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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **13 April 2026**

THE APPEALS CHAMBER

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Confidential
with Confidential Annex A**

**Request for Leave to Reply Pursuant to Regulation 60 of the Regulations of
the Court**

Source: Defence for Mr. Alfred Rombhot Yekatom

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I. Introduction

1. Pursuant to regulation 60(1) of the Regulations of the Court, the Defence for Mr. Alfred Rombhot Yekatom ('Defence') respectfully seeks leave to file a written reply to the 'Prosecution consolidated response to Yekatom's and Ngaissona's appeals against the Judgment and Yekatom's request to present additional evidence'.¹

2. This Request is confined to five issues, each of which independently satisfies the threshold for a written reply under regulation 60(1): (i) in response to Ground 1 of the Appeal Brief,² the Prosecution collapses the distinction between pleaded material facts and evidentiary material, re-formulates pleaded complaints as to scope, notice, re-characterisation and mode of liability, and advances new appellate-cure positions in relation to the 5 December convictions; (ii) in response to Ground 2.1, the Prosecution denies carry-over, yet relies on movement-wide Anti-Balaka characteristics as a bridge to article 25(3)(a); (iii) across the Response, the Prosecution attributes to the Trial Chamber findings not made in the Judgment and supplies inferential steps on appeal not expressed in the Judgment itself;³ (iv) the Response re-casts pleaded arguments, proceduralises Annex 5 and original-language points, and atomises materiality so as to leave central pleaded matters unanswered; and (v) the Response re-casts the sentencing appeal and fragments sentence prejudice (collectively, the 'Five Issues').

3. Taken together, the Five Issues show that the Response goes beyond opposing the Appeal Brief on the terms pleaded and instead alters the basis on which central issues are presented for appellate determination. Leave is therefore required to ensure that the Defence has a fair opportunity to address the case now advanced in response.

II. Submissions

i) The interests of justice require a written reply

4. Under regulation 60(1), the Appeals Chamber may order an appellant to file a reply whenever it considers this necessary in the interests of justice. Whether to do so is discretionary and is decided on a case-by-case basis. In exercising that discretion, the Appeals Chamber has considered, *inter alia*, whether a reply is needed to address alleged inaccuracies in the response,

¹ ICC-01/14-01/18-2885-Conf ('Response').

² ICC-01/14-01/18-2848-Conf-Corr ('Appeal Brief').

³ ICC-01/14-01/18-2784-Conf ('Judgment').

whether the response raises issues warranting further submissions, and whether a reply on a discrete issue may assist its determination of the appeal.⁴

5. Those considerations apply with particular force where, as here, the Response does not confine itself to defending the Judgment as rendered. A reply is warranted where the Response advances genuinely new objections or positions that could not reasonably have been anticipated,⁵ and equally where it seeks to sustain impugned conclusions by attributing to the Trial Chamber findings it did not make or by supplying inferential steps the Judgment itself does not express. In the latter situation too, the point could not reasonably have been anticipated from the Judgment itself; to hold otherwise would require the parties to anticipate and answer reasoning the Judgment never gave.⁶

6. Here, the Response materially alters the basis on which the pleaded grounds of the Appeal Brief would otherwise be adjudicated. In answer to Ground 1 of the Appeal Brief, it reformulates pleaded complaints as to scope, notice, re-characterisation and mode of liability by collapsing the distinction between pleaded material facts and evidentiary material, and by seeking to preserve the 5 December article 25(3)(a) convictions through shifting commission theories and appellate-cure reasoning. In answer to Ground 2.1 of the Appeal Brief, it denies any carry-over from movement-wide Anti-Balaka characteristics while itself relying on Anti-Balaka-wide identity, objective and perception as a bridge to the article 25(3)(a) analysis. Elsewhere, it seeks to sustain impugned conclusions by attributing to the Trial Chamber findings not made in the Judgment and by supplying, on appeal, inferential steps that the Judgment itself does not express. It also attacks Annex 5 as though it were a set of freestanding

⁴ See ICC-01/04-01/06-2982 (A5 A6), *Prosecutor v. Thomas Lubanga Dyilo*, Order on the filing of a reply under regulation 60 of the Regulations of the Court, 21 February 2013, paras. 6-7; ICC-01/05-01/13-2333 (A1), *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Jean-Pierre Bemba Gombo's requests for leave to reply, 5 July 2019, paras. 20-22; ICC-01/04-02/06-2488 (A), *Prosecutor v. Bosco Ntaganda*, Decision on request for leave to reply, 11 March 2019, paras. 7-8; ICC-01/04-02/06-2708 (A4 A5), *Prosecutor v. Bosco Ntaganda*, Decision on various procedural issues, 9 September 2021, paras. 17-19.

⁵ Whilst regulation 60 is not textually confined to issues that could not reasonably have been anticipated, the Appeals Chamber's jurisprudence under regulation 24(5) is instructive by analogy. The Appeals Chamber has repeatedly held that leave to reply may be granted where the response raises issues that could not reasonably have been anticipated, or where a reply would otherwise be necessary for the adjudication of the appeal; and an applicant must explain why the identified issues are genuinely new and why a reply is otherwise warranted see e.g. most recently ICC-02/04-01/05 OA4, *Prosecutor v. Joseph Kony*, Decision on the Defence's request for leave to reply, 26 March 2025, paras. 10-11.

⁶ For objective of the obligation to give reasoned opinion see e.g. ICC-01/05-01/13-2275-Red, *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018, paras. 102, 105-106; ICC-01/04-01/06-3121-Red, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 24.

submissions rather than a referenced aid to pleaded arguments, reduces original-language and transcript issues to supposed failures to pursue procedural correction, and atomises materiality in a manner that leaves central pleaded matters unanswered. On sentence, it likewise answers the article 76(2), aggravation, mitigation and gravity complaints at a higher level of abstraction, and fragments sentence prejudice by re-casting the pleaded showing of material impact as speculative and insufficiently particularised.

7. A written reply is required because these issues turn on pinpoint comparison between the Appeal Brief, the Response, the Judgment and, in some instances, the original-language record. In particular, they require the Defence to identify precisely where the Response attributes to the Trial Chamber findings or reasoning that the Judgment does not contain; where it re-describes evidentiary material as pleaded material facts or purports to derive sufficient notice from the trial record; and where it advances new procedural or appellate-cure positions. Those points are dispersed across multiple sections and footnotes of the Response and require a stable, citable written record that could not be replicated with comparable clarity in oral submissions.

8. The Defence accordingly seeks leave to reply only on the Five Issues identified below. The examples set out in this Request are relied upon in support of that application. Annex A sets out further examples, grouped by issue, illustrating the matters that would be addressed in the proposed reply, should leave be granted. Taken together, the matters identified in this Request and Annex A demonstrate both the systemic character of the issues across the Response and the confined and focused nature of the reply sought.

ii) The Five Issues on which leave to reply is sought

a) Issue 1: The Response re-formulates pleaded Ground 1 complaints as to scope, notice, re-characterisation and mode of liability, and advances new appellate-cure positions

1. The Response collapses the distinction between pleaded material facts and evidentiary material (Ground 1.1 of the Appeal Brief)

9. In answer to Ground 1.1 of the Appeal Brief, the Response collapses the distinction between pleaded material facts and evidentiary material. It points to evidentiary material as though that were itself the pleaded material fact, while also recasting the Defence complaint

about unpleaded material facts as no more than a dispute about evidentiary overlap, record support or notice said to arise from the trial record.⁷ That does not answer the ground as raised. The complaint in Ground 1.1 is not that there was no evidentiary material touching similar subject-matter, or that parts of the evidentiary record broadly overlapped with the case as confirmed. It is that the Judgment relied, as operative facts in the liability chain, on specific material facts concerning Mr. Yekatom's conduct and state of mind – including the 5 December instructions as formulated in the Judgment, the alleged reconnaissance on 4 December 2013, the pistol-launch finding, and the *Axis mens rea* facts – even though those facts were not pleaded as material facts at trial. The requested reply would address why cited references cannot be re-characterised as pleaded material facts or *vice versa*, why pleading defects cannot be answered by pointing to record overlap, and why the Response's notice and overlap thesis does not meet the complaint actually advanced in Ground 1.1.

2. The Response answers the 5 December article 25(3)(a) complaint by shifting between incompatible commission theories and appellate cure (Ground 1.2 of the Appeal Brief)

10. The Response also advances an internally inconsistent position on the 5 December convictions under article 25(3)(a). It says, in substance, that the Chamber convicted Mr. Yekatom under a charged form of article 25(3)(a); that the direct-perpetration language in the Judgment was merely descriptive rather than operative; that the same findings would in any event sustain direct co-perpetration or indirect perpetration; and that any defect can be corrected on appeal under article 83(2)(a).⁸ The requested reply would address why those positions are mutually inconsistent; why the direct-perpetration language was not, and could not be, merely descriptive given the way the 5 December convictions were reasoned in the Judgment; why the Prosecution cannot preserve the convictions by shifting between distinct variants of article 25(3)(a) as though they were interchangeable modes of commission; why, even if the Response now seeks to preserve the convictions through direct co-perpetration, the Judgment did not make the requisite findings in relation to 5 December as to any agreement or common plan, the identity of co-perpetrators or direct perpetrators, or their respective essential contributions;⁹

⁷ Response, paras. 6-9, 16-17, 19.

⁸ Response, paras. 10-18, 22.

⁹ Judgment, paras. 4013, 4025-4026 *contra* paras. 4345-4363.

and why the Prosecution's fallback request that any defect be 'cured' on appeal on the basis of indirect perpetration is likewise misplaced.¹⁰

3. The Response recasts a cumulative alteration of the co-perpetration case purely as a set of discrete changes (Ground 1.3 of the Appeal Brief)

11. The Response to Ground 1.3 of the Appeal Brief likewise requires reply because it recasts what is pleaded as a cumulative alteration of the joint co-perpetration case as a series of supposedly isolated refinements.¹¹ The Defence complaint is not merely that individual components were adjusted;¹² it is that the Chamber convicted on a materially different co-perpetration case, in which the common plan was narrowed and reformulated, the set of co-perpetrators was changed, and the essential contributions were recast. Nor does the Prosecution answer that complaint by saying that material facts were not 'omitted' or later moulded to the evidence. The point in the Appeal Brief is that evidentiary material was used to support findings that the Chamber then treated as operative material facts of liability, even though the co-perpetration case so constituted was materially different from the one confirmed and litigated. To the extent the Response suggests that aspects of that recast case could not previously have been pleaded, that too requires reply, not least because the Prosecution was already aware of material concerning Alkanto from the witness statements on which it relied. The reply would therefore address why the cumulative alteration of the convicted co-perpetration case cannot be reduced to isolated refinements; why the existence of evidence does not answer a complaint that the convicted co-perpetration case was materially different from the confirmed case; and why 'exceeding scope' cannot be treated as only a question of expansion, when narrowing, reformulation or substitution may equally alter the case the accused had to meet.

- b) Issue 2: The Response denies carry-over, yet relies on movement-wide Anti-Balaka characteristics to do article 25(3)(a) work (Ground 2.1 of the Appeal Brief)

12. The Response to Ground 2.1 of the Appeal Brief independently warrants leave because, although it denies carrying movement-wide Anti-Balaka characteristics into the article 25(3)(a)

¹⁰ Response, paras. 8, 22.

¹¹ Response, paras. 20-21.

¹² Appeal Brief, paras. 17-20.

analysis,¹³ it nevertheless relies on those same characteristics in support of responsibility under article 25(3)(a). Thus, it states, that it was unnecessary to determine the precise moment at which Mr. Yekatom became, or was perceived as, Anti-Balaka so long as he acted jointly with or through Anti-Balaka elements;¹⁴ that ‘his group’ was ‘seen as and understood to be part of the Anti-Balaka’;¹⁵ that his purported personal objectives brought him ‘under the Anti-Balaka umbrella’;¹⁶ and that any error concerning his association with the Anti-Balaka would in any event be immaterial to responsibility under article 25(3)(a).¹⁷ Those are not incidental descriptions. They are used to link Anti-Balaka-wide identity, objective and perception to the article 25(3)(a) case against Mr. Yekatom.¹⁸ The requested reply would address why those passages themselves constitute the carry-over denied in the Response, and why the same contradiction reappears in the Response’s treatment of apparatus, control, knowledge and intent.

c) Issue 3: The Response answers reasoning complaints by attributing findings to the Trial Chamber and by supplying inferential steps not expressed in the Judgment

1. Findings attributed to the Judgment that it does not make

13. Across the Response, the Prosecution answers pleaded reasoning complaints by treating witness narratives, evidentiary recitals, contextual passages or later characterisations as though they were findings of the Trial Chamber and, in some instances, by asserting as a finding a proposition not found anywhere in the Judgment. For example, in answer to Ground 2.4 of the Appeal Brief, the Response presents the Judgment as having found that, before 5 December, Mr. Yekatom trained ‘his group’ in Gbangba and instructed them to target Muslims,¹⁹ whereas the cited passages do not articulate that finding in those terms.²⁰ That reformulated proposition is then recycled as support for the impugned convictions, even though it is not a finding made in the Judgment as rendered. In answer to Grounds 3.2 and 5.2 of the Appeal Brief, the Response likewise presents the Judgment as having found that harassment of Muslims ceased only when

¹³ Response, paras. 24-29.

¹⁴ Response, para. 33.

¹⁵ Response, para. 35, 51.

¹⁶ Response, para. 36.

¹⁷ Response, para. 47.

¹⁸ Response, paras. 101-104, 118, 122, 128, 151, 157, 162, 165, 167, 174, 175, 182, 193, 196, 198. See also paras. 44, 47, 52, 65-66, 256, 280- 281.

¹⁹ Response, para. 102.

²⁰ Response, fn. 479 citing to Judgment, 2427, 2432-2446. See also Judgment, paras 2446-2447, 2454.

it was agreed that they would leave *en masse*,²¹ whereas the cited passages do not so find.²² Those reformulations matter because they are then used to answer the Defence's pleaded complaints on control, displacement, knowledge and causation. The requested reply would address, by pinpoint comparison to the cited Judgment passages, why those propositions are not findings in the Judgment as rendered and why a reasoned-opinion appeal cannot be answered by converting evidence summaries, contextual observations or later characterisations into findings on appeal. Further examples are set out in Annex A, Issue 3.

2. Missing inferential bridges supplied on appeal

14. The same problem arises where the Response does not assert a new 'finding', but instead supplies on appeal the missing inferential bridge between existing findings and the impugned conclusion. In answer to Grounds 2.5 and 2.6 of the Appeal Brief, the Response reconstructs the alleged common plan and shared control by assembling later chronology, generic hierarchy material and *post facto* approval not expressly relied upon by the Trial Chamber for those propositions.²³ In answer to Ground 3.3, the Response likewise advances a new common article 3 theory not articulated in the Judgment, stating, in substance, that for count 3 the Chamber was not required to determine whether the Traders had a continuous combat function because common article 3 murder turns on whether, at the material time, the victim was not taking active part in hostilities and was in the power of the alleged perpetrators.²⁴ The requested reply would address why that answer reframes the pleaded complaint; why it depends on an 'in the power' premise, a temporal shift, and alternative appellate bridges not expressed in the Judgment; and why the legal materials cited for that theory are more qualified than the Response suggests, including because direct participation in hostilities remains a contested issue of international humanitarian law whose scope and application continue to be debated. Similar problems arise, albeit differently, in parts of the Response to Grounds 5.1, 5.2 to 5.3, and 5.5, where it invokes a broader attack-context theory to bridge civilian-status, object-of-attack, and displacement reasoning that the Judgment does not itself articulate in those terms.²⁵ This warrants reply all the more because these are reasoned-opinion complaints: the Defence cannot fairly be expected to anticipate and answer inferential steps the Judgment itself never gave, and the Appeals

²¹ Response, para. 250.

²² Response, fn. 972 citing to Judgment, paras. 120-123, 4304-4305.

²³ E.g. Response, paras. 137-143. See further Annex A, Issue 3.

²⁴ Response, paras. 214-216.

²⁵ Response, paras. 339-349, 356-359.

Chamber should not be invited to supply them on the Prosecution's behalf. Further examples are set out in Annex A, Issue 3.

d) Issue 4: The Response recasts pleaded arguments, proceduralises Annex 5 and original-language points, and atomises materiality

1. Pledged grounds are narrowed and central complaints left unanswered

15. The Response also requires reply where it answers a different argument from the one actually pleaded, or reduces a broader pleaded challenge to a narrower and easier point. For example, in response to Ground 2.3 of the Appeal Brief, the Prosecution answers the Defence complaint that the Chamber failed to establish that Mr. Yekatom knew that the Anti-Balaka more broadly perceived Muslims as collectively responsible for Seleka abuses, by pointing instead to material said to show that Mr. Yekatom knew how 'his own elements' perceived Muslims.²⁶ That is not the same issue. The Appeal Brief treated the alleged perceptions of the RFACPP separately.²⁷ Likewise, in response to Ground 2.2, the Prosecution states that the Defence challenged only '3 of the 14 indicators',²⁸ whereas the Appeal Brief addressed the full set of coordination indicators in different ways and further challenged the shift from coordination between the RFACPP and other Anti-Balaka groups to the more general proposition that the Bangui attack was coordinated overall.²⁹ The requested reply would address how those reformulations narrow the pleaded grounds and thereby leave central aspects of them unanswered. Further examples are set out in Annex A, Issue 4.

2. The Response proceduralises Annex 5 and original-language points instead of answering them

16. The Response further proceduralises, rather than answers, the Ground 4 points as raised in the Appeal Brief. It launches a new threshold objection to Annex 5, treating it as though it were fresh submissions or impermissible incorporation by reference,³⁰ notwithstanding that Annex 5 is a reference compilation supporting pleaded submissions in the Appeal Brief.³¹ It

²⁶ Response, para. 77.

²⁷ Appeal Brief, paras. 97-100, paras 105-123.

²⁸ Response, para. 64.

²⁹ Appeal Brief, paras. 68-72.

³⁰ Response, para. 288 and fnn. 1112-1115; para. 290; fnn. 1119-1120.

³¹ See e.g. Appeal Brief, paras. 58, 69, 76, 111, 113, 136, 141, 165, 181, 193, 278, 312, 335, 383, 384, 397, 402, 403.

similarly reduces the P-1839 point to a missed transcript-correction mechanism while at the same time advancing its own contested linguistic reconstruction of the French testimony.³² The requested reply would address why Annex 5 is procedurally proper, why the Kenya citations relied upon by the Prosecution are not on point, and why original-language and transcript issues cannot be dismissed by procedural relabelling.

3. The Response atomises materiality by disaggregating interlocking errors

17. The Response also atomises materiality. It isolates sub-errors, assumes the correctness of other challenged findings, and then says that the impugned point is not dispositive in isolation. The requested reply would address why materiality must be assessed cumulatively and by reference to the ground actually pleaded, rather than by disaggregating interlocking errors into self-contained micro-points or assuming away other contested findings. It would further address why, by proceeding in that manner, the Response leaves unanswered central pleaded matters going to common plan, control, knowledge, direct participation in hostilities, departures and the crime-specific Ground 5 complaints. Further examples are set out in Annex A, Issue 4.

e) Issue 5: The Response re-casts the sentencing appeal and fragments sentence prejudice

1. Article 76, aggravation, mitigation and gravity are answered at a higher level of abstraction

18. The Response likewise requires reply on sentence. It answers the article 76(2), aggravation, mitigation and gravity complaints at a higher level of abstraction, and by appeal to discretion, rather than by engaging with the pleaded structure of the sentencing grounds.³³ The requested reply would address why those reformulations do not answer the complaints as pleaded, including why the discriminatory-motive point is not a general objection to discrimination as aggravation, but a complaint about the manner in which aggravation was reasoned, counted and separated from already convicted conduct; and why the article 76, mitigation and gravity complaints were likewise answered at a level that leaves the pleaded prejudice untouched.

³² Response, para. 51 and fn. 225; para. 288 and fn. 1114; Appeal Brief, para. 58; Judgment, para. 1641.

³³ Response, paras. 654-668.

2. The Response fragments sentence prejudice

19. The Response then fragments sentence prejudice by re-casting the pleaded showing of material impact as speculative and insufficiently particularised. The requested reply would address why that does not answer the sentencing grounds as pleaded, and why sentence prejudice, like materiality in relation to conviction, must be assessed cumulatively rather than by isolating each point and dismissing it for want of a self-contained quantification of impact.

III. Classification

20. This filing is classified as Confidential pursuant to regulation 23 as it contains confidential information and follows the classification of related filings, including the Response. A public redacted version will be filed in due course.

IV. Relief sought

21. For the foregoing reasons, the Defence respectfully requests the Appeals Chamber to:

- a) **GRANT** leave, pursuant to regulation 60, for Mr. Yekatom to file a written reply to the Prosecution's consolidated response confined to the Five Issues set out above; and
- b) **FIX** such time limit for the filing of the reply as the Appeals Chamber deems appropriate, within the page limit prescribed by regulation 60(2).

RESPECTFULLY SUBMITTED ON THIS 13TH DAY OF APRIL 2026



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