

Annex I

**Transmission of the Responses of Belgium and the Netherlands concerning the
Application for Interim Release of Mr Alfred Yekatom**

ICC-01/14 -01/18

27 August 2020

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR v. Alfred YEKATOM and Patrice-Edouard NGAÏSSONA
(ICC-01/14-01/18)**

APPLICATION FOR INTERIM RELEASE**OBSERVATIONS OF THE KINGDOM OF BELGIUM****24 August 2020**

Noting article 60 of the Rome Statute of the International Criminal Court, under which the International Criminal Court (“Court”) may grant interim release, with or without conditions, while a case is pending before it;

Noting rule 119(3) of the Rules of Procedure and Evidence of the Court, which provides that before rendering a decision on conditional interim release, the Court shall seek the views of, among others, any relevant State;

Noting regulation 51 of the Regulations of the Court, which states that before delivering a decision on interim release, the competent Chamber shall seek observations from the State to which the person seeks to be released;

Noting the bilateral agreement concluded by exchange of letters of 8 April 2014 between the Court and Belgium on the interim release of detained persons to Belgium pursuant to decisions rendered by competent Chambers of the Court, which makes provision for interim release to Belgium with the consent, on a case-by-case basis, of the Belgian authorities;

Noting the declaration formulated by the Kingdom of Belgium under article 87(1) of the Statute specifying that “[TRANSLATION] the Kingdom of Belgium declares that the Ministry of Justice shall be the competent authority to receive requests for cooperation”;

Noting the Royal Order of 17 September 2005 on the creation of a Department of International Humanitarian Law;

Noting articles 2 (fourth item) and 5 of the Belgian Act of 29 March 2004 on cooperation with the International Criminal Court and international criminal tribunals, as amended by the Act of 26 March 2014, which designate the Department of International Humanitarian Law as the Belgian Central Authority for Judicial Cooperation with the International Criminal Court (“Central Authority”) and charge it with receiving and acting upon requests from the International Criminal Court;

Noting article 2, paragraph 1 and article 9, paragraph 2, subparagraph 1 of the Royal Order of 23 August 2014 forming the Belgian Task Force for International Criminal Justice (BTF ICJ), which provide that the head of the Central Authority, who is the Federal Coordinator of Belgian Cooperation with International Criminal Courts and Tribunals, shall be required to call a coordination meeting of the BTF ICJ with all competent Belgian authorities in order to consider implementing any bilateral agreement concluded with an international criminal court or tribunal pertaining, *inter alia*, to interim release;

Noting the warrant of arrest issued under seal on 11 November 2018 by Pre-Trial Chamber II of the International Criminal Court (“Pre-Trial Chamber II”) for Mr Alfred Yekatom;

Noting the decision rendered on 17 November 2018 by Pre-Trial Chamber II unsealing the warrant of arrest issued for Mr Alfred Yekatom;

Noting the transfer of Mr Alfred Yekatom to the seat of the International Criminal Court on 17 November 2018;

Noting the decision of 20 February 2019 rendered by Pre-Trial Chamber II joining the cases against Mr Alfred Yekatom and Patrice-Edouard Ngaïssona;

Noting the decision rendered on 11 December 2019 on confirmation of the charges brought, in relevant part, against Mr Alfred Yekatom, an alleged former Anti-Balaka militia commander, in which Pre-Trial Chamber II states that he bears individual criminal responsibility under article 25(3)(a) and (b) of the Rome Statute for six counts of crimes against humanity (murder; forcible transfer and deportation; other inhumane acts; torture; imprisonment and other forms of severe deprivation of physical liberty; and persecution) and seven counts of war crimes (intentionally directing attacks against the civilian population; murder; displacement; directing an attack against a building dedicated to religion; cruel treatment; torture; and conscription, enlistment and use of children under the age of 15 years to participate actively in hostilities). The crimes are alleged to have been committed at various locations in the Central African Republic (Bangui, including Cattin, Boeing, the Yamwara school and along the PK9-Mbaïki road) during the armed conflict not of an international character which is alleged to have taken place in the Central African Republic between September 2013 and December 2014;

Noting the Defence application dated 3 March 2020 seeking Mr Alfred Yekatom’s interim release to the Central African Republic;

Noting the decision rendered on 11 March 2020 by Pre-Trial Chamber II transmitting the confirmation decision and the record of the proceedings to the Presidency via the Registry;

Noting the decision rendered on 16 March 2020 by the Presidency of the Court constituting Trial Chamber V and referring to it for trial the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*;

Noting the decision of Trial Chamber V of 17 March 2020 notifying its election, on the preceding day, of Judge Bertram Schmitt as Presiding Judge and Single Judge in the case;

Noting the decision of Trial Chamber V of 16 July 2020 scheduling the trial to commence on 9 February 2021;

Noting the public redacted version dated 24 July 2020 of the decision rendered on 28 April by Trial Chamber V denying the Defence application for interim release dated 3 March 2020;

Noting the Defence motion dated 27 July 2020 seeking Mr Alfred Yekatom's interim release pending trial to the Kingdom of Belgium on such conditions as the Chamber might consider necessary;

Noting the decision rendered on 29 July 2020 by the Single Judge of Trial Chamber V ordering "the Registry to invite Belgium and the Netherlands to submit any observations on Mr Yekatom's interim release by 19 August 2020";

Noting the note verbale from the Registry of the Court addressed on 4 August 2020 to the Kingdom of Belgium by order of Trial Chamber V whereby the Registry "[TRANSLATION] requests that the authorities of the Kingdom of Belgium submit their observations on Mr Yekatom's interim release by 19 August 2020";

Noting the correspondence dated 3 August addressed by Mr Alfred Yekatom's Defence team to the Belgian Minister of Justice regarding its motion for interim release; the motion was transmitted to the Central Authority by the Registry by note verbale dated 4 August 2020;

Noting the correspondence of 5 August 2020 transmitted by the Central Authority to the Registry of the Court for the attention of Trial Chamber V whereby "[TRANSLATION] the Belgian authorities respectfully seek from the Court an extension of time to respond until Friday, 4 September" in view of the circumstances and the Central Authority's obligation to confer with all competent Belgian authorities before conveying its observations;

Noting the decision rendered on 11 August 2020 by the Single Judge of Trial Chamber V granting the request for extension of time; and noting the transmission of that decision to the Central Authority by the Registry by note verbale dated 12 August 2020;

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The Belgian Central Authority for Judicial Cooperation with the International Criminal Court, acting on behalf of the Kingdom of Belgium, presents the following observations:

A. General remarks of the Belgian authorities regarding the possibility of conditional release to Belgium

The prospect of Mr Alfred Yekatom's presence in Belgium pursuant to a decision that might be taken by the International Criminal Court to grant interim release calls for the following general observations on the part of the Belgian authorities:

(1) Existing personal connections to Belgium

The Central Authority notes that the choice of Belgium as the State in which to implement interim release, if granted, is explained as follows in the aforementioned Defence motion, dated 27 July 2020, at paragraph 11:

[Trial Chamber V's previous] decision denying interim release was based in large part on the negative assessment provided by the authorities of the Central African Republic who did not want Mr. Yekatom to be at liberty on their territory. As a result, Mr. Yekatom now proposes to be released to Belgium, a State that has agreed to receive accused persons from the ICC on interim release.

That explanation is confirmed by the aforementioned correspondence from the Defence team dated 3 August 2020, which says that the individual in question chose to designate Belgium as his State of residence in the event of interim release, on conditions to be decided by the Chamber, if any, because "[TRANSLATION] Belgium is the only State willing to accept on its territory persons awaiting trial before the ICC".

It is stated that the individual in question wishes to reside in the Brussels Region, but no indication is given as to a specific place of residence in Belgium, nor as to housing arrangements (staying with a private individual, short-term letting, etc.).

Furthermore, paragraphs 17 and 31 of the aforementioned Defence motion clearly indicate that the individual in question has no personal connections or support in Belgium.

Accordingly the Belgian authorities conclude that the individual in question lacks any existing personal connection to Belgium.

The existence of such a connection, however, while not in itself guaranteeing that a decision of interim release will be implemented in Belgium, has thus far been a determining factor in the decision-making of the Belgian authorities on similar requests.

(2) Impact of the COVID-19 pandemic on interim release to Belgium, if granted

In its motion dated 27 July 2020, the Defence states at paragraph 14 that

The conditions of [Mr Yekatom's] detention have become increasingly difficult due to its length and the isolation caused by restrictions imposed since the outbreak of the coronavirus pandemic preventing him from receiving visits, even from his Defence team.

It is also stated, at paragraph 26 of the same motion, that

Mr. Yekatom's release in Belgium would not in any way disrupt the Defence's trial preparation. In person consultations could take place regularly, since Belgium is only a short train ride from The Hague for defence team members, who could have in person access to Mr. Yekatom, which has been unavailable at the Detention Center since March, and access during evenings and weekends, which has never been available at the Detention Center.

The Defence thus seems to think that the pandemic has not occasioned any travel restrictions or lockdown measures in Belgium itself or indeed between Belgium and the Netherlands. However it must be noted that public health measures, the strictness of which is liable to change over time (and unpredictably so), have been, are being and may yet be imposed by the time the trial commences, on any travel in Belgium or between the Netherlands and Belgium. Such measures may involve recommending or requiring the quarantine of any persons entering Belgium from the Netherlands.

Furthermore the Netherlands itself may introduce public health measures conditioning the re-entry into the Netherlands of persons having travelled to Belgium or to certain regions of Belgium. For example, persons re-entering the Netherlands after a stay in Brussels have been advised since mid-August to quarantine for 14 days upon returning to the Netherlands.

This would seriously diminish the impact of the interim release of the individual in question to Belgium, if granted, in relation to his current situation.

Moreover, these public health measures could subsequently complicate in-person contact with the Defence team, other visits, and compliance with any request from the Court to the individual in question, who would be residing in Belgium, to appear at the seat of the Court in The Hague.

Given that previous Court decisions implemented in Belgium granting interim release to other accused persons have consistently been made conditional on the released person's obligation to appear in person whenever so ordered by a Chamber of the Court and to obey all orders and directions of the Chambers and Registry of the Court, it is important to make clear that the Belgian authorities cannot guarantee strict compliance with such a condition, on account of the ongoing pandemic and in the absence of any foreseeable major change by the time the trial commences.

(3) Duration of interim release to Belgium

The Belgian authorities note that the interim release of the individual in question might be of very short duration.

Specifically, release could begin only when and if the Court decides to grant it and once the conditions thereof have been laid down (and implemented), by agreement with the Belgian authorities, and once practical arrangements have been

made to secure a place of residence in Belgium for the individual in question who – by his own admission – has no acquaintances, connections or support in Belgium.

Release would end by early February 2021, given the date set for the commencement of trial, or earlier if the individual in question is required to quarantine in the Netherlands upon returning from Belgium.

All in all, therefore, this would mean putting in place a fairly onerous set of arrangements for a mere few weeks of residence in Belgium.

B. Remarks of the Belgian authorities on the conditions proposed by the Defence

In its motion dated 27 July 2020, the Defence proposes that the decision to grant interim release, if taken, be made subject to a whole series of conditions, to which the individual in question states his agreement in advance (end of paragraph 18 of the motion).

Those conditions are:

- “home confinement enforced by electronic monitoring, regular reporting to the local police station, consent to electronic surveillance of his premises and electronic devices, and the designation of third-party custodian or security personnel to be responsible for monitoring Mr. Yekatom’s whereabouts” (paragraph 18);
- “a condition that Mr. Yekatom have no contact, direct or indirect, with any victim or witness in his case[,] [which] would be sufficient to ensure that no such interference occurred. This condition could also be re-enforced by an electronic surveillance regime” (paragraph 21); and
- “[a] condition that Mr. Yekatom not involve himself in political life in CAR nor make any public statements[,] [which] would be sufficient to ensure that he did not play any role, no matter how remote, in the commission of crimes in Central African Republic” (paragraph 24).

The Belgian authorities underscore that the proposed conditions as to residence and telephone monitoring of the individual in question, coupled with the fact that the individual in question cannot stay with family in Belgium – as he has no personal connection to Belgium – and the measures put in place by Belgium and the Netherlands in response to the public health crisis (limitations on contact, travel restrictions, entry conditions, etc.), would entail the taking of onerous measures to provide constant (telephone) or regular (residential) monitoring by the Belgian authorities for the implementation of an interim release which, if granted, would be of (very) short duration.

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CONCLUSION

In conclusion, considering all of the above observations and in particular Mr Alfred Yekatom's lack of any specific personal connection to Belgium and the adverse impact of the public health crisis in Belgium and on the conditions placed on crossing between Belgium and the Netherlands, the Belgian Central Authority for Cooperation renders, on behalf of the Government of Belgium, a strictly negative opinion as regards a possible interim release of the person concerned to Belgium.

Rixensart, 24 August 2020

FOR THE KINGDOM OF BELGIUM
On behalf of the Central Authority for Judicial
Cooperation with the International Criminal Court,

[signed]

Gérard Dive
Head, Central Authority