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No.: ICC-01/14-01/18
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THE APPEALS CHAMBER

Before: Judge Solomy Balungi Bossa, Presiding Judge
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF *THE PROSECUTOR V. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

Public redacted version of "Prosecution Response to 'Observations from the Central African Republic pursuant to Appeals Chamber Order ICC-01/14-01/18-552 of 15 June 2020' (ICC-01/14-01/18-610-Conf-Anx)", (ICC-01/14-01/18-614-Conf)

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INTRODUCTION

1. On 30 July 2020 the Central African Republic (“CAR”) provided Observations¹ concerning the issues arising from Yekatom’s appeal against Trial Chamber V’s “Decision on the Yekatom Defence’s Admissibility Challenge”.² Trial Chamber V rejected Yekatom’s request for a “sequential approach” and found the case against him admissible because the CAR authorities were inactive with respect to Yekatom’s case.³ In the Observations, [REDACTED]. The Observations [REDACTED]. Even assuming *arguendo* that the Trial Chamber had erred and should have requested observations from the CAR, such purported error would have had no material impact in the Decision. Likewise, the timing of the Registry’s notification of Yekatom’s Request to the CAR—required under article 19(3) and rule 59(3) since the CAR referred the situation to the Court under article 13(a)—did not materially affect the Decision.⁴ In both instances, if the CAR authorities had been invited to provide observations by the Chamber or formally notified by the Registry before the Decision was issued *and* had made these representations with respect to the Request, the Trial Chamber would have likewise rejected Yekatom’s Request and concluded that the case against him was admissible because the CAR authorities were (and are) inactive.

CONFIDENTIALITY LEVEL

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, the Prosecution files this response as confidential since it refers to a document with the same confidentiality level.

SUBMISSIONS

3. In their Observations, [REDACTED].⁵
4. As Yekatom observes: the [REDACTED].⁶ Since the Observations are “unequivocal”, Yekatom does not provide further submissions on the merits of the appeal.⁷

¹ ICC-01/14-01/18-610-Conf-Anx (“CAR Observations” or “Observations”). The Appeals Chamber authorised the Prosecution and Yekatom to file a consolidated response to the CAR Observations and to the victims’ observations: [ICC-01/14-01/18-552](#). The Prosecution only responds to the CAR Observations.

² ICC-01/14-01/18-523 (“[Appeal](#)”); ICC-01/14-01/18-493 (“[Decision](#)”).

³ [Decision](#), paras. 21-22 and p. 12; *see also* ICC-01/14-01/18-456 (“[Request](#)”).

⁴ The Prosecution became aware that the Registry had notified the CAR of Yekatom’s Request after the Decision was issued and thus that the CAR authorities were not formally notified of the Request in a manner that would have enabled them to make representations under rule 59(3) of the Rules (as the referring entity under article 13(a) of the Statute) had they wished to do so. This issue is unrelated to Yekatom’s single ground of appeal where he argued that the Trial Chamber had to seek observations from the CAR under rule 58(2) of the Rules, being the CAR the State with jurisdiction to investigate and prosecute Yekatom.

⁵ Observations, p. 2.

5. Consequently, the CAR Observations [REDACTED]. In particular, the Trial Chamber noted that Yekatom had “concede[d] that there are presently no investigations or prosecutions against [him] at the SCC and that the Inactivity Test is currently not satisfied”.⁸ It further considered that “there is no indication that the CAR authorities have any intention to investigate or prosecute Mr Yekatom [and that] nothing in the recent CAR observations [on Yekatom’s request for interim release] indicates that the CAR authorities intend to challenge the Court’s jurisdiction or to investigate or prosecute Mr Yekatom in the future”.⁹

6. The CAR Observations [REDACTED].¹⁰ The Observations [REDACTED].¹¹ Moreover, even assuming *arguendo* that the Trial Chamber had erred and should have requested observations from the CAR, such purported error would have had no material impact.¹² Likewise, the timing of the Registry’s notification of Yekatom’s Request to the CAR authorities—required under article 19(3) and rule 59(3) since the CAR referred the situation to the Court under article 13(a)—did not materially affect the Decision. In both instances, if the CAR authorities had been invited by the Trial Chamber to provide observations or formally notified by the Registry before the Decision was issued *and* if they had decided to make representations as set out in the Observations, the Decision would not have been different.¹³ Since the CAR authorities [REDACTED], the Chamber would have found the case against Yekatom admissible because “the CAR authorities, including the SCC, are presently inactive insofar as Mr Yekatom’s Case is concerned”.¹⁴ In addition, the Chamber would have likewise rejected Yekatom’s request for a “Sequential Approach” because “increasing or encouraging State capacity for the investigation and prosecution of the most serious international crimes is not within the Chamber’s purview [and] the Chamber must limit its decisions to the judicial matters at hand.”¹⁵

⁶ ICC-01/14-01/18-613-Conf, para. 5.

⁷ ICC-01/14-01/18-613-Conf, para. 8.

⁸ [Decision](#), para. 19.

⁹ [Decision](#), para. 20.

¹⁰ [Decision](#), para. 21.

¹¹ [Decision](#), para. 25.

¹² [ICC-01/14-01/18-548-Red](#) (“Prosecution Response”), para. 50.

¹³ [Prosecution Response](#), paras. 22, 51.

¹⁴ [Decision](#), para. 21. The CAR authorities do not complain nor assert prejudice with respect to the Registry’s belated notification of the Request.

¹⁵ [Decision](#), para. 22.

CONCLUSION

7. For the reasons above and those in its Response, the Prosecution respectfully requests the Appeals Chamber to dismiss Yekatom's Appeal and to confirm the Decision.



Fatou Bensouda, Prosecutor

Dated this 17th day of February 2021

At The Hague, The Netherlands