



**Original: English**

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

**Date: 28 April 2020**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision on the Yekatom Defence's Admissibility Challenge**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Kweku Vanderpuye

**Counsel for the Alfred Yekatom**

Mylène Dimitri  
Peter Robinson

**Counsel for Patrice-Edouard Ngaissona**

Geert-Jan Alexander Knoops

**Legal Representatives of Victims**

Abdou Dangabo Moussa  
Elisabeth Rabesandratana  
Yaré Fall  
Marie-Edith Douzima-Lawson  
Paolina Massidda  
Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

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

**States Representatives**

Central African Republic

*Amicus Curiae*

**REGISTRY**

---

**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 17, 19, 64(2) and 68 of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Yekatom Defence’s Admissibility Challenge’.

## **I. Procedural history and submissions**

1. On 30 May 2014, the Central African Republic (the ‘CAR’) referred the situation in the CAR since 1 August 2012 to the Office of the Prosecutor (the ‘Prosecution’).<sup>1</sup>
2. On 11 November 2018, Pre-Trial Chamber II (the ‘PTC II’) issued a warrant of arrest against Mr Yekatom.<sup>2</sup> On 17 November 2018, the CAR authorities surrendered him to the Court.<sup>3</sup> On 23 November 2018, Mr Yekatom made his initial appearance before PTC II.<sup>4</sup>
3. On 11 December 2019, PTC II confirmed several charges against Mr Yekatom (the ‘Confirmation Decision’).<sup>5</sup>
4. On 17 March 2020, the Registry transmitted the record of the proceedings to this Chamber, including the Confirmation Decision.<sup>6</sup>
5. On the same day, the Yekatom Defence (the ‘Defence’) challenged the admissibility of the case against Mr Yekatom (the ‘Admissibility Challenge’ and ‘Mr Yekatom’s Case’, respectively).<sup>7</sup> In essence, the Defence requests that

---

<sup>1</sup> Presidency, Annex 1 to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, 18 June 2014, ICC-01/14-1-Anx1 (the ‘Referral’).

<sup>2</sup> Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Yekatom Defence (public redacted version notified on 17 November 2018).

<sup>3</sup> See Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona 11 December 2019, ICC-01/14-01/18-403-Conf (public redacted version notified on 20 December 2019, ICC-01/14-01/18-403-Red), para. 3.

<sup>4</sup> See transcript of hearing, ICC-01/14-01/18-T-001-ENG.

<sup>5</sup> Confirmation Decision, ICC-01/14-01/18-403-Red.

<sup>6</sup> Transmission to Trial Chamber V of the record of the proceedings, including the Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-455 (with Annex 1, under seal *ex parte*, only available to the Registry; and Annexes 2 and 3, confidential *ex parte*, only available to the Registry).

<sup>7</sup> Yekatom Defence’s Admissibility Challenge – Complementarity, ICC-01/14-01/18-456.

the Chamber declare Mr Yekatom's Case inadmissible on the grounds that the CAR authorities are 'now capable to prosecute him in their own Special Criminal Court' (the 'SCC').<sup>8</sup> At the same time, the Defence requests that the Chamber take a step-by-step approach by (i) inviting 'written submissions from the CAR authorities addressing whether, notwithstanding the OTP's invocation of Article 37 [of the CAR's Organic Law 15/003 (the 'Organic Law')<sup>9</sup>], it would be willing and able to investigate and prosecute Mr. Yekatom's case if given the opportunity to do so'; (ii) 'if the answer is in the affirmative, giv[ing] the CAR authorities a fixed period of time to open an investigation and/or commence a prosecution of Mr. Yekatom and encourage the OTP to share the results of its investigation with the SCC to enable it to act expeditiously' and (iii) 'if an active investigation and/or prosecution has been commenced during this period, declar[ing] Mr. Yekatom's case inadmissible and order his transfer to the custody of the CAR authorities' (the 'Sequential Approach').<sup>10</sup>

6. The Defence further submits that (i) the SCC is now operational;<sup>11</sup> (ii) the Chamber should give the CAR authorities the opportunity to open an investigation and prosecution, in accordance with the so-called 'qualified deference approach';<sup>12</sup> (iii) States have the primary responsibility to exercise criminal jurisdiction in line with the complementarity principle;<sup>13</sup> (iv) the Appeals Chamber's established 'inactivity test' (the 'Inactivity Test')<sup>14</sup> has been criticised as 'insufficiently encouraging State capacity';<sup>15</sup> (v) finding the case inadmissible could 'remove the impediment to an investigation and prosecution of Mr. Yekatom by the SCC imposed by Article 37' of the CAR's Organic Law, which gives primacy to the ICC;<sup>16</sup> (vi) Article 37 of the Organic Law might be irreconcilable with the principle of complementarity;<sup>17</sup> (vii) Mr Yekatom's

---

<sup>8</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 1.

<sup>9</sup> *Loi organique n. 15/003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale*, [https://cps-rca.com/documents/Loi\\_Cour\\_penale\\_speciale\\_.pdf](https://cps-rca.com/documents/Loi_Cour_penale_speciale_.pdf) (last accessed on 28 April 2020).

<sup>10</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 60-63. *See also* paras 38-41.

<sup>11</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 11.

<sup>12</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 14-15, 34-37.

<sup>13</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 16-23.

<sup>14</sup> *See* para. 17 below.

<sup>15</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 26-27.

<sup>16</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 31.

<sup>17</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 27-30.

prosecution at the SCC together with other lower level zone commanders would avoid ‘vertical impunity’ between those most responsible and those who are not;<sup>18</sup> and (viii) Mr Yekatom’s transfer to the Court should not serve as an impediment to his transfer to the SCC.<sup>19</sup>

7. Nonetheless, the Defence acknowledges that there are currently no active investigations or prosecutions against Mr Yekatom for the events for which he is being prosecuted at the Court<sup>20</sup> and that the Inactivity Test is thus currently not satisfied.<sup>21</sup> The Defence, however, argues that this absence of investigations and prosecutions in the CAR results from the fact that the SCC did not exist at the time the Prosecution opened its investigations and that by the time it did exist, Article 37 of the Organic Law precluded it from investigating cases due to the Court’s primacy.<sup>22</sup>
8. On 30 March 2020, the Prosecution filed its response to the Admissibility Challenge.<sup>23</sup> The Prosecution requests that the Chamber reject the Admissibility Challenge for the following reasons: (i) the case is admissible as a matter of fact and law;<sup>24</sup> and (ii) the Admissibility Challenge ‘effectively amounts to a request for the Chamber to defer its proper exercise of jurisdiction in favour of “promoting” a theoretical and presently non-existent investigation or prosecution of his alleged crimes in the [CAR].’<sup>25</sup>
9. In the Prosecution’s submission (i) the Defence’s concession that there are presently no active investigations or prosecutions is ‘fatal to [its] article 17 challenge’ and the Defence fails to meet this provision’s ‘clear and unambiguous’ test;<sup>26</sup> (ii) the Defence’s Admissibility Challenge represents merely a policy recommendation;<sup>27</sup> (iii) that finding the case inadmissible on the

---

<sup>18</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 44. *See also* paras 51-52.

<sup>19</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 55.

<sup>20</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 13, 32.

<sup>21</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 33.

<sup>22</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 32.

<sup>23</sup> Prosecution’s Response to the “Yekatom Defence’s Admissibility Challenge – Complementarity”, ICC-01/14-01/18-466 (the ‘Prosecution Response’).

<sup>24</sup> Prosecution Response, ICC-01/14-01/18-466, para. 1.

<sup>25</sup> Prosecution Response, ICC-01/14-01/18-466, para. 1.

<sup>26</sup> Prosecution Response, ICC-01/14-01/18-466, paras 2, 4. *See also* para. 6.

<sup>27</sup> Prosecution Response, ICC-01/14-01/18-466, para. 6.

basis of a theoretical possibility that a domestic jurisdiction may eventually investigate and prosecute ‘risks impunity, rather than combats it’.<sup>28</sup> With regard to the Defence’s submissions on Article 37 of the Organic Law, the Prosecution argues that (i) the Court should not assess the validity of the CAR’s national legislation;<sup>29</sup> (ii) the Court cannot force a State that has chosen to relinquish its jurisdiction to pursue a case *in lieu* of the Court;<sup>30</sup> and (iii) any conflict between Article 37 of the Organic Law and Article 17 of the Statute only arises where national authorities wish to exercise their rights, which is presently not the case.<sup>31</sup>

10. On 17 April 2020, after an extension of deadlines,<sup>32</sup> the Common Legal Representatives of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLR V’) submitted their response to the Admissibility Challenge.<sup>33</sup> The CLR V request that the Admissibility Challenge be rejected due to the absence of any active investigation or prosecution against Mr Yekatom in the CAR.<sup>34</sup> In this regard, the CLR V recall the Appeals Chamber’s ‘settled case law’ on the Inactivity Test,<sup>35</sup> and its two-step analysis, according to which the Chamber must first assess whether there are ongoing investigations or prosecutions and, only if the answer is in the affirmative, address the question of unwillingness or inability.<sup>36</sup>
11. Nonetheless, the CLR V submit that the CAR authorities are unwilling<sup>37</sup> and that the SCC is unable<sup>38</sup> to conduct investigations or prosecutions against Mr Yekatom. Notably, the CLR V submit that (i) by adopting Article 37 of the Organic Law, the CAR authorities expressed their will to defer cases falling

---

<sup>28</sup> Prosecution Response, ICC-01/14-01/18-466, para. 11.

<sup>29</sup> Prosecution Response, ICC-01/14-01/18-466, paras 16-17.

<sup>30</sup> Prosecution Response, ICC-01/14-01/18-466, paras 18-19.

<sup>31</sup> Prosecution Response, ICC-01/14-01/18-466, para. 20.

<sup>32</sup> Email from the Chamber to the CLR V, the Prosecution, the Yekatom and the Ngaissona Defence, 25 March 2020, at 18:18.

<sup>33</sup> Common Legal Representatives’ Joint Observations on the “Yekatom Defence’s Admissibility Challenge – Complementarity”, ICC-01/14-01/18-482-Conf (public redacted version notified the same day, ICC-01/14-01/18-482-Red) (the ‘CLR V Response’).

<sup>34</sup> CLR V Response, ICC-01/14-01/18-482-Red, paras 23-25, 44.

<sup>35</sup> CLR V Response, ICC-01/14-01/18-482-Red, paras 54-62. *See also* para. 17 below.

<sup>36</sup> CLR V Response, ICC-01/14-01/18-482-Red, paras 20-22.

<sup>37</sup> CLR V Response, ICC-01/14-01/18-482-Red, paras 27-45.

<sup>38</sup> CLR V Response, ICC-01/14-01/18-482-Red, paras 47-52.

under both jurisdictions to the Court;<sup>39</sup> (ii) the CAR authorities have expressed their preference for Mr Yekatom being tried before the Court;<sup>40</sup> (iii) the CAR has never challenged the admissibility Mr Yekatom's Case;<sup>41</sup> and (iv) the SCC does presently not have an operational structure in place to assist and protect hundreds and possibly thousands of victims and witnesses.<sup>42</sup>

12. Moreover, the CLRV argue that the Defence's proposed Sequential Approach is impracticable and unacceptable for the victims,<sup>43</sup> *inter alia*, because: (i) given the advanced stage of proceedings and the Court's finite resources, the Chamber should not serve as a monitoring body to national authorities;<sup>44</sup> (ii) the CAR does not have the resources to investigate and prosecute Mr Yekatom and the SCC is struggling financially;<sup>45</sup> (iii) Mr Yekatom's prosecution in the CAR might be hindered by his parliamentary immunity;<sup>46</sup> and (iv) the Sequential Approach would delay the proceedings and not be in the victim's interests, who have been awaiting justice for over six years.<sup>47</sup>
  
13. Finally, the CLRV present the following victims' views of and concerns: (i) the victims are concerned that the late timing of the Admissibility Challenge will delay the proceedings;<sup>48</sup> (ii) the victims consider the national jurisdiction unable to investigate and prosecute Mr Yekatom and fear that the SCC would not take the rights afforded to them by the Court's framework into account,<sup>49</sup> in particular with respect to their protection;<sup>50</sup> (iii) the victims believe that Mr Yekatom may still have some influence over armed Anti-Balaka elements;<sup>51</sup> (iv) the victims fear that their right to reparations would be lessened if the SCC

---

<sup>39</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 3, 28.

<sup>40</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 3, 30.

<sup>41</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 3, 36.

<sup>42</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 50.

<sup>43</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 63-71.

<sup>44</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 67.

<sup>45</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 68.

<sup>46</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 69.

<sup>47</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 70. *See also* para 85.

<sup>48</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 5, 73.

<sup>49</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 5, 76, 78.

<sup>50</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 80.

<sup>51</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 76.

tried Mr Yekatom;<sup>52</sup> and (v) they fear that Mr Yekatom's presence in Bangui will endanger their safety and well-being,<sup>53</sup> and that he may evade detention.<sup>54</sup>

## II. Analysis

14. The Chamber notes at the outset that it is not entirely discernible from the Defence's Admissibility Challenge whether the requested relief at this point is to find the case inadmissible (the 'Inadmissibility Request'),<sup>55</sup> or that the Chamber adopt the proposed Sequential Approach (the 'Sequential Approach Request').<sup>56</sup> However, the Chamber interprets the Admissibility Challenge to contain two alternative requests and will therefore address them separately in the following.

### A. Inadmissibility Request

15. Article 19(1) of the Statute mandates the Court to 'satisfy itself that it has jurisdiction in any case brought before it.'

16. Article 17 (1) of the Statute provides in its relevant part that:

[...] the Court shall determine that a case is inadmissible where:

- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; [...]

17. The Chamber recalls that the Appeals Chamber has repeatedly applied the Inactivity Test in its admissibility assessments.<sup>57</sup> According to this test, a

---

<sup>52</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 79.

<sup>53</sup> CLRV Response, ICC-01/14-01/18-482-Red, paras 5, 81.

<sup>54</sup> CLRV Response, ICC-01/14-01/18-482-Red, para. 84.

<sup>55</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras. 1 and 65.

<sup>56</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras in 38-41, 60-63.

<sup>57</sup> *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497 (the '*Katanga Appeals Judgment*'), paras 74-80; *The Prosecutor v. William Somoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 30 August 2011, ICC-01/09-01/11-307 (the '*Ruto*



Chamber must ask (i) whether there are ongoing investigations or prosecutions, or (ii) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned.<sup>58</sup> Only if the answers to these questions are in the affirmative, does the question of unwillingness or inability of a State become relevant.<sup>59</sup> The assessment of unwillingness or inability therefore necessarily depends on investigative and prosecutorial activities by the State.<sup>60</sup> Consequently, in the case of inactivity, the question of unwillingness and inability does not arise.<sup>61</sup> This assessment must be made ‘on the basis of the facts as they exist at the time of the proceedings concerning the admissibility challenge.’<sup>62</sup>

18. The Chamber agrees with the Appeals Chamber that a different interpretation of Article 17(1) of the Statute would be irreconcilable with the wording of the provision and the overarching aim of the Statute to ‘put an end to impunity’ and ensure that ‘the most serious crimes of concern to the international community

---

*et al.* Appeals Judgment’), para. 44; *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 August 2011, ICC-01/09-02/11-274 (the ‘*Kenyatta et al.* Admissibility Judgment’), para. 40; *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”, 21 May 2014, ICC-01/11-01/11-547-Red (the ‘*Gaddafi Appeals Judgment*’), para. 213; *The Prosecutor v. Simone Gbagbo*, Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, 27 May 2015, ICC-02/11-01/12-75-Conf (public redacted version notified the same day, ICC-02/11-01/12-75-Red) (the ‘*Simone Gbagbo Appeals Judgment*’), paras 58-59.

<sup>58</sup> *Katanga Appeals Judgment*, ICC-01/04-01/07-1497, para. 78; *Gaddafi Appeals Judgment*, ICC-01/11-01/11-547-Red, para. 213.

<sup>59</sup> *Katanga Appeals Judgment*, ICC-01/04-01/07-1497, paras 75-76; *Kenyatta et al. Admissibility Judgment*, ICC-01/09-02/11-274, para. 40; *Gaddafi Appeals Judgment*, ICC-01/11-01/11-547-Red, para. 213.

<sup>60</sup> *Katanga Appeals Judgment*, ICC-01/04-01/07-1497, paras 56, 76.

<sup>61</sup> *Katanga Appeals Judgment*, ICC-01/04-01/07-1497, para. 78. *See also* Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony et al.*, Decision on the admissibility of the case under article 19(1) of the Statute, 10 March 2009, ICC-02/04-01/05-377, para. 52 (the ‘*Kony et al. Admissibility Decision*’).

<sup>62</sup> *Katanga Appeals Judgment*, ICC-01/04-01/07-1497, paras 56, 80; Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi*, Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gad[d]afi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute, 5 April 2019, ICC-01/11-01/11-662, para. 56. *See also* *Ruto et al. Appeals Judgment*, ICC-01/09-01/11-307, para. 44; *Kenyatta et al. Admissibility Judgment*, ICC-01/09-02/11-274, para. 40; *Simone Gbagbo Appeals Judgment*, ICC-02/11-01/12-75-Red, para. 59; *Kony et al. Admissibility Decision*, ICC-02/04-01/05-377, para. 52.

as a whole must not go unpunished.’<sup>63</sup> These aims would be jeopardised if, ‘despite the inaction of a State, a case would be inadmissible before the Court, unless that State is unwilling or unable to open investigations’.<sup>64</sup> As pointed out by the Appeals Chamber, this would result in a situation, where the ‘Court would be unable to exercise its jurisdiction over a case as long as the State is theoretically willing and able to investigate and to prosecute the case, even though that State has no intention of doing so.’<sup>65</sup>

19. With regard to Mr Yekatom’s Case, the Chamber notes, firstly, that the Defence itself concedes that there are presently no investigations or prosecutions against Mr Yekatom at the SCC and that the Inactivity Test is currently not satisfied.<sup>66</sup>
20. Second, there is no indication that the CAR authorities have any intention to investigate or prosecute Mr Yekatom. Notably, the Chamber recalls that the CAR authorities not only referred the situation in its territory since 1 August 2012 to the Court,<sup>67</sup> but subsequently implemented the Court’s warrant of arrest against Mr Yekatom by transferring him to the Court<sup>68</sup> and have up to this date not challenged the Court’s jurisdiction. Moreover, the Chamber notes that nothing in the recent CAR observations<sup>69</sup> indicates that the CAR authorities intend to challenge the Court’s jurisdiction or to investigate or prosecute Mr Yekatom in the future.
21. In light of the above, the Chamber concludes that the CAR authorities, including the SCC, are presently inactive insofar as Mr Yekatom’s Case is concerned. For this reason alone, and irrespective of the CAR authorities’ hypothetical willingness or ability to investigate and prosecute, the Chamber is

---

<sup>63</sup> *Katanga Appeals Judgement*, ICC-01/04-01/07-1497, para. 79, referring to the fourth and fifth paragraphs of the Preamble of the Statute.

<sup>64</sup> *Katanga Appeals Judgement*, ICC-01/04-01/07-1497, para. 79.

<sup>65</sup> *Katanga Appeals Judgement*, ICC-01/04-01/07-1497, para. 79.

<sup>66</sup> Admissibility Challenge, ICC-01/14-01/18-456, paras 13, 32-33.

<sup>67</sup> Referral, ICC-01/14-1-Anx1. See also Admissibility Challenge, ICC-01/14-01/18-456, para. 6.

<sup>68</sup> Confirmation Decision, ICC-01/14-01/18-403-Red, para. 3.

<sup>69</sup> Annex II to the Transmission of observations from the Kingdom of the Netherlands and the Central African Republic on interim release of Alfred Yekatom, 14 April 2020, ICC-01/14-01/18-478-Conf-AnxII.

of the view that the case against Mr Yekatom is admissible.<sup>70</sup> Consequently, the Chamber will not address the question of willingness and ability.

## **B. Sequential Approach Request**

22. While the Chamber is mindful of the complementarity principle, it also stresses that increasing or encouraging State capacity for the investigation and prosecution of the most serious international crimes is not within the Chamber's purview.<sup>71</sup> On the contrary, the Chamber must limit its decisions to the judicial matters at hand.<sup>72</sup> In this regard, the Chamber also recalls the findings by the Bureau on Complementarity that '[i]ssues arising from the admissibility of cases before the Court under article 17 of the Rome Statute all remain a judicial matter to be addressed by the judges of the Court.'<sup>73</sup>
23. Additionally, the Chamber notes that Articles 64(2) and 68 of the Statute mandate the Chamber to ensure that the trial is expeditious, with full respect for the rights of the accused and due regard to the protection of victims and witnesses.
24. Accordingly, the Defence's Sequential Approach Request is rejected.
25. Lastly, as regards the Defence's submission that other Chambers have sought observations from States on admissibility before ruling on the challenge,<sup>74</sup> the Chamber notes that in light of the Defence's concession that there are currently no proceedings against Mr Yekatom and the other reasons listed above, no further observations were required to adjudicate the present Admissibility Challenge.

---

<sup>70</sup> See also *Katanga Appeals Judgement*, ICC-01/04-01/07-1497, para. 80.

<sup>71</sup> See also Assembly of States Parties, Report of the Bureau on complementarity, ICC-ASP/17/34, para. 23 (IV. Views of the Court); Assembly of States Parties, Report of the Bureau on complementarity, ICC-ASP/18/25, para. 27 (IV. Views of the Court).

<sup>72</sup> See also Assembly of States Parties, Report of the Bureau on complementarity, ICC-ASP/17/34, para. 16 (II. General findings), para. 23 (IV. Views by the Court); Assembly of States Parties, Report of the Bureau on complementarity, ICC-ASP/18/25, para. 27 (IV. Views of the Court).

<sup>73</sup> See also Assembly of States Parties, Report of the Bureau on complementarity, ICC-ASP/17/34, para. 16 (II. General findings).

<sup>74</sup> Admissibility Challenge, ICC-01/14-01/18-456, para. 38.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Inadmissibility Request, and

**REJECTS** the Sequential Approach Request.

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

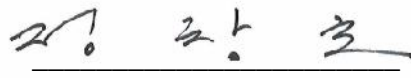


**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Péter Kovács**



**Judge Chang-ho Chung**

Dated this Tuesday, 28 April 2020

At The Hague, The Netherlands