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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 redacted version of

Decision on the Yekatom Defence Application for Interim Release

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

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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 58(1), 60(2) and (4), 61(11), 64(6)(a) and 68(1) of the Rome Statute (the ‘Statute’) issues this ‘Decision on the Yekatom Defence Application for Interim Release’.

I. Procedural background and submissions

1. On 11 November 2018, Pre-Trial Chamber II (the ‘PTC II’) issued a warrant of arrest against Mr Yekatom.¹ On 17 November 2018, the Central African Republic (the ‘CAR’) authorities surrendered him to the Court.² Mr Yekatom arrived at the Detention Centre of the Court on 18 November 2018.³ On 23 November 2018, Mr Yekatom made his initial appearance before PTC II.⁴
2. On 28 January 2019, the Chamber directed the parties to provide observations on the feasibility of joining the cases against Mr Yekatom and Mr Ngaïssona.⁵ On 20 February 2019, after having received submissions by the parties,⁶ PTC II joined Mr Yekatom’s case with that of Mr Ngaïssona.⁷
3. As a result of the joinder, the dates for the confirmation hearings, that had previously been scheduled for Mr Yekatom and Mr Ngaïssona on 30 April 2019

¹ 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) (the ‘Warrant of Arrest’).

² Rapport du Greffe sur l’Arrestation et la Remise de M. Alfred Yekatom, 22 November 2018, ICC-01/14-01/18-17-US-Exp, under seal *ex parte*, only available to the Prosecution and the Registry (with under seal *ex parte* Annexes I-III, VII-XI, XIII, only available to the Prosecution and the Registry; and under seal *ex parte* Annexes IV, VI and XII, only available to the Registry) (redacted under seal *ex parte* version of the report and Annexes I-III, VII-VIII, XIII, only available to the Prosecution, the Registry and the Yekatom Defence, notified on 17 December 2018, ICC-01/14-01/18-17-US-Exp-Red; redacted under seal *ex parte* version of Annexes VI, XII only available to the Registry and Yekatom Defence, notified on 17 December 2018) (the ‘Registry Report on Mr Yekatom’s Arrest and Surrender’), para. 19.

³ Registry Report on Mr Yekatom’s Arrest and Surrender, ICC-01/14-01/18-17-US-Exp-Red, paras 19, 25.

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

⁵ Order seeking observations on the feasibility of joining the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-67.

⁶ See Prosecution’s Observations Regarding Joinder, 4 February 2019, ICC-01/14-01/18-76; Observations de la Défense de M. Alfred Rombhot Yekatom sur la faisabilité de joindre les affaires « Le Procureur c. Alfred Yekatom » et « Le Procureur c. Patrice-Édouard Ngaïssona », 11 February 2019, ICC-01/14-01/18-82; Observations on Joinder, 11 February 2019, ICC-01/14-01/18-118.

⁷ Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, 20 February 2019, ICC-01/14-01/18-87 (the ‘Decision on Joinder’).

and 18 June 2019, respectively, were vacated and 18 June 2019 set as a new date for the joint confirmation hearing.⁸

4. On 1 May 2019, the Office of the Prosecutor (the ‘Prosecution’) requested a postponement of the confirmation hearing and the related disclosure deadlines.⁹ After considering the request and the parties’ responses,¹⁰ PTC II granted the postponement until 19 September 2019.¹¹
5. The hearing on the confirmation of charges was held from 19-25 September 2019 and 11 October 2019.¹²
6. On 11 December 2019, PTC II confirmed part of the charges against both accused (the ‘Confirmation Decision’)¹³ and suspended the deadline for filing an application for leave to appeal until a French translation of the Confirmation Decision was made available.¹⁴ The Registry filed the official French translation of the Confirmation Decision on 21 February 2020.¹⁵

⁸ Decision on Joinder, ICC-01/14-01/18-87, para. 18.

⁹ Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines, 2 May 2019, ICC-01/14-01/18-186-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (with confidential *ex parte* Annex 1, only available to the Prosecution and the Registry) (public redacted version notified on 8 May 2019, ICC-01/14-01/18-186-Red2).

¹⁰ Ngaïssona Defence, Defence Response to the “Confidential Redacted version of “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”, 2 May 2019, ICC-01/14-01/18-186-Conf-Exp” (ICC-01/14-01/18-186-Conf-Red), 8 May 2019, ICC-01/14-01/18-192-Conf (public redacted version notified the same day); Yekatom Defence, Rectificatif de la «Réponse de M. Alfred Rombhot Yekatom à la «Confidential Redacted version of “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”, 2 May 2019, ICC-01/14-01/18-186-Conf-Exp», 8 May 2019, ICC-01/14-01/18-194-Conf-Corr (with public Annex A) (public redacted version notified on the same day).

¹¹ Decision on the ‘Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines’, 15 May 2019, ICC-01/14-01/18-199 (the ‘Decision on the Postponement Request’).

¹² See transcript of Hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red-ENG; transcript of Hearing, 20 September 2019, ICC-01/14-01/18-T-005-Red-ENG; transcript of Hearing, 20 September 2019, ICC-01/14-01/18-T-007-Red-ENG; transcript of Hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red2-ENG; transcript of Hearing, 24 September 2019, ICC-01/14-01/18-T-009-Red-ENG; transcript of Hearing, 25 September 2019, ICC-01/14-01/18-T-010-ENG; transcript of Hearing, 11 October 2019, ICC-01/14-01/18-T-011-Red-ENG.

¹³ 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).

¹⁴ Confirmation Decision, ICC-01/14-01/18-403-Red, para. 240.

¹⁵ See *Décision relative à la confirmation des charges portées contre Alfred Yekatom et Patrice-Édouard Ngaïssona*, ICC-01/14-01/18-403-Conf-tFRA (public redacted version notified on 10 March 2020).

7. On 26 February 2020, the Ngaïssona Defence requested PTC II for a swift transmission of the case record to the Presidency pursuant to Rule 129 of the Rules of Procedure and Evidence and stated that he will not seek leave to appeal the Confirmation Decision.¹⁶
8. On 2 March 2020, the Prosecution requested PTC II to reconsider the Confirmation Decision, or alternatively, to certify two proposed issues for appeal (the ‘Prosecution Request for Reconsideration of the Confirmation Decision’).¹⁷ The Common Legal Representative of Victims of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLRV’) and the Yekatom Defence submitted their responses to this request on 6 March 2020.¹⁸
9. On 3 March 2020, the Yekatom Defence filed an application for interim release in which he recalled that he did ‘not seek reconsideration or leave to appeal’ and requested the Chamber ‘to grant [Mr Yekatom] interim release to the [CAR] under such conditions as it deems necessary’ (the ‘Request’).¹⁹ The Yekatom Defence seeks his interim release pending trial pursuant to Article 60(2) of the Statute.²⁰ The Yekatom Defence contends that Mr Yekatom’s release is ‘required at this stage to avoid lengthy pre-trial detention for loss of liberty and time with his family that can never be returned to him’.²¹ The Yekatom Defence addresses the conditions set forth in Article 58(1) of the Statute and submits that the Prosecution has the burden of establishing that they continue to exist.²²

¹⁶ Ngaïssona Defence, Defence request for a swift transmission of the case record to the Presidency pursuant to Rule 129 of the Rules of Procedure and Evidence, ICC-01/14-01/18-434.

¹⁷ Prosecution’s Request for Reconsideration of, or alternatively Leave to Appeal, the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Nga[i]ssona”, ICC-01/14-01/18-437.

¹⁸ Common Legal Representatives’ Joint Response to the Prosecution’s Request for Reconsideration or Leave to Appeal, ICC-01/14-01/18-442; Yekatom Defence Opposition to Prosecution’s Request for Reconsideration or Leave to Appeal Confirmation Decision”, ICC-01/14-01/18-443.

¹⁹ Yekatom Defence Application for Interim Release, 3 March 2020, ICC-01/14-01/18-438 (with public Annexes A-C and confidential Annexes D-F), paras 11, 42.

²⁰ Request, ICC-01/14-01/18-438, para. 1.

²¹ Request, ICC-01/14-01/18-438, para. 1.

²² Request, ICC-01/14-01/18-438, paras 14, 15-22 (ensuring the person’s appearance at trial), 23-26 (ensuring the person does not obstruct or endanger investigation or court proceedings), 27-31 (preventing the commission of (related) crimes within the jurisdiction of the court arising from the same circumstances).

10. Additionally, the Yekatom Defence asserts that Mr Yekatom could not exercise his right to seek interim release in the CAR due to procedural violations, not attributable to him, during his arrest and surrender to the Court.²³ Arguing that this amounted to a violation of his rights guaranteed under Article 59 of the Statute, the Yekatom Defence contends that ‘this provides an equitable ground upon which his current request for interim release can and should be granted’.²⁴ Further, it argues that the delays attributable to the Prosecution resulting in lengthy pre-trial detention militate in favour of granting his interim release.²⁵ Lastly, the Yekatom Defence furnishes personal undertakings by Mr Yekatom to, *inter alia*, return to the Detention Centre in The Hague when so ordered and to respect all conditions imposed on him by the Court, should the Chamber grant interim release (the ‘Personal Undertakings’).²⁶
11. On 11 March 2020, the PTC II rejected the Prosecution’s Request for Reconsideration of the Confirmation Decision, ordered the transmission of the record of the proceedings, and considered that the Request be addressed and determined by the newly constituted trial chamber.²⁷
12. On 13 March 2020, as directed by PTC II, the Registry transmitted to the Presidency, the Confirmation Decision and the record of proceedings.²⁸
13. On 16 March 2020, the Prosecution requested the Chamber to reject the Request and order Mr Yekatom’s continued detention (the ‘Prosecution Response’).²⁹ Therein, it addresses the conditions relevant to Article 58(1) of the Statute arguing that Mr Yekatom’s continued detention is necessary.³⁰ In particular, the

²³ Request, ICC-01/14-01/18-438, paras 32-37.

²⁴ Request, ICC-01/14-01/18-438, para. 37.

²⁵ Request, ICC-01/14-01/18-438, paras 38-41.

²⁶ Request, ICC-01/14-01/18-438, paras 16, 25, 29; Annex B to the Yekatom Defence Application for Interim Release, ICC-01/14-01/18-438-AnxB.

²⁷ 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’, 11 March 2020, ICC-01/14-01/18-447 (‘PTC Reconsideration Decision’), paras 34-37.

²⁸ Transmission to the Presidency of the record of the proceedings, including the Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-449.

²⁹ Prosecution’s Response to Yekatom’s Request for Interim Release, ICC-01/14-01/18-452.

³⁰ Prosecution’s Response, ICC-01/14-01/18-452, paras 6-9 (ensuring the person’s appearance at trial), 10-11 (ensuring the person does not obstruct or endanger investigation or court proceedings), 12-13

Prosecution responds that, given the gravity of the alleged crimes, Mr Yekatom faces a lengthy sentence, if convicted, and that therefore, he has an incentive to flee and abscond.³¹ The Prosecution adds that Mr Yekatom, as a former member of the Parliament in the CAR, continues to retain influence over his network of supporters and has access to means to abscond through them.³² It submits that Mr Yekatom's length of detention is not unreasonable or otherwise due to an 'inexcusable delay' attributable to the Prosecution.³³ The Prosecution adds that the impending proceedings on the merits of the case make Mr Yekatom's continued detention 'all the more necessary'.³⁴ Regarding the Personal Undertakings, the Prosecution submits that they are 'premature' and 'not substantively pertinent considerations under article 58(1) or 60 warranting a variation or interruption of his detention'.³⁵

14. On 16 March 2020, the CLRVs submitted a joint response opposing the Request (the 'CLR V Response').³⁶ Therein, the CLR V request the rejection of the Request on grounds that the conditions set forth in Article 58(1) of the Statute continue to be met.³⁷ The CLR V respond that Mr Yekatom faces multiple crimes of 'extreme gravity' and Yekatom faces a lengthy sentence, if convicted, and that therefore, he has an incentive to flee and abscond.³⁸ The CLR V also submit that Mr Yekatom's release will pose a direct and significant danger to the victims and that, in assessing the Request, the Chamber must balance Mr Yekatom's interests with those contained in Article 68(1) of the Statute.³⁹

(preventing the commission of (related) crimes within the jurisdiction of the court arising from the same circumstances).

³¹ Prosecution Response, ICC-01/14-01/18-452, paras 6-8.

³² Prosecution Response, ICC-01/14-01/18-452, para. 9.

³³ Prosecution's Response, ICC-01/14-01/18-452, paras 3, 14-16.

³⁴ Prosecution's Response, ICC-01/14-01/18-452, para. 16.

³⁵ Prosecution's Response, ICC-01/14-01/18-452, para. 17.

³⁶ Common Legal Representatives' Joint Response to the 'Yekatom Defence Application for Interim Release', ICC-01/14-01/18-450.

³⁷ CLR V Response, ICC-01/14-01/18-450, para. 2. The CLR V address these conditions in turn. *See* paras 21-44.

³⁸ CLR V Response, ICC-01/14-01/18-450, paras 25-26.

³⁹ CLR V Response, ICC-01/14-01/18-450, paras 50-52.

15. On 20 March 2020, the Chamber invited observations from the Kingdom of Netherlands (hereinafter: ‘the Netherlands’), in its capacity as host State, and the CAR on Mr Yekatom’s interim release by 9 April 2020.⁴⁰
16. On 14 April 2020, after an extension of time was granted to the CAR authorities,⁴¹ the Registry transmitted the States’ observations.⁴² The Dutch authorities recall their mutual obligations and express their readiness to cooperate with the Court, noting further specific information that will be required should Mr Yekatom be granted interim release to the CAR.⁴³ The CAR authorities recall their submissions relevant to Article 58(1)(b) of the Statute.⁴⁴ They provide further information on [REDACTED]⁴⁵ and [REDACTED]⁴⁶ and submit that [REDACTED].⁴⁷

II. Analysis

17. Pursuant to Article 60(2) of the Statute, a person subject to a warrant of arrest may apply for interim release pending trial. If the Chamber is satisfied that the conditions set forth in Article 58(1) of the Statute are fulfilled, the person shall continue to be detained; if not, the Chamber shall release the person with or without conditions.
18. Pursuant to Article 58(1) of the Statute, a Chamber must be satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court and that the arrest of the person appears necessary either (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

⁴⁰ Order Requesting Observations from relevant States on Interim Release, ICC-01/14-01/18-461.

⁴¹ The Chamber granted an extension of time upon a request of the Registry, on behalf of the state authorities, until 14 April 2020. *See* Email from the Chamber to the Registry, the Prosecution and the Yekatom Defence on 9 April 2020, at 13:00.

⁴² 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 (with confidential Annex I, ICC-01/14-01/18-478-Conf-AnxI [the ‘Observations from the Netherlands’]; and confidential Annex II, ICC-01/14-01/18-478-Conf-AnxII [the ‘Observations of the CAR’]).

⁴³ Observations from the Netherlands, ICC-01/14-01/18-478-Conf-AnxI, p. 3.

⁴⁴ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 6-7, paras 2-3.

⁴⁵ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 7-8, paras 6-8.

⁴⁶ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp. 8-9, paras 10-11.

⁴⁷ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, paras 12-14.

that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

19. The Chamber recalls that the Appeals Chamber has held that in reaching a decision pursuant to Article 60(2) of the Statute, a Chamber has to inquire anew into the existence of facts justifying detention, in the course of which it has to determine whether the conditions of Article 58(1) are met.⁴⁸

A. Requirements of Article 58(1) of the Statute

20. At the outset, the Chamber is satisfied that, following the confirmation of charges against Mr Yekatom on 11 December 2019,⁴⁹ the requirement under Article 58(1)(a) of the Statute that the person has committed a crime within the jurisdiction of the Court continues to remain fulfilled.
21. As regards the conditions set forth in Article 58(1)(b) of the Statute, the Chamber recalls that the Appeals Chamber has previously considered these conditions to be set ‘in the alternative’ in that if one of the conditions is fulfilled, ‘the other conditions do not have to be addressed, and detention must be maintained’.⁵⁰ However, given that the Yekatom Defence as well as the parties and participants make submissions on each of the conditions under Article 58(1)(b) of the Statute to argue that Mr Yekatom’s detention is *not* necessary, the Chamber addresses them in turn.

i. Assessment of Article 58(1)(b)(i) of the Statute

⁴⁸ See Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II of 23 January 2015 entitled “Decision on ‘Mr Bemba’s Request for provisional release’”, 29 May 2015, ICC-01/05-01/13-970 (the ‘Bemba OA10 Appeal Judgement’), paras 24, 27; see also *Prosecutor v. Gbagbo*, Public redacted version - 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’”, 26 October 2012, ICC-02/11-01/11-278-Red, para. 69.

⁴⁹ Confirmation Decision, ICC-01/14-01/18-403-Red.

⁵⁰ *Prosecutor vs. Jean-Pierre Bemba Gombo*, 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”, 2 December 2009, ICC-01/05-01/08-631-Red, para. 89.

22. The Chamber first turns to Mr Yekatom's arguments concerning the assurance of his presence at trial.
23. The Yekatom Defence submits that Mr Yekatom proposes to return to Bangui, should interim release be granted.⁵¹ The Yekatom Defence asserts that he is 'fully committed to defending himself against the [...] charges and fully prepared to endure the consequences'⁵² and obey the orders of the Court to return to trial.⁵³ The Yekatom Defence adds that he does not have access to 'significant resources' or 'a network of international contacts' that could make him a flight risk.⁵⁴ The Yekatom Defence point out that 'the areas that the Anti-Balaka recaptured from the Seleka are largely under the control of the [CAR] government' and that Mr Yekatom has no incentive to fleeing to areas under the Seleka's control.⁵⁵
24. The Chamber notes that the confirmed charges against Mr Yekatom include both war crimes and crimes against humanity. In particular, the Chamber notes that Mr Yekatom faces charges under Article 8(2)(e)(vii) of the Statute. The Chamber notes that Mr Yekatom is charged with the modes of liability of joint commission under Article 25(3)(a) and, alternatively, ordering crimes under Article 25(3)(b) of the Statute. Considering the grave nature of the charges and the role attributed to Mr Yekatom, the Chamber finds that in the present instance, he would have an incentive to flee, given the potential for a high sentence in case of a conviction, especially following the confirmation of charges.
25. In respect of the means available to Mr Yekatom to abscond, the Chamber considers that, given his position as a member of the CAR parliament during his arrest,⁵⁶ he would continue to exercise influence over his supporters in his immediate and extended community in the CAR.⁵⁷ In particular, the Chamber

⁵¹ Request, ICC-01/14-01/18-438, para. 15.

⁵² Request, ICC-01/14-01/18-438, para. 17.

⁵³ Request, ICC-01/14-01/18-438, para. 22.

⁵⁴ Request, ICC-01/14-01/18-438, para. 19.

⁵⁵ Request, ICC-01/14-01/18-438, para. 20.

⁵⁶ Warrant of Arrest, ICC-01/14-01/18-1-Red, p. 3.

⁵⁷ *See also* [REDACTED].

also has regard to the statements by the CAR authorities concerning the activities of Mr Yekatom's supporters in the area under their control.⁵⁸ The Chamber also notes that the CAR authorities consider 80% of the CAR territory to be under the control of armed groups forming part of the Anti-Balaka.⁵⁹ Therefore, the Chamber considers that Mr Yekatom could have easy recourse to means to flee regardless of his current access to resources, financial or otherwise.

26. In light of the above, the Chamber finds that there is a risk that Mr Yekatom has the resources and means to flee within the CAR, if necessary. Therefore, despite Mr Yekatom's assurances, the Chamber is satisfied that Mr Yekatom continues to pose a flight risk and that detention is necessary to ensure his presence during the trial.

ii. Assessment of Article 58(1)(b)(ii) of the Statute

27. The Chamber turns to its assessment on whether the continued detention is necessary to ensure that Mr Yekatom does not obstruct or endanger investigation or court proceedings.
28. In this respect, the CLRV point out that the security and well-being of those victims who still live in Bangui and surrounding areas will be at risk if Mr Yekatom is allowed to return to the CAR.⁶⁰ The Prosecution and the CLRV express further concerns in this regard because Mr Yekatom now has access to the evidence against him, including identities of Prosecution witnesses, some of whom are also participating victims in the present case.⁶¹ The Prosecution adds that if released to the CAR, Mr Yekatom could contact Prosecution witnesses, directly or indirectly, thereby improperly influencing their evidence, and there would be no effective means to prevent it.⁶²

⁵⁸ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 7-8, para. 7.

⁵⁹ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 8, para. 8.

⁶⁰ CLRV Response, ICC-01/14-01/18-450, paras 28, 37.

⁶¹ Prosecution Response, ICC-01/14-01/18-452, para. 10; CLRV Response, ICC-01/14-01/18-450, paras 28, 36.

⁶² Prosecution Response, ICC-01/14-01/18-452, para. 10.

29. The Chamber notes that the Registry and the CAR authorities consider that the 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.⁶³ [REDACTED].⁶⁴ The Chamber recalls its earlier conclusions regarding Mr Yekatom's position at the time of his arrest and the influence he may continue to exercise over his supporters in the CAR.⁶⁵
30. Indeed, the Chamber considers that Mr Yekatom potentially continues to exercise influence in the community to the detriment of the victims' safety. In this context, the Chamber also notes that [REDACTED].⁶⁶ Furthermore, the Chamber recalls its previous finding that [REDACTED].⁶⁷ As an additional compounding factor, the Chamber further notes the current challenges indicated by the Registry.⁶⁸
31. For these reasons, the Chamber is satisfied that Mr Yekatom's detention also continues to remain necessary to ensure that he does not obstruct or endanger the investigation or the court proceedings, particularly through interference with victims and witnesses.
- iii. Assessment of Article 58(1)(b)(iii) of the Statute*
32. The Chamber turns to the risk of continued commission of charged crime or a related crime, within the jurisdiction of the Court and which arises out of the same circumstances.
33. The Yekatom Defence points out that the armed conflict in the CAR at the moment is 'less intense' and not ongoing in the area where Mr Yekatom would

⁶³ Annex II to the Registry Submissions in View of the upcoming Status Conference, 8 April 2020, ICC-01/14-01/18-470-Conf-Exp-AnxII, confidential *ex parte*, only available to the Registry (a confidential redacted version was notified on 17 April 2020) (the 'Annex II to the Registry Submissions on Status Conference'), para. 2; Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, paras 10-11.

⁶⁴ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, para. 11.

⁶⁵ See para. 25 above.

⁶⁶ Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence, and the Registry, para. 22 (the 'Restrictions Decision'); see also para. 28.

⁶⁷ Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 21.

⁶⁸ Registry Report in View of the Status Conference, ICC-01/14-01/18-470-Conf-AnxII-Red, para. 15.

reside.⁶⁹ The Yekatom Defence also submits that Mr Yekatom has ‘no intention in engaging in any violent acts while on interim release’.⁷⁰ The Prosecution submits that the factors taken into account by PTC II in this respect, *i.e.* influence over his Anti-Balaka group and the political situation in the CAR, remain substantially unchanged and for this reason, Mr Yekatom continues to remain likely to commit further violent acts if released.⁷¹ The CLRV echo these concerns.⁷² The CLRV point out that, contrary to Yekatom Defence’s assertions, Mr Yekatom’s release to the CAR will be an additional destabilising factor.⁷³

34. The Chamber notes that the CAR authorities state that, given that [REDACTED].⁷⁴ In this regard, the Chamber also recalls that the CAR authorities maintain that 80% of the CAR territory is under the control of armed groups forming part of the Anti-Balaka.⁷⁵ The Chamber further notes that the CAR authorities [REDACTED]⁷⁶ and [REDACTED].⁷⁷ [REDACTED].⁷⁸ They further observe that even though the conflict may be less intense than before, the situation continues to remain uncertain and volatile,⁷⁹ including in Bangui, in the run up to the presidential elections in 2020 and rising political tensions.⁸⁰ The Chamber also notes the challenges in the implementation of the February 2019 Peace Agreements and the rising number of clashes between armed groups, signatory to these agreements.⁸¹
35. For these reasons, the Chamber is satisfied that Mr Yekatom’s detention remains also necessary to prevent the risk of continuing commission of crimes

⁶⁹ Request, ICC-01/14-01/18-438, para. 30.

⁷⁰ Request, ICC-01/14-01/18-438, para. 21.

⁷¹ Prosecution Response, ICC-01/14-01/18-452, para. 13.

⁷² CLRV Response, ICC-01/14-01/18-450, para. 31.

⁷³ CLRV Response, ICC-01/14-01/18-450, para. 44; *see also* paras 39-43.

⁷⁴ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 12.

⁷⁵ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 6-8, paras 2, 8.

⁷⁶ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 7-8, paras 6, 9.

⁷⁷ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, pp 7-8, para. 7.

⁷⁸ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 14.

⁷⁹ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 14; *see also* Registry Report in View of the Status Conference, ICC-01/14-01/18-470-Conf-AnxII-Red, para. 11.

⁸⁰ Registry Report in View of the Status Conference, ICC-01/14-01/18-470-Conf-AnxII-Red, para. 13.

⁸¹ Registry Report in View of the Status Conference, ICC-01/14-01/18-470-Conf-AnxII-Red, para. 3.

(or related crimes) within the jurisdiction of the Court, arising from the same circumstances.

iv. Conclusion

36. Having regard to the above, the Chamber is satisfied that Mr Yekatom's detention continues to remain necessary under each of them. The Chamber accordingly will not consider Mr Yekatom's Personal Undertakings at this stage.

B. Length of detention and delay in proceedings

37. The Chamber now turns to the Yekatom Defence's arguments concerning the length of detention and the delay in proceedings. The Yekatom Defence requests a cumulative assessment of delays in the proceedings attributable to the Prosecution, that, according to the Request, 'tip the scales in favour of interim release'.⁸² According to the Yekatom Defence, these delays are caused by (i) the Prosecution having 'preferred to join Mr Yekatom's trial with that of another accused';⁸³ (ii) the postponement of the hearing on the confirmation of the charges;⁸⁴ and (iii) the Prosecution 'seeking reconsideration [of,] or leave to appeal'⁸⁵ the Confirmation Decision that 'delays the case even further'.⁸⁶ The Yekatom Defence also avers that since the Prosecution works in both languages, it could have sought reconsideration of, or leave to appeal, the Confirmation Decision before receiving the French translation of the Confirmation Decision rather than waiting for the two months it took to prepare the French translation.⁸⁷

38. The Chamber recalls that according to Article 60(4) of the Statute, a Chamber 'shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor', and that if such delay occurs, it shall 'consider releasing the person, with or without conditions'.

⁸² Request, ICC-01/14-01/18-438, para. 40.

⁸³ Request, ICC-01/14-01/18-438, para. 41; *see also* para. 7.

⁸⁴ Request, ICC-01/14-01/18-438, paras 8, 38.

⁸⁵ Request, ICC-01/14-01/18-438, para. 41.

⁸⁶ Request, ICC-01/14-01/18-438, para. 38; *see also* paras 10-11.

⁸⁷ Request, ICC-01/14-01/18-438, paras 10-11.

39. At the outset, the Chamber notes that while the Yekatom Defence attributes the delays to the Prosecution, it does not appear to be requesting an assessment pursuant to Article 60(4) of the Statute but rather that ‘equitable considerations warrant strong consideration of interim release under these circumstances’.⁸⁸
40. In this respect, the Chamber recalls that the Trial Chamber in *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, upon further guidance from the Appeals Chamber on this issue, considered that a chamber, in its decision pursuant to Article 60(2) or (3) of the Statute, has the discretion to determine that a person has been detained for an unreasonable period even in the absence of an inexcusable delay by the Prosecution.⁸⁹ It also considered that the duration of time in detention pending trial is a factor that needs to be considered along with the risks that are being reviewed, in order to determine whether or not, all factors being considered, the continued detention ‘stops being reasonable’.⁹⁰ This determination requires a Chamber to assess whether the risks related to Article 58(1)(b) of the Statute continue to exist against the duration of detention taking into account relevant factors that may have delayed the proceedings and circumstances of the case as a whole.⁹¹
41. For these reasons, the Chamber will assess the factors causing delays pointed out by the Yekatom Defence and determine whether or not, having regard to the risks assessed above, the detention has stopped being reasonable.
42. As regards the submissions on the delay on account of the joinder,⁹² the Chamber notes that Yekatom Defence was opposed to joining the two cases and requested PTC II to postpone its decision on joinder.⁹³ The Chamber further notes that PTC II specifically addressed the practical implications of the

⁸⁸ Request, ICC-01/14-01/18-438, para. 39.

⁸⁹ Trial Chamber VII, *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Decision Regarding Interim Release, 17 August 2015, ICC-01/05-01/13-1151 (the ‘*Bemba et al.* Decision’), para. 16, referring to *Bemba* OA10 Appeal Judgement, ICC-01/05-01/13-970, para. 23; Appeals Chamber, *Judgment on the appeals against Pre-Trial Chamber II’s decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification*, 29 May 2015, ICC-01/05-01/13-969, para. 43.

⁹⁰ *Bemba et al.* Decision, para. 16.

⁹¹ *Bemba et al.* Decision, para. 16.

⁹² Request, ICC-01/14-01/18-438, para. 41.

⁹³ Decision on Joinder, ICC-01/14-01/18-87, para. 6.

joinder,⁹⁴ including the possible delays in setting the date of the confirmation for both accused.⁹⁵ In joining the cases against both accused, PTC II reasoned that joint proceedings against them would serve to enhance the fairness and expeditiousness of the proceedings.⁹⁶ PTC II noted that the Prosecution and the Yekatom Defence did not oppose the date being set to 18 June 2019 to allow adequate time to prepare any challenges to the evidence and the charges, if any.⁹⁷ The PTC II also considered that further amendments to this date would only be entertained in ‘exceptional circumstances’.⁹⁸ For these reasons, the Chamber finds that this delay does not amount to inexcusable delay attributable to the Prosecution.

43. As regards the delay on account of the Prosecution’s request for a further postponement of the confirmation hearing,⁹⁹ the Chamber notes that PTC II granted this delay ‘on an exceptional basis’ in full knowledge of the initial postponement.¹⁰⁰ PTC II noted that, in the specific circumstances of the case, this delay was necessary in view of the fulfilment of the Court’s and the Prosecution’s obligation in respect of protective measures.¹⁰¹ For these reasons, while this delay was on account of a request made by the Prosecution, the Chamber does not find that this delay was inexcusable in view of the Prosecution’s statutory obligations of the Court.
44. The Chamber now turns to the Yekatom Defence’s submissions concerning the delays on account of the Prosecution Request for Reconsideration of the Confirmation Decision.¹⁰² The Chamber notes that PTC II has since issued a decision rejecting this request.¹⁰³ The Yekatom Defence’s arguments

⁹⁴ Decision on Joinder, ICC-01/14-01/18-87, paras 15-23.

⁹⁵ Decision on Joinder, ICC-01/14-01/18-87, paras 16-18.

⁹⁶ Decision on Joinder, ICC-01/14-01/18-87, para. 13.

⁹⁷ Decision on Joinder, ICC-01/14-01/18-87, paras 17-18.

⁹⁸ Decision on Joinder, ICC-01/14-01/18-87, para. 18.

⁹⁹ Request, ICC-01/14-01/18-438, para. 38.

¹⁰⁰ Decision on the Postponement Request, ICC-01/14-01/18-199, para. 39.

¹⁰¹ Decision on the Postponement Request, ICC-01/14-01/18-199, paras 37, 39.

¹⁰² Request, ICC-01/14-01/18-438, para. 38; *see also* paras 10-11.

¹⁰³ PTC Reconsideration Decision, ICC-01/14-01/18-447, para. 34.

concerning the delays that would have been caused ‘[i]f leave to appeal is granted’¹⁰⁴ are dismissed for being speculative.

45. The Chamber now turns to the Yekatom Defence arguments that the Prosecution filed the Prosecution Request for Reconsideration of the Confirmation Decision ‘at the very last possible moment’ after the French translation of the Confirmation Decision was filed, causing further delays.¹⁰⁵ The Yekatom Defence argues that because the Prosecution works in both languages, this request could have been filed before receiving the French translation rather than waiting two months.¹⁰⁶ The Chamber notes that PTC II granted a *proprio motu* suspension of the time limits to file an application for leave to appeal until the French translation of the Confirmation Decision on account of the fact that neither accused is proficient in English and both accused speak French.¹⁰⁷ The Chamber further notes that PTC II stated that the statutory texts of the Court mandate that a decision on the confirmation of charges be available to the accused in his/her language.¹⁰⁸ PTC II reasoned that the availability of a French translation would also allow the co-accused to contribute to their defence, in particular, to ‘the advisability and feasibility of applying for leave to appeal’.¹⁰⁹ The Chamber also notes that neither co-accused requested leave to appeal against the Confirmation Decision following the filing of the official French translation of the Confirmation Decision.¹¹⁰ Further, the Chamber is not persuaded by the Yekatom Defence’s argument that the Prosecution’s ability to work in both languages has any bearing on the Chamber’s assessment in the present instance. The Chamber is of the view that the Prosecution requesting a leave to appeal ‘before receiving the French translation [of the Confirmation Decision] rather than waiting two months’

¹⁰⁴ Request, ICC-01/14-01/18-438, para. 38.

¹⁰⁵ Request, ICC-01/14-01/18-438, para. 11.

¹⁰⁶ Request, ICC-01/14-01/18-438, para. 11.

¹⁰⁷ Confirmation Decision, ICC-01/14-01/18-403-Red, para. 240.

¹⁰⁸ Confirmation Decision, ICC-01/14-01/18-403-Red, para. 240.

¹⁰⁹ Confirmation Decision, ICC-01/14-01/18-403-Red, para. 240.

¹¹⁰ Ngaïssona Defence, Defence request for a swift transmission of the case record to the Presidency pursuant to Rule 129 of the Rules of Procedure and Evidence, ICC-01/14-01/18-434, para. 10; Request, ICC-01/14-01/18-438, para. 11. *See also* Yekatom Defence Opposition to Prosecution’s Request for Reconsideration or Leave to Appeal Confirmation Decision, 6 March 2020, ICC-01/14-01/18-443, para. 4.

would not have shortened the period required for the translation of the Confirmation Decision. Nor would it have relieved the Chamber of ensuring that the statutory requirement of the accused being properly informed of the nature, cause, and content of the charges in French remains fulfilled.

46. For these reasons, the Chamber finds that none of the delays discussed above were caused by an inexcusable delay by the Prosecution. The Chamber finds that none of the factors relevant to assessing delay pointed out by the Yekatom Defence justify release on grounds of unreasonableness of the duration of detention. The Chamber is further not persuaded that factors causing delays in the proceedings thus far and the circumstances of the present case as a whole, including the length of detention, outweigh the Chamber's assessment of the risks related to Article 58 (1) of the Statute elaborated above.
47. Lastly, the Chamber acknowledges its obligation pursuant to Articles 60(3) of the Statute to periodically review Mr Yekatom's detention and will do so in accordance with the statutory framework.

C. Alleged violation of Article 59 of the Statute

48. At the outset, the Chamber notes that the submissions made by the Yekatom Defence do not concern Article 58(1)(b) of the Statute, but are based on equity considerations. Mr Yekatom appears to be raising violations in respect of two procedures, namely, (i) compliance with articles 349-352 of the Penal Procedure Code of the CAR;¹¹¹ and (ii) representation by the duty counsel provided by the Court.¹¹² Mr Yekatom attributes these violations, in part, to the Court for providing him with duty counsel Ms Oumballo who was later found to have a conflict of interest¹¹³ and who allegedly did not advise him on his right to seek interim release.¹¹⁴ Mr Yekatom also submits that, because the Court pressed the

¹¹¹ Request, ICC-01/14-01/18-438, paras 34-36.

¹¹² Request, ICC-01/14-01/18-438, para. 35.

¹¹³ Transcript of hearing, ICC-01/14-01/18-T-004, pp. 65-66.

¹¹⁴ Request, ICC-01/14-01/18-438, para. 35.

CAR authorities to transfer him into the custody of the Court ‘immediately’, ‘normal procedure under national law’ was not respected.¹¹⁵

49. The Chamber will not review the fulfilment of procedures under the national law of the CAR. The Chamber considers it sufficient that the CAR authorities affirm that the procedure pursuant to Articles 349-351 of the Penal Procedure Code of the CAR was observed.¹¹⁶ Further, the Chamber will limit its assessment to those violations that Mr Yekatom attributes to the Court.
50. As regards the allegedly conflicted duty counsel and alleged lack of legal advice, the Chamber recalls that the CAR authorities have affirmed that, following his arrest, Mr Yekatom was informed of his rights and did not request interim release at this time.¹¹⁷ Moreover, the Chamber notes that Mr Yekatom was assisted not only by Ms Oumballo, but more importantly also by Mr Morouba, a CAR lawyer of Mr Yekatom’s choosing, during his transfer to the Court.¹¹⁸ For these reasons, and irrespective of a potential conflict of interest, the Chamber is of the view that Ms Oumballo’s appointment could not have led to violations under Article 59 of the Statute.
51. Lastly, noting the CAR authorities’ confirmation that national procedure was observed, the Chamber sees no merit in Mr Yekatom’s submission that national procedure could not be observed due to the Court’s alleged pressure on the CAR authorities to expedite the process.
52. In light of the above, the Chamber rejects Mr Yekatom’s request that interim release be granted due to equity considerations under Article 59 of the Statute.

¹¹⁵ Request, ICC-01/14-01/18-438, paras 34-36.

¹¹⁶ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 15. *See also* Registry Report on Mr Yekatom’s Arrest and Surrender, ICC-01/14-01/18-17-US-Exp-Red, para. 13.

¹¹⁷ Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 15; Registry Report on Mr Yekatom’s Arrest and Surrender, ICC-01/14-01/18-17-US-Exp-Red, para. 11.

¹¹⁸ Registry Report on Mr Yekatom’s Arrest and Surrender, ICC-01/14-01/18-17-US-Exp-Red, paras 13, 19, 20, 23; Annex II to the Registry Report on Mr Yekatom’s Arrest and Surrender, ICC-01/14-01/18-17-US-Exp-AnxII-Red, pp 3-4; Observations of the CAR, ICC-01/14-01/18-478-Conf-AnxII, p. 9, para. 15.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 24 July 2020

At The Hague, The Netherlands