062-0039-R01, para.138: “[REDACTED].”; **P-1172**, CAR-OTP-2082-1058-R01, para.35: “[REDACTED].”; **P-2027**, CAR-OTP-00001054-R01, 32:4-9: It is a popular movement. People got together with machetes; CAR-OTP-00000880, 8:7-13: This was a civilian movement, which is different from an armed group. And it became the Anti-Balaka movement with all the population who rose up in Bangui, 8:20-25: The goal was to go against the Seleka who were committing crimes; **P-2841**, CAR-OTP-00000873, 41:1-19: “First, some people, ordinary civilians, were victims of Séléka. They had been persecuted. And so in order to protect themselves, they turned to a new movement -- a resistance movement which was being birthed. So they joined it. Then secondly, you have people, young unemployed people, for example, who may have believed that this was a movement with a future promise, so they could join the movement hoping that if things worked out in the end, they might become soldiers, they might join the army”, 43:17-18: “Initially, the resistance was not organised at all. It emerged from a natural instinct by people to defend themselves”; **P-2296**, CAR-OTP-2111-0336-R01, para.96: “[REDACTED]”; **P-1791**, CAR-OTP-2057-0054-R01, at 0058: “[REDACTED].”

⁷ **P-0291**, CAR-OTP-00001093, 9:13-20: “The population, therefore, could not continue to remain passive indefinitely in the face of the crimes that were being committed by Seleka. Children saw their fathers assassinated, their mothers raped, their houses destroyed, so they had no other choice but to resist by all means possible this

Balaka after his mother was killed by Seleka and her body left in the street. He told the Prosecution that “Mokom didn’t create the rebellion, he joined it”.⁸

7. This evidence about the spontaneous emergence of the Anti-Balaka, is corroborated by the wealth of PEXO evidence from the Prosecution witnesses about Anti-Balaka goals.⁹ Prosecution witnesses repeatedly explained that the goal of the Anti-Balaka was to fight back against the Seleka who were killing and raping. Not to harm the Muslim population, not to take political power, but to stop the violence.¹⁰ There was no Common Purpose to use the Anti-Balaka to commit the 20 charged crimes, and Mr Mokom neither planned nor implemented it.

b. Participating in the formation, structuring, development, and organisation of the Anti-Balaka—including the incorporation of pre-existing and new self defence groups

8. The Prosecution alleges that Mr Mokom coordinated all the pre-existing and new self-defence groups that gathered in Gobéré. It alleges that with his “guidance, assistance, and

situation [...]”; **P-1077**, CAR-OTP-00001135, 7:11-20: “The Anti-Balaka movement was created by the people in the hinterland, in small villages. The torture of the -- by the Seleka was something that the villagers could not bear, and so gradually the number of Anti-Balakas increased. And there are people who supported the Anti-Balaka and then there was someone who began to lead it. It's not that there was one single founder of the Anti-Balaka.”

⁸ CAR-OTP-2111-0336-R01, paras.34, 41-42.

⁹ See, [ICC-01/14-01/22-260-Conf-AnxA](#), pp.2-21.

¹⁰ The following PEXO extracts can be read in their full form, with other PEXO evidence, in [ICC-01/14-01/22-260-Conf-AnxA](#), pp.2-21: **P-0808**, CAR-OTP-00001103, 28:21-24: “[...] I am proud of the mission that I carried out with the Anti-Balaka because the purpose was to save and liberate people.”; CAR-OTP-00001105, 22:16 to 23:12: “[...] from January, until I resigned, we did not waiver in our position. We remained consistent. The aim was to restore peace.”; **P-1521**, CAR-OTP-2046-0603-R01, paras.49-52: “[REDACTED].”; CAR-OTP-00000913, 6:9-12: “At the beginning, our objective was to push out Seleka. And when we got to Bangui, the goal was still the same. Even until the time of the elections, we did not have any political goals such as taking power and any such thing. Our objective remained the same.”; **P-0446**, CAR-OTP-2105-0430-R01, 11.974-1070: “[REDACTED].”; CAR-OTP-2105-0462-R01, 11.483-484: “[REDACTED].”; CAR-OTP-00001115, 8:5-11: “Our objective was not to hurt the Muslims, but we wanted to put pressure on Djotodia.”; 92:16-23: “The reason why I fought for one single thing, I wanted to make sure that Djotodia would leave and that we would find reconciliation so that we would find peace again.”; CAR-OTP-00001117, 36:13-38:4: “[...] the Balaka have not come for the power. It's because the Central African Republic people were impacted, and this is why Balaka was born. So it was important to help -- it was important for the FACA to help the international community, for peace to be restored in our country. And that was our objective.”; **P-0876**, CAR-OTP-00000919, 87:14-20: “[REDACTED].”; **P-0966**, CAR-OTP-2031-0241-R01, para.46: “[REDACTED].”, para.47: “[REDACTED].”; CAR-OTP-00001127, 12:16-25: “You know, the conflict was not a matter of Muslims versus Christians. We were all people of the Central African Republic. During this conflict, you must realise that there were Muslims amongst us and Christians too. If we went to a place where there were Muslims, those who were not fighting, they would be together and it was our duty to protect them, and so on and so forth. We protected them as we were moving forward. That was our role. We rose up and the only goal was to protect our country because the foreigners had come to destroy it. We rose up merely to defend our country. It was also our duty to defend the people of the Central African Republic.”

encouragement, these groups were reinforced by PG and FACA members”, and claims he was also coordinating groups with similar concentrations, such as at the Cameroon/CAR border.¹¹

9. The picture painted by the Prosecution evidence could not be more different. Instead, the witnesses (including key insiders) describe hearing about “people gathering in Gobéré” and so decided to join. **P-1521** is specific that “nobody ordered them to go there”.¹² **P-2232**, who was alleged [REDACTED] during this critical period, is explicit that “I don't know, who decided that Gobéré should be the gathering point for the Anti-Balaka.”¹³

10. **P-2269** recalled speaking with Mr Mokom during this period. However, Mr Mokom “was **not** higher in the hierarchy”¹⁴ than **P-2269**, who accordingly makes no reference to Mr Mokom giving orders or coordinating over the phone. Rather, **P-2269** took 280 men to gather in the bush near Bouca, after speaking with Andjilo and others.¹⁵ **P-2269** then recalls a discussion with the ‘chiefs’ who agreed that if a Seleka member surrendered, he or she must not be killed. **P-2269** himself caught some Seleka members as prisoners, and they were eventually released. The same policy was adopted for civilians who were Muslim.¹⁶

11. Mr Mokom’s absence from this story makes sense. The allegation that Mr Mokom was spearheading the formation, structure, development, and organisation of the Anti-Balaka does not fit with Prosecution witness descriptions.¹⁷ **P-1521** said that “[REDACTED].”¹⁸ **P-2841** explained that because people were fed up with being attacked and humiliated, in every locality they organised a traditional resistance.¹⁹ Expert witness **P-0287** talks about the Anti-Balaka structure evolving from a “myriad of local groups”.²⁰ **P-2012**, in his report, spoke of the Anti-

¹¹ [ICC-01/14-01/22-174-Conf-AnxA](#), para.49.

¹² CAR-OTP-00000911, 57:21-58:1.

¹³ CAR-OTP-2090-0561-R01, para.60.

¹⁴ CAR-OTP-2111-0336-R01, paras.54, 78-79.

¹⁵ **P-2269**, CAR-OTP-2111-0336-R01, paras.46-51.

¹⁶ CAR-OTP-2111-0336-R01, paras.65-66.

¹⁷ **P-0808**, CAR-OTP-00001107, 19:21-23: “ComZones were really just small groups, small groups of fighters. They were homogeneous groups that formed and started to fight. But they were autonomous and they came from various villages.”; **P-0876**, CAR-OTP-00000919, 74:10-17: “[REDACTED].”; CAR-OTP-00000923, 13:22-25: “The reasons that impelled each village from the most remote parts of the Central African Republic to the capital itself to begin self-defence, the reasons varied from these remote villages to the cities. People did not know one another at that time. So you can’t say that there was a ComZone at that time.”; **P-2027**, CAR-OTP-00000880, 8:7-13: “The Anti-Balaka was a popular movement against the Seleka. It's not a movement - Balaka in our language is machete, so it's the population who rose up against and took up machetes to fight against those who had arms. So there was a civilian movement which is different from an armed group. And afterwards, it became the Anti-Balaka movement with all the population who rose up in Bangui. I wasn't there, but that's what happened.”

¹⁸ CAR-OTP-00000911, 67:20-70:1.

¹⁹ CAR-OTP-2127-4238-R01, para.28.

²⁰ CAR-OTP-00000860, 85:19.

Balaka being firstly “[REDACTED].”²¹ **P-0876** stated that “[REDACTED]”,²² and further explained that:²³

I wouldn't say that it was the chiefs who later became ComZones who organised those self-defence groups. No. I would say, rather, that it was the villages themselves, the people in the villages themselves who organised themselves, the neighbourhoods who organised themselves in a spontaneous fashion, who rose up in a disorganised or a haphazard way to ensure that something would be done. But there was no one single individual who called for action. It was a feeling of revolt, and those who felt that they were affected mobilised. That's how I would describe the situation.

12. By inserting Mr Mokom in this process, and in fact, alleging that he was leading and directing it, the Prosecution case becomes separated from its evidence.

c. Coordinating the deployment and military operations of the Anti-Balaka, including the 5 December 2013 attacks on BANGUI and BOSSANGO

13. The Prosecution evidence does not support charges of commanding, or ordering. Instead, Mr Mokom is accused through the vague concept of “coordinating the deployment and military operations” of the Anti-Balaka. This is another area where the Prosecution evidence departs entirely from its case.

14. First, there was no hierarchy to pass orders through.²⁴ **P-1521** testified that Anti-Balaka command was linked to whoever had possession of a gun. Leadership of a group could change, or groups could split, depending on who had captured a weapon.²⁵ While ComZones acted as leaders, **P-0876** described “all the fighters in disorder”,²⁶ and spoke of the existence of 100 ComZones.²⁷ **P-1521** said some [REDACTED],²⁸ and **P-0446** said that ComZones needed help because they did not control their whole area, and could not know all the armed people in the zone.²⁹ **P-2841** gave a clear description of the fragmented and spontaneous command

²¹ CAR-OTP-2091-0202, at 0215.

²² CAR-OTP-2046-0249-R01, ll.298-299.

²³ CAR-OTP-00000923, 14:12-19.

²⁴ **P-2012**, CAR-OTP-00001085, 47:12-48-17, 50:8-52:23: “The Anti-Balaka remain decentralised, divided into multiple groups with different and largely unarticulated political claims and without a clear command structure, although there are some exceptions.”; **P-0283**, CAR-OTP-2001-5358-R01, at 5361: “[REDACTED].”

²⁵ CAR-OTP-00000911, 68:18-23: “During the progression or the advance, but the hierarchy is based on the youth in each village. For example, if you take village X, there is a leader there. Now, if we move forward and we capture a weapon, the leader may change. For example, if another combatant captures a weapon, the previous leader -- leader may have to split in order to set up a different group, as long as the new person had acquired a weapon.”

²⁶ CAR-OTP-2046-0267-R01, ll.394-403.

²⁷ CAR-OTP-2046-0267-R01, ll.403-409.

²⁸ CAR-OTP-00000913, 51:9-16.

²⁹ CAR-OTP-00001117, 52:15-53:14.

structures, stating that coordination at the general level did not exist; rather, people “would rise up to defend a village and at least there would be somebody there to tell the villagers to do this and do that. This is how things happened naturally.”³⁰

15. **BANGUI, 5 DECEMBER:** How did this “fragmented” command structure³¹ play out on 5 December? The Prosecution witnesses who were on the ground give a consistent account of the convergence of a myriad of groups behind the Boy-Rabé hill prior to 5 December 2013.³² **P-0446**, for example, said the people gathered came from Bongangolo, others from Ouham, Bossangoa, Bouca, Batangafo, Bogambolo, Sibut, Damara,³³ and cites many different leaders: 12 Puissances for the Bongangolo group, and many others because the groups were split,³⁴ at Bossangoa and Bouca, it was Andjilo, his younger brother Ngaïbona, and Konate.³⁵ There was Marcelin Deholo and Benjamin Ouapoutou for Damara.³⁶ In Bouca, Charles Anga also commanded a group.³⁷ Alain Zoni, assistant to 12 Puissances, had his group.³⁸ Bernard Yakouzou had his group.³⁹ Richard Bozando had his group.⁴⁰ At Boeing, Wenezoui and Ngremangou were leaders.⁴¹ This was a mix; chiefs, leaders, ComZones, commanders, as diverse and fragmented as the Anti-Balaka itself.

16. The Prosecution evidence shows that Mr Mokom was not in charge and did not coordinate the military operations or deploy the troops. **P-0884** said that nobody was behind the attack, and that “[REDACTED].”⁴² **P-1521** explained that there was no one overall leader. After listing the different commanders, he insisted that “[REDACTED].”⁴³ **P-1521** said there was no

³⁰ CAR-OTP-00001149, 70:9-21.

³¹ **P-2012**, CAR-OTP-00001085, 52:20-23: “It’s a fragmented group, you don’t have very clear command and control structures.”

³² Konaté: **P-0876**, CAR-OTP-2046-0267-R01, ll.266-324, ll.421-426; **P-1521**, CAR-OTP-2046-0603-R01, para.54; **P-1719**, CAR-OTP-2062-0039-R01, para.131. 12 Puissances: **P-0876**, CAR-OTP-2046-0267-R01, ll.386-426. Rhombo: **P-0876**, CAR-OTP-2046-0267-R01, ll.386-426; **P-1521**, CAR-OTP-2046-0603-R01, para.54. Kamezolai: **P-0876**, CAR-OTP-2046-0267-R01, ll.386-426. Ngremangou: **P-0876**, CAR-OTP-2046-0267-R01, ll.386-426; **P-1521**, CAR-OTP-2046-0603-R01, para.54. Kema: **P-1521**, CAR-OTP-2046-0603-R01, para.54. Andjilo: **P-1521**, CAR-OTP-2046-0603-R01, para.54; **P-2269**, CAR-OTP-2111-0336-R01, para.88. Ndomaté: **P-1521**, CAR-OTP-2046-0603-R01, para.54; Kossi: **P-2269**, CAR-OTP-2111-0336-R01, paras.87-91.

³³ CAR-OTP-2059-1523, ll.53-61.

³⁴ CAR-OTP-2059-1523, ll.92-97.

³⁵ CAR-OTP-2059-1523, ll.107-112.

³⁶ CAR-OTP-2059-1523, ll.117-128.

³⁷ CAR-OTP-2059-1523, ll.128-130.

³⁸ CAR-OTP-2059-1523, ll.130-131.

³⁹ CAR-OTP-2059-1523, l.132.

⁴⁰ CAR-OTP-2059-1523, ll.137-141.

⁴¹ CAR-OTP-00001117, 53:24-54:8.

⁴² CAR-OTP-2072-1541-R01, ll.1006-1014.

⁴³ CAR-OTP-2046-0603, paras.54, 56.

[REDACTED].⁴⁴ [REDACTED].⁴⁵ Importantly, **P-1521** explained that nobody asked or ordered them to meet behind the hill.⁴⁶ **P-0954** said that on 5 December, some of the Anti-Balaka were not even in communication with each other.⁴⁷ More specifically, there was no plan about how to cooperate among Anti-Balaka groups, every group just had to manage on their own.⁴⁸ **P-2269** [REDACTED]. There was no leader, and “[REDACTED]”.⁴⁹

17. The sole evidence of *planning* of the 5 December attack, shows some arrangements or discussions among those who were present. **P-0446** describes meeting the evening before to divide the teams, and Konate and Andjilo spoke to divide the targets. **P-1521** affirms that the [REDACTED].⁵⁰

18. The Prosecution’s theory that Mr Mokom coordinated the attack is further undermined by evidence of the spontaneous involvement by civilians. **P-0446** explained that the Anti-Balaka behind the hill were joined by the people of Bangui. People from all walks of life joined the group.⁵¹ Even during the attack, they came from the surrounding areas, with people gathering even on the road.⁵² **P-0808** recalls youth from Boy-Rabé joining Anti-Balaka behind the hill,⁵³ as does **P-1521**.⁵⁴ There is no allegation that Mr Mokom could coordinate or deploy civilians.

19. Perhaps the clearest picture of the attack comes from **P-0884**. After explaining that the attack was due to take place on 1 December 2013, the national holiday, but was postponed because “[REDACTED]”,⁵⁵ **P-0884** has this exchange with the Prosecution:

[REDACTED].”⁵⁶

20. Of course, the Prosecution evidence contains other theories of who was coordinating on 5 December. None of them implicate Mr Mokom. **P-1074** insists, for example, that the 5

⁴⁴ CAR-OTP-00000909, 51:17-22.

⁴⁵ *Ibid.*

⁴⁶ CAR-OTP-00000911, 56:6-12: “Q [14:30:49] So if I've understood correctly, nobody asked or ordered you to meet there, all the groups together behind the hill? A. Nobody gave such an order. You know, the history of the Anti-Balaka is that if there's an abuse in an area, when the Anti-Balaka move about, they meet people and they meet them from other locations and then the others follow. And that's how things worked. Nobody ordered us to go to a particular place, to this locality.”

⁴⁷ CAR-OTP-00001015-R01, 19:6-14.

⁴⁸ CAR-OTP-2048-0171-R01, para.34.

⁴⁹ CAR-OTP-2111-0336-R01, para.91.

⁵⁰ CAR-OTP-00000909, 55:7-56:5. *See also* CAR-OTP-00000934, 45:15-24.

⁵¹ CAR-OTP-00000934, 37:14-38:4.

⁵² **P-0446**, CAR-OTP-00000934, 44:17-22.

⁵³ CAR-OTP-2025-0324-R01, para.53.

⁵⁴ CAR-OTP-00000909, 41:10-20.

⁵⁵ CAR-OTP-2080-1678-R01, ll.1417-1427.

⁵⁶ CAR-OTP-2080-1678-R01, ll.1428-1469.

December attack was organised and planned by Bozizé, and commanded by Captain Kamezolaï who was the Anti-Balaka chief of staff, with Rambo as one of his deputies.⁵⁷ **Demafouth** stated that, [REDACTED], all Anti-Balaka military structures received orders from Bozizé for the attack of 5 December,⁵⁸ and the FACA were on hand to help the Anti-Balaka.⁵⁹ Importantly, according to **P-0466**, the FACA were under the command of Ngremangou or Lieutenant Konaté, who was in the hinterland.⁶⁰ As for who was responsible for 5 December, **Demafouth** pointed to Francis Bozizé (abroad but commanded the operations by phone), Ngremangou (based at the airport), Kokaté (via phone from Cameroon), 12 Puissances (Ouango), Yekatom (from Cattin to 6th arrondissement), Konaté (Gobongo), Mokom (Bouar),⁶¹ Ngaïkosset, and Captain Kamezolaï.⁶² The Prosecution theory with Mr Mokom coordinating the 5 December attack from Zongo by phone, cannot co-exist with this body of evidence, and is not a conclusion that the Pre-Trial Chamber can safely reach even to the standard at confirmation.

21. **5 DECEMBER, BOSSANGOYA**: At the centre of the Prosecution’s overall theory that Mr Mokom was coordinating military operations and deploying troops, is the evidence of **P-2232**, and his statement that “[REDACTED]”.⁶³ This is discredited by the evidence of the “men on the ground” during the 5 December attack in Bangui, discussed directly above, **none of whom** said they were executing Mr Mokom’s orders. What is then devastating for the Prosecution case in relation to Bossangoya, is that although **P-2232** discusses the other attacks that took place on 5 December, **he says nothing about Mr Mokom coordinating the attack in Bossangoya**.⁶⁴ This is because in reality, Mr Mokom did not.

22. The evidence of the Bossangoya attack, shows that the Anti-Balaka were led by Kema and Ndangba-Pissidi [REDACTED].⁶⁵ According to **P-0966**, the objective was to liberate the town so that Christians could live in peace.⁶⁶ **P-2602** gives a compelling statement that, during the Bossangoya attack they fought only those who were armed and had uniforms,⁶⁷ and that a real

⁵⁷ CAR-OTP-2094-0228-R01, paras.60-61.

⁵⁸ CAR-OTP-2099-0165-R01, para.75.

⁵⁹ CAR-OTP-2099-0165-R01, para.78.

⁶⁰ CAR-OTP-2059-1546-R01, ll.635-653.

⁶¹ This is not Maxime Mokom, as he was not in Bouar.

⁶² CAR-OTP-2099-0165-R01, paras.87-88, 91.

⁶³ [ICC-01/14-01/22-174-Conf-AnxC1](#), at section 130; CAR-OTP-2090-0561-R01, para.55.

⁶⁴ CAR-OTP-2090-0561-R01, para.80.

⁶⁵ **P-2602**, CAR-OTP-2118-9617-R01, ll.642-658; CAR-OTP-2118-9664-R01, ll.542-566; **P-0966**, CAR-OTP-00000950, 42:2-12; CAR-OTP-2031-0241-R01, paras.60-61; CAR-OTP-00001127, 57:6-58:10; **P-0992**, CAR-OTP-2122-6499-R01, para.96.

⁶⁶ CAR-OTP-2031-0241-R01, para.62; CAR-OTP-00001127, 39:3-40:23.

⁶⁷ CAR-OTP-2118-9683, ll.436-445.

Anti-Balaka is “[REDACTED]”, while a fake Anti-Balaka “[REDACTED]”.⁶⁸ This is corroborated by **P-0966**’s account that he never saw elements under Kema’s control disobey orders in Bossangoa, and that anyone who broke discipline was punished.⁶⁹

23. The trigger for the 5 December attack in Bossangoa, was a report on RFI at 05h00 that Bangui had been attacked.⁷⁰ At the time, the Anti-Balaka were 30km from Bossangoa.⁷¹ **P-0966** said that a decision was taken by the ComZones that “since Bangui [w]as attacked on the 5th, we had to attack Bossangoa on the 5th in order to show that it was a coordinated attack”.⁷² In other words, to at least give the impression of a coordinated attack. ComZone Kema was leading one group, [REDACTED] another group and they attacked different locations.⁷³ [REDACTED] “was operational [...] was in charge, directing operations in the field.”⁷⁴ [REDACTED], but **P-0966** did not know who they were talking to.⁷⁵ [REDACTED] that he received instructions from Mr Mokom, which aligns with **P-2232**’s evidence which also gives no indication of Mr Mokom’s involvement.

24. According to the Prosecution, Mr Mokom coordinated the Bossangoa military operation on the ground, and coordinated the deployment of troops, in order to commit crimes against Muslims. There is no evidence of this. The Anti-Balaka in Bossangoa were led by Kema and Ndangba-Pissidi. The only evidence of Mr Mokom [REDACTED].⁷⁶

25. So desperate is the Prosecution to create a link between Mr Mokom and the attacks, it relies on a statement from **P-1521** that “[REDACTED]”.⁷⁷ **P-1521** testified, and was cross-examined on this precise statement, and denied having said it: “what the investigators asked me was whether we had contact with Mr Mokom as we advanced. So I said: Us, no... the investigator asked me whether we had contact with Mokom, and I said no.”⁷⁸ Importantly, although **P-1521** corrected this statement in his testimony in November 2021, the Prosecution included the original (incorrect) statement in this case in March 2023. The Prosecution

⁶⁸ CAR-OTP-2118-9705, ll.181-183.

⁶⁹ CAR-OTP-00001127, 31:2-32:1.

⁷⁰ CAR-OTP-00000950, 42:2-12.

⁷¹ **P-0966**, CAR-OTP-00000950, 42:2-12, 47:23-49:20.

⁷² CAR-OTP-00000950, 42:2-12.

⁷³ *Ibid.*

⁷⁴ **P-0966**, CAR-OTP-00000950, 44:8-10.

⁷⁵ CAR-OTP-00000950, 42:15-24.

⁷⁶ **P-0889**, CAR-OTP-00001068-R01, 19:14-22:5: “[REDACTED]”.

⁷⁷ [ICC-01/14-01/22-174-Conf-AnxC1](#), at section 130, citing **P-1521**, CAR-OTP-2046-0603-R01, at 0610, paras.39, 43.

⁷⁸ CAR-OTP-00000909, 40:15-25.

considers it necessary to rely on evidence which has been reversed, under oath, in order to try to make a link between Mr Mokom and the attacks.

26. Any consideration of Mr Mokom's alleged deployment and coordination of the Anti-Balaka troops must also factor in the Prosecution evidence of: (i) **unreliable phone networks and coverage**,⁷⁹ and that on 5 December the Anti-Balaka did not have sufficient comms, they had to borrow each other's phones frequently because they didn't have enough batteries or credit,⁸⁰ reinforced by the fact that CDRs demonstrate that half of the 5256 calls listed on 5 December 2013 lasted less than 10 seconds, and many only a second or two;⁸¹ (ii) the issue of **language**, and the objective impossibility of coordinating military operations from Zongo by phone to people drawn from, "73 sub-prefectures, 16 prefectures, people mobilised in every village, in 4,800 villages" speaking "263 dialects", meaning "it was impossible to have any coordination or channel of command";⁸² and (iii) **the difficulty described by P-0446 in communicating** because many of the Anti-Balaka were illiterate, and did not understand anything at all, to the point where he questioned whether they had mental problems.⁸³ Despite this, **P-0446** did his best, and explained that the targets of the attack were the Seleka who were holding weapons, and not their brothers.⁸⁴

27. Apart from the attack at "Ndjo", discussed during the hearing,⁸⁵ the 5 December attacks on Bangui and Bossangoa are the only specific attacks referenced in the charging documents. The Prosecution's own evidence of what actually happened makes it impossible for the Pre-Trial Chamber to safely conclude, even to the standard at confirmation, that Mr Mokom was coordinating military operations of the Anti-Balaka. As **P-2841** recalled, "[REDACTED]."⁸⁶

28. Considered as a whole, the sketchy and disparate evidence about the contact between Mr Mokom and those on the ground, does not support, directly or inferentially, a conclusion that

⁷⁹ **P-2012**, CAR-OTP-2091-0127-R01, para.59; CAR-OTP-2091-0202, at 0215: "[REDACTED]."; **P-2404**, CAR-OTP-2102-1558-R01, para.108: "[REDACTED]."; **P-2131**, CAR-OTP-2108-0093-R01, para.121; **P-2012**, CAR-OTP-00001085, 44:17-45:2: "[...] there's no phone network, it's very — less penetration, they don't have access to radios or satellite communication.", 52:4-23: "The penetration of phone network is -- in CAR is very limited. Often you can't get through, you can't reach people and things like that."; **P-0534**, CAR-OTP-2068-0643-R01, para.77: "[REDACTED]."; **D-0004**, CAR-D34-00000101-R01, para.18.

⁸⁰ **P-0446**, CAR-OTP-00001117, 22:17-24.

⁸¹ CAR-OTP-2068-0033: 4834 calls lasted less than 60 seconds, 2601 calls lasted less than 10 seconds.

⁸² **P-0876**, CAR-OTP-00000919, 13:1-18; 74:10-17; **P-0446**, CAR-OTP-2059-1586-R01, 11.301-303.

⁸³ CAR-OTP-2059-1586-R01, 11.301-305: "[REDACTED]."

⁸⁴ **P-0446**, CAR-OTP-2059-1586-R01, 11.325-331.

⁸⁵ [ICC-01/14-01/22-T-007-CONF-ENG ET](#), 33:24-38:21; 48:21-49:21; 65:12-66:5; [ICC-01/14-01/22-T-008-CONF-ENG ET](#), 46:20-47:5.

⁸⁶ **P-2841**, CAR-OTP-2127-4238-R01, para.105.

Mr Mokom coordinated, wanted, anticipated, or condoned crimes being committed during the attacks of 5 December 2013 in Bangui and Bossangoa.

d. Providing the Anti-Balaka with logistical support for military operations, including by providing funds, weapons, medication, and ammunition

29. The Prosecution's best evidence of logistical support is unreliable for the reasons addressed at the hearing.⁸⁷ Putting these few examples aside, what is the real story that emerges from the Prosecution evidence?

30. The Prosecution case file demonstrates how the Anti-Balaka was plagued by its lack of funds, relied on the civilian population for support,⁸⁸ and employed a practice of recovering weapons from Seleka,⁸⁹ discrediting any suggestion of regular or efficient logistical support. **P-0446**, for example, said the Anti-Balaka were armed with home-made weapons, and that out of 200 people, 50-60 would have home-made weapons, sticks, pieces of wood, and AK-47's recovered from the enemy.⁹⁰

31. Importantly, the evidence of Prosecution insider witnesses about logistical support does not include Mr Mokom. **P-0291** cites the financiers and political leaders of Anti-Balaka as being Bozizé, his sons and Ngaïssona, and Kokaté as the military leader, with the "coordinators" being Ngaya and Bara.⁹¹ **P-0446** said that Ngaïssona sent him money through Ngaya while he was in Zongo.⁹² **P-0954** gives extensive evidence about Ngremangou receiving money from Bozizé, that Kamezoulaï provided money to Kengwa, and that a certain Beorofei

⁸⁷ [ICC-01/14-01/22-T-007-CONF-ENG ET](#), 39:2-44:21; [ICC-01/14-01/22-T-008-CONF-ENG ET](#), 9:16-10:22.

⁸⁸ **P-1521**, CAR-OTP-2046-0603, para.46: there was a change of strategy from 2 December because of a shortage of ammunition; **P-2027**, CAR-OTP-2078-0059-R01, para.92: they had nothing apart from a few AKs; **P-0446**, CAR-OTP-2059-1567-R01, ll.200-207: As for food, the population gave them manioc leaves and food; **P-2269**, CAR-OTP-2111-0336-R01, para.90, regarding 5 December attack in Bangui: "[REDACTED]"; **P-2841**, CAR-OTP-2127-4238-R01, para.202: "[REDACTED]"; **P-1719**, CAR-OTP-2062-0039-R01, para.138, "[REDACTED]."; **P-1077**, CAR-OTP-00001135, 8:4-15: "We did not have enough weapons as the Seleka had, and the support we got was support of our citizens who were in the small towns. When we were in the bush, we would hunt to have something to eat. Sometimes for two to three days, we had nothing to eat but we just drank water. And as soon as we got out into small villages and bigger cities, the Central African population was praying to us, saying, 'Thank you. Thank you to – thanks to you and the strength of our ancestors, we are – we have some food, we have a well with water.'"

⁸⁹ **P-2481**, CAR-OTP-2127-4238-R01, para.73: "[REDACTED]"; CAR-OTP-00001149, 29:14-17: "[REDACTED]"; **P-0992**, CAR-OTP-2110-0048-R01, para.50: the strategy (started by Andjilo in Bouca) to acquire weapons was to attack Seleka groups to stole their weapons; **P-0808**, CAR-OTP-2025-0324-R01, para.52: "[REDACTED]."; **P-2012**, CAR-OTP-2091-0264-R01, at 0286.

⁹⁰ CAR-OTP-2059-1567-R01, ll.117-129.

⁹¹ CAR-OTP-2034-0104-R01, paras.118-123: P-0291's "source" gave him a list of Anti-Balaka commanders, and the positions they occupied. Mr Mokom is not mentioned.

⁹² CAR-OTP-00000934, 17.13-25.

received money from Bozizé to buy weapons.⁹³ **P-0992** said that Ngaïssona “had the means” which is why he was chosen, and sent money to Ngaya from Cameroon which was given to Andjilo.⁹⁴ He had no knowledge about Mr Mokom giving ammunition to the Anti-Balaka.⁹⁵ **P-1074** said that Ngaïssona bought food, gave per diems, ammunition, etc,⁹⁶ that [REDACTED] Bozizé was trying to collect money for the survival of his men, and that Yvon Songuet was helping Bozizé financially through remittances.⁹⁷ **P-1719** said [REDACTED] set up barricades and collected money from vehicles passing through in order to feed the men.⁹⁸ **P-2841** spoke about supply of weapons,⁹⁹ including rumours of weapons coming from South Africa, which he said were untrue,¹⁰⁰ but that any supplies coming from the DRC “[REDACTED]” [REDACTED].¹⁰¹ Detailed, complicated, and credible stories, which do not involve Mr Mokom.

e. Supporting, promoting and endorsing the crimes of the Anti-Balaka against the Muslim civilian population

32. There is no credible evidence of Mr Mokom supporting and endorsing “the crimes of the Anti-Balaka”. The Prosecution evidence of Mr Mokom taking active steps to stop crimes and bring order, was discussed at the hearing.¹⁰² There is more.

33. **P-0889** said that with Mr Mokom’s arrival in Bangui, things calmed down for the most part. Mr Mokom explained to Ngaïssona that being the “coordinator of operations” did not mean coordinating attacks, but rather putting in place disarmament. So Mr Mokom would go into the field and sensitise the Anti-Balaka to disarmament.¹⁰³ **P-1719** interpreted Mr Mokom’s words to mean that they should attack only their enemies, like the Seleka, not fellow Central Africans. The witness and his group had initiatives to raise awareness among youth. They contacted local authorities and would tell Mr Mokom to get his opinion on that.¹⁰⁴ **P-1961** said that “Mokom told the Anti-Balaka representatives that they should not attack the Central

⁹³ CAR-OTP-2048-0171-R01, paras.37, 51, 99.

⁹⁴ CAR-OTP-2110-0048-R01, paras.39-40; CAR-OTP-00001064, 32:1-15; CAR-OTP-00000930, 29:17-30:20.

⁹⁵ CAR-OTP-2122-6499-R01, para.138.

⁹⁶ CAR-OTP-2094-0228-R01, para.162.

⁹⁷ CAR-OTP-2094-0228-R01, para.57.

⁹⁸ CAR-OTP-2062-0039-R01, para.56.

⁹⁹ CAR-OTP-2127-4238-R01, paras.103-104.

¹⁰⁰ CAR-OTP-2127-4238-R01, para.171.

¹⁰¹ CAR-OTP-2127-4238-R01, para.105.

¹⁰² [ICC-01/14-01/22-T-007-CONF-ENG ET](#), 71:13-73:16, 75:11-22; [ICC-01/14-01/22-T-008-CONF-ENG ET](#), 12:9-13-7; 15:16-24; 17:1-20. *See also* CAR-OTP-2093-0344 at 0346.

¹⁰³ CAR-OTP-2122-7825-R01, ll.709-775.

¹⁰⁴ CAR-OTP-2062-0039-R01, paras.91-92.

African population because the Anti-Balaka movement was created to protect the population. Mokom further said that the Anti-Balaka were not allowed to take the role of the security forces in the country or erect illegal barricades.”¹⁰⁵ **P-1521**, [REDACTED] with problems like abductions and stolen cars. [REDACTED] to get people or their cars back. [REDACTED] to prevent people from committing crimes.¹⁰⁶ In May 2014, the military police, responsible for preventing the commission of crimes and arresting the Anti-Balaka responsible of them, became operational.¹⁰⁷ **P-0966** said that during all the meetings that the Anti-Balaka had, no one was talking about billeting. It was only after the arrival of Maxime Mokom that they started bringing together the various lists and talking about billeting troops.¹⁰⁸ As for billeting, **P-0446** explained that in the CAR there were no prisons, and all the crooks were outside. You cannot tell them apart, except when you catch them. If the Anti-Balaka had confined its men, they wouldn’t have reached that stage.¹⁰⁹ This is what Mr Mokom had wanted to do, and then implemented. Mr Mokom not only took steps to prevent crimes, he took reasonable and effective steps.

34. The Prosecution’s own case is that Mr Mokom set up the military police.¹¹⁰ **P-0405** said [REDACTED] instructed to establish the military police by Mr Mokom, to prevent exactions and limit the suffering of the population. Criminals declared themselves to be Anti-Balaka to commit crimes, and Mr Mokom had to put an end to it.¹¹¹ **P-1521** cited the military police as being present to “[look] at the actions of the Anti-Balaka”,¹¹² and that “[REDACTED]”.¹¹³ **P-2269** says the military police “[REDACTED]”,¹¹⁴ and **P-2232** gave specific examples of the military police disarming Anti-Balakas who were causing problems.¹¹⁵ **P-0888** said that the military police was led by those with military training: “[REDACTED]”.¹¹⁶ When asked whether the Coordination was helping Anti-Balaka elements escape justice, **P-0808** responded that “[i]f we set up the military police ourselves and took the Anti-Balaka to the gendarmerie, how can we then be the same people to work to take them out of the judicial system, so to

¹⁰⁵ CAR-OTP-2090-0096-R01, at 0098.

¹⁰⁶ CAR-OTP-2046-0603-R01, para. 78.

¹⁰⁷ CAR-OTP-2046-0603-R01, para. 85.

¹⁰⁸ CAR-OTP-00000952, 35:5-36:18.

¹⁰⁹ CAR-OTP-2118-6278-R01, ll.803-812.

¹¹⁰ [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 77:21-78:2.

¹¹¹ CAR-D34-0000090-R01, para.25.

¹¹² CAR-OTP-00000911, 24:4-8.

¹¹³ CAR-OTP-2046-0603-R01, para.85.

¹¹⁴ CAR-OTP-2111-0336-R01, para.114.

¹¹⁵ CAR-OTP-00001062-R01, 58:9-12.

¹¹⁶ CAR-OTP-2031-0217-R01, para.58.

speak? We had put in place our own informal police, military police, which would arrest people and take them to the - the justice department”.¹¹⁷ **P-0446** gave an interview in 2014 in which he said “we really have to put in place a military police so that there -- so that we can do patrolling, so that we can lay our hands on the fake Anti-Balaka that are continuing to commit exactions in our name.”¹¹⁸ **P-0446** later testified that they were acting to bring back peace, “[a]nd this is why the military police was set up and I had this permanent mission order to act on behalf of the movement to avoid these mistakes, errors and unfortunate incidents [...] We haven’t actually come to hurt anyone. We just have come to put pressure on the President Djotodia to quit his office.”¹¹⁹

35. According to **P-0446**, the idea of badges came at the same time as the military police, to distinguish real from fake Anti-Balakas.¹²⁰ **P-0808** said that the main objective of the badges was to identify the Anti-Balaka in relation to a “process of the restoration of security and peace” [REDACTED].¹²¹

36. Perhaps the most detailed information of what Mr Mokom did on returning to Bangui, comes from **P-2232**. His evidence, considered holistically, shows a pattern of **P-2232** working hard to incriminate Mr Mokom when [REDACTED],¹²² but once [REDACTED], even to the point of taking credit for them. For the military police, while the Prosecution states it was Mr Mokom’s idea,¹²³ **P-2232** says [REDACTED].¹²⁴ Similarly, **P-2232** describes how [REDACTED].¹²⁵ Post-5 December, **P-2232** puts himself [REDACTED]. This evidence corroborates other witnesses about what Mr Mokom was doing, and necessarily affects the credibility of **P-2232**’s pre-5 December accusations.

37. The evidence of Mr Mokom’s conduct post-5 December, where he takes concrete steps to reduce and control criminality from the Anti-Balaka and others, supports the inference that he

¹¹⁷ CAR-OTP-00001103, 58:7-10. *See also*, CAR-OTP-00001103, 71:18-24: “Q. So the role of the police, military police, was to stop the - - those who misbehaved? A. Yes, to arrest them and then to hand them over to the gendarmerie. This is what was done under the leadership of Namsio and Emotion. They did it passionately, and sometimes he would come on Radio Ndeke Luka and talk about it. He was the spokesperson. And whenever he had those indisciplined elements caught, he would take them to the *gendarmerie*.”

¹¹⁸ CAR-OTP-00001117, 37:8-10. *See also* CAR-OTP-2087-8944, ll.188-191.

¹¹⁹ CAR-OTP-00001115, 41:10-12,18-19.

¹²⁰ CAR-OTP-2059-1626, ll.173-203. *See also* **P-0808**, CAR-OTP-00001103, 59:19-20.

¹²¹ CAR-OTP-00000913, 49:9-12.

¹²² [ICC-01/14-01/22-174-Conf-AnxC1](#), e.g: sections 64, 68, 130, 142-145, 150.

¹²³ [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 77:21-78:2.

¹²⁴ CAR-OTP-2090-0561-R01, paras.269-271.

¹²⁵ CAR-OTP-2090-0561-R01, paras.184-197; CAR-OTP-00000901, 59:15-63:1.

did not participate in a plan or share a purpose with others which entailed the commission not only of the crimes charged, but of any criminality whatsoever.

B. MR MOKOM'S INTENT AND KNOWLEDGE

38. The Prosecution's framing of Mr Mokom's intent is knowledge based. The Prosecution relies on Mr Mokom's alleged knowledge of the views of Bozizé's inner circle; his knowledge of the Anti-Balaka sharing these views, and knowledge that they were committing or had a propensity to commit crimes against Muslim civilians; and then not walking away.¹²⁶ This framing is understandable, as there is no credible evidence of Mr Mokom intending harm to anyone.

39. Knowledge is insufficient to give rise to aiding and abetting liability.¹²⁷ Knowledge is insufficient to give rise to common purpose liability, in the absence of at least a significant contribution from Mr Mokom to the charged crimes.¹²⁸ This case cannot be met, even to the confirmation standard. The following section examines each of the factors put forward by the Prosecution as demonstrating intent.

a. his knowledge and endorsement of the views of BOZIZÉ and his inner circle, who regarded the Muslim civilian population in western CAR as foreigners and supporters of the Séléka and an obstacle to BOZIZÉ regaining power

40. There is no credible evidence that Mr Mokom regarded the "Muslim civilian population" as an "obstacle to Bozizé regaining power", or that he endorsed this view. There is very little evidence of Mr Mokom saying anything about Muslim civilians apart from the steps he actively took to distinguish between armed Seleka and Muslim civilians, and to stop crimes against them.¹²⁹ **P-1961** said:¹³⁰

[REDACTED].

41. This aligns with the consistent evidence about the Anti-Balaka's inherently apolitical nature in 2013 and into 2014,¹³¹ and **P-0966**'s evidence that when Mr Ngaïssona announced he

¹²⁶ [ICC-01/14-01/22-174-Conf-AnxA](#), para.59; [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 80:6-25.

¹²⁷ [ICC-01/04-01/10-465-Red](#), para.274; [ICC-01/05-01/13-1989-Red](#), para.97.

¹²⁸ [ICC-01/04-01/10-465-Red](#), paras.283, 285, 288; [ICC-01/04-01/07-3436-tENG](#), paras.1632-1633.

¹²⁹ *Supra*, paras.33-37.

¹³⁰ CAR-OTP-2090-0067, para.109 (emphasis added).

¹³¹ **P-0876**, CAR-OTP-00000923, 15:1-7: "There was absolutely no political agenda, otherwise they would not be called "self-defence" groups... They just wanted to allow the people and the villages to live in peace and in

wanted to transform the Anti-Balaka into a political party, in a plan backed by the French, Mr Mokom then split. He split because, for Mr Mokom, the purpose of the Anti-Balaka was “to defend the country until elections took place so that the Anti-Balaka could then go back to their provinces and work their land.” For Mr Mokom, “[REDACTED].”¹³² The Prosecution’s theory of him viewing Muslim civilians as an obstacle to his ultimate political goal of Bozizé’s return to power, is not reflected in the Prosecution evidence.

b. his knowledge that these views were shared by the Anti-Balaka, including on the basis of his awareness of the propensity and/or intention of Anti-Balaka elements to commit crimes, including violent crimes, against Muslim civilians, and his awareness of such crimes committed by the Anti-Balaka

42. The Prosecution’s case is that Mr Mokom acted with a purpose to commit the 20 charged crimes in this case, because he **knew** that “the Anti-Balaka” viewed Muslim civilians as an obstacle to Bozizé’s return to power, including that he **knew** they intended or had a propensity to commit violent crimes against Muslim civilians, and then **knew** that they were doing so. The Prosecution tried to awkwardly fit its theory over an evidential matrix that cannot support it. It is significant that Prosecution cannot simply say “Mr Mokom intended to commit the charged crimes”, but instead needs the Pre-Trial Chamber to make leaps and draw inferences just to get to “knowledge”. While inferences may form part of the basis for confirming charges at the pre-trial stage, they must be supported by the available evidence. Pre-Trial Chambers have consistently declined to draw inferences, particularly as regards a suspect’s knowledge or intent, where the evidence presented was considered too vague, indeterminate, or general to support the inference being claimed, particularly when it was contradicted by other evidence.¹³³ As such, in determining whether the applicable standard is met, the Pre-Trial Chamber may not exclude or ignore other inferences which favour the accused and/or lead to the conclusion that one or more elements of the charged crimes are not demonstrated.¹³⁴ The Prosecution’s

security... And there were not linked to any political party or any political religion. It was a mobilisation that was entirely disconnected from any political movement, any religion. The only agenda was to live in peace.”; **P-0808**, CAR-OTP-00001103, 35:13-25: Just before and after the attack on Bangui, the Anti-Balaka had no political goals; **P-1521**, CAR-OTP-00000913, 6:4-16: The Anti-Balaka in the bush had no political project; **P-2269**, CAR-OTP-2111-0336-R01, paras.43-44: “[REDACTED]”; **P-0307**, CAR-OTP-2005-0281-R01, at 0285: “[REDACTED]”.

¹³² **P-0966**, CAR-OTP-2031-0241-R01, paras.95-96 (emphasis added).

¹³³ [ICC-02/05-01/20-433](#), para.51; [ICC-01/14-01/18-403-Conf-Corr](#), paras.192, 201, 204, 237; [ICC-01/04-01/10-465-Red](#), para.263; [ICC-01/05-01/08-424](#), paras 387, 392, 394, 396, 400.

¹³⁴ See e.g. ICTY, Appeals Chamber, *Prosecutor v. Milomir Stakić*, [Judgement](#), 22 March 2006, Case No. IT-97-24-A, para.219, and references therein.

thesis cannot survive any reasonable reading of this casefile and ignores the overwhelming evidence which shows that Mr Mokom neither knew of nor contributed to any crimes.

43. First, the Prosecution evidence does not show the Anti-Balaka forming, taking up arms, or acting in any way in order to restore constitutional order and bring Bozizé back. A largely illiterate,¹³⁵ uneducated population was not moved to leave their homes and villages, to fight for a change in political leadership. The overwhelming weight of the evidence shows they were fighting to defend themselves from the brutal murderous Seleka rebellion.¹³⁶ **P-0808** was explicit that Bozizé had abandoned them, so “we weren’t thinking about Bozizé at that time. It was simply the desire to survive as a population. Our concern was to try and find peace and safety, security.”¹³⁷ By injecting this “political” aspect into its case theory, to try to create “shared views” between Bozizé’s inner circle and the Anti-Balaka, the Prosecution has built a case that cannot be proven. The Prosecution’s own link between the “Bozizé inner circle” and the “shared views of the Anti-Balaka” is political: it is about a return of Bozizé to power. This is not found in the evidence.

44. There are other problems. The Prosecution relies on Mr Mokom’s alleged knowledge of “the propensity and/or intention of Anti-Balaka elements to commit crimes, including violent crimes, against Muslim civilians”. Here, the *gris-gris* are important. What emerges from the testimony is a vehement and widespread belief that the protection from *gris-gris*, which was accepted as being a real phenomenon,¹³⁸ would only be afforded to those Anti-Balaka who did not commit crimes.¹³⁹ **P-0889** said “the truth is that when the real Anti-Balaka, they believed

¹³⁵ **P-0446**, CAR-OTP-2059-1586-R01, ll.301-303.

¹³⁶ **P-0992**, CAR-OTP-2110-0048-R01, para.48: “[REDACTED].”; **P-0966**: CAR-OTP-00001127, 12:19-25: “If we went to a place where there were Muslims, those who were not fighting, they would be together and it was our duty to protect them, and so on and so forth [...] We rose up and the only goal was to protect our country because the foreigners had come to destroy it. We rose up merely to defend our country. It was also our duty to defend the people of the [CAR].”; **P-1521**, CAR-OTP-00000913, 6:9-12: “Yes, indeed. At the beginning, our objective was to push out Seleka. And when we got to Bangui, the goal was still the same. Even until the time of the elections, we did not have any political goals such as taking power and any such thing. Our objective remained the same.”

¹³⁷ CAR-OTP-00001103, 32:12-17.

¹³⁸ **P-0808**, CAR-OTP-2025-0324-R01, para.52; **P-1077**, CAR-OTP-2107-7027, ll.16-33; **P-1692**, CAR-OTP-2068-0037-R01, para.19; **P-2167**, CAR-OTP-2107-4252-R01, ll.255-258; CAR-OTP-2107-4322-R01, ll.862-863; **P-1815**, CAR-OTP-2130-1184, ll.318-319; **P-0446**, CAR-OTP-2059-1523-R01, ll.471-478.

¹³⁹ **P-1048**, CAR-OTP-2094-0512, ll.600-604: “[...] [REDACTED]”; **P-2138**, CAR-OTP-2092-4048-R01, ll.617-679: “[REDACTED]”; **P-2138**: CAR-OTP-2092-4221-R01, ll.1047-1053: “[REDACTED].”; **P-0446**, CAR-OTP-2059-1602, ll.553-566; CAR-OTP-2105-0430, ll.974-1070; **P-1521**: CAR-OTP-2046-0603, para.88: “[REDACTED].”

that if you steal you will be killed by a bullet, and those who had those *gris-gris* respected that reality because they knew that the laws of the *gris-gris* were serious.”¹⁴⁰

45. What does this mean for the Prosecution case? The evidence shows that Mr Mokom is a man of faith, a pastor, who lives in a compound with a church where he preaches. **P-1961** said “[REDACTED]”,¹⁴¹ giving an even greater basis to accept that he believed, like the other Central Africans who spoke with the Prosecution, in the power of *gris-gris*, and the principles that governed it. **P-0889** even states that the Anti-Balaka’s belief in the power of the *gris-gris* was so strong, that some chose not to eat when they arrived in Bangui rather than eat food prepared by women.¹⁴² On this basis, it is not safe to conclude that Mr Mokom had knowledge “of the propensity and/or intention” of the Anti-Balaka to commit violent crimes against Muslim civilians, given the widely accepted fatal consequences of doing so. Reinforced by the evidence of Mr Mokom’s actions to distinguish between those he considered to be real Anti-Balaka, and those committing crimes, and to stop them and bring peace.

c. his acceptance and approval of such crimes, as demonstrated by his consistent support for Anti-Balaka operations until at least December 2014.

46. Support for the Anti-Balaka operations cannot be equated with acceptance and approval of crimes against Muslim civilians. It was possible to support the Anti-Balaka, and its goals of fighting back against the Seleka, while at the same time working to stop any attacks or crimes against Central African civilians. If support for the Anti-Balaka meant acceptance and approval of crimes, then many Prosecution witnesses should also be in prison, together with a significant swathe of the current Central African military and political establishment.

47. The Prosecution has now walked back to the position that “many” Anti-Balaka fighters would not distinguish between Seleka and Muslim civilians;¹⁴³ relying on a witness who actually said that “[i]n the lower ranks” the perceived enemy “simply became Muslims in general”.¹⁴⁴ **P-0952**, [REDACTED], knew that apart from the exactions attributed to **some** of them, the Anti-Balaka movement has a distant and noble origin in their country's history.¹⁴⁵ As such, even for the Prosecution, it is no longer the case that “the Anti-Balaka” shared a common

¹⁴⁰ CAR-OTP-00000942, 27:21.

¹⁴¹ CAR-OTP-2090-0096-R01, para.6: “[REDACTED]”.

¹⁴² CAR-OTP-00000942, 26:15-24.

¹⁴³ [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 80:11-13.

¹⁴⁴ [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 63:22-23.

¹⁴⁵ CAR-OTP-2087-9017, at 9018: “[REDACTED]”.

view that Muslim civilians were an obstacle to Bozizé regaining power, and had a propensity to commit violent crimes against them on this basis. This accords with **P-0283**'s view that "[REDACTED]"; adopted by some as part of their ancestral destiny, and used as a shield by others to settle scores or benefit themselves through crime.¹⁴⁶

48. Reinforcing this, are the Prosecution witnesses who lay crimes and excesses, often exclusively, at the feet of fake Anti-Balaka who did not understand the true meaning of membership.¹⁴⁷ This meant that crimes were falsely attributed to the real Anti-Balaka elements, when this was not the case.¹⁴⁸ The Prosecution's own evidence is overwhelming that the real Anti-Balaka were considered by the Coordination to be those who were complying with the terms of their ancient beliefs, and the fake Anti-Balaka were the ones committing crimes, which casts doubt on the Prosecution's overly-simplistic theory. Mr Mokom's support was directed at those members of the Anti-Balaka who were acting as real Anti-Balaka, while he actively worked to stop the crimes of those who were not. Civilians were also committing crimes,¹⁴⁹ and Seleka, civilians, and fake Anti-Balaka were also wearing *gris-gris*,¹⁵⁰ making findings that "contributing to Anti-Balaka meant contributing to crimes" impossible to safely reach.

¹⁴⁶ CAR-OTP-2001-5358-R01, at 5361.

¹⁴⁷ **P-0446**, CAR-OTP-2059-1602-R01, ll.570-573; **P-0992**, CAR-OTP-00000930, 41:7-13; CAR-OTP-2062-0722-R01, at 0726: "[REDACTED]"; **P-1521**, CAR-OTP-00000913, 65:11-66:13: "many members of the population engaged in settlement of scores under the mask of the Anti-Balaka movement"; **P-1048**, CAR-OTP-2094-0533-R01, ll.655-657: "[REDACTED]."; **P-1647**, CAR-OTP-2050-0654-R01, para.61: "[REDACTED]."; **P-1921**, CAR-OTP-2081-0072-R01, para.57; **P-2013**, CAR-OTP-2075-1751-R01, para.29; **P-0446**, CAR-OTP-2105-0348-R01, ll.799-822; **P-1337**, CAR-OTP-2039-0471-R01, at 0475: "[REDACTED]."; **P-2012**, CAR-OTP-2091-0202, at 0215: "[REDACTED]"; CAR-OTP-2091-0264-R01, at 0286; **P-2395**, CAR-OTP-2104-0235-R01, at 0237: "[REDACTED]."

¹⁴⁸ **P-1048**, CAR-OTP-2094-0512-R01, ll.561-570: "[REDACTED]."; **P-1858**, CAR-OTP-00001047, 7:23-8:3: "Is it right to say that at the time, still following the weeks of 5 December 2013, that the Anti-Balaka became very popular within the population because they were fighting against the Seleka, and so some civilians started to pretend as well that they were Anti-Balaka, and those civilians sometimes got fake *gris-gris* and they took advantage of this to commit crimes and to loot? A. Yes."; 9:4-7: "Q. Witness, am I right to say that specifically because of that difficulty - i.e., to distinguish people - there were a lot of crimes that were unjustly attributed to Anti-Balaka at the time? A. Yes."

¹⁴⁹ **P-0446**, CAR-OTP-2059-1468-R01, ll.674-717; **P-808**, CAR-OTP-00001105, 82:1-84:20, 86:23-87:21; CAR-OTP-00001107, 9:24-10:9, 16:8-17:3; **P-0884**, CAR-OTP-00001101, 26:11-27:9, 30:25-31:8, 55:21-25; **P-0889**, CAR-OTP-2122-7684-R01, ll.116-124, ll.132-133, ll.217-222; CAR-OTP-00000942, 27:7-28:10; **P-0954**, CAR-OTP-00001011, 31:3-17; **P-0992**, CAR-OTP-2110-0048, para.107; **P-1077**, CAR-OTP-00001135, 32:2-33:12; **P-1339**, CAR-OTP-00000972, 71:25-72:5, 74:7-20; CAR-OTP-00000976, 77:14-79:19; **P-1521**, CAR-OTP-00000913, 42:11-15: "[REDACTED]"; CAR-OTP-00000913, 59:1-23; CAR-OTP-00000915, 26:15-21; **P-1858**, CAR-OTP-00001043, 61:11-19; **P-2652**, CAR-OTP-2126-0175-R01, para.57; **P-2926**, CAR-OTP-00000878, 5:7-6:6.

¹⁵⁰ **P-0446**, CAR-OTP-2059-1602-R01, ll.569-573: "[REDACTED]"; **P-0889**, CAR-OTP-2122-7626-R01, ll.766-772; CAR-OTP-00000942, 27:19-24; **P-1521**, CAR-OTP-00000911, 83:25-84:11; CAR-OTP-00000913, 4:24-5:14; **P-1858**, CAR-OTP-00001047, 7:23-8:3; **P-2462**, CAR-OTP-00000895, 40:3-17: "I saw that the Seleka also wore *gris-gris*... I can't differentiate. The Anti-Balaka and the Seleka wore *gris-gris*."

49. The Prosecution case that Mr Mokom’s consistent support of the Anti-Balaka can be equated with support for crimes, is further weakened by the evidence of steps taken to address crimes, both by Mr Mokom and more broadly by the people on whom the Prosecution have built its case.¹⁵¹ **P-0405** was [REDACTED] crimes had to stop in their respective zones and the population should be free to come and go, and to allow humanitarian access.¹⁵² **P-0446** said that “[a]t one time there were excesses. The coordinator instructed me to look at ways of means of tracking down fake Anti-Balaka committing crimes in the neighbourhoods. That is how come this police was set up.”¹⁵³ **P-0808** described the creation of the Coordination as being to supervise the Anti-Balaka, stop violence, carry the message that they had to work for the restoration of peace and security, and to create the proper conditions for their reinsertion in society.¹⁵⁴ **P-0446** said that when Samba-Panza took power, there was no state. At the Anti-Balaka level, they tried to prevent regrettable behaviour, and worked for the return of peace, including by going to see Andara, the mayor of the 4th Arrondissement. The Coordination worked for peace, and had signed a permanent mission order allowing them to track people down who committed crimes, working closely with the police and the *gendarmerie*. They recovered stolen cars and kidnapped Muslims. Despite the crimes, they worked hard for the return of peace.¹⁵⁵ **P-0966** said that the Coordination decided what to do in cases of theft, how to deal with fake Anti-Balaka who behaved badly. It dismantled two bases in Benz, with fake Anti-Balaka elements. The goal of the Coordination was to locate the Anti-Balaka bases and know the leaders. And when there was disorder, call on these leaders to solve the problems.¹⁵⁶ **P-2232** explained that “there [were] thieves, robbers who operated under the name Anti-Balaka and when they were stopped, they were taken to MINUSCA or Sangaris or to the *gendarmerie*.”¹⁵⁷ **P-0808** said that there were a lot of thieves pretending to be Anti-Balaka, so they introduced badges and created the military police.¹⁵⁸ This kind of corroborated evidence from Prosecution insiders precludes any reasonable conclusion that support for the Anti-Balaka equates to support for crimes.

50. The Prosecution concluded its submissions by reinforcing how it ultimately sees Mr Mokom’s liability, being that he “continued to support the groups united under the National

¹⁵¹ *Supra*, paras.33-37.

¹⁵² CAR-OTP-2107-4618-R01, ll.21-27; 440-452.

¹⁵³ CAR-OTP-00000936, 8:14-16.

¹⁵⁴ CAR-OTP-00001103, 57:11-21.

¹⁵⁵ CAR-OTP-00000936, 83:15-85:16.

¹⁵⁶ CAR-OTP-00000952, 29:1-31:18.

¹⁵⁷ CAR-OTP-00000901, 40:16-17.

¹⁵⁸ CAR-OTP-00001103, 38:21-39:10.

Coordination now to make the Anti-Balaka stronger and more effective, yes, but he chose to proceed anyway, when a reasonable person would have walked away... Mr Mokom made his choice. And, your Honours, he should now be held responsible for the foreseeable consequences of that choice.”¹⁵⁹ This framing would give rise to criminal responsibility to many others who similarly did not “walk away”, but acted to make the Anti-Balaka more effective, regularised, disciplined, and controlled. Or even those who kept supporting or contributing to its legitimate aim of self-defence against Seleka combatants. It also ignores the reality that, at the time that the Prosecution seeks to impose individual criminal responsibility on Mr Mokom for murder, rape and persecution, he was acting to stop the same acts being committed against Central Africans on a much larger scale. Any assessment of what a “reasonable person” would have done, must take that into account. Mr Mokom’s support for the Anti-Balaka does not demonstrate “acceptance and approval” of the charged crimes. It shows his abhorrence for these very crimes, and his determination for a return to peace.

C. THE EVIDENCE DOES NOT SHOW THAT MR MOKOM AIDED & ABETTED CRIMES

51. **CONTRIBUTION:** The Prosecution must demonstrate that Mr Mokom’s contribution had a causal effect; that it “furthered, advanced or facilitated the commission” of the crime.¹⁶⁰ The Prosecution’s evidence of the alleged contributions (logistics, coordinating operations, giving money, endorsing Anti-Balaka crimes) is already insufficient. No attempt is made by the Prosecution to link any of these alleged contributions to a single charged crime in the case.

52. **MENS REA:** The Prosecution must demonstrate that Mr Mokom made his contribution for the purpose of facilitating the charged crimes,¹⁶¹ and he was aware that the principal offences will occur in the ordinary course of events.¹⁶² There is nothing that demonstrates that Mr Mokom did anything with the purpose of facilitating any of the 20 charged crimes. The weight of the evidence shows the opposite. This is not a conclusion that can safely be drawn. The Prosecution is silent as to the point at which Mr Mokom is alleged to have formed the purpose intent. The Prosecution must prove that Mr Mokom held this intent **at the time the**

¹⁵⁹ [ICC-01/14-01/22-T-006-CONF-ENG ET](#), 85:7-20.

¹⁶⁰ [ICC-01/05-01/13-1989-Red](#), para.94.

¹⁶¹ Article 25(3)(c); [ICC-01/04-01/10-465-Red](#), para.274; Kai Ambos, *Treaties on International Criminal Law Volume 1: Foundations and General Part* (Oxford University Press 2021), p. 240; Kai Ambos, ‘Article 25: Individual Criminal Responsibility’ in Otto Triffterer and Kai Ambos (eds), *The Rome Statute of the International Criminal Court: A Commentary* (4th ed, 2022), p. 1225.

¹⁶² [ICC-01/05-01/13-1989-Red](#), para.98.

alleged contribution was made. It does not point to evidence that shows, for example, that Mr Mokom had the purpose to facilitate the charged crimes either before or on 5 December, or in the period where he was taking steps to stop them. That evidence does not exist.

**D. THE EVIDENCE DOES NOT SHOW THAT MR MOKOM COMMITTED
CRIMES THROUGH A GROUP ACTING WITH A COMMON PURPOSE**

53. **GROUP ACTING WITH A COMMON PURPOSE:** The Document Containing the Charges states that the group acting with a common purpose is “the Anti-Balaka”.¹⁶³ This cannot be established either on the evidence, and is undermined by the Prosecution’s own concessions.¹⁶⁴ Not all the Anti-Balaka shared a common purpose to murder and rape Muslim civilians. Certainly, those who had undertaken the initiation and were wearing *gris-gris* had the opposite purpose. By lacking any nuance, the Prosecution’s case is removed from the reality.

54. **CONTRIBUTION:** The threshold for contribution here is higher than for aiding and abetting; as a counterbalance to the lower *mens rea* requirement, and the removal of the defendant from the criminal acts themselves. The Prosecution must establish that Mr Mokom made a significant¹⁶⁵ contribution to the commission of a crime by a group of people acting with a common purpose. It is insufficient to demonstrate a contribution to the group in general. The contribution must be to the specific crime charged.¹⁶⁶ The same problems exist. The Prosecution cannot demonstrate that the contributions as set out in the charging documents made at least a substantial contribution to the charged crimes. Again, that step has not been attempted, and cannot be shown on the evidence.

55. **MENS REA:** The Prosecution must demonstrate that Mr Mokom’s substantial contribution to the specific charged crimes was made with the aim of furthering the criminal purpose of the group, or in the knowledge of the intention of the group to commit the crime.¹⁶⁷ Nowhere has the Prosecution explained how this part of their case works. Mr Mokom did not consider the Anti-Balaka to be a group that had a common purpose to commit murder, rape, deportation, or persecution, let alone that he acted with this knowledge in making a substantial contribution to each of the charged crimes.

¹⁶³ [ICC-01/14-01/22-174-Conf-AnxA](#), para.4.

¹⁶⁴ *Supra*, para. 47.

¹⁶⁵ [ICC-01/04-01/10-465-Red](#), para.283; [ICC-01/04-01/07-3436-tENG](#), paras.1632-1633.

¹⁶⁶ [ICC-01/04-01/07-3436-tENG](#), para.1632.

¹⁶⁷ Article 25(3)(d).

Respectfully submitted,



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Friday, October 13, 2023