

Decision
of the
adjudicatory chamber
of the
FIFA Ethics Committee

Mr Vassilios Skouris [GRE], chairperson
Mr Flavio Zveiter, [BRA], member
Mr Melchior Wathelet, [BEL], member

taken on 25 July 2019

in the case of:

Mr Patrice-Edouard Ngaïssona (CAR)

Adj. ref. no. 10/2019
(Ethics E19-00001)

I. Factual analysis

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

a) Procedural background

1. Mr Patrice-Edouard Ngaïssona, a Central African Republic national, was from May 2008 until recently, the president of the Central African Republic Football Association (hereinafter: "CARFA"). He was also a member of the Organising Committee for the FIFA Club World Cup between January 2012 and January 2017, and, from November 2017 until recently, a member of the FIFA Member Associations Committee.
2. The International Criminal Court (hereinafter: "ICC") issued a Warrant of Arrest for Mr Ngaïssona on 7 December 2018 in regards to the *Situation in the CAR II*, Case No. ICC-01/14-02/18 (hereinafter: "*warrant of arrest*"). Mr Ngaïssona, who allegedly was the most senior leader and the National General Coordinator of the Anti-Balaka group, is alleged to be responsible for committing crimes against humanity and war crimes in various locations in Central African Republic (hereinafter: "CAR"), between at least 5 December 2013 and December 2014.
3. Mr Ngaïssona was arrested by French authorities on 12 December 2018 and transferred to the ICC detention centre in The Hague on 23 January 2019.
4. Pursuant to art. 59 of the FIFA Code of Ethics, 2018 edition ("*FCE*") and based on the abovementioned information, Ms Maria Claudia Rojas, Chairperson of the investigatory chamber of the FIFA Ethics Committee (hereinafter: "*the investigatory chamber*"), instructed the secretariat of the investigatory chamber to carry out an initial evaluation of this matter. In this regard, Mr Ngaïssona was required to submit a written statement by 18 March 2019 and all relevant information in its possession in relation to the above allegations.
5. By virtue of Mr Ngaïssona being in custody of the ICC, his legal counsel stated, through a letter dated 18 March 2019: that Mr Ngaïssona was presumed innocent pursuant to the Rome Statute of the ICC and all the internationally recognised standards of protection of Human rights; that Mr Ngaïssona was still awaiting for the disclosure of any incriminating evidence against Mr Ngaïssona; that the evidence of the case was and would remain confidential until public presentation during the Confirmation Hearing before the ICC; that the counsel was not at liberty to provide to third persons any information or materials regarding a pending case at the ICC.
6. On 1 April 2019, Mr Ngaïssona was officially notified pursuant to article 60 and 61 par. 1 of the FCE, that formal investigation proceedings with ref. no. E19-00001 had been opened against him for possible violations of articles 13 par. 2; 23 and 24 FIFA Code of Ethics 2012 (hereinafter: "*FCE 2012*").

7. Reference is made, in respect to any further procedural factual and procedural aspects, to the final report submitted, together with the investigation files, by the investigatory chamber to the Chairperson of adjudicatory chamber of the FIFA Ethics Committee (hereinafter: "*the adjudicatory chamber*") on 2 May 2019, upon completion of the respective investigation proceedings, in accordance with art. 62 par. 3 and art. 68 of the FCE.

b) Findings of the investigatory chamber

8. In the scope of its investigation, the investigatory chamber gathered different types of evidence, including: the Warrant of Arrest for Mr Ngaïssona issued by the ICC on 7 December 2018; the Final Report No. S/2014/762 of the Panel of Experts on the CAR established pursuant to UN Security Council resolution 2127 (2013); other reports issued by several non-governmental organizations (hereinafter: "*NGOs*").

1. Historical background

9. Dissatisfied with the government of the CAR, an armed group known as "*Seleka*" emerged in August 2012.
10. By the end of March 2013, CAR's president at the time François Bozizé was forced into exile in the Republic of Cameroon and Michel Djotodia, leader of the Seleka group, proclaimed himself as president of CAR. The Seleka group attacked and committed atrocities, including summary executions, rape and sexual violence, torture, arbitrary arrests and detention, looting and property destruction. The targets of such attacks were the western regions associated with Bozizé and his ethnic group Gbaya, and civilian population.
11. In response to these attacks and violations, another military group known as "*Anti-Balaka*" was formed. Their objectives were to (i) remove Michel Djotodia from power, (ii) defend against and oust the Seleka from CAR; and (iii) target the Muslim population in western CAR in retribution for the crimes and the abuses committed by the Seleka.
12. The Anti-Balaka group was engaged in hostilities against the Seleka in western CAR, starting in Bossangoa, spreading east to Bouca and then south to Bossemptélé, Bossembélé and Boali.
13. An attack was carried out in Bangui on 5 December 2013. Various Anti-Balaka groups, comprising about a thousand armed men, joined efforts and attacked Bangui from different directions, using heavy weapons, assault rifles and machetes. On the same day, Anti-Balaka elements attacked Bossangoa. An estimated 1,000 persons were killed in Bangui alone.
14. On 10 January 2014, self-proclaimed president Michel Djotodia resigned and the Seleka forces retreated.
15. When the Seleka 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 targeting of the Muslim civilian population and those perceived to have supported the Seleka group. 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 systematically carried out.

16. By February 2014, nearly all Muslim neighbourhoods in Bangui had been cleared of their inhabitants. Bangui's original Muslim resident population of approximate 130,000 had been drastically reduced to only around 900 by March 2014. Most of western CAR's Muslim population had sought refuge in the neighbouring countries. Approximately 70,000 Muslim refugees were received in Chad and over 120,000 in Cameroon by August 2014.

2. Warrant of Arrest

17. The ICC Pre-Trial Chamber found that there are reasonable grounds to believe that, from at least September 2013 until at least December 2014, a widespread and systematic attack was carried out by the Anti-Balaka military group against the Muslim civilian population and anyone perceived to support the Seleka group.

18. Mr Ngaïssona – who was the most senior leader and the National General Coordinator of the Anti-Balaka – is alleged to be responsible for crimes committed in this context in various locations in CAR, including Bangui, Bossangoa, the Lobaye Prefecture, Yaloké, Gaga, Bossemptélé, Boda, Carnot and Berberati, between at least 5 December 2013 and December 2014, as follows:

- crimes against humanity: murder and attempted murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, persecution, enforced disappearance and other inhumane acts; and

- war crimes: murder and attempted murder, torture, cruel treatment, mutilation, intentionally directing an attack against the civilian population, intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance, intentionally directing an attack against buildings dedicated to religion, pillaging, enlistment of children under the age of 15 years and their use to participate actively in hostilities, displacement of the civilian population and destroying or seizing the property of an adversary.

3. Reports from the UN Security Council's Panel of Experts on the CAR situation and other NGOs reports.

19. On 29 October 2014, the Panel of Experts on the CAR established pursuant to UN Security Council resolution 2127 (2013), issued its Final Report S/2014/762. Such report identified Mr. Ngaïssona as one of the persons involved in the armed conflict between the Anti-Balaka and Seleka groups, by being one of the key leaders of the Anti-Balaka military group in the CAR between 2013 and 2014.

20. According to the mentioned report and various evidence cited therein, Mr Ngaïssona was the political coordinator of the "Coordination Nationale 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. This included 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.
21. As stated on the Panel of Experts' report, the CLPC group was politically led by Mr Ngaïssona as the "National General Coordinator", and therefore, Mr Ngaïssona was directly involved in the referred armed conflicts that took place in Batangafo, Bambari and Boda.
22. The Panel also gave its opinion that all the efforts made by Mr Ngaïssona to structure the different components and groups within the Anti-Balaka organization, showed the extent of Mr Ngaïssona's reach and leadership within the CLPC and the Anti-Balaka group. Mr Ngaïssona on behalf of the CLPC issued and signed identification cards for its members as to allow them to participate in the disarmament, demobilization and reintegration process. There is 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 (cessation agreement know as "Brazzaville Summit").
23. Many other documents have been exhibited by diverse NGOs that show that Mr Ngaïssona participated in the Anti-Balaka military group. For example, Mr Ngaïssona confirmed his position and explained the way the troops were to be organised. Along with the investigations carried out by a NGO called "International Federation for Human Rights" (hereinafter: "FIDH"), Mr Ngaïssona has also been identified as one of the main links between former president Bozizé and the Anti-Balaka military command during the armed conflict. In February 2014 during an interview with 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".
24. 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 proceedings 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.

25. 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.
26. Mr Ngaïssona made public statements on behalf of the CLPC, such as declaring that the Anti-Balaka group was successful in releasing the people from “the murderous claws of the Seleka” after self-proclaimed president Michel Djotodia resigned and fled. On 1 February 2014, Mr Ngaïssona additionally stated that the “ultimate aim of the movement” – ending the Seleka regime – has been achieved. These public statements are well documented as annexes of the mentioned reports.
27. There exist several documents that prove Mr Ngaïssona’s participation in the Anti-Balaka group. He publicly declared he was part of the Anti-Balaka movement and openly acted as such. He assumed and confirmed his leadership within the CLPC, organization that certainly was part of the Anti-Balaka group.
28. The gathered information shows that the Anti-Balaka group caused thousands of killings, mutilations, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty, sexual offences, destruction of Muslim property and religious buildings in CAR.
29. The armed conflict between the Anti-Balaka and the Seleka groups was not only a political fight, but also a religious one. According to the UN Security Council Experts Panel’s report and confirmed by several NGOs, both the Seleka and the Anti-Balaka groups were fighting to keep the political control within CAR. These groups also were on the one hand, a Muslim group, and on the other, a Christian group. Each group was aiming to impose their political views and their religion over the other.
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).

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

a) The opening of adjudicatory proceedings

32. On 3 May 2019, a letter was sent to Mr Ngaïssona informing him that adjudicatory proceedings had been opened, providing him with a copy of the final report and the relevant enclosures and requesting him to submit his position by 24 May 2019 (cf. art. 68 and art. 71 of the FCE 2018). Mr Ngaïssona was further requested to confirm by 13 May 2019 whether he would request a hearing to appear in situ. The letter was communicated to Mr Ngaïssona through his legal representatives (hereinafter: "Knoops Advocaten").
33. On behalf of Mr Ngaïssona, Knoops Advocaten confirmed on 13 May 2019 that Mr Ngaïssona would require a hearing. However, Knoops Advocaten added that since Mr Ngaïssona was held at the ICC Detention Centre in The Hague, he would not be able to appear in situ, and therefore requested the adjudicatory chamber to allow them to represent him, in their capacity as legal counsels. Such request was granted on the following day by the chairperson of this adjudicatory chamber of the FIFA Ethics Committee.
34. On 23 May 2019, Mr Ngaïssona's legal representatives requested the adjudicatory chamber to extend the deadline imposed on Mr Ngaïssona by two days to present his position, justifying this extension on the intensification of workflow that his Mr Ngaïssona team faced during the first weeks of May in respect to the criminal proceedings before the ICC. The extension was granted and Mr Ngaïssona was informed that the deadline for the submission of his position was extended until Monday 27 May 2019.

b) Summary of Mr Ngaïssona's position

35. Mr Ngaïssona submitted his position with regard to the final report of the investigatory chamber on 27 May 2019, pursuant to article 71 of the FCE. His position pivots around two main line of arguments pointing at the procedural and substantial aspects of this case.
36. First, and with regard to the procedural aspects, he claims that he suffered from several procedural flaws diminishing his right to be heard as well as the principle of equal arms that should be respected in this kind of proceeding. Specifically on the alleged procedural flaws. Mr Ngaïssona, made the following most notable remarks:
 - The investigatory chamber has relied upon evidence provided by anonymous witnesses;
 - The investigatory chamber did not disclose evidence related to previous exchanges between Mr Ngaïssona and FIFA regarding Mr Ngaïssona's situation during the crisis in CAR;
 - The investigatory chamber has failed to consider the relevant standard of evidence and the relevant fundamental rights that apply to the case. In particular, it has failed to:

- enable Mr Ngaïssona to exercise his right to be heard, as it has not been enabled by the investigatory chamber to participate in the investigatory proceedings opened against him;
 - examine aggravating and mitigating circumstances equally;
 - consider the relevant jurisprudence of the Court of Arbitration for Sport in its entirety, in particular with regard to the standard of comfortable satisfaction of the Court having in mind the seriousness of allegation which is made.
 - consider the relevant jurisprudence of the European Court of Human Rights, in particular with respect to the applicability of art. 6 par.1 and 6 par.2 of the European Convention on Human Rights:
 - art. 6(2) of the European Convention applies to the statements made in the parallel disciplinary proceedings against an applicant when both criminal and disciplinary proceedings against him or her have been initiated on suspicion that he or she has committed criminal offences and where the disciplinary sanction gave substantial consideration to whether the applicant has in fact committed the offences he or she is charged with in the criminal proceedings
 - Given that the allegations brought against Mr Ngaïssona by the Prosecutor of the ICC, on the one hand, and by the investigatory chamber, on the other hand, clearly overlap and originate from the same alleged facts, the lines that should separate disciplinary and ethical liability from criminal liability has become theoretical and illusory. Therefore, the adjudicatory chamber should assess the present case guaranteeing Mr Ngaïssona's right to be presumed innocent until the termination of the criminal proceedings initiated against him before the ICC.
37. Second, with regard to the substance of the case, Mr Ngaïssona claims that the investigatory chamber has failed to either provide evidence, or demonstrate the factual elements that would be relevant to his alleged breaches of the duties and obligations imposed by the FCE 2012. In particular:
- The investigatory chamber has allegedly failed to substantiate extensive and core portions of the Final Report:
 - It has failed to explain the characterization of an armed conflict in the CAR ("*CAR*");
 - It has not explained, nor substantiated to what extent Mr Ngaïssona would have been "*appointed again*" as President of the CAR Football Federation in February 2013 and why his functions would have allegedly been terminated before;
 - It has not provided documents in relation to the statements allegedly made by Mr Ngaïssona in which he defended the fact that the right to self-defence

justified the actions of Anti-Balaka groups (*“Déclaration des Combattants anti-balaka relative à la situation sécuritaire en République Centrafricaine”*, *“Communiqué de presse n° 5”*);

- It has not provided one of the so-called ID cards allegedly signed by Mr Ngaïssona to formalize the structure of the Anti-Balaka in January 2014, and, even assuming that the allegation would be factually founded, Mr Ngaïssona fails to see how an action aimed at promoting *“disarmament, demobilization and reintegration process”* would contravene the duties and obligations of the FCE 2012;
- The *“many reports”* that supposedly guided the investigatory chamber to conclude that *“Mr Ngaïssona was well recognised among and followed by children and young people”, which entailed that he “ had sufficient support and was chosen as a leader within the Anti-Balaka movement”*, were not mentioned and, hence, missing;
- The investigatory chamber has built the final report around irrelevant, inconclusive and opinion evidence:
 - the date when the beginning of the *“hostilities”* are situated is very unclear, has and it has not been substantiated to what extent Mr Ngaïssona would have been a *“recognized businessman”* and the *“ex-president of the CAR Football Federation”* at that time;
 - When providing a picture of the Anti-Balaka movement, this picture remains unsubstantiated and amounts to opinion. The excerpt of the UN Panel of Experts interim report in this respect, reproduced in the Final report, refers to evidence/documents that either make no mention to Mr Ngaïssona or are not provided, therefore should not be admissible;
 - None of the allegations regarding Mr Ngaïssona as of March 2013 are substantiated by evidence, amounting to opinion and speculation;
 - The origin of the diagram entitled *“Structure of the political and military branches of CLPC of Patrice-Edouard Ngaïssona”* is neither in the Final Report, nor in the UN Panel of Experts’ Report nor is it mentioned who made it, when it was made, and for which purpose it was made, depriving Mr Ngaïssona of any means to challenge its authenticity.
- Assuming *arguendo* that the decision would be authentic, it does not make any mentions of a suspension of Mr Ngaïssona from his functions as President of the CAR Football Federation. The reasons provided for the exclusion of Mr Bara from the CLPC are *“abus de confiance et insubordination”*.
- The allegation concerning Mr Ngaïssona’s statement, in a February 2014 interview, that he had *‘a hand on about 50 to 70 000 men in the West and had control of the provinces’* is not substantiated by supporting evidence. The FIDH investigative report of June 2014 (enclosure 14 to the Final report), makes

no mention of an interview given by Mr Ngaïssona in February 2014, and the alleged statement attributed to him is reported indirectly and not as a quote;

- The sources of the excerpt "*Box 2.1: The political and military structure of the anti-balaka (August 2014)*" in enclosure 12 to the Final report are not mentioned, which renders the document highly unreliable;
 - The allegation that, according the UN Panel of Experts, Mr Ngaïssona was the leader of the CLPC which was "*directly involved in armed conflicts that took place in Batangafo, Bambari and Boda*" is inconsistent (the supporting evidence attributed to the UN Panel of Experts is not mentioned in the Final Report to substantiate the allegation; Mr Ngaïssona is not mentioned as being the leader of CLPC in the UN Panel of Experts' final report but rather the CLPC is referred to as "*of Patrice-Edouard Ngaïssona*", which could imply several meanings; by using the verb "*believe*", the UN Panel of Experts has made it clear that it only expressed an opinion and not a fact substantiated by evidence);
 - The documents exhibited by the investigatory chamber do not show that the persons allegedly appointed by Mr Ngaïssona were under his structure, command and control.
 - the investigatory chamber has submitted inconclusive videos of Mr Ngaïssona's interviews (at footnotes 22 and 23 of the Final report) that do not support the conclusions that "*implicitly confirmed his position and explained the way the troops were to be organized*" or was "*known as the leader of the Anti-Balaka group*";
 - a report prepared by the International Peace Information Service ("*the IPIS*"), enclosed to the Final report to support the allegation that Mr Ngaïssona sought to re-establish François Bozizé's regime, relies on an interview given by [...] in July 2014. However the transcript of such interview was not disclosed in the IPIS report, and therefore cannot be tested, which entails that the IPIS report in this respect cannot be seen as reliable evidence;
 - the investigatory chamber relied upon conclusions from the UN Panel of Experts, clearly stating that the panel "*gave its opinion*" on allegations regarding Mr Ngaïssona's role, acts and conduct regarding the anti-balaka and the CLPC.
38. The adjudicatory chamber has analyzed and reviewed the case file in its entirety. The summary of Mr Ngaïssona's position does not purport to include every contention put forth. However, the adjudicatory chamber has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the outline of Mr Ngaïssona's position and in the ensuing discussion on the merits.

c) The hearing

39. By correspondence dated 20 June 2019, the adjudicatory chamber informed Mr Ngaïssona that the hearing would take place on 25 July 2019 at 9:30 a.m. at the Home of FIFA, Zurich.
40. On 25 June 2019, the adjudicatory chamber provided Mr Ngaïssona with details of the hearing, such as the composition of the panel and structure of the procedure, and reminded of the content of art. 35 par. 4 of the FCE. Additionally, he was asked to indicate by 28 June 2019, whether he would request the hearing to be open to the public.
41. With reference to the letter of 25 June 2019, Mr Ngaïssona's legal representatives confirmed that the hearing should not be open to the public and be carried out in a closed session.
42. On 25 July 2019 a hearing was held at the FIFA HQ, in Zurich. The chairperson of the adjudicatory chamber opened the hearing and noted the presence of Mr Ngaïssona and of the chairperson of the investigatory chamber, explaining the procedure to be followed. He reminded the parties of the composition of the Panel and informed them that the hearing would be recorded. The parties were given the opportunity to reiterate the arguments given in their written pleadings and developed and maintained their requests.

III. Legal analysis

A. Applicability of the FCE *ratione materiae* (art. 1 of the FCE)

43. The adjudicatory chamber notes that according to the final report of the investigatory chamber on the present matter, there are several indications of potential improper conduct in terms of the FCE by the official. In particular, during the investigations, possible violations of the relevant provisions of the FCE related to general rules (art. 13), duty of neutrality (art. 14), non-discrimination (art. 22) and protection of physical and mental integrity (art. 23), as well as their analogous provisions in the 2012 edition of the FCE, have been identified. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.
44. Consequently, the FCE is applicable to the case according to art. 1 FCE (*ratione materiae*).

B. Applicability of the FCE *ratione personae* (art. 2 of the FCE)

45. According to art. 2 FCE, the Code shall apply, inter alia, to "*officials*". The definitions section of the current FCE does not contain a definition of the term "*official*" but refers to the definitions section in the FIFA Statutes.

46. By virtue of his positions within CARFA and FIFA as previously mentioned (cf. par. I.1 above), Mr Ngaïssona was an official within the meaning of the definition given by no. 13 of the definitions section in the FIFA Statutes during the period presently relevant (2008 onwards).
47. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Ngaïssona's position in football at the time, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

C. Applicability of the FCE *ratione temporis* (art. 3 of the FCE)

48. The relevant events took place between December 2013 and December 2014, at a time prior to the current edition of the FCE coming into force. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the Code shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the 2012 edition of the FCE would be more beneficial to the party (*lex mitior*).
49. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012 edition of the FCE (which was applicable between 2012 and August 2018) is duly reflected in the below articles of the FCE, which contain equivalent provisions:
 - Art. 23 of the FCE has a corresponding provision in the 2012 FCE (art. 24);
 - Art. 22 of the FCE has a corresponding provision in the 2012 FCE (art. 23);
 - Art. 14 of the FCE has a corresponding provision in the 2012 FCE (art. 14);
 - Art. 13 of the FCE has a corresponding provision in the 2012 FCE (art. 13).
50. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence and that the maximum sanctions in the current (2018) FCE are equal or less. Furthermore, from a material point of view, the adjudicatory chamber considers that none of the provisions would be more beneficial to the accused (principle of "*lex mitior*"), since their application would lead to the same result.
51. Consequently, the 2018 edition of the FCE is applicable to the case according to art. 3 of the FCE (*ratione temporis*).

D. Jurisdiction of the FIFA Ethics Committee

52. The scope of jurisdiction of the FIFA Ethics Committee is defined in art. 30 of the FCE, which is more restrictive compared to the equivalent provisions in the previous editions of the FCE.
53. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee. According to art. 30 par. 1, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise

a function, the Ethics Committee shall be entitled to investigate and judge the respective matter. The secondary competence of the FIFA Ethics Committee is established when the relevant conduct has not been investigated and judged (in particular within three months as from when the matter became known to the Ethics Committee) and/or cannot be expected to be investigated and judged by the relevant judicial bodies of the association/confederation concerned.

54. The adjudicatory chamber notes that the relevant conduct has been committed by a member of various FIFA committees (cf. par. I.1 above). Consequently, the FIFA Ethics Committee is entitled to judge his conduct as per art. 30 par. 1 of the 2018 FCE.

E. Procedural issues

The standard and the burden of proof

55. The adjudicatory chamber notes that the FIFA Code of Ethics in its articles 48 and 49 clearly establishes the applicable standard of proof and the burden of proof. In this regard, according to art. 48 of the FCE, the members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction. Further and according to art. 49 of the FCE, the burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee.
56. Mr Ngaïssona, even though accepting that the standard of proof is comfortable satisfaction, indicates that the seriousness of the allegations pressed against him should be considered in order to leverage the threshold of conviction of the adjudicatory chamber. In this sense, he infers that the allegations made against him by the investigatory chamber are so closely connected to the allegations by the Prosecutor of the ICC that their seriousness should bear a particular importance in the fact-finding mission and the decision-making of the adjudicatory chamber.
57. The Panel appreciates the fact that Mr Ngaïssona accepts that the standard of proof in the current proceedings is comfortable satisfaction. It is also noted that the jurisprudence mentioned by Mr Ngaïssona is relevant when assessing the evidence at hand, but the same quoted CAS jurisprudence also refers to other important circumstances to be taken into account when assessing that evidence. In this regard, it is underlined, that the current proceedings are - according to constant CAS jurisprudence - considered to be civil in nature (CAS 2005/C/976&986, §127).
58. The Panel also notes that Swiss law is not blind vis-à-vis difficulties of proving ("Beweisnotstand"). Instead, 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 (SFT 132 III 715, E. 3.1; BK-ZPO/BRONNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art. 157 no. 11).

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.

a) Introductory remarks: the civil nature of sporting adjudicatory proceedings

61. Mr Ngaïssona insists on the fact that the investigatory chamber has failed to consider the relevant jurisprudence of the European Court of Human Rights, in particular with respect to the applicability of art. 6 par.1 and 6 par.2 of the European Convention on Human Rights. In this regard, Mr Ngaïssona contests to the value and validity of the evidence used by the investigatory chamber in its report, as well as addresses to the application of the principle of *lis pendens*. The application of this principle should impede the adjudicatory chamber to decide on the current matter until the ICC has established the responsibility of Mr Ngaïssona on similar charges pressed against him – based on the same facts at stake in the current FIFA adjudicatory proceedings.
62. The Panel cannot follow Mr Ngaïssona's reasoning as it clearly misrepresents the nature of the current proceedings. The fact that Mr Ngaïssona intends to apply principles that originate, in principle, from criminal proceedings is a misguided approach, which has already been addressed by the CAS jurisprudence in numerous cases.
63. It should be noted that Swiss law applies complementarily 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/Ail 102 & 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 a 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).
64. The adjudicatory chamber, as it is the case of CAS, is not a criminal court and can neither promulgate nor apply penal laws (CAS 1998/002, Digest of CAS Awards I, p. 419,425). "*To adopt criminal standard is to concise the public law of the state with the private law of an association [...]*" (CAS 98/208, Digest CAS Awards II, p. 234,247).
65. It follows that disciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties and from criminal

penalties¹. A punishment imposed by an association is not a criminal punishment (CAS 2005/C/976& 986 FIFA & WADA, no. 127).

66. The criminal principles are the expression of weighing the state's interests (in criminal prosecution) and a citizen's right to freedom. However, under Swiss law the right of associations to impose sanctions or disciplinary measures on athletes, clubs or officials is not the exercise of a power delegated by the state, it is rather the expression of the freedom of associations and federations (cf. CAS 2005/C/976& 986 FIFA & WADA, no. 125, "*The jurisdiction to impose sanctions is based on the freedom of associations to regulate their own affairs*"). The analogous application of criminal principles to limit the powers of sports organizations is therefore only a possibility if the principle in question is an expression of a fundamental value system that penetrates all areas of the law. Even if a principle of criminal law is the expression of this fundamental value system (across all areas of the law), it does not follow that the principle applies without exception and irrefutably in the relationship between a sports association and the athlete/club.
67. Consequently, it is in this context that an analysis over the validity and value of the evidence at stake, as well as of the applicability of the *lis pendens* principle must be addressed.

b) The principle of *lis pendens* in the current adjudicatory proceedings

68. According to the information at hand, Mr Ngaïssona is currently under arrest and is accused of several crimes against humanity before the ICCIC for his participation at the armed conflict in the CAR. It follows that Mr Ngaïssona's participation at the this conflict is also under scrutiny before a state court, which might actually sentence him with imprisonment for several years as extracted from the petition of the Prosecutor acting at this criminal proceeding.
69. Mr Ngaïssona in his position infers that adjudicatory chamber should assess the present case guaranteeing Mr Ngaïssona's right to be presumed innocent until the termination of the criminal proceedings initiated against him before the ICC. For this purpose, he refers to a decision of the ECHR, Kemal Coşkun v. Turkey, no. 45028/07, 28 March 2017, and deems that the investigatory chamber's investigation clearly overlap and originate from the same alleged facts, the lines that should separate disciplinary and ethical liability from criminal liability has become theoretical and illusory. In a nutshell, Mr Ngaïssona applies the principle of *lis pendens* to sustain his claim to suspend the current proceedings until the ICC has decided on the abovementioned matter.
70. It is the opinion of this Panel that Mr Ngaïssona is not placed in an unprotected position by the existence of parallel criminal proceedings before the ICC because, due to the measure's character as a sanction, it is perfectly possible that other legal principles, which are part of the "*droits de protection*", apply. In this regard one must think of the principle of legality, the principle of proportionality, the principle

¹ (CAS 2006/A/1102-1146 Johannes Eder v/ Ski Austria, Agence Mondiale Antidopage (AMAWADA) v/ Johannes Eder & Ski Austria, no. 52)

of equal treatment and also the principle of "*nulla poena sine culpa*" (on all this see CAS 2007/A/1381 RFEC & Alejandro Valverde v/ UCI, no. 99).

71. As mentioned in previous paragraphs, and decided in CAS 2010/A/217², in the context of sport, it is essential that sport's governing body should be able to rely on the available information, e.g. decisions of national courts or public authorities, as it does not have the same resources and undertake investigations, as also held by CAS 2009/ A/1920.
72. Furthermore, the Panel agrees with the findings in CAS 2011/A/2528 that an effective fight to protect the integrity of sport depends on prompt action. In this context, FIFA cannot wait until state proceedings have concluded, i.e. after all internal remedies have been exhausted, to take its decision.
73. It is also submitted that Mr Ngaissona is accused of having breached a number of provisions referring to the non-respect of the protection of the integrity, to the duty of neutrality and acts of discrimination, which are strictly connected to his duties as a football official and have no connection with the charges pressed against Mr Ngaissona before the ICC. The latter, should be considered as additional elements and are irrelevant as to establish FIFA's own competence. Again, FIFA as an association under Swiss law has the competence to evaluate these facts and to impose the appropriate sanctions according to its own legal framework. This is the expression of its autonomy as a private association subject to Swiss civil law and one of its fundamental rights as such.
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 court². 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 Ethics³.
75. In this sense, the Panel makes reference to another recent CAS award in a matter pertaining to integrity in football, i.e. match-fixing allegations against the Ukrainian club FC Metalist. In this case, a Ukrainian criminal court acquitted FC Metalist, but CAS still punished the club. In explaining the different outcomes, the CAS panel, when assessing the underlying facts, inter alia, determined that it is not guided by the same standards as the public court, here with regard to the standard of proof, and, consequently, was entitled to reach a different outcome (CAS 2010/A/2267, §746).

² CAS 2009/A/1881 at para 14.

³ Ibidem

76. For all the abovementioned reasons, the adjudicatory chamber finds that the arguments raised by Mr Ngaïssona against the initiation and adjudication of the case in hand are not justified in the current circumstances of the case.

c) The validity and value of the evidence proposed by the investigatory chamber

1. Introductory remarks

77. By date 2 May 2019, the investigatory chamber submitted its final report against Mr Ngaïssona accusing the latter of infringing a number of violations of the FIFA Code of Ethics, i.e. arts. 13, 14, 22 and 23 of the FCE 2012. The investigatory chamber attached to the report several documents, which according to the latter should demonstrated the said allegations.
78. In particular, this Panel notes that the investigatory chamber bases mainly its allegations on the findings made by different international entities on the situation armed conflict, establishing Mr Ngaïssona as one of the key leaders of a military group known as “Anti-Balaka” in the CAR. The facts on which these entities made their reports comprehend span over a lapse of time between December 2012 and August 2014. In particular, there is relevant evidence in form of 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).
79. On his side, Mr Ngaïssona points to a number of alleged failures made by the investigatory chamber to provide valid evidence to support its conclusions. In substance, Mr Ngaïssona claims that the investigatory chamber has failed to characterize facts that would be relevant to Mr Ngaïssona’s alleged breaches of his duties and obligations imposed by the FCE. In particular, it has failed to substantiate extensive and core portions of the final report and has built the final report around irrelevant, inconclusive and opinion evidence.
80. Bearing the above in mind, this Panel considers that it is necessary to address the issues of the validity and quality of the evidence presented by the investigatory chamber, including a brief explanation of the main legal considerations, as well as a reference to the existing jurisprudence around both aspects, before entering into the merits of the case.

2. The validity of the evidence provided by the investigatory chamber

81. It appears to the Panel that Mr Ngaïssona confuses two different legal circumstances such as the admissibility of evidence and the assessment of the latter by the adjudicatory chamber. Whereas the concerns about the admissibility of the different evidence presented by the investigatory chamber relates to its acceptance as a pertinent document in the current proceedings (art. 43 *et seqq.* of the FCE), its assessment is aimed at the value the deciding body is prepared to give to a specific document.

82. In this regard, the Panel draws again the attention to the fact that FIFA is a legal entity domiciled in Switzerland, and as such subject to Swiss law. Under Swiss law - as under most legal systems - sporting associations have a wide margin of autonomy to regulate their own affairs (see CAS 2005/C/976&986, para. 123 and 142 with reference to Swiss law; CAS 2007 I A/1217, para. 11.1) and possess the power (i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law - such as the right to be heard and proportionality - be respected. It follows, that sport governing bodies have the freedom to adopt its own procedural rules.
83. With the above in mind, and specifically with regard to the acceptance of the proposed evidence, art. 43 of the FCE contemplates that any type of proof may be produced, in particular, documents, reports from officials, declarations from the parties, declarations from witnesses, audio and video recordings, expert opinions and all other proof that is relevant to the case. Art. 46 of the FCE refers to inadmissible evidence as such, obtained by means or ways involving violations of human dignity or that obviously does not serve to establish the relevant facts shall be rejected.
84. Bearing the above in mind and following the above wording of this provision, the Panel finds all the documents attached to the final report of the investigatory chamber as valid pieces of evidence. Without entering into the question whether the different reports should be deemed expert opinions or witness statements, in fact all of the documents attached to the final report of the investigatory chamber fit perfectly with the notion of "documents" provided by art. 43 of the FCE. There is no element, nor Mr Ngaïssona was able to justify a departure from this conclusion or even an indication by means of which it is proven that the way in which such evidence was obtained may have violated human dignity or obviously does not serve to establish relevant facts. In this regard, the documents and the exhibits connected to them are publicly available on the internet. It follows the human dignity of Mr Ngaïssona has by no means been violated by these reports.
85. Consequently, the Panel has no objections to consider the above mentioned documents as a valid form of evidence in accordance with art. 43 *et seqq.* of the FCE.

3. The value of the evidence provided by the investigatory chamber

86. With regard to the evaluation of the evidence, the adjudicatory chamber recalls that, according to art. 49 of the FCE, the Ethics Committee shall have absolute discretion regarding proof. In this regard, two main conclusions can be drawn from the application of the above mentioned provisions.
87. First, it depends on this Panel to clarify the facts on any pertinent document. It follows that the adjudicatory chamber has the discretion to decide which documents are pertinent for a specific case.

88. Second, 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. Again, the discretion of the Panel is absolute and it can decide whether the evidence provided to it is significant or insignificant depending on the particular circumstances of the case and the quality of the document itself.
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 Ngaïsona in these events.
90. It is undisputed that the entities involved in the elaboration of these reports are well known and have a world recognition without being their impartiality put in question whatsoever. In this regard, the adjudicatory chamber reminds Mr Ngaïsona that among the entities providing the different reports are the Office of the Prosecutor of the ICC, a Panel of experts appointed by the United Nations and the International Federation for Human Rights (FIDH). Their impartiality and expertise in the assessment of the above-mentioned matter is undisputed and no elements contained in the case file could eventually justify a different approach.
91. In particular, the Office of the Prosecutor of the ICC is an independent organ of the Court. It is responsible for examining situations under the jurisdiction of the Court where genocide, crimes against humanity, war crimes and aggression appear to have been committed, and carrying out investigations and prosecutions against the individuals who are allegedly most responsible for those crimes⁴. The Panel of Experts appointed by the United Nations is the consequence of resolution 2127 (2013) of 5 December 2013, the Security Council imposed a sanctions regime on the CAR and established a sanctions committee (the Security Council Committee established pursuant to resolution 2127 (2013) concerning the CAR) and a panel of experts (the Panel of Experts on the CAR) to monitor its implementation. And, finally, the FIDH (International Federation for Human Rights) is an international human rights NGO federating 184 organisations from 112 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights.
92. Nothing in the case file nor in Mr Ngaïsona's submissions challenges the content of the investigations or the reliability of the different documents presented by the investigatory chamber and its attachments. The mere assertion that this report must be deemed as allegations or opinions is insufficient. Even accepting this position (*quod non*), it is uncontested that the analysis and the conclusions of the different reports have been done on the basis of academic knowledge and experience of the authors, as well as within the context of other similar researches. All these

⁴ <https://www.icc-cpi.int/about/otp>

characteristics render the reports credible pieces of evidence, at least insofar as they are not rebutted by any equally reliable document or argument.

93. Also, this Panel has no reasons to doubt about the neutrality of internationally recognised academics and the conclusions deriving from their examination, which, again, are not contested by Mr Ngaïssona. It is therefore accepted that the conclusions contained therein are based on a scientific and independent approach on the basis of the accredited experience of its authors.
94. Bearing the above in mind, this disciplinary body is more than comfortable satisfied in that the different documents provided by the investigatory chamber in support of the accusations contained in the final report are well founded and reliable. This conclusion is the consequence of the convincing elements at hand provided by the investigatory chamber, as well as, regrettably, in some occasions the absence of any counter evidence or allegation that would eventually contest the facts and the conclusions contained in the final report.

F. Assessment of potential violations of the FCE committed by Mr Ngaïssona

a) Introductory remarks and background

95. It is recalled that, in a nutshell, the current case deals with the accusation pressed against Mr Ngaïssona for his participation in an armed conflict, as well as for being one of the key leaders of a military group known as “Anti-Balaka” in the CAR. It is the Panel opinion that both the political magnitude of the events portrayed by the investigatory chamber and the level of involvement of Mr Ngaïssona make him responsible for the violation of several provisions of the FIFA Code of Ethics.
96. Before entering into the responsibility of Mr Ngaïssona towards the adjudicatory chamber wishes to briefly address the aforementioned armed conflict and Mr Ngaïssona’s participation and role in it.

1. The armed conflict

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.
98. The main circumstances of the exposed armed conflict, can be summarized as follows:
 - By the end of March 2013, former president of CAR, François Bozizé, was forced into exile and Michel Djotodia, leader of the Seleka group, proclaimed himself as President of CAR.
 - It appears that the Seleka group attacked and committed atrocities targeting western regions associated with Bozizé, his ethnic group Gbaya, as well as civilian population. In response to those attacks, another military group known

as "Anti-Balaka" was formed with the objectives of (i) removing Michel Djotodia from power, (ii) defend against and oust the Seleka from CAR; and (iii) target the Muslim population in western CAR in retribution for abuses committed by the Seleka group.

- From the above, it is advised that the armed conflict between the Anti-Balaka and the Seleka groups was not only a political struggle, but also a religious fight. Both the Seleka and the Anti-Balaka groups were fighting to keep the political control within CAR, while each group was aiming to impose their political views and their religion over the other.
 - Among the hostilities allegedly committed by the Anti-Balaka group are: attacks against the civilian population, displacement, forcible transfer or massive deportation of population, summary executions, killings, extermination, mutilations, torture and cruel treatment, imprisonment or other forms of severe deprivation of liberty, persecution, forced disappearance, sexual offences, destruction of property and religious buildings, and routine pillaging of houses and shops.
99. From the final report and its supporting documental evidence, it can additionally be inferred Mr Ngaïssona's participation in the referred armed conflict, as the national general coordinator and one of the main figures of the Anti-Balaka group.
100. It is noted, that Mr Ngaïssona has not contested the above mentioned facts and as such are considered established. The main issue here is to discern whether Mr Ngaïssona had any participation in those events and, if so, in which level.

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

101. With regard to the possible responsibility of Mr Ngaïssona in the above exposed events, special reference is made to art. 6 of the FCE, according to which the Ethics Committee may pronounce the sanctions described in this Code, the FIFA Disciplinary Code and the FIFA Statutes. Further, unless otherwise specified, 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.
102. First and foremost, the adjudicatory chambers deems that the final report, supported by the various evidence and reports resulting, amongst others, from the Prosecutor of the Office of the ICC, the Panel of Experts of the UN and the FIDH report, provide sufficient proof of Mr Ngaïssonas key role in the above mentioned events.
103. Illustrative of Mr Ngaïssona's participation in the above mentioned armed conflict is the fact that held a relevant political role, i.e. coordinator of the "Coordination Nationale 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.

104. As stated on the UN Panel of Experts' report, the CLPC group was politically led by Mr Ngaïssona as the "National General Coordinator", and therefore, Mr Ngaïssona was directly involved in the referred armed conflicts that took place in Batangafo, Bambari and Boda.
105. This report also deemed that all the efforts made by Mr Ngaïssona to structure the different components and groups within the Anti-Balaka organization, showed the extent of Mr Ngaïssona's reach and leadership within the CLPC and the Anti-Balaka group. Mr Ngaïssona on behalf of the CLPC issued and signed identification cards for its members as to allow them to participate in the disarmament, demobilization and reintegration process. There is 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 (cessation agreement known as "Brazzaville Summit").
106. As established in the investigatory chamber report, many other documents have been exhibited by diverse NGOs that show that Mr Ngaïssona participated in the Anti-Balaka military group. For example., Mr Ngaïssona confirmed his position and explained the way the troops were to be organised. Along with the investigations carried out by a NGO called "International Federation for Human Rights" (hereinafter: "FIDH"), Mr Ngaïssona has also been identified as one of the main links between former president Bozizé and the Anti-Balaka military command during the armed conflict. In February 2014 during an interview with 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".
107. This, amongst others is supported by the reports of UN Security Council's Panel of Experts on the CAR situation. In addition, the adjudicatory chamber deems that the evidence at hand demonstrates that Mr Ngaïssona openly supported the Anti-Balaka movement confirming his leadership within the CLCP.
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.
109. It must be emphasized that the analysis of Mr Ngaïssona's participation is established from the very moment where he acted in support and as one of the key leaders of this movement. The fact that the atrocities detailed in previous paragraphs occurred is a dramatic and regretful aspect for which Mr Ngaïssona will have to give the appropriate explanations before the ICC, mainly because he was one of the preeminent leaders of this military movement who was responsible for them.
110. It follows that the arguments provided by Mr Ngaïssona are not diminishing the reliability of the conclusions reached by several international bodies like the UN and

the prosecutor of the ICC. This is true for Mr Ngaïssona's claims, including those about the alleged inaccurate dates provided by the investigatory chamber with regard to the beginning of the hostilities, the doubts about the picture of the Anti-Balaka movement, the arguments about the lack of the transcriptions of the meeting with "Colonel 12 puisances" or the requests of information about the origin of the diagram of the "structure of the political and military branches of the CLPC", where he wasn't the sole leader.

111. The same goes for the arguments of Mr Ngaïssona by means of which he contests the value of a press communication or his attempt to present himself as a man of peace advocating for the disarmament, demobilization and reintegration process or as a supervisor and guarantor of the peace process in the region during these years, which are not supported by reliable evidence, apart from the mere statements of Mr Ngaïssona.
112. It is further recalled that the Panel has no reasons to doubt the neutrality or competence of internationally recognised academics and the conclusions deriving from their examination, which, again, are not contested by Mr Ngaïssona. It is therefore accepted that the conclusions contained therein are based on a scientific and independent approach on the basis of the accredited experience of its authors. In this regard, Mr Ngaïssona has refused to submit any piece of evidence which would eventually contradict the conclusions of the investigatory chamber. His participation in the events occurred in CAR during these years is, consequently, well established, as well as his leadership role in the CLPC.
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 and 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.
116. The events connected to the Anti-Balaka movement as explained in previous paragraphs present a dramatic picture in which the Muslim population in the CAR was decimated, almost annihilated. Numerous aggressions took place in form of the hostilities included 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. These events as evidenced in the final report and largely substantiated by different reports of renowned international entities largely demonstrate the remembrance of a society which is the opposite of the vision of fraternity and peace defended by FIFA in its statutes and absolutely against the core values defended and protected by this sport organization.

117. Mr Ngaïssona addresses the fact he had been appointed “coordinnateur préfectorale[sic] provisoire” and that his mission was to “supervise and guarantee the durable peace of the Populations of the said localities”, as well as that his mandate was of “supervising and guaranteeing the durable peace of the Populations of the said localities . He also denies the fact that he had the authority to appoint does not necessarily entail the authority to command and to control. In sum, he’s presenting himself as a promoter of “peacebuilding” and the necessity of a “dialogue”.
118. The Panel disagrees with Mr Ngaïssona’s argument insofar he has not provided any evidence of the above, and since the evidence at hand point to a completely different direction and conclusion, i.e. his active role in the above mentioned events. Mr Ngaïssona’s role, even passive as he tries to portray, doesn’t exclude his responsibility towards the above mentioned violent actions. As a peacemaker and alleged defender of dialogue he never protested against these actions, and never severed ties with the Anti-Balaka movement, which members were publicly known as the perpetrators of such atrocities.
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 occurring 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)

120. According to art. 22 of the FCE, persons bound by this Code shall 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.

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 undertaken 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 in 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 recognized 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 judgement 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

133. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition (hereinafter: FDC) and the FIFA Statutes.
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).
140. To sum up, the adjudicatory chamber deems that the guilt of Mr Ngaïssona in the present case is extremely serious, and virtually no aspects are suited to mitigate the degree of his guilt.
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).

142. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that, where art. 14 par. 2 of the FCE (duty of neutrality) establishes a maximum ban duration of two years for the respective violation, art. 22 par. 3 (discrimination and defamation) as well as art. 23 par. 6 (protection of physical and mental integrity) of the FCE foresee a more extensive maximum limit of five years in serious cases and/or in the case of repetition. Moreover, art. 11 of the FCE foresees that, where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased up to one third as appropriate, depending on the specific circumstances.
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.

H. Procedural costs and procedural compensation

149. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
150. Mr Ngaïssona has been found guilty of violations of arts. 14, 22 and 23 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Ngaïssona shall bear the procedural costs (art. 56 par. 1 of the FCE).
151. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings – including a hearing before the adjudicatory chamber – add up to [...].
152. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Ngaïssona shall bear his own legal and other costs incurred in connection with these proceedings.

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 [...] 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.
6. This decision is sent to Mr Ngaïssona. A copy of the decision is sent to CAF, the CARFA and to the chairperson of the investigatory chamber, Ms Maria Claudia Rojas.

Note relating to the financial sanction:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. [...] or in US dollars (USD) to account no. [...], with reference to case no. "Adj. ref. no. 10/2019 (E19-00001)" in accordance with art. 7 let. e) of the FIFA Code of Ethics.

LEGAL ACTION

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland (www.tas-cas.org). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Vasilios Skouris
Chairperson of the adjudicatory chamber
FIFA Ethics Committee