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**International
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THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-ÉDOUARD NGAÏSSONA***

Public

**Common Legal Representatives' Joint Response
to the "Yekatom Defence Application for Interim Release"**

Source: Common Legal Representatives of Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly the “Common Legal Representatives”) hereby file their joint response to the “Yekatom Defence Application for Interim Release” (the “Defence Application” or the “Application”).¹

2. The Common Legal Representatives submit that the Defence Application should be rejected and Mr Alfred Yekatom (“Mr Yekatom” or the “Accused”) should continue to be detained as the conditions set forth in article 58(1) of the Rome Statute (the “Statute”) continue to be met.

3. In particular, the confirmation of charges alone is sufficient to justify the continued detention of the Accused. Furthermore, the gravity of the charges confirmed, and the fact that Mr Yekatom has access to the evidence in the record of the case and to the Prosecution witnesses’ identities (some of whom are dual status individuals), are additional important factors that make his continued detention necessary and justified to ensure his presence at trial - as required by the Statute - and to avoid the obstruction of the Court’s proceedings.

4. Finally, the security and well-being of the victims will be in danger if the Accused is released. In this regard, the Common Legal Representatives strongly oppose the proposal by the Defence that Mr Yekatom return to his home in Bangui.

¹ See the “Yekatom Defence Application for Interim Release”, [No. ICC-01/14-01/18-438](#), 3 March 2020 (the “Defence Application”).

II. PROCEDURAL BACKGROUND

5. On 11 November 2018, Pre-Trial Chamber II issued the “Warrant of Arrest for Alfred Yekatom” (the “Warrant of Arrest”).²

6. To date, the Pre-Trial Chamber has admitted 1085 victims to participate in the proceedings.³

7. The confirmation of charges hearing was held between 19 and 25 September 2019, with closing arguments heard on 11 October 2019.

8. On 11 December 2019, the Pre-Trial Chamber issued the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Édouard Ngaïssona” (the “Decision confirming the charges”).⁴

9. On 2 March 2020, the Prosecution filed a Request for Reconsideration of, or alternatively Leave to Appeal, the Decision confirming the charges (the “Prosecution’s Request for Reconsideration or Leave to Appeal”).⁵

² See the “Warrant of Arrest for Alfred Yekatom”, No. ICC-01/14-01/18-1-US-Exp, 11 November 2018” (Pre-Trial Chamber II), No. ICC-01/14-01/18-1-US-Exp, 11 November 2019. A public redacted version of the Warrant of Arrest was issued on 17 November 2019; see [No. ICC-01/14-01/18-1-Red](#) (the “Warrant of Arrest”).

³ See the “Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Conf](#), 21 June 2019; and “Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019.

⁴ See the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-403-Conf](#), 11 December 2019. A public redacted version of the Decision was issued on 20 December 2020; see [No. ICC-01/14-01/18-403-Red](#) (the “Decision confirming the charges”).

⁵ See the “Prosecution’s Request for Reconsideration of, or alternatively Leave to Appeal, the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’”, [No. ICC-01/14-01/18-437](#), 2 March 2020.

10. On 3 March 2020, the Defence for Mr Yekatom filed the Application for interim release.⁶

11. On 6 March 2020, the Common Legal Representatives⁷ and the Defence⁸ filed their respective Response to the Prosecution's Request for Reconsideration or Leave to Appeal.

12. On 11 March 2020, the Pre-Trial Chamber issued its decision rejecting the Prosecution's Request for Reconsideration or Leave to Appeal, directing the parties to submit any response or observations to filings currently pending before it to the Trial Chamber to be constituted or, pending its constitution, to the Presidency for it to include them in the case record.⁹

III. SUBMISSIONS

1) Applicable law

13. The interim release of a person within the Court's statutory framework is governed by article 60(2), in conjunction with article 58(1) of the Statute.

14. Article 60(2) of the Statute provides :

"A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions".

⁶ See the Defence Application, *supra* note 1.

⁷ See the "Common Legal Representatives' Joint Response to the Prosecution's Request for Reconsideration or Leave to Appeal", [No. ICC-01/14-01/18-442](#), 6 March 2020.

⁸ See the "Yekatom Defence Opposition to Prosecution's Request for Reconsideration or Leave to Appeal Confirmation Decision", [No. ICC-01/14-01/18-443](#), 6 March 2020.

⁹ See the "Decision on the Prosecutor's request for reconsideration or, in the alternative, leave to appeal the 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona'" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-447](#), 11 March 2020, p. 14.

15. Article 58(1) of the Statute provides the following conditions:

- “a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and*
- (b) The arrest of the person appears necessary:*
 - (i) To ensure the person’s appearance at trial;*
 - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or*
 - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances”.*

16. The Appeals Chamber has held in this regard that *“the decision on continued detention or release pursuant to article 60(2) read with article 58(1) of the Statute is not of a discretionary nature. Depending upon whether or not the conditions of article 58(1) of the Statute continue to be met, the detained person shall be continued to be detained or shall be released”*.¹⁰

17. Whilst the Chamber’s power is *“not conditioned by its previous decision to direct the issuance of a warrant of arrest”*,¹¹ the factors supporting said decision may be the same as those required for a decision under article 60(2) of the Statute. In particular, *“in a decision under article 60(2) of the Statute, a Pre-Trial Chamber may refer to the decision on the warrant of arrest, without this affecting the de novo character of [its] decision”*.¹² The Chamber may therefore *“base its decision on evidence that was already before it when it issued the warrant of arrest, as long as it is persuaded that the evidence, at the time of the decision under article 60(2) of the Statute, justifies the finding in question”*.¹³ This reasoning applies to the Trial Chamber as well.

¹⁰ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Decision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” (Appeals Chamber), [No. ICC-01/04-01/06-824 OA7](#), 13 February 2007, para. 134.

¹¹ See the “Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release” (Appeals Chamber), [No. ICC-01/04-01/07-572 OA4](#), 9 June 2008, para. 10.

¹² See the “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’” (Appeals Chamber), [No. ICC-02/11-01/11-278-Red OA](#), 26 October 2012, paras. 23 and 27.

¹³ *Idem*, para. 69.

18. Moreover, the Appeals Chamber has confirmed that, when assessing the need for continued detention, “[i]t must ‘appear’ to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence”,¹⁴ and “[t]he apparent necessity of continued detention in order to ensure the detainee’s appearance at trial does not necessarily have to be established on the basis of one factor taken in isolation. It may also be established on the basis of an analysis of all relevant factors taken together”.¹⁵

19. The reasons for detention pursuant to article 58(1)(b)(i) to (iii) of the Statute are alternative.¹⁶ Accordingly, if at least one of the three conditions is fulfilled, the person shall continue to be detained.

20. Moreover, international human rights case law, as developed by the European Court of Human Rights (the “ECtHR”), has established that the following grounds may be considered “relevant” and “sufficient” to justify the continued detention of the person concerned:¹⁷ (i) the existence and persistence of serious indications of guilt;¹⁸ (ii) the existence of a risk of pressure on witnesses and collusion between the co-accused;¹⁹ (iii) the risk of flight;²⁰ (iv) the existence of a risk of the commission of a new offence;²¹ and (v) the requirements of the investigation.²²

¹⁴ See the “Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release”, *supra* note 11, para. 21.

¹⁵ See the “Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled ‘Decision on application for Interim release’ (Appeals Chamber), [No. ICC-01/05-01/08-323 OA](#), 16 December 2008, para. 55; and the “Decision on the ‘Defence Request for Interim Release’” (Pre-Trial Chamber I), [No. ICC-01/04-01/10-163](#), 19 May 2011, para. 39.

¹⁶ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’”, *supra* note 10, para. 139.

¹⁷ See ECtHR, *Prencipe v. Monaco*, [Application No. 43376/06](#), 16 July 2009, para. 74; *Tum v. Turkey*, [Application No. 11855/04](#), 17 June 2008, para. 41; *Lelievre v. Belgium*, [Application No. 11287/03](#), 8 November 2007, para. 92.

¹⁸ See ECtHR, *Tum v. Turkey*, [Application No. 11855/04](#), 17 June 2008, para. 41; *Mansur v. Turkey*, [Application No. 16026/90](#), 8 June 1995, para. 56; *Tomasi v. France*, [Application No. 12850/87](#), 27 August 1992, para. 89.

¹⁹ See ECtHR, *Contrada v. Italy*, [Application No. 27143/95](#), 24 August 1998, para. 61; *Tomasi v. France*, [Application No. 12850/87](#), 27 August 1992, paras. 92-95.

²⁰ See ECtHR, *Cetin Agdas v. Turkey*, [Application No. 77331/01](#), 19 September 2006, paras. 27-28. See also, *Mansur v. Turkey*, [Application No. 16026/90](#), 8 June 1995, para. 55; *Tomasi v. France*, [Application](#)

2) Application of the legal criteria to the Defence Application

a. Article 58(1)(a) - there are reasonable grounds to believe that Mr Yekatom committed a crime that falls within the jurisdiction of the Court

21. In confirming the charges against Mr Yekatom, the Pre-Trial Chamber indicated that, on the basis of the evidence presented by the Prosecution, there are substantial grounds to believe that he is responsible for most crimes attributed to him in the Document Containing the Charges.²³

22. At the outset, the Common Legal Representatives submit that the confirmation of charges *alone* is sufficient to justify the continued detention of Mr Yekatom. Indeed, the confirmation of charges implies that the case is referred to a Trial Chamber and that the preparation for trial starts.

23. The Common Legal Representatives also note that the Defence has chosen not to challenge the validity of the Decision confirming the charges,²⁴ insofar implicitly acknowledging that the requirement of article 58(1)(a) of the Statute is met.

b. Article 58(1)(b)(i) – Mr Yekatom’s continued detention is necessary to ensure his appearance at trial

24. The Common Legal Representatives first recall that, with respect to article 58(1)(b)(i) of the Statute, the Appeals Chamber has held that “*any determination by a*

[No. 12850/87](#), 27 August 1992, para. 98; *Letellier v. France*, [Application No. 12369/86](#), 26 June 1991, para. 43.

²¹ See ECtHR, *Paradysz v. France*, [Application No. 17020/05](#), 29 October 2009, para. 70; *Muller v. France*, [Application No. 21802/93](#), 17 March 1997, para. 44; *Clooth v. Belgium*, [Application No. 12718/87](#), 12 December 1991, para. 40.

²² See ECtHR, *Lelievre v. Belgium*, [Application No. 11287/03](#), 8 November 2007, para. 92; *Bouchet v. France*, [Application No. 33591/96](#), 20 March 2001, para. 41.

²³ See the Decision confirming the charges, *supra* note 4, para. 2.

²⁴ See the Defence Application, *supra* note 1, para. 11.

Pre-Trial Chamber of whether or not a suspect is likely to abscond necessarily involves an element of prediction".²⁵ This reasoning applies to the Trial Chamber as well.

25. In its Application, the Defence, while acknowledging that Mr Yekatom understands that *"the gravity of offences that he is charged with and that the potential penalty, if he is convicted, is high"*, argues that the Accused *"is fully committed to defending himself against the charges and fully prepared to endure the consequences"*.²⁶ The charges confirmed against Mr Yekatom are multiple and include crimes of extreme gravity such as persecution, murder, torture, forcible transfer and deportation, and the conscription and enlistment of children under the age of 15 into the Anti-Balaka groups and their use to participate actively in hostilities.²⁷ With regard to the seriousness and gravity of the crimes allegedly committed and attributed to the Accused, the Appeals Chamber has held that *"[e]vading justice in fear of the consequences that may befall the person becomes a distinct possibility; a possibility rising in proportion to the consequences that conviction may entail"*,²⁸ and that *"[i]f a person is charged with grave crimes, the person might face a lengthy prison sentence, which may make the person more likely to abscond"*.²⁹

²⁵ See the "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'", *supra* note 10, para. 137.

²⁶ See the Defence Application, *supra* note 1, para. 17.

²⁷ See the Decision confirming the charges, *supra* note 4, pp. 104-105.

²⁸ See the "Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release", *supra* note 11, para. 21. See also, the "Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled 'Decision on application for Interim release'", *supra* note 15 para. 55; and the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'" (Appeals Chamber), [No. ICC-01/05-01/08-631-Red](#), para. 67.

²⁹ See the "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'", *supra* note 10, para. 136. See also, the "Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled 'Decision on application for Interim release'" *supra* note 15, para. 55; and the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", *supra* note 28, para. 70.

26. The Common Legal Representatives also underline that Chambers have considered that the risk of absconding increases with the progress of the proceedings.³⁰ Consequently, considering that the charges against Mr Yekatom have been confirmed and that he potentially faces a lengthy sentence if convicted; he has a bigger incentive to flee and abscond.

27. In its Application, the Defence proposes that Mr Yekatom return to his home in Bangui and provides his personal undertaking to return to the detention centre in The Hague when ordered and to obey any and all conditions that the Court may choose to impose on him.³¹

28. The Common Legal Representatives strongly oppose the proposal. First, the security and well-being of the victims who still live in Bangui and surrounding areas will be at risk if Mr Yekatom is allowed to return to the Central African Republic ("CAR"). Indeed, the Accused has access to the evidence, including identities of the Prosecution's witnesses (some of whom are dual status individuals, as they also have the status of participating victims in the case). Moreover, the charges confirmed are very serious and show that Mr Yekatom acted in a violent manner. The risk posed by these factors cannot *"be outweighed by the mere submission of the personal commitment [...] not to abscond from the proceedings. Such undertaking, commendable as it might be, is not and cannot be per se decisive but should rather be assessed and appreciated in light of all other relevant factors"*.³² In this regard, Mr Yekatom's alleged personal characteristic of

³⁰ See the "Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010" (Trial Chamber III) [No. ICC-01/05-01/08-1088 OA4](#), 17 December 2010, para. 40. See also the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", *supra* note 28, para. 70.

³¹ See the Defence Application, *supra* note 1, para. 15-16. See also "Annex B, Engagement Personnel d'Alfred Rombhot Yekatom", [No. ICC-01/14-01/18-438-AnxB](#), 3 March 2020.

³² See the "Decision on the 'Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu'" (Pre-Trial Chamber II), [No. ICC-01/05-01/13-258](#), 14 March 2014, para. 20.

being “a fighter, not a runner”³³ is irrelevant, as “the personality of a suspect is not one of the reasons on the basis of which the Chamber can or should determine whether detention is necessary”.³⁴

29. In any case, the proposal appears difficult to implement, since the relief sought would imply the need to arrange the Accused’s travel from Bangui to The Hague every time his appearance before the Court is required. This will put an onerous burden on the Registry in terms of security, logistics and resources and will inevitably cause delays in the proceedings. Incidentally, in this regard, the Common Legal Representatives note that article 63 of the Statute requires the presence of the Accused at trial and that the exceptions provided for in rule 134 *ter* and *quater* of the Rules of Procedure and Evidence (the “Rules”) certainly do not apply to Mr Yekatom.

30. Another factor put forward by the Defence in its Application is the lack of “significant resources and a network of international contacts that might help a released person abscond”.³⁵

31. However, contrary to the Defence’s contentions, in the decision issuing the Warrant of Arrest, the Chamber relied on evidence that showed that “Yekatom is a CAR MP and retains strong influence over his (former and current) Anti-Balaka subordinates”.³⁶ The Common Legal Representatives posit that this situation has not changed, and thus if released, and moreover authorised to return to CAR, Mr Yekatom would still be able to use his influence as an MP and former high-ranking military official in order to abscond.

³³ See the Defence Application, *supra* note 1, para. 18.

³⁴ See the “Decision on the ‘Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu’”, *supra* note 32, para. 16.

³⁵ See the Defence Application, *supra* note 1, para. 19.

³⁶ See the Warrant of Arrest, *supra* note 2, para. 22.

32. The Common Legal Representatives further submit that the bank statements provided by the Defence³⁷ cannot alone serve as proof that Mr Yekatom does not have access to significant resources. A person's assets are not quantified only by the sum of his or her bank balance. Moreover, resources do not have to be monetary *per se*; indeed, logistical support from former and current Anti-Balaka members would be more valuable than money in helping Mr Yekatom to abscond.

33. The Defence argues further that, if released, Mr Yekatom will not engage in violent acts and will have no involvement in political life in CAR.³⁸ The Common Legal Representatives refer in this regard to the jurisprudence in the *Bemba* case, according to which such kind of personal guarantees are not sufficient *per se* to grant interim release and may only be regarded as a factor that needs to be assessed alongside other factors.³⁹

34. Finally, the Defence argues that Mr Yekatom has obeyed the conditions of his detention for more than fifteen months and followed the rules of detention.⁴⁰ The Common Legal Representatives posit that, although the behaviour of the Accused in detention is a relevant factor when considering interim release, it should be assessed on a case by case basis,⁴¹ and in this instance it does not overcome the other factors militating against the interim release of the Accused.

³⁷ See the Defence Application, *supra* note 1, para. 3 and Confidential Annex E, [No. ICC-01/14-01/18-438-Conf-AnxE](#).

³⁸ See the Defence Application, *supra* note 1, para. 21.

³⁹ See the "Decision on Application for Interim Release" (Pre-Trial Chamber II), [No. ICC-01/05-01/08-321](#), 16 December 2008, para. 37; and the "Decision on Application for Interim Release" (Pre-Trial Chamber II), [No. ICC-01/05-01/08-403](#), 14 April 2009, para. 50. See also, the "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-180-Red](#), 13 July 2012, para. 55.

⁴⁰ See the Defence Application, *supra* note 1, para. 22.

⁴¹ See the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber IPs 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", *supra* note 28, paras. 79-83.

c. Article 58(1)(b)(ii) – Mr Yekatom’s continued detention is necessary to ensure he does not obstruct or endanger the Court’s proceedings

35. In its Application, the Defence argues that there is no risk that Mr Yekatom will interfere with witnesses because he has refrained from doing so in the fifteen months that he has been in detention.⁴²

36. The Common Legal Representatives first submit that, as a matter of law, interference with witnesses entails criminal liability under the Statute and therefore non-interference is the norm and is not meant to be accorded any merit. Furthermore, the fact that Mr Yekatom has not attempted to interfere with any witness so far does not mean *per se* that he might not wish to do so, if the opportunity arises, given in particular that he now knows the identities of most Prosecution’s witnesses, as well as the content of their expected testimony. Mr Yekatom has further had access to other important evidence and has been able to get acquainted with the Decision confirming the charges, which sets out in detail the reasoning of the Pre-Trial Chamber and the relevant evidence on the basis of which the charges were confirmed. Mr Yekatom will continue to receive disclosure of evidence and of the identity of additional witnesses. All these factors increase the possibility that the Accused, if released, and moreover authorised to return to CAR where witnesses and victims reside, may obstruct or endanger the proceedings. The Appeals Chamber has held in this regard that the “disclosure of evidence ‘amplified’ the risk to the investigation and the court proceedings in case of [the accused’s] release”.⁴³

37. Indeed, in the Warrant of Arrest, the Pre-Trial Chamber referred to the information that Mr Yekatom “resides in the CAR, as do potential witnesses, which

⁴² See the Defence Application, *supra* note 1, para. 23.

⁴³ See the “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’”, *supra* note 12, para. 65.

increases his ability to interfere with the ongoing investigation".⁴⁴ Therefore, if release in CAR is granted, risks of interference with both the ongoing investigation and witnesses and victims will equally be significant.

38. Moreover, while Mr Yekatom's telephone calls are monitored and recorded at the detention centre,⁴⁵ if released, he will have unrestricted access to any contacts and means of communication. There would therefore be a risk that the Accused "*would, directly, or indirectly with the help of others, exert pressure on the witnesses, thus obstructing or endangering the court proceedings*".⁴⁶

d. Article 58(1)(b)(iii) – Mr Yekatom's continued detention is necessary to prevent the commission of crimes

39. In the context of article 58(1)(b)(iii), the Common Legal Representatives recall that the Appeals Chamber has held that "[t]he reason for detention under article 58(1)(b)(iii) of the Statute is the risk that further crimes may be committed - therefore the issue is future crimes, which by their nature cannot be specified in detail".⁴⁷

40. Specifically with regard to the commission of further crimes, the Pre-Trial Chamber in the Warrant of Arrest held that "*given Yekatom's recent behaviour, his connections to and authority over his Anti-Balaka group and the fact that the armed conflict has not ceased in the CAR to this day, the Chamber is of the view that Yekatom's arrest is necessary to prevent him from committing further crimes within the jurisdiction of the Court.*"⁴⁸ The Common Legal Representatives posit that it is little probable, if at all,

⁴⁴ See the Warrant of Arrest, *supra* note 2, para. 22.

⁴⁵ See the Defence Application, *supra* note 1, para. 23.

⁴⁶ See the "Decision on the Application for the interim release of Thomas Lubanga Dyilo" (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/06-586-tEN](#), 18 October 2006, p. 6.

⁴⁷ See the "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled 'Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", *supra* note 12, para. 70.

⁴⁸ See the Warrant of Arrest, *supra* note 2, para. 22.

that the potential of commission of further crimes has ceased since the issuance of the Warrant of Arrest.

41. The Common Legal Representatives further posit that the assertion by the Defence that, after contacting Mr Yekatom's neighbours, the vast majority had stated that they did not foresee any danger of violence or problems should the Accused be released and authorised to return to CAR, has to be carefully pondered. Indeed, Mr Yekatom's neighbours *may* not be adversely affected by his release, but the victims and witnesses in the present case certainly *will be*.

42. The Defence further states that, if released, Mr Yekatom would be willing to report to a Gendarmerie Brigade located 900m from his home and that the Commander of this Brigade foresaw no security problems if the Accused was released and offered to conduct surveillance as required by the Court.⁴⁹ The Common Legal Representatives submit that, apart from not being a sufficient guarantee, this statement cannot at all be considered by the Trial Chamber. Indeed, as acknowledged by the Defence,⁵⁰ the Chamber shall seek observations from the State to which the person seeks to be released, in this case CAR, pursuant to rule 119(3) of the Rules. The Appeals Chamber in the *Bemba* case held in this regard that for interim release to be granted, the identification of a State willing to accept the person concerned, as well as to enforce related conditions, is necessary.⁵¹

43. Finally, the Defence contends that "*the stability of the current situation in the country is also a factor in Mr Yekatom's favour.*"⁵² While the situation has indeed improved since the time the alleged crimes were committed, it is certainly optimistic

⁴⁹ See the Defence Application, *supra* note 1, para. 28. See also, Annex D, [No. ICC-01/14-01/18-438-Conf-AnxD](#).

⁵⁰ See the Defence Application, *supra* note 1, footnote 33.

⁵¹ See the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", *supra* note 28, para. 106.

⁵² See the Defence Application, *supra* note 1, para. 30.

to define it as “stable”. In this regard, less than three weeks ago, the UN Security Council issued a press statement in which it:

*“strongly condemned violations of the Peace Agreement and violence perpetrated by armed groups throughout the country, and most recently in the north and in the east of the Central African Republic, and demanded that they cease all forms of hostilities, incitement to ethnic and religious hatred and violence, violations of international humanitarian law and human rights violations and abuses, including those committed against children and those involving sexual and gender-based violence in conflict, as well as attacks against humanitarian personnel”.*⁵³

44. Considering the volatility of the security situation in CAR, the Common Legal Representatives submit that the interim release of Mr Yekatom and his return to the country will undoubtedly be an additional destabilising factor, as well as a source of great danger for the victims and witnesses in the present case.

e. Alleged violation of national law during the transfer to the Court cannot justify interim release

45. In the Application, the Defence submits that as *“an equitable argument in favour of interim release, the Chamber should consider that Mr. Yekatom was prevented from seeking interim release upon his arrest in Bangui on the Chamber’s warrant”*.⁵⁴

46. The Common Legal Representatives contend that interim release sought before the Court and alleged violation of national law during the Accused’s transfer to the Court are two very distinct questions. One should not conflate interim release pursuant to articles 60(2) and 58(1) of the Statute and interim release in the custodial State pending surrender under article 59(3) of the Statute. There is no support in the

⁵³ See the [Security Council Press Statement on Central African Republic](#), SC/14128, 27 February 2020.

⁵⁴ See the Defence Application, *supra* note 1, para. 32.

Court's jurisprudence for the argument that the remedy to an alleged violation of national law during an accused's transfer to the Court should be interim release.

47. In the context of a violation of article 59 of the Statute, the Pre-Trial Chamber in the *Gbagbo* case stated that “[t]he object and purpose of the proceedings under article 59 of the Statute is thus limited to ensuring that the ICC warrant applies to the person arrested, that he or she has been arrested in accordance with the proper process, and that his or her rights have been respected”.⁵⁵ If the Defence is of the opinion that article 59 of the Statute has been violated, which is a serious allegation, it should submit a separate request to the Trial Chamber substantiating the violation and ask for the appropriate remedy.

f. Delay in the proceedings

48. In its Application, the Defence submits that the fact that the confirmation hearing was delayed by five months and that a Trial Chamber is yet to be constituted warrant interim release.⁵⁶

49. The Common Legal Representatives contend that the Statute provides safeguards against the undue extension of the period of detention. Indeed, pursuant to article 60(3) of the Statute, the Pre-Trial Chamber shall review periodically (at the latest within 120 days) any previous ruling on the release or detention of Mr Yekatom in order to ascertain whether the circumstances have changed, and if so, whether they warrant the termination of detention.⁵⁷ Said provision applies *mutatis mutandis* to the Trial Chamber.

⁵⁵ See the “Decision on the ‘Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129)’” (Pre-Trial Chamber I), [No. ICC-02/11-01/11-212](#), 15 August 2012, para. 101.

⁵⁶ See the Defence Application, *supra* note 1, paras. 38-39.

⁵⁷ See the “Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of PreTrial Chamber I on the Application of the Appellant for Interim Release”, *supra* note 11, para. 14.

3) Mr Yekatom's interim release, if granted, will endanger victims

50. The Common Legal Representatives submit that the release of Mr Yekatom - and eventually his return to CAR - will not only be a great destabilising factor to the volatile security situation in the country as a whole, but pose a direct and significant danger to the victims who have demonstrated courage in applying to participate in the present proceedings in order to contribute to the search for the truth, despite risks of being threatened or otherwise stigmatised.

51. In accordance with article 68(1) of the Statute, the Court shall *"take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses"*. Consequently, when ruling on the Defence Application, the Trial Chamber have to strike a fair balance between different competing interests, with due regard to the safety and well-being of the victims. Mr Yekatom's continued detention pending trial makes it possible to meet all of these requirements given in particular that, as demonstrated above, all relevant criteria under articles 60(2) and 58(1) of the Statute continue to be met.

52. Considering that Mr Yekatom has been committed to trial, his interim release would be hard to fathom for the participating victims who have clearly expressed the view that he should remain in detention at the Court pending the trial proceedings. For the victims this is the only way of ensuring that he will face trial.

IV. CONCLUSION

53. For the foregoing reasons, the Common Legal Representatives respectfully request the Trial Chamber to reject the Defence Application for interim release.



Dmytro Suprun

Common Legal Representative of the
Former Child Soldiers



Paolina Massidda

For the team of Common Legal
Representatives of the Victims of Other
Crimes

Dated this 16th day of March 2020

At The Hague (The Netherlands), Bangui (Central African Republic), La Rochelle (France) and Saint Louis (Senegal)