



Original: **English**

No.: **ICC-01/14-01/18**
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
NGAISSONA***

Public

Prosecution notice of appeal of the judgment against Patrice-Edouard Ngaïssona

Source: Office of the Prosecutor

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Notice of Appeal

1. The Prosecution gives notice of its appeal in part against the judgment of Trial Chamber V in the case of *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, filing number ICC-01/14-01/18-2784, rendered on 24 July 2025 (“Judgment”).¹
2. This appeal is brought under article 81(1)(a)(iii) of the Rome Statute, rule 150 of the Rules of Procedure and Evidence and regulation 57 of the Regulations of the Court.² The appeal will demonstrate that the Chamber erred in law in acquitting Mr Ngaïssona of rape committed by the Anti-Balaka during its attack on Bossangoa on 5 December 2013 in violation of articles 7(1)(g) and 8(2)(e)(vi) of the Statute (counts 40 and 41)³ and as an underlying act of persecution (count 42).⁴ In particular, the Chamber failed to consider Mr Ngaïssona’s criminal responsibility under article 25(3)(d) on these counts, with which he was alternatively charged in the Decision on the Confirmation of Charges.⁵ Had the Chamber not made this error, it would have convicted Mr Ngaïssona of rape as well as rape as an underlying act of persecution pursuant to article 25(3)(d)(i).
3. The Prosecution has identified this error after reviewing the Judgment carefully with reference to the established standard of appellate review for errors of law,⁶ and mindful of the need to demonstrate that any error materially affected the Judgment.⁷ On this basis, the Prosecution has identified the following ground of appeal.

¹ ICC-01/14-01/18-2784-Conf and [ICC-01/14-01/18-2784-Red](#).

² The deadline for filing this notice of appeal was extended by order of the Appeals Chamber: ICC-01/14-01/18-2794 (“[Decision on Request for Extension](#)”), para. 13.

³ [Judgment](#), paras. 4126-4132, 4847.

⁴ [Judgment](#), paras. 4110-4125, 4126-4132, 4847.

⁵ ICC-01/14-01/18-403-Corr-Red (“[Confirmation Decision](#)”), para. 112, p. 111.

⁶ In this regard, the Appeals Chamber will not defer to the Trial Chamber’s interpretation of the law, but rather will arrive at its own conclusions as to the appropriate law. See e.g. [ICC-02/04-01/15-2022-Red](#) (“*Ongwen* AJ”), para. 76; [ICC-02/11-01/15-1400](#) (“*Gbagbo* AJ”), para. 62; [ICC-01/04-02/06-2666-Red](#) (“*Ntaganda* AJ”), para. 36; [ICC-01/05-01/13-2275](#) (“*Bemba et al.* AJ”), para. 90; [ICC-01/05-01/08-3636](#) (“*Bemba* AJ”), para. 36; [ICC-01/04-02/12-271](#) (“*Ngudjolo* AJ”), para. 20; [ICC-01/04-01/06-3121](#) (“*Lubanga* AJ”), paras. 17-18.

⁷ See e.g. [Rome Statute](#), article 83(2). See also [Ongwen AJ](#), para. 84; [Gbagbo AJ](#), para. 72; [Ntaganda AJ](#), para. 36; [Lubanga AJ](#), para. 19.

GROUND OF APPEAL: THE CHAMBER ERRED IN FAILING TO APPLY ARTICLE 25(3)(D) OF THE STATUTE IN DETERMINING MR NGAÏSSONA’S LIABILITY FOR THE CRIME OF RAPE (COUNTS 40 AND 41) AND RAPE AS AN UNDERLYING ACT OF PERSECUTION (COUNT 42)

4. The Chamber erred in law by failing to assess Mr Ngaïssona’s liability for rape under counts 40 and 41 and as an underlying act of persecution under count 42 under the alternate mode of liability with which he was charged—namely, article 25(3)(d).⁸

5. In its Judgment, the Chamber set out the law regarding the primary mode of liability confirmed by the Pre-Trial Chamber for Mr Ngaïssona, namely, article 25(3)(c). The Chamber stated in paragraph 3868 of the Judgment that it considered it unnecessary to address the requirements of the alternative mode of liability under article 25(3)(d). In paragraph 3886, the Chamber then explained that it would not consider the “subsidiary” mode of liability of article 25(3)(d) since the “primary alternative” mode of liability under article 25(3)(c) had been established for the charges against Mr Ngaïssona.⁹ However, the Chamber erroneously failed to comply with its own stated approach with respect to counts 40 and 41. While the Chamber found that the material elements for the crime of rape under counts 40 and 41 were met,¹⁰ it found that Mr Ngaïssona’s responsibility for this crime was *not* established under article 25(3)(c).¹¹ In the circumstances, it was required to assess his criminal responsibility under the alternative mode of liability in article 25(3)(d) as confirmed by the Pre-Trial Chamber, yet it failed to do so. Similarly, the Chamber failed to assess Mr Ngaïssona’s responsibility for rape as an underlying act of persecution under count 42, since it had found that rape did not form part of it.¹²

⁸ See [Confirmation Decision](#), para. 112 (“Considering that the attacks on Bangui and Bossangoa were part of the same course of action, the Chamber considers that Ngaïssona’s acts in relation to the 5 December 2013 Attack on Bangui further entail that he is individually criminally responsible for the crimes committed during the attack on Bossangoa on 5 December 2013 pursuant to article 25(3)(c) of the Statute or, in the alternative, article 25(3)(d)(i) or (ii) of the Statute”), p. 111.

⁹ See also [Judgment](#), para. 4109 (turning to assess Mr Ngaïssona’s responsibility under counts 30 to 33, and 37 to 41, stating that “Mr Ngaïssona is alleged to have committed the aforementioned crimes by facilitating the commission of the crimes as set out in the confirmed charges by aiding, abetting or otherwise assisting in their commission under Article 25(3)(c) of the Statute”).

¹⁰ [Judgment](#), paras. 83, 2857, 4095-4098.

¹¹ [Judgment](#), paras. 4126-4132, 4847 (finding, on the basis of the evidence before it, that the legal requirements under article 25(3)(c), namely awareness that the principal offence will occur in the ordinary course of events, were not met).

¹² [Judgment](#), paras. 4110-4125, 4847. The Chamber found that all the other elements for the crime of persecution were met (see [Judgment](#), paras. 4099-4125).

6. Following its assessment of Mr Ngaïssona’s individual criminal responsibility for counts 40 and 41 and rape as an underlying act of persecution for count 42 under article 25(3)(c) in paragraphs 4099-4132, and concluding that his liability had not been established under that mode of liability, the Chamber erred by terminating its assessment without then proceeding to assess his liability for those counts under article 25(3)(d) and without making all factual findings relevant to article 25(3)(d).¹³

7. These errors materially affected the Judgment.¹⁴ Mr Ngaïssona was charged under articles 25(3)(c), 25(3)(d)(i) and 25(3)(d)(ii) in the alternative, to account for the possibility that his conduct could satisfy the legal elements of one or both of these modes of liability.¹⁵ Because the Chamber acquitted Mr Ngaïssona under article 25(3)(c) for counts 40 and 41 and persecution based on rape for count 42, yet did not assess his responsibility under article 25(3)(d), the Judgment fails to conclusively determine Mr Ngaïssona’s guilt or innocence against the full scope of the confirmed charges.

8. Had the Chamber assessed Mr Ngaïssona’s liability for counts 40 and 41 and for persecution based on rape for count 42 under article 25(3)(d) as it was required to do, and applied the correct lens and approach to crimes of sexual violence, it would have convicted Mr Ngaïssona for these counts on the basis of the facts as found throughout the Judgment and the only reasonable inferences to be drawn from those facts. These findings, and the only reasonable inferences to be drawn from them, demonstrate that the constituent elements of article 25(3)(d)(i) were met, including that: the Anti-Balaka shared a common criminal purpose to violently target the Muslim civilian population in western Central African Republic in retribution for Seleka exactions, and that this common criminal purpose included the crime of rape as well as persecution based on rape; Mr Ngaïssona contributed to the Anti-Balaka’s commission of the crime of rape; and Mr Ngaïssona made his contribution intentionally and with the aim of furthering the criminal activity or criminal purpose of the Anti-Balaka.

¹³ See also [Judgment](#), paras. 4109, 4847.

¹⁴ ICC-02/11-01/11-321 (“[Gbagbo Jurisdiction AD](#)”), para. 44, citing ICC-01/04-169 (“[DRC Arrest Warrant AD](#)”), para. 84 (“A decision is materially affected by an error of law if the Pre-Trial Chamber or Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, if it had not made the error”); [Ngudjolo AJ](#), para. 20; [Lubanga AJ](#), para. 31.

¹⁵ [Confirmation Decision](#), para. 112.

RELIEF REQUESTED

9. Based on the above ground of appeal, the Prosecution requests the Appeals Chamber to exercise its powers under article 83(2) of the Statute to:

- (a) correct the legal errors outlined in paragraphs 4-6 above and reverse the findings material to the errors;
- (b) set out the legal standard for the elements of article 25(3)(d)(i); and
- (c) apply that standard to the facts as found, and the only reasonable inferences to be drawn from them, make any further findings which are necessary, and enter the following additional convictions:
 - **under count 40**, to find that Mr Ngaïssona is responsible under article 25(3)(d)(i) of the Statute for contributing to the Anti-Balaka's commission of rape on 5 December 2013 in Bossangoa as a crime against humanity in violation of article 7(1)(g); and
 - **under count 41**, to find that Mr Ngaïssona is responsible under article 25(3)(d)(i) of the Statute for contributing to the Anti-Balaka's commission of rape on 5 December 2013 in Bossangoa as a war crime in violation of article 8(2)(e)(vi);
 - **under count 42**, to find that Mr Ngaïssona is responsible for the crime against humanity of persecution, on religious grounds, of Muslim civilians perceived by the Anti-Balaka as supporters of or affiliated with the Seleka, by rape committed on 5 December 2013 in the context of the attack on Bossangoa, pursuant to articles 7(1)(h) and 25(3)(d)(i) of the Statute; and
- (d) determine an appropriate increase to the sentence imposed upon Mr Ngaïssona based on the additional convictions.

10. In the alternative, having corrected the legal errors, reversed the findings material to the errors, and set out the legal standard for the elements of article 25(3)(d)(i), the Appeals Chamber could remand the matter to Trial Chamber V for it to apply article 25(3)(d)(i) in determining Mr Ngaïssona's liability for rape under counts 40, 41 and persecution based on

rape for count 42 and to determine an appropriate increase of the sentence imposed upon Mr Ngaïssona, if it enters additional convictions.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and a final vertical stroke with a small hook at the top.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 26th day of September 2025

At The Hague, the Netherlands