

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 March 2020**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public with Public Annexes A, B, and C and Confidential Annexes D, E, and F

Yekatom Defence Application for Interim Release

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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1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby applies, pursuant to Article 60(2) of the Statute, for interim release pending trial.¹ The Defence contends that Mr. Yekatom’s release is required at this stage to avoid lengthy pretrial detention for loss of liberty and time with his family that can never be returned to him. Detention is not necessary to ensure his appearance at trial, or to ensure that he does not obstruct or endanger the investigation or the court proceedings, or to prevent him from committing crimes.

2. Jean-Pierre Bemba served 10 years in detention in The Hague before being released following his acquittal. Laurent Gbagbo served more than 7 years and Charles Blé Goudé almost 5 years before their acquittals and release. The Court must avoid these catastrophic consequences on the lives and families of those who it prosecutes in the name of the international community. Detention pending trial must become the exception, not the rule.² The likely delay in Mr. Yekatom’s trial due to the Prosecution’s challenge to the confirmation decision,³ makes it even more imperative that his separation from his family, which has already exceeded 15 months, come to an end.

CONFIDENTIALITY

3. This application is filed publicly, but three Annexes have been classified as confidential because they reveal personal details such as addresses and bank account numbers.

¹ A French translation of this application is Annex A. The English version should be considered authoritative.

² [International Covenant on Civil and Political Rights](#), 999 UNTS 171, entered into force on 23 March 1976, art. 9(3): “It shall not be the general rule that persons awaiting trial shall be detained in custody”.

³ [ICC-01/14-01/18-437](#).

RELEVANT PROCEDURAL BACKGROUND

4. On 11 November 2018, this Chamber issued its *Warrant of Arrest for Alfred Yekatom*.⁴ It found, pursuant to Article 58(1)(b) of the Statute, that the issuance of an arrest warrant was necessary:

The Chamber is satisfied, in conformity with article 58(1)(b) of the Statute, that the arrest of Yekatom appears necessary to ensure that (i) he appears at trial; (ii) does not obstruct or endanger the Prosecutor's ongoing investigation; and (iii) does not continue with the commission of crimes within the jurisdiction of the Court arising out of the same circumstances. The Chamber notes that information from as early as 2015 describes Yekatom to be a person "engaging in or providing support for acts that undermine the peace, stability or security of the CAR". The Chamber takes also heed of the fact that nearly 80% of the territory of the CAR is still under the control of armed groups, including the Anti-Balaka, which would easily enable the suspect to evade justice if he would remain free. Further, Yekatom's recent behaviour, in particular the reported instruction to his men to intimidate individuals in Bimbo at gun point and the latest incident in the CAR Parliament, demonstrate that he resorts to violent acts, his position of authority and availability of means today, and make his voluntary appearance implausible. In addition, the Chamber notes that Yekatom is a CAR MP and retains strong influence over his (former and current) Anti-Balaka subordinates, in particular in Lobaye Prefecture, which could allow him to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court. In this context, the Chamber refers to the information that Yekatom resides in the CAR, as do potential witnesses, which increases his ability to interfere with the ongoing investigation. Lastly, 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. In light of the foregoing, the issuance of a warrant of arrest is deemed as necessary.⁵

5. The warrant of arrest was executed on 17 November 2018 and Mr. Yekatom was flown to The Hague that day in violation of the laws of the Central African Republic.⁶ Mr. Yekatom never appeared before a Central African Republic judge or chamber, and was never informed of his right to apply for interim release at that

⁴ [ICC-01/14-01/18-1-Red.](#)

⁵ [ICC-01/14-01/18-1-Red.](#), para. 22.

⁶ [ICC-01/14-01/18-17-US-Exp-Red.](#), paras. 21, 24.

time, as required by Central African Republic law.⁷ The ICC Registry had assigned him a duty counsel, but this lawyer had previously represented two Prosecution witnesses against him, and later represented his alleged victims. She never advised Mr. Yekatom of these rights and did nothing to assist him.⁸

6. Mr. Yekatom made his initial appearance before this Court on 23 November 2018. His hearing on the confirmation of charges was set for 30 April 2019.⁹

7. On 20 February 2019, over Mr. Yekatom's objection,¹⁰ the Pre-Trial Chamber joined the case of Mr. Yekatom with that of Patrice-Edouard Ngaïssona, who had been recently arrested and transferred to the Court. Both Mr. Yekatom and Mr. Ngaïssona requested that the date of 30 April 2019 for the confirmation hearing be maintained.¹¹ The Prosecution, on the other hand, asked that the confirmation hearing be postponed to 18 June 2019.¹² The Chamber granted the Prosecution's request.¹³

8. On 1 May 2019, the Prosecution requested yet another postponement of the confirmation hearing until September 2019,¹⁴ over the objection of Mr. Yekatom, who contended that a postponement would result in unreasonable delay.¹⁵ The Chamber again granted the Prosecution's request and postponed the confirmation of charges hearing until 19 September 2019.¹⁶

9. The hearing commenced on 19 September 2019, ten months after Mr. Yekatom's arrival at the Court.¹⁷ It concluded on 11 October 2019.¹⁸

⁷ [Penal Procedure Code of the Central African Republic](#), art. 351. See also Section D, below.

⁸ [ICC-01/14-01/18-358-Red](#). The lawyer was later disqualified from representing the victims. [ICC-01/14-01/18-T-004-Red2-ENG](#), pp. 65-66. See also Section D below.

⁹ [ICC-01/14-01/18-T-1-ENG](#).

¹⁰ [ICC-01/14-01/18-82](#).

¹¹ [ICC-01/14-01/18-82](#), para. 6; [ICC-01/14-01/18-118](#), para. 8.

¹² [ICC-01/14-01/18-76](#), para. 11.

¹³ [ICC-01/14-01/18-87](#). Leave to appeal this decision was denied on 21 March 2019 ([ICC-01/14-01/18-154](#)).

¹⁴ [ICC-01/14-01/18-186-Red2](#).

¹⁵ [ICC-01/14-01/18-194-Red](#), paras. 28-31.

¹⁶ [ICC-01/14-01/18-199](#).

¹⁷ [ICC-01/14-01/18-T-004-Red2-ENG](#). The *Chamber's Practice Manual* provides that "the typical target date for the confirmation hearing should be around four to six months from the first appearance" (p. 3).

10. 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. The Chamber suspended *proprio motu* the time limit for the filing of leave to appeal the decision until a French translation was provided.¹⁹

11. It took more than two months for a French translation to be prepared. Then, at the very last possible moment, on 2 March 2020, the Prosecution sought reconsideration or leave to appeal the confirmation decision.²⁰ The Prosecution, which works in both languages, could have filed its request before receiving the French translation rather than waiting two months. Mr. Yekatom and Mr. Ngaïssona did not seek reconsideration or leave to appeal.

ARGUMENT

12. 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.

13. The conditions set forth in Article 58(1) are:

- (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.

¹⁸ [ICC-01/14-01/18-T-011-Red-ENG](#).

¹⁹ [ICC-01/14-01/18-403-Red](#), para. 240.

²⁰ [ICC-01/14-01/18-437](#).

14. The Prosecution has the burden of establishing the continuing existence of these conditions.²¹ The Defence will address each of them in turn.

A. RISK OF FLIGHT

15. Mr. Yekatom proposes to return to live in the home that he shares with his wife and children in Bangui, Central African Republic.²²

16. Mr. Yekatom provides this Court with 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.²³ There is a gendarmerie brigade a mere 900 meters from his residence.²⁴ Mr. Yekatom is willing to report there at such times as the Court may direct.

17. Mr. Yekatom understands that the gravity of the offences that he is charged with and that the potential penalty, if he is convicted, is high. He also understands that the gravity of the offences charged, “alongside the threatened sentence, is taken into account as one of the factors that has a bearing on detention and as part of the assessment of the risk of absconding from the jurisdiction of the Court”.²⁵ However, he is fully committed to defending himself against these charges and fully prepared to endure the consequences.

18. Mr. Yekatom is a fighter, not a runner. He is a military officer who honoured his oath and defended his country for its liberation and for the future of his children when many higher-ranking officers had fled. He will also not run from this Court but will defend himself for his own liberation and for his children to be proud of their father.

²¹ *Prosecutor v. Katanga & Ngudjolo*, [Decision on the powers of the Pre-Trial Chamber to review proprio motu the pre-trial detention of Germain Katanga](#), ICC-01/04-01/07-330, 18 March 2008, pp. 5-7.

²² A photograph of the home is included in the declaration attached as Annex D.

²³ Mr. Yekatom’s personal guarantee is attached as Annex B.

²⁴ See Annex D.

²⁵ *Prosecutor v. Mbarushimana*, [Decision on the “Defence Request for Interim Release”](#), ICC-01/04-01/10-163, 19 May 2011, para. 41.

19. Another factor considered by the Court when determining the risk of flight has been access to significant resources and a network of international contacts that might help a released person abscond.²⁶ Indeed, this was the main factor that was used to continue to detain President Gbagbo.²⁷ In contrast to President Gbagbo and Vice-President Bemba, Mr. Yekatom has neither access to significant resources,²⁸ nor a network of international contacts. He spent his life in the Central African Republic, and his working life in its army. He has no place else to go and no access to resources to finance a life on the run.

20. In the arrest warrant, the Chamber relied on the fact that “nearly 80% of the territory of the CAR is still under the control of armed groups, including the Anti-Balaka, which would easily enable the suspect to evade justice if he would remain free”.²⁹ Today, the areas that the Anti-Balaka recaptured from the Seleka are largely under the control of the Central African Republic government. Fleeing to areas under the Seleka’s control would be a death sentence for Mr. Yekatom. He has no incentive whatsoever to do that.

21. In the arrest warrant, the Chamber also relied on the fact that Mr. Yekatom “resorts to violent acts, his position of authority and availability of means today, and make his voluntary appearance implausible”.³⁰ Mr. Yekatom has no intention in engaging in any violent acts while on interim release and knows the consequence would be to return him immediately to detention and take him away from his family.

²⁶ *Prosecutor v. Lubanga*, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of the Pre-Trial Chamber I entitled “Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo”](#), ICC-01/04-01/06-824, 13 February 2007, para. 136; *Prosecutor v. Katanga & Ngudjolo*, [Decision on the application for interim release of Matthieu Ngugijolo Chui](#), ICC-01/04-01/07-345, 27 March 2008, p. 8; *Prosecutor v. Bemba*, [Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment on 19 November 2010](#), ICC-01/05-01/08-1088, 17 December 2010, para. 40; *Prosecutor v. Mbarushimana*, [Decision on the “Defence Request for Interim Release”](#), ICC-01/04-01/10-163, 19 May 2011, para. 42.

²⁷ *Prosecutor v. Gbagbo*, [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 ‘Requete de la Defense demandant la mise en liberte provisoire du president Gbagbo’”](#), ICC-02/11-01/11-278-Red, 26 October 2012, para. 56.

²⁸ A copy of his latest bank statement showing that little money is left in his personal bank account is attached as Annex E. A copy of the business account statement of Koya Sécurité is attached as Annex F.

²⁹ [ICC-01/14-01/18-1-Red](#), para. 22.

³⁰ [ICC-01/14-01/18-1-Red](#), para. 22

He would have no objection to a condition that prohibited him from having access to any weapons and to allow his person and premises to be searched at any time. Mr. Yekatom would also agree to a condition that he have no involvement in political life in the CAR, thereby removing him from the possibility of exercising any authority.

22. Mr. Yekatom has obeyed the conditions of his detention for more than 15 months and followed the rules of detention. Mr. Yekatom is a soldier and he is used to obeying orders. He has obeyed them in the Detention Centre. When the Court orders him to return for trial, he will obey. The Prosecution cannot meet its burden of showing that it is more likely than not that if released, Mr. Yekatom would abscond.³¹

B. INTERFERENCE WITH WITNESSES

23. Actions speak louder than words. Mr. Yekatom has never interfered in the Prosecution's investigation either before his arrest, when he lived among the pool of potential Prosecution witnesses, or since his arrest. While in prison, all of Mr. Yekatom's telephone calls are monitored and recorded. For over 15 months of such monitoring, there has not been a single instance where Mr. Yekatom interfered with any witnesses or even attempted to. Likewise, his Defence has been scrupulous in honouring the protective measures, reporting the Prosecution's own inadvertent disclosures and refraining from taking advantage of them, reporting inadvertent contacts with Prosecution witnesses in the field, and passing on information about protected witnesses to the Victims and Witnesses Unit when necessary.

24. The fears expressed by this Chamber in the arrest warrant that "Yekatom is a CAR MP and retains strong influence over his (former and current) Anti-Balaka subordinates, in particular in Lobaye Prefecture, which could allow him to reach,

³¹ *Prosecutor v. Lubanga*, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of the Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo"](#), ICC-01/04-01/06-824, 13 February 2007, para. 136.

intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court”³² have simply not come to pass.

25. Mr. Yekatom undertakes to have no contact with any witnesses in this case, and he would not discuss the evidence in this case with anyone other than members of his defence team. He would also refrain from making any public statements, directly or indirectly, about the case.

26. Therefore, there is no reason to believe that Mr. Yekatom would obstruct or endanger the court proceedings.

C. COMMISSION OF CRIMES

27. Despite the fact that Mr. Yekatom is charged with crimes of violence, those alleged crimes occurred in wartime more than six years ago. There is no reason to believe that if released, Mr. Yekatom would continue those alleged crimes or commit related crimes.

28. The Defence has contacted Mr. Yekatom’s neighbours and the vast majority have stated that they foresee no danger of violence or problems should Mr. Yekatom be released. The Commander of the Gendarmerie Brigade located just 900 meters from Mr. Yekatom’s residence has indicated that he foresaw no security problems if Mr. Yekatom were released to live at his residence while awaiting trial. He is willing to have Mr. Yekatom report to his brigade and offered to conduct whatever additional surveillance on Mr. Yekatom the Court may direct.³³

29. Mr. Yekatom has also provided his own personal guarantee that if released, he would not engage in the commission of crimes or interfere with any witnesses, and would return for trial at any time he was directed to do so. The fact that Mr. Yekatom

³² [ICC-01/14-01/18-1-Red](#), para. 22.

³³ See Annex D. The official position of the government of the Central African Republic will have to be obtained by the Chamber pursuant to Regulation 51 of the Regulations of the Court: “For the purposes of a decision on interim release, the Pre-Trial Chamber shall seek observations from the host State and from the State to which the person seeks to be released”.

knows that any violation of the terms of his release would result in his forfeiting that release and in his immediate return to detention, provides a strong deterrent to the commission of any crimes.

30. The stability of the current situation in the country is also a factor in Mr. Yekatom's favor. In the *Bemba* case, the Trial Chamber found that the Prosecution had not satisfied this provision because the situation in the Central African Republic had stabilised and no information had been provided that indicated the accused would commit the same or related crimes.³⁴ While this Chamber, in its arrest warrant, relied on the fact that the armed conflict "has not ceased in the CAR to this day", ³⁵ the conflict is less intense today and not present in the area where Mr. Yekatom would reside.

31. Therefore, there is no reason to believe that if released, Mr. Yekatom would continue the crimes he is alleged to have committed in 2013-14, or commit related crimes.

D. VIOLATION OF CENTRAL AFRICAN REPUBLIC LAW IN THE TRANSFER TO THE ICC

32. As an additional 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.

33. Article 59 of the Statute provides, in pertinent part, that:

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(a) The warrant applies to that person;

³⁴ *Prosecutor v. Bemba*, [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](#), ICC-01/05-01/08-475, 14 August 2009, para. 76.

³⁵ [ICC-01/14-01/18-1-Red](#), para. 22.

(b) The person has been arrested in accordance with the proper process;
and

(c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

34. The Penal Procedure Code of the Central African Republic provides for the procedure to be followed when a citizen is arrested for the ICC on its territory. That procedure requires that the person be taken before a Judge and advised of his right to counsel and to apply for interim release and given the opportunity to have additional proceedings before a *chambre d'accusation*.³⁶

35. Those procedures were violated in Mr. Yekatom's case. He was never taken before a Judge, never advised of his right to counsel and to apply for interim release, and never given the opportunity for review by the *chambre d'accusation*. Instead, the ICC provided him with a counsel who had a conflict of interest in that she already represented two witnesses against him and later came to represent his alleged victims. She never advised him of his right to interim release, nor asserted his rights at all under the Penal Procedure Code. She never had any privileged conversation with Mr. Yekatom.³⁷

36. In addition, the ICC pressed the Central African authority to transfer Mr. Yekatom as a matter of urgency by 16 November 2018 despite the Central African authority informing the ICC that the normal procedure under national law would not result in his transfer until at least 23 November.³⁸ The national procedure requires that the person be taken before the *chambre d'accusation*.³⁹ Because the ICC insisted on transferring Mr. Yekatom immediately, the Central African authorities disregarded their own statutes and never brought Mr. Yekatom before a Judge. As a

³⁶ [Penal Procedure Code of the Central African Republic](#), arts. 349-52.

³⁷ [ICC-01/14-01/18-T-004-Red2-FRA](#), p. 4, lns. 18-20: "Jamais je n'ai eu accès au dossier de M. Yekatom. Jamais je n'ai eu de contact personnel avec M. Yekatom. Je n'ai jamais été son avocat devant les juridictions nationales ni devant la Cour." See also [ICC-01/14-01/18-359-Conf](#).

³⁸ [ICC-01/14-01/17-US-Exp-Red](#), para. 8.

³⁹ [Penal Procedure Code of the Central African Republic](#), art. 351.

result, through no fault of his own, Mr. Yekatom lost his right to seek interim release in Central African Republic.

37. Mr. Yekatom contends that this provides an equitable ground upon which his current request for interim release can and should be granted.

E. DELAY IN THE PROCEEDINGS

38. Mr. Yekatom's confirmation hearing was already delayed for five months at the Prosecution's request. Its application for reconsideration or leave to appeal delays the case even further. If leave to appeal is granted, the delay will be one of many months while the parties brief the appeal, the Appeals Chamber deliberates, and perhaps while the matter is once again remanded to the Pre-Trial Chamber.

39. Absent interim release, Mr. Yekatom will likely have spent a longer time in custody before a Trial Chamber was even assigned to his case than any other accused at the ICC except for President Gbagbo.⁴⁰ Where none of that delay is attributable to Mr. Yekatom, equitable considerations warrant strong consideration of interim release under these circumstances.

40. Chambers of this Court have found that, in light of recognised human rights principles, the duration of time in detention pending trial is a factor that needs to be considered along with those enumerated in Article 58(1) in order to determine whether interim release should be granted.⁴¹ While not an overriding factor, the length of detention, when considered in light of Article 58(1)'s criteria, can tip the scales in favor of interim release.⁴²

⁴⁰ See the table in Annex C

⁴¹ *Prosecutor v. Gbagbo & Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention"](#), ICC-02/11-01/15-992-Red, 19 July 2017, paras. 75-77.

⁴² *Prosecutor v. Bemba et al.*, [Judgment on the appeals against Pre-Trial Chamber II's decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification](#), ICC-01/05-01/13-969, 29 May 2015, para. 46.

41. In this case, the Prosecution has preferred to join Mr. Yekatom's trial with that of another accused and has sought to improve its tactical position at the trial by seeking reconsideration or leave to appeal to provide more modes of liability at its disposal at trial. These tactical choices have resulted in a significant delay in Mr. Yekatom's trial. Mr. Yekatom should not have to bear the burden of these tactics by spending an extra year or more in detention. By granting him interim release, the Chamber can appropriately balance the Prosecution's desire to improve its chances at trial with Mr. Yekatom's right to liberty and family life.

CONCLUSION

42. Deprivation of liberty is a serious matter. This Court has detained people for years, only to see them acquitted. That has to change. The Prosecution cannot meet the heavy burden necessary to detain Mr. Yekatom, who is presumed innocent. The Chamber is respectfully requested to grant Mr. Yekatom interim release to the Central African Republic under such conditions as it deems necessary.⁴³

RESPECTFULLY SUBMITTED ON THIS 3RD DAY OF MARCH 2020



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⁴³ The assistance of Legal Interns Justine Bernatchez and Mitterrand Muntu in the research for this application is gratefully acknowledged.