

1 International Criminal Court
2 Trial Chamber V
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács and
7 Judge Chang-ho Chung
8 Opening Statements - Courtroom 1
9 Thursday, 18 February 2021
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:56] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SCHMITT: [9:31:22] Good morning, everyone.
15 Could the court officer please call the case.
16 THE COURT OFFICER: [9:31:27] Good morning, Mr President, your Honours.
17 Situation in the Central African Republic II, in the case of The Prosecutor versus
18 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
19 And for the record, we are in open session.
20 PRESIDING JUDGE SCHMITT: [9:31:47] Thank you.
21 I ask for the appearances of the parties, we start with Mr Vanderpuye.
22 MR VANDERPUYE: [9:31:53] Good morning, Mr President, your Honours.
23 Good morning, everyone.
24 Today the Prosecution is represented by Olivia Struyven, seated behind me, and
25 behind her Eric Iverson. I'm Kweku Vanderpuye. Good morning.

- 1 PRESIDING JUDGE SCHMITT: [9:32:08] Thank you.
- 2 And the Legal Representatives of the Victims, perhaps Mr Suprun first.
- 3 MR SUPRUN: [9:32:11] Good morning, Mr President, good morning, your Honours.
- 4 The former child soldiers are represented by myself, Dmytro Suprun, counsel at the
- 5 Office of Public Counsel for Victims. Thank you.
- 6 PRESIDING JUDGE SCHMITT: [9:32:21] Thank you.
- 7 And Ms Massidda.
- 8 MS MASSIDDA: [9:32:22] Good morning, Mr President, your Honours.
- 9 (Interpretation) The victims of the other crimes are represented by myself.
- 10 Ms Rabesandratana has not been able to be here on time this morning, she sends her
- 11 apologies, she will join me later. I'm also assisted by my colleague Mr Yaré Fall.
- 12 MR FALL: [9:32:46](Via video link)(Interpretation) Good morning, your Honours,
- 13 I am indeed present. I am speaking to you from Dakar in Senegal.
- 14 MS MASSIDDA: [9:32:55](Interpretation) And in Bangui my colleagues
- 15 Marie-Edith Douzima and Abdou Dangabo Moussa are present.
- 16 MS DOUZIMA LAWSON: [9:33:07](Via video link)(Interpretation) Good morning,
- 17 your Honours.
- 18 PRESIDING JUDGE SCHMITT: Good morning.
- 19 MR MOUSSA: [9:33:11](Interpretation) Good morning, I'm Mr Dangabo.
- 20 PRESIDING JUDGE SCHMITT: [9:33:18] Now we turn to the Defence.
- 21 We start with the Defence of Ms Yekatom, Ms Dimitri.
- 22 MS DIMITRI: [9:33:24] Good morning, Mr President. Good morning, your
- 23 Honours. Good morning, everyone. This morning Mr Yekatom is represented by
- 24 Thomas Hannis, associate counsel. We have our legal intern Camille Gillain. In
- 25 the public gallery we have our legal assistant Gyo Suzuki and our case managers

1 Wilhelmina Whittingham and Sabine Bayssat. And myself Mylène Dimitri, lead
2 counsel.

3 PRESIDING JUDGE SCHMITT: [9:33:45] Thank you very much.

4 And the Defence for Mr Ngaïssona. Welcome, Mr Knoops.

5 MR KNOOPS: [9:33:51] Good morning, Mr President, your Honours. The Defence
6 of Mr Ngaïssona is represented today by my associate counsel

7 Mr Omissé-Namkeamaï and case manager Chiara Giudici. Thank you.

8 PRESIDING JUDGE SCHMITT: [9:34:06] And, Mr Knoops, I can already give you
9 the floor. It's your turn for the presentation of the opening for your client.

10 MR KNOOPS: [9:34:26] First of all, Mr President, your Honours, I'm grateful to
11 the Chamber for the understanding of the situation last Tuesday, my private life.

12 Thank you very much. And I'll extend my gratitude on behalf of my family to
13 the Chamber for the understanding, and also the parties and participants for their
14 support and understanding. Thank you very much.

15 We, Mr President, we have presented a road map of our submissions for today, you
16 find on the screen. The first part will deal with the Defence case as to the history of
17 Mr Ngaïssona and his person. And the second part of the road map consists of our
18 Defence case in regard to the conflict itself. And the role of Mr Ngaïssona will be
19 delved into the third part of our Defence case. We forecast what we intend to
20 establish in our Defence case. And the conclusions at the end of our submissions
21 will be delivered by the associate counsel, Maître Omissé-Namkeamaï.

22 Mr President, your Honours, last Tuesday the Prosecution in its opening statement,
23 on page 27 of the real-time transcript - transcripts - stated that "Justice is necessary for
24 peace and reconstruction of the Central African Republic."

25 We agree with the Prosecution that the population of the Central African Republic

1 deserves justice. However, we submit that justice should and must be based on
2 the reality and the truth what happened in the Central African Republic within
3 the time frame relevant to the crimes charged. And this is also applicable, as we
4 submit, to the person of Mr Ngaïssona, who he was and what was his exact role
5 within that time frame. And this you will hear from the Defence today, we will
6 foreshadow our case in this regard.

7 Mr President, your Honours, this case is about a human being, a person, Mr Patrice
8 Ngaïssona, whose endeavour in life was to bring peace and unity in his country, to
9 reunite his people. A person who was refusing to use violence, was refusing to use
10 military means to achieve this goal. This is our Defence case.

11 His weapon, if we can speak about weapons in the metaphorical sense, was to making
12 his experience with sports, football, instrumental also for the unification of his people
13 from all ethnicities. How? It will be our Defence case that you will receive an
14 answer to this important question.

15 To foreshadow our case, we say to the Chamber today that on 25 March 2008,
16 Mr Patrice Ngaïssona was elected president of the Football Federation of Central
17 Africa, in the presence of the special envoy of FIFA, Mr Jacques Anouma, member of
18 the FIFA executive committee and president of the *Fédération Ivoirienne de Football*,
19 a position which Mr Ngaïssona assumed to continue to occupy during the time frame
20 of the charges. And the relevance of this observation, Mr President, will be shown
21 later during our presentation.

22 It is quite telling, your Honours, for the life story of Mr Patrice Ngaïssona and his
23 personality, and also for the --

24 PRESIDING JUDGE SCHMITT: [9:39:22] Perhaps may I say the following, there
25 are -- it's of course unfortunate that you are interrupted --

1 MR KNOOPS: [9:39:28] It's okay.

2 PRESIDING JUDGE SCHMITT: [9:39:29] -- like this, Mr Knoops. This can happen.

3 MR KNOOPS: Of course.

4 PRESIDING JUDGE SCHMITT: [9:39:32] But let me say the following: we have

5 representatives for the victims in the courtroom, so if there is any problem with

6 the connection in Bangui we simply continue. You know, this would -- because we

7 don't have it under control and it would perhaps be nice if we could avoid that we

8 have the loud music when there is connection and disconnection.

9 That's not a criticism, this can happen, but it is possible that it occurs again and we

10 should perhaps avoid it if we can, yeah? Okay.

11 Excuse me, Mr Knoops, please continue.

12 MR KNOOPS: [9:40:03] No problem, Mr President. Thank you very much.

13 Mr President, it's quite telling for the life story of Mr Ngaïssona and his personality,

14 and also for the appraisal by your Chamber of the charges, that his most favourite

15 player in the football team, national football team of Central Africa was a player of

16 Muslim descent. This person was one of the key players in the national team as of

17 2010, which team, under the auspices of Mr Ngaïssona, was a multi-ethnic team.

18 You will hear a Defence witness in our Defence case, if we would arrive at a Defence

19 case at all, telling this Court that Mr Ngaïssona even helped the family of this football

20 player of Muslim descent in that he arranged flight tickets for him and he arranged

21 travels for him to participate in the national football team of the Central African

22 Republic.

23 You will hear evidence from Defence witnesses saying that Mr Ngaïssona never gave

24 weight to anyone's ethnicity or religion when he dealt with the selection of players

25 within the football team. It is quite relevant for the establishment of the requisite

1 *mens rea*, as we will submit.

2 This type of evidence, which we will submit at trial, will show the real personality of

3 Mr Ngaïssona, his nature as a human being, and will show at trial, at the same time,

4 that this does not fit at all into the theory of someone who resented certain ethnic

5 groups, let alone who had the requisite *mens rea* to be involved in the crimes charged.

6 On the contrary, your Chamber will learn during this trial through our case that

7 Mr Ngaïssona's philosophy was, as one of the Defence witnesses will tell your

8 Chamber, to make the country smile and give the country some peace through sports,

9 to unify the country. This will also be corroborated by evidence which is, by the way,

10 also in the hands of the Prosecution.

11 And we ask you now to listen to an excerpt as an illustration of the evidence you

12 might receive during our case, which you find in number 2 of our list of our materials.

13 And Ms Chiara Giudici will now play this excerpt, which is, by the way,

14 a presentation of Mr Ngaïssona of April 2014.

15 (Playing of the audio excerpt)

16 THE INTERPRETER: [9:43:23](Interpretation of the audio excerpt) Mr Ngaïssona,

17 something else which I did was contribute to our country to try and bring peace back

18 to the Central African Republic and also to use football to the ends of peace. Football

19 is an important tool in pacifying the country. Football needs to start again and we

20 need to see what we can do to get things back up and running. The president of the

21 republic asked me also to support women's football and to make it into an elite

22 support. This is something which needs to be done by the Football Federation and

23 with the government and the support of the president. She has asked me to do

24 something and I will need to do that in cooperation with her.

25 Central African Republic government needs to not abandon the young people but,

1 rather, to use football for their better good and also to bring back peace, to support
2 peace. The Central Africans want not only to have their country freed, but they also
3 want somebody leading them who can manage them and I can do that. I am coming
4 back to football to assist young people and assist the effort to bring about peace.

5 MR KNOOPS: [9:45:13] So, Mr President, your Honours, who was actually
6 Mr Patrice Ngaïssona? How did he live his life in those days of the crimes charged?
7 Defence witnesses close to Mr Ngaïssona will tell this Court that his professional life
8 was, on a daily basis, dominated by organising the national team, their trips to play
9 football around the world. Defence witnesses will tell the Court that Mr Ngaïssona's
10 daily schedule was focused on making this happening, including the finance and
11 the logistical organisation of them.

12 Mr Ngaïssona did not have any assistance to manage all of these activities in those
13 days, to manage the international and national matches of the national team. He did
14 it all by himself, as you will hear from Defence witnesses. It was a full-time job and
15 it was a life philosophy.

16 Mr President, this does not fit at all into a theory, a narrative of a man who was
17 occupied with or interested in assisting in regaining power in the Central African
18 Republic. When you hear all the evidence, the Prosecution evidence and our
19 evidence, this Court will conclude that this case is about the distortion of the
20 personality of a man, Mr Patrice Ngaïssona, as well as his acts. When you have
21 heard all the evidence you will conclude with the Defence that this case pertains to
22 a rush to a conviction, in spite of evidence which clearly points in a different
23 direction.

24 The evidence presented in the course of this trial, Mr President, will ultimately, as we
25 are convinced, point to just one conclusion: Mr Ngaïssona did not contribute to

1 the establishment or proliferation of a criminal policy or common purpose resulting
2 in the crimes charged. He was not part of any alleged common purpose plan to
3 reclaim political power in the Central African Republic with whatever criminal intent.
4 The Prosecution wants you to believe otherwise, namely that he was instrumental in
5 assisting certain individuals in regaining power through military operations. But
6 this is, as you will show the Chamber, a defective theory. The narrative of
7 the Prosecution, as we will make clear before this Court, does not at all reflect
8 the reality of those days. Several even Prosecution witnesses, as we anticipate, will
9 appear before this Chamber and will illustrate this Defence narrative.

10 So again, Mr President, your Honours, who is Mr Ngaïssona?

11 He had a technical education at the School of Agriculture "*Des eaux et forêts*" and he
12 earned his title as an engineer in this discipline. In this capacity he served from 1992
13 till 2013 on several occasions and positions. Alongside his professional career as an
14 engineer, he had also a long and impressive career in football, as we just mentioned.
15 Nowhere, Mr President, your Honours, you will find in his curriculum vitae any
16 reference to a military background.

17 He became the second vice president of the Bangui football league in 2001 and was
18 elected - elected, not appointed, elected - as a member of the FIFA Club World Cup
19 Organising Committee in 2008, several years before the charges, which is quite a
20 prestigious position. The same year he was also elected - not appointed - member of
21 the commission of young people under 20 years of the Central African football
22 Confederation. He also became an elected member of the FIFA Member
23 Associations Committee in 2017, and in the same year he was elected as vice president
24 of the Youth Commission of the CAF.

25 In July 2017 he was again elected president of the Central African Football

1 Federations' Union, the UNIFFAC, in Kinshasa, Republic of Congo, which includes
2 eight Central African countries, Cameroon, Gabon, Equatorial Guinea, Chad, DRC,
3 RCA, and São Tomé et Príncipe. In February 2018 he was elected as a member of the
4 executive committee of the CAF.

5 Now, why are we telling this today to this Chamber? Why are we resuming
6 the history of Mr Ngaïssona? Why is this relevant for this trial?

7 Mr President, the mere fact that Mr Patrice Ngaïssona was so involved and
8 intentionally engaged in football, his life was dominated by his football career but
9 also all these prestigious positions, and we have seen that he assumed quite some
10 responsible functions as elected member of various prestigious commissions within
11 the world of professional football. This all, Mr President, makes it quite improbable,
12 highly unlikely that this person had any interest in aiding and abetting crimes or in
13 contributing to a common criminal purpose aiming to regain political power in
14 the Central African Republic, Mr President.

15 The proper context, therefore, of this trial, and your Honours when hearing
16 the evidence, cannot be understood without a genuine portrayal of this person.

17 Mr Ngaïssona became Minister of Youth, Sports and Culture in February 2013, and
18 held this position only for 45 days, as part of the implementation of the Libreville
19 ceasefire agreement in which a national unity government was created. And this
20 will be supported by the Prosecution's own evidence and is also reflected in the table
21 of agreed facts which will be discussed during trial. And we simply point for this
22 moment the Chamber to document number 5 of our list of material in which
23 the source cited refers to the implementation of that Libreville ceasefire agreement.
24 So, therefore, contrary to the Prosecution case, our evidence will show, and as we
25 submit even evidence the Prosecution will introduce, will show that Mr Ngaïssona

1 was not appointed as minister because of an alleged proximity to Mr Bozizé, nor that
2 he was appointed that minister because he was part of a so-called inner circle or core
3 alliance, a term the Prosecution introduced during its opening statement.

4 Mr President, your Honours, the history of Mr Ngaïssona's life, as we will
5 demonstrate in our case, will also convince your Chamber that he, Mr Ngaïssona, was
6 elected president of the Football Federation of Central Africa, contrary to what
7 the Prosecution case wants you to believe, not because of any intervention in 2008 by
8 Mr Bozizé. This is simply to be demonstrated during our case by taking notice of the
9 FIFA rules on election of these type of members, which do not allow any political
10 interference for such a prestigious position within FIFA.

11 To the contrary, our evidence will demonstrate that Mr Ngaïssona was selected for
12 this position and elected for this position while one of the sons of Mr Bozizé's elder
13 brother, Mr Jean Roger Ouefio, was the only other candidate, the rival in this election
14 procedure of Mr Ngaïssona. Therefore, the statement of the Prosecution that it was
15 Mr Bozizé's influence that Mr Ngaïssona became an elected member of the Football
16 Federation is therefore, in our submission, not correct. Therefore, the selection and
17 election in this position of Mr Ngaïssona was not because of Mr François Bozizé, but
18 due to the professionalism and popularity of Mr Ngaïssona within the circles of FIFA.
19 Otherwise he would never have been elected, as one Defence witness will tell this
20 Court in our case.

21 Mr President, your Honours, within FIFA you don't receive a position simply because
22 you have a political ally. It's all about achievements, professional achievements.
23 The world of football governed Mr Ngaïssona's life, while his endeavours in this
24 regard made his country proud of the national football team. He was instrumental
25 in the growth of football in the CAR and this was his life story. He renewed

1 the national cup and focused on the developing of the technical aspects of women's
2 football, as you just heard during the excerpt.

3 The Central African Republic, quite impressively, Mr President, your Honours, rose
4 in the ranks of football internationally thanks to the interventions and professionalism
5 of Mr Ngaïssona, placing the CAR in the first place during the CEMAC cup, that's
6 the *Communauté Économique des États de l'Afrique Centrale*, winning the UNIFFAC Cup
7 in Cameroon in 2009 and the CEMAC in 2009 in Bangui, all thanks to the endeavours
8 of this man.

9 Under Mr Ngaïssona's presidency, the national team of the CAR rose from being
10 ranked number 204 out of the 207 countries in the world, to the ranking of number 50,
11 5-0, in the world, number eight in Africa and number one in the CEMAC. And this
12 is the reason why people liked him and why he became popular, not because of his
13 political endeavours or any alleged proximity to Mr Bozizé. And this was the reason
14 why he was eventually approached to become a national coordinator, because of this
15 life story, because of this professional background. If your Honours will transpose
16 this life story of Mr Ngaïssona on to this case, on to this trial, it will create a different
17 narrative as opposed to the Prosecution case.

18 So what can we also learn from the history of Mr Ngaïssona's life? We can all learn
19 from it, Mr President, that the Prosecution case that Mr Ngaïssona left for Cameroon
20 to prepare or to set up a policy to reinstate Mr François Bozizé will not withstand
21 judicial scrutiny, as we will submit. After the *coup d'état* of 24 March 2013,
22 Mr Ngaïssona was forced to leave the country, like many, to end up in Douala in
23 Cameroon at the beginning of April 2013 through a transit in Brazzaville.
24 The Prosecution case rests upon the assumption that this place was selected by
25 Mr Ngaïssona because he wanted to stay in touch with Mr François Bozizé, with

1 the goal or incentive to prepare a response to the Séléka offensive and to coordinate
2 military operations to regain power. That's their case.
3 Yet, we will show with evidence the contrary, Mr Ngaïssona went to Douala in exile
4 because there he could not, forced by the war, continue his work as an engineer, first
5 of all, and secondly, to preserve his important and prestigious work for the Football
6 Federation of Central Africa, as we just displayed to the Court, of which he remained
7 the president for a second time while even in exile. He had nothing to do with
8 Mr François Bozizé, and, during those seven months of exile in Cameroon, his
9 activities of Mr Ngaïssona had no relation with assisting or otherwise contributing to
10 the conception of any alleged common plan or purpose, your Honours.
11 Your Honours, speaking about plans, the evidence will also demonstrate, as we
12 anticipate, that the counteroffensive against the Séléka was not born during
13 Mr Ngaïssona's stay in Cameroon, nor in Paris. We are convinced that this trial will
14 also demonstrate that there were no reunions inspired or directed by Mr Ngaïssona to
15 this end. On the contrary, we submit and we are convinced that your Honours will
16 at the end of this trial accept that the resistance movement to protect against
17 the crimes of the Séléka started initially in small villages of the Central African
18 Republic nearby Chad, and specifically in the Ouham region. And why? Very
19 simple, Mr President. For many years the population there was subjected to
20 violence and oppression from Chad and they were, therefore, the first ones to resist
21 and to protect themselves against the invasion of those foreign fighters. And
22 nothing to do with an inter-African conflict. It was a conflict which was fuelled by
23 foreign fighters, foreign forces.
24 And during this trial, when hearing the evidence, your Court will hear evidence and
25 can be conscious that, when Ngaïssona returned on 15 January 2014 in Bangui, he was

1 approached to assume the position of the national coordinator of the Anti-Balaka
2 exactly because of this life story we just laid out before the Chamber, given the fact
3 that the Anti-Balaka groups needed a representative to speak on their behalf in
4 the context of the peace process and to engage with the transitional government.
5 The OTP did not tell you last Tuesday that there are PEXO witnesses, exculpatory
6 witnesses, who explained to the investigators of the Prosecution that Mr Ngaïssona
7 was elected "because he was not a fighter and even didn't know the origin of the
8 Anti-Balaka". And some of those witnesses told the investigator, and we will submit
9 that evidence to Court, that one of those witnesses will say to this Chamber that they
10 wanted someone perceived as neutral and someone who could talk. You find
11 the reference on our list of material, number 38 of that witness.
12 That is, Mr President, your Honours, how Mr Ngaïssona became ultimately
13 a defendant in this trial.
14 In his role as national coordinator, Mr Ngaïssona consistently worked towards peace.
15 At this trial, your Chamber will hear other evidence and even videos where
16 Mr Ngaïssona calls for peace following his attendance to the peace talks in Brazzaville.
17 Listening to this type of evidence will convince your Chamber, as we submit that he
18 had no incentive to use violent means to achieve that goal.
19 We will now play briefly an excerpt of such a video, which is document number 111
20 on our list. It's a video which was displayed on 3 August 2014.
21 (Viewing of the video excerpt)
22 THE INTERPRETER: [10:05:13](Interpretation of the video excerpt) At the moment
23 of my return to Bangui, we tried to implement our commitments vis-à-vis all
24 the players, vis-à-vis the Central African players who were present during
25 the Brazzaville forum.

1 As soon as I returned, I tried to recoup the main players of Anti-Balaka and
2 implement the commitments. It's time to restore peace and to put into practice our
3 commitments. We must start peace processes. We in Central Africa, we must also
4 do our duty. We must see the coordinators and we need to help the people of
5 the Central African Republic. We are lagging behind. It is high time that we do
6 something. Yesterday we had conflicts and clashes, today we need to find peace.
7 We must go hand in hand in this endeavour to try and save our country. Some want
8 to go to Boali. We don't want any more roadblocks. We don't want these
9 roadblocks. We have to start to hunt down the false Anti-Balaka who are carrying
10 out these atrocities. Some even fear their life. We cannot endanger the peace and
11 security of our country. We have to stop this. We must be sincere in our daily
12 efforts.

13 MR KNOOPS: [10:07:32] Your Honours of course will have noticed - that's why I
14 mentioned the date 3 August 2014 - that this speech was made after the relevant time
15 frame of the charges. Now, you will ask yourself why are we quoting from a speech
16 of Mr Ngaïssona which was made many months after the charges. That's a very
17 important question. The Court will remember that the Prosecution's position is that
18 it could reconstruct the relevant *mens rea* of Mr Ngaïssona in a retrospective manner
19 in order to establish also alleged prior intent.

20 Now if the Chamber would follow this reasoning during this trial, it is our
21 submission that it's only consistent and fair if we, in this reconstruction, also pay
22 attention to the actions of Mr Ngaïssona which countervail the Prosecution case.
23 And it's therefore our submission that these types of speeches which we will
24 introduce at trial will indeed countervail the Prosecution case. Therefore, this
25 important speech which was delivered on 3 August 2014, which we will present

1 during this trial, will convince the Chamber, as we submit, that there was no *mens rea*
2 whatsoever which the Prosecution has in mind and cannot serve in a retrospective
3 manner to reconstruct and construct prior intent.

4 Mr President, it's Mr Ngaïssona's personal life story which will prove that this
5 Court -- for this Court that he is not guilty of the crimes charged. And these are not
6 just words from the Defence. The evidence itself will display and demonstrate to
7 this Chamber that Mr Ngaïssona was a man in favour of peace and against any form
8 of violence.

9 We cite just one Prosecution witness who will appear before this Chamber, in
10 his statement before the investigators where he, I summarise, you find it in document
11 6 on our list of material, where he said that he never participated at any reunion of the
12 coordination of the Anti-Balaka during which any order was given to attack the civil
13 population and the Muslim population. Indeed, these are not just words from
14 the Defence. We submit that several witnesses will confirm during this trial this
15 characterisation of Mr Ngaïssona and already did, some of them, to the investigators
16 of the Prosecution, saying that Mr Ngaïssona even gave small sums of money to
17 people in need in order to prevent the commission of crimes, in order to let them
18 return to their provinces, to achieve peace.

19 There will be witnesses appearing before this Court saying that Ngaïssona was being
20 perceived as someone who saved his country from burning down, using these terms,
21 which will directly contradict the Prosecution case, using the metaphor last
22 week -- this week of Mr Ngaïssona being an arsonist who would not put out their
23 own fire. That was a Prosecution remark on 17 February in the real-time transcripts,
24 page 13, lines 9 to 11.

25 Mr Ngaïssona was even described by one of the Prosecution witnesses as a firefighter,

1 to the contrary, who would put out fires, and that's a witness which you will find on
2 our list of materials document 6.

3 We are convinced that the evidence will tell this Chamber that any alleged meeting
4 organised by Mr Ngaïssona was meant to merely discuss the achievement of peace in
5 his country.

6 As a matter of fact, his continued engagement for peace will be demonstrated by also
7 his public declarations, which we will introduce at trial. As soon as he was
8 appointed as a general coordinator of the Anti-Balaka, Mr Ngaïssona directly
9 expressed his engagement in this regard to work alongside the transitional
10 government in order to ensure the return of peace and security in the Central African
11 Republic.

12 You will see now document number 10 of our list, it's a *communiqué de press* of
13 21 January 2014, and we ask the attention of the Chamber to the highlighted parts in
14 this *communiqué de press* as an illustration that Mr Ngaïssona transformed his
15 incentives into concrete actions like this *communiqué de press*, which was delivered
16 within the time frame of the charges.

17 Such engagement, Mr President, on his part can hardly be reconciled with the image
18 of a person who, as the Prosecution put it on Wednesday in its opening statement,
19 cite -- I cite from it, "did not get his hands dirty". This trial will introduce various of
20 such public declarations as a general coordinator of the Anti-Balaka in which
21 Mr Ngaïssona consistently reiterated the movement's engagement into a peace
22 process.

23 On 1 February 2014, in the time frame of the charges, he declared that the objective of
24 the Anti-Balaka, namely the removal of the Séléka coalition, had been achieved and
25 that this was essential to engage in the normalisation of the pacification of the country.

1 That's document number 11 on our list, again a display of this *communiqué de press* of
2 February 2014.

3 And our last document in this regard is a *communiqué de press* of 4 April 2014 where
4 Mr Ngaïssona requested all Anti-Balaka leaders to ask their elements to return to their
5 bases and to ensure the stop of all hostilities.

6 This type of evidence will demonstrate that the Prosecution case is also contradictory.

7 On the one hand it alleges that Mr Ngaïssona did not do anything in his capacity as
8 a general coordinator, but on the other hand, when he displays actions, is being said,
9 well, he had apparently the power to monitor and govern those Anti-Balaka groups.

10 The Prosecution's own material, as we will submit during this trial, will tell you
11 a different story. We will now display -- play a video -- an audio, pardon, of an
12 interview with Mr Ngaïssona in the time frame of the charges, 24 February 2014, item
13 97 on our list.

14 (Playing of the audio excerpt)

15 THE INTERPRETER: [10:15:15](Interpretation of the audio excerpt) I came back to
16 my country so that -- we don't have any spokesman to represent the voice of our
17 children. And everything is going against those children and that's a pity. It's
18 a -- there's no spokesman between Anti-Balaka and the others in the countries. And
19 the authorities have discussed with these elements. There's also the position which
20 is involved. I discussed with these elements, it's true. We tried to work towards
21 peace. These youth have left their countries, they came here on foot and they even
22 had arms and they want to return. They want -- particularly today they explained to
23 me that these children must do something to wipe this out. We have to do
24 something new, to start afresh, so that the population can go back to their normal
25 activities. They can't go back with arms to their countries. We need security and

1 peace so that we have a chance in the future. That's why I say, through these
2 children, we can carry out reforms. They've lost their homes, their fields, they've lost
3 everything. But through them we can try and do something and then do something
4 so that the government is trying to find adequate material so that we can start again.
5 This is the drama we are facing. That's why I'm standing on behalf of these children.
6 Peace doesn't have a price and we want peace. We have to do -- be able to move
7 freely. They already have arms. They haven't got any spokesman. We aren't seen
8 well and we have to do something. I must return to my country to help these
9 children. Those who are doing the atrocities, we must stop them. We must fight
10 against this looting, we must fight against these delinquencies.

11 MR KNOOPS: [10:18:01] Mr President, at the end of this trial the Chamber will be
12 convinced that the Prosecution case reflects, in our submission, a fundamental
13 misapprehension of his role during the crisis and his position as a peace coordinator.
14 He had no military authority, nor background, and like any other peace coordinator
15 he only heard and observed what happened in his country.
16 We ask the Chamber, when it appraises the role during this trial of Mr Ngaïssona,
17 and especially at the end of this trial, to keep in mind, Mr President, that the country
18 in which he was supposed to achieve peace extended over 622,000 square kilometres,
19 with a population in 2014 of 4,854,940 people, 78 per cent of which aged between zero
20 and 35 years. It defies, as we submit, the intelligence of this Court to accept that
21 there be any peace coordinator in the world who would ever be able to prevent or
22 control or redress any crimes in a country of such a size.

23 And before we further unfold our Defence case, Mr President, the Chamber should
24 also be aware when listening to the evidence of the Prosecution that its case reflects
25 merely a selection of witnesses, with only the purpose, of course, from the perspective

1 of the Prosecution, to achieve at a conviction.

2 Your Honours, at the end of this trial you will have heard numerous witnesses which
3 will be presented by the Office of the Prosecution, but you should ask yourselves at
4 the end of that trial, will these witnesses have given you a complete picture of
5 the reality in those days? Our answer will be no.

6 This trial, at least the Prosecution case will show, that various witnesses were not
7 called by the Prosecution and do not fit into its case theory. We will present to you
8 witnesses who were on the ground. They will tell you the real narrative,
9 the narrative about not only the history of the case, but also the real narrative about
10 who Mr Ngaïssona is and what he actually did during the conflict.

11 Mr President, the Court should also be aware when hearing the evidence during this
12 trial that a total of 64 INCRIM witnesses who also gave partially exculpatory
13 statements to the investigators of the Prosecution, who were initially on the list, have
14 since been withdrawn after the confirmation of charges. Now, it's of course
15 the discretion of the Prosecution, it's laudable that they try to diminish their witness
16 list. But, at the same time, the Chamber should be mindful and should keep in mind
17 that its list therefore, as we submit, will not provide a full picture of the case.

18 And it's the case of the Prosecution which will present to you which reflects, therefore,
19 a narrative which was told to the Prosecution witnesses -- to the Prosecution
20 investigators and which therefore will not reflect the entirety of the reality on the
21 ground in those days.

22 You will not hear during the Prosecution case witnesses who describe Mr Ngaïssona
23 to the investigators of the Office of the Prosecution as a person whose activities
24 during and after the crisis were only concentrated on reconciliation.

25 One witness was even telling the investigators that the little money Mr Ngaïssona had

1 to uphold his family was even used for him to give them to people to have them
2 returned to the region and to assist them in their daily lives, document number 20 on
3 our list of materials.

4 You will not hear during the OTP case a witness who told investigators of
5 the Prosecution that Mr Ngaïssona, with his very limited financial means, did
6 everything what he could do within his abilities to achieve peace, document number
7 21 of our list of materials.

8 Our various examples -- and for the translation booth I will now skip several
9 examples in my submissions and I will go to paragraph 37 of my presentation.

10 Another Prosecution witness told the Office of the Prosecution, you will not hear that
11 during the Prosecution case, provided an account of the planning and unfolding of
12 the 5 December attack which directly will contradict the Prosecution case about
13 Mr Ngaïssona's alleged contribution to this attack, as is, by the way, confirmed by
14 the Pre-Trial Chamber in paragraph 101.

15 That witness described to the investigators in detail how the ex-FACA, organised
16 alongside the Anti-Balaka, descended upon Bangui without exterior assistance or
17 guidance except for assistance of the French Sangaris forces.

18 You will not hear this witness in the Prosecution case, what he told the investigators,
19 that, apart from the Sangaris, that attack was not discussed with anyone and not
20 coordinated by or with anyone else, document 29 on our list of materials.

21 That witness which you will not hear told the investigators that, following
22 the overthrow of Mr François Bozizé, many fled to Cameroon. Mr Ngaïssona was
23 amongst those many, with others. And this will also confirm, and we are convinced
24 that we are able as Defence to convince the Chamber in this regard, that indeed
25 Mr Ngaïssona didn't go to Cameroon to align with Mr François Bozizé. He took

1 a route that thousands of refugees from the Central African Republic took as well.
2 And this witness which you will not hear during this trial in the Prosecution case, but
3 which you might hear during our case, told that Mr Ngaïssona only came into
4 the picture afterwards, after the 5 December attacks, and was not involved in those
5 attacks. The same witness saying that he did not have any military power, did not
6 give any military orders, because he was a simple civilian, document 30 on our list.
7 A witness saying that Mr Ngaïssona was a man of peaceful actions, that he was
8 like -- his house was like an orphanage or a church, telling the investigators that every
9 morning the population of Boy-Rabe would gather in front of his house and
10 Mr Ngaïssona would help them with medicine or would give them a bit of money to
11 help.
12 Mr President, the Chamber can conclude from these remarks of the Defence that,
13 when you will hear the Prosecution case, you should be mindful that its case is indeed
14 based on a selection of witnesses which are meant to fit into a narrative which is there
15 to support a conviction.
16 And this approach in the Prosecution case, as we will demonstrate, is not limited to
17 simple witness statements. We give you another example. The Prosecution has
18 alluded to a speech which was allegedly made by Mr Ngaïssona eight months before
19 the time frame of the charges. Prosecution submits that this speech of Mr Ngaïssona
20 was a call for support against enemies of the nation who decided to bring trouble by
21 bringing Sharia law and who wanted to use Islamism to destroy the country. A call,
22 therefore, to galvanise the youth against the so-called foreign invaders and to
23 organise a march against the crimes blamed on them, in an appeal to the Christians.
24 But the Prosecution, as we will submit, will present this speech merely on the basis of
25 a selection and tries to turn this call into a call to galvanise the youth. But we will

1 prove at this trial that this assumption is not correct.

2 This speech was not made at the eve of the coup on 8 March, this speech was made on
3 4 January 2013 at the eve of the Libreville peace talks in order to place the peace
4 discussions in the hands of God, document 4 of our list of materials. Moreover, we
5 will submit at trial that this call, placed in its proper context, was not a call to create
6 a rebellion against Muslims, but a call for peace, for dialogue, for joining Muslims in
7 their prayers. It's clearly stated, if your Honours will see the speech at trial, and I'll
8 just quote briefly in French:

9 (Interpretation) Let us pray that God bless us 2013, to preserve and keep peace which
10 he has given us finally so that our citizens can live in peacefulness."

11 (Speaks English) Document 4 of the list.

12 Therefore, the speaker recalls that God answers the prayers of the Muslims and
13 the Christians and pacified the crisis. This March was intended to include Muslims,
14 not exclude, not only through a call to join their prayers, but also to join the march.
15 School principals of several establishments, including a Muslim private school, were
16 even invited to this meeting to organise this march. Rather, therefore, than
17 exploiting division, as is the Prosecution case, this speech actually called for unity and
18 peace and fits into the narrative Mr Ngaïssona life and personality.

19 We will ask your Chamber in conclusion, Mr President, to keep this example in mind
20 when you will hear the evidence during this trial.

21 When we speak about the Prosecution drive for a rush to conviction, we will show
22 you that the evidence presented during the Prosecution case and during our case will
23 not withstand the highest evidentiary standards which this trial requires. It's
24 striking, therefore, that the Prosecution will ask you to pay attention to what they call
25 contemporaneous Facebook communications by, mind you, third parties, not even

1 attributed to Mr Ngaïssona as being the alleged author. And in doing so, to ask your
2 Chamber to prove key elements of a criminal case theory such as, in his case,
3 the element of alleged orders, the element of alleged provision of equipment and
4 ammunition.

5 Now, Mr President, your Honours, we asked the Chamber that the issue of
6 admissibility of social media evidence, which we will argue at trial, of course, has
7 already led to relevant jurisprudence in the United States of America, indicating that
8 Facebook messages become a main concern and has impacted upon the judicial
9 findings of several courts. Just one example, the US Federal Court of Appeals
10 Second Circuit ruled in 2014 in a very important case, United States v Vayner, that
11 the mere fact that the page with the defendant's name and photograph happened to
12 exist on the Internet at the time of the investigator's testimony in that case, according
13 to the Federal Court, does not permit a reasonable conclusion that this page was
14 created by the defendant or on his behalf. And mind you, this was even
15 a page where the name of the defendant as the alleged author was mentioned.

16 And therefore, Mr President, your Honours, when you will hear potential Facebook
17 evidence at this trial, we ask you to be aware of the conclusion of also experts such as
18 Dr Rebecca Hamilton of the American University of Washington DC in a very
19 important paper which should also, speaking about the context of mobile instant
20 messaging evidence, so-called MIM evidence, says that the technology nowadays
21 enables with the minimum technical skills to create forgeries that are undetectable to
22 the lay eye. Publication of 2018.

23 The Chamber, as we submit, will learn during this trial that Facebook evidence is, as
24 we will prove, not reliable at its face, it's not self-authenticating, partly due to
25 the anonymity resulting in the use of pseudonyms as user names.

1 Other risks we will submit during this trial will appear and were already identified
2 by also the Court of Appeals of Texas in the Tienda v State case, 2012, an important
3 case when it concerns the veracity of Facebook messages and the value of those
4 messages as criminal evidence. And also that court ruled that that type of evidence,
5 without more, is not sufficient to support a finding of authenticity.

6 Mr President, your Honours, it is our submission that this Chamber should keep
7 these reasonings in mind, these rulings in mind when the Prosecution will ask you to
8 look at Facebook evidence, whether Messenger or posts, such as evidence
9 the Prosecution has already quoted and displayed in its opening statement on
10 Tuesday.

11 With regard to Facebook messages and posts emanating from unknown individuals,
12 such as from the account, quote, "*coordination des Anti-Balaka*", (Speaks English)
13 the Chamber should also keep in mind what the Pre-Trial Chamber in this case
14 already held in paragraph 202, where the judges ruled that Facebook entries must be
15 assigned limited weight in the absence of evidence led as to the identity of the person
16 using the account entitled "*coordination des Anti-Balaka*".

17 Your Honours, we ask you to keep in mind, when the Prosecution will introduce this
18 type of material, what was held by this Pre-Trial Chamber II in paragraph 202 in this
19 regard.

20 And we will ask you in our case to ignore this type of material because, certainly
21 when Facebook comments are made by an anonymous Facebook user to a post made
22 on an anonymous Facebook group, in other words from unidentified sources
23 unknown even to the Office of the Prosecution, to not pay attention at these type of
24 materials.

25 And lastly, it is our submission that comments expressing anti-Muslim animus made

1 in private by individuals other than Mr Ngaïssona, as displayed by the Prosecution
2 last Tuesday in their opening statement, cannot be accepted, that cannot constitute
3 evidence before this Court that he himself, Mr Ngaïssona, shared such anti-Muslim
4 animus or sentiment. The Prosecution's attribution in its case of such quotes and
5 speeches made by other individuals than Mr Ngaïssona, by -- simply by virtue of
6 those individuals and Mr Ngaïssona allegedly being part of an inner circle should not
7 be accepted by the Court, as we will submit.

8 Such an approach stands, by the way, in stark contrast with the Prosecution's own
9 submission last Tuesday in the opening, saying that this trial is, we quote from
10 the real-time transcript, "is singularly about whether Mr Ngaïssona ... bear[s] criminal
11 responsibility for [his] own actions". Singularly. Therefore, what other people might
12 have said about Muslims is not something which we can attribute to Mr Ngaïssona
13 himself.

14 Mr President, in the remaining part of our opening statement to forecast our Defence
15 case I will now briefly go into the origin of the conflict and the relevance for our
16 Defence case.

17 And, secondly, we will delve into and we will unfold our case as to the proper role of
18 Mr Ngaïssona during this conflict, especially in regards to the allegation that he was
19 part of an inner circle or so-called core alliance. I will try to finish before the break
20 the second part, the origin of the conflict and the portrayal of the Anti-Balaka in this
21 conflict and the relevance for the Defence case of Mr Ngaïssona.

22 The case against Patrice Ngaïssona, Mr President, and the appraisal of his role as
23 national coordinator cannot, as we already alluded to this morning, examined in
24 isolation of the socio-political history of the Central African Republic and its military
25 political context in 2013-2014. When your Honours will learn during this trial from

1 this context, either through experts or witnesses, you will understand why
2 Mr Patrice Ngaïssona cannot be found guilty of the crimes charged.
3 Last Tuesday, the Prosecution in its opening statement started its presentation with
4 the following words, I quote: "Mr Ngaïssona was a member of Bozizé's inner circle.
5 He helped put together a fighting force composed amongst others of Bozizé's former
6 Presidential Guard, members of the *Forces armées centrafricaine*, which I will refer
7 to" -- words of the Prosecution -- "as the FACA, pre-existing self-defence groups, new
8 recruits and others to forcibly remove the incumbent Séléka regime."
9 Now, we are convinced that this trial will not establish these allegations of
10 the Prosecution. It is our case that the Anti-Balaka groups were, first of all,
11 spontaneously created, which as such is not disputed by the Prosecution, I learned.
12 Second, that they were without any central control. And third, there was no political
13 force or entity or drive behind them, it was a self-defence phenomenon.
14 As to the spontaneity of the Anti-Balaka, we will show during our case that the origin
15 of that conflict had nothing to do with the creation of a criminal policy resulting in
16 the commission of crimes against civilians on the assumption of regaining power, nor
17 a plan which allegedly found its origin in ethnic or religious affiliation.
18 Rather, as we will establish during this trial, the various Anti-Balaka groups emerged
19 simply on the basis of the need to protect, protection of the lives of the population, in
20 the absence of a proper law enforcement system. There was no police, no army
21 anymore present to protect the population. That was the real origin of the
22 emergence of all these various not organised groups of the so-called Anti-Balaka.
23 And while we unravel this history, which started, as we just submitted in the Ouham
24 region nearby Chad and gradually spread out through the country, while we unravel
25 this political social context, it will be shown to the Chamber that Mr Ngaïssona

1 played no role, no role whatsoever, in aiding, abetting or otherwise assisting those
2 groups in the commission of any crime.

3 The truth, Mr President, your Honours, the truth is, as we will submit, is that many of
4 those self-organised self-defence group spontaneously arose to respond to the violent
5 Séléka advance in the country, in the absence of a law enforcement system. And at
6 the time of the conflict and when this ensued, all of these groups were totally, totally
7 unrelated to Mr Ngaïssona or the KNK, which was the party of Mr Bozizé. Their
8 formation was therefore completely spontaneous and did not emerge at the behest of
9 any person.

10 Now, Mr President, will this trial present evidence to this? Yes. We are convinced
11 that this will be established at trial. Because even a Prosecution witness told
12 the investigators, and that's document 35 on our list, and he will appear before this
13 Court telling the investigator the Anti-Balaka movement began as a response to
14 the brutality of the Anti-Balaka -- of the Séléka forces, excuse me. With respect to
15 the 4th arrondissement in Bangui, that witness told the investigators that the security
16 forces were fleeing and that the people felt they had to rise, they had to rise up in
17 the absence of any protection.

18 This trial will establish, Mr President, what also this witness told the investigators of
19 the Office of the Prosecution, that the *raison d'être* of these groups was simply to
20 defend their country, "*pour défendre leur patrie, les Centrafricains.*" (Interpretation)
21 "They organised themselves in self-defence, to defend our fatherland."

22 (Speaks English) These are the words of a witness who spoke to the investigators of
23 the Prosecution and he also told them that there was no *chef*, there was no boss,
24 (Interpretation) "And they said that they didn't have a leader.

25 (Speaks English) We will submit in this trail, Mr President, that the Anti-Balaka was

1 rather a resistant movement. It was not based on an inter-African conflict, but
2 a conflict was -- which ensued from the outside, the exterior of Central Africa, an
3 invasion by foreign fighters which comprised 80/90 per cent of the Séléka, reports
4 which are presented by the Prosecution.

5 Document number 9 on our list you will also find another Prosecution witness which
6 will appear before this Court, and told the investigators, I quote:

7 (Interpretation) "Faced with these atrocities and crimes that the Central African
8 people were suffering, the young people of our country, coming from the provinces,
9 joined together in resistance as the French did against the Nazis back in the day."

10 Against the Nazis.

11 (Speaks English) So this witness of the Prosecution is making the comparison with
12 World War II when France was invaded by a foreign force, Germany, and that
13 why -- that's why this organisation, this Anti-Balaka movement came across.

14 Secondly, no coordination. We are convinced at this trial that these groups were far
15 from organised, Mr President - and we will come back to this topic later during
16 the presentation - making any coordination amongst them virtually impossible. It's
17 quite telling to this Chamber that one witness which whom the Prosecution has
18 spoken and will appear before this Court told them that:

19 "We got the impression that there were different Anti-Balaka groups in many areas ...
20 and elsewhere, but that there was no coordination amongst them."

21 These were the words of a witness speaking to the investigators of the Prosecution.

22 We ask your Honours during this trial to keep all these words in mind, "no
23 coordination", especially when your Chamber will assess the role of Mr Ngaïssona.

24 Now, the last element, was there any political or religious motive behind

25 the movement of the Anti-Balaka? The answer during this trial to be established is

1 no. Prosecution witnesses, as we anticipate, will appear before this Court saying
2 indeed there was no political -- or, party or politician behind the creation and
3 the actions of the Anti-Balaka groups. You'll find an example, document 104 on our
4 list of material, where that witness told the investigators, I quote:
5 "There is no political party or politician behind the Anti-Balaka. I can tell you that I
6 know that you are here to investigate what happened in the CAR and to find out if we
7 were pushed to do this by a politician or political party. We were not."
8 This witness tells the investigators of the Prosecution they were not pushed by
9 anyone, no politician, no political party, no political motive, to engage in this
10 self-defence.
11 So, Mr President, there was no use of any pre-existing groups by anyone, let alone
12 any politician, as suggested by the Office of the Prosecution.
13 In fact, during this trial, it will become evident to your Honours that the Prosecution
14 ignores the results of its own investigation. Its own investigation show, as we will
15 submit, that the Anti-Balaka movement was unstructured, it was impossible to
16 subsume this movement under a central control such as, for instance, somebody like
17 Mr François Bozizé or Mr Patrice Ngaïssona, or any other member of any alleged
18 inner circle. In making the argument that the Anti-Balaka groups became
19 a structured organisation - the argument of the Prosecution, with the help of
20 Mr Ngaïssona, their theory - the Prosecution, as we will submit, presents to the
21 Chamber not the reality on the ground. The reality on the ground was not that there
22 were just two groups that arose in response to the Séléka attacks in the lead-up to
23 the crisis, namely COCORA and COAC. No, the evidence will show there was
24 a multitude of resistance movements, a multitude of groups constituting this popular
25 resistant movement created by the citizens, the population itself, without any central

1 control or drive. It was all totally unrelated to Mr Patrice Ngaïssona or any other
2 politician in those days. Many Anti-Balaka members, as we will show the Chamber,
3 did not even want to affiliate with any politician. And Mr Ngaïssona was later
4 simply chosen as national coordinator not because of his political affiliation, but
5 because of his neutrality, his popularity, his achievements in football.
6 This socio-political reality, Mr President, which we will submit at trial will disprove
7 also -- and this opening statement is not about legal argument, we realise, but we will
8 disprove that the Anti-Balaka cannot constitute an organisation in terms of the
9 Rome Statute.

10 We can say it not more clearly than a report of the International Crisis Group of
11 21 September 2015, which is part of the Prosecution material and in our list of
12 material document number 34. And I quote in French from this report, to conclude
13 this part of my submissions:

14 (Interpretation) "There was a plethora of groups of different types, with different
15 geographical origins and political affiliations that were more or less effective, behind
16 the term Anti-Balaka." End of quote.

17 (Speaks English) Mr President, this is our Defence case, showing this Chamber that
18 the combination of the spontaneousness of this movement, the absence of a political
19 drive or party behind them, the absence of any coordination, makes the Prosecution
20 case highly improbable and make the Chamber convinced that the Prosecution case
21 cannot be proven beyond any reasonable doubt.

22 Your Honours, this trial will also answer another important question which
23 the Prosecution did not address in detail in its opening statement. The question is
24 why were these self-defence groups created and what was their motive? Is this
25 question important? Yes, because it will contextualise the actions of Mr Ngaïssona,

1 and specifically the speeches, because in the Prosecution case the speeches are
2 apparently a tool for the Prosecution case to show that Mr Ngaïssona used rhetoric to
3 galvanise the population in the regaining of power. We believe this trial will give
4 you another answer to this important question as to why these self-defence groups
5 were created.

6 Evidence will be presented before this Court which will show that foreign fighters
7 were essential in the bolstering of the Séléka forces. I mentioned this already before,
8 it was not an inter-African, Central African conflict, it started with a foreign invasion.
9 This specific contextual element, Mr President, your Honours, makes it quite clear
10 why this resistance movement spontaneously arose. This phenomenon of foreign
11 fighters will therefore disprove, as we submit, the Prosecution case that the conflict
12 was ethnically or religiously related. It was not.

13 The Court will learn from, amongst others, a report from the federal -- *Fédération*
14 *Internationale des Droits de l'Homme*, which is part of the Prosecution documents, and
15 we will submit this during our case, that 80 per cent of the Séléka forces may have
16 been made up of Chadian or Sudanese fighters, document 39 of our list of materials.
17 Document 40 on our list contains the written testimony of the bishop of the diocese of
18 Bossangoa submitted to the House Subcommittee on Africa, Global Health, Human
19 Rights and International Organisations, which tells the Court that as much as
20 90 per cent of the Séléka fighters were made of Chadians and Sudanese fighters.
21 Moreover, Prosecution witness, as we will expect, will appear before the Court to
22 corroborate this evidence and that they will confirm that the Séléka forces were able
23 to strengthen their ranks through use of mercenaries.
24 You will be made aware during this trial that one Prosecution witness told
25 the investigators of the Prosecution that he saw Chadian military vehicles doing

1 patrols in Bangui and he will affirm that some vehicles belonged to the official
2 Chadian forces and others were from paramilitary groups in Chad, document 42 of
3 our list.

4 Your Honours will observe at this trial what the implications are of this military
5 political element. It will disprove the allegation that the incentive of Mr Ngaïssona
6 to address the population in the CAR with certain speeches was done with so-called
7 rhetoric. The statement allegedly made by Mr Ngaïssona in January 2013 on his
8 behalf about foreign invaders - which is also referred to in paragraph 61 of
9 the Prosecution pretrial brief - was exactly made to denounce this phenomenon, not
10 to galvanise the population. There were indeed people from outside the CAR within
11 the ranks of the Séléka when they attacked the CAR population. The Prosecution
12 wants you to believe, Mr President, during this trial that such references by
13 Mr Ngaïssona were merely made based on rhetoric and that he was equating foreign
14 fighters with Muslims of Central African descent.

15 We will make clear during this trial that this Prosecution assumption that
16 Mr Ngaïssona's alleged references to "foreigners" were not a thinly veiled reference to
17 Muslims but was simply to alert the people to this invasion, this danger.

18 We will submit during this trial that the crucial role of mercenaries will countervail
19 the assumption that Mr Ngaïssona was engaged in anti-Muslim rhetoric before
20 Mr Djotodia's rise to power. To the contrary, we will submit that it was
21 the phenomenon of foreign fighters within the ranks of the Séléka which created
22 grave concern within the population.

23 As one Prosecution witness told the investigators, I quote:
24 (Interpretation) "I myself saw several military vehicles from Chad, several, if it wasn't
25 100, if it wasn't 200, several, and that was throughout the city of Bangui."

1 (Speaks English) Mr President, it will be important for the Court - and I go, for
2 the translation, to paragraph 69 of my submission, paragraph 69 - it will be important
3 for the Chamber to be aware, when you hear this evidence, that another Prosecution
4 witness told the investigators that the Séléka were indeed mercenaries and did not
5 follow the rules of war and combat. They targeted not only Christians, but also
6 the population in general, document 44 on our list. And document 45 on our list
7 refers to a witness telling the Office of the Prosecution in similar words this -- about
8 this phenomenon.

9 At the end of this trial, Mr President, your Honours, you will be convinced that it
10 were the Séléka attacks which was at the heart of this resistance movement, meant to
11 defend the population against the invasion of foreign fighters, which were meant to
12 facilitate the operations of the Séléka units. That was the political reality of those
13 days. The Anti-Balaka movement was therefore not about attacking civilians
14 because of religious or ethnic affiliation, it was about defending their lives. And
15 why would that be the case when so many of the Prosecution witnesses, as we submit,
16 told the investigators that Christians and Muslims lived in harmony before the whole
17 crisis started?

18 Mr President, during the conflict, the interference of foreign fighters was not limited
19 to neighbouring countries such as Chad and Sudan. The Chamber will, as we
20 submit, hear witnesses explaining how a crisis depicted by the media and
21 the Prosecution as being a clash between two religious communities, an inter-African
22 fight, arose simply based on economic motivations of foreign powers.

23 It's now quite cynical, Mr President, to notice that Mr Ngaïssona, the man in this
24 courtroom who is held responsible for the crimes committed during the crisis is in
25 fact the man who tried to put out the blaze created by foreign powers and economic

1 powers. This man is now before you, Patrice Ngaïssona. It is important to be
2 aware, Mr President, during this trial that those same foreign powers, after having
3 seen the humanitarian disaster created by the rival Séléka which was supported by
4 western powers, ultimately decided to switch positions and started to support
5 the Anti-Balaka. So when those western powers did observe this huge disaster
6 created by the Séléka, they realised their mistake, that they gambled wrongly in an
7 economical sense. And several witnesses explained this already to the investigators
8 of the Office of the Prosecution about the involvement of the French Sangaris
9 operation, the famous operation, in the organisation of the 5 December attacks, where
10 they were involved. One month after this attack, Mr President, Mr Djotodia
11 resigned under the pressure of the international community. This was exactly what
12 happened. And it's indeed cynical that now Ngaïssona, in view of the Prosecution,
13 has paid a price, has paid a price for this disaster which was created by foreign
14 powers.

15 Mr President, any political leader or peace coordinator would have criticised such
16 foreign intervention. In his country, any political leader would have done so.
17 Therefore, Mr Ngaïssona's alleged calls and actions have nothing to do with ethnic or
18 religious bias. It had nothing to do with any anti-Muslim rhetoric in this regard.
19 If the Chamber positions this conflict in its proper military, social, cultural context, it
20 can only arrive at the following four conclusions, and that's where I end my
21 presentation before the break:

22 First, the Anti-Balaka arose spontaneously in response to the Séléka crimes and thus
23 consist of several disorganised groups that one could not subsume under one person
24 or political leader.

25 Two, the Anti-Balaka cannot constitute an organisation within the Rome Statute.

1 Three, the Séléka coalition was indeed largely composed by foreign fighters from
2 other countries, which reflects on the *mens rea* of Mr Ngaïssona and the interpretation
3 of his speeches.

4 And fourth, those public speeches alerting to this reality by Mr Ngaïssona did not
5 amount to mere rhetoric aiming at fomenting division along religious or ethnic lines,
6 Mr President.

7 Thank you. I see now at the clock that I'm two minutes after the time of the break.

8 After the break I will conclude my submission with the third part, after which

9 Mr Omissé-Namkeamaï will take the floor. Thank you.

10 PRESIDING JUDGE SCHMITT: [11:03:28] Thank you. We will have half an hour of
11 a coffee break.

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

13 (Recess taken at 11.03 a.m.)

14 (Upon resuming in open session at 11.36 a.m.)

15 THE COURT USHER: [11:36:12] All rise.

16 Please be seated.

17 PRESIDING JUDGE SCHMITT: [11:36:35] Mr Knoops, you still have the floor.

18 MR KNOOPS: [11:36:40] Thank you, Mr President, your Honours.

19 My last part relates to the Defence case as to the role of Mr Ngaïssona and

20 the relevance thereof for the alleged individual criminal responsibility of

21 Mr Ngaïssona.

22 You heard this morning, Mr President, your Honours, that it's our case that

23 Mr Ngaïssona was not a member of any alleged inner circle or contributed or assisted

24 in any crime with a group of persons acting with a common purpose.

25 Now, the question -- the next question this trial will touch upon is the question

1 whether there was a criminal purpose or policy at all to reinstate François Bozizé into
2 power. It's the Prosecution case, as expressed by its opening statement yesterday,
3 Wednesday, that Mr Ngaïssona's role was, I quote, "more distant". But we submit
4 that this qualification of the Prosecution of Mr Ngaïssona's role as "more distant" is
5 quite an understatement. That Mr Ngaïssona - and I quote the Prosecution in its
6 opening statement - "did not get his hands dirty" and "operated under the radar" is, as
7 we submit, a total mischaracterisation of his actions as demonstrated this morning
8 and the intent attributed to him in this case.

9 It's our case that no common purpose or criminal policy existed, as alleged by
10 the Prosecution, and that the role of Mr Ngaïssona as "more distant", quotation of
11 the Prosecution, cannot constitute such a criminal responsibility.

12 This trial will establish, as we submit, Mr President, that such an objective or common
13 purpose or plan, if existed at all, is *ab initio* not deemed criminal at all under
14 international criminal law, nor the Statute. The Court should be mindful of the
15 majority opinion written by Judge Henderson rendered on 16 July 2019 in
16 the acquittal of Gbagbo and Blé Goudé, where the majority of the Chamber found that
17 Mr Gbagbo and Mr Blé Goudé may have shared the goal, together with other
18 individuals, to maintain the former in power, but this is immaterial. What matters is
19 whether or not there was ever a plan, albeit an implicit one, to commit any of the
20 crimes charged in order to achieve this goal. So a potential plan, if existed at all, to
21 reinstate an individual into power is not criminal under international criminal law,
22 nor the Statute.

23 There's also, by the way, rendered this decision in the case of Brima et al of the Special
24 Court for Sierra Leone in 20 June 2017, where the judgment in that case was rendered,
25 and there you see the same approach as delivered by the majority opinion in the case

1 of Gbagbo, Blé Goudé.

2 Now, Mr President, your Honours, the Prosecution theory and case will ask you to
3 make a speculative leap by stating and by accepting that by virtue of the fact that they
4 were members of the same ethnic group and family close to each other, that this
5 would constitute an inner circle.

6 The evidence at trial will not support this at all. You will hear testimony, even from
7 Prosecution own witnesses, who told the investigators that Mr Ngaïssona and
8 Mr Bozizé were not related at all. The fact that he and Mr François Bozizé were both
9 Gbaya cannot justify the inference of any type of familiar proximity to support
10 the case of the Prosecution that Mr Ngaïssona formed an inner circle based on this
11 assumption with Mr François Bozizé, or Maxime Mokom, or Bernard Mokom, or any
12 other person. It would mean that all Gbaya from western Africa could have been
13 part of this so-called fictitious inner circle.

14 Speaking about fictitious concepts such as inner circle, the Chamber should, in our
15 submission, be aware during this trial that François Bozizé and Patrice Ngaïssona
16 were not part of the same family as suggested by the Prosecution in its case, were not
17 part of the same family. The parents of Mr Patrice Ngaïssona originated from
18 the village Bowara in the province of Nana-Bakassaa, while the parents of
19 François Bozizé originated from Benzambe from the province Bossangoa.

20 Lastly, speaking about fictitious concepts as inner circles, with respect to
21 Mr Ngaïssona's alleged ties with the KNK, the party of François Bozizé, the Chamber
22 should be aware that a Prosecution witness told the investigators during
23 the investigation that while Mr Ngaïssona was indeed a member of the KNK, he was
24 never a KNK activist really. Document 32 of our list of material. He was never
25 a KNK activist really. He was more of a businessman. These were the words of

1 a witness which was interviewed by the investigators of the Prosecution.

2 Now, Mr President, I touch upon another question in this trial. This trial will also

3 revolve around alleged meetings. You will hear in the Prosecution case a lot of

4 evidence about alleged meetings. But were there any meetings within the confines

5 of an alleged inner circle? If there were any meetings, Mr President, your Honours,

6 it is our case that any such meeting between Patrice Ngaïssona, François Bozizé, or

7 Bernard Mokom, or whoever, were not meant to set up a common plan or purpose.

8 The Prosecution of course wants you to believe otherwise. But that is not what

9 the evidence will tell this Chamber. Rather, it will tell the Chamber that

10 Patrice Ngaïssona did not follow Mr François Bozizé, as we said this morning, to

11 Cameroon, to join him there in order to conceive a plan or policy, conduct military

12 operations. Not at all. We will show you that he went there, Mr Ngaïssona, to

13 Cameroon, simply to do what thousands of Central Africans did at that time, to

14 escape the war, to save their lives. You will hear a witness who told the Office of

15 the Prosecution that, I quote from the French transcript: (Interpretation) "They went

16 to those countries undoubtedly to find refuge."

17 (Speaks English) Document number 9 of our list of materials. And your Chamber

18 will ask yourself -- (Interpretation) "they came to the country to seek shelter."

19 (Speaks English) And your Chamber will ask yourself during the course of the trial,

20 why Cameroon? Why were all these people going to Cameroon? The answer's

21 very simple, we don't need a trial for this answer. Cameroon is a logistical choice

22 given its proximity, economic ties and the fact that its president at the time was

23 favourable to accepting refugees from the CAR. There was a common language,

24 French, which was also spoken in parts of Cameroon, and witnesses from the CAR

25 speak of how they have family in Cameroon.

1 Mr President, your Honours, you will also learn during this trial that Mr Ngaïssona
2 fled to Cameroon, like thousands, not to join François Bozizé, as we said this morning,
3 but simply for the survival of himself and his family.

4 A Prosecution witness told the investigators that Mr Ngaïssona was indeed occupied
5 with his football obligations for the federation in Cameroon while in exile and
6 therefore was only able to meet him, Mr Ngaïssona, because of his occupation, three
7 or four times in Cameroon. Document 66 on our list. All this implies and will
8 imply to the Chamber throughout this trial, Mr President, that no coordination on
9 the part of Mr Ngaïssona took place in Cameroon within the confines of an alleged
10 common plan.

11 It's our case that if any meeting abroad materialised, it was merely to speak about
12 the political situation in the CAR, which was dramatic, the foreign fighters which
13 were supporting the Séléka committing crimes. And we believe that the Prosecution
14 evidence will also support this stance. You will hear testimony from a Prosecution
15 witness, witness number 9 on our list, who will confirm that all people from the CAR
16 who found themselves in exile in Cameroon were like brothers, brothers from
17 the CAR meeting to exchange ideas and discuss the dramatic developments in their
18 home country, what was happening there with their lives and what could be done to
19 restore peace, document 66 on our list. Mr President, this hardly will allow any
20 inference to be made that Mr Ngaïssona was part of an inner circle joining
21 François Bozizé in Cameroon to formulate a common plan or purpose whatsoever.
22 Now, of course, the Chamber will ask yourselves will this trial show any tangible
23 evidence to this extent? It is our submission at trial that no tangible objective
24 evidence will be established that Mr Ngaïssona coordinated any military action, not
25 being a military man, any military action from Cameroon being part of an alleged

1 common plan or core alliance, another fictitious concept you will hear during this
2 trial.

3 The Prosecution will during this case try to believe you otherwise and will present
4 also CDR evidence to this extent. However, this material, as we believe similar to
5 the Facebook evidence, will not reveal any concrete tangible evidence as to
6 Mr Ngaïssona's purported role. When you are faced, Mr President, your Honours,
7 during this trial with this CDR evidence, we will ask you to keep in mind, we ask you
8 to keep in mind what already the Pre-Trial Chamber in paragraph 180 of its
9 confirmation decision ruled about this issue, simply saying, look, the Chamber
10 observes that such records do not provide the Court with any kind of indicia as to
11 the content and purpose of the conversations. They only allow the Chamber to
12 establish that Mr Ngaïssona had conversations with such persons.

13 This is of course the reality of the evidence, Mr President, and we ask the Chamber to
14 come to the same conclusion as the Pre-Trial Chamber did with the CDR evidence, to
15 ask -- the Prosecution asks you to infer from that evidence the alleged role of
16 Mr Ngaïssona.

17 But when you hear this evidence from the Prosecution during its case, we also ask
18 you to take notice of a report, an interesting report mandated by the Office of
19 the Prosecution itself. I will not mention the author because of the confidential
20 nature of this document, you will find it 113 on our list of material, and we intend to
21 introduce this at trial because, Mr President, this report highlights in its findings, this
22 expert, the shortcomings of exactly CDR data provided by the Prosecution. It notes
23 *inter alia* the significant difference in formatting source data. It refers to uncertainty
24 with respect to the quality of data, et cetera. This document, Mr President, will
25 convince the Chamber that CDR evidence is not only of a highly unreliable nature but

1 cannot lead to any inferences as to the role of Mr Ngaïssona while in exile in
2 Cameroon.

3 And during this trial you will hear qualifications such as inner circle, core alliance,
4 meetings, planning military operations, et cetera. There will be no tangible evidence,
5 as we anticipate. Of course, you will hear many so-called insider witnesses
6 appearing before this Court presented by the Prosecution, saying that Mr Ngaïssona
7 participated in such an alleged plan. Of course you will hear those witnesses coming
8 before you. You will hear from those witnesses also, and one of the very few
9 witnesses who alleges that Mr Ngaïssona attended such meetings with Mr Bozizé and
10 his so-called entourage in Cameroon, Witness 8, but that witness will not confirm that
11 he in fact attended the alleged meetings himself or herself.

12 When hearing this type of evidence, Mr President, we ask the Court to keep in mind
13 that another Prosecution witness who will be presented to you to back up this
14 allegation about the content of these meetings, will be, as we will submit, a person of
15 a dubious character who has previously committed crimes against the administration
16 of justice before this Court. I will not go into detail because of the confidential
17 nature of this issue, but the Court is aware of our filing in this regard.

18 Mr President, we started our presentation this morning with Mr Ngaïssona's
19 background, and not without reason. We ask you to look at his life in those days
20 and we will ask you to conclude that he could not have reasonably assisted or
21 contributed to the crimes charged or have been part of an alleged common plan.

22 We believe that the evidence will show also that his personal life, his activities as
23 president of the Football Federation in Central African is a clear contraindication of
24 the OTP's case. We will just give you one example today, one example.

25 The evidence shows that on 1 December 2012, Mr President, your Honours,

1 Mr Ngaïssona travelled to Japan for the FIFA Club World Cup. Looking at
2 Mr Ngaïssona's electronic ticket to Japan, for instance, you will learn that, in addition
3 to a mission order that clearly states that he is to complete an 18-day mission in Japan
4 for the purpose of attending this Cup, you will find evidence that -- which, by
5 the way, countervails the assumption that he was involved in the activities of
6 COCORA in December 2012, as the Prosecution's case submits to you also in its
7 pretrial brief in paragraph 56. We direct, by the way, the Chamber to the items 48
8 and 49 of our list of materials, where you find also the evidence to support this travel
9 of Mr Ngaïssona to Japan.

10 But you will see that after this 18-day trip to Japan for the FIFA Cup, Mr Ngaïssona
11 landed first, arrived first in France, where he spent Christmas. We are still in
12 December 2012, where the Prosecution says December 2012 was the creation of
13 COCORA and Mr Ngaïssona was instrumental in those activities in December 2012.
14 So you will see he, this man, travelled on 1 December to Japan for the FIFA Cup and
15 then, after 18 days, spent Christmas with his family in Paris, travelled through
16 Cameroon and only returned in Bangui on
17 27 December 2012 - 27 December 2012 - document 52 on our list of materials.

18 Now, Mr President, your Honours, this is to say that this trial will provide you
19 tangible evidence - tangible evidence - objective evidence, not evidence of witnesses
20 who were not there, that he, Mr Ngaïssona, did not return to Bangui till upon
21 27 December 2012. And we refer to his passport pages you find, as I mentioned, in
22 our document 52 of our list of materials. This type of evidence, Mr President, will
23 already countervail the Prosecution case that Mr Ngaïssona was involved in
24 realisation, the foundation of the alleged common purpose by mobilising the youth
25 and supporting them by the creation of COCORA in December 2012. He was not

1 even there. Very simply.

2 Now, another relevant question the Prosecution will raise, and also Defence will raise

3 during this trial, is did Mr Ngaïssona finance the Anti-Balaka? Our answer is also

4 here he could reasonably not have done so. We'll prove this in court. We will

5 introduce evidence to show that his financial situation at that time is a clear

6 contraindication for the Prosecution case, because we will show you that in 2013-2014,

7 Mr President, Mr Ngaïssona was in dire financial need. It's not just our word,

8 the Prosecution is in possession of documents indicating that Mr Ngaïssona indeed

9 was in dire financial problems in those days. We refer simply for today to document

10 53 on our list of materials. It's an email of 7 September 2013, so three weeks before

11 October 2013, and this is the time frame within which the Prosecution says

12 Mr Ngaïssona started to finance all these groups from October 2013.

13 This email of 7 September 2013 is an email from Mr Ngaïssona to another person

14 where he lists, Ngaïssona lists his huge financial struggles and asks for financial help.

15 Another email you find will be the one of November 2013, so a few weeks after

16 October 2013, where Mr Ngaïssona expressed his concern for not being able to even

17 pay the fees for his son's school, mind you, document 56 on our list. That's 55, 56

18 and others documents asking -- again, Mr Ngaïssona asking again for financial

19 assistance for January 2014 before leaving to Cameroon.

20 Now, Mr President, these documents, this is just a few examples, which are to be

21 found amongst the Prosecution evidence will make it quite improbable already that

22 he was able to dispatch money, as the Prosecution asserts, to the field in the fall of

23 2013, October 2013, as the Prosecution submits in its case, given that at that time,

24 Mr President, the evidence will show that Mr Ngaïssona was struggling to even

25 provide financial need for his family.

1 Now, the question is why was Mr Ngaïssona in financial -- dire financial need when
2 leaving Cameroon in 2013? We will give you this answer also at trial. Because he
3 had at that time, mind you, almost 30 family members, 3-0, who were under his
4 financial responsibility in Cameroon. In addition to these 30 family members, you
5 will learn during this trial that also under people were under his financial
6 responsibility, including his father and other family members in Bangui, as well as
7 family in France. A huge family and this man had all the financial responsibility to
8 take care of them. His situation financial was even more burdensome since his two
9 younger siblings, namely his brother Barnabé Ngaïssona and his sister Angèle
10 Ngaïssona, were both seriously ill at that time. They were on the verge of dying and
11 dependent on Mr Ngaïssona for financial support and obtain medication they
12 imperatively needed. Sadly, Mr Ngaïssona lost both of them in Douala in Cameroon,
13 they died, despite Mr Ngaïssona trying to help them with medication.
14 Now, Mr President, this is all to say that the evidence will illustrate at this trial that
15 Mr Ngaïssona did not have the financial means to finance all these Anti-Balaka
16 groups. Documents will show this Court that he was himself asking for financial
17 help from friends and family in order to take care of his huge financial responsibility
18 towards his family. It will undermine the Prosecution case.
19 We will show you that he even requested in those days financial assistance from
20 the FIFA and from the CAF to help his subsistence while in exile. We will show you
21 that in Cameroon he set up a special bank account to receive those emergency funds
22 in Yaoundé to survive.
23 As a result, we will ask the Chamber to negate the portrayal of Mr Ngaïssona as being
24 a person capable of funding all these different Anti-Balaka groups and we will submit
25 that the Prosecution case will lack forensic evidence based to suggest that any

1 purported payment attributed to Mr Ngaïssona could be linked to an alleged
2 common purpose. Indeed, Mr Ngaïssona, as we demonstrated this morning, even
3 when in great financial need was still a man with a heart. Generous as he was, he
4 still helped other people of the society, despite his financial needs.

5 It's quite self-explanatory that one witness told the investigator of the Prosecution,
6 document 66 on our list, that Ngaïssona gave me in those days 100,000 CFA, that's
7 €153, Mr President, and this witness told the Office of the Prosecution investigators:
8 "He does this out of the goodness of his heart. He helped a lot of people like this,
9 including pensioners in Bangui."

10 The Chamber will not hear, as we submit, tangible evidence to link the financial
11 means of Mr Ngaïssona, if any, to a common purpose or to show that he in any way
12 contributed to the commission of the crimes charged.

13 We also you during this trial to pay attention to the witnesses who told
14 the investigators of the Prosecution that Ngaïssona indeed gave, despite his financial
15 problems, gave money to those people who were hungry and to stop them from
16 committing crimes and to enable them to return to their provinces. That have
17 nothing to do, these payments, with any common criminal plan or purpose.

18 And why would Mr Ngaïssona act in this way? Why would he even pay money to
19 help these people while his family was in dire needs, financial need? It was, as you
20 heard this morning, it was his nature, it was his personality. In any event, these
21 actions will clearly contradict the Prosecution case, specifically when it concerns
22 *mens rea*. The Court should keep in mind that in those days the government of the
23 CAR didn't pay any individuals to return to their villages, to lay down their weapons
24 in their villages, and it was indeed Mr Ngaïssona who stepped in sometimes with his
25 even poor financial means. One example you find on our list of materials number

1 58.

2 To conclude, Mr President, your Honours, this trial will tell you that Mr Ngaïssona
3 did not fund the Anti-Balaka movement, because of his own financial situation.

4 Now, another question is did he provide weapons or ammunition to those
5 Anti-Balaka individuals? We believe this trial will answer the question with a clear
6 no. The Chamber will not hear evidence, as we submit, about weapon storages, nor
7 Mr Ngaïssona's involvement therein, nor any concrete contribution of weapons to
8 Anti-Balaka groups by Mr Ngaïssona.

9 To the contrary, evidence to be presented at this trial will show the Chamber that
10 those Anti-Balaka in those days fought with basic weapons such as artisanal
11 traditional hunting weapons, machetes, wooden sticks, et cetera, some of them even
12 unarmed. Or weapons retrieved from Séléka fighters, as some of the Prosecution
13 witnesses will tell you - document 59 of our list - or retrieved from the FACA during
14 the attack. Your Honours will learn during this trial that the weapons in
15 the possession of the Anti-Balaka were indeed mostly retrieved from Séléka fighters,
16 but all of this had nothing to do with the role of Mr Ngaïssona.

17 One Prosecution witness told the investigators that the resistance, the Anti-Balaka,
18 had a strategy in place to acquire weapons. The strategy to acquire weapons was to
19 attack and neutralise the Séléka. That was the way how the Anti-Balaka armed
20 themselves, Mr President, not through one individual, Mr Ngaïssona here, in his
21 current at that time situation financially.

22 The evidence to be presented at trial will also make clear to the Chamber that
23 the coordination in Bangui did not provide weapons or ammunition to any fighter.
24 Prosecution witnesses that we believe will be heard by the Chamber and will be
25 established that Mr Ngaïssona himself nor the coordination were involved in

1 the providance of weapons. And when it concerns the 5 December attack, there is
2 even a Prosecution witness who was initially on the list, but was withdrawn, who
3 told the investigators that the military weapons they used during the attack on
4 5 December were FACA weapons and were not provided by anyone, neither in
5 Gobéré, nor during his journey of that witness to Bangui. Therefore, the Prosecution
6 case that Mr Ngaïssona was instrumental in the armament of those groups has to be
7 dismissed.

8 And these are not just our words, because we believe that several Prosecution
9 witnesses appearing before this Court will confirm this and already told the OTP
10 investigators that the coordination did not provide weapons or ammunitions to any
11 fighter.

12 The Chamber should be conscious of the fact that one Anti-Balaka leader who was
13 already interviewed by the investigators, but was not provided with a pseudonym
14 and not appearing on the list, also told this similar message to the Office of
15 the Prosecution. I quote briefly from that transcript, in French. He told
16 the interpreters: (Interpretation) "So don't think I'll give you a penny to buy
17 ammunition or to go kill."

18 (Speaks English) But who told this? It was Mr Ngaïssona. This witness told
19 the investigators of the Prosecution that it was Mr Ngaïssona who told him this, that
20 he shouldn't think that he will give one dime to this witness to buy weapons or
21 ammunitions for killing. It was Ngaïssona who told this to the witness of
22 the Prosecution. Mr President, document 95 on our list.

23 Mr President, a man is put on trial today who was appointed to coordinate peace in
24 his country. Was a coordination necessary? Yes. But why was he put on trial?
25 Because this coordination was necessary for the peace process in light of the diversity

1 of all the Anti-Balaka groups. One needed a person, the community,
2 it -- the government needed a person to structure the peace process, and it should
3 have been someone neutral, not a fighter, words of the Prosecution witnesses. And
4 there was only one man in the country who could save the country from burning
5 down and that was Mr Ngaïssona. And it was not to structure pre-existing
6 groups to commit crimes, it was to facilitate and streamline the process, to bring
7 the leaders from the provinces to Bangui, to the peace table.
8 Now let us have a closer look at his task as a national coordinator. His only
9 contribution was, Mr President, your Honours, that he gave the Anti-Balaka a voice,
10 a voice to unify the country, to represent them before the government and
11 the international community. And Mr Ngaïssona accepted that position on
12 the condition that the violence would cease. You have seen today some of the
13 evidence to this. His role was simply limited to conveying the Anti-Balaka's
14 demands to the government or the international organisations. There will be
15 evidence presented by the Defence that Ngaïssona in those days even sent letters to
16 the secretary-general of the United Nations to ask for help. It was Mr Ngaïssona
17 who reached out to the United Nations in those days, Mr President. And you have
18 to keep in mind that when he returned in Bangui in January 2014, Mr Ngaïssona,
19 the movement, Anti-Balaka movement was well under its way, it was irreversible, it
20 was only to stop with a person.
21 And these are not just words of the Defence, these are also words of Prosecution
22 witnesses who will appear before this Chamber. Witness 26 on our list of evidence
23 of witnesses will show this.
24 Mr President, at this trial we will observe that as a national coordinator
25 Mr Ngaïssona's incentive was solely to unify these groups, to give them a voice and

1 a face at the negotiation table, to gain peace in the country, using his philosophy as
2 sports, his experience and drive as sports to unify people.

3 None of us in this courtroom were present at those meetings, Mr President. None of
4 us. Some witnesses were, indeed. Maybe. We will hear that during the trial.

5 But one of the witnesses who was interviewed by the Office of the Prosecution and is
6 not appearing anymore on the list told the following - and this is very important for
7 the Chamber to know at the outset of the trial - told the following to the investigators
8 about a meeting. He said the following to the investigators, Mr President: "During
9 the meeting, Ngaïssona took the floor and said that if they wanted him as a leader all
10 the exactions had to stop; that everyone had to follow his orders, stop pillaging and
11 killing of Muslims for nothing."

12 This was said by Ngaïssona according to a Prosecution witness during these so-called
13 meetings. That had nothing to do with concocting crimes, Mr President.

14 What this person also told the investigators, Mr President, your Honours, was exactly
15 what we discussed this morning with your court about the personality of

16 Mr Ngaïssona. He said, "when the young people wanted to rise up, the Government
17 would call Ngaïssona". They -- he didn't volunteer to be in this courtroom as
18 a national coordinator, he was asked to assist the government and the community, to
19 speak with them. The government would ask him, according to this witness, would
20 ask him to talk to the youth to calm tensions. That was the mandate he was asked to
21 perform, Mr President. Document 64 on our list.

22 Your Honours should be aware that according to this very witness, some of the
23 Anti-Balaka, because Mr Ngaïssona refused to engage in fighting, even tried to target
24 him and his family. His house was burned down in Boy-Rabe. They tried to kill
25 him and his family, Mr President, because he was refusing to take up arms,

1 Mr President. And this will also be detailed by witnesses, Mr President. Document
2 64 on our list.

3 Your Honours, when hearing the evidence, your Chamber should also be aware that
4 one of the witnesses who contacted the investigators exactly told the same as we just
5 telling you during our opening statement. And he also told that some of the efforts
6 to coordinate with the provinces for the purpose of the DDR process did not always
7 work out because - and this is important - because it shows the lack of any central
8 control to monitor the Anti-Balaka, because, I quote from the French statement:
9 (Interpretation) "Everyone in that little group already claims to be the leader of his
10 group and that he didn't have to report to anyone."

11 (Speaks English) Mr President, this was the reality on the ground, nothing else. This
12 is the evidence which is direct, and not experts who will testify before this Court
13 reconstructing the conflict years later. These are the witnesses the Court needs and
14 some of them are, unfortunately, withdrawn from the list.

15 Mr President, this trial will also address the question whether Mr Ngaïssona gave any
16 instructions or orders to so-called ComZones, especially with respect to military
17 operations. No. There will be no evidence to this. Ngaïssona was not a military
18 man. It's our case and we will show that he was not involved in any type of military
19 operations.

20 The Prosecution wants you to believe in its case that he communicated from
21 Cameroon about military operations. Here we should not confuse the evidence,
22 Mr President, your Honours. Of course, like everyone, Mr Ngaïssona was very
23 much concerned about the fate of his country and he received many proposals and
24 suggestions from individuals who were equally concerned about the attacks on
25 the population by the Séléka. We ask you to keep in mind when you hear

1 the evidence of the Prosecution that any allegation that Mr Ngaïssona responded to
2 such communications, to such requests for assistance cannot serve in this context as
3 proof for alleged criminal intent.

4 A clear example which we will show at trial is his concern and, at the same time,
5 the lack of intention to be militarily engaged, there were his actions versus
6 the international community. I already mentioned them. We will show you with
7 evidence that he in 2014 addressed the crisis in an official letter and *communiqué* and a
8 proposal for a solution to the secretary-general of the United Nations.

9 Mr Ngaïssona, Mr President, is a man who never left the path of diplomatic dialogue
10 and never entered the path of military action. This was the reality on the ground,
11 Mr President, nothing else. And we will show you, contrary to the Prosecution case,
12 that the purpose of the missions he might have given to some of the Anti-Balaka was
13 simply to disseminate the peace process in the provinces, to convey the content of the
14 coordination discussion in Bangui, to be his voice, the voice of peace and
15 reconciliation with the government and the international organisations.

16 So-called -- these so-called instructions which would have been given by
17 the coordination and Mr Ngaïssona in particular were, in reality, therefore not related
18 to any military operation at all.

19 Even you heard him saying he tried to stop the erection of roadblocks. He asked for
20 the removal thereof. It was in line with his personality. He was concerned with
21 the existence roadblocks and helped -- and tried to help to remove them.

22 The Chamber should be aware that the fact that Ngaïssona helped in dismantling
23 the barricades in July 2014 was acknowledged by the Prosecution in its pretrial brief.

24 You have undoubtedly read this in paragraph 481 in the pretrial brief.

25 The Prosecution accepts that Mr Ngaïssona helped in the dismantling of the

1 barricades in July 2014. Also, Prosecution witnesses will appear before this Court
2 who will confirm this, who already told this to the investigators of the Prosecution,
3 document 89 of our list.

4 Now, in this trial we will argue, Mr President, your Honours, that his calls to take
5 down roadblocks - which is confirmed by the Prosecution, there is evidence - in his
6 capacity of peace coordinator can of course not serve as evidence that he had
7 the power to erect them. The fact that you try to dismantle them does not *a fortiori*
8 mean that you have the power to erect roadblocks. That is an illusion in a court of
9 law, Mr President.

10 In conclusion, Mr President, he will illustrate in our case that Mr Ngaïssona was
11 vividly against any violent practice, including that of the setting up of barricades for
12 the purpose of racketeering or any other crime. But it was beyond his control and
13 abilities, of course, to stop it in such a huge country, as we explained this morning.
14 We have three final questions to conclude my submissions. First: Was he involved?
15 Is there evidence that he was involved in the attacks? No. The Chamber, as we are
16 convinced will hear no tangible evidence to the extent that he, Mr Ngaïssona, called
17 for or ordered to launch any attacks whatsoever. You will hear -- you might hear
18 a witness saying that Mr Ngaïssona was informed of the attacks, but this of course has
19 nothing to do with the power to stop them or to give instructions. The type of
20 information enabled Mr Ngaïssona in those days to inform the authorities so that
21 the international community would be aware of the actions and the developments,
22 document 80 on our list.

23 Second question: Will this trial establish that Ngaïssona gave orders or was capable
24 to do so? Also here the answer will be a negative one. It is our submission that
25 the Court will hear witnesses who told the investigators of the Prosecution that he did

1 not give any direct order for crimes committed to the respective ComZones.
2 Now, what about summons? Was he able to summon ComZone leaders?
3 The answer also here will be negative. The Chamber will have noticed that
4 the OTP's case rests on the assumption that Ngaïssona was allegedly able to summon
5 the ComZones to attend meetings, that he was able to summon the ComZones from
6 Bangui and the provinces and attend the meetings.
7 Now, during this trial it will be established that these meetings were certainly not
8 regular and that all the ComZones were simply invited. Mr Ngaïssona had no
9 power to summon, he could only invite those leaders, which were leaders in itself, we
10 just heard from a Prosecution witness. We anticipate that this witness will come
11 before this Court. He invited them to attend, to merely attend meetings in
12 the context of the very specific peace-related events of the DDR, such as
13 the Brazzaville forum, the preparation thereof, et cetera.
14 The Court will hear, in specific, one witness who told the Office of the Prosecution
15 that the number of coordination meetings between January-October 2014 were just
16 four or five, at least three of them where the ComZones were invited. He speaks
17 about invitations and not summons. The evidence will therefore show that
18 the preparation for the Brazzaville talks and a meeting related to the Bangui forum
19 were based on invitations of the respective ComZones.
20 I conclude, Mr President, this part by saying that the Chamber will be convinced at
21 the end of the trial Mr Ngaïssona cannot be blamed for having any -- issuing any
22 orders or summons to the respective ComZone leaders. That all the meetings
23 pertain to peace activities and that he would not discuss any military operations with
24 those respective ComZones. He would just pay for their transport, without which
25 there would be no peace talk at all. Document 59 of our list of materials.

1 Finally, will this trial establish that Mr Ngaïssona dismissed information, disregarded
2 information by doing nothing or actively denying the Anti-Balaka's responsibility?

3 Well, that's not a valid question if we assume and accept that he was not instrumental
4 at all in the Anti-Balaka movement. But apart from this observation the answer is no,
5 this Defence -- this Prosecution case will be unravelled also on this point. Far from
6 not reacting to the reports of crimes allegedly committed by Anti-Balaka, the evidence
7 will show that Mr Ngaïssona did actually everything in his capabilities at that time to
8 stop them.

9 The Court will hear at this trial that, far from dismissing or disregarding
10 the information on the reports of crimes committed by Anti-Balaka, alleged
11 Anti-Balakas, the evidence will show to this Chamber that Mr Ngaïssona, to
12 the contrary, called for full cooperation with the international forces and the
13 cantonment or confinement of the Anti-Balaka's actions, as to guarantee
14 the disarmament and also the sending back of those units and individuals to their
15 regions of origin. Document 92 of the list of materials.

16 We will even show that he actively sought the removal of a senior or prominent
17 member of the Anti-Balaka because he was not able to abstain from any violence.

18 The evidence showing that he, Mr Ngaïssona, personally thought that these
19 exclusions were necessary of those individuals from the peace negotiation table and is
20 convincing proof that he did everything within his abilities, taking into account that
21 decisions by the coordinations were not unilateral to be made by him.

22 At the end of the trial the Chamber will be convinced that, far from doing nothing
23 against the crimes that were allegedly reported to Mr Ngaïssona, he took measures
24 within his capabilities and abilities to prevent or to redress those actions.

25 Mr President, the Court, as I just mentioned, will hear evidence that even

1 Mr Ngaïssona himself was under attack from certain Anti-Balaka elements. Now,
2 why would that person be under attack of Anti-Balaka elements if he was in favour of
3 their alleged policy of fighting? It only will show this Court during the trial that he
4 had no influence of any alleged agitator. And contrary therefore to the Prosecution
5 case, it will be established that Ngaïssona did not accept within the ranks of
6 ComZones, as the Prosecution suggest, any alleged crime committed, but he simply
7 did not have the power to remove them from the movement. That is the
8 reality -- that was the reality in those days.

9 Mr President, I conclude my submissions with a document which most aptly will
10 demonstrate our Defence case. It's a document called *Declaration Liminaire* to
11 the forum de Brazzaville of July 2014, an excerpt declaration at the forum Brazzaville.
12 It's to be found document 1 on our list of material and I ask you to pay attention to
13 page 4 of that document. And please read what Mr Ngaïssona at that time had to
14 say in the days of July 2014.

15 I have two quotations which I think highlight exactly what the essence of our Defence
16 case will be about. First is, and I quote from French:

17 (Interpretation) "The Anti-Balaka patriots are convinced of the need for a Central
18 African society which is secular in which all religions can live their faith freely. ...
19 It now falls to us to save what we can and to take the path of national reconstruction,
20 in peace, unity and agreement."

21 (Speaks English) Mr President, this is our Defence case. And I'll, finally, give
22 the word to my learned friend from the Central African Republic,
23 Mr Omissé-Namkeamaï, to take the floor for the last 20/25 minutes.

24 PRESIDING JUDGE SCHMITT: [12:27:23] Thank you, Mr Knoops.

25 Mr Omissé-Namkeamaï, you have the floor.

1 MR OMISSÉ-NAMKEAMAÏ: [12:28:25](Interpretation) Thank you, your Honour.

2 Your Honours, I am taking the floor in the wake of my colleague, Mr Knoops, to
3 present the concluding comments in these opening statements on behalf of
4 Mr Ngaïssona.

5 Over the course of this trial, your Honours, it is incumbent upon the Defence to show
6 that the proof of the Prosecution does not demonstrate that Mr Ngaïssona was an
7 ambitious politician who was actively involved in designing a common plan to
8 establish a -- or to re-establish an overthrown political regime by massacring an ethnic
9 religious community which was recognised as such, but that, rather, Mr Ngaïssona
10 was in reality a pacifist, a well-known personality in that society and that he had been
11 called upon to contribute to implementing a government initiative which enjoyed
12 the support of international partners and which was designed to re-establish peace in
13 the country.

14 Now, over the course of this trial the Court will need to bear in mind that since
15 the Central African Republic was known as Ubangui-Shari, it was part of the French
16 empire and had the status of a territory. Even back then, Central African country
17 brought together or contained various communities, Muslim and non-Muslim, who
18 lived in perfect harmony together through trade, cultural exchanges, interfaith
19 marriages, for instance. Generations of Central Africans, including Mr Ngaïssona,
20 had never given a second thought to the ethnic origins or the faith of the people they
21 encountered in their daily lives.

22 Whereas in other parts of the world societal debates raged on topics such as religious
23 extremism, Muslim fundamentalism, anti-Muslim feeling, in the Central African
24 society the debate was all about governance, poverty, HIV/AIDS and the country was
25 very much focused on developing -- on development and not at all with ideological

1 considerations.

2 Now, Mr Ngaïssona, as the Defence will demonstrate, was very much of that mindset.

3 He chose to devote his time and attention to various parts of -- or various aspects to

4 promoting his country, for instance in the economic, political and sports fields. He

5 was clearly of a secular mind and worked closely with people of the Muslim faith,

6 men and women of all social backgrounds who he simply saw as being fellow citizens

7 of the Central African Republic.

8 Now, the Defence will be reminding the Court that this is a country which has

9 instability in its genes. The Central African Republic has always had transitions of

10 power which were -- which took place through the means of armed conflict, with

11 the exception of the peaceful and democratic transition of power in 2012 when

12 President Ange-Félix Patassé took power.

13 THE INTERPRETER: [12:32:42] Or, sorry, the interpreter corrects: that peaceful

14 transition of power was in 1993.

15 MR OMISSÉ-NAMKEAMAÏ: [12:32:50](Interpretation) Other than that, there has

16 largely been instability in the country such that political analysts have referred to

17 the Central African Republic of being a country of coup d'état.

18 However, although there have been many assaults on the domestic security of the

19 state, in other words coup d'état, some of which have been successful, some of which

20 have been failed and which have punctuated the history of the Central African

21 Republic, the taking of power in Bangui by the Séléka in March 2013 had various

22 specific features, one of which was that it was a -- this one was a power grab which

23 caused the whole country to be sent into a bloodbath.

24 The taking of power by François Bozizé 10 years earlier on 15 March 2003 involved

25 many of the same players, including Central African Muslims and mercenaries which

1 had come essentially from Chad and Sudan and which had joined forces under
2 the label of liberators and a group which also included non-Muslim Central Africans.
3 It is undeniable that the power grab of 15 March 2003, which is sometimes referred to
4 as being a patriotic uprising, did cause chaos, it caused looting of businesses,
5 vandalism and damage to economic, public and private, infrastructure, people
6 leaving to find shelter outside of the country and also the settling of many, many
7 scores. This time the conquest of power by the Séléka led to a disaster.
8 Within a few days, the uproar in which the country found itself led to whole districts
9 and the northern part of the capital of Bangui, and indeed other cities which were
10 thought to have been favourable to the deposed regime, being the subject of forced
11 displacements, massive looting, one of the victims of whom was Mr Ngaïssona. And
12 also the victim of gendered and sexual crime, murders, torture and inhumane and
13 degrading treatment and displaced -- and forced disappearances.
14 The loot that was pillaged fell into the hands -- or was taken, rather, by Séléka and
15 was redistributed to the districts of Bangui, which were of majority Muslim
16 population, and also in the north-eastern part of Central African Republic which has
17 large Muslim populations as well, or indeed in the direction of Chad and Sudan.
18 Now, this settling of accounts meant that many people had to flee the country. Now,
19 although the international community listened to the denunciation of abuses by
20 the Séléka in Bangui and some cities, and indeed called upon the leaders of the coup
21 to put an end to the disaster and to reintroduce order, in far-flung parts of the country
22 where there was nobody, so to speak, to see what happened, rural communities
23 found themselves at the mercy of godless and lawless people who been given
24 the instruction to claim their due.
25 The people living in the country who had been tracked down by the Séléka and who

1 had been forced into the bush suffered horrendous atrocities and the Defence hopes
2 that the Office of the Prosecutor has received good documentation thereof.
3 The army has fallen into disarray. The authorities in Bangui had no power over
4 the armed groups, because they only heeded the commands of their immediate
5 leaders. Both regional and international forces seemed unconcerned about what was
6 going on, which meant that these young people had to rely on their own instincts to
7 survive and to maintain their dignity, as well as the dignity of their families.
8 Farmers, hunters, fishermen, artisanal miners, all these men spontaneously gathered
9 together to form self-defence groups known as Anti-Balaka. In the past they had
10 cooperated with state authorities to fight against cattle rustlers or those who set up
11 roadblocks in some prefectures in the eastern and north-eastern part of central Africa.
12 If Ngaïssona, your Honours, were called upon to raise awareness amongst
13 the Anti-Balaka, it was because of the influence and understanding he had on
14 the young people of Central Africa, thanks to the multiple works and initiatives he
15 undertook in the area of sport.
16 The Defence will also show that in the midst of a military political crisis which had
17 nothing to do with him, he was no protagonist, Ngaïssona, as a true patriot of peace
18 accepted not to be a defender of the belligerent groups, but rather to work as
19 a mediator, a peacemaker, to bring boys and girls together rather than have them
20 fight against each other.
21 There is no evidence to suggest that Ngaïssona, despite his title of coordinator of the
22 Anti-Balaka movement, sought to promote the interests of the Anti-Balaka movement
23 above his desire for peace and national cohesion. Despite the many witnesses that
24 have been withdrawn, the Prosecution has not been able to hide the evidence that
25 they have brought to the Court, a man to stand trial despite the fact that he has

1 always acted to promote peace.

2 Mr President, your Honours, just like the Central African state, with taxpayers'
3 money and powerful support available, all the international community, with its
4 multiple missions and military units, just like they could not solve the crisis which
5 was ravaging the country, Patrice-Edouard Ngaïssona, acting as a peacemaker,
6 sometimes putting his own life at risk and solely relying on his own hard-earned cash,
7 was not able to transform the Anti-Balaka movement into a channel of peace as he
8 would have liked to do.

9 Mr President, your Honours, it's paradoxical that Ngaïssona has to stand trial today
10 when, for the whole period of transition, there was not a single peace process where
11 he did not actively participate, nor was there any political actor who so militantly and
12 devotedly fought for peace as he did.

13 There is ample evidence of blunders, abuses, bloodbaths and unrests that would have
14 occurred had Ngaïssona not stepped in with his philanthropic spirit, and playing his
15 part in an attempt to resolve the crisis which the Central African Republic is still
16 facing.

17 Mr President, your Honours, the Office of the Prosecution in this case will call upon
18 prominent Central African personalities with whom the accused had worked together
19 to look for peace, with whom he had no prior record, but whose false testimony
20 against him is based solely on their desire to keep a person whom they consider to be
21 a formidable opponent out of their arena permanently.

22 The Defence is convinced, finally, that during the trial the Chamber will not accept
23 the Prosecution's arguments to prosecute and convict Ngaïssona because the -- as
24 a national coordinator of the Anti-Balaka movement who played a major role in
25 the perpetration of serious crimes against the Muslim community, crimes where

1 the Prosecution has not collected sufficient solid evidence which link the accused to
2 the crimes, namely, he only intervened in order to mitigate the worst effects.

3 Mr President, your Honours, I have finished my presentation. Thank you.

4 PRESIDING JUDGE SCHMITT: [12:43:22] Thank you very much,

5 Mr Omissé-Namkeamaï.

6 I take it that this concludes the presentation by the Defence of Mr Ngaïssona?

7 MR KNOOPS: [12:43:31] Yes, Mr President, your Honours, this concludes our
8 presentation. Thank you.

9 PRESIDING JUDGE SCHMITT: [12:43:36] Thank you.

10 This also concludes the opening phase of the case of the Prosecutor against

11 Mr Ngaïssona and Mr Yekatom.

12 I would like to thank, on behalf of the Chamber, the interpreters who had a very
13 difficult job. We all hope that in the course of the trial we get accustomed to speak
14 a little bit slower so that they can follow better.

15 And I would also like to thank on behalf of the Chamber the Registry, who did a great
16 job to connect to different countries. It was not always possible 100 per cent, but
17 under these circumstances I think it was a great job that they did.

18 The presentation of the evidence will start on 15 March.

19 The Court is adjourned.

20 THE COURT USHER: [12:44:23]

21 (The hearing ends in open session at 12.44 p.m.)