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THE APPEALS CHAMBER

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

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

Public Document
With Public Annexes A to L

Public Redacted Version of the "Corrigendum of the 'Ngaïssona Defence Appeal Brief against the Trial Judgment', 25 November 2025, ICC-01/14-01/18-2847-Conf", 19 December 2025, ICC-01/14-01/18-2847-Conf-Corr

Source: **Defence of Patrice-Edouard Ngaïssona**

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INTRODUCTION

1. Despite its considerable length, the Judgment leaves unanswered the most fundamental question: how do the crimes committed by Anti-Balaka on the ground connect to Mr Ngaïssona?

2. This inquiry demanded a rigorous and transparent approach to the evidence, coupled with a careful and principled application of the law on accomplice liability. The Judgment offers neither. Rather, core legal norms relating to aiding and abetting liability were diluted to the point of meaninglessness. Basic evidentiary standards, particularly in relation to circumstantial, untested, hearsay, and uncorroborated evidence, were cast aside.

3. The Judgment is replete with errors of law, fact and procedure. It recites lengthy factual passages without connecting them to legal conclusions, leaving the reader to piece together a patchwork of findings in an attempt to discern the Chamber's reasoning – a task that should never fall on the parties, or the Appeals Chamber. This approach undermines transparency and Mr Ngaïssona's right to a reasoned and fair judgment. The Judgment invokes relevant legal standards, only to disregard them in their application, in ways unprecedented before the Court. Rather than presenting a coherent analysis underlying Mr Ngaïssona's conviction and sentence, the Judgment presents disjointed, at times incoherent and unintelligible findings that conflict with the evidence on record. A selective approach to credibility assessments reveals an outcome-driven reasoning, undermining the integrity of trial. These fundamental errors occasioned the likelihood of a miscarriage of justice.

4. These also resulted in a crucial missing link, the evidentiary and legal foundation necessary to hold Mr Ngaïssona responsible as a purported aider and abettor to the crimes. In the absence of such a link, the Judgment cannot stand. It must be reversed and Mr Ngaïssona must be acquitted on all counts.

5. Finally, it is regrettable that the Defence for Mr Ngaïssona ('Defence' or 'Appellant') was not afforded adequate time and facilities to prepare this appeal. The expedited schedule imposed by the Appeals Chamber was unreasonable given the exceptional length and complexity of the Judgment, the pervasiveness of errors, the absence of translation in French – the language that Mr Ngaïssona understands – and other factors beyond the Defence's control. The repeated requests for additional time were not accorded the weight and attention required under fair trial

standards. These denials resulted in irreversible prejudice to Mr Ngaïssona's right to a fair and meaningful appeal.

6. The Defence files the present Appeal Brief pursuant to Articles 81(1) and (2) of the Rome Statute ('Statute'), which set forth four possible grounds of appeal: (i) a procedural error, (ii) an error of fact, (iii) an error of law, or (iv) any other ground that affects the fairness or reliability of the proceedings or decision. The Appeals Chamber may reverse or amend the decision, or order a new trial before a different trial chamber, if the error materially affected the decision,[1] for which the burden and substantiation falls on the appellant.[2] A sentence can also be appealed on the ground of disproportion between the crime and the sentence.[3]

7. The Appeals Chamber will interfere with factual findings if they are unreasonable, i.e. inconsistent "with logic, common sense, scientific knowledge and experience and whether the Trial Chamber took into account all relevant and connected evidence, and was mindful of the pertinent principles of law".[4] It may also interfere with a decision when "the failure to interfere may occasion a miscarriage of justice".[5] The Appeals Chamber will "determine whether a reasonable Trial Chamber properly directing itself could have been satisfied beyond reasonable doubt as to the finding in question, based on the evidence before it",[6] and consider not only the "evidence relied upon, but also the Trial Chamber's reasoning in analysing it".[7]

8. On errors of law, the Appeals Chamber will not defer to a trial chamber's interpretation of the law; it will rather identify the correct law and determine whether the trial chamber erred,[8] and, if so, whether the error materially affected the decision, namely whether the trial chamber "would have rendered a judgment that is substantially different from the decision that was affected by the error, if it had not made the error".[9]

9. In accordance with regulation 23*bis*(1) of the Regulations of the Court ('Regulations'), the Appeal Brief is classified as confidential as it discusses the Judgment and evidence that contain

[1] Rome Statute, Article 83(2).
[2] Gbagbo Appeal on Jurisdiction and Stay of Proceedings, para. 44.
[3] Rome Statute, Article 81(2)(a).
[4] Gbagbo and Blé Goudé AJ, para. 68 (footnote omitted).
[5] Bemba AJ, para. 40.
[6] *Ibid*., para 42.
[7] *Ibid*., para. 44.
[8] Gbagbo and Blé Goudé AJ, para. 62; Ntaganda AJ, para. 36; Lubanga AJ, para. 18; Ngudjolo AJ, para. 20.
[9] Lubanga AJ, para. 19.

confidential information pertaining to protected witnesses. A public redacted version will be filed as soon as practicable. Annexes A to L are filed publicly.[10]

I. MR NGAÏSSONA WAS CONVICTED ON THE BASIS OF AN EVIDENTIARY FRAMEWORK THAT WAS INCORRECTLY APPLIED WHICH RESULTED IN FINDINGS THAT ARE FUNDAMENTALLY UNSAFE[11]

A. The Trial Chamber systematically misapplied relevant evidentiary standards in its evaluation of the relevance, reliability and weight of the evidence

10. The Trial Chamber systematically misapplied relevant evidentiary standards in assessing relevance, reliability and weight, including its treatment of circumstantial and hearsay evidence; corroboration of evidence such as statements pursuant to Rule 68(2) of the Rules of Procedure and Evidence ('Rules') and testimonial evidence, particularly from cooperating insider witnesses; and its obligation to provide a coherent and well-reasoned opinion. In addition, the Trial Chamber failed to adhere to the correct burden and standard of proof. These errors resulted in critical findings of fact resting on an unsound evidentiary basis, or having been reached without satisfying the requisite standard of proof.

1. Circumstantial evidence

11. Where a factual finding is based on an inference drawn from circumstantial evidence, said finding is only established beyond reasonable doubt if it was the only reasonable conclusion that could be drawn from the evidence.[12] As held by the Appeals Chamber in *Bemba et al.*, "[i]t is indeed well established that it is not sufficient that a conclusion reached by a trial chamber is merely a reasonable conclusion available from that evidence; the conclusion pointing to the guilt of the accused must be the only reasonable conclusion available. If there is another conclusion reasonably open from the evidence, and which is consistent with the innocence of the accused, he or she must be acquitted."[13] Consequently, when reviewing errors of fact based on inferences drawn from circumstantial evidence, the Appeals Chamber will consider "whether no reasonable trier of fact could have concluded that the inference drawn was the only reasonable conclusion that could be drawn from the evidence".[14]

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[10] Annex A comprises the Table of Authorities, while Annexes B to L comprise books and articles that are not available online, according to Regulation 23(3) of the Regulations of the Court.
[11] To ensure coherence and clarity in the presentation of arguments, Grounds 1 and 2 have been inverted from the order originally indicated in the Notice of Appeal.
[12] Bemba et al. AJ, para. 868. *See also* Milošević AJ, para. 20.
[13] Emphasis in the original. Bemba et al. AJ, para. 868. *See also* Delalić et al. AJ, para. 458; Stakić AJ, para. 219; Krnojelac TJ, para. 67.
[14] Bemba et al. AJ, para. 868.

12. Contrary to the Trial Chamber's assertion that "[i]n making findings based on circumstantial evidence, the Chamber has reached a conclusion beyond reasonable doubt when it was convinced that was the only reasonable inference to be drawn from the relevant facts",[15] the Judgment is replete with instances where such inferences were not the only reasonable ones. The Trial Chamber disregarded reasonable alternative hypotheses that were compatible with at least some of the facts or evidence of the case,[16] despite raising doubt "rational[ly] link[ed] to the evidence, lack of evidence, or inconsistencies in the evidence".[17]

2. Hearsay evidence

13. Although the Trial Chamber has broad discretion in assessing the probative value of hearsay evidence, caution is warranted in its consideration,[18] especially when it relates to a crucial factual finding.[19] Reliance upon hearsay evidence should be avoided wherever possible[20] and such evidence must be carefully scrutinized before being relied upon.[21] This includes assessing its consistency, alignment with other evidence, source reliability, and the Defence's ability to challenge it.[22] For instance, the Appeals Chamber deemed a trial chamber's failure to scrutinise the "extremely low probative value" of media reports including anonymous hearsay evidence a reversible error.[23] Proper scrutiny of hearsay evidence is crucial to mitigate the prejudice that such evidence may cause to a fair trial,[24] notably the accused's right to challenge the evidence against him or her.[25]

14. Chambers have found hearsay evidence insufficient to establish key factual findings, especially where it stands alone,[26] when it is general hearsay[27] or when there is a lack of information regarding the reliability and credibility of its source.[28] This concern is heightened with

[15] Judgment, para. 136.
[16] Al Hassan TJ, para. 20 *citing* Ongwen TJ, para. 229.
[17] Al Hassan TJ, para. 20 *citing* Ongwen TJ, para. 228; Ngudjolo AJ, para. 109, *quoting* Rutaganda AJ, para. 488.
[18] Muvunyi AJ, para. 70; Kalimanzira AJ, para. 199; Akayesu AJ, paras 288-289; Rutaganda AJ, para. 34.
[19] Ngudjolo TJ, para. 496.
[20] Gbagbo, Adjournment of the hearing of the confirmation of charges, para. 28.
[21] Nyiramasuhuko et al. TJ, para. 169.
[22] Katanga Confirmation Decision, para. 141; Mbarushimana Confirmation Decision, para. 49; Shala AJ, para. 330; Ntaganda TJ, para. 68; Lukić and Lukić AJ, para. 577 ("Relevant criteria in assessing the weight or the probative value to be accorded to hearsay evidence are the source of the information, the precise character of the information, and corroborative evidence").
[23] Bemba AJ, para. 183; *see also* Lukić and Lukić AJ, para. 387.
[24] Rome Statute, Article 69(4).
[25] Rome Statute, Article 67(1)(e); Gbagbo, Adjournment of the hearing of the confirmation of charges, para. 29; Bemba TJ, para. 238; Katanga TJ, para. 90; Ngudjolo TJ, para. 56.
[26] Mbarushimana Confirmation Decision, para. 232; Ntaganda TJ, fn. 1563.
[27] Muvunyi AJ, para. 70.
[28] Kalimanzira AJ, para. 100.

anonymous hearsay, which carries extremely low probative value, if any,[29] due to inherent difficulties in ascertaining the truthfulness and authenticity of such information.[30] No conclusions may be drawn exclusively from anonymous hearsay evidence.[31] As Judge Henderson held, "when the only evidence in relation to a particular proposition is based primarily on anonymous hearsay or hearsay without adequate information about the reliability and the credibility of the source, the Chamber must conclude that such a proposition is unsupported".[32] Further, although anonymous hearsay may still carry probative value if it corroborates, or is corroborated by, other evidence,[33] the Appeals Chamber has warned against treating multiple hearsay strands as mutually reinforcing when their provenance is unknown or overlapping.[34] Without clarity on the independence of sources, the Chamber must avoid speculation.[35]

15. Across the Judgment, the Chamber repeatedly failed to uphold these principles, relying on hearsay evidence to enter or support findings concerning Mr Ngaïssona's alleged contributions to the charged crimes. For instance, the Chamber excessively relied on the testimonies of P-1847 and P-2673, whose evidence was largely based on hearsay of often vague or unknown source.[36] While at times the Chamber refused to enter findings on the basis of these witnesses' evidence due to it amounting to anonymous hearsay,[37] this approach was not adopted consistently. This fundamentally infringed on Mr Ngaïssona's fair trial rights and particularly on his ability to challenge the evidence against him.

3. Corroboration of specific types of items of evidence

16. Although Rule 63(4) of the Rules sets no legal requirement of corroboration, specific circumstances often require corroboration of witness testimony,[38] such as where there are reservations with respect to a witness' credibility.[39] To be considered corroborative, testimonies

[29] Judge Van den Wyngaert Dissenting Opinion on Interim Release, para. 4; Judge Ušacka Dissenting Opinion on Interim Release, para. 16, Bemba AJ, para. 183.
[30] Mbarushimana Confirmation Decision, para. 78.
[31] Decision on the use of Anonymised Summaries of witness Statements, para. 23; Katanga Confirmation Decision, para. 140.
[32] *See* Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 45.
[33] Katanga Confirmation Decision, para. 140; Mbarushimana Confirmation Decision, para. 49.
[34] Gbagbo, Adjournment of the hearing of the confirmation of charges, para. 30.
[35] *Ibid*.
[36] *See* Ground I.C.3.i; Ground I.C.5.iii; Ground I.C.5.iv; Ground I.C.5.v.
[37] Judgment, p. 292, para. 832, p. 808, para. 2214, pp. 826-827, paras 2273-2278.
[38] Gicheru Confirmation Decision, para. 42.
[39] Ngudjolo AJ, para. 168; Bemba et al. AJ, para. 1084.

need not be identical but should confirm, even in different ways, the same fact.[40] Corroborative testimonies may differ with respect to certain *details*, provided that no credible testimony describes the facts in a way which is incompatible with another credible testimony.[41] Corroborative evidence must be relevant, credible and probative, and must come from a source independent of any evidence which is to be supported by it.[42]

17. While corroboration is not a requirement for the submission of prior recorded evidence pursuant to Rule 68(2) of the Rules, it becomes necessary when such evidence is relied upon to establish findings that are indispensable to a conviction. This constitutes a corollary of Article 67(1)(e) of the Statute.[43] Jurisprudence from the international tribunals and the International Criminal Court ('ICC' or 'Court') has consistently found that a conviction may not rest solely, or decisively, on the evidence of a witness whom the accused has had no opportunity to examine or to have examined, either during the investigation or at trial.[44] To avoid unacceptable infringements on the rights of the defence,[45] untested evidence which is pivotal[46] or critical[47] to the Prosecution's case, or constitutes a vital link in demonstrating the accused person's responsibility,[48] must be sufficiently corroborated by evidence that was properly tested in Court.[49] The Appeal Panel of the Kosovo Specialist Chamber ('KSC') recently reminded that "Rule 140(4)(a) of the Rules does not allow a trial panel to rely solely or decisively on untested evidence to enter findings on individual charged criminal incidents […] even where multiple such incidents are brought under a single count".[50] In a similar vein, the European Court of Human Rights ('ECtHR') has consistently found a violation of the fair trial rights enshrined in the Convention, not only in cases where convictions were based solely or decisively on untested evidence,[51] but also when untested evidence carried considerable weight in the evidentiary section.[52]

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[40] Ntaganda AJ, paras 18, 672; Gbagbo and Blé Goudé AJ, para. 357.
[41] Nahimana et al. AJ, para. 428.
[42] Gbagbo and Blé Goudé, Reasons of Judge Henderson, paras 46, 49.
[43] Ntaganda AJ, para. 629.
[44] Popović et al. AJ, para. 1222; Galić, AJ concerning rule 92bis(c), fn. 34; Mladić AJ, para. 45; Karadžić AJ, para. 449; Ntaganda AJ, paras 629, 630; Đorđević AJ, para. 807; Haraqija and Morina AJ, para. 61; Shala AJ, para. 473.
[45] Haraqija and Morina AJ, para. 61.
[46] Martić AJ concerning the decision on the evidence of witness, para. 20.
[47] Prlić et al. AJ concerning admission of transcript into evidence, para. 59.
[48] Đorđević AJ, para. 807.
[49] Popović et al. AJ, para. 1226.
[50] Shala AJ, paras 482-483.
[51] Unterpertinger Judgment, para. 33; Kostovski Judgment, para. 43; Lüdi Judgment, paras 47-50; Lučić Judgment, paras 87-88; Al-Khawaja and Tahery Judgment, para. 142.
[52] Schatschaschwili Judgment, paras 72-74, 163-165; *see also* Keskin Judgment, para. 45.

18. In the Judgment, the Chamber relied largely on untested evidence for findings that were crucial to Mr Ngaïssona's criminal responsibility. In particular, it relied on the uncorroborated and untested evidence of: (a) P-2269, to establish a key financial contribution by Mr Ngaïssona;[53] (b) P-2200, to establish the commission of murders Mr Ngaïssona was found to have aided and abetted;[54] and (c) P-1847, to establish Mr Ngaïssona's various key contributions, spanning from financing individuals allegedly close to the Anti-Balaka[55] to liaising with key persons during the timeframe relevant to the charges.[56]

19. The Chamber's reliance on P-2269 and P-2200's prior recorded testimonies to establish key facts was particularly egregious, as neither witness appeared before the Court for reasons of unavailability pursuant to Rule 68(2)(c) of the Rules.[57] While P-1847 appeared in Court,[58] his two prior recorded statements, which were introduced pursuant to Rule 68(2)(d), were never properly tested by the Defence.[59] While the Defence had the opportunity to examine P-1847, it could not meaningfully challenge most of the incriminating portions in his statements, given they were not raised during his oral testimony. The Defence could not be expected to elicit incriminating evidence merely to be able to subsequently challenge it,[60] especially without notice that his prior recorded testimony would be submitted over two years later, at the close of the Prosecution's case.[61] The Chamber failed to address and mitigate this procedural unfairness.[62] It follows that the Chamber should have required corroboration for P-1847's untested evidence, in particular for findings that were critical to establish Mr Ngaïssona's criminal liability. While the Chamber stated that it would consider "the nature of the evidence provided by the Witness, any references to the acts and conduct of the accused, and whether

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[53] *See* Ground I.C.3.i.
[54] *See* Ground I.C.2.i.b.
[55] *See* Ground I.C.3.i.
[56] *See* Ground I.C.5.iii; Ground I.C.5.v.
[57] Third Decision on Rule 68(2)(c), paras 32, 94.
[58] Decision on Rule 68(2)(d), para. 72.
[59] Judgment, pp. 119-120, para. 368.
[60] Decision on Rule 68(2)(d), paras 45-54. As acknowledged by the Appeals Chamber, if a witness recants his or her prior recorded statement and the Prosecution does not elicit incriminating evidence during its examination, the Defence cannot be expected to elicit that incriminating evidence in order to be able to subsequently challenge it. Ruto and Sang AJ on the decision regarding admission of prior recorded testimony, para. 93. By way of analogy *see also* Vidgen Judgment, para. 47; Cabral Judgment, paras 37-38.
[61] The Prosecution Request for submission of P-1847's Prior-Statement was filed on 7 July 2023, over two years after P-1847's appearance.
[62] The Trial Chamber rejected the Defence's request to recall P-1847, *see* Response to the Prosecution Request for submission of P-1847's Prior-Statement, para. 66; Decision on Rule 68(2)(d), para. 89. *See also,* Rukundo AJ, paras 134-135, 149, where the Appeals Chamber found an error of law in the Trial Chamber's failure to allow cross-examination of a witness following his recantation of incriminating testimony due to improper interference. The error was found not to have invalidated the judgment because the Trial Chamber treated that witness' evidence with caution and only relied on it when corroborated.

the evidence (…) is corroborated by any other evidence" in weighing the probative value and reliability of P-1847's prior recorded testimony,[63] it failed to deliver on that promise and largely relied on him – one of the top four cited witnesses in the Judgment – to establish key findings on Mr Ngaïssona's contribution.[64]

4. Failure to provide a reasoned opinion

20. Pursuant to Article 74(5) of the Statute, a judgment "shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions". This fair trial right guarantee includes the right of the accused to have their conviction reviewed by a higher tribunal,[65] as a failure to provide a reasoned opinion inhibits the parties from properly mounting an appeal and prevents the Appeals Chamber from exercising appellate review.[66]

21. While a trial chamber is not required to address all arguments raised by the parties or all items of evidence relevant to a particular finding, it must explain with sufficient clarity the basis of its decision, by identifying which facts were found to be relevant in coming to its conclusion.[67] When evidence for a factual conclusion appears weak on its face, such as hearsay evidence, or when there is significant contradicting evidence, more reasoning is required than when there is a sound evidentiary basis.[68] The duty to provide a reasoned statement of findings is heightened when parties raise issues concerning the relevance, probative value, or potential prejudicial effect of a piece of evidence.[69] A failure to address evidence which is clearly relevant to a trial chamber's findings can constitute a procedural error under Article 74(5).[70] While the Chamber is presumed to have assessed and weighed all evidence,[71] this presumption can be rebutted if clearly relevant evidence is not addressed in its reasoning.[72] A chamber's failure to address

[63] Decision on Rule 68(2)(d), para. 104; Judgment on the appeal against the Decision on Rule 68(2)(d), paras 103-104.
[64] *See* Ground I.C.3.i; Ground I.C.5.iii; Ground I.C.5.iv; Ground I.C.5.v.
[65] Hadjianastassiou Judgment, para. 32 ("The Contracting States enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (art. 6). The national courts must, however, indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him. The Court's task is to consider whether the method adopted in this respect has led in a given case to results which are compatible with the Convention").
[66] Bemba et al. AJ, paras 102, 107.
[67] Bemba AJ, paras 53, 59. *See also* Lubanga AJ on the PTC I decision regarding requests for redactions under Rule 81, para. 20.
[68] Bemba AJ, para 43.
[69] Ongwen AJ, para. 507.
[70] Bemba et al. AJ, para. 105.
[71] Ntaganda TJ, para. 52; Bemba et al. TJ, para. 196; Bemba TJ, para. 227.
[72] Bemba et al. AJ, para. 105; Kvočka et al. AJ, para. 23; Ntaganda AJ, para. 40.

material discrepancies between different pieces of evidence,[73] or to explain apparent contradictions in its own findings,[74] can constitute a procedural error.

22. Despite its considerable length, the Judgment suffers from major deficiencies in reasoning, that in turn hamper appellate scrutiny. The Chamber's factual findings are often extremely vague and general,[75] fail to indicate their evidentiary basis,[76] or are altogether missing.[77] The Chamber often limited itself to summarizing the testimonies of various witnesses it considered relevant to certain macro-topics, without drawing conclusions.[78] The Chamber failed to articulate its position on the relative evidentiary weight of particular items, and often altogether failed to identify which items it relied upon. As a result, the Judgment contains passages that are illogical and, at times, unintelligible: important inconsistencies in different witnesses' narratives coexist without the Chamber attempting to reconcile them;[79] the Chamber appears to have uncritically accepted, and even cited, witnesses' vague and ambiguous assertions;[80] the Chamber lists

[73] Kupreskić et al. AJ, paras 155-158, 163.
[74] Bemba AJ, para. 182.
[75] *See* e.g., Judgment, p. 289, para. 828 (Mr Ngaïssona financed individuals "willing or meant to assist the efforts in bringing François Bozizé back to power"); p. 322-323, para. 890 (Mr Ngaïssona "liais[ed] with other persons that, at that time or later, were involved in efforts to remove Michel Djotodia and the Seleka from power and bring back Bozizé to power").
[76] *See* e.g., Judgment, pp. 1384-1385, para. 4042, pp. 1602-1603, para. 4710, especially fn. 10800 (finding that Mr Ngaissona made it possible for elements to join the Bangui and Bossangoa attacks); pp. 1382-1383, para. 4037, pp. 1602-1603, para. 4710 (finding that Mr Ngaïssona's financial contribution had a "positive" effect on the commission of crimes during the Bangui attack). *See* Ground I.C.3.
[77] *See* Ground I.C.3.v, paras 185, 195.
[78] *See* e.g., Judgment, pp. 289-322, paras 827-889, pp. 322-333, paras 890-913, pp. 1006-1008, paras 2888-2895, pp. 979-981, paras 2815-2822.
[79] *See* e.g., Judgment, p. 294, para. 835, P-2673's assertion with respect to the sending of ammunition and a Thuraya to Andjilo in Bouca, which was not confirmed by [REDACTED]; p. 366, para. 973, p. 416, para. 1084, p. 801, para. 2193, P-2269's narrative on his supposed meeting with [REDACTED], which was not confirmed by [REDACTED] nor compatible with the Chamber's reconstruction at [REDACTED]; pp. 824-825, para. 2268, P-2841's allegation that Mr Ngaïssona provided funds to Mokom in Zongo, which is incompatible with his allegation elsewhere, at pp. 305-306, para. 858, that Mokom ultimately didn't receive anything from Mr Ngaïssona; Judgment, pp. 1015-1023, paras 2918-2938, notably p. 1023, para. 2938 ("At the same time, the evidence before the Chamber suggests that some destruction and looting in Bossangoa either took place at some point after the time period relevant to the charges, or was committed by individuals other than Anti-Balaka members. Therefore, in conclusion and on the basis of the evidence before it, the Chamber finds that the Anti-Balaka burned and destroyed residential structures in the vicinity of the imam's residence at some point between 5 and 8 December 2013"); *See* Ground I.C.2.ii.
[80] *See* e.g., Judgment, pp. 290-291, para. 830, P-1719's assertion that "the funding did not stop at Yaoundé, it also extended to Bangui"; pp. 297-298, para. 841, P-2841's assertion that "Joel Yangongo was in contact with Maxime Mokom, Claude Ngaikosset and others in DRC, *maybe even* Kokaté" (emphasis added); pp. 305-306, para. 858, P-2841's assertion that "Bernard Mokom and Mr Ngaïssona were starting to organise the Anti-Balaka and also the military but at that point, *it was a matter of wait and see*" (emphasis added); p. 323, para. 891, an email is said to "suggest that at this time Mr Ngaïssona and *the others* were communicating with *others*, and that *others* wanted them to be engaged in their efforts" (emphasis added); p. 324-325, para. 893, P-0992 is cited to have said "They put in place a system to fight back against the Seleka advances – on 5 December when close to 4,000 elements met behind the hills, *this was not a light matter. The physical aspect were* the Anti-Balaka coming down from the hill and confronting the Seleka on 5 December; some had sticks and others traditional weapons" (emphasis added).

factual findings without providing any further context on their relevance to the charges and modes of liability.[81] While the Chamber stressed that it would carry out a holistic evaluation of the evidence,[82] that did not dispense it of its obligation to clearly articulate the basis for its decision. Through these errors, the Chamber has effectively deprived Mr Ngaïssona of his right to a reasoned Judgment.

5. Standard and Burden of Proof

23. The presumption of innocence is a fundamental fair trial right which requires that the burden of proof lies entirely with the Prosecution.[83] Any suggestion that the accused bears a duty to prove their innocence, or to present evidence more convincing than that of the Prosecution, would amount to an impermissible reversal of this burden.[84]

24. The "beyond reasonable doubt" standard applies to any fact indispensable for entering a conviction, including all facts material to the elements of the crime and the alleged modes of liability.[85] Reasonable doubt "cannot consist in imaginary or frivolous doubt based on empathy or prejudice", but must "be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence".[86] Thus, the Chamber must be satisfied that there is no "reasonable interpretation of the evidence admitted other than the guilt of the Accused".[87] Where the Trial Chamber considers an allegation not proven beyond reasonable doubt, this signifies that the evidence is insufficiently reliable to sustain a finding of guilt in light of the high standard of proof required.[88]

25. For several key findings that led to Mr Ngaïssona's conviction, the Chamber failed to adhere to the correct burden and standard of proof. Particularly, as will be illustrated below, the Chamber lowered the evidentiary threshold for findings of fact by excessively relying on (anonymous) hearsay evidence, failing to properly assess corroboration and apply the proper legal standard to circumstantial evidence. Further, in several passages of the Judgment, the

[81] *See* e.g., Judgment, p. 294, para. 835, P-2673's decontextualized assertion that "[he] did not know if the ammunition problem was solved at the time", with no prior reference to any ammunition problem in the preceding paras; p. 307, para. 861, P-0884 is cited saying that he "did not know if Mr Ngaïssona gave money to the Anti-Balaka before that. P-0884 stated he sent money before 5 December 2013, [REDACTED], but P-0884 did not know precisely who he sent the money to".
[82] Judgment, pp. 40-41, para. 127.
[83] Rome Statute, Article 66; Al Hassan TJ, para. 18; Ongwen TJ, para. 227; Kordić and Čerkez AJ, para. 834.
[84] Rome Statute, Article 67(1)(i); Al Hassan TJ, para. 1739; Ntaganda AJ, para. 586.
[85] Ngudjolo AJ, para. 124; Martić AJ, para. 55.
[86] Ngudjolo AJ, para. 109 *citing* Rutaganda AJ, para. 488.
[87] Halilović AJ, para. 109.
[88] Ngudjolo AJ, para. 119.

Chamber's own wording betrays its failure to uphold the standard of proof. When presented with exculpatory evidence, the Chamber simply concluded that they failed to "negate"[89] or "undermine"[90] findings that were key to Mr Ngaïssona's criminal responsibility when it should have noted the reasonable doubts arising therefrom. The Chamber further impermissibly reversed the burden of proof by requiring the Defence to present evidence that is more convincing than that presented by the Prosecution. On the one hand, it consistently dismissed the evidence proposed by Defence witnesses on the basis of the sources of their evidence. On the other, it rarely questioned the sources or nature of the evidence proposed by Prosecution witnesses.[91]

B. The Trial Chamber erred in law, fact and procedure in its assessment of witness credibility, contrary to its obligation to conduct such assessment as an integral part of determining the probative value of testimony, thereby abusing its discretion and leading to erroneous factual findings that materially affect the decision

1. Application of inconsistent and incorrect standards in assessing the credibility of 'accomplice witnesses'

26. It is *essential* for trial chambers to consider any motives or incentives that a witness may have had to implicate the Appellant.[92] A chamber is not required to formally characterise a witness as an 'accomplice witness'; however, where a witness "was involved in the criminal events under consideration"[93] it is also *essential* to provide sufficient reasoning for the Chamber's reliance on such witnesses, and especially those where the Defence has vigorously challenged a given witness' credibility.[94]

27. ICC chambers have applied 'great caution' before concluding that witness testimony "was in *any* respect credible and reliable"[95] if the witness falls within a category who have, or *may* have, their own interests in reducing their culpability for the crimes and ascribing blame to others.[96]

[89] *See* e.g., Judgment, pp. 228-229, para. 702; p. 233, para. 710; p. 272, para. 795; pp. 287-288, para. 822; p. 308, para. 863; p. 338, para. 923 ("[t]he Chamber does not consider the above evidence to be negated by the information provided by D30-4914"); p. 424, fn. 2944; p. 487, para. 1263; p. 519, para. 1353; pp. 625-626, para. 1654; p. 644, para. 1707 ("[t]he Chamber considers the above not negated by Vivien Beina averring that Mr Ngaïssona was not informed of incidents before the coordination set up in June 2014 […]"); p. 679, para. 1800; p. 827, para. 2276 ("[t]he Chamber considers that Brice Emotion Namsio not having heard of ammunition in such boxes does not negate their existence").
[90] *See* e.g., Judgment, pp. 1019-1020, para. 2926 ("[i]ndeed, his evidence as such does not undermine the allegation that Anti-Balaka may have been engaged in damaging or destroying structures in the aftermath of the Bossangoa Attack").
[91] *See* e.g., Judgment, p. 525, paras 1373-1374 ; *see* Ground II.B.2, para. 319.
[92] Ntaganda AJ, para. 655.
[93] Ntaganda AJ, paras 17 and 655.
[94] Ntaganda AJ, para. 655.
[95] Abd-Al-Rahman TJ,para. 180 (emphasis added).
[96] Abd-Al-Rahman TJ,para. 180.

This requires considering the "motives for giving evidence"[97] and follows from the jurisprudence of the ad hoc tribunals where appeals chambers have emphasised that a reasonable trial chamber should examine "whether the particular witness has a specific motive to testify as it did and to lie".[98]

i. The Chamber failed to identify and apply the law

28. The failure to apply the standard on 'accomplice testimony' set out by the Appeals Chamber in *Ntaganda* is a legal error. The Judgment contains no citations to this appellate jurisprudence and, although the phrase 'great caution' appears three times, there is no concrete indication that the Judgment engages with that jurisprudence.[99]

29. Alternatively, the Chamber incorrectly applied the law. Its approach to 'accomplice witness' testimony reversed the analytical process required by the Appeals Chamber and wider jurisprudence, which requires a sequential approach. The starting point is a presumption of caution, due to the witness' role or interests in the events, followed by a case-by-case evaluation of the witness' testimony in relation to the reasons that were identified for suspicion.

30. In contrast, the Judgment invoked 'great caution', based on issues identified within the analysis of the testimony itself, thereby reversing the required analysis. For instance, P-2027 was deemed to require great caution because of discrepancies between his statement and testimony[100] and the Chamber's inference that he "did not provide a lot of detail […] despite the high level of details given in his prior statement".[101] Similarly, Brice Stanislas Mohi ('Mohi') (D30-4504) was described as "not forthcoming" and as having "limited the scope of his knowledge",[102] with the Chamber dismissing his claims about his interactions with Mr Ngaïssona, without citations, as "highly improbable and contradicted by other evidence"[103] and contrasted his testimony with that of P-1719 whom the Chamber found more credible.[104] Finally, D30-4848's testimony was considered "evasive and not forthcoming, despite being in a position to provide direct information about events in Cameroon",[105] he "distanced himself

[97] Abd-Al-Rahman TJ, para. 194.
[98] Ntagerura et al. AJ, para. 206.
[99] In relation to D30-4848 (Judgment, p. 150, para. 468), Mohi (Judgment, p. 147, para. 456), and P-2027 (Judgment, p. 129, para. 399).
[100] Judgment, p. 127, para. 392.
[101] Judgment, pp. 128-129, para. 397.
[102] Judgment, p. 145, para. 449. *See also* Judgment, p. 146, paras 452-453.
[103] Judgment, p. 145, para. 449.
[104] Judgment, pp. 145-146, para. 455.
[105] Judgment, pp. 149-150, para. 465.

from the activities in Cameroon and downplayed his knowledge",[106] and noted his reaction having learned [REDACTED].[107] While it was open to evaluate these witnesses as individuals who were involved in the events in question, there is no clear discussion of this.

ii. The Chamber failed to exercise caution when it should have

31. A Chamber is *obliged* to provide sufficient reasoning where there is a possibility that a witness may bend their testimony or outright lie due to their role in events.

32. It was unreasonable and inappropriate of the Chamber to assess witnesses Joachim Kokaté ('Kokaté') (P-0801), P-0306, and P-0965 without applying the jurisprudence relevant to those individuals who had or may have had a motive to implicate the Appellant.[108]

33. Alternatively, the unifying legal error is also construable as a combination of failures to give weight or sufficient weight to relevant considerations,[109] a misappreciation of facts[110] that led to conclusions not based on evidence, logic, reason or common sense, and a lack of reasoning.[111] Regarding these individuals the Judgment displays a recurring pattern of downplaying or ignoring discrepancies suggesting that a witness was either untruthful or presenting a distorted version of what they know or how they conducted themselves.

34. Kokaté provided paradigmatic accomplice testimony, yet the Chamber failed to apply the required standard. The Chamber concluded Kokaté was a "self-proclaimed Anti-Balaka supporter and key political figure at the time of the events".[112] Yet, the Judgment is scattered with further findings that illustrate Kokaté's role was deeply intertwined with the charged crimes.[113]

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[106] Judgment, p. 150, para. 466.
[107] Judgment, p. 150, para. 467.
[108] Hereinafter 'accomplice witnesses' although as noted *above* the jurisprudence encompasses more than a narrow understanding of accomplices.
[109] Kony AJ on the decision regarding the admissibility of the case, para. 81.
[110] Mbarushimana AJ on the decision regarding interim release, para. 16; Bemba AJ on the decision regarding provisional release, para. 45.
[111] Bemba AJ, para. 55.
[112] Judgment, p. 78, para. 233.
[113] P-2673 hoped that Kokaté would give money to Mr Ngaïssona who would give it to Bernard Mokom (Judgment, p. 291-292, para. 831); according to P-1847 "Kokaté was contacting former military and fighters and tried to regroup them, both in relation to his role in the movement and FROCCA" (Judgment, pp. 398-399, para. 1050); P-2625 stated that "Kokaté shared the viewpoint of the other participants, the idea of using armed violence in order to return to power; he was saying that he was ready to go out into the field and fight" (Judgment, pp. 263-264, para. 780); Kokaté preferred to not answer whether he claimed on the radio that the Bouca attack of 9 September 2013 was the responsibility of FROCCA (Judgment, p. 523, para. 1366); P-0974 said "in reality, the coordinator

35. These findings confirm that the only reasonable conclusion from the Judgment's text is that Kokaté sought to reduce his perceived culpability for crimes. The Chamber concedes that he "clearly distanced himself and downplayed his own involvement in certain aspects relevant to this case", he "distanced himself from any involvement with the FROCCA", and "appeared to downplay his knowledge of the attack on Bangui".[114] The Chamber also specifically found that Kokaté downplayed his involvement in planning meetings in 2013 in Cameroon and negotiations in N'Djamena, and the Chamber states that it believes he had a military role despite him claiming he did not.[115] The Chamber also found that Kokaté lied in court but refused to characterise it as such[116] and casually brushed aside Kokaté's prior established involvement in a witness inference scheme before the ICC.[117]

36. As discussed in detail below,[118] the Judgment glosses over how P-0306 exhibited behaviour that any reasonable observer would recognise as evasive, including omitting key details about the Anti-Balaka organisation and events that were central to the proceedings, especially considering P-0306's background.

37. P-0965 equally required caution given that he provided extensive details about "the preparation and his participation in the attack on Bangui on 5 December 2013",[119] which, on the Judgment's own terms, places him within the criminal events under consideration. The testimony of P-0965 suggests motives for giving evidence that at least included self-aggrandisement while at the

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of the Anti-Balaka group" in December 2013 was Kokaté (Judgment, p. 569, para. 1509); P-0808, P-0992, and P-1193 leading the Chamber to conclude that "Kokaté was seen as external relations or special advisor" of the Anti-Balaka in 2014 (pp. 646-647, para. 1713); in the context of the attack on Bouar, P-2841 noted that "Kokaté was like a liaison person, contacted elements to mobilise them, he had a lot of connections in the military and in politics" (Judgment, p. 336, para. 918); and the Chamber's referencing to an interview with Mr Ngaïssona in April 2014 where the Appellant is asked about a 'wing' under Kokaté (Judgment, p. 691, para. 1830).

[114] Judgment, p. 82, para. 246.

[115] Judgment, pp. 603-604, para. 1597. ("In contrast, Joachim Kokaté testified that he immediately rejected the role assigned to him as 'military coordinator', as this was not based on consultations between them. Joachim Kokaté adamantly rejected any claims of him having been military coordinator or having held a role with military responsibilities within the Anti-Balaka. Indeed, the witness testified that he was appointed as representative of the Anti-Balaka within the Samba-Panza government due to him having been an Anti-Balaka 'supporter' at the time. *The Chamber considers that the witness attempted to downplay his role within the Anti-Balaka. While witnesses did not point to him as playing a specific role in the context of military operations, it is also clear from the evidence before the Chamber that Joachim Kokaté was directly involved with the activities of the Anti-Balaka, both in initial meetings in Cameroon as well as going to N'Djamena to represent the movement, as well as of FROCCA.* At the same time, the evidence shows that by around mid-February 2014, Joachim Kokaté distanced himself from the Anti-Balaka." (emphasis added)). Fn. 4212 in this paragraph refers to pp. 78-82, paras 233-247 (the entire credibility assessment of P-0801).

[116] *See* paras 44-46 *below*.

[117] *See* para. 53 *below*.

[118] *See* paras 197, 217 *below*.

[119] Judgment, pp. 101-102, para. 310.

same time playing down his role.[120] P-0965 falsely claimed [REDACTED],[121] inflated his status within [REDACTED],[122] advanced a story about a notebook seemingly intended to increase his perceived importance,[123] and made other dramatic claims about arms caches – claims that the Chamber considered unsupported by the evidence.[124] P-0965 appeared to have a tendency to fabricate stories and as the Chamber noted, to the credit of the Prosecution, "placed limited reliance on P-0965's evidence."[125]

iii. The error materially impacts the Judgment

38. The material impact of this error was that critical passages of testimony supporting the conviction were not evaluated in accordance with international standards and adequate scepticism. Passages from Kokaté, P-0306, and P-0965 formed the sole basis for certain factual findings. In other instances, these witnesses were among a handful of sources purported to corroborate a fact.

39. While Kokaté's desire to implicate the Appellant is likely, it is immaterial given that his testimony offered an opportunity to shift blame to Mr Ngaïssona and thereby benefit himself. Regarding the *Front pour le retour à l'ordre constitutionnel en Centrafrique* ('FROCCA'), Kokaté alleged that Mr Ngaïssona was among the deciders of its military wing,[126] was determined to see François Bozizé ('Bozizé') restored to power and claimed to have organised and coordinated military actions in the field.[127] In one instance the Chamber referenced Kokaté's "wanting to use all means possible to return François Bozizé to power"[128] to dismiss a contradiction raised by the Defence[129] between his testimony and that of Adrien Poussou ('Poussou') (P-2625). While Poussou described Kokaté's willingness to use armed violence,[130] the Chamber did not apply the same reasoning when assessing Kokaté's assertions concerning Mr Ngaïssona.

[120] Judgment pp. 850-851, para. 2359 ("P-0965, as 'an ordinary element' on 5 December 2013 did not have a weapon, but he was part of the attack on Bangui").
[121] Judgment, pp. 102-103, paras 314, and p. 808, paras 2214 and p. 835, para. 2307.
[122] Judgment, p. 102, para. 312.
[123] Judgment, p. 102, para. 313.
[124] Judgment, p. 820, para. 2254.
[125] Judgment, p. 101, para. 309.
[126] Judgment, pp. 395-396, para. 1041 ("Franklin Bozizé, Mr Ngaïssona, Bernard Mokom, Eric Danboy, Rodrigue Bozizé in Yaoundé that they were the deciders of the military wing of FROCCA").
[127] Judgment, pp. 395-396, para. 1041.
[128] Judgment, p. 271, para. 792.
[129] Judgment, p. 260, para. 722.
[130] Judgment, p. 264, para. 780.

40. Other than P-1847's statements, Kokaté is the sole source of 'direct evidence' that Mr Ngaïssona claimed he organised the attack on Bouar.[131] His testimony is cited to establish incriminatory facts against Mr Ngaïssona for financing in 2013,[132] and he is the sole source of certain claims.[133] He alone provided information about meetings that led the Chamber to conclude a plan to attack Bangui existed by 30 November 2013. Kokaté also added the detail that Mr Ngaïssona allegedly claimed responsibility for the upcoming attack on Bangui.[134]

41. P-0965's speculative testimony is the only source who is cited for the Judgment's conclusion that Konaté was in contact with Mr Ngaïssona because, along with a few others, he allegedly funded the Anti-Balaka and had the means to finance it.[135]

42. The error also led the Chamber to conclude that Mr Ngaïssona continued to provide financial assistance to the Anti-Balaka for various purposes in 2014 and that these purposes included the purchase of weapons and ammunition.[136] Among three witnesses cited for this, P-0965 is the only purported *direct* evidence of Mr Ngaïssona's stating that people should inquire who had weapons and ammunition and refer them to him so that he could buy them.[137]

43. The Chamber twice dismissed P-0965's fanciful and fabricated claims[138] as well as reaching other findings rejecting the reliability of P-0965's account.[139] There is no reasonable or principled basis upon which the above claim about Mr Ngaïssona can be distinguished from those that the Chamber dismissed. Absent finding P-0965's testimony credible, the Chamber could not reasonably have reached its conclusion about arms funding or financing.[140]

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[131] Judgment, p. 554, para. 1460 ("Kokaté testified that Mr Ngaïssona described to him on the phone what they had done during the attack on Bouar […] [h]e said that Mr Ngaïssona told him that he had organised the attack on Bouar").
[132] *See* paras 170-171 *below*.
[133] *See* particularly Judgment, pp. 300-301, para. 847.
[134] Judgment, p. 781, para. 2127 ("Kokaté described a meeting that he himself attended, towards the 'end of November' 2013, with Mr Ngaïssona, Eric Danboy, Franklin Bozizé and Bernard Mokom, during which Mr Ngaïssona stated that it would not be long before 'his troops' attacked the Seleka, of which they would be notified in due time, telling them that there would be 'an imminent attack on Bangui'").
[135] Judgment, pp. 842-843, para. 2334.
[136] Judgment, p. 640, para. 1694.
[137] *See* para. 200. *See* Judgment, pp. 639-640, para. 1691.
[138] *See* paras 50 and 218 *below*.
[139] Judgment, p. 672, para. 1781.
[140] *See* para. 200 *discussing* Judgment, p. 639, para. 1690 ("P-0954 testified that Mr Ngaïssona could not say this over the radio but said it in a meeting, and 'everyone' followed, that 'each ComZone' had the opportunity to monitor 'their men' and if they had 'little' money, they should stock munitions and arms to keep – one could never know when these mercenaries might return and this would help in putting up a resistance"); and *see* para. 201 *discussing* Judgment, p. 640, para. 1692 ("one time after 5 December 2013 that Sylvestre Yagouzou arrived at 'the

2. Failure to make adverse credibility findings despite manifest indicators

44. The Chamber erred in fact by refusing to articulate factual findings concerning witness testimony which any reasonable person would describe as untruthful statements – and colloquially as lies. Its findings in relation to Kokaté,[141] and P-0965[142] effectively conclude that these witnesses lied in court, yet rather than treating this as a serious flaw in credibility and potential perjury, the Chamber categorised such testimony as mere reliability issues (i.e. memory lapses etc.).[143] In the case of P-0306[144] and Poussou,[145] the Chamber ignored Defence submissions that, if addressed, would have obliged the Chamber to enter findings that would have had consequences for their credibility.

i. The Chamber erred in its assessment of testimony, evidence and own reasoning pointing to witness deception and dishonesty

45. First, for Kokaté, the error arises with the untenable finding that, although he "distanced himself and downplayed his own involvement",[146] this did not undermine the credibility of the rest of his testimony.[147] The Chamber's underlying findings are that Kokaté twice claimed in court that his signature had been forged in relation to a document from December 2013 and January 2014 – documents which the Chamber considered he signed[148] and which concerned Kokaté's purported role in military operations. Lying about documents that indicate potential culpability is not downplaying one's involvement, it is deliberate falsehood.

46. The Chamber's reasoning also confirms that Kokaté repeatedly lied about his role in FROCCA. He claimed he knew nothing about FROCCA,[149] specifically "not having been aware of the positions people occupied", "never having been a member" and "having no information about what happened in FROCCA and "*insisted* not knowing anything about FROCCA".[150] Yet the Judgment states that "the evidence before it shows that Joachim Kokaté was clearly a member of

coordination' and gave weapons, ammunition, grenades to the coordination which paid for it, specifically Maxime Mokom came out with the money, but Mr Ngaïssona have (sic) the money to pay for the weapons or other equipment. P-2232 said that they did not have enough resources and if needed, Mr Ngaïssona would check out the situation and they would go towards him for money, and he would buy something through his subordinates, associates").

[141] Judgment, p. 82, paras 246-247.
[142] Judgment, p. 102-103, paras 314, and p. 808, paras 2214 and p. 835, para. 2307.
[143] *See* para. 58 *below*.
[144] Judgment, pp. 72-73, para. 216.
[145] Judgment, pp. 94-95, para. 291.
[146] Judgment, p. 82, para. 246.
[147] Judgment, p. 82, para. 247.
[148] Judgment, p. 82, para. 246.
[149] *Ibid*.
[150] Judgment, p. 387, para. 1023 (emphasis added).

FROCCA and involved in planning its activities"[151] and finds "not credible the claim of Joachim Kokaté that he was not a member of FROCCA and would not have played any role in it".[152]

47. The Chamber's permissive approach to Kokaté contrasts sharply with its approach to P-0487, whom it described as "evasive, contradictory, and attempt[ing] to minimise his role within the Anti-Balaka to an extent that put into question the entirety of his account".[153] One of the core reasons was that, when confronted with information from his own contemporary notes, P-0487 tried to distance himself by claiming he wrote those notes 'out of sheer pride'.[154]

48. Second, the Chamber erred in fact when it failed to articulate an adverse finding concerning P-0306's explanation of notes that he provided to the Prosecution that were prepared with the assistance of another person. The Chamber failed to consider the incoherence of P-0306's testimony concerning the identity of the person who drafted the notes,[155] instead downplaying this by finding that they were "prepared with the assistance of someone else".[156] Similarly, it did not engage with the Defence arguments concerning P-0306's incoherent explanation of the timing of writing one of the notes. He claimed the first document was prepared when he was still in [REDACTED] (i.e. September 2013), yet it mentions later events, such as the Bangui attack.[157] Rather than see this testimony as illustrating a willingness to make claims irrespective of their truth, the Chamber only focused upon whether the notes reflected coaching or were intentional fabrications.[158] P-0306's testimony about these notes not only impugned his credibility because, as the Defence argued, it suggested that he was coached to incriminate Mr Ngaïssona, but also because his explanations were evasive and inconsistent, and importantly, impossible.[159] Yet, the Judgment confirms that the Chamber grasped only part of the Defence

[151] Judgment, pp. 387-388, para. 1024.
[152] *Ibid*.
[153] Judgment, p. 76, para. 229.
[154] Judgment, p. 76, para. 229.
[155] Closing Brief, pp. 6-7, para. 15.
[156] Judgment, pp. 72-73, para. 216.
[157] *See* e.g., **P-0306:** T-066, pp. 59-56 and *compare* with CAR-OTP-2120-0598, particularly [REDACTED].
[158] Judgment, pp. 72-73, para. 216 ("[…] At most, his testimony regarding these notes reflected a lack of understanding of legal procedure. The Chamber notes that P-0306 appeared to have drawn some of these notes as a memory aid 'to jog [his] memory' and, being illiterate, prepared with the assistance of someone else, thinking that they could 'serve as evidence whenever necessary'. It was clear to the Chamber that, in making these notes, P-0306 did not fully understand the need to keep track of dates and sequence of events adequately for proper legal scrutiny. This did not reflect negatively on the credibility of the rest of his claims").
[159] Closing Brief, pp. 6-7, para. 15 ("[…] Second, P-0306's testimony on the author of the documents was unconvincing and replete with inconsistencies. P-0306's initial account was that [REDACTED] drafted CAR-OTP-2120-0598, while another [REDACTED] drafted CAR-OTP-2120-0599. Confronted with the same handwriting in three of the documents, P-0306's provided further inconsistent evidence, claiming that [REDACTED] when the documents were drafted. Yet, P-0306 stated that [REDACTED], well before P-0306's

arguments,[160] and therefore concluded that this episode did not "reflect negatively on the credibility of the rest of his claims".[161]

49. Third, the Chamber erred by failing to provide a reasoned opinion – i.e. make an adverse credibility finding – on the Defence argument[162] concerning Poussou's testimony that Mr Ngaïssona reiterated his ability to mobilise people for combat during a second meeting at Hôtel des Députés.[163] The Defence argued that Poussou's claim was not corroborated by any evidence, absent from prior interviews, and refuted by evidence indicating that Poussou never stayed at the hotel[164] as alleged. These factors led to the conclusion that Poussou was not telling the truth, both about the occurrence of the meeting and critically, in his testimony before the Chamber. The Chamber's failure to address this argument resulted in an error of fact, as it overlooked the relevant consideration that Poussou appeared to lie on the stand and falsely attribute incriminatory statements to Mr Ngaïssona.

50. Fourthly, the Chamber also erred by failing to draw a credibility conclusion in relation to [REDACTED] testimony, instead stating euphemistically that it "cannot reach a conclusion on direct contacts between Bozizé and [REDACTED] on the ground".[165] [REDACTED][166] [REDACTED][167] is a fanciful claim that warranted scrutiny. If the Chamber considered the claim was not true, then it is not one that can be lightly attributed to the passage of time like when a witness mis-recalls the day of the week ten years after the events. Absent any indication

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[REDACTED] in 2016, making it impossible for him to have drafted the documents mentioning proceedings against Mr NGAÏSSONA in 2018. […]").
[160] Judgment, p. 73, para. 217, the notes "did not reflect improper motives to incriminate Mr Ngaïssona nor a fabrication of evidence".
[161] Judgment, pp. 72-73, para. 216.
[162] Closing Brief, p. 167, para. 423 ("[…] the testimonies of POUSSOU and KOKATÉ are not mutually corroborative regarding the number and locations of these alleged meetings, the identity of the attendees, and the subject-matter of these meetings. POUSSOU claims that Mr NGAÏSSONA participated in three meetings: […] (ii) one at the Hôtel des Députés without BOZIZÉ. In contrast, KOKATÉ claims that there were three to four meetings involving Mr NGAÏSSONA: (i) one at the Hilton hotel, (ii) one or two at the CAR embassy and (iii) one at Mr NGAÏSSONA's alleged villa in YAOUNDÉ") and pp. 169-170, para. 429 ("POUSSOU is the sole witness claiming that a meeting occurred at Hôtel des Députés with Mr NGAÏSSONA in attendance. KOKATÉ, also purportedly present according to POUSSOU, does not validate this event. Furthermore, documentation from Hôtel des Députés refutes that POUSSOU stayed at the hotel in the relevant period. POUSSOU's assertion that Mr NGAÏSSONA reiterated his ability to mobilise people for combat during this second meeting at Hôtel des Députés is not corroborated by any other evidence on record. POUSSOU could not explain the reason why this alleged meeting was not discussed when he met the Prosecution investigations in 2019, but only conveniently resurfaced during his in-court testimony.").
[163] Judgment, pp. 270-273, paras 792-797.
[164] CAR-D30-0003-0211.
[165] Judgment, p. 808, para. 2214.
[166] [REDACTED].
[167] Judgment, p. 835, para. 2307.

of mental health concerns, such a claim reflects a tendency in [REDACTED] to knowingly distort his account with invented and exaggerated details.

51. These instances are composites of several legal and factual errors. The Chamber failed to provide a reasoned opinion as to why such dishonesty could be dismissed when assessing other testimony or examining other challenges to the witnesses' credibility. As established, an "allegation – whether accepted or not – that a witness has lied about any matter is one which has to be examined with care when considering the credibility of that witness".[168] Moreover, concluding that the witness was merely inaccurate – as opposed to wilfully untruthful – is not a reasonable conclusion to draw from the very reasoning of the Judgment.

ii. The errors materially impact credibility findings throughout the Judgment

52. By refusing to characterise these instances as lies, the Chamber failed to weigh the evidence with all relevant factors and omitted a crucial overarching factor: the scepticism that should reasonably attach to an individual who has lied to a judge. The cursory comments that it "considered it within the context of other evidence before it"[169] fall below the standard required for a reasoned opinion. As noted in *Abd-Al-Rahman*, a Chamber should examine "what effect [a finding of a lie] has on the overall credibility of that witness' evidence on an issue in the case"[170] and "ascertain whether there is a reason revelated for untruthful evidence."[171]

53. The failure to make the above findings affected the Chamber's holistic assessment of the evidence and its evaluation of Kokaté's credibility in light of his involvement in influencing witnesses to give false testimony in the *Bemba* case.[172] The Chamber noted that findings by a different chamber do not, as such and by themselves, pre-determine the assessment of the witness' testimony before it;[173] however having examined his testimony overall it found him "generally credible".[174] While the Chamber's approach to "evaluate the witness' evidence as provided under oath in the circumstances of the current case"[175] was not unreasonable *per se*, the consistent pattern of dishonesty that was ignored in the current case was. This meant that his prior actions in the *Bemba* case, which led to adverse findings in the *Bemba et al.* case, were

[168] Al-Rahman TJ, para. 219.
[169] Judgment, p. 82, para. 247.
[170] Abd-Al-Rahman TJ, para. 219.
[171] Abd-Al-Rahman TJ, para. 220.
[172] Judgment, pp. 78-79, paras 235-236.
[173] Judgment, p. 79, para. 236.
[174] Judgment, p. 79, para. 237.
[175] Judgment, p. 79, para. 236.

not considered relevant to his credibility in the present one. Had those prior events and findings been put in context, the Chamber would have identified an ongoing pattern of dishonesty and disregard for judicial proceedings that dated back to at least 2013.[176]

54. The Chamber erred in its evaluation of P-0306's testimony by limiting its analysis to the reliability of the notes and the Defence's coaching argument, rather than considering the significance of the testimony for P-0306's overall credibility. Instead of examining how P-0306 testified about the notes, the Chamber focused solely on whether they suggested criminal conduct. Once it concluded that the testimony did not support such a finding, the Chamber moved on. However, P-0306's manner of responding was almost as important as whether he had been coached. By failing to assess this aspect, the Chamber unjustifiably isolated the issue of the notes from P-0306's broader testimony.[177]

55. Absent the error, the Chamber would have included the issue in its holistic assessment of P-0306's evidence. By mischaracterising his testimony, the Chamber did not consider whether other inconsistencies reflected lack of credibility rather than mere memory errors. The error also contributed to the Chamber not evaluating other Defence arguments accurately. Reflecting a recurring pattern throughout the Judgment once the Chamber dismissed one Defence argument, it adopted an all or nothing approach to other credibility arguments concerning P-0306, evaluating them without nuance. In a broader section addressing whether P-0306 was coached and produced false evidence, the Chamber concluded that P-0306 "did not show a tendency to incriminate Mr Ngaïssona at all costs *and therefore* his testimony did not reflect a bias against Mr Ngaïssona or the Anti-Balaka generally".[178] It is correct that the Defence argued this;[179] however, the phrase "at all costs" is not compatible with the beyond reasonable doubt standard. A witness who is biased and bends testimony to incriminate – even short of 'at all costs' – will still give distorted and inaccurate evidence.

56. The Chamber addressed the Defence argument that Poussou attempted to incriminate Mr Ngaïssona "at all costs" only in relation to his "hostile, obstructive and aggressive demeanour" during examination, marked by refusals to answer questions, inappropriate and disparaging

[176] i.e. the period in which Kokaté's actions in relation to the *Bemba* case occurred.
[177] Judgment, pp. 72-73, para. 216 ("the Chamber considers that these notes did not render his evidence wholly unreliable").
[178] Judgment, pp. 70-71, para. 212 (emphasis added).
[179] Closing Brief, p. 5, para. 13 (emphasis added).

remarks and the use of violent language.[180] Like with P-0306, the Chamber dismissed one Defence argument and then failed to engage with others. Had the Chamber fully engaged with the Defence argument and supporting evidence, it would have been obliged to assess the inference that Poussou lied about the meeting at Hôtel des Députés and to consider how this in-court dishonesty impacted the overall credibility of his claims. Given that Poussou was an insider witness fitting the profile of an accomplice witness, the Chamber should have scrutinised his testimony through this lens, which strongly suggests an intent to incriminate Mr Ngaïssona. This, in turn, would have required the Chamber to revisit other testimony and other credibility challenges raised by the Defence, for example, Poussou's claim that Mr Ngaïssona said he was financing "the children out in the field".[181]

57. The failure to make adverse credibility findings and to assess testimony as 'accomplice testimony' are distinct but overlapping errors. However, the broad impacts on the Judgment in the evaluation of testimony for Kokaté, P-0306, P-0965, and Poussou both resulted in inadequate scrutiny and a confirmation bias that downplayed inconsistencies and anomalies, leading to unreasonable incriminatory conclusions described through this brief. With Poussou, this failure contributed to findings on financing[182] and liaising findings[183] against Mr Ngaïssona. The Chamber further relied on Poussou's testimony – alongside Kokaté's – to conclude that Mr Ngaïssona was involved in planning steps to secure Bozizé's return to power 'by all means', including through violence.[184] As detailed below, this caused the Chamber to reach unsound conclusions connecting Mr Ngaïssona to alleged contacts with the Anti-Balaka and to conclude that, shortly before 5 December 2013, he was in contact with two of the main actors of the Bangui attack, namely Andjilo and Konaté.[185]

3. Improper conflation of reliability and credibility in evaluating testimony

58. While some deference must be given to the Chamber's assessment of testimony and issue characterisation, it abused its discretion and made a legal error by treating instances of lying, just described,[186] as issues of *reliability* rather than *credibility*. While there is a strong link between the two concepts, as reflected in the jurisprudence of the ad hoc international criminal

[180] Judgment, pp. 94-95, para. 291 ("Having reviewed his testimony in light of these arguments, the Chamber did not consider that Adrien Poussou was biased against Mr Ngaïssona or the Ngaïssona Defence.").
[181] *See* para. 180.
[182] *See* paras 180 and 191.
[183] *See* paras 213 and 234.
[184] Judgment, paras 777-792.
[185] *See* Ground I.C.5.ii.
[186] *See* Ground I.B.2.

tribunals,[187] using one concept in the place of the other is incorrect in the same way that kilometres cannot be substituted for miles even though they are both related to measuring distance. As noted by the Appeals Chamber in *Lubanga*

> while credibility is generally understood as referring to whether a witness is testifying truthfully, the reliability of the facts testified to by the witness may be confirmed or put in doubt by other evidence or the surrounding circumstances. Thus, although a witness may be honest, and therefore credible, the evidence he or she gives may nonetheless be unreliable because, inter alia, it relates to facts that occurred a long time ago or due to the "vagaries of human perception".[188]

59. The evidence of a witness in relation to whose credibility a trial chamber has some reservations may be relied upon to the extent that it is corroborated by other reliable evidence.[189] However, as noted by the Appeals Chamber in *Ngudjolo*, "there may be witnesses whose credibility is impugned to such an extent that he or she cannot be relied upon *even if other evidence appears to corroborate parts of his or her testimony*."[190]

60. If the Chamber had approached lying or telling stories on the stand as an issue of credibility, then it would not have permitted itself to give crucial excerpts of witness testimony the probative weight that it did.

61. As noted above, at the very least there are several critical findings based upon Kokaté's testimony as the only source.[191] Moreover, it is an adjudicated fact that Kokaté contributed to interference with testimony before the ICC. Had the Chamber properly characterised aspects of his testimony as lies, it should have found him so lacking in credibility that the Judgment should not have relied upon his evidence, corroborated or not. Confusing issues that go to credibility for those that go to reliability distorted the Chamber's analysis of his evidence. A piece-meal analysis focusing only on reliability, rather than a holistic assessment, led the Chamber to reach unreasonable conclusions. Although it *could* be true that "Kokaté, in his description [of meetings], may have been mixing up information concerning several separate meetings",[192] this inference is only compelling when applied to a credible witness seeking to tell the truth.

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[187] Lubanga AJ, para. 239.
[188] *Ibid*. *See also* Ntaganda TJ, para. 53.
[189] Ngudjolo AJ, para. 1.
[190] *Ibid*. (emphasis added).
[191] *See* e.g. para. 40 *above*.
[192] Judgment, p. 377, para. 1002.

62. The Chamber erred in conflating reliability and credibility in its assessment of P-0965. Despite finding that he inflated and misstated his position in the organisation and presented a notebook that he claimed to have copied from [REDACTED] notes, the Chamber concluded that these inconsistencies "were not such that rendered his testimony wholly unreliable".[193] Referring to the purported call from President Bozizé, "the Chamber has assessed the reliability of P-0965's evidence on a case-by-case basis in light of other evidence before it".[194] The basis for these findings cannot be explained by the vagaries of human perception, they concern the truthfulness of the witness' account.

63. The Chamber's approach to dismissing testimony from witnesses called by the Defence when it found them not credible illustrates the significant impact an adverse credibility finding would have had on the probative value of testimony from these Prosecution witnesses.

64. In contrast, the Chamber incorrectly assessed aspects of the testimony of Defence witness D30-4914 through a lens of credibility rather than reliability. It found "D30-4914's account did not appear truthful on certain aspects".[195] Although not fully articulated, this finding appears to rest on an alleged inconsistency regarding his nickname in 2013 that included reference to the "Anti-Balaka", while also testifying that "the term only came into being "after" 20 January 2014."[196]

65. The Chamber cited no evidence to support its finding that D30-4914's testimony was untruthful and even acknowledged it could not determine when or in what context the term "Anti-Balaka" first appeared.[197] The Judgment's only clear reference dates the emergence of the term "Anti-Balaka" to November 2013.[198] At most, D30-4914's testimony could be characterised as imprecise and not probative – i.e. the name "Anti-Balaka" was not official until 20 January 2014, or simply unreliable on this point in light of other evidence on the record.

[193] Judgment, p. 102, para. 311.
[194] Judgment, pp. 102-103, para. 314.
[195] Judgment, pp. 151-152, para. 471.
[196] *Ibid*.
[197] Judgment, p. 411, para. 1073 ("The evidence before the Chamber does not allow to conclude when or in which context the name 'Anti-Balaka' first appeared. It is clear from the evidence that this name was commonly used for the groups forming against the backdrop of the Seleka violence").
[198] Judgment, pp. 538-539, para. 1413 ("P-1577 said that he heard the term 'Anti-Balaka' for the first time during this trip to the CAR in early November 2013. When travelling out of Bossangoa on occasion, P-1577 came across individuals that identified themselves as Anti-Balaka, who also said that bridges had been removed so that Seleka vehicles would not be able to travel at speed along the roads and would have to stop") and p. 552, para. 1455 ("[…] a press release published on 'ohchr.org' on 8 November 2013, which mentions an attack on Bouar on 26 October 2013 by 'self-defence militias, known as anti-Balaka' […]").

66. Paragraph 471, which describes much of the Chamber's view of this alleged credibility issue, contains two further errors of fact. First, it links the use of the term "Anti-Balaka" in October 2013 to D30-4914's apparent nickname, [REDACTED].[199] However, his answers indicate that this nickname was used in January 2014, not 2013.[200] Second, the Chamber wrongly concluded that he agreed to this nickname. Asked about it four times,[201] his only unequivocal affirmative answer was to the question of whether the population used the nickname [REDACTED],[202] not [REDACTED].[203] The Judgment therefore unreasonably and inadequately concludes that this testimony impugns D30-4914's credibility.

67. These errors led the Chamber to treat D30-4914, who provided exculpatory evidence, as dishonest, rather than lacking sufficiently reliable information to support certain factual conclusions.

4. Erroneous inference of speculation resulting from the Trial Chamber's own inaction

i. The Chamber disregarded [REDACTED] offer to provide his sources

68. The Judgment erred in fact and law in finding Defence arguments that a scheme to falsely incriminate Mr Ngaïssona affected the credibility of testifying witnesses was wholly speculative and unsubstantiated.[204] According to the Chamber, "[REDACTED] evidence on the alleged meetings to incriminate Mr Ngaïssona, […][was] entirely speculative and based on anonymous hearsay",[205] and concluded that he "did not provide any further information that could assist the Chamber in evaluating the weight to be given to these claims".[206] This finding is incorrect: [REDACTED] offered additional information,[207] but neither the Prosecution nor the Chamber followed up on it at the time, and there is no indication that the Prosecution did so subsequently. [REDACTED] explicitly offered the Chamber the name of his source of information within the [REDACTED] for the conspiracy against Mr Ngaïssona.

[199] Judgment, pp. 151-152, para. 471 ("*At the same time*, D30-4914 denied the existence of the Anti-Balaka before October 2013, claiming that the term only came into being 'after' 20 January 2014 […]" (emphasis added)).
[200] **D30-4914:** T-303, p. 70, lns 16-22 [REDACTED].
[201] **D30-4914:** T-303, p. 67, lns 10-12 [REDACTED].
[202] **D30-4914:** T-303, p. 68, ln 5 ("A: Yes, Mr Prosecutor").
[203] Judgment, pp. 151-152, para. 471.
[204] Judgment, p. 140, para. 431 [REDACTED].
[205] [REDACTED].
[206] [REDACTED].
[207] [REDACTED].

69. The establishment of the truth is a core objective of the Statute, and the Trial Chamber must *actively* contribute to it.[208] Yet the Chamber took no action, despite holding broad powers under Article 64(6), as further elaborated in jurisprudence. The Chamber is under the stringent obligation to ensure that a trial is fair,[209] but this obligation "is heightened in circumstances where the Chamber *is aware* of *possible* efforts to distort witness testimony or the truth finding process."[210] Nevertheless, it failed to follow up.

70. The Chamber could not expect the Prosecution to ask the question as it had erroneously, already relieved the Prosecution of its obligation to ask questions in court "to aid"[211] the Defence's case and thereby pursue the truth.[212]Although that decision occurred late in the trial[213] and is a separate and subsidiary procedural error, it forms part of a wider flawed evidentiary framework. The Yekatom Evidence Exclusion Decision permitting the Prosecution to only pursue its case-theory is in striking contrast to the approach of other trial chambers.[214] In *Abd-Al-Rahman*, the Chamber reaffirmed jurisprudence from the Kenya trials and other cases, holding that where there are reasonable grounds to believe information outside the Prosecution's possession may be potentially exculpatory, Article 54(1) of the Statute obliges the Prosecution to make reasonable efforts to obtain it.[215] Here the effort required of the Prosecution was trivial, the Prosecution could have asked a follow-up question or sought permission to speak with the witness post-testimony.

71. The Yekatom Evidence Exclusion Decision appears to allude to the more adversarial approach to common law proceedings, but it is mistaken in implicitly suggesting that prosecutors in such systems have no obligation to pursue the truth. As far back as 1954, precisely to avoid the mis-perception that a prosecutor is an amoral contestant, the Canadian Supreme Court emphasized that the purpose of a criminal prosecution is not to secure a conviction but to present credible

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[208] Ngudjolo AJ, para. 256. *See also* Rome statute, Article 69(3).
[209] Rome Statute, Article 64(2).
[210] Ngudjolo AJ, para. 275 (emphasis added).
[211] Yekatom Evidence Exclusion Decision, para. 28 ("While Article 54(1)(a) of the Statute makes it clear that the Prosecution is conceived of as an 'objective truth seeker and not as a partisan lawyer' during the investigation phase, it cannot be denied that thereafter it is expected to focus on proving the confirmed charges. Considering this, *the Prosecution has no obligation to ask questions to aid the Defence's case* and cannot be reprimanded for limiting its witness examinations to questions in support of its own case theory." (emphasis added)).
[212] Pursuant to Rome Statute, Article 54(1)(a) ("The Prosecutor shall: […] (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally").
[213] [REDACTED].
[214] Yekatom Evidence Exclusion Decision.
[215] Abd-Al-Rahman TJ, para. 126.

evidence fairly and fully. The prosecutor's role excludes any notion of "winning or losing" and is a matter of public duty, requiring an ingrained sense of fairness and justice in judicial proceedings.[216]

72. Even if it was not incumbent upon the Prosecution to ask [REDACTED] for the phone numbers both to follow-up and identify the sources of his information, then it was wholly incumbent for the Chamber to do so – given that it had assumed this responsibility considering the Yekatom Evidence Exclusion Decision.

ii. The error materially impacts credibility findings throughout the Judgment

73. There are two aspects to the Chamber's error that impact upon the Judgment. First, the Chamber shifted its own failure to inquire further to the detriment of the witness' account and the prejudice of the Appellant. A Chamber should not make adverse findings against a witness when it fails to act, just as a party's failure to confront a witness with a credibility impugning document may lead a Chamber to reject the admissibility of that document.[217] It was not reasonable for the Chamber to conclude that his testimony could not be evaluated when it had the power to obtain the information necessary to do so.

74. The second aspect of the error is the potential impact that follow-up would have had on the Judgment. This error goes to the presumption of innocence and the standard of proof. While assessing the impact is inherently speculative – legally speaking – the Chamber resolved the uncertainty of whether [REDACTED] information was reliable or mere speculation against the Appellant, inferring speculation absent [REDACTED] naming sources in court. This inference was arbitrary, particularly when contrasted against the Chamber's willingness to infer facts from other witnesses, such as P-2049, P-2453, P-1577 or P-2200, who likewise did not provide their sources.[218]

75. Had the Chamber not made this error, it would have evaluated other Defence arguments concerning the scheme through a lens that had an evidentiary foundation, and this would have changed the Chamber's appreciation of other testimony and evidence. The Chamber's finding that the interference scheme had no merit also contributed to the Chamber's negative

[216] Boucher v. The Queen, pp. 23-24 (emphasis added).
[217] Ntaganda Decision on Defence Bar Table Evidence Request, para. 6 ("while the failure to tender an item through a witness does not in and of itself prevent it from being admitted from the bar table, it may have an impact upon the Chamber's admissibility assessment").
[218] *See* e.g., paras 138, 151, and 319 *below*.

impression of [REDACTED] credibility[219] and elevated the credibility of other witnesses' testimony who were implicated in the scheme.

76. Once a judge has formed a strong opinion and found a witness is not credible on an important aspect of the witness' testimony, there is a heightened risk that the judge will be more likely to see other contested evidentiary issues through a 'tunnel vision' thus contributing to other errors.[220] As noted in a recent Canadian Supreme Court judgment "[t]he anchoring effect is a well-known cognitive bias: final judgments are disproportionately biased toward the starting point of a decision-maker's reasoning".[221]

77. Part of [REDACTED] basis for explaining the scheme to falsely incriminate the Appellant was connected to his reasons for the assessment of P-1719's character. The Chamber viewed these separate but related claims through the same lens – lacking substance. It dismissed allegations that P-1719 lied about Mr Ngaïssona as "based on speculations and hearsay"[222] and that they seemed "to be solely based on [REDACTED] assumptions having had contact with P-1719 over telephone".[223] Similarly, the Chamber discounted [REDACTED] impressions that P-1719 was "volatile" and "easy to corrupt", reasoning that these were based on his own reading of P-1719's behaviour rather than any objective information that could affect P-1719's reliability.[224] Both of these findings were factual errors. While the language he used was strong, he explained how P-1719's actions and behaviour led to this conclusion. His impression was based upon him finding out that P-1719 said different things to three different people (i.e. lying) and P-1719 showing no loyalty to his comrades by disappearing as soon an opportunity presented itself (i.e. he was an opportunist).[225] Moreover he noted that he stole cattle.[226] It is also an error that [REDACTED] provided no explanation for his belief that P-1719 was being used by [REDACTED] beyond "contact with P-1719 over telephone during which [P-1719] asked about his positions". A careful reading of his statement shows that [REDACTED] was shocked to find P-1719 working with [REDACTED] upon his return to Bangui and, from the time that [REDACTED] was at the border until he got to Bangui later in 2014, P-1719 had been calling

[219] Judgment, p. 140, para. 431 [REDACTED].
[220] *See* paras 64-66 *above*.
[221] R. v. Parranto, retrieved on 2025-11-20, para. 180.
[222] Judgment, pp. 113-114, para. 351.
[223] *Ibid*.
[224] Judgment, p. 113, para. 350.
[225] [REDACTED].
[226] [REDACTED].

him and asking for information that [REDACTED] considered sensitive.[227] He considered this as betrayal and spying.[228] In this context, a reasonable interpretation of why he was surprised to see P-1719 in a car with [REDACTED] was because he was referring to someone from [REDACTED] whom in his view made up the story of François Bozizé and Mr Ngaïssona financing the Anti-Balaka.[229] Given P-1719's willingness to realign himself so dramatically, [REDACTED] asks himself why P-1719 would do this and speculates that [REDACTED] was paying P-1719 based on his experience of P-1719's acts, criminal character, and willingness to deceive to pursue his interests. A reasonable interpretation of [REDACTED] comment about [REDACTED] paying P-1719 follows from [REDACTED] in the period of 2014 and the reference to Boy-Rabe being an implicit reference to the Anti-Balaka or Mr Ngaïssona. While this last interpretation of [REDACTED] testimony involves some inferences, the Chamber focused on it exclusively and ignored [REDACTED] direct experience of P-1719's duplicitousness and his grounded experience of a person who would lie where it benefited him.

78. By erroneously dismissing [REDACTED] testimony concerning P-1719's dubious credibility, the Chamber placed significantly greater weight on P-1719's testimony when it conflicted with that of [REDACTED]. It favoured P-1719 when [REDACTED] stated that P-1719 never received instructions from the Appellant in relation to [REDACTED], and when he noted that [REDACTED] was close to 'the authority' and was among those who received instructions.[230] P-1719's testimony counted against [REDACTED] when the Chamber found that it "does not consider credible […] the generalised claims […] that [REDACTED] would never have received any instructions from Mr Ngaïssona with a view to attacking villages in the CAR",[231] when the Chamber found him "not credible" when he claimed "that he was 'very surprised' when Mr Ngaïssona was chosen as coordinator as he had never heard of Mr Ngaïssona in connection with the Anti-Balaka before 2014",[232] and when the Judgment refers to other "self-serving" and "blanket-denials"[233] with reference to a claim that refutes P-1719's testimony.[234]

[227] [REDACTED].
[228] [REDACTED].
[229] [REDACTED].
[230] Judgment, pp. 739-740, para. 1991.
[231] Judgment, pp. 742-743, para. 1998.
[232] [REDACTED].
[233] [REDACTED].
[234] [REDACTED].

79. The error impacted upon the evaluation of other witnesses whom [REDACTED] and [REDACTED] suggested were involved in the scheme.[235] The Trial Chamber dismissed Defence challenges to the credibility of Prosecution witnesses as "mere speculation".[236] [REDACTED] was mentioned once in the Judgment. Absent the error, the Chamber would have had to assess whether testimony from Prosecution witnesses was false, partly distorted, or misleading and numerous findings would have needed to be examined through a more sceptical lens.

80. For example, the Chamber "generally relied"[237] upon P-0884's testimony despite [REDACTED] and [REDACTED] testifying that P-0884 had been improperly influenced. The Chamber's incorrect conviction that no evidence indicated a scheme impacted upon its appreciation of evidence. The Defence presented a disclosed *WhatsApp* message to P-0884 suggesting that pressure was exerted on him, yet the Chamber found that "there is no evidence on the case record supporting these claims and therefore considers that they are based on mere speculation and without merit".[238] This finding is unreasonable: the footnote to that conclusion acknowledges the message was on the record.[239] The Chamber's certainty that there was absolutely no scheme is further illustrated by the same footnote, which relies on P-0884's denial of pressure when presented with the message in the courtroom,[240] an approach in striking contrast to the Third Decision on Rule 68(2)(c), which reasoned that "assuming a witness was subject to improper interference, the likelihood of such a person openly admitting to such interference is close to nil".[241]

5. Inconsistent reliance on CDR evidence prejudicing credibility assessments

81. The Chamber erred in its evaluation of the call data records ('CDR') evidence through its inconsistent use of this material with respect to assessing the credibility of witnesses. Despite a lengthy general discussion on CDRs,[242] it failed on at least two instances to provide reasoning

[235] Notably P-1719, P-0884, P-1847, Kokaté, and P-2673.
[236] Judgment, p. 88, para. 268.
[237] Judgment, p. 89, para. 273.
[238] Judgment, p. 88, para. 268.
[239] Judgment, p. 88, fn. 320 ("the Chamber notes that in support of its argument that '[a]ccording to information circulating in Bangui in 2018 among high-ranking officials', P-0884 was 'being pressured', the Ngaïssona Defence solely refers to the content of a WhatsApp message allegedly sent by [REDACTED] (*see* P-0884: T-058, p. 83, lines 9-24). Further, the Chamber considers that the message, in any event and if anything, shows that P-0884 would not have given in to any pressure allegedly exerted on him").
[240] Judgment, p. 88, fn. 320.
[241] Decision on Rule 68(2)(d), para. 66.
[242] Judgment, pp. 52-64, paras 158-193.

or conclusions on how the evidence related to specific witness testimony and how Defence arguments with respect to CDRs could be reconciled with a holistic assessment of the record.

i. D30-4505's denial of purported calls with several individuals

82. The Chamber's reasoning about Mohi's phone contacts in paragraph 454[243] is not conclusively decipherable. However, it appears to have erroneously treated Mohi's denial of phone contacts with several individuals that were indicated in a CDR as impacting upon his credibility.[244] If the Chamber considered that Mohi's testimony about the CDR material presented to him was dishonest, then footnote 1776, addressing whether Mohi's testimony undermines P-1719's, contradicts such a finding.[245] That footnote recalls the Chamber's own finding that an absence of CDR evidence does not exclude the possibility of communication by other means.[246] Moreover, the same cited finding (i.e. paragraph 190) concludes that even if a CDR shows a call was placed, this alone cannot definitively prove that said individuals effectively engaged in a conversation.[247] The Chamber cannot logically use CDRs to undermine Mohi's credibility while also acknowledging that CDRs are not definitive proof of communication or its absence. This inconsistency undermines the Judgment's reasoning.

83. Additionally, the Chamber entered no findings on the attribution of phone numbers presented to Mohi by the Prosecution. If it accepted that these phone numbers were attributed to the individuals alleged, it did so without offering a reasoned opinion. The attribution of phone numbers was a hotly contested issue at trial, involving technical evidence that sometimes required balancing "a combination of elements, and some carry[ing] a greater weight than others",[248] and its role in a Prosecution's case at the ICC was novel. By leaving attribution unstated, the Chamber fell below the necessary minimum legal standard for providing a

[243] Judgment, p. 146, para. 454 ("The Chamber also notes that the witness denied having phone contacts with 'Machin Machin', Samy Urbain, and Eusebe Emtenou, when shown CDR reflecting such contacts. When asked whether he was ever in contact with Perrieur Dongombe, Brice Stanislas Mohi said that he did not know him at all and said that perhaps the latter worked for the federation").
[244] Judgment, p. 146, para. 454. The paragraph appears in the section titled 'Specific credibility assessments'.
[245] Judgment, pp. 283-284, para. 815, fn. 1776 ("The Chamber notes that it was suggested that CDR relating to numbers associated with the witness and [REDACTED] do not show any contacts (*see* P-1719: T-143, p. 59, line 3 – p. 61, line 8 referring to CDR, CAR-OTP-2101-6428). The Chamber recalls in this regard that the witness spoke of [REDACTED], as well as its general position that the absence of CDR does not, by itself, refute a witness' testimony as to the existence of contacts").
[246] Judgment, p. 64, para. 190.
[247] *Ibid*.
[248] Judgment, pp. 61-62, paras 179-180. *See* the whole discussion on CDRs, Judgment, pp. 52-64, paras 158-193.

reasoned opinion. The basis did not provide a single sentence explaining the attribution of the phone numbers that negatively impacted Mohi's credibility.

ii. Kokaté's alleged call with Mr Ngaïssona concerning Mr Ngaïssona's involvement with the attack on Bouar

84. The Chamber erred in concluding that Mr Ngaïssona was involved in liaising with the groups executing the attack on Bouar beforehand and then was informed of this attack.[249] Its finding, based on the testimony of Kokaté,[250] failed to consider relevant facts and circumstances. The Chamber recalled its general conclusion that the absence of CDR evidence does not exclude the possibility that a communication took place and used this to reject Defence submissions outright.[251] While such reasoning may be legitimate in some circumstances, it was unreasonable and incorrect given the specifics.

85. First, the Chamber failed to take into account a critical factor: Kokaté's testimony should at best be approached with caution. He was dishonest, involved in the crimes under consideration and he had a motive to shift blame to Mr Ngaïssona.[252] Even if the Chamber is correct that Kokaté distanced himself from the Anti-Balaka as of mid-February 2014,[253] testimony cited in the Judgment show that in late October 2013,[254] in the time-frame that the Chamber found the Bouar attack occurred,[255] Kokaté "was like a liaison person, contacted elements to mobilise them, he had a lot of connections in the military and in politics".[256] Second, the incriminatory claim against Mr Ngaïssona financing the Anti-Balaka emerged in testimony well after Kokaté's first interview in 2018[257] suggesting an attempt to shift blame to Mr Ngaïssona. The claim is uncorroborated: no witness overheard the alleged call, and Kokaté's testimony is the only direct evidence of Mr Ngaïssona's alleged involvement in the Bouar attack. Finally, the inference that no call occurred drawn from the absence of any indication of a call in the CDRs had probative value – even if limited – and should not have been dismissed. The Chamber's reasoning disregarded this and relied exclusively on a highly questionable source.

[249] Judgment, p. 556, para. 1467.
[250] Judgment, p. 554, para. 1460.
[251] Judgment, p. 554, para. 1460, fn. 3888. The Chamber considered that Defence submissions on CDR concerning numbers attributed to Mr Ngaïssona and a number used by Kokaté in France do not show any contact in October 2013 were of "no further import".
[252] *See* paras 34- 35 *above*.
[253] Judgment, pp. 603-604, para. 1597.
[254] Judgment, p. 556, para. 1467.
[255] Judgment, p. 556, para. 1467 ("late October 2013").
[256] According to P-2841, *see* Judgment, p. 336, para. 918.
[257] Judgment, pp. 80-81, paras 241-242.

iii. The error materially impacts credibility and other factual findings

86. Firstly, the Chamber's erroneous finding that the CDRs indicated Mohi was dishonest was a contributing factor to its adverse credibility assessment. This led the Chamber to view Mohi as "not forthcoming in his testimony and limit[ing] the scope of his knowledge"[258] and to assess "with great caution the veracity of Brice Stanislas Mohi's claims and opinions in light of other evidence received".[259]

87. The reduced credibility of Mohi unreasonably elevated the credibility of P-1719. Mohi's testimony directly challenged the credibility and reliability of P-1719's narrative on three critical issues. Mohi refuted ever [REDACTED] and that they received any financial support from Mr Ngaïssona or Bernard Mokom in Yaoundé.[260] These issues were significant because P-1719's account was among the few findings directly implicating Mr Ngaïssona in culpable acts. Yet, the Chamber dismissed Mohi's testimony with only a cursory reference to its credibility discussion of P-1719, after noting, among other issues, that Mohi denied phone contacts.[261]

88. A close reading of the Judgment's recitation of P-1719's evidence illustrates how the error leading to Mohi's diminished credibility contributed to the Chamber overvaluing the probative value of P-1719's opinions and narrative. However, it also may have contributed to the Chamber reaching another erroneous finding that negatively impacted Mohi's credibility. The Chamber found that:

> Brice Stanislas Mohi continued to *limit his own knowledge* about his interactions with other Central African individuals at the 'Total' gas station in Douala to football, and said that neither Mr Ngaïssona *nor the Anti-Balaka were ever discussed* during these conversations.[262]

Yet if P-1719 was credible then the Chamber was in error to conclude that Mohi was limiting his own knowledge since P-1719 corroborates Mohi's claim concerning no mention of the Anti-Balaka [REDACTED]. As cited in the Judgment: "*before* P-1719's meeting with Mr Ngaïssona,

[258] Judgment, p. 145, para. 449.
[259] Judgment, p. 147, para. 456.
[260] Closing Brief, pp. 185-186, para. 466.
[261] Judgment, p. 147, para. 455 ("Regarding the Ngaïssona Defence's arguments contesting Brice Stanislas Mohi's claim that Mr Ngaïssona financed the transportation of elements to the Cameroonian border, the Chamber recalls its conclusions concerning the credibility of P-1719's evidence" (sic)).
[262] Judgment, p. 146, para. 453 (emphasis added).

those based in Yaoundé did not share the information that they had just in any manner, *they were not yet talking about the Anti-Balaka* […]".[263]

89. Putting aside Mohi's credibility also appears to have distorted the Chamber's appreciation of P-1719's evidence, leading the Chamber to unreasonable conclusions. Firstly, P-1719's claim that [REDACTED] Mr Ngaïssona was recruiting people to resist the Seleka is double hearsay[264] – it does not prove that Mr Ngaïssona said it. Second, the Chamber treated P-1719's speculation on the source of money for his trip to the border as direct evidence,[265] despite its own findings pointing to Bernard Mokom as the source of financing and instructions. P-1719 testified that Bernard Mokom gave them instructions, provided money for travel, and gave P-1719 phone contacts [REDACTED].[266] Similarly, Mokom told them that military materiel was available for operations at the border.[267] Finally, P-1719 never received instructions directly from Mr Ngaïssona;[268] his belief that Mr Ngaïssona was the authority was based solely upon what others said.[269] The Judgment itself notes that Bernard Mokom [REDACTED] was part of the '*éminences grises*' of the movement, but P-1719 admitted he did not know Mr Ngaïssona's role in practical terms.[270] Moreover, P-1719 acknowledged that several personalities were in Yaoundé[271] and that, during his time at the border, the coordinator of operations was in Zongo – not Mr Ngaïssona.[272]

90. Secondly, the absence of CDRs showing a call between Kokaté and Mr Ngaïssona, while not conclusive, is significant. This absence introduced doubt that such calls occurred, given the unique character of Kokaté and the specific and highly incriminatory nature of his claim. The Chamber failed to take into account this fact when assessing the reliability of the allegation.

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[263] Judgment, p. 275, para. 801 (emphasis added).
[264] Judgment, pp. 283-284, para. 815 ("that Mr Ngaïssona was calling upon all people of the CAR in Cameroon to go back home because they had to rise up in resolve" (sic)).
[265] Judgment, pp. 341-342, para. 929.
[266] Judgment, p. 290, para. 829.
[267] Judgment, pp. 341-342, para. 929.
[268] Judgment, pp. 290-291, para. 830.
[269] Judgment, pp. 274-275, para. 800, pp. 283-284, para. 815, pp. 290-291, para. 830, p. 327, para. 898 and p. 331, para. 909 ("There were several personalities in Yaoundé and the person *he considered* as the leading personality, the captain of the ship, was Mr Ngaïssona and Bernard Mokom" (emphasis added)).
[270] Judgment, p. 275, para. 801.
[271] Judgment, pp. 331-332, para. 909 ("they knew that there was a coordination or directorate with a coordinator in Yaoundé, and they also knew that the coordinator of operations during that period was in Zongo, in Congo; this was known to everyone. There were several personalities in Yaoundé and the person he considered as the leading personality, the captain of the ship, was Mr Ngaïssona and Bernard Mokom, whom he met in Yaoundé and who gave him money for his transportation costs to the border").
[272] *Ibid*.

91. The error in discarding the Defence argument concerning CDRs was pivotal to the Chamber's finding that Kokaté's testimony was reliable. Kokaté's uncorroborated claim of a phone call with Mr Ngaïssona is the lynchpin of the Chamber's conclusion that Mr Ngaïssona liaised with the Anti-Balaka groups before the Bouar attack in late October 2013 and was later informed of it.[273] Without Kokaté's testimony, the conclusion sits on indirect evidence that does not withstand scrutiny to the level of beyond reasonable doubt: the finding that Mr Ngaïssona accompanied Bernard Mokom to the border,[274] hearsay evidence from P-2673,[275] speculation,[276] and hearsay evidence[277] in a repudiated statement from P-1847.[278] This flawed finding formed a core part of the 2013 liaising conclusions.[279]

92. The Chamber's responsibility to consider all relevant information was particularly important when it was examining Kokaté's highly incriminatory claim. Where a passage of testimony or an item of evidence is central or close to determinative of such a fact, a Chamber should give to such testimony or evidence extensive scrutiny. This is essential to uphold the presumption of innocence, ensure proof beyond a reasonable doubt and prevent a miscarriage of justice. The Chamber failed to meet this standard in its treatment of Kokaté's testimony.

6. Erroneous evaluation of witness speculation and inferences, leading to inconsistent credibility findings

93. The Trial Chamber erred in fact where it found certain witnesses' speculative statements or inferences as reliable and probative, while discounting comparable testimony from other witnesses and counting this against their credibility.

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[273] Judgment, p. 556, para. 1467.
[274] Judgment, p. 555, para. 1465.
[275] Judgment, p. 554, para. 1461.
[276] Judgment, p. 554, para. 1462, fns 3891-3892 ("According to P-1847, Mr Ngaïssona was certainly also informed of the attack in Bouar, he was with Mokom father and they supported the fighters at the border; P-1847 could not say if Mr Ngaïssona financed them, but before their divide, Mokom and Mr Ngaïssona were very close. P-1847 thought Mr Ngaïssona was aware of the attack in Bouar because he was in constant communication with Godonam and Ndale").
[277] Judgment, p. 554, para. 1462, fn. 3891 ("P-1847 stated that [REDACTED] the attack on Bouar, which was a Seleka base, was prepared following the instructions of Bernard Mokom and Mr Ngaïssona, after their meeting in Yaoundé").
[278] *See* para. 19.
[279] Judgment, p. 289, para. 827 ("(i) Mr Ngaïssona provided financial assistance to some individuals that were to assist the efforts to bring François Bozizé back to power; (ii) Mr Ngaïssona liaised with various individuals with a view to organising and coordinating their steps to be taken; and, in this context, (iii) Mr Ngaïssona did travel to the border area between Cameroon and the CAR to liaise with groups which were to assist the efforts to bring François Bozizé back to power. The Chamber will address further below the question of whether Mr Ngaïssona was involved in issuing instructions in the context of attacks carried out by Anti-Balaka groups"), fn. 1824 *citing* pp. 553-556, paras 1459-1467.

i. The Chamber improperly derived factual findings from impermissible speculation regarding the sources and purposes of money

94. The error is present in the finding of "overwhelming evidence"[280] on "Mr Ngaïssona providing financial assistance to individuals willing or meant to assist the efforts in bringing François Bozizé back to power already while still in Cameroon".[281] This conclusion rests on witness speculation based on hearsay evidence. One of the main erroneous supporting findings is that "the money given to P-1719 and his group by Bernard Mokom did, in fact, come from Mr Ngaïssona".[282] P-1719's direct evidence was that Bernard Mokom instructed him and gave him money.[283] Yet the Chamber unreasonably accepted P-1719's inference, based on rumours of a leadership contest,[284] Mr Ngaïssona's wealth and that he set up an appointment with him by phone,[285] and Mr Ngaïssona waving from a balcony.[286] P-1719 confirmed that the appointment was not premised upon asking for money for transport,[287] and at that appointment, he neither spoke to Mr Ngaïssona nor received money from him.[288]

95. Although the only reasonable conclusion of P-1719's testimony is that it was speculative, the Chamber further erred in failing to account for his pattern of speculation, which appears repeatedly throughout the Judgment.[289]

96. Seemingly aware of the tenuous nature of P-1719's testimony, the Chamber erroneously used P-2673's evidence to corroborate P-1719. However, P-2673's evidence is equally speculative

[280] Judgment, pp. 289-290, para. 828.
[281] *Ibid*.
[282] Judgment, pp. 290-291, para. 830.
[283] Judgment, p. 290, para. 829.
[284] Judgment, pp. 274-275, para. 800 ("he heard there was a leadership struggle between Levy Yakété and Mr Ngaïssona").
[285] Judgment, pp. 283-284, para. 815 ("He said that there were several transactions, 'the leader' sent him money regularly, which meant that there was regular communication between them"), pp. 290-291, para. 830 *citing* **P-1719:** T-143, p. 13, ln. 23 to p. 14, ln. 3 ("What led me to think and believe this is that, since Douala, the person I spoke to over the phone was Mr Ngaïssona. It was Mr Ngaïssona, Edouard, who set up the appointment. I never spoke over the phone to Mr Mokom. Not at all. Now, one question: Who told Mr Bernard Mokom that I was on my way so that he could come and welcome us?").
[286] Judgment, p. 290, para. 829 ("They met with Bernard Mokom who said that there was a group which had come before them and gave them some instructions; then Mr Ngaïssona came out, greeted them from the balcony and went back inside; a bit later, Bernard Mokom came out with money in his hands, saying, 'My children, each one of you is to get […] 15,000 CFA, just to pay for the transportation from Yaoundé to Garam Boulaye'").
[287] Judgment, p. 284, para. 816, fn. 1783 *citing* **P-1719:** T-143, p. 32, ln. 22 to p. 33, ln. 19, p. 34, lns 4-25.
[288] Judgment, pp. 290-291, para. 830, fns 1832-1833.
[289] Judgment, pp. 283-284, para. 815 [REDACTED]; pp. 274-275, para. 800 ("P-1719 *assumed* that one of the people in direct contact with Mr Ngaïssona was Kevin Kpefio" (emphasis added)); and pp. 331-332, para. 909 ("There were several personalities in Yaoundé and the person *he considered* as the leading personality, the captain of the ship, was Mr Ngaïssona and Bernard Mokom" (emphasis added)).

and inconclusive. His *direct* evidence was that he received money from Mokom father[290] and again Mokom father was the person urging individuals to go fight, not Mr Ngaïssona.[291]

97. P-2673 explained he knew that the money [REDACTED] from Mr Ngaïssona because of conversations with [REDACTED] who had visited the residence,[292] yet he could not identify the source of their information.[293] His speculative reasoning is evident in court when he claimed that "Ngaïssona gave the money to Mokom father *because they shared the same residence*", presenting this as a fact rather than something he merely had been told.[294] Further, P-2673 admitted he did not know where Mr Ngaïssona got his money from,[295] yet relied on double hearsay evidence – purportedly originating again from Mokom father – that Marius Feiganazoui contributed funds and that "many wealthy Gbaya" provided money though he "[did] not know their names".[296] Crucially, the Chamber failed to incorporate its own prior finding that P-2673 "made clear that some of the information he received from others turned out to be incorrect"[297] and "admit[ed] that he might have received false or misleading information"[298] despite noting that his claims contributed to his credibility in general.

98. The Judgment also erroneously refers to P-2027's evidence to bolster P-2673's testimony. In footnote 1841, "Mr Ngaïssona gave money to Mokom father who was in charge of giving it out, and reported back to Mr Ngaïssona afterwards".[299] However, P-2027's testimony was unequivocal that the money Mr Ngaïssona provided him was limited and intended for a

[290] Judgment, pp. 291-292, para. 831 *citing* **P-2673:** T-041, p. 18, ln. 25 to p. 19, ln. 4 ("Ngaïssona gave money to the officers at 1 his residence, and Mokom father was responsible for distributing the money. Mokom father, when he was supposed [REDACTED].
[291] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 54.
[292] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 53 ("that is how I know this").
[293] *Ibid.,* ("[…] I was told that NGAISSONA was giving out money to MOKOM to give to the soldiers. I do not know how they knew this").
[294] Judgment, pp. 291-292, para. 831 *citing* T-041, p. 20, lns 8-12 ("Q. [10:29:51] So if I have understood, when you said "we had 50,000", it was Mokom father who did that? A. Ngaïssona gave the money to Mokom father because they shared the same residence, and Mokom was the one responsible for money. So he took
the money and he -- he accounted back and reported back to Ngaïssona afterwards." (emphasis added)).
[295] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 56 ("I do not know where NGAISSONA got this money from").
[296] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 55 ("Many wealthy Gbaya such as Marius FEIGANAZOUl provided NGAISSONA with this money to provide to the military men. FEIGANAZOUl was at the BEAC in 'YAOUNDE. [REDACTED] had told them that FEIGANAZOUl had provided his share of the money. I know that NGAISSONA got money from other wealthy Gbaya, but l I do not know their names").
[297] Judgment, pp. 139-140, para. 430.
[298] *Ibid*.
[299] Judgment, pp. 291-292, para. 831.

humanitarian purpose.[300] P-2027 also stated that, Mr Ngaïssona had helped him previously in Bangui[301] which casts a different light on other purported payments to CAR refugees in Cameroon. Moreover, P-2027 confirmed that no one else was present when he received the money,[302] he had no knowledge of any others receiving money from Mr Ngaïssona in Cameroon,[303] and he "felt no obligations toward him and didn't feel like I owed him something".[304] Nothing in P-2027's evidence corroborates P-2673; it does not mention Mokom father, reporting back, or bringing François Bozizé back to power.

99. The Chamber held witnesses called by the Defence to a stricter standard before it accepted their testimony as probative. Firstly, as discussed above,[305] it dismissed D30-4914's testimony on [REDACTED] as "entirely speculative and based on anonymous hearsay"[306] and led it to dismiss the allegations.[307] Yet, by comparison, P-1719's impressions of what occurred in 2013 were also formed from things he heard, speculative in nature, but were treated as probative.[308] Moreover, D30-4914's testimony is corroborated by D30-4197,[309] yet beyond one passing reference,[310] the Chamber entirely ignored the testimony of D30-4197. D30-4197's testimony was detailed. He explained how [REDACTED].[311] He explained his sources of information[312] and [REDACTED].[313] He also detailed the [REDACTED],[314] and identified [REDACTED].[315]

[300] **P-2027:** CAR-OTP-2078-0059-R03, at 0069-70, para. 62 ("[…] He gave me money in cash to take care of myself while he went to France. The money was for the hotel and food, it was money for me to get by. He didn't ask me to come to CAMEROON, that's not what the money was for. NGAISSONA was Minister for Youth and Sport so he helped a lot of people at the time. […]"); T-040, p. 18, lns 14-20 ("He is someone who does not like problems. And if you have problems yourself and he sees you, he can assist you, he gives you assistance. That's why I mentioned everything that I mentioned. Even retired persons who had unpaid arrears, he would come and see you and then he helps you, gives you some money. And when your money is paid by the treasury, you can reimburse his money. So in Bangui, that is what really happened with people that had problem. So even if you have 500 from him, thank God. But he helped people. He helped many people").
[301] **P-2027:** CAR-OTP-2078-0059-R03, at 0069-70, para. 62.
[302] **P-2027:** CAR-OTP-2078-0059-R03, at 0069, para. 61.
[303] **P-2027:** CAR-OTP-2078-0059-R03, at 0069, para. 61.
[304] **P-2027:** CAR-OTP-2078-0059-R03, at 0069-70, para. 62.
[305] *See* Ground I.B.4.
[306] Judgment, p. 152, para. 472.
[307] Judgment, pp. 113-114, para. 351 ("based on speculations and hearsay").
[308] *See* e.g., Judgment, pp. 274-275, para. 800 ("he heard there was a leadership struggle between Levy Yakété and Mr Ngaïssona").
[309] [REDACTED].
[310] [REDACTED].
[311] [REDACTED].
[312] **D30-4197**: T-278, p. 41, lns 1-6.
[313] **D30-4197**: *see,* e.g., CAR-D30-0027-0001-R01, at 0012, lns 414-419; T-278, p. 38, ln. 3 to p. 39, ln. 14, p. 40, ln. 20 to p. 41, ln. 6 [REDACTED]; T-278, p. 33, ln. 3 to p. 34, ln. 20 [REDACTED].
[314] **D30-4197**: T-278, p. 38, lns 17-19 [REDACTED].
[315] [REDACTED].

It was incumbent on the Chamber to identify its basis and at the very least explain why this testimony was "not credible".[316]

100. Secondly, while the Chamber accepted P-1719's speculations about Mr Ngaïssona, based on what others had said and a phone call,[317] it dismissed D30-4914's "impressions that P-1719's was "volatile" and "easy to corrupt", reasoning that these were based only on his own observations[318] and assumptions from telephone contact[319] – and seemingly far more phone calls.[320] Yet, P-1719's views of Mr Ngaïssona as an authority and financier at the time were based on no less than the same.[321]

101. Thirdly, the Chamber accepted P-2673's explanation that his knowledge about the money [REDACTED] allegedly coming from Mr Ngaïssona was based on conversations with [REDACTED] – without requiring identification or verification of those sources.[322] In contrast, D30-4914 identified his sources[323] of information concerning [REDACTED][324] [REDACTED],[325] but the Chamber was unable to give this weight.[326] The Chamber also erred in the evaluation of D30-4914's information about [REDACTED]. The Chamber appears to have understood[327] that D30-4914 was not certain as to whether [REDACTED];[328] however, this was not his testimony. He was not wholly certain about [REDACTED] but his testimony confirms that [REDACTED],[329] [REDACTED].[330]

102. Finally, the Chamber's inconsistent approach to speculation extended beyond the examples discussed. As mentioned throughout this brief, there are additional instances where speculative testimony, potentially fatal or highly detrimental[331] to a Defence witness when considered

[316] [REDACTED].
[317] *See* para. 94 *above*.
[318] Judgment, p. 113, para. 350.
[319] Judgment, pp. 113-114, para. 351.
[320] **D30-4914:** CAR-D30-0024-0001-R01, at 0025, lns 1001-1004 [REDACTED].
[321] The Appellant has argued *above* that D30-4914's evidence was in fact not mere speculation. *See* para. 68.
[322] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 53 ("[…] I was told that NGAISSONA was giving out money to MOKOM to give to the soldiers. I do not know how they knew this").
[323] *See* para. 68 *above*.
[324] [REDACTED].
[325] **P-2673:** CAR-OTP-2127-6435-R01, at 6443, para. 53 ("[…] I was told that NGAISSONA was giving out money to MOKOM to give to the soldiers. I do not know how they knew this").
[326] Judgment, p. 152, para. 473, pp. 113-114, para. 351.
[327] Judgment, p. 152, para. 473.
[328] *Ibid*., [REDACTED].
[329] **D30-4914:** T-303, p. 45, lns 22-25 [REDACTED].
[330] **D30-4914:** T-303, p. 52, lns 3-8 [REDACTED].
[331] *See* Judgment, pp. 842-843, para. 2334 discussed *above* at para. 41.

holistically – was instead accepted as proof of a fact.[332] The Appellant notes again the Chamber's willingness to find proof of crimes or their causal nexus with their perpetrators without witnesses providing their sources of information,[333] further illustrating this pattern of unequal scrutiny.

ii. The errors materially impact credibility findings and other factual findings

103. The errors led the Chamber to find that Mr Ngaïssona provided financing in 2013, contributing to charged crimes on 5 December 2013 and beyond, and that he exercised authority and played a role in several attacks in 2013 and 2014 – findings that underpinned the Chamber's conviction.[334]

104. At best, the testimony underpinning the Chamber's finding of "overwhelming evidence" of Mr Ngaïssona providing financing in Cameroon in 2013 amounts to uncorroborated inferences which no reasonable trial chamber could have accepted. By treating opinion as fact, the Chamber obscured this weakness. When viewed as speculations flowing from limited circumstantial evidence, the fragility of the Chamber's conclusions becomes clear, as multiple reasonable conclusions exist. The repeated mention of Mokom father giving money suggests many other plausible conclusions. Money from wealthy donors mentioned by P-2673 may have bypassed Mr Ngaïssona entirely and been given directly to Mokom father for distribution without Mr Ngaïssona's knowledge. P-1847's statement, as cited by the Chamber, supports this and names P-1719 among those whom Mokom father supported.[335] Alternatively, Mr Ngaïssona may have provided money for humanitarian purposes during that period, unaware that Mokom father was telling soldiers to go to the border – P-1719's narrative of phoning the Appellant is consistent with this. P-1719's own testimony describes how military officers assisted him in various humanitarian ways, reinforcing this interpretation.[336] A mixed scenario is also reasonable: money from wealthy donors destined for resistance may have been combined with humanitarian funds from Mr Ngaïssona by Mokom father, creating the impression and subsequent rumours that Mr Ngaïssona was giving money for the resistance.

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[332] *See* e.g., paras 183, 231.
[333] *See* paras 41, 138, 151, and 319 *below.*
[334] *See*, e.g., paras 75, 77-80 *above.*
[335] Judgment, pp. 741-742, para. 1996 ("P-1847 stated that Aaron Ouilibona, Kombo Juvenal, Zokoue alias 'Grand Machin' and Rocca Mokom participated in the attack on Beloko, they were financially supported by 'Mokom father'").
[336] Judgment, p. 283, para. 814 ("there was an officer called Sylvain, who rented a house in Douala and if there were problems with money, he would intervene and provide assistance to others; P-1719 visited another officer who had been a member of the presidential security because his wife prepared food for them.").

105. The Chamber's inconsistent approach to speculation also meant that exculpatory evidence was not considered. It affected its evaluation of D30-4914's testimony concerning the existence of [REDACTED][337] which led the Chamber to place disproportionate weight on P-1719's testimony and the evaluation of other witnesses whom D30-4914 and D30-4197 suggested were [REDACTED].[338] The Chamber's failure to engage with the potential impact of this scheme meant that the testimony of no less than five witnesses, whose evidence touched on numerous aspects of the Judgment, were inadequately scrutinised, leading to numerous prejudicial findings that significantly contributed to Mr Ngaïssona's conviction. The Chamber also arbitrarily ignored the testimonies of D30-4914 and D30-4197 as being allegedly speculative while these testimonies were concrete and corroborated each other and were relevant for the truth finding nature of the ICC and to prevent a miscarriage of justice. After all, the existence of [REDACTED] goes to the very heart of the obligation of the judiciary to at least investigate and give it due weight which the Chamber failed to do.

C. The Chamber's misapplication of relevant evidentiary standards led to factual findings that are fundamentally unsafe

106. This section addresses key factual findings that underpin the conviction decision. While the preceding section focused on the Chamber's misapplication of evidentiary and credibility standards, the analysis here scrutinises the factual findings themselves. These findings are central to the Judgment and, as demonstrated below, were reached on an unsound evidentiary basis or without satisfying the requisite standards, thereby impacting upon the integrity of the conviction.

1. The Chamber erred in fact and procedure in concluding on the objective of the Anti-Balaka attack on Bossangoa and its indiscriminate nature

107. Under Article 8(2)(e)(i) of the Statute, the Chamber had to be satisfied that the primary object of the attack was the civilian population or individual civilians. Situations in which the attack is directed against a military objective and civilians are only *incidentally* affected fall outside the scope of this provision.[339]

[337] *See* paras 75, 77-80 *above*.
[338] Notably P-1719, P-0884, P-1847, P-0801 (aka Kokaté), and P-2673.
[339] Katanga TJ, para. 802.

108. The verb 'to direct' is understood to mean "selecting the intended target and deciding on the attack".[340] Article 57(2) of Additional Protocol I further refers to "those who plan or decide upon an attack".[341] The crime, which is "directing the attack as such", concerns the decision-making process, not the execution of the attack.[342] The attack itself need not have taken place nor lead to actual harm to civilians.[343] Further, the perpetrator must have intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.[344]

109. Therefore, those who planned, selected and decided on the object of the attack, as well as their testimonies to these facts, are central to the assessment of this crime. They must be given significant consideration in said assessment.

110. Against this legal framework, the Chamber erred in fact when concluding that the Bossangoa attack aimed to chase away the Seleka and all Muslims from the town and that the Anti-Balaka targeted Muslim civilians without distinction.[345] These errors, as developed below, directly affected its finding that the crimes of directing attacks against the civilian population (Count 30), destruction of the adversary's property (Count 33), forcible transfer and deportation (Count 37), ordering the displacement of civilians (Count 38), severe deprivation of physical liberty (Count 39) and persecution (Count 42) were established.

i. The Chamber erred in fact when it concluded that the goal of the Bossangoa attack was to chase away the Seleka as well as all Muslims from the town[346]

111. First, the Chamber distorted Jo-Brice Ouabiro Dana's ('Dana') (P-0966) evidence. The Chamber relied on the witness' statement[347] to conclude that the task was to occupy the centre of Bossangoa and free Bossangoa so Christians could live in peace.[348] However, during his

[340] Ntaganda TJ, para. 917 *referring to* para.744. Fn 2300 of para. 744 states: "Compare Article 57(2) of Additional Protocol I, referring to 'those who plan or decide an attack'. Read in conjunction with Article 51, which forms the basis of the present war crime as included in Article 8 of the Statute, the direct perpetrator of any use of artillery must be understood as being the person deciding on the attack (*i.e.* the commander who selected the target and ordered the firing on it), as opposed to the person who operated the weapon system".
[341] Additional Protocol I, Article 57(2).
[342] Ongwen TJ, para. 2758; Ntaganda TJ, para. 904.
[343] Katanga TJ, para. 799; Abd-Al-Rahman TJ, paras 690, 709; Ntaganda TJ, para. 904; Ongwen TJ, para. 2760.
[344] Elements of Crimes, Article 8(2)(e)(i), para. 3. *See also* e.g, Katanga TJ, para. 806.
[345] Judgment, p. 30, para. 82, p. 963, pp. 967-971, paras 2777-2789, pp. 977-978, 2811-2814, pp. 993-994, para. 2861, pp. 1408-1409, paras 4121-4124.
[346] Judgment, p. 30, para. 82, pp. 963-968, paras 2777-2781.
[347] CAR-OTP-2031-0241-R03: summarised, drafted and structured by the Prosecution.
[348] Judgment, p. 968, para. 2778.

testimony, the witness clarified that the objective was to capture Seleka bases and drive out the Seleka so that people could move freely, without limiting this to Christians.[349]

112. Second, the Chamber failed to give sufficient weight to the testimonies of Dana and P-2602, the only two Anti-Balaka witnesses who led and participated in the Bossangoa attack.[350] Both testified unequivocally that the objective of the attack was to attack and chase the Seleka.[351] Their evidence was corroborated by Aurelien Llorca ('Llorca') (P-0287) – who the Chamber selectively relied on to determine the objective of the attack–[352] who testified that "the Anti-Balaka could have been heard saying that they wanted to chase out all Muslims, whereas in the choice of words by the leadership, reference was only being made to Seleka in order to avoid any amalgamation of issues based on religion".[353]

113. Instead, the Chamber relied on evidence proposed by witnesses who did not participate in the attack: an interview of Llorca dated April 2015,[354] P-2453's evidence on a conversation he allegedly overheard between two Anti-Balaka members in early September 2013,[355] and P-1577's account of a conversation with unnamed Anti-Balaka elements after the attack.[356] Respectively, the evidence is non-contemporaneous, non-contemporaneous double hearsay, and anonymous hearsay. As such, a reasonable trier of fact would have given little to no weight to evidence of this nature.

114. Even if, *arguendo*, non-contemporaneous evidence is deemed indicative of the Anti-Balaka's objectives on 5 December 2013, direct evidence – proposed by Anti-Balaka members no less – was available and ignored. P-2251, a low-level Anti-Balaka who participated in the attack on Bossangoa and its surroundings in September 2013, testified that "[t]he purpose of the attacks, the main objective was to chase the Seleka out of our villages".[357] Similarly, Dana testified that "[t]he objective was to conquer all the Seleka bases who were in the smaller villages around

[349] **P-0966:** T-118, p. 7, lns 4-9, T-117, p. 40, lns 3-23.
[350] Judgment, p. 963, para. 2766, p. 975, para. 2805, pp. 977-978, para. 2811. The Chamber further noted that P-0966 "had direct insight into this Anti-Balaka's group's objectives", *see* Judgment, p. 968, fn. 6840.
[351] **P-0966:** T-117, p. 57, lns 3-5; **P-2602:** CAR-OTP-2118-9664, at 9676-9677, lns 403-433. *See also* **P-2602:** CAR-OTP-2118-9560, at 9578, lns 592, 607-609 ("the plan was to chase away the mercenaries" and "We never had a plan to take over the country. But our plan was only to chase away the mercenaries. When people say that we were killing our brother Muslims, it's not true. That's a lie. That's ... our target was only to chase away the mercenaries").
[352] *See below* para. 113.
[353] **P-0287:** T-020, p. 28, lns 2-5.
[354] **P-0287:** CAR-OTP-2115-0239-R01, at 0265, para. 131; Judgment, p. 968-969, para. 2781.
[355] Judgment, p. 968, para. 2780.
[356] Judgment, p. 968, para. 2779.
[357] **P-2251:** T-043, p. 22, lns 4-5.

Bossangoa before going to Bossangoa".[358] He added that during the attack on Bossangoa in September 2013, they "[…] fought against Seleka, not against women or other civilians".[359] P-2602 similarly testified that the "[…] objective was to chase away the mercenaries" from the Ouham region.[360] While these statements relate to September 2013, they reveal a consistent operational focus on Seleka combatants rather than civilians. The Chamber failed to explain why such direct, insider testimony was given little weight, while relying instead on non-contemporaneous hearsay, on the Ouham region in general, collected in 2015 and anonymous accounts proposed by P-2453 and P-1577.

115. Therefore, given the weak supporting evidence and the significance of contradictory evidence,[361] no reasonable trier of fact would have reached the conclusion that the Anti-Balaka's objectives included chasing away the Muslim civilians beyond a reasonable doubt.

ii. The Chamber erred in procedure when it failed to articulate a reasoning for preferring hearsay evidence over direct evidence

116. As mentioned above, the Chamber relied on evidence proposed by witnesses who did not participate in the attack while failing to give due weight to that proposed by Anti-Balaka's members. The Defence recalls that the Chamber itself concluded that P-2602 is "generally credible" and that he has "a vast amount of first-hand knowledge about the events in 2013, especially about […] the attacks in the Bossangoa region".[362] The Chamber also heavily relied both on P-2602 and Dana's evidence on the intended target to describe the hostilities during the advance towards Bangui.[363] Yet, it failed to provide reasoning as to its choice to not rely on them to then establish the objective of the attack on Bossangoa in favour of non-contemporaneous, non-contemporaneous double hearsay, and anonymous hearsay.

117. As such, the Chamber committed an error of procedure and deprived the Defence of the means to understand and challenge the basis for the Trial Chamber's finding.[364]

[358] **P-0966:** T-116, p. 52, lns 21-23.
[359] **P-0966:** T-117, p. 55, lns 10-20.
[360] **P-2602:** CAR-OTP-2118-9641-R01, at 9651-9652, lns 336-346.
[361] *See* Ground I.A. *See also* reasoning in Bemba AJ, para. 44; Ntaganda AJ, para. 42.
[362] Judgment, p. 138, para. 427.
[363] Judgment, pp. 503-506, paras 1307-1313, 1317-1318, pp. 524-525, para. 1371.
[364] *See* Lubanga AJ, para. 313; *see also* Liakat Ali Alibux Judgment, para. 86.

iii. The Chamber erred in fact when it found that the Anti-Balaka targeted the Muslim civilians and drew no distinction between them and the Seleka to conclude that the civilian population was the object of the attack (Count 30)[365]

118. The Chamber erred in inferring the indiscriminate nature of the attack from one single sentence in Dana's written statement:[366] "'whoever was a Muslim was a Seleka' in Bossangoa".[367] By focusing exclusively on this sentence, the Chamber distorted the overall meaning of Dana's testimony, and ignored the remainder of the paragraph, where Dana explicitly stated that "those who came to face us were Seleka and we fought them",[368] and that his "attack was against the Seleka".[369] Further, his testimony was consistent with this clarification. Dana repeatedly stated that the intended targets of the attack were the Seleka and their bases.[370] He testified, for example, that they went to Boro because it was indicated to them that Seleka posts and bases were located in that neighbourhood, where they were ultimately attacked.[371] This evidence was relied on by the Chamber in its own description of the attack's unfolding,[372] yet it failed to reconcile this with its conclusion that the Anti-Balaka targeted combatants and non-combatants indiscriminately.

119. His evidence that he could not know who was military or civilian and fought all armed individuals[373] further shows his intent to distinguish those engaged in hostilities and those who did not. However, the Chamber erroneously read his testimony through the lens of his written statement instead of reading it as corroborative of his consistent oral evidence.

iv. The above errors materially impact the Judgment by forming the basis for the Chamber's conclusions on Counts 30, 33, 37 to 39 and 42

[365] Judgment, p. 1389, para. 4055.
[366] CAR-OTP-2031-0241-R03: Summarised, drafted and structured by the Prosecution.
[367] Judgment, p. 977, para. 2811; *see also* pp. 993-994, paras 2861-2862, p. 1389, para. 4055, pp. 1408-1409, paras 4121-4124.
[368] **P-0966:** CAR-OTP-2031-0241-R03, at 0252, para. 64.
[369] **P-0966:** T-117, p. 57, lns 3-5.
[370] *See* **P-0966:** T-117, p. 43, ln. 15 to p. 44, ln. 1, p. 47, ln. 22.
[371] **P-0966:** T-118, p. 6, lns 11-21.
[372] Judgment, p. 974-975, para. 2799 ("Jo-Brice Ouabiro Dana stated that he was in [REDACTED] group which took the main road to Bossangoa, approaching from Benzambé in the north where there was a Seleka base near the cemetery"), para. 2800 ("P-2602 stated that Théophile Ndangba attacked the secondary position of the Seleka at the Kafa cemetery"), para. 2801 ("Jo-Brice Ouabiro Dana and P-2602 each stated that they approached from Benzambé in the north where there was a Seleka base near the cemetery and attacked and fought against the Seleka in military uniform"), para. 2805 ("Specifically, Jo-Brice Ouabiro Dana stated that they went to Boro because this location had been indicated to them as a Seleka post or base, and they found the Seleka there and attacked").
[373] **P-0966:** T-117, p. 56, ln. 25 to p. 57, ln. 5.

120. In conclusion, the Chamber erred in its assessment of the Anti-Balaka's intent and conduct during the Bossangoa attack by mischaracterising both the objective of the operation and the nature of the targeting. These errors are material. The conviction for directing attacks against civilians rests on the finding that civilians were the primary object of the Bossangoa attack. Similarly, the Chamber based the perpetrators' *mens rea* on the object and indiscriminate nature of the attack for Counts 30, 33, 37 to 39 and 42.[374] Further, the Chamber relied on its erroneous finding on the object and indiscriminate nature of the attack to establish the existence of an order to displace civilians in Bossangoa, therefore materially impacting its finding on Count 38.[375] Not only is the Chamber's finding on the object and indiscriminate nature of the attack unreasonable, it also lowered the evidentiary threshold by treating mere conduct or the consequences of the attack as sufficient to prove an order to displace. This approach resulted in a finding that was not established beyond reasonable doubt. The Chamber misinterpreted the very nature of the crime as it is not the indiscriminate nature of an attack that establishes the existence of an order; rather, it is an order to attack indiscriminately that establishes an order to displace.[376] The Chamber failed to demonstrate that an actual *order* to displace existed,[377] including identifying who issued such an order and whether that person was in a position to do so.[378]

121. In any event, had the Chamber properly weighed the evidence, it could not have concluded beyond reasonable doubt that the Anti-Balaka intended to target the civilian population or the latter to be the primary object of the attack. Also, had the Chamber given due weight to the testimonies of Anti-Balaka elements who led and participated in the attacks in the Ouham Region, it would not have reasonably concluded on the indiscriminate nature of the attack.

122. As such, the disproportionate reliance on indirect, hearsay evidence, and misinterpretation of key testimonies to establish the object of that attack as well as the indiscriminate nature of the attack warrants reversal of Counts 30, 33, 37 to 39 and 42.

[374] Judgment, pp. 1408-1409, paras 4121, 4125.
[375] Judgment, p. 1397, para. 4083.
[376] Ntaganda TJ, para. 1088.
[377] Ntaganda TJ, para. 1080.
[378] *See* Ground I.C.2.iii.

2. The Chamber erred in law, procedure and fact in attributing the war crimes and crimes against humanity of murders, the war crime of destructions of properties belonging to the adversary, and the war crime of ordering the displacement of civilians to Anti-Balaka elements

123. The identification of the perpetrator is a *sine qua non* condition to establish any crime under the Statute, including murder and destruction of an adversary's property.[379]

i. The Chamber erred in law, procedure and fact in imputing the commission of the war crimes and crimes against humanity of murders in Bossangoa on 5 December 2013 to Anti-Balaka elements (Counts 31 and 32)

124. The Chamber erred in fact, law and procedure in attributing the alleged murders of all 18 individuals in Bossangoa to the Anti-Balaka.[380] The Chamber predominantly relied on untested Rule 68(2) testimony and (anonymous) hearsay evidence from witnesses who were confined at *École Liberté* at the time of the attack, who did not see the Anti-Balaka killing the victims. The Chamber selectively disregarded relevant and exonerating evidence, sometimes provided by the same witnesses it relied on. It is indiscernible how the Chamber's conclusion could have reasonably been reached from the evidence before it. Cumulatively, had the Chamber applied the correct legal standards, it could not have attributed the murders to the Anti-Balaka, and to Mr Ngaïssona.

a. The Chamber erred in procedure when it failed to provide a reasoned opinion in imputing the murders of eight individuals to Anti-Balaka elements

125. The Chamber erred in procedure by failing to provide a reasoned opinion under Article 74(5) for imputing the murders of Abakar, Ismael, Salamatou, Sale Adim, Abdallah Mahamat, Abdelkhadir, Mariam Yamwha and Amadou Oumarou to Anti-Balaka elements.[381]

126. The Chamber found that these eight individuals were killed by the Anti-Balaka,[382] yet failed to articulate any factual conclusion attributing these deaths to Anti-Balaka elements.[383] The Chamber merely stated that witnesses listed these names as victims of the 5 December attack.[384]

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[379] Elements of crimes, Article 8(2)(c)(i)-1, para. 1, Article 8(2)(e)(xii), para. 1, Article 8(2)(e)(viii), para. 1, Article 7(1)(a), para. 1, Article 7(1)(d), para. 1.
[380] Judgment, pp. 30-31, para. 84, pp. 992-1008, paras 2858- 2895, pp. 1389-1390, para. 4057, p. 1390, paras 4058-4060.
[381] Judgment, pp. 30-31, para. 84, pp. 992-993, para. 2858, pp. 1006-1008, paras 2888-2895, pp. 1389-1390, pp. 1389-1391, paras 4057, 4060, 4062.
[382] *Ibid*.
[383] Judgment, pp. 1006-1008, paras 2888-2895.
[384] Judgment, pp. 1006-1008, paras 2888-2895.

For instance, the Chamber solely relied on P-2453's inclusion of the name of Abakar, Ismael, Salamatou, and Sale Adim in the list of 11 victims "which he collected from their relatives at school […] and were found in the vicinity of the imam's house".[385] Similarly, the Chamber did no more than note "P-2200 stated that [Abdallah Mahamat / Abdelkhadir / Mariam Yamwha / Amadou Oumarou]" were killed.[386] A reasoned opinion grounded in evidence was required to establish the causal nexus between the victims' deaths and the Anti-Balaka. Its absence violates Article 74(5) of the Statute and deprives the Defence of the means to understand and challenge the basis for the Trial Chamber's overarching finding.[387]

b. The Chamber erred in law when it concluded on the alleged murders of Abdallah Mahamat, Abdelkhadir, Mariam Yamwha and Amadou Oumarou on the sole basis of untested evidence

127. The Chamber erred in law when it concluded on the alleged murders of four individuals on the sole basis of P-2200's prior recorded testimony admitted under Rule 68(2)(c). This approach violates the principle that such testimony "must not form the sole or decisive basis for the conviction for a particular crime as such"[388] given that the accused has had no opportunity to challenge the evidence through cross-examination.[389] Despite the Chamber's reassurance that it would treat Rule 68(2)(b) and (c) prior recorded testimonies with caution as "the witnesses did not testify before the court and that the non-tendering party did not have the opportunity to examine them",[390] it relied solely on P-2200's prior recorded testimony to establish the murders of Abdallah Mahamat, Abdelkhadir, Mariam Yamwha and Amadou Oumarou.[391]

128. The Defence was never in a position to test the credibility or reliability of P-2200's proposed evidence, as it was introduced pursuant to Rule 68(2)(c). Unlike a transcribed interview, P-2200's prior recorded testimony was drafted, summarised and structured by the Prosecution. This is relevant because "[i]n relation to prior recorded testimony admitted under Rule 68(2) of the Rules, one aspect which should receive particular attention is the extent to which the examiner probed the witness' account and his or her interest in the case", and whether "the examiner made a genuine effort to ensure that the witness provided all relevant information and

[385] Judgment, pp. 1007-1008, paras 2892-2895.
[386] Judgment, pp. 1006-1007, paras 2888-2890.
[387] *See* Lubanga AJ, para. 313; *see also* Liakat Ali Alibux Judgment, para. 86.
[388] Ntaganda AJ, para. 630; *see also* Karadžić AJ, para. 449; Popović et al. AJ, para. 96; Đorđević AJ, para. 807; Haraqija and Morina AJ, para. 61; Shala AJ, para. 473.
[389] *See* Ground I.A.3.
[390] Judgment, pp. 65-66, para. 196.
[391] Judgment, pp. 1006-1007, paras 2888-2890.

not only the facts that may have been supportive of the examining party's case".[392] Bound by the Statute to mitigate this procedural disadvantage[393] and safeguard Mr Ngaïssona's right to confront the evidence,[394] the Chamber was obliged to treat P-2200's statement with caution and ensure that his proposed evidence was sufficiently corroborated by evidence tested in Court.[395] In this regard, the Defence recalls that there is no other piece of evidence on the alleged murders of these four individuals. Yet, the Chamber failed to address these concerns and instead hinged its conclusion on the murders on P-2200's statement only.[396]

129. Had the Chamber not committed this error of law, it would not have been able to attribute these murders to the Anti-Balaka, and impute these crimes to Mr Ngaïssona.

c. The Chamber erred in fact when it imputed the alleged murders of Abdallah Mahamat, Abdelkhadir, Mariam Yamwha, Amadou Oumarou, Abakar, Ismael, Salamatou, and Sale Adim to the Anti-Balaka without supporting evidence

130. The Chamber also erred in fact by relying on P-2200's prior recorded testimony because his statement never attributed the deaths of these four individuals to the Anti-Balaka.[397] P-2200 merely noted that the victims were shot, without identifying the perpetrators.[398] Similarly, for the alleged murders of Abakar, Ismael, Salamatou, and Sale Adim,[399] the Chamber committed an error by giving undue consideration to P-2453's proposed evidence. The Chamber relied primarily on P-2453, citing P-2049 as well to corroborate the identities of the victims.[400] Yet, P-2453 never testified to the identity of the attackers.[401] To the contrary, P-2453 expressly testified that he did not witness the course of the attack[402] and "could not see who were the

[392] Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 40.
[393] Rome Statute, Articles 64(2), 67(1)(e).
[394] Haraqija and Morina AJ, para. 61; Popović et al. AJ, para. 1226.
[395] Popović et al. AJ, para. 1226.
[396] *See* Al-Khawaja and Tahery Judgment, para. 147; *see also* Schatschaschwili Judgment, para. 123.
[397] Judgment, pp. 30-31, para. 84, pp. 992-993, para. 2858, pp. 1006-1007, paras 2888-2891, pp. 1389-1390, pp. 1389-1391, paras 4057, 4060, 4062.
[398] On Abdallah Mahamat, **P-2200:** CAR-OTP-2088-2146-R04, at 2155, para. 49 ("[…] il est mort d'une balle dans la tête."); on Abdelkhadir, **P-2200:** CAR-OTP-2088-2146-R04, at 2156, para. 50 ("[…] il a été tué d'une balle dans la tête […]"); on Mariam Yamwha, **P-2200:** CAR-OTP-2088-2146-R04, at 2156, para. 51 ("[…] elle est morte après avoir reçu plusieurs balles dans le corps […]; and on Amadou Oumarou, **P-2200:** CAR-OTP-2088-2146-R04, at 2156, para. 52 ("[…] il a été tué par balle […]").
[399] Judgment, pp. 30-31, para. 84, p. 992-993, para. 2858, pp. 1007-1008, paras 2892-2895, pp. 1389-1390, pp. 1389-1391, paras 4057, 4060, 4062.
[400] Judgment, pp. 1007-1008, paras 2892-2895. *See* fns 7173-7175 (" [t]he Chamber notes that P-2049 confirmed the name of '[Alleged Name of Victim]' as having been one of the victims of the attacks […]").
[401] **P-2453:** CAR-OTP-2111-0415-R04, at 0429-0430, para. 67.
[402] *Ibid*., para. 61; T-138, p. 42, lns 5-8.

aggressors".[403] The Presiding Judge even interrupted the Defence's line of questioning in this regard, qualifying it as a "waste of time" because "the witness has now – I don't know how many times – repeated that he was not an eyewitness […] and he did not know who was shooting".[404]

131. As such, no reasonable trier of fact could have established the identity of the perpetrators on the sole evidence provided by P-2453 and P-2200. It is undiscernible how the Chamber's conclusion about the murders of Abakar, Ismael, Salamatou, Sale Adim, Abdallah Mahamat, Abdelkhadir, Mariam Yamwha and Amadou Oumarou[405] "could have reasonably been reached from the evidence before it" on such nexus.[406] Such a conclusion is inconsistent "with logic, common sense, […] [and] the pertinent principles of law".[407] Had the Chamber not committed such an error of fact based on the absence of supporting evidence, no link between their deaths and the Anti-Balaka could have been established.

d. The Chamber erred in fact when it found that no battle took place near the vicinity of the Imam's residence

132. Given the overwhelming documentary and testimonial evidence of both Seleka and Anti-Balaka presence in the vicinity of the Imam's residence, the Chamber erred in fact[408] by finding that "[…] no battle […] took place in the vicinity of the imam's residence", to attribute certain murders to the Anti-Balaka.[409] This conclusion rests on an unreasonable inference drawn from circumstantial evidence and a failure to take other evidence into account. First, the Chamber relied on P-1577's evidence that the closest Seleka base in relation to the Imam's residence was three to four kilometres away.[410] This is contradicted by a large body of testimonial evidence, which the Chamber previously noted,[411] and a map of Bossangoa, which places the Seleka bases a few hundred meters of the Imam's house.[412] Second, the Chamber emphasized that "the Seleka base at Boro school was there only temporarily during September 2013".[413] This is an

[403] **P-2453:** T-138, p. 42, lns 5-8. This was even noted later by the Chamber: *see* Judgment, pp. 1009-1010, para. 2900.
[404] **P-2453:** T-138, p. 42, lns 9-15.
[405] Judgment, pp. 30-31, para. 84, pp. 992-993, para. 2858, pp. 1006-1007, paras 2888-2891, pp. 1389-1391, paras 4057, 4060, 4062.
[406] *See* Lubanga AJ, para. 21.
[407] *See* Gbagbo and Blé Goudé AJ, para. 68.
[408] *See* reasoning Gotovina TJ I, paras 61-66, 703.
[409] Judgment, pp. 1004-1008, paras 2884-2887, 2892-2895.
[410] Judgment, p. 994, para. 2862.
[411] Judgment, pp. 961-962, para. 2763; *See also* **P-1577:** CAR-OTP-2081-0769-R01, at 0784-0785; **P-2602:** CAR-OTP-2118-9705, at 9708, ln. 93, at 9709, lns 109-119; **P-0966:** T-118, p. 7, lns 23-25, p. 8, lns 9-14.
[412] CAR-OTP-2118-9140.
[413] Judgment, p. 994, para. 2862.

irrelevant consideration since the Imam lived in the Arab neighbourhood,[414] nowhere near the *École Boro*.[415] Third, the Chamber failed to consider Dana's account on Anti-Balaka movements, suggesting convergence on and around the Imam's residence where, as mentioned by P-2049, the Anti-Balaka went to Arabe and Fulbe quarters to neutralise the Seleka.[416] This is corroborated by P-2602, who testified that the Anti-Balaka faced heavily armed Seleka in a midst of a gun battle.[417] Fourth, the Chamber's inference that no battle took place in the vicinity of the Imam's residence was not reasonable – let alone the only one – from the circumstantial evidence before it.[418] P-1577 saw heavily armed Seleka fighters move towards the Imam's residence and later photographed on 7 December 2013 thousands of spent cartridges, bullet holes, and blood spatter at the site.[419] A highly more probable conclusion from these indicators is that an intense battle took place there. The Chamber's finding to the contrary, in light of P-1577's evidence alone, is unreasonable.

133. A reasonable trier of fact would not have excluded the possibility that a battle took place at the Imam's residence and its vicinity. Had the Chamber not committed this error, it would not have inferred the attribution of the murders of the above individuals to the Anti-Balaka.

e. The Chamber erred in fact when attributing the alleged murders of Khadidja Adjaro, Koursi Abdelrahim, Abdel (a.k.a. Adaye) Abakar, Atahir Abou, Atahir Djime or Djimet, Halima Hisseini, Hamadou Bouba, Ousman Abacar and Ousman Abacar's mother to the Anti-Balaka without supporting evidence and based on hearsay evidence (Counts 31 and 32)

134. The Chamber erred by attributing multiple murders to the Anti-Balaka based primarily on (anonymous) hearsay evidence, without any direct or reliable identification of perpetrators.

135. The Chamber inferred, based on hearsay evidence and untested Rule 68(2) evidence, that the attackers of Khadidja Adjaro were Anti-Balaka.[420] None of the witnesses cited by the Chamber witnessed the murder.[421] Yet, the Chamber held that "Khadidja Adjaro was a Muslim civilian

[414] **P-2200:** CAR-OTP-2088-2146-R04, para. 17; **P-2049:** T-101, p. 66, ln. 14.
[415] *See* CAR-OTP-2118-9140.
[416] **P-0966**: T-118, p. 7, lns 23-25, p. 8, lns 9-14; CAR-REG-0001-0004; **P-2049:** T-103, p. 65, lns 7-9, p. 66, lns 11-21.
[417] **P-2602**: CAR-OTP-2118-9705-R01, at 9709, lns 109-121; *See also* CAR-OTP-2001-7145, at 7156 ("as we return to the Imam's house just after noon, heavily armed Seleka fighters arrive, and we find ourselves in the midst of a gun battle, when anti-balaka fighters enter Bossangoa").
[418] Bemba et al. AJ, para. 868.
[419] *See* CAR-OTP-2085-4192, CAR-OTP-2085-4202, CAR-OTP-2085-4212, CAR-OTP-2085-4222, CAR-OTP-2085-4232, CAR-OTP-2085-4242, CAR-OTP-2085-4252, CAR-OTP-2085-4262, CAR-OTP-2085-3122, CAR-OTP-2085-3582, CAR-OTP-2085-4062, CAR-OTP-2085-4082; **P-1577:** T-027, p. 59, ln. 19 to p. 63, ln. 6.
[420] Judgment, p. 996, para. 2868.
[421] P-2657, P-2462, P-2453, P-2200, P-2049.

killed by the Anti-Balaka during the Bossangoa Attack".[422] P-2657 testified that she never saw who attacked Khadidja Adjaro,[423] Koursi Abdelrahim,[424] or Abdel Abakar.[425] In the same vein, the witness only saw Atahir Abou's body, but failed to provide any evidence on the alleged attackers.[426] She further testified that she knew nothing about Halima Hisseini, only that she died,[427] as noted by the Chamber.[428]

136. The Chamber also concluded to the alleged identity or affiliation of the perpetrators of Abdel Abakar and Atahir Abou mainly based on the indirect account of P-2462. P-2462 testified that she did not see or know how Khadidja Adjaro, Atahir or Abdel Abakar died,[429] but only learned from [REDACTED], when the bodies were brought to *École Liberté*, that they were shot.[430] Although she may [REDACTED],[431] P-2462 said that she "was not in a position to know" how they died.[432] As such, P-2462 could not be safely relied upon to establish the alleged identity of their attackers.

137. The remaining witnesses on whom the Chamber relied lacked first-hand knowledge of these deaths and the identity of the perpetrators. P-2200, P-2049 and P-2453 provided only second-hand accounts gathered at *École Évêché, post facto*.[433] Further, none of them testified to the identity of the attackers. As such, not only did P-2200, P-2049 and P-2453 not testify to the identity of the alleged attackers of Khadidja Adjaro, Koursi Abdelrahim, Abdel Abakar, Atahir Djime, Atahir Abou, but their evidence is hearsay. Moreover, none of the witnesses relied by the Chamber permits the attribution of the deaths of Djime Atahir, Halima Hisseini and Hamadou Bouba to the Anti-Balaka, nor were they in a position to do so.

138. The Chamber erred in establishing that the attackers of Koursi Abdelrahim were Anti-Balaka based on hearsay and Rule 68(2) evidence. No evidence on record allows for the identification of the perpetrators of the acts, let alone that they were Anti-Balaka. None of the witnesses cited

[422] Judgment, p. 997, para. 2870.
[423] **P-2657:** T-105, p. 26, ln. 24 to p. 26, ln. 3.
[424] **P-2657:** T-105, p. 30, lns 10-11.
[425] **P-2657:** T-105, p. 26, ln. 25 to p. 26, ln. 3.
[426] **P-2657:** T-104, p. 41, lns 1-6.
[427] **P-2657:** T-104, p. 41, lns 7-12.
[428] Judgment, p. 1005, para. 2885.
[429] **P-2462:** T-059, p. 34, lns 8-11.
[430] **P-2462:** T-059, p. 34, ln. 14 to p. 35, ln. 2.
[431] **P-2462:** T-059, p. 23, lns 19-22.
[432] **P-2462:** T-059, p. 34, lns 8-11.
[433] **P-2200:** CAR-OTP-2088-2146-R04, at 2156, para. 58; **P-2049**, when specifically asked by the Presiding Judge about Khadidja Adjaro, Adaye Abakar and Koursi Adbelrahim: T-101: p. 8, lns 7-17, p. 9, lns 8-14; **P-2453:** CAR-OTP-2111-0415-R04, at 0428 para. 61; *see also* e.g., **P-2453:** T-138: p. 28, ln. 8 to p. 30, ln. 2, p. 44, lns 5-13.

by the Chamber witnessed the murder.[434] It also erred in finding that Ousman Abacar and Ousman Abacar's mother were killed by Anti-Balaka, based solely on the anonymous hearsay of P-1577. P-1577's evidence on the perpetrators of the alleged deaths of Ousman Abacar and his mother was relayed to him by "[…] a man who picked up the bodies […]".[435] The Chamber also cited a Human Rights Watch report,[436] whose source in this regard is an anonymous "Boro resident".[437]

139. Finally, the Chamber erred in inferring the attribution of the crimes of murder to the Anti-Balaka from its erroneous finding that there was no intense battle in the vicinity of the Imam's residence.[438]

140. In conclusion, while the evidence may have "suffic[ed] to establish the death of the individuals mentioned to the requisite standard",[439] it cannot establish beyond reasonable doubt that the Anti-Balaka were the perpetrators. No reasonable trial chamber would have established the nexus between the perpetrators of a crime and the victims thereof on the sole basis of uncorroborated and (anonymous) hearsay evidence.[440] Had the Chamber considered the hearsay nature of the evidence before it, as it did for Defence witnesses repeatedly,[441] it would not have attributed these crimes of murder to the Anti-Balaka.

f. The Chamber erred in fact, law and procedure when it attributed the alleged murder of "C-17" to the Anti-Balaka

141. The Chamber erred in attributing the alleged murder of C-17 to the Anti-Balaka by relying on P-2453's prior recorded testimony, while discarding his oral testimony, without any reasoning.

142. First, in his prior recorded testimony, P-2453 claimed the Anti-Balaka killed C-17.[442] However, when recounting the same events before the Chamber, not once was C-17 mentioned. As mentioned above,[443] the witness unequivocally testified that he could not see the aggressors and

[434] Judgment, pp. 998-999, paras 2872, 2874.
[435] **P-1577:** T-027, p.58, lns 14-15.
[436] Judgment, pp. 1003-1104, para. 2883.
[437] CAR-OTP-2001-2043, at 2055, fns 33-34.
[438] Judgment, p. 994, para. 2862, pp. 1004-1008, paras 2884-2887, 2892-2895. *See* Ground I.C.2.i.d.
[439] Judgment, p. 1001, para. 2877.
[440] *See* Ground I.A.2.
[441] *See* e.g., Judgment, p. 997, para. 2869, p. 999, para. 2873. *See also* Judgment, p. 1001, para. 2877.
[442] **P-2453:** CAR-OTP-2111-0415-R04, at 0429, para. 66 ("[a]t some point, the Anti-Balaka came very close to the school, they started shooting in our direction, killing […] one of the displaced Muslims, a 23-year old moto-taxi driver named Husseni alias "C-17").
[443] *See* Ground I.C.2.i.c., para. 130.

could not identify them.[444] The Trial Chamber acknowledged that P-2453 did not see the actual killing of C-17,[445] yet, it still relied on his statement because "the individual was his friend and he described the circumstances in which he was killed".[446] Such a conclusion is inconsistent with logic, common sense, or the pertinent principles of law.[447]

143. Second, giving precedence to a written statement over *viva voce* testimony violates the principle of publicity and orality laid down in Articles 64(7), 67(1), and 69(2) of the Statute.[448] Rule 68 is an exception, not the norm,[449] and its application must not be "prejudicial to or inconsistent with the rights of the accused".[450] Here, the Chamber failed to apply these statutory requirements.

144. Third, the Chamber's finding was reached in violation of the presumption of innocence[451] and the principle of *in dubio pro reo*.[452] P-2453's testimony[453] casts serious doubt on his ability to identify C-17's attackers, impugning the reliability of his evidence so much that it cannot sustain alone a finding that C-17 was killed by the Anti-Balaka.[454]

145. Finally, such a major inconsistency between P-2453's written statement and his testimony, should it not be considered in favour of the Accused, had to be at a minimum reconciled. Yet, the Chamber relied on P-2453's written statement without providing any justification. As such, the Chamber's finding is unreasoned.

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[444] **P-2453:** T-138, p. 43, lns 5-8.
[445] Judgment, pp. 1003-1004, para. 2883.
[446] *Ibid.*
[447] *See* Gbagbo and Blé Goudé AJ, para. 68.
[448] *See* Rome Statute, Articles 64(7), 67(1), and 69(2). *See also* Initial Guidance on Rule 68 of the Rules, paras 25-26. On *viva voce* testimony being the default mode of testifying, *see* Bemba AJ on Admissibility of Evidence, para. 76; Ruto and Sang AJ on the Decision regarding Admission of Prior Recorded Testimony, para. 84.
[449] *See* Ground I.A.3; *see also* Initial Guidance on Rule 68 of the Rules, paras 25-26. On *viva voce* testimony being the default mode of testifying, *see* Bemba AJ on Admissibility of Evidence, para. 76; Ruto and Sang AJ on the Decision regarding Admission of Prior Recorded Testimony, para. 84.
[450] Rules of Procedure and Evidence, Rule 68(1).
[451] *See* Ground I.A.5.
[452] Halilović AJ, para. 109.
[453] **P-2453:** T-138, p. 43, lns 5-8 ("[…] But I couldn't see who were the aggressors. I don't know who was shooting. I was lying down on the ground. We were ordered to lie down on the ground, so I can't see what's happening outside").
[454] *See* e.g., Ngudjolo AJ, para. 119.

ii. The Chamber erred in law, fact and procedure in imputing the war crime of destruction of adversary's properties in Bossangoa on 5 December 2013 to Anti-Balaka elements (Count 33)[455]

a. The Chamber erred in law when it established the identity of perpetrators for the crime of destruction in Bossangoa on the basis of hearsay evidence

146. In a case predominantly built upon (anonymous) hearsay evidence,[456] at least one piece of direct evidence is needed to establish the identity or the affiliation of the perpetrators beyond a reasonable doubt.[457] Anonymous hearsay evidence must be given low probative value, if any.[458] General caution is warranted in the consideration of hearsay evidence where such evidence constitutes the primary basis for a finding of fact,[459] such as the identification of a perpetrator.[460]

147. The identity of the perpetrators and the link between them and the crimes are the first *sine qua non* conditions to any crime, including the war crime of destroying the adversary's properties.[461] The Trial Chamber erred in establishing the identity of perpetrators for the crimes of destruction in Bossangoa on the sole basis of hearsay evidence.[462] By misapplying the standard established by the jurisprudence of the Court,[463] the Trial Chamber also deprived Mr Ngaïssona of the opportunity to challenge the evidence presented against him by depriving him the opportunity to question the source of the information at trial.[464]

b. The Chamber erred in procedure when it failed to provide reasons for attributing the destruction of the residential structures in the vicinity of the Imam's Residence to the Anti-Balaka (Count 33)

148. The Chamber erred in failing to provide any reasoning for attributing the destructions of the residential structures in the vicinity of the Imam's residence to the Anti-Balaka.[465] On the one hand, it acknowledged doubts surrounding both the dates of the destructions and the identity of the perpetrators, even observing that some destruction and looting was committed by

[455] Judgment, p. 31, para. 8, pp. 1015-1023, paras 2918-2938.
[456] *See* Closing Brief, paras 5-7.
[457] Rome Statute, Articles 66 and 69(4); *see also* Ground I.A.2.
[458] Judge Van den Wyngaert Dissenting Opinion on Interim Release, para. 4; Judge Ušacka Dissenting Opinion on Interim Release, para. 16.
[459] *See* Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 45.
[460] Shala AJ, para. 330.
[461] Elements of Crimes, Article 8(2)(e)(xii), para. 1 ("The perpetrator destroyed or seized certain property.").
[462] Judgment, pp. 1022-1023, para. 2938.
[463] *See* Ground I.A.2. Despite the Chamber's assertion that it will assess all of the evidence before it holistically and in light of the jurisprudence of the Court regarding the indirect and hearsay evidence. *See* Judgment, pp. 44-45, para. 137.
[464] Ntaganda TJ, para. 68; *see also* Judge Van den Wyngaert and Judge Morrison Separate Opinion, para. 64.
[465] Judgment, p. 31, para. 85, pp. 1015-1023, paras 2918-2938.

individuals other than Anti-Balaka.[466] On the other hand, it concluded, without further explanation, "that the Anti-Balaka burned and destroyed residential structures in the vicinity of the imam's residence at some point between 5 and 8 December 2013".[467] The Chamber did not reconcile these contradictions and explain how it reached this conclusion in light of contrary evidence.

149. Moreover, despite relying on the same evidence and reasoning for both pillaging and destruction in Bossangoa,[468] the Chamber acquitted Mr Ngaïssona of the crimes of pillaging (Count 34),[469] and directing an attack against religious buildings (Count 35), noting specifically that "witnesses testified to hearing about the destruction of the central mosque, but that there are no eyewitnesses to the central's mosque destruction".[470] The Chamber provided no reasoning to justify how it attributed the destruction of the residential structures to the Anti-Balaka in light of these parallel factual findings. This amounts not only to a procedural error but also to a violation of Mr Ngaïssona's right to a reasoned decision.[471]

c. The Chamber erred in fact when it imputed the destructions of houses to the Anti-Balaka between 5 December and 8 December 2013 on the sole basis of hearsay evidence (Count 33)

150. The Chamber erred in fact when it imputed the destructions of houses to the Anti-Balaka on 5 December 2013 on the basis of hearsay evidence from which it drew speculative inferences.

151. The Chamber relied on evidence which clearly does not support the attribution of the crimes to the Anti-Balaka. The UNITAR-UNOSAT Satellite imagery analysis simply reports destructions.[472] P-2193 never mentioned the Anti-Balaka, and P-2049 and P-2453 never attributed the destructions to them.[473] It flows that, if the evidence does not mention the Anti-Balaka, no matter how much of that evidence the Chamber relies on to establish the destruction of residential structures, it cannot sustain attribution to the Anti-Balaka: "[c]orroboration, like

[466] Judgment, pp. 1021-1023, paras 2931, 2935-2938. The Chamber concluded that the evidence "suggests that some destruction and looting in Bossangoa either took place at some point after the time period relevant to the charges or was committed by individuals *other than Anti-Balaka members"* (emphasis added).
[467] Judgment, pp. 1022-1023, para. 2938.
[468] Judgment, pp. 1020-1023, paras 2928-2938 ("[a]t the same time, the evidence before the Chamber suggests that some destruction *and looting* in Bossangoa either took place at some point after the time period relevant to the charges or was committed by individuals other than Anti-Balaka member" (emphasis added)).
[469] Judgment, p. 1647.
[470] Judgment, pp. 1026-1027, para. 2954, p. 1647.
[471] *See* Ground I.A.4.
[472] CAR-OTP-2127-6617, at 6622; CAR-OTP-2127-6626, at 6629.
[473] *See* **P-2193:** T-019; **P-2049:** T-101, p. 25, lns 4-19, p. 26, ln. 12 to p. 27, ln. 5; **P-2453:** T-136, p. 91, ln. 21.

relevance, is proposition specific".[474] Third, the Chamber erred in relying on the anonymous hearsay evidence of P-2453,[475] P-1577 and Rule 68(2)(c) witness P-2200[476] as the primary basis for attribution. P-1577 was only told that the Anti-Balaka set the buildings on fire, without naming a specific source.[477] Similarly, P-2200 based his identification of the alleged perpetrators as Anti-Balaka on "some children".[478]

152. Conversely, the Chamber failed to give due weight to relevant exculpatory evidence. It gave "no weight" to Dana's testimony, who stated that the Anti-Balaka did not set houses and schools alight on the day of the Bossangoa Attack,[479] and that it was the Seleka who burnt grass around houses.[480] The Chamber reasoned this evidence "does not undermine the allegation that Anti-Balaka may have been engaged in damaging or destroying structures in the aftermath of the Bossangoa Attack".[481] This reasoning is flawed for three reasons. Firstly, Mr Ngaïssona was charged and convicted for destructions allegedly committed on 5 December 2013.[482] Any evidence addressing that date[483] should have been given weight. Secondly, Dana, as an Anti-Balaka element who participated in the attack,[484] provided direct and contemporaneous testimony, one of only two such witnesses. Such evidence should have carried more weight than the anonymous hearsay relied upon by the Chamber.[485] Thirdly, the Chamber erred in ignoring the direct and contemporaneous testimony of P-2602,[486] who testified that houses were destroyed by angered Christian civilians after the Anti-Balaka had retreated outside of Bossangoa.[487]

153. In sum, while the Chamber received ample evidence on burned or burning houses, none permitted attribution to a particular group or individual. Had these errors not occurred, the

[474] *See* **P-2193:** T-019; *See* Gbagbo and Blé Goudé, Reasons of Judge Henderson, paras 44, 47.
[475] **P-2453:** T-136, p. 91, lns 2-6 ("I didn't leave because I was working and I didn't have the permission of my boss. Those who left to check their houses came and told us that our houses had been looted. Our houses had been burnt down and all that remained was the foundation; that no house was standing properly. And that is what they told us in the camp").
[476] Judgment, pp. 1017-1019, paras 2921-2925.
[477] **P-1577:** T-027, p. 63 ln. 23 to p. 64, ln. 13.
[478] **P-2200:** CAR-OTP-2088-2146-R04, at 2158, para. 65 ("[…] je me trouvais à l'école. […][c]ertains enfants se sont faufilés hors du site pour aller voir ce qui se passait dans leurs quartiers […]").
[479] **P-0966:** T-118, pp. 8-9.
[480] **P-0966:** T-118, p. 9, lns 6-13.
[481] *See* Judgment, pp. 1019-1020, para. 2926.
[482] CoC Decision, p. 109; Judgment, p. 1647.
[483] CoC Decision, p. 109 ("(vii) destruction of the adversary's property [...] in the context of the attack on Bossangoa on 5 December 2013 and in the days after the attack […]").
[484] As noted by the Chamber, *see* Judgment, p. 963, para. 2767.
[485] *See* Ground I.A.2.
[486] As noted by the Chamber, *see* Judgment, p. 138, para. 427.
[487] **P-2602:** CAR-OTP-2118-9785, at 9802, lns 582-583, CAR-OTP-2118-9705-R01, at 9712, lns 221-226.

Chamber could not have reasonably concluded that the Anti-Balaka were the perpetrators of the crime of destruction, nor imputed them to Mr Ngaïssona.

iii. The Chamber erred in procedure in failing to provide reasons on the position of the person giving the order to displace (Count 38)[488]

154. The first element of the crime of ordering the displacement requires that "[t]he perpetrator ordered a displacement of a civilian population".[489] Yet the Chamber never provided any reasoning or pointed to any evidence to identify such perpetrator – the person from whom the order emanated.[490] To the contrary, it confined itself to the finding that "the Anti-Balaka groups were ordered" to perform an act resulting in the displacement.[491] As such, the Chamber entered a crucial finding without adequate reasoning on the first prong of the crime.

155. It results from this finding that the Chamber failed to identify whether those who purportedly gave the order were in a "position to effect such displacement", which required assessing their position within the chain of command, and their authority to bring about the displacement.[492] Instead, the Chamber wrongfully assigned such position to the executors' practical ability (location or weaponry) to carry out the displacement – the well-armed Anti-Balaka.[493]

iv. The above errors materially impact the Chamber's conclusions on Counts 31, 32, 33 and 38

156. The Chamber erred in law, fact, and procedure by attributing murders (Counts 31 and 32) and destruction of adversary's property (Count 33) to Anti-Balaka on the basis of untested Rule 68(2) statements, hearsay, and anonymous hearsay, while disregarding direct and contemporaneous exculpatory evidence. It failed to provide reasoned findings on the nexus

[488] Judgment, p. 1398, para. 4085.
[489] Elements of Crimes, Article 8(2)(e)(viii), para. 1.
[490] *Contra* Trial Chamber VI's finding whereby it identified Mr Ntaganda, Mr Kissembo and Mr Mulenda as the persons giving the orders to UPC/FPLC troops to attack without making a difference between 'Lendu civilians' and the militia, *see* Ntaganda TJ, paras 1084-1094. *See also* Ntaganda TJ, para. 1082 ("the order to displace must emanate from a person […]").
[491] Judgment, pp. 1397-1398, para. 4084. *Contra* Trial Chamber VI's finding whereby it identified Mr Ntaganda, Mr Kissembo and Mr Mulenda as the persons giving the orders to UPC/FPLC troops to attack without making a difference between 'Lendu civilians' and the militia, *see* Ntaganda TJ, paras 1084-1094. *See also* Ntaganda TJ, para. 1082 ("the order to displace must emanate from a person […]").
[492] *See* Trial Chamber VI's reasoning whereby, to find that Mr Ntaganda was in a position to effect the displacement, it had to establish that Mr Ntaganda held the position of UPC/FPLC Deputy Chief of Staff in charge of Operations and Organisation, was in charge of deployment and operations of the UPC/FPLC and that his orders were obeyed: Ntaganda TJ, paras 1095-1097.
[493] Judgment, p. 1398, para. 4085.

between the crimes and Anti-Balaka, and its conclusions rest on speculative inferences rather than corroborated evidence.

157. For murders, the Chamber relied on second-hand accounts from witnesses who expressly stated they did not see the attackers. For destruction, it ignored evidence and failed to give due weight to evidence supporting that Anti-Balaka did not burn residential structures during the attack and that later destruction was carried out by civilians after Anti-Balaka had retreated. These errors undermine the essential element of the crimes: the identity of perpetrators. Applying the correct standard, no reasonable trier of fact could have concluded that Anti-Balaka committed these crimes.

158. The Chamber further failed to provide any reasoning as to the attribution of the crime of ordering the displacement of civilians (Count 38), which necessarily impacts Mr Ngaïssona's conviction of Count 38.

159. These findings underpin Mr Ngaïssona's convictions for aiding and abetting crimes allegedly committed by Anti-Balaka. If the crimes themselves cannot be attributed to Anti-Balaka, they cannot be imputed to Mr Ngaïssona. A reasonable trier of fact, applying the correct standard, would have acquitted Mr Ngaïssona on Counts 31, 32, 33, and 38.

3. The Chamber erred in fact and procedure in finding that Mr Ngaïssona provided funding to the Anti-Balaka ahead of 5 December 2013

160. The Chamber made a procedural and factual error when it found that the evidence concerning financial contributions established Mr Ngaïssona's criminal responsibility for aiding and abetting the charged crimes. The main factual finding that Mr Ngaïssona financed individuals "willing or meant to assist the efforts in bringing François Bozizé back to power"[494] is insufficient to establish Mr Ngaïssona's criminal responsibility. For several of the individuals that supposedly received Mr Ngaïssona's financial assistance, the Judgment provided no reasoning with respect to their affiliation or relevance to the Anti-Balaka movement. In the absence of a demonstrated connection between the individuals who received financial assistance and – at the very least – the group that later engaged in the commission of crimes, there can be no finding of criminal liability. Armed struggles often take place in the context of a wider political struggle. Yet, partaking in that political struggle, even by means of providing

[494] *See* Judgment, p. 289, para. 828; *similarly* at p. 21, para. 35.

financial assistance, does not automatically imply an involvement or responsibility for any potential armed actions undertaken by other individuals to reach that same goal in parallel.

161. The Chamber's error in identifying relevant acts of financial assistance, as discussed above, impacted onto several areas of the Judgment. The Chamber erred in assessing corroboration of Mr Ngaïssona's financial assistance to the Anti-Balaka in key locations such as Gobere, Bangui and Zongo. Evidence concerning Mr Ngaïssona's financial assistance to each of these groups was not assessed separately, but rather considered alongside evidence supporting the general allegation that Mr Ngaïssona financed individuals "willing or meant to assist the efforts in bringing François Bozizé back to power".[495] This approach to corroboration was procedurally incorrect, as it conflated financial contributions to different individuals, in different places and at different times, ultimately amounting to different facts.

162. While corroborative testimonies need not to be identical in all aspects and might differ with respect to some details, they are nonetheless required to confirm the same fact.[496] As aptly put by Judge Henderson in his Reasons for granting the no case to answer motion in *Gbagbo and Blé Goudé*:

> When evaluating the strength of the evidence for a particular proposition, the Chamber must determine the overall weight of the combined relevant evidence. However in doing so, it is important not to be distracted by the large amounts of evidence that have been submitted and to focus the analysis on evidence that is relevant to the fact and the issues under consideration. Corroboration only occurs when two pieces of evidence independently confirm the same fact. When exhibits relate to similar but different facts; for example, a number of killings that took place at different times and locations, even at close proximity, such evidence does not necessarily provide corroboration. It is equally not possible to argue in such a scenario that there is necessarily corroboration for a pattern of events, because the patterns do not exist independently from the individual instances that constitute it.[497]

163. In the present case, the Chamber grouped evidence that did not relate to the same facts, thereby unacceptably diluting the standard of proof for key allegations that constitute the basis for Mr Ngaïssona's conviction. This error materially affected the decision, as it led the Chamber to find facts concerning Mr Ngaïssona's financial contribution to groups and locations of relevance that were not supported by the evidence.

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[495] *See* Judgment, pp. 289-322, paras 827-889, especially the Chamber's finding at para. 828.
[496] Ntaganda AJ, para. 18; Gbagbo and Blé Goudé AJ, para. 357.
[497] Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 47. The Appeals Chamber found no error in this approach, *see* Gbagbo and Blé Goudé AJ, paras 355-358.

164. While the Judgment gives the appearance of detailed and specific findings on financing, a closer look reveals a lack of substantiation, flimsy evidentiary basis, and absence of sufficient reasoning. At paragraph 2272, the Judgment states that "Mr Ngaïssona provided financial support to certain elements of the Anti-Balaka movement that later on participated in the Bangui attack".[498] This conclusion is crucial to the Chamber's finding of guilt,[499] as it is touched upon when assessing Mr Ngaïssona's contribution, *mens rea* and sentence.[500] Given its centrality to Mr Ngaïssona's conviction, the Chamber should have identified its evidentiary basis with precision, to ensure transparency and proper appellate scrutiny of the decision. Yet, the reasoning that led the Chamber to reach this key conclusion is opaque. The finding is based on the more specific finding that "Mr Ngaïssona provided money to elements in Zongo and in the Bossangoa area during their move towards Bangui before 5 December 2013",[501] which is in itself insufficiently substantiated: it only refers to a handful of evidentiary items,[502] some of which are on their face irrelevant to the matter at hand,[503] and completely fails to point to evidence relating to the Bossangoa area for the timeframe prior to 5 December. The Chamber fills this gap by merely recalling Mr Ngaïssona's alleged prior financial contributions[504] and referencing the whole section on financing,[505] with no specific indication of which items were considered relevant to its assessment.

165. A further unsubstantiated finding concerning financial contribution is that "Mr Ngaïssona's financial support made it possible for at least some of the elements to participate in the attacks during the advance and during the seminal attacks on Bangui and Bossangoa." This key finding is recalled in both the *mens rea* and sentencing sections yet contains no indication of the supporting evidence that led to it. In one instance, the finding has no citation whatsoever, while in the other, the paragraph cites itself.[506] The same goes for the Chamber's finding that Mr Ngaïssona's "financial contribution had a positive effect on the commission of crimes during the Bangui attack", which has no citation either.[507]

[498] *See* Judgment, pp. 825-826, para. 2272.
[499] *See* Judgment, p. 18, para. 24, p. 27, para. 70.
[500] *See* Judgment, pp. 825-826, para. 2272, p. 1382, para. 4035, pp. 1384-1385, para. 4042, pp. 1602-1603, para. 4710.
[501] *See* Judgment, p. 824, para. 2267.
[502] *See* evidence listed at pp. 824-825, paras 2268-2271 of the Judgment.
[503] Note in particular P-2556 and P-0876.
[504] *See* Judgment, p. 825, para. 2272 and fn. 5824.
[505] Notably Judgment, pp. 289-322, paras 827-889.
[506] *See* Judgment, pp. 1384-1385, para. 4042, pp. 1602-1603, para. 4710, especially fn. 10800.
[507] *See* Judgment, p. 1382, para. 4037, pp. 1602-1603, para. 4710.

166. The Chamber's failure to identify evidence to specifically support its conclusions concerning Mr Ngaïssona's provision of funds to individuals who participated in the Bossangoa and Bangui attacks seriously hampers appellate scrutiny and amounts to a procedural error pursuant to Article 74(5) of the Statute.[508] The Appellant already illustrated how the Judgment is often deficient in reasoning, in that it often limits itself to provide long summaries of the evidence, rather than reaching specific conclusions on the basis of the evidence. In the case of financial assistance, this approach renders scrutiny impossible, as it leaves the Appellant to guess whether a given item of evidence was considered relevant by the Chamber when concluding that Mr Ngaïssona financed individuals in specific locations. This is especially in cases where individuals' affiliation to specific groups, or connections between specific groups, are not self-evident.[509] As a result, the evidentiary basis for certain key findings is unclear, hampering meaningful appellate scrutiny.

167. As argued, the Chamber erred in procedure by not independently assessing corroboration for each act of financial assistance by Mr Ngaïssona. Had it done so, it would not have overlooked that Mr Ngaïssona's financial assistance to groups involved in the Bangui and Bossangoa attacks was not established to the required evidentiary threshold. This particularly concerns Mr Ngaïssona's financial assistance to: (i) the group in Gobere and the Bossangoa area; (ii) the Anti-Balaka located behind the hill before the Bangui attack; and (iii) the Zongo group.

i. Gobere and the Bossangoa area

168. P-2269's allegation that Mr Ngaïssona sent money to the Anti-Balaka in Gobere[510] is uncorroborated. Given that the witness' prior-recorded statement was introduced into evidence pursuant to Rule 68(2)(c), the Chamber should not have relied on it without corroboration.[511] Gobere was pivotal to the Prosecution's case, as the Judgment concluded that the elements who gathered at that location later led or took part in the attacks in Bossangoa and Bangui on 5 December 2013.[512] Any financial contribution to that specific group would have carried significant evidentiary weight and therefore warranted careful consideration. The Chamber's reliance on P-2269's evidence with no corroboration violated Mr Ngaïssona's rights pursuant to Article 67(1)(e) and constituted a procedural error.

[508] *See* Ground I.A.4.
[509] *See* Ground II.D.2.
[510] *See* Judgment, p. 294, para. 836, pp. 423-424, para. 1106.
[511] *See* Ground I.A.3.
[512] *See* i.a. Judgment, p. 503, para. 1306, p. 785, para. 2140, p. 786, para. 2143, p. 963, para. 2767.

169. It further appears entirely unreasonable and a significant error of fact for the Chamber to have relied at all on P-2269's evidence, given the significant inconsistencies between his evidence and the remainder of the evidence on the record, casting serious doubts on the witness' very presence in Gobere. P-2269 offered a peculiar narrative which places him at the origin of the Gobere gathering and among the leaders of the group.[513] Yet, individuals whom he specifically mentioned never cited him in their testimonies,[514] nor was he mentioned by any witness who was part of the Gobere group.[515] None of the Gobere witnesses confirmed Mr Ngaïssona's alleged multiple financial contributions to the group,[516] despite P-2269's allegation that the money was distributed openly among all the chiefs.[517] At the same time, several items of evidence placed P-2269 in Zongo far beyond his supposed departure for Gobere[518] and up until the Bangui attack.[519] No reasonable trier of fact could ever have examined these inconsistencies and labelled them as "minor", as the Chamber did.[520] The witness' narrative was incompatible with the remainder of the evidence on that subject and the only common-sense approach would have been one of extreme caution. This should have been further dictated by the suspicious circumstances surrounding the witness' unavailability, notably the fact that he likely faked his own death to avoid testifying.[521] The Chamber failed to appreciate these circumstances, basing its finding of credibility on the witness' "detailed account" on events in Gobere,[522] while failing to consider that the witness could have acquired this knowledge [REDACTED].[523] In light of

[513] **P-2269:** CAR-OTP-2111-0336-R01, at 0342-0343, paras 46, 49, 51, 53.
[514] [REDACTED].
[515] *See* P-2602, naming all of the leaders of the companies in the Gobere group, **P-2602:** CAR-OTP-2118-9598-R01, at 9610-9613 lines 417-502; P-0966, listing leaders who came up with the strategy in Gobere, **P-0966**: T-117, p. 38; P-0975, listing leaders in Gobere, **P-0975:** CAR-OTP-2033-7885-R02, at 7889, para. 29; P-2251, listing leaders in Gobere, **P-2251:** CAR-OTP-2093-0045-R01, at 0050-0051 paras 35-37. *See also* the list provided by **P-1521**: CAR-OTP-2046-0628, in conjunction with the witness' clarifications at T-081, p. 25.
[516] **P-2251:** T-043, p. 19 lns 1-10 and CAR-OTP-2093-0045-R01, at 0050, paras 32-33; **P-0975:** CAR-OTP-2033-7885-R02, at 7889, 7892 paras 30, 52; **P-0966:** CAR-OTP-2031-0241-R03, at 0247, 0253, paras 32, 68; T-117, p. 23; **P-0306:** T-064, p. 55 ln. 19 to p. 56 ln. 19; P-2602 never mentioned receiving funds in Gobere either.
[517] **P-2269:** CAR-OTP-2111-0336-R01, at 0351, paras 110-112.
[518] [REDACTED]. P-0446 detailed having met P-2269 in Zongo, [REDACTED], which could not have taken place before September 2013, as P-0446 was in Bangui before then, *see* **P-0446:** CAR-OTP-2105-0542-R01, at 0551-0555, lns 302-436 as well as Judgment, p. 356, para. 955. While data for the entire time period is not available, CDR show that the two phone numbers belonging to the witness, [REDACTED] connected to cell-sites in Bangui (compatible with the witness being located in Zongo) for the whole month of November 2013, [REDACTED]. This is incompatible with the witness' timeline, according to which he only arrived in the Bangui area a few days before the attack, *see* **P-2269:** CAR-OTP-2111-0336-R01, at 0347, paras 81-82.
[519] [REDACTED]. Also note that P-2232 was specifically asked whether he knew the names of individuals who went to Gobere (**P-2232:** T-076, page 3), or if he knew members of FACA who joined the self-defence groups in Bossangoa (**P-2232:** T-075, page 71) and he made several names, while never referring to P-2269. [REDACTED].
[520] *See* Judgment, p. 136, para. 421.
[521] Decision on the Prosecution Requests to Summon Witnesses P-2602 and P-2269, para. 15; Third Decision on Rule 68(2)(c), para. 31.
[522] Judgment, p. 136, para. 421.
[523] [REDACTED].

the above, the Chamber's finding that P-2269 was "generally credible"[524] is unreasonable and constitutes an error of fact that materially affected the decision, as it led the Chamber to rely on P-2269's allegation that Mr Ngaïssona financed the Gobere group. Further, the Chamber's repeated failure to address and reconcile the material discrepancies detailed above between P-2269's evidence and the overall body of evidence constituted an error of procedure and contravened Article 74(5) of the Statute.

170. As far as financing the Gobere group is concerned, the Chamber further erred in fact when finding that P-1847 confirmed that Mr Ngaïssona funded [REDACTED]. At paragraph 845, the Chamber found that P-1847 explained that "[REDACTED] talked about money received from Mr Ngaïssona when the latter travelled from Douala to Bertoua." This finding misrepresents P-1847's evidence, as the section cited by the Chamber is double hearsay evidence and shows that the witness was reporting information he had received from [REDACTED] and not [REDACTED], as made clear by the witness' reference to the location of [REDACTED].[525] The Chamber's error in this regard further reinforces the impression that no caution whatsoever was employed when examining or relying on P-1847's evidence.[526] The Chamber's error of fact materially affected the decision, as it led the Chamber to erroneously consider that there existed corroborative evidence of P-2269's untested evidence on Mr Ngaïssona's funding of the Gobere group.

171. P-1847's evidence does not corroborate financing of the Gobere group and the Bossangoa area. There is no tangible evidence that financial assistance to Godonam, who remained in Cameroon in 2013, reached elements in the Gobere or Bossangoa area. The same goes for P-1847's hearsay evidence that Mr Ngaïssona provided funds to Azounou, with no indication of the timeframe of this supposed financing, nor of the location of this individual at the time.[527] Besides, P-1847's evidence would in any event have been insufficient to corroborate P-2269's evidence on such key allegation, given that the Defence did not have an opportunity to challenge the evidence of these two witnesses.[528] It bears recalling that during his live testimony, P-1847

[524] *See* Judgment, p. 136, para. 420.
[525] [REDACTED].
[526] *See* Ground I.A.3; Ground I.C.5.iii, para. 222; Ground I.C.5.iv, para. 226; Ground I.C.5.v, para. 231.
[527] Judgment, pp. 299-300, para. 845, *citing* **P-1847:** CAR-OTP-2061-1534, at 1555, para. 135.
[528] *See* Ground I.A.3.

recanted his evidence concerning Mr Ngaïssona financing Godonam and Azounou,[529] rendering any attempt at cross-examination on those aspects entirely ineffective.[530]

172. It is noteworthy that the Chamber points to no other evidence that might cogently support the conclusion that Mr Ngaïssona financed individuals in the Bossangoa area. Hence, the Chamber erred in fact when finding that Mr Ngaïssona provided money to elements in the Bossangoa area during their move towards Bangui before 5 December 2013[531] and that Mr Ngaïssona's financial support made it possible for at least some of the elements to participate in the attacks during the advance and during the attack on Bossangoa.[532]

ii. Bangui hill

173. The Chamber erred in fact in relying on Jacob Mokpem-Bionli's ('Mokpem-Bionli') (P-0992) evidence that Mr Ngaïssona sent money to Anti-Balaka elements stationed behind the hill of Bangui *before* the 5 December attack.[533] First, Mokpem-Bionli's evidence was not "clear"[534] with respect to the timing of this financial contribution, as the witness had originally declared not to have been aware of any provision of money to the Anti-Balaka before 5 December.[535] Second, the witness indicated that the idea to contact Mr Ngaïssona for financial assistance came up when he accompanied some journalists to see the Anti-Balaka stationed at the hill,[536] which he definitively placed on 4 December 2013.[537] This timing is compatible with the witness' later clarification that the money was requested before 5 December but received after,[538] especially since concluding otherwise would mean that it would have taken less than 24 hours for the money to be requested, sent, picked up and distributed to the Anti-Balaka behind the hill, which is not tenable in the context of events at the time. Third, Mokpem-Bionli did not have direct evidence of this money transfer, but rather reported information he received from Alfred Legrand Ngaya ('Ngaya') (P-0808).[539] Given that Ngaya clearly testified that Mr Ngaïssona sent money to him for the Anti-Balaka starting in late December or early January,[540]

[529] **P-1847:** T-023, p. 39, ln. 15 to p. 40, ln. 14, p. 41, ln. 16 to p. 43, ln. 2, p. 66, ln. 19 to p. 68, ln. 15.
[530] *See* Ground I.A.3, para. 19.
[531] *See* Judgment, p. 824, para. 2267.
[532] *See* Judgment, pp. 1384-1385, para. 4042, pp. 1602-1603, para. 4710.
[533] Judgment, p. 296, para. 839.
[534] *See* Judgment, p. 296, para. 839, fn. 1896.
[535] **P-0992:** CAR-OTP-2128-0288-R02, para. 122.
[536] **P-0992:** T-092, pp. 34-37.
[537] **P-0992:** T-092, p. 49, lns 19-24.
[538] **P-0992:** T-093, pp. 29-30. *See* Ground II.B.3, para. 331.
[539] **P-0992:** CAR-OTP-2128-0288-R02, at 0305, para. 108; T-092, p. 32, lns 1-15.
[540] **P-0808:** T-069, pp. 37-40; CAR-OTP-2093-0010-R02, at 0018, paras 42-43.

it was unreasonable and contrary to logic and common sense for the Chamber to rely on Mokpem-Bionli's inconsistent and indirect evidence, rather than on Ngaya's direct evidence. Furthermore, the Chamber ignored that [REDACTED] Mokpem-Bionli identified as having contacted Mr Ngaïssona along with him and Ngaya, namely Brice Emotion Namsio ('Namsio') (P-0446) [REDACTED], did not corroborate Mokpem-Bionli's version of events.[541]

174. The Chamber's erroneous reliance on Mokpem-Bionli's evidence that Mr Ngaïssona sent money to the Anti-Balaka behind the hill ahead of the 5 December attack materially affected the decision. Mokpem-Bionli's evidence appears to be the evidentiary foundation for the Chamber's crucial finding that Mr Ngaïssona provided funds to Anti-Balaka elements that participated in the Bangui Attack[542] and that his financial contribution had a positive effect on the commission of crimes during the Bangui attack.[543]

iii. Zongo

175. The Chamber further erred in fact when concluding that Mr Ngaïssona financed the Anti-Balaka in Zongo. This finding is key, as it contributed to the Chamber's conclusion that Mr Ngaïssona financed elements who participated to the Bangui attack.[544] Yet, it is unsupported by concrete evidence.

176. The Chamber put particular emphasis on P-2232's evidence that Maxime Mokom ('Mokom') organised the Bangui attack with money he received from Cameroon.[545] The witness testified that Mokom would receive the money from a "Mr Camerounais", that he did not know who this person was and that he did not hear any mention of Mr Ngaïssona's name during the period prior to the 5 December attack.[546] While the Chamber did not explicitly infer that the sender of the money was Mr Ngaïssona, P-2232's testimony is listed among the items of "overwhelming evidence" of Mr Ngaïssona's financial assistance.[547] Therefore it is reasonable to conclude that the Chamber inferred that "Mr Camerounais" was Mr Ngaïssona. This inference cannot ground a conviction, as the case record is replete with evidence of other wealthy individuals providing

[541] **P-0446:** T-097-, p. 62, lns 17-23 (the witness could not confirm any provision of money by Mr Ngaïssona to Anti-Balaka elements located behind the hill); [REDACTED].
[542] Judgment, p. 819, para. 2249, pp. 825-826, paras 2270, 2272.
[543] Judgment, pp. 1382-1383, para. 4037, pp. 1602-1603, para. 4710.
[544] Judgment, p. 824, para. 2267.
[545] Judgment, p. 297, para. 840, p. 806, para. 2208, p. 822, para. 2259.
[546] **P-2232:** T-075, p. 50 ln. 23 to p. 51 ln. 24.
[547] *See* Judgment, pp. 289-290, para. 828.

money to the Anti-Balaka.[548] That Mr Ngaïssona was the source of the money was therefore not the only inference that could reasonably be drawn based on the evidence. Conversely, if the Chamber did not draw that inference, it inflated the pool of "overwhelming evidence" of Mr Ngaïssona's financing, by referring to evidence that did not support that conclusion.

177. With respect to Mr Ngaïssona financing Mokom, the Chamber further relied on P-2841 having heard from [REDACTED] that Mr Ngaïssona sent money to Mokom in Zongo.[549] No reasonable trier of fact could have relied on such an assertion, given that the witness claimed [REDACTED]'s source was [REDACTED],[550] while stating at the same time that Mokom [REDACTED] received nothing from Mr Ngaïssona.[551] The serious doubts on the record concerning the reliability of information provided by [REDACTED][552] should have further led the Chamber to treat this hearsay evidence with extreme caution. Yet, given the scant evidentiary support for the finding that Mr Ngaïssona financed the Anti-Balaka in Zongo, the only reasonable conclusion is that P-2841's testimony was afforded substantial weight. Besides, the Chamber also made a procedural error by failing to reconcile inconsistencies in the evidence, as elsewhere in the Judgment it relied on P-2841's evidence that Mr Ngaïssona had merely promised to supply Mokom, who ultimately did not receive anything.[553] The coexistence of these two irreconcilable versions within the Judgment affects its coherence and transparency, ultimately hampering appellate scrutiny.

178. As far as Mr Ngaïssona's financing of other individuals in Zongo is concerned, there exists only one additional item of evidence: Namsio's testimony that Mr Ngaïssona helped to pay for his rent when he was in Zongo.[554] This allegation is insufficient to draw any conclusions on Mr Ngaïssona's funding of the Anti-Balaka, especially in light of the absence of a specific

[548] *See* e.g., the evidence recalled at p. 286, para. 819 (on "Meckassoua" financing certain individuals from Cameroon, with the goal of defeating Djotodia), pp. 301-302, para. 850 (on the Bozizé family sending money to Mokom), p. 822, para. 2258 (on "Marcelin" sending money to the Anti-Balaka from Douala).
[549] Judgment, pp. 824-825, para. 2268 *citing* **P-2841:** T-029, p. 42, ln. 11 to p. 43, ln. 2.
[550] **P-2841:** T-029, p. 42 ln. 25 to p. 43, ln. 8.
[551] *See* **P-2841:** [REDACTED].
[552] **P-2841:** CAR-OTP-2127-4238-R01, at 4254-4255, para. 94; *see also* **P-2843:** T-074, p. 45, lns 3-13.
[553] Judgment, pp. 305-306, para. 858, *citing* **P-2841:** CAR-OTP-2127-4238-R01, at 4258-59, para. 118; **P-2841:** T-029, p. 54, lns 15-25.
[554] **P-0446:** CAR-OTP-2105-0572-R01, at 0587-0590, lines 483-597; T-096, p. 17, ln. 5 to p. 20, ln. 1, p. 21, lns 2-7. Cited in Judgment, p. 825, para. 2269.

timeframe[555] and related information as to whether, at the time he received this financial contribution, Namsio was affiliated or not with the Anti-Balaka.

179. This overview of the body of evidence concerning Mr Ngaïssona's financing of the Zongo group showcases that no reasonable trier of fact could ever have found that this allegation was proven beyond a reasonable doubt. Evidence was scarce and of negligible probative value. Given the central role of this key finding to Mr Ngaïssona's criminal responsibility, the Chamber's error in properly evaluating and weighing the evidence on this aspect materially affected the decision.

iv. Other allegations of financing

180. The analysis above shows that, had the Chamber properly assessed corroboration by comparing evidence related to financial contributions to specific groups or individuals, it could only have concluded that said contributions were not established beyond a reasonable doubt. The Chamber's conflating of all financial contributions led to an unacceptable lowering of the standard of proof. Each insufficiently established allegation of financial contribution was used to validate and give credence to another. In addition, the Chamber relied on further evidence that more generally – and sometimes unacceptably vaguely – purports to show that Mr Ngaïssona financed "the Anti-Balaka". Poussou's evidence that Mr Ngaïssona said he was financing "the children out in the field" and spent money on their "upkeep",[556] lacks any detail about the supposed recipients.[557] This evidence is too vague to strengthen or corroborate allegations that Mr Ngaïssona financed the Anti-Balaka as an organization, let alone specific groups or locations.

181. The Chamber further relied on Kokaté's evidence that, at a meeting with the head of state Samba-Panza, all of the Anti-Balaka who were present unanimously pointed at Mr Ngaïssona as being their leader and financer.[558] The Chamber erred in relying on Kokaté's statement in this regard, as the witness clearly sought to downplay[559] the importance of him having led the

[555] Judgment, p. 825, para. 2269, fn. 5817, the Chamber acknowledges this might have taken place between early September and late November 2013. *See* Ground II.B.3, para. 331.
[556] Judgment, p. 307, para. 862, p. 329, para. 901, p. 382, para. 1011, *citing* **P-2625:** T-189, pp. 35-37, 46; T-190, pp. 23-24, 35-36; T-193, pp. 60-61.
[557] **P-2625:** T-189, p. 38, lns 6-11.
[558] Judgment, pp. 300-301, para. 847, *citing* **P-0801:** T-034, p. 52 ln. 10 to p. 53, ln. 9 and T-035, p. 29, ln. 22 to p. 32, ln. 4; T-036, p. 14, lines 8-14.
[559] The Chamber also found P-0801 generally sought to downplay his role within the Anti-Balaka movement, *see* Judgment, p. 82, para. 246, p. 604, para. 1597. *See* Ground I.B.1.ii.

Anti-Balaka delegation at this meeting, which Mr Ngaïssona did not attend.[560] The witness repeatedly emphasized that he had no position of responsibility, stressing instead Mr Ngaïssona's role, contrasting it with his own claimed lack of role whatsoever.[561] These circumstances warranted extreme caution. The complete absence of corroboration of Kokaté's claims should only have reinforced scepticism towards his allegations: [REDACTED], whom the witness said [REDACTED],[562] did not corroborate his claims,[563] nor did Catherine Samba-Panza ('Samba-Panza') (P-0952).[564]

182. In light of the above, no reasonable trier of fact could have safely relied on Kokaté's allegations on the Anti-Balaka unanimously indicating Mr Ngaïssona as their financer. By the same token, the Chamber erred in placing weight on the witness' vague allegations that Mr Ngaïssona had admitted to having financed the Anti-Balaka.[565] The failure to apply sufficient caution *vis-à-vis* Kokaté's testimony materially affected the decision, particularly as it led the Chamber to conclude that his allegations could corroborate sparse allegations concerning Mr Ngaïssona's financing of groups.

183. The remaining items of evidence cited by the Chamber to support its conclusion that there exists an overwhelming body of evidence supporting Mr Ngaïssona's financing contribution are of negligible probative value, if not completely irrelevant. Notably, Nicholas Tiangaye (P-0291) merely provided anonymous hearsay which he could not confirm,[566] P-0876 offered nothing

[560] **P-0801:** T-035, p. 29, ln. 22 to p. 30, ln. 6; CAR-OTP-2087-9271, at 9273; **P-0952:** T-249, p. 26, ln. 11 to p. 27, ln. 11, T-250, p. 12, ln. 18 to p. 14, ln. 14.
[561] **P-0801:** T-034, p. 53, lns 2-8 ("*So the one who was responsible was Edouard Patrice Ngaïssona and there was no one else other than him.* The president, Catherine Samba-Panza, asked that question to ask whether Kokaté, and any one of us present, who clearly answered to Samba-Panza, who was in that country, and *they said that Mr Kokaté is simply a member of the Anti-Balaka, but did not in any way do anything and it was Ngaïssona who funded the Anti-Balaka*" (emphasis added)); T-035, p. 30, lns 9-23 ("The president took the floor and said the following: She said that she wanted to know who the reliable chosen interlocutor of the Anti-Balaka would be (…) And then she gave the floor to the participants who were there, along with her cabinet. *And they unanimously all said that their leader was Mr Edouard Ngaïssona*, that he was the one who took care of them, who gave them food, who financed them, who organised them. He was their leader. Then the president asked whether she should deal with him exclusively, and they unanimously said yes. *The president then asked whether Minister Kokaté was also one of the leaders of the Anti-Balaka, and their answer was no*, Minister Kokaté is not an Anti-Balaka leader. He is a member of the Anti-Balaka as everyone else" (emphasis added)).
[562] [REDACTED].
[563] [REDACTED].
[564] While P-0952 testified about this meeting, she made no mention of these allegations being made, **P-0952:** T-249, p. 26, ln. 11 to p. 29, ln. 1 Her references to Mr Ngaïssona's financing of the Anti-Balaka at T-249, p. 38, ln. 24 to p. 40, ln. 1 clearly concern the timeframe when Mr Ngaïssona was the Anti-Balaka National Coordinator and not the preparations for the Bangui attack, as argued by P-0801.
[565] *See* Judgment, pp. 300-301, para. 847, *citing* **P-0801:** T-034, p. 52, lns 2-4 and T-037, p. 81, lns 13-15.
[566] Judgment, p. 301, para. 849, *citing* **P-0291:** CAR-OTP-2024-0036-R05, at 0055, para. 120; T-051, p. 37, ln. 1 to p. 38, ln. 25; T-053, p. 9 ln. 21 to p. 10, ln. 19.

more than speculation based on the role Mr Ngaïssona took on upon his return to CAR,[567] while the anonymous hearsay offered by Kasper Agger ('Agger') (P-2012) on the alleged provision of money by Bozizé to the Anti-Balaka through Mr Ngaïssona obviously referred to another timeframe, given that Mr Ngaïssona was placed in Bangui at the time.[568] No reasonable trier of fact could ever have relied, even marginally, on this evidence. That these testimonies were even cited only goes to confirm the absence of sufficiently probative evidence of Mr Ngaïssona's financing. The Chamber's erroneous reliance on this evidence materially affected the Judgment, contributing to the false impression that there existed "overwhelming evidence" of Mr Ngaïssona's financing.[569]

v. Alleged provision of means and military equipment

184. The Chamber further made findings or relied on evidence concerning Mr Ngaïssona's involvement in the provision of means and military equipment or promise thereof.[570] In doing so, it erred in fact and procedure.

185. The Chamber erred in fact and procedure in failing to enter findings and address inconsistencies in P-2673's evidence concerning Mr Ngaïssona's provision of Thurayas and ammunition to Anti-Balaka groups. P-2673's allegations in this respect are noted in the Judgment,[571] but the Chamber failed to take a clear stance as to whether this evidence was considered reliable and whether it carried any weight in its finding that Mr Ngaïssona provided assistance to elements willing or meant to assist with the efforts in returning Bozizé to power.[572] This lack of reasoning violated Article 74(5) of the Statute and amounts to a procedural error. While Chambers are not required to respond in detail to every argument or address all items of evidence relevant to a particular finding, they must indicate with sufficient clarity the basis for their decision.[573] This requirement is not met if a Chamber limits itself to summarise the evidence of a witness, while failing to enter a clear factual finding based on that evidence, as was the case with P-2673's

[567] Judgment, pp. 301-302, para. 850, *citing* **P-0876:** CAR-OTP-2046-0455-R01, at 0465-66, lns 367-386, at 0466-67, lns 409-441; T-085, p. 14, ln. 20 to p. 15, ln. 11, p. 57, ln. 11 – p. 58, ln. 8; T-088, p. 30, lns 6-24, p. 48, ln. 14 – p. 49, ln. 22.
[568] Judgment, p. 302, para. 851, *citing* **P-2012:** CAR-OTP-2091-0127-R01, at 0140, para. 64.
[569] Judgment, p. 289, para. 828.
[570] Judgment, pp. 303-322, paras 852-889.
[571] Judgment, pp. 292-294, paras 833, 835.
[572] Judgment, pp. 289-290, para. 828.
[573] Bemba AJ, para. 53; Bemba et al. AJ on Mr Mangenda's 'Requête de mise en liberté', para. 116.

allegations that Mr Ngaïssona provided Thurayas to Anti-Balaka groups in various locations and that he provided ammunition to Andjilo in Bouca.[574]

186. In the alternative, the Chamber erred in fact and procedure by relying on P-2673's allegations and failing to address important inconsistencies arising from his evidence.

187. The provision of Thurayas to the locations of Bossangoa, Gobere, Bouca and Bouar is based solely on P-2673's evidence.[575] While the witness might have [REDACTED],[576] he had no direct evidence on their sending to the field[577] and offered vague and inconsistent evidence in this respect. The witness' sources were unclear,[578] as were the identities of the recipients,[579] the number of devices sent[580] and their destination.[581] The provision of a Thuraya to Andjilo in Bouca was not corroborated by P-0306, who claimed Andjilo did not even know what a phone was when he was in Bouca.[582] Similarly, P-2673's allegation concerning Mr Ngaïssona's provision of ammunition to Andjilo in Bouca is not only based on anonymous hearsay,[583] but was further refuted by [REDACTED].[584] P-2673 claimed Andjilo received the Thuraya and ammunition at the time of the Bouca attack, misdating the latter by two months,[585] which further casts doubts on the reliability of his evidence.

188. The Chamber's failure to address these inconsistencies amounts to a procedural error. Arguments related to the scarce probative value and lack of corroboration of P-2673's

[574] Judgment, pp. 292-294, para. 833, 835.
[575] Judgment, pp. 292-293, para. 833, *citing* **P-2673:** CAR-OTP-2127-6435-R01, at 6453, para. 118, at 6461, para. 175, at 6462, para. 176, at 6464, para. 188; T-042, p. 35, lines 8-9.
[576] **P-2673**: CAR-OTP-2127-6435-R01, at 6462, paras 176-177, 180; T-041, p. 25.
[577] **P-2673:** T-042, p. 40, lns 16-19.
[578] *See and compare* **P-2673**: CAR-OTP-2127-6435-R01, at 6453, para. 119 (on not remembering who told him about the sending of a Thuraya to Andjilo in Bouca), at 6464, para. 188 (on learning from [REDACTED] that Thurayas had been sent to Andjilo, Bossangoa and Gobere); T-041, p. 40 lns 4-14 (on learning from [REDACTED] about the sending of a Thuraya to Andjilo); T-042, p. 26, lns 17-23 (suggesting the source of information on the receipt of a Thuraya by Andjilo was [REDACTED]).
[579] **P-2673**: CAR-OTP-2127-6435-R01, at 6464, para. 188 (on not knowing who received them in Gobere and Bossangoa), at 6453, para. 118 (on the witness not recalling who is the individual who received the Thuraya in Bouar), at 6463, para. 184 (on the witness identifying the individual who received the Thuraya in Bouar as Junior Danboy); para. 185 (on the witness later identifying this individual as Didier Danboy, having asked for information to [REDACTED]).
[580] *See and compare* **P-2673**: CAR-OTP-2127-6435-R01, at 6453, para. 119 (on one Thuraya having been sent to Andjilo in Bouca); T-042, p. 26, lns 17-23 (on "Thurayas" having been sent to Bouca, implying it was more than one).
[581] **P-2673:** T-041, p. 40, ln. 20 to p. 41, ln. 2 (where the witness appears to confirm he is only aware of Thurayas having been sent to Bouar and Bouca).
[582] **P-0306**: T-064, p. 52, lns 5-8.
[583] Judgment, p. 294, para. 835; **P-2673:** CAR-OTP-2127-6435-R01, at 6453, para. 119; T-041, p. 40, lns 4-14.
[584] [REDACTED].
[585] **P-2673:** T-041, p. 39, ln. 21 to p. 40, ln. 14.

allegations had been raised by the Appellant in its Closing Brief,[586] rendering it particularly important for the Chamber to provide a reasoned statement of its findings and address any inconsistency arising from the evidence.[587] Furthermore, [REDACTED].[588] This results in two incompatible narratives coexisting in the Judgment, without the Chamber having made any effort to reconcile them or explain which one was preferred over the other. This lack of reasoning violates Mr Ngaïssona's rights under Article 74(5) of the Statute, affecting transparency and coherence of the Judgment and ultimately preventing appellate scrutiny.

189. Had the Chamber consistently assessed P-2673's allegations, it would have concluded that it was not possible to rely on them at all. Elsewhere in the Judgment, the Chamber discarded P-2673's allegation that Mr Ngaïssona provided ammunition for the Bangui attack in Maggi cube boxes, on the basis of it being uncorroborated and hearsay evidence.[589] Given that P-2673's allegations concerning the provision of Thurayas and ammunition to Bouca was also uncorroborated hearsay evidence, the Chamber's inconsistent approach of not discarding this evidence was unreasonable and contrary to logic. Further, P-2673 established a clear link between the provision of Thurayas and the delivery of ammunition in Maggi cube boxes, indicating that they were moved to the field by the same individuals using the same methods.[590] This factual overlap undermines the Chamber's rationale for treating the two allegations differently and renders its inconsistent reliability determinations unreasonable.

190. The Chamber's failure to appreciate the patent lack of probative value of P-2673's uncorroborated hearsay allegations materially affected the decision. Had the Chamber not erred, it would not have relied on this allegation, amongst others, to conclude that Mr Ngaïssona provided assistance to elements willing or meant to assist with the efforts in returning Bozizé to power.[591]

191. The Chamber further erred in fact by relying on Poussou's evidence that Mr Ngaïssona admitted to him having purchased weapons for the Anti-Balaka.[592] The witness' narrative was so vague and inconsistent, that no reasonable trier of fact could have given it weight. Notably, the witness

[586] Closing Brief, para. 496.
[587] Ongwen AJ, para. 507.
[588] *See and compare* Judgment, [REDACTED].
[589] Judgment, p. 292, para. 832, pp. 826-827, paras 2273-2278.
[590] **P-2673:** CAR-OTP-2127-6435-R01, at 6464, para. 190; T-042, p. 26, lns 17-23.
[591] Judgment, p. 289, para. 828, pp. 292-294, paras 833, 835.
[592] Judgment, pp. 307-308, para. 862, *citing* **P-2625:** T-190, p. 36, ln. 2 to p. 37, ln. 8; T-193, p. 70, ln. 22 to p. 73, ln. 4.

did not recall having given a statement along that line and had to be reminded of it,[593] after which he tied this allegation with Mr Ngaïssona having assisted Touadera to get to power,[594] raising considerable doubts on the timing of this supposed purchase of weapons, as well as the reliability of the allegation. The witness' claim that he had heard this from Mr Ngaïssona in other instances on the one hand, but his complete inability to recall more details on the other,[595] further cast doubts on the reliability of Poussou's account. The Chamber's failure to properly appreciate the negligible evidentiary weight of Poussou's allegations materially impacted the decision, as Poussou's evidence was relied upon to conclude that Mr Ngaïssona provided assistance to elements willing or meant to assist with the efforts in returning Bozizé to power.

192. The Chamber further erred in fact by giving excessive weight to email exchanges between [REDACTED] and [REDACTED] concerning the needs of groups seemingly involved in armed resistance.[596] First, the Chamber noted that "these emails were sent *in the belief* that Mr NGAÏSSONA could and would provide the relevant assistance".[597] By giving weight to what others thought Mr Ngaïssona could and would do, the Chamber took into account irrelevant facts. Second, it failed to properly appreciate that the individuals involved in the sending of these emails sought to extort money from Mr Ngaïssona,[598] as he was known as a wealthy individual who had financed youth and political movements in the past[599] and [REDACTED].[600] While P-2841 and P-2843 both claimed that Mr Ngaïssona was contacted because he was involved in the Anti-Balaka, neither of them could provide evidence that went beyond anonymous hearsay in this regard.[601] Through its focus on the spirit in which the emails were sent, the Chamber magnified the relevance of P-2843 and P-2841's evidence, which was in fact negligible.

193. The Chamber further relied on Mr Ngaïssona's apparent intention to establish contact with the individuals mentioned in the emails,[602] as well as on his forwarding of one of the emails to an

[593] **P-2625:** T-190, p. 36, ln. 2 to p. 37, ln. 8.
[594] *Ibid*.
[595] **P-2625:** T-193, p. 70, lns 10-20.
[596] *See* Judgment, pp. 314-322, paras 876-889, *citing* emails CAR-OTP-2130-3379, CAR-OTP-2124-0899 and CAR-OTP-2124-0900.
[597] Judgment, p. 318, para. 883 (emphasis added).
[598] **P-2843**: T-073, p. 79, lns 15-21; T-074, p. 41, lns 18-22, p. 43, ln. 24 to p. 44, ln. 3; **P-2841:** T-029, p. 46, lns 13-20.
[599] **P-2841:** CAR-OTP-2127-4238-R01, at 4261, para. 130.
[600] **P-2841:** CAR-OTP-2127-4238-R01, at 4261, para. 128.
[601] **P-2843:** T-073, p. 75, lns 21-24; **P-2841:** T-030, p. 25, lns- 5-13, p. 25 ln. 18 to p. 26, ln. 6.
[602] Judgment, p. 318, para. 883.

address attributed to Eric Danboy,[603] to conclude that "at the very least, [he] 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".[604] The Chamber erred in fact when drawing that inference, as three items of correspondence certainly did not allow to infer that Mr Ngaïssona took on a "liaison" role *vis-à-vis* the entire Anti-Balaka movement, as implied in the Judgment. At best, these emails showed that a handful individuals whose affiliation with the Anti-Balaka was not even established[605] sought to obtain money and military means and that they directed opportunistic requests in this sense to Mr Ngaïssona. There is no proof that Mr Ngaïssona agreed to these unsolicited requests, endorsed them, or took steps to implement them. His forwarding of one email to Eric Danboy and inquiry about phone numbers are equivocal acts that cannot establish intent. Most importantly, P-2843 and P-2841's evidence clearly suggests that the money and means requested in these emails were never received.[606] This lack of any follow-up or fulfilment casts serious doubts on the Chamber's conclusion that Mr Ngaïssona intentionally acted as a liaison for requests of weapons and ammunition. Lastly, the Chamber erred in fact by relying on a Facebook message by P-2841 suggesting that Mr Ngaïssona would have requested to be provided with lists of means.[607] Notably, the Chamber failed to take into account P-2841's clarification regarding that Facebook exchange, where he made it clear that he was not confirming that Mr Ngaïssona would have made such request.[608] This contravened the Chamber's own indication that it would assess the probative value of Facebook conversations on a case-by-case basis and especially in light of the testimonies of witnesses who could comment on that material.[609]

194. The Chamber's factual errors in the assessment of the above-mentioned emails materially impacted the decision, as they led it to enter factual findings on Mr Ngaïssona's acts and conducts which were directly relevant to the Chamber's finding of guilt. Notably the Chamber concluded that Mr Ngaïssona was "directly involved in liaising with individuals on the ground that required material and financial means with a view to […] organizing a response to the

[603] Judgment, pp. 318-319, para. 884.
[604] Judgment, p. 322, para. 889 (emphasis added).
[605] [REDACTED].
[606] **P-2843:** T-074, p. 41, lns 2-10; **P-2841:** T-030, p. 16, ln. 20 to p. 17, ln. 1.
[607] Judgment, pp. 319-320, para. 886, *citing* [REDACTED] and **P-2841:** CAR-OTP-2127-4238-R01, at 4254, para. 94.
[608] **P-2841:** T-029, p. 51, lns 2-13.
[609] Judgment, p. 51, para. 154.

Seleka violence."[610] Had the Chamber properly assessed the evidence, it would have found that these liaising efforts could not be established beyond a reasonable doubt.

195. The Chamber further found that some Anti-Balaka elements *considered* that they had been promised material by Mr Ngaïssona before the Bangui attack.[611] The Chamber's factual finding suffers from a stark lack of reasoning, as it fails to reach a conclusion on whether it was established beyond a reasonable doubt that it was Mr Ngaïssona who made these promises. This amounts to a procedural error pursuant to Article 74(5), hampering clarity of the Judgment. The Chamber's failure to provide reasoning ultimately hinders appellate scrutiny, forcing the Appellant to speculate on the Chamber's intentions when citing certain evidence and on the weight the latter was given in its finding on Mr Ngaïssona's guilt.

196. If the Chamber did not find that Mr Ngaïssona promised materiel to Anti-Balaka before the Bangui attack, then it also erred in fact, by giving weight to irrelevant facts and circumstances. That the Anti-Balaka considered they had been promised material by Mr Ngaïssona should have been considered entirely irrelevant to his acts and conducts if it was not proven that the promises originated from him.

197. If, on the contrary, the Chamber considered that the evidence before it sufficiently allowed it to establish an involvement of Mr Ngaïssona in these promises, then the Chamber erred in fact by failing to properly evaluate the evidence. That Anti-Balaka elements "considered" to have been promised means by Mr Ngaïssona relies only on P-2658 and P-0306.[612] P-2658, who provided anonymous hearsay evidence, had no information on whether Mr Ngaïssona was at the origin of said promises.[613] As to P-0306, his evidence was plagued by such credibility concerns[614] that it was entirely unreasonable for the Chamber to rely on his evidence in this respect.[615] Notably, the witness' evasiveness and lack of truthfulness concerning [REDACTED], partly acknowledged in the Judgment,[616] made it impossible to safely rely on his allegation that the "authority" promised ammunition to [REDACTED] if they went to Bangui. The same remarks apply to P-0306's allegation that [REDACTED] was offered money in exchange for his

[610] Judgment, p. 309, para. 865.
[611] Judgment, p. 823, para. 2262.
[612] Judgment, pp. 823-824, paras 2263-2266.
[613] **P-2658:** T-134, p. 62, ln. 22 to p. 63, ln. 2.
[614] *See* Ground I.C.5.ii, para. 217. Note **P-0306:** T-064, p. 55, ln. 11 to p. 56, ln. 12 [REDACTED]. *See* Judgment, pp. 415-416, para. 1083. *Compare* with Chamber's finding that [REDACTED].
[615] Judgment, pp. 303-304, para. 854, *citing* **P-0306:** T-068, p. 17, lines 3-16.
[616] Judgment, pp. 789-792, paras 2155-2162.

participation to the Bangui attack. While the Chamber does not appear to have relied on this allegation for its conclusions on Mr Ngaïssona's financial assistance or promise thereof, it still reported it in the Judgment in great detail,[617] failing once more to clearly outline its factual findings and provide reasoning in conformity with Article 74(5) of the Statute.

198. The Chamber's failure to properly evaluate P-0306 and P-2658's evidence concerning Mr Ngaïssona's alleged promise of means materially impacted the decision, contributing to the Chamber's overall conclusion that Mr Ngaïssona provided support to Anti-Balaka groups ahead of the Bangui attack.

4. The Chamber erred in fact and procedure in finding that Mr Ngaïssona's financial contributions to the Anti-Balaka in 2014 were, *inter alia*, for the purchase of weapons and ammunition[618]

199. The Chamber's finding that Mr Ngaïssona funded the purchase of weapons and ammunition after his designation as general coordinator[619] was clearly erroneous. To support this finding, the Chamber relied on the testimonies of three Prosecution witnesses whose credibility was seriously called into question,[620] namely P-0965, P-0954 and P-2232, and additionally invoked Mokpem-Bionli's statement that Mr Ngaïssona gave them money "to face the mercenaries".[621] However, as Mokpem-Bionli clarified in his oral testimony, this remark concerned the period prior to the 5 December 2013 attack, not 2014.[622] The Chamber erred in relying on this temporal mischaracterisation to corroborate its finding of post-designation funding by Mr Ngaïssona. Yet, neither Mokpem-Bionli nor any of the three witnesses provided evidence establishing actual payments by Mr Ngaïssona for weapons or ammunition. P-0954 describes no funding whatsoever by Mr Ngaïssona, only a suggestion during a meeting that the Comzones themselves should procure arms "if they had little money".[623] Even if accepted, P-0954's account reflects at most a speech about preparedness, not specific payments made by Mr Ngaïssona for weapons or any intent to facilitate the commission of crimes.

[617] Judgment, p. 415, para. 1083.
[618] Judgment, pp. 637-641, paras 1683-1695.
[619] Judgment, p. 640, para. 1694.
[620] *See above* Ground I.B.
[621] Judgment, p. 637, para. 1686 *citing* **P-0992:** CAR-OTP-2128-0288-R02, at 0306, para. 112.
[622] *See* **P-0992:** T-092, p. 34, ln. 17 to p. 36, ln. 22. *See also* Ground I.C.3.ii, paras 173-174.
[623] Judgment, p. 639, para. 1690 *citing* **P-0954:** T-169, p. 47, ln. 21 to p. 48, ln. 6; T-169-FRA, p. 51, ln. 19 to p. 52, ln. 4.

200. P-0965 offers only vague and uncorroborated information about Mr Ngaïssona giving ammunition or money,[624] and that he "heard" Mr Ngaïssona say that he was looking "to buy" weapons.[625] Such statements lack probative value: they provide no dates, amounts, recipients, or any link to a crime committed, and therefore fail to establish the necessary nexus.[626] The ambiguous phrase "to continue to fight"[627] as a purported purpose for procuring those weapons fails to establish the necessary *mens rea*.[628] In the absence of corroboration or concrete details, the Chamber's finding that Mr Ngaïssona funded weapons purchases or acted with the requisite intent is clearly unreasonable.

201. Besides general and uncorroborated assertions that Mr Ngaïssona would buy weapons through his subordinates,[629] the only purported "direct" evidence is P-2232's claim that Yagouzou arrived in a white pickup truck with weapons allegedly paid for by Maxime Mokom at an unknown date. He added that although Mokom sometimes gave money, it was Mr Ngaïssona who provided funds for weapons and equipment.[630] P-0889, however, [REDACTED].[631] The two witnesses therefore corroborate only that [REDACTED]; their accounts contradict on whether [REDACTED]. In the absence of corroborating evidence linking any payment to weapons procurement, the inference that Mr Ngaïssona funded the purchase of weapons, even indirectly through Mokom based solely on P-2232's account, is a misappreciation of the evidence that no reasonable trier of fact could reach.

202. Nor does P-2232's assertion that weapons were brought to and bought on behalf of "the coordination", led by Mr Ngaïssona, withstand scrutiny. The Anti-Balaka treasurer himself, Vivien Beina ('Beina') (P-0888), categorically denied that the coordination ever bought weapons.[632] There are no particulars, such as dates, amounts, or counterparties which may contradict Beina or corroborate P-2232 on this point. Likewise, P-0306's allegation that Mr Ngaïssona promised [REDACTED] of ammunition is both implausible and uncorroborated,[633]

[624] Judgment, pp. 639-640, para. 1691 *citing* **P-0965:** CAR-OTP-2046-0150-R01, at 0161, lns 397-402.
[625] Judgment, pp. 639-640, para. 1691 *citing* **P-0965:** T-061, p. 36, lns 10-19; T-063, p. 34, ln. 4 to p. 35, ln. 4
[626] *See* Ground II.A.1.
[627] Judgment, pp. 639-640, para. 1691 *citing* **P-0965:** CAR-OTP-2046-0150-R01, at 0161, lns 397-402.
[628] *See* e.g., Ground II.B.2, para. 325.
[629] Judgment, p. 640, para. 1692 *citing* **P-2232:** T-077, p. 22, line 14 to p. 23, line 6; T-078, p. 49, lines 1-12.
[630] **P-2232:** T-077, p. 21, ln. 17 to p. 22, ln.13.
[631] **P-0889:** T-109, p. 84, lines 4-15.
[632] **P-0888:** T-123, p. 45, lines 12-16.
[633] *See* Ground I.C.3.v, paras 195-198.

and his claim of later ammunition distributions is too vague (no dates, recipients, or quantities) to sustain any finding of weapons funding.[634]

203. Taken at their highest, these accounts remain vague, uncorroborated, internally inconsistent, and lacking the specificity required to establish any concrete funding contribution or the purposive intent required under Article 25(3)(c).[635] Yet, the Chamber gave preferential weight to this subset of Prosecution witnesses, while dismissing as mere "generic assertions" multiple Prosecution witnesses, including members of the coordination and Comzones, who consistently testified that Mr Ngaïssona never paid for weapons.[636] This unreasonable assessment of the evidence leaves unresolved the internal contradictions at the heart of the Prosecution's case such that no reasonable trier of fact could reconcile, or accept that reasonable doubt remains.

204. Moreover, the Chamber erred in procedure by failing to provide a reasoned opinion. It did not explain why it credited the three incriminating witnesses over multiple Prosecution witnesses who explicitly rejected the allegation that Mr Ngaïssona provided financial assistance for the purchase of weapons. In this context, it had a heightened duty to explain why it relied on the contested witnesses by addressing issues of specificity, credibility and corroboration. Simply labelling the exculpatory testimony as "generic" without further analysis falls short of the requirement to provide adequate reasons under Article 74(5). Nor did the Chamber clarify how it assessed the conflicting accounts of P-2232 and P-0889: although it acknowledged that [REDACTED],[637] it never determined whether it considered the two accounts to concern the [REDACTED]. [REDACTED]. Likewise, the Judgment cites Beina[638] only to dismiss his position-based denial as a "generic assertion" that could not weaken P-2232's account, without explaining why the Anti-Balaka treasurer was discounted on a matter squarely within his remit. These omissions leave unresolved major contradictions in the evidence relied upon by the Chamber, including with respect to the purpose of the alleged financing by Mr Ngaïssona. They constitute an error of insufficient reasons materially affecting Mr Ngaïssona's conviction, as it

[634] Judgment, pp. 303-304, para. 854 *citing* **P-0306:** T-064, p. 73, lns 9-24; T-065, p. 16, ln. 14 to p. 17, ln. 8; T-068, p. 16, ln. 2 to p. 17, ln. 16. The citation mentioned by the Chamber for T-065 in fn. 1962 of the Judgment is inaccurate; the correct citation is p. 16, ln. 14 to p. 17, ln. 8. Regarding P-0306's credibility or lack thereof *see* Ground I.B.1; II.B.2.
[635] *See* Ground II.B.
[636] **P-0992:** T-093, p. 39, lns 2-13; **P-1193:** T-125, p. 42, lines 3-13; **P-0808:** T-071, p. 48, lines 18-24; **P-0889:** T-109, p. 83, line 8 to p. 84, line 3; **P-0888:** T-123, p. 45, lines 12-16; **P-1077:** T-150, p. 48, lns 5-13; *See also* **P-2251:** T-044, p. 53, line 25 to p. 54, line 13; **P-1042:** T-164, p. 23, lns 20-24; **P-1521:** T-083, p. 47, lines 3-18, the witness testified that no money was given by Mr Ngaïssona at any time in 2014 to buy weapons or ammunition since Mr Ngaïssona had no control over operational matters; Judgment, p. 640, para. 1693.
[637] *See* Judgment, p. 640, para. 1693, fn. 4443.
[638] Judgment, p. 640, para. 1693, fn. 4443.

inhibits the Defence's ability to mount a focused appeal on the contested factual finding, and prevents the Appeals Chamber from exercising meaningful appellate review.

205. These errors had a material effect on the decision. The Chamber's mischaracterisation of the 2014 evidence led it to conclude that Mr Ngaïssona "continued to provide financial assistance to the Anti-Balaka" in 2014, a finding that it relied on when determining that he aided and abetted the crimes committed on the PK9-Mbaïki axis and thus bore criminal responsibility for counts 24 to 28,[639] as well as when assessing his degree of participation and intent for the purposes of sentencing.[640]

5. The Chamber erred in fact and procedure in finding that Mr Ngaïssona contributed to the charged crimes through engaging in activities pertaining to the organisation and coordination of groups

206. The Judgment found that Mr Ngaïssona engaged in activities pertaining to the organisation and coordination of groups. This crucial finding lays at the foundation of the Chamber's finding of guilt, along with financial assistance.[641] Despite that, the Chamber failed to provide a clear indication of which factual findings laid at the basis for this extremely broad conclusion of fact. On a closer analysis, this finding entirely overlaps with the one that Mr Ngaïssona liaised with various individuals, including groups at the border.[642] The Judgment does not identify any other actions on Mr Ngaïssona's part that could have contributed to this finding.

207. Given that Mr Ngaïssona's alleged engagement in activities pertaining to the organisation and coordination of groups essentially overlapped with his alleged liaising actions, the Chamber should have focused on evidence showing that Mr Ngaïssona's alleged liaising aimed at coordinating and organizing groups. Instead, the Chamber entered the extremely vague and generic finding that Mr Ngaïssona liaised "with other persons that, at that time or later, were involved in efforts to remove Michel Djotodia and the Seleka from power and bring back Bozizé to power".[643] It then proceeded to list all evidence of Mr Ngaïssona's alleged liaising,[644] including contacts that were not even remotely relevant to organizing or coordinating, thereby

[639] Judgment, pp. 1490-1491, paras 4373-4374.
[640] Judgment, pp. 1629-1630, paras 4807-4811.
[641] Judgment, p. 21, para. 38; *see also* pp. 1380-1381, para. 4031 and p. 1406, para. 4113.
[642] *See* Judgment, p. 289, para. 827.
[643] Judgment, pp. 322-323, para. 890.
[644] Judgment, pp. 322-333, paras 890-913.

failing to sufficiently identify the evidentiary basis for its factual conclusion. This amounted to a failure to provide a reasoned opinion pursuant to Article 74(5) of the Statute.

208. The Chamber further erred in procedure by not entering specific findings about each alleged liaising action undertaken by Mr Ngaïssona and its relevance to the charged crimes. Had it done so, it would have concluded that many important liaising allegations lacked a sufficient evidentiary basis. As argued, different actions, taking place at different times and involving different individuals can only be qualified as different facts.[645] The Chamber's conflation of many separate liaising allegations led to an unacceptable dilution of the standard of proof and to an erroneous assessment of corroboration. Had the Chamber attempted to make more specific and particularized findings, it would have reached the only reasonable conclusion possible that Mr Ngaïssona's liaising with relevant Anti-Balaka leaders and groups could not be established beyond a reasonable doubt. It would further have concluded that it was impossible to find that Mr Ngaïssona engaged in activities relating to the coordination and organisation of groups and that, through those actions, he contributed to the commission of the charged crimes.

i. Mokom

209. Mr Ngaïssona's conviction considerably hinges on the finding that he liaised with Mokom.[646] Yet the Chamber failed to clearly identify evidence in support of this finding, limiting itself to refer back to its general summary of all evidence of Mr Ngaïssona's liaising.[647] In turn, the Chamber also failed to identify relevant evidence supporting its finding that Mokom liaised with "individuals in Cameroon", as the Judgment cross-referenced to a section that does not even exist.[648] The Chamber's failure to clearly identify the evidence it considered relevant for such a key conclusion of fact amounts to a procedural error pursuant to Article 74(5) of the Statute. The Chamber failed to clearly articulate its reasoning, forcing the Appellant to scout

[645] *See* Ground I.C.3, paras 162-163.
[646] *See* Judgment, p. 1348, para. 3937 (assessment of Mr Ngaïssona's *mens rea*) ("through meetings in Cameroon and communications with individuals in Zongo, *in particular Maxime Mokom*, who in turned liaised with persons and groups in Bangui and in the provinces, François Bozizé, Mr Ngaïssona, Bernard Mokom and others planned steps to respond to the Seleka violence in the CAR as well as to ensure François Bozizé's return to power" (emphasis added)); p. 1380, para. 4029 (assessment of responsibility for Counts 1-6) ("Through meetings in Cameroon and communications with individuals in Zongo, *in particular Maxime Mokom*, Mr Ngaïssona and others planned steps to respond to the Seleka violence in the CAR as well as to ensure François Bozizé's return to power, by all means possible, including through armed violence" (emphasis added)); similarly pp. 1405-1406, para. 4111 (assessment of responsibility for Counts 30-33 and 37-41).
[647] Judgment, pp. 322-333, paras 890-913.
[648] Judgment, p. 366, para. 974, fn. 2524 *citing* section "IV.A.2.ii.b". Note that section IV.A.2.ii relates to activities in Douala, includes no mention of communication between Mokom and Cameroon and most importantly contains no sub-section (b).

for relevant evidence into the entire section concerning "individuals and their activities in Cameroon and the DRC", which totals 113 pages.[649]

210. The Chamber further erred in fact as no reasonable trier of fact could ever have concluded beyond reasonable doubt that Mokom was in contact with Mr Ngaïssona and that, through that contact, Mr Ngaïssona engaged in coordination and organisation activities of any sort. The bulk of the evidence the Chamber appears to rely on consists of the testimonies of P-2232 and P-0884.[650] The two witnesses provided similar evidence, claiming that from Zongo, Mokom worked with a group in Cameroon and that this group involved Mr Ngaïssona.[651] Their evidence was insufficient to establish liaising between Mokom and Mr Ngaïssona and the latter's coordination or organisation activities.

211. P-2232 had no information on whether Mokom ever communicated with Mr Ngaïssona at the time[652] and could not provide any details about the composition and functioning of this group in Cameroon that was supposedly working with Mokom.[653] Against this backdrop, the Chamber's labelling of P-2232's evidence as "*detailed* evidence about the connection between Maxime Mokom, on one hand, and Bernard Mokom and Mr Ngaïssona, on the other side"[654] mischaracterizes P-2232's evidence, as no reasonable trier of fact could ever have found that P-2232's evidence in this regard was "detailed". Further, the Chamber's choice to disregard P-2232's evidence that he never heard mention of Mr Ngaïssona's name up until after the BANGUI attack[655] amounted to a failure to properly evaluate his evidence. This omission overlooks that the witness could offer no specific information on Mr Ngaïssona's role or contacts during that timeframe.

212. P-0884 could not provide any specific information on contacts between Mr Ngaïssona and Mokom either. He merely stated that Mr Ngaïssona was part of a group that worked with

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[649] Judgment, pp. 247-360.
[650] Judgment, pp. 325-326, para. 895, pp. 805-806, para. 2207 (*citing* P-2232) and p. 333, para. 911 (*citing* P-0884).
[651] **P-2232**: T-075, pp. 56-57.
[652] **P-2232:** T-075, p. 48, lns 2-6 ("So he [Mr Ngaïssona] became coordinator, even before Maxime arrived in Bangui. *But I'm not sure. When he was in Cameroon, did he have contact with Maxime so that he could be coordinator of the movement?* Because I was surprised when I learnt in the morning that he was the coordinator"), p. 51, ln. 25 ("[…] *I have no idea* what his contacts may have been with Mokom"); T-078, p. 42, lns 5-6 ("They did not tell me the name of the person to whom they reported. Was it his father or someone else? *I have no idea*").
[653] **P-2232:** T-075, p. 57, lns 8-16; T-076, p. 18 lns 12-20, 24-25, p. 20, lns 22-25.
[654] Judgment pp. 805-806, para. 2207.
[655] Judgment, p. 806, para. 2208, fn. 5660, *citing* **P-2232:** T-075, pp. 50-53.

Mokom, which led him to speculate that the two were in contact.[656] P-2673 provided similarly speculative evidence, assuming that Mr Ngaïssona was in contact with Mokom by sole virtue of the fact that he was in Cameroon with his father.[657]

213. The above-cited evidence was clearly insufficient to conclude beyond reasonable doubt that Mr Ngaïssona liaised with Mokom and to which end, due to it being too general, indirect and often speculative. No reasonable trier of fact could ever have found otherwise. The only remaining evidence concerning contact between the two was Poussou's allegation that he would have witnessed one phone call between Mr Ngaïssona and Mokom in August 2013.[658] Leaving aside the reliability concerns with Poussou's allegation,[659] evidence of one phone call was insufficient to establish that Mr Ngaïssona and Mokom were liaising beyond that date.

214. Considering the absence of evidence that Mr Ngaïssona was communicating with Mokom, the Chamber's further finding that the two were communicating "in respect of" the Bangui attack[660] strikes as particularly unreasonable. There exists no evidence to this effect, and in fact the Judgment points to none, as it merely re-cites P-2232's evidence along with two irrelevant evidentiary items.[661] Not only did the Chamber err in fact in entering that finding; it also erred in procedure by failing to point to any pertinent evidence that would actually support it.

215. The Chamber's errors materially affected the decision, as Mr Ngaïssona's liaising with Mokom is one of the contributions that led to his finding of guilt, as outlined above.

ii. Konaté and Andjilo

216. The Chamber erred in fact when finding that Mr Ngaïssona was in communication with Konaté and Andjilo ahead of the Bangui attack.[662] This finding is based largely on the evidence of P-0306 and P-0965. The Chamber erred in fact when relying on P-0306 and P-0965 in this regard.

[656] **P-0884:** T-055, p. 71, lns 13-21.
[657] Judgment, pp. 328-329, para. 900, *citing* **P-2673:** CAR-OTP-2127-6435-R01, at 6455-56, para. 132.
[658] Judgment, p. 382, para. 1011, *citing* **P-2625:** T-189, pp. 47-53; T-193 pp. 5-6, 57-61.
[659] *See and compare* **P-2625:** T-189, p. 47, ln. 22 to p. 49, ln. 3 (testifying he had no idea what Mokom's role was at the time) and T-193, pp. 5-6 (claiming that at the time it was "common knowledge" in the entire country that Mokom was an Anti-Balaka leader).
[660] Judgment, pp. 805-806, paras 2207-2208, p. 808, para. 2213.
[661] Judgment, p. 807, para. 2209, *citing* **P-0306:** T-064, p. 59, lns 7-14 (relating to a timeframe after 5 December) and para. 2211, citing CAR-OTP-2100-2994, at 3027 (Facebook conversation relating to Bernard Mokom, not Mokom, as confirmed by **D30-4679:** T-301, p. 55, ln. 19 to p. 58, ln. 12).
[662] Judgment, p. 791, para. 2160.

No reasonable trier of fact could have safely relied on these witnesses' evidence, in light of clear reliability concerns which the Chamber failed to give sufficient weight to.

217. The Judgment makes factual findings which are at odds with P-0306's evidence on key allegations concerning Mr Ngaïssona's acts and conduct, particularly how he would have mandated for Andjilo to join the Bangui attack [REDACTED].[663] The Chamber's reconstruction downplays contrasts among the evidence[664] and unreasonably fails to articulate adverse findings.[665] Notably, despite it being the only reconstruction possible to reconcile P-0306's testimony with its conclusions, the Chamber failed to find that P-0306 lied about Andjilo having left Bouca to attack Bangui pursuant to Mr Ngaïssona's instructions. Similarly, the Chamber failed to articulate adverse findings on P-0306's reticence when testifying on his involvement with the Anti-Balaka movement, particularly [REDACTED][666] and [REDACTED].[667] The witness failure to testify about [REDACTED] should have led a reasonable trier of fact to treat any allegations in that sense with extreme caution.[668] The Chamber failed to apply such caution when it found that P-0306's evidence allowed it to safely establish that Mr Ngaïssona was in touch with Andjilo through Konaté.[669] The Chamber further behaved inconsistently towards P-0306's allegations concerning alleged contacts between Mr Ngaïssona, Konaté and Andjilo, downgrading some to mere inferences[670] or outright rejecting others,[671] while accepting that communication took place with no clear rationale for this distinction.

218. Similarly, the Chamber erred in relying on P-0965's allegation that Mr Ngaïssona was in touch with Konaté ahead of the Bangui attack.[672] Despite its silence on the matter, the Chamber's refusal to rely on key allegations made by P-0965 on the Anti-Balaka's contacts and arming

[663] *See and compare* Judgment, pp. 789-791, paras 2155, 2160, with **P-0306:** T-064, p. 26, ln. 2 to p. 33, ln. 23, p. 40, lns 7-24, p. 44, ln. 16 to p. 46, ln. 1, p. 52, lns 1-24, p. 55, lns 11-16; *see and compare* Judgment, p. 791, paras 2158, 2160 with **P-0306:** T-064, p. 32, lns 18-25, p. 33, lns 5-20, p. 52, lns 1-24.
[664] *See and compare* Judgment, p. 789, para. 2155 with **P-0306:** T-064, p. 29, lns 5-10, 19-20, p. 31, lns 15-17, p. 40, lns 7-24, p. 44, ln. 16 to p. 46, ln. 1, p. 52, lns 1-24, p. 55, lns 11-16, p. 57, lns 10-24, p. 59, lns 7-10, p. 65, lns 1-8; T-066, p. 53, lns 10-11, p. 55, lns 4-10, p. 59, ln. 22 to p. 60, ln. 2; T-067, p. 51, lns 8-18, p. 55, ln. 7; *see also* P-0306's notes CAR-OTP-2120-0598.
[665] *See* Ground I.B.2; *see and compare* Judgment, p. 791, paras 2158, 2160 with **P-0306:** T-064, p. 30, lns 19-20, p. 32, lns 18-25, p. 33, lns 5-20, p. 57, lns 10-24.
[666] *See and compare* [REDACTED].
[667] *See and compare* [REDACTED].
[668] *See* Ground I.B.1.
[669] Judgment, p. 792, para. 2162.
[670] [REDACTED].
[671] Judgment, p. 836, para. 2309, p. 838, 2315-2316.
[672] Judgment, pp. 842-843, para. 2334.

ahead of the Bangui attack[673] clearly hinges on credibility concerns.[674] With the record showing that P-0965 failed to give truthful evidence about the Anti-Balaka's contacts ahead of the Bangui attack, no reasonable trier of fact could have safely relied on P-0965's connected allegation of contact between the Anti-Balaka, Konaté and Mr Ngaïssona.

219. The Chamber's repeated failures to acknowledge issues in P-0306 and P-0965's evidence, reconcile inconsistencies and articulate adverse findings led it to misjudge the evidentiary value of P-0306 and P-0965's allegations. These errors materially affected the decision, leading the Chamber to find that, shortly before 5 December 2013, Mr Ngaïssona was in contact with two of the main actors of the Bangui attack, namely Andjilo and Konaté.

220. Further, the Chamber failed to address that P-2673's evidence on Mr Ngaïssona's contacts with Andjilo in Bouca did not corroborate P-0306,[675] nor aligned with the Chamber's conclusion that these contacts only begun after Andjilo had left Bouca and was joined by Konaté.[676] Addressing this inconsistency was legally required, otherwise the Chamber should have refrained from relying on P-2673's hearsay evidence. Its failure to do so[677] affected the coherence of the Judgment and violated Article 74(5) of the Statute.

221. Lastly, regardless of whether the Chamber erred in establishing that these contacts took place, it largely refused to enter findings about their content.[678] Therefore, these contacts are not evidence that supports the Chamber's broader conclusion that Mr Ngaïssona engaged in activities pertaining to the organisation and coordination of groups.

iii. Gobere and Bossangoa area

222. Evidence does not allow to establish that Mr Ngaïssona liaised with the Gobere group and Anti-Balaka in the Bossangoa area, let alone that he performed any organizational or coordination activities towards those groups. The Judgment only points to a handful evidentiary items consisting of hearsay evidence, mostly anonymous. That is the case for P-2673's allegation that

[673] Judgment, p. 820, para. 2254 (on the Anti-Balaka picking up weapons at the Ndress cemetery ahead of the Bangui attack) and p. 808, para. 2214, p. 835, para. 2307, p. 838, para. 2315 (on Bozizé calling Andjilo ahead of the attack).
[674] *See and compare* P-0965's prior recorded testimony CAR-OTP-2046-0037-R02 at 0040, lns 82-85; CAR-OTP-2046-0055-R02, at 0060-0061 lns 185-190, 223-236, at 0064-0065, lns 320-361, at 0070 lns 516-540 with testimony T-062, p. 44, ln. 3 to p. 52 ln. 10, p. 53, ln. 1 to p. 55, ln. 22; T-063, p. 3, ln. 20 to p. 5, ln. 24, p. 45, ln. 11 to p. 52, ln. 1.
[675] *See* Ground I.C.3.v, para. 187.
[676] Judgment, pp. 789-790, para. 2155, p. 791, para. 2160.
[677] Judgment, pp. 328-329, para. 900.
[678] Judgment, pp. 791-792, paras 2160-2162, p. 838, para. 2315.

Mr Ngaïssona was in touch with Anti-Balaka elements in Bossangoa,[679] as well as for P-2658's speculative allegation that Mr Ngaïssona was in touch with the Gobere group through other individuals.[680] As to P-1847's allegation that Mr Ngaïssona was in touch with Dedane, the Chamber misstated the witness' source, thereby erroneously finding that [REDACTED].[681] To the contrary, there is no information on the basis of knowledge of the witness' actual source, making it impossible to verify its reliability and credibility.[682]

223. The evidence cited above clearly falls short of proving beyond reasonable doubt that Mr Ngaïssona liaised with Anti-Balaka in Gobere or in the Bossangoa area. The Chamber did not expressly make a finding in that sense. Yet, its reliance on allegations concerning these alleged acts of liaising implies that the Chamber found they took place and form part of Mr Ngaïssona's contribution to the charged crimes. This conclusion is incorrect in fact. Had the Chamber properly assessed corroboration by entering particularized findings on Mr Ngaïssona's liaising actions, it would have found that the evidence fails to establish that Mr Ngaïssona liaised with Anti-Balaka elements in the region.

iv. Border area

224. The Chamber found that Mr Ngaïssona and Bernard Mokom travelled to the border area between Cameroon and the CAR with a view to liaising with groups that were to engage in armed efforts.[683] The Chamber heard no direct evidence of Mr Ngaïssona's passage at the border, merely relying on hearsay evidence from often vague sources, which renders this finding fundamentally unsafe.[684] The unreliability of this finding is further compounded by the Chamber's failure to give proper weight to D30-4914's testimony. The witness had a unique vantage point, as [REDACTED] during the relevant timeframe.[685] His evidence that [REDACTED] never liaised with Mr Ngaïssona[686] and that he did not see or hear about him

[679] Judgment, pp. 328-329, para. 900, *citing* **P-2673:** CAR-OTP-2127-6435-R01, at 6455-56, para. 132. *See also* T-042, p. 23, ln. 13 to p. 25, ln. 20.
[680] Judgment, p. 326, para. 896, *citing* **P-2658:** CAR-OTP-2126-0012-R02, at 0037, para. 164; CAR-OTP-2135-3476, at 3489, para. 164; **P-2658:** T-134, p. 50, lns 7-16, p. 60, ln. 24 to p. 61, ln. 14.
[681] Judgment, pp. 350-351, para. 943, *citing* **P-1847:** CAR-OTP-2122-8251-R01, at 8254-55, para. 28.
[682] *See* Ground I.A.2.
[683] Judgment, p. 333, para. 914.
[684] P-2673's source shifted from [REDACTED] to [REDACTED] (*see* CAR-OTP-2127-6435-R01, at 6459-6560, paras 154, 159); P-1847 provided no source (CAR-OTP-2122-8251-R01, at 8254, para. 25); P-2841's source was [REDACTED] (CAR-OTP-2127-4238-R01, at 4250, para. 68) but he stressed that information he had on approaching the "archers" at the border referred much more to Bernard Mokom: T-030, p. 13-14.
[685] **D30-4914**: CAR-D30-0024-0001-R01, at 0014, lns 524-525.
[686] **D30-4914**: CAR-D30-0024-0001-R01, at 0010, lns 344-369.

travelling to Garamboulaye,[687] nor about groups from Bouar travelling to the border around that timeframe,[688] should have been afforded relevant weight, particularly when juxtaposed with mere hearsay.[689]

225. Furthermore, the Chamber completely failed to develop any form of reasoning establishing the relevance of these supposed actions to the charges. The Judgment does not indicate whether Mr Ngaïssona and Bernard Mokom's supposed "mobilising" of self-defence groups in the area yielded any results, nor does it enter findings on the composition and affiliation of these groups. That some witnesses labelled them as Anti-Balaka[690] does not suffice to make them part of the alleged organisation, in the absence of further elements that allow to establish that they were embedded in a more structured group, with systems in place to coordinate their actions with those of other groups situated in other regions, including those involved in the Bangui and Bossangoa attacks.[691]

226. The Chamber also erred in finding that Mr Ngaïssona was involved in liaising with the groups that executed the Bouar attack in late October 2013.[692] The evidence it relied upon either amounts to hearsay[693] or suffers from serious credibility concerns.[694] Particularly insofar as P-1847's evidence is concerned, the witness' source of knowledge concerning Mr Ngaïssona's involvement in the Bouar attack shifted from indirect knowledge in his first statement,[695] to speculation in his second statement.[696] Against this backdrop, the Chamber's decision to disregard clarifications during testimony that this area of the witness' evidence involved "some points of confusion" was ill-advised.[697] Further, the Chamber did not enter any findings on the affiliation of the Bouar self-defence group with the alleged organisation and it found that it

[687] **D30-4914**: CAR-D30-0024-0001-R01, at 0015, lns 575-579; T-302, p. 44, ln. 18 to p. 45, ln. 6; T-303, p. 18, lns 5-14.
[688] **D30-4914**: T-302, p. 46, lns 1-18.
[689] *See* Ground I.B.3; Ground I.B.4.
[690] Judgment, e.g., pp. 337-338, para. 921; *contra* pp. 334-336, paras 916-917.
[691] *See* Ground II.D.2.
[692] Judgment, p. 556, para. 1467.
[693] Judgment, p. 554, para. 1461 *citing* **P-2673**: T-042, p. 25, ln. 14 to p. 26, ln. 13.
[694] Judgment, p. 554, para. 1460, *citing* **P-0801**: T-034, p. 62, ln. 17 to p. 63, ln. 5; *See* Ground I.B.5.i, paras 90-92; p. 554-555, paras 1462-1464, *citing* **P-1847**: CAR-OTP-2061-1534, at 1556, para. 142; CAR-OTP-2122-8251-R01, at 8256, para. 42, at 8257, para. 46, at 8264-65, para. 125; T-023, p. 46, lines 13-20.
[695] **P-1847**: CAR-OTP-2061-1534-R01, at 1556, para. 142, claiming Mr Ngaïssona ordered the Bouar attack.
[696] **P-1847**: CAR-OTP-2122-8251-R01, at 8256-8257, paras 42, 46, stating that Mr Ngaïssona "must have known" about the Bouar attack.
[697] Judgment, p. 555, para. 1464.

could not conclude, on the basis of the evidence that the individuals who led the Bouar attack joined armed actions during the advance towards Bangui and on 5 December.[698]

227. Against this backdrop, the Chamber erred in fact by finding that Mr Ngaïssona's alleged travel to the border and liaison with individuals who led the attack in Bouar constituted assistance to the charged crimes.[699] This was a direct result of the Chamber's overly broad interpretation of the objective elements of Article 25(3)(c).[700] This error materially affected the decision, as it led the Chamber to rely on the above-mentioned contributions to conclude that Mr Ngaïssona engaged in activities pertaining to the organisation and coordination of groups.

v. Involvement in planning the Bangui attack

228. The Chamber erred in fact and procedure by implying Mr Ngaïssona's involvement in the planning of the Bangui attack. While said involvement was not stated openly, the Chamber clearly inferred it, by deducing the existence of a plan to attack Bangui from Mr Ngaïssona's participation in meetings and communications in the months preceding the attack.[701] The connection between the planning of the Bangui attack and meetings in Cameroon is not readily discernible and the Chamber failed to clearly outline its reasoning in this respect, as well as to point to evidentiary items that clearly showed the existence of such a connection. The mere cross-referencing to an entire section on meetings in Cameroon[702] did not adequately fulfil the Chamber's obligation provide a reasoned opinion pursuant to Article 74(5) of the Statute.

229. The Chamber further erred in fact when relying on Kokaté's allegation that, in November 2013, Mr Ngaïssona would have met individuals in Yaoundé "in relation to a future attack on Bangui."[703] As recalled, Kokaté downplayed his role in the Anti-Balaka movement and knowledge of the 5 December attack in Bangui.[704] In light thereof, it was profoundly unsound for the Chamber to rely on allegations clearly seeking to shift blame, such as the one that Mr Ngaïssona qualified the individuals who were about to attack Bangui as "his troops".[705] Besides, such a qualification hardly aligned with the majority of the evidence, that rather pointed to

[698] Judgment, p. 795, para. 2171, p. 797, para. 2181.
[699] Judgment, p. 289, para. 827, pp. 1380-1381, para. 4031, p. 1406, para. 4113.
[700] *See* Ground II.A.
[701] Judgment, pp. 782-783, para. 2131.
[702] Judgment, pp. 782-783, para. 2131; *similarly see* p. 781, para. 2126 fn. 5479.
[703] Judgment, p. 781, para. 2126.
[704] Judgment, p. 82, para. 246.
[705] Judgment, p. 781, para. 2127, *citing* **P-0801:** T-034, pp. 58-59.

Mokom as the individual who was handling and coordinating the upcoming Bangui attack, as acknowledged by the Chamber.[706]

230. The Chamber further erred in fact by unduly focusing on Mr Ngaïssona's informing other individuals of an upcoming attack in Bangui.[707] The record was replete with evidence confirming that, in the days ahead of the attack, it became common knowledge that an attack on Bangui was going to take place.[708] Therefore, Mr Ngaïssona's awareness in that sense in no way confirmed his involvement in the attack's planning.

231. Lastly, the Chamber erred in fact and procedure when relying on P-1847's allegation that Mr Ngaïssona asked elements to rest for a week before the Bangui attack. First, as acknowledged by the Chamber, P-1847's evidence was speculation.[709] Second, the Chamber's assertion that P-1847 "agreed" in court that Mr Ngaïssona had made this request misstates the witness' evidence, as the witness rather stated that the request came from Mokom and Bozizé.[710] Third, P-1847's allegation was in contrast with other evidentiary items, suggesting that the attack was not moved out of a need for rest, but rather because of security reasons.[711] Indeed, the Chamber ultimately found that it could not establish the exact reason why the attack was postponed,[712] which – in and of itself - is incompatible with its reliance on P-1847's allegation that it took place on 5 December because of Mr Ngaïssona's request to rest. Fourth, the Chamber adopted an inconsistent approach, by relying on P-1847's hearsay evidence in this instance, while declining to do so in comparable situations.[713]

232. While the Chamber made no explicit finding that Mr Ngaïssona was implicated in the organisation of the Bangui attack and declined to find that Mr Ngaïssona gave orders for the attack,[714] its reliance on the above-cited evidence leaves little doubt that this inference contributed to the Chamber's conclusion that Mr Ngaïssona engaged in organisation and

[706] Judgment, p. 805, para. 2205.
[707] Judgment, pp. 781-783, paras 2125-2131.
[708] *See* i.a. **P-0884**: T-056, p. 6, lns 11-18; **P-2843**: T-073, p. 56, lns 9-13; **P-0889**: CAR-OTP-2027-2290-R02, at 2297, paras 38-39; **P-0974**: T-243, p. 17, lines 3-14. Also note Judgment, p. 832, para. 2294.
[709] Judgment, pp. 817-818, para. 2244, citing **P-1847**: CAR-OTP-2061-1534, at 1560, paras 165 ("En ce qui concerne la date du 05 Décembre pour l'attaque, *je pense* que NGAÏSSONA avait demandé aux troupes de se réposer pendant une semaine" (emphasis added)), 167.
[710] Judgment, pp. 817-818, para. 2244, *citing* **P-1847**: T-023, p. 92, ln. 20 to p. 93, ln. 6.
[711] Judgment, p. 830-831, paras 2287-2288.
[712] Judgment, p. 832, para. 2293.
[713] Judgment, p. 808, para. 2214.
[714] Judgment, pp. 835-838, paras 2305-2316.

coordination activities. The above errors materially affected the decision, as they underpin the Chamber's assessment of Mr Ngaïssona's contribution to the organisation of the Bangui attack.

vi. Other allegations of liaising

233. The Chamber relied on general allegations of liaising with individuals or groups involved in the resistance against the Seleka. In relying on this evidence, the Chamber committed mixed errors of fact and procedure.

234. The Chamber erred in fact when finding, based on Poussou's evidence, that in August 2013 Mr Ngaïssona was "in contact with individuals who were 'in the field' organising efforts in response to the Seleka violence."[715] Poussou's evidence lacked sufficient detail, vaguely referring to "children out in the field"[716] and admitting that he only heard a fragment of Mr Ngaïssona's account.[717] The witness had difficulties recalling this event with clarity,[718] had to be reminded his prior statement[719] and contradicted himself.[720] The Chamber erred in assessing the evidentiary weight of Poussou's assertions, as no reasonable trier of fact could have relied so extensively on such vague and inconsistent evidence.[721] The Chamber further failed to address and acknowledge inconsistencies in Poussou and Kokaté's evidence as to the content of this meeting, despite acknowledging the presence of the latter.[722] This amounted to a failure to provide a reasoned opinion pursuant to Article 74(5), especially in light of the fact that the Chamber had a heightened obligation to resolve this inconsistency, which had been raised by the Appellant in its Closing Brief.[723]

235. The Chamber erred in fact when relying on P-0974's evidence that Mr Ngaïssona admitted having been in touch with former members of the *Force Armée Centrafricaine* ('FACA') and people in the provinces "for the birth of the movement".[724] While these words would have been

[715] Judgment, p. 383, para. 1013.
[716] **P-2625:** T-192, p. 67, lns 12-16.
[717] **P-2625:** T-189, p. 33, lns 3-9, p. 35, lns 4-7.
[718] **P-2625:** T-189, p. 45, lns 18-22 ("Do you recall a meeting in which Ngaïssona provided information on the status of the elements on the military side? These are *probably* the elements he already mentioned when he was describing his contacts with what was happening on the ground. And Francis Bozizé *must have* then interrupted him. *I think that's -- that's it*").
[719] **P-2625:** T-189, p. 36, lns 1-23.
[720] **P-2625:** T-189, p. 36, lns 9-23 (on identical exchanges taking place at two different meetings); T-192, p. 67, lns 12-16 (on Mr Ngaïssona having been interrupted by François, rather than Francis, Bozizé, as argued earlier).
[721] Note the repeated recalling of this evidence in the Judgment at pp. 379-381, paras 1006, 1008, pp. 382-383, paras 1012, 1013.
[722] **P-0801**: T-034, p. 35, lns 3-15; Judgment, p. 381, para. 1010.
[723] Closing brief, para. 191.
[724] Judgment, p. 329, para. 902, *citing* **P-0974:** CAR-OTP-2058-0165-R01, at 0177, para. 81; T-243, p. 12, lns 17-24; T-244, p. 31, ln. 16 to p. 35, ln. 22.

spoken [REDACTED], in the presence of other witnesses,[725] none of them corroborates this evidence[726] and [REDACTED] actively refutes it.[727] Against this backdrop, no reasonable trier of fact could have safely relied on P-0974's evidence. The Chamber further erred in procedure, as it failed to address this lack of corroboration and to reconcile the inconsistency between P-0974 and [REDACTED]'s evidence, thereby violating its obligation to provide a reasoned opinion pursuant to Article 74(5). The Chamber's errors materially affected the decision, as the Chamber erroneously relied on P-0974's evidence to find that Mr Ngaïssona contributed to the charged crimes through liaising.

236. The Chamber further erred in fact when relying on Mokpem-Bionli's evidence that Mr Ngaïssona would have kept himself informed about and communicated with the "movement of the resistance", urging them not to commit crimes.[728] The Judgment misrepresents the witness' evidence, as it suggests that these communications would have taken place in early 2013 when Mr Ngaïssona was in Cameroon with Bozizé. This fails to account for Mokpem-Bionli's later clarification that he did not know if Mr Ngaïssona was in touch with the Anti-Balaka from Cameroon[729] and that this request not to commit crimes was made shortly before his return to CAR, when the Anti-Balaka were already in Bangui.[730] The Chamber's error in properly assessing Mokpem-Bionli's evidence materially affected the decision, as it led it to rely on that evidence to confirm contact between Mr Ngaïssona and resistance movements in the provinces.

237. The Chamber further relied on the evidence of Namsio and P-0884, who stated to have had contact with Mr Ngaïssona in the months ahead of the Bangui attack.[731] The Chamber erred in placing weight on this evidence, absent any information on the content of these communications and especially on whether, through these communications, Mr Ngaïssona engaged in any organisational or coordination activities. In the same vein, Mr Ngaïssona's communications with Ngaya,[732] absent any evidence of impact on or relevance to the charged crimes, should have been deemed irrelevant to determining whether Mr Ngaïssona engaged in organisation or coordination activities that contributed to the charged crimes. The Chamber's incorrect reliance

[725] [REDACTED].
[726] [REDACTED].
[727] [REDACTED].
[728] Judgment, pp. 323-324, para. 892, *citing* **P-0992:** CAR-OTP-2110-0048-R05, at 0055-56, para. 38.
[729] **P-0992:** CAR-OTP-2128-0288-R02, at 0305, paras 107-108.
[730] **P-0992:** CAR-OTP-2128-0288-R02, at 0306, para. 113; T-092, p. 23, lns 2-5; T-093, p. 26, lns 6-22.
[731] Judgment, p. 325, para. 894, p. 327, para. 897.
[732] *See* Judgment, p. 84, para. 253, pp. 273-274, para. 798, pp. 312-313, paras 873-874, pp. 391-393, paras 1032-1035, 1037.

on this evidence clearly stems, once more, from a legally wrong and overly broad interpretation of the objective elements of aiding and abetting liability under Article 25(3)(c).[733] These errors materially affected the decision, as they led the Chamber to rely on an excessively broad evidentiary pool when concluding that Mr Ngaïssona was involved in activities related to the organisation and coordination of groups.

238. The Chamber further erred in relying on P-2673 and P-1847's evidence that they heard Mr Ngaïssona met with Eugène Ngaikosset in Cameroon.[734] Seeing as Eugène Ngaikosset did not play any role in the commission of the charged crimes, his alleged liaising with Mr Ngaïssona was irrelevant to assessing the latter's contribution to the charged crimes. Further, the Chamber erred in fact when relying on P-1847 and P-2673's evidence in this regard, when: (i) it was based on hearsay;[735] (ii) the record showed the circulation of a large amount of conflicting information on Ngaikosset's movements on Facebook;[736] and (iii) the witnesses themselves diverged on Ngaikosset's movement following his alleged meeting with Mr Ngaïssona.[737] The Chamber's errors materially affected the decision, as they contributed to the finding that Mr Ngaïssona engaged in activities related to the organisation and coordination of groups. The Chamber also erred in procedure when failing to address these inconsistencies, which had been extensively highlighted by the Defence.[738] These errors affected the overall coherence and transparency of the Judgment, violating Mr Ngaïssona's right to a reasoned opinion under Article 74(5) of the Statute.

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[733] *See* Ground II.A.
[734] Judgment, pp. 329-330, para. 903, *citing* **P-2673:** T-041, p. 8, ln. 20 to p. 9, ln. 10; T-042, p. 5, ln. 20 to p. 6, ln. 1; p. 331, para. 907 *citing* **P-1847:** CAR-OTP-2061-1534, at 1562, paras 177-179; T-023, p. 87, ln. 3 to p. 88, ln. 20.
[735] **P-2673:** T-041, p. 8, ln. 20 to p. 9, ln. 10 (anonymous hearsay); **P-1847:** *Compare* CAR-OTP-2061-1534, at 1562, paras 177-178 (the individuals named as sources were [REDACTED]) with T-023, p. 87, ln. 15 to p. 88, ln. 2 (the individuals named as sources were [REDACTED]):
[736] *Compare* CAR-OTP-2100-9896, at 9909-9911, where user [REDACTED] places Ngaïkosset in Yaoundé on 25 November with CAR-OTP-2102-6699, at 6921, where, on 25 November, user [REDACTED] says he has learnt from Kokaté that Ngaïkosset is in Douala since the day before; *compare* CAR-OTP-2100-9896, at 9912, where, on 29 November, user [REDACTED] says Ngaïkosset is moving towards the border; CAR-OTP-2102-8228, at 8243-8244, where, on 2 December, user [REDACTED] says that Ngaïkosset had problems and got stuck in Bétou [close to the CAR southern border] while going through Congo with CAR-OTP-2101-6260, at 6276, where, on 5 December, an unidentified user says that "contrary to what is being said", Ngaïkosset is still in Cameroon, which is confirmed by user [REDACTED], who says that erroneous information is circulating because "he is feared" and therefore he is "being seen everywhere". Yet, in CAR-OTP-2101-6303, at 6309, the same user claims just one day later (6 December) that Ngaïkosset is in Bouar. *Compare* with CAR-OTP-2133-3390, at 3466-3467 where user [REDACTED] claims that Ngaïkosset is leading elements in camp Kassai on 5 December, to which his interlocutor responds that it is not true, although he is on the terrain and "not far" from Bangui.
[737] *Compare* **P-1847**: CAR-OTP-2061-1534-R01, at 1562, para. 178 (Ngaïkosset arrested in Yokadoma) with **P-2673**: T-041, p. 9, lns 2-4 (Ngaikosset seeking to go to Garam-Boulai).
[738] Closing brief, paras 514-516.

239. The Chamber further erred in fact when finding, on the basis of emails between Mr Ngaïssona and Ngaya after the 5 December attack and before the former's return to CAR,[739] that Mr Ngaïssona was "not a mere bystander" to the Anti-Balaka movement and that he had "a valid interest therein".[740] The Chamber's finding was excessively vague and reflected its failure to clearly outline and articulate Mr Ngaïssona's role *vis à vis* the Anti-Balaka ahead of him becoming National Coordinator. No reasonable trier of fact could ever have based a conviction on such ambiguous findings. Besides, the Chamber failed to provide reasoning on the impact of Mr Ngaïssona's involvement in this exchange of emails on the commission of the charged crimes. Similarly, the Chamber erred in fact when relying on emails exchanged between Mr Ngaïssona, [REDACTED] and [REDACTED],[741] when it was largely unable to enter conclusions on their interpretation[742] and in the absence of information or evidence on any impact these exchanges had on the charged crimes. These errors materially affected the decision, as they led the Chamber to find that Mr Ngaïssona was involved in activities related to organisation and coordination of groups, despite the lack of clarity on the nature of these activities and their impact onto the charged crimes.

240. Lastly, the Chamber erred in fact when relying on Kokaté's allegations of Mr Ngaïssona's involvement in liaising or organising actions, when these allegations were made with the clear goal of shifting blame. Notably, the Chamber erred in fact when relying on Kokaté's allegation that Mr Ngaïssona would have told him that he organised and coordinated military actions in the field.[743] In light of its earlier finding that Kokaté sought to downplay his own role in the Anti-Balaka movement,[744] and given that evidence on the record suggested Kokaté was involved in organising military operations within the Anti-Balaka,[745] the Chamber should have applied extreme caution when relying on allegations that patently sought to shift blame. In the same vein, the Chamber should have applied extreme caution and refused to rely on Kokaté's evidence that he was "required" to inform Mr Ngaïssona ahead of travelling to the N'Djamena peace talks in representation of the Anti-Balaka at the end of December 2013.[746] With respect to these talks, the Chamber further failed to address inconsistencies between Kokaté and P-

[739] Judgment, pp. 576-580, paras 1529-1538, pp. 582-583, paras 1543-1548.
[740] Judgment, pp. 583-584, para. 1548.
[741] Judgment, pp. 580-581, paras 1539-1542.
[742] Judgment, p. 581, para. 1542.
[743] Judgment, pp. 395-396, para. 1041, *citing* **P-0801:** T-034, p. 51, lines 5-21.
[744] Judgment, p. 82, para. 246.
[745] *See* e.g., **P-2841**: CAR-OTP-2127-4238-R01, at 4265, para. 154; T-030, p. 22, lns 18-20; **P-2328**: T-047, p. 4, ln. 10 to p. 5, ln. 2; CAR-OTP-2084-1222.
[746] Judgment, p. 585, para. 1552.

1847's evidence.[747] These errors materially affected the decision as they led the Chamber to misjudge Mr Ngaïssona's role within the Anti-Balaka in the period ahead of his return to CAR.

6. The Chamber erred in fact and law in finding that Mr Ngaïssona's designation as the Anti-Balaka general coordinator in January 2014 was an indicator of his prior involvement

241. The Chamber erred in finding that Mr Ngaïssona's designation as the Anti-Balaka general coordinator in January 2014 was an indicator of his prior involvement. None of the evidence cited supports this inference.

242. First, the Chamber erred in fact by misappreciating the evidence on the record. Mr Ngaïssona's designation on the day of his return cannot reasonably establish prior involvement. Similarly, convening the meeting[748] does not show pre-existing authority: the evidence indicates only that, once back in Bangui, and in the context of a leadership vacuum,[749] he gathered various actors to discuss a way forward. The testimonial evidence cited by the Chamber goes no further than recording that Mr Ngaïssona convened that meeting upon his return,[750] and that, at that meeting, he was designated coordinator by vote or proclamation.[751] Notably, the record shows that Mr Ngaïssona was asked to become coordinator and that he only accepted this role on the condition that the violence would stop.[752]

243. The Chamber's reliance on the 3 March 2014 press release is equally flawed. On its face, the release records that Mr Ngaïssona "*a été désigné […] à l'issue d'une grande réunion […] tenue le 14 Janvier 2014*",[753] and that a coordinator was needed "*par souci d'encadrement et de leadership politique*".[754] The list of signatories shows *ex post facto* endorsement.[755] This further corroborates that Mr Ngaïssona's designation as coordinator by certain Anti-Balaka actors was

[747] *See and compare* **P-0801:** T-035, pp. 16-21 (on discussing the Ndjamena talks with Mr Ngaïssona over the phone) with Judgment, pp. 585-586, para. 1553 (*citing* **P-1847:** T-023, p. 29, ln. 11 to p. 30, ln. 4; CAR-OTP-2061-1534, at 1564-65, para. 195; CAR-OTP-2122-8251-R01, at 8263, para. 113).
[748] Judgment, p. 590, para. 1565. *See also* **P-0801:** T-035, p. 22, lns 4-19; **P-0974:** CAR-OTP-2058-0165-R01, at 0177, para. 77; T-243, p. 25, ln. 23 to p. 26, ln. 1; **P-1521:** T-082, p. 11, ln. 7 to p. 14, ln. 23; **P-0306:** T-064, p. 36, ln. 17 to p. 37, ln. 19. [REDACTED].
[749] **P-0808:** T-070, p. 42, lns 23-25. *See also* **P-1521:** T-082, p. 8, lns 9-17; T-083, p. 8, lns 3-23; **P-0884:** T-057, p. 18, lns 2-13; T-058, p. 37, lns 5-23; **P-0889:** T-109, p. 74, ln. 18 to p. 75, ln. 5.
[750] Judgment, pp. 591-594, paras 1567-1574. For the witnesses cited, *see* those listed in fn. 748.
[751] **P-0801:** T-035, p. 22, lns 4-19; T-036, p. 13, lns 7-14; **P-2232:** T-078, p. 56, ln. 20 to p. 58, ln. 9; **P-0974:** CAR-OTP-2058-0165-R01, at 0177, para. 77; T-244, p. 46, ln. 10 to p. 47, ln. 3; **P-0306:** T-064, p. 36, ln. 17 to p. 37, ln. 19; **P-0889:** CAR-OTP-2027-2290-R02, at 2299, paras 54-55; **P-1521**: T-082, p. 11, ln. 7 to p. 14, ln. 23. *See also* **P-0884:** T-058, p. 33, lns 20-21.
[752] **P-1521:** T-083, p. 9, line 19 to p. 10, line 4, p. 11, lines 7-12.
[753] CAR-OTP-2101-4059, at 4059 cited at p. 591, para. 1566 and fn. 4125 of the Judgment.
[754] *Ibid*. *See also* **P-0992:** T-095, p. 34, ln. 7 to p. 35, ln. 11; **D30-4756:** T-269-FRA, p. 15, ln. 26 to p. 17, ln. 5.
[755] CAR-OTP-2101-4059, at 4060-61 cited at p. 591, para. 1566 and fn. 4126 of the Judgment.

made on the same day as his return to Bangui, as a response to an urgent contemporaneous need for political leadership,[756] and not in furtherance to any pre-2014 role or mandate. The record shows also that (i) discussions about Mr Ngaïssona potentially leading the movement occurred only after 10 January 2014,[757] and that, following these discussions, the Anti-Balaka, chose him as coordinator,[758] i.e. his leadership resulted from a collective decision rather than any self-appointment or recognition of an earlier mandate; (ii) other candidates competed for the leadership position;[759] and that (iii) a pre-existing spokesperson framework operated without him.[760] These elements further support the more reasonable inference that Mr Ngaïssona's designation as Anti-Balaka coordinator by part of the movement was a late and contested political choice[761] prompted by the leadership vacuum, rather than the confirmation of any pre-existing leadership position or prior involvement in an organised Anti-Balaka structure.

244. Moreover, the Chamber erroneously treated non-probative criteria, such as public profile, financial resources and ability to interface with international forces, as proof of Mr Ngaïssona's prior involvement.[762] These factors merely explain why Mr Ngaïssona was chosen in January 2014 as national coordinator; they do not establish participation in 2013. At most, they provide an equally or more plausible alternative explanation for his designation, that weakens any inference of prior involvement. The Chamber erred in drawing an unreasonable inference from the evidence that no reasonable trier of fact could reach.

245. Two witnesses alluded to prior links between Mr Ngaïssona and the Anti-Balaka, but neither directly proved that he was already familiar with the Anti-Balaka and "had links with the military".[763] Prosecution witness Ngaya merely observed that he saw Mr Ngaïssona with

[756] *See also* **P-1521:** T-082, p. 12, lns 8-16; T-083, p. 8, lns 3-23; **P-0306:** T-065, p. 44, ln. 25 to p. 45, ln. 10.
[757] **P-0446:** CAR-OTP-2105-0593-R01, at 0597-0599, lns 116-186, at 0602, lns 306-311.
[758] **P-0446:** T-097, p. 30, lns 11-19. *See also* **P-0884:** T-056, p. 46, lns 15-25; **P-0889:** T-109, p. 33, lns 2-10; **P-1521:** T-082, p. 12, lns 8-16; **P-0808:** CAR-OTP-2025-0324-R01, at 0337, para. 87; T-070, p. 45, ln. 22 to p. 46, ln. 3.
[759] **P-0446:** CAR-OTP-2105-0593-R01, at 0599, lns 189-211.
[760] The witness told Mr Ngaïssona that he [P-0446] was only the deputy spokesperson, as Wénézoui was the spokesperson and Konaté the spokesperson of the FACA elements, *see* **P-0446:** CAR-OTP-2105-0593-R01, at 0597-99, lns 116-186.
[761] *See* Judgment, pp. 648-656, paras 1717-1737.
[762] Judgment, p. 626, para. 1655. On the selection criteria *see* **P-0808:** CAR-OTP-2025-0324-R05, at 0337, para. 87; T-070, p. 43, lns 5-9, p. 58, ln. 23 to p. 59, ln. 5; **P-2841:** CAR-OTP-2127-4238-R01, at 4244, paras 33-34; CAR-OTP-2130-4475-R01, at 4476; **P-0446:** CAR-OTP-2105-0593-R01, at 0601, lns 270-278; T-097, p. 75, ln. 13 to p. 76, ln. 6; **P-0888:** T-123, p. 21, ln. 22 to p. 22, ln. 11; **P-0992:** CAR-OTP-2110-0048-R05, at 0056, para. 40; **P-0889:** T-109, p. 32, ln. 17 to p. 33, ln. 22; **P-2843:** T-073, p. 20, ln. 13 to p. 21, ln. 9; T-074, p. 17, ln. 17 to p. 20, ln. 9; **P-2232:** T-076, p. 50, ln. 17 to p. 51, ln. 3; **D30-4720:** T-279, p. 21, ln. 14 to p. 22, ln. 5; **P-1172:** CAR-OTP-2082-1058-R03, at 1065, para. 41; **D30-4756:** T-269, p. 18, ln. 20 to p. 19, ln. 4.
[763] Judgment, p. 624, para. 1652.

Lieutenant Konaté and FACA members.[764] P-0884, for his part, expressly stated that he did not know Mr Ngaïssona as a political coordinator before 5 December 2013; his additional account regarding Cameroon[765] is insufficient to establish any prior involvement, as previously analysed.[766] These observations and ambiguous opinion statements[767] cannot reasonably establish any pre-return position within, or concrete military links to, the Anti-Balaka; the Chamber's conclusion is therefore inferential rather than based on direct evidence.

246. Similarly, witnesses who were in the provinces or in Zongo testified not having heard of Mr Ngaïssona before his return and recognised Mokom as their coordinator.[768] Instead of weighing this contradiction, the Chamber applied a "does not negate" test,[769] ignoring that such evidence is at least equally consistent with Mr Ngaïssona not having a role within the Anti-Balaka in 2013.

247. In light of the above, no reasonable trier of fact could treat Mr Ngaïssona's January 2014 designation as proof of prior involvement. The evidence relied upon is neutral or, if anything, more consistent with him assuming leadership only after his return, and it cannot establish beyond reasonable doubt that he held any coordinating, command or other role in the Anti-Balaka before 14 January 2014.

248. Second, the Chamber misapplied the legal standard for circumstantial evidence and the standard of proof beyond reasonable doubt. It erred in drawing an inculpatory inference on Mr Ngaïssona's post-return designation as coordinator, in the presence of an alternative reasonable explanation, namely the need for urgent leadership to enable the Anti-Balaka to properly engage with the transitional authorities. The Chamber's finding that Mr Ngaïssona's designation indicates prior involvement in the Anti-Balaka was not the only reasonable conclusion and it was not reached beyond reasonable doubt.

249. Third, the Chamber's finding lacks reasoning. Indeed, the phrase "as further outlined below"[770] promises a reasoned opinion on its finding of prior involvement. Yet, the Chamber only uses

[764] Judgment, p. 624, para. 1652 *citing* **P-0808**: CAR-OTP-2093-0010-R02, at 0021, para. 59.
[765] Judgment, p. 625, para. 1653.
[766] *See* Ground I.C.5, paras 210, 212.
[767] Judgment, p. 624, para. 1652 *citing* **P-0808:** CAR-OTP-2093-0010-R02, at 0021, para. 59; T-069, p. 24, ln. 21 to p. 25, ln. 8. P-0808 mentioned, however, that this "was simply an observation", *see* T-069, p. 25, ln. 4.
[768] Judgment, p. 625, para. 1654 *citing* **P-0975:** CAR-OTP-2033-7885-R02, at 7892, para. 52; **P-1172:** CAR-OTP-2082-1058-R03, at 1065, para. 40; **P-0966:** CAR-OTP-2031-0241-R03, at 0256, para. 88; **P-2232:** T-075, p. 50, ln. 23 to p. 51, lns 2, 10, 19-24, p. 54, lns 9-12; **P-1839:** T-174, p. 88, lns 1-10.
[769] Judgment, p. 625, para. 1654.
[770] *See* Judgment, p. 590, para. 1565 and p. 624, para. 1649.

the circumstantial timing of[771] and the reasons for Mr Ngaïssona's designation[772] in 2014 to support its finding of prior involvement in the Anti-Balaka, leading to an insufficient reasoning. Likewise, as mentioned above, the Chamber's failure to reason why conflicting evidence was discounted,[773] amounts to a violation of Article 74(5) of the Statute.

250. By inferring prior involvement from same-day designation, opinion-based testimony, and non-probative factors, the Chamber reached a conclusion unsupported by the evidence on the record. Proper application of the above factual and legal standards would have precluded any finding of 2013 involvement. Together with the Chamber's erroneous findings regarding Mr Ngaïssona's financial contributions and liaising in 2013,[774] this error materially affects the conviction, as it underpins the narrative of Mr Ngaïssona's alleged role in the Anti-Balaka and the crimes charged.

7. The Chamber erred in fact and procedure in finding that Mr Ngaïssona engaged in inflammatory rhetoric, which incited vigilance against Muslim civilians

251. The Chamber reasoned that the roots of the Anti-Balaka's anti-Muslim animus can be traced back to public speeches uttered by Bozizé and his supporters, including Mr Ngaïssona, during the Seleka advance. It particularly found that the local population was "primed" through the expression of anti-foreign sentiments and inflammatory rhetoric,[775] which introduced a distinction between "real" and "foreign" Central Africans, with the latter being understood to encompass Muslim civilians.[776] The Chamber's conclusions are based on inferential leaps which are not logically supported by the evidence. Particularly, the Chamber erred by conflating the expression of anti-foreign animus in public speeches with anti-Muslim animus, which is not reasonably borne out of the evidence.

252. It is undisputed that public speeches in late 2012 and early 2013 referred to the vast presence of foreign fighters within the Seleka, including from Chad and Sudan, a presence which the Chamber itself acknowledges.[777] While some speeches presented the Seleka as a partly foreign entity,[778] they also referred to members and supporters of the Seleka as compatriots, "sons of

[771] *See* Judgment, pp. 590-594, paras 1564-1574.
[772] *See* Judgment, pp. 624-628, paras 1648-1661.
[773] *See above* para. 246.
[774] *See* Grounds I.C.3 and I.C.5.
[775] Judgment, p. 23, paras 46-47, p. 479, para. 1241.
[776] Judgment, p. 479, para. 1241.
[777] Judgment, p. 246, para. 737.
[778] Judgment, pp. 486-487, para. 1262.

the country" and "brothers".[779] The Chamber completely failed to give appropriate or any weight to these nuanced passages, thereby incorrectly finding that, at the time, the Central African public was being led to consider all Seleka and its supporters as "foreign" Central Africans.

253. Based on this erroneous conclusion, the Chamber then leapt to another, untenable finding: that the Central African Muslims were also being implicitly labelled as "foreigners".[780] The Chamber made this finding on the basis of one single sentence spoken by Bozizé, namely his request to the public to "keep an eye especially on the foreigners who live in fenced compounds".[781] The Chamber's inference that this was a reference to local Muslims[782] was not the only reasonable inference that could have been drawn from the evidence. Given the context at the time, with the Seleka being largely composed of foreigners and having already started to descend along the country earlier that month,[783] another reasonable interpretation of Bozizé's speech was possible, namely that he meant to refer to actual foreigners. While the Chamber accounted for the fact that this speech was understood differently by different audiences,[784] it failed to give these differing interpretations sufficient weight. Had it done so, it would have

[779] *See* CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, particularly at 0683, lns 135-137 ("[…] l'opposition démocratique que nous respectons, *qui vit ensemble avec nous à BANGUI* […] elle va se rallier à ces individus-là? Se rallier aux Janjaouid?"(emphasis added)), at 0691, lns 443-447 ("[…] malheureusement, certains *Centrafricains agissant comme des marionnettes* vont se mettre à soutenir cet état de chose. Non, ceci n'est pas la bonne manière de travailler pour le développement du pays. L'opposition démocratique revient; nous allons travailler ensemble comme c'était le cas dans le passé. Mais soutenir une guerre orchestrée par des étrangers n'est pas la meilleure façon de faire, non"(emphasis added)), at 0692, lns 495-496 ("*certains fils du pays* sont prêts à vendre le pays"(emphasis added)); CAR-OTP-2000-0632, CAR-OTP-2060-0631, CAR-OTP-2060-0693 (cited at Judgment, p. 488, paras 1267-1268), particularly at 0695, lns 31-32 ("Voilà le diable qui *pousse les Centrafricains à se faire la guerre entre eux*, et à détruire le pays"(emphasis added)), at 0697, lns 91-92 ("Après notre dialogue à Libreville, si *mes compatriotes centrafricains* et moi-même arrivons à trouver un terrain d'entente, nous pourrons mettre en place le Gouvernement de l'Union nationale"(emphasis added)); CAR-OTP-2000-0658, CAR-OTP-2006-0661, CAR-OTP-2006-0739 (cited at Judgment, para. 1276), at 0746, lns 233-235; CAR-OTP-2000-0656, CAR-OTP-2060-0653, CAR-OTP-2060-0740 (cited at Judgment, para. 1277), at 0751 lns 375-376 ("nous sommes les enfants du pays*, eux aussi sont les enfants du pay*s. Nous ne pouvons pas le chasser"(emphasis added)); CAR-OTP-2042-0976, CAR-OTP-2135-3389, CAR-OTP-2107-1473 (cited at Judgment, paras 1270-1271), at 1474, lns 21-23 ("ce ne sont pas les centrafricains qui ont fait ces choses là. Je pense *c'est les étrangers qui s'y mixent au milieu des Centrafricains* pour venir revendiquer"(emphasis added)), ln. 26 ("afin de discuter avec *leurs frères centrafricains* à Libreville" (emphasis added)); CAR-OTP-2042-2144, CAR-OTP-2107-1483 (cited at Judgment, para. 1273), at 1484, lns 11-12 ("quelle que soit ton origine, quel que soit là où tu es, tu dois dire que le pays, la Republique Centrafricaine, c'est ton pays, le peuple centrafricain et un et indivisible").
[780] Judgment, p. 480, para. 1247, *citing* CAR-OTP-2000-0630, CAR-OTP-2060-0623, CAR-OTP-2060-0678, at 0685, lns 204-214.
[781] *Ibid*.
[782] Judgment, p. 487, para. 1263.
[783] *See* e.g., Judgment, p. 221, paras 683-684.
[784] Judgment, pp. 483-487, paras 1252-1263.

found that one inconclusive fragment of speech was insufficient to show Muslims were implicitly labelled as foreigners.

254. The Chamber further found that Bozizé's remarks accusing the Seleka of entering the country with "merchandises" also implicitly targeted Muslims, given their historical engagement in trade.[785] The Chamber's conclusion was erroneous and deeply troubling. It rests on a mistranslation of Bozizé's speech, despite the existence of an accurate translation of the same speech on the record, cited elsewhere in the Judgment,[786] where Bozizé was correctly cited as having stated that the Seleka entered the country with "pickups" and not "merchandises".[787] Such a conclusion, based on a single mistranslated word, is indefensible and undermines the credibility of the Judgment. Had the Chamber relied on the proper translation, it would have found that this particular speech could not be interpreted as implicitly targeting Muslims.

255. Given the above and particularly in light of the absence of any public speech labelling local Muslims as foreigners, the Chamber's inference that these speeches sought to ignite inter-communal conflict, as opined by Poussou,[788] was not the only reasonable inference that could be drawn from the evidence. An alternative and equally reasonable inference was that public speeches emphasising the Seleka's foreign and "Islamist" component sought to spark outrage and attract the attention of the international community, a goal that was actively pursued at the time, and later on during the Seleka regime.[789]

256. The Chamber's error in assessing the purpose of anti-foreign discourse materially affected the decision. Particularly, it led the Chamber to give undue weight to speeches by Mr Ngaïssona where he lamented the foreign composition of the Seleka, erroneously finding that similar speeches indirectly targeted local Muslims.[790] The Chamber further found that Mr Ngaïssona's

[785] Judgment, pp. 491-492, paras 1277-1278, *referring to* CAR-OTP-2000-0656, CAR-OTP-2060-0653, CAR-OTP-2060-0740.
[786] Judgment, fn. 3455.
[787] *See and compare* CAR-OTP-2060-0740, at 0747, lns 226-228 ("Ne laissez pas des personnes malintentionnées entrer dans notre pays, dans nos quartiers. Elles viennent avec des autos, avec des marchandises, elles viennent en moto, à cheval") with CAR-OTP-2130-1099, at 1114, lns 576-579 ("Ne permettons pas aux fauteurs de trouble de prendre pied dans notre pays, ni dans les quartiers. Ils viennent à bord de véhicules, de pick-up, en moto, à dos de cheval, dans toutes les différentes localités de République centrafricaine"). This translation refers to CAR-OTP-2000-0655, which is another audio of the event of 15 March 2013.
[788] **P-2625:** T-189, p. 70, ln. 13 to p. 71, ln. 12, p. 73, lns 11-20.
[789] *See*, i.a. **P-0889:** CAR-OTP-2122-7517-R01, at 7538, lns 843-848; T-108, p. 68, ln. 10 to p. 71, ln. 11; CAR-OTP-2000-0686, CAR-OTP-2130-1172, CAR-OTP-2130-1290, at 1292, lns 16-22; **P-0808:** T-069, p. 15, lns 3-8; **D30-4720**: T-280, p. 70, ln. 22 to p. 71, ln. 22 ; T-281, p. 30, ln. 18 to p. 31, ln. 4, *citing* CAR-OTP-2091-1804.
[790] Judgment, p. 500, para. 1301.

deliberately exaggerated the foreign component within the Seleka.[791] In light of the Chamber's own inability to determine the size of that component,[792] a similar finding strikes as unreasonable and not the only reasonable inference available on the evidence.

257. No reasonable trier of fact could ever have concluded, on the plain content of Mr Ngaïssona's public speeches and declarations, that he engaged in rhetoric targeting the Muslim population in CAR. The Chamber failed to give sufficient weight to clear evidence: Mr Ngaïssona's public addresses in 2013 unequivocally called for national unity.[793] It further distorted the meaning of later speeches and declarations, reaching conclusions that did not reasonably reflect the content of the evidence. Most strikingly, the Chamber found that as national coordinator, Mr Ngaïssona "continued to see 'Muslims' in general as the 'foreigners' in the country against whom the Anti-Balaka had "defended."[794] This finding is not only unsupported, it stands in stark contrast with evidence showing that in his public addresses, Mr Ngaïssona consistently distinguished between foreign and local Seleka, as well as local Muslims.[795]

258. The Chamber further failed to take Mr Ngaïssona's alleged quote to Agger that "we cannot accept these attacks by the Muslims"[796] in its proper context. Particularly, it failed to appreciate that even assuming this sentence was uttered in this terms, Mr Ngaïssona was not making a statement, but rather describing, in objective terms, the thought process behind the actions of self-defence groups, without legitimizing their actions.[797] Besides, the Chamber failed to give proper weight to Agger's testimony that Mr Ngaïssona clearly made a difference between local Muslims, with whom the Anti-Balaka were prepared to coexist, and foreign rebels, whom they wanted out of the country.[798] This statement, in and of itself, entirely contradicted the finding that Mr Ngaïssona perceived local Muslims as foreigners. The Chamber's failure to reconcile

[791] Judgment, pp. 500-501, para. 1303.
[792] Judgment, pp. 245-246, paras 734-737.
[793] *See* fn. 779 above, particularly CAR-OTP-2042-0976, CAR-OTP-2135-3389, CAR-OTP-2107-1473; CAR-OTP-2042-2144, CAR-OTP-2107-1483.
[794] Judgment, p. 688, para. 1821.
[795] CAR-OTP-2042-0916, from [00:06:00] to [00:07:22], CAR-OTP-2088-0646, CAR-OTP-2088-0649, at 0651, lns 40-42 ("Le mouvement ANTI-BALAKA a vu le jour parce que des étrangers ont accompagné les SELEKA qui étaient de vrais Centrafricains lors de leur entrée dans BANGUI et que ceux-ci ont fait beaucoup du mal au peuple Centrafricain'"), at 0653, lns 91-92 ("[…] nos frères musulmans centrafricains") cited at Judgment, p. 696, para. 1847.
[796] Judgment, p. 500, para. 1303, *citing* **P-2012:** T-025, p. 18, ln. 21 to p. 19, ln. 19.
[797] **P-2012:** T-025, p. 18, ln. 21 to p. 19, ln. 19.
[798] **P-2012:** T-025, p. 15, ln. 20 to p. 16, ln. 3.

this obvious tension between its conclusions and the evidence affected the coherence of the Judgment.

259. The Chamber's finding that Mr Ngaïssona defined Muslims who had come to the CAR "for work" as "foreigners",[799] reflects a fundamental misrepresentation, and potential mistranslation, of Mr Ngaïssona's words. The reference to "occupation" was plainly about armed occupation, not employment.[800] No reasonable trier of fact could ever have found that Mr Ngaïssona's words meant to incite hatred against local Muslims, especially in the face of his subsequent words that God would see to it that they could continue to live and remain together with their "Muslim brothers".[801] The Chamber further misrepresented the content of certain press communiqués bearing Mr Ngaïssona's signature, finding that they targeted Muslims "in general" while their plain content made it clear that it was not the case.[802]

260. The above-mentioned errors expose fundamental flaws in the Chamber's findings on the expression of anti-foreign and anti-Muslim animus during the period relevant to the charges, and Mr Ngaïssona's supposed engagement therein. By failing to properly analyze, take into context and even accurately translate public declarations, the Chamber committed multiple errors of fact. Ultimately, these errors materially taint the conclusion that Mr Ngaïssona's intent under Art. 25(3)(c) could be inferred from the inflammatory context and his expression of anti-Muslim animus.[803] Such a finding, built on misinterpretation and mistranslation, is indefensible and must be set aside.

261. The cumulative effect of the Chamber's errors cannot be overstated. By systematically misapplying the evidentiary framework, disregarding its obligation to rigorously assess credibility, and entering findings based on flawed legal and factual reasoning, the Chamber compromised the integrity of the entire decision-making process. These errors infected critical

[799] Judgment, pp. 696-697, paras 1847-1848, *citing* CAR-OTP-2042-0916, from [00:06:00] to [00:07:22], CAR-OTP-2088-0646, CAR-OTP-2088-0649, at 0653, lns 89-90.
[800] *See and compare* the translation at Judgment, p. 501, fn. 3497 with the Chamber's conclusions at Judgment, pp. 500-501, para. 1303.
[801] CAR-OTP-2042-0916, from [00:06:00] to [00:07:22], CAR-OTP-2088-0646, CAR-OTP-2088-0649, at 0653, lns 91-94 ("Mais par contre, nos frères musulmans centrafricains, avec lesquels nous étions habitués à cohabiter avant l'indépendance, après l'indépendance, nous vivions ensemble, Dieu fera en sorte que nous continuions à vivre ensemble et à rester ensemble").
[802] *See* CAR-OTP-2025-0372, at 0374 ("les sujets musulmans qui ont soutenu les Séléka durant leur occupation de la RCA" (i.e. the Muslim individuals who supported the Seleka during its occupation of CAR)); CAR-OTP-2084-0148, at 0149, where the reference to "les musulmans" concerns the Imams invited at the meeting described earlier in the communiqué (at 0148), cited at Judgment, p. 500, para. 1303.
[803] *See* Ground II.B.1.

conclusions on the Anti-Balaka's conduct, Mr Ngaïssona's alleged contributions, and his purported intent, all of which are central to the conviction. Individually, each error was shown to have a material impact on the verdict; collectively, they render the findings fundamentally unsafe. The conviction rests on a foundation that is legally unsound and factually unreliable, which warrants its reversal.

II. THE TRIAL CHAMBER WRONGLY ATTRIBUTED INDIVIDUAL CRIMINAL RESPONSIBILITY TO MR NGAÏSSONA

A. The Trial Chamber erred in law, procedure and fact in adopting an overly broad interpretation of the objective elements of aiding and abetting liability under Article 25(3)(c) of the Statute

1. Erroneous expansion of liability under Article 25(3)(c)

262. The Trial Chamber erred by convicting Mr Ngaïssona for all charged crimes committed in furtherance of the Anti-Balaka's criminal policy without establishing that his conduct contributed to the commission of the charged crimes. This approach improperly expanded individual criminal responsibility under Article 25(3)(c), relying on support to the group rather than demonstrating a nexus between Mr Ngaïssona's acts and the crimes charged.

263. The Trial Chamber's finding that a causal link is not required between Mr Ngaïssona's assistance to the Anti-Balaka and the crimes[804] departs from the plain wording of Article 25(3)(c) and established jurisprudence.

264. Article 25(3)(c) requires assistance in the commission of the crime, confirming that the relationship with the offense is decisive. While assistance need not be indispensable (a *conditio sine qua non*),[805] the Chamber was still required to show that Mr Ngaïssona assisted in the commission of the crime. Responsibility cannot be imputed for all crimes committed in furtherance of a criminal policy without demonstrating such assistance.

265. The Chamber's unsubstantiated affirmation that the lack of causal link requirement is consistent with ICC jurisprudence is quite puzzling.[806] Far from aligning with ICC jurisprudence, the Chamber's claim disregards clear authority and amounts to a distortion of the legal standard. In *Bemba et al.*, the Trial Chamber affirmed that "this general causal requirement is undisputed in

[804] Judgment, p. 1383, para. 4038.
[805] Bemba et al. TJ, para. 94.
[806] Judgment, p. 1383, para. 4038.

the Court's case-law"[807] and that "if the assistance was not causal, the conduct of the perpetrator does not fall within the ambit of Article 25(3)(c) of the Statute".[808] In *Gbagbo and Blé Goudé*, the Chamber rejected the Prosecution's reliance on generic contributions alleged to strengthen group capacity, as well as certain more specific acts, noting that without a demonstrated link to the commission of specific crimes, such assertions were insufficient to establish assistance.[809] A similar approach was adopted in *Al Hassan*, where the Chamber did not equate general affiliation to the Islamic Police with assistance. Instead, it examined whether the accused's conduct enabled the crime, and only then concluded that it amounted to assistance.[810]

266. The Chamber's approach effectively treats elevated intent alone as sufficient to establish causation under Article 25(3)(c),[811] a position that is inconsistent with ICC jurisprudence and conflates the *actus reus* with *mens rea*. As the Appeals Chamber in *Bemba et al.* confirmed, demonstrating an effect on the crimes is highly relevant to proving assistance.[812] Responsibility requires both *actus reus* and *mens rea*, which cannot be collapsed. As Pre-Trial Chamber I held: "[…] what is required for this form of responsibility is that the person provides assistance to the commission of a crime *and that*, in engaging in this conduct, he or she intends to facilitate the commission of the crime".[813] Mere support to a group, without showing that it assisted the commission of the charged crimes, does not meet this standard.

267. While the Appeals Chamber is not bound by the ad hoc tribunals' jurisprudence,[814] it can be instructive to interpret the objective elements of aiding and abetting, absent any further ICC textual guidance.

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[807] Bemba et al. TJ, para. 90.
[808] *Ibid.*, para. 94. *See also* para. 95, where the enhanced *mens rea* requirement is considered as "an additional filter" and para. 85 ("The accessorial perpetrator under Article 25(3)(c) of the Statute […] merely contributes to or otherwise *assists in an offence* committed by the principal perpetrator" (emphasis added). *See also* paras 877-878, 883 and 865, where the Trial Chamber was unable to enter a conviction for Mr Babala and Mr Mangenda in relation to a number of witnesses "lacking proof of any effect or causal link". *See also J.G. Stewart,* Complicity, p. 547-548, *see* Annex B; *M. Moore*, Causing, Aiding, and the Superfluity of Accomplice Liability, p. 397, *see* Annex C.
[809] Gbagbo and Blé Goudé, Reasons of Judge Henderson, paras 2017-2027.
[810] Al Hassan TJ, paras 1591, 1593-1594, 1598, 1600, 1606-1613.
[811] *See* e.g., Judgment, p. 1350, para. 3943, where the Chamber found 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".
[812] Bemba et al. AJ, para. 1327.
[813] Blé Goudé Confirmation Decision, para. 167. *See also* Bemba et al. Confirmation Decision, para. 35.
[814] Bemba et al. AJ, para. 1326.

268. This causal link requirement is affirmed in *Taylor*, where both the Trial Chamber and Appeals Chamber held that individual criminal responsibility under aiding and abetting liability requires a demonstrated nexus between the accused's conduct and the commission of specific crimes. Mr Taylor's assistance – through weapons, manpower, logistics, and moral support – was found to have substantially enhanced the Revolutionary United Front's ('RUF') capacity to commit crimes.[815] Liability attaches not from mere association with a criminal organization, but according to *Taylor*, from acts that have a substantial effect on the commission of crimes.[816] Similarly, ICTY cases applying aiding and abetting liability to large-scale crimes convicted accused only for crimes on which their acts had a substantial effect, not simply all crimes committed pursuant to a common purpose.[817]

269. The *Kvočka* Appeals Chamber distinguished co-perpetrators in a joint criminal enterprise from aiders and abettors by emphasizing both the nature of their contribution and their mental state. A co-perpetrator shares the intent to further a common criminal purpose and performs acts that advance that collective plan. In contrast, liability for aiding and abetting hinges on the accused's awareness that their actions are helping to commit that particular offense, not merely supporting a criminal group or its broader objectives. Crucially, the Chamber emphasised that a joint criminal enterprise is merely a mode of committing crimes, not a crime in itself. Therefore, one cannot aid or abet a joint criminal enterprise as such; rather, the aider and abettor is responsible for assisting the principal perpetrator(s) in committing identifiable crimes.[818]

270. The Trial Chamber's reliance on "financial or psychological assistance generally to the Anti-Balaka"[819] without properly assessing whether such support enhanced the Anti-Balaka's capacity to commit the charged crimes reflects a failure to apply the correct legal standard and to provide a reasoned opinion.

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[815] Taylor TJ, paras 6905, 6936-6937.
[816] Taylor AJ, para. 385 ("In accordance with the Statute and customary international law, triers of fact are required to consider whether, by assisting, encouraging or supporting the planning, preparation or execution of the plan, program, policy or strategy, an accused's acts and conduct thereby had a substantial effect on some or all of the crimes committed in furtherance of the plan, program, policy or strategy. That an accused's acts and conduct had a substantial effect on the commission of the crimes establishes the requisite actus reus for aiding and abetting liability, not the manner in which an accused assisted the commission of the crimes").
[817] *See* e.g., Blagojević and Jokić TJ, paras 761, 765, 774; Brđanin TJ, para. 538, fn. 1375.
[818] Kvočka et al. AJ, paras 88-91. *See also* Bemba et al. TJ, paras 874-876; Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 2019.
[819] Judgment, p. 1383, para. 4038.

271. The Chamber focused on a series of general contributions that are not specifically linked to any specific crime(s), such as attending meetings in Cameroon and France,[820] liaising with "individuals linked to efforts to remove Michel Djotodia and the Seleka from power" and with groups at the border,[821] or Mr Ngaïssona's role as general coordinator upon his return from Cameroon.[822] Apart from stating that Mr Ngaïssona "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",[823] the Chamber provides no explanation as to how these generic contributions can be linked to the specific crimes charged. This is particularly egregious where such conduct entirely overlaps with acts of liaising which have not been found by the Trial Chamber to have been aimed at coordinating and organizing the Anti-Balaka.[824]

272. While the Trial Chamber stated that "financial contributions which aimed at sustaining an armed group, such as to provide for its food or other sustenance – *can* amount to [..] assistance",[825] it acknowledged that this is only the case if the required elements under the Statute are fulfilled. This includes demonstrating that such contribution facilitated or furthered the commission of the charged crimes, or that such demonstration is not necessary because there is a sufficient connection between the accused acts and the charged crimes.[826] It also includes demonstrating that the financial contributions were made for the purpose of not only sustaining the armed group but for the purpose of facilitating its crimes. Crucially, stating that financial contributions *can* amount to assistance is not the same as finding that they *do* amount to assistance.

273. Even if treated as a finding, the Chamber failed to explain how this standard was satisfied in the present case. As Judge Henderson pointed out, when assessing contributions at such a high level of generality, almost any act that supports an organization could be said to contribute to crimes committed by its members. At this level of abstraction, the causal connection becomes

[820] *See* Judgment, pp. 259-260, para. 769, p. 376, para. 1000. *See also* Judgment pp. 1379-1380, para. 4028, p. 1405, para. 4110.
[821] *See* e.g., Judgment, pp. 322-323, para. 890. However, *see* Judgment, p. 795, para. 2171, p. 797, para. 2181. *See also* Judgment, pp. 1379-1380, para. 4028, p. 1405, para. 4110.
[822] *See* e.g., Judgment, p. 25, paras 60-62.
[823] *See* e.g., Judgment, p. 1350, para. 3943, p. 1380, para. 4031, p. 1406, para. 4113.
[824] *See* Ground I.C.5.
[825] Judgment, p. 1384, para. 4040 (emphasis added).
[826] *See* Ground II.A.2.

so tenuous that it is artificial to conclude that the physical perpetrators were genuinely assisted by these contributions.[827]

274. While the Chamber acknowledged that weapons-related funding was "not alone determinative" in 2014 and broadened its analysis to include contributions such as subsistence and travel reimbursements, it did not demonstrate how these payments, individually or collectively, assisted in the commission of crimes charged in the Lobaye.[828] Supporting the general functioning of a group is not automatically equivalent to assistance in the commission of crimes, and the Judgment fails to identify any evidence establishing this nexus.

275. Finally, in the same vein, assistance need not have been directed to specific individuals or sub-groups who committed the crimes, to the extent that it nonetheless assisted in the commission of the crimes charged.[829] Instead, the Chamber relied on vague assertions of financial and liaison support without identifying the individuals involved or demonstrating that their actions contributed to the charged crimes.[830] In the absence of any proven effect, this lack of specificity prevents establishing a nexus between Mr Ngaïssona's conduct and the commission of the crimes.

2. Failure to establish assistance under Article 25(3)(c)

276. The Trial Chamber further erred in law, procedure and fact in finding that Mr Ngaïssona's conduct amounted to assistance – whether material or psychological – in the commission of the charged crimes under Article 25(3)(c), without establishing beyond reasonable doubt that his conduct facilitated or furthered the commission of those crimes or explaining why such a showing was unnecessary in light of the specific facts of this case. The Trial Chamber's conclusion that such an evaluation was not required as a matter of law led the Trial Chamber to inconsistently and inadequately engage with the factual impact of Mr Ngaïssona's conduct across the four charged locations. This failure to apply the correct standard to the evidence in this case, without justification, constitutes mixed errors of law, procedure and fact, which underpin the legal foundation for attributing responsibility under Article 25(3)(c) of the Statute.

[827] Gbagbo and Blé Goudé, Reasons of Judge Henderson, para. 2020. *See also* para. 2019.
[828] Judgment, p. 637, para. 1688, pp. 640-641, para. 1695. *See also* Taylor TJ, para. 4026.
[829] *See* e.g., Al Hassan TJ, para. 1220 ("The Chamber notes from the plain wording of the provision that criminal responsibility under Article 25(3)(c) of the Statute is dependent on the commission or at least the attempted commission of a crime by the principal perpetrator").
[830] *See* Ground I.C.3 to I.C.5.

277. The Trial Chamber did not err in concluding that a causal effect is not legally required,[831] but in failing to establish that Mr Ngaïssona's conduct amounted to assistance in the commission of the charged crimes, a determination which, given the facts of the case, required demonstrating such an effect. While a showing of effect is not a strict legal requirement, it is factually probative. The Appeals Chamber in *Bemba et al.* clarified that whether such an effect is irrelevant can only be determined in light of the facts of each case.[832] The Trial Chamber failed to conduct this case-specific inquiry.

278. Although the Appeals Chamber suggested the theoretical possibility that no effect whatsoever is required, demonstrating an effect remains the gold standard for establishing accomplice liability. As affirmed in *Taylor*, this principle ensures that criminal liability is grounded in personal culpability and prevents unjust attribution of responsibility for the acts of others or for non-criminal activities.[833]

279. Similarly, the *Tadić* Trial Chamber required that the contribution "in fact has an effect on the commission of the crime"[834] and overall considered an act to amount to assistance if "the criminal act most probably would not have occurred in the same way had not someone acted in the role the accused in fact assumed".[835]

280. The Chamber's categorical dismissal of the relevance of effect disregards the jurisprudential nuance mentioned in *Bemba et al.*. As a result, the Chamber did not consistently and appropriately examine whether Mr Ngaïssona's conduct facilitated or furthered the commission of the charged crimes, nor did it inquire whether or explain why such a showing was unnecessary in the circumstances of this case. Instead, the Trial Chamber erroneously assumed that general support to the Anti-Balaka groups automatically amounted to assistance in the commission of the charged crimes.[836]

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[831] Judgment, pp. 1382-1383, para. 4037.
[832] Bemba et al. AJ, para. 1327. *See also* Mbarushimana Confirmation Decision, para. 279 ("a substantial contribution to the crime may be contemplated").
[833] Taylor AJ, paras 391-392.
[834] Tadić TJ, para. 688.
[835] *Ibid*. *See also* Furundžija TJ, para. 233 where the Chamber clarified that "[h]aving a role in a system without influence would not be enough".
[836] Judgment, p. 1383, para. 4038. *See also* Judgment, p. 1381, para. 4034, pp. 1406-1407, para. 4115, p. 1460, para. 4281, p. 1490, para. 4373.

281. Where contributions are inherently connected to crimes (e.g. operational support within an established system of abuse,[837] supplying resources or performing a key logistical step immediately linked to the crime,[838] direct participation in the criminal operation,[839] deliberate inaction in the face of duty),[840] assistance may be established without the need to prove a measurable effect on the specific crimes charged.[841] In such cases, the contribution is directed to the very crimes committed, proximate to the execution phase and inherently criminal. Mr Ngaïssona's alleged conduct was none of these: it was remote from the execution of the charged crimes,[842] diffuse and limited in nature,[843] and capable of legitimate or neutral use.[844] It was not specifically directed at the commission of the crimes charged, and the groups he allegedly supported engaged in both lawful and unlawful activities (which was not confined to the crimes charged).[845] Unlike situations where the accused's contribution is operationally embedded in a structure whose sole purpose is the commission of the charged crimes, Mr Ngaïssona's support was not inherently criminal, nor was it directly linked to the criminal acts in question. In such circumstances, assistance cannot be presumed.

282. Had the Prosecution produced evidence showing that Mr Ngaïssona's contributions had a discernible impact on the crimes charged, the Trial Chamber would undoubtedly have highlighted and relied upon it. Instead, the Chamber inconsistently and inadequately engaged with the factual impact of his conduct across the four charged locations, resulting in a patchwork of inconsistent and inadequate factual assessments.

283. For Bangui, the Trial Chamber evasively concluded that Mr Ngaïssona's financial support "made it possible for at least some of the elements to participate" in the attack, yet it failed to

[837] *See* e.g., Aleksovski TJ, paras 122-129 (prison warden in a detention camp); Krnojelac TJ, paras 126-127, 171, 318-320.
[838] *See* e.g., Krstić AJ, paras 137, 144; Brima et al. TJ, para. 1941; Kamuhanda TJ, paras 637, 648; Ngirabatware TJ, paras 1337-1338; Blagojević and Jokic TJ, paras 747-759.
[839] *See* e.g., Furundžija TJ, paras 273-275; Delalić et al. TJ, paras 842-845; Blagojević and Jokic TJ, paras 761-770 (assistance in digging graves on execution site); Kalimanzira TJ, paras 473-474; Ntawukulilyayo TJ, paras 454-457.
[840] *See* e.g., Popović et al. TJ, paras 1556-1559, 1563; Brima et al. TJ, paras 1786, 1940.
[841] *See* Perišić AJ, para. 38.
[842] Mr Ngaïssona resided in Cameroon until 14 January 2014, then in Boy-Rabe in Bangui. *See* Judgment, p. 254, para. 754, p. 590, para. 1564; **P-0808**: T-070, p. 42, lns 11-12; CAR-OTP-2098-0107, at 0110.
[843] *See* Ground I.C.3 to I.C.5.
[844] *See* Ground II.B.2, paras 322-324.
[845] *See* e.g., Judgment, p. 24, para. 50, p. 711, para. 1894.

identify the factual findings underpinning this assertion.[846] Moreover, the evidence is fragmented, speculative and uncorroborated.[847]

284. For Bossangoa, the Chamber concluded, as well as for the Bangui attack, that Mr Ngaïssona's financial support enabled participation in the attack.[848] Yet, the evidence underpinning this finding is even more tenuous. The Chamber relied on uncorroborated Rule 68(2) statements and hearsay. It failed to establish that the alleged recipients of financial support were involved in the commission of the crimes in Bossangoa. The Chamber also misinterpreted key evidence and failed to resolve contradictions.[849]

285. For Yamwara and Mbaïki, the Chamber made no attempt to assess whether Mr Ngaïssona's conduct had any effect on the commission of the crimes, inferring intent while failing to evaluate assistance.[850]

286. In addition, certain contributions considered by the Chamber – even if proven – were inconsequential to the crimes. Findings such as Mr Ngaïssona providing 15,000 CFA for travel from Yaoundé to Garam Boulaye at the end of November 2013,[851] asking Ouébio to deposit his money on his own bank account,[852] Mr Ngaïssona's communications with Ngaya,[853] or his alleged encounter with Eugène Ngaïkosset in Cameroon,[854] are irrelevant to establishing assistance in the commission of the charged crimes.

287. This evidentiary approach lacks both factual scrutiny and legal sufficiency, stemming from the Chamber's erroneous view that a causal or facilitative link need not be established.[855]

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[846] Judgment, pp. 1384-1385, para. 4042. *See also*, pp. 1382-1383, para. 4037 ("[…] Mr Ngaïssona's financial aid and psychological support, in the very least, to have had a positive effect on the commission of the crimes during the Bangui Attack").
[847] *See* Ground I.C.3.
[848] Judgment, pp. 1384-1385, para. 4042.
[849] *See* Ground I.C.3.i.
[850] Judgment, p. 1460, para. 4280, p. 1489, para. 4372. *Compare* Judgment, p. 1382, para. 4035 (in relation to Bangui) with Judgment, pp. 1460-1461, para. 4282 (in relation to Yamwara) and p. 1490, para. 4374.
[851] Judgment, p. 290, para. 829. *See* Ground I.C.5.iv; Ground II.D.1; Ground II.D.2.
[852] Judgment, pp. 308-309, para. 864.
[853] *See* Judgment, p. 84, para. 253, pp. 273-274, para. 798, pp. 312-313, paras 873-874, pp. 391-393, paras 1032-1035, 1037.
[854] Judgment, pp. 329-330, para. 903, p. 331, para. 907 *citing* **P-2673**: T-041, p. 8, ln. 20 to p. 9, ln. 10; T-042, p. 5, ln. 20 to p. 6, ln. 1 and **P-1847**: CAR-OTP-2061-1534, at 1562, paras 177-179; T-023, p. 87, ln. 3 to p. 88, ln. 20.
[855] Judgment, pp. 1382-1383, paras 4037-4038.

288. As mentioned above,[856] the Chamber in *Al Hassan* conducted a fact-specific inquiry into whether his conduct had a tangible effect on the commission of the charged crimes. Despite Mr Al Hassan's direct involvement, presence, and instrumental role in the Islamic Police, the Chamber still assessed whether his conduct had an effect on the flogging and unlawful sentencing to determine whether it constituted assistance. This underscores the importance of properly evaluating factual impact, a step omitted in Mr Ngaïssona's case.

289. In the interest of legal certainty and Mr Ngaïssona's fundamental rights to a reasoned judgment, the Chamber should have explicitly acknowledged the impossibility of establishing an actual facilitative link and clearly articulated, justified and motivated the standard it applied *in lieu* of impact.

290. The Trial Chamber failed to articulate and apply any alternative framework to justify dispensing with the requirement of actual facilitation. It did not, for instance, examine or draw conclusions on whether Mr Ngaïssona's contribution was: (i) directed to the principal perpetrators,[857] (ii) provided for lawful or neutral purposes,[858] (iii) significant in comparison to other contributions.[859] The Chamber considered these factors irrelevant, yet they may offer a useful lens through which to assess whether assistance was established in the absence of proven effect.

291. For example, a threshold of assistance, though not strictly required,[860] could be considered necessary in cases where no discernible impact on the crimes was proven. Such an approach could be relevant to distinguish those who are in a position to make a real difference from those, like Mr Ngaïssona, whose alleged contributions are remote, indirect, and limited.[861] In such circumstances, this threshold would be indispensable to prevent an unbounded notion of complicity.[862]

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[856] *See* Ground II.A.1, para. 265.
[857] Judgment, p. 1383, para. 4038.
[858] Judgment, p. 1384, paras 4040-4041.
[859] Judgment, p. 1383, para. 4038. *See* Van Anraat AJ, para. 12.5, where the Court of Appeal emphasised that Van Anraat was a very important tradesman and delivered at least 38% of the TDG to Iraq in the relevant period, and where other stopped delivering, the accused continued to do so.
[860] Bemba et al. TJ, para. 93.
[861] *See* Ground I.C.3 to I.C.5.
[862] *See also* Perišić AJ, para. 38.

292. As recognised in *Mbarushimana*,[863] a threshold is necessary to exclude contributions which, due to their nature or level, were not intended by the drafters to give rise to liability. This reasoning, though articulated under Article 25(3)(d), applies equally to aiding and abetting. Without such a threshold, remote, neutral, or *de minimis* contributions, such as those alleged against Mr Ngaïssona, may be improperly treated as criminally significant, undermining the principle of individual culpability.[864]

293. Similarly, while the Chamber deemed the link between Mr Ngaïssona and direct perpetrators irrelevant, this factor – given the absence of any proven effect on the crimes – should have served as an essential safeguard against an overly expansive theory of liability. In principle, direction toward perpetrators is not, in and of itself, determinative; however, in the specific circumstances of this case, it is highly probative. Where the alleged assistance is remote and diffuse, such as in the case against Mr Ngaïssona, examining whether contributions were directed to individuals who materially participated in the crimes provides a critical indicator of facilitation. This consideration would not replace the requirement of effect but, alongside other factors, would operate as an alternative safeguard to ensure that liability rests on a genuine nexus to the commission of the crimes.

294. By treating both the effect of Mr Ngaïssona's conduct and other factors as irrelevant, the Trial Chamber failed to apply the evidentiary scrutiny required to establish individual criminal responsibility and effectively collapsed the *actus reus* into *mens rea*. The lack of reasoning violates Mr Ngaïssona's rights under Article 74(5) of the Statute, compromising transparency and coherence of the Judgment. The Chamber's failure to conduct a fact-sensitive inquiry into whether assistance in the commission of the charged crimes was established – either through effect or other relevant considerations – constitutes a mixed error of law, procedure and fact that warrants appellate intervention.

295. These errors were not mere formalities; they fundamentally shaped the Chamber's reasoning and the Judgment's outcome. Had the correct standard been applied, the Chamber could not have validly concluded that Mr Ngaïssona assisted in the commission of the charged crimes. In

[863] Mbarushimana Confirmation Decision, para. 277. *See also* Lubanga TJ, para. 997, Ruto and Sang Confirmation Decision, para. 354.
[864] *See* Taylor TJ, para. 4026 ("in light of the relatively few and small amounts of funding provided to the RUF or AFRC by the Accused, and considering that most of his funding was for personal or unspecified uses, the Trial Chamber is unable to find that the financial support provided by the Accused, in itself, had a direct impact on the operations of the AFRC/RUF").

this case where the alleged assistance was remote, minimal, inconsequential and directed at loosely affiliated groups, the absence of proven effect was fatal to establishing assistance. These errors strike at the core of the legal reasoning and render the convictions unsustainable.

B. The Trial Chamber erred in law and fact in concluding that Mr Ngaïssona acted for the purpose of facilitating the commission of the crimes under Article 25(3)(c), without establishing to the relevant standard that his conduct was purposefully directed toward their commission

296. The Trial Chamber both misinterpreted the elevated *mens rea* required for aiding and abetting at the ICC and misapplied that standard to the facts, relying on generalized "pattern" and macro-level awareness of crimes instead of proof that Mr Ngaïssona's own conduct was purposefully directed toward facilitating the specific crimes charged.[865] These errors materially affected the convictions and warrant their reversal.

297. The *mens rea* for aiding and abetting at the ICC comprises two elements:

- the aider and abettor must have a *mens rea* regarding the principal offence (i.e. the crime committed by the principal); and
- a *mens rea* regarding their own conduct (i.e. the acts of the aider and abettor).[866]

298. For the principal's crime, it suffices that the aider and abettor either intended to cause its commission or was aware it would occur in the ordinary course of events (as per Articles 30(2)(b) and 30(3)).The purposive standard under Article 25(3)(c) applies solely to the aider and abettor's own conduct.[867] In addition to knowing of the principal's crime, they must act with the purpose of facilitating it.

299. The Trial Chamber in *Bemba et al.* clarified that the assistant must have lent their support *with the aim of* facilitating the offence.[868] Mere knowledge of the criminal intentions of others[869] or

[865] Judgment, pp. 1384-1385, paras 4041-4043, p. 1408, para. 4120, p. 1411, para. 4131, p. 1463, paras 4291-4292, p. 1491, para. 4376.
[866] Bemba et al TJ, paras 97-98, Al Hassan TJ, paras 1227-1228.
[867] *K. Ambos*, 'Article 25', p. 1010 ("it must be noted that the stronger purpose requirement only refers to the act of facilitation, not to the main crime"), *see* Annex D.
[868] Bemba et al. TJ, para. 97.
[869] Mbarushimana Confirmation Decision, para. 274 ("[U]nlike the jurisprudence of the *ad hoc* tribunals, Article 25(3)(c) of the Statute requires that the person act with the purpose to facilitate the crime; knowledge is not enough for responsibility under this Article. Unless the requisite superior-subordinate relationship exists to charge responsibility under Article 28 of the Statute, 25(3)(d) liability is the only other way a person can be held criminally responsible for acting merely with knowledge of the criminal intentions of others").

that one's conduct will assist in the commission of crimes is not sufficient.[870] The volitional element required under Article 25(3)(c) corresponds to *dolus directus* of the first degree – that is, the accused must have acted with the concrete intent to bring about the criminal outcome (i.e. in the case of aiding and abetting, the facilitation of the commission of the crimes). This is the only form of intent that aligns with the plain meaning of "for the purpose of", where the volitional element prevails over the cognitive element, and preserves the integrity of the twofold mental element required under Article 30.[871] As explained, *inter alia*, in *Lubanga* and *Bemba et al.*, *dolus directus* of the first degree involves a volitional component: the accused must know that their conduct will bring about the proscribed result and must act with the specific intent to achieve that result.[872] The *Bemba et al.* Trial Chamber described this as acting with the "purposeful will (intent) or desire to bring about those material elements of the offence", and explicitly noted that "in this case the volitional element is prevalent over the cognitive element".[873] Other forms of lower intent, such as certainty (*dolus directus* of the second degree) or foresight of risk (*dolus eventualis*), fall short of this threshold and cannot satisfy the "purpose" requirement under Article 25(3)(c).[874]

300. This interpretation is consistent with the origins of Article 25(3)(c), which was directly borrowed from the Model Penal Code ('MPC') of the United States.[875] The MPC defines accomplice liability as requiring that the actor act "with the purpose of promoting or facilitating the commission of the offense".[876] This purpose-based standard has long been recognized in U.S. jurisprudence, most notably in *United States v. Peoni*, 100 F.2d 401 (2d Cir. 1938), where Judge Learned Hand clarified that criminal liability as an accomplice requires more than mere knowledge of the crime. He stated that accomplice liability demands that the accused "associate himself with the venture, that he participate in it as in something that he wishes to bring about,

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[870] Bemba et al. TJ, para. 97.
[871] *S. J. Finnin,* Element of Accessorial Modes of Liability, p. 202, *see* Annex E; *M. E. Badar,* The Concept of *Mens Rea*, pp. 105, 424-426, *see* Annex F; *A. Eser,* 'Mental Elements - Mistakes of Fact and Law', *see* Annex J, pp. 899 and 902.
[872] Lubanga Confirmation Decision, paras 351-355; Bemba et al. TJ, para. 29. *See also I. Peterson*, 'Open Questions Regarding Aiding and Abetting Liability', p. 591.
[873] Bemba et al. TJ, para. 29.
[874] *See*, by analogy with the offence under Rome Statute, Article 70(1)(a), Bemba et al. TJ, para. 29.
[875] *K. Ambos*, Individual Criminal Responsibility, p. 240; *K. Ambos*, 'Article 25', p. 1009, *see* Annex D; *M. Bergsmo et al*., M.2. 'The perpetrator had the purpose of facilitating the commission of the crime'; Mbarushimana Presentation of Evidence, p. 5, lns 20-22 ("I was a part of the German Delegation in Rome and I was participating in the working group of general principals which negotiated, among others, this provision"); *M. E. Badar,* The Concept of *Mens Rea*, p. 105, *see* Annex F; *S. J. Finnin,* Element of Accessorial Modes of Liability, p. 201, *see* Annex E.
[876] Model Penal Code, § 2.06(4).

that he seek by his action to make it succeed".[877] Most United States jurisdictions have interpreted this language to mean that the aider and abettor must have the "conscious object" of furthering or achieving the crime.[878] This formulation underscores that mere knowledge of a crime is insufficient; rather, the accomplice must intentionally contribute to its success. The Statute's adoption of a purpose-based standard thus reflects a well-established principle in comparative criminal law, ensuring that liability is grounded in culpable intent rather than mere foreseeability.[879]

301. Unlike at the *ad hoc* tribunals, where the related concept of specific direction was ultimately rejected for not being firmly rooted in customary international law, the Rome Statute expressly codifies and thereby signals a deliberate choice to adopt a distinct and more demanding standard. Accordingly, the reasoning in *Perišić*, though controversial within the ICTY context, finds firmer footing at the ICC, where the statutory language demands a specific and intentional link between the accused's conduct and the commission of the crimes.

302. Having established the applicable legal standard, the following section identifies the Trial Chamber's key errors in interpreting and applying Article 25(3)(c).

303. The Trial Chamber reasoned that, "regardless of what Mr Ngaïssona's concerns and motives may have been", he "provided financial, organisational and psychological support to the Anti-Balaka with the knowledge of the crimes that the Anti-Balaka were committing during their advance towards Bangui", and that this assistance "could only have been provided intentionally with the aim of facilitating the *concerned crimes*".[880] In support, it invoked a "clear pattern of criminal conduct relating to the targeting of Muslim civilians" from September 2013 through early 2014 and concluded that "Mr Ngaïssona was aware that such criminal conduct would occur in the ordinary course of events and, indeed, that he performed his own conduct for the purpose of facilitating the commission of *such crimes*".[881]

[877] United States v. Peoni, pp. 401-402.
[878] United States v. Irwin, pp. 565, 572; *J.F. Decker*, Mental State Requirement for Accomplice Liability, pp. 247-248, 297.
[879] *M. A. Summers*, Prosecuting Generals for War Crimes, pp. 540-544 ("[…] the similarity in the language used in the MPC and the ICC Statute makes the two approaches virtually indistinguishable").
[880] Judgment, p. 1384, para. 4041 (emphasis added). *See* identical reasoning, Judgment, pp. 1384-1385, para. 4042.
[881] Judgment, p. 1411, para. 4131 (emphasis added).

1. The Chamber erred in law in conflating the knowledge requirement under Article 30 with the "purpose" requirement under Article 25(3)(c)

304. The Trial Chamber erred in law by conflating Article 30's knowledge standard with the distinct purpose requirement under Article 25(3)(c). The Chamber was required to establish, beyond reasonable doubt, that Mr Ngaïssona not only knew his conduct would facilitate the commission of the crimes, but that he acted with the aim of doing so. Any lesser form of intent constitutes a misapplication of Article 25(3)(c). Instead, the Chamber inferred Mr Ngaïssona's special intent from (i) alleged virtually certainty that Anti-Balaka crimes would occur, combined with (ii) generalized contribution to loosely affiliated groups,[882] and (iii) an unsupported assumption of personal anti-Muslim animus.[883] This error collapses the twofold mental element – knowledge under Article 30 and "purpose" under Article 25(3)(c) – into a single, diluted standard, undermining the integrity of the conviction.

305. This approach is legally flawed and particularly problematic as Mr Ngaïssona's knowledge of the crimes committed during the advance toward Bangui – which underpins the Chamber's conclusion that Mr Ngaïssona knew the charged crimes would occur in the ordinary course of events – is itself inferred.[884] From this inferred awareness in relation to the principal offence, the Chamber then leapt to a finding of purpose in relation to Mr Ngaïssona's own conduct, without identifying beyond reasonable doubt any additional contemporaneous conduct or evidence to support its conclusion that his actions were specifically aimed at facilitating the charged crimes or a particular attack.[885] Article 25(3)(c) requires the concrete showing of intent to facilitate, not speculation. The Chamber's assumption that he viewed Muslims as collectively responsible for Seleka abuses is unsupported.[886] Absent proof that his conduct was directed toward the crimes charged[887] and motivated by shared criminal purpose,[888] aiding and abetting liability cannot stand.

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[882] *See* Ground II.D.
[883] *See* Ground I.C.7.
[884] *See* Judgment, pp. 1384-1385, para. 4042. *See also* para. 318 below.
[885] Judgment, p. 1385, para. 4043, p. 1408, para. 4120, p. 1463, para. 4292, p. 1492, para. 4378.
[886] Judgment p. 1382, para. 4035, p. 1407, para. 4116, pp. 1460-1461, para. 4282, p. 1490, para. 4374. *See* Ground I.C.7.
[887] *See* Ground II.C.2.
[888] Mbarushimana Confirmation Decision, para. 281 (stating that the *ad hoc* Tribunals do not require the aider and abettor to share the intent of the principal "whereas under article 25(3)(c) of the [ICC] Statute the aider and abettor must act with the purpose of facilitating the commission of that crime"). *See also H. Vest*, Business Leaders and the Modes of Individual criminal Responsibility, p. 861 (most scholars are of the opinion that the aider and abettor must share the principals intent under the Rome statute); *J. Dressler*, Understanding Criminal Law, p. 514, *see* Annex G; *A. Eser*, Individual Criminal Responsibility, *see* Annex H, p. 801.

306. While purpose may, in some cases, be inferred from knowledge that one's conduct will facilitate the commission of crimes, it cannot be derived from mere foresight – particularly where that foresight pertains solely to the principal's acts, not the accused's own. To hold otherwise renders the distinct requirement of purposeful facilitation under Article 25(3)(c) meaningless.

307. The Trial Chamber's failure to assess whether the alleged contribution in fact assisted the commission of the charged crimes also undermines its conclusion on intent.[889] Where the contribution is general in nature, remote from the execution of the crimes and incapable of being shown to have had any discernible impact on their commission, an inference that the accused acted with the purpose of facilitating the commission of those crimes becomes inherently doubtful. In such circumstances, purpose cannot be inferred.[890]

308. Although the Appeals Chamber in *Bemba et al.* clarified that the assistance need not always be causal "in the sense of having had an effect on the commission of the offence",[891] it must nonetheless be causal in the sense of being provided for the purpose of facilitating the charged crimes.

309. In Mr Ngaïssona's case, the Trial Chamber erred in failing to apply any framework for assessing whether his conduct was functionally[892] or intentionally linked to the commission of the crimes, disregarding the fundamental safeguards that filter aiding and abetting liability.[893] It did not examine whether his contributions were made with the aim of facilitating a specific crime. Instead, it relied on general support to the alleged Anti-Balaka and individuals "willing or meant to assist the efforts in bringing François Bozizé back to power",[894] and inferred purpose from

[889] *See* Ground II.A.
[890] *See*, by analogy, Perišić AJ, para. 40 and fn. 102 ("The Appeals Chamber underscores that the requirement of explicit consideration of specific direction does not foreclose the possibility of convictions in cases of remoteness, but only means that such convictions require explicit discussion of how evidence on the record proves specific direction"). *See also* Al Hassan TJ, Opinion of Judge Akane, para. 93 ("Based on the evidence before the Chamber, I consider that the concrete impact of the Police reports on the core of the Islamic Court proceedings was somewhat limited, remote or unknown in the specific cases at hand. I also recall that Police reports were drafted concerning various issues encountered by the Islamic Police, and were not limited to criminal cases that were brought before the Islamic Court. Mr Al Hassan's conduct in question was done within this context of the policing system set up by Ansar Dine/AQIM, but not with the specific purpose of facilitating the commission") .
[891] Bemba et al. AJ, para. 1327.
[892] *See* Ground II.A.1.
[893] Bemba et al. TJ, paras 94-95.
[894] Judgment, pp. 289-290, para. 828; *similarly* at pp. 20-21, para. 35.

contextual awareness of their past conduct,[895] failing to identify any crime-specific direction in his actions.[896]

310. This failure is particularly evident when examining the Chamber's findings across the locations charged. In relation to Bangui, even where the Chamber purported to assess "effect",[897] its reasoning lacked concrete evidence that Mr Ngaïssona's assistance was aimed at facilitating the concerned crimes.[898] For instance, while it found that Mr Ngaïssona provided money, food, and other support to Anti-Balaka elements in Zongo and Bossangoa, some of whom "later on participated in the Bangui attack",[899] it did not establish that this support was intended to facilitate that attack or any other crimes.[900] The mere fact that certain individuals received support and subsequently took part in the attack does not, without more, demonstrate that the support was provided for that specific purpose.

311. For Bossangoa, the Chamber found, like for Bangui, that Mr Ngaïssona's financial support enabled at least some Anti-Balaka elements to participate in that attack,[901] yet pointed to no evidence showing this support or that it was directed toward facilitating those crimes.[902] Critically, the Chamber did not find that Mr Ngaïssona knew an attack would take place in Bossangoa on 5 December.[903] Instead, it relied on his alleged awareness of the Anti-Balaka's advance toward Bangui, which included passing through Bossangoa in September.[904] However, if his knowledge is said to derive from that advance, it cannot, without more, support awareness of a later attack in a location already traversed months earlier. In relying on the advance to establish intent, the Chamber undermined its own finding.

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[895] Judgment, pp. 1384-1385, paras 4041 ("Mr Ngaïssona provided financial, organisational and psychological support to the Anti-Balaka with the knowledge of the crimes that the Anti-Balaka were committing during their advance towards Bangui"), 4042 ("In particular, the Chamber notes that Mr Ngaïssona knew and was informed of the hostilities committed by the Anti-Balaka during their advance towards Bangui").
[896] *See* Ground II.C.2.
[897] Judgment, pp. 1382-1383, paras 4037 ("Mr Ngaïssona's financial aid and psychological support, in the very least, to have had a positive effect on the commission of the crimes during the Bangui Attack"), 4035 ("Mr Ngaïssona provided funds to Anti-Balaka elements that participated in the Bangui Attack. Mr Ngaïssona made his contributions prior to the Bangui Attack, in which Mr Yekatom's elements participated").
[898] *See* Ground I.C.3; Ground I.C.5.
[899] Judgment, pp. 825-826, para. 2272, p. 1382, para. 4035 ("provided funds to Anti-Balaka elements who participated in the Bangui Attack").
[900] *See* Ground I.C.3.
[901] Judgment, p. 1408, para. 4119.
[902] *See* Ground I.C.3.
[903] *Compare* Judgment, p. 1382, para. 4035 (in relation to Bangui) with Judgment, p. 1407, para. 4116 (in relation to Bossangoa).
[904] Judgment, p. 1407, para. 4116.

312. Regarding Yamwara and the Mbaïki-PK9 axis, the Chamber did not find that Mr Ngaïssona contributed to these crimes or that he even knew these attacks would take place or that Muslim civilians were present in these areas.[905] As for Mbaïki, it merely noted his continued general financial support to the group.[906] Crucially, it failed to establish any assistance in the commission of the Yamwara and Mbaïki-PK9 axis crimes or that his contributions were made for the purpose of facilitating them. Instead of presenting new evidence, the Chamber reiterated its findings from earlier attacks, relying solely on Mr Ngaïssona's appointment as political representative without demonstrating a specific link to the Yamwara and Mbaïki events.[907]

313. In *Bemba et al.*, by contrast, purpose was inferred only after detailed findings that the accused knew the criminal nature of his own conduct – such as coded communications, concealment, and targeted payments – and that these acts were directed at facilitating specific offences.[908] The chamber in *Bemba et al.* carefully distinguished between general involvement and criminally purposeful assistance.[909] Similarly, in *Al Hassan*, the chamber relied on specific conduct – including direct participation in corporal punishments – as concrete evidence of purposeful facilitation. The Chamber found that his actions were deliberate and supported by direct evidence and narrowly reasoned inferences.[910] Even there, Judge Akane dissented from the finding of purpose for the crime of sentencing without due process, reasoning that knowledge of the principal's intent did not suffice to show that Mr Al Hassan himself acted with the specific aim of facilitating the offence in question.[911] Her view – that the impact of Mr Al Hassan's police reports was "limited, remote or unknown"[912] – underscores that purpose demands a tighter nexus than knowledge alone.[913] No such individualized findings were made in Mr Ngaïssona's case.

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[905] *Compare* Judgment, p. 1382, para. 4035 (in relation to Bangui) with Judgment, pp. 1460-1461, para. 4282 (in relation to Yamwara) and pp. 1490-1491, para. 4374 (in relation to the PK9-Mbaïki axis).
[906] Judgment, p. 1491, para. 4377 ("Despite this, Mr Ngaïssona continued to provide funds to the Anti-Balaka"). *See also* Judgment, p. 637, para. 1685 ("the evidence before the Chamber as further outlined below shows that Mr Ngaïssona continued to provide financial assistance to the Anti-Balaka also following his return to Bangui in January 2014").
[907] Judgment, p. 1491, paras 4376-4377.
[908] Bemba et al. TJ, paras 865-870 (in relation to Mr Magenda), paras 880-893 (in relation to Mr Babala). *See also* Bemba et al. AJ, para. 1429.
[909] *See* e.g., Bemba et al. TJ, para. 883.
[910] Al Hassan TJ, paras 1592-1602.
[911] Al Hassan TJ, Opinion of Judge Akane, para. 92. *See also* paras 91-94.
[912] Al Hassan TJ, Opinion of Judge Akane, para. 93.
[913] *See also* Perišić AJ, para. 44 where the chamber held that "the provision of general assistance that could be used for both lawful and unlawful activities is alone insufficient to prove that the assistance was specifically directed to the crimes". Although the specific direction standard was articulated in the context of *actus reus*, it is

314. The Chamber in *Al Hassan* noted that purpose presupposes knowledge,[914] but the reverse is not true: knowledge alone does not imply purpose. As the Court has consistently held, mere awareness that one's conduct will assist in the commission of crimes is insufficient under Article 25(3)(c).

315. Ultimately, the Trial Chamber's reliance on a diluted awareness standard under Article 30 to infer the "purpose" required under Article 25(3)(c) reflects a fundamental legal error. Without such a finding of causal and volitional link, the requisite mental element is not met, and the conviction cannot stand.

2. The Chamber erred in inferring *mens rea* in a manner that misapplied the standard of proof

316. When inferring *mens rea*, the applicable legal standard requires that the inference be the only reasonable inference available from the evidence.[915] Even assuming, *arguendo*, that the Trial Chamber did not err in law in inferring purpose from alleged knowledge in the ordinary course of events and broad contributions (regardless of materiality, impact, recipients), no reasonable trial chamber could have concluded that the only reasonable inference available on the record was that Mr Ngaïssona possessed the requisite higher intent.

317. The Trial Chamber failed to consider other reasonable alternatives for his acts, did not assess whether the inference drawn was truly the only reasonable one, and failed to explain why it rejected other plausible interpretations. This constitutes a fundamental error in reasoning, contrary to the standard articulated in *Bemba et al.*, where the Appeals Chamber held that if another reasonable conclusion consistent with innocence is open, the accused must be acquitted.[916]

318. First, as previously noted, the Chamber's presumption that Mr Ngaïssona possessed knowledge of a campaign targeting Muslim civilians during the advance toward Bangui relies predominantly on media reports and what other witnesses may have known.[917] However, the

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equally relevant to the *mens rea* analysis. *See* Perišić AJ, Opinion of Judges Theodor Meron and Carmel Agius, para. 4; Stanišić and Simatović AJ Opinion of Judge Afanđe, para. 30.
[914] Al Hassan TJ, para. 1595.
[915] Bemba et al. AJ, para. 868. *See also* Delalić et al. AJ, para. 458; Stakić AJ, para. 219; Krnojelac TJ, para. 67; Vasiljević AJ, para. 120.
[916] Bemba et al. AJ, para. 868. *See also* Delalić et al. AJ, para. 458.
[917] Judgment, p. 389, para. 1027, *citing* CAR-OTP-2094-0387, at 0393-0394 and their reproductions; pp. 540-542, paras 1416-1422 (only statements and testimonies); pp. 562-563, para. 1489, *citing* CAR-OTP-2091-1725, CAR-OTP-2074-0278, at 0287, CAR-OTP-2082-0793, CAR-OTP-2079-0622, CAR-OTP-2079-1940, CAR-OTP-

Pre-Trial Chamber in this case expressly warned against relying on media reports as a primary source of evidence, noting their limited relevance and insufficient reliability, especially as regards their assumptions of responsibility attribution.[918] This concern is echoed in the Appeals Chamber's jurisprudence, which held that failure to scrutinize the "extremely low probative value" of such reports, including anonymous hearsay, constitutes a reversible error.[919] Crucially, the Trial Chamber did not establish that Mr Ngaïssona had access to, read, or was otherwise contemporaneously aware of these reports. Mr Ngaïssona was not present in the country during the relevant period,[920] nor did the Chamber find he held operational control over the Anti-Balaka elements involved. This evidentiary gap renders any inference of contemporaneous knowledge speculative.[921]

319. This flawed approach is all the more striking when contrasted with the Chamber's handling of direct evidence on the Benzambe attack in September 2013.[922] First, it concluded that individuals named by P-2049 were killed during the Benzambe attack,[923] despite direct testimony and corroborating evidence showing that several of these persons were alive,[924] not present during the attack,[925] or affiliated with the Seleka.[926] To reach this conclusion, the Chamber credited P-2049, who never set foot in Benzambe[927] and relied solely on anonymous,

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2001-4118, CAR-OTP-2092-1001, at 00:11:31-00:12:22, CAR-OTP-2092-1017, at 00:13:04-00:13:50; pp. 499-500, para. 1300, *citing* CAR-OTP-2076-0678. *See also* Judgment, p. 514, para. 1342, referring to CAR-OTP-2100-1790, at 1791 (alleged CAR government document of September 2013); pp. 392-393, paras 1035-1036, referring to CAR-OTP-2130-3306, CAR-OTP-2124-0788, CAR-OTP-2124-0823, CAR-OTP-2124-0844 (email exchanges with Ngaya).

[918] *See* CoC Decision, para. 181 ("media reports are also of limited relevance to support a finding to the required threshold that Ngaïssona knew of the alleged crimes committed as (i) there is no indication that such reports reached Ngaïssona, (ii) the information contained in them is limited, (iii) it has not been demonstrated that they are sufficiently reliable, especially as regards their assumptions as to which groups were responsible for the events"). *See also* COC Decision, paras 211, 219, 224, 233 where the Pre-Trial Chamber did not find substantial grounds to believe that Mr Ngaïssona bore individual responsibility for crimes in Bossemptélé, Boda, Carnot and Berbérati, notably because the use of media reports did not suffice to prove his involvement and knowledge.

[919] Bemba AJ, para. 183; *see also* Lukić and Lukić AJ, para. 387.

[920] Judgment, p. 590, para. 1564.

[921] *See* Šainović et al. AJ, paras 1711-1726 and *compare* with the standard applied to Mr Lazarević, the ICTY only requiring probability of knowledge, not purpose, for aiding and abetting. *See* Ground II.C.

[922] Judgment, pp. 524-527, paras 1368-1379.

[923] Abou Khiress; Yaya Zakaria; Ibrahim Adey; Aladji Mahamat; Yaya Djito; Naga Adamou; Salma Idrissa; Harouna Douka; Joël Feissonangai aka Dolé; Seidou Deré; Mariame Adamou. These names were all provided by **P-2049:** T-100, p. 35, lns 15-22, p. 40, l. 13 – p. 42, l. 4, p. 43, l. 19 – p. 44, l. 5.

[924] **D30-4953:** CAR-D30-0026-0001-R01, [REDACTED], *see* **P-0966**: T-116, p. 34, ln. 3 to p. 35 ln. 9; T-117, p. 45, ln. 12 to p. 47 ln. 22; D30-4496's evidence corroborates D30-4953's testimony on 'Dolé' being alive at the time of their testimony, **D30-4496:** T-289, p. 68, ln. 25 to p. 69, ln. 2.

[925] **D30-4953:** CAR-D30-0026-0001-R01, at 0005, para. 45: Naga Adamou, Salma Idrissa and Harouna Doukawere not in Benzambe during the attack in any event.

[926] **D30-4953:** CAR-D30-0026-0001-R01, at 0006, para. 47: Seidou Deré was affiliated with the Seleka by selling weapons to them and is still alive and Seidou Deré's wife, Mariame Adamou, was killed by local youth in Bongame, while carrying a weapon.

[927] **P-2049:** T-102, p. 45, lns 3-5, p. 51, lns l-19.

non-contemporaneous hearsay,[928] while dismissing Nestor Wiabona ('Wiabona') (D30-4953), an eyewitness who lived there and witnessed the attack. [929] Labeling Wiabona's sources as "unclear"[930] is patently wrong, as he was the direct source of his testimony. Preferring hearsay over direct, corroborated evidence not only defies logic but materially undermines the integrity of the Chamber's findings. The Chamber further erred by misattributing responsibility for certain deaths: it concluded, based on vague context from V44-0001, that her husband's death occurred during events in Benzambe,[931] when the evidence clearly links Mahamat Abdel Karim's death to Bowaye, specifically to the truck attacks on the road to the weekly market.[932] It further ignored substantial evidence contradicting this conclusion, including testimony confirming that Ajdo Ibrahim Moussa's death was unrelated to Benzambe. These errors go to the heart of the Chamber's evidentiary approach. If the Chamber misreads clear, primary evidence on responsibility attribution and identification of victims during the alleged advance toward Bangui, it cannot reasonably claim to draw accurate inferences about Mr Ngaïssona's state of mind from indirect and unreliable sources. This methodological failure undermines the credibility of its findings and materially affects the conclusion on intent under Article 25(3)(c).

320. Second, even if, *arguendo*, the Appeals Chamber were to find reasonable the Trial Chamber's conclusion that Mr Ngaïssona became aware of the Anti-Balaka's purported pattern of criminal conduct, his subsequent actions, however established and timed beyond reasonable doubt,[933] were too equivocal, remote and inconsequential to support the conclusion that the only reasonable inference was that he acted with the purpose of facilitating the commission of crimes.[934]

[928] **P-2049:** T-100, p. 35, lns 20-22; T-102, p. 51, lns 2-3. It is recalled that P-2049 was at *École Liberté* from 5 December onwards (P-2049: T-101, p. 48, lns 2-4), which means that his alleged interactions with the survivors of the attack of Benzambe would have taken place at least three months after the fact.
[929] **D30-4953:** CAR-D30-0026-0001-R01, at 0002, para. 6; at 0004, para. 28. The Chamber even noted the evidence itself, *see* Judgment, p. 526, para. 1375 ("Nestor Wiabona was present during this attack and saw the Anti-Balaka entering the town […]").
[930] Judgment, pp. 524-525, para. 1374.
[931] Judgment, p. 527, para. 1378.
[932] **P-2049:** T-100, p. 34, ln. 17 to p. 35, ln. 22; **P-2658:** T-136, p. 14, ln. 11 to p. 15 ln. 8; **P-2453:** CAR-OTP-2111-0415-R04, at 0421, para. 30; T-138: p. 5, lns 6-17.
[933] *See* Ground I.C.3 to I.C.7; Ground II.B.3.
[934] *See* Krnojelac AJ, paras 101-103.

321. The Chamber's dismissal of Mr Ngaïssona's motives as irrelevant was erroneous.[935] While motive does not negate liability *per se*,[936] it is highly probative in assessing specific intent.[937] Both international and domestic tribunals have recognized that motive can contextualise conduct and support or undermine inferences of intent.[938] For instance, in *Gillick*, the House of Lords held that knowledge of a principal's criminal intent is insufficient for aiding and abetting where the accused's purpose was not to facilitate the offence.[939]

322. In this light, the Chamber's blanket dismissal of Mr Ngaïssona's contemporaneous motives – such as calls to cease violence,[940] humanitarian support,[941] and his role during a transitional period in which even the transitional president financially supported the Anti-Balaka for peace-building reasons[942] – fails to engage with the possibility that these motives may provide a reasonable alternative purpose for his actions, and therefore the assumption of the Chamber is not the only reasonable inference. The Chamber's refusal to balance these considerations further weakened its inference of purpose.

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[935] Judgment, pp. 1383-1384, paras 4039-4041. *See also* Judgment, pp. 640-641, paras 1694-1695.
[936] Krnojelac AJ, para. 102.
[937] *D. N. Husak,* Motive and criminal liability, p. 8 (motives in the sense of reason for action find a place in criminal doctrine, particularly where the defendant's reason for acting helps assess the wrongfulness or intentionality of their conduct. The criminal law routinely considers motives in the context of defences and *specific intent* crimes, and it remains "interested in intention"), *see* Annex I. *See* ICC's interpretation of the "purpose" requirement under Article 25(3)(c) as a form of specific intent: Ongwen Confirmation Decision, para. 43; Al Mahdi Confirmation Decision, para. 26; *A. Eser*, 'Mental Elements - Mistakes of Fact and Law', *see* Annex J, pp. 899-902. *See also* comparisons to the heightened *mens rea* required for specific intent crimes such as genocide or torture: Ongwen TJ, para. 2726; Katanga TJ, para. 772; Bemba Confirmation Decision, paras 320, 354 and fn 445.
[938] *See* e.g., Ayyash et al. TJ, para. 6198; *M. E. Badar*, The Concept of *Mens Rea*, pp. 72-73, *see* Annex F.
[939] *M. E. Badar*, The Concept of *Mens Rea*, pp. 72-73, *see* Annex F; Gillick v. West Norfolk and Wisbech AHA.
[940] Judgment, p. 638, para. 1688, *citing* **P-2232:** T-076, p. 67, ln. 15 to p. 68, ln. 9; T-077, p. 9, ln. 25 to p. 10, ln. 9; T-078, p. 49, ln. 15 to p. 50, ln. 3; **P-1858:** T-187, p. 30, lns 13-25; **P-0975:** CAR-OTP-2033-7885-R02, at 7892, para. 53; **P-0884:** T-058, p. 61, ln. 22 to p. 63, ln. 5, p. 64, lns 1-4; **P-0808:** CAR-OTP-2093-0010-R02, at 0018, paras 42-43; T-069, p. 38, ln. 1 to p. 39, ln. 2; T-071, p. 44, ln. 25 to p. 45, ln. 25; **P-0889:** T-109, p. 34, lns 3-22; **P-0992:** T-095, p. 7, ln. 18 to p. 9, ln. 12. *See also* **D30-4756:** T-269, p. 18, lns 16-19; **D30-4496:** CAR-D30-0022-0001-R03, at 0008, para. 44; **P-2251:** CAR-OTP-2093-0045-R01, at 0063, para. 117. *See also* Judgment, p. 639, para. 1688, *citing* **P-0808:** T-071, p. 46, lns 1-12. *See also* **P-2251:** CAR-OTP-2093-0045-R01, at 0068-69, paras 147- 150; **P-2251:** T-044, p. 37, lns 3-22. *See also* **P-2251:** T-043, p. 43, lns 3-11; **P-0992:** T-093, p. 46, lns 1-12. *See also* **P-0889:** T-109, p. 81, ln. 2 to p. 82, ln. 2; **P-1858:** T-187, p. 22, ln. 21 to p. 23, ln. 24.
[941] Judgment, pp. 296-297, para. 839 *citing* **P-0992**: T-092, p. 36, lns 11-22, p. 48, lns 13-19; Judgment, pp. 638-639, para. 1688, *citing* **P-0954:** CAR-OTP-2048-0171-R03, at 0189, para. 106; **P-0888**: T-123, p. 20, lns 3-20; **P-2269:** CAR-OTP-2111-0336-R01, at 0350, paras 103-104, at 0357, para. 156; **P-0884**: T-058, p. 66, ln. 21 to p. 67, ln. 2; **P-0992**: CAR-OTP-2110-0048-R05, at 0066, para. 101; CAR-OTP-2128-0288-R02, at 0309, para. 132; **P-0889**: T-109, p. 34, lines 3-22. *See also* Judgment, pp. 638-639, para. 1688, *citing* **P-0888**: T-123, p. 20, lns 3-20; CAR-OTP-2111-0336-R01, at 0350, paras 103-104, at 0357, para. 156; **P-0992**: T-093, p. 39, lines 2-13. *See also* Judgment, pp. 637-638, para. 1686, *citing* **P-0992**: CAR-OTP-2110-0048-R05, at 0065, para. 94.
[942] **P-0952**: T-249, p. 59, lns 6-9, 14-21.

323. In particular, the post-Djotodia period marked a significant shift: the withdrawal of Seleka,[943] the formation of a transitional government,[944] and a renewed emphasis on restraint and reconciliation.[945] Mr Ngaissona's active participation in peace-building efforts, in collaboration with the transitional authorities and the international community are fundamentally incompatible with the conclusion that Mr Ngaïssona's assistance at that time was aimed at facilitating the commission of crimes. The motives behind these actions are critical – they reflect efforts to de-escalate violence and reintegrate fighters –[946] not to perpetuate criminal conduct. From his appointment as General Coordinator in January 2014, which he accepted on the condition that the abuses committed by the Anti-Balaka stopped,[947] Mr Ngaïssona repeatedly called for peace and asked Anti-Balaka elements to lay down their weapons.[948] Mr Ngaïssona specifically called for appeasement and respect of the Muslim community advocated for the unity of Muslim and Christian communities.[949] The Judgment erred in failing to engage with this exculpatory context.

324. Even the Trial Chamber acknowledged that financial contributions made by Mr Ngaïssona may have been aimed at daily subsistence, and preventing looting or criminal acts.[950] Yet, it nonetheless concluded that these contributions "interlocked" with the Anti-Balaka's operational capacity.[951] This reasoning fails to consider other reasonable interpretations and does not meet the threshold for exclusive inference of purpose.

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[943] Judgment, pp. 587-588, paras 1558-1560, *citing* **P-0952**: T-250-ENG, p. 11, lns 3-13; T-250-FRA, p. 9, lns 16-27, Report 'Behind the Headlines', CAR-OTP-2001-2564, at 2573, UNSG Report, CAR-OTP-2001-0409, at 0410, para. 8.
[944] Judgment, pp. 588-589, para. 1561.
[945] **P-0952**: T-249, p. 28, lns 18-21; **P-0808**: T-071, p. 23, lns 7-12; **P-1042**: T-164, p. 22, ln. 18 to p. 23, ln. 8. CAR-OTP-2084-0157; CAR-OTP-2042-0916, from [00:11:08] to [00:12:10]; CAR-OTP-2088-0646; CAR-OTP-2088-0649, at 0654, lns 138-150. *See also* **P-0808**: T-071, p. 39, lns 4-19; **P-0954**: T-169, p. 59, lns 16-25. *See* Ground IV.C and Ground V, para. 463.
[946] *See* Ground IV.C and Ground V.B.
[947] Jugdment, pp. 593-594, para. 1574.
[948] CAR-OTP-2084-0146; CAR-OTP-2084-0147; CAR-OTP-2084-0148; CAR-OTP-2110-0145; CAR-OTP-2084-0150; CAR-OTP-2084-0155; CAR-OTP-2084-0157; CAR-OTP-2084-0166; CAR-OTP-2101-3611; CAR-OTP-2030-0245; CAR-OTP-2030-0243; CAR-OTP-2118-5622, at 5624, lns 19-28; CAR-D30-0002-0006; CAR-OTP-2068-0619; CAR-OTP-2042-2641, at [00:18:38] to [00:23:10]; CAR-OTP-2107-2997; CAR-OTP-2118-5622; **P-0808:** T-071, p. 23, lns 7-12; **P-1042:** T-164, p. 22, ln. 18 to p. 23, ln. 8.
[949] CAR-OTP-2084-0157; CAR-OTP-2042-0916, from [00:11:08] to [00:12:10]; CAR-OTP-2088-0646; CAR-OTP-2088-0649, at 0654, lns 138-150. *See also* **P-0808**: T-071, p. 29, lns 17-25, p. 39, lns 4-19, p. 54, ln. 18 to p. 55, ln. 20, p. 56, lns 2-14, p. 57, lns 3-8; **P-0954:** T-169, p. 59, lns 16-25; **P-1521:** T-083, p. 83, ln. 25 to p. 84, ln. 11. *See also* CAR-OTP-2023-1597, CAR- OTP-2107-1499; **P-1193:** T-125, p. 23, lns 9-15; **P-1962:** T-140, p. 8, ln. 18 to p. 10, ln. 6; **P-1077:** T-150, p. 55, lns 6-15; **P-0889:** T-109, p. 81, ln. 2 to p. 82, ln. 2; T-110, p. 24, ln. 20 to p. 25, ln. 15, p. 52, lns 10-20; **P-0888:** T-123, p. 61 ln. 4 to p. 62, ln. 9.
[950] Judgment, pp. 640-641, para. 1695, p. 1384, para. 4041.
[951] Judgment, pp. 640-641, para. 1695.

325. Despite affirming it several times, the Chamber failed to establish beyond reasonable doubt that Mr Ngaïssona was involved in planning steps "to ensure François Bozizé's return to power, by all means possible including through armed violence".[952] Assuming *arguendo* that Mr Ngaïssona provided some form of military assistance to the Anti-Balaka – as the Chamber found, though the evidentiary basis for this is strongly contested elsewhere in this brief[953] – this alone does not establish purpose to facilitate crimes. As first cautioned by Judge Moloto in his dissent at trial and later confirmed by the Appeals Chamber in *Perišić*, providing military support for strategic or political reasons is not equivalent to aiding and abetting crimes.[954] Like the VRS in *Perišić*, not all of the Anti-Balaka activities were criminal in nature.[955] Criminal liability under Article 25(3)(c) requires proof that the assistance was given with the specific intent to facilitate the commission of crimes – not merely that it supported a group engaged in both lawful and unlawful conduct.

326. As noted above,[956] the Chamber acknowledged that financial contributions aimed at sustaining an armed group can amount to assistance, but only if the required elements under the Statute are met.[957] Fairly interpreted, this means liability arises only where such support is provided with the purpose of facilitating the charged crimes, as Article 25(3)(c) requires. The Chamber could not simply rely on the fact that the alleged assistance sustained the group's existence; it had to establish that Mr Ngaïssona's intent extended beyond organizational support to encompass facilitation of specific crimes.

327. In sum, the Trial Chamber's inference of Mr Ngaïssona's intent is not the only reasonable inference available on the evidence. The Chamber's failure to consider alternative explanations for his conduct, its reliance on speculative or indirect sources, and its disregard for contextual and motivational factors amount to a misapplication of the standard for inferring *mens rea*. As such, the finding of intent cannot be sustained.

[952] *See* e.g., Judgment, p. 20, para. 34, p. 1602, para. 4709. *See* Ground I.B, paras 34-35, 39, 49, 56, 57.
[953] *See* Ground I.C.3; Ground I.C.4; Ground II.D.
[954] Perišić TJ, Opinion of Judge Moloto, paras 3-5; Perišić AJ, para. 52.
[955] *See* e.g., Judgment, p. 404, para. 1059, p. 406, paras 1063-1064, pp. 409-410, para. 1070, p. 465, para. 1204.
[956] *See* Ground II.A.1.
[957] Judgment, p. 1384, para. 4040.

3. The Chamber erred in failing to ensure that *mens rea* coincided with the alleged assistance

328. Under the principle of contemporaneity in criminal law, the mental element (*mens rea*) and the physical act (*actus reus*) must coincide. An accessory must possess the intent to facilitate a crime at the time the assistance is provided.[958] The Trial Chamber failed to establish this temporal nexus in Mr Ngaïssona's case.

329. The Chamber committed both legal and factual errors in relying on Mr Ngaïssona's alleged knowledge of crimes committed during the Anti-Balaka's advance toward Bangui to infer a higher *mens rea*. Legally, inferred awareness of non-charged crimes cannot substitute for the distinct purpose required under Article 25(3)(c).[959] Factually, the Chamber failed to establish that, at the time of Mr Ngaïssona's alleged assistance, he intended to facilitate the charged crimes – rather than merely earlier, non-charged acts.[960]

330. Even assuming Mr Ngaïssona knew that alleged crimes against the Muslim civilian population had been committed, this does not satisfy the requirement of contemporaneity. The Chamber did not establish how early Mr Ngaïssona acquired such knowledge,[961] nor did it identify when most of the alleged assistance in the commission of the charged crimes was provided.[962]

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[958] *See* e.g., *J. Horder,* Ashworth's Principles of Criminal Law, p.192, *see* Annex K. *See also* Naletilić & Martinović AJ, para. 114; Krajišnik AJ, paras 172-178; Haradinaj et al. AJ, para. 58.
[959] *See* Ground II.B.1.
[960] *See* e.g., Judgment, p. 1380, para. 4031 ("During this period of at least September to December 2013 and prior to the Bangui 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. *This included killings and dislocating of Muslim civilians from around Bossangoa, Bouca (Ouham prefecture), in Ndjo, Bossembélé, Boali and Gaga (Ombella-M'Poko prefecture), as well as in Bouar (Nana-Mambéré prefecture), including the attack on Bossangoa in September 2013*. […]" (emphasis added)). *See also* Judgment, p. 1384, para. 4041 (equivocally referring to "the concerned crimes") or p. 1411, para. 4131 (referring to "such crimes").
[961] *See* e.g., Judgment, p. 542, para. 1423 where the Chamber concludes that Mr Ngaïssona "must have known about the attack on Bossangoa in September 2013" based in particular, on the fact that "information on the attack in Bossangoa in September 2013 was widely available at the time". *See also* Judgment, p. 554, para. 1462 where the Chamber finds that "Mr. Ngaïssona was certainly also informed of the attack in Bouar". *See also* Judgment, p. 560, paras 1479-1480 where the Chamber notes that the attack in Boali was "widely covered in the media" without identifying any sources, and concludes that Mr Ngaïssona was aware of the attack based solely on two emails sent to him (CAR-OTP-2124-0899; CAR-OTP-2124-0952), the latter dispatched on the eve of the Bangui attack. *See also* Judgment, pp. 392-393, paras 1035-1036 where the Chamber observes that the exchange – containing no information on attacks – coincides with the time of the Bossangoa attack in September 2013, yet does not identify when Mr Ngaïssona allegedly acquired knowledge.
[962] *See* e.g., Judgment, p. 561, para. 1484 where the Chamber records that P-2673 did not see Mr Ngaïssona speaking to Anti-Balaka in Bouar, Bossangoa, or Bouca, yet reports that "those in Bouar, Bouca said it was Mr Ngaïssona who sent the money," without recalling the date.

Without this temporal clarity, it is impossible to determine whether the assistance coincided with the requisite intent.

331. This gap is particularly significant given the Trial Chamber's own findings regarding the timing of the criminal plans. For example, it found that "a plan to attack Bangui existed, at least, as of 30 November 2013".[963] Yet, while the Chamber broadly asserted that "Mr Ngaïssona made his contributions prior to the Bangui Attack",[964] the evidence cited in support of Mr Ngaïssona's alleged assistance either: (i) lacks a clear temporal link to this plan, (ii) predates the formation of the plan, or (iii) postdates the commission of the crimes.[965] It is difficult to sustain that an accomplice could acquire the *mens rea* to aid and abet the commission of crimes before the perpetrators even decide to commit them.

332. In short, the Chamber failed to establish when the assistance occurred, whether it was actually provided, and whether it coincided with Mr Ngaïssona's alleged awareness of the attack concerned. This failure undermines the finding of contemporaneity.[966]

333. The same flaw applies to other charged locations. For the PK9-Mbaïki axis, the Chamber found that the plan to remove Muslims from the area formed during Mr Yekatom's group's advance beginning on 10 January 2014,[967] but did not establish that Mr Ngaïssona had contemporaneous awareness of these acts or that his conduct after that date was intended to facilitate those crimes.[968] Common knowledge is either undated,[969] post-February 2014,[970] or speculative.[971]

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[963] Judgment, p. 781, para. 2125.
[964] Judgment, p. 1382, para. 4035.
[965] *See* e.g., Judgment, p. 825, para. 2269 and fn. 5817 where the Chamber found that Brice Emotion Namsio received rent support from Mr Ngaïssona sometime between early September and end of November 2013, but the exact timing remains unclear, para. 2270 where it was found Mokpem-Bionli initially suggested funds for food were received before 5 December, but later clarified that money only began to reach Alfred Legrand Ngaya after the Bangui attack. *See also* Judgment, pp. 824-825, para. 2268. Regarding alleged promises of material support prior to the Bangui attack, never delivered, *see* Judgment, pp. 823-825, paras 2261-2266. *See* Ground I.C.3.
[966] *See* Perišić AJ, para. 40.
[967] Judgment, p. 1488, para. 4368. *See also* Judgment, p. 1481, para. 4345.
[968] *See* Judgment, p. 1490, para. 4374.
[969] Judgment, p. 641, para. 1698 *citing* **P-0952:** T-250, p. 67, ln. 24 to p. 68, ln. 11 for which the only timeframe is 2014. *See also* Judgment, p. 642, para. 1702, in which Samba-Panza does not provide a timeline of Mr Ngaïssona sending a mission to Boda; CAR-OTP-2039-0020. *See also* Judgment, p. 642, para. 1701, *citing* **P-0446:** T-096, p. 78, ln. 9 to p. 79, ln. 1.
[970] Judgment, p. 644, para. 1706, *citing* **P-0992**, CAR-OTP-2110-0048-R05, at 0067, para. 106; T-095, p. 10, ln. 7 to p. 11, ln. 14, where the witness places the formation of a team to investigate what happened in the hinterland at "the end of 2014".
[971] Judgment, p. 499, para. 1300, fn. 3489, which refers to evidence indicating that Samba-Panza was in Mbaïki, but does not address Mr Ngaïssona's knowledge. The Chamber does not cite Samba-Panza's testimony (T-249, p. 43, ln. 21 to p. 44, ln. 4), where she stated that she had to send people to Boda to find out what was happening. *See also* Judgment, p. 641, para. 1699, *citing* **P-0884**: T-056, p. 84, ln. 5 to p. 85, ln. 2, where the witness testified

Presidential discussions with Mr Ngaïssona were vague and lacked specificity regarding crimes, dates, or perpetrators.[972] Internal reporting within the Anti-Balaka coordination is inconsistent and lacks clarity on what Mr Ngaïssona knew, when, and how.[973]

334. For Yamwara, the Chamber failed to establish that Mr Ngaïssona made any contributions between the Bangui attack and the incident itself.[974] Moreover, there is no evidence that Mr Ngaïssona had contemporaneous awareness of the Yamwara incident, or even of the establishment of Yamwara as a base for Mr Yekatom's elements.[975] The Chamber's broad argument that Mr Ngaïssona remained informed of the ongoing activities of the "Anti-Balaka"[976] – a group the Defence contests included Mr Yekatom's elements –[977] concerned political demands and internal power struggles – not the commission of crimes or the targeting of Muslim civilians.[978] At the time, the Bangui Attack had concluded and the Anti-Balaka began articulating political objectives.[979] There was no basis to infer that Mr Ngaïssona knew or should have known that further crimes, such as the Yamwara incident, would occur as a matter

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that "normally they should have been aware as coordinator". *See also* Judgment, p. 642, para. 1700, *citing* **P-0567** who testified about common knowledge of violence in Bangui but left a week after Mr Ngaïssona returned (CAR-OTP-2059-0084-R04, at 0095, para. 68), and mentioned pictures circulating, though the witness did not receive them personally. *See also* Judgment, p. 642, para. 1701, *citing* **P-0446**: T-096, p. 78, ln. 9 to p. 79, ln. 1 where the witness testified that he did not see targeting, killing, deportation, or displacement of Muslims by Anti-Balaka despite being in the military police, p. 76, lns 8-20 where he said he heard about Samba-Panza's statement on the radio; T-097, p. 3, ln. 24 to p. 4, ln. 11 where he testified that, despite being in National Coordination, he did not know who did what, p. 11, lns 1-23, where he testified about hearing things on the radio despite his role in Anti-Balaka, p. 12, ln. 19 to p. 13, ln. 3 referring to *post facto* knowledge. *See also* Judgment, p. 644, para. 1706 *citing* **P-0992**: CAR-OTP-2110-0048-R05, at 0062, para. 75 where the witness stated that he was informed of events in the Ouham region.

[972] Judgment, p. 642, para. 1702, *citing* **P-0952:** T-250, p. 68, ln. 24 to p. 69, ln 7.

[973] Judgment, p. 643, para. 1703, *citing* **P-2232:** T-077, p. 24, lns 6-15, 18-20, p. 64, lns 12-20, p. 26, ln. 18 to p. 27, ln. 17, p. 28, ln. 17 to p. 29, ln. 2. *See also* Judgment, p. 644, para. 1706, *citing* **P-0992**, CAR-OTP-2110-0048-R05, at 0061, paras 71-72, listing places with reported incidents, none in Lobaye. *See also* Judgment, p. 643, para. 1704, *citing* **P-0966**: T-116, p. 61, ln. 6 to p. 62, ln. 4, p. 60, ln. 20 to p. 61, ln. 5 where the witness testified that after Mr Ngaïssona assumed leadership, only events in Bangui were discussed, and he was not part of conversations on provinces; details provided were *post facto*. *See also* Judgment p. 644, para. 1705, *citing* **P-0966:** T-061, p. 37, lns 12-25, where the witness stated the Anti-Balaka objective was to conquer the enemy. *See also* Judgment, p. 642, para. 1701, *citing* **P-0446**: T-097, p. 5, lns 3-24.

[974] *Compare* Judgment, p. 1382, para. 4035 (Bangui), p. 1407, para. 4116 (Bossangoa) with pp. 1460-1461, para. 4282 (Yamwara).

[975] Judgment, pp. 1460-1461, paras 4282-4283.

[976] Judgment, p. 1463, para. 4291.

[977] *See* Ground II.D.

[978] Judgment, pp. 576-577, paras 1529-153, p. 579, para. 1535, p. 580, para. 1538, p. 582, para. 1543, p. 584, para. 1549, *citing* emails CAR-OTP-2124-0995, CAR-OTP-2124-0495, CAR-OTP-2124-0500, CAR-OTP-2124-0496, CAR-OTP-2124-0526, CAR-OTP-2124-0511.

[979] *See* Judgment, p. 566, para. 1499.

of course.[980] Accordingly, no reasonable Chamber could have concluded that his conduct was intended to facilitate the Yamwara incident.[981]

335. For Bossangoa, it failed to establish any link between the timing of Mr Ngaïssona's alleged financial contribution and the Bossangoa attack,[982] leaving open the possibility that the contribution, if proven, was provided before any criminal plan was formed. In the absence of evidence showing that Mr Ngaïssona knew of, or intended to facilitate, the Bossangoa attack at the time of his contribution, the Chamber's finding cannot sustain the requisite *mens rea*.

336. More generally, the Chamber itself acknowledges that the Anti-Balaka's objectives "evolved over time" and that the groups initially formed as self-defence units against Seleka atrocities.[983] This creates uncertainty about when the criminal purpose crystallized. The Chamber made no effort to align this temporal evolution with the timing of Mr Ngaïssona's alleged contributions. Without this temporal clarity, no reasonable trial chamber could have concluded that Mr Ngaïssona intended to further crimes against humanity or war crimes at the time he allegedly provided assistance.[984]

337. The Trial Chamber also relied on public speeches by figures like François Bozizé to infer Mr Ngaïssona's intent.[985] However, first, the evidentiary basis for the inflammatory nature of these speeches and their alleged impact on the population is insufficient.[986] Second, it did not establish that Mr Ngaïssona was aware of the entirety of these speeches, nor that they influenced his conduct at the relevant time.

338. In sum, the Chamber failed to establish when Mr Ngaïssona's assistance occurred at all, whether it coincided with the formation of criminal plans, and whether he possessed the requisite intent at the time. Without this temporal clarity, the requirement of contemporaneity is not met, and the finding of *mens rea* under Article 25(3)(c) cannot be sustained.

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[980] *See a contrario* Mrkšić et al. TJ, para. 628 ("He was aware […] of the propensity, if not the determination, of the TO and paramilitary personnel gathered to continue their cruel treatment against the prisoners of war").
[981] Judgment, p. 1463, para. 4292.
[982] *See* Ground I.C.3.
[983] Judgment, p. 466, para. 1207.
[984] *See* Judgment, pp. 466-467, para. 1208 ("groups initially started out separately").
[985] Judgment, pp. 1382-1383, para. 4037, p. 1407, para. 4116, pp. 1460-1461, para. 4282, pp. 1490-1491, para. 4374.
[986] *See* Ground I.C.7, paras 251-255.

4. Material effect

339. The Chamber's errors in interpreting and applying Article 25(3)(c)'s "purpose" requirement were dispositive. The Chamber's reliance on macro-level patterns, generalized support, and speculative inferences bypassed the heightened mental element required for aiding and abetting under Article 25(3)(c). No reasonable trier of fact could have concluded that Mr Ngaïssona's contributions were made with the specific intent to facilitate the commission of the charged crimes at the time of his assistance. As developed above, had the correct legal standard been applied, the outcome would have differed. Accordingly, the convictions under Article 25(3)(c) cannot stand.

C. The Trial Chamber erred in law and fact in its interpretation and application of Articles 30(2) and (3) of the Statute by relying, *inter alia*, on a "clear pattern of criminal conduct" to infer that Mr Ngaïssona possessed the requisite knowledge for the crimes charged

340. While the preceding section demonstrated that the Trial Chamber erred in law by inferring Mr Ngaïssona's *purpose* from his alleged *knowledge* of Anti-Balaka crimes, the following section addresses a deeper flaw in the Chamber's reasoning: its reliance, *inter alia*, on a "clear pattern of criminal conduct"[987] to infer that Mr Ngaïssona possessed the requisite *knowledge* under Article 30. In doing so, the Chamber not only conflated the twofold mental element required under the Statute but also improperly broadened the knowledge standard itself, treating macro-level awareness of group conduct as a substitute for individualized knowledge of specific crimes.

1. The Chamber erred in law in inferring knowledge from a pattern-based standard

341. First, the Trial Chamber erred in law by deeming the existence of a pattern of Anti-Balaka violence against Muslim civilians as sufficient to establish that Mr Ngaïssona knew that specific crimes would occur in the ordinary course of events.

342. Articles 30(2)(b) and 30(3) of the Statute require that the accused "knew that a consequence would occur in the ordinary course of events". The Appeals Chamber in *Lubanga* clarified that this standard about a future occurrence demands virtual certainty, not mere awareness of risk.[988] The consequence must be practically inevitable, barring an unforeseen or unexpected

[987] Judgment, p. 1411, para. 4131.
[988] Lubanga AJ, para. 447.

intervention.[989] The Trial Chamber reiterated this jurisprudence,[990] without however applying it.

343. The Trial Chamber erred in law by inferring Mr Ngaïssona's knowledge that crimes such as killings, dislocation, and destruction of property were virtually certain to occur from a "clear pattern of criminal conduct relating to the targeting of Muslim civilians".[991]

344. No jurisprudence supports the use of a pattern of conduct as a standalone and decisive basis for establishing knowledge under Article 30. In *Bemba*, the Pre-Trial Chamber rejected the argument that Mr Bemba's knowledge could be inferred from the prior conduct of MLC troops, holding that the mere fact that crimes had occurred in previous deployments did not establish that similar crimes would occur again with "virtual certainty".[992] The Chamber further clarified that even though Mr Bemba maintained his troops in the CAR after being informed of crimes committed by them, this did not mean he knew that further crimes would occur in the ordinary course of events. Foreseeing the risk that crimes might occur was deemed insufficient to meet the Article 30 standard, as it requires *dolus directus in the second degree*, a mental state involving awareness that the consequence will occur, not merely that it might.[993]

345. Similarly, in *Sesay*, the chamber of the Special Court for Sierra Leone ('SCSL') held that a prior pattern of conduct, specifically, the RUF's historical use of terror tactics, was insufficient, on its own, to establish that the accused intended such acts to occur during the relevant period in furtherance of the joint criminal enterprise. The Chamber emphasised that absent evidence of comparable crimes in the area under the accused's control, and without proof of his intent to instill terror, responsibility for acts of terrorism could not be imputed. This reinforces the principle that prior group conduct cannot substitute for a concrete assessment of the accused's knowledge and intent regarding specific crimes.[994]

346. The Chamber's reliance on a pattern of criminal conduct to infer Mr Ngaïssona's knowledge under Article 30 cannot be supported by jurisprudence from the ICTY or ICTR. The ad hoc tribunals applied a significantly lower standard of knowledge – typically framed as *awareness*

[989] Katanga TJ, para. 777.
[990] Judgment, p. 1410, para. 4128.
[991] Judgment, p. 1411, para. 4131. *See* Ground II.B.2.
[992] Bemba Confirmation Decision, paras 362-363, 377, 384.
[993] Bemba Confirmation Decision, paras 400-401. *See also* Lubanga AJ, para. 449.
[994] Sesay et al. TJ, para. 2047.

of a probability that crimes would occur.[995] This "probability" standard stands in contrast to the ICC's stricter requirement of *virtual certainty* under Article 30, which demands, as confirmed in *Bemba*, *dolus directus in the second degree*.[996] Thus, even if patterns of conduct were used to infer knowledge at the ad hoc tribunals, that reasoning cannot justify the Chamber's approach under the ICC's higher threshold.

347. This legal error materially affects the conviction because it lowers Article 30 *mens rea* standard from virtual certainty to mere probability, allowing liability to rest on an impermissibly diluted threshold.

2. The Chamber committed mixed errors in applying the pattern-based standard inconsistently

348. Second, even if a pattern of conduct could be relevant as a subsidiary indicator of knowledge, the Trial Chamber further erred in failing to consistently (i) require a specific appreciation of the criminal acts being committed to establish Mr Ngaïssona's knowledge, and (ii) assess his knowledge in light of his specific contributions and mode of liability. The Chamber's overly broad interpretation of the notion of "pattern of conduct" further diluted the requisite *mens rea* and led to findings of knowledge for crimes that were not part of any established pattern.

i. The Chamber failed to consistently require knowledge of specific crimes

349. The Chamber found that Mr Ngaïssona had "virtual certainty" that certain crimes – such as killings, injuries, and destruction of property – would occur in the ordinary course of events, based on a pattern of Anti-Balaka conduct targeting Muslim civilians.[997] This reasoning was extended to crimes like torture and attack against a building dedicated to religion, despite the absence of prior comparable instances.[998] The Trial Chamber considered "it was not necessary to have been aware of *the specific details of each of the crimes*",[999] and deemed it sufficient that

[995] *See* e.g., Furundžija TJ, paras 236-248, where the Chamber concluded that aiding and abetting could be based on the probability that a crime might be committed; Blaškić AJ, para. 50, where the Appeals Chamber accepted that the accused need not know the precise crime, as long as it was one of a number of crimes that would probably be committed. *See also* Popović et al. TJ, paras 1989-1990; Mrkšić et al. TJ, para. 621; Ndindabahizi AJ, para. 122.
[996] Bemba Confirmation Decision, paras 400-401.
[997] Judgment, p. 1411, para. 4131.
[998] Judgment, p. 1464, para. 4294 (torture); pp. 1384-1385, para. 4042 (destruction of religious building). *See also* Judgment pp. 1461-1462, para. 4285.
[999] Judgment, p. 1464, para. 4294 (emphasis added).

Mr Ngaïssona was aware "the Anti-Balaka would target Muslim civilians in the ordinary course of events".[1000]

350. In essence, in relation to torture for instance, the Chamber's logic was that Mr Ngaïssona was virtually certain torture would occur because, although there were no previous instances of similar criminal conduct, torture could be broadly classified as a crime directed against the Muslim civilian population. Given his alleged virtual certainty that crimes against this population would occur, as they had in the past, the Chamber concluded that this certainty extended to torture as well.

351. Under this approach, any prior crimes committed against the Muslim civilian population automatically renders all further crimes against that group virtually certain.

352. However, the Chamber declined to apply the same reasoning to rape,[1001] despite acknowledging that an Anti-Balaka element raped P-2462 during the Bossangoa attack and that sexual violence is not "exceptional" in armed conflict.[1002]

353. This selective application reveals a fundamental inconsistency. If the absence of prior incidents precludes a finding of virtual certainty for rape, the same logic should apply to all other types of crimes lacking comparable precedent. The Chamber's own logic applied in relation to the counts of rape, i.e. that "knowledge of an abstract 'risk' of certain types of crimes being committed is insufficient",[1003] demonstrates that knowledge of a general pattern of targeting Muslim civilians cannot be relied upon to establish "virtual certainty" of particular criminal acts.

354. Further inconsistency can be found in the Majority's reasoning in relation to the counts of torture: because Mr Ngaïssona was allegedly aware of a pattern of mistreatment and killings, the Majority concluded that this awareness also covered acts like cutting off body parts – even if similar incidents had not happened before the Yamwara incident.[1004] This stands in contrast with the Chamber's earlier reasoning, which found Mr Ngaïssona virtually certain that torture would occur despite the absence of prior comparable conduct, on the basis that torture could be

[1000] *Ibid*. *See also* Judgment, p. 1383, para. 4038.
[1001] Judgment, p. 1411, para. 4131 ("[...] However, the Chamber cannot conclude the same as regards the cases of rape that occurred in Bossangoa, one of which Mr Ngaïssona is charged with").
[1002] Judgment, p. 1411, para. 4130. *See also* Judgment, p. 1401-1402, paras 4095-4098.
[1003] Judgment, p. 1410, para. 4128.
[1004] Judgment, pp. 1462-1463, para. 4288.

broadly classified as a crime targeting Muslim civilians.[1005] Thus, for the same act, the mutilation of Saint Cyr, the Chamber first claimed that prior similar acts were not necessary to establish knowledge, and then relied on specific past acts of mistreatment and killing to justify the inclusion of mutilation within Mr Ngaïssona's awareness. While no torture was found to have occurred prior to the Yamwara incident, the Trial Chamber's reliance on general targeting on the one hand, and on more specific, yet different, prior conduct, on the other, reflects an inconsistent application of the knowledge standard and undermines the legal coherence of the Chamber's findings.

355. The Trial Chamber's failure to consistently require a more specific appreciation of the criminal acts being committed constitutes a further error of law. This error led the Trial Chamber to assess Mr Ngaïssona's knowledge under Article 30 and elevated *mens rea* under Article 25(3)(c) using an incorrect standard.[1006]

356. The principle of individual guilt requires that each crime for which an accused is held liable be one to which they objectively contributed and subjectively adhered. The Statute defines actual crimes, such as murder, rape, or corruption of witnesses. Accordingly, when Article 25(3)(c) refers to aiding "such a crime", it refers to a real, defined offence, not general wrongdoing.

357. The Appeals Chamber in *Bemba et al.* clarified that an accessory need not know all the details or factual circumstances of the crime in which he or she assists.[1007] However, it did not find any error in the trial chamber's requirement that the accessory must be aware of the essential elements of the crime being facilitated.[1008] The Appeals Chamber merely rejected a standard that would require knowledge of *all* details.[1009]

358. This interpretation aligns with the jurisprudence of the ad hoc tribunals, which confirms that while precise knowledge is not required, the accused must know that their assistance will contribute to the commission of the specific crime ultimately committed by the principal, including the principal's relevant *mens rea*.[1010]

[1005] Judgment, p. 1464, para. 4294.
[1006] Judgment, p. 1411, para. 4131. *See* Ground II.B.
[1007] Bemba et al. AJ, para. 1400.
[1008] Bemba et al. TJ, para. 98 *citing* i.a. Sesay et al. TJ.
[1009] *Ibid*., para. 98.
[1010] Aleksovski AJ, para. 163; Kayishema and Ruzindana AJ, para. 186, (requiring "that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act"); Krnojelac AJ, para. 51; Vasiljević AJ, para. 102; Blaškić AJ, paras 45-46; Ntagerura et al. AJ, para. 370; Simić AJ, para. 86

359. Properly understood, "essential elements" include (i) the type of crime (e.g., "murder, extermination, rape, torture, wanton destruction of civilian property, etc.");[1011] and (ii) the principal perpetrator(s)'s mental state, including any specific intent.[1012] Different crimes require different mental elements. For crimes such as torture, this means knowing that the perpetrators inflicted severe pain or suffering for a prohibited purpose. The Chamber found that the Anti-Balaka committed torture for the purposes of punishment, intimidation, and religious discrimination.[1013] However, there is no evidence that Mr Ngaïssona was aware of these specific motivations. The Chamber relied solely on his generalised knowledge that the Anti-Balaka targeted Muslim civilians and may have perceived Muslims in the CAR as collectively responsible for Seleka abuses.[1014] This is insufficient. Under Article 30, knowledge of the contextual targeting of a group does not equate to knowledge of the specific mental state of the perpetrators at the time of the crime. Without proof that Mr Ngaïssona knew the Anti-Balaka acted with the specific intent required for a specific crime, the mental element for aiding and abetting that crime is not met. Awareness that a group will be targeted may relate to the contextual elements of crimes against humanity or war crimes,[1015] but it does not substitute for knowledge of the specific criminal conduct or the principal's intent.

360. Yet the Trial Chamber relied on a broad concept of "pattern of conduct" to infer Mr Ngaïssona's awareness of *both* contextual and material elements of the crimes.[1016] This conflation is flawed.[1017] Moreover, the Trial Chamber's language – shifting from "not all details of the

("knowledge that the acts performed by the aider and abettor assist in the commission of the specific crime of the principal perpetrator"); Blagojević and Jokić AJ, para. 127 ("The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator"); Muvunyi AJ, para. 79; Mrkšić et al. AJ, para. 159; Haradinaj et al. AJ, para. 58 ("'[it] must be shown that the aider and abettor knew that his own acts assisted the commission of that specific crime by the principal' (e.g., murder, extermination, rape, torture) and that the aider and abettor was 'aware of the essential elements of the crime which was ultimately committed by the principal'"); Kalimanzira AJ, para. 86; Perišić AJ, para. 48; Ndahimana AJ, para. 157 ("[t]he aider and abettor [...] must be aware of the essential elements of the crime ultimately committed by the principal, including his state of mind"). *See also* Ndindiliyimana et al. AJ, para. 317; Blagojević and Jokić TJ, para. 740 ("The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt, however, that […] Colonel Blagojević knew that members of his brigade were assisting in the commission of the crime of murder.").

[1011] Šainović et al. AJ, paras 1772-1773.

[1012] *See* e.g., Haradinaj et al. AJ, para. 58; Popović et al. TJ, para. 1017; Ndahimana AJ, para. 157; Sesay et al. TJ, para. 280.

[1013] Judgment, p. 1456, paras 4266-4267.

[1014] Judgment, pp. 1460-1461, para. 4282.

[1015] *See* e.g., Taylor AJ, para. 383.

[1016] Judgment, p. 1336, para. 3906, pp. 1350-1351, para. 3944.

[1017] Kunarac et al. AJ, para. 94; Sesay et al. TJ, para. 78.

crime" to "not the specific details of each of the crimes" – further diluted the *mens rea* standard.[1018]

361. This legal error was material. By adopting an improperly low knowledge threshold – general awareness of macro-level targeting – the Trial Chamber concluded that the Article 25(3)(c) mental element was met without establishing that Mr Ngaïssona knew of the essential elements of each charged crime, including the principal perpetrators' intent.

ii. The Chamber erred in fact in its findings regarding specific counts

362. The Chamber's incorrect interpretation of a "clear pattern of criminal conduct" led to factual errors in its findings on several specific counts. In multiple instances, it inferred Mr Ngaïssona's knowledge of crimes that were not supported by prior comparable incidents, thereby failing to meet the evidentiary threshold of virtual certainty under Article 30.

363. For Count 6 (war crime of attacking religious buildings), the Trial Chamber "*infer[red]* that Mr Ngaïssona would have known that, during the ordinary course of these attacks, the Anti-Balaka would also attack buildings dedicated to the Muslim religion".[1019] However, the Chamber did not find any similar instances in any of the crimes that the Anti-Balaka committed in their advance to Bangui prior to 5 December 2013. Moreover, the only incident of mosque destruction referenced in the charges, i.e. the destruction of the mosque in Bossangoa on 5 December 2013 was not conclusively attributed to the Anti-Balaka.[1020] Despite this, the Trial Chamber still inferred that Mr Ngaïssona had virtual certainty that such crimes would occur in Boeing on the same day. The reasoning appears speculative and is not supported by a consistent pattern of prior conduct or other evidence. The Chamber failed to explain how it reached this conclusion and why it was the only reasonable one. Therefore, this inference lacks a factual foundation.

364. For Counts 12 and 13 (crime against humanity and war crime of torture), the Trial Chamber found that Mr Ngaïssona had knowledge of the torture of Saint-Cyr, including mutilation, despite the absence of any comparable incidents in the Anti-Balaka's prior conduct.[1021] Judge Kovács dissented, noting that: "[t]he Chamber did not find any instances of torture, similar to that faced by Saint Cyr, in any of the crimes that the Anti-Balaka committed in their advance

[1018] *Compare* Bemba et al. AJ, para. 1400 with Judgment, p. 1464, para. 4294.
[1019] Judgment, pp. 1384-1385, para. 4042.
[1020] Judgment, p. 1027, para. 2955.
[1021] Judgment, p. 1461, para. 4284.

to Bangui prior to 5 December 2013".[1022] He further noted that the confirmed charges do not contain any comparable incidents and distinguished Saint Cyr's torture from other acts, such as the post-mortem mutilation of Djido Saleh.[1023] The Majority's reliance on general awareness of mistreatment and killings,[1024] cannot reasonably be extended to the "particular cruelty" of mutilation while alive.[1025] This constitutes a factual error, as the Chamber inferred knowledge of a crime not evidenced in the established pattern.

365. This reasoning also applies to Counts 15 and 16 (crime against humanity and war crime of murder) as Saint Cyr's death resulted directly from the torture. Judge Kovács rightly concluded that Mr Ngaïssona could not have had virtual certainty that such a uniquely cruel and personally motivated act against Muslim civilians, resulting in their death, would occur.[1026]

366. The Defence fully adopts Judge Kovács' view that Alkanto's personal desire for revenge against the women in the group, and the perpetrator's motive to cut off Saint Cyr's body parts to "prove her worth", impacted Mr Ngaïssona's knowledge.[1027] The Chamber erred in failing to consider that these highly individualised motives and uniquely cruel circumstances – involving bodily mutilation – severed any potential link to Mr Ngaïssona's intent and knowledge.[1028] Although a perpetrator's motive does not, in itself, exclude criminal intent, unrelated and opportunistic acts such as those encompassed in Counts 12-13 and 15-16 committed at Yamwara, clearly fall outside the scope of foreseeability for the purpose of

[1022] Judgment, pp. 1461-1462, para. 4285.
[1023] *Ibid*.
[1024] Judgment, pp. 1462-1463, para. 4288.
[1025] Judgment, p. 1462, para. 4286 ("[a]ccordingly, Judge Kovács considers that these facts taken together show that the particular cruelty involved in the crime of torture, namely the cutting off of Saint Cyr's toes, fingers, and ear did not take place in the ordinary course of events within the meaning attributed to it in the jurisprudence as outlined above. [...]). *See* Sesay et al. TJ, para. 1372 distinguishing between amputation and carving.
[1026] Judgment, p. 1462, para. 4286.
[1027] Judgment, pp. 1461-1462, paras 4285-4286 ("In his view, the personal and specific nature of the motives of Mr Yekatom's elements that contributed to the commission of this crime created a break in what one could consider 'the ordinary course', as required by Article 30(3) of the Statute, and therefore considers that this test is not satisfied in this specific instance in respect of Mr Ngaïssona. […] Judge Kovács considers that Mr Ngaïssona was not aware that Muslim civilians would be subjected to the particular cruelty resulting in their death, as was the case with Saint Cyr, in these circumstances").
[1028] Judgment, p. 1455, para. 4265 ("The Chamber finds that these personal motives did not have any relevance for establishing the *elements of the crime*. There is nothing in the legal framework of the Court requiring proof of motive of the direct perpetrator of a war crime or a crime underlying crimes against humanity to establish the mental elements of such crimes. The Chamber also considers that merely because personal motivations can be identified, it does not necessarily follow that the *required nexus with the widespread or systematic attack* is inevitably lacking") (emphasis added). *See also* Judgment, p. 1458, para. 4273. **P-1704:** T-128-FRA, p. 38, lns 1-5: "… Alkanto, il voulait venger son ami qui… a été maltraité par […] la femme du Général Mamour".

Articles 30(2)(b) and 30(3) of the Statute.[1029] Mr Ngaïssona could not have foreseen with virtual certainty that these particular acts would occur in the "ordinary course of events" and the Trial Chamber points to no such evidence.

367. The Trial Chamber failed to engage with this reasoning and the inference of knowledge, which is unsupported by any pattern of prior conduct, thereby failing to meet the evidentiary threshold required under Article 30.

368. Counts 14 and 39 (crimes against humanity of imprisonment and severe deprivation of liberty) are two materially different incidents. In Bossangoa, the Muslim community was confined in a school and dependent on international forces for protection.[1030] In contrast, the Yamwara incident involved the temporary abduction of a small group of individuals who were later released.[1031] These acts differed in modality, perpetrators, and objectives, and do not reflect a consistent modus operandi.[1032] The Chamber failed to demonstrate how such disparate acts could form part of a coherent criminal pattern.

369. Moreover, the Chamber's own findings regarding the Anti-Balaka's advance toward Bangui do not include any documented incidents of imprisonment or confinement. Media and NGO reports from the relevant period refer to displacement, not detention.[1033] Therefore, no reasonable trier of fact could have reasonably concluded that these acts formed part of a clear pattern of conduct and that Mr Ngaïssona intended that such crimes would occur.[1034]

370. For Counts 11 and 13 (crime against humanity of other inhumane acts and war crime of cruel treatment), the Trial Chamber erred in fact by concluding that the crimes charged under Counts 11 and 13, namely, the inhumane and cruel treatment of six individuals, including three Muslim women, at Yamwara, formed part of a clear pattern of criminal conduct.[1035] The confirmed charges do not contain any comparable criminal acts. Moreover, the Chamber did not find any instances of mistreatment, similar to that faced by the six of the captives, namely forced

[1029] *See* Al Hassan TJ, Opinion of Judge Akane, para. 27, *citing* Limaj et al. TJ, para. 668; Limaj et al. AJ, paras 108-110.
[1030] Judgment, pp. 1399-1400, para. 4089.
[1031] Judgment, p. 37, para. 110, p. 1127, para. 3272.
[1032] *See* e.g., Sesay et al. TJ, paras 1275, 1293, 1354.
[1033] *See* e.g., CAR-OTP-2100-1790; CAR-OTP-2050-0822.
[1034] Judgment, p. 1407, para. 4117. *See*, however, Judgment, pp. 1410-1411, paras 4129, 4131 where no mention of the crime of severe deprivation of physical liberty can be found among the list of crimes Mr Ngaïssona was virtually certain would occur.
[1035] Judgment, pp. 1461-1463, paras 4283, 4287-4288, p. 1411, para. 4131.

undressing, exposure of a relative's torture, and threats of death,[1036] in any of the crimes that the Anti-Balaka committed in their advance to Bangui prior to 5 December 2013, let alone reported to Mr Ngaïssona. None of the media reports referenced in the Judgment describe similar conduct, and while attacks against Muslim civilians were reported, they did not include systematic inhumane or cruel treatment of detainees. The Chamber's conclusion is unsupported by the evidence.

371. The Chamber erred in fact by finding that certain charged crimes were encompassed within a "clear pattern of criminal conduct". The reasoning fails to distinguish between contextual targeting and the essential criminal modalities of the specific crimes charged. As such, it cannot support a finding that Mr Ngaïssona was virtually certain those crimes would occur.

372. Moreover, the inference of an accused's state of mind must relate directly to his own knowledge, not that of the general public or others in the organisation.[1037] In the absence of evidence that Mr Ngaïssona knew of the essential elements of the crimes through means other than public reports, the Chamber's reliance on an undifferentiated pattern of conduct is insufficient.[1038]

373. Had the Trial Chamber properly required that the pattern include comparable prior incidents, it would have found that several charged crimes fell outside the scope of what Mr Ngaïssona would have known in the ordinary course of events. This error of fact materially affected the outcome of the trial and invalidates the convictions under Counts 6, 11, 12, 13, 14, 15, 16 and 39.

iii. The Chamber erred in failing to contextualise the standard based on mode of liability and specific circumstances

374. The Trial Chamber further erred by failing to assess Mr Ngaïssona's knowledge in light of his mode of liability as an accessory under Article 25(3)(c).

375. Instead, the Chamber assessed Mr Ngaïssona's knowledge of crimes based on a 'macro-level' awareness of Anti-Balaka conduct[1039] – an approach more appropriate for principal

[1036] Judgment, p. 1451, para. 4249.
[1037] Bemba TJ, para. 192, *citing* Delalić et al. TJ, paras 385-386.
[1038] *See* Ground II.B.2.
[1039] Judgment, p. 1383, para. 4038.

perpetrators. This conflated the distinction between principal and accessory liability and constitutes a legal error.

376. As Smith observes, "'an accessory cannot "know" something yet to occur' when it relates to the intentions of another, in the same way that the principal can know their own intentions".[1040] This principle is reflected in ICC jurisprudence. In *Lubanga*, the accused was a principal and his knowledge was assessed in light of his central role and authority, which gave him control over the execution of the common plan. The "virtual certainty" standard was applied to assess whether Mr Lubanga, as a principal, knew that crimes would occur as a direct result of the plan he designed and executed.[1041] Similarly, in *Ntaganda*, the Trial Chamber found that crimes were virtually certain to occur because the accused co-designed and controlled the criminal plan, issued explicit targeting orders, and operated within a hierarchical structure that guaranteed obedience.[1042]

377. Mr Ngaïssona's situation was materially different. He did not design the operations, nor did he exercise control over those who carried them out, no witness who testified at trial confirmed this allegation. Yet the Chamber assessed his mental state as if he had designed the criminal purpose himself, relying on macro-level awareness of Anti-Balaka conduct to infer virtual certainty,[1043] without assessing knowledge from the specific lenses of Mr Ngaïssona role.

378. His alleged liability is derivative, and the mental element must be evaluated accordingly. The Chamber itself acknowledged that the mental element must be assessed "in relation to the individual criminal responsibility of the specific accused" and even concluded that Mr Ngaïssona did not have virtual certainty that rape would occur in Bossangoa.[1044] However, it failed to apply this principle consistently across other charges.

379. The *Šainović et al.* Appeal Judgement confirms that "the degree of knowledge pertaining to the details of the crime required to satisfy the *mens rea* of aiding and abetting will depend on the circumstances of the case, including the scale of the crimes *and the type of assistance provided*".[1045] A remote supporter cannot be equated with a direct perpetrator or someone physically present at the crime scene. The ad hoc tribunals have consistently considered

[1040] *K. J. M. Smith*, Law of Criminal Complicity, 162, 181.
[1041] Lubanga AJ, paras 451, 455.
[1042] Ntaganda TJ, paras 776, 789–791, 797, 801-807, 811.
[1043] Judgment, p. 1383, para. 4038.
[1044] Judgment, p. 1411, para. 4131.
[1045] Šainović et al. AJ, para. 1773. *See also* Popović et al. AJ, para. 1800.

proximity to the crime scene and the nature of the assistance as relevant factors in assessing knowledge.

380. In *Al Hassan*, the accused's repeated and direct involvement in corporal punishments and enforcement of rules made the crimes a virtually certain consequence of his conduct. Even as an accessory, Mr Al Hassan's conduct was integral to the execution of the crimes, making foreseeability much stronger.[1046] Mr Ngaïssona's contributions, by contrast, were indirect and removed from the operational context.

381. By failing to contextualise Mr Ngaïssona's knowledge based on his mode of liability and the nature of his contributions, the Chamber applied an improperly low threshold. It concluded that the Article 25(3)(c) mental element was met without establishing that Mr Ngaïssona knew, at the time of his assistance, that the crimes would occur in the ordinary course of events. Applying the correct standard, no reasonable trial chamber could have found the requisite knowledge under Article 30. Therefore, this error was material.

3. Material effect

382. The Trial Chamber erred in law in inferring that Mr Ngaïssona had virtual certainty that the charged crimes would occur based on a macro-level pattern of Anti-Balaka conduct. It further erred by failing to consistently (i) determine whether there were prior instances of similar specific crimes that Mr Ngaïssona was aware of, and (ii) assess his knowledge in relation to his specific contributions and mode of liability.

383. Moreover, the Chamber's inconsistent treatment of similar evidentiary contexts – accepting generalised awareness for some crimes while requiring specificity and contextualisation for others – undermines the credibility and coherence of its findings. It reflects a flawed reasoning process that materially affects the determination of Mr Ngaïssona's mental element and individual criminal responsibility.

384. Had the correct legal standard been applied, and had the Chamber properly assessed the evidence regarding Mr Ngaïssona's knowledge, it could not have found that he possessed the mental element required for conviction under Article 30. The errors in law and fact materially affected the outcome of the trial and invalidate the convictions under all counts.

[1046] Al Hassan TJ, paras 1594-1595.

D. The Chamber erred in law and in fact in adopting an overly broad interpretation of the organisational structure of the Anti-Balaka, treating distinct and loosely affiliated groups as a single movement without properly applying the legal criteria for organisational identity[1047]

385. The Chamber relied on sporadic cooperation between armed groups on 5 December, as well as the establishment of the Anti-Balaka coordination as a political interlocutor in 2014 as evidence that the Anti-Balaka, which it labelled as "one movement",[1048] was an organisation within the meaning of Article 7. In doing so, the Chamber misapplied the Article 7(2)(a) standard and made unreasonable findings.

1. The Chamber erred in law in misapplying the Article 7 standard for an "organisation"

386. First, the markers relied upon by the Chamber were wrongly focused on the 5 December attacks. The Chamber treated markers tied to the 5 December attacks in Bangui and Bossangoa as sufficient to prove the existence of a standing organisation with a continuing policy.[1049] Four of the five markers, in particular planning, communications during the advance towards Bangui, and the simultaneous execution of the Bangui and Bossangoa attacks,[1050] reflect operational coordination for that single operation, not mechanisms or structures that persisted beyond 5 December. Article 7 requires organisational capacity that sustains the course of conduct constituting a widespread or systematic attack against civilians,[1051] not organisational features applicable only for one short-lived operation to attack two cities.

387. Second, the Chamber erred in treating, at least for certain groups, the mere existence of a shared objective to oust Djotodia and the Seleka as sufficient to establish a single "organisation".[1052] Rather than requiring proof that these local self-defence groups – labelled as Anti-Balaka – including those that never joined the advance towards Bangui and Bossangoa, shared the same structures and mechanisms as the groups that carried out the 5 December attacks, the Chamber treated ideological alignment to subsume distinct actors under one Article 7 organisation. Yet,

[1047] This heading reflects a logical grouping of issues for clarity. It does not introduce any new errors. The errors of fact referenced here were already identified in the Notice of Appeal, para. 28 ("the sustained and coordinated operations conducted by Anti-Balaka groups throughout the period relevant to the charges" and "Mr Ngaïssona's overarching role in unifying, coordinating, and representing all Anti-Balaka groups throughout the period from January to June 2014").
[1048] Judgment, p. 22, para. 43.
[1049] Judgment, p. 1344, para. 3926.
[1050] *See* markers (i) to (iv) in p. 1344, para. 3926 of the Judgment.
[1051] Bemba Confirmation Decision, para. 81 ("Such a policy may be made by groups of persons who govern a specific territory or by any organization *with the capability to commit a widespread or systematic attack against a civilian population*" (emphasis added)). *See also* Katanga Confirmation Decision, para. 396.
[1052] Judgment, pp. 22-23, paras 43 and 45.

"a common objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives".[1053] The legal standard requires demonstrated mechanisms and structures that enable the organisation to plan, direct, and implement the attack against the civilian population, not mere parallelism of purpose.

388. Lastly, even accepting the Chamber's findings that various Anti-Balaka groups came to share an objective both to oust the Seleka and to inflict retributive violence on Muslim civilians,[1054] this goes to what certain groups wanted and did, not to whether they constituted one organisation in the sense of Article 7(2)(a). The indicia the Chamber relied on show, at most, that some groups were capable of coordinating a particular campaign against a common enemy; they do not establish that all groups it labelled as Anti-Balaka were embedded in one organisational framework whose structures were responsible for their conduct. By treating common aims and broadly similar forms of conduct by different groups as sufficient to collapse heterogeneous self-defence groups into a single Anti-Balaka entity, the Chamber interpreted organisation more broadly than Article 7(2)(a) and the jurisprudence permit.

389. Had the Chamber required proof of enduring organisational capacity beyond the 5 December attack and required that "other" local groups be shown to share the same structures and mechanisms as the groups that carried out the attack, it could not lawfully have concluded to a single movement with a continuing organisational policy. Even assuming *arguendo* that an Article 7 organisation could be found, in applying the correct standard, its scope would have been significantly narrower, limited at most to those groups proven to share the organisational mechanisms identified by the Chamber. This directly affects the contextual element of crimes against humanity for incidents and locations the Chamber attributed to the Anti-Balaka.[1055] It also undermines its finding that Mr Ngaïssona's alleged coordination and financial support to Anti-Balaka elements amounted to a contribution to crimes against humanity committed pursuant to a single organisational policy.[1056] But for this legal error, the scope of the Article 7 attack and of Mr Ngaïssona's resulting convictions would have been narrower or different.

[1053] Krajišnik TJ, para. 884. *See also* Stanišić and Simatović TJ II, para. 1259.
[1054] Judgment, pp. 1356-1346, para. 3930.
[1055] *See* Judgment, p. 1351, para. 3946.
[1056] Judgment, pp. 1350-1351, paras 3943-3945.

2. The Chamber erred in fact in finding that an organisation existed before the 5 December attack

390. The Chamber's finding that heterogeneous self-defence groups operated as a single Anti-Balaka organisation throughout 2013[1057] cannot be sustained on the evidence cited. That evidence is largely confined to preparations for and execution of the 5 December attacks on Bangui and Bossangoa and does not demonstrate the existence of a unified structure corresponding to the organisation described in the Judgment.[1058] Even on the Chamber's own account, the findings show separate local leaders[1059] coordinating a specific campaign from their respective bases,[1060] rather than a standing organisation with continuing mechanisms. Similarly, the evidence on pre-5 December communications and planning relied upon by the Chamber reflects coordination along specific axes.[1061] In these circumstances, the material relied on may support a finding that a subset of local formations coordinated a particular offensive, but it does not show that all groups labelled Anti-Balaka shared common organisational structures or mechanisms beyond that operation. At most, the record reflects temporary coordination for a single operation, not the organisational capacity required under Article 7 to sustain a widespread or systematic attack against civilians.

391. The Chamber then wrongly included in the "organisation" other local groups that never took part in the Bangui/Bossangoa advance, as well as individuals whose affiliation with the Anti-Balaka was never established.[1062] It treats, for example, the Bouar "archers" under the Ndale family,[1063] the Beloko group at the border,[1064] the *Front de resistance pour l'alternance pour*

[1057] Judgment, p. 22, para. 43; p. 1344, para. 3926.
[1058] Judgment, p. 1344, para. 3926
[1059] On Mr Yekatom's group, RFACPP, *see* Judgment, p. 866, para. 2413. On the Gobere group *see* Judgment, p. 22, para. 41, p. 437, para. 1141, pp. 442-444, paras 1152-1157, pp. 1332-1333, para. 3895, p. 1338, para. 3911. On the group in Zongo coordinated by Maxime Mokom *see* Judgment, p. 22, para. 41, p. 837, paras 2311-2312, pp. 1332-1333, para. 3895. Regarding the Sibut group, no specific leaders are named, the group is only mentioned as the group "in Sibut", *see* Judgment, p. 803, para. 2199. The provincial advance groups are the Bouar, Boali, Bossembélé, Gaga, Ndjo clusters with various local chiefs and with FACA/Presidential Guard elements embedded, *see* Judgment, pp. 459-460, para. 1192.
[1060] Judgment, pp. 780-781, para. 2124, p. 870, para. 2427, p. 22, para. 41, pp. 1332-1333, para. 3895, p. 1338, para. 3911, p. 22, para. 41, p. 592, para. 1569, p. 650, para. 1721, p. 804, para. 2202, p. 837, paras 2311-2312, p. 1348, para. 3937. Judgment, pp. 414-415, para. 1081.
[1061] *See* e.g., Judgment, pp. 359-360, para. 964, pp. 362-363, para. 967, pp. 431-432, paras 1129-1132, pp. 451-452, para. 1176, pp. 458-459, paras 1190-1191, p. 546, p. 555, para. 1463, p. 556, para. 1467, p. 561, para. 1484, p. 564, para. 1495, para. 1433, p. 791, para. 2160, p. 794, para. 2169, pp. 801-802, para. 2195, p. 803, para. 2199, p. 804, para. 2202, p. 837, para. 2311; p. 896, para. 2525; p. 1333, para. 3896.
[1062] *See* Ground I.C.3.v, paras 192-194.
[1063] Judgment, pp. 334-335, para. 916, pp. 337-338, para. 921, p. 420, para. 1095-1096.
[1064] Judgment, p.742, para. 1997. *Contra see* **D30-4914**: CAR-D30-0024-0001-R01, at 0008, lns 249-275, at 0010, lns 344-369, at 0014, lns 531-537; T-303, p. 24, lns 5-22.

le peuple Centrafricain ('FRAPPE') structure around Bimbo,[1065] and *the Combattants pour la liberation du people Centrafricain* ('CLPC') self-defence units[1066] as part of the Anti-Balaka. Yet the Judgment does not identify evidence that these groups joined Gobere, took part in any pre-5 December planning, reported to the same commanders, or participated to the Bangui and Bossangoa attacks.[1067] Their inclusion rests mainly on broad similarities, namely that they arose as local self-defence groups against the same enemy[1068] and were sometimes referred to under the Anti-Balaka label,[1069] even though in some instances their leaders expressly adopted different names or distanced themselves from the Anti-Balaka label, underscoring their separate identity.[1070] Another example of such an over inclusive approach is the Chamber's reliance on the contents of select emails to consider the senders as Anti-Balaka members even though their affiliation with the Anti-Balaka was never established.[1071]

392. In a context where multiple self-defence groups emerged independently against the Seleka, such broad similarities between them and isolated emails are insufficient to prove their affiliation or integration into a supposed unified "organisation". Based on the evidentiary record, a reasonable trier of fact could at most find parallel actors in different localities sharing a political objective; the conclusion that they formed part of the same Anti-Balaka organisation in 2013 is not supported by the evidence.

3. The Chamber erred in fact in finding that an organisation existed after the 5 December attack

393. The evidence from the immediate aftermath of the 5 December attacks likewise shows continued fragmentation rather than consolidation into a single structure. P-1839 described "two groups" at Yamwara, mentioned "little misunderstandings",[1072] and explained that the

[1065] Judgment, pp. 448-449, para. 1167, p. 798, para. 2183.
[1066] Judgment, p. 450, para. 1172, p. 451, para. 1175.
[1067] For example, there is no reference in the Judgment regarding the CLPC participating in any attacks, let alone the Bangui or Bossangoa attacks. As far as FRAPPE, there is only a single witness, [REDACTED], mentioning that they intended to attack Bangui on 6 December, yet there's no other information related to this or whether they indeed participated in any attacks, *see* Judgment p. 798, para. 2184 *citing* [REDACTED]**:** CAR-OTP-2063-0050-R04, at 0055, paras 28-30, at 0056, para. 33, at 0057, para. 40. On Bouar and the groups at the border *see* Ground I.C.5, paras 224-226.
[1068] Judgment, pp. 334-335, para. 916, pp. 448-449, para. 1167, pp. 449-450, para. 1170, p. 451, paras 1174-1175, p. 553, para. 1458.
[1069] Judgment, pp. 449-450, para. 1170. Regarding CLPC, it was created under this name in 2013 and only after Samba-Panza's election in 2014 joined the Ant-Balaka, *see* Judgment, p. 450, para. 1172.
[1070] Judgment, pp. 448-449, para. 1167, pp. 449-450, para. 1170.
[1071] *See also* Ground I.C.3.v, paras 192-194.
[1072] Judgment, p. 621, para. 1641 *citing* **P-1839:** T-171, p. 74, lns 3-14.

Anti-Balaka who came to visit were not part of "their group".[1073] This is direct testimony that Mr Yekatom's RFACPP and the visiting elements remained distinct groups. It is corroborated by a contemporaneous video in which Mr Yekatom disavowed the Anti-Balaka label,[1074] and used the term "RFACPP" to designate his group,[1075] which the Judgment recognises was formed separately before 5 December 2013.[1076] The Chamber's inference that Mr Yekatom was merely distinguishing between the soldiers and the uncontrolled elements[1077] is one possible interpretation, but is not the only reasonable one on this evidence; an equally or more reasonable reading is his consistent disassociation from the Anti-Balaka label.

394. As regards the Gobere elements arriving at Yamwara, the Chamber's finding that Mr Yekatom was their "supreme leader"[1078] is not supported by the material it cites. Those elements had their own name, sections and chiefs,[1079] and the same passage notes uncertainty as to who summoned them to Yamwara.[1080] The suggestion that their chiefs "would wait for Mr Yekatom's orders" rests on what the Judgment itself recognises as a single, internally inconsistent account and is not independently corroborated.[1081] Yagouzou's stance towards Mr Yekatom[1082] shows momentary deference in a specific setting, not that his men were subordinated to Mr Yekatom or that there was unitary command. On this record, a conclusion that Mr Yekatom exercised hierarchical control over all Gobere elements is not supported by the evidence.

395. The evidence also supports that Andjilo's group was entirely distinct.[1083] Immediately after the 5 December attack his group withdrew to Cité Jean XXIII,[1084] then established a base in Boy-

[1073] Judgment, p. 621, para. 1641 *citing* **P-1839:** T-172, p. 76, ln. 4 to p. 80, ln. 22.
[1074] Judgment, p. 622, para. 1643 *citing* CAR-OTP-2065-3180, from [00:01:29] to [00:01:35], CAR-OTP-2122-7503, at 7504, lns 30-32; CAR-OTP-2065-0396, from [00:01:45] to [00:02:02], CAR-OTP-2107-6918, CAR-OTP- 2122-2284, at 2287, lns 36-43; CAR-OTP-2094-7618, from [00:06:04] to [00:06:43], CAR-OTP-2118-4284, CAR-OTP-2118-4272, at 4275-76, lns 80-101. *See also* **P-0888**: T-121, p. 73, ln. 1 to p. 77, ln. 13, p. 79, ln. 3 to p. 80, ln. 9; **P-0876:** CAR-OTP-2046-0267-R01, at 0277, lns 359-365.
[1075] Judgment, pp. 621-622, para. 1641 *citing* **P-1839:** T-172, p. 76, ln. 4 to p. 80, ln. 22.
[1076] On Mr Yekatom's group being formed separately *see* Judgment, pp. 370-371, paras 987-988.
[1077] Judgment, p. 622, para. 1643.
[1078] Judgment, p. 1067, paras 3083-3084.
[1079] *Ibid*., *citing* **P-1786:** T-197, p. 37, ln. 23 to p. 38, ln. 3; CAR-OTP-2058-0200-R03, at 0205, para. 27.
[1080] Judgment, p. 1067, para. 3083 *citing* **P-1786:** T-197, p. 46, ln. 23 to p. 47, ln. 8.
[1081] Judgment, p. 1067, para. 3083 *citing* **P-1786:** CAR-OTP-2058-0200-R03, at 0205, para. 27. *See also* Judgment, p. 1067, fn. 7631 where the Chamber acknowledges that P-1786's testimony was inconsistent on this account.
[1082] Judgment, p. 623, para. 1644 *citing* CAR-OTP-2065-3220, CAR-OTP-2127-3752, CAR-OTP-2127-3668, at 3670, lns 23-33.
[1083] The Judgment does not state where the provincial groups or Maxime Mokom's group were after 5 December. The location of Dedane's group is likewise unclear because Dedane was killed and his successor, Florent Kema, was engaged in the Bossangoa attack rather than in Bangui, *see* Judgment, pp. 964-965, para. 2770, p. 1015, para. 2917.
[1084] Judgment, p. 855, para. 2374.

Rabe,[1085] alongside other leaders in that area.[1086] Co-location and contemporaneous presence in Bangui do not show that these groups were merged into a single structure after the 5 December attacks.

4. The Chamber erred in law, fact and procedure in concluding to an organisation in the period of early 2014-June 2014

396. According to the Chamber's marker (v), the Anti-Balaka groups continued to engage in hostilities in early 2014, following the same pattern of conduct as in 2013.[1087] Assuming *arguendo* that the Chamber could reasonably find a coordinated pattern in late 2013, the record does not reasonably show that the same pattern of coordinated conduct by an organisation persisted into 2014. Early-2014 evidence shows political representation of various groups, factional divisions, and competing leadership claims, not inter-group mechanisms comparable to those the Chamber relied upon for the 5 December attacks.

397. The finding that Anti-Balaka elements committed many crimes against Muslim civilians across several western prefectures in late January and early February 2014[1088] does not establish that a unified organisation implemented those incidents as part of the same coordinated pattern of conduct. Article 7 requires proof that an organisation's mechanisms coordinated the course of conduct. The early 2014 record shows no evidence of orders, liaison structures or logistics coordination across groups during this period that could sustain the Chamber's "same pattern" conclusion under marker (v).

398. Instead, the evidence demonstrates fragmentation and fluid representation. P-0876 testified that shortly after 5 December and before Samba-Panza's election, no command chain existed;[1089] only different self-defence groups escorted by MISCA to the meeting at the national assembly[1090] and two speakers representing different streams.[1091] The speeches made by Bara and Ngaya during said meeting, corroborated by other witnesses,[1092] show division and

[1085] Judgment, p. 665, para. 1759.
[1086] *See* Judgment, pp. 573-574, para. 1522.
[1087] Judgment, p. 1344, para. 3926.
[1088] Judgment, pp. 26-27, para. 68.
[1089] Judgment, pp. 594-595, para. 1575 *citing* **P-0876:** T-086, p. 73, ln. 23 to p. 74, ln. 17 *referring to* CAR-D29-0016-0051. *See also* CAR-OTP-2029-0629, at 0632.
[1090] Judgment, pp. 594-595, para. 1576 *citing* **P-0876:** CAR-OTP-2046-0249-R01, at 0264-65, lns 616-641; T-086, p. 71, ln. 16 to p. 73, ln. 21, p. 74, ln. 19 to p. 75, ln. 2, p. 77, ln. 23 to p. 78, ln. 8.
[1091] Judgment, pp. 594-595, para. 1576 *citing* **P-0876:** T-085, p. 59, ln. 21 to p. 62, ln. 7; T-085-FRA, p. 58, ln. 7 to p. 61, ln. 3; T-086, p. 70, lns 14- 23; T-088, p. 52, lns 6-22, p. 70, ln. 9 to p. 71, ln. 14.
[1092] **P-1858:** CAR-OTP-2063-0050-R04, at 0061, para. 67; T-186, p. 39, ln. 6 to p. 40, ln. 5; T- 187, p. 12, ln. 15 to p. 13, ln. 16; **P-0954:** T-167, p. 78, lns 14-24, p. 79, lns 12-14. *See also* **P-0974:** T-243, p. 55, ln. 22 to p. 57,

competition between the groups.[1093] P-0884's isolated assertion that there is "no Anti-Balaka 'south', no Anti-Balaka 'north', but one Anti-Balaka"[1094] is contradicted by multiple witnesses who described hostility,[1095] no cooperation or little interaction,[1096] and separate "streams" until mid-2014.[1097] Even P-0884 accepted that at the time, there were several leaders, no communication, and no organisation.[1098]

399. The North-South split was so pronounced that third-party mediation was required.[1099] Witnesses consistently described the meeting held at Samba-Panza's residence in the aftermath of her election, attended by Aristide Sokambi and General Essongo,[1100] as an attempt to reconcile the northern and southern factions.[1101] Mr Yekatom's group was clearly distinguishable by its separate name and spokesperson,[1102] while Samba-Panza "asked why they had split" and urged them to "be one".[1103] The very need of external mediation and the plea to establish control over the elements[1104] is incompatible with the existence of ongoing organisational mechanisms

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ln. 7; **P-0808:** CAR-OTP-2025-0324-R05, at 0333-34, paras 61-64; CAR-OTP-2093-0010-R02, at 0015, paras 28-29, at 0016, paras 33-34; T-072, p. 38, ln. 23 to p. 40, ln. 17.

[1093] Judgment, pp. 594-595, para. 1576 *citing* [REDACTED].

[1094] Judgment, pp. 649-650, para. 1720 *citing* **P-0884:** T-056, p. 57, lns 17-21; CAR-OTP-2023-1812, from [00:09:48] to [00:10:51], CAR-OTP-2118-5597, at 5599-5600, lns 35-44.

[1095] Judgment, p. 653, para. 1728 *citing* **P-1193:** CAR-OTP-2045-0048-R03, at 0054-55, paras 39-40; T-125, p. 42, ln. 20 to p. 43, ln. 8.

[1096] Judgment, p. 653, para. 1728 *citing* **P-1193:** T-124, p. 56, ln. 24 to p. 57, ln. 10, p. 64, ln. 5 to p. 65, ln. 14; T-125, p. 7, ln. 24 to p. 8, ln. 8; **P-0954:** T-166, p. 65, ln. 18 to p. 66, ln. 16, p. 71, lns 5-8; **P-1858:** T-187, p. 14, lns 11-22, p. 16, lns 2-6; **P-0888:** T-120, p. 82, lns 1-23; T-123, p. 15, ln. 4 to p. 18, ln. 4, p. 29, lns 11-16, p. 32, lns 4-12, p. 46, ln. 22 to p. 47, ln. 6; **P-0876:** T-088, p. 54, ln. 11 to p. 55, ln. 9.

[1097] *See* **P-1858:** T-187, p. 15, lns 2-13 ("Q. I'm now going to go on to the fusion of the movement in 2014. Now, in your statement -- June 2014. Now, you described the joining together of the north and south branches, but would you agree that before June 2014 there was no hierarchical link between Mr Ngaïssona and the Anti-Balaka of the south because the Anti-Balaka of the south were coordinated and managed by Mr Wenezoui? A. Well, what I would say is the following. Before there was no structure, and it was only afterwards when the NGO MOUDA tried to join the two tendencies together. It was at that time, coming out of that meeting, that we found out that Ngaïssona in future would be the person in charge, and thereafter he left to arrange the different posts and the structure therein. So before, before that, there was a tendency. There wasn't a structure. There was a governing tendency but no structure.)".

[1098] **P-0884:** T-057, p. 18, lns 2-8.

[1099] Judgment, pp. 599-602, paras 1590-1594.

[1100] **P-0801:** T-035, p. 25, ln. 5 to p. 26, ln. 5. Aristide Sokambi was the Ministre Chargé de l'Administration du Territoire, de la Décentralisation et Régionalisation in the transitional government, *see* CAR-OTP-2094-0295. Léonard Essongo was the Congolese general appointed by President Sassou-Nguesso as his "special representative", to act both as a communication channel with the presidents of the Economic Community of Central African States and as a mediator in Bangui, *see* CAR-OTP-2001-1976, at 1995.

[1101] Judgment, p. 600, para. 1591. *See also* **P-1839:** T-171, p. 76, ln. 12 to p. 77, ln. 5; T-171-FRA, p. 77, ln. 28 to p. 78, ln. 20.

[1102] Judgment, p. 602, para. 1594 *citing* **P-1839:** T-173, p. 11, ln. 18 to p. 12, ln. 1, p. 12, lns 2-5.

[1103] [REDACTED]; [REDACTED]; [REDACTED]. *See also* **P-0801:** T-035, p. 26, lns 6-13.

[1104] Judgment, p. 602, para. 1594 *citing* [REDACTED]. The absence of control over the elements is corroborated by P-0884 who testified that Samba-Panza contacted Mr Ngaïssona "to ask for a list of people who could be nominated in the government so they could receive a salary which would then enable them to take responsibility for 'the men', take 'charge of these people', rather than make them commit actions like stealing", *see* Judgment

coordinating early-2014 hostilities. Further, evidence of this meeting shows the absence of any command or unity. A broad delegation attended the meeting,[1105] including Mr Ngaïssona, Mr Yekatom, Kokaté, Bara and others,[1106] and the agenda concerned political inclusion,[1107] names for potential government appointments,[1108] and Disarmament, Demobilization, and Reintegration ('DDR').[1109] This refutes, rather than supports, the existence of inter-group mechanisms or the organisational implementation of a civilian-directed policy.

400. The Chamber treated political self-presentation and requests for governmental positions as proof that the Anti-Balaka "structure [was] taking further shape".[1110] Yet the record shows disagreement over Mr Ngaïssona's suggested position,[1111] followed by non-recognition of Bara's subsequent appointment, accusations that "their victory had been stolen" and threats of mobilisation.[1112] Statements made in that political setting regarding Mr Ngaïssona's prior involvement in the Anti-Balaka are uncorroborated, and do not show control or coordination.[1113] These developments reflect factional competition, not a cohesive organisational structure.

401. The remainder of the evidence on the record is equally insufficient to support the presence of an organisation. First, the 23 January 2014 communiqué conjoint mentioning a "Coordination unique" and its composition[1114] is wholly unreliable. As the Chamber itself acknowledged, the

pp. 606-607, para. 1602 *citing* **P-0884:** T-056, p. 47, ln. 19 to p. 48, ln. 20 *referring to* CAR-OTP-2087-9025, p. 49, lns 2-8; T-058, p. 49, lns 5-9.
[1105] Judgment, pp. 596-597, para. 1582 *citing* **P-0952:** T-249, p. 20, lns 8-19.
[1106] Judgment, p. 597, para. 1583 *citing* CAR-OTP-2087-9027. *See also* **P-0954:** T-167, p. 80, ln. 9 to p. 81, ln. 2; **P-0876:** T-085, p. 64, lns 9-17; **P-0974:** T-243, p. 28, lns 5-10, p. 29, lns 4-17, p. 57, ln. 18 to p. 58, ln. 20.
[1107] Judgment, pp. 597-598, para. 1584 *citing* **P-0952:** T-249, p. 21, ln. 20 to p. 22, ln. 15; T-250, p. 16, lns 5-15.
[1108] Judgment, pp. 597-598, para. 1584 *citing* **P-0952:** T-249, p. 22, ln. 17 to p. 23, ln. 6. *See also* CAR-OTP-2087-9024, at 9024. For further Anti-Balaka demands regarding positions in the government *see* Judgment, pp.606-609, paras 1601-1608; pp. 610-611, paras 1612-1613.
[1109] Judgment, p. 596, para. 1582 *citing* **P-0952:** T-249, p. 19, ln. 25 to p. 20, ln. 7.
[1110] Judgment, p. 596, para. 1580-1581.
[1111] Judgment, pp. 600-601, para. 1592 *citing* [REDACTED].
[1112] Judgment, pp. 600-601, para. 1592 *citing* [REDACTED]. *See also* Judgment, p. 599, para. 1589 *citing* CAR-OTP-2014-0755, from [00:07:38] to [00:13:35], CAR-OTP-2122-7370, at 7372-74, lns 74-149. *See also* **P-0952:** T-250, p. 17, ln. 12 to p. 21, ln. 8, p. 21, ln. 13 to p. 23, ln. 23; **P-0876:** T-085, p. 64, ln. 22 to p. 67, ln. 17; CAR-OTP-2046-0455-R01, at 0469, lns 496-524, at 0470-71, lns 539-583; CAR-OTP-2046-0500-R01, at 0501-02, lns 24-41; T-086, p. 76, ln. 2 to p. 77, ln. 22; T-088, p. 56, ln. 15 to p. 57, ln. 11; **P-0889:** T-109, p. 34, ln. 23 to p. 36, ln. 19 *referring to* CAR-OTP-2124-1211.
[1113] Judgment, pp. 601-602, para. 1593 *citing* **P-0974:** T-243, p. 10, ln. 21 to p. 11, ln. 8, p. 14, ln. 17 to p. 15, ln. 5. For the lack of corroboration regarding P-0974's claim, *see* Ground I.C.5, para. 235.
[1114] CAR-OTP-2001-3372.

provenance of the document is unclear,[1115] it was reportedly not published[1116], and it was immediately disavowed[1117] or its roles rejected by key actors.[1118] Such a contested document of unclear origin cannot reasonably support a finding that a unified structure existed under Mr Ngaïssona in early 2014.

402. Second, the 25 January 2014 official minutes of the meeting at Samba-Panza's office record that, speaking for the Anti-Balaka delegation, Kokaté acknowledged that they did not control their elements and that the leaders disagreed on how to contain the men.[1119] This contemporaneous admission of lack of control and internal disagreement directly contradicts any inference that, in early 2014, Anti-Balaka groups operated in a coordinated manner or followed the same coordinated pattern as in December 2013. The Chamber does not reconcile this admission with its finding of early-2014 coordination.

403. Third, Mr Ngaïssona's 27 February 2014 radio interview, where he refers to himself as "general coordinator,"[1120] coupled with calls for a ceasefire[1121] that were not complied with,[1122] reflects public positioning, not demonstrated command. A call for the cessation of hostilities does not prove the existence or functioning of mechanisms capable of implementing it, particularly where other evidence shows lack of control.[1123]

[1115] The Chamber notes that Samba-Panza appeared to indicate that this specific document was not from her archives (*see* **P-0952:** T-252, p. 38, lns 1-18 *referring to* CAR-OTP-2087-9289), while the JEM code suggests this item was retrieved from 'open source', *see* Judgment, p. 603, fn. 4204.
[1116] **P-0876:** T-085, p. 62, lns 8-23 *referring to* CAR-OTP-2001-3372.
[1117] Judgment, p. 603, para. 1596 *citing* **P-0876:** CAR-OTP-2046-0455-R01, at 0469, lns 496-524, at 0470-71, lns 539-583; CAR-OTP-2046-0500-R01, at 0501-02, lns 24-41; T-085, p. 62, ln. 24 to p. 64, ln. 6; T-086, p. 76, ln. 2 to p. 77, ln. 22; T-088, p. 56, ln. 15 to p. 57, ln. 11. *See also* **P-0889:** T-109, p. 34, ln. 23 to p. 36, ln. *19 referring to* CAR-OTP-2124-1211.
[1118] Judgment, pp. 603-604, para. 1597 *citing* **P-0801:** T-033, p. 11, lns 8-15; T-035, p. 32, lns 6-12, p. 50, ln. 10 to p. 51, ln. 9; T-036, p. 5, ln. 9 to p. 6, ln. 7, p. 10, lns 4-22 referring to CAR-OTP-2001-3372; T-038, p. 50, ln. 18 to p. 51, ln. 3.
[1119] Judgment, p. 612, para. 1616 *citing* CAR-OTP-2087-9271, at 9273.
[1120] Judgment, pp. 604-605, para. 1598 *citing* CAR-OTP-2073-0870, CAR-OTP-2107-1561, at 1562-63, lns 29-55.
[1121] Judgment, pp. 605-606, para. 1599 *citing* CAR-OTP-2107-1561, at 1563, lns 73-80. *See also* CAR-OTP-2084-0146, at 0146; CAR-OTP-2042-1909, from [00:09:10[to [00:10:56], CAR-OTP-2107-1479, at 1480, lns 14-23.
[1122] Judgment, p. 610, para. 1611 *citing* **P-0952:** T-251, p. 50, lns 15-20.
[1123] *See* above paras 398, 402.

404. Lastly, the Chamber accepted evidence of friction[1124] and divergent aims between Mr Ngaïssona and Mr Yekatom,[1125] and recorded Mr Yekatom's distinct group identity,[1126] yet concluded that Mr Yekatom was "represented" by Mr Ngaïssona's coordination between January and June 2014, and beyond. The supporting accounts cited which refer to Mr Yekatom's participation in meetings between Mr Ngaïssona and the Comzones are either undated[1127] or refer to the post-June 2014 period.[1128] Furthermore, the evidence on the record shows that a unified Anti-Balaka national coordination, bringing together the northern and southern streams under Mr Ngaïssona, was only established in June 2014.[1129] It is from this merger that Mr Yekatom was, for the first time, placed within that unified coordination framework.[1130] No reasonable trier of fact could infer pre-June representation on this record.

405. Taken together, the evidence shows division, political self-presentation, unsuccessful attempts at reconciliation, bargaining for posts, and contemporaneous admission of lack of control over the Anti-Balaka. None of this demonstrates unity, standing mechanisms, or a continued pattern of coordinated organisational conduct. Without resolving these conflicts, a reasonable trier of fact could not conclude that the Anti-Balaka groups operated in a coordinated manner in early 2014 or that the January-February 2014 incidents were implemented by a unified organisation pursuant to an Article 7 policy.

406. Besides the abovementioned errors of fact, the Chamber committed multiple errors of law. It treated Mr Ngaïssona's participation in meetings with the transitional authorities and his public presentation as the Anti-Balaka coordinator as evidence of control over the group,[1131] and it drew decisive conclusions from those circumstantial indications without applying the proper

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[1124] Judgment, p. 623, para. 1645 *citing* **P-1962:** CAR-OTP-2068-0037-R04, at 0059, para. 106; **P-0876:** CAR-OTP-2046-0473-R02, at 0490-91, lns 650-662.
[1125] Judgment, pp. 649-650, para. 1720 *citing* **P-0884:** T-056, p. 55, ln. 16 to p. 57, ln. 16, p. 63, ln. 9 to p. 66, ln. 22, p. 67, lns 3-13, p. 68, ln. 17 to p. 69, ln. 1. *See also* **P-1858:** CAR-OTP-2063-0050-R04, at 0061, para. 68; T-186, p. 42, lns 10-15; CAR-OTP-2001-4867, at 4867; CAR-D30-0008-0041, at 0041; CAR-D30-0008-0030, at 0030-0031; **P-0876:** T-085, p. 75, ln. 15 to p. 77, ln. 1; T-087, p. 7, lns 6-19. *See also* Judgment, p. 621-622, para. 1641 *citing* **P-1839:** T-172, p. 84, ln. 11 to p. 85, ln. 24.
[1126] Judgment, p. 865, para. 2411-2412.
[1127] **P-2269:** CAR-OTP-2111-0336-R01, at 0353, para. 132; **P-0884**: T-056, p. 70, lns 8-11, p. 79, ln. 22 to p. 80, ln. 5; **P-1558:** CAR-OTP-2105-0195-R01, at 0199-0200, para. 24.
[1128] **P-0992:** CAR-OTP-2110-0048-R05, at 0070, paras 131-132; CAR-OTP-2128-0288-R02, at 0312, paras 152-153; T-092, p. 62, ln. 19 to p. 63, ln. 3, p. 67, ln. 9 to p. 68, ln. 18; T-095, p. 44, ln. 22 to p. 45, ln. 25; **P-1193:** T-125, p. 8, lns 10-16; T-126, p. 68, lns 3-24, p. 69, lns 8-22; T-126-FRA, p. 71, ln. 21 to p. 72, ln. 14.
[1129] *See* above fn. 1097.
[1130] *See* Annex J1 to the Prosecution's Notification of Filing of the Document Containing the Charges and List of Evidence, p. 300 *et seq.* showing that communication between Mr Ngaïssona and Mr Yekatom started in June 2014; **P-0808:** T-072, p. 42, ln. 6 to p. 43, ln. 19.
[1131] *See* Judgment, p. 606, para. 1600.

standard for circumstantial evidence. In particular, it did not confront, or exclude, reasonable alternative explanations suggested by the record, such as continuing fragmentation, and it did not explain why an inference of unified control was the only reasonable one. This misapplies both the standard for circumstantial evidence and the Article 7 test, which requires an inquiry of whether an organisation implemented the attack, not merely whether it was represented politically. As marker (v) rests on the early-2014 evidence, these legal errors directly affect the finding of a continuing coordinated conduct.

407. The Judgment further does not provide sufficient reasons. The Chamber fails to reconcile its finding that Mr Ngaïssona had sufficient power to call an end to hostilities with contrary evidence;[1132] it fails to provide reasons for its reliance on the contested 23 January communiqué; it does not explain why P-0884's "one Anti-Balaka" assertion was preferred over contrary and more detailed testimony; it does not engage with evidence that Mr Yekatom was "apart", with a distinct ideology and group identity; and it does not address the documented North-South split and the need for mediation.[1133] Absent reasoned resolution of these conflicts, the Chamber's conclusion on the existence of an organisation in early-2014 cannot be maintained.

408. In addition, the Judgment is internally inconsistent. The Chamber relies on the notion that the Anti-Balaka's structure and organisational policy developed over time, drawing in particular on events before the group was formally recognised to support the existence of an Article 7 organisation in late 2013 and early 2014.[1134] At the same time, it treats post-February disputes[1135] and fragmentation as only indirectly relevant,[1136] yet relies on May-June 2014 reconciliation to confirm a unitary narrative and representation under Mr Ngaïssona.[1137] If temporal development is invoked to strengthen the case for organisation, then later developments that tend to undermine unity or control cannot be discounted without explanation. The Judgment does not explain why evidence of internal splits and the need for external mediation do not affect its conclusion that the Anti-Balaka operated as a unified organisation in early 2014.

[1132] *Ibid*.
[1133] *See* above para. 399.
[1134] Judgment, p. 1345, para. 3929.
[1135] Judgment, pp. 649-652, paras 1719-1726.
[1136] Judgment, p. 648, para. 1717.
[1137] Judgment, p. 26, para. 64.

409. Finally, by elevating self-serving statements[1138] over contemporaneous minutes and factional evidence without indicating weight or corroboration, the Judgment fails to meet the Article 74(5) duty to provide sufficient and coherent reasons.

410. These shortcomings materially impact the Chamber's conclusion on organisation, as they concern the evidence underpinning marker (v). Without adequate reasoning, the conclusion that the Anti-Balaka operated as a unified organisation in early 2014 cannot stand. Marker (v) was central to the Chamber's conclusion that the Anti-Balaka operated as a unified organisation with a continuing policy into 2014, and that the January–February incidents across multiple prefectures formed part of the same Article 7 "attack". Had the Chamber correctly applied the proper legal standard, assessed the early-2014 evidence, and resolved the material conflicts on the record, it could not have found that those events were implemented by a single organisation or that Mr Ngaïssona's alleged role extended to them. A proper assessment would have narrowed both the scope of the Article 7 attack and the organisational policy attributed to the Anti-Balaka, thereby reducing the number of incidents, locations, and groups falling within the contextual element and within the alleged contribution. There is therefore a high likelihood that, absent these errors, the findings on the existence and duration of the organisation, the extent of the attack, and Mr Ngaïssona's resulting contributions and convictions would have been materially different.

III. MR NGAÏSSONA WAS CONVICTED ON THE BASIS OF A MANIFESTLY UNFAIR TRIAL PROCESS, WHICH UNDERMINED THE FAIRNESS, RELIABILITY AND INTEGRITY OF THE CONVICTION

411. The withdrawal of the charges against Mr Mokom, based on the "unavailability" of key Prosecution witnesses who also testified against Mr Ngaïssona ('overlapping witnesses'), prompted the Defence to file several requests for disclosure to the Prosecution, which escalated to the Trial Chamber. The Trial Chamber dismissed the Defence's disclosure requests as speculative, without engaging with the sought material or affording Mr Ngaïssona a genuine opportunity to exercise his rights to disclosure, to be heard, and to fully confront Prosecution evidence, resulting in a manifestly unfair trial and conviction. This unfairness undermines the reliability of Mr Ngaïssona's conviction such that it must be overturned.

[1138] *See* Mr Ngaïssona's statement that he was the general coordinator, Judgment, pp. 604-605, para. 1598. For P-0974's claim that Mr Ngaïssona was involved in the Anti-Balaka in 2013, *see* Ground I.C.5, para. 235.

A. The Trial Chamber's denial of Mr Ngaïssona's rights to disclosure, to be heard, and to challenge the evidence presented against him, resulted in an irremediable unfairness pursuant to Articles 81(i)(b)(iv) and 83(2) of the Statute

412. On 16 October 2023, the Prosecution withdrew all charges against Mr Mokom based on the absence of a reasonable prospect of conviction given insider witnesses' "unavailability", including for reasons of non-cooperation.[1139] Given the Prosecution's portrayal of Mr Mokom as the central figure of the Anti-Balaka, the abrupt collapse of the case against him raised serious doubts as to the credibility and stance of the overlapping witnesses in the present case, and as to the legitimacy of the prosecutorial position against Mr Ngaïssona. The Defence sought inter partes disclosure of information relating to the circumstances of the withdrawal of overlapping witnesses ('sought material').[1140] The materiality of this information was evident: it was indispensable for a proper evaluation of the credibility of the overlapping witnesses, with the potential to mitigate Mr Ngaïssona's guilt, particularly in light of the inconsistencies in their cooperation across both trials and their provision of incriminating evidence against Mr Ngaïssona. The materiality was particularly heightened with respect to overlapping insider witnesses whose credibility was seriously challenged by the Defence and whose cooperation with the Court proved to be demonstrably inconsistent and unreliable, such as Witnesses Poussou, P-2232, P-1847, P-2269, and P-1719.[1141] Faced with the Prosecution's persistent

[1139] Mokom, Notice of withdrawal of the charges, para. 3: "It has become clear that several critical witnesses are unavailable to testify". During the Article 86 hearings on compensation, the Prosecution argued that ""[…] it had become clear that despite having taken all reasonable steps to secure *cooperation* and availability, several critical witnesses, including insider witnesses, would be unavailable to testify […]"(emphasis added); ICC-01/14-01/22-T-009, p. 58, lns 17-20; from the publicly available transcripts and filings in the *Mokom* case, the Defence has identified at least 16 overlapping insider witnesses across both cases: P-1521, P-0808, P-2232, P-0884, P-0446, P-0876, P-0889, P-1719, P-2269, P-1339, P-2328, P-2625, P-0954, P-0966, P-1847, P-1172. The Prosecution itself indicated during the confirmation of charges hearings in *Mokom* that it "can rely on at least 12 insiders who show that Mr Mokom was a person of influence within the groups. He liaised with key Anti-Balaka figures, both those on the ground in CAR and leadership figures in exile in Cameroon, Democratic Republic of the Congo, and other places. Meaning that he spoke with them, he strategised with them and he supported the movement as a whole from Zongo. The witnesses I refer to are in particular P-0446, P-0884, P-0889, P-0966, P-1172, 5 P-1339, P-1521, P-1719, P-1847, P-2232, P-2269 and P-2328. (…)", ICC-01/14-01/22-T-006, p. 66, ln. 23 to p. 67, ln.10; *see also* Mokom Prosecution's Post-Confirmation Submissions.

[1140] Email from the Defence to the Prosecution, 20 October 2023, at 9:27; Email from the Defence to the Prosecution, 9 January 2024, at 12:02; Email from the Defence to the Prosecution, 30 January 2024, at 14:52; Email from the Defence to the Prosecution, 18 September 2024, at 18:22; Email from the Defence to the Prosecution, 20 September 2024, at 12:34.

[1141] *See* e.g., Closing Brief, paras 20-23 (P-2625), 172, 202, 507, 539 (P-2232), 27-28 (P-1847), 197, 200 (P-2269), 56-57 (P-1719); for references to the witnesses' participation in the *Mokom* proceedings, *see* e.g., ICC-01/14-01/22-T-006, p. 53, ln. 18 (P-2625), p. 78, ln. 6 (P-2232), p. 67, ln. 5 (P-1847), p. 44, ln. 23 (P-2269); ICC-01/14-01/22-T-007, p. 60, ln. 3 (P-1719).

refusals to disclose, despite repeated attempts to narrow its requests based on information available to it, the Defence seized the Trial Chamber for relief.[1142]

413. Rather than respect Mr Ngaïssona's fair trial rights, in particular his right to disclosure of potentially exculpatory materials allowing him to further challenge witness credibility, the Trial Chamber flatly denied the Defence's requests by adopting the Prosecution's assertions of speculation.[1143] Despite the critical importance of the sought material, the Trial Chamber rejected the Defence's initial disclosure request as well as its reconsideration request (based on new developments in the *Mokom* case), on 2 May 2024, and 18 October 2024.[1144] In doing so, and by failing to, at a minimum, independently assess the materials for disclosability, the Trial Chamber failed not only to safeguard Mr Ngaïssona's fair trial right to disclosure, but also his right to be heard by preventing him from further narrowing and substantiating the materiality of the sought material.[1145] The unfairness also arose from the Trial Chamber's subsequent rejection of the Defence's request to contact and interview the overlapping witnesses on the narrow issue of their withdrawal of cooperation with the Court, on 15 May 2024.[1146] This procedural avenue would have allowed the Defence to partially secure Mr Ngaïssona's rights, by allowing it to contact the overlapping witnesses, within the bounds of the Protocol on the Handling of Confidential Information and Contacts with Witnesses,[1147] in order to assess whether and how their withdrawal impacted the credibility of their evidence against Mr Ngaïssona.[1148] The decisions of 2 and 15 May 2024, and 18 October 2024 ('Disclosure-related

[1142] Defence Motion for Disclosure before trial Chamber II; Defence Motion for Disclosure before Trial Chamber V.
[1143] Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, para. 8.
[1144] Decision on the disclosure of material related to the Withdrawal of Charges in Mokom; Reconsideration Decision on the disclosure of material related to the Withdrawal of Charges in Mokom.
[1145] Lubanga Decision on Non-Disclosure and Stay Application, para. 87 ("Accordingly, under international jurisprudence the judges are empowered to determine relevant issues concerning the disclosure of potentially exculpatory materials. Particularly given that with trials before the ICC the judges are also the ultimate fact-finders, they are in a position to know what effect the exculpatory evidence may have on their ultimate decision in the case. It follows that the Chamber rejects the suggestion, advanced by the prosecution, that it is entitled to decide whether or not potentially exculpatory evidence will only impact *in principle* on the Chamber's decision, rather than having a material impact *in fact* on the Chamber's determination of the guilt or innocence of the accused. This is not a decision for the prosecution but for the judges: once the prosecution believes that the evidence "shows or tends to show the innocence of the accused" (Article 67(2) of the Statute), it is to be disclosed to the defence, or in case of doubt put before the Court.").
[1146] Decision on Prosecution compliance with the Contact Protocol; Defence Request for Prosecution's compliance with the Contact Protocol.
[1147] Contact Protocol.
[1148] Defence Request for Prosecution's compliance with the Contact Protocol.

decisions') impacted both the reliability of the trial and Mr Ngaïssona's conviction, as well as Mr Ngaïssona's right to appellate review.

414. Considered cumulatively, the unfairness arising from the Prosecution's denials of the Defence's disclosure requests, and the Trial Chamber's Disclosure-related decisions meets the threshold of Articles 81(i)(b)(iv) and 83(2) of the Statute.[1149] First, the Prosecution and the Trial Chamber failed to guarantee Mr Ngaïssona's right to disclosure. Pursuant to the legal framework of the Court, Mr Ngaïssona was entitled to the information surrounding the withdrawal of cooperation of overlapping witnesses, which would have allowed it, and the Chamber, to properly assess the credibility of those same witnesses who testified against him.[1150] The right to disclosure, which is a corollary of the principle of equality of arms, is a core fair trial right guaranteed under Articles 67(1), 67(2) and 21(3) of the Statute, Rule 77 of the Rules, and international human rights law.[1151] The denial of this right "makes trial according to law unattainable".[1152] This is especially true of evidence which may undermine the credibility of a Prosecution witness.[1153] In accordance with the Statute and with international human rights law, it is the Trial Chamber's duty to ensure that the Prosecution fulfils its disclosure obligations without undue delay.[1154] By taking the Prosecution's assertions of non-disclosability at face value, the Trial Chamber failed to protect Mr Ngaïssona's disclosure rights.[1155]

415. The unfairness is compounded by the fact that, throughout trial, the Trial Chamber held on multiple occasions that the Prosecution violated its disclosure obligations.[1156] This circumstance

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[1149] Bemba AJ, para. 60.
[1150] Defence Motion for Disclosure before Trial Chamber V; Ngaïssona Defence Request for Reconsideration of the Decision on the disclosure of material related to the Withdrawal of Charges in Mokom.
[1151] Lubanga Decision on Non-Disclosure and Stay Application, para. 79, citing Jespers v. Belgium Report ("In Jespers v. Belgium, the European Commission of Human Rights held that the principle of equality of arms imposes on prosecuting and investigating authorities an obligation to disclose any material in their possession, or to which they could gain access, *which may assist the accused in exonerating himself* or in obtaining a reduction in sentence. This principle covers a wide variety of evidential possibilities, and it includes evidence which may undermine the *credibility of a prosecution witness*." (emphasis added)).
[1152] Lubanga AJ concerning non-disclosure of exculpatory material, Opinion of Judge Pikis, para. 16.
[1153] Rome Statute, Article 67(2).
[1154] Rome Statute, Articles 64(2) and 21(3); Lubanga Decision on Prosecution's Application for Leave to Appeal Consequences of Non-Disclosure and Stay of Proceedings, para. 13; Kenyatta Decision regarding the Regime for Evidence disclosure, para. 25; Mirilashvili Judgment, para. 85.
[1155] Decision on the disclosure of material related to the Withdrawal of Charges in Mokom; Reconsideration Decision on the disclosure of material related to the Withdrawal of Charges in Mokom.
[1156] Third Decision on Motion for Finding of Disclosure Violation; Decision on Motion for Finding of Disclosure Violation in relation to CAR-OTP-2114-0229; Second Decision on Motion for Finding of Disclosure Violation; Decision on Motion for Finding of Disclosure Violation and Additional Remedies; Decision on Motion for Finding

warranted a more rigorous assessment by the Trial Chamber of the Prosecution's reasons to withhold the sought material. Yet, it held that the assessment of disclosability was within the Prosecution's purview and that the Defence arguments were speculative.[1157] In its decision on the Defence's disclosure request and the related reconsideration request, the Trial Chamber held that it had "no reason to doubt that the Prosecution has complied with its disclosure obligations".[1158] Rather than assessing disclosability, and evaluating whether legal grounds for restricting disclosure applied to the Prosecution, the Trial Chamber merely "trusted" that the Prosecution was complying with its disclosure obligations.[1159] The Chamber failed to critically engage with the Prosecution's blanket assertions regarding non-disclosability, and to consider the fairness considerations raised by the Defence.

416. The Trial Chamber also failed to independently assess the sought material to evaluate disclosability, which could have constituted a minimal safeguard of Mr Ngaïssona's fair trial rights, and contributed to the truth seeking nature of the trial. It was in the interest of justice and the integrity of the trial proceedings for the Chamber to at a minimum review the sought material, in light of the significant credibility issues pertaining to the overlapping witnesses, and the extensive overlap in facts and evidence, across the two cases.[1160]

417. In flatly dismissing the Defence's disclosure-related requests, both the Prosecution and the Trial Chamber imposed an unreasonably high burden on the Defence to access basic information

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of Disclosure Violation of Exculpatory Material; First Decision on Motion for Finding of Disclosure Violation; Decision on Request for Finding of Disclosure Violation of Exculpatory Material; Decision on Request for Finding of Disclosure Violation in Relation to P-2018.

[1157] Reconsideration Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, paras 8-9.

[1158] Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, para. 8.

[1159] Reconsideration Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, para. 9; Bemba Decision on the Defence Request for disclosure of pre-interview assessments and the Consequences of non-disclosure, paras 29-30 ("[…] the disclosure regime created by the Rome Statute framework places responsibility on the prosecution to disclose any evidence or material coming within these provisions, *and the Chamber's role is essentially limited to that of resolving instances of "doubt"* (*see*, for instance. Article 67(2)). Given the dispute in this instance, the Chamber needs to investigate whether there are grounds for doubting whether the prosecution has effected appropriate disclosure of any of the screening notes"(emphasis added)).

[1160] *See* eg. Lubanga AJ concerning non-disclosure of exculpatory material, para. 3 ("If the Prosecutor has obtained potentially exculpatory material on the condition of confidentiality pursuant to article 54 (3) (e) of the Statute, the final assessment as to whether the material in the possession or control of the Prosecutor would have to be disclosed pursuant to article 67 (2) of the Statute, had it not been obtained on the condition of confidentiality, will have to be carried out by the Trial Chamber and therefore the Chamber should receive the material"). The Trial Chamber V has previously reviewed Prosecution material and assessed that redacted information by the Prosecution was to be disclosed to the Defence give its materiality Decision on Prosecution Request to Summon a Witness, paras 25-26; *See also* Decision on Prosecution Request to Compel Witness Attendance and Related Defence Disclosure Requests, para. 11.

which would have enabled it to effectively safeguard Mr Ngaïssona's fair trial rights. Article 67(2) requires the Prosecution to disclose materials to the Defence "which may affect the credibility" of its evidence; it is not required that it will affect it. The Appeals Chamber has held that the Prosecution's disclosure obligations towards the Defence are broad and encompass "all objects relevant for the preparation of the defence".[1161] It held that Rule 77 of the Rules places a low burden on the Defence.[1162] Despite the highly disputed nature of the sought material, the Trial Chamber held that the Defence's request to contact the overlapping witnesses on the narrow issue of their withdrawal of cooperation was "overly broad".[1163] The Trial Chamber failed to acknowledge that the Defence was never provided even the most basic information relating to the withdrawal, which would have allowed it to further narrow its disclosure requests.

418. Second, the Trial Chamber's mere acceptance of the Prosecution's assertions of non-disclosability and failure to review the sought material independently, breached Mr Ngaïssona's right to be heard. This core right is a "guarantee for the proper administration of justice, which especially safeguards the due process of law."[1164] The Defence was not given access to even the most basic information, for instance relating to the scope of the sought material, or a list of concerned witnesses, which could have allowed it, at a minimum, to narrow the scope of its disclosure requests. The unfairness was heightened when the Defence became aware of – and immediately alerted the Trial Chamber to – the existence of a Prosecution document filed before Trial Chamber II (ICC-01/14-01/22-352-Anx) summarising the grounds for the withdrawal of witnesses.[1165] Access to this filing – a concrete and identifiable document – or to the general

[1161] Lubanga AJ on the Oral Decision of Trial Chamber I of 18 January 2008, paras 77-78; Gaddafi Decision on Disclosure of Memorandum on Burden Sharing, para. 4; Banda and Jerbo AJ on the decision regarding disclosure of documents, paras 38-39; Ntaganda AJ on the decision regarding disclosure and declaration of Prosecution, para. 23.
[1162] Banda and Jerbo AJ on the decision regarding disclosure of documents, para. 42.
[1163] Decision on Prosecution compliance with the Contact Protocol, para. 11.
[1164] Ntaganda Opinion of Judge Ibáñez Carranza, paras 2, 10 ("The human right to be heard in a public hearing is recognised in different treaties at the international and regional level. It is reflected in article 14(1) of the International Covenant on Civil and Political Rights , article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 7 of the African Charter on Human and Peoples' Rights, and article 8(1) of the American Convention on Human Rights"); Katanga AJ Dissenting Opinion of Judge Kourula and Judge Trendafilova, para. 56.
[1165] On 10 September 2024, after the hearing regarding Mr Mokom's Article 85 claim for compensation, Trial Chamber II "instructed the Prosecution 'to provide information on which witnesses became unavailable and when, as well as supporting material'". On 13 September 2024, the Prosecution filed its Prosecution Response. The Annex appended to the Prosecution's Response consists of "a report prepared by […] the OTP Senior Trial Lawyer in the Mokom case at the relevant time" that "summarises the most significant information known about the unavailability of certain witnesses in the Mokom case at the time of the Prosecutor's decision to withdraw the charges": Mokom Prosecution's response to the Chamber's request for further information, paras 1, 5.

information contained therein, even in redacted form, was a prerequisite for a meaningful exercise of Mr Ngaïssona's right to be heard and to disclosure. The Defence provided the Prosecution, and the Trial Chamber, to the extent possible, multiple indicators that the sought material was disclosable. For instance, it filed a narrowed list of overlapping insider witnesses for which disclosure was sought, and identified several specific credibility issues pertaining to those witnesses, including cooperation-related issues impacting credibility.[1166] Yet, these indicators were deemed speculative by the Chamber. The Prosecution and the Trial Chamber deprived the Defence of a genuine opportunity to articulate a disclosure request with a more reasonable prospect of success, as it was consistently denied access to basic information that would have enabled it to do so. Instead of ensuring that Mr Ngaïssona's right to be heard was practical and effective, the Prosecution and the Trial Chamber rendered it merely theoretical, resulting in an irremediable unfairness.[1167]

419. Third, the Trial Chamber's Disclosure-related decisions constituted a breach of Mr Ngaïssona's right to confront the evidence against him. Article 67(1)(e) of the Statute ensures that an accused has the right to meaningfully challenge the credibility and reliability of the evidence used to support the charges. The principle of confrontation is a fair trial right guarantee extending beyond mere cross-examination of a witness.[1168] It encompasses an accused's ability to challenge and scrutinize the evidence presented against him. The sought material constituted information pertaining to key insider witnesses who provided incriminating testimony against Mr Ngaïssona, whose credibility was highly contested by the Defence, and whose evidence the Trial Chamber ultimately relied upon to convict Mr Ngaïssona.[1169] By depriving the Defence access to the sought material, and allowing the Prosecution to withhold it, the Trial Chamber failed to secure Mr Ngaïssona's right to confront the credibility of those witnesses on the issue of their inconsistent and wavering cooperation with the Court.

[1166] *See* e.g., Ngaïssona Defence Request for Reconsideration of the Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, para. 9, with reference to Email from the Defence to the Prosecution, 9 January 2024, at 12:02.
[1167] Bemba et al. Decision on Rule 68(2) and (3), para. 55; Ntaganda Opinion of Judge Ibáñez Carranza, para. 2; Katanga AJ Dissenting Opinion of Judge Kourula and Judge Trendafilova, para. 56; Sakhnovskiy Judgment, para. 95; Pelladoah Judgment, para. 41.
[1168] Ruto and Sang AJ on the decision regarding admission of prior recorded testimony, para. 94; Ntaganda AJ, para. 16; Al Hassan AJ, Dissenting Opinion of Judge Ibáñez Carranza, paras 41, 43.
[1169] *See* e.g., Judgment, pp. 264-271, paras 781-792; p. 275, 800-802; p. 283, para. 815; pp. 268-271, para 787-792; pp. 290-291, paras 829-830; pp 298-300, para 842-846; p. 331, para. 909; p. 341, para. 929, p. 640, para. 1692, p. 643, para. 1703, pp. 805-606, paras 2207-2208, p. 817, para. 2244.

420. Fourth, the Trial Chamber's Disclosure-related decisions, coupled with its failure to address the issue in the Judgment,[1170] constituted a breach of Mr Ngaïssona's right to effective and meaningful appellate review.[1171] Matters of witness credibility are typically assessed and resolved by trial chambers, as they are best placed to assess credibility, having heard the witnesses *viva voce*. As held by the Appeals Chamber, "for reasons of clarity, the Appeals Chamber's ability to review impugned decisions, and an effective and meaningful right to appeal, Trial Chambers should set out with clarity which factual findings are the basis for each of the elements of a crime, including the subjective elements".[1172] The Trial Chamber's failure to engage with the double standards applied by the Prosecution to the evidence in the parallel proceedings in *Mokom* – despite this having been raised in the Closing Brief[1173] – impedes the Defence's ability to meaningfully appeal on this particular point.[1174]

421. Fifth, the breach of Mr Ngaïssona's fair trial rights is not proportionate. The potentially exculpatory nature of the sought material, relating to the credibility of key overlapping witnesses, and its materiality for the Defence, clearly weighed in favour of disclosure.[1175] The Trial Chamber failed to balance the potentially competing interests at stake, namely Mr Ngaïssona's fair trial rights and the Prosecution's stated ground for withholding disclosure pursuant to Rule 81(1) of the Rules, deeming it "unnecessary".[1176] It failed to consider altogether

[1170] *See below*, paras 422-432.
[1171] UDHR, Article 8; UNHCR General Comment on Article 14, para. 49; ECHR, Article 2(1) of Protocol n°7; Shvydka Judgment, para. 50; Catrimán et al. Judgment, para. 270; Herrera Ulloa Judgment, para. 161.
[1172] Lubanga AJ, para. 313. *See also* Liakat Ali Alibux Judgment, para. 86; Rome Statute, Article 74(5): "The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions"; *See also* Bemba et al. AJ, paras 102,107.
[1173] Closing Brief, paras 131-134.
[1174] Bemba et al. AJ, para. 107.
[1175] Katanga AJ on First Decision regarding Redaction of Witness Statements, para. 72.
[1176] Second Katanga AJ on First Decision regarding Redaction of Witness Statements, paras 59-62 ("The same general factors apply, *mutatis mutandis*, in the current case, which can be summarised briefly as a thorough consideration of the danger that the disclosure of the information may cause; the necessity of the non-disclosure, including whether it is the least intrusive measure necessary to avoid prejudice to the investigations of the Prosecutor; and the fact that any measures taken shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial"); Katanga AJ on First Decision regarding Redaction of Witness Statements, para.72 ("If non-disclosure would result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect, the requested redactions should not be authorised."); Lubanga AJ on the PTC I decision regarding requests for redactions under Rule 81, paras 27, 34 ("The principle of proportionality, on the other hand, is not explicitly referred to in the relevant provisions of the Statute and of the Rules of Procedure and Evidence, nor is it mentioned in the Impugned Decision. It may be said that the principle of proportionality is encompassed in the reference to the necessity of the protective measure in rule 81 (4) of the Rules of Procedure and Evidence as well as in the last sentence of article 68 (1) of the Statute, which provides that witness protection measures "shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.""); Gbagbo AJ regarding Redactions, para. 61 ("It follows from this principle that, in the Trial Chamber's assessment of whether

less intrusive measures to reject disclosure of the sought material, or to explore procedural safeguards to preserve Mr Ngaïssona's fair trial rights, as dictated by proportionality.[1177] This failure to take measures to mitigate the unfairness, both during trial and in the Judgment, further aggravated the disproportionality of the Disclosure-related decisions.[1178]

B. The unfairness affected the reliability of the trial proceedings and Mr Ngaïssona's conviction

422. Pursuant to Articles 81(i)(b)(iv) and 83(2) of the Statute, an appellant must show not only the existence of an unfairness, but also that it affected the reliability of the proceedings or the conviction.[1179] This criterion is distinct from the requirement that an error materially affect the decision.[1180] It involves a broader assessment of the trial and the Judgment to determine whether the conviction is well-founded.[1181] In the present case, the unfairness resulting from the Prosecution's refusals to disclose the sought material and the Trial Chamber's Disclosure-related decisions affected the reliability of both the trial and the Judgment such that Mr Ngaïssona's conviction must be overturned.

423. First, the unfairness significantly undermines the reliability of the trial proceedings. As held in *Lubanga*, if an "accused's right to an effective defence is infringed, a fair trial for the accused is no longer possible".[1182] The sudden collapse of the Prosecution's case in *Mokom* coincided with the finalisation of the Defence's list of witnesses. The Defence only became aware of the "unavailability" of the overlapping witnesses following the close of the Prosecution's case. As such it was not afforded the opportunity to examine the overlapping witnesses on their

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redactions to disclosable information are justified, there should be no burden placed on the defence. Rather, the Trial Chamber should consider the reasons for authorising the redactions being sought and, in reaching its overall decision as to whether they are justified, and in balancing the appropriate factors, should give the defence an opportunity to make submissions. This may entail receiving submissions from the defence on the impact that non-disclosure would have on the fairness of the proceedings. Although the defence may have an interest in presenting such submissions, there is no burden to meet in that regard. In addition, the Trial Chamber must bear in mind that the defence is at a disadvantage in being able to make a case given its inability to access the withheld information.").

[1177] Katanga AJ on First Decision regarding Redaction of Witness Statements, paras 72-73.

[1178] *See* Ntaganda AJ, para. 181, where by contrast, the Appeals Chamber was satisfied that the Trial Chamber had taken several measures to mitigate prejudice to Mr Ntaganda's rights relating to delayed disclosure to the Defence, none of which are present here.

[1179] Bemba AJ, para. 61 ("[i]n keeping with articles 81 (1) (b) (iv) and 83 (2) of the Statute, these allegations are considered […] in relation to whether [the convicted person's] rights have been violated and, if so, whether such violations affected the reliability of the Conviction Decision").

[1180] *See* e.g., Bemba AJ, para. 62, relying on Lubanga AJ, para. 28; Ntaganda AJ, para. 49; Ongwen AJ, para. 89. *See also* Bemba Dissenting Opinion of Judge Monageng and Judge Hofmański, para. 386.

[1181] *G. M. Pikis*, The Rome Statute for the International Criminal Court, p. 198, *see* Annex L.

[1182] Lubanga Decision on legal assistance, para. 54.

"unavailability", contrary to the Trial Chamber's findings in its decisions of 18 October 2024 and 15 May 2024.[1183]

424. The Defence's investigations, which were actively underway, were significantly hindered by denial of disclosure. The Prosecution's withholding of the sought material, and the Trial Chamber's failure to address the disclosure violation once it became known, deprived Mr Ngaïssona of the means to pursue investigative leads at a crucial procedural stage, namely during the presentation of the Defence case. Access to the sought material, such as the list of "unavailable" overlapping witnesses, the timing of their withdrawal, and the reasons for it, would have allowed the Defence to narrow and pursue potential investigative leads supporting its challenge to several Prosecution insider witnesses' credibility. The persistent denials of Mr Ngaïssona's rights to disclosure prevented Mr Ngaïssona from meaningfully challenging the credibility of overlapping witnesses on the issue of their withdrawal, affecting the reliability of trial proceedings.

425. Access to the sought material would have informed the Defence's trial strategy, and altered the course of trial and the evidence submitted into the case record. It would have allowed, for instance, the Defence to pursue lines of inquiry relating to the withdrawal of cooperation of overlapping witnesses during the examination of Defence witnesses. It would have given the Defence the opportunity to present potentially exculpatory evidence at trial, which could have further challenged the credibility of the overlapping witnesses. The Defence could have sought to recall Prosecution witnesses on the narrow issue of their non-cooperation and uncovered additional evidence affecting their credibility.[1184] Disclosure of the sought material could also have supported lines of argument relating to overlapping witnesses' withdrawal of cooperation, such as witnesses recanting their prior testimonies in the present case, leading the Prosecution to withdraw them in the *Mokom* case. For instance, information relating to the sequence of events relating to how a witness' "unwillingness" to cooperate with the Prosecution has contributed to their "unavailability" to testify within the meaning of Rule 68(2) of the Rules was relevant to the Defence's strategy.

426. The trial against Mr Ngaïssona has suffered from profound judicial incoherence as it concerns the parallel proceedings against Mr Mokom. On the one hand, the Prosecution and the Trial

[1183] Reconsideration Decision on the disclosure of material related to the Withdrawal of Charges in Mokom, para. 11; Decision on Prosecution compliance with the Contact Protocol, para. 12.
[1184] *See* e.g., Ntaganda decision on stay of proceedings, para. 62.

Chamber consider Mr Mokom as the key central figure behind the Anti-Balaka and, *inter alia*, the attacks on Bangui and Bossangoa.[1185] On the other hand, the same Prosecution office deemed the evidence against Mr Mokom insufficient to proceed to trial before Trial Chamber II, while the case against Mr Ngaïssona – whose role was deemed accessorial – proceeded. Despite the overwhelming overlap in charges, facts, and evidence in both cases, the Trial Chamber consistently refused to engage with this incoherence, and with materials underlying the overlapping witnesses' "unavailability". As conceded by the Prosecution, the separation between the *Mokom* and *Yekatom & Ngaïssona* cases is purely due to timing and circumstance; the cases are almost identical.[1186] The Prosecution and the Trial Chamber failed to address the irreconcilable judicial outcomes in both cases, despite the near-total convergence of facts and evidence in both trials. The Trial Chamber's failure to engage during trial with the implications of the termination of the proceedings in *Mokom* undermines Mr Ngaïssona's conviction and the integrity of the judicial process, such that Mr Ngaïssona's conviction cannot be maintained.

427. Second, the unfairness affected the reliability of the Judgment. The Judgment is totally silent as to the withdrawal of the overlapping witnesses from the *Mokom* case. The Trial Chamber failed to take into account that many of the overlapping witnesses, upon which it relies to convict Mr Ngaïssona, withdrew their cooperation with the Court following their testimonies against Mr Ngaïssona, for reasons unknown to the Chamber and the Defence.[1187] The Trial Chamber's failure to engage with this potentially exculpatory information, whether by ordering disclosure to the Defence, or reviewing the sought material *proprio motu*, impacted the body of

[1185] For instance, *see* Judgment, p. 838, para. 2316 ("The evidence thus far overwhelmingly suggests that Maxime Mokom was in regular contact with the chiefs on the ground. Relying on Brice Emotion Namsio and P-0889's evidence, as discussed above, the Chamber finds that Maxime Mokom relayed the orders to launch the Bangui Attack."); p. 358, para. 961, p. 361, para. 966, pp. 821-823, paras 2255-2260, p. 837, para. 2311.
[1186] *See* e.g., Mokom Prosecution Request to extend the contact restrictions imposed in the "Fifth Decision on Contact Restrictions", para. 6 ("but for the timing of MOKOM's arrest the substantive elements of the case against him would have joinable to the now ongoing trial. Given the overlapping nature of the evidence and witnesses regarding the two processes, including linkage evidence, (…)"); ICC-01/14-01/22-T-006, p. 22, lns 2-5 ("Mr Mokom should actually have been tried at the same time with Ngaïssona and Yekatom. There was a single Document Containing the Charges against the three, but because of the gaps in the arrests it was necessary for us to separate the cases").
[1187] *See* i.e., P-0446 (relied upon 215 times in the Judgment), P-0808 (relied upon 293 times in the Judgment), P-0876 (appearing 307 times in the Judgment), P-0884 (appearing 544 times in the Judgment), P-0889 (appearing 264 times in the Judgment), P-0954 (appearing 380 times in the Judgment), P-0966 (relied upon 317 times in the Judgment), P-1172 (relied upon 45 times in the Trial), P-1339 (appearing 580 times in the Judgment), P-1521 (appearing 191 times in the Judgment), P-1719 (appearing 197 times in the Judgment), P-1847 (appearing 458 times in the Judgment), P-2027 (appearing 83 times in the Judgment), P-2232 (appearing 386 times in the Judgment), P-2269 (appearing 174 times in the Judgment), P-2328 (relied upon 111 times in the Judgment), P-2625 (relied upon 219 times in the Judgment), P-2841 (appearing 256 times in the Judgment).

evidence it ultimately relied upon in the Judgment to convict Mr Ngaïssona, rendering it incomplete.

428. The reliability of the portions of the Judgment relating to the credibility assessment of the insider overlapping witnesses, upon which the Trial Chamber founded Mr Ngaïssona's conviction, is particularly impugned. For example, the Trial Chamber heavily relied on overlapping witness Poussou, whose cooperation with the Court was inconsistent, to convict Mr Ngaïssona, particularly in finding that he attended meetings in Cameroon with François Bozizé and his 'entourage', shared anti-foreign sentiment, and liaised with the Anti-Balaka in the field.[1188] The Trial Chamber's lack of scrutiny of the credibility implications of Poussou's potential withdrawal of cooperation in the parallel proceedings in *Mokom*, significantly affects the reliability of the Trial Chamber's conclusion on Mr Ngaïssona's liability for the crimes. Rather than mitigating the unfairness, the Trial Chamber entrenched the fair trial violations into the Judgment.

429. The Trial Chamber failed to allude altogether, whether directly or indirectly, to the collapse of the parallel proceedings in *Mokom*, notwithstanding its overwhelming findings pointing to Mr Mokom's central role, actions, and whereabouts in relation to the Anti-Balaka. It failed to engage with the major inconsistency that overlapping witnesses who appeared "unavailable" to testify in the *Mokom* case – but provided incriminating testimony against Mr Ngaïssona – appeared available to testify in the *Saïd* case, raising *prima facie* credibility issues for those witnesses in the present case.[1189] Significantly, it failed to engage with the Defence argument that the Prosecution applied double standards to the evidence across the *Mokom* and *Yekatom & Ngaïssona* proceedings: excerpts taken from 425 documents, including core witness statements and transcripts of testimony in the present case, had been disclosed as "PEXO" in the *Mokom* case.[1190] The diametrically opposed characterisation of the evidence in both cases, despite the overwhelming factual overlap, presents a troubling double standard; if evidence is exculpatory for Mr Mokom, it is even more so for Mr Ngaïssona, against whom the Prosecution's case was much more tenuous. The Judgment fails to address these major incoherences raised by the Defence throughout trial, despite the Trial Chamber's asserted

[1188] Judgment, p. 265, para. 783; Closing Brief, para. 22.
[1189] Defence Motion for Disclosure before Trial Chamber V, para. 23.
[1190] Closing Brief, paras 131-134.

commitment to a holistic evaluation of evidence. These irreconcilable conclusions significantly undermine the reliability of Mr Ngaïssona's conviction such that it must be overturned.

430. The establishment of the truth is one of the principal objectives of the Statute, to which the Chamber must actively contribute.[1191] This obligation "is heightened in circumstances where the Chamber is aware of the possible efforts to distort witness testimony or the truth finding process".[1192] The Chamber's truth-seeking function was compromised by its refusal to engage with the evidentiary material underlying the withdrawal of charges in the *Mokom* case, affecting the outcome of the proceedings against Mr Ngaïssona. The unfairness arising from the Disclosure-related decisions – particularly the failure to consider potentially exculpatory evidence – resulted in a miscarriage of justice, undermining the material truth in this case.

431. The unfairness relating to the breach of Mr Ngaïssona's rights to disclosure, to be heard, to confront the evidence, and to meaningful appellate review, and its impact on the reliability of the trial proceedings and of the Judgment, warrants the intervention of the Appeals Chamber in overturning Mr Ngaïssona's conviction.

432. The Defence requests that the Appeals Chamber reverse Mr Ngaïssona's conviction or, in the alternative, given the presence of compelling reasons, the Defence invites the Appeals Chamber to order the Prosecution to disclose the sought material relating to the withdrawal of overlapping witnesses in *Mokom* to assist it in its adjudication of the Defence's Third Ground of Appeal.[1193] The sought material is relevant as: it is at the very core of the Third Ground of Appeal;[1194] it was not adduced before the Trial Chamber given that disclosure was never granted, despite the Defence's due diligence[1195] and despite its materiality;[1196] and, as illustrated above, it could have led the Trial Chamber to "enter a different verdict, in whole or in part".[1197] In the further alternative, the Defence requests the Appeals Chamber to remand the issue before the Trial

[1191] Ngudjolo AJ, para. 256.
[1192] Ngudjolo AJ, para. 275.
[1193] Rome Statute, Article 83(1) ("For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber"); Lubanga AJ, para. 62.
[1194] Regulations of the Court, Regulation 62(1).
[1195] This included the Defence's request to interview the overlapping witnesses on the narrow issue of their unavailability, pursuant to the Contact Protocol, which was rejected by the Trial Chamber.
[1196] *See* Lubanga AJ, para. 58.
[1197] *See* *Ibid.*, para. 59.

Chamber by ordering it to evaluate the sought material in its credibility assessment of the overlapping witnesses.[1198]

IV. THE TRIAL CHAMBER MISAPPLIED RULE 145(2)(A)(II) OF THE RULES, BY ACCORDING LIMITED WEIGHT TO MR NGAÏSSONA'S POST-OFFENCE CONDUCT DESPITE ITS OBJECTIVE PEACE-CONDUCIVE CHARACTER

433. The Trial Chamber erred in law and fact by applying an unduly restrictive interpretation of Rule 145(2)(a)(ii) of the Rules in sentencing Mr Ngaïssona. The Rule expressly allows the Chamber to give weight to a convicted person's conduct after the act, including efforts to repair harm or promote peace, provided such efforts are established on the balance of probabilities. ICC jurisprudence confirms that such conduct may mitigate a sentence when it is palpable and genuine, and that neither "pure" motives nor concrete success are required.[1199] The Chamber nonetheless discounted Mr Ngaïssona's post-offence peace efforts – his participation in and follow-up to the Brazzaville process, his orders to dismantle roadblocks, his reconciliation initiatives in Boda, and his collaboration with national and international actors – because they occurred after the charged period, within broader peace negotiations, and were allegedly self-interested.[1200] This approach conflated genuineness with motive-purity and results, contrary to Rule 145 and settled jurisprudence. Had the Chamber applied the correct test, it would have found that the evidence demonstrated genuine, peace-conducive actions warranting tangible mitigating weight.

A. Applicable law

434. Rule 145(2)(a)(ii) of the Rules expressly recognises the convicted person's *conduct after the act* as a potential mitigating circumstance for sentencing. The provision encompasses any post-offence behaviour showing cooperation with the Court, compensation to victims, and genuine efforts to restore peace, reconciliation, or stability. Mitigation under this Rule is assessed *on a balance of probabilities*.[1201]

435. ICC jurisprudence establishes several complementary principles guiding the assessment of post-offence mitigation:

[1198] Rome Statute, Article 83(2).
[1199] Katanga Sentencing Decision, para. 115.
[1200] Judgment, pp. 1594-1596, paras 4689-4693.
[1201] Ntaganda Sentencing Decision, para. 24.

436. **Genuineness, not results.** In *Katanga*, the Chamber held that peace or reconciliation efforts may mitigate sentence when they are "palpable and genuine, without the need to demand results."[1202] The inquiry focuses on the objective character of the conduct – whether the steps taken were directed towards peace or harm reduction – rather than on their ultimate success or effectiveness.

437. **Mixed motives are not fatal.** While personal or political motives may coexist, they do not disqualify an act from being genuine mitigation unless self-interest was its *dominant* or *exclusive* purpose. The proper test asks whether, viewed as a whole, the conduct was peace-conducive and undertaken in good faith.[1203]

438. **No correspondence requirement.** Mitigating conduct need not relate directly to the specific crimes of conviction. Rule 145(2)(a)(ii) speaks broadly of "conduct after the act," and both the *Ntaganda* and *Ongwen* Trial Chambers confirmed that mitigating circumstances are not required to correspond to the specific crimes of conviction; while such circumstances must relate to the *convicted person*, they may concern aspects of character or conduct that arise outside the charged conduct and outside the factual findings of the Judgment.[1204]

439. **Temporal scope.** Mitigation may extend to acts occurring after the charged period, provided they bear a logical connection to the convicted person's conduct and reflect a shift towards peace, accountability, or cooperation. The Rule does not confine consideration to acts within the temporal scope of the charges.[1205]

440. **Assessment method.** The Chamber must consider such conduct cumulatively, weigh it on the balance of probabilities, and assign reasoned weight within the overall sentencing analysis under Rule 145(1)(b) and (c).[1206]

441. This is the governing legal standard against which the Trial Chamber's treatment of Mr Ngaïssona's post-offence peace efforts must be measured.

[1202] Katanga Sentencing Decision, para. 91.
[1203] Katanga Sentencing Decision, paras 114-115.
[1204] Ntaganda Sentencing Decision, paras 23-24; Ongwen Sentencing Decision, para. 54.
[1205] Rules of Procedure and Evidence, Rule 145(2)(a)(ii).
[1206] Ongwen Sentencing Decision, para. 54.

B. The Trial Chamber's reasoning and errors

442. The Trial Chamber accepted that Mr Ngaïssona engaged in several post-offence peace-related activities, including participation in the Brazzaville process, instructions to dismantle roadblocks, reconciliation efforts in Boda, and coordination with national and international actors. However, it accorded these measures only "limited" or "some" weight in mitigation. Its reasoning rested on three principal grounds: (i) the timing of the acts, as they occurred after the charged period; (ii) their context within broader political negotiations; and (iii) the Chamber's finding that the efforts were motivated by self-interest and accompanied by discriminatory rhetoric.[1207] Each prong reflects a legal misdirection and a misappreciation of fact under Rule 145(2)(a)(ii).

443. **Timing: wrongful exclusion of post-period conduct.** The Chamber held that Mr Ngaïssona's peace efforts carried little weight because they occurred after the relevant period of the charges,[1208] which it viewed as ending in February 2014.[1209] This approach contradicts the plain language of Rule 145(2)(a)(ii), which expressly contemplates *conduct after the act*. As illustrated in part A above, the ICC jurisprudence has never imposed a temporal cut-off limiting mitigation to acts within the indictment period. Rather, subsequent actions that show genuine engagement with peace, reconciliation, or cooperation are legally relevant, provided they can be established on the balance of probabilities.[1210] By attributing less weight to post-period conduct, the Chamber applied an unduly narrow temporal scope and therefore erred in law.

444. **Context: improper discounting because of political and multi-party setting.** The Chamber also reasoned that Mr Ngaïssona's peace-related activities occurred in the context of wider governmental and international negotiations,[1211] and thus reflected external political dynamics rather than personal initiative. That logic misunderstands Rule 145(2)(a)(ii). The provision does not require that mitigating efforts be solitary or apolitical; it asks whether the conduct, viewed objectively, was directed toward peace or harm reduction. Participation in multi-party processes such as the Brazzaville Forum or subsequent outreach missions cannot, by itself, negate genuineness. Indeed, the purpose of such engagements, which is often intrinsic

[1207] Judgment, pp. 1563-1564, paras 4692-4694.
[1208] Judgment, p. 1599, para. 4699.
[1209] Judgment, p. 711, para. 1894.
[1210] Ntaganda Sentencing Decision, para. 24.
[1211] Judgment, p. 1596, para. 4692.

to post-conflict situations, is to contribute to peace collectively. The Chamber's contextual reasoning therefore imposed an additional, extra-contextual condition – that mitigation must be individual or insulated from political settings – which the Rule does not support.

445. **Motive: conflation of genuineness with motive-purity and rhetoric.** Finally, the Chamber found that Mr Ngaïssona's peace initiatives were self-interested and primarily driven by political ambition, citing statements it viewed as "political spin" or as reflecting continued anti-Muslim bias.[1212] This reasoning conflates the distinction between *genuineness* and *purity of motive*. Under Rule 145(2)(a)(ii), mitigation premised on the genuineness and objective contribution of post-offence conduct rather than the purity of motive. In *Katanga* the Trial Chamber expressly credited disarmament and demobilisation efforts as "palpable and genuine" mitigation notwithstanding suggestions of self-interest.[1213] The record shows multiple objective indicators of Mr Ngaïssona's peace efforts as further illustrated in part C below. By focusing on perceived ulterior motives, the Chamber ignored the substance of the acts themselves. This constitutes both a legal error – applying the wrong test for genuineness – and a factual error – misappreciating the record.

446. Together, these misdirections led the Chamber to undervalue conduct that Rule 145(2)(a)(ii) explicitly recognises as mitigating. Had it applied the correct test – assessing genuineness objectively and cumulatively, without excluding post-period actions or requiring motive purity – it would have accorded substantially greater mitigating weight to Mr Ngaïssona's post-offence peace efforts. That error materially affected the highest individual sentences and, through Article 78(3), the joint sentence.

C. Evidence demonstrating genuine peace efforts

447. The record before the Trial Chamber contained extensive evidence of Mr Ngaïssona's genuine post-offence conduct aimed at promoting peace, reconciliation, and the restoration of order. Taken cumulatively, this evidence demonstrates a consistent pattern of de-escalation and cooperation that squarely falls within the mitigation contemplated by Rule 145(2)(a)(ii). The Chamber's failure to accord proper weight to these efforts – despite their independent corroboration – constitutes both a misapplication of the law and a misappreciation of fact.

[1212] Judgment, pp. 1596-1597, paras 4693-4694.
[1213] Katanga Sentencing Decision, paras 91, 114-115.

448. First, the evidence concerning the Brazzaville peace process demonstrates Mr Ngaïssona's central role in advancing reconciliation at the national level. He personally attended the Brazzaville Forum, declared the Anti-Balaka movement's commitment to peace, and facilitated the participation of Anti-Balaka delegates in the negotiations.[1214] Furthermore, he played a decisive stabilising role during the Brazzaville Forum, which unfolded under acute tension driven by the Seleka's refusal to participate constructively and their repeated threats to abandon the process.[1215] Mr Ngaïssona unrebutted account explains that the Seleka refused to participate in the workshops, announced partition, and prepared to abandon the talks.[1216] At that critical juncture, the mediator, President Sassou-Nguesso, personally summoned Mr Ngaïssona to intervene with the Seleka delegation.[1217] After Mr Ngaïssona addressed them directly and urged them to remain engaged, the Seleka's chief negotiator immediately declared that he would sign the agreement without the slightest condition if Mr Ngaïssona meant what he said.[1218] The Seleka then reaffirmed their unconditional commitment to the process, confirming in real time the effect of his intervention.[1219]

449. Following the conference, he organised missions to the provinces to communicate the peace commitments adopted in Brazzaville and encourage implementation among Anti-Balaka combatants.[1220] Then-President Catherine Samba-Panza expressly recognised his engagement in this process as "to his credit".[1221] These acts were public, sustained, and directed toward

[1214] CAR-OTP-2099-1360, CAR-OTP-2107-1600, at 1601-1602; CAR-D30-0003-0001; *See also* **P-0888**: T-123, p. 62, lns 3-9, p. 71, ln. 13 to p. 72, ln. 16, p. 80, ln. 22 to p. 82, ln. 23; **P-1962**: T-140, p. 25, ln. 19 to p. 26, ln. 14; **P-1521**: T-083, p. 74, ln. 18 to p. 75, ln. 19, p. 79, ln. 19 to p. 80, ln. 2, p. 81, ln. 15 to p. 82, ln. 3; CAR-OTP-2001-5386, at 5393-5394, para. 25; CAR-OTP-2001-1057, at 1063, para. 32; **P-0801**: T-036, p. 55, ln. 15 to p. 57, ln. 1; **P-1193**: T-124, p. 77, ln. 20 to p. 78, ln. 10; CAR-OTP-2001-3405; CAR-OTP-2001-5386, at 5449-5457.
[1215] *See* **P-0952**: T-249, p. 32, lns 1-4, describing a lot of political tension at Brazzaville.
[1216] *See* T-304, p. 50, lns 8-14 (Seleka refusing to join thematic workshops), p. 51, lns 9-12 (Seleka announcing partition and signaling intention to withdraw). The Defence is cognisant that an unsworn statement is not "evidence" within the meaning of Article 69(1) and cannot establish facts not otherwise supported on the record. Nevertheless, nothing in the Statute or Rules precludes the Appeals Chamber from taking notice of such statements for their contextual or illustrative value, particularly where they are consistent with, or help explain, evidence properly before the Court. The Defence refers to Mr Ngaïssona's unsworn statement in that limited manner only.
[1217] *See* T-304, p. 51-52 (mediator Sassou-Nguesso summoning Mr Ngaïssona to address the Seleka delegation).
[1218] *See* T-304, p. 52, lns 1-7 (Mr Ngaïssona urging Seleka to remain engaged and reject partition), p. 52, lns 8-14 (Dhaffane stating he would sign the agreement without the slightest condition based on Mr Ngaïssona's intervention).
[1219] *See* T-304, p. 52-53 (Seleka delegation formally committing "without conditions" to continue the Brazzaville negotiations).
[1220] **D30-4504**: T-283, p. 58, ln. 4 to p. 60, ln. 14; **D30-4953**: Statement, CAR-D30-0026-0001-R01, at 0004, para. 38; **D30-4914**: CAR-D30-0026-0001-R01, at 0018, lns 685-688; **D30-4914**: T-303, p. 32, ln. 13 to p. 36, ln. 22, p. 38, ln. 12 to p. 39, ln. 13; **P-0801**: T-035, p. 58, ln. 18 to p. 59, ln. 19, p. 60, ln. 25 to p. 61, ln. 23; T-035, p. 59, lns 8-11; T-035-FRA, p. 61, lns 14-19; **P-2027**: T-040, p. 11, lns 16-22.
[1221] **P-0952**: T-249, p. 31, ln. 24 to p. 32 ln. 7, p. 32, lns 8-19, p. 33, lns 5-10; T-250, p. 38, ln. 22 to p. 39, ln. 14, p. 40, ln. 20 to p. 41, ln. 3; T-251, p. 50, ln. 22 to p. 51, ln. 23.

national reconciliation.[1222] The Chamber nonetheless gave them only limited weight because they occurred after the charged period and within a broader political framework.[1223] This reasoning disregards the plain text of Rule 145(2)(a)(ii), which expressly embraces conduct "after the act," and ignores the fact that transitional peace processes necessarily occur within political and multi-party settings.

450. Second, the evidence concerning the dismantling of roadblocks reveals direct instructions by Mr Ngaïssona to reduce violence and civilian suffering. He ordered Anti-Balaka commanders to remove illegal roadblocks and to cease harassment of civilians.[1224] He also participated in taking the roadblocks down in person.[1225] However, field reports confirmed partial compliance with these directives.[1226] Jean-Jacques Demafouth (P-2328) confirmed that Mr Ngaïssona instructed Anti-Balaka units to "stop pressure, racketeering, and dismantle the roadblocks",[1227] demonstrating his opposition to extortion at checkpoints. These orders represent clear de-escalatory action aimed at protecting civilians and restoring freedom of movement. However, the Chamber held that Mr Ngaïssona's peace and restraint initiatives were "neither genuine nor concrete," because they were accompanied by conduct that "undermined them" and failed to achieve full or meaningful compliance.[1228] This reflects an outcome-based approach inconsistent with the *Katanga* standard that peace efforts may be "palpable and genuine" even without immediate success.[1229]

451. Third, the evidence demonstrates that Mr Ngaïssona personally initiated and directed reconciliation missions to Boda at a time of acute inter-communal violence. He instructed Anti-Balaka representatives to travel to Boda to engage both Christian and Muslim communities, to explain the cessation-of-hostilities agreement adopted at Brazzaville, and to facilitate the safe

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[1222] CAR-OTP-2101-3611, at 3611-3612; **P-0808**: T-071, p. 14, ln. 25 to p. 17, ln. 18, p. 40, ln. 24 to p. 41, ln. 13; T-072, p. 43, ln. 20 to p. 44, ln. 11, p. 44, ln. 25 to p. 45, ln. 7; **P-0446**: T-098, p. 25, ln. 16 to p. 26, ln. 11; **P-1193**: T-125, p. 23, lns 9-15; **P-0889**: T-110, p. 24, ln. 20 to p. 25, ln. 15.
[1223] Judgment, pp. 1596-1597, paras 4692-4694.
[1224] **P-0808:** T-071, p. 43, lns 11-24; **P-1521:** T-083, p. 61, lns 7-18; **P-0889**: T-110, p. 55, ln. 11 to p. 56, ln. 3, p. 54, ln. 6 to p. 55, ln. 10; **P-1193**: T-124, p. 69, lns 17-22; **P-1042:** T-164, p. 23, ln. 25 to p. 25, ln. 1; **P-0446:** T-096, p. 71, ln. 22 to p. 72, ln. 8.
[1225] **P-0808:** T-071, p. 42, ln. 1 to p. 43, ln. 24; **P-0888:** T-123, p. 67, ln. 6 to p. 68, ln. 2.
[1226] **P-0889**: T-110, p. 60, ln. 16 to p. 61, ln. 13; **P-2232:** T-077, p. 39, lns 4-24 referring to CAR-OTP-2108-0049; **P-0952**: T-251, p. 76, ln. 22 to p. 77, ln. 18; **P-1193**: T-124, p. 31, ln. 25 to p. 32, ln. 9; T-125, p. 21, ln. 11 to p. 22, ln. 18.
[1227] **P-2328**: T-047, p. 34, lns 2-3.
[1228] *See* Judgment, pp. 1593-1594, para. 4686 (initiatives described as "neither genuine nor concrete" and "accompanied by conduct which undermined them"). *See also* Judgment, p. 1594, para. 4687, pp. 1598-1599, para. 4698 (failure to intervene, condemn, or sanction demonstrating lack of meaningful implementation).
[1229] Katanga Sentencing Decision, para. 91.

circulation of Muslim civilians. Witnesses described these missions as expressly aimed at restoring coexistence and preventing further retaliatory attacks.[1230] Local leaders credited him with reducing tensions and preventing retaliatory violence.[1231] President Samba-Panza – who testified as a court-appointed witness – also acknowledged the constructive nature of Mr Ngaïssona's reconciliation efforts. In her testimony, she described the attitude reflected in his peace communiqué as "very positive," confirming that she perceived his outreach initiatives as aligned with her own attempts to stabilise the transition.[1232] The Chamber nevertheless accorded this initiative only "some weight," failing to consider corroborating evidence that demonstrated its authenticity and positive local effect.[1233]

452. Finally, Mr Ngaïssona's coordination with national and international authorities further corroborates the sincerity of his peace efforts. He maintained regular contact with the transitional government on matters of disarmament and security, including direct consultations with President Samba-Panza on cessation-of-hostilities measures, and stabilisation initiatives.[1234] He also engaged with international forces – most notably MISCA – through his coordination, which worked alongside them to address insecurity and manage armed fighters.[1235] MISCA, United Nations and national officials recorded meetings and communications with him regarding the Brazzaville cessation-of-hostilities process and the broader question of disarmament.[1236] Taken together, these exchanges reflect genuine

[1230] *See* **P-0801**: T-036, p. 16, lns 3-6 (describing Mr Ngaïssona's instruction to travel to Boda "to […] find some ground for reconciliation" amid attacks against Muslims); **P-1193**: T-124, p. 69, lns 7-8 (noting that the mission asked Christians to leave certain areas "to allow Muslims to freely move in Boda"); T-125, p. 41, lns 10-11 (recounting Mr Ngaïssona's instruction to meet the population in Boda and explain the cessation-of-hostilities agreement).
[1231] *See* **P-1962:** T-139, p. 28, lns 8-14, p. 29, ln. 24, p. 30, lns 1-24, p. 32, lns 6-9, p.21, lns 22-23 (explaining that if Mr Nagïssona had travelled to Boda, "there would have been changes" because he was widely listened to, reflecting local confidence in his ability to calm tensions). *See also* **P-0801**: T-036, p. 16, lns 3-6 (describing instructions from Mr Ngaïssona to undertake reconciliation efforts aimed at preventing retaliatory attacks).
[1232] *See* **P-0952**: T-251, p. 25, ln. 22 to p. 26, ln. 3 (a court-appointed witness, describing the "very positive" attitude conveyed in Mr Ngaïssona's reconciliation communiqué). *See also* **P-0952:** T-250, p. 41, lns 6-18 (noting that Mr Ngaïssona respected the conditions imposed following their meeting); T-249, p. 50, ln. 16 to p. 51, ln. 24 (describing their engagement on transitional stabilisation measures).
[1233] *See* Judgment, p. 1594, para. 4688 (Chamber according "some weight" to Mr Ngaïssona's peace-related efforts), p. 1599, para. 4699 (concluding that the initiative warranted only limited weight).
[1234] *See* **P-0952**: T-250, p. 27, lns 21-24, p. 31, lns 1-5, lns 8-11 (where President Samba-Panza confirms that she personally received Mr Ngaïssona at her residence, including urgently during security crises, and that Anti-Balaka communications – sent under his coordination – were integrated into the government's reconciliation, stabilisation, and DDR planning, including matters of weapons management and cessation-of-hostilities measures).
[1235] *See* **P-0808**: T-070, p. 75, lns 1-3 (describing the coordination's written request to MISCA for joint efforts and consultation in addressing insecurity).
[1236] *See* CAR-D30-0008-0037, at 0037 (communication to international partners, including the United Nations presence, requesting assistance pending a disarmament, demobilisation and reintegration programme); **P-1193:** T-125, p. 32, lns 20-21 (describing approaches to the international community regarding grouping, disarmament and demobilisation)

collaboration with state and international partners toward stabilisation – conduct that falls squarely within Rule 145(2)(a)(ii). The Chamber, however, dismissed this pattern of coordination as politically motivated and declined to accord it mitigating weight.[1237]

D. Material effect

453. The Trial Chamber's misapplication of Rule 145(2)(a)(ii) had a direct and measurable effect on the sentence imposed. Under Article 78(3), the joint sentence must be no less than the highest individual term. In Mr Ngaïssona's case, that floor was established by the eleven-year terms imposed for the counts of murder as a crime against humanity and as a war crime committed in Bangui, Bossangoa, Yamwara, and along the PK9-Mbaïki axis.[1238] Each of those counts therefore fixed the minimum joint sentence at eleven years, to which the Chamber then added a single additional year when setting the twelve-year total.

454. Had the Chamber applied the correct legal standard for mitigation, it would have given genuine weight to Mr Ngaïssona's post-offence peace efforts. Even a modest downward adjustment to the individual sentences – for example, reducing the top terms from eleven to nine or ten years to reflect properly credited mitigation – would have automatically lowered the joint sentence under Article 78(3). Because the joint term cannot exceed the highest individual sentence, the Chamber's legal and factual errors in assessing mitigation necessarily inflated both the individual and total sentence.

455. Moreover, the Chamber's own reasoning shows that it attributed "limited" or "some" weight to these efforts;[1239] under a correct interpretation of Rule 145(2)(a)(ii), those findings should have been treated as substantial mitigation, affecting not only the duration of the individual terms but also the proportionality of the overall penalty. The consequence is a sentence that is manifestly disproportionate to Mr Ngaïssona's actual culpability and post-offence conduct. Rectifying the error by properly crediting

[1237] *See* Judgment, p. 1596, para. 4693 (finding that these initiatives appear politically motivated); p. 1599, para. 4699 (according the efforts only limited weight for not resulting in disarmament).
[1238] *See* Judgment, pp. 1604-1605, paras 4716-4718 (Counts 2-3: murder as a crime against humanity and as a war crime committed in Bangui - 11 years each); pp. 1612-1613, paras 4745-4752 (Counts 31-32: murder as a crime against humanity and as a war crime committed in Bossangoa - 11 years each); pp. 1627-1628, paras 4801-4802 (Counts 15-16: murder as a crime against humanity and as a war crime committed at Yamwara –11 years each); and pp. 1632-1633, paras 4817-4819 (Counts 26-27: murder as a crime against humanity and as a war crime committed along the PK9-Mbaïki axis – 11 years each).
[1239] *See* Judgment, p. 1594, para. 4688 (according "some weight" to Mr Ngaïssona's peace-related efforts); p. 1599, para. 4699 (affording the initiatives only "limited weight" because they did not result in actual disarmament).

456. genuine mitigation would lower the highest individual term and, through the mechanism of Article 78(3), require a corresponding reduction of the joint sentence.

457. For these reasons, the Defence respectfully submits that the Appeals Chamber should vary the sentence to reflect a joint term not exceeding the corrected highest individual sentence, or in the alternative remand for re-sentencing with instructions to re-weigh the mitigating factors in accordance with the proper Rule 145(2)(a)(ii) test.

V. THE TRIAL CHAMBER DISCOUNTED MR NGAÏSSONA'S PEACE EFFORT INITIATIVES, INCLUDING HIS INVOLVEMENT IN DDR PROCESSES AND RELATED ORGANISATIONAL MEASURES, THEREBY FAILING TO ACCORD THEM APPROPRIATE MITIGATING WEIGHT

458. The Chamber further erred in law and fact by refusing to treat the DDR proposals, badges initiative, and creation of the "military police" as mitigating. It concluded that these measures were politically motivated, insincere, or unrelated to the crimes of conviction because disarmament did not occur and the initiatives did not directly prevent the offences.[1240] In doing so, the Chamber demanded results and motive purity, and ignored that under Rule 145(2)(a)(ii) mitigation does not depend on outcomes or on an exact correspondence between the mitigating conduct and the offences. The Chamber also overlooked evidence that these initiatives were objectively peace-conducive: the DDR programme was initiated in consultation with national authorities and international partners; the badges sought to impose discipline and distinguish genuine members from criminal opportunists; and the "military police" was created to curb lawlessness within Anti-Balaka ranks.[1241] The Chamber's reasoning thus rests on both a legal error (application of the wrong test for genuineness) and a factual error (misappreciation of evidence showing genuine, order-restoring purpose). Proper evaluation would have afforded significant mitigation and reduced the individual sentences driving the joint term.

A. Applicable law

459. Rule 145(2)(a)(ii) provides that a convicted person's conduct after the act – including efforts to compensate victims, cooperate with the Court, or promote peace – may operate in mitigation. The Appeals Chamber has consistently held that such conduct warrants mitigation where it is "palpable and genuine", meaning that the effort is concrete, voluntary, and directed toward

[1240] *See* Judgment, p. 1594, para. 4687 (Chamber finding it was not convinced of the genuineness of the initiatives); pp. 1593-1594, para. 4686 (determining that the initiatives were not related to the crimes and did not prevent or substantially reduce the offences); p. 1599, para. 4699 (according the efforts only "limited weight" because they did not result in actual disarmament).
[1241] *See* Ground V.B.

peace or harm-reduction, even if it does not achieve its intended results.[1242] The Chamber must therefore assess the conduct objectively – asking whether, viewed in context, the actions were aimed at promoting stability, reconciliation, or restraint.

460. Finally, the mitigating conduct need not correspond precisely to the specific offences of conviction. The Rule's open wording – "conduct after the act" – permits consideration of any initiative demonstrating a commitment to peace, order, or accountability, even if it addresses different manifestations of harm. In short, the scope of mitigation is broad, the test is genuineness, and the results requirement does not apply.

B. DDR programme

461. The Trial Chamber erred in law and fact in finding that Mr Ngaïssona's efforts to establish a DDR programme were not genuine peace initiatives and thus did not merit any mitigating weight.[1243] The Chamber's analysis demanded results, inferred insincerity from political context and alleged self-interest, and failed to engage with record evidence,[1244] demonstrating that the proposal was both tangible and consistent with national peacebuilding objectives. On a proper application of Rule 145(2)(a)(ii), the DDR initiative was palpable, genuine, and objectively peace-conducive, and should have been credited in mitigation.

462. The evidence shows that Mr Ngaïssona took active steps to promote a DDR process for Anti-Balaka combatants.[1245] Testimony and documentary evidence confirm that he presented detailed proposals for the collection of weapons, the registration of fighters, and their integration into civilian life under government supervision.[1246] He raised the initiative in meetings with national authorities, the transitional government, and international partners

[1242] Katanga Sentencing Decision, para. 91.
[1243] *See* Judgment, pp. 1596-1597, paras 4693-4694 (finding that Mr Ngaïssona's DDR proposals were not a genuine peace effort, attributing them to financial and political motives, and concluding that his actions in relation to DDR were "not taken into consideration" for mitigation).
[1244] *See* Judgment, pp. 1596-1597, paras 4693-4694.
[1245] *See* **P-0889**: T-110, p. 32, lns 22-25 and p. 40, lns 21-25 (describing Mr Ngaïssona's proposals for billeting and reintegration, and the request that a DDR programme be implemented jointly with the government and international community); CAR-D30-0008-0037, at 0037 (Mr Ngaïssona, Ngaya and Namsio jointly demanding support pending a disarmament, demobilisation and reintegration programme); **P-0446**: T-096, p. 63, lns 3-6 (confirming Anti-Balaka's demand to participate in the demobilisation programme); **P-0888**: T-123, p. 49, lns 17-19 (noting that Mr Ngaïssona presented a billeting and DDR plan to the government).
[1246] *See* CAR-D30-0008-0037, at 0037 (proposing a jointly-implemented programme of disarmament, demobilisation and reintegration under government and international supervision); **P-0889**: T-110, p. 32, lns 22-25 (describing Mr Ngaïssona's reintegration project for Anti-Balaka fighters returning to civilian life); **P-1962**: T-140, p. 19, ln. 22 to p. 20, ln. 1 (referring to registration of Anti-Balaka members on DDR lists and the issuance of socio-professional cards).

including the African Union and MINUSCA.[1247] Witnesses testified that he sought coordination with the government so that the process would mirror similar DDR programmes being discussed for the former Seleka forces.[1248] These steps were concrete in form and consistent in message: that the Anti-Balaka should lay down arms under a structured reintegration framework.

463. The Chamber nonetheless found that these efforts were "not genuine," reasoning that Mr Ngaïssona's primary motivation was personal advancement and political gain.[1249] It relied in particular on evidence that he had expressed interest in being appointed as DDR coordinator within the transitional government, and that his proposals coincided with the Anti-Balaka's demand for recognition in the political transition.[1250] It further cited President Samba-Panza's remark that some of his statements amounted to "political spin" ("effets d'annonce").[1251] On this basis, the Chamber concluded that the DDR proposal lacked sincerity and therefore carried no mitigating weight.[1252]

C. The Chamber's findings misappreciate both context and evidence

464. That reasoning cannot stand. First, the record demonstrates that DDR was not a personal or partisan initiative but a central component of the broader peace framework then being advanced by both the government and the international community.[1253] The transitional authorities and international actors – including President Samba-Panza – acknowledged that a DDR

[1247] *See* **P-0888**: T-123, p. 49, lns 17-19 (noting that Mr Ngaïssona presented a billeting and DDR plan to the government); **P-1521**: T-083, p. 59, lns 16-17 (referring to engagement with transitional authorities); **P-0808**: T-070, p. 75, lns 1-3 (describing outreach to MISCA, the African Union mission); CAR-D30-0008-0037, at 0037 (communication to the international community requesting support pending a DDR programme); **P-1193**: T-125, p. 32, lns 20-21 (indicating that DDR demands were addressed to the international community).
[1248] *See* **P-0966**: T-118, p. 34, ln. 23 to p. 36, ln. 2 (describing Mr Ngaïssona's call, during meetings with the government, to initiate a process for caring for Anti-Balaka fighters, in a context where former Seleka elements were already benefiting from DDR-type arrangements); CAR-OTP-0008-0040 (Radio Ndeke Luka report noting Anti-Balaka demands to receive the same billeting and DDR treatment as the ex-Seleka).
[1249] Judgment, p. 1596, para. 4693.
[1250] *Ibid*.
[1251] Judgment, pp. 1596-1597, para. 4694.
[1252] *Ibid*.
[1253] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that DDR required the support of international forces and the international community); T-251, p. 51, lns 18-23 (P-0952 noting that DDR was a matter for the transitional authorities); **P-0889**: T-110, p. 40, lns 21-25 (P-0889 describing a DDR programme to be implemented jointly by the government and the international community); **P-1193**: T-125, p. 32, lns 20-21 and p. 36, lns 20-22 (referring respectively to DDR requests made to the international community and to MINUSCA and Sangaris pushing for demobilisation); CAR-D30-0008-0040 (Radio Ndeke Luka report noting Anti-Balaka demands for DDR treatment equivalent to ex-Seleka).

programme for both Anti-Balaka and Seleka forces was essential for stabilisation.[1254] It was therefore natural and appropriate that Mr Ngaïssona, as the recognised Anti-Balaka coordinator, would advocate for his constituency's inclusion in that process. His expressed willingness to assist or even lead the programme was consistent with his leadership role and the government's own practice of appointing community representatives to DDR commissions. Interpreting this as self-interest misunderstands the institutional realities of post-conflict implementation.

465. Second, the Chamber failed to appreciate the *objective and verifiable* steps Mr Ngaïssona undertook toward stabilisation. In early 2014, Mr Ngaïssona publicly advanced peace and DDR proposals and sought support from both national authorities and the international community, as reflected in his public communiqué and his coordination's engagement with MISCA.[1255] The record shows he presented concrete proposals to transitional authorities, publicly urged the initiation of a disarmament process, and engaged both local commanders and government officials to organise the grouping of fighters and the logistics required for weapons collection.[1256] Moreover, P-1521 agreed that Mr Ngaïssona said that he accepted to become coordinator on the condition that the abuses being committed by the Anti-Balaka would stop.[1257]

466. These are precisely the kinds of "palpable" and "genuine" acts that *Katanga* identifies as warranting mitigation.[1258] The Chamber's dismissal of these measures because disarmament did not occur conflates effort with outcome. Under Rule 145(2)(a)(ii), the correct inquiry is whether the conduct was *directed* toward peace and harm reduction – not whether it produced complete results.

[1254] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that DDR had to be organised with international forces and the international community); T-251, p. 51, lns 18-23 (P-0952 noting that DDR was a matter for the transitional and post-transition authorities); **P-1193**: T-125, p. 36, lns 20-22 (describing MINUSCA and Sangaris' insistence on demobilisation and transformation of armed groups); CAR-D30-0008-0040 (Radio Ndeke Luka reporting that Anti-Balaka demanded DDR treatment equivalent to that already granted to ex-Seleka).
[1255] *See* CAR-D30-0008-0037, p. 0037 (public communiqué calling for joint DDR efforts with government and the international community); **P-0808**: T-070, p. 75, lns 1-3 (coordination writing to MISCA to initiate consultation and joint actions on security).
[1256] *See* **P-0888**: T-123, p. 49, lns 17-19 (noting that Mr Ngaïssona presented a billeting and disarmament plan to the Government); CAR-D30-0008-0037, at 0037 (public call for a DDR programme involving disarmament, demobilisation and reintegration); **P-1193**: T-125, p. 32, lns 20-21 (describing coordination requests to the international community to group and disarm Anti-Balaka fighters).
[1257] **P-1521**: T-083, p. 9, ln. 19 to p. 10, ln. 4, p. 11, lns 7-12.
[1258] Katanga Sentencing Decision, para. 91.

467. Third, the Chamber ignored contemporaneous testimony confirming that disarmament could not be achieved at the time due to conditions beyond Mr Ngaïssona's control.[1259] Both national authorities and international forces recognised that the security situation, logistical constraints, and lack of resources made immediate implementation impossible.[1260] President Samba-Panza herself testified that although she encouraged disarmament, her government and international partners lacked the means to enforce it.[1261] It was therefore unreasonable for the Trial Chamber to treat the absence of results as evidence of bad faith on the part of Mr Ngaïssona. The failure of the DDR process reflected structural limitations, not insincerity on the part of those advocating it.

468. Finally, the Chamber's approach imposed an impermissible requirement of *motive purity*. The Court-appointed witness, Ms Samba-Panza, confirmed that she took the initiative to consult all parties – including Mr Ngaïssona's Anti-Balaka faction –regarding their participation in the transitional government, requesting that they express their wishes and submit names for potential appointments.[1262] The Chamber therefore erred in construing his participation as the pursuit of political gain, rather than what it was: a response to the President's own request that Anti-Balaka leadership propose names for government service. Even if Mr Ngaïssona had political ambitions or hoped to enhance his legitimacy, these motives do not negate the genuineness of conduct objectively directed toward peace. As the *Katanga* Trial Chamber held, peace efforts may attract mitigation when they are both palpable and genuine "without the need to demand results," and regardless of whether the actor also seeks political advantage.[1263] The Trial Chamber's finding that the proposal was tainted by "self-interest" therefore reflects an error of law and a misappreciation of fact.

[1259] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that disarmament could only be undertaken with international forces and that the State lacked the means to implement it); **P-1521**: T-083, p. 59, lns 16-17 (noting that even transitional authorities lacked the capacity to intervene without support).
[1260] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that the Central African Republic lacked the means to implement disarmament and that it depended on international forces); **P-1521**: T-083, p. 59, lns 16-17 (noting that transitional authorities lacked capacity and relied on the coordination to intervene); **P-0889**: T-110, p. 40, lns 21-25 (referring to a DDR programme that could only be implemented jointly by the government and the international community).
[1261] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that while disarmament "had to be done," neither the transitional government nor the international forces had the means to implement it); *See also* **P-0952**: T-251, p. 51, lns 18-23 (noting that DDR was only taken up by later authorities, confirming the impossibility of immediate implementation).
[1262] *See* **P-0952**: T-250, p. 16, lns 5-22.
[1263] Katanga Sentencing Decision, paras 91, 115.

D. Proper assessment on the balance of probabilities

469. When evaluated on the proper standard – the balance of probabilities – the DDR initiative clearly meets the threshold for mitigation under Rule 145(2)(a)(ii). The record contains direct evidence of meetings, communications, and coordination with national and international counterparts;[1264] contemporaneous instructions to Anti-Balaka members to disarm;[1265] and acknowledgement from authorities that he pursued DDR as a stabilisation measure.[1266] None of this was contested. On any reasonable view of the evidence, these actions were genuine efforts to lay the groundwork for peace.

470. The Defence emphasises that the Rule does not require certainty of success or purity of motive, only credible evidence of peace-conducive conduct. The DDR proposals were part of a broader attempt to channel a fragmented militia movement into the structures of lawful governance – a classic example of post-offence conduct warranting mitigation. By failing to credit this initiative, the Trial Chamber not only applied the wrong legal test but also reached a conclusion contrary to the weight of the evidence. Had the Trial Chamber applied the proper balance-of-probabilities assessment, it would have found that Mr Ngaïssona's DDR efforts were genuine and concrete, and accordingly reduced his sentence to reflect that mitigation.

E. Badges and "military police"

471. The Trial Chamber erred in law and fact by refusing to accord mitigating weight to Mr Ngaïssona's initiatives establishing Anti-Balaka identification badges and a "military police."[1267] Both measures were objectively aimed at restoring internal discipline, distinguishing combatants from criminal opportunists, and enabling accountability[1268] – precisely the type of *order-restoring conduct* that Rule 145(2)(a)(ii) encourages. By construing these initiatives narrowly as tools of self-promotion or "branding," and by demanding proof of

[1264] *See* **P-0888**: T-123, p. 49, lns 17-19 (on presentation of a billeting/disarmament plan to the Government); **P-0808**: T-070, p. 75, lns 1-3 (coordination with MISCA); CAR-D30-0008-0037, at 0037 (DDR communication addressed to government and international partners).
[1265] *See* CAR-D30-0008-0037, at 0037 (public Anti-Balaka call for a disarmament programme); **P-1193:** T-125, p. 32, lns 20-21 (describing requests to facilitate grouping and disarming Anti-Balaka fighters).
[1266] *See* **P-0952**: T-250, p. 28, lns 16-21 (explaining that DDR required state and international support due to stabilisation needs); **P-0889**: T-110, p. 40, lns 21-25 (describing a DDR programme as part of joint government–international stabilisation efforts); **P-1193**: T-125, p. 36, lns 20-22 (noting MINUSCA/Sangaris demands for disarmament as part of stabilisation).
[1267] *See also* Judgment, pp. 1593-1594, paras 4686-4687 (finding such initiatives unrelated to the crimes and not genuine; pp. 1597-1598, paras 4695-4697(addressing Mr Ngaïssona's internal organisational measures – including the issuance of identification badges and the establishment of a "military police" – and concluding that these efforts did not prevent Anti-Balaka criminality and therefore do not merit mitigating weight).
[1268] *See* **P-0808**: T-070, p. 58, lns 9-10, 15-17 (military police mandated to maintain order and target "fake AB").

their full effectiveness, the Chamber applied an unduly restrictive test inconsistent with the jurisprudence on post-offence mitigation.

472. The record demonstrates that the badge initiative was introduced to distinguish genuine Anti-Balaka members – those under the coordination's authority – from imposters engaged in banditry. Witnesses explained that the badge initiative was designed to allow authorities and civilians to distinguish disciplined Anti-Balaka members from imposters abusing the movement's name, thereby restoring internal order, curbing extortion and other opportunistic crimes, and creating conditions necessary for any future disarmament or reintegration process.[1269] The creation and distribution of badges were therefore practical, preventive steps to limit abuses against civilians and restore central control.

473. Similarly, the "military police" was conceived as an internal disciplinary body tasked with preventing theft, looting, and other criminal acts by Anti-Balaka members. Its mandate was to identify and sanction individuals who acted "out of bounds," including those attacking civilians or engaging in unauthorised reprisals.[1270] Testimony established that the "military police" referred offenders to the gendarmerie and worked with local authorities to restore public order.[1271] These functions align squarely with Rule 145(2)(a)(ii)'s reference to "conduct after the act," reflecting genuine efforts to impose discipline and reduce harm.

474. Both initiatives therefore reveal a consistent intention: to transform an unstructured militia into an accountable, organised body capable of adhering to peace directives. They were designed to contain violence and create conditions for reconciliation. The Trial Chamber's characterisation of these steps as organisational measures aimed at strengthening Mr Ngaïssona's authority over the Anti-Balaka movement overlooks their preventive and order-restoring purpose.[1272]

[1269] **P-2251**: T-044, p. 50, lns 12-22 (badges introduced to ensure fighters "could not behave just anyhow," reinforcing internal discipline and reducing abuses).
[1270] Judgment, p. 705, para. 1874 (noting that the Anti-Balaka military police pursued individuals "acting out of bounds," particularly in relation to theft and looting).
[1271] *See* **P-0808**: T-070, p. 58, lns 9-10, 15-17 (describing the Anti-Balaka "military police" as an internal disciplinary body responsible for maintaining order and targeting "fake" Anti-Balaka members); **P-0992**: T-093, p. 48, lns 8-10 (testifying that a team was created to "clean up the mess" and address abuses committed by opportunists within the group); **P-1521**: T-083 p. 41, ln. 21 to p. 42, ln. 15 (explaining that the coordination referred offenders to the gendarmerie and collaborated with authorities to restore order).
[1272] Judgment, pp. 1597-1598, paras 4695-4697.

F. The Chamber's narrowing misinterprets the mitigation standard

475. The Trial Chamber concluded that the badges and "military police" did not warrant mitigation because (i) they were allegedly meant to strengthen Mr Ngaïssona's command and public image; (ii) they targeted only "fake" Anti-Balaka or petty criminals rather than addressing the crimes of conviction; and (iii) they failed to stop the broader violence.[1273] Each of these reasons reflects a misapplication of Rule 145(2)(a)(ii).

476. First, self-presentation or organisational consolidation does not negate genuineness. ICC jurisprudence accepts that peace-oriented conduct may be motivated by a combination of political, reputational, or strategic considerations. What matters is that the efforts remain *palpable and genuine* in substance. Only where personal or organisational gain wholly supplants any peace-building purpose would such conduct fall outside the scope of mitigation.[1274] Here, the badge and police initiatives were objectively directed at discipline and harm-reduction; even if they also enhanced authority, that secondary effect does not defeat genuineness. As *Katanga* confirms, the focus is on the objective character of the acts, not on the purity of intent.[1275]

477. Second, Rule 145(2)(a)(ii) does not require the mitigating conduct to correspond precisely to the crimes of conviction. The Chamber erred in reasoning that because the "military police" targeted theft and looting rather than murder or persecution, it could not mitigate those offences.[1276] Mitigation under this Rule extends to any post-offence conduct that promotes order, peace, or restraint. By preventing further criminal acts, enforcing discipline, and demonstrating cooperation with law enforcement, the initiatives advanced the very aims of accountability and harm reduction that the Rule seeks to reward.

478. Third, effectiveness is not the test. The Chamber required proof that these initiatives produced measurable results, such as the cessation of violence or complete disarmament.[1277] That demand

[1273] Judgment, pp. 1597-1598, paras 4695-4697.
[1274] Katanga Sentencing Decision, paras 91-115, para. 91 (holding that peace-promotion efforts "*can and must* be taken into account" where they are "*palpable and genuine*," without requiring results) (emphasis added), para. 92 (accepting conciliatory conduct even where it occurred amid competing strategic dynamics), para. 93 (noting that actions undertaken partly at the insistence of third parties may still constitute "*positive acts*" supporting peace), and para. 115 (finding that despite contextual complexities and mixed motivations, the accused's role in disarmament remained a *"positive contribution"* warranting mitigation) (emphasis added).
[1275] *Ibid*.
[1276] Judgment, pp. 1597-1598, paras 4695-4697.
[1277] *Ibid*.

contradicts the "palpable and genuine" standard established in *Katanga*,[1278] which explicitly rejected any results requirement. In a volatile post-conflict context where command and communication were limited, the partial or imperfect implementation of such initiatives does not render them insincere. The law credits efforts that are genuine, not necessarily successful.

479. Finally, the Chamber ignored corroborating evidence from national authorities acknowledging that such internal disciplinary measures were welcomed as constructive steps toward stabilization, in the absence of a fully functioning state security apparatus.[1279] Testimony from government officials and President Samba-Panza herself indicated that efforts to differentiate legitimate Anti-Balaka from criminal opportunists facilitated cooperation with state security forces and reduced random violence.[1280] The Chamber's omission of this independent corroboration underscores its misappreciation of the record.

G. Genuineness established on the balance of probabilities

480. When evaluated objectively and on the proper balance-of-probabilities standard,[1281] the badges and "military police" clearly qualify as genuine mitigating conduct under Rule 145(2)(a)(ii). They were practical mechanisms designed to restore order, protect civilians, and prepare the ground for broader disarmament efforts.[1282] They were implemented publicly, required personal initiative, and entailed reputational and physical risk for Mr Ngaïssona.[1283] The Chamber's refusal to credit them rested on a misreading of the law and a selective view of the evidence.

481. The Defence emphasises that post-offence conduct is assessed not by perfection but by direction: whether it shows a tangible movement toward peace and restraint. On that test, both

[1278] Katanga Sentencing Decision, paras 91.
[1279] Judgment, pp. 1597-1598, paras 4695-4697.
[1280] *See* **P-0952**: T-250, p. 28, lns 16-21 (President Samba-Panza explaining that stabilisation required identifying legitimate actors and coordinating with them, noting that the State lacked the means to control armed elements without such internal organisation); **P-1521**: T-083, p. 59, lns 16-17 (explaining that transitional authorities relied on the coordination to intervene and maintain order, reflecting the government's recognition of internal disciplinary structures as useful for stabilisation); **P-0992**: T-093, p. 48, lns 8-10 (describing a team created to "clean up the mess" and deal with abusive opportunists, a measure understood by authorities as contributing to public order).
[1281] *See* Ntaganda Sentencing Decision, para. 24.
[1282] *See* **P-0808**: T-070, p. 58, lns 9-10, 15-17 (military police mandated to maintain order and target "fake" Anti-Balaka); Judgment, p. 705, para. 1874 (military police pursued those "acting out of bounds," particularly theft and looting); **P-0992**: T-093, p. 48, lns 8-10 (Mr Ngaïssona set up a team to "clean up the mess" and address abusive opportunists); **P-1193**: T-125, p. 32, lns 20-21 (coordination seeking means to group and disarm Anti-Balaka fighters).
[1283] *See* CAR-D30-0008-0037, at 0037 (public communiqué concerning discipline and DDR, demonstrating that these measures were implemented publicly); **P-0992**: T-093, p. 48, lns 8-10 (Mr Ngaïssona "set up a team to clean up the mess" and confront "fake Anti-Balaka," evidencing personal initiative and inherent risk).

the badge system and the "military police" represent precisely the sort of palpable and genuine efforts that warrant mitigation. By denying them any weight, the Trial Chamber imposed an outcome-driven and motive-purity threshold foreign to Rule 145(2)(a)(ii). Correcting this error would require attributing meaningful mitigating value to these initiatives and reducing the corresponding sentences accordingly.

H. Material effect

482. The Trial Chamber's failure to attribute mitigating weight to the DDR programme, the badge system, and the "military police" materially affected both the individual and joint sentences. Each of these initiatives demonstrated genuine, post-offence conduct aimed at reducing harm and restoring order. Properly credited, they would have reduced the highest individual sentences – each fixed at eleven years for the murder counts in Bangui, Bossangoa, Yamwara, and along the PK9-Mbaïki axis – and thereby lowered the joint sentence under Article 78(3).[1284]

483. By assigning these initiatives no weight, the Chamber inflated the culpability assessment underlying those top terms. The difference need not be large to alter the outcome: even a modest recognition of their mitigating value would have warranted a reduction of one to two years per affected count, lowering the highest individual term from eleven to nine or ten years. Because the joint sentence cannot fall below the highest individual term, this correction alone would proportionally reduce the overall sentence from twelve to a term aligned with the properly assessed individual culpability.

484. Furthermore, the Chamber's blanket refusal to treat the DDR, badge, and "military police" initiatives as mitigation[1285] undermined the principle of proportionality by disregarding evidence that Mr Ngaïssona took concrete steps to contain violence and cooperate with authorities during and after the charged period. Correcting this legal and factual error – by crediting these genuine, peace-promoting measures – would necessarily lower the highest individual terms and, pursuant to Article 78(3), require a corresponding reduction in the joint sentence.

[1284] *See* Judgment, pp. 1604-1605, paras 4716-4718 (Counts 2-3: murder as a crime against humanity and as a war crime committed in Bangui - 11 years each); pp. 1612-1613, paras 4745-4752 (Counts 31-32: murder as a crime against humanity and as a war crime committed in Bossangoa - 11 years each); pp. 1627-1628, paras 4801-4802 (Counts 15-16: murder as a crime against humanity and as a war crime committed at Yamwara - 11 years each); and pp. 1632-1633, paras 4817-4819 (Counts 26-27: murder as a crime against humanity and as a war crime committed along the PK9-Mbaïki axis - 11 years each).
[1285] Judgment, pp. 1597-1598, paras 4695-4697.

485. The Defence therefore submits that the Appeals Chamber should vary the sentence to reflect appropriate mitigation for these initiatives, or alternatively remand the matter with directions to re-evaluate them under the correct Rule 145(2)(a)(ii) standard.

VI. THE TRIAL CHAMBER FAILED TO PROPERLY CALIBRATE MR NGAÏSSONA'S DEGREE OF PARTICIPATION AND INTENT PURSUANT TO RULE 145(1)(C) OF THE RULES, THEREBY FRUSTRATING PROPORTIONALITY AND MEANINGFUL APPELLATE REVIEW

486. The Chamber's findings on degree of participation and intent were too general to permit proportional sentencing review. It described Mr Ngaïssona's contribution as having a "positive effect" on the commission of crimes specifically in the context of the Bangui attack and concluded that his participation and intent were not "particularly high or low" across all locations.[1286] This language does not satisfy Rule 145(1)(c), which requires a reasoned qualification of the *degree* of culpability for each crime or location, reflecting the individual's specific contribution and mental element. By failing to make a location-specific assessment – particularly for the Yamwara and PK9-Mbaïki incidents, where the Chamber made no evaluation of any nexus between Mr Ngaïssona and those events – the Chamber effectively equalised culpability across the case and inflated the highest individual terms of eleven years that set the floor for the joint sentence. The omission constitutes both an error of law and a failure to provide a reasoned opinion.

A. Applicable law

487. Rule 145(1)(c) of the Rules of Procedure and Evidence obliges a Trial Chamber, in determining sentence, to give consideration to the degree of participation and the degree of intent of the convicted person. These factors ensure that the punishment imposed reflects the individual's actual culpability, in line with the overarching requirement in Rule 145(1)(a) that the "totality of any sentence must reflect the culpability of the convicted person." Read together with Article 78(1) of the Statute, this provision embodies the principle of proportionality – that the sentence must correspond to both the gravity of the crimes and the personal blameworthiness of the offender.

488. ICC jurisprudence consistently affirms that sentencing must be individualised, even where crimes were committed within a collective or organisational framework. The Chamber is

[1286] *See* Judgment, pp. 1602-1603, para. 4710 (stating that Mr Ngaïssona's conduct had a "positive effect on the commission of the crimes"); p. 1603, para. 4711, p. 1610, para. 4736, p. 1624, para. 4791, p. 1630, para. 4810 (concluding that his degree of intent was "not particularly high or low" for the purpose of sentencing).

required to determine a sentence that reflects the culpability of the particular convicted person, which necessarily entails distinguishing the person's own conduct, role, and intent. As the Appeals Chamber held in *Lubanga*, proportionality – "generally measured by the degree of harm caused by the crime and the culpability of the perpetrator"[1287] – is central to this assessment. Accordingly, the Trial Chamber must identify the relevant sentencing factors and explain how it evaluated them, so that the resulting sentence can be reviewed for proportionality within the meaning of Article 83(2)-(3).

489. Although the Trial Chamber enjoys broad discretion in weighing the relevant sentencing factors, that discretion "is not unlimited". Its decision must demonstrate that it has properly considered the gravity of the crimes and the culpability of the convicted person, and that the sentence entered corresponds to those findings.[1288] To meet the proportionality standard reflected in *Lubanga* and Rule 145(1), the Chamber must articulate the basis on which it assessed the convicted person's participation and intent, and how these considerations informed the final sentence. Where the Chamber relies on vague, unqualified, or indeterminate terms to describe participation or intent, or fails to explain how the identified factors relate to the sentence imposed, the Appeals Chamber cannot meaningfully review whether the sentence is proportionate. In such circumstances, the decision fails to satisfy the standard of reasoning required under article 83(2).

490. The purpose of Rule 145(1)(c) is thus two-fold: to ensure that the sentence accurately mirrors the convicted person's relative contribution and intent, and to provide a transparent basis for appellate oversight. A Chamber's failure to calibrate these degrees per crime or location constitutes an error of law and renders the sentence disproportionate within the meaning of Article 81(2)(a) of the Statute.

B. Errors in the Trial Chamber's sentencing determination

491. The Chamber's reasoning also failed to meet Rule 145(1)(c)'s requirement to explain how Mr Ngaïssona's conduct contributed to each crime. Beyond using indeterminate phrases, the Chamber did not link his alleged acts to the specific criminality in Bangui, Bossangoa, Yamwara, or along the PK9-Mbaïki axis. This omission prevents verification that the sentences

[1287] Lubanga AJ Sentencing, paras 39-40.
[1288] *Ibid.*

– both individual and joint – reflect a properly individualised assessment of culpability and are proportionate.

492. In the Judgment, the Chamber acknowledged that Mr Ngaïssona provided "financial aid, organisational assistance and psychological support to the Anti-Balaka", but concluded that these contributions had a merely "positive effect on the commission of the crimes during the Bangui Attack".[1289] No comparable qualification appears for the other charged locations and the Chamber did not describe the magnitude of that effect, its scope, or its relative importance compared with other actors. Later, the Chamber stated that it "could not find any circumstances that would qualify Mr Ngaïssona's participation and intent for the purposes of sentencing as particularly high or low".[1290] That formulation effectively collapses the full spectrum of culpability into a neutral midpoint. A finding that participation and intent were "not particularly high or low" is, by definition, not a qualification of degree at all.

493. Such wording deprives the Appeals Chamber of any measurable criterion for review. The Rules require an express determination of *degree*; instead, the Trial Chamber produced a narrative of general involvement, concluding without analysis, for only one of the charged locations, that the assistance provided had some unspecified "positive effect". The absence of calibration – whether limited, significant, or high – makes it impossible to verify that the sentences imposed reflect Mr Ngaïssona's true contribution or mental state.[1291]

C. Lack of location-specific analysis

494. The error is compounded by the Chamber's failure to differentiate culpability across the four charged locations. The Chamber itself recognised that the factual contexts varied substantially: the Chamber found that Mr Ngaïssona's involvement ranged from indirect or remote in some locations; to facilitative or organisational in others, and in certain instances was contemporaneous with the commission of crimes.[1292] Yet it applied a single, undifferentiated description of participation and intent to all.

[1289] *See* Judgment, pp. 1602-1603, para. 4710.
[1290] Judgment, p. 1603, para. 4711, p. 1610, para. 4736, p. 1624, para. 4791, p. 1630, para. 4810 (concluding that his degree of intent was "not particularly high or low" for the purpose of sentencing).
[1291] *See* Ground II.
[1292] Judgment, pp. 1602-1603, para. 4710, p. 1609, para. 4734, p. 1624, para. 4789, pp. 1629-1630, paras 4807-4809.

495. **Bangui.** The Chamber found that despite being outside the CAR in 2013, Mr Ngaïssona's "financial support made it possible for at least some elements to participate in the Bangui attack" and that his assistance "had a positive effect on the commission of the crimes.". No further quantification was provided.[1293] The Chamber did not explain whether this "positive effect" was minor, moderate, or decisive, nor how it compared to the roles of those who physically perpetrated the crimes.

496. **Bossangoa.** For the attack on Bossangoa, the Chamber simply recalled its Bangui findings and stated that the same considerations applied, again observing that his participation was limited to "funding and supporting activities in relation to the Anti-Balaka prior to the attacks."[1294] The Chamber thus transposed the same generic reasoning without assessing whether his awareness or contribution differed at Bossangoa.

497. **Yamwara.** With respect to the crimes committed in and around Yamwara on 24 December 2013, the Chamber concluded that Mr Ngaïssona continued to finance the Anti-Balaka after the 5 December 2013 attack and remained informed of their continued activities.[1295] The absence of any qualification leaves the degree of awareness and participation entirely indeterminate.

498. **PK9-Mbaïki axis.** For crimes committed along this route, the Chamber again merely recalled Mr Ngaïssona's participation and intent for the crimes in Bangui and Yamwara, adding only that he "continued to provide financial assistance […] and actively engaged in formalising the structure of the Anti-Balaka."[1296] It offered no assessment of whether this continuing support assisted in the commission of those specific crimes or whether his intent was equivalent to, or lesser than, for the earlier incidents.

499. By relying on largely identical phrasing across all four locations, the Chamber implicitly treated Mr Ngaïssona's culpability as constant, despite material differences in his proximity, knowledge, and temporal connection to the events. Those findings remained general and were not tied to the *specific degree*, *scope*, or *object* of any alleged intent or support in relation to the crimes committed there. [1297] Similarly, the Chamber made no finding that Mr Ngaïssona was aware of the crimes committed in Bossangoa, Yamwara and PK9-Mbaïki at the relevant time.

[1293] Judgment, pp. 1602-1603, para. 4710.
[1294] Judgment, p. 1381, para. 4034.
[1295] Judgment, p. 1624, para. 4789.
[1296] Judgment, pp. 1629-1630, para. 4807-4809.
[1297] *See* Judgment, pp. 1602-1603, para. 4710, p. 1609, para. 4734, p. 1624, para. 4789, pp. 1629-1630, paras 4807-4809.

Yet the Chamber imposed the same individual terms of imprisonment for these incidents as it did for Bangui, where its analysis of participation and awareness was more developed.[1298] The absence of a differentiated assessment of the degree of intent and participation therefore falls short of the requirements of Rule 145(1)(c) and Article 78(1).

D. Consequences for proportionality and review

500. These omissions have concrete consequences. Without calibrated findings, the eleven-year sentences imposed for the murder counts in each location rest on indistinguishable reasoning. The Appeals Chamber cannot ascertain whether the Chamber considered Mr Ngaïssona's degree of participation to be equal in all four contexts or whether the same term was imposed for administrative simplicity. The use of vague descriptors – "some elements," "positive effect," "not particularly high or low" – prevents verification that the sentence reflects his true culpability.

501. Rule 145(1)(c) requires the Chamber to distinguish between different degrees of responsibility within the same mode of liability, including qualitatively different forms of aiding and abetting. An individual who provides limited or sporadic logistical support – particularly after the principal crimes have been committed – cannot bear the same degree of culpability as one who provides sustained, operationally significant assistance that materially influences their commission. By failing to draw these internal distinctions, the Chamber produced a sentence that is formally reasoned but substantively opaque. This frustrates appellate review and undermines the principle of proportionality under Article 81(2)(a).

502. In sum, the Chamber's treatment of degree of participation and intent consisted of generic formulations applicable to any participant in a collective enterprise, with no location-specific or quantitative assessment. This approach failed to calibrate culpability as required by Rule 145(1)(c), undermined the individualisation of sentence, and rendered the resulting penalties disproportionate to Mr Ngaïssona's actual role and mental state.

E. The consequences of the chamber's approach

503. The Trial Chamber's failure to calibrate the degree of participation and intent across the charged locations materially affected the structure and outcome of the sentence. By relying on generic formulations – "positive effect," "some elements," "not particularly high or low" – and by

[1298] *Ibid*.

applying those phrases uniformly to four distinct locations, the Chamber produced individual sentences that do not reflect Mr Ngaïssona's differentiated culpability. The consequence was a set of eleven-year terms for murder at each site, which in turn fixed the floor for the joint sentence under Article 78(3) at eleven years and directly yielded the twelve-year total. This error of law and reasoning inflated both the individual and joint sentences.

504. Article 78(3) of the Statute requires that when multiple crimes are convicted, the Court must pronounce a sentence for each and a joint sentence specifying the total period of imprisonment, which "shall be no less than the highest individual sentence." The Chamber's approach to degree directly determined this highest individual sentence. Because it treated Mr Ngaïssona's culpability as constant across all four locations, it imposed the same eleven-year term for murder as a crime against humanity and as a war crime in each case. Those identical terms – anchored in unreasoned generalities – set the floor for the joint sentence.

505. Had the Chamber properly calibrated the degree of participation and intent, it would have distinguished between the varying levels of knowledge, temporal proximity, and functional contribution across the charged locations.

F. A principled recalibration

506. The record supports a principled, location-specific assessment of degree, consistent with the standard under Rule 145(1)(c).

507. **Bangui and Bossangoa.** The Chamber found that Mr Ngaïssona provided organisational and financial support and was aware that Anti-Balaka elements would commit crimes in the ordinary course of events.[1299] Even accepting those findings, his role was at best facilitative and remote, not operational. A mid-range qualification of participation and intent – significant but not high – would have been appropriate.

508. **Yamwara.** For the events of 24 December 2013, the Chamber's only relevant finding was that Mr Ngaïssona "continued to provide financial assistance to the Anti-Balaka, [and] remained informed of the Anti-Balaka's continued activities."[1300] This finding was broad and unspecific, not linked to the concrete acts committed at Yamwara. Moreover, the "continued activities" referenced by the Chamber related to the group's political demands and internal power

[1299] *See* Judgment, pp. 1602-1603, para. 4710, p. 1609, para. 4734.
[1300] *See* Judgment, p.1624, para. 4789.

struggles, not to criminal actions at Yamwara or the targeting of Muslim civilians.[1301] At most, the Chamber established a general awareness of internal Anti-Balaka dynamics – not the level of particularised intent or contribution necessary to justify parity with Bangui and Bossangoa. A proportionate assessment would recognise that his participation here was limited and his inferred intent low, warranting a sentence several years below the eleven-year mark.

509. **PK9-Mbaïki axis.** For the crimes committed during the Anti-Balaka advance in early 2014, as with Yamwara, the Chamber's findings remained general and detached from the specific offences committed along this axis. The Chamber "recalled" its earlier conclusions without demonstrating that Mr Ngaïssona possessed concrete awareness of, or intent directed towards, the particular crimes at PK9-Mbaïki.[1302] By this stage, his involvement centred on political coordination and peace discussions rather than operational logistics. His support to the Anti-Balaka was largely administrative or symbolic, not instrumental to the commission of the offences. Properly assessed, his degree of participation here was minimal and his inferred intent indirect, meriting a sentence substantially lower than those imposed for earlier incidents.

510. This gradation reflects the diminishing nexus between Mr Ngaïssona's conduct and the specific crimes as the events unfolded, and it accords with the principle that punishment must track culpability, not status. Had the Chamber performed this analysis, the sentences for Yamwara and PK9-Mbaïki would have been meaningfully lower than for Bangui and Bossangoa, reducing the highest individual term and thus the joint total.

G. Consequences for proportionality and review

511. The Chamber's omission frustrated proportional sentencing and precluded meaningful appellate review. Without express findings of degree, the Appeals Chamber cannot ascertain whether the identical eleven-year terms were driven by gravity, culpability, or administrative convenience. The result is a sentence that lacks transparency and appears disproportionate to Mr Ngaïssona's proven level of involvement.

512. Moreover, the Chamber's failure to differentiate among locations neutralised the mitigating effect of temporal distance and evolving conduct. By the time of the Yamwara and PK9-Mbaïki incidents, Mr Ngaïssona's role had moved away from the earlier allegations of substantial logistical involvement and towards broader political coordination; during the PK9-Mbaïki

[1301] *See* Ground II.B.3.
[1302] *See* Judgment, pp. 1629-1630, paras 4807-4809.

period in particular, he was engaged in political interlocution and discussions aimed at stabilisation. [1303] Equating this later, largely political role with the earlier period – where the Chamber considered his financial and organisational assistance more significant – erases meaningful distinctions in culpability. This error directly inflated the highest individual term to eleven years, which then anchored the twelve-year joint sentence.

513. The Defence therefore submits that the Trial Chamber's failure to calibrate degree per location constitutes both an error of law and an error of reasoning that materially affected the sentence. The Appeals Chamber should vary the individual terms to reflect properly assessed degrees of participation and intent – setting lower sentences for Yamwara and PK9–Mbaïki – and accordingly reduce the joint sentence to align with the corrected highest individual term. Alternatively, the Chamber should remand for re-sentencing with specific instructions to perform a reasoned, location-based degree analysis under Rule 145(1)(c).

H. Material effect

514. The Trial Chamber's failure to calibrate Mr Ngaïssona's degree of participation and intent per location had a direct and measurable effect on the sentence. By declining to distinguish between different levels of culpability and by imposing identical eleven-year terms for the murder counts across all four charged areas, the Chamber fixed the statutory floor for the joint sentence under Article 78(3). That error propagated through the sentencing structure, yielding the twelve-year total.

515. Had the Chamber applied Rule 145(1)(c) correctly – by assessing degree of participation and intent separately for Bangui, Bossangoa, Yamwara, and PK9-Mbaïki – it would have found that Mr Ngaïssona's involvement diminished over time The evidence demonstrates that for Yamwara and PK9-Mbaïki, he neither directed nor facilitated the specific crimes; his contributions were remote and largely political.

516. Because the joint term must be no less than the highest individual sentence, this miscalibration inflated the overall penalty. Even a modest downward adjustment of the highest individual term – from eleven to nine years – would have compelled a corresponding two-to-three-year reduction in the joint sentence. In effect, the Trial Chamber's failure to individualise degree

[1303] *See* **P-0808**: T-070, p. 75, lns 1-3 (coordination writing to MISCA seeking joint consultations and cooperation); **P-1521**: T-083, p. 59, lns 16-17 (transitional authorities contacting the coordination to intervene, reflecting political interlocutor functions); CAR-D30-0008-0037, at 0037 (public communiqué by Mr NGAÏSSONA and co-signatories calling for national dialogue, ceasefire, and DDR efforts).

across locations caused a structural error: the proportionality of the total sentence cannot be verified, and the resulting twelve-year term exceeds the culpability actually found.

517. Accordingly, the Defence submits that this deficiency materially affected the sentence within the meaning of Article 83(2). The Appeals Chamber should therefore vary the individual and joint sentences to reflect the properly assessed degrees of participation and intent, or, in the alternative, remand the matter to the Trial Chamber for a reasoned recalibration under Rule 145(1)(c) and Article 78(3).

518. The Defence respectfully submits that the Judgment is vitiated by interrelated legal and reasoning errors under Rule 145 and Articles 78 and 83 of the Statute, each of which materially affected the individual and joint sentences. Collectively, these errors produced a sentence disproportionate to Mr Ngaïssona's proven degree of culpability and post-offence conduct.

519. Together, the Chamber's misapplications of law, reasoning and fact described in Grounds 4, 5 and 6, yielded a sentence that does not reflect the principle of proportionality or the individualisation mandated by the Statute.

VII. RELIEF SOUGHT

520. For the foregoing reasons, the Defence respectfully requests that the Appeals Chamber:

— **REVERSE** the Judgment on Mr Ngaïssona's conviction and sentence and enter an acquittal on all counts;

— **ORDER** the immediate release of Mr Ngaïssona and such arrangements as it considers appropriate for his transfer pursuant to Rule 185(1) of the Rules;

— **ORDER** any other relief the Appeals Chamber deems appropriate in the interests of justice to ensure fairness, including reviewing the 'sought material' discussed in Ground 3.

521. **In the alternative,** the Defence respectfully requests that the Appeals Chamber:

— **REVERSE** the findings of guilt affected by the errors identified, enter acquittals on those counts, and amend the sentence accordingly;

— **VARY** the Judgment by:

- Reducing the individual sentences to reflect a correct application of Rules 145(2)(a)(ii) and (1)(c), lowering the highest individual term; **AND**

- Lowering the joint sentence pursuant to Article 78(3) of the Statute to reflect the corrected highest individual term; **OR**

— **REMAND** the matter to the Trial Chamber with directions to apply the correct applicable standards pursuant to Rule 145 of the Rules as set out above.

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

Dated this 19 December 2025
At The Hague, the Netherlands