



Original: English

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

Date: 25 August 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

Order requesting further written submissions

Order 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 Trial Chamber V's "Judgment" of 24 July 2025 (ICC-01/14-01/18-2784-Red),

Noting in particular, the appeal of the Deputy Prosecutor entitled "Prosecution Appeal Brief" of 25 November 2025 (ICC-01/14-01/18-2846-Red),

Recalling the "Decision on whether to hold a hearing and further directions" of 23 March 2026 (ICC-01/14-01/18-2894), wherein the Appeals Chamber decided, *inter alia*, not to hold a hearing in these appeals at the current stage of the proceedings,

Issues, pursuant to regulation 28(2) of the Regulations of the Court, the following

ORDER

1. In the matter of the appeal of the Deputy Prosecutor against Trial Chamber V's "Judgment" (ICC-01/14-01/18-2784-Red), the Deputy Prosecutor and the Common Legal Representative of Victims of the Other Crimes may file further written submissions on the questions posed by the Appeals Chamber in paragraph 7 below by 16h00 on Wednesday, 30 September 2026. The submissions shall not exceed 40 pages.
2. The Defence for Mr Ngaïssona may file a response to both the questions posed by the Appeals Chamber and the further written submissions of the Deputy Prosecutor and the Common Legal Representative of Victims of the Other Crimes by 16h00 on Wednesday, 14 October 2026. The response shall not exceed 50 pages.

REASONS

1. On 24 July 2025, Trial Chamber V (hereinafter: "Trial Chamber") rendered the "Judgment" (hereinafter: "Impugned Decision"),¹ *inter alia*, acquitting Mr Ngaïssona of the charge of rape as a crime against humanity and as a war crime (counts 40 and 41) and

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.

persecution through rape as a crime against humanity (count 42) under the mode of liability of aiding, abetting or otherwise assisting in the (attempted) commission of a crime pursuant to article 25(3)(c) of the Statute.

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”) filed their respective appeal briefs against the Impugned Decision.²

3. On 27 February 2026, the Prosecutor and the Ngaïssona Defence filed their respective response briefs³ and the Common Legal Representatives of Victims of the Other Crimes (hereinafter: “Victims”) filed their observations.⁴

4. On 23 March 2026, the Appeals Chamber issued the “Decision on whether to hold a hearing and further directions” indicating its decision not to convene a hearing at the current stage of the proceedings and that if during the course of its deliberations “additional submissions are necessary, whether oral or in writing, the Appeals Chamber will issue further directions at that time”.⁵

5. The Appeals Chamber notes that in his appeal, the Prosecutor raises a single ground of appeal arguing that upon acquitting Mr Ngaïssona under article 25(3)(c) of the Statute for his contribution to the rape of P-2462 as a crime against humanity and a war crime (counts 40 and 41) and persecution through rape (count 42), the Trial Chamber was obliged to examine his conduct under the confirmed alternative mode of liability, article 25(3)(d)

² [Prosecution Appeal Brief](#), ICC-01/14-01/18-2846-Conf (public redacted version dated 27 November 2025 and registered on 28 November 2025, ICC-01/14-01/18-2846-Red) (hereinafter: “Prosecutor’s Appeal Brief”); [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.

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 (public redacted version filed on 8 May 2026, ICC-01/14-01/18-2885-Red), 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) (hereinafter: “Ngaïssona Defence’s Response”).

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) (hereinafter: “Victims’ Observations”).

⁵ [Decision on whether to hold a hearing and further directions](#), ICC-01/14-01/18-2894 (A A2 A3), para. 8.

of the Statute.⁶ The Prosecutor avers that this alleged legal error materially affected the Impugned Decision, as the Trial Chamber would have convicted Mr Ngaïssona under the mode of liability of article 25(3)(d)(i) of the Statute, based on a legal interpretation of this provision, as suggested by the Prosecutor, and the factual findings in the Impugned Decision.⁷

6. For the proper disposal of the appeal, the Appeals Chamber considers it necessary to receive additional written submissions on specific questions that require further elucidation. To that end, the Appeals Chamber underlines that submissions or observations already made in the respective filings should as far as practicable not be repeated.

7. More specifically, the Prosecutor, the Ngaïssona Defence and the Victims are requested to file further submissions on the following questions:

- a. What are the elements of a “common purpose” under article 25(3)(d) of the Statute and how do those differ from the elements of an “organizational policy” within the meaning of article 7(2)(a) of the Statute?
- b. Can findings of a pattern of violence for purposes of establishing the contextual elements of crimes against humanity be relied upon to establish the common purpose under article 25(3)(d) of the Statute?
- c. Must it be established that the crime with which the person is charged was part of the common purpose or is it sufficient to show that the crime was committed in the context of pursuing the common purpose? In the case of the latter scenario, what level of awareness must the accused have in relation to the commission of the crime?
- d. Can the common purpose be inferred from a showing of a pattern of criminality?
- e. In light of the existing conflicting opinions in the Court’s jurisprudence,⁸ is there a threshold applicable to a contribution pursuant to article 25(3)(d) of the Statute?

⁶ [Prosecutor’s Appeal Brief](#), paras 2, 7, 11-18.

⁷ [Prosecutor’s Appeal Brief](#), paras 3, 20-91.

⁸ See Trial Chamber II, *The Prosecutor v. Germain Katanga*, [Judgment pursuant to article 74 of the Statute](#), 7 March 2014, ICC-01/04-01/07-3436-tENG (hereinafter: “*Katanga* Conviction Decision”), paras 1632-1633; Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on the Confirmation of](#)

Does the special *mens rea* (“with the aim of furthering”) justify liability for any contribution that is intentionally directed at furthering the group’s criminal activity or purpose?

- f. What distinguishes the term “contributes” in article 25(3)(d) of the Statute from “aids, abets or otherwise assists” in article 25(3)(c) of the Statute?
- g. The Appeals Chamber notes that article 25(3)(d) of the Statute is an innovation derived from the International Convention for the Suppression of Terrorist Bombings (hereinafter: “Terrorist Bombings Convention”) which provided for a unique form of liability for inchoate crimes.⁹ Article 25(3)(d) of the Statute imports language from article 2(3)(c) of the Terrorist Bombings Convention almost verbatim with the notable exclusion of the word “general” from the text¹⁰ and a structural change, which entailed the creation of distinct sub-paragraphs, that reflect different options relating to the subjective elements that need to be met in order to establish this distinct mode of liability.

[Charges](#), 16 December 2011, ICC-01/04-01/10-465-Red, paras 276-283. For “no additional requirement” in relation to a level or threshold of contribution: see, for example, Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto et al.*, [Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#), 23 January 2012, ICC-01/09-01/11-373, paras 353-354, rejecting the requirement of a “substantial” contribution; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Trial Judgment](#), 26 June 2024, ICC-01/12-01/18-2594-Conf (public redacted version filed on the same day, ICC-01/12-01/18-2594-Red), paras 1241-1244, rejecting the requirement of a “significant” contribution while stating that it effectively applies the same requirements as Trial Chamber II in the *Katanga* Conviction Decision with respect to the contribution “in any other way”, but without reading into it the qualification of “significant”, see fn. 4027; Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 8 November 2019, ICC-01/12-01/18-461-Conf-Corr (public redacted version filed on 13 November 2019, ICC-01/12-01/18-461-Corr-Red), para. 948; Pre-Trial Chamber I, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, [Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi](#), 24 March 2016, ICC-01/12-01/15-84-Red, para. 27; Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, [Decision on the confirmation of charges against Dominic Ongwen](#), 23 March 2016, ICC-02/04-01/15-422-Conf (public redacted version filed on the same day, ICC-02/04-01/15-422-Red), para. 44; Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, [Separate Opinion of Judge Silva Fernández de Gurmendi](#) to the Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, ICC-01/04-01/10-514 (OA4), paras 7-15.

⁹ [International Convention for the Suppression of Terrorist Bombings](#), General Assembly Resolution 52/164, 15 December 1997, U.N. Doc. A/RES/52/164. The Appeals Chamber notes that the [Terrorist Bombings Convention](#) was itself based on article 3(4) of the 1996 [Convention Relating to Extradition between Member States of the European Union](#), see W. A. Schabas, *The International Criminal Court. A Commentary to the Rome Statute* (Oxford University Press, 2010), p. 436.

¹⁰ See article 2(3)(c) of the [Terrorist Bombings Convention](#) (“[...] such contribution shall be intentional and either be made with the aim of furthering the *general* criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned” (emphasis added)).

In this regard:

- i. What, if any, impact does the drafting history have on how the subjective elements of the two sub-paragraphs of article 25(3)(d) of the Statute should be interpreted?
 - ii. Does the exclusion of the word “general” from the text of article 25(3)(d)(i) of the Statute affect the interpretation of this provision?
- h. In relation to each of the sub-paragraphs of article 25(3)(d) of the Statute:
- i. What are the *mens rea* requirements?
 - ii. Does article 30 of the Statute apply or is the *mens rea* “otherwise provided” for?
- i. What awareness must the accused have as to the “criminal activity or criminal purpose of the group”? How specific must their knowledge be with regard to the crimes involved?
- j. Does the language of article 25(3)(d)(i) of the Statute provide for a different level of awareness with respect to the crimes than that required by article 25(3)(d)(ii) or any of the other modes of liability under article 25(3) of the Statute ?
- k. How should the phrase “where such activity or purpose involves the commission of a crime” be interpreted? Does it constitute an objective element or a subjective element?

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



Judge Solomy Balungi Bossa
Presiding

Dated this 25th day of August 2026

At The Hague, The Netherlands