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**No. ICC-01/14-01/18
Date: 7 September 2020**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public redacted version of

Decision on the Second Yekatom Defence Motion 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(3), 61(11), 64(2) and (6)(a), and 68(1) of the Rome Statute (the ‘Statute’) and Rule 118(2) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Second Yekatom Defence Motion for Interim Release’.

I. Procedural history and submissions

1. The Chamber recalls the procedural history set out in its ‘Decision on the Yekatom Defence Application for Interim Release’ (the ‘Initial Decision’).¹
2. On 28 April 2020, in its Initial Decision under Article 60(2) of the Statute, the Chamber rejected Mr Yekatom’s request for interim release to the Central African Republic² (the ‘Initial Request’ and the ‘CAR’, respectively), after having received submissions from the Office of the Prosecutor (the ‘Prosecution’)³ and 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’),⁴ as well as observations from the host State (the ‘Initial Host State Observations’) and the CAR⁵ (the ‘CAR Observations’).⁶
3. On 16 July 2020, the Chamber decided that the trial will commence on 9 February 2021.⁷

¹ 28 April 2020, ICC-01/14-01/18-495-Conf-Exp (confidential redacted version notified the same day, ICC-01/14-01/18-495-Conf-Red and second confidential redacted version notified on 24 July 2020, ICC-01/14-01/18-495-Conf-Red2; public redacted version notified on 24 July 2020, ICC-01/14-01/18-495-Red3).

² Yekatom Defence Application for Interim Release, 3 March 2020, ICC-01/14-01/18-438 (with public Annexes A, B, C and confidential Annexes D, E, F).

³ Prosecution’s Response to Yekatom’s Request for Interim Release, 16 March 2020, ICC-01/14-01/18-452.

⁴ Common Legal Representatives’ Joint Response to the ‘Yekatom Defence Application for Interim Release’, 16 March 2020, ICC-01/14-01/18-450.

⁵ 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, containing the Initial Host State Observations; and confidential Annex II, ICC-01/14-01/18-478-Conf-AnxII, containing the CAR Observations).

⁶ Initial Decision, ICC-01/14-01/18-495-Red3, p. 20. *See further* below, II. Analysis (1) Review of Mr Yekatom’s detention.

⁷ Decision Setting the Commencement Date of the Trial, ICC-01/14-01/18-589, p. 10.

4. On 27 July 2020, the Yekatom Defence (the ‘Defence’) filed its second motion requesting Mr Yekatom’s interim release (the ‘Request’).⁸ The Defence proposes that Mr Yekatom be released to the Kingdom of Belgium (hereinafter: ‘Belgium’) instead of the CAR, as requested in its Initial Request. It submits that the ‘availability of interim release in Belgium would constitute [a] chang[e] of circumstances’, warranting the Chamber’s reconsideration of its Initial Decision.⁹ Furthermore, the Defence states that, in light of the geographical proximity to the host State, Mr Yekatom’s release to Belgium would not disrupt the Defence’s trial preparation.¹⁰
5. In support of its Request, the Defence argues that the Initial Decision denying interim release was largely based on the ‘negative assessment’ provided by the CAR authorities, who were not in favour of Mr Yekatom’s release to their territory.¹¹ It submits that the factors which led to the Chamber’s findings in the Initial Decision would not be present in case of a release to Belgium. Specifically, the Defence submits that: (i) there is no flight risk because Mr Yekatom does not have a network of supporters or influence in Belgium;¹² (ii) there is no risk of witness interference in Belgium in the absence of supporters, influence and means to interfere *in loco*, and any potential risks resulting from Mr Yekatom’s phone communications could be remedied by imposing conditions;¹³ and (iii) there is no reason to believe that Mr Yekatom would commit any crimes in Belgium.¹⁴
6. On 6 August 2020, following an order by the Chamber to submit observations by 19 August 2020,¹⁵ the Registry transmitted Belgium’s request for an

⁸ Second Yekatom Defence Motion for Interim Release, ICC-01/14-01/18-603-Conf (public redacted version notified the same day, ICC-01/14-01/18-603-Red).

⁹ Request, ICC-01/14-01/18-603-Red, para. 13.

¹⁰ Request, ICC-01/14-01/18-603-Red, para. 26.

¹¹ Request, ICC-01/14-01/18-603-Red, para. 11.

¹² Request, ICC-01/14-01/18-603-Red, paras 15-19.

¹³ Request, ICC-01/14-01/18-603-Red, paras 20-21.

¹⁴ Request, ICC-01/14-01/18-603-Red, para. 22.

¹⁵ Order Requesting Observations from relevant States on Interim Release, 29 July 2020, ICC-01/14-01/18-608.

extension of the imposed deadline (the ‘Extension Request’).¹⁶ On the same day, upon an order from the Chamber seeking observations,¹⁷ the Defence ‘consent[ed] that the upcoming Trial Chamber decision may fall outside the deadline prescribed in Rule 118(2) of the Rules’, if the extension is granted.¹⁸

7. On 7 August 2020, the CLRV responded to the Request.¹⁹ The CLRV submit that the detention should be maintained as the conditions under Article 58(1) of the Statute continue to be met.²⁰ Notably, the CLRV argue that: (i) the fact that the Defence is now asking for release to Belgium instead of the CAR does not constitute a changed circumstance under Article 60(3) of the Statute;²¹ (ii) the conditions set forth in Article 58(1) of the Statute persist and interim release to Belgium and other conditions proposed by the Defence are not sufficient to mitigate the flight risks or the risks to victims’ and witnesses’ safety and to ensure the preservation of evidence and the integrity of the proceedings;²² and (iii) interim release to Belgium would not be appropriate given the start date of trial and other factors, such as the ‘onerous burden it would impose on the Court and the volatility of the health situation in Belgium and The Netherlands caused by the COVID-19 crisis’.²³
8. On the same day, the Prosecution responded to the Request.²⁴ The Prosecution submits that the Request should be rejected because: (i) ‘there are no favourable changed circumstances since the [Initial] Decision on Detention’;²⁵ (ii) ‘the purported change – namely, the possibility of the Accused’s release in the territory of the Belgium is speculative’;²⁶ and (iii) ‘even if the Belgian

¹⁶ Transmission of a request for extension from the Kingdom of Belgium to provide observations on interim release of Mr Alfred Yekatom, ICC-01/14-01/18-615 (with one annex, containing the Extension Request).

¹⁷ Email from the Chamber, 6 August 2020, at 16:16.

¹⁸ Email from the Yekatom Defence to the Chamber, 6 August 2020, at 16:49.

¹⁹ Common Legal Representatives’ Joint Response to the “Second Yekatom Defence Motion for Interim Release”, ICC-01/14-01/18-616-Conf (the ‘CLRV Response’).

²⁰ CLRV Response, ICC-01/14-01/18-616-Conf, para. 2.

²¹ CLRV Response, ICC-01/14-01/18-616-Conf, paras 2, 19.

²² CLRV Response, ICC-01/14-01/18-616-Conf, paras 3, 20-34.

²³ CLRV Response, ICC-01/14-01/18-616-Conf, paras 4, 35-39.

²⁴ Prosecution’s Response to ‘Second Yekatom Defence Motion for Interim Release Request for Interim Release’ (ICC-01/14-01/18-603-Conf), ICC-01/14-01/18-617-Conf (the ‘Prosecution Response’).

²⁵ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 1, 3-7.

²⁶ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 1, 8-9.

authorities are willing to accept [Mr Yekatom], the alternative conditions otherwise requiring detention under article 58(1) continue to prevail, and there are additional circumstances militating against his interim release’.²⁷

9. In relation to the risks under Article 58(1)(b) of the Statute, the Prosecution submits, *inter alia*, that: (i) Mr Yekatom’s flight risk persists even if released to Belgium;²⁸ (ii) Mr Yekatom would still be able to influence witnesses from Belgium (stressing in particular the availability of other means of communication, Mr Yekatom’s [REDACTED] and the Chamber’s diminished ability to control the conduct of the accused outside of the Detention Unit);²⁹ (iii) Mr Yekatom does not need to be present in the CAR to cause crimes to be committed, bearing in mind that one of the confirmed modes of liability is the ordering of crimes.³⁰ In addition, the Prosecution submits that the [REDACTED], the accused’s increased knowledge of the Prosecution witnesses in light of the Preliminary Witness List³¹ and the announced trial date are new circumstances further warranting Mr Yekatom’s continued detention.³²
10. On 11 August 2020, noting the parties’ and participants’ views,³³ and in particular the Defence’s agreement to the delayed review of Mr Yekatom’s detention, the Chamber granted Belgium’s Extension Request.³⁴
11. On 21 August 2020, the Chamber found that Mr Yekatom [REDACTED].³⁵

²⁷ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 1, 10-32.

²⁸ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 12-15.

²⁹ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 16-22.

³⁰ Prosecution Response, ICC-01/14-01/18-617-Conf, paras 23-24.

³¹ See Prosecution’s Submission in Compliance of the Single Judge’s “Order to provide a Preliminary Witness List”, ICC-01/14-01/18-528, ICC-01/14-01/18-553 (with confidential Annex A; and confidential *ex parte* Annex B, only available to the Prosecution).

³² Prosecution Response, ICC-01/14-01/18-617-Conf, paras 26-30.

³³ The Yekatom Defence indicated that it ‘agrees to the Kingdom of Belgium request for an extension of the deadline’. Similarly, the Prosecution and CLRV indicated that they do not oppose the Extension Request. See Email from the Yekatom Defence to the Chamber, 6 August 2020, at 16:49, email from the Prosecution to the Chamber, 10 August 2020, at 09:24, and email from the CLRV to the Chamber, 10 August 2020, at 08:54.

³⁴ Decision on the Request for Extension of Time by the Kingdom of Belgium, ICC-01/14-01/18-621 (the ‘Extension Request Decision’).

³⁵ Second Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-627-Conf, para. 16.

12. On 27 August 2020, the Registry transmitted observations from Belgium and the host State on the Request.³⁶ The host State recalled its Initial Host State Observations.³⁷ Belgium stated that it does not favour Mr Yekatom's interim release to Belgian territory.³⁸ It reasoned, *inter alia*, that: (i) Mr Yekatom does not have any personal links or support in Belgium, which is a determinative factor for its decisions on interim release;³⁹ (ii) the impact of the sanitary measures imposed by Belgium in response to the Coronavirus Pandemic would encumber cross-border travel of Mr Yekatom and his Defence team, due to the restrictions in place;⁴⁰ and (iii) the burden of organising interim release to Belgium is disproportionate to its anticipated duration.⁴¹
13. On 31 August 2020, the Prosecution submitted its Provisional Witness List, along with brief summaries of the witnesses' anticipated testimonies, information on the type of witness, and the intended mode of testimony.⁴²

II. Analysis

A. Applicable law

14. The Chamber recalls its obligation under Article 60(3) of the Statute to periodically review its first ruling on the release or detention rendered pursuant to Article 60(2) of the Statute.⁴³ Pursuant to Rule 118(2) of the Rules, the Chamber shall do so 'at least every 120 days'.

³⁶ Transmission des réponses de la Belgique et des Pays-Bas concernant la demande de mise en liberté provisoire de M. Alfred Yekatom, ICC-01/14-01/18-633 (with public Annex I, ICC-01/14-01/18-633-AnxI, containing the observations from Belgium [hereinafter: 'Belgium's Observations']; and confidential Annex II, ICC-01/14-01/18-633-Conf-AnxII, containing the observations from the host State, public redacted version of Annex II notified the same day, ICC-01/14-01/18-633-AnxII-Red [hereinafter: 'Host State Observations']).

³⁷ Host State Observations, ICC-01/14-01/18-633-AnxII-Red, p. 2.

³⁸ Belgium's Observations, ICC-01/14-01/18-633-AnxI, p. 8.

³⁹ Belgium's Observations, ICC-01/14-01/18-633-AnxI, pp 5, 8.

⁴⁰ Belgium's Observations, ICC-01/14-01/18-633-AnxI, pp. 5-6.

⁴¹ Belgium's Observations, ICC-01/14-01/18-633-AnxI, pp. 6-7.

⁴² Notification of the Provisional List of Prosecution Witnesses with a Summary of their Anticipated Testimony, ICC-01/14-01/18-642-Conf (with confidential Annex A, containing the Provisional Witness List).

⁴³ See Initial Decision, ICC-01/14-01/18-495-Red3, para. 47. See also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, 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', 13 February 2007, ICC-01/04-01/06-824 (the '*Lubanga* OA 7 Judgment'), paras 3, 94.

15. As regards the scope of review under Article 60(3) of the Statute, the Chamber recalls that it does not need to make a decision *ab initio*.⁴⁴ Rather, it must assess whether there are any changed circumstances, and if so, whether these changed circumstances have an impact on the previous ruling under review.⁴⁵
16. As consistently held by the Appeals Chamber, the requirement of changed circumstances ‘imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary’.⁴⁶ Consequently, a chamber reviewing a person’s detention under Article 60(3) of the Statute must ‘revert to the ruling on detention to determine whether there has been a change in the circumstances underpinning the ruling and whether there are any new circumstances that have a bearing on the conditions under article 58(1) of the

⁴⁴ See Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled ‘Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’, 19 November 2010, ICC-01/05-01/08-1019 (the ‘*Bemba* OA 4 Judgment’), para. 53. See also Request, ICC-01/14-01/18-603-Red, para. 10.

⁴⁵ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”, 29 October 2013, ICC-02/11-01/11-548-Conf (public redacted version notified the same day, ICC-02/11-01/11-548-Red) (the ‘*Gbagbo* AO 4 Judgment’), paras 1, 40, 53; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled “Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba’”, 5 March 2012, ICC-01/05-01/08-2151-Conf (public redacted version notified the same day, ICC-01/05-01/08-2151-Red), paras 1, 31; *The Prosecutor v. Laurent 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 ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’”, 26 October 2012, ICC-02/11-01/11-278-Conf (public redacted version notified the same day, ICC-02/11-01/11-278-Red) (the ‘*Gbagbo* OA 1 Judgment’), paras 23-24.

⁴⁶ Appeals Chamber, *The Prosecutor v. 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-Conf (public redacted version notified the same day, ICC-01/05-01/08-631-Red) (the ‘*Bemba* OA 2 Judgment’), paras 1, 60; *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 51; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled ‘Decision on Applications for Provisional Release’, 19 August 2011, ICC-01/05-01/08-1626-Conf (public redacted version notified the same day, ICC-01/05-01/08-1626-Red) (the ‘*Bemba* OA 7 Judgment’), para. 71; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled ‘Decision on the “Demande demise en liberté de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”’, 9 September 2011, ICC-01/05-01/08-1722 (the ‘*Bemba* OA 8 Judgment’), para. 30.

Statute’.⁴⁷ A change in circumstances must be demonstrated on a concrete basis, ‘[h]ypotheticals and conditionals’ are insufficient.⁴⁸ When assessing changed circumstances, a chamber must consider all available information.⁴⁹

17. As held by the Appeals Chamber, chambers do not need to enter findings ‘on the circumstances already decided upon’,⁵⁰ or ‘entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed’.⁵¹

B. Review of Mr Yekatom’s detention

1. Initial Decision

18. Subject of the present review is the Chamber’s Initial Decision, in which it found the conditions set forth in Article 58(1) of the Statute to be fulfilled and, consequently, maintained Mr Yekatom’s detention. First, the Chamber was satisfied, pursuant to Article 58(1)(a) of the Statute, that Mr Yekatom allegedly committed a crime within the jurisdiction of the Court.⁵² Second, it considered that Mr Yekatom’s continued detention was necessary under Article 58(1)(b) of the Statute to (i) ensure his appearance at trial, (ii) ensure that he does not obstruct or endanger the investigation or the court proceedings, in particular, by

⁴⁷ *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 52; *Bemba* OA 7 Judgment, ICC-01/05-01/08-1626-Red, para. 71; *Bemba* OA 8 Judgment, ICC-01/05-01/08-1722, para. 30; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles 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”, 19 July 2017, ICC-02/11-01/15-992-Conf (public redacted version notified the same day, ICC-02/11-01/15-992-Red), para. 39.

⁴⁸ See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Applications for Provisional Release, 27 June 2011, ICC-01/05-01/08-1565-Conf (public redacted version notified on 16 August 2011, ICC-01/05-01/08-1565-Red), para. 58, citing 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”, 16 December 2008, ICC-01/05-01/08-323, para. 55. See also *Lubanga* OA 7 Judgment, ICC-01/04-01/06-824, para. 138.

⁴⁹ See also Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Review of Detention and Decision on the ‘Third Defence request for interim release’, 16 September 2011, ICC-01/04-01/10-428, para. 36, citing *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 52.

⁵⁰ *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 53; *Bemba* OA 7 Judgment, ICC-01/05-01/08-1626-Red, para. 60; *Gbagbo* AO 4 Judgment, ICC-02/11-01/11-548-Red, para. 52.

⁵¹ *Bemba* OA 4 Judgment, ICC-01/05-01/08-1019, para. 53; *Bemba* OA 7 Judgment, ICC-01/05-01/08-1626-Red, para. 60.

⁵² Initial Decision, ICC-01/14-01/18-495-Red3, para. 20.

interfering with victims and witnesses, and (iii) prevent the commission of crimes.⁵³

19. The Chamber recalls the circumstances underpinning the findings in the Initial Decision (the ‘Initial Circumstances’):

- i.* the confirmation of charges against Mr Yekatom,⁵⁴ including charges for both war crimes and crimes against humanity, and modes of liability under Article 25(3)(a) or (b) of the Statute;⁵⁵
- ii.* the grave nature of the charges and of the role attributed to Mr Yekatom, as well as the potential for a high sentence in case of a conviction;⁵⁶
- iii.* Mr Yekatom’s position as a member of the CAR Parliament at the time of his arrest, and continued influence over his supporters in his ‘immediate and extended community in the CAR’;⁵⁷
- iv.* Mr Yekatom’s propensity to use violent means to achieve his ends;⁵⁸
- v.* the extent of control by the Anti-Balaka over CAR territory and their activities;⁵⁹
- vi.* the activities of Mr Yekatom’s supporters, who resort to illegal acts in areas under their control;⁶⁰
- vii.* the political and security dynamics/situation in the CAR;⁶¹
- viii.* certain victims’ fear of reprisals, should Mr Yekatom be released;⁶²
- ix.* [REDACTED];⁶³
- x.* Mr Yekatom’s knowledge of witnesses’ identities;⁶⁴
- xi.* [REDACTED].⁶⁵

⁵³ Initial Decision, ICC-01/14-01/18-495-Red3, paras 21-36.

⁵⁴ Initial Decision, ICC-01/14-01/18-495-Red3, para. 20.

⁵⁵ Initial Decision, ICC-01/14-01/18-495-Red3, para. 24.

⁵⁶ Initial Decision, ICC-01/14-01/18-495-Red3, para. 24.

⁵⁷ Initial Decision, ICC-01/14-01/18-495-Red3, paras 25, 29.

⁵⁸ Initial Decision, ICC-01/14-01/18-495-Conf-Red2, para. 34.

⁵⁹ Initial Decision, ICC-01/14-01/18-495-Red3, paras 25, 34.

⁶⁰ Initial Decision, ICC-01/14-01/18-495-Red3, para. 25.

⁶¹ Initial Decision, ICC-01/14-01/18-495-Red3, paras 29, 34.

⁶² Initial Decision, ICC-01/14-01/18-495-Conf-Red2, para. [REDACTED].

⁶³ Initial Decision, ICC-01/14-01/18-495-Conf-Exp, para. 30.

⁶⁴ Initial Decision, ICC-01/14-01/18-495-Conf-Exp, para. 30.

⁶⁵ Initial Decision, ICC-01/14-01/18-495-Conf-Exp, para. 30.

2. *Timing of the periodic review*

20. Before turning to its assessment whether a modification of its ruling in the Initial Decision is warranted, the Chamber recalls that pursuant to Rule 118(2) of the Rules, it shall review the accused's detention 'at least every 120 days'.
21. Although the present decision is issued more than 120 days after the Initial Decision, the Chamber considers this delay to be justified by the circumstances at hand, namely the time extension requested by Belgium to file its observations as the State to whose territory Mr Yekatom seeks to be released, and the Defence's consent to a delayed review under Article 60(3) of the Statute, which was also not opposed by the Prosecution or the CLRV.⁶⁶

3. *Changed circumstances*

22. In the following, the Chamber will assess whether any of the Initial Circumstances have changed or whether there are any new circumstances. In the affirmative, the Chamber will assess whether these changes have a bearing on its Initial Decision.
23. In this context, the Chamber also recalls that the parties alleged the following changed and/or new circumstances: (i) the accused's request to be released to a new country and the potential availability of release to Belgium, (ii) [REDACTED], (iii) the accused's increased knowledge of Prosecution witnesses, and (iv) the setting of the trial commencement date.
24. First, the Chamber does not consider the fact that Mr Yekatom now seeks to be released to Belgium – as opposed to the CAR, as in his prior request – or the potential availability of release to Belgium, to constitute a changed circumstance within the meaning of Article 60(3) of the Statute. The Defence's submissions in this regard, namely that the circumstances which led to the Chamber's findings in the Initial Decision 'would not be present in case of a release to Belgium' and that the Chamber's 'decision denying interim release

⁶⁶ See I. Procedural history. The Chamber further recalls the procedural history set out in the Extension Request Decision, ICC-01/14-01/18-621, paras 3-7.

was based in large part on the negative assessment provided by the authorities of the [CAR] who did not want Mr. Yekatom to be at liberty on their territory', seem to be based on a misapprehension of the Initial Decision.

25. The Chamber clarifies that it did not limit its assessment or findings in the Initial Decision to Mr Yekatom's presence or potential release to the CAR. On the contrary, the Chamber considered that the Initial Circumstances, in particular the extent of Mr Yekatom's influence in the CAR, enabled Mr Yekatom to contact, influence and use individuals – be it Anti-Balaka members, other supporters, or witnesses – *irrespective of his location*. He might do so directly and in person, or through others, and *via* various means of communication.
26. In this regard, the Chamber also recalls that Mr Yekatom has [REDACTED], that his supporters continue to exercise control in the CAR and that several witnesses reside in areas under their influence. Moreover, the Chamber recalls that Mr Yekatom was charged with committing the alleged crimes 'jointly with another or through another' or by ordering. All of these circumstances illustrate the risk of exerting his influence remotely.
27. Second, noting that Belgium unequivocally refused Mr Yekatom's interim release to its territory, the Chamber considers the submissions relating to the availability of release to Belgium to be moot.
28. In light of the above, the Chamber is of the view that the Initial Circumstances have not changed since its review of Mr Yekatom's detention in the Initial Decision.
29. Nevertheless, the Chamber acknowledges that a number of new circumstances have surfaced since its Initial Decision, notably (i) the [REDACTED], (ii) the accused's increased knowledge of the Prosecution witnesses, and (iii) the setting of the trial commencement date. However, the Chamber does not consider that any of these new circumstances have a bearing on its findings in the Initial Decision.

30. As regards the [REDACTED], the Chamber recalls that the Initial Decision, *inter alia*, took Mr Yekatom's [REDACTED] into account when finding that a risk under Article 58(1)(b)(ii) of the Statute existed.⁶⁷ This [REDACTED] only confirms that this risk continues to exist and weighs in favour of maintaining Mr Yekatom's detention. As such, it does not impact on the Chamber's findings in the Initial Decision.
31. With respect to the accused's increased knowledge of Prosecution witnesses, the Chamber recalls that since its Initial Decision, the accused has been provided with a Preliminary Witness List, and subsequently with a Provisional Witness List, indicating, *inter alia*, the names and type of witnesses and an overview of their anticipated testimony. The Chamber also notes that disclosure has progressed in light of the disclosure deadlines set by the Chamber. The Chamber considers that, if anything, these developments confirm the Chamber's initial risk assessment under Article 58(1)(b)(ii) of the Statute, finding that Mr Yekatom continued detention is necessary to ensure that he does not interfere with victims or witnesses.
32. Similarly, the Chamber considers that the setting of the trial commencement date only aggravates the risks found under Article 58(1)(b)(i) and (ii) of the Statute. The fact that Mr Yekatom's case is moving forward and that he might face a significant sentence in case of a conviction, might incentivise the accused to abscond or interfere with witnesses.
33. In conclusion, the Chamber considers that there are no changed circumstances within the meaning of Article 60(3) of the Statute requiring a modification of its initial ruling on Mr Yekatom's continued detention.
34. Lastly, the Chamber notes the Defence's submissions in relation to conditional release. The Chamber emphasises that although conditional release might be ordered even if the conditions under Article 58(1) of the Statute are found to be met,⁶⁸ this remedy is entirely at the Chamber's discretion. Particularly noting the

⁶⁷ Initial Decision, ICC-01/14-01/18-495-Conf-Exp, para. 30.

⁶⁸ *Bemba* OA 7 Judgment, ICC-01/05-01/08-1626-Red, paras 47, 55, 82; *Bemba* OA 2 Judgment, ICC-01/05-01/08-631-Red, para. 105.

absence of any indication that Belgium or the CAR is willing and able to accept Mr Yekatom on its territory, the Chamber considers the exercise of this discretion unwarranted.⁶⁹



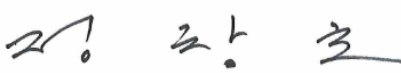
FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

ORDERS the Prosecution to file a public redacted version of filing ICC-01/14-01/18-617-Conf; and

ORDERS the CLRV to file a public redacted version of filing ICC-01/14-01/18-616-Conf.

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

 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Péter Kovács</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p>
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Dated 7 September 2020

At The Hague, The Netherlands

⁶⁹ See Appeals Chamber, *The Prosecutor v. Bemba et al.*, Judgment on the appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber II of 17 March 2014 entitled “Decision on the ‘Requête de mise en liberté’ submitted by the Defence for Jean-Jacques Mangenda”, 11 July 2014, ICC-01/05-01/13-560, para. 128; *Gbagbo* OA 1 Judgment, ICC-02/11-01/11-278-Red, para. 79. See also Judgment on the appeal of Mr Fidèle Babala Wandu against the decision of Pre-Trial Chamber II of 14 March 2014 entitled “Decision on the ‘Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu’”, 11 July 2014, ICC-01/05-01/13-559, para. 116.