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No. ICC-01/14-01/18 A A2 A3

Date: 8 May 2026

THE APPEALS CHAMBER

Before:

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

Decision on requests for leave to reply

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

D29

D30

☒ **Legal Representatives of the Victims**
V44

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

The Appeals Chamber of the International Criminal Court,

In the appeals of the Deputy Prosecutor, Mr Alfred Yekatom and Mr Patrice-Édouard Ngaïssona against the decision of Trial Chamber V entitled “Judgment” of 24 July 2025 (ICC-01/14-01/18-2784-Red),

Having before it the “Request for leave to Reply to the ‘Prosecution consolidated response to Yekatom’s and Ngaïssona’s appeals against the Judgment and Yekatom’s request to present additional evidence’ (ICC-01/14-01/18-2885-Conf)” of 18 March 2026 (ICC-01/14-01/18-2892),

Having before it the “Request for further leave to Reply to the ‘Prosecution consolidated response to Yekatom’s and Ngaïssona’s appeals against the Judgment and Yekatom’s request to present additional evidence’ (ICC-01/14-01/18-2885-Conf)” of 13 April 2026 (ICC-01/14-01/18-2901),

Having before it the “Request for Leave to Reply Pursuant to Regulation 60 of the Regulations of the Court” of 13 April 2026 (ICC-01/14-01/18-2902-Conf),

Renders, pursuant to regulation 60 of the Regulations of the Court, the following

DECISION

1. The Defence for Mr Ngaïssona may file a written reply no longer than five pages on the issue specified in paragraph 24 below, by Wednesday, 20 May 2026.
2. The request of the Defence for Mr Ngaïssona for further leave to reply is rejected.
3. The request of the Defence for Mr Yekatom for leave to reply is rejected.
4. The Registrar is directed to reclassify document ICC-01/14-01/18-2908-Conf as public.
5. The Defence for Mr Yekatom is directed to file a public redacted version of documents ICC-01/14-01/18-2902-Conf and ICC-01/14-01/18-2902-Conf-AnxA by Friday, 22 May 2026.

REASONS

I. PROCEDURAL HISTORY

1. On 24 July 2025, Trial Chamber V (hereinafter: “Trial Chamber”) rendered the “Judgment” (hereinafter: “Impugned Decision”).¹
2. On 25 November 2025, the Deputy Prosecutor (hereinafter: “Prosecutor”), the Defence for Mr Ngaïssona (hereinafter: “Ngaïssona Defence”) and the Defence for Mr Yekatom (hereinafter: “Yekatom Defence”) (collectively hereinafter: “Defence Teams”) filed their respective appeal briefs against the Impugned Decision.²
3. On 27 February 2026, the Prosecutor and the Ngaïssona Defence filed their response briefs³ and the Common Legal Representatives of Victims of the Other Crimes filed their observations.⁴
4. On 18 March 2026, the Ngaïssona Defence filed a request for leave to reply to the Prosecutor’s Response (hereinafter: “Ngaïssona Defence’s Request”).⁵
5. On 23 March 2026, the Prosecutor filed a response to the Ngaïssona Defence’s Request (hereinafter: “Prosecutor’s Response to Ngaïssona Defence’s Request”).⁶

¹ [Judgment](#), ICC-01/14-01/18-2784-Conf (public redacted version filed on the same day, ICC-01/14-01/18-2784-Red), with Annexes A and B.

² [Prosecution Appeal Brief](#), ICC-01/14-01/18-2846-Conf (public redacted version filed on 28 November 2025, ICC-01/14-01/18-2846-Red); [Ngaïssona Defence Appeal Brief against the Trial Judgment](#), ICC-01/14-01/18-2847-Conf (public redacted version filed on 19 December 2025, ICC-01/14-01/18-2847-Red), with public Annexes A-L (hereinafter: “Ngaïssona’s Appeal Brief”); [Yekatom Defence Appeal against the Judgment, ICC-01/14-01/18-2784-Conf, 24 July 2025](#), ICC-01/14-01/18-2848-Conf (corrected public redacted version filed on 19 December 2025, ICC-01/14-01/18-2848-Corr-Red), with public Annexes 1-2, and confidential Annexes 3-6 (hereinafter: “Yekatom’s Appeal Brief”).

³ Prosecution consolidated response to Yekatom’s and Ngaïssona’s appeals against the Judgment and Yekatom’s request to present additional evidence, ICC-01/14-01/18-2885-Conf, with public Annex A (hereinafter: “Prosecutor’s Response”); [Ngaïssona Defence Response to the Prosecution Appeal Brief \(ICC-01/14-01/18-2846-Conf\)](#), ICC-01/14-01/18-2886-Conf-Corr (public redacted version filed on 12 March 2026, ICC-01/14-01/18-2886-Corr-Red).

⁴ [Consolidated Victims’ Response to the Prosecution and Defence Appeals of the Judgment and Sentence against Mr Alfred Yekatom and Patrice-Edouard Ngaïssona](#), ICC-01/14-01/18-2884-Conf (public redacted version filed on 23 March 2026, ICC-01/14-01/18-2884-Red).

⁵ [Request for leave to Reply to the “Prosecution consolidated response to Yekatom’s and Ngaïssona’s appeals against the Judgment and Yekatom’s request to present additional evidence” \(ICC-01/14-01/18-2885-Conf\)](#), ICC-01/14-01/18-2892.

⁶ [Prosecution Response to Ngaïssona’s Request for Leave to Reply](#), dated 19 March 2026 and registered on 23 March 2026, ICC-01/14-01/18-2893.

6. On the same date, the Appeals Chamber issued a decision to not hold a hearing in these appeals at the current stage of the proceedings (hereinafter: “Decision on Hearing”) and directed the parties to file any further requests for leave to reply to the responses to the appeal briefs by 13 April 2026, and any responses thereto within five days of receipt of same.⁷

7. On 13 April 2026, the Ngaïssona Defence filed a request for further leave to reply to the Prosecutor’s Response (hereinafter: “Ngaïssona Defence’s Further Request”)⁸ and the Yekatom Defence filed a request for leave to reply to the Prosecutor’s Response (hereinafter: “Yekatom Defence’s Request”).⁹

8. On 20 April 2026, the Prosecutor filed a consolidated response to the Ngaïssona Defence’s Further Request and the Yekatom Defence’s Request (hereinafter: “Prosecutor’s Consolidated Response”).¹⁰

II. MERITS

9. The Ngaïssona Defence seeks leave to reply to the Prosecutor’s Response on the issue of the applicable evidentiary standards, and more specifically on the Prosecutor’s alleged argument that the Trial Chamber “was neither bound by the beyond reasonable doubt standard, or the rules on circumstantial evidence and corroboration, in respect to core factual findings leading to Mr Ngaïssona’s conviction”.¹¹ It submits that the Prosecutor is pursuing an unforeseeable “novel and incoherent approach, which does not find support in international criminal law”.¹²

10. The Ngaïssona Defence seeks further leave to reply on two additional issues regarding: (i) the alleged misrepresentation of the evidentiary record and the attempt “to preclude consideration of Defence submissions on procedural grounds”;¹³ and (ii) the

⁷ [Decision on whether to hold a hearing and further directions](#), ICC-01/14-01/18-2894 (A A2 A3), paras 8, 10.

⁸ [Request for further leave to Reply to the “Prosecution consolidated response to Yekatom’s and Ngaïssona’s appeals against the Judgment and Yekatom’s request to present additional evidence” \(ICC-01/14-01/18-2885-Conf\)](#), ICC-01/14-01/18-2901.

⁹ Request for Leave to Reply Pursuant to Regulation 60 of the Regulations of the Court, ICC-01/14-01/18-2902-Conf, with confidential Annex A.

¹⁰ Prosecution Consolidated Response to Yekatom and Ngaïssona’s Requests for Leave to Reply, ICC-01/14-01/18-2908-Conf.

¹¹ [Ngaïssona Defence’s Request](#), paras 1, 4.

¹² [Ngaïssona Defence’s Request](#), para. 5.

¹³ [Ngaïssona Defence’s Further Request](#), paras 9-10, 13.

“relevance of specific factual aspects” of the Trial Chamber’s findings relating to Mr Ngaïssona’s criminal responsibility, particularly on, *inter alia*, his financial support to the Anti-Balaka, his involvement in FROCCA (*Front pour le retour à l’ordre constitutionnel en Centrafrique*), the relevance of some items of evidence to the finding that Mr Ngaïssona liaised with Andjilo and Konaté, and “[w]hether and how the [Trial] Chamber relied on Poussou’s testimony regarding a meeting at the Hôtel des Députés”.¹⁴ The Ngaïssona Defence submits that given the Appeals Chamber’s decision not to hold a hearing, it will not have the “opportunity to respond” to these issues and will be prevented from exercising its “right to speak last as provided for in [r]ule 141(2) read with [r]ule 149 of the Rules of Procedure and Evidence” (hereinafter: “Rules”).¹⁵

11. The Ngaïssona Defence argues that succinct and limited written submissions on these issues, which could not have been reasonably anticipated, would assist the Appeals Chamber in its determination of the Ngaïssona Defence’s appeal, in particular in relation to the errors alleged in grounds of appeal 1 and 2 of Ngaïssona’s Appeal Brief.¹⁶

12. The Yekatom Defence seeks leave to file a written reply to the Prosecutor’s Response on the following five issues:¹⁷ (i) alleged reformulation of “pleaded complaints” regarding the “scope, notice, re-characterisation and mode of liability”, inconsistent position on Mr Yekatom’s conviction under article 25(3)(a) of the Statute regarding the 5 December 2013 attack, and the re-casting of the Yekatom Defence’s pleading of a “cumulative alteration of the joint co-perpetration case as a series of [...] isolated refinements”;¹⁸ (ii) alleged denial of “carry-over” of the “movement-wide Anti-Balaka characteristics”, yet relying on this movement characteristics in support of Mr Yekatom’s criminal liability under article 25(3)(a) of the Statute;¹⁹ (iii) alleged attribution to the Trial Chamber of findings it did not make and supplying “inferential steps not expressed” in the Impugned Decision;²⁰ (iv) alleged re-casting of pleaded arguments, procedural challenges to Annex 5 to Yekatom’s Appeal Brief and to “materiality”;²¹ and (v) alleged re-casting of the sentencing appeal by “answer[ing] the article 76(2) [...] complaints at a higher level of

¹⁴ [Ngaïssona Defence’s Further Request](#), paras 11-13 (footnote omitted).

¹⁵ [Ngaïssona Defence’s Further Request](#), paras 4-5, 7.

¹⁶ [Ngaïssona Defence’s Request](#), paras 2, 5-6; [Ngaïssona Defence’s Further Request](#), paras 2, 4, 8, 13.

¹⁷ Yekatom Defence’s Request, paras 1-3, 6-19, 21.

¹⁸ Yekatom Defence’s Request, paras 2, 6, 9-11.

¹⁹ Yekatom Defence’s Request, paras 2, 6, 12.

²⁰ Yekatom Defence’s Request, paras 2, 5-6, 13-14; Annex A.

²¹ Yekatom Defence’s Request, paras 2, 6, 15-17; Annex A.

abstraction [...] rather than by engaging with the pleaded structure of the sentencing grounds”.²²

13. The Yekatom Defence submits that the five issues taken together show that the Prosecutor’s Response “goes beyond opposing the Appeal Brief [...] and instead alters the basis on which central issues are presented”.²³ The Yekatom Defence adds that it could not have had anticipated the Prosecutor’s Response attributing findings to the Trial Chamber it did not make or “by supplying inferential steps the [Impugned Decision] itself [did] not express”.²⁴ The Yekatom Defence avers that leave is required to “ensure that the [Yekatom] Defence has a fair opportunity to address the case now advanced in response”.²⁵

14. With respect to the Ngaïssona Defence’s Request, the Prosecutor defers to the discretion of the Appeals Chamber in its disposition of the request, subject to the following considerations:²⁶ (i) the reply should remain within the scope of the narrowly framed request;²⁷ (ii) the request “mischaracterises” the Prosecutor’s position regarding the beyond reasonable standard or the rules on circumstantial evidence;²⁸ (iii) “the beyond reasonable doubt standard applies only to the material facts [...] and not to subsidiary facts”;²⁹ and (iv) the Ngaïssona Defence does not demonstrate how the alleged errors to which the request relates materially affected Mr Ngaïssona’s conviction.³⁰

15. With respect to Ngaïssona Defence’s Further Request and the Yekatom Defence’s Request, the Prosecutor submits that they should be rejected as replies on the issues identified by the Defence Teams would not be necessary in the interests of justice.³¹ He submits that the Appeals Chamber “should be guided by the principles developed in the context of replies under regulation 24(5) [of the Regulations of the Court (hereinafter: “Regulations”)], including whether the requesting party seeks to provide arguments on

²² Yekatom Defence’s Request, paras 2, 6, 18-19.

²³ Yekatom Defence’s Request, para. 3.

²⁴ Yekatom Defence’s Request, para. 5.

²⁵ Yekatom Defence’s Request, para. 3.

²⁶ [Prosecutor’s Response to Ngaïssona Defence’s Request](#), para. 1.

²⁷ [Prosecutor’s Response to Ngaïssona Defence’s Request](#), para. 2.

²⁸ [Prosecutor’s Response to Ngaïssona Defence’s Request](#), para. 3.

²⁹ [Prosecutor’s Response to Ngaïssona Defence’s Request](#), para. 4.

³⁰ [Prosecutor’s Response to Ngaïssona Defence’s Request](#), para. 5.

³¹ Prosecutor’s Consolidated Response, paras 1, 5.

matters that it could have reasonably anticipated or should have included in its original brief”.³²

16. The Prosecutor argues that the Defence Teams’ submissions: (i) “repeat arguments already advanced” in their appeal briefs; (ii) “seek to build upon or cure shortcomings” in their appeal briefs; (iii) “amount to mere disagreement” with the Prosecutor’s position; (iv) raise a “lack of responsiveness” of the Prosecutor’s Response to the appeal briefs where such claim “does not constitute an appropriate basis for a reply”; (v) are “marginal and not material” to the matters under appeal; (vi) are “insufficiently developed” or are “too broad or vague”; and (vii) concern issues which could reasonably have been anticipated, as the challenged submissions in the Prosecutor’s Response were “directly responsive to claims on appeal”.³³

17. With respect to the Yekatom Defence’s Request, the Prosecutor submits that the request is “overly broad and, if granted, would effectively convert the reply stage into a further full round of written litigation”, which would defeat the exceptional nature of the reply procedure under regulation 60 of the Regulations.³⁴ Moreover, the Prosecutor avers that the Yekatom Defence’s attempt to incorporate by reference “examples” of the Prosecutor’s submissions catalogued in Annex A to its request should be dismissed *in limine*.³⁵

18. The Prosecutor further submits that: (i) issue 1 merely repeats submissions made in ground of appeal 1 of Yekatom’s Appeal Brief, amounts to a disagreement with the Prosecutor’s submissions, contends a lack of responsiveness from the Prosecutor, seeks to develop arguments already made and to reply to arguments not pleaded in the Prosecutor’s Response, which would “impermissibly expand the scope of the appeal”;³⁶ (ii) issue 2 is “immaterial and misconstrues” the Prosecutor’s Response;³⁷ (iii) issue 3 “reflects merely disagreement on anticipatory and immaterial matters”;³⁸ (iv) issue 4 claims “lack of responsiveness” and “seeks to cure pleading defects and is insufficiently developed”;³⁹ and

³² Prosecutor’s Consolidated Response, para. 4.

³³ Prosecutor’s Consolidated Response, paras 1, 5.

³⁴ Prosecutor’s Consolidated Response, para. 8; *see also* paras 9, 17, 21.

³⁵ Prosecutor’s Consolidated Response, para. 8; *see also* para. 20.

³⁶ Prosecutor’s Consolidated Response, paras 9-12; *see also* para. 1.

³⁷ Prosecutor’s Consolidated Response, paras 13-14; *see also* para. 1.

³⁸ Prosecutor’s Consolidated Response, paras 15-16; *see also* para. 1.

³⁹ Prosecutor’s Consolidated Response, paras 18-20; *see also* para. 1.

(v) issue 5 is “overly broad and vague”, sub-issue 5.1 amounts to a “blanket request to reply” to the Prosecutor’s submissions in response to the “entire sentencing appeal” and sub-issue 5.2 is insufficiently developed.⁴⁰

19. With respect to Ngaïssona Defence’s Further Request, the Prosecutor submits that the two issues: (i) amount to “mere disagreements with the interpretation of the evidence or the Trial Chamber’s findings”;⁴¹ (ii) seek to clarify the “evidentiary basis of [the Ngaïssona Defence’s] argument”, that “would inevitably expand the scope” of its appeal;⁴² and (iii) fail to explain why the “alleged deficiencies” in the Prosecutor’s Response would assist the Appeals Chamber in its determination of the appeal, and even if these issues were substantiated, “they would not be pertinent to the proper adjudication of the matters on appeal”.⁴³

20. Finally, the Prosecutor submits that should the Appeals Chamber grant any reply, such reply should be limited to the “specific issues and examples identified in the respective [r]equests, or parts of them”.⁴⁴

21. The Appeals Chamber recalls that, pursuant to regulation 60(1) of the Regulations, it may order an appellant to file a reply whenever it considers it necessary in the interests of justice. The ordering of a reply lies within the Appeals Chamber’s discretion and is to be decided on a case-by-case basis.⁴⁵

22. At the outset, the Appeals Chamber notes the Ngaïssona Defence’s submission that in the absence of a hearing before the Chamber, not allowing it to reply to the issues raised in its present requests would prevent it from exercising its “right to speak last”.⁴⁶ The Appeals Chamber recalls that the decision to hold a hearing is “discretionary and made on

⁴⁰ Prosecutor’s Consolidated Response, paras 22-23; *see also* paras 1, 20.

⁴¹ Prosecutor’s Consolidated Response, paras 1, 25.

⁴² Prosecutor’s Consolidated Response, para. 26.

⁴³ Prosecutor’s Consolidated Response, paras 1, 27.

⁴⁴ Prosecutor’s Consolidated Response, para. 2.

⁴⁵ *The Prosecutor v. Bosco Ntaganda*, [Decision on request for leave to reply](#), 15 May 2020, ICC-01/04-02/06-2530 (A3), para. 7; *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on Mr Jean-Pierre Bemba Gombo’s requests for leave to reply](#), 5 July 2019, ICC-01/05-01/13-2333 (A10), para. 20; *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on requests for leave to reply to the Prosecutor’s consolidated response to the appeal briefs](#), 24 January 2018, ICC-01/05-01/13-2259 (A6 A7 A8 A9), para. 9, referring to *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on Mr Bemba’s request for leave to reply to the Prosecutor’s Response to the Document in Support of the Appeal](#), 7 December 2016, ICC-01/05-01/08-3480 (A), para. 8 and the reference cited therein.

⁴⁶ [Ngaïssona Defence’s Further Request](#), paras 7-8, referring to rules 141(2) and 149 of the Rules.

a case-by-case basis”.⁴⁷ While the Appeals Chamber’s ruling relied upon by the Ngaïssona Defence shows that the person’s right “to ‘speak last’ as provided for in rule 141(2) read with rule 149 of the Rules” may be given effect in appellate proceedings,⁴⁸ the ruling in question concerned the order of oral submissions in an appellate hearing. The Appeals Chamber’s ruling did not concern a reply under regulation 60 of the Regulations. A decision not to hold a hearing before the Appeals Chamber does not mean that a defence request for leave to reply must always be granted in order to give effect to the person’s right to “speak last”.⁴⁹ Any other interpretation would run contrary to the aforementioned requirement of a case-by-case assessment of a reply’s necessity in the interests of justice, as well as regulation 60 of the Regulations.

23. Regarding the Ngaïssona Defence’s requests for leave to reply, the Appeals Chamber notes that the issue of the evidentiary standards applied by the Trial Chamber relates to grounds of appeal 1 and 2 of Ngaïssona’s Appeal Brief.⁵⁰ The issues relating to the alleged misrepresentation of the evidentiary record and the dismissal of arguments concerning D30-4914,⁵¹ and the Trial Chamber’s assessment of the evidence relating to its conclusion

⁴⁷ [Decision on Hearing](#), para. 7 and references cited therein.

⁴⁸ Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, [Decision on the Prosecutor’s request to establish parameters for Mr Ngudjolo’s personal address at the appeal hearing](#), 17 October 2014, ICC-01/04-02/12-217 (A), para. 10.

⁴⁹ See Prosecutor’s Consolidated Response, para. 6.

⁵⁰ [Ngaïssona Defence’s Request](#), para. 4, referring to Prosecutor’s Response, paras 411 (referring to [Ngaïssona’s Appeal Brief](#), paras 90-92 (ground of appeal I.B.5.iii)), 457-458, fn. 1727 (referring to [Ngaïssona’s Appeal Brief](#), paras 160-163, 165-167 (ground of appeal I.C.3)), 461 (referring to [Ngaïssona’s Appeal Brief](#), paras 168-169 (ground of appeal I.C.3.i)), 464 (referring to [Ngaïssona’s Appeal Brief](#), paras 171-172 (ground of appeal I.C.3.i)), 469 (referring to [Ngaïssona’s Appeal Brief](#), paras 175-176, 179 (ground of appeal I.C.3.ii)), 471 (referring to [Ngaïssona’s Appeal Brief](#), paras 180-183 (ground of appeal I.C.3.iv)), 474 (referring to [Ngaïssona’s Appeal Brief](#), paras 185-190 (ground of appeal I.C.3.v)), 475 (referring to [Ngaïssona’s Appeal Brief](#), paras 186-189 (ground of appeal I.C.3.v)), 481 (referring to [Ngaïssona’s Appeal Brief](#), para. 194 (ground of appeal I.C.3.v)), 484 (referring to [Ngaïssona’s Appeal Brief](#), para. 197 (ground of appeal I.C.3.v)), 488 (referring to [Ngaïssona’s Appeal Brief](#), paras 200, 202 (ground of appeal I.C.4)), 568-569 (referring to [Ngaïssona’s Appeal Brief](#), paras 329-330 (ground of appeal II.B.3)). The Appeals Chamber notes that the Ngaïssona Defence also refers to paragraph 297 of the Prosecutor’s Response. However, this paragraph does not seem to relate to the arguments made in the Ngaïssona Defence’s Request.

⁵¹ [Ngaïssona Defence’s Further Request](#), paras 9-10, 13, referring to Prosecutor’s Response, paras 395-398, fn. 1496 (referring to [Ngaïssona’s Appeal Brief](#), paras 68-80 (ground of appeal I.B.4.i)), 463 (referring to [Ngaïssona’s Appeal Brief](#), para. 170 (ground of appeal I.C.3.i)), 468 (relating to Mr Ngaïssona’s financial assistance to persons in Zongo, raised in paragraphs 175 to 179 of [Ngaïssona’s Appeal Brief](#), (ground of appeal I.C.3.iii)).

on Mr Ngaïssona's financial support to the Anti-Balaka underpinning his criminal responsibility,⁵² relate mainly to ground of appeal 1 of Ngaïssona's Appeal Brief.

24. The issue raised in the Ngaïssona Defence's Request concerns the application of evidentiary standards to what the Ngaïssona Defence considers to be "core factual findings leading to Mr Ngaïssona's conviction".⁵³ The Ngaïssona Defence submits that in his response to Ngaïssona's Appeal Brief, the Prosecutor "downplays and reframes the significance of certain key findings".⁵⁴ Indeed, the Prosecutor's Response refers to some of the findings challenged by the Ngaïssona Defence on appeal as "subsidiary 'linked facts'",⁵⁵ which the Trial Chamber "was not required to establish [...] beyond reasonable doubt".⁵⁶ The Appeals Chamber considers that the issue of whether those findings are subsidiary is relevant to the Appeals Chamber's determination on the Ngaïssona Defence's challenge to the evidentiary standards applied by the Trial Chamber. Noting the Prosecutor's request to defer to the discretion of the Appeals Chamber on that matter, the Appeals Chamber considers it necessary in the interests of justice to grant the Ngaïssona Defence's Request to reply to the issue identified therein, to the extent that it relates to the Prosecutor's submissions expressly referenced by the Ngaïssona Defence.⁵⁷ The written reply shall not be longer than five pages⁵⁸ and shall be filed by Wednesday, 20 May 2026. The Appeals Chamber emphasises that the reply shall not repeat submissions already made in the appeal brief and shall not exceed the scope of the related grounds of appeal.

25. Regarding the two issues raised in the Ngaïssona Defence's Further Request, the Ngaïssona Defence seeks to clarify the "evidentiary basis of the [Ngaïssona] Defence's argument and the manner in which the relevant testimony has been characterised" by the Prosecutor's Response and the reasoning underpinning the Trial Chamber's findings

⁵² [Ngaïssona Defence's Further Request](#), paras 11-13, *referring to* Prosecutor's Response, paras 387 (*referring to* [Ngaïssona's Appeal Brief](#), paras 47, 49 (ground of appeal I.B.2.i)), 456 (*referring to* [Ngaïssona's Appeal Brief](#), paras 160-198 (ground of appeal I.C.3)), 483 (*referring to* [Ngaïssona's Appeal Brief](#), paras 195-198 (ground of appeal I.C.3.v)), 493 (*referring to* [Ngaïssona's Appeal Brief](#), para. 206 (ground of appeal I.C.5)). The Appeals Chamber notes that footnotes 173 and 200 of the Prosecutor's Response cited in the Ngaïssona Defence's Further Request are unrelated to the arguments raised by the Ngaïssona Defence in its request. See [Ngaïssona Defence's Further Request](#), para. 11, fns 20, 22.

⁵³ [Ngaïssona Defence's Request](#), para. 4.

⁵⁴ [Ngaïssona Defence's Request](#), para. 4.

⁵⁵ Prosecutor's Response, para. 458; *see also* paras 297, 411, 471, 481, 484.

⁵⁶ Prosecutor's Response, para. 458; *see also* paras 297, 464, 469, 471, 481, 484.

⁵⁷ See [Ngaïssona Defence's Request](#), para. 4.

⁵⁸ Regulation 60(2) of the Regulations provides that a reply filed in accordance with regulation 60(1) of the Regulations "shall not exceed 50 pages".

concerning Mr Ngaïssona’s criminal liability.⁵⁹ The Appeals Chamber considers that the Ngaïssona Defence’s submissions are broad and imprecise, and that the matters raised mainly concern the evidentiary record and the Trial Chamber’s assessment of the evidence underpinning findings which have been sufficiently addressed by the parties in their respective briefs. The Appeals Chamber therefore does not consider it necessary to receive further submissions on these issues and, accordingly, the request for leave to reply on these issues is rejected.

26. Turning to the Yekatom Defence’s Request, the Appeals Chamber notes that the first four issues relate to all grounds of appeal against the conviction,⁶⁰ and issue 5 relates to ground of appeal 6 against the sentence.⁶¹

27. The Yekatom Defence formulates issue 1 as follows: “[t]he [Prosecutor’s] Response re-formulates pleaded Ground 1 complaints as to scope, notice, re-characterisation and mode of liability, and advances new appellate cure-positions”.⁶² The Yekatom Defence also alleges that the Prosecutor’s submission in response “does not answer the ground as raised” and clarifies that in its appeal it challenges the Trial Chamber’s reliance on facts which were not pleaded at trial.⁶³ The Appeals Chamber considers that the Yekatom Defence mainly restates arguments already made in its appeal brief in relation to this ground of appeal.⁶⁴ In any event, the Appeals Chamber is in a position to discern which facts concerning Mr Yekatom’s conduct and state of mind were pleaded at trial. The Appeals Chamber therefore does not consider it necessary to receive further submissions on issue 1 and, accordingly, the request for leave to reply on this issue is rejected.

28. With respect to issue 2, the Yekatom Defence seeks to reply on the question “why those passages [of the Prosecutor’s Response regarding Mr Yekatom’s responsibility under

⁵⁹ [Ngaïssona Defence’s Further Request](#), paras 10, 13.

⁶⁰ Yekatom Defence’s Request, paras 1, 6-17, *referring to* Prosecutor’s Response, paras 6-22 (*referring to* [Yekatom’s Appeal Brief](#), paras 5-11, 13-14, 17-24 (grounds of appeal 1.1, 1.2 and 1.3)), 24-29, 33, 35-36, 44, 47, 51-52, 64-65, 77, 101-104, 118, 122, 128, 137-143, 151, 157, 162, 165, 167, 174-175, 182, 193, 196, 198, 214-216, 250, 256, 280-281, 288, 290, 339-349, 356-359 (*referring to* [Yekatom’s Appeal Brief](#), paras 25, 28, 30-35, 37-46, 48-50, 53-56, 58, 65-66, 73-78, 97-100, 152-157, 173-174, 184-186, 194, 225, 234, 241-242, 247-248, 255-256, 279 (grounds of appeal 2.1, 2.2, 2.4, 2.5, 2.6, and 2.7), 306-308, 333-339 (grounds of appeal 3.2 and 3.3), 368-371 (grounds of appeal 4), 416-424, 429-433, 436 (grounds of appeal 5.1, 5.2, 5.3, and 5.5)).

⁶¹ Yekatom Defence’s Request, paras 1, 6, 18-19, *referring to* Prosecutor’s Response, paras 654-668 (*referring to* [Yekatom’s Appeal Brief](#), paras 439-456 (grounds of appeal 6.1, 6.2, 6.3 and 6.4)).

⁶² Yekatom Defence’s Request, p. 3; *see also* paras 9-11.

⁶³ Yekatom Defence’s Request, para. 9.

⁶⁴ [Yekatom’s Appeal Brief](#), paras 9-10, 13, 19, 22.

article 25(3)(a) of the Statute] themselves constitute the carry-over [of the movement-wide Anti-Balaka characteristics] denied in the [Prosecutor's] Response, and why the same contradiction reappears in the [Prosecutor's] Response's treatment of apparatus, control, knowledge and intent".⁶⁵ The Appeals Chamber finds it unclear why submissions on this issue would be of any assistance to the Appeals Chamber's determination of grounds of appeal 2 and 3 of Yekatom's Appeal Brief. Seemingly, what is sought to be conveyed by this rather imprecise issue is that the Prosecutor's Response makes the same error as one which the Yekatom Defence alleges with respect to the Impugned Decision. However, the Appeals Chamber's enquiry in this case focuses on the correctness of the Impugned Decision. When alleging errors in the Prosecutor's submissions, the Yekatom Defence does not explain how those submissions relate to any alleged error in the Impugned Decision. Therefore, this issue, which appears to be a mere disagreement with the Prosecutor's submissions, will not assist in the Appeals Chamber's determination of the appeal. It does not consider it necessary to receive further submissions on these issues and, accordingly, the request for leave to reply on issue 2 is rejected.

29. With respect to issues 3 and 4, the Appeals Chamber notes that the Yekatom Defence makes reference to Annex A to the Yekatom Defence's Request, which is a six-page table that lists submissions on issues 3⁶⁶ and 4.⁶⁷ They are presented as "[f]urther examples" of the Prosecutor's submissions to which the Yekatom Defence refers in support of these issues that would warrant a reply on them.⁶⁸ The Appeals Chamber takes note of the Prosecutor's request to dismiss "the wholesale incorporation by reference of Annex A".⁶⁹ In this regard, the Appeals Chamber recalls regulation 36(2)(b) of the Regulations, which provides that "[a]ny appendix containing references, authorities, copies from the record, exhibits and other relevant, non-argumentative material" are not counted in calculating the page limits. The same provision stipulates that "[a]n appendix shall not contain submissions". Regulation 37(1) of the Regulations provides that "[a] document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber".

⁶⁵ Yekatom Defence's Request, para. 12.

⁶⁶ Annex A, pp. 2-4.

⁶⁷ Annex A, pp. 4-7.

⁶⁸ Yekatom Defence's Request, paras 13-15, 17.

⁶⁹ Prosecutor's Consolidated Response, para. 8.

30. The Appeals Chamber notes that, contrary to the clear language of regulation 36(2)(b) of the Regulations, Annex A contains submissions. For instance, the Yekatom Defence argues in this annex that “[the Prosecutor’s] Response answers legal complaint by re-labelling it as a mere factual disagreement; mischaracterises Defence arguments in relation to article 25(3)(d); imports reasoning [...] without addressing Defence complaint”.⁷⁰ The Appeals Chamber considers that this amounts to an attempt to circumvent the requirements of regulations 36 and 37 of the Regulations. To the extent that Annex A to the Yekatom Defence’s Request contains submissions or argumentative material, the Appeals Chamber considers it appropriate to disregard such submissions or arguments contained therein,⁷¹ irrespective of whether the main request uses the entire page limit or not.⁷²

31. The Yekatom Defence formulates issue 3 as follows: “[t]he [Prosecutor’s] Response answers reasoning complaints by attributing findings to the Trial Chamber and by supplying inferential steps not expressed in the [Impugned Decision]”.⁷³ The issue is divided into two sub-issues. With respect to sub-issue 3.1, the Yekatom Defence seeks to address the Prosecutor’s attempts to strengthen the Trial Chamber’s reasoning challenged on appeal “by treating witness narratives, evidentiary recitals, contextual passages or later characterisations as though they were findings of the Trial Chamber”, or “by asserting as a finding a proposition not found anywhere in the [Impugned Decision]”.⁷⁴ The Yekatom Defence gives two examples of such attempts in the Prosecutor’s Response:

The [Prosecutor’s] Response presents the [Impugned Decision] as having found that, before 5 December, Mr. Yekatom trained ‘his group’ in Gbangba and instructed them to target Muslims, whereas the cited passages do not articulate that finding in those terms. That reformulated proposition is then recycled as support for the impugned convictions, even though it is not a finding made in the [Impugned Decision] as rendered. In answer to Grounds 3.2 and 5.2 of the Appeal Brief, the [Prosecutor’s] Response likewise presents the [Impugned Decision] as having found that

⁷⁰ Annex A, p. 4.

⁷¹ Appeals Chamber, *Situation in the Republic of Kenya*, [Decision on the Request for Disqualification of the Prosecutor in the Investigation against Mr David Nyekorach-Matsanga](#), 11 July 2012, ICC-01/09-96-Conf (OA2) (public redacted version filed on 6 September 2012, ICC-01/09-96-Red (OA2)), para. 5.

⁷² Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”](#), 15 December 2022, ICC-02/04-01/15-2023 (A2), para. 277.

⁷³ Yekatom Defence’s Request, p. 6.

⁷⁴ Yekatom Defence’s Request, para. 13.

harassment of Muslims ceased only when it was agreed that they would leave *en masse*, whereas the cited passages do not so find.⁷⁵

32. The Yekatom Defence submits that it seeks to address in its reply “why those propositions are not findings in the [Impugned Decision]”.⁷⁶ The Appeals Chamber notes that it is in a position to determine whether those passages in the Impugned Decision are findings or not. In any event, the Appeals Chamber finds that the submissions it received so far sufficiently address these matters. It therefore does not consider that further submissions will be of any assistance in its determination of the Yekatom Defence’s appeal. Accordingly, the request for leave to reply on issue 3.1 is rejected.

33. Regarding sub-issue 3.2, the Yekatom Defence submits that the Prosecutor’s Response: (i) “reconstructs the alleged common plan”, based on findings that were “not expressly relied upon by the Trial Chamber”; (ii) advances “a new common article 3 theory not articulated in the [Impugned Decision]”; and (iii) “invokes a broader attack-context theory”, based on “inferential steps the [Impugned Decision] itself never [took]”.⁷⁷ The Appeals Chamber notes that the parties made extensive submissions on these matters, including on the applicability of the theory of a continuous combat function to the circumstances of the present case. As far as the Yekatom Defence seeks to address the Prosecutor’s reliance on findings or “inferential steps” which were not expressly made in the Impugned Decision, the Appeals Chamber is in a position to determine which passages of that decision constitute findings and which do not. It does not consider that further submissions on this matter will be of any assistance in its determination of the Yekatom Defence’s appeal. Accordingly, the request for leave to reply on issue 3.2 is rejected.

34. With respect to issue 4, the Yekatom Defence seeks to address: “how [...] reformulations [in the Prosecutor’s Response] narrow the pleaded grounds and thereby leave central aspects of them unanswered”, the “new threshold objection to Annex 5” to Yekatom’s Appeal Brief, how the Prosecutor’s Response “reduces the P-1839 point to a missed transcript-correction mechanism” and how it “atomises materiality”.⁷⁸ The Appeals Chamber considers that it does not need additional submissions to determine whether the Prosecutor narrowed the Yekatom Defence’s grounds of appeal, or failed to answer their

⁷⁵ Yekatom Defence’s Request, para. 13 (footnotes omitted, emphasis in original omitted).

⁷⁶ Yekatom Defence’s Request, para. 13.

⁷⁷ Yekatom Defence’s Request, para. 14, *referring to* Prosecutor’s Response, paras 214-216.

⁷⁸ Yekatom Defence’s Request, paras 15-17.

“central aspects”.⁷⁹ In any case, the Yekatom Defence seeks to address these purported shortcomings of the Prosecutor’s Response without explaining how they relate to any error alleged with respect to the Impugned Decision. Accordingly, the request for leave to reply on issue 4 is rejected.

35. Issue 5 is set out as follows: “[t]he [Prosecutor’s] Response re-casts the sentencing appeal and fragments sentence prejudice”.⁸⁰ The Yekatom Defence seeks to address: (i) “why the discriminatory-motive point is not a general objection to discrimination as aggravation”;⁸¹ (ii) “why the article 76, mitigation and gravity complaints were [...] answered at a level that leaves the pleaded prejudice untouched”;⁸² and (iii) “why [the Prosecutor’s Response] does not answer the sentencing grounds as pleaded, [whereas] sentence prejudice [...] must be assessed cumulatively”.⁸³ The Yekatom Defence’s Request does not refer to any specific submissions of the Prosecutor, which in its view fail to properly address the grounds of appeal against the sentence. Furthermore, it only contains a broad reference to practically all paragraphs of the Prosecutor’s Response regarding Mr Yekatom’s sentence, rather than to any specific part of it.⁸⁴ The Appeals Chamber finds this issue to be overly broad and imprecise, as it concerns the entirety of the Prosecutor’s response to the Yekatom Defence’s ground of appeal 6 on the sentence.

36. In addition, by seeking to address the issue of “why [some] reformulations [in the Prosecutor’s Response] do not answer the complaints as pleaded”,⁸⁵ the Yekatom Defence unduly focuses on the correctness of the Prosecutor’s submissions, without explaining how its reply on those submissions would assist in the assessment of the correctness of the Impugned Decision. The Yekatom Defence fails to substantiate how a reply would be necessary in the interests of justice for the determination of its appeal. The Appeals Chamber therefore considers that it will not be assisted by further submissions on issue 5 and, accordingly, the request for leave to reply on this issue is rejected.

⁷⁹ Yekatom Defence’s Request, para. 15.

⁸⁰ Yekatom Defence’s Request, p. 9.

⁸¹ Yekatom Defence’s Request, para. 18.

⁸² Yekatom Defence’s Request, para. 18.

⁸³ Yekatom Defence’s Request, para. 19.

⁸⁴ See Yekatom Defence’s Request, para. 18, fn. 33, *referring to* Prosecutor’s Response, paras 654-668.

⁸⁵ Yekatom Defence’s Request, para. 18; *see also* para. 19.

37. Finally, the Appeals Chamber notes the Prosecutor's submission that he does not object to his confidential consolidated response being reclassified as public.⁸⁶ The Appeals Chamber therefore directs the Registrar to reclassify as public the Prosecutor's Consolidated Response. The Appeals Chamber also notes the Yekatom Defence's submission that it will file a public redacted version of its confidential request for leave to reply "in due course".⁸⁷ The Appeals Chamber therefore directs the Yekatom Defence to file a public redacted version of its request and confidential Annex A by Friday, 22 May 2026.

Done in both English and French, the English version being authoritative.



Judge Solomy Balungi Bossa
Presiding

Dated this 8th day of May 2026

At The Hague, The Netherlands

⁸⁶ Prosecutor's Consolidated Response, para. 3.

⁸⁷ Yekatom Defence's Request, para. 20.