

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 October 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-EDOUARD
NGAISSONA***

Public

Prosecution response to YEKATOM Request for Hearing

Source: Office of the Prosecutor

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INTRODUCTION

1. The Prosecution hereby responds to Mr Yekatom’s Request for a Hearing.¹ The decision whether to convene a hearing lies within the discretion of the Appeals Chamber. If the Chamber is of the view that a hearing would in fact assist it, the Prosecution stands ready to appear and make oral submissions accordingly. Nevertheless, the Prosecution notes that none of the issues raised by Mr Yekatom warrant reconsideration of the Appeals Chamber’s decision not to hold one.

2. On 23 March 2026, the Appeals Chamber stated that it “[did] not deem it necessary to hold a hearing at th[at] stage of the proceedings”.² In reaching its conclusion it “considered, *inter alia*, the extensive submissions of the parties and the responses and observations thereto.”³ The Appeals Chamber recalled that the decision whether to hold a hearing in appeal proceedings is discretionary and case-specific, and “should be based primarily on the potential utility of an oral hearing, namely whether it would assist the Appeals Chamber in clarifying and resolving the issues raised in the appeal”.⁴ The Appeals Chamber expressly reserved the possibility of ordering “additional submissions,” whether oral or written, “[s]hould it later appear during the course of the Appeals Chamber’s further deliberations” that these are necessary.⁵ As explained below, the Appeals Chamber has continued to ensure that “the proceedings are conducted in the fairest and most expeditious manner”.⁶

3. Since the Hearing Decision, nothing has changed that would warrant departing from it. If anything, the Parties’ further submissions reduce any need for a hearing. *First*, the Appeals Chamber granted Mr Ngaïssona the opportunity to file a reply to the Prosecution’s response to his appeal,⁷ which he did.⁸ *Second*, it ordered written submissions in relation to its questions on the legal interpretation of article 25(3)(d)—relevant to the Prosecution’s appeal against Mr Ngaïssona’s acquittal for the rape of P-2462.⁹ The Prosecution¹⁰ and the Common Legal Representative of the Victims (“CLRV”)¹¹ filed their responses to the Appeals Chamber

¹ [ICC-01/14-01/18-2932](#), 29 September 2026 (“Request”).

² [ICC-01/14-01/18-2894](#), 23 March 2026, para. 8, (“Hearing Decision”).

³ [Hearing Decision](#), para. 8.

⁴ [Hearing Decision](#), para. 7.

⁵ [Hearing Decision](#), para. 8.

⁶ [Hearing Decision](#), para. 7.

⁷ [ICC-01/14-01/18-2917](#), 8 May 2026 (“Decision on Replies”).

⁸ [ICC-01/14-01/18-2885-Red](#), 8 May 2026 (“Prosecution Response”).

⁹ [ICC-01/14-01/18-2929](#), 25 August 2026, (“Appeals Chamber Questions”).

¹⁰ [ICC-01/14-01/18-2935](#), 30 September 2026 (“Prosecution Submissions”).

¹¹ [ICC-01/14-01/18-2933](#), 30 September 2026 (“CLRV Submissions”).

Questions, and Mr Ngaïssona is due to file his shortly.¹² Indeed, the Appeals Chamber had already found a hearing unnecessary on the basis of the record that pre-dated the Parties' further submissions. As such, there is no basis for the Chamber to reconsider its decision.

4. As the Appeals Chamber has made clear, the test is one of potential utility to the Chamber's deliberations, as assessed by the Chamber itself. It is not a threshold a party can unilaterally trigger by asserting that a hearing would be helpful to the Chamber. Mr Yekatom has not identified any issue that only an oral hearing could resolve. His Request (i) merely raises matters that are irrelevant to his appeal; (ii) effectively seeks to reply to the Prosecution's response without permission; (iii) and effectively seeks to present additional evidence before the Appeals Chamber without identifying any legal basis for doing so. Further, Mr Yekatom impermissibly makes substantive submissions on the merits of the issues he seeks leave to address orally.

I. The Appeals Chamber Questions on article 25(3)(d) have no bearing on Yekatom's conviction and appeal and do not require a hearing

5. The Appeals Chamber reasonably confined its questions on the legal interpretation of article 25(3)(d) to the Prosecution, Mr Ngaïssona and the CLRV.¹³ Its rationale was clear: receiving "additional written submission" on article 25(3)(d) was necessary "[f]or the proper disposal of the appeal" raised by the Prosecution against Mr Ngaïssona's acquittal for the rape of P-2462.¹⁴ Contrary to Mr Yekatom's submission,¹⁵ the answers to the questions raised by the Appeals Chamber have no bearing on Grounds 1 and 2 of his appeal related to his contribution, intent and knowledge under article 25(3)(a).

6. In particular, questions (a) and (b) concern the differences, from both a legal and evidentiary perspective, between the concepts of "organisational policy" under article 7(2)(a) and "common purpose" under article 25(3)(d). Question (d) relates specifically to the evidentiary relevance of a "pattern of criminality" in assessing the existence of a "common purpose" under article 25(3)(d). Neither these questions,¹⁶ nor the responses provided by the Prosecution¹⁷ and the CLRV,¹⁸ have any bearing on the Trial Chamber's treatment of the Anti-

¹² Mr Ngaïssona is expected to file his response by 14 October 2026, see [Appeals Chamber Questions](#), p.1 n.2.

¹³ [Appeals Chamber Questions](#), p. 1.

¹⁴ [Appeals Chamber Questions](#), paras. 5-6.

¹⁵ [Request](#), paras. 6-14. Mr Yekatom impermissibly makes substantive submissions on the merits of the issues he seeks leave to address orally

¹⁶ [Appeals Chamber Questions](#), para. 7(a), (b), (d).

¹⁷ [Prosecution Submissions](#), paras. 2-6, 10.

¹⁸ [CLR V Submissions](#), paras. 9-20, 30-34.

Balaka as “one movement”, for the purposes of articles 7(2)(a) and 8(2)(f), or on its alleged impact on the Trial Chamber’s findings on Mr Yekatom’s responsibility under article 25(3)(a).¹⁹

7. Questions (e) and (f) concern the concept of “contribution” under article 25(3)(d) and its distinction from the concept of “aids, abets or otherwise assists” under article 25(3)(c). Contrary to Yekatom’s submission,²⁰ the questions and submissions provided do not relate to “contribution and control” under article 25(3)(a).²¹

8. Finally, questions (c), (g), (h), (i), (j), and (k) concern both legal and evidentiary considerations regarding the *mens rea* requirements under article 25(3)(d) and do not address the mental element under article 25(3)(a).²² Any submission on these aspects of article 25(3)(d) to show “why knowledge of a group’s activity or purpose cannot, without more, establish the state of mind required under article 30 and the applicable form of article 25(3)(a)”²³ would fall outside the scope of the Appeals Chamber’s assessment of Grounds 1 and 2 of Mr Yekatom’s appeal.

9. In sum, the Appeals Chamber Questions on article 25(3)(d) are not relevant to Mr Yekatom’s conviction or to any ground of his appeal. Nor are the Prosecution and CLRV’s written responses to those questions. There is no reason for Mr Yekatom to be heard on these matters, and still less for an oral hearing to be held for that purpose. Should the Appeals Chamber nonetheless consider that Mr Yekatom’s submissions on the legal parameters of article 25(3)(d) would in fact assist it, the most economical course would be to allow him to make a written submission.

II. The material/subsidiary facts distinction and the scope of article 83(2) do not require a hearing

10. Mr Yekatom further requests a hearing to address two matters raised in the Prosecution’s response to his appeal: the distinction between material and subsidiary facts,²⁴ and the scope of and safeguards under article 83(2).²⁵ Neither issue requires oral arguments. Mr

¹⁹ [Request](#), paras. 8-11.

²⁰ [Request](#), para. 12.

²¹ See [Appeals Chamber Questions](#), para. 7(e), (f); [Prosecution Submissions](#), paras. 11-17; [CLR V Submissions](#), paras. 35-54.

²² See [Appeals Chamber Questions](#), para. 7(c), (g), (h), (i), (j), (k); [Prosecution Submissions](#), paras. 7-9, 18-58; [CLR V Submissions](#), paras. 21-29, 55-81.

[Request](#), paras.13-14.

²⁴ [Request](#), paras.15-19.

²⁵ [Request](#), paras. 19-26.

Yekatom is effectively asking the Chamber to reconsider its Decision on Replies and/or seeking to reply to the Prosecution's response to his appeal,²⁶ which would circumvent the applicable standard for replies and the 13 April 2026 deadline imposed by the Appeals Chamber.²⁷

11. *First*, as Mr Yekatom acknowledges,²⁸ the Appeals Chamber has already rejected his request to reply to the Prosecution on the distinction between pleaded material facts and subsidiary facts. This is because the arguments had already been made in his appeal, and the Appeals Chamber noted that it "is in a position to discern which facts concerning Mr Yekatom's conduct and state of mind were pleaded at trial."²⁹ His request for a hearing to address essentially the same matter³⁰ amounts to either a request for reconsideration of the Decision on Replies, or a belated and renewed request for leave to reply. Either way, the Appeals Chamber should reject it. The Prosecution's submissions responded directly to Mr Yekatom's appeal and could reasonably have been anticipated by him. Without further submissions, the Appeals Chamber is in a position to determine "whether the material basis of responsibility was properly charged and proved and whether [Mr Yekatom] had adequate notice and an effective opportunity to defend against it."³¹ Nor has Mr Yekatom identified any change in circumstances requiring reconsideration.

12. *Second*, Mr Yekatom requests a hearing to address the scope of article 83(2) in reply to the Prosecution Response to his ground of appeal 1.2.³² Specifically, whether, as a matter of evidence and law, the Appeals Chamber can amend the Trial Judgment to affirm his conviction as a co-perpetrator and enter any necessary legal conclusions, or to enter a conviction under the alternatively charged mode of indirect perpetration.³³ In effect, Mr Yekatom improperly seeks to reply to the Prosecution Response more than *five months* after the deadline set by the Appeals Chamber,³⁴ and without addressing the applicable standard for leave to reply. The Prosecution submits that it would not be in the interests of justice to permit a reply, much less an oral hearing, on a matter that Mr Yekatom could reasonably have anticipated, and that the Appeals Chamber can resolve on the existing submissions.

²⁶ [Prosecution Response](#).

²⁷ [Hearing Decision](#), para. 10.

²⁸ [Request](#), para. 15.

²⁹ [Decision on Replies](#), para. 27.

³⁰ [Request](#), paras. 15-19.

³¹ [Decision on Replies](#), para. 27. *See contra* [Request](#), para. 19.

³² [Request](#), paras. 20-26.

³³ [Prosecution Response](#), para. 18.

³⁴ [Hearing Decision](#), para. 10. Yekatom provides no explanation as to why he did not request to address these issues before.

13. By merely reiterating or raising for the first time potential issues in reply, Mr Yekatom fails to provide any reason why the Appeals Chamber should reconsider its decision not to hold a hearing. Further, on both matters Mr Yekatom impermissibly makes substantive submissions on the merits of the issues he seeks leave to address orally.

III. The *Said* Trial Chamber’s assessment of P-1339 does not require a hearing

14. Finally, Mr Yekatom seeks an oral hearing to make additional submissions on Trial Chamber VI’s assessment of P-1339 in the *Said* case.³⁵ He submits it is relevant to Ground 4 of his Appeal, in which he challenges the Trial Chamber’s assessment of P-1339’s testimony in this case.³⁶ Mr Yekatom argues that, unlike the Trial Chamber in his case, which considered P-1339 generally reliable “in the context of other evidence”,³⁷ Trial Chamber IV in the *Said* case assessed his reliability on a case-by-case basis “in light of the other evidence before it”.³⁸ This issue does not require oral argument. Mr Yekatom’s request should be dismissed solely because he fails to set out any legal basis on which the Appeals Chamber should consider the *Said* Judgment.³⁹ In fact, his request to introduce Trial Chamber VI’s assessment of P-1339 into the record falls outside the specific statutory provisions allowing the Appeals Chamber to take notice of findings from another case or consider new evidence on appeal. He also fails to demonstrate that the Chamber should exercise its discretion in hearing Mr Yekatom on this issue.

15. First, Yekatom’s request falls outside the parameters of rule 69*bis* of the Rules of Procedure and Evidence, which permits a chamber to take judicial notice of adjudicated facts in another case. Mr Yekatom’s request regarding Trial Chamber VI’s assessment of P-1339 does not satisfy that rule, not least because the rule applies only to factual findings—as opposed to assessments about the credibility of a witness based on substantially different bodies of evidence—rendered in judgments that are final, which the *Said* Trial Judgment is not.⁴⁰

16. Second, his request does not meet the well-established criteria for the admission of additional evidence under regulation 62 of the Regulations of the Court. Trial Chamber VI’s

³⁵ [ICC-01/14-01/21-1054-Red-Corr](#), 23 September 2026 (“*Said* Judgment”), paras. 147-152.

³⁶ [Request](#), para. 29. See for instance [ICC-01/14-01/18-2848-Corr-Red](#), 25 November 2025 (“Yekatom Appeal Brief”), paras. 372-386, 396-398.

³⁷ [ICC-01/14-01/18-2784-Red](#), 24 July 2025 (“Trial Judgment”), paras. 330-337.

³⁸ [Said Judgment](#), para. 152.

³⁹ See [ICC-02/11-01/15-1400](#), 31 March 2021, para. 73.

⁴⁰ The [Said Judgment](#), rendered on 23 September 2026, is not yet final since the Judgment may be subject to appeal, and the period for the filing of notices of appeal has not yet lapsed.

assessment of P-1339 does not amount to “evidence”.⁴¹ Rather, it reflects the Chamber’s evaluation of the probative value of P-1339’s evidence based on the record in the *Said* case. That record reasonably did not include the substantial body of corroborative insider and other evidence introduced against Mr Yekatom in his own trial, which even a cursory reading of the corresponding Judgments readily reveals. As such, Trial Chamber VI’s assessment of P-1339 could not have led the Trial Chamber to enter a different verdict. Contrary to Mr Yekatom’s submission,⁴² this is precisely a situation in which two chambers assessed two *different* evidentiary records and reached different conclusions when determining the probative value of the evidence in adjudicating the different facts alleged in each case.⁴³ As the ICTR Appeals Chamber held, “the probative value of a piece of evidence may be assessed differently in different cases, depending on the rest of the evidence and other relevant circumstances.” In fact, the existence of a prior assessment of the evidence by another Trial Chamber “does not relieve the Trial Chamber of its obligation to assess [...] the evidence in the context of the case before it.”⁴⁴

17. Finally, Mr Yekatom has otherwise shown no reason for the Appeals Chamber to exercise its discretion to receive his oral submissions on this issue. Mr Yekatom merely seeks to re-open his arguments on the credibility of P-1339. Moreover, his request ignores that, in light of all the other evidence introduced in this case, Trial Chamber V was best placed to assess P-1339’s evidence against him. That Trial Chamber VI assessed the probative value of P-1339’s evidence differently in another case does not demonstrate any error. Clearly, two trial chambers may reach different conclusions on different evidence. This falls far short of demonstrating that the Trial Chamber’s assessment of P-1339’s evidence in this case was so unreasonable that no other reasonable Trial Chamber could have reached the same conclusion.

18. Nevertheless, if the Appeals Chamber is minded to receive further submissions on this issue—which Mr Yekatom’s Request impermissibly addresses on its merit⁴⁵ — an opportunity to provide them in writing would suffice.

⁴¹ See *Black’s Law Dictionary* (12th ed. 2024), “evidence *n.*” (“Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact [...]).

⁴² [Request](#), para. 29.

⁴³ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-A, [Judgement](#), 29 September 2014, para. 52. See also *Prosecutor v. Lukić & Lukić*, Case No. IT-98-32/1-A, [Judgement](#), 4 December 2012, para. 260.

⁴⁴ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.17, [Decision on Joseph Nzirorera’s Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts](#), 29 May 2009, para. 16.

⁴⁵ [Request](#), paras. 27-30.

IV. Conclusion

19. Mr Yekatom has shown no reason for the Appeals Chamber to reconsider its decision not to hold a hearing. None of the issues he has raised requires the Appeals Chamber to hold a hearing. The Appeals Chamber should also disregard the substantive submissions he has made in his Request on the issues he seeks to address orally.

20. Nevertheless, should the Appeals Chamber consider that a hearing would in fact assist it, the Prosecution stands ready to appear and make oral submissions accordingly.

A handwritten signature in black ink, appearing to read 'Mame Mandiaye Niang', with a large, stylized initial 'M' on the left.

Mame Mandiaye Niang, Acting Prosecutor

Dated this 8th day of October 2026

At The Hague, the Netherlands