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**Cour
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**International
Criminal
Court**

Original: English

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

Date: 19 January 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Consolidated Request for Leave to Reply to the YEKATOM and
NGAISSONA Defence's Responses to the Prosecution's Fourth and Fifth Request
for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b),
(ICC-01/14-01/18-823-Conf) (ICC-01/14-01/18-826-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 Prosecution requests leave to reply to the YEKATOM and NGAISSONA Defence's Responses to the Prosecution's Fourth and Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) ("Responses").¹

2. A limited and focused reply addressing the legal positions advanced in the Responses would assist Trial Chamber V ("Chamber") in the proper determination of the relevant issues, and is otherwise in the interests of justice. These comprise: (1) the scope and assessment of relevant factors which a Chamber may reasonably consider in determining the acts and conduct of the Accused under rule 68(2)(b) of the Rules of Evidence and Procedure ("Rules"); and (2) the relevance of potentially exonerating evidence in prior recorded testimony to the Chamber's exercise of discretion in determining whether it may be formally submitted pursuant to rule 68(2)(b).

3. The specific Defence arguments advanced could not reasonably have been anticipated by the Prosecution at the time of filing of its Requests. A reply in relation to the proposed issues would also greatly assist the Chamber in its resolution of the Requests by clarifying the facts and law related to the formal submission of prior recorded testimony.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Response is filed as "Confidential", as it concerns filings of the same designation. A "Public Redacted" version will be filed as soon as practicable.

¹ See ICC-01/14-01/18-823-Conf ("YEKATOM Defence Response"), ICC-01/14-01/18-826-Conf ("NGAISSONA Defence Response"). See also, ICC-01/14-01/18-794-Conf and ICC-01/14-01/18-795-Conf (Prosecution Requests).

III. SUBMISSIONS

5. The Prosecution requests leave to reply on the issues arising from the Responses, as follows:

(1) The scope and assessment of relevant factors which a Chamber may reasonably consider in determining the acts and conduct of the Accused under rule 68(2)(b)

- a. Whether the term “acts and conduct of the Accused” can be extended beyond its plain and natural meaning to include the acts and conduct of YEKATOM’s elements,² that is, co-perpetrators, subordinates, or other persons.
- b. Whether limited references to the Accused in the prior recorded statement which do not constitute the core of the testimony entails the preclusion of formal submission under rule 68(2)(b).³

(2) The relevance of potentially exonerating evidence in the prior recorded statement as a factor in the Chamber’s exercise of discretion on whether the prior recorded testimony may be formally submitted pursuant to rule 68(2)(b)

- a. Whether and to what extent the Chamber may take into account potentially exonerating evidence in the prior recorded statement in determining whether the witness’s live testimony is required.⁴
- b. Whether NGAISSONA’s claim of prejudice lies in not being able to question a rule 68(2) witness regarding potentially exonerating

² YEKATOM Defence Response, para. 33.

³ YEKATOM Defence Response, para. 46, NGAISSONA Defence Response, para. 12.

⁴ NGAISSONA Defence Response, paras. 15, 12.

evidence where the rule precludes the Prosecution from formally submitting such acts or conduct evidence.

- c. Further to (2) (b) above — whether having requested that the prior recorded statements be submitted in their entirety,⁵ NGAISSONA may validly and selectively waive the introduction of acts and conduct evidence insofar as they may be potentially exonerating.

6. A reply focused on these limited and discrete matters will distil the salient issues before the Chamber, and assist the fair and considered determination of the Requests.

IV. RELIEF SOUGHT

7. For the above reasons, the Chamber should permit a consolidated reply to the YEKATOM and NGAISSONA Defence's Responses to the Prosecution Requests.



James Stewart, Deputy Prosecutor

Dated this 19th day of January 2021
At The Hague, The Netherlands

⁵ NGAISSONA Defence Response, para. 7.