

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **27 July 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Second Yekatom Defence Motion for Interim Release”,
27 July 2020**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION / OVERVIEW

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby apply, pursuant to Article 60(3) of the Statute, for interim release pending trial. The Defence now proposes that Mr. Yekatom be released to Belgium, rather than the Central African Republic. These changed circumstances warrant that the Trial Chamber reconsider and modify its earlier decision denying interim release.

PROCEDURAL BACKGROUND

2. On 17 November 2018, Alfred Rombhot Yekatom was arrested in the Central African Republic pursuant to an ICC arrest warrant.¹ As of the filing of this motion, he has been in ICC custody for 605 days.
3. Mr. Yekatom’s confirmation of charges hearing was held between 19 September 2019 and 11 October 2019² after being postponed twice at the request of the Prosecution and over the objection of the Defence.³
4. On 11 December 2019, the Chamber issued its *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice-Edouard Ngaïssona* in which it confirmed some of the charges. Assignment of a Trial Chamber was delayed until 16 March 2020⁴ after Chamber suspended *proprio motu* the time limit for the filing of leave to appeal the decision until a French translation was provided,⁵ and the Prosecution, which works in both languages, delayed seeking leave to appeal until the very last day.⁶

¹ [ICC-01/14-01/18-1-Conf-Exp](#), Public redacted version: [ICC-01/14-01/18-1-Red](#).

² [ICC-01/14-01/18-T-011-CONF-ENG](#), Public redacted version: [ICC-01/14-01/18-T-011-Red-ENG](#).

³ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-199](#).

⁴ [ICC-01/14-01/18-451](#).

⁵ [ICC-01/14-01/18-403-Conf-Corr](#), para. 240; [ICC-01/14-01/18-403-Red-Corr](#).

⁶ [ICC-01/14-01/18-437](#).

5. On 3 March 2020, the Defence filed its motion for interim release.⁷ Responses from the Prosecution and Victims were filed on 16 March 2020.⁸ After receiving submissions from the Central African Republic⁹ and The Netherlands,¹⁰ the Trial Chamber denied the motion on 28 April 2020.¹¹
6. In its decision, the Trial Chamber found that Mr. Yekatom would continue to pose a flight risk if released to the Central African Republic, as he had proposed, because he had the means to flee within the Central African Republic through his supporters in CAR, where the authorities considered that 80% of the CAR territory was under the control of armed groups forming part of the Anti-Balaka. The Chamber also found that the potential for a high sentence if convicted provided an incentive for Mr. Yekatom to flee.¹²
7. The Trial Chamber further found that Mr. Yekatom's detention remained necessary because of the possibility that he could interfere with victims and witnesses in the Central African Republic, or commit further crimes there, if released to the Central African Republic.¹³
8. On 16 July 2020, the Trial Chamber decided that Mr. Yekatom's trial will not begin until 9 February 2021, with the evidence beginning sometime in March 2021.¹⁴

RELEVANT PROVISIONS

Article 60—Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber

⁷ [ICC-01/14-01/18-438](#).

⁸ [ICC-01/14-01/18-452](#) ; [ICC-01/14-01/18-450](#).

⁹ [ICC-01/14-01/18-478-Conf-AnxII](#).

¹⁰ [ICC-01/14-01/18-478-Conf-AnxI](#).

¹¹ [ICC-01/14-01/18-495-Red3](#).

¹² [ICC-01/14-01/18-495-Conf-Red2](#), paras. 24-26; Public redacted version: [ICC-01/14-01/18-495-Red3](#).

¹³ [ICC-01/14-01/18-495-Conf-Red2](#), paras. 29-31; 34-35; Public redacted version: [ICC-01/14-01/18-495-Red3](#).

¹⁴ [ICC-01/14-01/18-589](#).

shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. 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.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Rule 118—Pre-trial detention at the seat of the Court

1. If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 121 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.

2. The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

3. After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor or the detained person or on its own initiative. A hearing must be held at least once every year.

Rule 119 - Conditional release

1. The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:

(a) The person must not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;

(b) The person must not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;

(c) The person must not contact directly or indirectly victims or witnesses;

(d) The person must not engage in certain professional activities;

(e) The person must reside at a particular address as specified by the Pre-Trial Chamber;

(f) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;

(g) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

(h) The person must supply the Registrar with all identity documents, particularly his or her passport.

2. At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to sub-rule 1.

3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed.

4. If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis,

at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

5. When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons. In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with sub-rules 1, 2 and 3. If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with sub-rule 4.

ARGUMENT

9. Rule 60(3) requires the Chamber to periodically review its ruling on interim release. Rule 118(2) provides for this review to take place at least every 120 days. Thus, the Chamber's review of Mr. Yekatom's detention should take place by 26 August 2020.
10. The review is not *de novo*, but requires the Chamber to assess whether there are any changed circumstances. If there are changed circumstances, the Chamber is required to consider their impact on the factors that formed the basis for the decision to keep the person in detention.¹⁵ In proceedings under article 60(3), the onus is on the Prosecutor to demonstrate that there has been no change in the circumstances justifying detention.¹⁶
11. The Trial Chamber's decision denying interim release was based in large part on the negative assessment provided by the authorities of the Central African Republic who did not want Mr. Yekatom to be at liberty on their territory. As

¹⁵ *Prosecutor v. Bemba*, [Judgment on the Appeal of Jean-Pierre Bemba Gombo Against the Decision on Trial Chamber III of 6 January 2012 entitled « Decision on the Defence's 28 December 2011 'Requete de Mise en liberte provisoire de M. Jean-Pierre Bemba Gombo' »](#), 5 March 2012, ICC-01/05-01/08-2151-Red, para. 31.

¹⁶ *Prosecutor v. Gbagbo and Ble Goude*, [Judgment on the Appeal of Mr. Laurent Gbagbo against the Decision of Trial Chamber I of 8 July 2015 entitled 'Ninth Decision on the Review of Laurent Gbagbo's Detention pursuant to Article 60\(3\) of the Statute'](#), 8 September 2015, ICC-02/11-01/15-208, para. 36.

a result, Mr. Yekatom now proposes to be released to Belgium, a State that has agreed to receive accused persons from the ICC on interim release.¹⁷

12. Following consultation with the Registry, the Defence refrained from contacting the Belgian authorities to determine whether they are willing to receive Mr. Yekatom on their territory. The Registry informed the Defence that this would be done by the Registry when and if the Chamber requested observations from Belgium following the filing of this motion.¹⁸ The Chamber is respectfully requested to request such observations.
13. The availability of interim release in Belgium would constitute changed circumstances that require the Trial Chamber to re-examine its decision that the continued detention of Mr. Yekatom was necessary to ensure his appearance and to ensure that he did not interfere with witnesses or commit further crimes—a decision heavily based on his proposed release to the Central African Republic.
14. While Mr. Yekatom is disappointed not to be able to return home, he prefers release to Belgium to continuing his lengthy pre-trial detention in The Hague. The conditions of his detention have become increasingly difficult due to its length and the isolation caused by restrictions imposed since the outbreak of the coronavirus pandemic preventing him from receiving visits, even from his Defence team.
15. An examination of the factors that lead the Chamber to conclude that Mr. Yekatom would pose a flight risk if released to the Central African

¹⁷ [Belgium and ICC sign agreement on interim release of detainees](#), ICC Press Release, 10 April 2014.

¹⁸ See *Prosecutor v. Mbarushimana*, [Decision on the Defence Request for an Order for State Cooperation pursuant to Article 57\(3\)\(b\) of the Rome Statute](#), 24 March 2011, ICC-01/04-01/10-85, p. 3 : «it is for the Chamber to request observations from the State concerned, only if and when an application for interim release is made...it is not required that such observations should be obtained by the person applying for interim release and included in that person's application.»

Republic demonstrates that the risk of flight is substantially reduced were Mr. Yekatom to be released to reside in Belgium.

16. The factors that led the Chamber to conclude that “there is a risk that Mr. Yekatom has the resources and means to flee within the CAR, if necessary” were the influence he posed, as a former Member of Parliament, over his supporters “in the immediate and extended community in CAR” and the fact that “80% of the CAR territory [was] under the control of armed groups forming part of the Anti-Balaka.”¹⁹
17. These conditions would not be present were Mr. Yekatom released to reside in Belgium while awaiting his trial. He has no supporters or influence in Belgium. Apart from the fact that he is facing a long sentence if convicted, a circumstance that applies to every accused before this Court, there are no facts or circumstances that would support a conclusion that Mr. Yekatom would have the means and resources to flee from Belgium.
18. In the *Gbagbo and Ble Goude* case, the Appeals Chamber found that although the accused were flight risks because of the severe penalties they faced, the risk could be mitigated by the imposition of conditions.²⁰ Such is also the case here where the Chamber can apply stringent conditions of release. These conditions could include home confinement enforced by electronic monitoring,²¹ regular reporting to the local police station, consent to electronic

¹⁹ [ICC-01/14-01/18-495-Conf-Red2](#), paras. 24-26; Public redacted version: [ICC-01/14-01/18-495-Red3](#).

²⁰ *Prosecutor v. Gbagbo and Ble Goude*, [Judgement on the Prosecutor’s Appeal against the Oral Decision of Trial Chamber I pursuant to Article 83\(3\)\(c\)\(i\) of the Statute](#), ICC-02/11-01/15-1251-Red2, 21 February 2019, para. 60.

²¹ It should be noted that Belgium specifically integrated the possibility of using electronic surveillance as an alternative to detention, and thus have all the means and expertise necessary to implement it. See [Article 16 § 1 of Loi relative à la détention préventive dated 20 July 1990](#) which states :

« En cas d'absolue nécessité pour la sécurité publique seulement, et si le fait est de nature à entraîner pour l'inculpé un emprisonnement correctionnel principal d'un an ou une peine plus grave, le juge d'instruction peut décerner un mandat d'arrêt.

Le juge d'instruction décide également si ce mandat d'arrêt doit être exécuté soit dans une prison, soit par une détention sous surveillance électronique. L'exécution de la détention sous surveillance électronique, qui implique la présence permanente de l'intéressé à une adresse déterminée, exception faite des déplacements autorisés, a lieu conformément aux modalités fixées par le Roi. »

surveillance of his premises and electronic devices, and the designation of third-party custodian or security personnel to be responsible for monitoring Mr. Yekatom's whereabouts. Mr. Yekatom has already provided his undertaking to obey any and all conditions of release.²²

19. Belgium regularly grants release to detainees, including when convicted of the most serious crimes. As an example, Mr. Alphonse Higanro, sentenced in 2001 to 20 years of imprisonment for his role in the Rwandan genocide, was released in 2013 with an electronic bracelet.²³ The Defense contends that if a convicted person can benefit from an alternative to the detention in the form of an electronic monitoring, nothing prevents Mr. Yekatom, still presumed innocent, to also benefit from it.
20. The Chamber's conclusion that Mr. Yekatom might seek to interfere with victims or witnesses was also strongly linked to his proposed release in the Central African Republic. The Chamber noted that "political and security dynamics in the CAR have the potential to negatively impact the ability or willingness of victims to participate in the Court's proceedings" and the "influence that he may continue to exercise over his supporters in the CAR."²⁴ [REDACTED].²⁵
21. These concerns would be significantly mitigated were Mr. Yekatom to be released to reside in Belgium, where he has no supporters, no influence, and no means to interfere with victims or witnesses. His only means to influence victims and witnesses would be by telephone. Mr. Yekatom's telephone conversations have been monitored for the past 20 months and not a single

²² [ICC-01/14-01/18-438-AnxB](#).

²³ Philippe Breaways, [Rwanda 1994 : Noirs et Blancs menteurs](#), Edition Racine, 2013 : « [...] Higanro sera condamné à Bruxelles en 2001 à vingt ans de prison pour sa participation au génocide. Début 2013, il est en liberté provisoire, surveillé par un bracelet électronique. »

²⁴ [ICC-01/14-01/18-495-Conf-Red2](#), para. 29.

²⁵ *Id.* para. 30.

instance of an attempt to influence victims or witnesses has occurred. Knowing that he would be immediately returned to detention should he violate the conditions of his release, a condition that Mr. Yekatom have no contact, direct or indirect, with any victim or witness in his case would be sufficient to ensure that no such interference occurred. This condition could also be re-enforced by an electronic surveillance regime.

22. The Chamber's conclusion that detention remained necessary to prevent the risk that Mr. Yekatom would commit crimes was entirely dependent upon his release to the Central African Republic.
23. The Chamber cited the concern that [REDACTED].²⁶
24. None of these concerns would be present were Mr. Yekatom released to reside in Belgium while awaiting his trial. A condition that Mr. Yekatom not involve himself in political life in CAR nor make any public statements would be sufficient to ensure that he did not play any role, no matter how remote, in the commission of crimes in Central African Republic. There is no reason to believe that Mr. Yekatom would commit any crimes in Belgium.
25. Therefore, should the Trial Chamber re-examine the risk of flight, potential interference with victims or witnesses, or of Mr. Yekatom committing new crimes through the perspective of his release to Belgium, it should find that these risks are no longer significant. When weighed against the length and severity of his detention, the possibilities of further delays due to the coronavirus, and the availability if strict conditions of release, the balance of equities shifts in favor of interim release.
26. Mr. Yekatom's release in Belgium would not in any way disrupt the Defence's trial preparation. In person consultations could take place regularly, since

²⁶ *Id.* para. 30.

Belgium is only a short train ride from The Hague for defence team members, who could have in person access to Mr. Yekatom, which has been unavailable at the Detention Center since March, and access during evenings and weekends, which has never been available at the Detention Center.

27. Granting interim release would be consonant with the principle that “detention pending trial must be the exception, not the rule”.²⁷ The ten-year detention of Jean-Pierre Bemba, the seven-year detention of Laurent Gbagbo, and the five-year detentions of Charles Ble Goude and Mathieu Ngudjolo prior to their acquittals remains a black mark on the human rights record of the ICC. In each of those cases, Chambers relied upon the long sentences faced by the accused if convicted and the security situation in the African countries from which they came to deny interim release. This resulted in grave injustices to these men and their families that could never be repaid after they were finally acquitted.
28. Mr. Yekatom is presumed innocent in the eyes of the law. To continue to detain him in the face of available alternatives would be unjust. If released, Mr. Yekatom is committed to refrain from any contact with victims or witnesses and the commission of any crimes and to return to the Court when requested. If detention is truly the exception, then he should not continue to be detained.

²⁷ *Prosecutor v. Gbagbo and Ble Goude*, [Judgement on the Prosecutor’s Appeal against the Oral Decision of Trial Chamber I pursuant to Article 83\(3\)\(c\)\(i\) of the Statute](#), 21 February 2019, ICC-02/11-01/15-1251-Red2, para. 50; *Prosecutor v. Katanga*, [Decision on the Conditions of Pre-Trial Detention of Germain Katanga](#), ICC-01/04-01/07-426, 21 April 2008, p. 6; *Prosecutor v. Bemba*, [Decision on Application for Interim Release](#), ICC-01/05-01/08-321, 16 December 2008, para. 31; *Prosecutor v. Al Hassan*, [Decision on the Defence Request for Interim Release](#), 29 May 2020, ICC-01/12-01/18-786-Red, para. 16.

CONFIDENTIALITY

29. This pleading is filed confidentially because it refers to and quotes from parts of the Trial Chamber's first interim release decision which remain confidential. A public redacted version is being filed simultaneously.

CONCLUSION

30. The Trial Chamber is respectfully requested to seek submissions from the Kingdom of Belgium as to whether it is willing to allow Mr. Yekatom to be released to its territory pending trial. The Trial Chamber should then order Mr. Yekatom's interim release under such conditions that the Chamber believes are necessary.

RESPECTFULLY SUBMITTED ON THIS 27th DAY OF JULY 2020



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