

## Situation: Central African Republic II

### *The Prosecutor v. Patrice-Edouard Ngaïssona*

Update: January 2019

## Transfer of Patrice-Edouard Ngaïssona to the ICC, 23 January 2019

### WHO IS PATRICE-EDOUARD NGAÏSSONA AND WHAT IS HE SUSPECTED OF?

According to the arrest warrant, Patrice-Edouard Ngaïssona – who was the most senior leader and the "National General Coordinator" of the Anti-Balaka – is alleged to be responsible for crimes committed in this context in various locations in the Central African Republic ("CAR"), including Bangui, Bossangoa, the Lobaye Prefecture, Yaloké, Gaga, Bossempaté, Boda, Carnot and Berberati, between at least 5 December 2013 and at least December 2014, as follows:

- crimes against humanity: murder and attempted murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, persecution, enforced disappearance and other inhumane acts; and
- war crimes: murder and attempted murder, torture, cruel treatment, mutilation, intentionally directing an attack against the civilian population, intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance, intentionally directing an attack against buildings dedicated to religion, pillaging, enlistment of children under the age of 15 years and their use to participate actively in hostilities, displacement of the civilian population and destroying or seizing the property of an adversary.

Pre-Trial Chamber II found reasonable grounds to believe that Mr Ngaïssona is liable for having committed jointly with others and/or through others or having aided, abetted or otherwise assisted in the commission or attempted commission of the abovementioned crimes.

These crimes would have been committed in the context of an armed conflict not of an international character ongoing on the territory of the CAR since at least September 2013 until at least December 2014 between the Seleka – a coalition of armed groups predominantly composed of Muslims – and the Anti-Balaka – a predominantly Christian countermovement to the Seleka. There are reasonable grounds to believe that, from at least September 2013 until at least December 2014, a widespread and systematic attack was carried out by the Anti-Balaka against the Muslim civilian population and anyone perceived to support the Seleka.

### WILL THE CASE AGAINST MR. YEKATOM AND MR. NGAÏSSONA BE JOINED BEFORE THE ICC?

At this stage, these two cases are distinct. It is up to the judges to decide whether or not to join these two cases before the Court.

### WHAT WILL HAPPEN AFTER THE TRANSFER OF THE SUSPECT TO THE ICC?

Once the suspect is arrested and the Court is so informed, the ICC ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

Within a reasonable time after delivery of the suspect and his arrival at the Detention Unit of the ICC, the Pre-Trial Chamber will hold an initial appearance hearing to verify the identity of the suspect and ensure that he was clearly informed of the charges against him and his rights under the Rome Statute.

### WHAT IS AN INITIAL APPEARANCE HEARING?

The suspect's first appearance before the Court takes place shortly after his arrival in The Hague. During the first appearance, the Pre-Trial Chamber confirms the identity of the suspect, ensures that the suspect understands the charges, confirms that language in which the proceedings should be conducted, and sets a date to begin the confirmation of charges hearing. From this moment, the suspect will enjoy rights as recognised in the Rome Statute, including the right to have adequate time and facilities for the preparation of his or her Defence and to have the assistance of a Counsel, without payment if the person lacks sufficient means to pay for it. After this first appearance, the Pre-Trial Chamber shall set the date of the confirmation of charges hearing.

Pre-Trial Chamber II is assigned to this case. The Chamber is composed of Judge Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Presiding, Judge Tomoko Akane (Japan) and Judge Rosario Salvatore Aitala (Italy).

### WHAT WILL HAPPEN AFTER THE INITIAL APPEARANCE HEARING TAKES PLACE?

After the initial appearance hearing, the Pre-Trial Chamber will start the process leading to the confirmation of charges hearing. This process may take several months, depending on the complexity of the case, and also on the challenges which may arise during this

period. After the initial appearance, the process of disclosure of evidence will start. During this process, the Prosecutor will have to provide to the Defence teams the evidence she has collected during his investigation and on which she wants to rely for the confirmation of charges hearings. As indicated by the Rome Statute, the Prosecutor also has a duty to disclose exonerating information or materials to a suspect which in any way tend to suggest his innocence or mitigate his or her guilt, or which may affect the credibility of the Prosecution's evidence.

In addition, the Rome Statute contains provisions which enable victims to participate in all stages of the proceedings before the ICC. Victims can present their views and observations before the Court. The judges will give directions as to the timing and manner of the participation of victims at the confirmation of charges stage.

At the confirmation of charges hearing – which is not a trial, but a pre-trial hearing – the Prosecution must present sufficient evidence for the case to go to trial. The suspect's defence may object to the charges, challenge the Prosecution's evidence and also present evidence.

### WHAT RIGHTS DO SUSPECTS HAVE?

Suspects before the ICC are presumed innocent. Unless exempted by the Judges, they are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including, to mention a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the defence evidence in his possession or control which he believes shows or tends to show the innocence of the suspects or accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

### WHAT ARE THE CONDITIONS OF DETENTION AT THE ICC DETENTION CENTRE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC. The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

Detained persons are presumed innocent until proven guilty. If convicted of crimes under the jurisdiction of the ICC, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.