

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 20 May 2026

THE APPEALS CHAMBER

Before: Judge Solomy Balungi Bossa, Presiding Judge
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 Document

**Defence Reply to the "Prosecution consolidated response to the Yekatom's and
Ngaïssona's appeals against the Judgment and Yekatom's request to present
additional evidence" (ICC-01/14-01/18-2885-Conf)**

Source: Defence of Patrice-Édouard Ngaïssona

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I. INTRODUCTION

1. In accordance with the Appeals Chamber's decision¹ and Regulation 60,² the Defence presents its reply to the Prosecution's response to the Defence's appeal ("Response").³

II. SUBMISSIONS

2. In its Response, the Prosecution asserts that the Trial Chamber was not bound by the 'beyond reasonable doubt' standard, or by the rules on inferences based on circumstantial evidence, and corroboration, in relation to core factual findings underlying Mr Ngaïssona's conviction.⁴ The Prosecution's position, which artificially isolates individual factual conclusions to evade the application of Article 66 of the Statute,⁵ if adopted, would dilute the 'beyond reasonable doubt' standard, shift the burden of proof, and undermine Mr Ngaïssona's right to the presumption of innocence. The jurisprudence does not support the narrow and fragmented application of the standard put forward by the Prosecution. The Appeals Chamber has held that the 'beyond reasonable doubt' standard applies broadly to findings that "underpin the charges" and "upon which a conviction depends".⁶
3. First, individual core contributions underpinning the charges⁷ which the Prosecution seeks to exclude from the 'beyond reasonable doubt' standard, fall squarely within the "modes of liability" category it acknowledges is subject to that standard.⁸ Whether a particular fact is

¹ [ICC-01/14-01/18-2917](#), para. 24; Defence's request for leave to reply, [ICC-01/14-01/18-2892](#).

² [Regulations of the Court](#).

³ [ICC-01/14-01/18-2885-Red](#).

⁴ [Response](#), paras 457-458, 461, 464, 469, 471, 475, 481, 484, 488, 568.

⁵ See e.g. [Response](#), para. 458 ("the Chamber was not required to establish any individual instance of financial assistance beyond reasonable doubt, as no such instance was itself the basis for Ngaïssona's criminal responsibility").

⁶ *Prosecutor v. Ngudjolo*, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", [ICC-01/04-02/12-271-Corr](#) ("Ngudjolo AJ"), paras 124-125 (identifying three broad categories of facts for which the 'beyond reasonable doubt' standard applies); *Prosecutor v. Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', [ICC-01/04-02/06-2666-Red](#) ("Ntaganda AJ"), para. 37; *Prosecutor v. Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, [ICC-01/04-01/06-3121-Red](#) ("Lubanga AJ"), para. 22 (and "facts falling under the subject matter of the case"); *Prosecutor v. Taylor*, Appeals Judgment, [SCSL-03-01-A](#), para. 181 and citations in fn. 425 ("but only those on which a conviction or the sentence depends"). Some chambers held the standard applies to "modes of liability as charged" and "elements of the crimes", see e.g. *Prosecutor v. Ongwen*, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", [ICC-02/04-01/15-2022-Red](#), paras 320-321. See also [ICC-01/14-01/18-640](#), para. 10 (the Prosecution argues that "facts and circumstances" which delimit a trial per article 74(2) must be established beyond reasonable doubt).

⁷ See [ICC-01/14-01/18-403-Conf-Corr](#) ("Confirmation of Charges Decision"), para. 112 ("Ngaïssona assisted François Bozizé in planning his return to power by *inter alia* (i) taking steps to structure the Anti-Balaka; (ii) financing the Anti-Balaka, including for the purchase of weapons; and (iii) liaising with Anti-Balaka members exercising key functions, including Maxime Mokom."). See also [Judgment](#), p. 18.

⁸ [Response](#), para. 362.

subject to the evidentiary standard is necessarily case-specific.⁹ Here, Pre-Trial Chamber II identified “financing the Anti-Balaka, including for the purchase of weapons” as one of Mr Ngaïssona’s core contributions to the crimes as charged.¹⁰ In circumstances where the evidentiary record relating to financial contributions to the Anti-Balaka was extremely sparse, each alleged instance of financing assumed heightened importance.¹¹ The “single instance” of Mr Ngaïssona financing the Anti-Balaka in Gobere, and his financial contribution in Zongo, were expressly discussed by the Chamber in the context of Mr Ngaïssona’s Article 25(3)(c) contributions – not as “merely one evidentiary strand contributing to broader factual findings”.¹² The Chamber repeatedly relied on Mr Ngaïssona’s alleged funding of the Anti-Balaka groups¹³ – which the Prosecution itself identifies as part of the *actus reus* – to conclude to Mr Ngaïssona’s liability.¹⁴ The impugned instances of financing, therefore, “underpin the charges upon which a conviction depends” and were necessarily subject to the ‘beyond reasonable doubt’ standard.¹⁵ Similarly, the Prosecution attempts to downplay the significance of Mr Ngaïssona’s alleged liaising with Maxime Mokom as “just one aspect of the evidence”,¹⁶ while overlooking that this allegation was a key component of Mr Ngaïssona’s Article 25(3)(c) contributions¹⁷ and was part of the Confirmation of Charges Decision.¹⁸

4. The Prosecution’s argument that, because Mr Ngaïssona is charged with multiple contributions – none of which it considers individually “essential” – no single contribution must independently satisfy the ‘beyond reasonable doubt’ standard is untenable.¹⁹ This implies that where a trial chamber relies cumulatively on multiple factual findings to reach

⁹ See e.g. *Prosecutor v. Gbagbo and Blé Goudé*, Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions, [ICC-02/11-01/15-1400](#) (“Gbagbo and Blé Goudé AJ”), paras 358-359; *Prosecutor v. Bemba 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”, [ICC-01/05-01/13-2275-Red](#), (“Bemba et al AJ”), para. 1084 (“the question to what extent corroboration is needed is a matter of assessing the evidence and cannot be ruled upon in the abstract”); [Ngudjolo AJ](#), para. 168.

¹⁰ See [Confirmation of Charges Decision](#), paras 80, 101-102, 112 and 176.

¹¹ See [ICC-01/14-01/18-2847-Corr-Red](#) (“Ngaïssona Appeal Brief”), paras 160-183, in particular paras 168, 172, 175.

¹² [Response](#), para. 469. See also para. 461.

¹³ See [Judgment](#), p. 800, para. 2267, p. 801, para. 2272, p. 1351, para. 4042, pp. 1373-1374, para. 4115, p. 1427, para. 4281, p. 1457, para. 4373.

¹⁴ [Response](#), para. 569; [Judgment](#), pp. 1349-1350, para. 4037.

¹⁵ [Gbagbo and Blé Goudé AJ](#), para. 66.

¹⁶ [Response](#), para. 495. See also para. 496.

¹⁷ Mr Ngaïssona’s financing of the Anti-Balaka in Zongo is based on testimony (P-2232 and P-2841) suggesting that Mr Ngaïssona liaised and gave money to Maxime Mokom, identified as a coordinator of operations, with links to Gobere, see e.g. [Judgment](#), p. 290-291, para. 841, p. 298, para. 858, p. 308-309, para. 881, p. 782, para. 2208, p. 1299-1300, para. 3895, see also p. 1315, para. 3937. See also [Response](#), para. 468.

¹⁸ [Confirmation of Charges Decision](#), para. 112.

¹⁹ [Response](#), para. 469 (“It was not required to preclude other reasonable inferences since the criminal standard of proof did not apply to this question”). See also para. 458.

a core conclusion, none would qualify as “essential” and all would effectively escape appellate scrutiny.²⁰ Such logic effectively deprives the standard of any meaningful application and is contradicted by Court practice. For instance, Trial Chamber VII consistently applied the ‘only reasonable inference’ standard to Mr Kilolo’s various contributions, although none, taken individually, was determinative or “essential” of guilt.²¹ Likewise, Trial Chamber I applied the ‘only reasonable inference’ test broadly – to all adverse findings – while recalling its heightened duty to provide detailed reasons for essential findings based on inferences.²²

5. Second, the Prosecution’s attempt to minimise weakly supported findings by recharacterising them as “subsidiary”,²³ and thereby placing them beyond the reach of the ‘beyond reasonable doubt’ standard, should be rejected.²⁴ While multiple pieces of evidence may, when considered together, support a finding beyond reasonable doubt through mutual corroboration, such evidence must itself be reliable and probative²⁵ and the inferences must be the only reasonable ones.²⁶ The Defence does not suggest that the ‘beyond reasonable doubt’ standard applies to every factual allegation or item of evidence;²⁷ whether a fact is material, and requires corroboration, or must be the only reasonable inference, must be assessed on a case-by-case basis.²⁸ For example, P-2269’s evidence required corroboration, not only because it was untested or lacked credibility, but also because it related to allegations central to the Chamber’s findings concerning Mr Ngaïssona’s financing of the Anti-Balaka in Govere.²⁹

²⁰ See e.g. [Response](#), para. 469.

²¹ This approach was endorsed by the Appeals Chamber, [Bemba et al AJ](#), paras 868-869, 870, citing *Prosecutor v. Bemba et al*, Trial Judgment, [ICC-01/05-01/13-1989-Red](#), paras 251, 277-278, 302, 532.

²² *Prosecutor v. Abd-Al-Rahman*, Trial Judgment, [ICC-02/05-01/20-1240](#), para. 176 (the Trial Chamber did not limit the application of the “only reasonable inference” standard to “elements of the crime” and “modes of liability”). See also *Prosecutor v. Karadžić*, Public Redacted Version of Judgement Issued on 24 March 2016, [IT-95-5/18-T](#), paras 10, 14, 2612 (illustrating that the “only reasonable inference” analysis forms part of the Chamber’s assessment whether the beyond reasonable doubt standard is met and where an inference is drawn from circumstantial evidence, it must be the only reasonable one); [ICC-01/14-01/18-2909](#), paras 23-24.

²³ [Response](#), paras 365, 458, 481. In its Response to the Defence request for leave to reply, the Prosecution relies on pre-trial decisions, which apply a different standard than the Article 66 ‘beyond reasonable doubt’ standard applicable at trial. See [ICC-01/14-01/18-2893](#), para. 4.

²⁴ *Prosecutor v. Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, Separate opinion Judge Christine Van den Wyngaert and Judge Howard Morrison, [ICC-01/05-01/08-3636-Anx2](#) (“Bemba AJ Separate Opinion”), para. 12.

²⁵ [Bemba AJ Separate Opinion](#), para. 67 (“the Prosecutor’s proposed ‘cumulative’ approach creates the risk that the Chamber may consider evidence that is not relevant or has no evidentiary weight to speak of and make findings under the illusion of corroboration.”). [Response](#), paras 464, 471, 475, 488.

²⁶ [Bemba et al AJ](#), para. 868.

²⁷ [Response](#), para. 458, fns 1725, 1727.

²⁸ [Response](#), para. 458; [Bemba et al AJ](#), paras 868, 1084.

²⁹ [Judgment](#), p. 287, para. 836, p. 409, para. 1106; [Response](#), paras 368 (“no finding on facts essential to establishing Ngaïssona’s conviction was based solely or decisively on P-2269’s evidence”), 464 (“Nor was it

6. The Prosecution argues that the Chamber was not required to resolve credibility issues around Poussou's account regarding Mr Ngaïssona's presence and role at a second meeting at the Hôtel des Députés.³⁰ However, this issue was essential to a finding necessary for a conviction.³¹ In dismissing the Defence arguments³² and finding that "Mr Ngaïssona participated in meetings in Cameroon in which the anti-foreign and indeed anti-Muslim discourse was repeated [...]",³³ the Chamber expressly cites to the meeting alleged by Poussou at the Hôtel des Députés.³⁴ Similarly, the Prosecution argues that the "subsidiary" impugned finding concerning emails, which the Chamber concluded were sent by Mr Ngaïssona and demonstrate that he at the very least knew or intended to be a liaison for financing and weapons, falls outside the scope of Article 66(3), and need not be the only reasonable inference.³⁵ Yet, these findings were essential to *mens rea* findings,³⁶ and the Prosecution itself cites the Judgment where the Chamber interpreted and drew inferences from the email exchange.³⁷
7. Contrary to the Prosecution's suggestion in its Response, a holistic assessment of the evidence does not relieve it of its burden of proof, nor does it justify overlooking evidential

necessary for evidence of "financing of the Gobere group and the Bossangoa area" to be corroborated, since this was not legally required for P-2269's evidence"); [Ngaïssona Appeal Brief](#), para. 169.

³⁰ [Response](#), para. 387.

³¹ [Judgment](#), p. 255, para. 773, fn 1570. Footnote 1570 hyperlinks to the core factual findings that "execution of the Anti-Balaka's core objective was primed by anti-foreign sentiments and inflammatory rhetoric openly expressed by François Bozizé and others" and was "reflected in meetings of [...] Mr Ngaïssona and others in Cameroon" (p. 23, paras 46-47) and the section referenced ("See section II.A.5 below.") finds that "Mr Ngaïssona participated in meetings in Cameroon in which the anti-foreign and indeed anti-Muslim discourse was repeated [...]", see p. 484, para. 1302 (emphasis added). The footnote to the finding in para. 1302 cites the Poussou meetings at the Hôtel des Députés (Judgment, p. 484, fn. 3492: "See section IV.A.2.i.b.i above."). Section IV.A.2.i.b.i spans pp. 254-276, paras 769-812. The discussion of the Hôtel des Députés occurs at p. 254, para. 770). In the discussion of individual responsibility para. 1302 is referenced via p. 1317, para. 3944 ("[...] Mr Ngaïssona knew that the Anti-Balaka perceived, and himself perceived, the Muslims in the CAR as collectively responsible for, complicit in, or supportive of the violence and abuses committed by the Seleka, and that the Anti-Balaka targeted the Muslim civilian population, specifically in the west of the CAR."), fn. 9565 which cross-references p. 23, para. 49. The evidence supporting paragraph 49 is developed in pp. 452-486, paras 1210-1305. P. 484, para. 1302 cross-references to "section IV.A.2.i.b.i above" which includes the Hôtel des Députés discussion at paras 780-783.

³² [Judgment](#), p. 254, para. 770 (Defence argument outlined by the Chamber), p. 255, para. 773 ("as further outlined below, the Chamber considers the Ngaïssona Defence's arguments in this regard without merit, including in relation to the expression of an 'anti-Muslim' animus.").

³³ [Judgment](#), 484, para. 1302 (emphasis added).

³⁴ [Judgment](#), p. 23, paras 46-47 ("The Chamber found that the implementation and execution of the Anti-Balaka's core objective was primed by anti-foreign sentiments and inflammatory rhetoric openly expressed by François Bozizé and others" and was "reflected in meetings of [...] Mr Ngaïssona and others in Cameroon"). The section referenced in the footnote refers to Judgment, p. 484, para. 1302.

³⁵ [Response](#), para. 481 ("the Chamber did not—and was not obliged to—make any determination concerning the import of these e-mails beyond reasonable doubt. Rather, this was a subsidiary aspect of the evidence, considered by the Chamber in the context of assessing Ngaïssona's financial assistance as a whole to the benefit of the Anti-Balaka"); [Judgment](#), p. 314, para. 889.

³⁶ [Judgment](#), p. 1315, para. 3937 cross-referencing, p. 20, para. 35 and p. 1317, para. 3943 citing paras 34-35, 38-39, 47, 49 above. Paragraphs 35 and 38 are the conclusive findings of fact. [Judgment](#), p. 314, para. 889 is part of the discussion developing that finding in detail.

³⁷ [Response](#), para. 477.

gaps and weaknesses that give rise to reasonable doubt in critical aspects of the case.³⁸ The Prosecution's impermissible reframing of its case through ambiguities in the Judgment, and lowering of the standard of proof, exposes the lack of adequate reasoning by the Chamber.³⁹

III. CONCLUSION

8. The Appeals Chamber should safeguard Mr Ngaïssona's rights to the presumption of innocence and the burden of proof, which constitute the cornerstones of criminal proceedings and which the Prosecution now seeks to undermine.



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on behalf of
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Dated this 20 May 2026

At The Hague, the Netherlands

³⁸ [Bemba AJ Separate Opinion](#), para. 15 (“holistic fact-finding should not be an excuse or a reason for making findings beyond a reasonable doubt on the basis of a collection of weak evidence” (...)) “analysing evidence holistically cannot cure the weakness of individual items of evidence and a number of weak arguments for a proposition do not and cannot ever combine into a strong reason for accepting it”), para. 60 (“The real question is whether it is logically possible to prove the existence of a forest beyond a reasonable doubt without proving the existence of a sufficient (...) number of trees beyond a reasonable doubt. Whereas trees exist independently of the forest, forests do not exist independently of the trees that constitute it”), para. 67; Gbagbo and Blé Goudé AJ, Separate Concurring Opinion of Judge Eboe-Osuji, [ICC-02/11-01/15-1400-Anx1-Red](#), para. 121 (“The idea of a holistic appraisal of evidence cannot require sweeping under the forensic carpet evidential gaps and weakness that entail reasonable doubt in critical aspects of a criminal case”); [Judgment](#), pp. 40-41, para. 127. The Chamber must evaluate the credibility and reliability of all testimony, see [Ntaganda AJ](#), para. 587 (“The question in all cases is whether the guilt of the accused has been proven beyond reasonable doubt. In reaching its determination, the trier of fact is bound to assess all relevant evidence, and it is proper that, in this context, it should evaluate the credibility and reliability of the testimony of all witnesses in light of the evidence as a whole.”).

³⁹ E.g., [Response](#), para. 469 (where the Prosecution concedes that the Chamber failed to specify the conclusion it drew from P-2232's testimony relating to funding in Zongo, while suggesting that this insulated the Chamber from the requirement of drawing the most reasonable inference); [Bemba et al AJ](#), para. 870; [Bemba AJ Separate Opinion](#), para. 16.