CAS 2019/A/6667 Patrice-Edouard Ngaïssona v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece

Arbitrators: Mr Philippe Sands, KC, Barrister in London, United Kingdom

Mr Manfred Nan, Attorney-at-law in Amsterdam, the Netherlands

in the arbitration between

Patrice-Edouard Ngaïssona, Central African Republic

Represented by Mr Geert-Jan Alexander Knoops and Ms C.J. Knoops-Hamburger, Attorneys-at-law, Amsterdam, The Netherlands

-Appellant-

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation and Mr Roberto Nájera Reyes, Senior Legal Counsel

-Respondent-

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I. PARTIES

1. Mr Patrice-Edouard Ngaïssona (the "Appellant") is a former Central African Republic Minister for Youth and Sport and has held, *inter alia*, the following positions: President of the Central African Republic Football Association ("CARFA"), Member of the Organising Committee of the FIFA World Cup, Member of the FIFA Member Associations Committee.

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions and evidence. Additional facts and allegations found in the Parties' written and oral submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. The background facts of this case concern the civil conflict which is ongoing since 2012 in the Central African Republic (CAR). In summarising the facts in this section, the Panel relies on the pleadings of the Parties, and wishes to make clear that it is not making findings of its own.

5. The "Séléka",[1] a predominantly Muslim armed group which emerged in 2012, is said to have taken power from CAR President at the time, François Bozizé, and forced him into exile. Michel Djotodia, a Séléka leader, became President and remained in that position until January 2014.

6. During the conflict atrocities and violations of international humanitarian law are alleged to have been committed both by government forces under the former President Bozizé and the Séléka, including the time after March 2013 when the Séléka came to power.

7. According to various UN reports, since the launch of the Séléka attacks in December 2012, the country has been facing a serious security crisis, with widespread and grave violations of human rights, including arbitrary arrests and detention, sexual violence against women and children, torture, rape, targeted

[1] Meaning coalition in Sango.

killings, recruitment of child soldiers and other abuses, reportedly committed by uncontrolled Séléka elements and unidentified armed groups across the country. The situation was particularly alarming in Bangui where the looting and plundering of homes, offices, businesses and health-care facilities, as well as carjacking and armed robberies, were ongoing. Outside the capital, the security situation was also deteriorating, with acts of vandalism, human rights violations and assault by Séléka elements against the civilian population.

8. In response to these attacks, another military group known as "Anti-Balaka" was said to have been formed with the aim of removing Michel Djotodia from power and ousting the Séléka from CAR. The Anti-Balaka targeted and engaged in hostilities against the Muslim population in western CAR in retribution to the actions of Séléka elements against the civilian population, for which Muslims were perceived as collectively responsible for, complicit with or supportive of the Séléka.

9. On 10 January 2014, President Michel Djotodia resigned. When the Séléka forces withdrew from Bangui, the Muslim population was reportedly left unprotected and exposed to escalating retributive sectarian violence by Anti-Balaka groups. The campaign involved the reported targeting of the Muslim civilian population and those perceived to have supported the Séléka. Crimes, such as attacks against the civilian population, displacement, forcible transfer or deportation, summary executions, killings, mutilations, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings (mosques), routine pillaging of Muslim houses and shops, and persecution, were reported to be systematically carried out.

10. By February 2014, nearly all Muslim neighbourhoods in Bangui were reported to have been cleared of their inhabitants. Bangui's original Muslim resident population of approximate 130,000 had been allegedly reduced to only around 900 by March 2014. Most of western CAR's Muslim population had sought refuge in the neighbouring countries.

11. In June 2014, the International Federation for Human Rights (FIDH) published a report on the situation in CAR (the "FIDH Report").

12. On 1 July 2014, the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013) submitted an interim report which is dated 26 June 2014 to the President of the UN Security Council (the "Interim Report")

13. On 29 October 2014, the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013) submitted their final report which is dated 28 October 2014 to the President of the UN Security Council (the "Final Report").

14. According to, amongst other evidence, the Final Report, Mr. Ngaïssona was reported to be one of the most prominent Anti-Balaka leaders and held the post of the general coordinator of the "*Coordination nationale des libérateurs du peuple centrafricain*" (CLPC), also known as the "*Mouvement des patriotes anti-balaka*". Such military organisation was reported to be engaged in hostilities against the Séléka in CAR. This included attacks against the civilian population, displacement, torture and cruel treatment, imprisonment or other forms of deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings, routine pillaging of Muslim houses and shops and persecution in several CAR locations identified in the Final Report.

15. The Final Report focused on Mr. Ngaïssona's central role, reach and leadership within the CLPC and the Anti-Balaka group during the armed conflict by identifying his efforts to structure the different components and groups within the organisation. In particular, Mr. Ngaïssona on behalf of the CLPC, was reported to have issued and signed identification cards for its members to allow them to participate in the disarmament, demobilisation and reintegration process. There is reported evidence that Mr. Ngaïssona also appointed new commanders and other officers in the region of Boda, and even signed on 23 July 2014 an agreement, facilitated by the UN Security Council, as to engage in mediation to resolve the conflict on behalf of the Anti-Balaka group, known as the "Brazzaville Summit".

16. Additionally, Mr. Ngaïssona was reported to have openly supported the Anti-Balaka, one of the opposing sides in a conflict which was not only a political fight, but also a religious one. As such, crimes were reportedly committed against the Muslim population in CAR and against Séléka supporters. Mr. Ngaïssona, *inter alia*, made public statements on behalf of the CLPC, as he was the CLPC declared leader, and is documented stating that the aim of the movement, namely to end the Séléka regime, has been achieved.

17. On 7 December 2018, the International Criminal Court (ICC) Pre-Trial Chamber issued a Warrant of Arrest for Patrice-Edouard Ngaïssona (the "Warrant"), according to which:

> "*there are reasonable grounds to believe that Ngaïssona – who was the most senior leader and the National General Coordinator of the Anti-Balaka as of January 2014 and, by virtue of his position, had authority over and was kept informed of operations conducted in furtherance of the organisation's policy, the establishment of which he had contributed to – is liable for having committed jointly with others and/or through others or having aided, abetted or otherwise assisted in the commission or attempted commission of the following crimes.*
>
> *The Bangui Area*
>
> *(…)*

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute), deportation or forcible transfer of population (article 7(1)(d) of the Statute)65 and persecution (article 7(1)(h) of the Statute);66 and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute)67 and displacement of the civilian population (article 8(2)(e)(viii) of the Statute.

(…)

Bossangoa

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder and attempted murder (articles 7(1)(a) and 25(3)(f) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder and attempted murder (articles 8(2)(c)(i) and 25(3)(f) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

Lobaye Prefecture

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely deportation or forcible transfer of population (article 7(1)(d) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), displacement of the civilian population (article 8(2)(e)(viii) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

Yaloké

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

Gaga

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute), deportation or forcible transfer of population (article 7(1)(d) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute), displacement of the civilian population (article 8(2)(e)(viii) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

Bossemptélé

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute), persecution (article 7(1)(h) of the Statute) and other inhumane acts (article 7(1)(k) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), mutilation (article 8(2)(c)(i) and/or 8(2)(e)(xi) of the Statute), intentionally

directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

Boda

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute), deportation or forcible transfer of population (article 7(1)(d) of the Statute), imprisonment or other severe deprivation of physical liberty (article 7(1)(e) of the Statute), persecution (article 7(1)(h) of the Statute) and other inhumane acts insofar as Muslims in the enclave resided in deplorable circumstances (article 7(1)(k) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance (article 8(2)(e)(iii) of the Statute) and displacement of the civilian population (article 8(2)(e)(viii) of the Statute).

Carnot

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

Berberati

(…)

In the light of the foregoing, the Chamber finds reasonable grounds to believe that the acts described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely murder (article 7(1)(a) of the Statute) and persecution (article 7(1)(h) of the Statute); and war crimes, committed in the context of and associated with an armed conflict not of an international character, namely murder (article 8(2)(c)(i) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute).

(…)

FOR THESE REASONS, THE CHAMBER HEREBY

ISSUES a warrant of arrest for Patrice-Edouard Ngaïssona (…)"

18. On 12 December 2018, Mr. Ngaïssona was arrested and has since then been in custody of the ICC.

19. On 19 September 2019, a hearing on the confirmation of charges against Mr. Ngaïssona commenced before the Pre-Trial Chamber II of the ICC.

20. On 11 December 2019, the Decision on the confirmation of charges against Mr. Ngaïssona was passed by the ICC (the "ICC Confirmation Decision").

21. The above-mentioned evidence and reported facts are disputed between the Parties. Mr. Ngaïssona challenges the reliability and relevance of the documents mentioned above and the evidence referenced therein, and has declared himself to be innocent of the charges.

B. Proceedings before the investigatory chamber of the FIFA Ethics Committee

22. On 1 April 2019, Mr. Ngaïssona was notified that formal investigation proceedings had been opened against him for possible violations of articles 13 (2), 14, 23 and 24 FIFA Code of Ethics ("FCE") (2012 version).

23. The evidence gathered by the investigatory chamber comprise the Warrant, the Final Report and other reports issued by several non-governmental organisations ("NGOs").

24. On the basis of the above and public statements made by Mr. Ngaïssona himself, the investigatory chamber concluded in its report which is dated April 2019 that Mr. Ngaïssona had violated article 13 FCE (General duties), article 14 FCE (Duty of neutrality), article 22 FCE (Non-discrimination) and article 23 FCE

(Protection of physical and mental integrity) (the "Investigatory Chamber Report").

C. Proceedings before the adjudicatory chamber of the FIFA Ethics Committee

25. On 3 May 2019, Mr. Ngaïssona was informed that adjudicatory proceedings had been opened on the basis of the report of the investigatory chamber.

26. On 27 May 2019, following FIFA's invitation to do so, Mr. Ngaïssona submitted his position and arguments extending to both procedural (flaws diminishing his right to be heard as well as the principle of equal arms) and substantial (failure to substantiate any factual elements relevant to his alleged breaches of duties and obligations) issues.

27. On 25 July 2019, a hearing was held at the FIFA Headquarters in Zurich.

28. On 28 November 2019, the adjudicatory chamber of the FIFA Ethics Committee communicated its decision (the "Appealed Decision") to the Appellant, which determined *inter alia* the following:

"(…)

30. The mentioned military attacks carried out by the Anti-Balaka group and in which Mr. Ngaïssona participated as the national coordinator of the CLPC, were focus exclusively to a group of people that can be identified by their religion (the Islam) and political opinion (Seleka supporters).

4. Conclusions of the investigatory chamber

31. Taking the above considerations into account in their entirety, the investigatory chamber concluded that Mr Ngaïssona had violated the following provisions of the FCE:

- *Art. 13 of the FCE 2012 (General duties);*
- *Art. 14 of the FCE 2012 (Duty of neutrality);*
- *Art. 22 of the FCE 2012 (Non-discrimination);*
- *Art. 23 of the FCE 2012 (Protection of physical and mental integrity);*

(…)

63. It should be noted that Swiss law applies complimentarily to the regulations of sport associations. In this regard, according to Swiss law, sporting measures imposed by Swiss associations are subject to Swiss civil law (CAS 2006/C/976 & 986, para. 127) and must be clearly distinguished from criminal penalties (CAS 2006/A/1102 & 1146, para. 52). Also under Swiss law the right of associations to impose sanctions or disciplinary measures on athletes and clubs is not the exercise of power delegated by the state,

rather it is the expression of the freedom of associations and federations (cf. CAS 2005/C/976 & 986, para. 125).

(…)

74. More specifically, the mere argument that there is a possibility that the State court may come up with a different decision than that of the FIFA Ethics Committee is not a serious reason, as the possibility of conflicting decisions is present in every case of parallel proceedings involving a decision of a sporting governing body and a criminal court. This is so, mainly because the interests at stake and the applicable principles are different, as already explained in previous paragraphs. If one were to accept this argument, the FIFA adjudicatory proceedings would end up being always suspended, which is manifestly not the legislative aim of the FIFA Code of Ethics.

(…)

89. It is the Panel's opinion that, principally, the reports and documents by the Office of the Prosecutor of the ICC, a warrant arrest of the Office, a report from a Panel of Experts of the United Nations and an investigative report of the International Federation for Human Rights (FIDH) contain a comprehensive analysis of the armed conflict in CAR, the key leaders of the different military groups such as "Anti-Balaka" and the participation of Mr Ngaïssona in these events.

(…)

97. The final report, with the support of extensive documents, have established a very dramatic situation lived in the CAR between 2012 and 2014, in which Mr Ngaïssona appears to have participated by leading one of the armed groups.

(…)

2. The participation of Mr. Ngaïssona as one of the key leaders of the Anti-Balaka movement

(…)

103. Illustrative of Mr Ngaïssona's participation in the above mentioned armed conflict is the fact that he held a relevant political role, i.e. coordinator of the "Coordination National des Libérateurs du Peuple Centrafricain" (hereinafter: "CLPC"), one of several groups of the Anti-Balaka movement, a military organisation which was engaged in hostilities against the Seleka group in CAR.

(…)

108. Mr Ngaïssona in his position before the current adjudicatory proceedings contests his participation in the different massacres, but does not contest the fact that he was a significant leader coordinator of the CLPC and acted as the "National General Coordinator". He merely addresses to the fact that the conclusions leading to his participation in any hostilities are mere unfounded opinions and without any supportive evidence.

(…)

113. Consequently, the adjudicatory chamber has no doubt that Mr Ngaïssona participated in the aforementioned events which occurred in CAR between 2012 and 2014, playing a key role within the structure of the Anti-Balaka military movement.

114. For the above mentioned reasons, Mr. Ngaïssona's participation in the armed conflict must now be evaluated in the light of the provisions contained in the FCE and mainly whether this participation comports a breach of his duty of neutrality, the protection of the integrity and his non-discrimination obligations.

b) Possible violation of art. 23 of the FCE (Protection of physical mental integrity)

115. Art. 23 of the FCE provides that persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others. They shall not use offensive gestures and language in order to insult someone in any way or to incite others to hatred or violence, as well as must refrain from all forms of physical or mental abuse, all forms of harassment, and all other hostile acts intended to isolate, ostracise or harm the dignity of a person.

(…)

119. In view of the above, the Panel concludes that the involvement of Mr Ngaïssona (a senior football official at the time) in the violent events which occurred in his country, in particular by positioning himself as a leader of one of the sides or factions involved in the armed conflict and failing to oppose, prevent or stop the violent actions of the movement he belonged to, represent sufficient elements to consider him responsible for his stance towards those events. Therefore, the actions and conduct of Mr Ngaïssona, in the scope of the aforementioned events occuring in 2013 – 2014 in the CAR, had a negative effect on the physical and mental integrity of a large number of people, which Mr Ngaïssona has failed to protect, respect and safeguard in violation of art. 23 of the FCE.

c) Possible violation of art. 22 of the FCE (Discrimination and defamation)

(…)

121. Mr. Ngaïssona's role as one of the key leaders of the Anti-Balaka movement entailed he was vested with great responsibility for the actions undertook by those under his supervision or command. Mr. Ngaïssona himself recognises that he acted as a coordinator and supervising in the scope of the so-called peacebuilding actions and dialogue. He not only failed in this mission but through his attitude, whether passive or active, he allowed the decimation of the Muslim community.

122. It is again noted that the responsible involvement in an event is not only evaluated under the light of a direct and active participation. In this regard, art. 6 FCE, contemplates that breaches of this Code shall be subject to the sanctions set forth in the Code, whether acts of commission or omissions, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or attempted act, and whether the parties acted as principal, accomplice or instigator.

123. In the case at hand, the adjudicatory chamber does not conceive a more paradigmatic example of discrimination of a specific ethnic group, than its decimation as a result of an armed and violent conflict. A conflict, which as portrayed by the different reports, is characterized by its despicable nature against the human rights and dignity.

124. For the above mentioned reasons, the responsibility of Mr. Ngaïssona deriving from his involvement in the armed conflict is clear. This is the consequence of his relevant position as a key leader of the Anti-Balaka movement, whose members in an act of revenge against another group give rise, again, to an armed conflict including attacks against the civilian population, displacement, forcible transfer or deportation, summary executions, killings, mutilations, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings, routine pillaging of Muslim houses and shops, and persecution.

125. For all the above mentioned reasons, Mr. Ngaïssona shall be held accountable for having committed the infringement of discrimination in accordance with art. 22 of the FCE.

d) Possible violation of art. 14 FCE (Duty of neutrality)

126. It must be underlined that political neutrality is a key aspect for FIFA, which is also recognised as one of its pillars. Expressions of this neutrality are the numerous examples in which FIFA has warned its member associations for allowing any type of political interference of governments in their daily business, or, even, the use of football events to promote political statements such as the right for independency of certain regions or some historical territorial rights. This principle pivots around the idea of fraternity, peace and understanding between the different nations.

127. Bearing the above in mind, the above provision requires from the persons bound by the FCE the obligation of remaining politically neutral, which means that no public statements or positioning is allowed, as well as holding any political position.

128. In the present case, Mr. Ngaïssona held a relevant position in a political and military movement called the Anti-Balaka movement. Mr. Ngaïssona does not even contest this fact, even though he indicates that his role was more close to a peace maker than to the military character of this movement.

129. The nature of his role, which will has already been assessed in previous paragraphs, is irrelevant when assessing the infringement of his duty of neutrality and, specifically, his obligation as a football official to remain politically neutral. It is an established fact that Mr. Ngaïssona played a significant political role in the events occurred in CAR between 2013 and 2014. In addition, it is noted that his political role during these events has been the basis of a warrant of arrest by the Prosecutor's Office of the ICC and serves as starting point of the allegations of genocide and other criminal offences under judgment before the ICC.

130. Consequently, by not remaining politically neutral during the above mentioned events, Mr. Ngaïssona violated his duty of neutrality and art. 14 of the FCE.

e) Conclusion

131. Overall, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr. Ngaïssona by his conduct presently relevant, has violated art. 14 (Duty of neutrality), 22 (Discrimination and defamation) and 23 (Protection of physical and mental integrity) of the FCE.

132. In the present context, bearing in mind the gravity of the violations of art. 14, 22 and 23 of the FCE, the adjudicatory chamber finds there is no necessity to consider the potential violation of art. 13 of the FCE set out in the final report (see in this sense CAS 2014/A/3537, Vernon Manilal Fernando v. FIFA, par. 105), which, in any case, appears to be consumed by Mr. Ngaïssona's breach of the aforementioned FCE provisions.

G. Sanctions and determination of sanctions

(…)

134. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offence, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts

responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).

135. When evaluating, first of all, the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that Mr. Ngaïssona was not only the president of CARFA, but also a member of various FIFA committees and, as such, he had a responsibility to serve the football community as a role model. Yet, his conduct revealed a pattern of not only disrespect for core values of the FCE, but also human dignity.

136. With regard to the circumstances of the case, the adjudicatory chamber emphasises that several of its aspects render the case at hand to be of unprecedented gravity. Firstly, the dramatic context in which Mr. Ngaïssona committed the above mentioned breaches illustrates the seriousness of said infringements. It is recalled that Mr. Ngaïssona participated at an armed conflict in the CAR during 2013 and 2014 in which several aggressions to the population took place, providing for, amongst others and again, attacks against the civilian population, displacement, forcible transfer or deportation, summary executions, killings, mutilations, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings, routine pillaging of Muslim houses and shops.

137. The above is not only despicable but is completely against the objectives and goals pursued by FIFA, football and sport in general. Any type of participation or acceptance of the above-mentioned violent acts is unacceptable.

138. Second, and bearing the above in mind, the specific participation of Mr Ngaïssona in the above-mentioned dramatic events as one of the key leaders of the military movement co-responsible for these atrocities, allows no margin for the consideration of any mitigating circumstance. It is undisputed that Mr Ngaïssona was placed at the top of the hierarchy of said movement, but also it appears that he was involved in internal fights for gaining power within this movement.

139. In any case, the Panel notes that Mr Ngaïssona has not expressed, at any point during these proceedings and in spite of the overwhelming evidence against him, awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies). To the contrary, he explicitly claimed not to have violated any provision of the FCE in his position (and at the hearing, through his legal representatives).

(...)

141. With regard to the type of sanction to be imposed on Mr Ngaïssona, the adjudicatory chamber deems – in view of the particularly serious nature of his misconduct (cf. par. II.95 et seqq. Above) – only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Ngaïssona by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 6 par. 2 lit. c) of the FDC).

(…)

143. In the present case, the Panel considers that, while all three breaches (of arts. 14, 22 and 23 of the FCE) are serious, the principal violation committed by Mr Ngaïssona was that of the protection of physical and mental integrity (art. 23 of the FCE). In reaching such consideration, the adjudicatory chamber reasoned that Mr Ngaïssona's actions as depicted above had direct consequences on the integrity and the lives of the people affected by the armed conflict in the CAR during 2013 and 2014, who were subjected to various degrees of mistreatment, displacement and aggressions, going as far as torture and executions.

144. In view of the above, and in accordance with the content of arts. 11 and 23 par. 6 of the FCE, the adjudicatory chamber concludes that, in the present case, the duration the ban to be imposed has a maximum limit of five years and by that the maximum applicable sanction can only be increased up to one third as appropriate.

145. At this point, the adjudicatory chamber reaffirms that FIFA has a zero-tolerance policy on human rights violations and condemns all forms of violence.

146. In conclusion and in light of the above considerations, Mr Ngaïssona is hereby banned (administrative, sports or any other) at national and international level for a period of six years and eight months (the maximum duration in accordance with art. 23 par. 6 and art. 11 of the FCE). In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.

147. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Ngaïssona adequately, in particular given the extreme gravity of the matter and the damage caused. Hence, the adjudicatory chamber considers that the ban imposed on Mr Ngaïssona should be completed with a fine.

148. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4

of the FDC). In the case at hand – taking into account the severe outcome of Mr Ngaïssona's misconduct, which could never be properly measured by the level of pain and suffering he inflicted on the people affected by the relevant conflict in which he actively participated (to the clear detriment of football and thus FIFA), as well as the fact that he held very prominent official positions in association football -, the adjudicatory chamber determines that a fine of CHF 500,000 would be appropriate. Accordingly, Mr Ngaïssona shall pay a fine of CHF 500,000.

(…)

DECISION

1. Mr Patrice-Edouard Ngaïssona is found guilty of having infringed art. 14 of the FCE (Duty of neutrality), art. 22 of the FCE (Non-discrimination) and art. 23 of the FCE (Protection of physical and mental integrity).

2. Mr Ngaïssona is hereby banned for six years and eight months from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with art. 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.

3. Mr Ngaïssona shall pay a fine in the amount of CHF 500,000 within 30 days of notification of the present decision.

4. Mr Ngaïssona shall pay costs of these proceedings in the amount of CHF 3,000 within 30 days of notification of the present decision.

5. Mr Ngaïssona shall bear his own legal and other costs incurred in connection with the present proceedings.

(…)"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 19 December 2019, the Appellant lodged a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport (the "CAS"), challenging the Appealed Decision. In his statement of appeal, the Appellant appointed Ms Anita L. DeFrantz, Attorney-at-law in California, USA, as arbitrator.

30. On 9 January 2020, the CAS Court Office informed the parties that the Appellant's primary relief to suspend the current proceedings until the issuance of a final decision before the ICC was denied.

31. On 24 January 2020, the CAS Court Office informed the parties that the Panel appointed to hear this case was constituted as follows:

President:	Mr. Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece
Arbitrators:	Ms. Anita L. DeFrantz, Attorney-at-law in California, USA
	Mr. Benoît Pasquier, Attorney-at-law in Zurich, Switzerland

32. On 29 January 2020, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

33. On 18 February 2020, the Appellant challenged the nomination of Mr. Benoît Pasquier. In his challenge the Appellant claims that "*on 11 February 2020 (…) several circumstances casting serious doubts on Mr. Benoît Pasquier's independence and impartiality came to light. (…) Mr. Benoît Pasquier has worked as a Legal Counsel for FIFA for several years. (…) In 2013, Mr. Benoît Pasquier became the General Counsel and Director of Legal Affairs of the Asian Football Confederation (…) In 2020, the FIFA launched its new Diploma in Football Law. The programme is managed directly by FIFA, and Mr. Benoît Pasquier is one of the appointed teachers on this course. (…) The Appellant's concerns are only increased by the fact that Mr. Pasquier did not consider necessary to inform the parties about the existence of the above circumstances (…)*".

34. On 25 February 2020, Mr. Benoît Pasquier wrote a letter to the CAS Court Office stating that he considers the Appellant's grounds for challenge of his nomination to be meritless, notwithstanding which and in order to avoid any perception of bias, he recuses himself of his participation in the proceedings.

35. On 25 February 2020, the CAS Court Office informed the Respondent to nominate a new arbitrator by 3 March 2020.

36. On 2 March 2020, the Respondent nominated Mr. Manfred Nan, attorney-at-law in Amsterdam, the Netherlands, as arbitrator.

37. On 12 March 2020, the CAS Court Office informed the parties that the Panel was now composed as follows:

President:	Mr. Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece
Arbitrators:	Ms. Anita L. DeFrantz, Attorney-at-law in California, USA
	Mr. Manfred Nan, attorney-at-law in Amsterdam, the Netherlands

38. On 9 April 2020, the Respondent filed its Answer in accordance with Article R55 of the Code.

39. On 14 April 2020, the CAS Court Office invited the parties to submit whether they prefer a hearing to be held in this matter or not.

40. On 21 April 2020, the Appellant requested that the filing of additional submissions be allowed, since there are "*serious discrepancies between the Appealed Decision and the Respondent's Answer, specifically with respect to*

the Appellant's alleged misconduct. These discrepancies effectively introduce new and unexpected factual allegations, which were not part of the Appealed Decision". Additionally, the Appellant requested that a hearing be held in this matter.

41. On 21 April 2020, the Respondent informed the CAS Court Office that it did not consider a hearing necessary in this matter in light of the extensive written exchanges between the parties.

42. On 28 May 2020, the CAS Court Office informed the parties that the Panel has decided to hold a hearing in this matter.

43. On 29 May 2020, the Respondent informed the CAS Court Office that is prefers that the hearing be held via videoconference.

44. On 2 June 2020, the Appellant reiterated his request that the Panel allow additional submissions and he also requested that the hearing be held 2-3 months after the lifting of the ICC Detention Centre's restrictions due to the Appellant's impossibility to effectively communicate with counsel.

45. On 17 June 2020, the CAS Court Office informed the parties that the Panel has decided to allow a second round of submissions and invited the Appellant to file his reply by 2 July 2020. The CAS Court Office further informed the parties that the date of the hearing would be fixed after the lifting of the restrictions in place at that time at the ICC Detention Centre.

46. On 2 July 2020, the Appellant filed his Reply.

47. On 27 July 2020, the Respondent filed its Rejoinder.

48. On 6 August 2020, the Appellant informed the CAS Court Office that all visits to the ICC Detention Centre remain suspended on account of the COVID-19 pandemic and requested that the hearing be held 2-3 months after the lifting of the ICC Detention Centre's restrictions.

49. On 18 August 2020, the Appellant informed the CAS Court Office that the restrictions on account of the COVID-19 pandemic would remain in place at the ICC Detention Centre until at least 17 September 2020.

50. On 24 September 2020, the Appellant informed the CAS Court Office that the restrictions on account of the COVID-19 pandemic would remain in place at the ICC Detention Centre until at least 16 October 2020 and reiterated his request that the hearing be suspended.

51. On 16 August 2021, the CAS Court Office invited the Appellant to inform the former and the Panel about the status of this case.

52. On 17 August 2021, the Appellant informed the CAS Court Office that the prohibition of visits to the ICC Detention Centre was lifted on 15 July 2021 and

requested that, on account of counsels' heavy workload, a hearing be held in this case not earlier than February 2022.

53. On 20 August 2021, the Respondent did not object to the Appellant's request as long as a hearing date was fixed as soon as possible during February 2022.

54. On 28 September 2021, the Appellant informed the CAS Court Office that he would not be available for a hearing on the proposed dates of 7 or 8 December 2021.

55. On 1 November 2021, the CAS Court Office informed the parties that the Panel would be available for a hearing on 8, 9 and 10 March 2022.

56. On 2 November 2021, the Appellant informed the CAS Court Office that counsel for the Appellant is not available on the proposed dates and proposed alternative dates instead.

57. On 16 November 2021, the CAS Court Office informed the parties that a hearing would be held in this case on 10 May 2022 at the CAS Court Office in Lausanne.

58. On 7 March 2022, the CAS Court Office issued an Order of Procedure and requested the parties to sign and return it by 31 March 2022.

59. On 7 March 2022, the Respondent sent a signed copy of the Order of Procedure to the CAS Court Office.

60. On 31 March 2022, the Appellant sent a signed copy of the Order of Procedure to the CAS Court Office.

61. On 6 May 2022, the CAS Court Office, following telephone conversations with the parties, issued a letter informing the parties that the hearing would be postponed as Ms. Anita L. DeFrantz would only be able to attend the hearing via videoconference on account of a health urgency which did not allow her to travel, and the Appellant objected to a hearing being held without all the arbitrators attending the hearing in person.

62. On 6 May 2022, the Appellant informed the CAS Court Office of the availability of his counsels in view of the ICC trial hearing dates.

63. On 12 August 2022, the CAS Court Office informed the parties of the proposed dates for the hearing and requested information on their availability.

64. On 23 August 2022, the Appellant informed the CAS Court Office that he was not available on the proposed dates and proposed alternative dates in November 2022.

65. On 26 August 2022, the CAS Court Office informed the parties that a hearing would be held in this case on 10 November 2022 at the CAS Court Office in Lausanne.

66. On 20 October 2022, the CAS Court Office informed the parties that, for health reasons, Ms Anita DeFrantz has decided to step down as an arbitrator in this case.

67. On 20 October 2022, the Appellant requested from the CAS Court Office the contact details of four arbitrators in order to contact them and enquire as to their availability.

68. On 24 October 2022, the CAS Court Office informed the parties that the Appellant nominated Mr. Philippe Sands, KC, Barrister in London, United Kingdom, as arbitrator in this case.

69. On 7 November 2022, the CAS Court Office informed the parties that a hearing would be held in this case on 10 February 2023 at the CAS Court Office in Lausanne.

70. On 24 January 2023, following an enquiry by the Appellant, the Respondent requested the CAS Court Office for a 5-day extension to confirm in which capacity Mr Llorca would testify at the hearing.

71. On 26 January 2023, the CAS Court Office informed the parties that, since it was not deemed feasible to obtain Mr. Llorca's witness statement, if any, given the date of the hearing, should Mr. Llorca eventually appear as a witness, the CAS Court Office will ensure that the Appellant be given sufficient time to prepare the cross-examination of Mr. Llorca.

72. On 30 January 2023, the Respondent confirmed that Mr. Llorca will testify at the hearing in his capacity as an expert and his testimony will be related to the issues reflected in the UN Security Council's Reports, his knowledge about the conflict in CAR and the role that the Appellant played in it. The Respondent further informed the CAS Court Office that Mr. Llorca waived his immunity under Article VI, Section 20 UN Convention solely to give his testimony before CAS in the present matter.

73. On 1 February 2023, the Appellant sent a letter to the CAS Court Office stating that he does not oppose the conditions set forth by the UN for the examination of Mr. Llorca subject to the following: a) any consultation between Mr. Llorca and the UN representative be subjected to the Panel's authorization, b) the schedule be accommodated to allow the potential consultations between Mr. Llorca and the UN representative to take place without shortening the questioning time of the Appellant, and c) the Respondent clarifying whether Mr. Llorca would be comfortable answering questions in English.

74. On 2 February 2023, the Respondent agreed to the Appellant's comments, namely that the potential consultation between Mr. Llorca and the UN representative be subject to the Panel's authorization and that the time for such consultation not be taken from the parties' effective time for examination and confirmed that his testimony will be given in English.

75. On 7 February 2023, the Respondent informed the CAS Court Office that the UN has confirmed that Mr. Nicolas Perez, a UN legal representative, will attend the hearing, by electronic means, during the testimony of Mr. Llorca.

76. On 10 February 2023, a hearing was held at the CAS Headquarters in Lausanne, Switzerland.

77. The Panel sat in the following composition:

President:	Mr. Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece
Arbitrators:	Mr. Philippe Sands, KC, Barrister in London
	Mr. Manfred Nan, Attorney-at-law in Amsterdam, the Netherlands

78. The Panel was assisted by Mr. Fabien Cagneux, CAS Managing Counsel.

79. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.

80. The following persons attended the hearing:

- The Appellant was represented by Mr. Geert-Jan Alexander Knoops, Ms. C.J. Knoops-Hamburger and Ms. Chiara Guidici, counsel;

- The Respondent was represented byMr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation and Mr Roberto Nájera Reyes, FIFA Senior Legal Counsel;

- Mr. Aurélien Llorca as an expert and Mr. Nicolas Perez, as UN legal representative.

81. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected, following which the Panel closed the hearing.

IV. SUBMISSIONS OF THE PARTIES

82. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

83. The Appellant's submissions, in essence, may be summarized as follows:

- The Appealed Decision was rendered on 25 July 2019, i.e. on the day of the hearing before the FIFA adjudicatory chamber, which did not allow the members of the chamber to properly reflect on the parties' arguments raised during the hearing. In this respect, the methodology of passing the decision

on the day of the hearing and crafting the reasons of the decision in the following months (until 28 November 2019) violates article 6(1) of the European Convention on Human Rights (fair trial), notably its principle according to which "justice must not only be done, it must also be seen to be done", which also applies in civil law.

- By eluding the application of ECHR case law and considering that it was bound exclusively by its own legal framework and by Swiss law, the adjudicatory chamber erred in law. Instead, it should apply relevant ECHR case law with respect to situations of parallel criminal and disciplinary proceedings and rules of fairness to the assessment of the evidence.

- The Appealed Decision misapplied the standard and the burden of proof. The comfortable satisfaction standard, when confronted to allegations of war crimes and crimes against humanity, is the highest as these allegations are the most serious that can be brought against an individual. The adjudicatory chamber failed to explain why the burden of proof should be reduced instead. It also did not call any witnesses to testify, while at the same time did not take into consideration the procedural disadvantage of the Appellant who was unable to present evidence from the ICC case file as such evidence was confidential.

- The adjudicatory chamber failed to apply the principles derived from the ECHR jurisprudence which aim to protecting the fundamental rights of the investigated person, while at the same time do not contest the principle invoked in the Appealed Decision, according to which "an effective fight to protect the integrity of sport depends on prompt action". No reasons were provided as to why FIFA cannot wait to take its decision until state proceedings have concluded or why a suspension of the disciplinary proceedings would have prejudiced FIFA's duties as a sports governing body.

- Article 6(2) of the ECHR and the Appellant's right to be presumed innocent was violated by the Appealed Decision reaching a number of conclusions as to the Appellant's alleged actions that are still to be decided upon in the case before the ICC and containing statements attributing the commission of crimes to the Appellant. The relevant articles of the FCE refer to a type of conduct that constitutes criminal offences under most legal systems, including the ICC's.

- The adjudicatory chamber failed to assess the validity of the evidence provided by the investigatory chamber, which repeatedly ignored the Appellant's will to cooperate and to be heard during the first stage of the proceedings. Moreover, the Appellant proved extensively that the documents relied upon by the investigatory chamber did not serve to establish relevant facts.

- The adjudicatory chamber erred in law by relying on evidence provided by entities mischaracterised as neutral and of undisputed impartiality.

- The Appealed Decision misinterpreted the principle of *lis pendens* and ignored the undisputed fact that the FIFA proceedings directly emerged from the ICC proceedings.

- The adjudicatory chamber did not specifically invite the parties to make submissions on the sanctions to be imposed.

- The sanctions imposed on the Appellant are disproportionate. His calls for cooperation were left unanswered by the investigatory chamber and mitigating circumstances were not explored in violation of articles 9(2) and 60(1) of the 2018 FCE. In addition, no clear reasoning is set out for the determination of the amount of the fine imposed on the Appellant and, by comparison, in the Valcke case the former general secretary of the FIFA Executive Committee was sanctioned with a fine five times less than the one imposed on the Appellant. The sanctions were imposed in the absence of direct evidence and witnesses' testimonies. In overall, the Appealed Decision does not explain the envisaged goal of the sanctions imposed on the Appellant and why these sanctions would be necessary to reach the envisaged goal, as there is no clear assessment as to how the Appellant's alleged misconduct would have affected FIFA, other than potentially by damaging its reputation.

- The adjudicatory chamber failed to examine aggravating and mitigating circumstances equally in violation of article 60(1) of the 2018 FCE.

- The adjudicatory chamber erred in law and in fact by making its decision on the basis of evidence provided by anonymous witnesses, which it has no discretion to do as it is not a criminal court.

- The adjudicatory chamber failed to determine why it excluded some of the documents provided by the investigatory chamber and decided to consider "three set of documents" only without explaining what other documents were not considered and for which reasons.

- The summary appreciation of facts made by the adjudicatory chamber differs from the detailed appreciation performed by Pre-Trial Chamber II of the ICC on 11 December 2019, as the latter dismissed 79 charges out of the 111 charges initially brought by the ICC Prosecutor against the Appellant.

- The Appealed Decision erred in fact by ignoring the Appellant's challenge of the reliability and the relevance of the documents presented by the investigatory chamber, by attributing to him a quote without supporting evidence and by holding the Appellant responsible for crimes that were not confirmed in the Confirmation Decision.

- In view of the above, the Appellant is requesting the Panel:

  "1. Primary relief:

  - to SUSPEND the appeal proceedings against the Impugned Decision until the issuance of a final decision in his case before the ICC and to order a (preliminary) hearing on the issue of lis pendens;

  2. Alternative relief

  - to ANNUL the Impugned Decision, including all the sanctions imposed by the Adjudicatory Chamber of FIFA, and to order a hearing on the merits of the appeal;

  3. Further alternative relief

  - to MITIGATE the sanctions imposed on Patrice-Edouard Ngaïssona, seeing as they are disproportionate."

- In his Reply, the Appellant further argues that the Respondent's answer does not cure the lack of evidentiary material to support the factual allegations of FIFA and that it is based on a selection of information and a partial assessment of its own evidence in order to fit its narrative.

- The Appellant claims that it is the Respondent who bears the burden of proving the alleged offences of the Appellant and that it failed to prove key elements of its case in this respect.

- FIFA is bound by the ECHR principles because Article 3 of the FIFA Statutes indicates that "FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights". The same ECHR provisions apply in the current proceedings before CAS.

- The Appealed Decision considered the Appellant as guilty of the acts he is accused of before the ICC and in this way violated his right to the presumption of innocence.

- The sanctions imposed are disproportionate. FIFA did not substantiate any connection between the Appellant and the commission of crimes against the civilian population in CAR.

- By means of his Reply, the Appellant is requesting the CAS:

  "1. Primary relief

  – to ANNUL the Impugned Decision, including all the sanctions imposed by the Adjudicatory Chamber of FIFA;

2. Alternative relief

– to MITIGATE the sanctions imposed on the Appellant, seeing as they are disproportionate."

84. In turn, the Respondent's submissions may be summarized as follows:

- The Respondent claims in essence that this case is about the Appellant's conduct during the armed conflict that took place in his country between 2013 and 2015 (when he was also a high-ranking football official subject to ethics obligations), which constitute a breach of articles 14, 22 and 23 FCE, irrespective of whether the ICC may conclude that the Appellant committed or not war crimes and crimes against humanity, as there is a clear differentiation between the two proceedings.

- In addition, any act performed by the Appellant as from the moment he became a football official, be it in the context of football or not, can be scrutinized by FIFA's judicial body through the prism of FIFA's regulations, being irrelevant whether "the Appellant had committed the alleged offences in his capacity as a FIFA individual" or not.

- The Appellant focuses mainly on technical and procedural aspects and only summarily addresses his serious misconduct described in the Appealed Decision by proclaiming his innocence and arguing errors in the interpretation of the facts from the deciding body.

- The Appellant's (unfounded) procedural complaints have to be dismissed in view of the curing effect of the Panel's *de novo* power against any procedural irregularity.

- As to the substance of the case, the Appellant did not bring any concrete arguments in support of his position that the Appealed Decision failed to assess the validity of the evidence. The adjudicatory chamber's assessment of the evidence on file was correct and the Appellant and FIFA merely do not share the same views with respect to the evidence under analysis.

- In addition, the ICC Confirmation Decision, on which the Appellant fully relies, has confirmed – at a much higher standard than the one currently applicable – that certain facts occurred. This does not mean that the Appellant was not involved in those events, that the Appellant did not breach the FCE through his involvement or that the dismissed charges could not be confirmed in a civil procedure such as this one, in which a lower standard of proof applies. Hence, the adjudicatory chamber was free to rely on said report and give it as much or little weight as it wanted.

- In this case, the charges brought against the Appellant are different. As such, facts that were not suitable to condemn the Appellant for war crimes or crimes against humanity may still be sufficient to find him guilty of

breaching the FCE. Thus, any general argument from the Appellant attempting to rule out from this case all the facts pertaining to the charges that were dismissed by the ICC shall not be taken into account. In any case, even if the Panel were to follow only the charges that were established in the Confirmation Decision, they would suffice to confirm the Appealed Decision.

- The Appellant provided no proof in support of his complaints that certain documents are absent from the file (while FIFA, having limited investigative powers, was unable to obtain said documents as they were not publicised via digital means but via paper copies) and that he has effectively challenged the reliability and the relevance of the documents presented by the investigatory chamber before the adjudicatory chamber.

- FIFA's reliance on several reports put together by independent experts that have conducted on-site investigations about the events that took place in the Central African Republic is perfectly acceptable, in view of the limited means of investigation of sports organisations. In this same line, it is underlined that the Ethics Committee did not just blindly rely on the external reports that it had at its disposal, but instead, it conducted thorough analysis of these investigative documents before reaching its conclusions.

- The Appellant was never hindered from providing his position concerning the possible sanctions that could be imposed and there is no requirement for the investigatory chamber to request any sanctions against the Appellant, in order for the adjudicatory chamber to decide on any such sanctions.

- The FIDH Report that was based on the testimonies of numerous anonymous witnesses constitutes written/documentary evidence, which FIFA adduced in the context of these proceedings to support its claims against the Appellant and the individuals interviewed by FIDH, not all of which are anonymous, are not to be considered FIFA's witnesses. Therefore, there is no breach of article 44(2) FCE. This approach has been confirmed by CAS in previous occasions. After all and in view of the private associations' limited powers of investigation, it cannot be expected from FIFA to summon all the persons that were interviewed by FIDH as witnesses, namely when they do not fall under its realm (i.e. they are not football officials). Moreover, the mere fact that the statements contained therein cannot be tested under cross-examination does not mean that they ought to be disregarded.

- It is not disputed that the Appellant has had the right to participate in the proceedings before the Ethics Committee (and now before the CAS), to adduce evidence and to submit evidentiary requests, as well as to express his views on all the facts of the case, including the FIDH Report.

- The principle of *lis pendens* cannot apply *in casu*, mainly because the object of the present civil proceedings (analysing a violation of the FCE) differs

from that of the ICC's criminal proceedings (analysing the Appellant's criminal liability). Article 53 of the Swiss Code of Obligations specifically provides for the principle of independence between criminal and civil proceedings and the fact that criminal investigations are (allegedly) pending does not constitute a mandatory ground for a stay of the arbitral proceedings, namely as a decision of the ICC would never be binding on CAS. In other words, even if the ICC were to consider that the Appellant has not committed any war crimes or crimes against humanity, this will not define nor affect the characterization of his acts as breaches of the FCE and vice versa. Moreover, FIFA has an interest to obtain an expedited award on the matter.

- The Appellant has violated his basic duty of political neutrality under Article 14 FCE as there is no doubt that (contemporaneously with his involvement in football as the highest official in the country) he was a high-ranking official in the Anti-Balaka movement in his country, which in itself had both a political and military nature. This is further evidenced by the fact that the Appellant was the General Coordinator - and thus enjoyed significant power - in a movement whose initial goal was to remove the President of the Central African Republic from power, oust and defend the country against the Séléka and target the Muslim population in western Central African Republic in retribution for the crimes and abuses committed by the Séléka.

- The Appellant also violated Article 22 FCE. The Anti-Balaka movement acted with the purpose of obtaining retribution for the crimes and abuses committed by the Séléka. The latter of these goals was sought through the targeting of the Muslim population in the Central African Republic, which the Anti-Balaka held responsible for the actions of the Séléka. As a high-ranking leader of this movement, the Appellant was involved in its decisions to implement such actions against a selected group of individuals, specifically the Muslim population. It is submitted that the Appellant's level of involvement with the movement is sufficient to link him directly to its decisions and activities, not just at the political level, but also in implementing the atrocious retribution against Muslims in the Central African Republic.

- Under the Appellant, the Anti-Balaka movement's acts led to the decimation of the country's Muslim population, to general hostilities and attacks against civilians exclusively for ethnic, religious and political reasons, as well as the displacement, forcible transfer or deportation, summary execution, killing, mutilation, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty and sexual offences against Muslims. These events were largely evidenced by different reports of renowned international entities and substantiate the Appellant's violation of Article 23 FCE.

- The seriousness and gravity of the Appellant's infringements which have damaged FIFA's and football's image as well as caused tremendous pain and suffering to his various victims, bear witness that the sanctions imposed are just and proportionate. Moreover, the Appellant has not brought forward any arguments with respect to the proportionality of the sanctions. The Respondent argues that, taking into account the accused person's status, the damage to the sport, the nature and severity of the infringement and the fact that the Appellant has not shown the slightest trace of remorse, must impose proportional sanctions that will dissuade others to act similarly, punish the offender, prevent recidivism from the latter and, most importantly, restore the victims' and public's trust in the core values that football can – and must – promote.

- In view of the above, the Respondent is requesting the Panel to issue an award on the merits:

  "(a) rejecting the reliefs sought by the Appellant;

  (b) confirming the Appealed Decision;

  (c) ordering the Appellant to bear the full costs of these arbitration proceedings."

- In its Rejoinder, the Respondent submits that the Appellant's Reply contains no new arguments, but vague and unsubstantiated points and misrepresentations of FIFA's arguments.

- The Appellant was clearly informed about which of his acts resulted in a breach of the FCE in the Final Report and in the Appealed Decision.

- The standard of proof to be applied by CAS is that of the comfortable satisfaction of the Panel and the conclusion to be reached is whether the Appellant breached articles 14, 22 and 23 of the FCE and not whether he committed war crimes and crimes against humanity.

- FIFA never contested it bears the burden of proving that a breach of the FCE was committed. Nonetheless, in contesting the Appealed Decision, the Appellant also has to prove the arguments he wishes to rely on.

- As to the substance of the dispute, the Appellant limits himself in presenting general and vague reproaches towards the evidence relied on by the Final Report and the Appealed Decision without substantiating them with any corroborating evidence.

- The Appealed Decision did not contain any direct or indirect reasoning that appears to regard the accused as guilty of war crimes or crimes against humanity but limited its reasoning to the infringements of the FCE.

V. JURISDICTION

85. The jurisdiction of the CAS, which is not disputed, derives from article 58 (1) of the FIFA Statutes (2019 edition) as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"* and Article R47 of the Code.

86. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

87. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

88. The appeal was filed within the 21 days set by article 58 (1) of the FIFA Statutes (2019 edition) and Article R49 of the Code. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

89. It follows that the appeal is admissible.

VII. APPLICABLE LAW

90. Article R58 of the Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

91. According to Article R57 of the FIFA Statutes (2019 edition) "*[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

92. In light of those provisions, the Panel must decide the present dispute in accordance with, primarily the FIFA Regulations, in particular the FCE, and, additionally, Swiss law.

93. In respect of the material aspects of the case and the different editions of the FCE, the Panel observes that the Appellant is accused of violating, either by acts or omissions, his obligations under the FCE and the circumstances relevant to such accusations span over a period of several months, namely from December

2013 until December 2014 (paragraph 48 of the Appealed Decision). During this period, the 2012 version of the FCE ("2012 FCE") was applicable. The 2012 FCE was succeeded by the 2018 version of the FCE ("2018 FCE"), which entered into force on 12 August 2018.

94. In addition, the Panel notes that the Appealed Decision points to the fact that there are corresponding provisions between the 2012 FCE and the 2018 FCE and that "*the different FCE editions cover the same offence and that the maximum sanctions in the current (2018) FCE are equal or less*", in order to conclude, in accordance with Article 3 of the 2018 FCE, that the 2018 FCE is applicable in this matter.

95. Article 3 of the 2018 FCE provides the following: "*This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code.*"

96. The Panel also notes that neither party disputed the applicability of the substantive rules included in the 2018 FCE.

97. For the sake of completeness, the Panel shall examine the intertemporal issue in the application of the FCE, which has been the subject of analysis in other cases involving the application of the same set of rules. In particular, the CAS Panel in CAS 2017/A/5003 ruled that:

> *139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of lex mitior makes it necessary.*
>
> *140. Article 3 FCE (2012 edition) departs from the traditional lex mitior principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. The CAS has previously held that even if the starting point of Article 3 FCE (2012 edition) is different, the approach is equivalent to the traditional principle of lex mitior (CAS 2016/A/4474, at para. 147).*

98. Pursuant to this approach, which the Panel will follow, the substantive provisions applicable at the time of the events of the case and at the time of its prosecution, respectively, are as follows:

- Article 14 of the 2012 FCE (Duty of neutrality) provides that: "*In dealings with government institutions, national and international organisations, associations and groupings, persons bound by this Code shall, in addition to observing the basic rules of art. 13, remain politically neutral, in accordance with the principles and objectives of FIFA, the confederations, associations, leagues and clubs, and generally act in a manner compatible with their function and integrity*". Article 14 of the 2018 FCE is, in its relevant part, identical to the provision of the 2012 FCE. Further than that, Article 14(2) of the 2018 FCE provides for a maximum limit to the sanction of a ban from taking part to any football-related activity which is threatened to be imposed in the event of violation of the duty of neutrality ("*Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years*."). The Panel observes that there is no such maximum limit in the 2012 FCE. Article 6 of the 2012 FCE provides that breaches are punishable by one or more of, inter alia, a fine or a ban on taking part in any football-related activity. At the same time, Article 22 of the FIFA Disciplinary Code (version 2011 which was applicable both at the time relevant for the events of this case and at the beginning of the investigation of the Appellant by FIFA on 1 April 2019), to which reference is made in Article 6(2) of the 2012 FCE, provides that "*[a] person may be banned from taking part in any kind of football-related activity (administrative, sports or any other)*", namely also without setting out a maximum limit for the ban to be imposed. As a result, the application of the 2018 FCE does not lead to the potential imposition of more severe sanctions than the ones threatened under the 2012 FCE, which is not disputed by the parties.

- Article 23 of the 2012 FCE (Non-discrimination) provides that: "*Persons bound by this Code <u>may</u> not offend the dignity or integrity of a country, private person or group of people through contemptuous, discriminatory or denigratory words or actions on account of race, skin colour, ethnic, national or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason*". Article 22(1) of the 2018 FCE (Discrimination and defamation) is, in its relevant part, almost identical to the provision of the 2012 FCE ("*Persons bound by this Code <u>shall</u> not offend the dignity or integrity of a country, private person or group of people through contemptuous, discriminatory or denigratory words or actions on account of race, skin colour, ethnicity, nationality, social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason*"), the only difference being the use of the word "may" in the 2012 FCE, which is

replaced by "shall" in the 2018 FCE. Further than that, Article 22(3) of the 2018 FCE provides for a maximum limit to the sanction of a ban from taking part to any football-related activity which is threatened to be imposed in the event of violation of the aforementioned provision ("*Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years*"). The Panel observes that there is no such maximum limit in the 2012 FCE. Article 6 of the 2012 FCE provides that breaches are punishable by one or more of, *inter alia*, a fine or a ban on taking part in any football-related activity. At the same time, Article 22 of the FIFA Disciplinary Code (version 2011 which was applicable both at the time relevant for the events of this case and at the beginning of the investigation of the Appellant by FIFA on 1 April 2019), to which reference is made in Article 6(2) of the 2012 FCE, provides that "*[a] person may be banned from taking part in any kind of football-related activity (administrative, sports or any other)*", namely also without setting out a maximum limit for the ban to be imposed. As a result, the application of the 2018 FCE does not lead to the potential imposition of more severe sanctions than the ones threatened under the 2012 FCE, which is not disputed by the parties.

- Finally, Article 24 of the 2012 FCE (Protection of physical and mental integrity) provides in its relevant part that "*1. Persons bound by this Code shall respect the integrity of others involved. They shall ensure that the personal rights of every individual whom they contact and who is affected by their actions is protected, respected and safeguarded. 2. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts for a considerable duration, intended to isolate or ostracise a person and affect the dignity of the person*". Article 23 of the 2018 FCE (Protection of physical and mental integrity) is, in its relevant part, virtually identical to the provision of the 2012 FCE ("*1. Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others. 2. Persons bound by this Code shall not use offensive gestures and language in order to insult someone in any way or to incite others to hatred or violence. 3. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts intended to isolate or ostracise or harm the dignity of a person*"). The Panel, considering the minor differences in the language, is convinced that it can hardly be contemplated, nor is it argued by any of the parties, that the FIFA legislator of the 2018 FCE wanted to sanction a different type of conduct than the one who drafted the previously applicable version of 2012. Lastly, Article 23(6) of the 2018 FCE provides for a maximum limit to the sanction of a ban from taking part to any football-related activity which is threatened to be imposed in the event of violation of that provision ("*Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases*

and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years"). The Panel observes that there is no such maximum limit in the 2012 FCE. Article 6 of the 2012 FCE provides that breaches are punishable by one or more of, inter alia, a fine or a ban on taking part in any football-related activity. At the same time, Article 22 of the FIFA Disciplinary Code (version 2011 which was applicable both at the time relevant for the events of this case and at the beginning of the investigation of the Appellant by FIFA on 1 April 2019), to which reference is made in Article 6(2) of the 2012 FCE, provides that "*[a] person may be banned from taking part in any kind of football-related activity (administrative, sports or any other)*", namely also without setting out a maximum limit for the ban to be imposed. As a result, the application of the 2018 FCE does not lead to the potential imposition of more severe sanctions than the ones threatened under the 2012 FCE, which is not disputed by the parties.

- Last but not least, the Panel notes that Article 11 of the 2018 FCE also limits for the first time the length of a sanction in case of multiple violations of the FCE, which is likewise equally in favour of the Appellant.

99. Therefore, the Panel confirms that, in respect of the material aspects of the case, it shall apply the 2018 FCE. The Panel is content to reach the same conclusion with the Panel in case CAS 2019/A/6669 (para. 117 – 127 of the abstract of the award as published on the CAS website), which also had to decide between the applicability of the 2012 and 2018 versions of the FCE.

100. As far as the law governing the procedural aspects of the case is concerned, the Panel notes that the Appellant was notified by FIFA that formal investigation proceedings had been opened against him for possible violations of the FCE on 1 April 2019. Hence, and considering that the 2019 version of the FCE came into force on 1 August 2019, procedural matters are governed by the regulations in force at the time of the procedural acts in question, namely the 2018 FCE.

VIII. MERITS

101. According to Article R57 of the Code, the Panel has "*full power to review the facts and the law*". As repeatedly stated in the jurisprudence of the CAS, by reference to this provision, the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits (see CAS 2007/A/1394).

102. The Appellant requests the Panel to set aside the Appealed Decision or, in the alternative, to mitigate the sanctions imposed by it, on account of them being disproportionate. The Respondent, on the other hand, seeks full confirmation of the Appealed Decision. In view of the facts of the case and the arguments of the

parties, the Panel must determine whether the Appellant violated Articles 23, 22 and 14 of the 2018 FCE and, if so, what are the appropriate sanctions. Before doing so, the Panel must address some preliminary issues, including the alleged procedural violations in the FIFA proceedings.

A. The alleged procedural violations in the FIFA proceedings

103. In accordance with the *de novo* principle which was set out above, the Panel must make an independent determination of the correctness of the parties' submissions on their merits, without limiting itself to assessing the correctness of the procedure and decision of the first instance (cf. TAS 98/211 at para. 8; TAS 2004/A/549 at para. 9; CAS 2009/A/1880-1881 at para. 146; CAS 2011/A/2426 at para. 46; TAS 2016/A/4474 at para. 223).

104. Pursuant to the well-established CAS jurisprudence, it is this *de novo* character of CAS's appeals proceedings that cures any procedural violations that may have been committed at the previous instance (CAS 94/129 at para. 59; CAS 2000/A/281 at para. 9; CAS 2008/A/1594 at para. 44; CAS 2009/A/1920 at para. 87; TAS 2016/A/4474 at para. 221 et seq.). The effect of the CAS appeal system is that issues concerning the manner in which the first instance conducted its proceeding become marginal or "*fade to the periphery*" (TAS 2016/A/4474 at footnote 22; CAS 98/211).

105. The Panel observes that there are several of the Appellant's contentions that could be understood as claims that FIFA violated the Appellant's due process rights during the proceedings before the FIFA investigatory and the adjudicatory chamber, which eventually led to the Appealed Decision. In particular, the Panel notes that the Appellant's grounds for appeal that could potentially be understood or interpreted as challenges of the Appealed Decision on the basis of procedural grounds, even if the nature of said grounds is not always clear at first sight and they are not marked as such by the Appellant, but listed instead as "errors" of the Appealed Decision, are the following:

- the Appellant was not given the opportunity to be heard before the investigatory chamber during the FIFA proceedings;
- the adjudicatory chamber prejudged the Appellant's case which constitutes, *inter alia*, a violation of Article 6(1) of the European Convention on Human Rights ("ECHR");

- the adjudicatory chamber deemed that it is not bound by the jurisprudence of the European Court of Human Rights ("ECtHR");

- wrongful assessment of the evidence on file and selective reliance on evidence;

- reliance on anonymous witnesses; and

- the Appellant's alleged failure to file observations on the sanctions.

106. Due to the curative effect of CAS appellate proceedings, the Panel finds it unnecessary to rule on whether FIFA committed such violations against the Appellant because, even assuming the existence of the alleged procedural violations at FIFA level, the present CAS appeals arbitration proceeding has rectified them in hearing the case *de novo* and making an independent determination without affording any deference to the Appealed Decision.

107. In full accordance with the CAS Code, the Panel has permitted the Appellant to present his case fully by filing written submissions, exhibiting documents, testifying, and orally pleading his case in person and through his counsel, including by allowing a second round of submissions, thereby granting the opportunity to the Appellant to comment on all relevant matters, facts, circumstances of the case and rebut the arguments and evidence relied on by the Respondent. By doing so, the Panel has fully respected the Appellant's procedural rights under the CAS Code making an independent determination on fact and law, thereby curing the procedural violations that might have occurred at FIFA.

B. The standard and the burden of proof applied in the Appealed Decision

108. According to the Appellant, the adjudicatory chamber misrepresented the Appellant's argumentation as to the standard of proof and misinterpreted the standard of proof set out in the 2018 FCE. In particular, according to the Appellant, the comfortable satisfaction standard, in view of the seriousness of the allegations against him, is "*the highest*" as these allegations are "*the most serious that can be brought against an individual*". Additionally, the Appealed Decision failed to "*explain or justify*" why the applicable standard of proof "*should have been reduced in the instant case*".

109. First of all, the Panel notes that the Appellant does not dispute the fact that the applicable standard of proof under Article 48 of the 2018 FCE is one of 'comfortable satisfaction'. Pursuant to Article 48 of the 2018 FCE, "*[t]he members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction*". The CAS has consistently understood this standard of proof to fall between "beyond reasonable doubt" and "balance of probabilities" on the standard of proof spectrum (Idem; CAS 2015/A/4163, para. 72).

110. Secondly, the Panel observes that the Appellant's complaint is twofold. On the one hand, the Appellant complains that the Appealed Decision did not take into consideration the seriousness of the allegations against him and refused to apply "*the highest*" standard, and, on the other, he objects to the adjudicatory chamber having departed from the applicable standard by reducing it without any proper justification.

111. As to the first complaint, the Panel notes that it is not clear whether the Appellant, by "*the highest*" standard, is requesting the application of the standard of comfortable satisfaction to the highest degree of satisfaction possible or, alternatively, whether he means that the adjudicatory chamber should have moved to the application of the beyond reasonable doubt criminal standard, which requires the highest level of conviction on behalf of the adjudicating authority. Either way, the Panel takes note of the well-established CAS jurisprudence according to which the standard of "*comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation*" has been constantly applied by CAS panels in disciplinary matters (chiefly in doping cases but not only; see e.g. CAS 2010/A/2172), including in cases specifically related to the behaviour of FIFA officials (e.g. CAS 2011/A/2425; CAS 2011/A/2426; CAS 2011/A/2433; CAS 2011/A/2625; CAS 2016/A/4501; CAS 2019/A/6388).

112. At the same time, however, the Panel wishes to point out that the application of such standard in the manner proposed by the Appellant, namely by taking into account "*the role played by the seriousness of the allegation in the standard itself*" cannot and should not, in view of the clear and express wording of Article 48 of the 2018 FCE, depart from the standard of comfortable satisfaction. In this respect, the Panel agrees with the findings of the Panel in case CAS 2020/A/6785 in which a similar matter was debated and the Panel rejected any application of the standard which, in practical terms, would lead to the increase in the standard of proof in certain situations, putting it on the verge of the criminal standard of proof beyond reasonable doubt: "*The Panel agrees that the standard of proof is that of comfortable satisfaction and that the seriousness of UEFA's allegations does not increase such standard to effectively being beyond reasonable doubt*" (par. 205).

113. With respect to the second complaint, the Panel is unable to understand how the Appellant concluded that the Adjudicatory Chamber has effectively reduced the standard of proof required under Article 48 of the 2018 FCE, namely that of comfortable satisfaction, in making the Appealed Decision. The section of the Appealed Decision cited by the Appellant ("*(…) Swiss law allows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (…)*", par. 58) is a mere reference to how Swiss law deals with difficulties that may arise in the finding and production of evidence ("*Beweisnotstand*"). It is by no means the description of the standard that was followed by the adjudicatory chamber in making the Appealed Decision. The Panel considers that this is made sufficiently clear by the language used in the paragraphs immediately following:

> *"59. Bearing in mind the abovementioned legal context, the Panel cannot accept Mr. Ngaïssona's arguments as one cannot be "less comfortably satisfied" or "more comfortably satisfied". Either the Panel is comfortably satisfied with the evidence or the applicable legal framework, or it is not.*
>
> *60. Further and as highlighted above, Mr. Ngaïssona approach is against CAS case law. There has never been any differentiation in the application of this standard, being the latter never reduced for one type of measures, or augmented for others.*" [sic]

114. With respect to the burden of proof, the Appellant claims in his appeal that he repeatedly explained to both the investigatory and the adjudicatory chamber that it was impossible to submit evidence from the case file of the ICC as such evidence was confidential "*unless it were to be presented in public during the hearing on the confirmation of charges*". As a result, and in order for FIFA to respect the principle of procedural fairness, the adjudicatory chamber should have taken into account the Appellant's disadvantage in the presentation of evidence due to the fact that criminal proceedings related to the same facts were held before another Court.

115. Even though it is not clear to the Panel what is the legal basis or the exact content of the Appellant's request as regards the matter of the burden of proof, for the sake of completeness, the Panel notes the following: it is undisputed that Article 49 of the 2018 FCE provides that the burden of proof "*regarding breaches of the Code rests on the Ethics Committee*".

116. As far as the matter of the alleged inability of the Appellant to procure and/or to submit evidence is concerned, the Panel notes that it appears from publicly available records on the ICC website that the hearings on the confirmation of charges for the Yekatom and Ngaïssona Case were held on 19-25 September and 11 October 2019 (https://www.icc-cpi.int/carII/yekatom-nga%C3%AFssona), namely before the filing of the Appeal Brief and the relevant exhibits on behalf of the Appellant. Additionally, the Appellant never made use of his right under Article R56 of the Code, namely to seek admission to the case file of documents which he was unable to submit at the time of filing of the Appeal Brief on the basis of exceptional circumstances, not to mention that he never presented, even in a vague way, a description of the content and nature of such evidence in his favor allegedly included in the ICC case file which could have made a difference in the determination of the adjudicatory chamber.

117. In view of the above, the Panel is unable to comprehend, let alone entertain, the Appellant's request regarding the burden of proof in this case.

118. Therefore, in view of Articles 48 and 49 of the 2018 FCE and the abovementioned CAS jurisprudence, the Panel finds that the applicable standard is that of comfortable satisfaction and, as a result, the burden is on the

Respondent to prove to the Panel's comfortable satisfaction that the Appellant has violated Articles 23, 22 and 14 of the 2018 FCE.

C. Other legal arguments of the Appellant

119. Before moving on to the examination of the alleged violation of the FCE and the grounds for appeal advanced by the Appellant related to the substance of the dispute, the Panel shall now revert to several legal points made by the Appellant against the Appealed Decision. The Panel notes that some of those points were already dealt with by the Panel in the section regarding procedural complaints but, for the sake of completeness, the Panel shall now address the matter of their merits as arguments alleging errors in law of the Appealed Decision.

i. The Appealed Decision was passed on the date of the hearing

120. The Appellant claims that the fact that the Appealed Decision is dated on the hearing date shows that the members of the adjudicatory chamber were not allowed "*to properly reflect on the parties' arguments raised during the hearing*", that the time to consider the parties' arguments was not "*reasonable*" and that they built the reasons to support the Appellant's conviction in the period after the passing of the decision, namely until 28 November 2019 when the Appealed Decision was notified to the parties.

121. The Panel fails to see how the course of events on which the Appellant relies on, in the absence of any other supporting evidence, may lead one to the conclusion that the adjudicatory chamber "prejudged" the case.

122. In this respect, the Panel recalls that the 2018 FCE provides the following as regards the passing and communication of a decision by the adjudicatory chamber in the course of proceedings before the FIFA Ethics Committee:

> "*76 Deliberations*
> *1. After the hearing, the adjudicatory chamber shall withdraw to deliberate on its decision in private.*
> *2. If circumstances permit, the deliberations and decision-taking may be conducted via telephone conference, video conference or any other similar method.*
> *3. Deliberations shall be conducted without interruption, unless there are exceptional circumstances.*
> *4. The chairperson shall decide in which order the various questions will be submitted for deliberation.*
> *5. The adjudicatory chamber is not bound by the legal assessment of the facts submitted by the investigatory chamber. In particular, the adjudicatory chamber may extend or limit the rule violations pointed out by the investigatory chamber.*
> *6. The members present shall express their opinions in the order set out by the chairperson, who always speaks last.*
> *7. A member of the secretariat shall be present during the deliberations.*

77 Taking the decision
1. Decisions shall be taken by the majority of the members present.
2. Every member present shall vote.
3. In the event of a tied vote, the chairperson shall have the casting vote.

78 Grounds of decision
1. The adjudicatory chamber shall communicate its decision in full, written form.
2. In case of urgency, or under any other special circumstances, the adjudicatory chamber may notify only the terms of the decision to the party, which become immediately applicable. The full, written decision shall then be notified within the next 30 days."

123. The Panel further notes that the Appellant did not submit any concrete allegations that any of the above-mentioned provisions was violated by the adjudicatory chamber of the FIFA Ethics Committee, let alone provided any supporting evidence to substantiate such breach. Accordingly, the Panel finds that no provision of the applicable rules was violated. For the sake of completeness, the Panel clarifies that this finding also extends in relation to the content of the decision of the Supreme Court of Canada referenced in par. 22 of the Appeal Brief, which does not provide any sufficient evidence to establish a violation of the applicable rules.

124. Last but not least, the Panel also rejects the Appellant's argument concerning the alleged violation of Article 6(1) ECHR (right to a fair trial). Even assuming that the provisions of ECHR are directly applicable in the matter at hand (CAS jurisprudence has held otherwise, notably in case CAS 2020/O/6689, par. 810, with further references, whereby ECHR-founded fundamental tenets can be only considered within the context of a potential review by the Swiss Federal Tribunal), the Panel notes that, in any event, they do not apply for the proceedings before the FIFA bodies. In reaching this conclusion, the Panel is reinforced by the findings of the Panel in CAS 2015/A/4095, which held that *"CAS Panels have consistently held that the ECHR does not apply to an association's disciplinary bodies, which cannot be qualified as "Tribunals" within the meaning of the Convention (see e.g. CAS 2000/A/290)*". Additionally, the Panel finds that Article 6(1) ECHR was not violated in any way by the adjudicatory chamber. In particular, no procedural or substantial rule of the 2018 FCE was violated and there has been no significant delay during any particular phase of the FIFA proceedings, neither did any of the circumstances relied on by the Appellant create an impression which might jeopardise the effectiveness and credibility of administering justice by the FIFA Ethics Committee.

125. Accordingly, the Appellant's challenge in this respect must fail.

ii. The applicability of the jurisprudence of the European Court of Human Rights ("ECtHR") and its principles

126. The Appellant contends that the adjudicatory chamber was wrong to not apply the findings of the jurisprudence of the ECtHR in the manner submitted by the Appellant in the proceedings before the FIFA Ethics Committee.

127. The Panel recalls the relevant finding of the previous section of this award, namely that the provisions of ECHR are not directly applicable before disciplinary bodies of sports associations.

128. In any event, the Panel reiterates that, as set out above in the relevant section of this award, the Appellant's contentions with respect to the ECtHR jurisprudence and, in particular, the reference to the findings of the ECtHR ruling in the case Mutu and Pechstein v. Switzerland (paras. 25 ff. of the Appeal Brief), according to which the adjudicatory chamber failed to consider "*the preservation of the Appellant's fundamental rights under article 6(1) of the European Convention*" cannot be entertained.

129. To begin with, any complaints of the Appellant to the extent that relate to the (potential) violation of his procedural rights under the ECHR, such as the right to a fair proceeding under Article 6 ECHR, are cured by the *de novo* effect of the CAS power of review.

130. After that, the Panel points out that regardless of the answer to the question whether the findings of the ECtHR ruling in the case Mutu and Pechstein v. Switzerland bind this CAS Panel with respect to the specific contentions of the Appellant raised against the Appealed Decision, the fact remains that the Appellant cannot rely on such findings to challenge the validity of the Appealed Decision, which is a decision issued by a sports body and not by CAS.

131. Following from that, the Appellant's argument that FIFA has "*failed to consider and respond to the Appellant's argument that, according to ECHR jurisprudence, the CAS was a "tribunal" under the meaning of article 6(1), in the context of disciplinary proceedings in which the CAS was the appellate body*" is simply mistaken. The nature of CAS as a "tribunal" under Article 6(1) ECHR is irrelevant in the context of disciplinary proceedings before a sports body and the subsequent appeal of the decision issued, which is only then (namely after the appeal, and not before) under review by the CAS.

132. Finally, as to a related point raised by the Appellant in the context of another argument, namely that "*he has sought the application of relevant ECHR case law to situations of parallel criminal and disciplinary proceedings, and the application of the rules of fairness to the assessment of the evidence in the present disciplinary case*" and that the Appealed Decision failed to apply the principles derived from the Kemal Coşkun ECtHR case, it needs to be noted that, in addition to the above points, the Panel has doubts as to the applicability of said ruling in the matter at hand. This case was about the violation of a police officer's right to the presumption of innocence when an administrative court upheld his dismissal from the police force on the grounds that he had committed the criminal acts of false imprisonment, robbery and attempted rape, thereby

pronouncing his guilt before it had been proved according to law, when, in fact, he was eventually acquitted of any criminal charges by the competent criminal court. The Panel notes that such case involved the imposition of disciplinary sanctions on an individual on the basis of him having committed an offence he is charged with, which is not the case here. International criminal law and the FCE are different in nature, scope and type of, respectively, criminally and ethically reprehensible misconduct. Lastly, the Panel cites the same ECtHR ruling, which finds that, in principle, there is no violation of Article 6 par. 2 ECHR in the event two sets of parallel proceedings are pursued, one civil in nature and the other criminal, without the need to suspend the one until the other is concluded: "*The Court has held in this context that the imposition of civil or other forms liability on the basis of a less strict burden of proof in parallel proceedings is not incompatible per se with the presumption of innocence (see, for example, C. v. the United Kingdom, no. 11882/85, Commission decision of 7 October 1987, DR 54, p. 162, and Erkol v. Turkey, no. 50172/06, § 37, 19 April 2011). Moreover, the guarantees of Article 6 § 2 of the Convention should not be read in a manner that implies an obligation on the part of States to stay disciplinary proceedings pending the outcome of the criminal trial. Article 6 § 2 of the Convention safeguards first and foremost the way in which the accused is treated in the context of criminal proceedings by public authorities. It also places an obligation on judicial authorities in parallel or subsequent proceedings to stay within their respective fora and refrain from commenting on the person's criminal guilt when no such guilt has been established by the competent court*" (ECtHR, Kemal Coşkun v. Turkey, par. 52).

133. Indeed, the present proceedings are in no way directed towards determining whether the Appellant is guilty of the criminal charges against him. The only matter under scrutiny here is whether, to the comfortable satisfaction of the Panel, it may be said that he violated the applicable FCE. In turn, the fact whether the disciplinary sanctions against the Appellant shall be upheld or set aside by CAS, can have no effect or influence on the determination to be made by the ICC on the guilt or innocence of the Appellant of the charges brought against him. The ICC will take a different standard and apply it to different legal rules.

134. In a connected matter, concerning in particular the related complaint submitted by the Appellant who claims that the Appealed Decision failed to apply the principles derived from ECtHR jurisprudence and, particularly, Article 6 par. 2 ECHR, the Panel recalls once more that the ECHR does not apply to an association's disciplinary bodies, which cannot be qualified as "Tribunals". Especially with respect to the matter of applicability of the principles enshrined in Article 6 par. 2 ECHR, the Panel relies on well-established CAS jurisprudence, which has ruled as follows (CAS 2013/A/3139):

> "*90. The Panel notes that Articles 6(2) and 6(3) of the ECHR contain specific provisions setting out 'minimum rights' applicable only in respect of those charged with a criminal offence and therefore are not applicable to the case*

at hand as these provisions apply to criminal proceedings only. According to Swiss law, sport-related disciplinary proceedings conducted by sports governing bodies against one of its members are qualified as civil law disputes and not as criminal law proceedings (CAS 2010/A/2311-2312, no. 7.6; HAAS, Role and application of Article 6 of the European Convention on Human Rights [ECHR] in CAS Procedures, I.S.L.R. 3/2012, p. 47). 91. Insofar as the Club relies on Article 6(2) of the ECHR in order to argue that UEFA violated the nulla poena sine lege principle, this argument must fail as Article 6(2) is only applicable to criminal proceedings and the present proceedings are not of a criminal nature.

91. Insofar as the Club relies on Article 6(2) of the ECHR in order to argue that UEFA violated the nulla poena sine lege principle, this argument must fail as Article 6(2) is only applicable to criminal proceedings and the present proceedings are not of a criminal nature."

135. In view of the above, the Panel fails to see how the two bodies of the FIFA Ethics Committee did not respect the guarantees afforded to the Appellant under the ECHR.

136. As a result, the Appellant's argument must also fail in this respect.

iii. Misinterpretation of the principle of *lis pendens* by the Appealed Decision

137. The Appellant contends that the Appealed Decision ignored the fact that the FIFA proceedings "*directly emerged*" from the ICC criminal proceedings and, in doing so, deprived the Appellant of his right to first show his innocence before the ICC, prior to having his case heard before the adjudicatory chamber.

138. The Panel notes that, while it may be true that the same circumstances were the object of both the ICC and the FIFA proceedings, it is undisputed (and ignored by the Appellant) that the FIFA proceedings and, by extension, the present appeal arbitration procedure, is different in nature, scope, in applicable regulations and the nature of the sanctions threatened compared to the ICC proceedings. While the latter is intended to investigate, prosecute, try and, if found guilty, convict and sanction perpetrators of serious crimes of concern to the international community, the FIFA proceedings are aiming at the sanction of football officials for breaches of their duties and obligations set out in the FCE. As a result, it cannot be excluded that while a person is found guilty in the one procedure, he may be acquitted of any wrongdoing in the other.

139. As noted above, the Panel would like to emphasise once more that the present proceedings are by no means directed in determining whether the Appellant is guilty of the criminal charges against him and, accordingly, his disciplinary conviction or acquittal plays no part in his guilt or innocence which is to be determined by the ICC.

140. Further than that, to support its finding about the difference between the two proceedings the Appellant attempts to compare, the Panel points to well-established CAS jurisprudence which, in accordance with Swiss law, which is applicable in this case, classifies disciplinary measures imposed by Swiss associations as subject to Swiss civil law (CAS 2006/C/976 & 986, par. 127), thereby clearly distinguishing them from criminal penalties (CAS 2006/A/1102 & 1146, par. 52).

141. Last but not least, the Panel considers that the existence of parallel criminal proceedings cannot as such constitute sufficient grounds for the suspension of an internal disciplinary proceeding or an appeals arbitration procedure which concerns allegations of serious disciplinary or ethics breaches. In reaching this conclusion, the Panel is comforted by the findings of the Panel in case CAS 2011/A/2528, which stated that the fact that the remedies prescribed in criminal procedure law were yet to be exhausted is not binding to the concerned sport association or the CAS and constitutes no reason for suspension of their decisions, particularly in view of the interests of an effective fight against integrity breaches in sport (par. 136). This position is also supported in the legal doctrine (see EFRAIM BARAK/DENNIS KOOLAARD, *Match-fixing. The aftermath of Pobeda – what have the past four years brought us?*, CAS Bulletin 1/2014, p. 18 et seq. with further references) and, indeed, by the ECtHR ruling relied on by the Appellant (*supra*, Kemal Coşkun v. Turkey, par. 52).

iv. The Appellant's alleged failure to submit observations on the sanctions to be imposed by the adjudicatory chamber

142. Other than the Appellant fails to submit the legal basis of his complaint with respect to the alleged failure of the adjudicatory chamber "*to enable the parties to present observations on sanctions*", the Panel further notes that, on 3 May 2019, the Appellant was invited in writing by FIFA to submit his position on the Investigatory Chamber Report in accordance with Article 71 of the 2018 FCE, which he did on 27 May 2019. In view of the FIFA invitation extended to the Appellant and the content of Article 71 ("*Before the adjudicatory chamber issues any final decision, the parties are entitled to submit their position, to present evidence and to inspect evidence to be considered by the adjudicatory chamber in reaching its decision. These rights may be restricted in exceptional circumstances, such as when confidential matters need to be safeguarded, witnesses need to be protected or if it is required to establish the elements of the proceedings*"), the Panel cannot see how the adjudicatory chamber prevented the Appellant from submitting his observations on the sanctions to be imposed in the event he was found guilty of the alleged violations. The Appellant simply chose not to do so in his submission of 27 May 2019.

143. In any event, the Panel recalls that a hearing was held before the adjudicatory chamber on 25 July 2019 during which the Appellant was capable of submitting observations on the matter of sanctions.

v. The Appealed Decision relied on anonymous witnesses in violation of the FCE

144. The Appellant claims that the adjudicatory chamber, by issuing the Appealed Decision on the basis of "*NGO reports containing massive amounts of anonymous testimonies*", violated Article 44 par. 2 of the 2018 FCE which allows that only for the purpose of imposing sanctions and not for determining the guilt or innocence.

145. Indeed, the Panel acknowledges that under Article 44 par. 2 of the 2018 FCE and under CAS jurisprudence, an anonymous witness statement is insufficient on its own to convict an individual (CAS 2019/A/6388, par. 195).

146. However, the Panel notes that in the present case the anonymous individuals to whom the Appellant refers were not in any way persons that had the status of "participants in the proceedings" or persons giving testimony before FIFA under Article 44 of the 2018 FCE. The Appellant's argument in this respect is simply false.

147. The content of the FIDH Report, for which the Appellant specifically complains, can be freely assessed by the respective deciding body, including this Panel, in accordance with the applicable rules on the standard and the burden of proof. In this respect, a judicial body may review the reports of testimonies of unidentified individuals which are included in the FIDH Report as any other evidentiary measure and is free to attach as much or as little weight to them as it deems fit.

148. The objections of the Appellant with respect to the evidentiary value of the evidence on file are addressed in the relevant part of this award.

vi. Selective reliance on evidence and partiality in their assessment

149. The Appellant complains that the adjudicatory chamber "*should have made a sound and detailed assessment of the evidence presented by the Investigatory Chamber*" and failed to explain "*what other documents were taken into account in the decision making*". Instead, "*it has considered the documents in such a vague fashion that it is not possible for the Appellant to understand its reasoning*".

150. In this respect, the Panel recalls that the Appealed Decision clearly states that "*[t]he adjudicatory chamber has analysed and reviewed the case file in its entirety*".

151. Additionally, the Panel cannot help to note that the Appellant, except for presenting his legal argument along the lines indicated above, does nothing to at least hint on the documents which the deciding FIFA body failed to take into account and how such assessment of the evidence missing from its evaluation could alter the outcome of the proceedings before the FIFA Ethics Committee.

152. Notwithstanding the above, the Panel finds the Appealed Decision to be well reasoned and based on a careful examination of the evidence presented to it and shall examine in detail the matter of the consistency and evaluation of the evidence in the relevant section of this award (D.iii), iv)).

vii. The Appealed Decision wrongly held the Appellant responsible for crimes that were not confirmed in the Confirmation Decision

153. The Appellant claims that not only is the assessment of facts made in a general and vague way in the Appealed Decision, but also the fact that the ICC Confirmation Decision dismissed the charges against the Appellant for the crimes committed in Boda constitutes proof that the assessment of the facts by the adjudicatory chamber was erroneous.

154. In this respect, the Panel first notes that the Appellant is silent on the fact that the charges against him were in their vast majority confirmed by the ICC Confirmation Decision.

155. Second, the Panel recalls that the Appealed Decision found the Appellant guilty of violations of the FCE because, among other things, their findings of fact as to his involvement "*in the violent events which occurred in his country, in particular by positioning himself as a leader of one of the sides or factions involved in the armed conflict and failing to oppose, prevent or stop the violent actions of the movement he belonged to, represent sufficient elements to consider him responsible for his stance towards those events. Therefore, the actions and conduct of Mr Ngaïssona, in the scope of the aforementioned events occuring in 2013 – 2014 in the CAR, had a negative effect on the physical and mental integrity of a large number of people, which Mr Ngaïssona has failed to protect, respect and safeguard in violation of art. 23 of the FCE*" (Appealed Decision, par. 119).

156. As such, the Appealed Decision did not take account of the Appellant's participation in specific events, but rather considered his involvement as a whole in the conflict in CAR in view of his leadership position within one of the opposing sides, and the fact that he did not, on the basis of the evidence available, actively attempt conciliation, dissociate himself openly from or at least denounce violence and crime.

157. Be that as it may, the Panel notes that the fact that the ICC Confirmation Decision rejected (a small) part of the charges brought by the ICC Prosecutor's Office against the Appellant has no significant impact on the outcome of his appeal. On the one hand, his conduct under scrutiny by the FCE extends way beyond what allegedly happened in Boda according to the Warrant and, on the other, there are multiple reasons why the ICC Confirmation Decision may have rejected that part of the charges against him. Either way, the Panel is of the view that the Appellant did not demonstrate that the Appealed Decision erred in fact, simply because (one of the) charges against him was/were not confirmed by the ICC Confirmation Decision.

D. Did the Appellant violate Articles 23, 22 and 14 of the 2018 FCE?

i) Factual background

158. The case revolves heavily around the events that are reported to have occurred in CAR after the onset of political unrest which escalated into a civil conflict and the Appellant's participation in such events. The reported events relevant to this case are set out in detail under section II.A. of this award and in the relevant parts of the Appealed Decision.

159. Of particular interest is the determination of the role and of the nature and degree of participation of the Appellant to the events that, according to the Appealed Decision, took place over a period of several months, namely from December 2013 until December 2014 (par. 48 of the Appealed Decision). During that time and in view of the evidence available before the FIFA Ethics Committee, the adjudicatory chamber found in the Appealed Decision that the Appellant was one of the most prominent Anti-Balaka leaders and held the post of the general coordinator of the "*Coordination nationale des libérateurs du peuple* centrafricain" (CLPC), also known as the "*Mouvement des patriotes anti-balaka*". Such group was reported to be engaged in hostilities against the Séléka in CAR, including attacks against the civilian population, displacement, torture and cruel treatment, imprisonment or other forms of deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings, routine pillaging of Muslim houses and shops and persecution in several CAR locations. The above is identified in detail in the Final Report, to which the Appealed Decision relied heavily.

160. The Appellant challenges the findings of the Final Report and of the Investigatory Chamber Report and, consequently, the Appealed Decision, on the basis of the reasons (errors of law, errors of fact and errors of both fact and law) included in the Appeal Brief and summarised in the relevant section of this award.

161. In view of the disputed facts of the case, the relevant submissions of the parties and the extensive evidentiary material, the Panel, in order to give a comprehensive view of the entire evidentiary material of the case, will provide extensive excerpts of the most relevant documents which are included in the FIFA Ethics Committee case file. After that, the Panel will examine their consistency and reliability in view of the applicable standard of proof and taking into account and examining the objections raised by the Appellant to that regard.

ii) The evidence

a) The Interim Report and the Final Report

162. The Interim Report, dated 26 June 2014, was issued by the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013).

163. According to the relevant part of the Final Report "*[o]n 13 February 2014, the Secretary-General, in consultation with the Committee, appointed the five members of the Panel (S/2014/98), which consists of a regional expert (Paul-Simon Handy), an arms expert (Ahmed Himmiche), a finance and natural resources expert (Ruben de Koning), an armed groups expert and the Coordinator of the Panel (Aurélien Llorca) and a humanitarian expert (Carolina Reyes Aragón)*". The Panel notes that Mr. Llorca is the expert called by the Respondent who testified during the hearing of the case before CAS.

164. In its annex, the Interim Report states that the Anti-Balaka movement was formed and first appears around September 2013. As far as its structure is concerned, the Panel of Experts identified four different groupings or categories, one of which is the CLPC. The Interim Report specifies the following with respect to the Appellant and the Anti-Balaka:

"*(…)*

The first group, named "Coordination nationale des Libérateurs du Peuple Centrafrican" (CLPC), is based out of the Boy-Rabe neighbourhood of Bangui and operates in the north of the city, up to the town of Damara, and is issuing identification badges to its members, including in Carnot. It is coordinated at the military level by Thierry Lébéné, alias 'Colonel 12 Puissances', a former FACA, and at the political level by a businessman named Patrice –Edouard Ngaïssona, former Youth and Sports Minister of the last Bozizé's government, founder of the COCORA and president of the CAR Football federation."

165. As a footnote next to the Appellant's name, the Interim Report includes the following information "*Meeting and telephone conversation with Patrice-Edouard Ngaïssona, Bangui, 3 and 20 May 2014*" indicating that the mentioned description regarding his role was confirmed by the Appellant during the referenced in person and telephone conversations.

166. The Final Report, which is dated 28 October 2014, identifies the Appellant as "*one of the most prominent anti-balaka commanders, who is a member of the command-and-control structure of the military branch of the Coordination nationale des libérateurs du people centrafricain of Patrice Edouard Ngaïssona, also known as the Mouvement des patriotes anti-balaka*" and documents the following with respect to the participation of the Appellant in the events that took place in CAR and are the object of the present case:

"*(…)*

68. Moreover, the Panel believes that all the efforts made by Ngaïssona to structure the four different components of the anti-balaka, extend the reach of his leadership beyond Bangui and provide his movement with all the attributes of a real organization, including an official command-and-control structure and a political façade, have, on the one hand, strengthened Ngaïssona's legitimacy as the representative of the anti-balaka for the international community but, on

the other hand, weakened his grip on his own organization and exacerbated rivalries, jealousies and tensions.

(…)

70. At the political level, Ngaïssona succeeded in sidelining the former Minister of Youth and Sports, Léopold Narcisse Bara, who officially represented the anti-balaka in the first Government of transition, after having challenged his legitimacy during several months. Ngaïssona also accused Bara, who was living in France before his appointment as Minister, of having been imposed by the French authorities to the Head of State of the transition. The climax of this conflict took place in June 2014, when Bara, in his capacity as Minister of Youth and Sports, announced the suspension of the board of the football federation of the Central African Republic, headed by Ngaïssona, who in return published on 24 June 2014 a communiqué dismissing Bara from CLPC, of which Bara was actually not officially a member (see annex 12).

(…)

81. On 30 July 2014, in a press conference, Kamezolaï called upon all army personnel to return to their barracks and leave the anti-balaka movement, in an initiative backed by the previous Prime Minister of the transition (see para. 34 above). According to Kamezolaï, his appeal was followed by some anti-balaka commanders in Boy-Rabe, including some known CLPC commanders. The initiative was condemned by Ngaïssona's CLPC, however, who claimed that Kamezolaï had no authority to dismantle the military wing of Ngaïssona's political movement.

82. This illustrates further how important it is for Ngaïssona to give the impression that the military wing falls under his command in order to justify his role as a key political figure, despite the signature of the cessation-of-hostilities agreement and the nomination of a new Government of national unity. In his letter to the President of the transition in August 2014, Kamezolaï denounced this situation and the appropriation of the self-defence militia by some politicians, and revealed that he had been threatened since the press conference of 30 July 2014.

(…)

201. The Panel monitored the situation of Muslim minorities in the western part of the country. According to an early warning system set up by the Inter-Agency Standing Committee Protection Cluster, the communities of Ndinguiri, Djomo, Guen and Gadzi (Mambéré-Kadeï Province) have been identified as enclaves of minorities at high risk. Since March, Boda (Lobaye Province) and then Yaloké (Ombella-Mpoko Province) have also been identified as communities at risk. In addition, the Panel has corroborated that the situation in Boda is one of the most serious of those identified by the Cluster.

202. Although the humanitarian response has improved significantly, the approximately 6,000 Muslims currently living in the enclave of Boda, located in the middle of the village, remains very fragile. The Panel has documented the killings, by different anti-balaka groups, of at least 168 civilians, including five children. Various incidents against humanitarian aid workers have also been documented, and the number of those incidents has in fact increased during the past few months. Although there have been various replacements and changes in the structure of the anti-balaka during the year, documents obtained by the Panel indicate that a new zone commander was appointed by Ngaïssona on 28 June 2014 (see annex 11; in addition, a detailed case study on Boda is included in annex 63).

203. Since 5 December 2013, the Panel has documented the killings of 3,003 civilians by various perpetrators. Of the total, 2,569 were mentioned in the Panel's interim report (see S/2014/452, para. 104). From 1 May to 14 August 2014, 436 additional killings were documented. While there was a clear reduction in the number of civilians killed across the country throughout 2014, it should be noted that there is still some underreporting and there continue to be delays in obtaining information.

(…)

205. From 1 May to 14 August 2014, according to the information collected by the Panel related to the killings of civilians, the Séléka were found responsible for committing 34 per cent of the killings and anti-balaka groups for 13.4 per cent. In 23.7 per cent of cases, no perpetrators were reported. Other groups or combinations of several armed groups reportedly committed 13.2 per cent of the incidents (see annexes 65 and 67).

206. Set out below are some of the most serious incidents that the Panel has documented in the past three months:

(…)

(c) On 23 June 2014, anti-balaka elements attacked the Fulani village of Liwa, 10 km from Bambari, reportedly killing 17 civilians. The Panel obtained testimonies from community representatives visiting the sites, who showed the Panel photographs of women and children killed and burned in the attack. According to Fulani representatives and Operation Sangaris forces, the anti-balaka assailants involved in the attack operated from the village of Ouabé, which is located only 7 km from Bambari but is inaccessible because fighters destroyed the bridge giving access to the village;

(d) On 29 July 2014, armed anti-balaka elements attacked Séléka positions in the city of Batangafo. After a violent clash, the Séléka elements warded off the attack. This led to many displaced persons seeking refuge in the MISCA base. Twenty-two people were killed, including two MISCA soldiers, and numerous others were injured, among them civilians.

(…)

215. The Monitoring and Reporting Mechanism and the Child Protection Adviser identified 1,114 children associated with anti-balaka groups in Bangui, Boali, Yalokéand Boda. Many of the children in Bangui were unaccompanied children and not originally from Bangui. In Bangui, MINUSCA had, by the end of July, identified 76 children (53 boys and 23 girls) who are currently in a transit camp, but many children still need to be identified. On 18 August 2014, UNICEF issued a press release in which it was stated that 103 children, including 13 girls, had been released from anti-balaka groups and taken to the transit centre of an international non-governmental organization. The total number of children identified as coming from anti-balaka groups is 1,114, of whom 179 have demobilized.

167. It is noted by the Panel that after par. 68, the Final Report includes a diagram containing photographs and names under the caption "Structure of the political and military branches of CLP of Patrice Edouard Ngaïssona", in which the Appellant appears at the heart of the CLPC, which, according to the Final Report, is the "*most structured component*" of the Anti-Balaka movement.

168. Additionally, the annexes of the Final Report contain, *inter alia*, an agreement between former Séléka and anti-balaka to engage in a mediation, which is signed in Bangui on 16 June 2014 by the Appellant as "*Représentant ANTIBALAKA*" in his capacity as "*Coordinateur National Politique*", an agreement for the cessation of hostilities in CAR signed in Brazzaville on 23 July 2014 by the Appellant on behalf of the Anti-Balaka movement, appointment letters signed by the Appellant of Soussou Abib as acting regional coordinator and Rodrigue Karamokonzi as acting zone commander in Boda on 28 June 2014 (Lobaye province), and confirmation letter of their appointment on 8 July 2014 (archived at the United Nations), a decision of the Coordination Nationale des Patriotes Anti Balaka for the expulsion of Léopold Narcisse Bara, minister of youth and sports, signed in Bangui on 24 June 2014 by the Appellant in his capacity as "*Coordinateur Général*", a press release of the Coordination Nationale des Patriotes Anti Balaka announcing the appointment of Sébastien Wénézoui as deputy general coordinator of the CLPC, signed in Bangui on 24 June 2014 by the Appellant in his capacity as "*Coordinateur Général*".

b) The FIDH Report

169. The FIDH Report was compiled to address the situation in CAR and to extend recommendations to international organisations (UN, EU) and to the ICC. In its relevant parts it states the following:

"*(…)*

Since the anti-balaka's attack on Bangui on 5 December 2013, fighting between Seleka and anti-balaka elements has occasioned over 2,000 deaths throughout the country. Over the last year, violence and instability have forced close to a

million people to take refuge in rural areas or in Bangui, where some 273,000 people have settled in 66 different locations. Close to 288,000 people have taken refuge in the neighbouring countries of Cameroon, Chad, the Democratic Republic of Congo (DRC) and the Republic of Congo

(…)

2.2.2. Anti-balaka attacks in Bangui since 5 December 2013

Attacking Bangui on 5 December 2013, anti-balaka militias transformed the capital into a new front for fighting in the prevailing conflict. This event triggered lethal violence occasioning 1,500 deaths in the capital city alone between December 2013 and March 2014. At the end of March 2014, anti-balaka abuses were continuing in Bangui and the militia was threatening to invade the city's PK5 district, one of the last Muslim enclaves in the capital, to kill the thousands of Muslims who had not yet been able to flee.

The anti-balaka attack of 5 December and Seleka revenge

On 5 December 2013, at around 6am, anti-balaka militias composed of armed civilians and FACA soldiers launched a coordinated, simultaneous attack on three points in the capital: camp Kassao, the National Assembly and the Boy Rabe district. Witnesses report that anti-balaka entered Bangui along several roads for several hours starting early in the morning.

Heavy weapons, assault rifles and machetes were used in the fighting. The assailants were pushed back from camp Kassao but went on a manhunt for Muslims in the Boy Rabe district, torching their houses and shops. Very soon dozens of people, mostly civilians, had been killed.

There were also numerous casualties, who spoke of attacks by anti-balaka who had entered their houses, killing or mutilating men, women and children with machetes.

On 5 and 6 December 2013, 65 bodies were taken to the central mosque in PK5.

Anti-balaka attacks have targeted all Muslims, irrespective of nationality or status. Ibrahim, a 38-year old South-Sudanese refugee, described his experiences: "I lived in the Boeing neighbourhood. The anti-balaka attacked my house around 5 or 5:30 in the morning. That was the day of the anti-balaka attack on Bangui. They came into my house. I escaped because I thought that they would not shoot children or women. I went straight to the central mosque. The next morning, December 6th, the bodies of my two sons were brought to the mosque – S.A.A, my 12 year old and M.A.A, my 8 year old. Listening to the people who carried in the bodies, I was led to think that they had been killed in PK 1. As for my wife, A.H [a 23-year old Central African Fulani], I have not had any news about her since then. I don't know what has become of her. I have not seen her since. I am from South Sudan and I lost my whole family there when

I was a child. I came alone to Central African Republic when I was 21 years old. Now I have lost my whole family".

Since these events, Ibrahim has been in Bangui trying to flee and escape being killed. As a refugee, the UNHCR should be able to protect him. Nevertheless, he has been waiting for four months to be taken to another country. Every day he goes to the UNHCR or some other organisation to plead his case, to find a way to get out of the country. On 5 February 2014 Ibrahim was attacked by FACA elements in the centre of the city and since 9 February has been receiving menacing phone calls from an anti-balaka fighter. He manages to survive at the Bangui central mosque in PK5, but is woken regularly by people shooting at the mosque and the displaced persons housed there.

The anti-balaka attack on Bangui was a coordinated, planned attack, displaying a notable aptitude for military tactic. The mission met Lieutenant Yvan Konati, who introduced himself as the anti-balaka's chief of staff, saying "I supervised the attacks of 5 and 25 December. I was in the field". The use of heavy weapons, the strategic objectives pursued and the coordinated actions deployed in the assault on the city are signs of military expertise. The timing of the attack – the date of the UN Security Council's vote on Resolution 212734 authorising the deployment of French Opération Sangaris forces in support of African AFISM-CAR troops – presents itself as a strategic decision that seems far from the preoccupations of a peasant self-defence militia. Anti-balaka political leaders, undoubtedly all FACA connected to the old regime, sought to capitalise on political/military surprise by launching an attack on a day of ostensible calm. This strategy proved successful in two respects: the militia's rapid arrival en masse in Bangui embodied a strong element of psychological surprise enabling the militia to achieve a foothold in the capital before the deployment of French troops, and thereby securing a fait accompli policy. These militia continue to be present in Bangui at the time of writing.

The anti-balaka attack of 5 December 2013 sparked a battle for control over Bangui, as well as violent revenge attacks by the Seleka. Confrontation between anti-balaka, the Seleka and local populations supporting these warring factions, resulted in the deaths of over 1,000 people in just a few days. On 5 December 2013, Bangui sank into chaos.

(…)

The 25 December 2013 "Christmas" attack

On 25 December 2013, the anti-balaka launched another offensive. They put up barricades and attacked the Seleka in PK5, PK12, Ben-Zvi and especially Gobongo, in the north of the city. A Bangui resident told Radio France Internationale (RFI) that: "the anti-balaka were the ones who started bothering people. We really are in over our depth. Since this morning, it has been non-stop. They are still shooting right now. We don't know what's happening. I'm at home, hiding, with my whole family".

Since 20 December, the violence in Bangui has worsened, causing thousands to leave. The NGO Medecins Sans Frontieres (MSF), on 24 December 2013, said that they had cared for close to 200 casualties in Bangui between 20 and 24 December. 2013 Since 5 December 2013, 1,000 people had been killed, with MSF treating about 400 casualties, of which about 300 had bullet wounds and over 100 knife wounds.

Christmas day saw intense fighting. Opération Sangaris reported a "peak of violence" on 25 December 2013. This followed "heightened tension observed since 20 December that was clearly not letting up" according to Colonel Jaron, spokesman for the French Chief of Staff, speaking to RFI.

(...)

Attacks on PK5 and PK12

Since the 5 and 25 December attacks, anti-balaka militia have been targeting the PK5 and PK12 neighbourhoods, where most inhabitants are Muslim. Both areas have gradually come to be besieged Muslim enclaves. PK12 now has a population of about 2,500, mainly Fulanis from other parts of the country, and PK5 may have a population of a few thousand also. These localities are two of 20 besieged Muslim enclaves on record in the west and the southwest of the country. In December 2013, anti-balaka offensives and the Seleka's reprisals divided Bangui into "Muslim" and "Christian" zones. Miskine, PK5 and PK12 in the 3rd district became the principle "Muslim" zones, though as Muslims fled the city, their size shrank. By February-March 2014, PK5 and PK12 were the last corners of Bangui where Muslims could hope for relative, albeit precarious safety.

For the last four months, anti-balaka militia have been attacking these enclaves with guns and grenades daily. Some Seleka have hidden among the local population and together with a number of civilians who have joined them, respond to the anti-balaka engage in reprisals for these attacks, infiltrating neighbouring areas and usually killing civilians. During the month of February, the mission observed how these attacks were carried out.

(...)

Violent chaos obscuring high levels of political violence

The apparently chaotic and aimless violence sweeping the country, especially Bangui, is currently obscuring a large number of politically motivated assassinations and attacks taking place in the CAR. Just as the Seleka chased out the Bozizı regime with its FACA members and presidential guard, anti-balaka militia seem to be singling out those accused of collusion with the Seleka. Moreover, whilst generalised violence undoubtedly prevails, in a number of cases, as one person told the FIDH mission, "coincidences only go so far".

(…)

Anti-balaka leaders: the role of ex-president Bozizı

(…)

The list of members of the Coordination du Mouvement anti-balaka explains how the movement is structured: of 26 members 20 are FACA and six are former notables or ministers in the François Bozizı regime.

Patrice Edouard Ngaissona was the General Coordinator and former Minister of Youth and Sports under Bozizı and President of the Central African Football Federation. He represented the Franηois Bozizı party in the Boy Rabe district, according to a well-informed observer who monitored the Central African political scene for years. "They [Ngaissona and Bozizé] are not only from the same region [Bossangoa-Mbezmbé], and from the same ethnic group [Mbaya], but they are also related", this observer told us. Ngaissona s himself told the mission that he "agreed to be the spokesman for the anti-balaka, the people's emancipation movement because they were unrepresented. I said, 'why me?' and they said, 'because you stand with the youth". Patrice Edouard Ngaissona claims (though this claim may be an overstatement) to control some 50,000-70,000 people throughout the west and some of the provinces, "except for the Carnot anti-balaka who went home to Berbérati yesterday [10 February 2014] and who belong to the UDDP or something like that and did some stupid things". On the preceding evening, the Carnot anti-balaka had killed 10 Muslims in a town where, according to the mayor, "the anti-balaka phenomenon was unknown; they all came from the north". It was considered inconceivable that the antbalak be responsible for the crimes committed even in Bangui where, according to Ngaissona, "the abuses are committed by fake ani-balaka, especially Second Lieutenant Lama, a former FACA corporal who moves around with 200 men and commits atrocities such as that in Diakité, Saint-Jean, etc.". No one else has referred to Lama and his 200-man force.

(…)"

c) The Investigatory Chamber Report

170. The Investigatory Chamber Report largely relies on the content and the findings of the Final Report.

171. In its relevant parts it stipulates the following:

"*(…)*

2.2. Mr Ngaïssona's involvement in the Anti-Balaka group

Before the hostilities began in CAR, Mr Ngaïssona was recognised as a businessman and as the ex-president of the CAR Football Federation. During the government of President Bozizé, he had several official charges in the

government of CAR. In February 2013, Mr Ngaïssona was appointed as Minister of Youth and Sports, and again, as President of the CAR Football Federation.

The Anti-Balaka movement was divided in several groups. The one of the most predominant was the so called "Coordination Nationale des Libérateurs du Peuple Centrafrican" (CLPC), which was based out of the neighbourhood of Bangui and operated in the north of the city. It was coordinated at the military level by Thierry Lébéné, alias 'Colonel 12 Puissances', and at the political level by a businessman named Patrice-Edouard Ngaïssona, former Youth and Sports Minister of the last Bozizé's government, founder of the COCORA and president of the CAR Football federation.

After the fall of the Bozizé's regimen in March 2013, Mr Ngaïssona left CAR for several months. While in exile, he allegedly gathered funds and acquired arms in order to come back to CAR and set up an armed group for the reestablishment of Bozizé. He returned to CAR and later, he became the General Coordinator of the Anti-Balaka movement at the national level (Coordination Nationale des Libérateurs du Peuple Centrafricain (CLPC)). Mr Ngaïssona was well recognised by the Anti-Balaka as a group leader.

[…]

There are statements made by Mr Ngaïssona in which he defended the existence of the Anti-Balaka movement, arguing that the Anti-Balaka groups were composed of youths who were embittered by the Seleka violence and that the right to self-defence justified their actions.

Many reports suggested that, as a consequence of his position in the Minister of Youth and Sports and as President of the CAR Football Federation, Mr Ngaïssona was well recognised among and followed by children and young people. Apparently, this was the reason why Mr Ngaïssona had sufficient support and was chosen as a leader within the Anti-Balaka movement. In December 2013, the Anti-Balaka group engaged in hostilities and quickly achieved their goal of ending the Seleka regime. On 10 January 2014, self-proclaimed president Djotodia resigned and the Seleka forces retreated. In regards to this accomplishment, Mr Ngaïssona publicly declared that the Anti-Balaka group was successful in releasing the people from "the murderous claws of the Seleka".

13 On 1 February 2014, Mr Ngaïssona also stated that the "ultimate aim of the movement" – ending the Seleka regime- has been achieved.

14 With a view to engaging with the transitional government, the existing de facto Anti-Balaka structure was formalised at the end of January 2014. ID cards were issued by the Anti-Balaka National Coordination - CLPC - to its members in order to distinguish them from so-called "fake" members. The ID cards were also issued with a view of allowing Anti-Balaka members to participate in the

disarmament, demobilization and reintegration process. Some of these ID cards were signed by Mr Ngaïssona himself.

In February 2014 during an interview with the NGO "International Federation for Human Rights" (FIDH), Mr Ngaïssona expressed that he had "a hand on about 50 to 70 000 men in the West and had control of the provinces". According to the FIDH investigations, Mr Ngaïssona has been one of the main links between former president Bozizé and the Anti-Balaka military command during the crisis.

The Panel of Experts on the Central African Republic, established pursuant to UN Security Council resolution No. 2127 (2013), collected information demonstrating that the Coordination Nationale des Libérateurs du Peuple Centrafricain (CLPC) lead by Mr Ngaïssona, also known as the Mouvement des patriotes Anti- Balaka, was directly involved in armed conflicts that took place in Batangafo, Bambari and Boda.

Apparently, after the death of a known Anti-Balaka commander "Général 8-8", Mr Ngaïssona decided to address the situation in Boda. In June and July 2014, he issued documents appointing new leaders and officers for the provinces, zones and towns of Boda. The documents show that these persons were clearly under Mr Ngaissona's structure, command and control.

The UN Security Council Panel of Experts also stated that "Although there have been various replacements and changes in the structure of the Anti-Balaka during the year [2014], documents obtained by the Panel indicate that a new zone commander was appointed by Ngaïssona on 28 June 2014."

Appointment letters signed by Mr Ngaïssona a) Appointment of Soussou Abib acting as regional coordinator in Boda (archived at the United Nations)

[…]

Following the intervention of the UN Security Council, on 23 July 2014, senior Seleka and Anti-Balaka commanders first signed an agreement as to engage in mediation to resolve the conflict. Later, in Brazzaville, Republic of the Congo with the aim of ending hostilities both groups signed an cessation agreement ("Brazzaville Summit"). One of the Anti-Balaka senior commanders that signed such agreements was Mr Ngaïssona himself.

However, despite this agreement for the cessation of hostilities, the Anti-Balaka continued to carry out attacks in Boda based on religion, kill civilians and attack international forces. Muslim population remained locked in the centre of the towns, and were not able to leave their neighborhood. The Panel documented the escalation of the hostilities in Boda during July, August and September 2014, just right after Mr Ngaïssona issued the Anti-Balaka appointment letters. There were 10 incidents in July, another 10 in August and 2 more in September.

Another relevant factor that demonstrates the involvement and leadership of Mr Ngaïssona is his political view and weight within the Anti-Balaka organization. The Anti-Balaka movement was divided in two. On the one hand, by self-defence groups who acted out of self-defence and revenge. On the other, by political groups who acted in order to get Bozizé back into power. Mr Ngaïssona's group sought to re-establish Bozizé's regimen, an objective that was not shared by other Anti-Balaka leaders such as Wenezoui and Kokaté.

During an election in May 2014, Anti-Balaka leaders voted for Wenezoui to be the new coordinator of a unified Anti-Balaka structure. However, Mr Ngaïssona declared that this election was not valid, and in mid-June Wenezoui accepted the role as Mr Ngaïssona's deputy. Collaboration between the two leaders did not last long though. In mid-August, Mr Ngaïssona excluded Wenezoui from the Anti-Balaka movement for not respecting his hierarchy after the latter went on a mission to Brazzaville earlier that month without informing Mr Ngaïssona.

[…]

The UN Security Council's Panel of Experts also gave its opinion that all the efforts made by Mr Ngaïssona to structure the different components and groups within the Anti-Balaka organization, shows the extend of Mr Ngaïssona's reach and leadership and provide the CLPC with all the attributes of a real political organization. This provided Mr Ngaïssona with legitimacy as the representative of the Anti-Balaka on the eyes of national and international communities.

Many other documents have been exhibited by diverse NGOs that show that Mr Ngaïssona participated in the Anti-Balaka military group.

[…]

Further evidence is available in the media regarding the involvement of Mr Ngaïssona in the Anti-Balaka movement. In an interview published by NGO "Avirec", Mr Ngaïssona implicitly confirmed his position and explained the way the troops were to be organised. Additionally, during a TV interview, Mr Ngïssona, known as the leader of the Anti-Balaka group, talked about the meanings of reconciliation.

(…)

It is worth mentioning that, this investigatory chamber will not assess whether Mr Ngaïssona has committed crimes against humanity or war crimes. This investigatory chamber refers only to those breaches of conducts as stated in the FCE 2012. The investigatory chamber's task is to address whether Mr Ngaïssona's involvement in the Anti-Balaka movement and in the CAR armed conflict, are considered unethical conducts and constitute violations accordingly to the FCE 2012.

Following, contrary to the proceedings opened by the ICC concerning war crimes and crimes against humanity, this FIFA Ethics Committee does not need to assess that Mr Ngaïssona had sufficient command and control over the armed group to prove that he has committed a violation of the FCE. His only involvement in an armed conflict between religious groups and his public statements instigating to violence are enough indications for us to determine infringements to the FCE.

In accordance with article 5, para. 5 of the FCE 2012, any breach of the code shall be sanctioned whether the parties acted as participant, accomplice or instigator. In our view, there is enough evidence and it is well documented that, Mr Ngaïssona was part of the Anti-Balaka movement and was involved in the armed conflict. Mr Ngaïssona publicly declared he was part of this movement and openly acted as such. Through several interviews, he confirmed his leadership within the Coordination Nationale des Libérateurs du Peuple Centrafricain (CLPC), organization that was without doubt part of the Anti-Balaka group.

3.2. Protection of physical and mental integrity

The UN Security Council's Panel of Experts, as well as other NGOs, have discovered that the attacks carried out by the Anti-Balaka group led to murder, extermination, massive deportation of population, deprivation of physical liberty, torture, cruel treatment, mutilation, persecution, enforced disappearance and other inhumane acts. In addition, the ICC opened proceeding against Mr Ngaïssona for intentionally directing attacks against the civilian population, against personnel, installations, material, units or vehicles involved in a humanitarian assistance, against buildings dedicated to religion, pillaging, enlistment of children under the age of 15 years and their use to participate actively in hostilities.

This Ethics Committee acknowledges that FIFA through its competitions and activities, touches the lives of millions of people all over the world. With such impact comes responsibility. FIFA recognises as well its obligation to uphold the inherent dignity and equal rights of everyone affected by its activities. This responsibility is enshrined in article 3 of the FIFA Statute. FIFA certainly aims to promote the values of equality and fairness and strengthens social bonds among people and countries. Therefore, FIFA takes a zero-tolerance approach to any violation of human rights, and all issues raised in this respect will be handled promptly in line with our statutory rules as well as FIFA internal regulations.

Unquestionably, there is a private interest of FIFA to verify the accuracy and veracity of the information included in the Warrant of Arrest of Mr Ngaïssona and in the published NGOs reports. The nature of the conducts in question and the seriousness of the allegations that have been made, enable FIFA with the ethical need to discover the truth and to expose and sanction any wrongdoing. FIFA, like any other private association, has a vested interest in identifying and

sanctioning any wrongdoing among its officials and its members so as to dissuade similar conducts in the future.

All reports that we have accessed have supporting documentation that allows us to conclude that Mr Ngaïssona was definitely involved in this armed conflict and that he even had some degree of authority within the Anti-Balaka structure.

Mr Ngaïssona openly supported the Anti-Balaka; a group that committed insidious crimes against the Muslim population in CAR and against supporters of the adversary armed group Seleka. Mr Ngaïssona went so far as to make public statements, through which he defended and justified the serious wrongdoings of the Anti-Balaka armed group.

There is no doubt that, Mr Ngaïssona's involvement makes him participant of the severe crimes. Crimes that, under the auspices of the FCE 2012, certainly constitute violations to article 24, which explicitly obliged officials to protect, respect and safeguard the physical and mental integrity of every individual.

3.3. Duty of neutrality and Non-discrimination

As previously mentioned, the armed conflict between the Anti-Balaka and the Seleka groups was not only a political fight, but also a religious one. Both groups were fighting to keep the power within CAR. As well, these groups happened to be on the one hand, a Muslim group, and on the other, a Christian group. Each group aimed to impose their political views and their religion over the adversary.

Based on the collected evidence, we advise that Mr Ngaïssona was recognised as the leader of the Coordination Nationale des Libérateurs du Peuple Centrafricain (CLPC), which was one of the main branches of the Anti-Balaka movement. In addition, it is well documented that, through means of television and radio, Mr Ngaïssona incited hatred and violence against Muslim civilian communities and supporters of the Seleka group.

As an official, Mr Ngaïssona should have refrained from getting involved in the armed conflict, abstained from giving any political or religious opinion, and remained politically neutral. By participating in the said armed conflict, Mr Ngaïssona committed an unethical conduct and did not respect his duty of neutrality as established in article 14 of the FCE 2012.

It is clear that the mentioned military attacks in which Mr Ngaïssona participated, were focus exclusively to a group of people that can be identified by their religion and/or their political opinion – Muslim population in CAR and supporters of the Seleka movement, respectively. By being engaged with the Anti-Balaka, Mr Ngaïssona committed acts that were discriminatory and denigratory towards a defined group of people, and consequently breached article 23 of the FCE 2012.

3.4. General duties

In agreement with article 13 of the FCE 2012, all persons bound by this code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity.

Mr Ngaïssona's involvement in the attacks carried out between 2013 and 2014, leads to accusations related to war crimes and crimes against humanity. Crimes that are contrary to applicable laws and regulations. All of the alleged conducts are linked to breaches of internationally recognised human rights, including those contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

As an official, Mr Ngaïssona was obliged to show an ethical attitude at all times. Mr Ngaïssona should have behaved in a dignified manner and acted with complete credibility and integrity.

However, by engaging in the Anti-Balaka group and participating in the military attacks that eventually led to war crimes and crimes against humanity, he has breached his obligation and infringed article 13 of the FCE 2012.

4. CONCLUSION

The investigatory chamber, following the investigation proceedings conducted against Mr Ngaïssona and in accordance with the provisions of the FIFA Code of Ethics, finds Mr Ngaïssona guilty of having breached article 13, 14, 23 and 24 of the FCE 2012."

172. The Panel notes that the Investigatory Chamber Report contains the diagram of photographs and names under the caption "Structure of the political and military branches of CLP of Patrice Edouard Ngaïssona", in which the Appellant appears at the heart of the CLPC, the appointment letters signed by the Appellant of Soussou Abib as acting regional coordinator and Rodrigue Karamokonzi as acting zone commander in Boda on 28 June 2014 (Lobaye province), the signature page of the agreement for the cessation of hostilities in CAR signed in Brazzaville on 23 July 2014 by the Appellant on behalf of the Anti-Balaka movement, the press release of the Coordination Nationale des Patriotes Anti Balaka announcing the appointment of Sébastien Wénézoui as deputy general coordinator of the CLPC, signed in Bangui on 24 June 2014 by the Appellant in his capacity as "*Coordinateur Général*", and the decision of the Coordination Nationale des Patriotes Anti Balaka for the expulsion of Léopold Narcisse Bara, minister of youth and sports, signed in Bangui on 24 June 2014 by the Appellant in his capacity as "*Coordinateur Général*", which were all part of the Final Report.

iii) Consistency of the available evidence

173. The Appellant submits that the material concerning the circumstances and events included in the evidence which are part of the case file and were submitted before the investigatory chamber and, consequently, before the adjudicatory chamber is inconsistent.

174. In this respect, the Panel notes that the events and circumstances documented in said evidence and, in particular, in the Interim and the Final Report, in the Investigatory Chamber Report and in the FIDH Report, are consistent, at least in relation to the reported participation of the Appellant in the relevant events in CAR during the time period from December 2013 until December 2014 is concerned.

175. All the aforementioned evidence point to the role played by the Appellant as a leader of the CLPC, which was one of the main groups of the Anti-Balaka movement, and, at the same time, that he acted as the *de facto* leader of the Anti-Balaka, as evidenced by the fact that he apparently signed, on more than one occasions, various documents in his capacity as the national coordinator or the national political coordinator of the Anti-Balaka movement. These pieces of evidence also paint the picture of a dire situation of international human rights violations in CAR during the relevant period, where the onset of extreme criminal violence and instability comes as a direct result of the struggle between the opposing parties, one of which is the Anti-Balaka movement, in their fight to gain influence in the ongoing political and military struggle for power in CAR. Such violence and instability are assuming the characteristics of a military, political and religious fight, as certain groups of people are targeted as a result of their group identities by the main actors in the CAR civil war, which is the Séléka rebel coalition, on the one hand and the Anti-Balaka movement, on the other. The listed reports are also consistent in that the Appellant, other than signing an agreement for the cessation of hostilities in CAR in Brazzaville on 23 July 2014 on behalf of the Anti-Balaka movement, is not reported to have acted in an appeasing or conciliatory manner, to dissociate himself openly, or to have publicly denounced the acts of violence and crime committed and evidenced in the report, or to call for them to come to an end.

176. In any event, the Panel observes that the Appellant did not specifically raise any particular inconsistencies in the content of the reports listed above. The Appellant's objections with respect to the alleged partial or incomplete assessment of the evidence at hand is addressed below.

iv) The available evidence and their evaluation

177. The Appellant submits that there is no sufficient evidence to establish to the comfortable satisfaction of the Panel that he was involved in the events and circumstances described in the Appealed Decision, and that the adjudicatory chamber failed to address his arguments in this respect.

178. At the outset, the Panel is bound to recognise the difficulty in which it finds itself, namely to make findings of fact on the basis of secondary evidence with

no real possibility to test that evidence in any detailed way. The Panel is also conscious of the limited ability of time available to it to make findings of fact, and the role of the ICC that will, to a different standard, assess much of the same evidence.

179. Nevertheless, the Panel is conscious of its obligations to make finding of fact on the basis of the evidence that is before it, and according to the lower standard of proof that it is called on to apply.

180. With this in mind, and preliminarily, the Panel shall refer to the methodology of the panels and teams of experts that comprised the Interim and the Final Reports and the FIDH Report, as described in each respective report.

181. The Final Report states in its relevant part that:

"*5. The Panel endeavours to ensure compliance with the standards recommended by the Informal Working Group of the Security Council on General Issues of Sanctions in its report of December 2006 (S/2006/997, annex). These standards call for reliance on verified, genuine documents, concrete evidence and on-site observations by experts, including photographs wherever possible. When physical inspection was not possible, the Panel attempted to corroborate information using multiple independent sources to appropriately meet the highest achievable standard, placing a higher value on statements by principal actors and first-hand witnesses to events.*

6. While it intends to be as transparent as possible, in situations where identifying sources would expose them or others to unacceptable safety risks, the Panel intends to withhold identifying information and place the relevant evidence in United Nations archives.

7. The Panel is equally committed to the highest degree of fairness and will endeavour to make available to parties, where appropriate and possible, any information in the report for which those parties may be cited, for their review, comment and response within a specified deadline.

8. The Panel safeguards the independence of its work against any effort to undermine its impartiality or create a perception of bias. The Panel approved the text, conclusions and recommendations in the present report on the basis of consensus prior to its transmission by the Coordinator to the President of the Security Council.

(…)

Annex 64: Methodology

1. Throughout the mandate, the Panel compiled a database of security and criminal incidents that could be classified as violations of international humanitarian law (IHL), international human rights law (IHRL) and other

sanctionable acts listed in paragraph 37 of Security Council resolution 2134 (2014). Other security-related incidents have been included as well to gain an overview of the security situation in the country and, if relevant, pursue further investigations.

2. Documented incidents include: killings, kidnappings and rapes of aid workers; attacks or threats against humanitarian organizations, staff members and criminal incidents."

182. According to the relevant section of the FIDH Report:

"*The international FIDH, OCDH, LCDH fact-finding mission went to Central African Republic in February 2014. This mission was composed of Benoζt Van Der Meerschen, FIDH chargé de mission; Roch Euloge Nzobo, Executive Director of the Congolese Observatory of Human Rights (Congo-Brazzaville) and chargé de mission; and Florent Geel, Head of the Africa Desk at the FIDH International Secretariat. The group was accompanied by representatives from the Central African League for Human Rights (LCDH) and the Central African Observatory for Human Rights (OCDH). The mission worked in Bangui and on the Bangui-Bossembılı road especially in and around Boali. A previous mission had been able to go to the Nana-Grıbizi Prefecture on the Kaga-Bondoro – Mbrés road.*

The main purpose of the mission was to investigate the grave abuses committed by the Seleka and to determine who was responsible, in order to conceptualise a road map on human rights for the authorities and the international community. This road map was to focus on the protection of the civilian population, the fight against impunity for the perpetrators of the most serious crimes and the consolidation of the rule of law. The brief also included support for the civil society organisations' human rights activities. Throughout their visit mission officials heard the testimony of victims of serious human rights violations and their families. FIDH, LCDH and OCDH, with the agreement of the parties involved, decided to keep victims' identities anonymous to ensure their safety. FIDH, LCDH and OCDH would like to thank the Centre pour l'information environnementale et le développement durable (CIEDD) and the Maison de l'enfant et de la femme pygmée (MEFP) for helping to establish the facts. FIDH, LCDH and OCDH would also like to thank the United Nations, AFISM-CAR and the Sangaris troops for having ensured the safety of the mission in certain parts of the country.

The mission met with the following persons:

(…)

– General anti-balaka Coordinator, Mr Patrice Edouard Ngaissona;"

183. The Panel notes that all the reports, except for the Investigatory Chamber Report, were made after one or more field visits to CAR and were drafted in

close proximity in time to the actual events. Additionally, the Appellant was interviewed by both the Panel of Experts and the team of experts who drafted the FIDH Report. He was also heard by the investigatory chamber prior to the conclusion of the Investigatory Chamber Report.

184. The Appellant does not offer any objections concerning the methodology of the reports, but his grounds for appeal are based on the alleged misapplication of the standard of proof, the alleged lack of impartiality of the panels or teams of experts or the international organisations that commissioned the relevant reports or their refusal to examine mitigating circumstances or consider the evidence in the light presented by the Appellant. The Panel also notes that the Appellant did not submit any evidence to contradict the evidence set out in the reports or their findings. This is even after the conclusion of the confirmation of charges hearing for the Yekatom and Ngaïssona Case and the beginning of the trial before the ICC. Nor did he explicitly refer to any evidence which he was not able to produce before CAS as a result of the confidentiality rules or any other policy or restriction imposed upon him by the ICC.

185. Having said that, the Panel finds that the evidence relied on by the investigatory and the adjudicatory chambers and submitted by FIFA before CAS offer a credible and reliable basis for it to form a view as to the facts, on the basis of a 'comfortable satisfaction' standard (which is materially different from a criminal standard of 'beyond reasonable doubt'). This is for a number of reasons.

186. First, the Interim Report and the First Report, to which the Investigatory Chamber Report heavily relied on, and the FIDH Report, were commissioned by the UN and the FIDH respectively, which are organisations that are independent of the conflict. The Panel notes that it is not enough to simply maintain that international organisations such as the UN or the FIDH are not impartial, in order to cast doubts on the findings of their reports. Moreover, there is no specific reference, let alone proof, of any reasons, personal or others, that the members of the UN Panel of Experts or the FIFA Ethics Commission or the leadership of such organisations had to implicate the Appellant in the events that took place in CAR in the relevant time and present him as a person who is involved in the leadership of one of the conflicting parties in CAR, as the Appellant seems to claim in his Appeal Brief.

187. Second, the Panel takes note of the objections of the Appellant against the evidentiary value of the Warrant, considering that it was drafted by the Office of the ICC Prosecutor, and that it was, at least in part, not confirmed by the ICC Confirmation Decision. However, the Panel feels that this last element is not decisive in assessing the evidentiary value of the remaining (confirmed) charges against the Appellant and the content of the reports. As explained in detail above, the ICC proceedings and the one at hand are different in nature, as is the standard of proof required to determine the guilt or the innocence of the Appellant in each one of them.

188. Third, the Panel is aware of the restraints faced by international sport organisations in conducting themselves investigations and finding and collecting evidence in disciplinary cases concerning matters principally outside their realm. The CAS has dealt with this problem many times, mostly in cases related to match-fixing. The CAS Panels have consistently taken into account that sports governing bodies, in contrast to public authorities, have extremely limited investigative powers (CAS 2017/A/5086, par. 189, CAS 2017/A/5003), which is to be considered together with the admission that the effective combat against corruption and ethics violations is of fundamental importance in sport (CAS 2011/A/2426, par. 103).

189. Fourth, there is nothing to deter the Panel from finding the evidence which was presented above as offering a basis to form a determination as to whether, to the standard of comfortable satisfaction, the Appellant committed any violations of the 2018 FCE, especially since the Appellant submitted no evidence to contradict them, but relied heavily on legal arguments against them, which were already addressed in the relevant sections of this award. In this respect, the Panel derives some comfort from having been able to take into consideration the testimony provided by Mr. Llorca: he testified as an expert during the hearing and confirmed the methodology of the UN Panel of Experts, in his capacity as coordinator, and provided details on the actual work they did on the field.

v) The Panel's assessment of the evidence

190. Based on the evidence on file and, particularly, on the content of the Interim and the Final Reports and of the FIDH Report (collectively: the "Reports"), the Panel is comfortably satisfied from a factual point of view that during the period from December 2013 until December 2014 the Appellant was active as the general coordinator of the CLPC and as one of the most prominent political leaders of the Anti-Balaka movement. In that capacity, he was regularly signing internal documents, such as appointment decisions for persons in the Anti-Balaka mechanism, but also documents intended to a broader public, such as press releases. He also signed agreements entered into between actors of the ongoing civil war in CAR on behalf of the Anti-Balaka. The above findings are not disputed *per se* by the Appellant. In fact, according to the FIDH Report, the Appellant confirmed himself his role in the Anti-Balaka: "*Ngaïssona s himself told the mission that he "agreed to be the spokesman for the anti-balaka, the people's emancipation movement because they were unrepresented. I said, 'why me?' and they said, 'because you stand with the youth"*." (p. 61) Overall, the Appellant failed to dispute the findings of the reports on his leadership position within the Anti-Balaka or provide an alternative picture.

191. The Panel is also comfortably satisfied from the same evidence that the incidents and circumstances described in the Reports occurred. Namely, that the Anti-Balaka, in the leadership of which the Appellant featured as the centrepiece, were involved from December 2013 onwards in armed attacks against areas of the capital of CAR, Bangui, and against towns and villages, most of the times

specifically targeting people belonging to a different political (Seneka supporters) or religious group (Muslims).

192. The Panel observes that the Appellant does not specifically object to such findings nor does he challenge with other evidence any of the above facts and circumstances. Instead, he makes general complaints to the effect that the Reports are impartial, non-conclusive and unsubstantiated, that the investigatory chamber was wrong to accept their findings as it did not take into account the objections of the Appellant and that the adjudicatory chamber relied on partial and non-objective evidence and failed to properly assess their validity. In this respect, the Panel finds that such objections are generalised and, at best, highly speculative and not supported by specific evidence. At worst, they may be characterised as vague and deeply implausible. In any event, the Panel has already addressed the legal points raised by the Appellant one by one previously in this award.

193. That said, the Panel shall now turn its attention to the question whether the Appellant violated Articles 23, 22 and 14 of the 2018 FCE.

vi) Applicability *ratione personae* of the 2018 FCE

194. According to Article 2 par. 1 of the 2018 FCE, the Code applies "*to all officials*". Considering that official is a defined term in the FCE, the Panel shall understand it to mean "*any board member (including the members of the Council), committee member, referee, assistant referee, coach, trainer or any other person responsible for technical, medical or administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries)*".

195. The Panel recalls that the Appellant occupied the following positions: he was President of the CARFA from 2008 and until at least his arrest on 12 December 2018 and from January 2012 to January 2017 member of the Organising Committee for the FIFA Club World Cup.

196. Therefore, the Appellant was indeed an "official" as defined under the 2018 FCE and, as such, bound by the 2018 FCE, the applicability of which is not disputed by the Appellant.

vii) Article 23 of the 2018 FCE

197. As a preliminary matter, the Panel points out once more that its task is not to determine whether the Appellant is guilty of war crimes or of violations of international humanitarian law. The scope of the present arbitration is limited to the competence of the FIFA bodies, the requests submitted by the parties and the content of the decision appealed against and, consequently, by the content of the applicable provisions of the 2018 FCE the Appellant is alleged to have

breached, to a standard of 'comfortable satisfaction'. The finding of this Panel, to that standard, can have no relevance to the ICC proceedings.

198. The Panel turns to the content of Article 23 of the 2018 FCE which is entitled "Protection of physical and mental integrity" and reads as follows in its relevant part:

"*1. Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others.*

2. Persons bound by this Code shall not use offensive gestures and language in order to insult someone in any way or to incite others to hatred or violence.

3. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts intended to isolate or ostracise or harm the dignity of a person.

(...)"

199. The applicable rules do not contain a definition of the terms "*integrity and personal dignity*". The Panel considers that there is no difficulty in defining those terms, which are to be understood, respectively, as including honesty and adherence to a set of moral principles, but also to the physical inviolability and personal autonomy of all persons, and the inherent right of every person to be valued, respected and treated with dignity, in accordance with fundamental rights under general international law. "*Harassment*" is defined in paragraph 3 of Article 23 as "*systematic, hostile and repeated acts intended to isolate or ostracise or harm the dignity of a person*".

200. On the one side, FIFA maintains that the evidence against the Appellant is overwhelming and that the ethics breaches found in the Appealed Decision should be confirmed. In particular with respect to the breach of Article 23, FIFA submits that the Reports established that under the Appellant's leadership "*the Anti-Balaka's acts led to the decimation of the country's Muslim population, to general hostilities and attacks against civilians exclusively for ethnic, religious and political reasons, as well as the displacement, forcible transfer or deportation, summary execution, killing, mutilation, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty and sexual offences against Muslims. All of this aside from the general destruction of Muslim property and religious building and the routine pillaging of Muslim houses and shops*". Such circumstances "*largely depict a society living outside the scope of fraternity and peace defended by FIFA in its Statutes (and, hence, being the underlying basis of Article 23 FCE)*", while "*the Appellant's role as General Coordinator of the Anti-Balaka made him a direct participant in the atrocities committed by the movement which he led, therefore resulting in his responsibility for such actions. Moreover, even if one were to consider his arguments portraying him as a "peacemaker" without deciding power, it is again obvious that in his capacity as a high-ranking member of the movement, he was clearly aware of the massacres that it was perpetrating in his country at*

the time, yet he remained an active member of the Anti-Balaka and seemingly took no action to prevent (or even condemn) the atrocious activities of his group". As a result, FIFA submits that the Appellant, "*through both his actions and his inactions and while being a football official, participated in the violent actions of his movement and failed to protect, respect and safeguard the integrity and personal dignity of the Muslim community in his country. On the contrary, his stance facilitated not only insults against that community, but it more importantly incited his followers to commit acts of hatred, harassment and violence against Muslims*".

201. On the other side, the Appellant contends, among other things, that there is no evidence to substantiate any of the alleged breaches of the applicable rules of the FCE. The Panel observes that the Appellant in his appeal focuses mainly on procedural and legal aspects and does not address his alleged misconduct per se, but only summarily proclaims that he is innocent of any violation. The Panel also takes note of the Appellant's argument that after the ICC hearing on the confirmation of charges, the ICC Pre-Trial Chamber "*dismissed 75% of the charges brought against the Appellant by the Prosecutor of the ICC*". Additionally, in his defence submitted before FIFA on 27 May 2019, which is incorporated by reference in his appeal, the Appellant, again, complains for unsubstantiated allegations made with respect to his person, the Anti-Balaka movement activities and his position in it in the Investigatory Chamber Report, for lack of impartial and objective assessment of the CAR case, for the use of anonymous witnesses, which is not allowed by the FCE, and for wrong assessment of the evidence at hand.

202. As a first consideration, the Panel notes that the Appellant does not in principle dispute his leadership position within the Anti-Balaka movement. Moreover, he does not seek to offer any concrete explanation as to why he has signed the documents which are annexed to the Final Report and are listed in the relevant section of this award as "*Représentant ANTIBALAKA*" in his capacity as "*Coordinateur National Politique*" or as "*Coordinateur Général*". What is more, he did not clarify his objection by indicating who, if not him, was occupying the leadership position in the Anti-Balaka movement during the relevant time, let alone substantiate it with evidence.

203. At the same time, the Panel notes that the Appellant did not counter or refute any of the findings of the Reports with respect to the actions committed by members of the Anti-Balaka movement, while under his political leadership, which are set out in detail in the Reports and in the relevant parts of the Appealed Decision. These findings of fact remain uncontested.

204. With regards in particular to the position expressed by the Appellant during the hearing, namely that he strived for peace and that his sole concern and aim during the relevant time period was to act as a promoter of peace, the Panel cannot help to note that the Appellant did not submit any evidence to support his claim, including in relation to the period of time to which the allegations relate.

205. Therefore, on the basis of the evidence on file and the Panel's position on the assessment and evaluation of those evidence explained previously in detail, and considering that the Appellant did not bring forward any evidence to cast doubt on, let alone refute, the findings of the Reports and the Appealed Decision, the Panel is comfortably satisfied that the Appellant played a role as representative of the Anti-Balaka, as recognised in the eyes of national and international communities alike. Further, by taking part in the events that occurred in CAR after the onset of civil war, and in his capacity as political leader and coordinator of the Anti-Balaka movement, intentionally or by omission, he was involved in the onset of extreme criminal violence and instability as a direct result of the struggle between the various opposing sides, one of which was the Anti-Balaka movement, in their fight to gain influence in the ongoing political and military struggle for power in CAR. In doing so, the Panel finds to its comfortable satisfaction, on the basis of the evidence before it, that the Appellant affected in a negative way the integrity and personal dignity of other persons and contributed to their harassment in the sense of Article 23 of the 2018 FCE. In reaching this conclusion, the Panel takes particular note of the fact that the Appellant, other than signing an agreement for the cessation of hostilities in CAR in Brazzaville on 23 July 2014 on behalf of the Anti-Balaka movement, has not presented any evidence to the Panel that he ever acted in an appeasing or conciliatory manner, dissociate himself openly from or publicly denounced the acts of violence and crime which were undisputedly committed in CAR during the relevant time.

206. With respect to the specific nature of the Appellant's involvement, the Panel notes that Article 6 of the 2018 FCE provides that "*breaches of this Code shall be subject to the sanctions set forth in this Code, whether acts of commission or omissions, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or attempted act, and whether the parties acted as principal, accomplice or instigator*."

207. Based on the foregoing, the Panel finds to its comfortable satisfaction, on the basis of the evidence before it, that the Appellant violated Article 23 paras. 1 and 3 of the 2018 FCE and confirms the Appealed Decision in this regard.

viii) Article 22 of the 2018 FCE

208. Pursuant to Article 22 par. 1 of the 2018 FCE, which is entitled "Discrimination and Defamation", the Appellant was under the obligation to "*not offend the dignity or integrity of a country, private person or group of people through contemptuous, discriminatory or denigratory words or actions on account of race, skin colour, ethnicity, nationality, social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason*".

209. The content of that provision is self-explanatory and presents no difficulty of interpretation or application.

210. The Panel observes that the Appellant does not submit any separate explanations for each allegation of violation of each different provision of the 2018 FCE.

211. As a result, in view of the content of the applicable provision ("*dignity or integrity of a […] private person or group of people […] on account of […] religion, political opinion*") and the circumstances of this case, the Panel repeats the conclusion reached in the previous section of this award. The Panel concludes, to its comfortable satisfaction on the basis of the evidence before it, that the Appellant by taking part in the events that revolved in CAR after the onset of civil war in his capacity as political leader and coordinator of the Anti-Balaka movement was, intentionally or by omission, involved in the onset of extreme criminal violence and instability as a direct result of the struggle between the various opposing sides, one of which was the Anti-Balaka movement, in their fight to gain influence in the ongoing political and military struggle for power in CAR. The Panel takes particular note of the fact that the Seleka group which was opposing the Anti-Balaka was predominantly Muslim and, as such, the actions of the Anti-Balaka elements in CAR during the relevant time were directed against other persons on account of their political and religious affiliations alike. This is documented in the Reports, where attacks, killings and other violent crimes against political opponents, Muslims, their properties and their places of worship are listed with detail and were not specifically disputed by the Appellant. In occupying the aforementioned position, the Panel concludes, to its comfortable satisfaction on the basis of the evidence before it, that the Appellant played a role in these actions, which offended the "*dignity or integrity of a […] private person or group of people […] on account of […] religion, political opinion*", and that he took no active steps to prevent them from occurring and that he did not dissociate himself openly from these actions.

212. The Panel notes, once more, that Article 6 of the 2018 FCE provides that "*breaches of this Code shall be subject to the sanctions set forth in this Code, whether acts of commission or omissions, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or attempted act, and whether the parties acted as principal, accomplice or instigator*."

213. In view of the above, the Panel finds to its comfortable satisfaction, on the basis of the evidence before it, that the Appellant violated Article 22 par. 1 of the 2018 FCE and confirms the Appealed Decision in this regard.

ix) Article 14 of the 2018 FCE

214. According to Article 14 par. 1 of the 2018 FCE, which is entitled "Duty of neutrality", the Appellant was under the obligation to "*remain politically neutral, in accordance with the principles and objectives of FIFA, the confederations, associations, leagues and clubs, and generally act in a manner compatible with their function and integrity*".

215. The content of that provision is self-explanatory and presents no difficulty of interpretation or application.

216. Considering the findings in the two preceding sections and the circumstances of the case, the Panel is comfortably satisfied, on the basis of the evidence before it, that the Appellant acted in a way which contravened his obligation to remain politically neutral, by taking sides in the events which culminated in the onset of extreme criminal violence and instability as a direct result of the political and military struggle in CAR.

217. Indeed, the Appellant did not submit any evidence to challenge the relevant findings of the Reports, neither did he challenge in the eyes of the Panel any of the circumstances which constitute a fragrant violation of his duty to remain politically neutral.

218. As a result, the Panel finds that the Appellant violated Article 14 par. 1 of the 2018 FCE and confirms the Appealed Decision in this regard.

E. Sanctions

219. Having established that the Appellant violated Articles 23, 22 and 14 of the 2018 FCE, the Panel shall now proceed to examine whether the sanctions imposed on the Appellant by means of the Appealed Decision are appropriate.

220. The Panel notes that the Appealed Decision imposed on the Appellant a ban from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for six years and eight months and a fine in the amount of CHF 500,000. In doing so, the adjudicatory chamber indicated that the Appellant was the president of a national association and of various FIFA committees and, as such, was expected to serve as a role model in the football community and, additionally, that his actions and conduct took place in a dramatic context and are of an unprecedented gravity, while he demonstrated no awareness of wrongdoing or remorse for his actions and/or failure to act at any stage of these proceedings.

221. The Appellant contested the proportionality of his sanction by arguing that his "*repeated calls for cooperation were left without response by the Investigatory Chamber*". The Panel does not see how this unsubstantiated argument may have any effect in contesting the proportionality of the sanction imposed by the Appealed Decision.

222. Additionally, specifically with respect to the amount of the fine imposed on him, the Appellant also argued that he is indigent and is using legal aid in the proceedings at the ICC, he is under pre-trial detention since 12 December 2018, therefore lacking any income, and that he has a wife and eight children. As a result, the fine imposed upon him by the adjudicatory chamber of the FIFA Ethics Committee is disproportionate and excessive under the circumstances.

223. The Panel notes that FIFA did not contest the Appellant's submissions on his financial situation.

224. The Panel further notes the constant jurisprudence of CAS regarding a limited discretion for CAS panels to review sanctions imposed by disciplinary bodies of federations when such panels make similar findings as in the decision appealed against and that such discretion should only be exercised "*when the sanction is evidently and grossly disproportionate to the offence*" (CAS 2009/A/1817 & 1844, par. 174, CAS 2016/A/4501, par. 313).

225. In this respect, the Panel takes into account that the Appellant has committed grave breaches of several of his obligations under the FCE, which, seen under the light of the circumstances in which they were committed, are indeed of a significant gravity. The nature of the offences committed alone does not allow arguments such as the one advanced by the Appellant, namely that "*if the goal aimed […] was to preserve football from interferences by individuals charged with war crimes and crimes against humanity, the ban could have been considered as a sufficient sanction*".

226. Secondly, the Panel takes note of the fact that the Appellant does not claim that the deciding body violated its discretionary power in an arbitrary way.

227. One other factor does trouble the Panel, namely the failure of FIFA to act until after the International Criminal Court (ICC) Pre-Trial Chamber issued a Warrant of Arrest for the Appellant, on 7 December 2018. For more than four years, notwithstanding the publication of UN and other reports, and other information that was in the public domain, FIFA apparently failed to take disciplinary action against an individual whose activities appeared to bring the organisation, and the sport for which it was responsible into disrepute. In the circumstances, it is not immediately apparent to the Panel, that the levying of a fine against the Appellant, in the amount determined in the Appealed Decision, the proceeds of which would be directed to FIFA, may be said to be justifiable.

228. In any event, in order to assess the proportionality of the sanctions, the Panel needs to review the nature of the principal offence committed and to what extent such conduct gives rise to an obvious, substantial and justified need to deter similar misconduct in the future from the Appellant, as well as from any other FIFA officials (CAS 2019/A/6388, par. 230). In doing so, the Panel finds that the adjudicatory chamber generally took into account all relevant circumstances and the applicable legal framework available sanctions in the event of multiple offences. In the exercise of its discretion, and in the absence of the possibility under the applicable rules of imposing a lifetime ban, which the Panel considers would be an appropriate sanction having regard to the gravity of the present matter, as supported by the evidence that is before it, the Panel concludes that the temporal ban is certainly justified and appropriate.

229. With regard to the financial penalty, the Panel has a number of concerns. Unlike, for example, a case that relates to corruption, there is no evidence before the

Panel that the Appellant gained any financial benefits from his actions. Nor has any evidence been put before the Panel to establish that FIFA has suffered any direct financial loss. It appears to the Panel that the penalty imposed by the Appealed Decision may have been a consequence of the inability to impose a longer temporal ban, or indeed a lifetime ban.

230. Relatedly, it is not immediately apparent to the Panel that, having regard to the nature of the evidence before it, the wrongs which were done, and the harms that have been suffered, are such as to justify a financial payment that might be seen by some as benefiting FIFA, rather than the individuals and groups who have suffered direct harm as a consequence of the actions of the Appellant, as set forth in the evidence before the Panel.

231. In view of the above and in light of the gravity of the offences and the need to deter similar misconduct in the future from the Appellant, as well as from any other FIFA officials (CAS 2019/A/6388, par. 230), the majority of the Panel finds that the imposition of a monetary fine to the Appellant, in addition to the ban, is also justified, taking into account at the same time that because of the applicable rules and absent a request of the parties it is not possible to direct the payment otherwise.

232. At the same time, however, the Panel considers that FIFA did not contest the Appellant's submission on his financial situation at present neither did it provide evidence of the Appellant's earnings in the past during his period as a FIFA official or what he may have gained financially from his actions, which, albeit causing extreme pain and suffering, did not relate with corruption in the sport of football and, in the face of the evidence before the Panel, were lacking any financial motives for the Appellant and similar effects for FIFA.

233. Accordingly, a majority of the Panel finds that while a fine is justified, the fine imposed on the Appellant is disproportionate and a fine of CHF 100,000 is justified and proportionate in view of the circumstances of the present case and the Appealed Decision has to be amended in this regard.

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Patrice-Edouard Ngaïssona on 19 December 2019 against the decision issued on 25 July 2019 by the adjudicatory chamber of the FIFA Ethics Committee is partially upheld.

2. The decision issued on 25 July 2019 by the adjudicatory chamber of the FIFA Ethics Committee is confirmed, save for item n. 3 of the operative part, which is amended as follows:

   "3. Mr Ngaïssona shall pay a fine in the amount of CHF 100,000 within 30 days of notification of the present decision."

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 13 November 2023

THE COURT OF ARBITRATION FOR SPORT

Sofoklis P. Pilavios
President of the Panel

Philippe Sands
Arbitrator

Manfred Nan
Arbitrator