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THE APPEALS CHAMBER

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Victims' Additional Submissions
pursuant to Order No. ICC-01/14-01/18-2929 A A2 A3**

Source: Common Legal Representatives of Victims of Other Crimes

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I. INTRODUCTION

1. Pursuant to the Appeals Chamber's Order of 25 August 2026 (the "Order"),¹ in the matter of the appeal of the Deputy Prosecutor against Trial Chamber V's Judgment (the "Impugned Decision" or the "Judgment"),² the Common Legal Representatives of the Victims of the Other Crimes (the "CLRV") herewith file the following further submissions on the questions identified at paragraph 7 of the Order.

2. Consistent with the Appeals Chamber's direction that submissions already made should - as far as practicable - not be repeated, the CLRV rely on their Consolidated Response ("Victims' Observations") concerning the applicable legal framework under article 25(3)(d) of the Statute and its application to the Trial Chamber's findings.³ The present submissions are therefore confined to the discrete interpretative questions identified in the Order.

II. ADDITIONAL SUBMISSIONS

a) What are the elements of a "common purpose" under article 25(3)(d) of the Statute and how do those differ from the elements of an "organizational policy" within the meaning of article 7(2)(a) of the Statute?

9. A "common purpose" within the meaning of article 25(3)(d) of the Statute requires that the person(s) who committed or attempted the relevant crime acted as a group

¹ See the "Order requesting further written submissions" (Appeals Chamber), [No. ICC-01/14-01/18-2929 A A2 A3](#), 25 August 2026.

² See the "Judgement" with public Annexes A and B (Trial Chamber V), No. ICC-01/14-01-18-2784-Conf, 24 July 2025 (the "Impugned Decision" or the "Judgement"). A public redacted version [No. ICC-01/14-01/18-2784-Red](#) was filed the same day. See also, the "Prosecution Appeal Brief", [No. ICC-01/14-01/18-2846-Conf A](#), 25 November 2025 (the "Prosecution Appeal"). A public redacted version [No. ICC-01/14-01/18-2846-Red A](#), was filed on 27 November 2025; the "Corrigendum of the 'Ngaïssona Defence Appeal Brief against the Trial Judgment'", 25 November 2025, ICC-01/14-01/18-2847-Conf, [No. ICC-01/14-01/18-2847-Conf-Corr A A2](#), 19 December 2025 (the "Ngaïssona Appeal"). A public redacted version [No. ICC-01/14-01/18-Red-Corr A A2](#) was filed on the same day.

³ See the "Victims' Observations to the Prosecution and Defence Appeals of the Judgment and Sentence against Mr Alfred Yekatom and Patrice-Edouard Ngaïssona", [No. ICC-01/14-01/18-2884-Conf](#), 27 February 2026, in particular paras. 31-46 (the "Victims' Observations"). A public redacted version was filed on 23 March 2026, [No. ICC-01/14-01/18-2884-Red](#).

sharing an aim, goal or objective. It does not require proof of the more stringent “*common plan*” applicable to co-perpetration under article 25(3)(a), nor an agreement among the members of the group as to the precise manner in which the crimes are to be committed.⁴ Its existence and content may be established by direct or circumstantial evidence.⁵ The Court’s jurisprudence accordingly defines the common purpose broadly as the “*shared aim, goal or objective*” linking the members of the group.⁶ This is also consistent with the Court’s characterisation of article 25(3)(d) as a residual mode of liability concerning crimes committed through collective action.⁷

10. An “*organisational policy*” under article 7(2)(a) of the Statute is a distinct legal concept serving a different function. It forms part of the contextual requirements of crimes against humanity and concerns the policy pursuant to or in furtherance of which the attack against the civilian population is carried out. The inquiry into the existence of an organisation capable of implementing such a policy concerns, *inter alia*, its capacity, coordination and continuity in carrying out the attack.⁸ By contrast, the common-purpose requirement under article 25(3)(d) concerns whether the persons committing or attempting the crime were linked by a shared aim, goal or objective. The two concepts should therefore not be treated as legally interchangeable.

11. Their legal distinctness does not, however, require that they must be established on the basis of separate evidence. To the contrary, the factual findings underpinning

⁴ See the public redacted version of the “Trial Judgment” with three public annexes (Trial Chamber X), [No. ICC-01/12-01/18-2594-Red](#), 26 June 2024, paras. 1235-1236 (the “*Al Hassan* TJ”); the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3436-tENG](#), 20 April 2015, para. 1627 (the “*Katanga* TJ”). See also, the “Decision on the Defence requests set forth in observations 3379 and 3389 of 3 and 17 June 2013” (Trial Chamber II), [No. ICC-01/04-01/07-3388-tENG](#), 26 June 2013, para. 28 (the “Decision on Defence Requests of 26 June 2013”); and the Public redacted version of “Decision on the confirmation of charges” (Pre-Trial Chamber I), [No. ICC-01/04-01/10-465-Red](#), 16 December 2011, para. 269-271 and 274 (the “*Mbarushimana* Confirmation Decision”).

⁵ See the Decision on Defence Requests of 26 June 2013, *supra* note 4, para. 28.

⁶ See the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236.

⁷ See the “Decision on the confirmation of charges” (Pre-Trial Chamber I), [No. ICC-01/04-01/06-803-tEN](#), 29 January 2007, para. 337. See also the *Katanga* TJ, *supra* note 4, para. 1618.

⁸ See the *Katanga* TJ, *supra* note 4, paras. 1118-1122 and *Al Hassan* TJ, *supra* note 4, paras. 69, 1111. See also, the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), [No. ICC-01/09-01/11-373](#), 23 January 2012, para. 185 (the “*Ruto et al.* Confirmation Decision”).

the existence of an organisational policy may also establish, or contribute to establishing, the existence and content of a common purpose under article 25(3)(d). This follows in particular from the fact that a common purpose may be inferred from circumstantial evidence.⁹ Findings that members of an organisation acted in coordination, pursued shared objectives, targeted the same civilian population, repeatedly engaged in the same or related forms of criminal conduct, and possessed the capacity to carry out coordinated attacks are directly relevant to determining whether they shared an aim, goal or objective within the meaning of article 25(3)(d) of the Statute.

12. This evidentiary overlap is particularly significant in the present case. In establishing the contextual elements of crimes against humanity, the Trial Chamber did not merely find that the Anti-Balaka possessed sufficient organisational capacity in the abstract. It found that the Anti-Balaka comprised multiple groups sharing a common identity, objectives and enemy, were capable of concerted action, and engaged over time in coordinated violence and common patterns of targeting.¹⁰ As already submitted, these findings demonstrate that the Anti-Balaka groups were “linked by a shared purpose and were capable of coordination”.¹¹

13. Accordingly, when considered for the distinct purpose of article 25(3)(d), the Trial Chamber’s findings underlying the organisational-policy requirement provide compelling evidence of the requisite common purpose. The point is not that an organisational policy *ipso facto* constitutes a common purpose. Rather, in the present case, the evidentiary findings through which the Trial Chamber established that the Anti-Balaka carried out an attack pursuant to a criminal organisational policy also establish the shared criminal objective required by article 25(3)(d). The same body of evidence may satisfy different legal elements where the factual findings are relevant to each. Nothing in article 25(3)(d) requires that a common purpose be established

⁹ See the Decision on Defence Requests of 26 June 2013, *supra* note 4, para. 28. See also, the *Katanga* TJ, *supra* note 4, para. 1627.

¹⁰ See the Impugned Decision, *supra* note 2, paras. 1207-1209, 3894-3897, 3913-3916, 3921, 3925-3932.

¹¹ See the Victims’ Observations, *supra* note 3, paras. 154-156.

through evidence different from that relied upon in determining the contextual elements of crimes against humanity.

14. This conclusion is directly relevant to the crimes of rape at issue in Counts 40 to 42. The common purpose evidenced by those findings was not an abstract or neutral organisational objective: it concerned the Anti-Balaka's coordinated campaign against the Muslim civilian population. The Trial Chamber further found, specifically in relation to Bossangoa, that the conduct of the Anti-Balaka satisfied the requirements of murder, destruction of property, forcible transfer and deportation or displacement, imprisonment or other severe deprivation of physical liberty, and rape, and that those crimes formed the conduct underlying persecution.¹² As previously submitted, the Trial Chamber thereby recognised rape as forming part of the Anti-Balaka's criminal activity against the Muslim civilian population.¹³

15. Thus, the findings by the Trial Chamber establish the relevant collective-criminality element of article 25(3)(d). The perpetrators of the rape did not act merely as individuals associated with the same organisation, but as members of a group whose shared criminal objective and coordinated conduct against Muslim civilians are demonstrated by the very findings underpinning the Trial Chamber's conclusion that the attack was carried out pursuant to an organisational policy.¹⁴ Whether the rape itself must have formed part of that common purpose, and the degree of awareness required of Mr Ngaïssona in relation to that crime, are separate questions that fall to be addressed under questions (c), (i), (j) and (k).

b) Can findings of a pattern of violence for purposes of establishing the contextual elements of crimes against humanity be relied upon to establish the common purpose under article 25(3)(d) of the Statute?

16. Findings concerning a pattern of violence relied upon to establish the contextual elements of crimes against humanity may also be relied upon to establish the existence

¹² See the Impugned Decision, *supra* note 2, para. 4108.

¹³ See the Victims' Observations, *supra* note 3, paras. 40-41.

¹⁴ See, *inter alia*, the Katanga TJ, *supra* note 4, para. 1630.

and content of a common purpose under article 25(3)(d), provided that the underlying factual findings are relevant to both inquiries. Although the legal requirements are distinct, their evidentiary bases may overlap. Nothing in article 25(3)(d) requires that the common purpose be established through a body of evidence separate from that relied upon to establish the widespread or systematic attack or the organisational policy under article 7 of the Statute.¹⁵

17. This is particularly so because a common purpose may be established by circumstantial evidence. A pattern of coordinated violence directed against the same civilian population, involving recurring forms of criminal conduct, common targets, common methods of operation and continuity of objectives, may demonstrate that the perpetrators were not acting independently or coincidentally, but as members of a group pursuing a shared criminal aim, goal or objective.¹⁶ The fact that those same findings were relied upon in the article 7 analysis does not diminish their probative value for the distinct inquiry under article 25(3)(d).

18. The CLRV do not submit that a pattern of violence established for purposes of article 7 *ipso facto* proves a common purpose. Rather, where the underlying findings establish coordination among perpetrators, shared objectives, a common targeted population, repeated or related forms of criminal conduct, and continuity in the implementation of those objectives, they form part of the evidentiary basis from which the requisite common purpose may be inferred. The same body of evidence may therefore satisfy different legal requirements because it proves facts relevant to each.

19. That is precisely the situation in the present case. In establishing the contextual elements of crimes against humanity, the Trial Chamber found not merely the existence of repeated violence, but a pattern of coordinated Anti-Balaka conduct against the Muslim civilian population, carried out by groups sharing a common

¹⁵ See the Decision on Defence Requests of 26 June 2013, *supra* note 4, para. 28 and the *Katanga* TJ, *supra* note 4, para. 1627.

¹⁶ See the Decision on Defence Requests of 26 June 2013, *supra* note 4, para. 28 and the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236.

identity, objectives and enemy and capable of coordinated action. It further found that those shared objectives and targeting patterns persisted over time.¹⁷ These findings are therefore directly relevant to, and probative of, the existence and content of the common criminal purpose required by article 25(3)(d).

20. The same reasoning applies to Counts 40 to 42. The Trial Chamber found that, in Bossangoa, the Anti-Balaka's conduct included rape and that rape formed part of the persecutory conduct directed against the Muslim civilian population.¹⁸ The significance of these findings is not merely that rape occurred alongside other crimes committed during the attack. Rather, the Trial Chamber's findings place rape within the same organised and patterned criminal campaign against Muslim civilians from which the common purpose may be inferred. Accordingly, the findings relied upon to establish the pattern of violence for purposes of article 7 may also be relied upon under article 25(3)(d), not because the contextual elements and the common-purpose require identical legal elements, but because the underlying facts establish the collective criminality relevant to both inquiries. In the present case, those findings support the conclusion that the rape was committed by members of a group pursuing the shared criminal objective already evidenced by the Trial Chamber's article 7 findings, rather than as an isolated act detached from that objective.

c) Must it be established that the crime with which the person is charged was part of the common purpose or is it sufficient to show that the crime was committed in the context of pursuing the common purpose? In the case of the latter scenario, what level of awareness must the accused have in relation to the commission of the crime?

21. Article 25(3)(d) does not require that every particular crime for which liability is attributed constitute the expressly agreed object of the group's common purpose. The jurisprudence recognises that the common purpose may pursue broader, including non-criminal, objectives, provided that it contains the requisite element of

¹⁷ See the Impugned Decision, *supra* note 2, paras. 1207-1209, 3894-3897, 3913-3916, 3921, 3925-3932.

¹⁸ *Ibid.*, paras. 4095-4098, 4108.

criminality and encompasses the commission of crimes within the Court's jurisdiction.¹⁹

22. Thus, it is not necessary to establish that the specific crime with which an accused is charged formed part of the common purpose as such. Article 25(3)(d)(i) requires that the perpetrators belong to a group acting with a common purpose involving criminal activity and that the accused intentionally contribute with the aim of furthering that criminal activity or criminal purpose. The provision does not require that every individual crime committed in the pursuit of that purpose be separately encompassed by, or specifically agreed upon as part of, the common purpose. It is sufficient that the crime was committed by members of the group in the course of pursuing or implementing that common purpose.²⁰

23. This follows from the text and structure of article 25(3)(d)(i). The provision does not require the contribution to be made with the aim of furthering the crime; rather, it requires the contribution to be made with the aim of furthering "*the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court*". The object of the contributor's purpose is therefore the group's criminal activity or criminal purpose, not each individual offence in furtherance of that activity or purpose.²¹ This is precisely the distinction already advanced by the Victims: the reference to "*a crime*" in subparagraph (i) permits a more general understanding of the group's criminal purpose, whereas subparagraph (ii) expressly requires knowledge of the group's intention to commit "*the crime*".²²

¹⁹ See the *Katanga* TJ, *supra* note 4, paras. 1624-1631 and the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236.

²⁰ See the *Katanga* TJ, *supra* note 4, paras. 1620-1631, in particular para. 1627. See also, the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236, 1245-1248 and the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 269, 289.

²¹ See the *Katanga* TJ, *supra* note 4, paras. 1620-1631, 1637-1639 and the "Minority Opinion of Judge Van den Wyngaert in the Judgment pursuant to article 74" (Trial Chamber II), [No. ICC-01/04-01/07-3436-AnxL](#), 7 March 2014, para. 288 ("Minority Opinion of Judge Van den Wyngaert"). See also, the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247.

²² See the Victims' Observations, *supra* note 3, paras. 37-38.

24. Accordingly, article 25(3)(d)(i) does not require that the contributor intended or knew that a particular crime would be committed, provided that the crime was committed by members of the group in the course of pursuing its common criminal purpose. The accused must intentionally engage in the conduct constituting the contribution and be aware that their conduct contributes to the activities of the group; in addition, the contribution must be made with the aim of furthering the group's criminal activity or criminal purpose.²³ Proof that the contributor shared the group's intention to commit the particular underlying offence is therefore unnecessary under subparagraph (i).

25. The level of awareness required under article 25(3)(d)(i) must be understood accordingly. The accused must possess sufficient awareness of the nature and criminal character of the group's activity or purpose to be capable of intentionally furthering it. However, this does not extend to knowledge that the specific crime charged would be committed, still less to awareness of its precise victim, perpetrator, place, time or manner of commission.²⁴ A crime-specific knowledge requirement is instead expressly provided for in article 25(3)(d)(ii), which requires the contribution to be made "*in the knowledge of the intention of the group to commit the crime*".²⁵ The two limbs must therefore remain distinct: subparagraph (i) requires purposive furtherance of the group's criminal activity or purpose; subparagraph (ii) requires knowledge of the group's intention to commit the particular crime.

26. This distinction is determinative in relation to the rape of P-2462. The Trial Chamber found that the Anti-Balaka operated as a coordinated group pursuing a common criminal purpose directed at violently targeting, persecuting, forcibly displacing and otherwise attacking Muslim civilians in western CAR, including Bossangoa.²⁶ It further found that rape was committed by Anti-Balaka elements during

²³ See the *Mbarushimana* Confirmation Decision, *supra* note 4, para. 288. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247.

²⁴ See the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247.

²⁵ See the *Katanga* TJ, *supra* note 4, para. 1641 and the *Al Hassan* TJ, *supra* note 4, para. 1248.

²⁶ See the Impugned Decision, *supra* note 2, paras. 22, 451, 1296, 1319. See also, the *Katanga* TJ, *supra* note 4, paras. 1624-1631.

the Bossangoa attack and expressly included rape among the criminal conduct forming the basis of persecution.²⁷ Rape was therefore not an act extraneous to the Anti-Balaka campaign or disconnected from its implementation. It was committed by members of the group during the very operation through which the group pursued its common purpose and formed part of the same persecutory campaign against Muslim civilians.

27. Against that background, it was unnecessary under article 25(3)(d)(i) to establish that Mr Ngaïssona specifically intended the rape of P-2462 or knew that rape would occur during the Bossangoa attack. The relevant inquiry was whether he intentionally contributed with the aim of furthering the Anti-Balaka's criminal activity or purpose. The Trial Chamber's own findings answer that question affirmatively: Mr Ngaïssona acted as national coordinator, financier, organiser, political representative and legitimising authority; strengthened the group's organisational structure and operational capacity; and sustained and promoted the Anti-Balaka's violent campaign.²⁸ His contributions were thus purposeful, sustained and directed at advancing the criminal objectives pursued by the Anti-Balaka, including through the operations during which the rape was committed.

28. The Trial Chamber's finding that Mr Ngaïssona had not been shown to know that rape would occur "*in the ordinary course of events*" - which the CLRV consider erroneous in any event - does not preclude this conclusion.²⁹ That finding arose from its analysis of the different mental requirements applicable under article 25(3)(c) and article 30.³⁰ Article 25(3)(d)(i), by contrast, does not require intent or knowledge directed at the specific underlying crime, but rather an intentional contribution made with the aim of furthering the group's criminal activity or criminal purpose.³¹ The Trial

²⁷ *Ibid.*, paras. 4095-4098, 4108.

²⁸ *Ibid.*, paras. 38, 1563-1575, 3864-3870, 4113.

²⁹ *Ibid.*, paras. 4126-4132.

³⁰ *Ibid.*

³¹ See the *Katanga* TJ, *supra* note 4, paras. 1637-1639; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248 and the *Mbarushimana* Confirmation Decision, *supra* note 4, para. 289.

Chamber's conclusion concerning the foreseeability of rape under article 25(3)(c) therefore cannot be transposed to article 25(3)(d)(i).

29. In the present case, therefore, liability under article 25(3)(d)(i) does not depend upon a finding that rape formed part of the expressly articulated common purpose. It is sufficient that the rape was committed by Anti-Balaka members in the context of pursuing that common criminal purpose, and that Mr Ngaïssona intentionally contributed with the aim of furthering the Anti-Balaka's criminal activity or purpose. The Trial Chamber's own findings establish both propositions. As previously submitted, once the Chamber recognised that rape was committed as part of the Anti-Balaka attack and formed part of the group's persecutory conduct, the principal remaining question was whether Mr Ngaïssona's incurred responsibility for that crime under the applicable mode of liability.³²

d) Can the common purpose be inferred from a showing of a pattern of criminality?

30. The existence and content of a common purpose under article 25(3)(d) may be established by circumstantial evidence and may therefore be inferred from a pattern of criminality, where that pattern demonstrates that the relevant crimes resulted from collective action directed towards a shared aim, goal or objective.³³ The common purpose need not be formally agreed upon or expressly articulated; it may be inferred from the manner in which the group acted and the circumstances surrounding its criminal conduct.³⁴

31. A pattern of criminality is particularly probative where it reveals recurring and coordinated conduct, a consistent target population, similar or complementary forms of violence, continuity over time, and conduct directed towards the same objective. Such circumstances may demonstrate that the crimes were not isolated or coincidental

³² See the Victims' Observations, *supra* note 3, paras. 40-45.

³³ See the Decision on Defence Requests of 26 June 2013, *supra* note 4, para. 28. See also, the *Katanga* TJ, *supra* note 4, para. 1627 and the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236.

³⁴ See the *Katanga* TJ, *supra* note 4, para. 1627.

acts by individual perpetrators, but manifestations of collective criminal activity undertaken in pursuit of a shared purpose.³⁵ This is consistent with the conclusions above that findings relied upon to establish the contextual elements of crimes against humanity may also be probative of the existence and content of a common purpose under article 25(3)(d).

32. In the present case, the Trial Chamber's findings establish considerably more than the mere occurrence of multiple crimes. It found a coordinated pattern of Anti-Balaka violence directed against Muslim civilians, perpetrated by groups sharing a common identity, objectives and enemy and capable of coordinated action.³⁶ Those findings provide a sufficient factual basis from which to infer that the perpetrators acted pursuant to the shared common purpose consisting of violently targeting, persecuting, forcibly displacing and otherwise attacking the Muslim civilian population.

33. Importantly for Counts 40 to 42, rape cannot be isolated from that pattern of criminality. The Trial Chamber found that Anti-Balaka members committed rape during the Bossangoa attack and expressly included said crime among the criminal acts constituting the persecutory conduct directed against Muslim civilians.³⁷ Thus, the rape occurred within the same operation, against the same targeted civilian population and as part of the same criminal campaign from which the common purpose may be inferred. As previously submitted by the CLRV, these findings establish that rape was committed *"by Anti-Balaka elements, as part of the same attack, and as part of the same criminal campaign"*.³⁸

34. Accordingly, the pattern of criminality established by the Trial Chamber provides circumstantial evidence of the common purpose under article 25(3)(d). In the circumstances of this case, the repeated and coordinated targeting of Muslim civilians

³⁵ *Ibid.*, paras. 1624-1631.

³⁶ See the Impugned Decision, *supra* note 2, paras. 1207-1209, 3894-3897, 3913-3916, 3921, 3925-3932.

³⁷ *Ibid.*, paras. 4095-4098, 4108.

³⁸ See the Victims' Observations, *supra* note 3, para. 55.

- together with the finding that rape formed part of the Anti-Balaka's persecutory conduct in Bossangoa - supports the conclusion that the rape was committed by members of the group in the course of pursuing that common criminal purpose, rather than as an isolated act detached from it. This is sufficient for the purposes of article 25(3)(d)(i); as explained above, it is not additionally necessary to establish that rape was expressly agreed upon as an element of the common purpose or that Mr Ngaïssona specifically intended or knew that rape would be committed.

e) In light of the existing conflicting opinions in the Court's jurisprudence, is there a threshold applicable to a contribution pursuant to article 25(3)(d) of the Statute? Does the special mens rea ("with the aim of furthering") justify liability for any contribution that is intentionally directed at furthering the group's criminal activity or purpose?³⁹

35. The CLRV submit that article 25(3)(d) does not impose an additional quantitative threshold, such as a requirement that the accused's contribution be "significant" or "substantial". The provision requires that the accused "contribute in any other way" to the commission or attempted commission of the crime by the group. Reading a further qualitative threshold into that language would introduce a requirement not contained in the Statute. This approach has been adopted by several Chambers and, most recently, by the trial chamber in *Al Hassan*, which expressly held that "no additional requirement for a certain level of contribution or threshold to be attained" should be read into article 25(3)(d).⁴⁰ This is also the position previously advanced by the CLRV.⁴¹

³⁹ Footnotes omitted.

⁴⁰ See the *Ruto et al.* Confirmation Decision, *supra* note 8, paras. 353-354; and the "Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi" (Pre-Trial Chamber), [No. ICC-01/12-01/15-84-Red](#), 24 March 2016, (the "*Al Mahdi* Confirmation Decision"), para. 27. See also, the "Decision on the confirmation of charges against Dominic Ongwen" (Pre-Trial Chamber II), [No. ICC-02/04-01/15-422-Red](#), 23 March 2016, para. 44 (the *Ongwen* Confirmation Decision"); the Corrected Version of "Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud" (Pre-trial Chamber I), [No. ICC-01/12-01/18-461-Corr-Red-tENG](#), 3 May 2024, para. 948 and the *Al Hassan* TJ, *supra* note 4, paras. 1241-1244.

⁴¹ See the Victims' Observations, *supra* note 3, paras. 34-35.

36. This interpretation is consistent with the wording and structure of article 25(3). The expression “*in any other way*” identifies article 25(3)(d) as a residual form of liability, intended to encompass contributions to collective criminality that do not fall within the preceding modes of responsibility.⁴² Requiring the contribution nevertheless to attain an additional degree of significance or substantiality would qualify the deliberately broad language chosen by the drafters and risk narrowing the residual function of the provision.

37. This does not mean, however, that any association with, or assistance to, the group is sufficient. There must still be a contribution to the commission or attempted commission of the crime. As clarified in *Al Hassan*, applying the substance of the approach developed in *Katanga* without importing the adjective “*significant*”, the contribution must have “*a bearing on the occurrence of the crime and/or the manner of its commission*”; it is not necessary that the commission of the crime depend upon that contribution.⁴³ The requirement of a genuine nexus between the contribution and the crime therefore gives meaningful content to the objective element without introducing an extra-textual threshold.

38. The contrary approaches in *Mbarushimana* and *Katanga* do not warrant a different conclusion. While *Mbarushimana* required a “*significant*” contribution and *Katanga* adopted that terminology, subsequent Chambers have declined to read such a qualification into the text. Notably, *Al Hassan* considered the *Katanga* criteria and concluded that they could be applied without characterising the requisite contribution as “*significant*”.⁴⁴ This reconciles the legitimate concern underlying the earlier jurisprudence - that liability cannot arise from merely incidental or irrelevant conduct - with the actual language of article 25(3)(d).

⁴² See the *Mbarushimana* Confirmation Decision, *supra* note 4, para. 279.

⁴³ See the *Al Hassan* TJ, *supra* note 4, paras. 1243-1244 and fn. 4027 and the *Katanga* TJ, *supra* note 4, paras. 1633-1634.

⁴⁴ See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 276-283; the *Katanga* TJ, *supra* note 4, paras. 1632-1634 and the *Al Hassan* TJ, *supra* note 4, paras. 1241-1244 and fn. 4027.

39. Moreover, the absence of a “*significant*” or “*substantial*” contribution threshold does not result in overbroad liability. Article 25(3)(d) contains its own limiting requirements. The contribution must be intentional and, under subparagraph (i), must be made with the aim of furthering the criminal activity or criminal purpose of the group. Thus, the objective requirement of an actual contribution bearing upon the crime operates in conjunction with a demanding purposive mental element that substantially limits the scope of liability.⁴⁵ As previously submitted,⁴⁶ the accused must intentionally engage in the contributing conduct and be aware that their conduct contributes to the group’s activities.

40. In the present case, it is also unnecessary to determine the precise lower boundary of the contribution requirement. The Trial Chamber’s findings concerning Mr Ngaïssona’s conduct go well beyond conduct that could plausibly be characterised as incidental or marginal. It found that he acted as a national coordinator, financier, organiser, political representative and legitimising authority for the Anti-Balaka; strengthened its organisational structure; provided political and symbolic authority; facilitated its operational capacity; and sustained and promoted its violent campaign.⁴⁷

41. The Trial Chamber further found that Mr Ngaïssona’s contributions included funding Anti-Balaka operations, legitimising the movement internationally, promoting it as a national resistance force, empowering commanders who perpetrated crimes and coordinating operations. The rape at issue was committed during the operations that his conduct enabled. Accordingly, whether article 25(3)(d) is understood as requiring simply a contribution having a bearing on the crime, as the CLRV submit, or even under the more restrictive approach reflected in the earlier jurisprudence, Mr Ngaïssona’s contributions satisfy the requisite objective element.

⁴⁵ See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 288-289; the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247.

⁴⁶ See the Victims’ Observations, *supra* note 3, para. 36.

⁴⁷ See the Impugned Decision, *supra* note 2, paras. 38, 1563-1575, 3864-3870, 4113.

42. Turning to the second part of question (e), the foregoing interpretation is reinforced by the special *mens rea* requirement under article 25(3)(d)(i). The breadth of the phrase “*in any other way*” must be read together with the requirement that the contribution be made “*with the aim of furthering the criminal activity or criminal purpose of the group*”. The provision does not require a particular type or degree of contribution beyond an actual contribution to the commission or attempted commission of the crime. Accordingly, where conduct in fact contributes to the crime committed by the group and is intentionally directed at furthering the group’s criminal activity or purpose, no additional requirement that the contribution be “*significant*” or “*substantial*” should be read into the provision.⁴⁸

43. Article 25(3)(d)(i) does not impose liability merely because an accused’s conduct objectively benefits a criminal group. The requirement that the contribution be intentionally directed at furthering the group’s criminal activity or purpose distinguishes culpable contribution from inadvertent, neutral or merely incidental assistance. The purposive mental element serves as the principal limiting mechanism of the provision.⁴⁹ Liability does not arise merely because conduct objectively benefits a criminal group. Rather, the contributor must intentionally engage in the relevant conduct with the aim of furthering the group’s criminal activity or criminal purpose. In this respect, the breadth of the phrase “*in any other way*” is counterbalanced by the specificity of the required mental element. This is consistent with the CLRV’s previous submission that the contributor must mean to engage in the relevant conduct and be aware that their conduct contributes to the group’s activities.⁵⁰

44. This does not dispense with the objective nexus required by article 25(3)(d). The special *mens rea* cannot transform conduct that did not contribute to the commission or attempted commission of the crime into a basis for liability. Rather, the objective

⁴⁸ See the *Al Hassan* TJ, *supra* note 4, paras. 1241-1247. See also, the *Ruto et al.* Confirmation Decision, *supra* note 8, paras. 353-354; the *Al Mahdi* Confirmation Decision, *supra* note 40, para. 27 and the *Ongwen* Confirmation Decision, *supra* note 40, para. 44.

⁴⁹ See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 288-289. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247.

⁵⁰ See the Victims’ Observations, *supra* note 3, para. 36.

and subjective requirements operate together: the conduct must have had a bearing on the occurrence of the crime and/or the manner of its commission, while the accused must have intentionally engaged in that conduct with the aim of furthering the group's criminal activity or purpose.⁵¹ The crime need not, however, have depended upon the contribution. This preserves a meaningful contribution requirement without importing an additional quantitative threshold into the Statute.⁵²

45. Importantly, under subparagraph (i), the purposive mental element is directed at the criminal activity or criminal purpose of the group, rather than at each individual crime committed in its pursuit. Article 25(3)(d)(i) refers to furthering the criminal activity or purpose "*where such activity or purpose involves the commission of a crime within the jurisdiction of the Court*". It therefore does not require that the contributor act with the aim of furthering the particular underlying crime. As previously submitted, the reference to "*a crime*" permits a more general understanding of the group's criminal purpose; by contrast, subparagraph (ii) expressly refers to knowledge of the group's intention to commit "*the crime*".

46. This distinction is particularly relevant to Mr Ngaïssona. The Trial Chamber found that his contributions were purposeful, sustained and directed at supporting the Anti-Balaka's criminal objectives. They included funding operations, strengthening the movement's organisational and operational capacity, providing it with political and symbolic legitimacy, empowering commanders and coordinating operations.⁵³ Those are paradigmatic examples of contributions capable of falling within the deliberately broad expression "*in any other way*".

47. Nor is it necessary, under article 25(3)(d)(i), to establish that Mr Ngaïssona directed those contributions specifically towards the commission of rape. The Trial Chamber found that rape was committed by Anti-Balaka elements during the Bossangoa attack and formed part of the persecutory conduct against Muslim civilians.

⁵¹ See the *Al Hassan* TJ, *supra* note 4, paras. 1243-1247 and the *Katanga* TJ, *supra* note 4 paras. 1633-1639.

⁵² See the Victims' Observations, *supra* note 3, para. 34.

⁵³ See the Impugned Decision, *supra* note 2, paras. 38, 1563-1575, 3864-3870, 4113.

The sexual violence thus occurred during operations which were facilitated, sustained and enabled by Mr Ngaïssona's contributions. Once it is established that his conduct contributed to the commission of the crime and that he intentionally engaged in that conduct with the aim of furthering the Anti-Balaka's criminal activity or purpose, the special *mens rea* of article 25(3)(d)(i) is satisfied without proof that his purpose extended specifically to rape.

48. Accordingly, the special *mens rea* under article 25(3)(d)(i) supports liability for any form of contribution that actually facilitates the commission or attempted commission of the crime and is intentionally made with the aim of furthering the group's criminal activity or criminal purpose. The breadth of the contribution contemplated by "*in any other way*" is thus counterbalanced not by an extra-textual requirement of significance or substantiality, but by the provision's express objective nexus and purposive mental element. In the present case, the Trial Chamber's findings establish both the requisite nexus between Mr Ngaïssona's contributions and the crimes committed by the Anti-Balaka and the purposive mental element required by article 25(3)(d)(i).

f) What distinguishes the term "contributes" in article 25(3)(d) of the Statute from "aids, abets or otherwise assists" in article 25(3)(c) of the Statute?

49. The principal distinction between "*contributes*" under article 25(3)(d) and "*aids, abets or otherwise assists*" under article 25(3)(c) lies not in the nature and conduct contributed, but in the structure and object of the two forms of accessory liability. Article 25(3)(c) concerns assistance in the commission or attempted commission of a crime: the accessory must engage in conduct which assists, facilitates or furthers the commission of the crime, and must do so "*for the purpose of facilitating the commission of*

such a crime".⁵⁴ As the CLRV previously submitted, under article 25(3)(c) "*the contribution is directed toward the crime*", rather than towards the principal perpetrator.⁵⁵

50. Article 25(3)(d), by contrast, addresses collective criminality. Its distinctive feature is that the crime must be committed or attempted "*by a group of persons acting with a common purpose*", to which the accused contributes "*in any other way*".⁵⁶ Thus, while the contribution must retain a nexus to the commission or attempted commission of the crime, it is assessed within the broader framework of the group's collective criminal activity. As previously submitted, the "*special and thus differentiating feature*" of article 25(3)(d), compared with article 25(3)(c), is precisely its collective dimension.⁵⁷

51. This distinction is reinforced by the respective mental elements. Under article 25(3)(c), the purpose requirement is directed at facilitating the commission of the crime; in addition, article 30 requires the accessory to possess the requisite intent in relation to that crime, including awareness that it will occur in the ordinary course of events.⁵⁸ Under article 25(3)(d)(i), by contrast, the special *mens rea* is expressly directed at "*furthering the criminal activity or criminal purpose of the group*". Accordingly, the accused need not intend or know that the particular underlying crime will be committed; what must be intentional is the contribution, which must be made with the aim of furthering the group's criminal activity or purpose.⁵⁹

⁵⁴ See the public redacted version of the "Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled 'Judgment pursuant to Article 74 of the Statute'" (Appeals Chamber), [No. ICC-01/05-01/13-2275-Red A A2 A3 A4 A5](#), 8 March 2018 (the "*Bemba et al. AJ*"), paras. 1324-1329 and the *Al Hassan TJ*, *supra* note 4, paras. 1220-1228.

⁵⁵ See the Victims' Observations, *supra* note 3, paras. 48-52.

⁵⁶ See the Mbarushimana Confirmation Decision, *supra* note 4, paras. 269, 274; the *Katanga TJ*, *supra* note 4, paras. 1620-1634 and the *Al Hassan TJ*, *supra* note 4, paras. 1235-1244.

⁵⁷ Victims' Observations, *supra* note 3, paras. 31-34.

⁵⁸ See the *Bemba et al. AJ*, *supra* note 54, paras. 769, 1400 and the *Al Hassan TJ*, *supra* note 4, paras. 1227-1228. See also, the Victims' Observations, *supra* note 3, paras. 51-53.

⁵⁹ See the *Katanga TJ*, *supra* note 4, paras. 1637-1639. The *Al Hassan TJ*, *supra* note 4, paras. 1245-1248 and the Mbarushimana Confirmation Decision, *supra* note 4, para. 289. See also, the Victims' Observations, *supra* note 3, paras. 37-38, 43.

52. The difference is therefore not principally one of the form of assistance. The same conduct - for example, financing, logistical assistance, political support or organisational assistance - may, depending on the circumstances, be relevant under either provision. Nor should the distinction be expressed as requiring a strict causal nexus under article 25(3)(c) but not under article 25(3)(d): as the CLRV previously submitted, the Court's jurisprudence does not establish causal effect as a mandatory stand-alone requirement under article 25(3)(c).⁶⁰ Rather, the essential distinction concerns the framework within which the contribution is made and the object of the special *mens rea*: article 25(3)(c) addresses purposive assistance to the commission of the crime, whereas article 25(3)(d)(i) addresses an intentional contribution to a crime committed through collective criminal activity, made with the aim of furthering the criminal activity or criminal purpose of the group.

53. This distinction is material to the rape charges against Mr Ngaïssona. His financial, organisational, political and operational contributions were directed at strengthening and sustaining the Anti-Balaka and furthering its criminal campaign against Muslim civilians. The Trial Chamber found that rape was committed by Anti-Balaka members during the Bossangoa attack and formed part of the persecutory conduct against the Muslim population.⁶¹ The CLRV have accordingly submitted that rape formed part of the Anti-Balaka's criminal activity undertaken in pursuit of its common purpose, while Mr Ngaïssona's contributions were purposeful, sustained and directed at supporting that criminal activity.⁶²

54. It follows that the inability to establish liability for rape under article 25(3)(c) does not determine the analysis under article 25(3)(d)(i). The relevant inquiry under the latter provision is whether the rape was committed by members of the group in the course of pursuing its common criminal purpose, whether Mr Ngaïssona contributed to its commission within that collective framework, and whether his

⁶⁰ See the *Bemba et al. AJ*, *supra* note 54, paras. 1327-1329. See also, the Victims' Observations, *supra* note 3, paras. 114-118

⁶¹ See the Impugned Decision, *supra* note 2, paras. 4095-4098, 4108.

⁶² See the Victims' Observations, *supra* note 3, paras. 40-44.

contribution was intentionally made with the aim of furthering the Anti-Balaka's criminal activity or purpose. It does not require that his contribution have been specifically directed at facilitating the particular rape.⁶³

g) The Appeals Chamber notes that article 25(3)(d) of the Statute is an innovation derived from the International Convention for the Suppression of Terrorist Bombings (hereinafter: "Terrorist Bombings Convention") which provided for a unique form of liability for inchoate crimes. Article 25(3)(d) of the Statute imports language from article 2(3)(c) of the Terrorist Bombings Convention almost verbatim with the notable exclusion of the word "general" from the text and a structural change, which entailed the creation of distinct sub-paragraphs, that reflect different options relating to the subjective elements that need to be met in order to establish this distinct mode of liability⁶⁴

(i) What, if any, impact does the drafting history have on how the subjective elements of the two sub-paragraphs of article 25(3)(d) of the Statute should be interpreted?

55. The drafting history of article 25(3)(d) confirms that the provision was intended to establish a distinct form of accessorial liability addressing collective criminality. Earlier proposals contemplated forms of responsibility based on conspiracy or participation in a common plan.⁶⁵ The 1996 ILC Draft Code, for example, provided for responsibility where an individual "*directly participates in planning or conspiring to commit such a crime which in fact occurs*".⁶⁶ During the negotiations leading to the Rome Statute, however, conspiracy proved particularly divisive, notably because of differences between common-law and civil-law approaches.⁶⁷ The compromise ultimately adopted drew substantially on the previously agreed language of

⁶³ See the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims' Observations, *supra* note 3, paras. 43-46.

⁶⁴ Footnotes omitted.

⁶⁵ See the Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol. II, Compilations of proposals, [UN Doc. A/51/22](#), 1996, p. 94.

⁶⁶ See the International Law Commission, *Draft Code of Crimes against the Peace and Security of Mankind, with commentaries* (1996), article 2(3)(e) and commentary thereto, paras. (13)-(15), reproduced in *Yearbook of the International Law Commission*, 1996, vol. II, Part Two; Report of the ILC on the work of its forty-eighth session, [UN Doc. A/51/10 \(1996\)](#).

⁶⁷ SALAND (P.), "International Criminal Law Principles", in LEE (R.S.) (Ed.), *The International Criminal Court: The Making of the Rome Statute*, Kluwer Law International, The Hague, 1999, pp. 199-200.

article 2(3)(c) of the Terrorist Bombings Convention, itself derived from article 3(4) of the 1996 EU Convention relating to Extradition.⁶⁸

56. The drafting history is relevant in two respects. First, it confirms the collective character of the responsibility contemplated by article 25(3)(d), while at the same time demonstrating the decision not to adopt liability for conspiracy as such: the Statute requires an actual contribution to the commission or attempted commission of a crime by a group acting with a common purpose.⁶⁹ This confirms the CLRV's previous submission that the distinguishing feature of article 25(3)(d), as compared with article 25(3)(c), is its focus on collective criminality.⁷⁰

57. Second, the drafting history assists in understanding the two subjective alternatives ultimately enacted in subparagraphs (i) and (ii). The Terrorist Bombings Convention provided, within the same sentence, that an intentional contribution must either be made with the aim of furthering the "*general criminal activity or purpose of the group*", or in the knowledge of the group's intention to commit the offence or offences concerned. Article 25(3)(d) preserves those two alternatives but separates them into distinct subparagraphs. That structure reinforces that they constitute alternative subjective bases of liability having different objects of intent and knowledge and should not be interpreted so as to collapse one into the other.⁷¹

⁶⁸ See the International Convention for the Suppression of Terrorist Bombings, adopted 15 December 1997, [A/52/653](#), article 2(3)(c) (the "Terrorist Bombings Convention"). See also the Convention relating to Extradition between the Member States of the European Union, drawn up 27 September 1996, [OJ C 313](#), 23 October 1996, p. 12, article 3(4). SCHABAS (W.A.), *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, Oxford, 2010, p. 436; AMBOS (K.), "Article 25", in TRIFFTERER (O.) and AMBOS (K.) (Eds.), *Rome Statute of the International Criminal Court: A Commentary*, 3rd edition, Verlag C.H. Beck / Hart Publishing, Munich / Oxford, 2016, mn. 28.

⁶⁹ See the "Separate Opinion of Judge Fernández de Gurmendi Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'" (Appeals Chamber), [No. ICC-01/04-01/10-514](#), 30 May 2012, paras. 58 *et seq.* See also, AMBOS (K.), *op. cit. supra* note 68, article 25, mn. 28.

⁷⁰ See the Victims' Observations, *supra* note 3, paras. 31-34.

⁷¹ See the Terrorist Bombings Convention, *supra* note 68, article 2(3)(c). See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1641; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248 and the Victims' Observations, *supra* note 3, paras. 36-38.

58. In particular, under subparagraph (i), the relevant purpose is directed at furthering the “*criminal activity or criminal purpose of the group*”; under subparagraph (ii), the relevant knowledge is expressly directed at “*the intention of the group to commit the crime*”. Accordingly, both the text and the drafting history support the conclusion that article 25(3)(d)(i) is concerned with intentional contributions made to further the group’s criminal activity or criminal purpose, whereas article 25(3)(d)(ii) addresses contributions made with knowledge of the group’s intention to commit the particular crime. The two alternatives must therefore be interpreted distinctly and given independent effect.⁷² The CLRV have previously relied on precisely this distinction in submitting that article 25(3)(d)(i) does not require intent or knowledge directed at the specific crime of rape.

(ii) Does the exclusion of the word “general” from the text of article 25(3)(d)(i) of the Statute affect the interpretation of this provision?

59. The omission of the word “*general*” from article 25(3)(d)(i), as compared with article 2(3)(c) of the Terrorist Bombings Convention, does not, in the CLRV’s submission, render the subjective element under subparagraph (i) specific to the particular crime for which responsibility is attributed. Rather, the omission should be understood in light of the more specific structure of the provision ultimately adopted in the Statute. Article 25(3)(d)(i) does not refer simply to furthering the criminal activity or purpose of a group; it expressly qualifies that activity or purpose by requiring that it “*involves the commission of a crime within the jurisdiction of the Court*”. The object of the contributor’s aim is therefore not criminality in the abstract, but a criminal activity or purpose involving at least one crime the Court’s jurisdiction.

60. Importantly, however, the text does not require the crime which the group’s criminal activity or purpose must “*involve*” to be identical to the particular crime to which the accused contributes and for which responsibility is attributed under the *chapeau* of article 25(3)(d). The provision uses different language for the two matters.

⁷² See the *Katanga* TJ, *supra* note 4, paras. 1637-1641; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248; the Victims’ Observations, *supra* note 3, paras. 37-38, 43.

The *chapeau* requires a contribution to the commission or attempted commission of “*such a crime*” by a group acting with a common purpose, whereas subparagraph (i) requires that the group’s criminal activity or purpose involve “*a crime within the jurisdiction of the Court*”. The use of the indefinite article is significant: it requires only that the activity or purpose which the contributor aims to further involve an ICC crime. It does not require that the crime forming part of that activity or purpose be identical to the particular crime ultimately attributed to the contributor.

61. The distinction is reinforced by the deliberate contrast between subparagraph (i) and (ii). Where the Statute requires a crime-specific mental relationship, it does so expressly, requiring knowledge of the group’s intention to commit “*the crime*”.⁷³ Reading the omission of “*general*” in subparagraph (i) as requiring that the contributor aim to further the particular crime charged would effectively substitute “*the crime*” for the words “*criminal activity or criminal purpose of the group*” and substantially erode the distinction between the two alternative subjective elements. Nothing in the preparatory works appears to establish that the omission of “*general*” was intended to produce that result. Indeed, the available accounts of the negotiations principally explain the adoption of article 25(3)(d) as a compromise concerning conspiracy and the use of the Terrorist Bombings Convention as previously agreed text, rather than attributing a specific substantive intention to the deletion of that word.⁷⁴

62. Accordingly, the omission of “*general*” has a meaningful but more limited effect. It reflects that, under the Statute, the criminal activity or purpose which the contributor aims to further cannot consist in criminality in the abstract: it must involve a crime within the jurisdiction of the Court. It does not follow that the contributor must aim to further, intend, or know of the particular crime to which their responsibility ultimately attaches. Interpreting subparagraph (i) as requiring proof that the contributor aimed

⁷³ See the *Katanga* TJ, *supra* note 4, paras. 1637-1641 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248.

⁷⁴ See SALAND (P.), *op. cit. supra* note 68, pp. 199-200; SCHABAS (W.A.), *op. cit. supra* note 68, p. 436; and AMBOS (K.), *op. cit. supra* note 68, article 25, mn. 28.

to further the particular crime would import a crime-specific mental element that the text does not contain and that the Statute expressly separately addresses under subparagraph (ii).

63. This distinction is particularly relevant in the present case. The criminal activity or purpose of the Anti-Balaka which Mr Ngaïssona intentionally sought to further involved crimes within the jurisdiction of the Court, including the violent targeting and persecution of Muslim civilians. The crime for which his responsibility is at issue under article 25(3)(d)(i) - rape - need not itself have constituted the crime which Mr Ngaïssona specifically aimed to further, provided that the rapes were committed by members of the group in the pursuit of that criminal activity or purpose and that his conduct contributed to their commission. As previously submitted, the Trial Chamber found that rape was committed by Anti-Balaka members during the Bossangoa attack and included rape among the acts constituting the persecution of the Muslim population.⁷⁵ Accordingly, the absence of proof that Mr Ngaïssona specifically intended, desired or knew that rape would be committed does not exclude liability under article 25(3)(d)(i), provided that the rapes formed part of the criminal activity or purpose that he intentionally sought to further and that his contribution facilitated their commission.⁷⁶

h) In relation to each of the sub-paragraphs of article 25(3)(d) of the Statute: i. What are the mens rea requirements? ii. Does article 30 of the Statute apply or is the mens rea “otherwise provided” for?

64. As previously submitted, article 25(3)(d) expressly sets out the subjective elements applicable to this mode of liability. In addition to requiring that the contribution itself be intentional, the Statute establishes two alternative subjective requirements: under subparagraph (i) the contribution must be made “*with the aim of furthering the criminal activity or criminal purpose of the group*”, where such activity or

⁷⁵ See the Impugned Decision, *supra* note 2, paras. 4095-4098, 4108. See also, the Victims’ Observations, *supra* note 3, paras. 40-43.

⁷⁶ See the Victims’ Observations, *supra* note 3, paras. 43-46. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248.

purpose involves the commission of a crime within the jurisdiction of the Court; under subparagraph (ii) it must be made “*in the knowledge of the intention of the group to commit the crime*”.⁷⁷ The two subparagraphs thus establish alternative and independent bases of culpability, rather than cumulative requirements.

65. The requirement that the contribution be “*intentional*” is common to both subparagraphs. It concerns the conduct constituting the contribution: the contributor must consciously and deliberately engage in that conduct, being aware that it contributes to the activities of the group. By itself, however, this requirement does not entail that the contributor shares the group’s intention to commit the crime.⁷⁸ This requirement should therefore be distinguished from the additional subjective element specified respectively in subparagraphs (i) and (ii), which define the contributor’s mental relationship to the group’s criminal activity or intended crime.

Article 25(3)(d)(i)

66. Under article 25(3)(d)(i), the intentional contribution must additionally be made with the aim of furthering the criminal activity or criminal purpose of the group. This is a purposive, rather than merely cognitive, requirement: it is insufficient that the contributor merely knows that their conduct may benefit the group; the contribution must be directed at furthering its criminal activity or purpose.⁷⁹

67. As explained in response to question (g), however, the object of this purposive element is the criminal activity or criminal purpose of the group, not necessarily the particular crime for which responsibility is attributed. The criminal activity or purpose must itself involve “*a crime within the jurisdiction of the Court*”, but that crime need not

⁷⁷ See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 288-289. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1643 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims’ Observations, *supra* note 3, paras. 36-38.

⁷⁸ See the *Mbarushimana* Confirmation Decision, *supra* note 4, para. 288; the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, para. 1245. See also, the Victims’ Observations, *supra* note 3, para. 36.

⁷⁹ See the *Mbarushimana* Confirmation Decision, *supra* note 4, para. 289; the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 45, paras. 1245-1247. See also, the Victims’ Observations, *supra* note 3, paras. 36-37.

be identical to the crime to which the accused contributed under the *chapeau* of article 25(3)(d). Accordingly, the contributor must deliberately seek to advance a criminal activity or purpose that they understand to involve criminality within the Court's jurisdiction, but article 25(3)(d)(i) does not additionally require intent or knowledge directed at each individual crime committed in the course of pursuing that activity or purpose.⁸⁰ This interpretation is consistent with the CLRV's previous submission that the reference to "*a crime*" in subparagraph (i), permits a broader understanding of the criminal activity or purpose pursued by the group.

Article 25(3)(d)(ii)

68. Article 25(3)(d)(ii) establishes a different subjective relationship. The intentional contribution must be made "*in the knowledge of the intention of the group to commit the crime*". Unlike subparagraph (i), the object of the additional mental element is therefore the particular crime intended by the group. General awareness that the group pursues criminal objectives is insufficient; the contributor must know of the group's intention to commit the specific crime for which responsibility is attributed.⁸¹

69. The distinction between the two subparagraphs is therefore substantive. Under subparagraph (i), the contributor acts with the aim of furthering the group's criminal activity or purpose, which must involve a crime within the Court's jurisdiction; under subparagraph (ii), the contributor acts with knowledge of the group's intention to commit the particular crime. This distinction gives effect both to the different language employed in the two subparagraphs and, as explained in response to question (g), to the contrast between "*a crime within the jurisdiction of the Court*" in subparagraph (i) and "*the crime*" in subparagraph (ii).⁸²

⁸⁰ See the *Katanga* TJ, *supra* note 4, paras. 1637-1639; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247; the Minority Opinion of Judge Van den Wyngaert, *supra* note 21, para. 288. See also, the Victims' Observations, *supra* note 3, paras. 37, 43.

⁸¹ See the *Katanga* TJ, *supra* note 4, paras. 1641-1643 and the *Al Hassan* TJ, *supra* note 4, para. 1248. See also, the Victims' Observations, *supra* note 3, para. 38.

⁸² See the *Katanga* TJ, *supra* note 4, paras. 1637-1643 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims' Observations, *supra* note 3, paras. 37-38.

Application of article 30

70. In the CLRV's submission, the subjective elements of article 25(3)(d) are "*otherwise provided*" within the meaning of article 30(1). Article 25(3)(d) expressly specifies both the intentional character of the contribution and the alternative additional mental elements applicable under subparagraphs (i) and (ii). It would therefore be inconsistent with article 30(1) to superimpose upon those expressly formulated requirements the default intent and knowledge requirements of article 30 in respect to the underlying crime.⁸³ This is particularly important under subparagraph (i): requiring the contributor additionally to intend the particular crime, or to be aware that it will occur in the ordinary course of events under article 30(2)(b), would introduce a crime-specific subjective requirement absent from article 25(3)(d)(i) and substantially undermine the distinction between the two alternative limbs.

71. This does not mean, however, that article 30 is irrelevant to the interpretation of the mental-state terminology employed in article 25(3)(d). Where article 25(3)(d) uses concepts of intention or knowledge without defining them differently, article 30 may inform their meaning. Thus, in relation to subparagraph (ii), the accused's "*knowledge*" of the group's intention should be understood by reference to article 30(3): the contributor must be aware that the group possesses the relevant intention when engaging in the conduct constituting the contribution.⁸⁴ Article 30 therefore performs an interpretative function, assisting in the construction of the concepts of intention and knowledge employed in article 25(3)(d), but does not supply an additional *mens rea* requirement beyond that specifically prescribed by that provision.

72. Accordingly, article 30 does not operate as an independent and cumulative source of mental-element requirements for liability under article 25(3)(d)(i) or (ii). Rather, article 25(3)(d) "*otherwise provides*" the applicable subjective requirements,

⁸³ See the *Katanga* TJ, *supra* note 4, paras. 1637-1641 and *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims' Observations, *supra* note 3, paras. 36-38.

⁸⁴ See the *Katanga* TJ, *supra* note 4, para. 1641 and the Victims' Observations, *supra* note 3, para. 38.

while the definitions contained in article 30 may assist in construing the concepts of intention and knowledge used in that provision.⁸⁵

73. Applied to the present case, article 25(3)(d)(i) therefore does not require proof that Mr Ngaïssona intended the rapes committed in Bossangoa or was aware that rape would occur in the ordinary course of events. The relevant questions are whether his contribution was intentional and whether it was made with the aim of furthering the Anti-Balaka's criminal activity or criminal purpose involving crimes within the jurisdiction of the Court. As previously submitted, the Trial Chamber's findings concerning Mr Ngaïssona's sustained organisational, financial, political and operational support establish that his contributions, were intentionally directed towards advancing the Anti-Balaka's criminal activity or purpose, while the rapes formed part of the persecutory campaign against Muslim civilians pursued by that group.⁸⁶

i) What awareness must the accused have as to the "criminal activity or criminal purpose of the group"? How specific must their knowledge be with regard to the crimes involved?

74. Under article 25(3)(d)(i), the accused must be aware of the criminal character of the activity or purpose which they aim to further. More specifically, since the provision requires that *"such activity or purpose involves the commission of a crime within the jurisdiction of the Court"*, the accused must be aware of the factual circumstances establishing that the activity or purpose which they seek to further involves the commission of a crime within the jurisdiction of the Court. This requirement is additional to the intentional nature of the contribution and follows from the purposive *mens rea* required under subparagraph (i).⁸⁷

⁸⁵ See the *Katanga* TJ, *supra* note 4, paras. 1637-1643 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims' Observations, *supra* note 3, paras. 36-38.

⁸⁶ See the Impugned Decision, *supra* note 2, paras. 1563-1575, 3864-3870, 4095-4098, 4108, 4113. See also, the Victims' Observations, *supra* note 3, paras. 40-46.

⁸⁷ See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 288-289. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1639; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247 and the Victims' Observations, *supra* note 3, paras. 36-37.

75. The accused's awareness need not, however, extend to each specific crime through which the group pursues its criminal activity or purpose, nor, in particular, to the crime for which responsibility is ultimately attributed under article 25(3)(d). As explained above, article 25(3)(d)(i) requires that the criminal activity or purpose involve "*a crime within the jurisdiction of the Court*"; it does not require that the accused aim to further, intend or know of the particular crime committed by the group. This contrasts with article 25(3)(d)(ii), which expressly requires knowledge of the group's intention to commit "*the crime*". Giving effect to this textual distinction, subparagraph (i) requires awareness of the criminal character of the activity or purpose which the accused aims to further, but knowledge of each offence committed in its pursuit.⁸⁸

76. Nor should this requirement be understood as demanding knowledge of the legal characterisation of the relevant conduct or of the legal elements establishing the Court's jurisdiction. What is required is awareness of the factual circumstances giving the activity or purpose its relevant criminal character. Thus, an accused need not appreciate that the conduct legally constitutes, for example, persecution as a crime against humanity; it is sufficient that they are aware of the factual circumstances constituting the criminal activity or purpose which they deliberately seek to further. Article 30 may assist in construing the concepts of intention and knowledge in this respect, but does not superimpose upon article 25(3)(d)(i) a requirement of intent or knowledge concerning the particular underlying crime.⁸⁹

77. Applied to the present case, it is therefore unnecessary to establish that Mr Ngaïssona knew that the Anti-Balaka's criminal activity or purpose specifically involved the commission of rape. It is sufficient that he was aware of the factual circumstances establishing that the criminal activity or purpose which he intentionally

⁸⁸ See the *Katanga* TJ, *supra* note 4, paras. 1637-1641; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also the Minority Opinion of Judge Van den Wyngaert, *supra* note 21, para. 288; the Victims' Observations, *supra* note 3, paras. 37-38.

⁸⁹ See article 30(1)-(3) of the Statute. See also, the *Katanga* TJ, *supra* note 4, paras. 1637-1641; the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248 and the Victims' Observations, *supra* note 3, paras. 36-38.

sought to further involved the commission of crimes within the jurisdiction of the Court. The Trial Chamber's findings concerning his awareness of, and purposeful contribution to, the Anti-Balaka's violent campaign against Muslim civilians satisfy this requirement. The rapes committed by Anti-Balaka members during the Bossangoa attack were not extraneous to that criminal activity, but formed part of the same persecutory campaign against Muslim civilians and were expressly included by the Trial Chamber among the acts constituting persecution. Accordingly, the attribution of responsibility for rape under article 25(3)(d)(i) does not additionally require proof that Mr Ngaïssona knew that rape itself formed part of the group's criminal activity or purpose or would be committed in its pursuit.⁹⁰

j) *How should the phrase “where such activity or purpose involves the commission of a crime” be interpreted? Does it constitute an objective element or a subjective element?*

78. In the CLRV's submission, the phrase “*where such activity or purpose involves the commission of a crime within the jurisdiction of the Court*” primarily defines an objective characteristic of the criminal activity or criminal purpose referred to in article 25(3)(d)(i): that activity or purpose must involve the commission of at least one crime within the jurisdiction of the Court. The phrase thereby circumscribes the criminal activity or purpose which may ground responsibility under subparagraph (i), excluding liability based merely on an aim to further criminality unrelated to crimes within the Court's jurisdiction.⁹¹

79. However, the objective character of this requirement does not mean that it falls outside the accused's *mens rea*. Article 25(3)(d)(i) requires the contribution to be made “*with the aim of furthering*” the very criminal activity or purpose which is subsequently qualified by the words “*where such activity or purpose involves the commission of a crime within the jurisdiction of the Court*”. The purposive mental element must therefore

⁹⁰ See the Impugned Decision, *supra* note 2, paras. 4095-4098, 4108, 4113 and the Victims' Observations, *supra* note 3, paras. 40-46.

⁹¹ See the *Katanga* TJ, *supra* note 4, paras. 1627, 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1235-1236, 1245-1247. See also, the Victims' Observations, *supra* note 3, paras. 33, 37.

encompass awareness of the factual circumstances by virtue of which the activity or purpose that the accused aims to further involves at least one crime within the jurisdiction of the Court. Otherwise, responsibility under subparagraph (i) could arise where the accused purposefully furthered an activity or purpose without being aware of the circumstances giving it the criminal character prescribed by the provision.⁹²

80. This does not require the accused to know the legal characterisation of the relevant conduct as a crime within the jurisdiction of the Court. Rather, they must be aware of the relevant factual circumstances and aim to further the criminal activity or purpose so characterised. Nor does it follow that the accused must know that the criminal activity or purpose involves the particular crime for which responsibility is attributed. Article 25(3)(d)(i) deliberately refers to “*a crime within the jurisdiction of the Court*”, rather than “*the crime*”. Thus, although the activity or purpose must objectively involve at least one crime within the Court’s jurisdiction and the accused’s awareness must extend to its relevant factual criminal character, the crime satisfying that requirement need not be identical to the crime ultimately attributed to the accused.⁹³

81. This interpretation preserves the distinction between the two alternatives in article 25(3)(d). Under subparagraph (i), the accused must aim to further a criminal activity or purpose which they understand, on the basis of the relevant factual circumstances, to involve at least one crime within the jurisdiction of the Court. Under subparagraph (ii), by contrast, the Statute expressly requires knowledge of the group’s intention to commit “*the crime*”, thereby establishing a crime-specific cognitive requirement.⁹⁴

⁹² See the *Mbarushimana* Confirmation Decision, *supra* note 4, paras. 288-289; the *Katanga* TJ, *supra* note 4, paras. 1637-1639 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1247. See also, the Victims’ Observations, *supra* note 3, paras. 36-37.

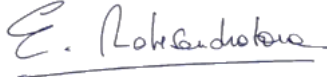
⁹³ See the *Katanga* TJ, *supra* note 4, paras. 1637-1641 and the *Al Hassan* TJ, *supra* note 4, paras. 1245-1248. See also, the Victims’ Observations, *supra* note 3, paras. 37-38.

⁹⁴ *Ibid.*

Respectfully submitted.



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Dated this 30th day of September 2026

At The Hague (The Netherlands), La Rochelle (France), Bangui (Central African Republic and Dakar (Senegal)