

**Cour
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**International
Criminal
Court**

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Date: 26 September 2025

THE APPEALS CHAMBER

Before: Judge Solomy Balungi Bossa, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Kimberly Prost
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

Ngaïssona Defence Notice of Appeal against the Trial Judgment

Source: Defence of Patrice-Edouard Ngaïssona

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I. INTRODUCTION

1. The Defence for Mr Ngaïssona ('Defence') hereby gives notice of its appeal against the judgment of Trial Chamber V ('Trial Chamber'), in the case *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, filing number ICC-01/14-01/18- 2784, which was rendered on 24 July 2025 ('Trial Judgment' or 'Judgment').
2. The Defence seeks to appeal the Trial Judgment pursuant to Articles 81(1)(b) and 81(2)(a) of the Rome Statute ('Statute'), Rule 150 of the Rules of Procedure and Evidence ('Rules') and Regulation 57 of the Regulations of the Court on the six (6) grounds of appeal enumerated below:
 - Ground 1 asserts that the Trial Chamber wrongly attributed individual criminal responsibility to Mr Ngaïssona, based on flawed factual and legal findings;
 - Ground 2 asserts that Mr Ngaïssona was convicted on the basis of an evidentiary framework that was incorrectly applied, which resulted in findings that are fundamentally unsafe;
 - Ground 3 asserts that Mr Ngaïssona was convicted on the basis of a manifestly unfair trial process, which undermined the fairness, reliability and integrity of the conviction;
 - Ground 4 asserts that the Trial Chamber misapplied Rule 145(2)(a)(ii) of the Rules, by according limited weight to Mr Ngaïssona's post-offence conduct despite its objective peace-conducive character;
 - Ground 5 asserts that the Trial Chamber discounted Mr Ngaïssona's peace-effort initiatives, including his involvement in DDR processes and related organisational measures, thereby failing to accord them appropriate mitigating weight; and
 - Ground 6 asserts that the Trial Chamber failed to properly calibrate Mr Ngaïssona's degree of participation and intent pursuant to Rule 145(1)(c) of the Rules, thereby frustrating proportionality and meaningful appellate review.

3. For each ground articulated below, the Defence has specified the nature of the errors and impact on the Trial Judgment.
4. Unless otherwise specified below, the above grounds are directed against the Trial Judgment as a whole. The Defence seeks the reversal of all convictions and Mr Ngaïssona's immediate release.
5. The Defence reserves the right, pursuant to the Appeals Chamber's "Decision on requests for extension of time limits for notices of appeal and appeal briefs against the decision of Trial Chamber V entitled "Judgment"" dated 1 August 2025 to introduce a request to vary or supplement these grounds upon receipt of the translation of the last essential portion of the Trial Judgment in French.¹

II. SUBMISSIONS

Ground 1: Attribution of Individual Criminal Responsibility

6. Ground 1 concerns errors of law, procedure and fact in relation to the Trial Chamber's conclusion that Mr Ngaïssona's conduct, intent and knowledge satisfied the requirements of Article 25(3)(c) of the Statute, and its underlying interpretation of the organisational structure of the Anti-Balaka.

Content of Ground 1

7. The **first sub-ground** asserts that the Trial Chamber erred in law, procedure and fact in adopting an overly broad interpretation of the objective elements of aiding and abetting liability under Article 25(3)(c) of the Statute.
8. The Trial Chamber erred in law, procedure and fact in finding that Mr Ngaïssona's conduct amounted to assistance —whether material or psychological— in the commission of the charged crimes under Article 25(3)(c), without establishing beyond reasonable doubt that his conduct facilitated or furthered the commission of those crimes or explaining why such a showing was unnecessary in light of the

¹ ICC-01/14-01/18-2794, para. 12.

specific facts of this case. The Trial Chamber's conclusion that such an evaluation was not required as a matter of law led the Trial Chamber to inconsistently and inadequately engage with the factual impact of Mr Ngaïssona's conduct across the four (4) charged locations. This failure to apply the correct standard to the evidence in this case, without justification, constitutes mixed errors of law, procedure and fact, which underpin the legal foundation for attributing responsibility under Article 25(3)(c) of the Statute.

9. The Trial Chamber further erred in law and fact by convicting Mr Ngaïssona for all charged crimes committed in furtherance of the Anti-Balaka's criminal policy, without establishing that his conduct contributed to the commission of the charged crimes. This approach improperly expanded individual criminal responsibility under Article 25(3)(c) by relying on generalised support to the group, rather than demonstrating a nexus between Mr Ngaïssona's acts and the crimes. This departs from the plain wording of Article 25(3)(c) and established practice at the ICC and other international criminal tribunals, which have consistently assessed whether a demonstrated link exists between the accused's conduct and the commission of specific crimes, rather than inferring liability from general association with a criminal organisation or policy. The Trial Chamber's reliance on the mere purported existence of support —without properly assessing whether such support enhanced the Anti-Balaka's overall capacity to commit the charged crimes— further reflects a failure to apply the correct legal standard and to engage with the evidentiary record in a manner consistent with the requirements of individual criminal responsibility.
10. The Trial Chamber finally failed to articulate or apply a clear threshold for what constitutes assistance under Article 25(3)(c). This omission is especially problematic in the present case, where Mr Ngaïssona's alleged conduct was remote, general, and often inconsequential in nature. While ICC jurisprudence has been inconsistent, customary international law and comparative jurisprudence support a "substantial contribution" standard, understood as requiring a real and

factual impact on the commission of the crime. The absence of any threshold constitutes a legal error that materially affects the conviction and undermines the principle of individual criminal responsibility in this case.

11. These errors reflect a fundamental misapplication of the legal framework governing the objective elements of aiding and abetting liability and materially affect the validity of Mr Ngaïssona's conviction.
12. The **second sub-ground** asserts that the Trial Chamber erred in law and fact in concluding that Mr Ngaïssona acted for the purpose of facilitating the commission of the crimes under Article 25(3)(c), without establishing to the relevant standard that his conduct was purposefully directed toward their commission.
13. The Trial Chamber inferred elevated intent, without establishing that Mr Ngaïssona's conduct was purposefully directed toward facilitating the specific crimes charged. This diluted the *mens rea* standard and materially affected the conviction.
14. The Trial Chamber further erred in law in finding it sufficient that Mr Ngaïssona was aware that the crimes would involve targeting the Muslim civilian population, without requiring knowledge of the essential elements of the charged crimes. This broad interpretation lowers the mental threshold required under Article 25(3)(c) and led the Trial Chamber to assess whether Mr Ngaïssona's actions were purposefully directed toward the commission of the charged crimes using an incorrect standard. The Trial Chamber's reliance on macro-level awareness, rather than a more substantiated appreciation of the criminal conduct, impermissibly extends liability beyond what the Statute permits.²
15. The **third sub-ground** asserts that the Trial Chamber erred in law and fact in its interpretation and application of Articles 30(2) and (3) of the Statute by relying,

² Judgment, para. 4038.

inter alia, on a “clear pattern of criminal conduct”³ to infer that Mr Ngaïssona possessed the requisite knowledge for the crimes charged.

16. The Trial Chamber incorrectly broadened the scope of Article 30 by treating the purported existence of a pattern of Anti-Balaka violence against Muslim civilians as sufficient to establish that Mr Ngaïssona knew that the charged crimes would occur in the ordinary course of events. This approach failed to contextualise the foreseeability standard in light of the charges , thereby lowering the threshold of knowledge required by the Statute to prove Mr Ngaïssona’s individual criminal responsibility.

17. In the alternative, even if there had been a proper application of Article 30, the Trial Chamber/Majority erred in fact in concluding that Mr Ngaïssona had the required knowledge under Article 30 for the commission of certain charged crimes. In particular, the mental element is not satisfied in respect of:

- Count 6: War crime of directing an attack against a building dedicated to religion;
- Count 11: Crime against humanity of other inhumane acts;
- Count 12: Crime against humanity of torture;
- Count 13: War crimes of cruel treatment and torture;
- Count 14: Crime against humanity of imprisonment and other forms of severe deprivation of liberty;
- Count 15: Crime against humanity of murder;
- Count 16: War crime of murder; and
- Count 39: Crime against humanity of imprisonment and other forms of severe deprivation of liberty.

18. If the error is one of law, then the error affects all counts to which this legal reasoning was applied. This is because a legal error in interpreting the mental

³ Judgment, para. 4131.

element under Article 30 vitiates the legal basis for the Trial Chamber's findings across all relevant counts.

19. If the error is one of fact, then the error affects only those counts where the factual finding of knowledge was determinative.
20. Accordingly, the error materially affected the outcome of the trial and invalidates the convictions under all counts, or in the alternative, under Counts 6, 11, 12, 13, 14, 15, 16 and 39.
21. The **fourth sub-ground** asserts that the Trial Chamber erred in law by adopting an overly broad interpretation of the organisational structure of the Anti-Balaka, treating distinct and loosely affiliated groups as a single movement without properly applying the legal criteria for organisational identity.⁴
22. This legal mischaracterisation expands the scope of organisational affiliation beyond what is supported by international criminal jurisprudence. This foundational error in interpreting the concept of "organisation" underpinned the Chamber's attribution of criminal responsibility to Mr Ngaïssona, particularly in relation to groups with which he had no demonstrable connection.

Ground 2: Improper evaluation of the evidence

23. Ground 2 concerns errors of law, fact and procedure in the Trial Chamber's evaluation of the evidence.

Content of Ground 2

24. The Trial Chamber erred in law, fact and procedure in assessing the relevance, reliability and weight of the evidence. This resulted in critical findings predicated on an unsound evidentiary basis.

⁴ See e.g. Judgment, paras 43, 3894, 3910.

25. The **first sub-ground** asserts that the Trial Chamber systematically misapplied relevant evidentiary standards in its evaluation of the relevance, reliability and weight of the evidence. These standards relate to, *inter alia*, the treatment of circumstantial⁵ and hearsay⁶ evidence, the corroboration of specific types or items of evidence, including Rule 68(2) evidence⁷ and testimonial evidence, particularly from cooperating insider witnesses,⁸ and the obligation to provide a coherent and well-reasoned opinion.⁹ In addition, the Trial Chamber failed to adhere to the correct burden and standard of proof.¹⁰ These errors resulted in critical findings of fact being fundamentally unsafe, as they rest on an unsound evidentiary basis, or were reached without satisfying the requisite standard of proof.

26. The Trial Chamber failed to address inconsistent evidence and reconcile contrasting narratives, particularly with respect to contested evidentiary matters.¹¹ It further failed to articulate clear factual findings, identify their evidentiary basis and provide reasoning on their relevance to Mr Ngaïssona's criminal responsibility.¹² These errors affected the overall coherence and transparency of the Trial Judgment, thereby hampering proper scrutiny over the Trial Chamber's reasoning.

⁵ *Prosecutor v. Ntaganda*, Trial Judgment, ICC-01/04-02/06-2359, 8 July 2019 (hereinafter "Ntaganda TJ"), paras 69-70; *Prosecutor v. Bemba et al.*, Appeals Judgment, ICC-01/05-01/13-2275, 8 March 2018 (hereinafter "Bemba et al. AJ"), para. 868. For a concrete example of inconsistent treatment and undue reliance on circumstantial evidence, see e.g. Judgment, paras 1648-1661.

⁶ Ntaganda TJ, paras 67-68; *Prosecutor v. Ngudjolo*, Trial Judgment, ICC-01/04-02/12-3-tENG, 26 December 2012, para. 56. For concrete examples of inconsistent treatment and undue reliance on hearsay evidence, see and compare e.g. Judgment, paras 833, 943, 1484, 2214, 2267.

⁷ *Prosecutor v. Ntaganda*, Appeals Judgment, ICC-01/04-02/06-2666, 30 March 2021 (hereinafter "Ntaganda AJ"), paras 629-630; *Prosecutor v. Karadžić*, Trial Judgment, IT-95-5/18-T, 24 March 2016, para. 24; *Prosecutor v. Popović et al.*, Appeals Judgment, IT-05-88-A, 30 January 2015, paras 1222, 1226; *Prosecutor v. Haraqija and Morina*, Appeals Judgment, IT-04-84-R77.4-A, 23 July 2009, paras 61-62, 64; ECtHR, *Schatschaschwili v. Germany*, no. 9154/10, 15 December 2015. For a concrete example of undue reliance on untested, uncorroborated evidence see, e.g. Judgment, paras 836, 1106.

⁸ Bemba et al. AJ, para. 1084; Ntaganda AJ, para. 18.

⁹ *Prosecutor v. Bemba*, Appeals Judgment, ICC-01/05-01/08-3636, 8 June 2018, paras 51-55; *Prosecutor v. Ongwen*, Appeals Judgment, ICC-02/04-01/15-2022, 15 December 2022, para. 507.

¹⁰ Ntaganda AJ, para. 12.

¹¹ See and compare e.g. Judgment, paras 833-835, 838-839, 973, 1083-1084, 1719-1729, 2155-2163, 2270-2278, 2777-2789, 2811-2831, 2861-2862, 2918-2927, 2931-2938.

¹² See e.g. Judgment, paras 827-889, 1083, 2262-2267, 2868-2876, 2883-2885, 2888-2895, 2918-2927, 2931-2938.

27. The **second sub-ground** asserts that the Trial Chamber erred in law, fact and procedure in its assessment of witness credibility,¹³ contrary to its obligation to conduct such assessment as an integral part of determining the probative value of testimony, thereby abusing its discretion and leading to erroneous factual findings that materially affect Mr Ngaïssona's conviction. In particular, it applied inconsistent standards to the assessment of the credibility of 'accomplice witnesses';¹⁴ unreasonably failed to articulate adverse credibility findings; conflated credibility and reliability; selectively used prior statements and transcripts;¹⁵ improperly cross-referenced credibility findings; inconsistently engaged with speculation and inferential reasoning; inferred from the Trial Chamber's own inaction that witness testimony was speculative; failed to take into account circumstances surrounding witnesses unavailability to testify; and inconsistently relied on CDR evidence.¹⁶ These errors led to an arbitrary and unreliable approach to credibility assessments.

28. The errors outlined in sub-grounds 1 and 2 undermined the entire evidentiary foundation of the Judgment, and particularly the following key factual findings that underpin Mr Ngaïssona's conviction:

- The credibility or lack thereof of key witnesses whose testimony was crucial to the Trial Chamber's finding of guilt;
- The facts underpinning crimes for which Mr Ngaïssona was found guilty;
- The imputation of crimes to Anti-Balaka elements for which Mr Ngaïssona was convicted;
- The sustained and coordinated operations conducted by Anti-Balaka groups throughout the period relevant to the charges;
- Mr Ngaïssona's funding of Anti-Balaka groups and elements during the period relevant to the charges;

¹³ See e.g. Judgment, paras 194-468.

¹⁴ Ntaganda AJ, para. 17. See e.g. P-0801.

¹⁵ See e.g. Judgment, para. 195.

¹⁶ See e.g. Judgment, para. 454.

- Mr Ngaïssona's provision or promise of military and logistical support to the Anti-Balaka;
- Mr Ngaïssona's liaising and coordination with Anti-Balaka groups, elements and individuals exercising key functions;
- Mr Ngaïssona's engagement in inflammatory rhetoric, which incited vigilance against Muslim civilians, during the period relevant to the charges;
- Mr Ngaïssona's January 2014 designation as the Anti-Balaka general coordinator, envisaged prior to his return to Bangui and predicated on his prior involvement;
- Mr Ngaïssona's overarching role in unifying, coordinating, and representing all Anti-Balaka groups throughout the period from January to June 2014;
- Mr Ngaïssona's intent and knowledge for the commission of crimes he was found guilty of.

29. In any event, even assuming that the Trial Chamber had correctly identified and applied the relevant evidentiary standards outlined in sub-grounds 1 and 2, no reasonable trier of fact could have reached the Trial Chamber's conclusions with respect to the above-mentioned key findings in light of the totality of the evidence before it.

Ground 3: Manifestly Unfair Trial Process

30. The Trial Chamber erred through a series of cumulative rulings¹⁷ rejecting the Defence's disclosure and contact protocol requests concerning insider witnesses common to both the *Yekatom & Ngaïssona* and *Mokom* cases. Said rulings amounted to an unfair restriction on the Defence's ability to challenge the credibility of key witnesses and thereby violated Mr Ngaïssona's rights, constituting as such an appealable error under Article 81(1)(b)(iv) of the Statute.

¹⁷ ICC-01/14-01/18-2474; ICC-01/14-01/18-2493-Conf; ICC-01/14-01/18-2728.

Content of Ground 3

31. A vast number of key insider witnesses were central to both the *Yekatom & Ngaïssona* and *Mokom* cases.¹⁸ While the sudden unavailability of several critical insider witnesses was the basis for the Prosecution's withdrawal of charges in *Mokom*,¹⁹ the Trial Chamber declined to independently assess whether this development bore on the credibility of key witnesses in the case against Mr Ngaïssona.
32. The cumulative effect of the Trial Chamber's rulings on the matter obstructed the Defence's ability to assess whether the credibility of key insider witnesses—central to both the *Yekatom & Ngaïssona* and *Mokom* cases—was compromised. This procedural barrier casts significant doubt on the reliability of the evidence used to convict, particularly since some witnesses may have ceased cooperation after testifying, preventing the Defence from exploring this during cross-examination. By relying solely on the Prosecution's blanket assertions and foreclosing all avenues of inquiry, the Trial Chamber denied the Defence a fair opportunity to challenge the reliability of critical witness testimony, thereby compromising the fairness of the proceedings against Mr Ngaïssona, and ultimately affecting the reliability of his conviction.
33. This unfairness is compounded by the Defence's inability to identify the specific impact of any compromised witness credibility on the Judgment. The Defence was denied access to the necessary information to determine which witnesses became unavailable and why, and whether their credibility was affected. As a result, it is

¹⁸ See, i.e. P-0446 (relied upon 215 times in the Trial Judgment), P-0808 (relied upon 293 times in the Trial Judgment), P-0876 (appearing 307 times in the Trial Judgment), P-0884 (appearing 544 times in the Trial Judgment), P-0889 (appearing 264 times in the Trial Judgment), P-0954 (appearing 380 times in the Trial Judgment), P-0966 (relied upon 317 times in the Trial Judgment), P-1172 (relied upon 45 times in the Trial Judgment), P-1339 (appearing 580 times in the Trial Judgment), P-1521 (appearing 191 times in the Trial Judgment), P-1719 (appearing 197 times in the Trial Judgment), P-1847 (appearing 458 times in the Trial Judgment), P-2027 (appearing 83 times in the Trial Judgment), P-2232 (appearing 386 times in the Trial Judgment), P-2269 (appearing 174 times in the Trial Judgment), P-2328 (relied upon 111 times in the Trial Judgment), P-2625 (relied upon 219 times in the Trial Judgment), P-2841 (appearing 256 times in the Trial Judgment).

¹⁹ *Prosecutor v. Mokom*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-275, 16 october 2023, para. 3.

impossible to pinpoint which findings may have been tainted or rendered unreliable, thereby obstructing meaningful appellate review and undermining confidence in the integrity of the Judgment.

Ground 4: Limited Weight Accorded to the “Conduct After the Act” (Rule 145(2)(a)(ii))

34. Ground 4 concerns errors of law and fact in the Trial Chamber’s assessment of Mr Ngaïssona’s post-offence conduct under Rule 145(2)(a)(ii).

Content of Ground 4

35. The Trial Chamber erred in law and fact by according only limited weight to Mr Ngaïssona’s post-offence conduct, including his participation in the Brazzaville process, the dismantling of roadblocks, and efforts undertaken in Boda.²⁰ The Trial Chamber reasoned that these actions (i) occurred after the charged period and large-scale hostilities,²¹ (ii) took place in the context of broader negotiations,²² and (iii) were tainted by mixed motives and contemporaneous rhetoric.²³

36. This approach misapprehends the proper application of Rule 145(2)(a)(ii). This Rule expressly provides that post-offence conduct—including efforts to compensate victims or to cooperate with peace processes—constitutes mitigating circumstances, assessed on a balance of probabilities.²⁴ The Rule does not exclude conduct that occurs after the charged period, nor does it require pure motives. The Trial Chamber’s reasoning therefore imposed an unduly restrictive standard that is inconsistent with the text of the Rule and the Court’s jurisprudence.

²⁰ Judgment, para. 4689.

²¹ Judgment, paras 4690-4692.

²² Judgment, para. 4692.

²³ Judgment, paras 4692-4693.

²⁴ *Prosecutor v. Katanga*, Decision on Sentence pursuant to article 76 of the Statute, ICC-01/04-01/07-3484-tENG-Corr, 23 May 2014 (hereinafter “Katanga Sentencing Decision”), para. 115.

37. The Trial Chamber further erred by undervaluing Mr Ngaïssona's leadership and coordinating role in these initiatives, which is a relevant mitigating consideration under Rule 145(2)(a)(ii).
38. These errors materially affected the sentence because proper consideration of Mr Ngaïssona's post-offence conduct would have reduced the highest individual terms of imprisonment,²⁵ thereby lowering the joint sentence under Article 78(3).
39. Accordingly, the Defence requests that the Appeals Chamber amend the sentence to reflect appropriate mitigating weight for Mr Ngaïssona's post-offence conduct pursuant to Rule 145(2)(a)(ii). In the alternative, the Defence requests that the matter be remanded to the Trial Chamber with directions to correctly apply Rule 145(2)(a)(ii) and to give due consideration to Mr Ngaïssona's leadership role in such initiatives.

Ground 5: Incorrect Assessment of Peace-Effort Initiatives (DDR / Badges / "Military Police")

40. Ground 5 concerns errors of law and fact in the Trial Chamber's assessment of Mr Ngaïssona's peace-effort initiatives, including his involvement in the DDR process, as well as the establishment of badges and "military police".

Content of Ground 5

41. The Trial Chamber erred in law and fact by discounting Mr Ngaïssona's participation in the DDR initiative on the basis that it was politically motivated and lacked concrete results.²⁶ The Trial Chamber further erred in declining to accord mitigating weight to the introduction of badges and "military police," characterising them as measures aimed at branding or targeting so-called "fake

²⁵ Imposing **11-year** terms for Counts 2–3, 31–32, 15–16, and 26–27, see Judgment, paras 4706–4841.

²⁶ Judgment, paras 4682–4699.

Anti-Balaka” or theft, rather than recognising their potential role in reducing violence.²⁷

42. The Trial Chamber’s reasoning conflated the requirement of genuineness with the purity of motive and tangible outcomes. ICC jurisprudence recognises that peace-promoting initiatives may qualify as mitigating when they are genuine and objectively aimed at reducing harm, irrespective of whether they produce immediate or complete results.²⁸
43. In particular, the Trial Chamber erred in fact by characterising Mr Ngaïssona’s post-offence peace efforts as primarily self-interested, notwithstanding evidence that clearly directed to the opposite.²⁹ This includes evidence showing, contemporaneous instructions aimed at de-escalation (e.g., dismantling roadblocks), participation in and follow-up to the Brazzaville process, reconciliation initiatives (including Boda), coordination with national and international actors, and third-party acknowledgements of those efforts.³⁰ Taken together, and applying the correct standard (balance of probabilities), these indicators show efforts that were palpable and genuine in line with the ICC jurisprudence.
44. Moreover, Rule 145 does not require mitigating conduct to correspond directly to the precise type of crimes for which an accused is convicted. The Trial Chamber’s failure to consider order-restoring measures such as the badges and “military police” as relevant mitigation constitutes a legal and factual error.
45. Proper application of the correct legal standard would have yielded meaningful mitigating weight for elements of the DDR process and related organisational measures. This, in turn, would have reduced the highest individual terms of imprisonment, thereby lowering the joint sentence under Article 78(3).

²⁷ Judgment, paras 4695-4697.

²⁸ Katanga Sentencing Decision, para. 91.

²⁹ Judgment, para. 4694.

³⁰ See e.g. P-0952: T-250-ENG CT, p. 16.

46. Accordingly, the Defence requests that the Appeals Chamber amend the sentence to reflect appropriate mitigation for Mr Ngaïssona's peace-effort initiatives. In the alternative, the Defence requests that the matter be remanded to the Trial Chamber with directions to apply the correct legal standard for assessing genuineness and scope of mitigation under Rule 145.

Ground 6: Incorrect Assessment and Insufficient Reasoning in Calibrating Degree of Participation and Intent (Rule 145(1)(c))

47. Ground 6 concerns errors of law, fact and reasoning in the Trial Chamber's assessment of Mr Ngaïssona's degree of participation and intent under Rule 145(1)(c).

Content of Ground 6

48. Rule 145(1)(c) requires the Trial Chamber, in addition to considering gravity and individual circumstances, to assess inter alia the degree of participation and the degree of intent as part of its sentencing determination. This is a degree-based calibration that underpins the principle of proportionality in sentencing pursuant to Article 78(1).

49. The Trial Chamber erred in law and fact by failing to articulate a clear, location-specific assessment of Mr Ngaïssona's degree of participation and intent. Instead, the Trial Chamber repeatedly described his contributions in vague terms—such as “a positive effect” or enabling “some elements”—before concluding that his participation and intent were neither particularly high nor low across several charged locations, including Bangui, Bossangoa, Yamwara, and PK9-Mbaïki.³¹ The Trial Chamber did not explain how these findings translated into the individual terms imposed.

³¹ Judgment, paras 4711 (referring to crimes in Bangui, Cattin and Boeing), 4736 (referring to crimes in Bossangoa), 4791 (referring to crimes at Yamwara), 4810 (referring to crimes on the PK9-Mbaïki axis).

50. This constitutes an error of law in failing to apply Rule 145(1)(c) as a degree-based assessment, as well as an error of reasoning that frustrates meaningful appellate review. The error materially affected the outcome of the sentencing, because the Trial Chamber imposed the highest individual terms,³² which then fixed the floor of the joint sentence under Article 78(3). Had the Trial Chamber properly calibrated the degree of participation and intent—particularly in Yamwara and along the PK9–Mbaïki axis, where the causal link to the crimes is least articulated—the highest individual terms would likely have been reduced, thereby lowering the joint sentence.

51. Accordingly, the Defence requests that the Appeals Chamber amend the individual terms of imprisonment to reflect a proper calibration of Mr Ngaïssona’s degree of participation and intent, and correspondingly reduce the joint sentence under Article 78(3). In the alternative, the Defence requests that the matter be remanded to the Trial Chamber with directions to conduct a location-specific assessment under Rule 145(1)(c).

Respectfully submitted,



G. G. J. Alexander Knoops
on behalf of
Patrice-Edouard Ngaïssona

Dated this 26 September 2025

At The Hague, the Netherlands

³² Imposing **11-year** terms for Counts 2–3, 31–32, 15–16, and 26–27, see Judgment, paras 4706–4841.