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**International
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Date: **27 November 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

**Public redacted version of “Prosecution Appeal Brief”, ICC-01/14-01/18-2846-Conf,
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INTRODUCTION

1. Trial Chamber V found that between September 2013 and December 2014, the Anti-Balaka carried out a widespread and systematic attack against the Muslim civilian population of western Central African Republic (“CAR”) pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in retribution for Seleka exactions.¹ As part of this attack, the Anti-Balaka perpetrated violent crimes in several localities, including attacking the civilian population, murder, forcible transfer and deportation, displacement, imprisonment, rape and persecution. Their violent crimes included the rape of P-2462 in Bossangoa on 5 December 2013. The Chamber convicted Mr Ngaïssona under article 25(3)(c) of the Rome Statute for aiding and abetting all of these violent crimes committed against Muslim civilians with which he was charged, except for P-2462’s rape as a war crime and crime against humanity, and as an act of persecution. The Chamber’s findings leading to these convictions were reasonable and correct, and the convictions should stand.

2. However, the Chamber erred in law in acquitting Mr Ngaïssona for his contribution to the Anti-Balaka’s rape of P-2462. After having found that the material elements of the rape of P-2462 were established beyond reasonable doubt,² the Chamber was required to assess whether Mr Ngaïssona was responsible for the crime under any of the modes of liability with which he was charged. Yet, having found that Mr Ngaïssona was not responsible for the crime under article 25(3)(c) of the Statute,³ it failed to assess his liability under article 25(3)(d), which was charged in the alternative.

3. This error of law⁴ materially affected the Judgment. But for this error, the Chamber would have assessed Mr Ngaïssona’s liability under article 25(3)(d), found him criminally responsible for contributing to the Anti-Balaka’s commission of rape as charged, pursuant to article 25(3)(d)(i), and convicted and sentenced him accordingly. This is because the Chamber’s factual findings, and the only reasonable conclusions to be drawn from them, show that Mr Ngaïssona was aware of the Anti-Balaka’s criminal purpose of violently targeting the Muslim population in Bangui and western CAR prefectures in retribution for Seleka exactions,

¹ ICC-01/14-01/18-2784-Red (“[Judgment](#)”), para. 3934.

² [Judgment](#), paras. 83, 2833-2839, 2857, 3907, 3946, 4095-4098.

³ [Judgment](#), para. 4131.

⁴ In this regard, the Appeals Chamber will not defer to the Trial Chamber’s interpretation of the law, but 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 & Blé Goudé NCTA AD](#)”), para. 62; ICC-01/04-02/06-2666-Red (“[Ntaganda AJ](#)”), para. 36; ICC-01/05-01/13-2275-Red (“[Bemba et al. AJ](#)”), para. 90; ICC-01/05-01/08-3636 (“[Bemba AJ](#)”), para. 36; ICC-01/04-02/12-271 A (“[Ngudjolo AJ](#)”), para. 20; ICC-01/04-01/06-3121-Red (“[Lubanga AJ](#)”), paras. 17-18.

and contributed to the commission of the group's violent crimes with the aim of furthering its criminal purpose. This criminal purpose involved the commission of Rome Statute crimes of violence against persons, including rape, committed with discriminatory intent based on religion. Mr Ngaïssona's contributions were intentional, in that he meant to engage in the conduct constituting his contributions, and he made them with the awareness that his conduct contributed to the (criminal) activities of the group. As the Chamber found, Mr Ngaïssona aided and abetted several of the Anti-Balaka's violent crimes against Muslims for the purpose of facilitating their commission. As such, his contributions necessarily aimed to further the Anti-Balaka's criminal purpose. Moreover, given its violent nature, Mr Ngaïssona was aware of the substantial risk that the Anti-Balaka would commit rape, and persecution through rape, in implementing their criminal purpose.

4. The Prosecution respectfully requests the Appeals Chamber to: correct the legal error; reverse the findings material to the error; apply the elements of article 25(3)(d)(i) to the existing findings in the Judgment and make any necessary additional conclusions beyond reasonable doubt; enter convictions for rape, and persecution through the underlying act of rape; and increase Mr Ngaïssona's overall sentence accordingly.

5. Correcting the Trial Chamber's error will ensure Mr Ngaïssona's full responsibility for the crimes to which he contributed, including rape, committed with discriminatory intent, pursuant to article 25(3)(d)(i); a commensurate sentence; and the participation of all the victims of his crimes in reparations proceedings. His conviction will properly recognise rape as a gender-based crime of violence, on par with the other violent crimes committed by the Anti-Balaka for which he was convicted under article 25(3)(c).⁵

CONFIDENTIALITY LEVEL

6. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Prosecution files this appeal as confidential since it refers to information with the same confidentiality level. The Prosecution will file a public redacted version as soon as practicable.

⁵ See e.g., ICC-01/04-02/06-2359 ("[Ntaganda TJ](#)"), para. 805 (recognising acts of sexual violence to be similar to other acts of physical violence including killings).

GROUND OF APPEAL: The Chamber erred in failing to apply article 25(3)(d) of the Statute in determining Mr Ngaïssona’s liability for rape (counts 40 and 41) and persecution through rape (count 42)

7. Mr Ngaïssona was charged under article 25(3)(c) or, in the alternative, article 25(3)(d)(i) or (ii) for the Anti-Balaka’s commission of rape on 5 December 2013 in Bossangoa as a crime against humanity and as a war crime (counts 40 and 41), and as an underlying act of persecution (count 42).⁶ However, the Trial Chamber only assessed his conduct under article 25(3)(c), finding him not responsible for rape,⁷ or as a result, persecution through rape.⁸ Having so concluded, the Chamber was bound to assess Mr Ngaïssona’s conduct under the confirmed alternative mode of liability, article 25(3)(d). The Chamber’s failure to do so is a legal error which materially impacted the Judgment.

A. Background

8. On 11 December 2019, Pre-Trial Chamber II confirmed the charges against Mr Ngaïssona and his co-accused, Mr Yekatom.⁹ In confirming counts 40 and 41 regarding the Anti-Balaka’s rape of P-2462 on 5 December 2013 in Bossangoa, and persecution based on rape under count 42, the Pre-Trial Chamber stated:

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.¹⁰

9. The Pre-Trial Chamber thus confirmed alternative charges, and noted that “a Trial Chamber is better poised to fully assess the relevant circumstances and that [...] providing early notice as to the applicable legal qualifications is beneficial both for the rights of the Defence and judicial economy”.¹¹

10. In the Judgment, the Trial Chamber found that the material elements for the crime of rape under counts 40 and 41 were met,¹² and that the rape was committed during the attack on

⁶ ICC-01/14-01/18-403-Corr-Red (“[Confirmation Decision](#)”), para. 112, p. 111.

⁷ [Judgment](#), paras. 4126-4132.

⁸ [Judgment](#), paras. 4110-4125 (assessing Mr Ngaïssona’s liability under article 25(3)(c) for, *inter alia*, the crime of persecution (count 42) and concluding that he is criminally responsible), 4126-4131 (finding that Mr Ngaïssona is not criminally responsible under article 25(3)(c) for the crime of rape), 4132, 4847 (pronouncing a guilty verdict for the crime against humanity of persecution (count 42) and listing the underlying crimes, of which rape is not one).

⁹ [Confirmation Decision](#).

¹⁰ [Confirmation Decision](#), para. 112; *see also* pp. 110-111.

¹¹ [Confirmation Decision](#), para. 121.

¹² [Judgment](#), paras. 83, 2833-2839, 2857, 3907, 3946, 4095-4098.

Bossangoa.¹³ However, it found that Mr Ngaïssona’s responsibility for this crime was *not* established under article 25(3)(c) because it could not conclude that Mr Ngaïssona was aware that rape was virtually certain to occur in the ordinary course of events of the Anti-Balaka’s attack on Bossangoa.¹⁴ Likewise, it found that Mr Ngaïssona’s responsibility was not established under this mode of liability for rape as an underlying act of persecution.¹⁵ The Chamber failed then to assess Mr Ngaïssona’s responsibility for this crime under article 25(3)(d)(i) or (ii).¹⁶ Instead, it acquitted Mr Ngaïssona of the rape committed during the Anti-Balaka’s attack on Bossangoa under counts 40 and 41,¹⁷ and of persecution through rape under count 42.¹⁸

B. The Chamber erred in law

B.1. Under the Court’s legal framework, trial chambers may acquit only if none of the alternative charges are satisfied on the evidence

11. Trial chambers are required to enter findings on the charges presented at trial against an accused person, and to determine whether they are proven beyond reasonable doubt. Trial chambers do not have discretion to disregard any charges. This obligation, which also applies in the context of alternative charges, arises from the Court’s legal framework and is the fundamental objective of a criminal trial.¹⁹

12. The practice of alternative charging is well-established in this Court.²⁰ It allows the Prosecution to plead, and the Pre-Trial Chamber to confirm, alternative legal characterisations of the crimes and/or the modes of liability in cases where the evidence meets the legal elements

¹³ [Judgment](#), paras. 2857 (referring to evidence of the rape of P-2657 during the attack on Bossangoa on 5 December 2013), 4131 (referring to “cases of rape that occurred in Bossangoa, one of which Mr Ngaïssona is charged with.” (emphasis added)).

¹⁴ [Judgment](#), paras. 4126-4132.

¹⁵ [Judgment](#), paras. 4110-4132, 4847.

¹⁶ In this Appeal, the Prosecution relies on article 25(3)(d)(i) of the [Statute](#).

¹⁷ [Judgment](#), paras. 4126-4132, 4847.

¹⁸ [Judgment](#), paras. 4110-4132, 4847.

¹⁹ The charges, as confirmed by the Pre-Trial Chamber, set the parameters for trial: [Statute](#), article 61(7)(a), article 61(9). See also [Chambers Practice Manual](#) (2024), para. 57; [Ntaganda AJ](#), para. 325. The Trial Chamber must render a decision on the charges following a trial: [Statute](#), article 74(5). Where there is more than one charge, the Trial Chamber must decide separately on each charge: Rules of Procedure and Evidence (“[RPE](#)”), rule 142(2).

²⁰ See e.g., ICC-02/04-01/05-633 (“[Kony Confirmation Decision](#)”), pp. 50-51; ICC-01/14-01/21-218-Red (“[Said Confirmation Decision](#)”), para. 48; ICC-02/05-01/20-433-Corr (“[Abd-Al-Rahman Confirmation Decision](#)”), para. 29; ICC-01/09-01/20-153-Red (“[Gicheru Confirmation Decision](#)”), para. 218; ICC-02/04-01/15-422-Red (“[Ongwen Confirmation Decision](#)”), para. 35; ICC-02/11-02/11-186 (“[Blé Goudé Confirmation Decision](#)”), para. 133; ; ICC-02/11-01/11-656-Red (“[Gbagbo Confirmation Decision](#)”), paras. 227-228; ICC-01/04-02/06-309 (“[Ntaganda Confirmation Decision](#)”), para. 100; ICC-01/09-01/11-1 (“[Ruto & Sang Summons Decision](#)”), para. 36.

of each alternative.²¹ This practice ensures that all relevant legal characterisations of the crimes and modes of liability constitute the basis of a trial, and that the accused receives sufficient notice of the alternatives in accordance with article 67(1)(a). It also limits the use of regulation 55 of the Regulations of the Court—“an exceptional instrument” to be used “only sparingly if absolutely warranted”.²²

13. As the Chambers Practice Manual states, once alternative charges have been confirmed, “[i]t would then be the Trial Chamber, on the basis of a full trial, to determine *which one, if any*, of the confirmed alternative is applicable to each case”.²³ Accordingly, when presented with alternatively charged modes of liability at trial, a trial chamber is required to assess whether the facts meet any one of the alternative modes. To convict, a chamber is only required to find that *one* of the alternative modes of liability is established on the evidence.²⁴ To acquit, a chamber must find that *none* of the alternatives are satisfied.²⁵

14. A complete determination of each charge is an essential feature of the fair administration of justice, as it is only following a conviction that victims of a crime can seek individual reparations under the Statute.²⁶

²¹ [Chambers Practice Manual](#) (2024), para. 67.

²² [Chambers Practice Manual](#) (2024), para. 67. See also C.F. Stuckenberg, “[Charges: International Criminal Courts and Tribunals](#)”, in *Max Planck Encyclopedia of International Law*, November 2021, para. 33; L. Sadat & J. Jolly, “Seven Canons of ICC Treaty Interpretation: making sense of article 25’s Rorschach blot”, *Leiden Journal of International Law*, Vol. 27, Issue 3 (2014), pp. 755-788, at p. 769.

²³ [Chambers Practice Manual](#) (2024), para. 67 (emphasis added).

²⁴ See e.g., ICC-02/05-01/20-1240 (“[Abd-Al-Rahman TJ](#)”), paras. 17-18 (setting out the charges relating to counts 12-31 for which Mr Abd-Al-Rahman was charged with alternative modes of liability), 998 (since the Chamber found Mr Abd-Al-Rahman criminally responsible for counts 12-31 under article 25(3)(a), it did not consider his responsibility for those charges under article 25(3)(b) with which he was charged in the alternative); [Ntaganda TJ](#), para. 1200 (“While the Chamber considers that a person’s conduct may be capable of satisfying elements of one or more modes of liability it does not find it appropriate or necessary, having found Mr Ntaganda’s principal liability to have been established for each of the counts charges, to reach any further finding on the remaining liability alternatives”), 744 (finding that Mr Ntaganda’s participation in the crime charged under count 3 was better qualified as an indirect co-perpetrator under article 25(3)(a) and finding him responsible under that mode, without analysing his responsibility under the alternatively charged article 25(3)(b), (d) or article 28); ICC-02/04-01/15-1762-Red (“[Ongwen TJ](#)”), para. 2780; see also paras. 34 (fns. 44, 48, 52, 56) and 36 (fn. 68) (noting the various modes of liability with which Mr Ongwen was charged in the alternative), paras. 2874, 2927, 2973, 3020 (terminating its assessment of Mr Ongwen’s liability for the crimes committed during the charged attacks on IDP camps, after finding him criminally responsible under article 25(3)(a)). A trial chamber may assess the accused’s conduct under multiple modes of liability, but may only enter a conviction under the mode best suited to characterise the accused’s responsibility: ICC-01/12-01/18-2594-Red (“[Al Hassan TJ](#)”), para. 1582.

²⁵ See e.g., ICC-02/11-01/15-1263-AnxB-Red (“[Gbagbo & Blé Goudé NCTA, Judge Henderson Reasons](#)”), paras. 1906-2034 (although finding that there was insufficient evidence to establish the contextual elements of the charged crimes against humanity, Judge Henderson assessed the criminal responsibility of the accused under all alternatively charged modes of liability, to find that none were established on the evidence).

²⁶ [Statute](#), article 75(2); [RPE](#), rules 94 and 95.

B.2. The Chamber failed to assess the confirmed and relevant alternative mode of liability

15. In failing to assess the alternatively charged mode of liability under article 25(3)(d) for Mr Ngaïssona’s conduct, the Trial Chamber erroneously disregarded the above principles.

16. First, the Chamber only set out the law on aiding and abetting in article 25(3)(c).²⁷ It discounted, without explanation, the requirements of article 25(3)(d) as an alternative mode of liability as unnecessary.²⁸

17. Second, the Chamber explained that it would not consider article 25(3)(d) as a “subsidiary” mode of liability since the “primary alternative” mode of liability—article 25(3)(c)²⁹—had been established.³⁰ However, the Chamber found that Mr Ngaïssona’s responsibility for the crime of rape under counts 40 and 41³¹ was *not* established under article 25(3)(c).³² Similarly, the Chamber erroneously failed to assess Mr Ngaïssona’s responsibility for persecution through rape under count 42.³³

18. Third, following the Chamber’s assessment of Mr Ngaïssona’s individual criminal responsibility for these counts under article 25(3)(c), and its conclusion that his liability had not been established under that mode of liability,³⁴ the Chamber erroneously terminated its assessment without proceeding to determine his liability for those counts under article 25(3)(d).³⁵

19. Finally, by failing to adjudicate Mr Ngaïssona’s criminal responsibility for rape under counts 40 and 41, and for persecution based on rape under count 42, the Chamber violated the victim’s right to an effective remedy under international human rights law.³⁶ As a recognised victim of a Rome Statute crime, P-2462 has the right to know whether Mr Ngaïssona is criminally responsible as charged, and thus whether she is entitled to reparations for this harm.

²⁷ [Judgment](#), paras. 3868, 3876-3883.

²⁸ [Judgment](#), para. 3868.

²⁹ [Judgment](#), para. 3886; *see also* para. 4109.

³⁰ [Judgment](#), para. 3886.

³¹ [Judgment](#), paras. 83, 2857, 4095-4098.

³² [Judgment](#), paras. 4126-4132, 4847.

³³ [Judgment](#), paras. 4110-4125, 4132, 4847. The Chamber found that all the other elements for the crime of persecution were met (*see Judgment*, paras. 4099-4108).

³⁴ [Judgment](#), paras. 4109-4132; *see also* paras. 4109, 4847.

³⁵ *See generally Judgment*, paras. 4109-4132.

³⁶ ICC-01/04-01/06-3466-AnxII (“[Lubanga Judge Ibáñez Carranza Separate Opinion](#)”), para. 57 (noting that victims have a right to an effective remedy which comprises both a procedural right (access to justice) and a substantive right (the right to reparations/redress)).

C. The Chamber's error materially affected the Judgment

20. If the Chamber had not legally erred in failing to assess Mr Ngaïssona's responsibility under article 25(3)(d), it would have convicted him under counts 40 and 41, and of persecution based on rape under count 42. Mr Ngaïssona's liability for these counts under article 25(3)(d)(i) is established beyond reasonable doubt based on the findings of the Chamber and the only reasonable conclusions to be drawn from them.

21. In demonstrating the material impact of the error, the Prosecution first sets out the elements of article 25(3)(d)(i). As shown below, article 25(3)(d)(i) requires a different *mens rea* from article 25(3)(d)(ii). For the former, the accused's (intentional) contribution to the commission of the charged crime must be made with the aim of furthering the group's criminal activity or criminal purpose. This implies that the accused must be aware of the scope of this criminal activity or criminal purpose. This requires that the accused was at least aware of a substantial risk that the group would commit the crimes that are the subject of its criminal activity or criminal purpose, including the crime to which the accused contributed.

22. Second, the Prosecution applies article 25(3)(d)(i) to the facts found by the Trial Chamber. Based on these factual findings, and the only reasonable conclusions available from them, the Chamber would have convicted Mr Ngaïssona of rape under counts 40 and 41, and persecution through rape under count 42, pursuant to article 25(3)(d)(i).

C.1. The legal standard under article 25(3)(d)(i)

C.1.a. Introduction

23. Article 25(3)(d) proscribes a form of accessorial liability³⁷ arising from group criminality.³⁸ It states:

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

³⁷ [Al Hassan TJ](#), paras. 1239; ICC-01/04-01/07-3436-tENG ("[Katanga TJ](#)"), para. 1618; ICC-01/09-01/11-373 ("[Ruto et al. Confirmation Decision](#)"), paras. 353-354; ICC-01/04-01/10-465-Red ("[Mbarushimana Confirmation Decision](#)"), para. 278; ICC-01/04-02/06-2666-Anx3 ("[Ntaganda AJ, Judge Ibáñez Carranza Separate Opinion](#)"), para. 290.

³⁸ ICC-01/04-02/06-2666-Anx2 ("[Ntaganda AJ, Judge Morrison Separate Opinion](#)"), paras. 37-40; ICC-01/04-02/06-2666-Anx5-Corr ("[Ntaganda AJ, Judge Eboe-Osuji Separate Opinion](#)"), para. 66; [Mbarushimana Confirmation Decision](#), para. 278 (also cited in [Ruto et al. Confirmation Decision](#), fn. 557).

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime.

24. Five elements must be satisfied to establish liability under article 25(3)(d)(i). Three are objective elements:

- (i) a crime within the jurisdiction of the Court was committed or attempted;
- (ii) by a group of persons acting with a common purpose; and
- (iii) the accused's conduct (*i.e.*, acts or omissions) contributed, in any other way (than those enumerated under article 25(3)), to the commission or attempted commission of the crime;

and two are subjective elements, requiring that the accused's contribution be:

- (iv) intentional; and
- (v) made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court.

25. The Prosecution addresses these five elements below, applying the general rule of statutory interpretation. This requires an interpretation of article 25(3)(d)(i) in good faith with the ordinary meaning given to its terms in their context and in light of the Statute's object and purpose.³⁹ The Prosecution also relies on the Court's prior decisions which have addressed the elements of article 25(3)(d),⁴⁰ and draws on customary international law and general principles of law where necessary.⁴¹

³⁹ See Vienna Convention on the Law of Treaties, 1969 ("[VCLT](#)"), article 31(1). See further *e.g.*, [Bemba et al. AJ](#), para. 675; ICC-01/04-02/12-4 ("[Ngudjolo AJ, Judge Van den Wyngaert Concurring Opinion](#)"), para. 11 (interpreting article 25(3)(a) of the Statute in accordance with article 31(1) of the VCLT); ICC-01/04-168 ("[DRC Extraordinary Review Judgment](#)"), para. 33; [Katanga TJ](#), para. 45; ICC-01/09-01/11-1598 ("[Ruto & Sang Witness Summonses AD](#)"), para. 105.

⁴⁰ See *e.g.*, [Al Hassan TJ](#), paras. 1229-1248; [Katanga TJ](#), paras. 1596-1642; [Ntaganda Confirmation Decision](#), paras. 158-163; [Ruto et al. Confirmation Decision](#), paras. 350-367; [Mbarushimana Confirmation Decision](#), paras. 268-289; ICC-01/09-01/20-153-Red ("[Gicheru Confirmation Decision](#)"), paras. 216-218; ICC-02/04-01/15-422-Red ("[Ongwen Confirmation Decision](#)"), para. 44; ICC-01/12-01/15-84-Red ("[Al Mahdi Confirmation Decision](#)"), para. 27; see ICC-01/04-01/07-3436-AnxI ("[Katanga TJ, Judge Van den Wyngaert Minority Opinion](#)"), paras. 283-288; ICC-01/04-01/10-465-Red ("[Mbarushimana CD, Judge Monageng Dissenting Opinion](#)"), paras. 115-133.

⁴¹ [Statute](#), article 21(1)(b), (c).

26. The text of the article provides, and the Court’s jurisprudence confirms, that the *mens rea* requirements under article 25(3)(d) concerning the charged crime (meaning, the type of crime⁴² to which the accused contributes and for which responsibility is alleged), differ from those in article 30. Subparagraph (i) of article 25(3)(d) requires that the accused aims to further the group’s criminal activity or criminal purpose. Inherent in this requirement is that the accused must be aware of the group’s criminal activity or criminal purpose and, consequently, the crimes that form part of it. This does not necessarily imply that the accused must know with virtual certainty that the charged crimes would be committed. For the limited purpose of determining the requisite degree of awareness with regard to the charged crime, the Prosecution relies on customary international law and general principles of law, which establish that it is sufficient to show that the accused was aware of the substantial risk that the crime would occur.⁴³

27. The Appeals Chamber should confirm these elements and apply them to the facts of this case to determine Mr Ngaïssona’s liability for the crime of rape, and persecution based on rape.

C.1.b. A crime within the jurisdiction of the Court must be committed or attempted

28. The charged crime must be committed or attempted. Thus, the objective, subjective, and contextual elements of that crime must be established.⁴⁴

C.1.c. By a group of persons acting with a common purpose

29. The charged crime must be committed or attempted by persons belonging to a group acting with a common purpose.⁴⁵ These persons need only be linked by a shared aim, goal or objective.⁴⁶

30. The common purpose must include an “element of criminality”, but it need not be purely criminal, nor must its ultimate objective be criminal.⁴⁷ It must be established that the charged crime (in this case the crime of rape and persecution based on rape against a Muslim woman)

⁴² All references to “crime” in Section C1 means the “type of crime” rather than a specific incident, unless otherwise stated.

⁴³ See below Section C.1.f, paras. 34-54.

⁴⁴ [Katanga TJ](#), paras. 1622-1623. Although the *Katanga* Trial Chamber limited its interpretation to contributions to the actual commission of a crime rather than an attempted crime, the Prosecution considers that the same elements would apply in both cases.

⁴⁵ [Al Hassan TJ](#), para. 1234; [Katanga TJ](#), paras. 1624, 1628.

⁴⁶ [Al Hassan TJ](#), paras. 1235-1236; [Katanga TJ](#), paras. 1625-1629; but see [Mbarushimana Confirmation Decision](#), para. 271. The persons need not to have agreed on the exact manner in which the crimes will be committed ([Al Hassan TJ](#), para. 1238, [Katanga TJ](#), para. 1626). The accused’s membership of the group is irrelevant in determining whether they are liable under article 25(3)(d) ([Al Hassan TJ](#), para. 1239; [Katanga TJ](#), para. 1631; [Mbarushimana Confirmation Decision](#), para. 275; see [Ntaganda AJ](#), Judge Ibáñez Carranza Separate Opinion, para. 291).

⁴⁷ [Katanga TJ](#), para. 1627; [Al Hassan TJ](#), para. 1237; [Mbarushimana Confirmation Decision](#), para. 271; ICC-01/04-01/06-803-tEN (“[Lubanga Confirmation Decision](#)”), para. 344.

formed part of the common purpose (in this case, the violent targeting of the Muslim civilian population in retribution for Seleka exactions), in that its commission was either intended by the group or accepted by its members as a consequence that would occur in the ordinary course of events.⁴⁸

C.1.d. *The accused contributed to the committed or attempted crime*

31. It is clear from the text of article 25(3)(d) and the jurisprudence of the Court that there must be a link between the accused's contribution and the charged crime—not merely the group's criminal activity in the general sense.⁴⁹

32. Chambers of the Court have adopted different formulations regarding the requisite level of contribution.⁵⁰ But they all have only required a link between the accused's contribution and the charged crime,⁵¹ noting that article 25(3)(d) explicitly provides for a contribution “‘in any other way’ to the commission of the crime”.⁵² This link need not be a direct one, as long as the accused's contribution had an effect on the commission of the crime.⁵³

C.1.e. *The accused's contribution was intentional*

33. The *chapeau* of article 25(3)(d) requires that the accused's contribution pursuant to article 25(3)(d) be intentional. This element applies only to the conduct constituting the contribution, consistent with article 30(2)(a). Intentional contribution thus entails, first, that the accused intended to engage in their conduct (i.e., the acts were deliberate and made with awareness); and second, that the accused was aware that the conduct contributed to the activities of the group.⁵⁴

⁴⁸ [Katanga TJ](#), para. 1627. See [Al Hassan TJ](#), para. 1655; ICC-01/12-01/18-2594-OPI2 (“[Al Hassan TJ, Judge Prost Separate and Dissenting Opinion](#)”), fn. 40. Such shared intent may be inferred from, *inter alia*, the group's collective decisions actions or omissions ([Katanga TJ](#), para. 1627). Crimes based solely on opportunistic acts by members of the group cannot be considered as part of the common purpose ([Al Hassan TJ](#), para. 1237; [Katanga TJ](#), para. 1630).

⁴⁹ [Al Hassan TJ](#), paras. 1240, 1244; [Katanga TJ](#), para. 1632; [Gicheru Confirmation Decision](#), para. 217.

⁵⁰ Some have required a ‘necessary’ or ‘significant’ contribution ([Katanga TJ](#), paras. 1632-1636; [Mbarushimana Confirmation Decision](#), paras. 276-283), while others, consistent with the wording and purpose of the text, have not imposed any specific level of contribution ([Al Hassan TJ](#), paras. 1241-1244; ICC-01/04-01/10-514 (“[Mbarushimana Confirmation AD, Judge Fernández Seperate Opinion](#)”), paras. 7-15; [Al Mahdi Confirmation Decision](#), para. 27; see [Ruto et al. Confirmation Decision](#), paras. 353-354).

⁵¹ *E.g.*, [Al Hassan TJ](#), paras. 1243-1244 (see fn. 4027); [Katanga TJ](#), paras. 1632-1634 (where the Trial Chamber needed to determine whether the conduct had a bearing on the commission of the crime).

⁵² *E.g.*, [Al Hassan TJ](#), para. 1243 (see para. 1231); [Mbarushimana Confirmation AD, Judge Fernández Seperate Opinion](#), paras. 7-9.

⁵³ [Katanga TJ](#), para. 1635.

⁵⁴ [Al Hassan TJ](#), para. 1246; [Katanga TJ](#), paras. 1638-1639. See also [Katanga TJ, Judge Van den Wyngaert Minority Opinion](#), para. 286; [Mbarushimana Confirmation Decision](#), paras. 288-289. The accused need not to have shared the group's intention to commit the crime.

C.1.f. *The accused made the contribution with the aim of furthering the criminal activity or criminal purpose of the group*

34. Article 25(3)(d)(i)—of specific relevance to this appeal—requires that the accused made the contribution “with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves a crime within the jurisdiction of the Court”. As shown below, this provision involves different volitional and cognitive elements from those in subparagraph (ii). It requires that the accused contributes with the aim of furthering the group’s criminal activity or criminal purpose. In doing so, the accused does not need to know that the charged crime will be committed as a matter of virtual certainty. Rather, it is sufficient if the accused is aware that the group may commit the charged crime—a risk that is not too remote but substantial. The notion of risk, considered outside the context of article 30, “involves considerations of the concepts of ‘possibility’ and ‘probability’”.⁵⁵

i. The accused intended to further the criminal activity or criminal purpose

35. The phrase “with the aim of furthering” requires that the accused contributes for the purpose of promoting or advancing the group’s criminal activity or criminal purpose which involves the charged crime(s). The mere awareness that their conduct contributes to the group’s criminal activity or criminal purpose is not sufficient. While the group’s “criminal activity” may be defined as its criminal conduct or practical acts, its “criminal purpose” is its criminal goal or ideological objective.⁵⁶

ii. The accused was aware that the criminal activity or criminal purpose involved the charged crime

(a) The accused was aware that the group may commit the charged crime

36. Aiming to further the criminal activity or criminal purpose necessarily carries a cognitive element. A will unaccompanied by any cognitive appreciation would ultimately be blind (*nihil volitum nisi precognitum*): nothing is willed unless it is known. The textual interpretation of article 25(3)(d)(i) in good faith according to its ordinary meaning in its context and in light of the object and purpose of the Statute⁵⁷ thus leads to the conclusion that the accused must have some degree of awareness of *what* it is that they intend to promote.

⁵⁵ [Lubanga AJ](#), paras. 449-450.

⁵⁶ See [Katanga TJ](#), para. 1626; K. Ambos, “Article 25: Individual criminal responsibility” in K. Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (München: Beck/Hart, 2021), p. 1231, mn. 41; K. Ambos, *Treatise on International Criminal Law: Volume I: Foundations and General Part*, 2nd Ed. (Oxford: Oxford University Press, 2021), p. 244.

⁵⁷ See [VCLT](#), article 31(1); ICC-01/21-01/25-309 (“[Duterte Jurisdiction Decision](#)”), para. 49; [Bemba et al. AJ](#), para. 675; [Ngudjolo AJ](#), Judge Van den Wyngaert Concurring Opinion, para. 11; [DRC Extraordinary Review Judgment](#), para. 33; [Katanga TJ](#), para. 45; [Ruto & Sang Witness Summonses AD](#), para. 105.

37. Since the accused must aim to further the group’s criminal activity or criminal purpose, the accused’s awareness concerns the scope of the group’s criminal activity or criminal purpose. Moreover, since the accused may only be held liable for contributing to the commission of crimes within the group’s common purpose to which they contribute,⁵⁸ the accused’s awareness of the criminal activity or criminal purpose includes an awareness of the types of crimes that form part of it.

38. The degree of awareness need not be determined by reference to article 30, since article 25(3)(d) “is encompassed by the ‘otherwise provided’ of article 30, and departs from the general rule laid down by the latter provision”.⁵⁹ The two Trial Chambers that have applied article 25(3)(d) have highlighted that it contains a *different* mental element than that required under article 30 of the Statute.⁶⁰

39. In addition, a contextual interpretation of article 25(3)(d) shows that subparagraph (i) has a different cognitive element regarding the crime than subparagraph (ii). Subparagraphs (i) and (ii) are framed in the alternative.⁶¹ Subparagraph (i) specifies a *high degree of intent* regarding the group’s *criminal activity or criminal purpose*.⁶² Subparagraph (ii)—which has been interpreted in accordance with article 30(3)⁶³ and article 30(2)(b)⁶⁴—stipulates a *high degree of awareness* regarding the group’s intention to commit *the crime*.⁶⁵

40. These different requirements in subparagraphs (i) and (ii) should be viewed as an intentional drafting choice, and interpreted such that neither becomes redundant.⁶⁶ Therefore, under article 25(3)(d)(i), the accused may have a degree of awareness *lower* than that of a ‘virtual certainty’ that the group will commit the charged crime.

41. The Court’s case law has not set out the required degree of awareness under article 25(3)(d)(i). While the *Al Hassan* Trial Chamber applied article 25(3)(d)(i) to determine whether Mr Al Hassan contributed to charged crimes with the aim of (and knowledge that he was)

⁵⁸ See above Section C.1.d.

⁵⁹ [Katanga TJ](#), para. 1637. See also [Al Hassan TJ](#), paras. 1245-1248.

⁶⁰ [Al Hassan TJ](#), paras. 1229-1248; [Katanga TJ](#), paras. 1616-1642, especially para. 1637.

⁶¹ [Al Hassan TJ](#), paras. 1231 (fn. 4008), 1245, 1247-1248; [Al Hassan TJ, Judge Prost Separate and Dissenting Opinion](#), paras. 6, 14. See [Ntaganda AJ, Judge Morrison Separate Opinion](#), para. 37.

⁶² T. Hamilton, *The Arms Trade and International Criminal Law: Reframing Accountability for Complicit Weapons Suppliers* (Oxford: OUP, 2025), p. 95.

⁶³ [Al Hassan TJ](#), para. 1248; [Katanga TJ](#), para. 1641.

⁶⁴ [Katanga TJ](#), para. 1641.

⁶⁵ [Judgment](#), para. 4128; [Al Hassan TJ](#), paras. 1248, 1765; [Onqwen TJ](#), para. 2695.

⁶⁶ ICC-01/05-01/08-3343 (“[Bemba TJ](#)”), para. 77; [Katanga TJ](#), para. 1389.

furthering Ansar Dine/AQIM's criminal activity in relation to each crime,⁶⁷ it did not articulate the *degree* of awareness that it applied.⁶⁸

42. Nor does the Statute's drafting history⁶⁹ conclusively indicate the relevant standard. The two subparagraphs of article 25(3)(d) were drawn from *mens rea* standards of various domestic jurisdictions, and were formulated as a compromise in response to proposals to include planning, conspiracy and criminal association as possible modes of liability in the Statute,⁷⁰ with wording borrowed from the 1997 Convention for the Suppression of Terrorist Bombings.⁷¹ It has been observed that this international convention likely served as the basis for article 25(3)(d) as it was considered particularly fit to apply to complex, organised crimes in which groups of people act together in a joint criminal endeavour.⁷²

43. Since article 25(3)(d)(i)'s interpretation does not itself directly lead to a conclusion on the required degree of awareness regarding the charged crime, it is relevant to draw upon other sources including customary international law⁷³ and general principles of law from national

⁶⁷ [Al Hassan TJ](#), paras. 1689 (regarding the crimes of torture, other inhumane acts, cruel treatment, outrages upon personal dignity and mutilation), 1703 (regarding the passing of sentences without due process), 1725 (regarding rape).

⁶⁸ See [Al Hassan TJ](#), para. 1247. In other cases, two judges considered article 25(3)(d)(i) in their dissenting or separate opinions, but did not elaborate on its cognitive element ([Mbarushimana CD, Judge Monageng Dissenting Opinion](#), paras. 123-133; [Katanga TJ, Judge Van den Wyngaert Minority Opinion](#), para. 288).

⁶⁹ See ICC-01/04-01/07-776 ("[Katanga & Ngudjolo Confirmation Hearing AD](#)"), para. 82.

⁷⁰ [Al Hassan TJ](#), para. 1231 (fn. 4008). See e.g., UN General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, [U.N. Doc. A/52/37](#), 31 March 1997, Annex IV, paras. 27, 37. See also Report of the Preparatory Committee on the Establishment of an International Criminal Court, Volume 1 (Proceedings of the Preparatory Committee during March-April and August 1996), [U.N. Doc. A/51/22](#), 13 September 1996, para. 203; Preparatory Committee on the Establishment of an International Criminal Court, Working Group on General Principles of Criminal Law and Penalties, Working paper submitted by Canada, Germany, Netherlands and the United Kingdom, 14 February 1997, [A/AC.249/1997/WG.2/DP.1](#), pp. 1-2; Preparatory Committee on the Establishment of an International Criminal Court, Decisions taken by the Preparatory Committee at its session held from 11 to 21 February 1997, 12 March 1997, [A/AC.249/1997/L.5](#), pp. 21-22; UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Addendum, 14 April 1998, [A/CONF.183/2/Add.1](#), pp. 49-50.

⁷¹ [International Convention for the Suppression of Terrorist Bombings](#) (1997), article 2(3). This Convention in turn based its language on the 1996 [Convention relating to Extradition between Member States of the European Union](#), article 3(4).

⁷² M. Cupido, "Group Acting with a Common Purpose" in J. de Hemptine, R. Roth, E. van Sliedregt (Eds.), *Modes of Liability in International Criminal Law* (Cambridge: CUP 2019), p. 311 ("The drafting history of the ICC Statute does not clarify why these conventions were used to define common purpose liability. Most likely, they were considered particular fit because – just like the ICC Statute – the Terrorist Bombings and Extradition Conventions apply to complex, organised crimes in which groups of people act together in a joint criminal endeavour").

⁷³ See ICC-01/04-02/06-1962 ("[Ntaganda Jurisdiction AD](#)"), para. 53; [Ruto & Sang Witness Summonses AD](#), para. 105.

laws of legal systems of the world⁷⁴ in accordance with article 21(1)(b) and (c) of the Statute, and to refer to the object and purpose of the Statute.

(b) Awareness of a substantial risk of the crime occurring is sufficient in customary international law

44. Customary international law as found by the *ad hoc* tribunals articulates standards of awareness for persons accused of participating in crimes which they did not directly intend. Of particular relevance is the *mens rea* of the third variant of joint criminal enterprise (“JCE III”). While JCE and its three variants are not recognised as modes of liability in this Court—and the Prosecution does not suggest that they should apply—the framing of the JCE III *mens rea* is instructive given it addresses group criminality and the commission of a crime which the accused themselves did not directly intend, thus setting out a minimum awareness threshold for criminal responsibility.

45. The ICTY Appeals Chamber in *Tadić* articulated the *mens rea* under JCE III in the following way: “it was *foreseeable* that such a crime *might* be perpetrated by another member or members of the group and the accused *willingly took that risk*”.⁷⁵ Subsequent jurisprudence confirmed that the standard is not one of probability, but lower, and requires that the crimes have to be foreseen as a possibility, albeit one that is not too remote.⁷⁶ In *Karadžić*, the Appeals Chamber explained that “possibility” does not include implausibly remote scenarios, stating: “Plotted on a spectrum of likelihood, the JCE III *mens rea* standard *does not* require an understanding that any crime would *probably* be committed; it does, however, require that the possibility a crime could be committed is *sufficiently substantial* as to be foreseeable to an accused”.⁷⁷ The Chambers of the ICTR also applied the standard of a sufficiently substantial risk for *mens rea* under JCE III.⁷⁸

46. The Appeals Chamber of the Special Tribunal for Lebanon—the only other international criminal tribunal to have recognised a similar mode of liability to that in article 25(3)(d), in

⁷⁴ ICC-01/09-02/11-421 (“[Muthaura et al. Oral Submissions Decision](#)”), para. 11; ICC-01/04-01/06-772 (“[Lubanga Jurisdiction AD](#)”), para. 34.

⁷⁵ *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999 (“[Tadić AJ](#)”), para. 228.

⁷⁶ See e.g., *Prosecutor v. Gotovina & Markač*, IT-06-90-A, [Judgement](#), 16 November 2012, para. 90; *Prosecutor v. Đorđević*, IT-05-87/1-A, Judgement, 27 January 2014 (“[Đorđević AJ](#)”), para. 907; *Prosecutor v. Karadžić*, Decision on Prosecution’s Motion Appealing Trial Chamber’s Decision on JCE III Foreseeability, IT-95-5/18-AR72.4, 25 June 2009 (“[Karadžić JCE III Foreseeability AD](#)”), para. 18.

⁷⁷ [Karadžić JCE III Foreseeability AD](#), para. 18; see also para. 16.

⁷⁸ *Prosecutor v. Ntakirutimana & Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, [Judgement](#), 13 December 2004, para. 467; *Prosecutor v. Karemera & Ngirumpatse*, ICTR-98-44-T, [Judgement and Sentence](#), 2 February 2012, paras. 1462-1464; *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, [Judgement and Sentence](#), 30 September 2011, para. 1909.

article 3(1)(b) of its Statute⁷⁹—observed that the intent requirements of its article 3(1)(b) were reconcilable with JCE III. When interpreting the “aim of furthering” requirement, it stated that “the specific crime must have been foreseeable in light of the ‘general criminal activity or purpose’ of the group”.⁸⁰ The Appeals Chamber thus required that the accused “could and did foresee the possibility of [the crime’s] commission and willingly took the risk of its occurrence”.⁸¹

(c) Awareness of a substantial risk is also sufficient under general principles of law

47. General principles of law⁸² also support an interpretation that awareness of a substantial (i.e. non-remote) risk is sufficient. Domestic jurisdictions do not require direct intent or virtual certainty, as shown in the ICTY Appeals Chamber’s survey of various common and civil law jurisdictions in *Blaškić*.⁸³ There, the ICTY Appeals Chamber found that the lowest degree of *mens rea* accepted across national systems for serious crimes such as murder or manslaughter where the accused did not have direct intent, is awareness of the *substantial likelihood* that a crime will be committed.⁸⁴ Once it has been established that the accused was aware of the substantial likelihood that a crime will be committed, “such awareness has to be regarded as accepting that crime”.⁸⁵

48. The ICTY Appeals Chamber reached this conclusion after observing that in common law systems such as the United States, ‘recklessness’ is sufficient for liability for murder where the accused consciously disregarded a *substantial and unjustifiable risk* that the crime will result from their conduct.⁸⁶ In the United Kingdom, it must have been *unreasonable* for the accused to take the risk.⁸⁷ A recklessness standard is also sufficient in Canada provided it is *likely* that

⁷⁹ [Statute of the Special Tribunal for Lebanon](#), article 3(1)(b). This provision sets out similar alternative *mens rea* as in article 25(3)(d)(i) and (ii), requiring that the accused’s contribution “is either made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime”.

⁸⁰ Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/I, 16 February 2011 (“[STL Applicable Law Decision](#)”), paras. 251, 252.

⁸¹ [STL Applicable Law Decision](#), para. 239; *see also* paras. 240-249.

⁸² [Statute](#), article 21(1)(c).

⁸³ *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2004 (“[Blaškić AJ](#)”), paras. 34-42. The Appeals Chamber surveyed the various national jurisdictions for the purpose of defining the relevant standard for the mode of liability of planning, instigating and ordering under the ICTY Statute.

⁸⁴ [Blaškić AJ](#), para. 42.

⁸⁵ [Blaškić AJ](#), para. 42.

⁸⁶ [Blaškić AJ](#), para. 34, citing [Model Penal Code](#), section 2.02(c).

⁸⁷ [Blaškić AJ](#), para. 35, citing [R v. G and another](#) [2004] 1 A.C. 1034; [2003] UKHL 50, para. 41.

the crime will result.⁸⁸ In Australia, the case law has required the accused to be aware of the *probability* and *not possibility* that the crime would occur.⁸⁹

49. The ICTY Appeals Chamber found that in civil law systems, *dolus eventualis* may constitute the applicable *mens rea*.⁹⁰ In France and Italy, the crime is foreseen by the accused as a *possibility*.⁹¹ In Germany, it is characterised as a *risk*,⁹² or a *possibility* that is *not completely remote*.⁹³ In the Netherlands, there must be a *considerable risk* of the crime resulting.⁹⁴

50. In line with these standards, domestic legislation implementing the Rome Statute has included recklessness or *dolus eventualis* for crimes against humanity, war crimes and genocide.⁹⁵

(d) Awareness of the substantial risk of the crime occurring is compatible with the Statute and its object and purpose

51. The *mens rea* standard of awareness of a substantial risk is compatible with the Statute, which accepts standards below article 30 where “otherwise provided”. For example, in article 28(1)(a), military commanders are criminally responsible for crimes committed by their forces if they “knew or [...] should have known” that the forces were committing or about to commit such crimes.⁹⁶ In articles 8(2)(b)(xxvi) and 8(2)(e)(vii), the third element of these crimes require that the accused “knew or should have known” that the victim was under the age of 15 years.

52. A cognitive element for article 25(3)(d)(i) that requires awareness of the substantial risk that the group will commit the charged crime appropriately aligns the accused’s conduct and *mens rea* in accordance with the principle of culpability, especially when coupled with the aim

⁸⁸ [Criminal Code](#) (1985), s. 229(a)(ii).

⁸⁹ [Blaškić AJ](#), paras. 36-37, citing [R v. Crabbe](#) (1985) 58 ALR 417, at 469-470; [1985] HCA 22, para. 10.

⁹⁰ [Blaškić AJ](#), para. 39.

⁹¹ [Blaškić AJ](#), para. 39, citing F. Le Gunehec, “Élément moral de l’infraction,” éditions techniques, Juris-Classeur, fascicule 20, vol. 1, 2002; Commentario Breve al Codice Penale, Cedam, Padua (1986), p. 103.

⁹² K. Ambos & S. Bock, “Germany” in A. Reed & M. Bohlander (Eds.), *Participation in Crime: Domestic and Comparative Perspectives* (Surrey: Ashgate Publishing Limited, 2013), p. 332 (“If [...] A and B have agreed to beat up V without using weapons and if during the commission of the offence B draws his knife and kills V, the killing cannot be attributed to A because this was not part of the common plan. [...] If, however, A is actually aware of the risk of an excess and nevertheless decides to carry out the criminal plan, essentially ignoring the risk (conditional intent – *dolus eventualis*), he can be held responsible for the murder of V pursuant to § 25(2) StGB”).

⁹³ [Blaškić AJ](#), para. 39, citing BGHSt 36, 1-20 [9-10].

⁹⁴ H.D. Wolswijk, “The Netherlands”, in A. Reed & M. Bohlander (Eds.), *Participation in Crime: Domestic and Comparative Perspectives* (Surrey: Ashgate Publishing Limited, 2013), p. 361 (“Conditional intent [*dolus eventualis*] means that the perpetrator is aware of the considerable risk that a certain result will occur, yet nevertheless accepts that risk”).

⁹⁵ G. Werle & F. Jessberger, “Unless Otherwise Provided: Article 30 of the ICC Statute and the Mental Element of Crimes under International Criminal Law”, in *Journal of International Criminal Justice*, Vol. 3 (2005), 35-55, p. 42.

⁹⁶ See also [Statute](#), article 28(2)(a) (holding civilian superiors criminally responsible if they “knew or consciously disregarded information” clearly indicating that their subordinates were committing or about to commit crimes).

of furthering the criminal activity or criminal purpose of the group.⁹⁷ It ensures that the accused's degree of knowledge of the crime is calibrated to the nature of the accused's participation, in which the accused's cognition is primarily directed at the level of the common purpose.

53. Such a cognitive standard also accords with the Statute's object and purpose to put an end to impunity and to ensure that 'the most serious crimes of concern to the international community as a whole must not go unpunished'.⁹⁸ To that end, article 25(3) sets out different modes of liability pursuant to which an individual can be held responsible for atrocity crimes that are well-suited to the cases falling within the Court's mandate. Given the public interest in protecting society from the risks of group criminality,⁹⁹ persons who contribute to the crimes of such groups while seeking to promote the group's criminal activity or purpose, and being aware of the substantial risk that the group may commit those crimes, should be held criminally responsible even if they are not 'virtually certain' that such crimes will be committed.

(e) Conclusion

54. The *mens rea* element in article 25(3)(d)(i) should be interpreted as requiring awareness of a substantial risk that the crime for which the accused is held responsible—and which forms part of the criminal purpose—will be committed. This excludes implausibly remote scenarios.¹⁰⁰ Rather, the risk must be realistic and not merely hypothetical.

iii. *For specific intent crimes, the accused was aware of the group's specific intent*

55. For specific intent crimes (such as persecution as a crime against humanity and genocide), persons charged under articles 25(3)(b)-(d) must know that the direct perpetrator(s) had the requisite specific intent for those crimes.¹⁰¹ Accordingly, for such crimes under article

⁹⁷ See [Tadić AJ](#), para. 186. See also M. Aksenova, *Complicity in International Criminal Law* (Oxford: Hart Publishing, 2016), pp. 17-18 ("[...] [T]he principle of culpability [does] not requir[e] the modes of liability to match the crime; rather, it presupposes holding a person accountable for his contribution to the crime if it is done culpably. There are two sets of elements that the prosecution must prove: those related to the crime itself and those linked to the way in which an individual becomes involved in the crime. It is perfectly reasonable to attach responsibility to someone who intends to contribute to the crime and merely foresees its occurrence as a possibility. What matters is that the underlying act is wrongful and that the assistance is provided on the basis of a choice available to an accomplice and in the absence of legal excuses.").

⁹⁸ [Statute](#), Preamble. See also ICC-01/04-01/07-1497 ("[Katanga & Ngudjolo Admissibility AD](#)"), para. 79; ICC-01/04-01/06-2205 ("[Lubanga Regulation 55 AD](#)"), para. 77.

⁹⁹ See [STL Applicable Law Decision](#), para. 245.

¹⁰⁰ [Karadžić JCE III Foreseeability AD](#), para. 18.

¹⁰¹ See e.g., [Gbagbo Confirmation Decision](#), paras. 249-250 (finding that Mr Gbagbo had the requisite awareness under article 25(3)(b) for the crime of persecution); [Al Hassan TJ](#), paras. 1595-1596, 1601-1602 (finding that Mr Al Hassan was aware of the essential elements of the crime that he was assisting, including torture as a war crime under article 8(2)(c)(i), for the purposes of *mens rea* under article 25(3)(c)), 1735-1736 (finding that Mr Al Hassan

25(3)(d)(i), the accused must be aware of the substantial risk that the crime will be committed with specific intent.

56. For all these reasons, the Appeals Chamber should confirm the elements of article 25(3)(d)(i) as set out above.

C.2. The elements of article 25(3)(d)(i) are met for rape and persecution through rape

57. If the Chamber had assessed Mr Ngaïssona's liability for rape as a war crime and as a crime against humanity (counts 40 and 41), and for persecution through rape (count 42), pursuant to article 25(3)(d)(i), it would have convicted Mr Ngaïssona for these counts on the basis of the facts as found throughout the Judgment and the only reasonable conclusions to be drawn from those facts.

C.2.a. Rape as a crime against humanity and war crime, and persecution through rape as a crime against humanity were committed

58. The Chamber found beyond reasonable doubt that rape was committed.¹⁰² Specifically, the Chamber found that, during the Anti-Balaka's attack on Bossangoa on 5 December 2013, a group of five Anti-Balaka elements threatened P-2462 with weapons, and one of them blindfolded and undressed her, forcing her into sexual intercourse.¹⁰³ The Chamber determined that this conduct met the material elements of rape under articles 7(1)(g) and 8(2)(e)(vi),¹⁰⁴ and, in light of additional findings, persecution on religious grounds pursuant to article 7(1)(h).¹⁰⁵ The Chamber also found that the relevant contextual elements of war crimes and crimes against humanity were established in respect of *inter alia* the counts of rape and persecution.¹⁰⁶

C.2.b. Anti-Balaka members committed rape as part of a common criminal purpose to target the Muslim civilian population

59. The Chamber's findings, and the only reasonable conclusions to be drawn from them, demonstrate that the charged crimes of rape and persecution through rape, found to have been

was aware of Ansar Dine/AQIM's intention to commit persecutory acts on prohibited grounds, for the purposes of *mens rea* under article 25(3)(d)); [Katanga TJ](#), para. 1691 (finding that Mr Katanga knew the intention of the group to commit the war crime of pillaging, for the purposes of *mens rea* under article 25(3)(d)(ii)).

¹⁰² See above para. 28.

¹⁰³ [Judgment](#), paras. 83, 2840, 2857, 4095, 4097; see also paras. 2832-2838, 2842, 2846, 2848-2853, 2855-2856.

¹⁰⁴ [Judgment](#), paras. 4095, 4097-4098; see also paras. 3865-3867 (legal elements).

¹⁰⁵ [Judgment](#), paras. 4100, 4102, 4106-4108. See also paras. 3837-3846 (legal elements). While the Chamber convicted Mr Ngaïssona, under article 25(3)(c), for the crime against humanity of persecution on religious grounds through a number of crimes committed as of 5 December 2013 in the context of the attack on Bossangoa, it did not enter a conviction for persecution through rape, given its acquittal for this underlying crime under article 25(3)(c). See above fn. 8.

¹⁰⁶ [Judgment](#), paras. 3888-3907 (war crimes), 3908-3946 (crimes against humanity).

perpetrated by Anti-Balaka elements, were committed as part of the Anti-Balaka's Criminal Purpose.¹⁰⁷

i. The Anti-Balaka perpetrated the charged crimes of rape and persecution through rape

60. The Chamber found beyond reasonable doubt that members of the Anti-Balaka directly perpetrated the rape with discriminatory intent against a Muslim woman.¹⁰⁸ The Chamber established that the five individuals who attacked P-2462, and the individual who forced P-2462 into sexual intercourse, were elements of the Anti-Balaka engaged in the Bossangoa Attack at the time of the events.¹⁰⁹ Further, as the Chamber found, through this conduct, Anti-Balaka elements severely deprived, contrary to international law, the victim of her fundamental right to physical integrity.¹¹⁰

ii. The Anti-Balaka acted with a common criminal purpose to violently target the Muslim civilian population in retribution for Seleka exactions

61. The Chamber's findings, and the only reasonable conclusion to be drawn from them, is that the Anti-Balaka—including the direct perpetrators of the charged crimes—acted with a common criminal purpose to violently target the Muslim population in Bangui and western CAR prefectures in retribution for Seleka exactions ("Criminal Purpose").¹¹¹ Although the Chamber made no express findings on the Anti-Balaka's common (criminal) purpose in light of its failure to assess Mr Ngaïssona's liability under article 25(3)(d), the Chamber's findings unequivocally show that the Anti-Balaka shared an objective that was inherently criminal as it was directed at inflicting retributive violence on Muslim civilians, and its implementation entailed the commission of violent crimes under the Statute, including the gender-based crime of rape.

62. The Anti-Balaka's Criminal Purpose is reflected in the Chamber's articulation of the Anti-Balaka's criminal policy. In its analysis of the contextual requirement under article 7(1), the Chamber expressly concluded, based on a thorough assessment of the evolution of the Anti-Balaka and its objectives, that the group operated "pursuant to or in furtherance of a criminal policy to primarily target the Muslim population in Bangui and in western CAR prefectures in retribution for Seleka exactions."¹¹² This finding necessarily presupposes the existence of a

¹⁰⁷ See above paras. 29-30.

¹⁰⁸ See above para. 29.

¹⁰⁹ [Judgment](#), paras. 83, 2857. See above fn. 103.

¹¹⁰ [Judgment](#), para. 4102, citing para. 83.

¹¹¹ See above paras. 29-30.

¹¹² [Judgment](#), para. 3934 (emphasis added).

shared aim, goal or objective among the Anti-Balaka, pursuant to article 25(3)(d).¹¹³ As such, although the policy requirement under article 7(2)(a) and the common (criminal) purpose requirement under article 25(3)(d) are distinct legal concepts, the group's criminal policy as found on the present facts and its Criminal Purpose reflect the same common objective, and arise from the same body of evidence, as the Prosecution submitted at trial.¹¹⁴

63. The Chamber's underlying findings on the evolution of the Anti-Balaka confirm that, among the Anti-Balaka's various goals and motives, the group ultimately coalesced around a common criminal purpose. The Chamber described the Anti-Balaka as emerging out of "self-defence groups in various localities across the CAR formed or re-activated from previous existence very quickly following the take-over of power by the Seleka."¹¹⁵ These groups initially formed with the aim of "defending against the abuses and violence committed by the Seleka, within which framework some considered necessary to remove Michel Djotodia and the Seleka from power."¹¹⁶ Having started out with a common enemy, the self-defence groups "coordinated their activities, thereby essentially forming one movement".¹¹⁷ In the words of the Chamber, "the evidence on record is unequivocal in showing that these various [Anti-Balaka] groups, in sharing a common enemy, set aside whatever individual motivation may have existed – whether of political, financial, or otherwise opportunistic nature – and through coordinated efforts acted towards the same goals."¹¹⁸ The Chamber went on to conclude that "while the initial impetus for the self-defence groups to emerge may have been in response to the Seleka violence, over time, the various Anti-Balaka groups joined and coalesced around the objective to oust the Seleka and inflict retributive violence on Muslim civilians."¹¹⁹ Further, as the Anti-Balaka emerged and coalesced in pursuit of its "core objective," Anti-Balaka elements violently targeted the Muslim civilian population based on the perception that Muslims were collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka.¹²⁰

64. The Anti-Balaka's Criminal Purpose was shaped by anti-Muslim sentiment and a desire for revenge for Seleka violence. Due to religious and ethnic commonalities between the

¹¹³ See *above* para. 29.

¹¹⁴ ICC-01/14-01/18-723-Red ("[Prosecution Trial Brief](#)"), paras. 6, 150, 191; ICC-01/14-01/18-2738-Red ("[Prosecution Closing Brief](#)"), paras. 6, 308, 544; [T-306-Red-ENG](#), 13:1-3.

¹¹⁵ [Judgment](#), para. 40.

¹¹⁶ [Judgment](#), para. 45; see also paras. 1210, 1213, 1216.

¹¹⁷ [Judgment](#), para. 43.

¹¹⁸ [Judgment](#), para. 1208.

¹¹⁹ [Judgment](#), para. 3930; see also paras. 45, 3894.

¹²⁰ [Judgment](#), paras. 45, 68, 1211. See *below* para. 65.

Muslims in CAR and the Seleka, the Anti-Balaka perceived the Muslims in CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka.¹²¹ Given these perceptions, “the Anti-Balaka equated the Muslim civilian population with the Seleka and its actions” and targeted it accordingly.¹²² These sentiments were heightened by the “inflammatory rhetoric openly expressed by François Bozizé and others, which incited vigilance against those perceived to support the Seleka, in particular Muslim civilians.”¹²³ Such anti-Muslim sentiment ultimately “played into the evolution of the Anti-Balaka and its objectives and policies”¹²⁴ and primed the implementation and execution of the Anti-Balaka’s core objective through the targeting of the Muslim civilian population in western CAR in retribution for violence and abuses committed by the Seleka.¹²⁵

65. The Criminal Purpose was implemented through multiple Anti-Balaka attacks and actions in 2013 and 2014, involving the commission of violent crimes against Muslim civilians.¹²⁶ As the Chamber set out, the Anti-Balaka’s criminal policy—and, in the Prosecution’s submission, the Criminal Purpose—was first implemented from September 2013 onwards through coordinated attacks targeting Muslim civilians as part of the Anti-Balaka’s advance towards Bangui.¹²⁷ On 5 December 2013, the Anti-Balaka carried out the seminal coordinated attacks on Bangui and Bossangoa, targeting Muslim civilians and drawing no distinction between them and the Seleka.¹²⁸ These attacks “led to the commission of crimes against Muslim civilians, including attacking, killings, and enslaving of Muslim civilians, ultimately leading to the Muslim civilians having to leave these areas.”¹²⁹ The Chamber found that the violent targeting of Muslim civilians continued during actions at Yamwara on or around 24 December 2013,¹³⁰ along the PK9-Mbaïki axis in early 2014,¹³¹ and across the western CAR prefectures in 2014.¹³² Taking these attacks and actions together, the Chamber found that the implementation of the

¹²¹ [Judgment](#), paras. 49, 1211, 1219, 1297.

¹²² [Judgment](#), paras. 1217; *see also* paras. 1219, 1297.

¹²³ [Judgment](#), para. 46; *see also* paras. 1240-1304.

¹²⁴ [Judgment](#), para. 1219.

¹²⁵ [Judgment](#), paras. 46, 3912.

¹²⁶ *See e.g.*, [Judgment](#), paras. 3914-3919, 3923, 3931-3932.

¹²⁷ [Judgment](#), paras. 50, 52-53, 3914, 3930, 3932; *see also* paras. 1306-1480.

¹²⁸ For the Bangui Attack: [Judgment](#), paras. 54, 69, 71-72, 75-80, 3916, 3918-3919; *see also* paras. 2317-2327. For the Bossangoa Attack: [Judgment](#), paras. 81-88, 3916, 3918-3919; *see also* para. 2790, 2804, 2811-2814. The Chamber found that, in addition to the common objective of the attacks on Bangui and Bossangoa, which “included systematic targeting of Muslim civilians”, the Bossangoa Attack was also implemented with a specific goal of chasing away the Seleka as well as all Muslims from the town, and from the Ouham prefecture more generally. [Judgment](#), paras. 2777, 3916.

¹²⁹ [Judgment](#), para. 3919, citing paras. 72, 77-80, 82-88.

¹³⁰ [Judgment](#), paras. 95-112; *see also* paras. 3131-3267.

¹³¹ [Judgment](#), paras. 114, 118-125; *see also* paras. 3417-3453, 3521, 3533-3551, 3558, 3565-3672.

¹³² [Judgment](#), paras. 68, 3923; *see also* paras. 1922-2112.

Anti-Balaka's policy to primarily target the Muslim population through retributive violence amounted to "a widespread and systematic attack conducted by the Anti-Balaka [...] against the Muslim civilian population".¹³³

iii. *Rape with discriminatory intent formed part of the Criminal Purpose*

66. The Chamber's findings on the scope, nature, and implementation of the Anti-Balaka's objectives and policy, and the only reasonable conclusion to be drawn from them, demonstrate that rape and persecution through rape formed part of the Anti-Balaka's Criminal Purpose.¹³⁴ There is no principled reason to distinguish acts of rape—or sexual violence more generally—from other violent crimes against persons as falling within a range of crimes that the group committed pursuant to a criminal purpose to target civilians, either conceptually or on these facts. Sexual crimes should be subject to the same threshold compared to other violent crimes.¹³⁵ This is also the case when sexual crimes are committed with specific discriminatory intent, as they were in this case.¹³⁶ Rape and persecution through rape against a Muslim woman objectively fell within the contours of the Anti-Balaka's Criminal Purpose to violently target the Muslim population in Bangui and western CAR prefectures in retribution for Seleka exactions, and were *in fact* committed pursuant to its execution.

67. First, the targeting of Muslim civilians pursuant to the Criminal Purpose was necessarily through violent means. Rape, as a modality of violence against persons, involves such violent means, namely force, threat of force or coercion, or creating a coercive environment,¹³⁷ and entails the same type of conduct and, at least, a similar kind of injury or harm contemplated under the Criminal Purpose.

68. Second, as with other violent crimes that the Chamber identified, rape served to give effect to the discriminatory objective inherent in the Criminal Purpose to target Muslim civilians based on religious grounds and the perception that they were collectively responsible for, complicit in, or supportive of Seleka violence and abuses.¹³⁸ Indeed, in its assessment of the constituent elements of persecution as a crime against humanity, the Chamber found that

¹³³ [Judgment](#), para. 3934; see also para. 3932.

¹³⁴ See above para. 30.

¹³⁵ See e.g., ICC-02/11-01/15-1400-Anx4-Red ("Gbagbo & Blé Goudé NCTA, Judge Ibáñez Carranza Dissenting Opinion"), paras. 395-404; [Dordević AJ](#), para. 887. See also [Ntaganda TJ](#), para. 805; [Abd-Al-Rahman TJ](#), paras. 867-868.

¹³⁶ See e.g., [Dordević AJ](#), paras. 876-878, 892-893, 895, 897-898; *Prosecutor v. Šainović et al.*, IT-05-87-A, Judgement, 23 January 2014 ("[Šainović et al. AJ](#)"), para. 580.

¹³⁷ See [Judgment](#), para. 3865.

¹³⁸ See above paras. 63-64. See also [Judgment](#), paras. 4106-4107, 4737.

P-2462, a Muslim woman fleeing the Anti-Balaka attack in Bossangoa, was targeted by Anti-Balaka men through rape based on religious grounds.¹³⁹

69. Third, through acts of rape, the Anti-Balaka gave effect to the retributive nature of the Anti-Balaka's Criminal Purpose: to target Muslim civilians in revenge for Seleka exactions¹⁴⁰ that had also involved sexual violence. In its factual findings on Seleka crimes in early 2013, the Chamber referred to "violence and abuses in various localities across the CAR, in particular against individuals considered to be associated with François Bozizé, his Gbaya ethnic group, his government's security forces, and non-Muslims."¹⁴¹ Although it received "a significant amount of evidence concerning the violence committed by members of the Seleka",¹⁴² the Chamber did not discuss specific Seleka crimes, since the parties did not dispute these at trial and it did not consider it directly relevant to adjudicate the allegations before it.¹⁴³ As Ngaïssona's Closing Brief and evidence relied on by the Chamber make clear, among these non-disputed crimes feature Seleka sexual violence and rapes.¹⁴⁴ Rape thus fell squarely within the Anti-Balaka's retributive campaign against Muslims in western CAR for Seleka exactions together with the other violent crimes committed in its implementation of the Criminal Purpose.

70. Fourth, rape was *in fact* committed as part of the course of conduct making up the implementation of the Anti-Balaka's Criminal Purpose. The Chamber found that an Anti-Balaka element raped P-2462 and that this took place "in the context of the Anti-Balaka's attack in Bossangoa, during which it targeted residential areas."¹⁴⁵ The Chamber also found beyond reasonable doubt that a second Muslim woman was raped during the attack on Bossangoa of 5 December 2013.¹⁴⁶ The Chamber further discussed at least four additional incidents of rape that

¹³⁹ [Judgment](#), paras. 4095, 4106-4108, 4737; *see also* paras. 2832-2838, 2842, 2846, 2848-2853, 2855-2856.

¹⁴⁰ *See above* paras. 63-64.

¹⁴¹ [Judgment](#), paras. 31, 3892; *see also* paras. 723-731.

¹⁴² [Judgment](#), para. 723.

¹⁴³ [Judgment](#), paras. 723, 731.

¹⁴⁴ ICC-01/14-01/18-2736-AnxA-Corr-Red ("[Ngaïssona Closing Brief](#)"), para. 145 ("The Seleka's forces plunged the country into a state of unprecedented violence and chaos that preceded the creation of the Anti-Balaka movement through: (...) attacking state institutions to the point where a functioning state was replaced by the arbitrary rule of the Seleka's self-proclaimed generals whose elements engaged in widespread looting, wanton killing, sexual violence, and other serious war crimes and crimes against humanity") *referenced at* [Judgment](#), fn. 1410. *See also* [Judgment](#), paras. 731 (finding that "at the latest by October 2013, the situation in the CAR had reached such a state that the UN Security Council expressed concerns about violations of international humanitarian law and human rights in particular by Seleka elements"), fn. 1446, citing Resolution S/RES/2121 (2013), CAR-OTP-2001-0256, at 0256 (referring *inter alia* to crimes of sexual violence towards women and children and rape by Seleka elements); para. 1537 (describing a press release of the *Coordination nationale pour la paix et la sécurité en République Centrafricaine* ("CNPS") denouncing *inter alia* "rapes on a large scale"), fn. 4056, citing CNPS Release, CAR-OTP-2124-0497, at 0497.

¹⁴⁵ [Judgment](#), para. 4097.

¹⁴⁶ [Judgment](#), paras. 2766, 2840, 2842 (referring to evidence of the rape of P-2657 during the attack on Bossangoa on 5 December 2013), 4131 (referring to "cases of rape that occurred in Bossangoa, one of which Mr Ngaïssona is charged with." (emphasis added)).

occurred: one during the Anti-Balaka's advance on Bangui in September 2013 and three during its continuation of hostilities in early 2014.¹⁴⁷ In its analysis of the *chapeau* requirement of article 7(1), the Chamber held that rape and persecution were amongst the crimes committed in the context of Anti-Balaka attacks, and, together with other acts of violence against Muslims, formed part of the course of conduct making up the widespread and systematic attack directed against the civilian population.¹⁴⁸

71. In examining the relevant modes of liability for gender-based crimes (article 25(3)(d)(i) in this case), a gender-competent, intersectional and non-discriminatory approach should be taken.¹⁴⁹ This requires contextualising sexual violence properly, including assessing the overall context and the role sexual violence played in the retributive common purpose.¹⁵⁰ Relevant factors may include the overall objectives of the group, the identity of the perpetrators, the religion of the victims, and the location and timing of the sexual violence. In this case, the act of rape cannot be disassociated from the other violent crimes committed by the Anti-Balaka in furthering their Criminal Purpose.¹⁵¹

C.2.c. *Mr Ngaïssona contributed to the commission of the crimes of rape and persecution through rape*

72. The Chamber's findings demonstrate that Mr Ngaïssona contributed to the commission of rape and persecution through rape.¹⁵² The Chamber found, in relation to Mr Ngaïssona's individual criminal responsibility under article 25(3)(c) for the Bossangoa Attack, that "[d]uring [the] period of at least September to December 2013 and prior to the Bossangoa Attack, Mr Ngaïssona provided financial contributions and engaged in activities pertaining to the organisation and coordination of groups for the purpose of facilitating the commission of criminal acts targeting the Muslim population."¹⁵³ The only reasonable conclusion based on

¹⁴⁷ [Judgment](#), paras. 1346 (referring to evidence that the Anti-Balaka forced a victim into sexual conduct during the attack on Bowaye on 6 September 2013), [REDACTED], 2105 (referring to evidence of the rape of P-1871, a Muslim woman, during the attack on Lobaye in February 2014).

¹⁴⁸ [Judgment](#), para. 3935.

¹⁴⁹ See e.g., S. SáCouto *et al.*, "Collective Criminality and Sexual Violence: Fixing a Failed Approach", *Leiden Journal of International Law*, Vol. 33, Issue 1 (2020).

¹⁵⁰ See e.g., [Šainović et al. AJ](#), paras. 1582, 1592, 1602.

¹⁵¹ See e.g., ICC-01/12-01/18-1211-Red ("Al Hassan Regulation 55 Decision"), para. 61 ("[I]t is impossible in practice to dissociate the act of rape and the other conditions of her detention as a whole [...]. The act of rape does not exist separately from the context of other inhumane acts and cruel treatment but aggravates that context [...].").

¹⁵² See *above* para. 31.

¹⁵³ [Judgment](#), para. 4113, citing para. 38. Based on its findings on Mr Ngaïssona's contributions, the Chamber convicted him under article 25(3)(c) for a range of crimes perpetrated by the Anti-Balaka during its Bossangoa Attack, including attacks against the civilian population, murder, destructing the adversary's property, forcible transfer and deportation, displacement, imprisonment and other forms of severe deprivation of physical liberty, and persecution. [Judgment](#), para. 4847.

this and other findings is that Mr Ngaïssona objectively contributed to the crimes found to have been committed by the Anti-Balaka during its attack on Bossangoa on 5 December 2013, including rape with discriminatory intent.

73. First, the Chamber established that Mr Ngaïssona played a central role in the creation and organisation of the Anti-Balaka. During his time outside of CAR in 2013, Mr Ngaïssona was actively involved in planning steps to respond to the Seleka violence in CAR and to ensure François Bozizé's return to power, "by all means possible, including through armed violence."¹⁵⁴ The Chamber discussed in detail the evidence on Mr Ngaïssona's coordination activities, finding that, first, Mr Ngaïssona met and liaised with François Bozizé, Bernard Mokom, and others to discuss strategies and plans.¹⁵⁵ Second, Mr Ngaïssona reached out to individuals within and outside of CAR with a view to gathering support for their cause, including "persons that, at that time or later, were involved in efforts to remove Michel Djotodia and the Seleka from power and bring François Bozizé back to power."¹⁵⁶ Third, Mr Ngaïssona travelled to the border area between Cameroon and CAR with a view to meeting, supporting, and encouraging elements that were to engage in armed efforts.¹⁵⁷ Fourth, in August 2013, Mr Ngaïssona "remained in contact with individuals who were 'in the field' organising efforts in response to the Seleka violence".¹⁵⁸ As the Chamber established, "Mr Ngaïssona, at the very least, acted as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make requests for weapons and ammunition, for purposes of engaging in armed hostilities."¹⁵⁹

74. Second, the Chamber determined that, as part of these efforts, Mr Ngaïssona and others met in Paris in August 2013 to create FROCCA, an initiative "advocat[ing] for the return to 'the constitutional order', which signified the return of François Bozizé to power."¹⁶⁰ Mr Ngaïssona was an active member of FROCCA,¹⁶¹ which co-existed with other efforts to achieve the return of François Bozizé to power, "specifically the galvanisation of groups eventually known collectively as the Anti-Balaka."¹⁶²

¹⁵⁴ [Judgment](#), paras. 34-35.

¹⁵⁵ [Judgment](#), paras. 34-35; *see also* paras. 769-812.

¹⁵⁶ [Judgment](#), paras. 890, 913; *see also* paras. 35, 827, 891-912.

¹⁵⁷ [Judgment](#), paras. 35, 827, 914, 1465, 1467; *see also* paras. 915-923.

¹⁵⁸ [Judgment](#), para. 1013; *see also* para. 865, 871-889.

¹⁵⁹ [Judgment](#), para. 889.

¹⁶⁰ [Judgment](#), para. 39; *see also* paras. 992, 1058, 1110.

¹⁶¹ [Judgment](#), para. 39; *see also* paras. 992, 1058, 1110.

¹⁶² [Judgment](#), para. 39; *see also* paras. 992-1058.

75. Third, Mr Ngaïssona provided financial contributions to promote the formation and operationalising of the Anti-Balaka.¹⁶³ The Chamber found that “Mr Ngaïssona’s financial contributions to the activities of groups coalescing into the Anti-Balaka in 2013 [...] were regular and related to the Anti-Balaka manoeuvring or continuing to function.”¹⁶⁴ The Chamber refers to “overwhelming evidence” of Mr Ngaïssona funding “individuals willing or meant to assist the efforts in bringing François Bozizé back to power”¹⁶⁵ as well as Anti-Balaka elements that ultimately participated in the coordinated attacks against the Muslim civilian population.¹⁶⁶

76. Fourth, Mr Ngaïssona’s contributions were made in the context of anti-foreign sentiments and inflammatory rhetoric that Mr Ngaïssona and others engaged in.¹⁶⁷ The Chamber found that Mr Ngaïssona participated in meetings in Cameroon “in which the anti-foreign and indeed anti-Muslim discourse was repeated.”¹⁶⁸ It also found that Mr Ngaïssona went on to repeat—“against his better knowledge”—anti-Muslim *animus* in press statements and interviews.¹⁶⁹ Mr Ngaïssona used rhetoric well into 2014 reflecting a lack of distinction between Seleka members and Muslim civilians “while he continued to support and worked with the Anti-Balaka”.¹⁷⁰

77. Finally, the Chamber’s findings demonstrate that Mr Ngaïssona’s contributions had a concrete impact on the commission of the crimes during the Anti-Balaka’s attack on Bossangoa, including the rape of P-2462. The Chamber established that Mr Ngaïssona aided, abetted or otherwise assisted the commission of other crimes forming part of the Anti-Balaka’s attack in Bossangoa.¹⁷¹ Mr Ngaïssona was thus found to have contributed to the Bossangoa Attack, including the targeting of residential areas, which created and contributed to coercive circumstances or conditions under which the rapes occurred.¹⁷² Additionally, the Chamber considered that Mr Ngaïssona’s financial contributions “inter-locked with the inter-operability of the Anti-Balaka.”¹⁷³ Among others, the Chamber found that “Mr Ngaïssona’s financial support made it possible for at least some of the elements to participate in the Bossangoa Attack”.¹⁷⁴ Similarly, the Chamber considered that Mr Ngaïssona’s contributions had “in the

¹⁶³ [Judgment](#), paras. 35, 38; *see also* paras. 828-851.

¹⁶⁴ [Judgment](#), para. 1695.

¹⁶⁵ [Judgment](#), para. 828; *see also* paras. 827, 830, 863.

¹⁶⁶ *E.g.*, [Judgment](#), paras. 70, 4042, 4710, 4734.

¹⁶⁷ [Judgment](#), paras. 47, 1301.

¹⁶⁸ [Judgment](#), para. 1302; *see also* paras. 47, 1299.

¹⁶⁹ [Judgment](#), para. 1303.

¹⁷⁰ [Judgment](#), para. 1304.

¹⁷¹ [Judgment](#), para. 4132.

¹⁷² [Judgment](#), paras. 4097-4098.

¹⁷³ [Judgment](#), para. 1695.

¹⁷⁴ [Judgment](#), para. 4734, citing para. 4119.

very least, a positive effect on the commission of the crimes” during the Bangui Attack¹⁷⁵ that took place in coordination with the Bossangoa Attack that same day.¹⁷⁶ Regarding the promotion of anti-foreign sentiments and inflammatory rhetoric, the Chamber found that such discourse “primed” “[t]he implementation and execution of the Anti-Balaka’s core objective”, leading to the targeting of the Muslim population in Bangui and in western CAR prefectures in retribution for Seleka exactions.¹⁷⁷

C.2.d. *Mr Ngaïssona’s contributions were intentional*

78. The Chamber found that Mr Ngaïssona made his contributions intentionally and with the requisite awareness that they contributed to the Anti-Balaka’s activities.¹⁷⁸ In finding him liable for his contributions to other crimes under article 25(3)(c), the Chamber established that Mr Ngaïssona provided his support *intentionally* and that—more than simply being aware that his conduct contributed to the activities of the Anti-Balaka—he did so with the aim of facilitating the Anti-Balaka’s criminal acts.¹⁷⁹ These findings also suffice to establish the first subjective requirement under article 25(3)(d) on the present facts.

79. First, the Chamber’s finding that “Mr Ngaïssona’s assistance was such that it could only have been provided intentionally”¹⁸⁰ establish that the conduct constituting Mr Ngaïssona’s contributions could only have been deliberate and made with awareness.¹⁸¹ As discussed, the Chamber made detailed findings on a range of deliberate acts sustained over a broad period of time.¹⁸² This included a pattern of coordinating activities by Mr Ngaïssona as well as sustained efforts to provide financial support to the Anti-Balaka through regular transfers of funds to a range of individuals—all volitional by their very nature.¹⁸³

80. Second, the Chamber’s findings show that Mr Ngaïssona made these contributions with awareness that his conduct contributed to the Anti-Balaka’s activities.¹⁸⁴ The Chamber concluded that Mr Ngaïssona provided financial contributions and engaged in activities pertaining to the organisation and coordination of groups *for the purpose of facilitating* the

¹⁷⁵ [Judgment](#), para. 4710, citing para. 4037.

¹⁷⁶ [Judgment](#), paras. 72, 81; *see also* paras. 2790-2795.

¹⁷⁷ [Judgment](#), para. 46.

¹⁷⁸ *See above* para. 33.

¹⁷⁹ [Judgment](#), paras. 38, 4041 *recalled at* para. 4118 (regarding the Bossangoa Attack); *see also* paras. 4119-4120.

¹⁸⁰ [Judgment](#), para. 4041 *recalled at* para. 4118 (regarding the Bossangoa Attack).

¹⁸¹ *See above* para. 33.

¹⁸² *See above* Section C.2.c.

¹⁸³ *See above* paras. 73-75. For example, the Chamber made the express finding that Mr Ngaïssona clearly intended to establish contact with the individuals and groups that he did. *See e.g.*, [Judgment](#), para. 883.

¹⁸⁴ *See above* para. 33.

commission of criminal acts targeting the Muslim population.¹⁸⁵ The Chamber found that Mr Ngaïssona’s contributions directly supported the creation, organisation, and operations of the Anti-Balaka¹⁸⁶ and that “Mr Ngaïssona, at the very least, acted as a liaison with the clear knowledge and intent that this entailed being a link to which the Anti-Balaka would make requests for weapons and ammunition, for purposes of engaging in armed hostilities.”¹⁸⁷ As discussed further below, Mr Ngaïssona continued to make these contributions even with the knowledge of the Anti-Balaka’s (criminal) activities during its advance towards Bangui.¹⁸⁸

C.2.e. *Mr Ngaïssona made his contributions with the aim of furthering the criminal purpose of the Anti-Balaka*

81. The Chamber’s findings, including those discussed above, and the only reasonable conclusion to be drawn from them, demonstrate that Mr Ngaïssona made his contributions with the aim of furthering the Anti-Balaka’s Criminal Purpose, that he was aware of the substantial risk that the Anti-Balaka would commit rape and persecution through rape in pursuing its Criminal Purpose.¹⁸⁹

i. Mr Ngaïssona contributed with the aim of furthering the Anti-Balaka’s Criminal Purpose

82. In assessing Mr Ngaïssona’s liability under article 25(3)(c) for the Bossangoa Attack, the Chamber concluded beyond reasonable doubt that, prior to the attack, Mr Ngaïssona provided assistance “for the purposes of facilitating *the commission of criminal acts targeting the Muslim population.*”¹⁹⁰ This finding likewise establishes that Mr Ngaïssona made his contributions with the aim of furthering the Anti-Balaka’s *Criminal Purpose*, since the Criminal Purpose was directed precisely at the violent targeting of Muslim civilians, and implemented through such criminal acts. This is further supported by the Chamber’s findings throughout the Judgment on Mr Ngaïssona’s contributions, his knowledge of the Anti-Balaka’s activities, and his continued assistance, which show that Mr Ngaïssona knew about, supported, and promoted the Anti-Balaka’s Criminal Purpose.

83. First, the Chamber’s findings demonstrate that Mr Ngaïssona’s contributions—deliberate, diverse, and sustained over a significant period of time—were directed towards the

¹⁸⁵ [Judgment](#), para. 38.

¹⁸⁶ *See above* Section C.2.c.

¹⁸⁷ [Judgment](#), para. 889.

¹⁸⁸ *See below* paras. 85-86. [Judgment](#), paras. 35, 49, 56, 62, 4041-4042, 4119, 4734.

¹⁸⁹ *See above* para. 35 and *following*.

¹⁹⁰ [Judgment](#), paras. 4113, citing para. 38 (emphasis added).

creation, organisation, and operations of the Anti-Balaka, enabling it to execute its Criminal Purpose.¹⁹¹ The Chamber detailed a pattern of coordinating activities by Mr Ngaïssona throughout much of 2013 and well into 2014 that included: meeting and liaising with individuals to discuss strategies and plans and to gather support;¹⁹² maintaining lines of communication with elements in the field and acting as liaison for Anti-Balaka requests for weapon and ammunition;¹⁹³ acting as founding member of FROCCA and using it to galvanise groups coalescing into the Anti-Balaka;¹⁹⁴ and providing financial assistance, including to Anti-Balaka elements directly implementing the Criminal Purpose.¹⁹⁵

84. Second, the Chamber’s findings show that Mr Ngaïssona made his contributions in the context of anti-Muslim sentiment and a desire for retaliatory violence, which Mr Ngaïssona knew, promoted, and instrumentalised to prime the implementation of the Anti-Balaka’s Criminal Purpose. As discussed, the Chamber found that the Anti-Balaka perceived the Muslims in CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka, and targeted Muslim civilians on this basis.¹⁹⁶ Mr Ngaïssona not only was aware of—and personally subscribed to—this discriminatory and retaliatory sentiment,¹⁹⁷ but directly contributed to it by participating in inflammatory rhetoric that reflected a lack of distinction between Seleka members and Muslim civilians.¹⁹⁸ The Chamber found that, in doing so, Mr Ngaïssona and others instrumentalised the lack of education across Anti-Balaka elements to play into their perceptions of the Muslim civilian populations.¹⁹⁹ As such, Mr Ngaïssona contributed to the anti-Muslim perceptions that “played into the evolution of the Anti-Balaka and its objectives and policies”²⁰⁰ and “primed” the implementation and execution of the Anti-Balaka’s core objective through the Criminal Purpose.²⁰¹

85. Third, the Chamber’s findings on Mr Ngaïssona’s *mens rea* show that he made his contributions with full awareness of the Anti-Balaka’s violent targeting of Muslim civilians leading up to, during and after the attacks on Bangui and Bossangoa.²⁰² Specifically, the

¹⁹¹ See above Sections C.2.c, C.2.d.

¹⁹² See above para. 73.

¹⁹³ See above para. 73.

¹⁹⁴ See above para. 74.

¹⁹⁵ See above para. 75.

¹⁹⁶ See above para. 64.

¹⁹⁷ [Judgment](#), paras. 49, 4116.

¹⁹⁸ See above para. 76.

¹⁹⁹ [Judgment](#), paras. 1235-1239.

²⁰⁰ [Judgment](#), para. 1219.

²⁰¹ [Judgment](#), para. 46. See above para. 77.

²⁰² See [Judgment](#), paras. 1696, 1708.

Chamber found that *prior to* the Anti-Balaka's attacks across western CAR, "Mr Ngaïssona made his contributions fully aware that the Anti-Balaka *would* violently target the Muslim civilian population, specifically in the west of CAR."²⁰³ After they launched their advance to Bangui, Mr Ngaïssona remained in contact with the Anti-Balaka²⁰⁴ and was informed of the hostilities involving the targeting of Muslim civilians through violent crimes²⁰⁵—which included at least one alleged incident of rape.²⁰⁶ The Chamber found that, at that time, Mr Ngaïssona knew that the Anti-Balaka would go on to launch the Bangui Attack that took place in coordination with the Bossangoa Attack on 5 December 2013,²⁰⁷ and that both attacks included the targeting of the Muslim civilian population²⁰⁸—as manifested in the two incidents of rape in Bossangoa.²⁰⁹ Following these coordinated attacks and his return to Bangui on 14 January 2014, Mr Ngaïssona "remained informed of the continued activities related to the Anti-Balaka" when further attacks against Muslim civilians in the west of CAR took place²¹⁰—involving at least three additional alleged incidents of rape.²¹¹

86. Fourth, despite his knowledge of the Anti-Balaka's targeting of Muslim civilians across western CAR in retribution for Seleka exactions, the Chamber found that Mr Ngaïssona continued providing financial, organisational, and psychological support.²¹² These contributions continued well after the 5 December 2013 Bossangoa attack and went beyond the modes of support discussed above as having contributed directly to the rape in Bossangoa.²¹³ In early 2014, Mr Ngaïssona used his new role as general coordinator of the Anti-Balaka²¹⁴ to actively engage in formalising the structure of the Anti-Balaka,²¹⁵ representing the Anti-Balaka externally,²¹⁶ and downplaying violent acts by Anti-Balaka elements "as isolated acts by specifically identified individuals, which, at that time, Mr Ngaïssona knew not to be correct."²¹⁷

²⁰³ [Judgment](#), para. 49 (emphasis added).

²⁰⁴ [Judgment](#), para. 1495.

²⁰⁵ [Judgment](#), paras. 53, 56, 1696, 4041, 4291.

²⁰⁶ *See above* para. 70.

²⁰⁷ [Judgment](#), para. 70. *See above* fn. 176.

²⁰⁸ [Judgment](#), para. 1696.

²⁰⁹ *See above* para. 70.

²¹⁰ [Judgment](#), paras. 57, 1304, 1527, 4280, 4291, 4372, 4789; *see also* para. 1696, citing paras. 1301-1304.

²¹¹ *See above* para. 70.

²¹² [Judgment](#), para. 4041; *see also* paras. 4119, 4734.

²¹³ While Mr Ngaïssona's (continued) contributions following the commission of the charged crimes of rape and persecution through rape are not directly relevant for establishing Mr Ngaïssona's contributions under the third legal element of article 25(3)(d), they are relevant for assessing Mr Ngaïssona's *mens rea* under the fifth element of article 25(3)(d)(i).

²¹⁴ [Judgment](#), para. 60.

²¹⁵ [Judgment](#), paras. 62, 1563, 1648.

²¹⁶ [Judgment](#), para. 61.

²¹⁷ [Judgment](#), para. 1852.

During this time, Mr Ngaïssona also “continued to provide financial assistance to the Anti-Balaka for various purposes in 2014” including “the purchase of weapons and ammunition.”²¹⁸ These findings on Mr Ngaïssona’s (continued) contributions notwithstanding his concrete awareness of the Anti-Balaka’s widespread and systematic targeting of Muslims further demonstrate that they were made with the aim of effectuating the implementation of the Anti-Balaka’s Criminal Purpose.

- ii. *Mr Ngaïssona was aware of the substantial risk that the Anti-Balaka would commit rape and persecution through rape in pursuing its Criminal Purpose*

87. The only reasonable conclusion to be drawn based on the Chamber’s findings, including those discussed above, is that, in aiming to further the Anti-Balaka’s Criminal Purpose, Mr Ngaïssona was aware of the substantial risk that rape and persecution through rape formed part of the range of crimes that the Anti-Balaka would commit in pursuit of its Criminal Purpose.²¹⁹ As articulated above, it is not necessary for article 25(3)(d)(i) liability that Mr Ngaïssona was aware that the Anti-Balaka would commit rape in the ordinary course of events as part of the Criminal Purpose in the sense that he was aware of the virtual certainty that it would occur.²²⁰

88. As discussed, Mr Ngaïssona knew about, supported, and promoted the Criminal Purpose, including in particular its discriminatory and retaliatory nature, and was fully aware that the implementation of the Anti-Balaka’s shared objective involved the violent targeting of Muslim civilians on religious grounds.²²¹ Rape and persecution through rape, as acts of discriminatory violence in retribution for Seleka exactions not only objectively fell within the contours of that Criminal Purpose, but were executed pursuant to its implementation.²²² In light of this, and the Chamber’s findings on his role, knowledge, and continued contributions, the only reasonable conclusion is that Mr Ngaïssona was aware of the substantial risk that the group would commit rape and persecution through rape—crimes to which he contributed.

89. This is further supported by the Chamber’s other findings on Mr Ngaïssona’s *mens rea*, which demonstrate that Mr Ngaïssona was aware of, and even intended, the Anti-Balaka’s commission of other violent crimes against persons that, together with incidents of rape, made

²¹⁸ [Judgment](#), para. 1694; *see also* paras. 35, 62, 1685.

²¹⁹ *See above* para. 54.

²²⁰ *See above* para. 38.

²²¹ *See above* Sections C.2.d, C.2.e.i.

²²² *See above* Section C.2.b.iii.

up the Anti-Balaka's retributive attacks against the Muslim civilian population. The Chamber found, in the context of assessing Mr Ngaïssona's liability under article 25(3)(c) for the coordinated attacks on Bossangoa and Bangui on 5 December 2013, that he intended *inter alia* the Anti-Balaka to attack and kill Muslim civilians, and that he lent his assistance with the aim of facilitating such crimes.²²³ In relation to the Anti-Balaka's subsequent assault on Yamwara on 24 December 2013, the Chamber further found that Mr Ngaïssona made his contributions knowing the Anti-Balaka would mistreat Muslim civilians²²⁴ and inflict great suffering, or serious injury to body or to mental or physical health,²²⁵ with the Majority also finding that he knew that the Anti-Balaka would torture Muslim civilians.²²⁶

90. The commission of rape or persecution through rape by Anti-Balaka elements during their attacks across western CAR was not merely a hypothetical or an implausibly remote scenario.²²⁷ As emphasised by the Chamber, sexual violence is not an "exceptional" occurrence in the context of armed conflicts.²²⁸ "On the contrary",²²⁹ rape forms part of the repertoire of violence commonly unleashed on civilians, whether in the context of armed conflict or during widespread or systematic attacks on civilian populations, in particular against civilians perceived to be associated with opposing armed groups.²³⁰ The Chamber's finding that the pattern of criminal conduct during the targeting of Muslim civilians was insufficient—"within the specific, and limited, context" required for the *mens rea* standard of article 25(3)(c)—to conclude that Mr Ngaïssona had knowledge on the basis of 'virtual certainty' that rape would occur in the ordinary course of events²³¹ does not preclude a finding that the *different* mental element under article 25(3)(d)(i) is met. Taken together, the Chamber's findings on the Anti-Balaka's objectives and policy, the implementation of its shared objective, and Mr Ngaïssona's contributions and knowledge, and the only reasonable conclusions to be drawn from them, show that Mr Ngaïssona not only made his contributions with the aim of furthering the Anti-Balaka's Criminal Purpose—which included rape with discriminatory intent—but was also

²²³ [Judgment](#), paras. 4036, 4043, 4117, 4120.

²²⁴ [Judgment](#), paras. 4283, 4288.

²²⁵ [Judgment](#), paras. 4283, 4288.

²²⁶ [Judgment](#), para. 4284.

²²⁷ *See above* para. 54.

²²⁸ [Judgment](#), para. 4130.

²²⁹ [Judgment](#), para. 4130.

²³⁰ *See e.g., Abd-Al-Rahman, Summary of Trial Chamber I's Judgment in the Case of The Prosecutor v. Ali Muhammed Ali Abd-Al-Rahman*, 6 October 2025, para. 36 (finding "[a]n inevitable consequence of this eruption of violence was that women and girls who were captured were raped, some jointly and several times."); *Abd-Al-Rahman TJ*, para. 868 (finding that acts of rape were "committed concomitantly with an attack directed against the civilian population"); *Ntaganda TJ*, para. 805.

²³¹ [Judgment](#), para. 4131.

aware of the substantial risk that rape and persecution through rape would in fact be committed in pursuit of the group's Criminal Purpose.

C.3. Conclusion

91. If the Chamber had not legally erred as outlined above, it would have applied article 25(3)(d)(i) to the facts to find that Mr Ngaïssona was criminally responsible for rape as a crime against humanity and as a war crime (counts 40 and 41) and for persecution through rape (count 42) and convicted him accordingly. As a result, his sentence would also have been higher.

RELIEF REQUESTED

92. Article 83(2)(a) of the Statute provides that, if the Appeals Chamber finds "that the decision [...] appealed from was materially affected by error of fact or law or procedural error, it may: [...] [r]everse or amend the decision".

93. The Appeals Chamber has not yet been called upon to amend a trial judgment based on an erroneous acquittal of the accused person, in whole or in part. In this regard, the practice of the *ad hoc* tribunals may be instructive.²³² Summarising this practice, the IRMCT Appeals Chamber held:

Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding [...]. The Appeals Chamber will not review the entire trial record *de novo*; rather, it will in principle only take into account evidence referred to by the trial chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and, where applicable, additional evidence admitted on appeal.²³³

²³² See [Lubanga AJ](#), para. 27.

²³³ See e.g., IRMCT, *Prosecutor v. Mladić*, MICT-13-56-A, Judgement, 8 June 2021 ("[Mladić AJ](#)"), para. 17; *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019 ("[Karadžić AJ](#)"), para. 16. See also KSC, *Prosecutor v. Mustafa*, KSC-CA-2023-02, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, paras. 19-20; ECCC, *Prosecutor v. Khieu* ("Case 002/02"), 002/19-09-2007-ECCC/SC, [Appeal Judgment](#), 23 December 2022, para. 24.

94. Similar principles apply when the Prosecution is the appellant, except insofar as the Prosecution “must show that, when account is taken of the errors [...], all reasonable doubt of guilt has been eliminated.”²³⁴

95. In this case, as shown above, the Trial Chamber made all the relevant factual findings from which the Appeals Chamber can draw the necessary conclusions and apply the elements of article 25(3)(d)(i) as outlined above. These findings show that Mr Ngaïssona’s guilt is established beyond reasonable doubt under article 25(3)(d)(i) for the crime of rape committed by the Anti-Balaka during its attack on Bossangoa on 5 December 2013.

96. Accordingly, having determined that the Trial Chamber erred in failing to apply article 25(3)(d), and applying the elements of this mode of liability to the facts as found by the Trial Chamber and the only reasonable conclusions available from them, the Appeals Chamber should itself amend the Judgment to enter convictions under counts 40 and 41, and to enter a conviction for persecution on the basis of rape under count 42.

97. In doing so, in the circumstances of this case, the Appeals Chamber need not review the evidence *de novo*,²³⁵ nor remand the matter to another chamber, but rather may adopt the existing findings made in the Judgment. This will allow the Appeals Chamber to correct the Trial Chamber’s error, and to enter the additional factual findings and convictions requested, while remaining as faithful as possible to the Trial Chamber’s role in ruling upon the evidence heard at trial.

CONCLUSION

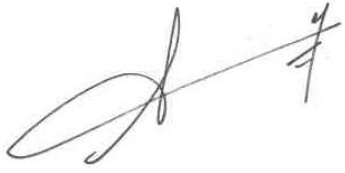
98. For all these reasons, the Appeals Chamber should:

²³⁴ See e.g., *Mladić AJ*, para. 19; *Karadžić AJ*, para. 18. For example, in *Šešelj*, upon appeal by the Prosecution, the IRMCT Appeals Chamber reversed his acquittals and entered convictions for crimes such as persecution, based on factual findings made by the Trial Chamber and evidence adduced at trial (IRMCT, *Prosecutor v. Šešelj*, MICT-16-99-A, *Judgement*, 11 April 2018, paras. 138-166).

²³⁵ See also *Onqwen AJ* <https://www.legal-tools.org/doc/tf7alc/pdf/>, para. 81 (recalling, albeit in a slightly different context, that “nothing in the Statute” contemplates an automatic “*de novo* review of the evidence on the record by the Appeals Chamber, in total disregard of the trial chamber’s evidentiary assessment, unless there are specific reasons to do so”).

- (a) Find that the Trial Chamber erred in law as outlined above, correct the legal error and reverse the findings material to the error;
- (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 conclusions available 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) 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);
 - **under count 41**, to find that Mr Ngaïssona is responsible under article 25(3)(d)(i) 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); and
 - **under count 42**, to find that Mr Ngaïssona is responsible under article 25(3)(d)(i) for contributing to 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, in violation of article 7(1)(h); and
- (d) determine an appropriate increase to the sentence imposed upon Mr Ngaïssona based on the additional convictions.

99. In the alternative, having corrected the legal error, reversed the findings material to the error, 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) to determine 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.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 27th November 2025

At The Hague, the Netherlands