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**International
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Court**

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Date: 3 March 2021

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

PUBLIC

Public Redacted Version of “Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence”, 2 March 2021, ICC-01/14-01/18-897-Conf

Source: Defence of Patrice-Edouard Ngaïssona

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Kweku Vanderpuye

Counsel for the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx
Ms Barbara Szmatala

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of the Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Mr Ngaïssona (“Ngaïssona Defence”) hereby presents its request to reduce the scope of Witness P-2926’s evidence at trial. The Defence submits that (1) P-2926’s report usurps the Chamber’s role as the trier of fact and draws conclusions on core elements of the case that still need to be proven at trial; (2) that the report lacks neutrality and impartiality reflecting P-2926’s own bias in contravention with his role as an expert; (3) and that P-2926’s methodology is strongly disputable and that P-2926 presents assertions outside the scope of his field of expertise. The result is a report lacking probative value, flooded with the personal and biased opinion of P-2926. The Defence therefore submits that P-2926 should not be allowed to testify on matters falling outside of his scope of expertise and should be precluded on giving his personal opinion on Mr Ngaïssona’s intent and alleged criminal responsibility.
2. In its Response to the “Prosecution’s Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4)”¹ (“Prosecution’s Request”), the Defence submitted that it deferred to the Chamber’s discretion as to the introduction via rule 68(3) of P-2926’s report and associated exhibits, and, recalling that it was still awaiting a decision on the “Request of Mr Yekatom to exclude the proposed Prosecution background expert P-2926 and his report” (“Yekatom Defence’s Request”),² dated 17 December 2020, reserved its right to challenge the scope of P-2926’s testimony. Following the rejection of the Request of Mr Yekatom on 17 December 2020,³ the Defence for Mr Ngaïssona hereby files its Motion to reduce the scope of P-2926’s evidence at trial.

¹ ICC-01/14-01/18-859-Conf.

² ICC-01/14-01/18-780-Conf.

³ ICC-01/14-01/18-881.

3. The Defence notes the Chamber's decision that due to the submission regime adopted in this case, issues of admissibility will be assessed when deliberating on the judgment pursuant to Article 74(2) of the Rome Statute ("Statute"). However, it also held that it has discretion "to 'rule on any other admissibility related issues upfront, when appropriate, particularly if so required in order to ensure the fairness and expeditiousness of the trial".⁴ Therefore, noting that the report lacks *prima facie* probative value, exceeds the scope of Witness P-2926's expertise and usurps the Chamber's role as trier of fact, the Defence requests the Chamber to exercise its gatekeeping function in order to safeguard the fairness and expeditiousness⁵ of the trial pursuant to articles 64(6)(f), 64(9)(a) and 69(4) of the Statute, rules 63(2) and 64 of the Rules of Procedure and Evidence ("Rules"), and regulation 44(5) of the Regulations of the Court ("RoC").

II. PROCEDURAL HISTORY

4. On 7 April 2020, the Prosecution informed the Defence that it was in the process of instructing P-2926 as background expert on the CAR crisis and opened the discussion about a possible joint instruction.
5. On 8 April 2020, the Defence for Mr Yekatom answered that a background expert "may not be of assistance to the Chamber given the potential for agreed facts and the anticipated testimony some reknown Prosecution fact witnesses steeped in the origin and background of the CAR themselves".⁶ The same day, following the Defence for Mr Ngaïssona's refusal to engage into a joint instruction of P-2926, the Defence for Mr Yekatom informed the Prosecution that it would not agree on a joint instruction without a joint agreement by the Defence for Mr Ngaïssona.⁷ On

⁴ ICC-01/14-01/18-881, para. 8. mentioning the Initial Direction on Conduct of Proceedings, paras 52-53.

⁵ See *The Prosecutor v. Ruto & Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, ICC-01/09-01/11-844, 7 August 2013, para. 15.

⁶ Email from Mr Yekatom Defence to the Prosecution, 8 April 2020 at 12:28.

⁷ Email from Mr Yekatom Defence to the Prosecution, 8 April 2020 at 18:38.

6 October 2020, following a new proposal of the Prosecution, the Defence for Mr Ngaïssona recalled its position and stated that “the Defence observes that [REDACTED] has made public statements taking positions on issues, which go to the heart of this case and are deeply contested by the parties.”⁸

6. On 23 October 2020, the Prosecution disclosed P-2926’s report, *curriculum vitae* and list of publications by way of email.⁹
7. On 9 November 2020, the Prosecution disclosed P-2926’s letter of instruction. On the same day, the Prosecution filed its Final List of Witnesses and Evidence.¹⁰ P-2926 appears on the List at [REDACTED]. P-2925 is expected to testify on the background of the conflict and both Mr Ngaïssona and Mr Yekatom’s alleged contributions.
8. On 17 December 2020, the Defence for Mr Yekatom filed its “Request of Mr. Yekatom to exclude the proposed Prosecution background expert P-2926 and his report”¹¹ requesting the Chamber to “find that appearance of Expert Witness P-2926 is unnecessary as his report and expected testimony [REDACTED] with information that will be provided by fact witnesses” and that “the Chamber should exclude the proposed Prosecution background expert P-2926 and his report”.¹²
9. On 18 December 2020, the Defence supported in full the Yekatom Defence’s Request noting that “P-2926 testimony would be superfluous and redundant” and that “excluding P-2926 will advance the proceedings and therefore will safeguard Mr Ngaïssona’s right to a fair trial”.¹³

⁸ Email from Mr Ngaïssona Defence to the Prosecution, 6 October 2020, at 15 :31.

⁹ Email from the Prosecution to the parties and participants, 23 October 2020, at 11 :00 and 15 :39.

¹⁰ ICC-01/14-01/18-724-Conf-AnxA.

¹¹ ICC-01/14-01/18-780-Conf.

¹² ICC-01/14-01/18-780-Conf, para. 38.

¹³ Email of the Ngaïssona Defence to Trial Chamber V, of 18 December 2020, at 15:27.

10. On 19 January 2021, the Prosecution submitted its “Prosecution’s Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4)” (“Prosecution’s Request”) whereby it submitted that “P-2926 has the skills, training, and experience to be of assistance to the determination of the issues explored in his Report, including the historical background and analysis of the 2013-2014 conflict in CAR”, that his report “meets the minimum standard of relevance, reliability, and probative value”.¹⁴
11. On 29 January 2021, the Defence responded to the Prosecution’s Request¹⁵ deferring to the Chamber’s discretion with respect to the potential mode of testimony of Witness P-2926. However, the Defence specified that its position should not be construed as an agreement with “(i) this witness remaining on the Prosecution’s Final Witness List, (ii) P-2926’s qualification as an expert, (iii) his report and associated materials being entered as evidence, (iv) the scope of his report, namely in light of the ultimate issue rule, as it relates to Mr Ngaïssona; (v) P-2926’s impartiality and independence.”¹⁶
12. On 11 February 2021, Trial Chamber V did not consider Witness P-2926’s testimony and report “to be so clearly irrelevant as to preclude the Prosecution from presenting this evidence” and rejected the Yekatom Request.¹⁷

III. APPLICABLE LAW

13. Pursuant to paragraph 59 of the Initial Directions on Conduct of Proceedings, “[t]he Chamber retains its discretion to rule on any other admissibility related

¹⁴ ICC-01/14-01/18-834-Conf, paras 29-31.

¹⁵ ICC-01/14-01/18-859-Conf.

¹⁶ ICC-01/14-01/18-859-Conf, para. 13.

¹⁷ ICC-01/14-01/18-881, para. 11.

issues upfront, when appropriate, particularly if so required in order to ensure the fairness and expeditiousness of the trial”.¹⁸

14. Pursuant to article 64(2) of the Rome Statute “[t]he Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”.
15. Pursuant to article 64(9)(a) of the Rome Statute, “[t]he Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to: (a) Rule on the admissibility or relevance of evidence”.
16. Pursuant to article 69(4) of the Rome Statute, “[t]he Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence”.
17. Pursuant to rule 63(2) of the Rules of Procedure and Evidence, “[a] Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69”.
18. Pursuant to regulation 44(5) of the RoC, “[t]he Chamber may issue any order as to the subject of an expert report, the number of experts to be instructed, the mode of their instruction, the manner in which their evidence is to be presented and the time limits for the preparation and notification of their report”.

¹⁸ ICC-01/14-01/18-631.

IV. CONFIDENTIALITY

19. The Defence files the present Motion as confidential pursuant to regulation 23bis(2) of the RoC as it relates to confidential information pertaining to P-2926. A public redacted version will be issued simultaneously.

V. SUBMISSIONS

20. On the Prosecution Final Witness List, P-2926 is described as an [REDACTED].¹⁹
21. While experts are afforded wide latitude to state their opinion, such opinion should be confined to their mandate, should not override the Chamber's role as the trier of fact, should be neutral and stated with scientific objectivity and methodology. Trial Chamber I in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* was asked to reduce the scope of evidence of a witness who was making judicial determinations and giving opinion on ultimate issues of the case, and who was also showing a clear bias against Mr Blé Goudé as submitted by his Defence team. Trial Chamber I, stating that the Defence raised legitimate concerns, decided to reduce the scope of this witness' evidence. Trial Chamber I held that "only the Chamber has the authority to draw inferences in the context of these proceedings and only on the basis of evidence that has been submitted and discussed before it."²⁰ As a result, it further ruled that the witness "should not be asked to give his personal views as to the trustworthiness of any individuals he spoke to as part of his inquiry, [...] it is the Chamber's responsibility to form its own opinion about the trustworthiness of any relevant evidence and it cannot

¹⁹ ICC-01/14-01/18-724-Conf-AnxA, p. 40.

²⁰ *The Prosecution v. Laurent Gbagbo and Charles Blé Goudé*, Decision on 'Defence's Motion to Preclude and Exclude the prospected Evidence of Witness P-369, or, in the alternative, to restrict the Scope of Witness P-0369's intended Evidence', ICC-02/11-01/15-539, 13 May 2016, para. 6.

simply rely on the impressions of NGO representatives or other third persons on this regard.”²¹

22. The findings of the Chamber in the *Gbagbo and Blé Goudé* case should therefore apply in this case at hand as will be demonstrated below. Witness P-2926’s report (i) usurps the role of the Chamber as the trier of fact; (ii) lacks neutrality and impartiality and (iii) lacks methodology and relies on anonymous sources and unreliable press articles.

A. P-2926 usurps the Chamber’s role as the trier of fact

23. Trial Chamber V(A) previously found that a testimony that would usurp the Chamber’s role as the trier of fact by going into the ‘ultimate issues’ at trial would include for example “opinions as to an accused’s guilt or innocence, or whether the contextual, material or mental elements of the crimes charged are satisfied.”²² Trial Chamber V(A) further stated that an expert testimony “should not, directly or indirectly, address the alleged role of the accused, or other key members of the alleged Network, in the [Post-Election Violence]”.²³

24. P-2926 on several occasions in the report enters into findings on Mr Ngaïssona’s alleged responsibility and makes statements relating to ultimate issues of fact and law at trial. P-2926 clearly presents assertions on Mr Ngaïssona’s alleged *mens rea*, as well as on the nature of the crimes committed and the context of their commission. [REDACTED]. These findings result in a report that goes well beyond

²¹ *Ibid*, para. 7.

²² *The Prosecutor v. Ruto & Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, ICC-01/09-01/11-844, para. 13; *The Prosecutor v. Bosco Ntaganda*, Decision on Defence preliminary challenges to Prosecution’s expert witnesses, 9 February 2016, ICC-01/04-02/06-1159, para. 8; ICTY, ICTY, *The Prosecutor v. Vujadin Popovic et al*, Decision on Professor Schabas Expert Report, IT-05-88-T, 1 July 2008, para. 8.

²³ ICC-01/09-01/11-844, para. 23.

an expert's mandate and oversteps the Chamber's role as trier of facts. Without expounding on each and every aspect of P-2926's report, the Defence will limit itself to providing the Chamber with just a few examples among the most telling in which P-2926 departed from his role of background expert and usurped the role of the Chamber.

25. P-2926 drafted his report on the basis of an assumption that [REDACTED] ("[REDACTED]"²⁴), also described as "[REDACTED]"²⁵, which is another way of describing [REDACTED]. P-2926's "[REDACTED]" and the Prosecution's theory of [REDACTED] appear to coincide, in that they consist of [REDACTED] amounts to drawing a conclusion on a core issue at trial.

26. P-2926 further states that [REDACTED]. He then trespasses his mandate and usurps the role of the Trial Chamber by stating that [REDACTED], which touches upon criminal liability.²⁶ He adds that [REDACTED] : "[REDACTED]."²⁷ By making this statement and saying that [REDACTED].

27. Through this artificially construed link [REDACTED]. Indeed, P-2926 describes [REDACTED] "[REDACTED]"²⁸ P-2926 further asserts that this [REDACTED] ("[REDACTED]"²⁹ and that [REDACTED] ("[REDACTED]") [REDACTED].³⁰ When making those sweeping assertions, [REDACTED]: "[REDACTED]"³¹ While doing so, P-2926 enters into the core issues at the case.

²⁴ See [REDACTED].

²⁵ See [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

28. P-2926's report further states that [REDACTED], explaining that "[REDACTED]".³² In this short sentence, P-2926 describes how [REDACTED].
29. The statements made by P-2926 not only demonstrate a clear bias but also infringes upon the Chamber's judicial role by suggesting that Mr Ngaïssona is criminally responsible for the acts and conducts of the anti-balaka. P-2926's lack of neutrality is further illustrated below in Section B of the present Motion. Therefore, recalling the Chamber's finding in the Decision on the Yekatom Request that "it is possible to call an expert on issues that do not go specifically to the facts *sub judice*, but to necessary contextual information",³³ the Defence submits that the report far exceeds the necessary contextual information and goes to the facts *sub judice* as demonstrated above. The Chamber should thus limit the scope of Witness P-2926's testimony by finding that P-2926 should be precluded from addressing directly or indirectly Mr Ngaïssona's alleged criminal responsibility.

B. P-2926's report lack neutrality and impartiality

30. The second argument as to why the scope of P-2926's evidence should be considerably limited pertains to findings of Trial Chamber VI, in the case of *The Prosecutor v. Bosco Ntaganda*, where it was held that "[a]t all times, the expert is obliged to testify with the utmost neutrality and objectivity."³⁴ P-2926 did not respect his obligations of neutrality as an expert. P-2926 drafted his report from an accusatorial perspective and his lack of neutrality is visible throughout the entire report. P-2926, also ventilated this clear accusatorial position in the media, and did not try to nuance his allegations despite the fact that Mr Ngaïssona has not faced

³² [REDACTED].

³³ ICC-01/14-01/18-881, para. 9.

³⁴ *The Prosecutor v. Bosco Ntaganda*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, ICC-01/04-02/06-1159, para 9. See also ICTR, *The Prosecutor v. Sylvester Gacumbitsi*, Decision on expert witnesses for the Defence, 11 November 2003, ICTR-2001-64-T, para. 8; ICTR, *The Prosecutor v. Ferdinand Nahimana et al*, Appeals Judgment, ICTR-99-52-A, 28 November 2007, para. 199.

his trial yet and that such allegations need to be proved during trial. Again, the Defence will refrain for listing all examples attesting to P-2926's bias but rather, will illustrate such bias with significant examples.

i. P-2926's lack of neutrality in the report

31. Without foundation P-2926 qualifies [REDACTED].³⁵ This deduction is clearly speculative and purely reflects P-2926's personal opinion. He further states that [REDACTED]³⁶ and the others, the [REDACTED]³⁷. [REDACTED],³⁸ P-2926 decided to ignore such information when drawing his personal conclusions. Not only does such statement go in the core matters of the trial and therefore, once again, usurps the Chamber's role, but it also substantively lacks neutrality and denotes a clear bias on P-2926's side.

32. P-2926 further states that [REDACTED] (“[REDACTED]”³⁹), [REDACTED] (“[REDACTED]”⁴⁰). In an attempt to further discredit Mr Ngaïssona, P-2926 further states that [REDACTED]. He states that Mr Ngaïssona “[REDACTED]”.⁴¹ Not only such statements have nothing to do with the context, they are also not objectively founded but rather subjective. Finally, they also clearly lack neutrality.

33. P-2926 also directly implicates Mr Ngaïssona [REDACTED]: “[REDACTED]”.⁴² P-2926 implicates Mr Ngaïssona in [REDACTED] “[REDACTED]”.⁴³

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

34. Such statements are to be found in various places in the report and particularly from paragraph 58 until paragraph 75 and should be simply excluded from the scope of P-2926's expected testimony. By stating that [REDACTED], without nuancing his findings, P-2926 proved a clear lack of neutrality.

ii. P-2926's lack of neutrality prior to the report

35. Aside from the statements made in the report, P-2926 prior to drafting his report incriminated Mr Ngaïssona in the media and notably [REDACTED] : "[REDACTED]".⁴⁴

36. P-2926 clearly drafted his expert report with a preconceived opinion as to Mr Ngaïssona's role in the crisis. In accordance with his duty of neutrality, P-2926 should not have accepted his assignment to draft the report or at the least he should have adopted a nuanced and neutral position vis à vis Mr Ngaïssona or at least should have supported his conclusions with sufficient sources. Instead, he decided to maintain his accusatorial position when drafting the report. Therefore, the Chamber should also find that the probative value of P-2926's anticipated evidence is limited due to the clear bias expressed by P-2926 in his report and associated evidence.

C. P-2926's report goes beyond his field of expertise and lacks methodology

i. P-2926 exceeds his field of expertise and lacks a clear methodology

37. The third reason to limit the scope of P-2926's evidence relates to the fact that P-2926's conclusions at times exceeded his field of expertise and mandate while at the same time his methodology and source material are unclear. For instance, P-

⁴⁴ [REDACTED]

2926 describes the alleged military organisation of the anti-balaka, and states that the anti-balaka were [REDACTED].⁴⁵ P-2926 also gives his opinion on the military structure of [REDACTED].⁴⁶ Whether there was a military strategy or structure behind the anti-balaka movement, is an analysis that should be made by an expert on military strategy. Therefore, P-2926 who does not have any military knowledge as reflected by his *curriculum vitae* is not qualified and should be prevented from making any findings on a field of expertise that he does not possess.

38. Similarly, at paragraphs 23 and 36 of his report, P-2926 explains his view as to the actions of the anti-balaka and how they led to the displacement of several thousands of Muslims in IDP camps. On 5 October 2020, the Prosecution transmitted to the parties and participants a letter of instruction sent to two identified experts on demographics,⁴⁷ and recalled its intention to call those experts in the “Joint Submission on Experts” filed on 9 November 2020. However, none of the two demographics experts appears on the Prosecution List of Witnesses. In case submissions need to be made on demographics, such submissions should be made by an expert having the knowledge to describe the phenomenon of population displacement. P-2926 cannot serve as a substitute to the two demographic experts. According to P-2926’s *curriculum vitae*, he has no experience in demographics and therefore cannot make submissions outside of his field of expertise. In addition, when P-2926 enters into conclusions on displacement of populations in CAR, he does not even provide a reliable source. At paragraph 23, P-2926 uses a Human Rights Watch report which is far from being authoritative in the field, and at paragraph 36, he does not even cite any source. As a result, P-2926 should have refrained from making conclusions outside the scope of his field of expertise. All these factors cast serious doubts on the methodology used by P-2926.

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ Email of 5 October 2020, from the Prosecution to the parties and participants, at 13 :09.

39. P-2926's clear lack of methodology is also manifest when examining the sources used in support of his report. Trial Chamber III of the ICTY in the case of *The Prosecutor v. Dragomir Milošević*, stated that "[t]here must be sufficient information as to the sources used in support of the statement in order to allow the other party to test or challenge the conclusions. Otherwise, the Chamber will not treat the conclusions as the expert witness's opinion but as his personal opinion and weigh the evidence accordingly".⁴⁸

40. P-2926's report should be treated as reflecting his mere personal opinion and not his opinion as an expert witness. Out of 120 footnotes supporting P-2926's findings, 89⁴⁹ are not documents authored by P-2926, and out of which, 57 appear to be mere public press articles and therefore not reliable. In addition, major incriminating allegations are not supported by any footnote.⁵⁰ As a consequence, P-2926 should not be allowed to testify based on these sources and his personal opinions should be prohibited during the oral testimony of P-2926. This argument is reinforced by the following.

41. **At paragraph 2 of his report**, P-2926 quotes an article published on a website called "Centrafrique-press.com". This media outlet is an internet blog that brings together news from various websites. P-2926 would rather quote this media instead of the original source of the article which is Radio Ndeke Luka.⁵¹ Quoting the original article is not only essential to the work of an expert and the sign of a rigorous work ethic but would also allow the Defence and the Chamber to verify the author of the press article. Some other footnotes in the report provide links to

⁴⁸ ICTY, *The Prosecutor v. Dragomir Milošević*, Decision on Defence Expert Witnesses, IT-98-29/1-T, 21 August 2007, para. 7.

⁴⁹ See footnotes : [REDACTED].

⁵⁰ See for example the allegation that [REDACTED].

⁵¹ [REDACTED].

websites that display an error page, such as the website [REDACTED],⁵² an issue that is at the core of this trial. On several other press articles the author is not even specified.⁵³

42. Aside from the fact that for some assertions P-2926 uses his own research and interviews conducted with individuals from CAR or NGOs, P-2926 provides handwritten notes that are illegible, rendering any attempt to verify the information used in the report futile. This type of first-hand information is therefore not admissible since it prevents the Defence and the Chamber from verifying any statements made by the interviewee. While such clarifications might be sought for persons that will be called to testify before this Chamber such as [REDACTED], who was also interviewed by P-2926, other interviewees such as [REDACTED] will not be present and therefore, the accuracy of their statements cannot be verified.

ii. P-2926 relies on anonymous sources

43. Another argument to limit the scope of P-2926's evidence relates to the use of anonymous sources. Aside from interviewees whose names were written down by P-2926, other interviewees are referred to with generic information such as "un FACA"⁵⁴ or "un membre du KNK"⁵⁵. Those are therefore anonymous sources and any attempt to seek for clarification as to the accuracy of their statements is futile. In the mentioned case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Trial Chamber I found that "it is the Chamber's responsibility to form its own opinion about the trustworthiness of any relevant evidence and it cannot simply rely on the impressions of NGO representatives or other third persons in this

⁵² [REDACTED].

⁵³ This concerns footnotes : [REDACTED].

⁵⁴ See for example [REDACTED].

⁵⁵ See for example [REDACTED].

regard. This restriction applies with even greater force when the identity of the sources of the Witness is not disclosed to the parties and the Chamber.⁵⁶ It further held that “when the sources remain anonymous, the Chamber has no independent means to ascertain the trustworthiness of those sources or to determine whether different sources genuinely corroborate each other”.⁵⁷ The Chamber decided that “it will not allow the Prosecutor to question Witness P-369 on facts which he learned from anonymous sources, regardless of whether the Witness had a single or multiple sources for a particular fact.”⁵⁸ Although in the *Gbagbo and Blé Goudé* case the Human Rights Watch worker was not technically used as an expert, he did serve as an overview expert to testify about the context of the conflict with bears similarities with the role of P-2926. It must be noted that the report of P-2926 relies mainly on anonymous sources that neither the Defence nor the Chamber will be able to question. Therefore the Chamber and the Defence will be deprived of any means to ascertain the statements made by such sources. As a result, the same remedy should apply as in the case of *Gbagbo and Blé Goudé* and P-2926 should be prevented from relying on anonymous sources during his testimony and be prevented from stating his personal opinion. In addition, those portions of the report which rely on anonymous sources should not be admitted.

VI. RELIEF SOUGHT

In light of the above, the Defence respectfully requests the Chamber to :

- a) **GRANT** the motion and limit the scope of P-2926’s evidence by restricting his anticipated testimony to his findings relating to the context of the conflict ;

⁵⁶ *The Prosecution v. Laurent Gbagbo and Charles Blé Goudé*, Decision on ‘Defence’s Motion to Preclude and Exclude the prospected Evidence of Witness P-369, or, in the alternative, to restrict the Scope of Witness P-0369’s intended Evidence’, ICC-02/11-01/15-539, 13 May 2016, para. 7 (emphasis added).

⁵⁷ *Ibid.*

⁵⁸ *Ibid*, para. 8.

- b) **PRECLUDE** P-2926 from giving his opinion on the alleged role of Mr Ngaiissona within the conflict ;
- c) **PREVENT** the admission of the following paragraphs of P-2926's report : paragraphs 2, 18, 19, 23, 33, 36, 42, 41-44, 52, 56, 57, 58-75 ;
- d) **PREVENT** the admission of the paragraphs which rely on anonymous sources mentioned in footnotes 55, 97, 136 and 134 of the report.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaiissona

Dated this 3 March 2021

At The Hague, the Netherlands.