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Date: **6 January 2021**

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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of Prosecution's Submissions under Rule 118 (2) of the
Rules of Procedure and Evidence, 14 December 2020, ICC-01/14-01/8-770-Conf**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby provides submissions on the continued detention of Alfred YEKATOM (“YEKATOM”) upon invitation of Trial Chamber V (“Chamber”).¹

2. The Chamber should order YEKATOM’s continued detention. Since the issuance of the Chamber’s 28 April 2020² and 7 September 2020³ decisions continuing YEKATOM’s detention, there have been no changed circumstances within the meaning of article 60(3) requiring a modification of the conditions of his detention.

II. CONFIDENTIALITY

3. This Response is filed as “Confidential” pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), as it refers to information previously classified as confidential. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. Since the Chamber’s 28 April 2020 and 7 September 2020 rejection of YEKATOM’s first and second applications for interim release (“Interim Release Decisions”), there have been no changed circumstances within the meaning of article 60(3). As the Chamber has previously confirmed, YEKATOM’s continued detention is required under article 58(1)(b).⁴ This remains the case today.

i. The facts underlying the Interim Release Decisions remain unchanged

¹ Email from Trial Chamber V Communications on 7 December 2020 at 12:03.

² ICC-01/14-01/18-495-Red3.

³ ICC-01/14-01/18-643-Conf.

⁴ *Idem*. Paras. 31-33.

5. In the Interim Release Decisions the Chamber considered the following facts in reaching its decision to continue YEKATOM's detention:

- a. the confirmation of charges against Mr Yekatom, including charges for both war crimes and crimes against humanity, and modes of liability under Article 25(3)(a) or (b) of the Statute;
- b. 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;
- c. 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';
- d. Mr Yekatom's propensity to use violent means to achieve his ends;
- e. the extent of control by the Anti-Balaka over CAR territory and their activities;
- f. the activities of Mr Yekatom's supporters, who resort to illegal acts in areas under their control;
- g. the political and security dynamics/situation in the CAR;
- h. certain victims' fear of reprisals, should Mr Yekatom be released;

i. [Redacted];

j. Mr Yekatom's knowledge of witnesses' identities;

k. [Redacted].⁵

6. It is unnecessary to restate the reasoning behind each of the above circumstances. Rather, it suffices to note that none of the above circumstances have changed and warrant YEKATOM's continued detention.

7. Each criterion of article 58(1)(b) continues to be satisfied. *First*, YEKATOM is still a flight risk and his detention is necessary to ensure his appearance for trial.⁶ *Second*, YEKATOM's detention is necessary to "ensure that he does not obstruct and endanger the investigation or the court proceedings, particularly through interference with victims and witnesses."⁷ *Third*, the risk of YEKATOM's continuing commission of at least related crimes within the Court's jurisdiction justify his detention.⁸

ii. *Additional unfavourable circumstances require detention*

8. Additionally, the prevailing circumstances have become even *less* favourable to YEKATOM since the issuance of the Interim Release Decisions.

a. [Redacted]

9. [Redacted]⁹ [Redacted]¹⁰ [Redacted]¹¹ [Redacted]¹² [Redacted].

⁵ ICC-01/14-01/18-643-Conf, para. 19.

⁶ ICC-01/14-01/18-495-Red3, para. 26.

⁷ ICC-01/14-01/18-495-Red3, para. 31.

⁸ ICC-01/14-01/18-495-Red3, para. 35.

⁹ ICC-01/14-01/18-69-Conf-Exp, para. 11, ICC-01/14-01/18-465-Conf-Exp, para. 9, ICC-01/14-01/18-599-Conf, paras. 6-8.

¹⁰ ICC-01/14-01/18-673-Conf-Red.

¹¹ [Redacted] ICC-01/14-01/18-679-Conf.

¹² ICC-01/14-01/18-673-Conf-Red, para. 13.

b. More precise knowledge of Prosecution witnesses

10. On 9 November 2020, YEKATOM was provided with the final list of witnesses the Prosecution intends to call,¹³ which more specifically identifies their importance to the pending charges. YEKATOM now knows better who to interfere with in relation to the case against him than before. Permitting his release in these circumstances would facilitate his ability to circumvent the Chamber's supervision and to undermine the security of victims and witnesses, as well as imperil the integrity of the proceedings, already at risk.

c. The commencement of the trial is approaching

11. On 16 July 2020, the Chamber set 9 February 2021 as the definitive date for the start of trial.¹⁴ As YEKATOM's trial on numerous counts of war crimes and crimes against humanity approaches — any one of which may potentially result in a lengthy sentence upon conviction — the serious and concrete risk that he will act to thwart the proceedings also rises.

12. Corresponding to the trial date, the Prosecution has now disclosed even more precise information concerning its witnesses, further augmenting the attendant risks of interference and efforts to otherwise undermine the trial.

13. As the Appeals Chamber has held, "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".¹⁵

¹³ ICC-01/14-01/18-724.

¹⁴ See ICC-01/14-01/18-589.

¹⁵ ICC-01/04-01/06-824 OA7, para. 134.

Here, for all of the reasons set out above, YEKATOM must remain in ICC detention pending trial.

IV. CONCLUSION

14. For the above reasons, the Chamber should order YEKATOM's continued detention.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 6th day of January 2021
At The Hague, The Netherlands