

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 March 2020**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

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

Public

Prosecution's Response to YEKATOM's Request for Interim Release

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) opposes Alfred YEKATOM’s request for interim release (“Request”).¹ The conditions listed in article 58(1)(b) continue to be met. YEKATOM, who is now facing confirmed charges of serious and violent crimes, must remain in detention pending trial.

2. *First*, YEKATOM’s detention is warranted and necessary under articles 58(1)(b) and 60(2) to ensure that he appears for trial and he does not obstruct or endanger the investigation or the prospective trial phase, scheduled to commence upon the constitution of a Chamber. The confirmation of numerous serious charges against YEKATOM increases his incentive to flee, obstruct the court proceedings, or further commit potentially violent offences.² The Appeals Chamber in the *Lubanga* case emphasised that: “the decision on continued detention or release pursuant to article 60 (2) read with article 58 (1) is not of a discretionary nature. Depending upon whether or not the conditions of article 58 (1) of the Statute continue to be met, the detained person shall be continued to be detained or shall be released.”³ Here, there is substantial evidence establishing the conditions warranting YEKATOM’s continued detention.

3. *Second*, YEKATOM has not been detained for an unreasonable period, nor has it been at all due to ‘inexcusable’ delay by the Prosecution in the conduct of the case within the meaning of article 60(4).

4. Finally, having failed to establish that the conditions under article 58(1)(b) of are no longer applicable, it is premature for YEKATOM to advance “personal

¹ ICC-01/14-01/18-438.

² ICC-01/14-01/18-1-Red, para. 22. In 2018, YEKATOM entered Central African Republic’s National Assembly building with a gun and fired it twice during the candidacy speech of Laurent Ngon BABA (“2018 incident in the CAR Parliament”).

³ ICC-01/04-01/06-824 OA7, para. 134.

undertakings” as a condition of prospective release.⁴ Furthermore, YEKATOM’s promises are not pertinent considerations for granting interim release under articles 58(1) and 60.

5. This Response is submitted to the Presidency per the express direction of Pre-Trial Chamber II, having duly transmitted the record of the proceedings pursuant to rule 129 of the Rules of Procedure and Evidence (“Rule”), and in advance of the assignment the case to a Trial Chamber.⁵

II. SUBMISSIONS

A. YEKATOM’s continued detention is necessary to ensure his appearance at trial

a. YEKATOM faces a lengthy sentence if convicted

6. Pre-Trial Chamber II (“Chamber”) has found substantial grounds to believe that YEKATOM is criminally responsible for the commission of serious crimes.⁶ The gravity of the charges and the possibility of a lengthy prison sentence are relevant factors in decisions on interim release.⁷ This is because serious charges provide a strong incentive for an Accused to abscond. Here, YEKATOM faces numerous such counts.

7. YEKATOM’s assurances that “he is fully committed to defending himself against these charges and fully prepared to endure the consequences⁸” are immaterial and unsubstantiated. His commitment to appear cannot be considered as *per se* decisive

⁴ ICC-01/14-01/18-438, para. 16.

⁵ See Pre-Trial Chamber email communication of 11 March 2020, at 13:26.

⁶ ICC-01/14-01/18-403.

⁷ ICC-02/11-01/11-278, para. 54.

⁸ Request, para. 17.

for the purposes of determining whether one or more of the conditions listed in article 58(1)(b) are met.⁹

8. YEKATOM is now closer to a trial on grave charges that may result in multiple convictions leading to a serious sentence. The proceedings should not be put at risk by affording him an opportunity to abscond or otherwise undermine his trial.

b. YEKATOM has the means to abscond

9. Contrary to the Request, YEKATOM has the means to abscond. As evidenced from his being a “fighter”¹⁰ in command of his Anti-Balaka Group and his former position as a Central African Republic (“CAR”) member of parliament (“MP”), YEKATOM has a network of contacts and supporters which could provide him with the necessary means of absconding. YEKATOM’s network is likely to mobilise to support him and facilitate his flight from the Court’s jurisdiction. As a former MP, YEKATOM retains influence over his network of supporters within CAR and he could rely on them to abscond.¹¹ In its determination, the Chamber need only consider the possibility – not the inevitability – of YEKATOM’s access to resources, financial or otherwise, where that risk is established on the basis of concrete evidence.¹²

B. YEKATOM’s continued detention is necessary to ensure that he does not obstruct or endanger the investigation or the court proceedings

10. YEKATOM’s interim release would increase his capacity to obstruct and endanger the investigation or the Court proceedings. He knows and understands the evidence of the Prosecution’s case through the confirmation proceedings and the ongoing disclosure process. YEKATOM is aware of the identities of key Prosecution

⁹ ICC-01/05-01/13-261, para. 26.

¹⁰ ICC-01/14-01/18-438, para. 18.

¹¹ ICC-01/04-01/06-824, para. 137.

¹² ICC-02/11-01/11-278, para. 56.

witnesses and their accounts of his acts and conduct. He requests release to CAR - where the majority of Prosecution witnesses reside and where he and his contacts could have direct contact with them, improperly influencing their evidence. If released, there are no effective means to prevent such witness contact, many of whom remain vulnerable. Additionally, even the prospect of his interim release risks creating a chilling effect on the continued cooperation of Prosecution witnesses who may be susceptible to YEKATOM's influence or perceived power.

11. The Defence arguments that YEKATOM has obeyed the conditions of his detention and he would obey the Court when ordered to return for trial are hypothetical and self-serving.¹³ If YEKATOM has abided by the terms of his custody and not threatened witnesses from the Detention Centre, this only shows that the restrictions imposed by the Court are working. It does not mean that YEKATOM poses any lesser risk to the integrity of the proceedings or witness security than the day he was admitted to the Detention Centre. Abiding by the stringent terms of his detention does not create a track record warranting his release, nor abate the attendant risks. YEKATOM's conduct in the Detention Centre has no correlation to the potential risk of flight or obstruction of justice outside of his detention.

C. YEKATOM's continued detention is necessary to prevent the commission of crimes

12. The Appeals Chamber in *Gbagbo* held that:

“[...] when deciding on a request for interim release under article 60 (2) of the Statute, the Pre-Trial Chamber has to inquire anew into the existence of facts justifying detention. This, however, does not mean that the Pre-Trial Chamber cannot base its decision on evidence that was already before it when it issued the

¹³ Request, para. 22.

warrant of arrest, as long as it is persuaded that the evidence, at the time of the decision under article 60 (2) of the Statute, justifies the finding in question.”¹⁴

13. In issuing the Warrant of Arrest in this case, the Chamber found that YEKATOM’s arrest was necessary to prevent him from committing further crimes within the jurisdiction of the Court, in light of the 2018 incident in the CAR Parliament, his connections to and authority over his Anti-Balaka Group and the fact that the armed conflict had not ceased in the CAR.¹⁵ Given that these factors remain substantially unchanged, notwithstanding the fluidity of the security situation in CAR, it is likely that YEKATOM would commit further violent acts if released.

D. The length of detention is not due to inexcusable delay by the Prosecution or unreasonable

a. There has been no inexcusable delay by the Prosecution

14. Contrary to the Defence’s arguments, the delay of the Confirmation Hearing does not amount to an *inexcusable* delay by the Prosecution or an otherwise unreasonable one. In granting the Prosecution’s request for a delay, the Chamber noted the limited postponement requested and importantly its justification, namely “for the purposes of allowing the Court and the Prosecutor to properly discharge their protective obligations.”¹⁶ The postponement was thus directly related to the Court’s statutory obligations pertaining to the protection of victims and witnesses. Moreover, it was manifestly supported by good cause. In any case, the rights of the Accused under article 67 were properly balanced against other competing interests under article 68, and they should continue to be in denying YEKATOM’s Request.

¹⁴ ICC-02/11-01/11-278-Red, para. 69.

¹⁵ ICC-01/14-01/18-1, para. 22.

¹⁶ ICC-01/14-01/18-199, para. 37.

b. YEKATOM's length of detention is not unreasonable

15. The length of YEKATOM's pre-trial detention is not been unreasonable. The Appeals Chamber in the *Bemba et al* case recalled that "the unreasonableness of any period of detention prior to trial cannot be determined in the abstract, but has to be determined on the basis of the circumstances of each case."¹⁷ Here, having regard to YEKATOM's potential exposure on sentence if convicted, the complexity of the case, and the impact of the deterioration of the security situation in parts of CAR on the range of potentially *effective* protective measures for victims and witnesses, the detention period is fully justifiable in the circumstances.

16. The Chamber has now ordered the Registrar to transmit the Confirmation Decision and the record of the proceedings to the Presidency for a Trial Chamber to be constituted under article 61(11) without undue delay.¹⁸ Thus, proceedings on the merits are impending and make YEKATOM's continued detention all the more necessary. In any event, the statute provides the Accused with a later opportunity to seize the Trial Chamber with a further request for release. However, his release presently is not justified.

E. The guarantees advanced by the Defence are misplaced as it is premature

17. YEKATOM's failure to establish that the conditions in article 58(b) are no longer applicable is fatal to the Request. His purported personal undertakings are not only premature and unavailing, but they are not substantively pertinent considerations under articles 58(1) or 60 warranting a variation or interruption of his detention.

¹⁷ ICC-01/05-01/13-969, para. 45.

¹⁸ ICC-01/14-01/18-447, para. 35.

III. RELIEF SOUGHT

18. For the above reasons, the Presidency should deny the Request and order YEKATOM's continued detention.



Fatou Bensouda, Prosecutor

Dated this 16th day of March 2020
At The Hague, The Netherlands