

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Rosario Salvatore Aitala
8 Confirmation of Charges Hearing - Courtroom 1
9 Tuesday, 24 September 2019
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:02] All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE MINDUA: [9:31:24](Interpretation) Good morning to
14 everybody. The session shall resume. I would like to welcome you all to the fourth
15 day of the confirmation of charges hearing, to all those individuals present today in
16 and around the courtroom and to all those people present in the public gallery.
17 Court officer, could you please call the case. Thank you.
18 THE COURT OFFICER: [9:32:07] Good morning, Mr President, your Honours.
19 The situation in the Central African Republic II in the case of the Prosecutor versus
20 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:32:32](Interpretation) Thank you very much,
23 court officer.
24 Once again, I would like to welcome all the parties and all the participants and the
25 suspects, Mr Yekatom and Mr Ngaïssona. I would like to call upon the parties and

1 participants to introduce themselves, starting with the Office of the Prosecutor,
2 please.

3 Mr Vanderpuye.

4 MR VANDERPUYE: [9:33:07] Good morning, Mr President, good morning, your
5 Honours, good morning, everyone. Today, the Office of the Prosecutor is
6 represented by Olivia Struyven, Eric Iverson, Pierre Belbenoit-Avich, Irina Galupa,
7 Lillian Robb, Yassin Mostfa, Manochitra Prathaban, George Mugwanya, Maria
8 Berdennikova and Nicholas Leddy. I'm Kweku Vanderpuye, good morning again.

9 PRESIDING JUDGE MINDUA: [9:33:39](Interpretation) Thank you very much,
10 Mr Prosecutor.

11 Now I shall turn to the teams -- the Defence teams, commencing with the Defence
12 team for Mr Yekatom.

13 Counsel Dimitri, please.

14 MS DIMITRI: [9:33:50] Good morning, Mr President, good morning, your Honours,
15 good morning to my colleagues.

16 This morning, the Defence of Mr Yekatom is represented by Peter Robinson, Yuqing
17 Liu, Jason Antley, Elvire Mbaye and myself, Mylène Dimitri.

18 PRESIDING JUDGE MINDUA: [9:34:10](Interpretation) Thank you very much,
19 Counsel.

20 Now Mr Knoops, could you please introduce your team.

21 MR KNOOPS: [9:34:18] Good morning, your Honours.

22 The team of Mr Ngaïssona is represented today by Ms Lauriane Vandeler,
23 Ms Knoops-Hamburger, Mrs Antonina Dyk, Marion Carrin, Madam Sara Pedroso,
24 Maître Zokou and Maître Kokongo (Interpretation) there, to the left. And Ms
25 Barbara Szmatala, one of our interns, she's on the left side, nearby Mr Kokongo,

1 Mr President.

2 PRESIDING JUDGE MINDUA: [9:34:57](Interpretation) Thank you very much,
3 Counsel.

4 Now, I should like to move to the Legal Representatives of Victims. Who would like
5 to start? Ms Massidda.

6 MS MASSIDDA: [9:35:13] (Interpretation) Good morning, Mr President,
7 your Honours.

8 I am called Paolina Massidda, I am part of the Legal Representatives of Victims for
9 the other crimes. The team is assisted this morning by Madam Asso, by
10 Madam -- Mr Larivière and Mr Innocent Mpoko is also in the courtroom.

11 PRESIDING JUDGE MINDUA: [9:35:40](Interpretation) Thank you very much,
12 Madam Counsel.

13 MS RABESANDRATANA: [9:35:49] (Interpretation) Mr President, my name is
14 Elizabeth Rabesandratana and I am part of the team of the legal representatives for
15 the other crimes.

16 PRESIDING JUDGE MINDUA: [9:35:58](Interpretation) Thank you very much,
17 Counsel.

18 MS DOUZIMA-LAWSON: [9:36:05] (Interpretation) Mr President, your Honours,
19 my name is Marie-Edith Douzima-Lawson and I am a legal representative for the
20 victims of the other crimes in this case.

21 PRESIDING JUDGE MINDUA: [9:36:17](Interpretation) Thank you very much,
22 Counsel.

23 MR DANGABO MOUSSA: [9:36:21] (Interpretation) Good morning, Mr President,
24 your Honours, good morning to all. My name -- I am the legal representative for the
25 other crimes, my name is Abdou Dangabo Moussa.

1 PRESIDING JUDGE MINDUA: [9:36:38](Interpretation) Thank you very much,
2 Counsel.

3 MR FALL: [9:36:41] (Interpretation) Good morning, Mr President, your Honours.
4 My name is Yaré Fall, I am also a member of the team representing the victims of the
5 other crimes.

6 PRESIDING JUDGE MINDUA: [9:36:53](Interpretation) Thank you very much,
7 Counsel.

8 MR SUPRUN: [9:36:57] (Interpretation) Good morning, your Honour, good
9 morning, your Honours. The child soldiers are today represented by Counsel Joseph
10 Akem-Mevoungou, counsel out in the field and myself, Dymtro Suprun, legal counsel
11 for the victims.

12 PRESIDING JUDGE MINDUA: [9:37:14](Interpretation) Thank you very much,
13 Counsel.

14 On our side, you will have noted that there is no change with regard to the
15 composition of the bench.

16 Now according to our calendar, we shall today be continuing with the submissions,
17 the oral submissions and conclusions on the part of the Ngaïssona Defence team.
18 So I will now hand over to Mr Knoops for the rest of his submissions.

19 Mr Knoops, please.

20 MR KNOOPS: [9:37:52] Good morning, Mr President, your Honours. Good
21 morning, everyone in the courtroom.

22 I ask the court officer, please, to display our table of contents. There's a slight change
23 which we made yesterday. The topics remain the same, but we just made the change
24 in the order. As the Court might notice, we delved yesterday in the paragraphs 2.1.,
25 2.2. and 2.3., dismantling the Prosecution's theory on the common plan and

1 organisation policy.

2 I will use, Mr President, today, two hours, 40 minutes to delve into paragraph 2.4. and
3 paragraph 3. of the submissions.

4 Twenty minutes after my submission, Ms Marion Carrin will address the Court on the
5 speeches of Mr Ngaïssona, and the last 30 minutes of our six hours will be addressed
6 by Maître Zokou and Maître Kokongo with concluding observations on the role of Mr
7 Ngaïssona during the conflict.

8 It's my obligation now to address the Court about the fourth topic, the absence of
9 control on the part of Mr Ngaïssona over the ComZones. That's our fourth topic, as
10 you might see in paragraph 2 of our submissions, if the Court would at all determine
11 that an organisation, under Article 7 section 2 of the Statute, would have existed
12 during the conflict.

13 The position, the only position, Mr President, of Mr Ngaïssona was when the conflict
14 was such that he accepted to speak in the name of those groups who had come to him
15 to ask him to be their voice. To be their voice to represent them before the
16 government and the international community, as most of them were not able to even
17 write. They were illiterate.

18 Mr Ngaïssona accepted this position on the condition that violence would cease. His
19 role was limited to conveying the so-called Anti-Balaka demands to the government
20 or the international organisations.

21 When Mr Ngaïssona returned to Bangui in 2014, the movement, the so-called
22 Anti-Balaka movement was well under its way -- on its way. Mr Ngaïssona was
23 only focusing on preventing the return of violence. That was his task.

24 As the Prosecution evidence shows - and we will demonstrate this in the next
25 submissions - up until the time of the so-called Pareto and Brazzaville summit and

1 talks in June-July 2014, Mr Ngaïssona started being in touch with some of the
2 ComZones from the provinces to the effect of coordinating peace.

3 He did - at that time, Mr President - not even have precise knowledge of whom these
4 individuals were and certainly did not exercise any control over them.

5 Now, this is confirmed by several Prosecution own witnesses and we have here found
6 four of those individuals.

7 First, P-1521, explaining that while the coordination may have been created in
8 January, it was not even functioning at that time as the situation was too tense.
9 CAR-OTP-2046-0603 at 0615, paragraph 75.

10 And this is, Mr President, consistent with P-0405 statement to the investigators of the
11 Prosecution that Mr Ngaïssona was officially chosen to speak in the name of the
12 Anti-Balaka during a general assembly only on 17 June 2014, when the movement
13 was well on its way. CAR-20 -- 2107-4580-R01 at 4606 and 4608.

14 The second Prosecution witness, P-0966, states to the investigators of the OTP that the
15 Anti-Balakas in the provinces had never heard of Mr Ngaïssona. Never heard of
16 him. But they listened to another individual, which you find in the DCC, whose
17 name I will not mention here, CAR-2031-0241-R01 at 0257, paragraph 89.

18 And it is this witness, your Honours, who also explains to the investigators that
19 Mr Ngaïssona did not know the real identity of the real Anti-Balaka. So whoever
20 came to him introducing themselves as an Anti-Balaka, Mr Ngaïssona had just to
21 believe that individual. He had no clue who these individuals were.

22 CAR-2031-0241 -- sorry, 0241-R01 at 0257, paragraph 94 of the witness statement.

23 A third Prosecution own witness, P-0568, also assessed that the contact made between
24 the Anti-Balaka from Bangui and those from the provinces during the Brazzaville
25 forum occurred for mere administrative reasons linked to the DDR process. Nothing

1 to do with an alleged common plan, your Honours.

2 The armed groups had to be quickly registered, according to this witness,

3 CAR-OTP-2045-1335 at paragraphs 15 till 22. However, the same witness, P-0568,

4 even states to the investigators that the efforts to coordinate with the provinces for the

5 purposes -- for the DDR process, the reconciliation process, did not work out because

6 I quote from his French statement:

7 (Interpretation) "Because everybody in that little group was already saying that they

8 were the boss of their own group and that they didn't need to report back to

9 anybody."

10 (Speaks English) CAR-OTP-2045-1335 at paragraph 30 till 32.

11 And the last fourth Prosecution own witness again confirms, Mr President, again

12 confirms that it was difficult to control individuals who were willing to take up arms.

13 P-2027 is clear in his statement to this extent and even states that Mr Ngaïssona was

14 trapped, he was trapped as a peace coordinator. He was appointed as a coordinator

15 but powerless, powerless as regards to a movement impossible to control, and not in

16 any position to leave due to the international community's expectation.

17 That was the trap in which Mr Ngaïssona was facing. He couldn't back-track.

18 These are the words, Mr President, of the Prosecution's own witness P-2027, "He

19 couldn't back-track." OTP-2078-0059-R01 at 008, paragraphs 134 till 135.

20 As we will develop, Mr President, shortly, the decisive evidence that Mr Ngaïssona

21 was not in control of these so-called Anti-Balaka groups arises from the fact that these

22 groups continued to operate whilst these were officially already dissolved.

23 I think there's no better evidence to attest -- to contest the Prosecution theory than just

24 pointing to this reality, Mr President. Contrary -- contrary to the allegations in

25 paragraph 69 of the DCC, a proper reading of the evidence - mostly, by the way,

1 media articles - dictates that Mr Ngaïssona did not claim as the Prosecution suggests,
2 he did not claim to have as many as 70,000 men under his control. That's an
3 inference, but rather, that the movement at that time, the movement in its totality, as
4 far as the coordinator could oversee, counted approximately 70,000 men,
5 Mr President.

6 Mr Ngaïssona's point was -- his point was that the Anti-Balaka had not been listened
7 to. That they have not been listened to and that there was an urgent need for a DDR
8 programme, a reconciliation programme.

9 You will see one of these media articles dates from 13 February 2014, even notes the
10 discrepancies between the figures mentioned by Mr Ngaïssona, a 70,000-man
11 movement, as compared to those mentioned by someone presented as the CEMA of
12 the Anti-Balaka and a person called Mr Richard Bejouane. And it reports that
13 certain AFP military sources would have concluded that these numbers were not
14 serious and that it would create some doubts as to the very existence of these figures.
15 Now in his capacity, Mr President, as a political coordinator, Mr Ngaïssona had no
16 role, no alleged formal command of the Anti-Balaka. Nor based on the evidence
17 before the Chamber, the Court can detect that he was involved at the operational level
18 to the requirement -- as to the extent required or the required extent, I'm sorry.

19 The OTP material does not provide substantial grounds to believe that Mr Ngaïssona
20 had a military operational role in any operation in 2013-14.

21 For instance, none of the Prosecution witnesses describing the alleged attack on
22 Bangui on 5 December 2014 implicates Mr Ngaïssona in this attack. He's totally
23 absent in their narratives. In all the Prosecution witnesses relating to this attack, you
24 will not find Mr Ngaïssona. We also refer in this regard to P-1951.

25 Our conclusion, interim conclusion: The allegation as to Mr Ngaïssona having

1 control over the ComZones is not established at the requisite standard. Indeed, the
2 OTP material does not provide sufficient evidence to show substantial grounds to
3 believe that - first, Mr Ngaïssona appointed the ComZones; second, he was giving
4 instructions and orders to them, especially regarding military operations, which
5 would have been complied with; third, it doesn't show that he was able to summon
6 the ComZones to attend meetings as from January 2014 during which orders would
7 have been issued; and fourth, it doesn't show that Mr Ngaïssona had the power to
8 discipline ComZones and did in fact do so.

9 We will develop these four points in the next hour, Mr President, before the break,
10 starting with the first point, is there evidence to the extent of substantial grounds to
11 believe that Mr Ngaïssona appointed ComZones? The answer is no. You will find
12 in paragraph 64 of the DCC, the allegation to this extent, Ngaïssona formally
13 appointed chiefs of discrete Anti-Balaka groups and areas as ComZones et cetera.
14 But Mr President, also here, like we'd shown yesterday, the Prosecution evidence
15 contradicts its own evidence. It shows on the contrary that the chiefs of ComZones
16 were all proclaimed as such in their respective towns or villages based, for instance,
17 on - first, previous experience as a chief in that region; and secondly, because these
18 individuals were popular. They were popular in the area amongst the local
19 population. This was the reason why those people were chosen as ComZones in the
20 beginning.

21 It had nothing to do with any appointment of Mr Ngaïssona. He wasn't even there
22 at that time. For instance, if you look, your Honours, to P-0801, a Prosecution
23 witness clearly testified to the investigators of the OTP that zone commanders were
24 people who proclaimed themselves as zone commanders. You will find it in the
25 OTP-02074-2369 at 2375, lines 200 till 204.

1 This witness, P-0801, takes the example of Bouar, which had its own organisation, the
2 witness says, and whom local Anti-Balaka gave the names of their ComZones to
3 Bangui. This witness concludes that it would have therefore been difficult to remove
4 anyone in this position because this was something, as the witness indicates, which
5 was dealt with locally internally. It was a local-internal affair who was to be a chief
6 and was not to be a chief. You'll find this in the same reference at 2379, lines 323 till
7 335 of the statement of this witness, P-0801.

8 A second Prosecution witness, P-0884, also confirms, your Honours, that the
9 functioning chief in the relevant location would automatically be ComZone and
10 confirms that this was, for instance, the situation in Boda. CAR-OTP-2072-1739 at
11 1764 till 1765, lines 856 till 898.

12 Now, we ask the Court to go two minutes in private session because we deal now
13 with a Prosecution witness who can be identified by mere reference.

14 PRESIDING JUDGE MINDUA: [9:54:38](Interpretation) Court officer, private
15 session, please.

16 (Private session at 9.54 a.m.)

17 THE COURT OFFICER: [9:54:41] We are in private session, Mr President.

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16 (Open session at 10.01 a.m.)

17 THE COURT OFFICER: [10:01:02] We are back in open session, Mr President.

18 PRESIDING JUDGE MINDUA: [10:01:11](Interpretation) My thanks, court officer.

19 Counsel, proceed, please.

20 MR KNOOPS: [10:01:15] Mr President, you have heard now six witnesses. We

21 have a seventh one. The Prosecution's own witness repeat themselves. P-1521, I

22 quote from his statement:

23 "The original company commanders became the 'real' ComZones." You find this in

24 his statement 2046-0603-R01 at 618, paragraph 89; ultimately, nothing to do with any

25 appointment from a person outside this region.

1 Our conclusion, Mr President, the interim conclusion of this assessment is that at least
2 seven Prosecution witnesses established that there was no formal appointment
3 organised from Bangui, but rather that the ComZones were appointed -- or
4 self-proclaimed locally by the local people for various personal, emotional, financial,
5 military operational reasons. There are more arguments, your Honours, to
6 undermine the Prosecution's thesis that Mr Ngaïssona was in charge of appointing
7 ComZones. The Prosecution material shows indeed - first, the ComZones existed,
8 pre-existed the return of Mr Ngaïssona in Bangui and the creation of the coordination.
9 This is confirmed by OTP witness P-0966, and you will find this in paragraph 72 of his
10 statement, 2031-0241-R01 at 0254, paragraph 72.
11 And secondly, the coordination had to find out ultimately as to whom the ComZones
12 were and they have to ask this through a list they were receiving in Bangui, witness
13 P-1962. Mr Ngaïssona had no idea who these individuals were.
14 Also confirmed by witness P-810 (sic) reference 2074-2369 at 2379, lines 330 till 331.
15 He literally said, Mr President:
16 "And in the end, they were the ones who gave the name of their zone Commander
17 here ... to Bangui here to Ngaïssona."
18 It was nothing to appoint. Everyone appointed themselves. It was just a matter of
19 handing over the list of who were the ComZones already existing.
20 Of course, Mr Ngaïssona needed the list as a peace coordinator to start doing his job,
21 but not the other way around, Mr President. That's not how we work in law; first,
22 the facts and then the conclusions.
23 The Prosecution evidence further demonstrates that even before the Brazzaville
24 agreement, there was no structure. There were various isolated ComZones and their
25 base fighting.

1 Prosecution witness 1521 clearly states in his statement at paragraph 96:

2 "The ComZone structure in the provinces was put in place after ... Brazzaville ..."

3 After Brazzaville.

4 "... in ... July 2014. Before, there was no structure, just ComZones and their bases
5 fighting. We were in contact with them and invited them to Brazzaville."

6 Mr President, these are the words of a Prosecution witness. Witness 1521 clearly
7 contests the whole thesis of the Prosecution that it was Mr Ngaïssona who appointed
8 these individuals. Reference 2046-0603-RO1 at 0619, paragraph 96. Again, I ask the
9 Court's indulgence for a private session of one minute because we are referring now
10 also to two other witnesses of the Prosecution.

11 PRESIDING JUDGE MINDUA: [10:06:01](Interpretation) Court officer, private
12 session, please.

13 (Private session at 10.06 a.m.)

14 THE COURT OFFICER: [10:06:10] We are in private session, Mr President.

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23 (Open session at 10.10 a.m.)

24 THE COURT OFFICER: [10:10:44] We are back in open session, Mr President.

25 PRESIDING JUDGE MINDUA: [10:11:00](Interpretation) Thank you very much.

1 Please proceed, Counsel.

2 MR KNOOPS: [10:11:05] So what is the conclusion we can draw from this analysis?

3 Those eight Prosecution witnesses? The conclusion is that all those own Prosecution
4 witnesses clearly undermine the thesis that Mr Ngaïssona would have formally
5 appointed ComZones before Brazzaville.

6 The different ComZones had proclaimed themselves - as the evidence suggests - or
7 had been appointed locally long before Mr Ngaïssona's return to the
8 Central African Republic. And Mr Ngaïssona's inquiry as to whom these
9 individuals actually were and to contact them on behalf of the peace process only
10 started much later - that's what one witness said - after Brazzaville.

11 This all happened - this making contact, getting a list, confirming any
12 appointments - happened in the context of the DDR and Mr Ngaïssona's work with
13 the government and international community to bring back peace for which he had
14 need to have contact with representatives from the provinces. Otherwise, a peace
15 coordinator cannot do his job clearly.

16 This is supported by the two documents the Prosecution relies on, the so-called *titre de*
17 *reconnaissance* (Interpretation) formal acknowledgment.

18 (Speaks English) One is not dated, the Court might digest that one is not dated, but
19 based on other evidence, that should have been issued on June 2014, this document.

20 And the other document you might see is dated 21 August 2014.

21 Interestingly, Mr President, these two documents feature around the Pareto and
22 Brazzaville summits, which took place on 16 June and 23 July 2014 respectively.

23 Clearly, the purpose of those documents at that time was to give a mandate to
24 representatives and coordinators to supervise and guarantee sustainable peace of the
25 population in the relevant locality.

1 In brief, the Prosecution failed to show substantial grounds to believe that the
2 coordination would have appointed ComZones and would have had control over
3 them through the means as asserted in the pages 59 till 68 of the DCC.

4 This was the first point on the control section, no appointment. Second point, did
5 Mr Ngaïssona give instructions or orders to ComZones especially regarding military
6 operations?

7 Also here, the answer is a clear no.

8 The Prosecution bases itself on paragraphs 74 and 143 of the DCC that as a national
9 coordinator Mr Ngaïssona gave direct instructions to ComZones in the field and
10 instructed them through other individuals.

11 Now, let us review the materials before the Chamber and the Court might conclude
12 with the Defence that this evidence does not support at all this allegation.

13 First, witness P-0808, his statement show clearly, for instance, that far from being
14 combat-related, the purpose of the missions for the coordination was simply and only
15 to give information to the Anti-Balaka regarding the progress of the peace process;
16 and secondly, to convey the content of their discussions with the government and
17 international organisations.

18 You find this in the statement of the Prosecution witness P-080 (sic) reference
19 2093-0010-RO1 at 0026, paragraph 88.

20 It's not only this witness, Mr President, your Honours, there's a second Prosecution
21 witness who corroborates this, P-0888, reference 2031-0217 at 0226, paragraph 59.

22 And a third witness, P-1048, reference 2094-0593 at 0598 and 0608.

23 Therefore, you have here three Prosecution witnesses who attest to the fact that it had
24 nothing to do with combat-related missions.

25 If one looks at the Prosecution material within the period of the charges, I mean it

1 shows that the vast majority of the so-called instructions - which, according to these
2 three witnesses just mentioned - had nothing to do with combat, but simply keeping
3 them abreast about the progress of the peace process.

4 But you will find, Mr President, in the materials of the Prosecution also other
5 evidence that the coordination in reality and that of Mr Ngaïssona, in particular, in
6 relation to ComZones, was totally unrelated, totally unrelated to any combat.

7 And therefore, we have four pieces of evidence detected in the Prosecution material.

8 First, appeals to cease hostilities -- appeals to cease hostilities, and I refer to the
9 documents 2066-1601 at 1656 and the second document, 2108-0050 at 0050 and 0051.

10 Two documents who show that these so-called instructions from the coordination and
11 Mr Ngaïssona, in particular, were related to appeals to stop any hostilities.

12 A second type of evidence in the Prosecution material, appeals to leave humanitarians
13 move around freely, sometimes requiring for help and to help the UN forces, this is
14 the type of measure that witness P-080 (sic) describes as being taken by Mr Ngaïssona
15 himself. An appeal from Mr Ngaïssona: Don't touch the humanitarian aid. Help
16 the UN. A clear appeal. Reference 2093-0010-R01 at 0029, paragraph 107. A
17 Prosecution witness again.

18 Third, evidence which shows that Mr Ngaïssona was involved in appeals to
19 dismantle roadblocks in the application of the Brazzaville talks, and this is evidence
20 by, again, the same witness, P-0808, and the same reference but ends at paragraph 89
21 of the witness statement.

22 And this second witness for this support is P-1048, reference 2094-0593-R01 at 0599 till
23 600, lines 206 till 248. Mr President, this witness, P-1048, specifically says that the
24 dismantling of the roadblocks was organised with the chiefs of the neighbourhoods
25 and the mayors. It was not done in secret; it was done in public. And he attests to

1 all the efforts made by Mr Ngaïssona to dismantle the barriers, to go back to peace to
2 assist the international community.

3 I quote from his statement at 0605. This is P -- witness Prosecution P-1048, the
4 quotation from French:

5 (Interpretation) "And there it is, it was one among coordinator Ngaïssona's efforts
6 that I liked. He took great pains, he devoted his life to this. He took great pains to
7 make sure that peace was restored in that area. The little money he had for his
8 family he had to give it to us or to regional officials to effect the return to peace in that
9 region, prefecture or sous-préfecture to dismantle all the barricades and to allow
10 people to move through freely, to speak of peace, to speak of reconciliation, for
11 a genuine return to peace in our country. And that's what I also -- that's what I liked
12 with what he did in the process of returning to peace."

13 (Speaks English) The Prosecution's own witness, Mr President. Nothing to add to
14 this observation by this witness.

15 The last type of documents of evidence from the Prosecution's own docket is the
16 so-called instructions which appeal to provide a list identifying the Anti-Balaka for
17 the purpose of the DDR. The list Mr Ngaïssona asked for - because he had no clue
18 who these people were - were simply to know who he was speaking to for the
19 purpose of the DDR. And this is also confirmed by a Prosecution witness, P-1962.
20 P-1962 clearly says that Mr Ngaïssona asked for the list because he had no idea who
21 these people were in the provinces. Transcript page 2068-0037-RO1 at 0058, paragraph
22 101.

23 So, Mr President, despite the attempt of the coordination to reach out to ComZones to
24 bring back peace in the context of the Brazzaville talks, certain witness testimonies
25 show - even Prosecution witnesses, not our witnesses, their witnesses - show that

1 these attempts were also ignored and that the aforementioned appeals, the numerous
2 appeals you find in the evidence of Mr Ngaïssona were not successful.

3 And also here, there are several Prosecution witnesses. To start with, the same
4 witness, P-0808, he admits that they were helpless as far as the provinces were
5 concerned as they did not have the means to travel there. You find it in paragraph
6 84 of his statement, which I already gave the reference to.

7 He also states - the same witness - that requests in communiqués could be successful
8 for a period, but afterwards people would just do the same thing. Paragraph 124 of
9 the statement of Mr P-0808.

10 He also explains that all of them had good intentions, but that there were certain
11 realities and that there was nothing they could do about it. Paragraph 107 and 122 of
12 his statement.

13 The second Prosecution witness, P-1193, specifies that Mr Ngaïssona was against the
14 practice of barricades for the purpose of racketeering, but that it was beyond his
15 control. It was beyond his control and his power as a peace coordinator to stop it.
16 Reference 2045-0048-R01 at 0056, paragraph 51.

17 The third Prosecution witness also explains that during a meeting in Berberati,
18 Mr Ngaïssona's message was conveyed that the Anti-Balaka were no longer a group
19 of combatants. He conveyed this: You're no longer a group of combatants; you
20 should stop. It had become a political association. To stop the violence and that they
21 should not carry weapons longer -- that's a Prosecution witness saying this.

22 However, the witness explains that nothing really changed after that. The elements,
23 the Anti-Balaka elements continued to commit crimes and attack individuals
24 according to this witness. You find this also in this witness statement in reference
25 number 20 -- 2100-1921-R01 at 1931, paragraph 48, this witness. Your Honours, no

1 evidence of Mr Ngaïssona's alleged calls or orders to launch any attack whatsoever
2 has been adduced by the Prosecution. The only evidence in relation thereto can be
3 an insider which explains that the role of the operational commanders was to verify
4 that an attack was legitimate and have the chief of staff manage the response. And
5 he alleged -- he alleged, he says, that they would then inform Mr Ngaïssona of the
6 relevant attacks, who might then inform the authorities so that the international
7 community would be aware of the attack. That is one of the witnesses the
8 Prosecution relies on.

9 But this statement, Mr President, contradicts the theory of the Prosecution in that it
10 shows that not only the Anti-Balaka did not launch any attacks, they were in
11 a defensive mode - if you read the statement of this witness very closely - and were
12 only responding, responding to attacks.

13 But for a second reason this witness contradicts the Prosecution theory in that
14 Mr Ngaïssona did not give any order to launch an attack. He was only informed,
15 according to this insider, informed of the Séléka's attacks to the effect of liaising this
16 to the international community about this information in congruence with his role as
17 a political coordinator.

18 Now, the mere passing of information as a peace coordinator of certain attacks from
19 one person to another can hardly impose criminal liability - I said in my introduction
20 yesterday - otherwise, we could also charge a lot of other political leaders in the world
21 for simply passing information of crimes, but not doing anything about it in the
22 submissions of the Prosecution. The witness the Prosecution is referring here, you
23 find in reference number 2046-0603-RO1 at 0616, paragraph 80.

24 So this witness statement cannot corroborate the suggestion that Mr Ngaïssona gave
25 orders to ComZones to attack civilians. All the other Prosecution witnesses,

1 Mr President, have stated that ComZones would receive so-called instructions from
2 the coordination directly or indirectly. All those witnesses remain silent as to the
3 type of instructions they would have been receiving.

4 There's no witness who clearly says what instructions this would entail and certainly
5 not that Mr Ngaïssona gave direct orders to kill civilians. The Prosecution ignores
6 its own witness statements establishing Mr Ngaïssona would not give orders to the
7 ComZones. There are at least three OTP witnesses who attest to this. It is P-1193,
8 P-0975 and P-1077.

9 P-1193 states that Mr Ngaïssona would never ask anything to do -- would never ask
10 anything to the Anti-Balaka and that he never attended a coordination meeting which
11 an order would have been given to attack -- to attack the Muslim population. And
12 that's in the reference 2045-0048-R01 at 0055, paragraph 42. Conclusion: No evidence
13 beyond the requisite standard is presented that Mr Ngaïssona would have had any
14 military operational control over the Anti-Balaka via the instructions given to them.
15 That's the second point.

16 The third point: Is there evidence that Mr Ngaïssona was kept abreast of military
17 events on the ground and that ComZones generally complied with his orders? Also
18 the evidence suggests a clear no.

19 This allegation you find in paragraph 145 of the DCC. The Prosecution avers that
20 the ComZones would keep the coordination abreast of the events on the ground,
21 including operations, casualties and the state and number of the elements under their
22 control.

23 Now, Mr President, the evidence doesn't say this.

24 What does the evidence say? The evidence says that the Prosecution did not
25 produce one single incident report addressed to Mr Ngaïssona to establish that he

1 was directly kept abreast of the events on the ground.
2 Secondly, the testimonial evidence presented to the Chamber is extremely vague as to
3 which type of information Mr Ngaïssona would have directly, but most of the time
4 apparently indirectly be kept abreast of.
5 Witnesses do mention the situation in the relevant locality, such as P-1962; or what
6 was happening, like witness P-0808; or how the Anti-Balaka were doing, the words of
7 witness P-1858 at para 112. But there's nothing in it to suggest that Mr Ngaïssona
8 received detailed incident reports to assess what happened on the ground.
9 We now move for one minute to private session to address two of the Prosecution
10 witnesses, please.

11 PRESIDING JUDGE MINDUA: [10:32:40](Interpretation) Court officer, private
12 session, please.

13 (Private session at 10.32 a.m.)

14 THE COURT OFFICER: [10:32:46] We are in private session, Mr President.

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20 (Open session at 10.36 a.m.)

21 THE COURT OFFICER: [10:36:04] We are back in open session, Mr President.

22 PRESIDING JUDGE MINDUA: [10:36:18](Interpretation) Thank you very much,
23 Mr Knoops.

24 MR KNOOPS: [10:36:20] Now, in the same vein, Mr President, is there evidence that
25 the ComZones would comply with the so-called orders of Mr Ngaïssona? Including

1 reporting orders, assuming that those orders were established of course, which we
2 think they are not established.

3 Also, this question has to be answered in the negative. There is, on the contrary,
4 Prosecution evidence - its own witnesses who gave examples of ComZones who
5 would not report to the coordination, such as Andjilo, who, according to P-0808 did
6 whatever he wanted without receiving orders from anyone as the coordination had
7 no control over him and that specific group. Reference number 2093-0010-R01,
8 paragraph 98.

9 Another insider of the Prosecution material explains that the orders would not come
10 from Mr Ngaïssona, but from a person with the name Ndomaté and Mr Namsio and
11 that he would not fully implement these alleged orders. Reference 2048-0171-R01 at
12 0183, paragraph 70 of that witness statement.

13 Another witness -- another Prosecution witness explaining that he would visit
14 Mr Ngaïssona to inform him about the situation in his locality whenever he would
15 visit his family in Bangui. But specifies that he was not requested, he was not
16 requested by the coordination to complete any reporting nor any fixed schedule what
17 was set up. The only thing that the coordination was doing was giving advice,
18 according to this witness. Reference is 2068-0037-R01 at 0057, paragraph 97.

19 And lastly, P-0884, while claiming that every time there was a meeting with
20 Ngaïssona there would be an incident in the streets the next day and that
21 Mr Ngaïssona would give orders at these meetings, he admits that he would refuse to
22 go to these meetings.

23 And in a response to the question of the investigators as to how he would know about
24 these orders, he simply responds: I know. I said I know. Transcript reference
25 number 2072-1913-R01 at 1919-1920, lines 215 till 239.

1 Our conclusion for this third element, Mr President, the alleged compliance with
2 orders keeping Mr Ngaïssona abreast of the situation on the ground, we submit the
3 Prosecution did not adduce evidence to this extent beyond the scope of
4 reasonable grounds, substantial grounds to believe of those allegations.

5 And that the fourth point is, was he able to summon the ComZones to attend
6 meetings as from January 2014 during which orders would be issued?

7 This is an allegation you find in the DCC, paragraph 72 till 143. Also here, our
8 conclusions, Mr President, this allegation is not supported at all by the vast majority
9 of the evidence, which shows on the contrary that these meetings were - first, not
10 regular at all; and secondly, that the ComZones had been invited - not summoned.

11 There's no summation. It was an invitation, an invitation to attend meetings only in
12 the context of the very specific peace-related events of the DDR, which was at that
13 time ongoing as late as just before, Mr President, the Brazzaville forum for its
14 preparation and onwards, sometimes as late as even 2016, way after the charges. It
15 simply shows that these events were totally unrelated to combat.

16 P-0808 estimates the number of coordination meetings between January and October
17 2014 to four to five. Four to five, he estimates. At least three of which the
18 ComZones had been invited to attend. He's also not speaking about summation, but
19 invite -- invitation, one in the preparation of the Brazzaville agreement, one in the
20 preparation of the Bangui forum and the last one when it was decided to turn the
21 Anti-Balaka into a political party. Reference 2025-0324-R02 at 339, paragraph 98.

22 That was the reality.

23 The other testimonies for the vast majority corroborate the statement of P-0808. We
24 refer to the following three Prosecution witnesses. First, the examples of meetings
25 P-0884 gave to the Prosecution investigators are indeed meetings for the preparation

1 of the Brazzaville talks and the meeting relating to the Bangui forum.

2 Secondly, witness P-1962 explains that the meeting took place before the Brazzaville
3 talks on 15 -- 25 June 2014 and that it was the first time, it was the first time, he says,
4 that the ComZones were meeting each other. The first time.

5 The witness explains that Mr Ngaïssona told the attendees to lay down their weapons,
6 to reconcile with the Muslims and to wait for the DDR. That was the message
7 conveyed. No order to commit any combat.

8 He states - this witness - that the strategy for the disarmament was also discussed
9 during this meeting but that not everybody was in agreement about that. Reference
10 2068-0037-R01 at 0057 till 0059, paragraph 99, 102, 103, 108 and 109.

11 The third witness, P-0966, states he cannot remember the date, but he knows that all
12 the ComZones were gathering in the presence of Mrs Samba-Panza's daughter to be
13 informed that the Anti-Balaka were being transformed into a political party with
14 Mr Ngaïssona as general coordinator.

15 This is also corroborated by P-1719 and P-1961, two other Prosecution witnesses. In
16 other words, all those meetings have nothing to do with issuing orders for any
17 combat.

18 We now return, if possible, for two minutes in private session.

19 PRESIDING JUDGE MINDUA: [10:44:02](Interpretation) Court officer, private
20 session, please.

21 (Private session at 10.44 a.m.)

22 THE COURT OFFICER: [10:44:12] We are in private session, Mr President.

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5 (Open session at 10.47 a.m.)

6 THE COURT OFFICER: [10:47:48] We are back in open session, Mr President.

7 PRESIDING JUDGE MINDUA: [10:47:53](Interpretation) Thank you very much.

8 MR KNOOPS: [10:47:55] Mr President, in conclusion of this third point, the alleged
9 ordering of meetings -- summoned ComZones to attend meetings, our conclusion is
10 that the Prosecution material does not tell us that Mr Ngaïssona summoned
11 individuals. He invited - the evidence tells us he invited ComZones to Bangui only
12 for important milestones as of June-July 2014 in the context of his work with the
13 international community.

14 The very reason he had been chosen by the way in the first place, rather than issuing
15 orders to these individuals, he was only conveying peace messages. The ComZones
16 stated that whenever Mr Ngaïssona would gather them for - at the time of his
17 coordination, he would just talk about his activities as peace coordinator. He would
18 never discuss anything substantial with them. No crimes or attacks. He would just
19 pay for their transport to bring them to Bangui. Reference 2031-0241-R01 at 257,
20 paragraph 93. In other words, the Prosecution case on this element should be
21 dismissed.

22 Our last point regarding the lack -- the absence of control relates to the power to
23 discipline ComZones, an allegation you'll find in the DCC in paragraph 148 and 77.
24 Mr Ngaïssona, in the theory of the Prosecution, exercised control over the ComZones
25 such that he had also the authority to implement disciplinary measures. The

1 evidence doesn't show the reality of this allegation.

2 The evidence adduced by the Prosecution is not sufficient to show that there are
3 substantial grounds to believe that Mr Ngaïssona had the power to implement at all
4 disciplinary measures.

5 P-184's (sic) statement is purely speculative, and it's clearly opinion evidence. He
6 refers to: "I think" -- "Je pense" (Interpretation) "I think that Ngaïssona had real
7 power of control over the Anti-Balaka."

8 That was one statement from his testimony to the investigators. As to the statement
9 the Prosecution relies on of P-1858, it is contradictory as it also shows that

10 Mr Ngaïssona would not and could not have taken disciplinary measures. We'll
11 give a few examples to this extent in further illustrating that the Prosecution's
12 evidence contradicts the allegation that Mr Ngaïssona had the power to discipline
13 ComZones.

14 First, witness P-1193 explains that the coordination could not punish people because
15 the Anti-Balaka had weapons, which was not the case of the coordination who could
16 therefore only attempt to raise awareness. This is corroborated by P-808 stating that
17 Mr Ngaïssona had limited means given and also he suggests that Mr Ngaïssona was
18 not armed. That it was indeed an intention to discipline people, but that in practice
19 it was difficult to put in place such measures as there were almost no state security
20 forces until the end of 2015.

21 This witness, 0808 adds that for a more powerful Anti-Balaka, the coordination would
22 speak to them to try to put some sense into their minds, "But ..." that, I quote, from his
23 statement,

24 "... it did not work ..." out. P-0808 at paragraph 78.

25 Or when the Anti-Balaka were committing robberies, the coordination "... tried to talk

1 to them." But they would continue to do "... the same thing ..." Paragraph 115 of
2 the witness statement.

3 An insider states that a person with the name Andjilo attacked even Mr Ngaïssona's
4 residence, Mr President. Mr Ngaïssona's residence was attacked twice with
5 weapons for having blame -- blaming him, this individual, Andjilo for his actions.
6 Reference 2027-229-R01 at 2304 till 2305, paragraph 89.

7 Another insider states that one day the same gentleman, Mr Andjilo, opened fire in
8 front of Mr Ngaïssona and him, the witness, while they were talking and there was
9 nothing they could do, the witness nor Mr Ngaïssona. Reference 2093-0010-R01 at
10 0024-25, paragraph 78.

11 Mr President, this all shows that Mr Ngaïssona had no control over alleged criminals,
12 agitators - how you name it - such as persons like Andjilo. Contrary to the
13 Prosecution allegations, Mr Ngaïssona did not accept within the group's
14 ranks ComZones like Andjilo, but he simply did not have the power to remove them
15 from the movement.

16 Another example that no one could have controlled the behaviour of these kinds of
17 individuals is given by P-1858, a Prosecution witness who explains that Mr Ngaïssona
18 had tried to give advice to one Anti-Balaka who was terrorising the population,
19 however that this individual continued the same behaviour even after meeting with
20 Mr Ngaïssona who tried to talk some sense in his mind. Reference 2063-0050 at 0068,
21 paragraph 110.

22 Second -- the second type of evidence presented by the Prosecution, which is far from
23 sufficient to show that Mr Ngaïssona did in fact replace ComZones as a disciplinary
24 measure is P-0884. He has heard of the alleged coordinator in Boda having been
25 replaced by someone else, but he does not have any details about this event as to

1 whether, for instance, it was the coordination in Bangui who had replaced him or
2 whether he had been removed locally as it had been the case.

3 P-0801 also says that he does not know if people would be replaced, but explains that
4 it would be difficult to remove anyone because this was something that was dealt
5 with locally or internally. This -- the lines, 323 till 333 of the witness we have cited
6 before, 0801.

7 The Prosecution evidence shows the contrary of this allegation. First, P-1962 claims
8 that the coordination of each zone was dealing with its own disciplinary
9 system measures and it was not necessary to consult Bangui. Reference 2068-0037 at
10 0060-0061, paragraph 114.

11 The second Prosecution witness, P-1858, does not know of any case where
12 Mr Ngaïssona disciplined a ComZone. And P-0966 -- 66 confirms that as far as he
13 knows, Mr Ngaïssona had not established disciplinary rules.

14 Turning now to the allegations in relation to the alleged military police, the
15 Prosecution claims in paragraph 149 of the DCC that Mr Ngaïssona had the power to
16 order the arrest of criminal members of the group and to refer them to
17 national, international authorities to ensure arrest and prosecution.

18 It is further alleged in paragraph 78 that Mr Ngaïssona appointed well-known
19 criminals to positions in the military police, such as the mentioned guy, Mr Andjilo,
20 whom he assigned allegedly to the police as an operational missions chef.

21 Your Honours, the purpose of the military police - also here, we have to reconstruct
22 the facts - was to track down criminals and to prevents crimes. It shows if anything
23 that Mr Ngaïssona was against violence. The fact that a politician does something to
24 prevent crimes does not indicate that he's in control of police. It's the other way
25 around.

1 In fact, one insider explains that the purpose of the military police was to try to
2 control the Anti-Balaka who stole or did not contribute to the peace process and to
3 hand them over to the gendarmerie.

4 This witness further states that:

5 "The intent to discipline people was there, we wanted to take them to the police so
6 that they would be locked up, but in practice it was difficult to implement."

7 Reference 2093-0010-R01 at 0033, paragraph 129.

8 For the most powerful and dangerous so-called Anti-Balaka, there was simply
9 nothing one could do apart from trying to speak to them, which became the concern
10 of Mr Ngaïssona in his role as peace coordinator.

11 May I go - just before the break, one minute into private session.

12 PRESIDING JUDGE MINDUA: [10:58:44](Interpretation) Court officer, private
13 session, please.

14 (Private session at 10.58 a.m.)

15 THE COURT OFFICER: [10:58:52] We are in private session, Mr President.

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15 (Open session at 11.01 a.m.)
16 THE COURT OFFICER: [11:01:16] We are back in open session, Mr President.
17 PRESIDING JUDGE MINDUA: [11:01:30](Interpretation) Thank you very much,
18 Mr Knoops --
19 MR KNOOPS: [11:01:33] Mr President --
20 PRESIDING JUDGE MINDUA: [11:01:33] (Speakers overlapping)
21 MR KNOOPS: [11:01:33] (Interpretation) Thank you.
22 (Speaks English) Mr President, the conclusion of this fourth part on the section on
23 control relating to the allegation that Mr Ngaïssona should have had the power to
24 discipline ComZones, is that the Chamber should reject the assertions of the
25 Prosecution in this regard.

1 There are no substantial grounds to believe that Mr Ngaïssona controlled the
2 Anti-Balaka through military police or other measures. Nor that he was able to
3 discipline those individuals with any appropriate measures.
4 We conclude, on the control section, first, the Prosecution has provided no substantial
5 evidence to show that Mr Ngaïssona had control over the ComZones; and secondly,
6 there is no substantial ground to believe that Mr Ngaïssona had the material ability to
7 prevent and/or punish any group as required under international criminal law to
8 establish command and control and therefore we ask the Chamber to dismiss the
9 DCC in its entirety.

10 After the break, Mr President, I will address the Chamber on the last part on control,
11 the call-data records, which is a separate part and after which I will go into section 3
12 of the submissions.

13 PRESIDING JUDGE MINDUA: [11:03:06](Interpretation) Thank you very much,
14 Mr Knoops, and congratulations for your presentation. We will now break for 30
15 minutes and resume at 11.30.

16 The hearing is adjourned. Court officer.

17 THE COURT USHER: [11:03:35] All rise.

18 (Recess taken at 11.03 a.m.)

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

20 THE COURT USHER: [11:32:07] All rise. Please be seated.

21 PRESIDING JUDGE MINDUA: [11:32:14](Interpretation) The hearing resumes.

22 I, without further ado, hand over to Counsel Knoops.

23 I'm told by the Registry that you have two hours' eight minutes remaining. I very
24 much hope that you will have finished your submissions between now and the
25 luncheon break.

1 Over to you, Counsel.

2 MR KNOOPS: [11:32:51] (Interpretation) Thank you very much, your Honour.

3 (Speaks English) Mr President, your Honours, dear parties and participants, we

4 draw the attention now to the table of contents of our submissions and you will find

5 that we have arrived at the section, the last section of number 2, which relates to the

6 CDR, the call-data records, annex G, to the DCC. And we have asked ourselves

7 whether these CDR records can sustain the Prosecution's theory that Mr Ngaïssona

8 exercised influence or control over the ComZones and provincial Anti-Balaka leaders.

9 And also here, our answer to this question is a clear no based on the Prosecution's

10 own materials.

11 First of all, the CDR - that will be the abbreviation I will use of call-data records,

12 annex G - do not say anything, Mr President, about Mr Ngaïssona's purported

13 conduct. This evidence therefore falls short of supporting the allegation that these

14 records in itself could show any contribution, let alone control over ComZones and

15 provincial Anti-Balaka leaders. Before we turn to this data themselves, we will ask,

16 first, the question whether these materials can be admitted as forensic evidence before

17 this Chamber and also here our answer will be a clear no.

18 First, even if the Chamber were to accept that all the telephone records the

19 Prosecution attributes to Mr Ngaïssona and his alleged interlocutor would be accurate

20 and reliable, they still cannot be accepted, as we submit, given the forensic

21 evidentiary deficiencies relating to the attribution and reliability of the CDR evidence.

22 The CDR provides virtually no information, Mr President, with respect to the content

23 of an alleged call or SMS message sent or received by Mr Ngaïssona. At best, this

24 evidence could indicate that indeed certain individuals may have had contact by

25 phone or SMS at one point in time, but that's about it. Nothing more, nothing less.

1 Secondly, speaking about whether these data are forensically acceptable, the
2 call-sequence table does not reflect, as your Honours might see, the direction of the
3 call. That's also recognised by the Prosecution in annex G. Meaning, whether it's
4 an incoming or an outgoing communication -- or outgoing communication, which
5 casts naturally uncertainty as to the nature of the call, despite the potential different
6 interpretations one might attach to whether the call is incoming or outgoing. You
7 find this at page 4 of annex G to the DCC, this admission that the direction of the call
8 could not be detected.

9 Thirdly, it is not possible on the basis of the CDR evidence relating to
10 Mr Ngaïssona to know whether a person to which a number is attributed by the OTP
11 was really on the phone. Was that person really on the phone? And whether the
12 number was in fact being used by that individual at the time of the alleged call or
13 SMS.

14 The Prosecution itself contends that at least one phone number would have been used
15 by two persons, despite the lack of evidentiary basis for that specific allegation.

16 Paragraph 39 in the DCC where this is conceded.

17 This is also confirmed, Mr President, by an insider witness who explains that he
18 would share his phone sometimes with others to make calls. For instance, if they
19 didn't have credit, no more battery on the phone or there was a power outage, which
20 the witness said happened often in Bangui. Reference P-0446, OTP document,
21 2059-1523 at 1531.

22 Mr President, the witness explained that sometimes people would borrow his phone
23 for days on end or for several hours, for instance, to call their families - found in the
24 same witness statement at 1531 till 2.

25 Another insider witness of the Prosecution explained to the Prosecution and

1 investigators, Mr Ngaïssona would sometimes lose his phone and sometimes
2 Mr Ngaïssona's younger brothers would steal his phones. By the way it's the same
3 witness, I apologise, P-0446 at 0605.

4 In the fourth place, speaking about admission of forensic evidence in terms of the
5 CDR, even where one were to accept that Mr Ngaïssona was in touch with certain
6 individuals while in exile in Cameroon, Prosecution witnesses have confirmed the
7 entirely irrelevant nature of those communications between exiled Central Africans
8 during the crisis.

9 For instance, insider witness, Prosecution P-1951 explained that he would be in touch
10 over the phone with Central Africans exiled in Cameroon who sought to remain
11 informed about the security information in and to how -- whether it was safe at their
12 homes to return home. That's P-1951, witness P-1951, reference 2092-0535 at 0538.

13 This witness statement therefore refutes, Mr President, the Prosecution's suggestion
14 that these phone calls had anything to do with coordinated action.

15 In the fifth place, speaking about the admission of those CDR records, this type of
16 evidence cannot meet the threshold of substantial grounds to believe because as
17 recognised by experts, raw data provided by telephone companies can easily be
18 manipulated and entail a considerable margin of error.

19 This was actually argued in the case of Ayyash et al. before the Special Tribunal for
20 Lebanon where the Defence quoted several experts to this extent.

21 In order to rule out any manipulation, the CDR must be checked against the binary
22 source data and the Defence in this instant case has found no indication that this has
23 been done by the Prosecution in the instant case.

24 To conclude, Mr President, these five points relate to the conclusion that the CDR is
25 not sufficient as material to support the Prosecution's theory of a common plan or any

1 concerted action involving Mr Ngaïssona or his alleged control and influence over the
2 so-called Anti-Balaka.

3 Now, my second point about the CDR is whether they show that Mr Ngaïssona
4 exercised control over the ComZones and Anti-Balaka. Do these records tell you,
5 Mr President, your Honours, that Mr Ngaïssona indeed exercised such a control?

6 The answer is also a clear no.

7 The allegation is to be found in paragraph 146 of the DCC and to support this
8 contention, the Prosecution relies heavily on CDR evidence. For instance, the
9 footnote of paragraph 146, which in turn refers to other paragraphs cited to the CDR
10 reference and evidence.

11 The Prosecution's theory is actually that Mr Ngaïssona was in frequent contact with
12 provincial leaders and therefore asks your Chamber, based on these CDR, to infer or
13 assume that Mr Ngaïssona was therefore also in control of those leaders and had the
14 requisite mens rea for the charged crimes.

15 Mr President, however, close examination of the CDR evidence reveals that such an
16 alleged control exercised by Mr Ngaïssona over those alleged leaders is totally
17 unfounded.

18 We'll delve into some of the examples of the CDR.

19 First, in relation to Bossangoa, Mr Ngaïssona's alleged influence and control relies
20 solely on an alleged contact with a single Anti-Balaka leader. The attribution of the
21 telephone number allegedly used by Mr Ngaïssona in January 2014 to contact that
22 individual hinges solely on one single document, which document falls short of the
23 evidentiary standard at this stage of the substantial grounds to believe.

24 Even if your Honours would conclude that this number might be attributed to
25 Mr Ngaïssona, as with all the CDR evidence, these records are still silent as to the

1 substance of any purported communication between him and other individuals, let
2 alone that these records can be indicative for any alleged influence or control over
3 ComZones or Anti-Balaka groups.

4 It is further noted, Mr President, alleged calls between Ngaïssona and this alleged
5 leader - with two exceptions - are under one minute if you look at the records.

6 Under one minute, which again can hardly be indicative for Mr Ngaïssona exercising
7 control -- exercising control under one minute.

8 In relation to Bossemptélé, the second example, similarly on the basis of this evidence,
9 the Prosecution states that Mr Ngaïssona would have been in touch with a provincial
10 leader in this locality, Bossemptélé, in March 2014. One call which would have
11 been made on 1 March 2014, would have lasted 10 seconds, Mr President. 10
12 seconds. And a second call on 5 March which would have lasted 22 seconds. This
13 can be found in footnote 933 of the DCC.

14 Again, these telephone numbers for two different numbers attributed to
15 Mr Ngaïssona rely only on one single document and even if the Chamber were to
16 accept this evidence relating to the attribution of this number or these numbers to
17 Mr Ngaïssona, those time codes, 10 seconds and 22 seconds can hardly be indicative
18 that Mr Ngaïssona, I quote:

19 "... held influence with the leaders of Anti-Balaka elements responsible for the
20 charged crimes."

21 And this all in 10 and 22 seconds. That would be a miracle, Mr President, a miracle
22 in the world that a peace coordinator would exercise influence over armed forces in
23 10 and 22 seconds. I wish that the world would have been such that people can
24 exercise control in 10 and 22 seconds. We would have less wars in the world,
25 Mr President. Of course, this is a side remark, but you know what I mean with my

1 observation.

2 When we speak about Boda, Mr President, the Prosecution alleges that the so-called
3 Boda group was also in touch with Mr Ngaïssona. However, if you look closely to
4 the evidence, it shows that you the sole evidence cited by the OTP in support of this
5 contention is a single call made between Mr Ngaïssona and an alleged Anti-Balaka
6 leader on 11 April 2014 running up to the summits. Annex G, section 915.

7 This call, Mr President, your Honours, lasted apparently 38 seconds on 11 of April.

8 Now, 38 seconds can hardly be evidence to sustain the conclusion that Mr Ngaïssona
9 held influence over such an individual. Finally, the attribution in support of the fact
10 that this number ending in 4433 was used by Mr Ngaïssona hinges on one single
11 document, which the OTP mentions, that's document 2008-0483 at tab 4.

12 Also, when we look at the records, Mr President, in relation to Yaloké to support the
13 allegation that Mr Ngaïssona was also there, someone who held influence over those
14 leaders, you can actually see the same phenomenon.

15 All these interpretations that the Prosecution relies upon are solely based on a contact
16 between Mr Ngaïssona and one Yaloké leader. You find this in section 5.3. of the
17 annex G of the DCC. And if you look, Mr President, again to the time codes of those
18 calls, 21 and 22 January, lasting 41, 1, and 38 seconds respectively, again, on the basis
19 of one single witness statement.

20 Also, these time codes 41, 1, and 38 can hardly support the allegation that
21 Mr Ngaïssona held influence over the so-called Yaloké group, based on three calls
22 which, in total, lasted a little bit more than one minute and this, in the days
23 immediately after or around the attacks on Gaga, Zawa and Yaloké.

24 The last example, the Prosecution alleges Mr Ngaïssona held influence over the
25 leadership in the PK9-Mbaiki axis, including with allegedly - as the Prosecution

1 suggests - Mr Yekatom. And the Prosecution for this allegation bases itself on the
2 CDR that allegedly show that Mr Ngaïssona and Mr Yekatom would have been in
3 touch after 5 December 2013, the alleged attack.

4 However, the telephone calls attributed to Mr Ngaïssona and to Mr Yekatom
5 recorded by the Prosecution would have been made only between 19 and 28
6 June 2014, and this was just before the Brazzaville summit. The first alleged contact
7 between the two of them, according to this section J, paragraphs 4.6. and 5.3., would
8 have taken place on 19 June 2014, just a few weeks before the Brazzaville summit.

9 Nothing to do with any armed action, and nothing to do with any relationship with
10 the 5 December 2013 attack, not at the least based on this document.

11 Our conclusion in the interim, Mr President, is that the CDR, the CDR evidence, if
12 admissible at all before the Chamber, in light of our submissions regarding the
13 forensic evidentiary deficiencies, the CDR evidence does not support that
14 Mr Ngaïssona was communicating with ComZones and Anti-Balaka leaders in the
15 provinces throughout the relevant period, let alone that he exercised control through
16 the phone - from wherever place he must be in the world acting for FIFA - on and
17 over Anti-Balaka leaders.

18 The second point is to question whether these records show that Mr Ngaïssona was
19 involved in the preparation of the 5 December attack. Do the records that the
20 Prosecution wants you to believe, Mr President, do they show -- do they form an
21 indication that Mr Ngaïssona was instrumental in the preparation of the attack? No.
22 Clearly not.

23 According to the OTP, para 59 of its DCC, yet those records would sustain the
24 conclusion that Mr Ngaïssona was involved in the preparation of that 5 December
25 attack. And in support of this allegation, the OTP relies again on the CDR with its

1 own interpretation as presented in the annexes I, the attribution table; and J,
2 call-sequence table of the DCC, sections 4.1.1., 4.1.2. and 4.1.3. and 2.3.
3 But also here, Mr President, your Honours, if you have a closer look at the CDR
4 evidence, it reveals that this allegation is totally unsupported by this type of evidence
5 and that any link between Mr Ngaïssona and that 5 December attack is very
6 speculative.

7 First, not only does the CDR evidence exhibit all the deficiencies as mentioned, but
8 there are also significant gaps with respect to the attribution of telephone numbers to
9 Mr Ngaïssona.

10 For this, we move one minute into private session. Well, maybe two minutes.

11 PRESIDING JUDGE MINDUA: [11:52:26](Interpretation) Court officer, private
12 session, please, for two minutes.

13 (Private session at 11.52 a.m.)

14 THE COURT OFFICER: [11:52:32] We are in private session, Mr President.

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18 (Open session at 12.03 p.m.)

19 THE COURT OFFICER: [12:03:14] We are back in open session, Mr President.

20 PRESIDING JUDGE MINDUA: [12:03:24](Interpretation) Thank you very much,
21 court officer.

22 Mr Knoops, please proceed.

23 MR KNOOPS: [12:03:29] Mr President, your Honours, to conclude the section on the
24 CDR in the context of the absence of control, part two of our submissions, we can
25 conclude that the CDR cannot contribute in any way to the existence of substantial

26

1 grounds to believe that Mr Ngaïssona was in control of all those so-called Anti-Balaka
2 groups.

3 We will now - that's my final part of my submissions - delve into the contribution of
4 Mr Ngaïssona, part three of our submissions, and we will conclude that also for these
5 reasons the charges should be dismissed in its entirety.

6 I will address five sections you will find here on the table of contents: 3.1. till 3.4.
7 and 3.5. will be dealt with by Ms Carrin, the speeches of Mr Ngaïssona.

8 I will start with 3.1., the question: Did Mr Ngaïssona himself contribute in any way
9 to the execution of a common plan? If the Chamber would come to the conclusion
10 that such a plan would have existed, which we severely dispute, as the Court might
11 have noticed.

12 To substantiate that Mr Ngaïssona attended meetings related to this alleged common
13 plan, the Prosecution relies mainly on three insider witnesses, and for this we have to
14 go into private session, briefly.

15 PRESIDING JUDGE MINDUA: [12:05:08](Interpretation) Court officer, private
16 session, please.

17 (Private session at 12.05 p.m.)

18 THE COURT OFFICER: [12:05:13] We are in private session, Mr President.

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15 (Open session at 12.07 p.m.)

16 THE COURT OFFICER: [12:07:17] We are back in open session, Mr President.

17 PRESIDING JUDGE MINDUA: [12:07:30](Interpretation) Thank you very much.

18 MR KNOOPS: [12:07:30] The second part the Prosecution alleges which would
19 constitute contribution on the part of Mr Ngaïssona to an alleged common plan is the
20 so-called erection and taking down of roadblocks, paragraph 143 of the DCC.

21 At the outset, we would like to point the Chamber to a fundamental flaw in the
22 methodology of the Prosecution theory. It intends to show that Mr Ngaïssona had the
23 power to order to take down roadblocks, and it suggests that therefore he had also the
24 power to order their erection. But that's not the case in international criminal law.
25 Calls to take down roadblocks, as a peace coordinator, are not evidence as such that

1 somebody has the power, the ability, the material ability to erect them.

2 If we look at the evidence tendered by the OTP as to this allegation, there is not one
3 witness, Mr President, your Honours, not one witness stating that Mr Ngaïssona
4 ordered directly the erection of roadblocks. We have many references here, but for
5 the sake of time I just mention one. My colleagues can provide the Chamber with, in
6 a separate document, all the references we have referred to in our brief.

7 One of the references, CAR-OTP-2072-1814-R01, pages 1818 till 1819, lines 126 till 180.

8 There are many other references of Prosecution witnesses; we have counted more
9 than four, five in our brief, which clearly show that Mr Ngaïssona never ordered
10 directly the erection of roadblocks.

11 When it comes to the removal of roadblocks, Mr President, the only relevant witness
12 saying that Mr Ngaïssona helped in the operation to remove roadblocks is witness
13 with reference 2094-0593-R01 at 0599 till 0606, lines 145 till 496. Not that he
14 ordered -- the witness is not saying that Mr Ngaïssona ordered it. Not that he had
15 the power to order it, to supervise it. What did the witness say? He only helped in
16 removing the roadblock. And this is something quite different than the inference
17 that when you help to remove a roadblock that you apparently have the power to
18 erect them. It's totally different.

19 And in fact, your Honours, Mr Ngaïssona was concerned, as we saw from the
20 evidence, was concerned by the existence of roadblocks and he helped indeed, in
21 accordance with his mandate as peace coordinator, to remove them. And this is
22 confirmed repeatedly by Prosecution's own witnesses, as we saw this morning during
23 our first submissions.

24 The Prosecution also alleges Mr Ngaïssona ordered the Anti-Balaka to stop harassing
25 or assaulting Muslims in the CAR during Ramadan, paragraph 143 of the DCC. And

1 it intends to prove with this allegation that Mr Ngaïssona actually had the power to
2 order a truce, which would mean that he would have had the power to order the
3 Anti-Balaka to arrest and assault Muslims by principle.

4 Also, this is not an evidentiary inference, which is settled under international criminal
5 law, one can make. The fact that somebody helps and calls for stopping harassing or
6 assaulting Muslims does not mean that that same individual has the material ability
7 to order the killing, assaulting or whatsoever.

8 There is absolutely no evidence, Mr President, tendered by the Prosecution to
9 demonstrate, there is no witness who testified that Mr Ngaïssona directly ordered to
10 kill Muslim individuals.

11 The evidence shows, for instance, a press release issued by Mr Ngaïssona during
12 Ramadan calling for peace and forgiveness during Ramadan. Document 2084-0157
13 at 0157.

14 The witness also has testified that Mr Ngaïssona asked the Anti-Balaka to take
15 advantage of the Ramadan to love their Muslim brothers, to love them. OTP
16 document 2088-0649 at 0656-0657, lines 235 till 270. Again, an OTP witness.

17 The Prosecution cannot reasonably, Mr President, confuse calls for peace with orders
18 to assault. That would be an anomaly in international criminal law. If there had
19 been a hidden or coded message, as the Prosecution suggests, it has the burden to
20 prove and it has failed to do so. These calls were genuine, as also evidenced by the
21 Prosecution's own witnesses.

22 Far from not reacting to the reports, Mr President, of crimes allegedly committed by
23 Anti-Balaka, Mr Ngaïssona did everything within his position as a peace coordinator
24 which was reasonable in his position to stop those actions.

25 The Prosecution cannot simultaneously argue that Mr Ngaïssona did not react to the

1 reports of crimes and tender into evidence witness statements and documents to
2 show on the contrary that he -- to show that he didn't take measures.

3 In reality, if you look at the evidence, far from denying those reports, Mr Ngaïssona,
4 contrary to the Prosecution allegation, took several actions:

5 First, far from dismissing or disregarding that type of information on the reports,
6 allegedly crimes committed by Anti-Balaka, he did call for full co-operation with the
7 international forces and for the cantonment or confinement of the Anti-Balakas, as to
8 guarantee that the youth would be disarmed and sent back to their regions of origin.
9 OTP-2107-2999 at 3001 till 3002.

10 Secondly, the second piece of evidence tendered by the Prosecution itself shows that
11 Mr Ngaïssona sought actively the removal of several senior or prominent members of
12 the coordination. Also here, there are numerous witnesses who testified to this
13 extent. I just mention one. We can give more references, the Chamber would
14 appreciate. One of them is 2034-0463-R01 at 047 -- 0475, paragraphs 64, 66.

15 Also other documents tendered into evidence by the OTP itself show that decisions to
16 exclude individuals from the coordination were collegial and could not have been
17 made by Mr Ngaïssona himself alone. This is also confirmed by several Prosecution
18 witnesses, such as 2001-5386 at 5469.

19 The evidence showing that he personally sought these exclusions is convincing, is
20 convincing proof that he, as a peace coordinator, did everything he could, taking
21 account he couldn't decide alone, as testified by these witnesses.

22 Besides the allegation that he did not act against some specific individuals has to be
23 examined also in light and in the context of the fact that his own safety, Mr Ngaïssona
24 said he was seriously threatened by those individuals, as we just saw this morning,
25 this Prosecution evidence to this extent.

1 And third, we have already made submissions to the extent that there were so-called
2 faux Anti-Balakas. The strong condemnation of the exactions carried out by these
3 groups, by Mr Ngaïssona, is fully consistent with his actions, as evidenced by several
4 Prosecution witnesses, such as OTP-2042-2641, and also the audios which we referred
5 to earlier.

6 In conclusion, far from not doing anything against alleged crimes that were allegedly
7 reported to Mr Ngaïssona, he took measures, measures that he, as a peace coordinator,
8 reasonably could have taken at that time. The Prosecution has hence failed to prove
9 the absence of action and reaction on the part of Mr Ngaïssona.

10 Now the question is: Did he contribute to the armament of the Anti-Balaka?

11 A second allegation in the DCC, paragraphs 84, 85 and 152, 153. The answer here is
12 also a clear no.

13 You might have noticed, Mr President, that a substantial part of the evidence
14 tendered against Mr Ngaïssona on this issue; namely, distribution of weapons and
15 ammunition, actually relates to other individuals mentioned in the DCC.

16 In other words, Mr Ngaïssona is not mentioned by a large part of the witnesses
17 mentioned in the DCC in regards to this allegation. And we submit that such an
18 evidentiary methodology cannot be applied to Mr Ngaïssona in order to obtain the
19 qualification of substantial grounds to believe.

20 But most importantly, the Prosecution approach reflects the confirmation bias we
21 referred to in our introduction of Professor Garrett, Professor of Law at the Virginia
22 School of Law, in that it only reflects and selects - the Prosecution, I mean - evidence
23 in support of the allegation that Mr Ngaïssona would have provided weapons to
24 Anti-Balaka fighters. We will show you with the following arguments that this
25 methodology is totally unfounded.

1 First, the OTP regards -- totally disregards its own witnesses - its own
2 witnesses - stating that the Anti-Balaka only fought with very basic weapons, such as,
3 traditional hunting weapons, machetes and even wood sticks for the majority of them,
4 and they were mostly not armed. Many of the OTP witnesses attested to this, such
5 as 2059-144 -- 1433 at 1448, just mention one of the many witnesses, we can give more
6 references if the Court appreciates.

7 Secondly, the Prosecution has not taken into account all those witnesses, their own
8 witnesses, stating that the weapons in their possession of the so-called Anti-Balaka
9 had been retrieved from Séléka fighters. There was no issue of distribution, many of
10 them retrieved those weapons from Séléka fighters.

11 Also, various Prosecution witnesses attested to this, like P-2027, Mr President, and
12 P-0446. On this point, there was even a witness, Mr President, testifying that the
13 Séléka fighters were heavily armed - that was P-0966 in reference 2031-0241,
14 paragraph 45 - when by opposition in the same paragraph, this witness testifies, I
15 quote, and we are speaking here about apparently an Anti-Balaka individual:

16 "... his group only had 17 bullets for hunting rifles, one AK-47 and one automatic
17 weapon that was not functioning properly."

18 And this was the formal army. The formal army which this man, Mr Ngaïssona, did
19 set up. It's really unbelievable that this theory can stand in this court: 17 bullets,
20 four hunting rifles, one AK-47, one automatic weapon that was not even functioning.
21 That was the arsenal of this group of individuals fighting the Séléka.

22 Another witness of the Prosecution testified in paragraph 98 that he attended several
23 meetings with Mr Ngaïssona, meetings purely dedicated to the DDR process. And
24 he testified that Mr Ngaïssona thought that the fighters should lay down their
25 weapons and engage in the DDR process. He also testified, Mr President, Ngaïssona

1 said that if anyone was caught with a weapon, he would not help that person. That
2 was the only thing as a peace coordinator he could do. This was his -- the border of
3 his power.

4 But, your Honours, these were not only Ngaïssona's words as he went way further
5 than this. He went further. He risked his life to achieve peace. The same witness
6 testified indeed, Mr President, that most of the meetings he attended with
7 Mr Ngaïssona were dedicated to this peace process. And this is direct evidence,
8 Mr President. It's not hearsay. This is a direct witness, as the witness personally
9 attended the meetings with Mr Ngaïssona. He strongly contradicts the Prosecution
10 narrative according to which Mr Ngaïssona would have distributed weapons to
11 fighters. And this you can find in OTP-2041-0741, paragraph 98 of this Prosecution
12 witness.

13 There are three other witnesses who testified clearly that the coordination did not
14 provide weapons or ammunition to fighters, and that if the fighters were carrying
15 weapons, they had acquired these weapons themselves from other sources. Another
16 witness, 2046-0603, paragraph 84 of the numerous OTP witnesses.

17 And this is, Mr President, the clearest and most direct evidence that contradicts the
18 Prosecution narrative. These witnesses, three key witnesses, being crystal clear,
19 crystal clear about one core element in the Prosecution theory narrative and if this
20 narrative doesn't hold water for this sole aspect, the Court might conclude that all the
21 other aspects do not even also hold water.

22 The coordination did not provide weapons or ammunition to Anti-Balaka fighters,
23 and certainly not Mr Ngaïssona. And that makes that the whole narrative of the
24 Prosecution falls apart.

25 In total, we have summarised 10 witnesses in the last few minutes who do not

1 support - even contradict, clearly contradict, undermine the Prosecution that
2 Ngaïssona distributed weapons or ammunition to fighters and a large part of those
3 witnesses, Mr President, are first-hand witnesses. It's first-hand evidence.
4 My next point is the question whether did Mr Ngaïssona - being a wealthy person, as
5 the Prosecution suggests, a wealthy person - did he contribute to the finance-ment of
6 the Anti-Balaka in their alleged criminal nature? Clearly, no.
7 First, the portrait the Prosecution has made about Mr Ngaïssona as a wealthy,
8 successful and influential businessman - well, this is clearly not supported by the
9 evidence. It's rather opinion. It's purely opinion evidence. Paragraph 12 of the
10 DCC.
11 Indeed, the Prosecution relies upon testimony of several witnesses, but two elements,
12 Mr President, your Honours, stand out when you read those statements.
13 First, although some witnesses describe Mr Ngaïssona as a businessmen, none of
14 them, Mr President, none of them is able to state precisely in what activities he was
15 involved.
16 Going further, the names of these alleged firms or companies are not even mentioned.
17 When a witness finally describes his alleged business of Ngaïssona, it is through
18 a confused collection of activities and real estates.
19 But what should draw the attention of the Chamber is that the Prosecution never
20 questioned this witness about the source of his information.
21 Secondly, it is clear that the adjectives wealthy, successful and influential are products
22 of an artificial interpretation from the Prosecution bench, and no witness used these
23 adjectives in the portions of their statements which should support the allegation of
24 the DCC.
25 The Prosecution has tried artificially to build up an image of Mr Ngaïssona as

1 a wealthy, successful and influential man, suggesting that he was wealthy enough to
2 support the Anti-Balaka, but has failed to substantiate this construction with reliable
3 tangible evidence.

4 And in conclusion, we can see there is no evidence, no evidence whatsoever to
5 support this allegation.

6 Well, did Mr Ngaïssona, even if he had some money, did he indeed use this money
7 for funding the alleged criminal activities of the Anti-Balaka organisation or
8 Anti-Balaka movement?

9 Following from the previous observation, Mr President, the same conclusion can be
10 drawn with respect to this allegation in the DCC paragraph 82, 83 that Mr Ngaïssona
11 allegedly funded the criminal activities of the so-called Anti-Balaka.

12 Also, here you will find no material which meets the standard of substantial grounds
13 to believe, while the evidence, which is submitted, is inconsistent and even
14 contradictory.

15 At the outset, the Prosecution's contention in paragraph 151 of the DCC in this regard
16 lacks the minimal evidentiary support when two of the three witnesses cited there do
17 not say anything as to an alleged intention of Mr Ngaïssona to secure the people's
18 loyalty and support for the peace process in exchange for money. None of those two
19 witnesses speak about it.

20 The absence of tangible evidence already emerges when one notices that the witnesses
21 who state that Mr Ngaïssona gave money to the Anti-Balaka and ComZones have not
22 provided us with the sources of their information. Most of them, if the Chamber
23 looks closely at their statements, do not even provide details as to the alleged transfer
24 of money.

25 We now go into, with the Court's approval, shortly in private session for two minutes.

1 PRESIDING JUDGE MINDUA: [12:28:05](Interpretation) Court officer, private
2 session for two minutes.

3 (Private session at 12.28 p.m.)

4 THE COURT OFFICER: [12:28:18] We are in private session, Mr President.

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22 (Open session at 12.32 p.m.)

23 THE COURT OFFICER: [12:32:35] We are back in open session, Mr President.

24 PRESIDING JUDGE MINDUA: [12:32:50](Interpretation) My thanks. Please
25 proceed.

1 MR KNOOPS: [12:32:53] Mr President, we submit that there is even a more
2 plausible alternative, there is a plausible narrative which is far more consistent with
3 reality and the evidence in this Court. A narrative which the Prosecution failed to
4 take into account, given the fact that its own witnesses - its own witnesses,
5 Mr President - testified that Mr Ngaïssona provided money not to fund Anti-Balaka
6 to commit crimes, but to prevent them from engaging into any criminal activities.
7 Several Prosecution witnesses interviewed - while mentioning money given by
8 Mr Ngaïssona to different individuals - have given the Chamber, when reading the
9 statements, quite an alternative and more plausible explanation as to the reasons of
10 such donations by Mr Ngaïssona.
11 First, one witness made it quite clear that Mr Ngaïssona was opposed to any extortion.
12 When the same witness was asked by the investigators which extent Mr Ngaïssona
13 financed -- to which extent he financed the coordination, he actually responded that
14 Mr Ngaïssona financed his own travels, phone bills and meeting rooms, which did
15 not involve donations to others.
16 Another Prosecution witness put forward that the reasons why Mr Ngaïssona gave
17 money to the Anti-Balaka was to prevent them from acting like the Séléka, i.e. to
18 perpetrate exactions against civilians.
19 He went, this witness, further, detailing that the money allegedly given by
20 Mr Ngaïssona was provided for funerals, sicknesses, pregnant women, and to prevent
21 them from harassing and looting the population. And this is also corroborated by
22 another witness of the Prosecution stating that the only time he received money from
23 Mr Ngaïssona was for a funeral, to help him, the equivalent of €76.
24 A third witness of the Prosecution stated that Mr Ngaïssona gave money while in
25 Yaoundé for his personal own expenses and to take care of his family, and he never

1 felt that he had to do something for him in return for the money given to help his
2 family.

3 According to this third Prosecution witness, Patrice-Edouard Ngaïssona was -- used
4 to do this. It was his custom to help many people and he gave money - I quote from
5 the witness's statement - "out of the goodness of his heart", end quote.

6 In conclusion, Mr President, the Prosecution evidence does not only not meet the
7 standard of substantial grounds to believe, but it also disregards its own statements,
8 the statements by its own witnesses I mean, that totally contradict the narrative that
9 Mr Ngaïssona gave financial means to the Anti-Balaka to carry out any criminal
10 activities.

11 Secondly, we have shown you this morning that the narrative provided by the
12 Prosecution is actually intercepted by a far more plausible narrative, a far more
13 consistent and reasonable explanation to the money gifts performed by Mr Ngaïssona.
14 What these witness do say is, and do tell us from this file, is that Mr Ngaïssona gave
15 money to people to prevent them from engaging any activities such as looting
16 and harassing. That was, at that time, his only means to stop the violence as a peace
17 coordinator.

18 Finally, the last accusation launched by the Prosecution in this regard, speaking about
19 the contribution of Mr Ngaïssona, relates to the alleged training of the Anti-Balaka.

20 This is my final point, we can be very brief on this point.

21 There is no tangible evidence produced by the OTP to demonstrate any linkage
22 between Mr Ngaïssona, any alleged training of the Anti-Balaka or any other military
23 group.

24 The Prosecution contends that rudimentary training was provided by FACA
25 members, without ever demonstrating any link with Mr Ngaïssona. There is no

1 linkage in the file to be detected.

2 More specifically, OTP alleges that from June 13 onwards, FACA members
3 provided - allegedly - Anti-Balaka elements at Gobere with rudimentary training,
4 including on self-defence techniques and weapons use, hunting rifles, spears and
5 machetes. And that these elements were also trained at Bogangolo and the Yamwara
6 school, and later in 2014 in Bimon and Bouar.

7 However, the evidence cited by the Prosecution in relation to this alleged training is
8 irrelevant for the case of Mr Ngaïssona and precedes, Mr President, for the most part
9 his return to Bangui.

10 If you look at the evidence, this all allegedly would have happened before
11 Mr Ngaïssona returned to Bangui. More significantly, the Prosecution does not allege
12 any direct linkage between the training of the Anti-Balaka and Mr Ngaïssona,
13 whether before or after his return to the CAR, and does not cite any direct evidence
14 linking him to an alleged training.

15 At least one Prosecution witness, P-0889, indicates indeed that no training had been
16 organised for the Anti-Balaka by anyone, nor in 2013, nor in 2014. And this also
17 supports, Mr President, our conclusion that an organisation in the terms of Article 7
18 of the Rome Statute is clearly absent.

19 And if you have a closer look, Mr President, to the evidence relied on by the
20 Prosecution for the existence of alleged training, you will see that the Prosecution
21 cites a unique reference. Only one witness. P-2338. Sorry, 2328, who merely
22 states in his testimony that, I cite, "knows that there were FACA there" -- "I know that
23 there were FACA there", without, however, specifying the basis for his knowledge
24 and, moreover, no mentioning of Mr Ngaïssona whatsoever in connection to the
25 alleged training.

1 Moreover, this witness also admits to not knowing the identity of the alleged trainer
2 who was apparently directing the base there.

3 Mr President, your Honours, this evidence clearly falls short of supporting the
4 existence of a training camp of Anti-Balaka at Bogangolo, let alone any role that
5 Mr Ngaïssona might have played in such training, and this part of the DCC should
6 also be dismissed.

7 That concludes my submissions that Mr Ngaïssona cannot be held liable for acts or
8 omissions pursuant to Article 25(3) in the absence of any element of control nor
9 material ability to prevent or suppress the commission of crimes.

10 Under the principles of international criminal law, Mr President, and the case law of
11 the various international tribunals, a failure to discharge a legal duty to act must have
12 a corollary, must have a corollary in the material ability to prevent and to punish.

13 This is, with a peace coordinator, clearly not the case.

14 Thank you very much. I will now pass the floor to Mrs Carrin for submissions on
15 the speeches of Mr Ngaïssona.

16 PRESIDING JUDGE MINDUA: [12:41:04](Interpretation) My thanks, Counsel, for
17 your submissions. It was very clear.

18 I now hand over the floor to Counsel Carrin.

19 MS CARRIN: [12:41:26] Good morning, Mr President, your Honours.

20 My contribution will be very brief, approximately 20 minutes, 20 minutes, and
21 focused on Mr Ngaïssona's alleged speeches and public interventions. Therefore, I
22 do not anticipate any private sessions.

23 Throughout the Document Containing the Charges, the DCC, and its public
24 submissions of last week, the Prosecution has significantly relied upon alleged
25 statements made by Mr Ngaïssona to the media or simply in public.

1 However, we raise several objections as to this -- to this public interventions in the
2 way the Prosecution has presented and interpreted them.

3 As an illustration, we would start with this allegation that after François Bozizé's
4 speech of 27 December 2012, Patrice-Edouard Ngaïssona said - and it's paragraph 29
5 of the DCC - he called and I quote -- sorry, and I quote, "called for support against the
6 enemies of the Nation who decided to bring trouble by bringing Sharia law and who
7 want to use Islamism to destroy the country".

8 This excerpt has been read by the Prosecution last week. It's the English transcript
9 number 4, page 108, lines 14 to 17.

10 Something needs to be clarified about this statement once and for all. It was not
11 pronounced by Patrice-Edouard Ngaïssona. And if the Prosecution or the actual
12 speaker intends to prove -- well, if the Prosecution or the -- the Prosecution or the
13 actual speaker submits that it was pronounced on behalf of Mr Ngaïssona, then it
14 becomes a fact and it has to be proved. However, it remains unsubstantiated as
15 today -- as of today.

16 Your Honours, we submit that the Prosecution has tried to attribute a criminal intent
17 or a criminal object to Mr Ngaïssona's speeches and public interventions as of
18 December 2012; whereas, this criminal intent or object did not exist in the original
19 addresses.

20 And to create this artificial impression that these addresses were vested with
21 a criminal intent or a criminal object, the Prosecution has performed a two-step
22 process.

23 First, they have made a selective reading of Mr Ngaïssona's public interventions,
24 isolating portions of phrases out of their context; and second, they have appended an
25 oriented and biased interpretation to the selected portions.

1 And we will illustrate this process with several examples and, by the same token,
2 restore the complete and original context of Mr Ngaïssona's addresses.

3 We will start with this statement allegedly made on behalf of Patrice-Edouard
4 Ngaïssona following Mr Bozizé's speech of 27 December 2012, because I recall that it
5 was read in the courtroom last week.

6 The item is CAR-OTP-2000-0680, and I will refer to the translation of the transcript
7 CAR-OTP-2087-9863 at 9865, lines 6 to 14, and I will then quote the entire
8 portions -- portion of the statement that was isolated by the Prosecution and you will
9 see the real context.

10 And I quote in French: (Interpretation)

11 "At the time when our natural resources like oil, cement and others are starting to be
12 used, at the time when the country's development is launched with the construction
13 of some factories, particularly a textile factory to manufacture wraps, a beer factory,
14 as well as revitalisation of ENERCA's activities, the enemies of the nations have
15 decided to create disturbances by bringing in Sharia law in order to hinder ..."

16 (Overlapping speakers)

17 (Speaks English) Sorry.

18 PRESIDING JUDGE MINDUA: [12:46:45](Interpretation) More slowly, please,
19 Counsel.

20 MS CARRIN: [12:46:49] (Interpretation) "... to create disturbances by introducing
21 Sharia law in order to hinder religious confessions to undertake their normal activities.
22 Some individuals wish to instrumentalise Islamism to destroy the country, to
23 overturn the positive endeavours undertaken by the government for the wellbeing of
24 our fellow citizens, to enable them to go to their daily activities and to foster the
25 country's development."

1 (Speaks English) So now that I've read the full sentences which -- from which the
2 Prosecution has extracted this excerpt with the keywords "*charia*" and "Islamism", you
3 understand that the real context of this statement was purely economical. It's a
4 purely economical statement. And that far from targeting the Muslim community, it
5 is aiming at denouncing the aggressive and violent behaviours of "some persons",
6 that's why I emphasised it when I read it, "*certaines personnes*", some persons, who
7 threaten the wellbeing of the diverse religions, in original, (Interpretation) the various
8 religious confessions. (Overlapping speakers) (Speaks English) And it is untrue and
9 unfair to link the speech to any criminal intent or object that would have targeted
10 Muslim civilians, especially given the capital and additional circumstance that this
11 statement that is referred to as the Zama call, "*l'appel de Zama*", was actually a call to
12 a peace march. We already elaborated on this peace march and I will not repeat our
13 submissions; that was our first example.

14 And the same can be said with all the public interventions made by Mr Ngaïssona
15 that are referred to in the DCC. Each time, the Prosecution intends to ignore the
16 overall context of the quotes mentioned and repeated calls for peace and civil actions
17 made by Mr Ngaïssona.

18 For example, at paragraph 29 of the DCC, the Prosecution alleges that Mr Ngaïssona
19 sought the youth support against, and I quote, "foreign invaders".

20 In one of the statements referred to as evidence in support of this allegation, that is,
21 CAR-OTP-2042-0976, with transcript CAR-OTP-2107-1473, Patrice-Edouard
22 Ngaïssona is heard saying, and I quote in French: (Interpretation)
23 "We must support inclusive dialogue, we mustn't tear each other apart, we must say
24 no to civil war, yes to dialogue, yes to national reconciliation, and we need also to call
25 upon our adversaries. Be they RDC -- whether you be RDC, MLPC, UFDR ... the

1 country is calling upon us all." End of quote.

2 (Speaks English) The Prosecution has not quoted this excerpt in the DCC, nor has it
3 read it during last week's hearings.

4 We do not have enough time to repeat this exercise with every statement, every single
5 statement or every public speech made by Mr Ngaïssona, but that's the reason why
6 we urge the Chamber to examine his full declarations and not only the excerpts
7 selectively included in the DCC or read in the courtroom by the Prosecution.

8 Your Honours, last week the Prosecution submitted - and the reference is the
9 transcript number 4, English transcript number 4, page 110, line 10 to 15 - the
10 Prosecution submitted that through Mr Yambeté, and I quote:

11 "Mr Ngaïssona told the youth in no uncertain terms to wait until he would call upon
12 them.

13 With the youth primed for action and desperate for vengeance, it was clear that they
14 would set upon the Muslim population."

15 This part of the hearing's transcript was referring to a document, a statement, this
16 reference -- the document's reference is CAR-OTP-2042-1475, and I will refer to its
17 translation, CAR-OTP-2107-1475.

18 And when you read the statement, the Prosecution's inference is highly unconvincing.
19 Even if Mr Ngaïssona would have made a call to the youth, it could not be interpreted
20 as a call to violence. The nature, the very nature of this call is, at worst,
21 undetermined and alleging that it would be a call to arms or an invitation to assault
22 and persecute civilians would be extremely interpretative and speculative.

23 But going further, when replaced in the context of the overall statement made by
24 Mr Yambeté, such interpretation and speculation become unrealistic as the statement
25 is an invitation to remain calm and not to listen to rumours, and I quote the

1 translation from line 10 to 11: (Interpretation)

2 "I have come to speak on behalf of my minister unable to attend to tell you to not
3 allow yourself to be manipulated by those spreading rumours. As I speak to you
4 now, be calm."

5 (Speaks English) And also line 15, (Interpretation) "Stay calm wherever you are."

6 (Speaks English) Although the Prosecution has failed to show that Mr Ngaïssona was
7 a founding member of FROCCA, it still asserts that, through FROCCA, he supported
8 the attack of 5 December 2013.

9 The allegation can be found in the English transcript number 4, page 114, line 24, 25 of
10 last week's hearings, and it refers to a document numbered CAR-OTP-2088-2034, with
11 transcript CAR-OTP-2107 -- sorry, 2107-1596.

12 Last week, the Prosecution quoted the statement made on the day of the attack, 5
13 December 2013, by an alleged member of FROCCA, immediately after recalling that
14 Patrice-Edouard Ngaïssona was a founding member of the movement. And I will
15 read the way it was presented in the courtroom, so I am reading lines 24 and 25,
16 page 114 of English transcript number 4:

17 "As the attack was underway FROCCA, who, remember, was founded by Ngaïssona,
18 made a radio announcement stating ..." and then quoting the whole statement.

19 By presenting this this way, keeping in mind that it is still unproved that
20 Patrice-Edouard Ngaïssona was a founding member of FROCCA, by presenting his
21 name just before quoting the statement of FROCCA, it creates, inevitably, the
22 impression that he endorsed the statement, which once again remains unproved and,
23 once again, he was not the speaker.

24 I will now move to a video that was used extensively in the Document Containing the
25 Charges. This video is CAR-OTP-2014-0749, it has been provided without a

1 transcript, so the transcript is live.

2 At the outset, we note that this video has been provided without a main date,
3 a context, and, most importantly, without any elements that would allow to
4 authenticate it, to authenticate it as a genuine interview, that is to say, given by
5 Patrice-Edouard Ngaïssona and without cuts.

6 Assuming *arguendo* that the video would be authentic, the person interviewed kept
7 repeating statements promoting peace building and the necessity of a dialogue. The
8 Muslim communities of CAR are referred to as "our Muslim brothers".

9 And therefore, we will show that the Prosecution has fundamentally misinterpreted
10 the video.

11 At paragraph 98 of the DCC it is written, and I quote: "Mr Ngaïssona and the
12 National Coordination leaders harboured anti-Muslim animus. For example,
13 Ngaïssona incited public opinion by referring to CAR Muslims as 'Boko Haram'."
14 Your Honours, in the excerpt referred to in support of this allegation, Mr Ngaïssona
15 does not refer to CAR Muslims -- to CAR Muslims as Boko Haram. Here, is what
16 Mr Ngaïssona really says in the video, and I quote in French from -- sorry, I quote in
17 French from 02:15 to 02:25: (Interpretation)

18 "To completely disarm KM5 and the Boko Haram who are currently located in that
19 district leave it, that way peace will return to the Central African Republic."

20 (Speaks English) Your Honours, you can recall our submissions on foreign fighters,
21 while they originated in Nigeria, they were also active in Cameroon and in Chad.

22 And in light of our submissions and in light of the overall context, it is clear that
23 Mr Ngaïssona does not refer to CAR Muslims as Boko Haram.

24 Another allegation, at paragraph 145 of the DCC, is that in April 2014 Mr Ngaïssona
25 stated, and I quote in French: (Interpretation)

1 "The Anti-Balaka that I coordinate, it's unique, it's spread over the entire land. When
2 I give an order to these children, I immediately think that that's enough."

3 (Speaks English) Your Honours, the Prosecution has insisted on this excerpt to show,
4 to show an idea of hatred incitement.

5 But to restore the real context of Mr Ngaïssona's words in the statement, I would like
6 to simply read what immediately follows the statement, the next sentence. And I

7 quote in French from 01:25 to 01:37, and then to 01:49 to 02:06: (Interpretation)

8 "And if we want peace to return permanently to this country, there needs to be
9 dialogue with the coordination, with its staff, so that permanent peace reigns in
10 Central African Republic. ... If we want peace to come, I think that it's all the bodies,
11 be they the Séléka, the government, the Anti-Balaka, to include even the international
12 forces for peacekeeping, so that very swiftly there is a dialogue and, subsequently,
13 peace in this country."

14 (Speaks English) This was the actual meaning of (Interpretation) "When I give
15 meaning -- when I give an order to these children, I immediately think that that's
16 enough in and of itself."

17 (Overlapping speakers) (Speaks English) an order to dialogue. The statement is only
18 about peace, peace building and dialogue.

19 In conclusion, your Honours, the Prosecution has presented and interpreted
20 Mr Ngaïssona's speeches and public addresses in the way that fits with their narrative;
21 notably, processing to cuts and selections of limited and out-of-context excerpts, and
22 also suggesting that he was the speaker when he was not.

23 Therefore, we consider that the Chamber can only be fully informed by reading the
24 full interventions of Patrice-Edouard Ngaïssona in their context.

25 This is our submissions. Thank you, your Honours.

1 And I give the floor to my colleague, Mr Seri Zokou.

2 PRESIDING JUDGE MINDUA: [13:02:35](Interpretation) Thank you very much,
3 Maître Carrin.

4 I give the floor to the next presenter.

5 MR ZOKOU: [13:02:47](Interpretation) Mr President, your Honours, in *Le Monde* of
6 7 December 2019, President Touadéra of CAR declared, relating to the transfer of
7 Mr Patrice-Edouard Ngaïssona, as follows:

8 "We were not informed that the ICC was going to arrest Mr Ngaïssona."

9 This surprise on the part of the part of the president of the republic relating to the
10 presence of Mr Ngaïssona in this Court is shared by the majority of Central Africans.
11 They are not the only ones to have been surprised. The Prosecutor himself cannot
12 deny that he was not ready to bring Mr Ngaïssona to this Court, and this has been
13 shown in public.

14 It is for that reason that we think that the Prosecution was not able to and shall not be
15 able to establish that Mr Ngaïssona had any criminal plans or intentions.

16 Mr President, your Honours, Mr Ngaïssona is renowned for his moral strength and
17 he is characterised by boundless generosity. He shared everything that he had, and
18 even when his property was destroyed after the Séléka attack. And P-961 described
19 Mr Ngaïssona's house as a sort of an orphanage or a church where people came in
20 and out. Because he was helping the community and inhabitants of Boy-Rabe, they
21 were always at his home, around his house. And that, your Honours, should be
22 considered as part of a cultural practice.

23 We are saying that Patrice-Edouard Ngaïssona paid attention to all the communities
24 without discrimination. He was approached for various forms of assistance,
25 including by the Muslim communities before or -- and after the crisis. And that is

1 how come, on 2 December 2012, he received a request for assistance,
2 CAR-D30-0001-0023. He received this request from the association of Muslims.
3 Later on, he received another request of that Muslim community of Bangui and the
4 CAR asking for assistance for Ramadan, and he has been asked for such assistance in
5 many occasions, CAR-D30-0001-0022.
6 And there was also the last Ramadan before his arrest, one of his representatives was
7 asked to give a grant to the Muslims of PK5, which was received by the imam.
8 Mr President, the fact that he provides assistance to people in need is part of
9 a generalised practice in Africa where people, who have resources, help those who
10 are less fortunate in the absence of a social security system. It is an African practice
11 which is not legally codified as in Europe, and is not done in expectation of any
12 benefit. And I think a good number of Africans in this room know what we are
13 talking about because we have experienced it with our families and friends.
14 Does that imply a criminal intention? No.
15 Mr Ngaïssona was fully committed to peace, and that was manifest at the very early
16 stage. And he was the one who insisted, with President Panza, that a Muslim,
17 Mahamat Kamoun, should be appointed and accepted as prime minister by all the
18 groups in the country.
19 And prior to that - and this is in the DCC itself and in other evidence - before that,
20 Mr Ngaïssona had worked ceaselessly for peace. He played a key role in the signing
21 of the Brazzaville agreement. He was the head of the delegation and he used all his
22 influence even to convince his opponents, the Séléka, to sign that agreement. And
23 this is in paragraph 58 and 59 of one of the Prosecution witness's statement.
24 In the aftermath of that Brazzaville agreement, Patrice-Edouard Ngaïssona
25 contributed towards the success of that agreement, and he was part of the follow-up

1 committee of the agreement, which was one of the most important instruments for the
2 restoration of peace in CAR. And he worked towards the implementation of the
3 resolutions to bring peace by disbanding the groups allegedly affiliated to the
4 Anti-Balakas. This is in one of the documents.

5 This position, contrary to what has been said, was not generally accepted and this led
6 to the decision - as we can see in paragraph 61 of Witness P-899 - as to one of his
7 collaborators to create a faction.

8 I would like to draw your attention - to conclude - to the fact that Mr Ngaïssona
9 contributed against the extension of the anti-Muslim feelings in Africa.

10 When you look at Séléka and its main leaders, they were perceived objectively as
11 foreign nationals. You have General Moussa from Sudan, Mahamat Al Khatim from
12 Chad, you had Sidiki from Cameroon, Ali Darassa from Niger. And the population
13 was aware of that and they started acting without having to be prompted.

14 And if Séléka was overthrown, it was not because Mr Ngaïssona was seeking for
15 power. It is because they were no longer able to maintain law and order. And this
16 was corroborated by Mr François Hollande, who went as far as saying that
17 a president who has lost control of everything cannot be allowed to stay in place, and
18 he was referring to President Djotodia.

19 That is the reason why, at the end of my brief statement, and following what my
20 learned colleagues have said, I would like to appeal to your Chamber to consider the
21 situation of Mr Ngaïssona. He is not a militia man. He is not a militia leader.

22 Mr Patrice-Edouard Ngaïssona is a Central African Republic citizen. He is proud of
23 having fought for democracy in his country, and without his assistance the
24 democracy in that country today would not have been possible.

25 Thank you, Mr President.

1 Mr Kokongo will now take the floor.

2 PRESIDING JUDGE MINDUA: [13:13:31](Interpretation) Thank you very much,

3 Mr Zokou. And I congratulate you also for the concision and clarity of your
4 observation.

5 Mr Kokongo.

6 MR KOKONGO: [13:13:46](Interpretation) Thank you very much, your Honour.

7 I come from the Central African Bar. I would like to thank you for giving me
8 a warm welcome. I tell you this because is the first time that I address an ICC
9 Chamber.

10 I would also like to pay thanks to Counsel Knoops who was kind enough to
11 incorporate me into his Defence team alongside the suspect, Ngaïssona.

12 It's an honour not without constraints, your Honour, and I am unaccustomed to your
13 practices, so I call upon your forbearance. Now, after speaking -- after hearing my
14 colleague speak, I would like to dwell upon the portrayal of Mr Ngaïssona and, more
15 accurately, what he did in the 2012 CAR conflict which retains our attention today.

16 We Central Africans, your Honour, we know each other and ourselves perfectly
17 within our respective communities. This is an obvious truth and this is particularly
18 true when things go sour, very badly, particularly in respect of the conflict that retains
19 our attention. Because we have been afflicted by these events, as Central Africans,
20 we know who is who and who did what in this harrowing episode in our common
21 history.

22 With that in mind, your Honour, every well-informed Central African having lived or
23 still living today in Bangui - and that for at least the last 20 years - know full well who
24 Patrice-Edouard Ngaïssona is. He is known as a committed fellow citizen, a
25 responsible man, a role model. In a word, your Honour, one of our model citizens.

1 So who can imagine that any institutions, be it to the international or national
2 community, you cannot change the history of an entire people, even less that of an
3 individual, in this case, Mr Ngaïssona, but it could be anybody for that matter. How
4 is this possible? Well, because the proven face and identity of Mr Ngaïssona is
5 entirely different and it's not an instigator of the 2013 crisis. We know this because
6 we are Central Africans.

7 Mr Ngaïssona, his role and his action turns on a point, a landmark date, 14
8 January 2014, the date of his return to Bangui after his forced exile to Cameroon after
9 the 24 March 2013 coup d'état.

10 Who was Mr Ngaïssona and what did he do prior to that date? That is the question.

11 Mr Ngaïssona, his ethnicity, he is of Gbaya ethnicity and he is from the vast
12 prefecture of Ouham in the central area of the north of Central Africa. As was the
13 former president of the republic François Bozizé, Mr Ngaïssona was born in Bégoua
14 in the suburbs of Bangui, the country's capital.

15 His parents come from Bowara, a village in the sub-prefecture of Nana-Bakassa,
16 contrary to François Bozizé's parents who, for their part, come from Benzambe in the
17 Bossangoa sub-prefecture. A numerous family. Conflict with -- well, his ethnicity,
18 Gbaya, is scattered over the west of the country and don't come from a single village,
19 as people have had you believe.

20 Second, Mr Ngaïssona was a civil servant. He was incorporated in the civil service
21 immediately after his university studies and he joined the water and forest ministry.
22 He served the state faithfully and proficiently, eventually promoted to engineer of
23 water and forests. And in that capacity, he took up positions of head of department,
24 most lately, finances and equipment in 2003, when Brigadier General François Bozizé
25 took power on 15 March in 2003 through his coup d'état.

1 Mr Ngaïssona, as the OTP would have you believe, was he a part of François Bozizé's
2 inner circle? Bozizé allegedly appointed him *directeur de cabinet*, or director general
3 of the water, of forests because in theory that was his sphere of competency. That's
4 how things it is said are done in our country. It was even said yesterday and even
5 today, your Honours.

6 But of course no, Mr Ngaïssona was never promoted within that particular ministry,
7 waters and forests. And it never happened then or after. And throughout Bozizé's
8 reign between 2003 to 2013, it is said that Mr Ngaïssona was a minister under Bozizé
9 for youth. And yes, that's true. But what you are not being told are the
10 circumstances surrounding that appointment, and I would like now to return to that
11 in my second point.

12 The third point before that, president of the Football Central African Federation.

13 Mr Ngaïssona, if you believe the OTP, was appointed - was appointed, I reiterate - to
14 that position in 2008 by the President Bozizé, president of the Central African
15 Republic. But nothing could be further from the truth, your Honours.

16 And why? Well, because nowhere, anywhere in Europe or elsewhere, the FIFA rules
17 don't make it possible for such a thing; sport is to remain free of all party politics.

18 So, on the contrary, it so happens that Mr Ngaïssona was elected to his position
19 following a hotly contested election after being annulled and then re-held under the
20 supervision of the international football bodies, where heavyweight challenges took
21 part, including Mr Kamash, but also Mr Wefio, the proven nephew of Bozizé, the
22 president at the time. The Bozizé children, very much at the time involved in
23 sporting activities, gave their total support to Wefio, who lost in the face of
24 Mr Ngaïssona.

25 Consequently this begs the question, your Honour, given the allegations stemming

1 from the OTP going to the preference of Bozizé's himself as a president. So he
2 took -- he has power therefore against -- over FIFA to appoint the president of the
3 football federation in Central African Republic, would he -- would he have preferred
4 Ngaïssona over his own nephew, Wefio?

5 So, you can ask about this so-called pact alleged by the OTP, so-called pact between
6 Bozizé and Ngaïssona, the alleged objective being to take over all - all, I reiterate - all
7 Central African youth and channel it.

8 But here again, your Honours, to the detriment of the rules and precepts of
9 international football, because the Central African Federation was, in theory, the
10 channel by which youth would be enrolled.

11 But this is a total fiction, your Honours. The OTP is losing sight of the fact
12 that -- well, how can I put it? Mr Bozizé began as a sportsman in Bangui, so it's true
13 that, that he was going to achieve all this? This didn't exist under Bozizé's regime.
14 Bozizé was president of the Bangui administration of football in 1997.

15 So, during and after Bozizé's fall, Ngaïssona reached the head of international football
16 administration, elected as a member of the executive committee, of the CAF, the
17 African Football Confederation 2013, then head of the committee of FIFA, President of
18 the Union of the Federations of Central African football, UNIFFAC, in 2017.

19 Was he appointed?

20 Fourth point, your Honour, national MP, elected twice, in 2005 and 2010. It so
21 happens that Ngaïssona in both cases canvassed and electioneered as an independent
22 candidate affiliated to the presidential party Kwa Na Kwa, KNK for short. But in no
23 shape or form Ngaïssona was part of that party, as the OTP suggests.

24 The reason is simple, in 2005, the Kwa Na Kwa party hadn't any genuine existence,
25 legal or otherwise, on the Central African political chessboard.

1 Whereas, in 2010, Ms Véronique Bozizé, wife of the sitting president Bozizé, opted to
2 snatch from the outgoing MP Ngaïssona the place that he had conquered in the
3 circumscription of the fourth district of Bangui by imposing her own candidacy,
4 effectively forcing the candidate Ngaïssona to seek election in Nana-Bakassa. As I
5 was saying, the constituency where his biological father came from, where he
6 received 90 per cent of the votes, your Honours.

7 The youth minister, let's talk about this matter, your Honour.

8 As mentioned in the foregoing, Mr Ngaïssona became a minister under Bozizé's
9 regime - for the very first time in his life, by the way - but what government was that?

10 Except that of 2 February 2013 where the democratic opposition also sat alongside
11 Séléka rebels. This includes Michel Djotodia himself, who toppled Bozizé through
12 the 24 March coup d'état which followed.

13 Your Honours, honourable members of the Bench, it's historically proven that it was
14 under the pressure brought by the rebel coalition, the Séléka-rebel coalition and the
15 international community, regional community, that Bozizé, through the decree of the
16 2 February 2013, agreed to put together a national union government headed up by
17 the opposition prime minister, Mr Nicolas Tiangaye. It was that government that
18 we're dealing with, and Ngaïssona was part of that government as youth minister,
19 sports, arts and culture minister conjointly. A government where the Séléka
20 coalition killed on 24 March 2013, 45 days after it was established initially.

21 The so-called minister of sports and culture that we make mention of here,
22 Mr Ngaïssona, in short, holds the sad record of the shortest-lived ministry -- minister
23 in CAR at the time when the Bozizé regime, where he says that he was in the inner
24 circle - or, according to the OTP - lasted 10 years, from 2003 to 2013.

25 I move to another point. Now what about Douala? In any event, the 24 March

1 coup d'état forced into exile almost all the senior-ranking officials in the Bozizé
2 regime, including the unfortunate youth and sports minister who, as I told you,
3 escaped by the southern road.

4 Why did Ngaïssona return? Well, to deal with his own business interests, to be close
5 to his family. And when he did return, your Honours, he was welcomed. Maybe
6 you'll hear this, that he organised this, but anyway with great pomp and circumstance
7 he was welcomed. He was welcomed particularly by women in the Boy-Rabe 4th
8 district because he had been an MP to represent there. And he was welcomed by
9 Anti-Balaka elements in the sectors, traders who came to see him. There was lots of
10 chaos, and they asked him to become their leader because he is a born leader,
11 your Honour.

12 And then the international forces, Sangaris, also came to his home to speak to him.
13 Samba-Panza, who was elected subsequently, sent her political adviser to the
14 presidency. All of them to ask him, your Honours, to help resolve the crisis by
15 taking up the leadership of the Anti-Balaka. And he was asked to do this and the
16 OTP carried this question forward: Why you? Was the question. Well, because
17 you are leader and you can do something.

18 So, your Honours, who was Ngaïssona after 14 January 2014? And I'll conclude on
19 that point, your Honours.

20 So the return therefore of Mr Ngaïssona, the backdrop was clear, the
21 Anti-Balaka -- well, didn't have -- no, they didn't have any training in Cameroon, no.
22 Anti-Balaka stemmed from a different history. Southern Chad is an area -- the north
23 of Central African Republic sees a population affiliated to the south of Chad. In that
24 particular area of the world, there was war. Everybody knows that. That particular
25 population, they came close to the northern reaches of Central African Republic,

1 because there was a war and there was an oppressive regime so they had that reflex
2 to, to move together.

3 When the population came under oppressive acts, it was quite logical that the
4 Anti-Balaka should not set up in Bossangoa but elsewhere, in Goré on the Chad
5 border, and that's where the Anti-Balaka saw their inception.

6 So we don't need to meet up in a building, a high-rise in Paris or anywhere else to
7 constitute the Anti-Balaka. That's my point, your Honours.

8 So the triumphal arrival of Mr Ngaïssona in Bangui, he contributed to peace, I return
9 to that matter. Mr Ngaïssona has always been available and showed great willing by
10 his very nature to promote peace, particularly within the events surrounding Bangui
11 and the crisis that we traversed. He sought to throw himself into the fray, but also
12 his financial and material resources, because everything was looted. Everything that
13 he had at his avail he gave.

14 So, your Honours and honourable members of the Bench, to conclude on time,
15 Ngaïssona and his supposed power and influence brought to bear against the
16 Anti-Balaka communiqués, all missions, orders and what have you that have been
17 brought before your Honours have, in actual fact, only had one overriding objective:
18 To bring peace back. And not the opposite, as people would have you believe.
19 And whether you like it or not, the security system has deteriorated considerably in
20 our country, particularly in the west, western reaches of our country. And when
21 Ngaïssona returned, things started improving.

22 The statistics bear this out, particularly the height of the 2013 crisis in Bangui and
23 elsewhere. And, of course, the fatal date of 5 December was the tipping point where
24 security accentuated, when Madam Catherine Samba on 20 January 2014 arrived.
25 But this regime cooperated with Mr Ngaïssona, even became National Coordinator.

1 And we have the official record of that meeting, this was in June 2014 -- 2013, I clarify.

2 Sorry, I apologise, June 2014.

3 THE INTERPRETER: Clarifies the speaker.

4 MR KOKONGO: [13:32:50] So within that coordination Mr Ngaïssona wasn't alone.

5 He was a national coordinator and, as such, he represented the Boy-Rabe Anti-Balaka

6 faction. And Boeing was represented by somebody else. And Mr Mokom was also

7 part of this. Ngaïssona was never alone. Ngaïssona was never responsible for

8 leading any military force or having responsibility thereto.

9 To stick to time, I conclude on that point. I thank your Honours.

10 PRESIDING JUDGE MINDUA: [13:33:27](Interpretation) Thank you very much for

11 your submission. Congratulations for your very skilled and structured submissions.

12 I can see you on your feet.

13 MR KNOOPS: [13:33:38] Yes, Mr President. Just to announce that this concludes

14 our submissions in its totality. And, needless to say, that our conclusion is that the

15 charges in all aspects should be not confirmed by the Chamber in the case of

16 Mr Ngaïssona. Thank you.

17 PRESIDING JUDGE MINDUA: [13:33:58](Interpretation) My thanks, Counsel

18 Knoops, for your wrapping up remarks. I thank you also for your organisational

19 skills and your spirit of co-operation.

20 This rounds off the oral submissions from Mr Ngaïssona's Defence team.

21 In keeping with our schedule, we shall now rise until tomorrow. We shall now rise,

22 but we will not resume in the afternoon. We will resume tomorrow.

23 I can see Counsel Dimitri standing on her feet.

24 Counsel.

25 MS DIMITRI: [13:34:52] (Interpretation) Thank you.

1 (Speaks English) We would be very much assisted if we could have before tomorrow,
2 the PowerPoint presentation the Prosecution used during their submissions. As you
3 noted, both Defence teams used several. We made an effort to make specific
4 references to the CAR-OTP. The Prosecution, on the other hand, had an extensive
5 PowerPoint. It's part of the proceedings now and we would be very much assisted if
6 we could have a courtesy copy.

7 Thank you.

8 PRESIDING JUDGE MINDUA: [13:35:23](Interpretation) Mr Prosecutor, you heard
9 that request. What can you say?

10 MR VANDERPUYE: [13:35:32] Thank you, Mr President.

11 We have been in contact with the Defence with respect to the Prosecution's
12 PowerPoint. We are not in a position to disclose that to Defence at this point,
13 because they contain certain information which is internal to our -- which is internal
14 to our office, and we are evaluating to determine whether it would be appropriate to
15 release it to the Defence at this stage.

16 I would note that we have not received any PowerPoint or presentation from the
17 Defence on either side thus far, and I think it is in the interest of fair exchange that, to
18 the extent that they request it from us, that they should likewise offer to make theirs
19 available to us, which they have yet to do.

20 This is entirely an *inter partes* discussion; so I don't see the need for the Chamber's
21 intervention in any event, but I'm happy to talk to Ms Dimitri about it if she wants to
22 discuss it further.

23 PRESIDING JUDGE MINDUA: [13:36:24](Interpretation) Maître Dimitri, I don't
24 want to play ping-pong here, but you have heard the Prosecutor's answer. He has
25 given reasons why he doesn't want to disclose that PowerPoint. In any case, this

1 should be resolved between the parties, except you have an objection?

2 MS DIMITRI: [13:36:45] (Interpretation) Mr President, we have just sent
3 the Defence's PowerPoint to the OTP team to begin with. (Speaks English) Internal
4 to our office - I'm sorry, but it's part of the record. It was used in the court. So I fail
5 to see how it's now internal to the Prosecution's office.

6 There were several references, the references were not part of the transcript. We
7 would be assisted if we could have the PowerPoint. It's part of the record, your
8 Honour. Thank you.

9 (Pre-Trial Chamber confers)

10 PRESIDING JUDGE MINDUA: [13:37:54](Interpretation) Maître Dimitri, the fact of
11 the matter is that these materials were published in open session and, pursuant to the
12 RPE, the Chamber cannot order the OTP to give you the entirety of their PowerPoints.
13 We know that you are always working in co-operation and please try to work
14 together and resolve the issue, and only in case of extreme difficulty should you come
15 back to the Chamber. For the time being, I don't want to discuss this in open session.

16 (Overlapping speakers)

17 MS MASSIDDA: [13:38:46] (Interpretation) Mr President, I am sorry to abuse your
18 indulgence. I simply want to take two minutes to point out that the Legal
19 Representatives of Victims are part and parcel of the proceedings. Documents are
20 being exchanged and they should also be made available to the LRVs.

21 It is not an *inter partes* affair, as we have heard. We have the right to receive the
22 documents exchanged in the proceedings, just like the Defence teams and the
23 Prosecution.

24 PRESIDING JUDGE MINDUA: [13:39:37](Interpretation) Thank you very much.
25 Once again, I will leave it up to you, the parties and participants, to discuss this

- 1 matter after the hearing.
- 2 We are now at the end of this second session of the confirmation of charges hearing.
- 3 We will break and we will resume tomorrow at 11.30 with the Judges' questions.
- 4 I would like to end by thanking the people in the public gallery. I would like to
- 5 thank all the parties and participants, as well as the interpreters, the court reporters
- 6 and the security officers.
- 7 I wish you a very good afternoon.
- 8 Court is adjourned.
- 9 Court officer, please.
- 10 THE COURT USHER: [13:40:47] All rise.
- 11 (The hearing ends in open session at 1.40 p.m.)