

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **07 January 2019**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

Public with Annex A

Response to the Prosecution's Request for a Protocol on Redactions

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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Further to the Prosecution's Request for a Protocol on Redactions ("Prosecution Request"), Counsel representing Mr. Alfred Rombhot Yekatom ("Defence" or "Mr. Yekatom") hereby submits this:

**Response to the Prosecution's Request for a Protocol on Redactions.
("Defence Response")**

INTRODUCTION

1. The Defence hereby responds to the Prosecution Request.
2. Despite the *prima facie* benefits highlighted in the Prosecution Request, the Defence opposes the adoption in this case of a Redaction Protocol, which constitutes a marked departure from the disclosure regime provided for in the Statute and the Rules. The preferred option is certainly to apply the provisions of the Statute and the Rules, which require the Prosecution to seek leave to the Chamber for any redaction of information. The disadvantages of adopting a Redaction Protocol allowing for exceptions to the statutory disclosure regime far outweigh its advantages, unless the exceptions to the disclosure of information provided therein are clearly defined, delineated, designed to avoid impeding the ability of the Defence to fulfill its responsibilities towards the administration of justice, ensure respect of the rights of Mr. Yekatom to a fair trial and interpreted restrictively.
3. Should the Pre-Trial Chamber nonetheless decide to adopt a Redaction Protocol in this case, the Defence respectfully submits that such Protocol should be based on, and limited to, the content of Annex A.

SUBMISSIONS

I. The Object, Purpose and Potential Harm of Adopting a Redaction Protocol in this Case

4. Proceedings before the Court are governed by extensive statutory provisions, rules, regulations and norms (“ICC Legal Framework”), the object and purpose of which is to ensure *inter alia* the fairness of trials and full respect for the rights of suspects and accused.

5. Any departure from the ICC Legal Framework in the conduct of proceedings before the Court should be resisted unless proper safeguards are put in place to ensure the fairness of trials and full respect for the rights of suspects and accused.

6. Regarding the disclosure of information to suspects and accused, the Appeals Chamber has recognised in numerous occasions the importance of the principle of total disclosure.¹ Pursuant to this principle, the Prosecution has the obligation to disclose to Mr. Yekatom any exculpatory material (Article 67(2)), and documents material to the preparation of the Defence, or intended for use by the Prosecutor as incriminating at trial (Rules 76 and 77). As stated by the Appeals Chamber, redactions to such information should remain the exception for which prior authorization must be sought from the Trial Chamber.²

7. The adoption of a Redaction Protocol allowing the Prosecution to redact information material to the preparation of the case for the Defence -without seeking prior authorization from the Chamber - is *per se* contrary to the principle of full disclosure.

8. The *prima facie* advantages linked to the adoption of such a protocol – *i.e.*, facilitating the Prosecution’s compliance with its disclosure obligations, expediting the disclosure process, dispensing the Prosecution with the need to seek authorization before redacting information and minimising the number of

¹ ICC-01/04-01/06-568 OA, para.36; ICC-01/04-01/07-475 OA, para.70.

² ICC-01/04-01/07-475 OA, para.70.

applications to be adjudicated – are far outweighed by the disadvantages – *i.e.*, depriving the Defence of information normally disclosable pursuant to the ICC Legal Framework, impeding the ability of the Defence to investigate for the purpose of assessing the reliability of the evidence, imposing a burden on the Defence to justify the lifting of redactions and increasing the number of applications to the Chamber to obtain such information.

9. What is more, the adoption of a Redaction Protocol is a marked departure from the conduct of proceedings and the administration of justice before other international courts et tribunals, which, in and of itself, underscores the exceptional character of adopting such a Protocol and the necessity, if such a Protocol is adopted, to ensure that the proper safeguards are put in place to ensure the fairness of trials and full respect for the rights of the accused.

10. The fact that the Redaction Protocol proposed by the Prosecution is based on a model protocol found in the Chamber's Practice Manual does not necessarily imply that a Redaction Protocol should be adopted in this case. The Pre-Trial Chamber is not bound by the Chamber's Practice Manual. In fact, in the fulfillment of its duty to ensure the fair and expeditiousness of conduct of the proceedings and full respect for the rights of Mr. Yekatom, the Pre-Trial Chamber is bound to evaluate the need for the adoption of a Redaction Protocol in this case.

11. Significantly, many of the categories of information, for which the Prosecution seeks to be granted authority to redact *proprio motu* without judicial control are not necessary to achieve the objectives of ensuring that (i) ongoing and future investigations are not prejudiced; (ii) and protecting witnesses, victims, their family members and innocent third parties.

12. Indeed, whereas much of the information the Prosecution seeks to redact *proprio motu* must not be disclosed to the public and kept confidential to achieve the above aims, there is no need to preclude the Defence from obtaining this information.

Indeed, the Defence as the receiving party and as an Officer of the Court bound by various Code of Professional Conduct is under a duty to maintain the confidentiality of this information and would do so.

13. Counsel assigned to represent suspects and accused are subject to their oath of office, have undertaken to abide with all applicable provisions of the ICC Legal Framework, and as such, are liable to be prosecuted pursuant to Article 70 in case of failure to do so.

14. The same applies to suspects and accused who are under an obligation not to disclose any confidential information to third parties, including the public.

15. Consequently, taking into consideration that adopting a redaction protocol is, in and of itself, exceptional and that the associated disadvantages far outweigh the advantages, it is imperative that the provisions of such a Redaction Protocol, if adopted neither impact the fairness of proceedings nor violate the rights of Mr. Yekatom.

II. Detailed Observations concerning Exceptions to Disclosure in the Form of Redaction of Information

16. The Chambers Practice Manual provides that the system governing ‘exceptions to disclosure in the form of redaction of information’ should be the object of an order issued by the Chamber as soon as possible following the initial appearance of Mr. Yekatom and remain applicable at all stages of the proceedings through the inclusion of the proposed text appearing at pages 29-30.

17. Taking stock of the observations provided in Section I, this section addresses the seven proposed paragraphs in the Chambers Practice Manual.

18. *“Paragraph 1”*: The Defence agrees in principle with the content of paragraph 1 as well as with the changes proposed by the Prosecution (“Parties and Participants to the proceedings”). Nonetheless, although paragraph 1 refers to ‘exceptions’ to

disclosure of information, which are subject to judicial control, there is no mention of the imperative necessity to ensure that exceptions to Rules 81(2) and 81(4) must be interpreted restrictively with the aim of ensuring that the rights of Mr. Yekatom - the only person who has nothing to gain by the adoption of this protocol - are fully respected. Paragraph 1 of Annex A palliates this default. Notably, there is no mention of the rights of the Accused in the Prosecution Redaction Protocol Request.

19. *“Paragraph 2”*: The Defence takes issue with the use of the word ‘shall’, which should be replaced with the word ‘may’ as follows: “Parties and Participants **may** disclose evidence with redactions under rule 81(2) and (4) of the Rules without discrete application to the Chamber, **only in the specific cases covered in this Protocol**”. Indeed, whenever possible, Parties and Participants should endeavor to disclose all relevant information allowing the Defence to fulfill its duties towards Mr. Yekatom. Moreover, the Defence proposes to modify the second sentence of paragraph 2 to ensure that “[w]hen disclosing redacted evidence the Parties and Participants shall, [**in all cases**], indicate the type of redaction [...]”.

20. *“Rule 81(2) of the Rules”*: Categories A.1 to A.8 address exceptions to Rule 81(2). The Defence deems necessary before providing observations in respect of each of these categories, to underscore the object and purpose of Rule 81(2). First, Rule 81(2) is directed at material or information in the possession or control of the Prosecutor, which must normally be disclosed in accordance with the Statute. Second, pursuant to Rule 81(2), such material or information may only be redacted where “disclosure may prejudice further or ongoing investigations”, upon application by the Prosecutor to the Chamber. It follows with a view to ensuring full respect for the rights of the Mr. Yekatom that the disclosing party vested with the authority to apply redactions without seeking judicial approval, in particular the Prosecutor, must ensure that: (i) the information redacted genuinely prejudices further or ongoing investigations; and (ii) ensure that the information redacted pursuant to this protocol does not impede the ability of the Defence to investigate.

What is more, the safeguard included in Rule 81(2) “[...] the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused” must be expressively included in the Protocol.

21. “*Category A.1*”: The Defence opposes the inclusion of such a category in the redaction protocol.

22. *First*, the information covered in this category is essential for the conduct of investigations by the receiving party with a view to testing and challenging the reliability of the evidence, and ultimately for the Chamber to assess the probative value which can be attributed to the same. It is indeed highly relevant for the receiving party to determine, *inter alia*: the type of accommodation in which a witness’s interview was held (commercial, private house, detention facility, etc.); whether a witness interview was conducted in the territory of an opposing side; whether a witness interview was conducted in a facility which belongs to a person ‘in authority’ or even to another witness; whether many interviews were held in the same location at the same time; whether witnesses interviewed were required to travel over long distances involving significant travel and accommodation costs; whether witnesses were accommodated at the interview location, together or not; and the duration of a witness interview including whether interviews were conducted in different locations.

23. *Second*, it has not been genuinely demonstrated that providing the above information to the receiving party would necessarily impede ongoing investigations by the disclosing party. In fact, with the exception of limited redactions of interview locations under judicial control, no other international court or tribunal allowed parties or participants to redact such information *proprio motu*. Not before the ICTY, not before the ICTR, not before the STL, not before the SCSL and not before the ECCC.

24. What is more, when such information was redacted in proceedings before other international courts and tribunals, timely and responsive mechanism were available to the receiving party to request that such redactions be lifted.

25. “*Category A.2*”: The Defence opposes the inclusion of category A.2 in its present form. This category should be modified to include solely the contact information of staff members of the investigating/disclosing party (translators, interpreters, stenographers and psycho-social experts), VWU or other Court sections.

26. *First*, the identity of the professionals covered in this category is essential for the conduct of investigations by the receiving party with a view to testing and challenging the reliability of the evidence, and ultimately for the Chamber to assess the probative value which can be attributed to the same. Indeed, it is highly relevant for the receiving party to determine, *inter alia*: not only how many persons were present during a witness interview but also the qualifications of the persons present, whether any of the persons present are persons ‘in authority’ in relation to the witness; whether any of the persons present is related in any way to the witness being interviewed (conflict of interest); whether any of the persons present were involved in any way in the situation/facts being investigated; whether any of the persons present ever met with the witness interviewed in any circumstances and whether the witness had the opportunity to review the credentials of the persons present. Running a background check on the persons present during an interview constitutes a legitimate, necessary and normal investigation technique. The provision of pseudonyms *in lieu* of the persons present is insufficient for the purpose of responsible investigations.

27. *Second*, it has not been genuinely demonstrated that providing the receiving party with the identity and information related to members of the investigating party would necessarily impede ongoing investigations by the disclosing party. In fact, with the exception of limited redactions covering the identity of certain members of

the Prosecution, in exceptional situation under judicial control, no other international court or tribunal allowed parties or participants to redact such information *proprio motu*. Not before the ICTY, not before the ICTR, not before the STL, not before the SCSL and not before the ECCC. The fact that the identity of members of the disclosing party was not redacted in proceedings before other courts and tribunals neither impeded the conduct of investigations nor the outcome of trials. Significantly, the fact that the identity of staff members of the investigating/disclosing party (translators, interpreters, stenographers and psycho-social experts), VWU or other Court sections would not be redacted does not, *ipso facto* make this information public. The receiving party is bound to maintain the confidentiality of this information and would do so.

28. Members of the disclosing party, in particular the Prosecutor, are professionals, well-remunerated who chose to work for the disclosing party knowing full-well the conditions and risks associated with their work.

29. “Category A.3”: The Defence opposes the inclusion of category A.3 in its present form. This category should be modified to include solely the contact information of professionals (translators, interpreters, stenographers and psycho-social experts) who are not members of the investigating/disclosing party, providing assistance during witness interview. With respect to the identity of such professionals, only that of local inhabitants acting in that capacity should be included in this category.

30. *First*, the rationale provided to oppose the inclusion of category A.2 above also applies to this category. This information is also essential for the conduct of investigations by the receiving party. The fact that professionals covered in this category are not *per se* members of the ‘investigating party’ strengthens the requirements for the receiving party to have this information.

31. *Second*, although it has not been genuinely demonstrated that providing the identity and information related to members of the disclosing/investigating party to the receiving party would impede ongoing investigations, the Defence acknowledges that in respect of local inhabitants, assisting the disclosing/investigating party regularly, albeit on an *ad hoc* basis, might render the work of such persons uncomfortable, in certain circumstances. Significantly, the fact that the identity and information related to professionals covered in this category would not be redacted does not, *ipso facto* make this information public. The receiving party is bound to maintain the confidentiality of this information and would do so.

32. “*Category A.4*”: The Defence opposes the inclusion of category A.4 in its present form. This category should be modified to include solely the contact information of investigators of the investigating/disclosing party.

33. *First*, the rationale provided to oppose the inclusion of category A.2 and A.3 above also applies to this category. This information is also essential for the conduct of investigations by the receiving party.

34. *Second*, it has not been genuinely demonstrated that providing the receiving party with the identity of investigators of the disclosing/investigating party would impede ongoing investigations by the disclosing party. In fact, with the exception of limited redactions of the identity of certain investigators of the Prosecution, in exceptional situations under judicial control, no other international court or tribunal allowed parties or participants to redact the identity of its investigators *proprio motu*. Not before the ICTY, not before the ICTR, not before the STL, not before the SCSL and not before the ECCC. The fact that the identity of investigators of the disclosing party was not redacted in proceedings before other courts and tribunals neither impeded the conduct of investigations nor the outcome of trials. Significantly, the fact that the identity of investigators would not be redacted does not, *ipso facto* make

this information public. The receiving party is bound to maintain the confidentiality of this information and would do so.

35. “*Category A.5*”: The Defence opposes the inclusion of category A.5 in its present form. This category should be modified to include solely the contact information of intermediaries of the investigating/disclosing party.

36. *First*, the rationale provided to oppose the inclusion of category A.2, A.3 and A.4 above also applies to this category. This information is also essential for the conduct of investigations by the receiving party. The identity of intermediaries has been a major issue in proceedings before the Court. It must be recalled that in *Lubanga* a stay of proceedings was ordered (and subsequently lifted) as a result of the Prosecutor refusing to disclose the identity of its intermediaries. The role, involvement and activities of Prosecution intermediaries has also been the object of protracted litigation in other cases such as *Prosecutor v. Bosco Ntaganda*.³ The role of intermediaries during investigations conducted by the Prosecutor is of critical importance. The nature of the responsibilities of the Prosecution intermediaries are vested with – including, *inter alia*, identifying potential witnesses, verifying what information can be provided by a potential witnesses, briefing potential witnesses before meeting with Prosecution representatives, assisting Prosecution’s witnesses during interviews conducted by Prosecution representatives, assisting witnesses with travel, accommodation and financial arrangements, providing the Prosecution with reports on information obtained from potential witnesses and/or witnesses, assisting witnesses in obtaining identification documents from village, municipality and governmental authorities in support of their testimony, verifying whether potential witnesses and/or witnesses are in possession of documentary or other material evidence and informing the Prosecution thereof, keeping the Prosecution informed of the whereabouts of potential witnesses and/or witnesses – render the disclosure of their identity imperative.

³ ICC-01/04-02/06-T-115-Red-ENG, p. 41, l.24 to p. 43, l. 22.

37. *Second*, allowing the investigating/disclosing party to redact *proprio motu* the identity of its intermediaries, the contractual arrangements under which they operate, the terms of reference they were provided with and other related information seriously impedes the ability of the Defence to conduct investigations for the purpose of testing and challenging the reliability of the evidence, and ultimately for the Chamber to assess the probative value which can be attributed to the evidence.

38. *Third*, it has not been genuinely demonstrated that providing the receiving party with the identity of intermediaries of the disclosing/investigating party would impede ongoing investigations by the disclosing party. In fact, with the exception of limited redactions of the identity of certain intermediaries of the Prosecution, in exceptional situations under judicial control, no other international court or tribunal allowed parties or participants to redact the identity of its intermediaries *proprio motu*. Not before the ICTY, not before the ICTR, not before the STL, not before the SCSL and not before the ECCC. The fact that the identity of intermediaries of the disclosing party was not redacted in proceedings before other courts and tribunals neither impeded the conduct of investigations nor the outcome of trials. Significantly, the fact that the identity of intermediaries would not be redacted does not, *ipso facto* make this information public. The receiving party is bound to maintain the confidentiality of this information and would do so.

39. “*Category A.6*”: The Defence opposes the inclusion of category A.6 in its present form. This category should be modified to include solely the identity of *individual* leads and sources of the investigating/disclosing party and contact information of leads and sources other than individual.

40. *First*, the rationale provided to oppose the inclusion of category A.2, A.3, A.4 and A.5 above also applies to this category. Information related to the identity of

leads and sources, other than individual leads and sources, is also essential for the conduct of investigations by the receiving party.

41. *Second*, the identity of individual leads and sources which can be redacted must be strictly limited to individual leads and sources (persons) who volunteer information already in their possession for the use of the investigating/disclosing party solely for investigation purposes. Individual leads or source, cannot be treated, involved with or act as a witness, an intermediary or a resource person. An individual lead or source can neither investigate nor have contact with other witnesses. Nonetheless, even though their identity can be redacted, the information provided by individual leads or sources to the Prosecution must be disclosed to the Defence by way of investigation reports pursuant to Rule 77.

42. *Third*, concerning the identity of other leads or sources such as NGOs, international organizations, academics and private companies, etc., such information must be disclosed as it is indispensable to the conduct of investigations by the receiving party for the purpose of testing and challenging the reliability of the evidence, and ultimately for the Chamber to assess the probative value which can be attributed to the evidence.

43. *Fourth*, allowing the investigating/disclosing party to redact *proprio motu, inter alia*, the identity of its leads and sources other than individual leads and sources, whether the information was volunteered by another lead or source or whether contact with an other lead or source was initiated by the investigating party; the goals and *raison d'être* of the other leads or sources; whether any member of the other lead or source has been contact with any witness at any time; and whether the other lead or source has an interest in the outcome of the proceedings, utterly impedes the ability of the Defence to conduct investigations in violation of the rights of the suspect or accused to full answer and defence.

44. “*Category A.7*”: The Defence opposes the inclusion of category A.7 in its present form. The term ‘means used to communicate with witnesses’ must be defined and redactions under this category must be limited solely to cases where disclosing such information would reveal the location of a protected witness.

45. *First*, information related to the means employed by the disclosing party to communicate with witnesses is essential for the conduct of investigations by the receiving party with a view to testing and challenging the reliability of the evidence, and ultimately for the Chamber to assess the probative value which can be attributed to the same. Indeed, it is highly relevant for the receiving party to know whether the disclosing party communicated with a witness in person; through an intermediary; through another third party, including for example a government official, a member of an NGO or other person in authority in relation to the witness; by telephone/fax/text message; by electronic means (email); or by regular post (surface mail). This information allows the receiving party to establish, *inter alia*: (i) the date of a particular communication between the disclosing party and its witness, including if applicable, the date of the request and the date of the response; (ii) whether there was an exchange of information by way of document or any other type of material between the disclosing party and the witness; (iii) what means are available to the witness to communicate with the disclosing party; (iv) whether the exchange of information between the disclosing party and its witness was transmitted solely to one witness or distributed to more than one recipient; and (v) whether the witness was in the presence of any other person (including a persons in authority in relation to him) when communicating with the disclosing party.

46. *Second*, Allowing the disclosing party to redact this information *proprio motu*, inappropriately impedes the ability of the receiving party to deploy necessary investigation techniques normally used in the course of any investigation.

47. *Third*, on the other hand, it has not been genuinely demonstrated that providing the receiving party with information related to the means employed by the disclosing party to communicate with witnesses would impede ongoing investigations by the disclosing party. In fact, with the exception of limited redactions concerning such information, in exceptional situations under judicial control, no other international court or tribunal allowed parties or participants to redact such information *proprio motu*. Not before the ICTY, not before the ICTR, not before the STL, not before the SCSL and not before the ECCC. The fact that information related to means employed of the disclosing party was not redacted in proceedings before other courts and tribunals neither impeded the conduct of investigations nor the outcome of trials. Significantly, the fact that such information would not be redacted does not, *ipso facto* make this information public. The receiving party is bound to maintain the confidentiality of such information where it involves protected witnesses and would do so.

48. Only in cases, where revealing the means used by the disclosing party to communicate with a witness inevitably reveals the location of a witness, should it be permissible for the disclosing party to apply a redaction *proprio motu*.⁴

49. “*Category A.8*”: The Defence opposes the inclusion of category A.8 all together. No such category should be included in the redaction protocol.

50. Allowing the disclosing party to apply *proprio motu* redactions of information which must be disclosed pursuant to the Statute and Rules constitutes, in and of itself, an exception, which must be clearly defined and delineated. Including such a vague and subjective category as ‘other redactions under Rule 81(2) of the Rules’ certainly does not meet this threshold. It is too subjective, too vague and paves the way for the redaction of information likely to impede the conduct of investigation by the receiving party.

⁴ Annex A Protocol proposé article XXX

51. *“Under Rule 81(4) of the Rules”*: Categories B.1 to B.5 address exceptions to Rule 81(4). The Defence deems necessary before providing observations in respect of each of these categories to underscore the object and purpose of Rule 81(4). First, Rule 81(2) is directed at material or information resulting from the implementation of Article 54, 72 and 93 and in accordance of Article 68. Second, pursuant to Rule 81(4) and the use of the word ‘shall’ therein, such material or information may only be redacted as a result of the Chamber’s objective assessment of the circumstances or upon application by the Prosecutor to the Chamber. Moreover, pursuant to Article 68 of the Statute the redaction of such information must be justified to protect witnesses and victims and their families due to the existence of demonstrated objective fears. It is thus imperative that the Chamber’s delegation of such an important power must be clearly defined and precisely delineated. Furthermore, such delegation of power by the Chamber to the disclosing party “[...] shall not be prejudicial to and inconsistent with the rights of the accused and a fair and impartial trial”.

52. In this regard, the Defence observations at paragraph 51 above concerning the use of the word ‘shall’ in paragraph 1 of proposed Redaction Protocol is more than ever relevant and important. Indeed, the object and purpose of the Redaction Protocol must be strictly interpreted to mean that the disclosing party ‘may’ apply redactions to information in categories B.1 to B.5 in specific cases where necessary and not ‘shall’ apply redactions to information in categories B.1 to B.5 in every case.

53. *“Category B.1”*: The Defence opposes the inclusion of category B.1 in its present form. Category B.1 should be modified to make it clear that it does not apply to all witnesses but rather to witnesses for whom it is necessary to protect their safety or whose identity has not otherwise legitimately been made public.

54. *“Category B.2”*: The Defence opposes the inclusion of category B.2 in its present form. Category B.2 should be modified to make it clear that it does *not* apply to the identity of family members of witnesses who are involved in or related to the

substance of the witness' testimony such that their identity is material to the receiving party's investigation into the reliability of the witness' testimony and ultimately for the Chamber's assessment of the probative value which can be attributed to the evidence of the witness.

55. As for family members who are not material to the assessment of the witness' testimony, redactions must not be automatic but applied only in cases where it is necessary to protect their safety.

56. "Category B.3": The Defence opposes the inclusion of category B.3 in its present form. Category B.3 should be modified to make it clear that it does not apply to all 'innocent third parties' but solely to persons whose safety is objectively at risk, because: (i) they appear in a photograph depicting a material fact, event or person; or (ii) they are mentioned in a witness' statement; and (iii) they are not material in any way to the assessment of such evidence.

57. The inclusion of category B.3 in the Redaction Protocol is based on the false premise that it is wrong for anyone to be perceived as being involved in any way with the activities of the Court, due *inter alia* to their presence near a facility of the Court, a person working for one of the organs of the Court, including the Defence, or any object identifiable as belonging to the Court, as a result of which, they would automatically be at risk.

58. Allowing the disclosing party to apply *proprio motu* redactions to information in its possession related to persons who are not covered by categories B.1 and B.2 inappropriately impedes the ability of the receiving party to conduct necessary investigations impedes to testing and challenging the reliability of the evidence.

59. "Category B.4": The Defence does not oppose the inclusion of category B.4 in its present form.

60. “*Category B.5*”: For the reasons stated in paragraph 44 above opposing the inclusion of category A.7 altogether, the Defence opposes the inclusion of category B.5.

61. “*Paragraph 3*”: The Defence opposes the content of paragraph 3 in its present form.

62. Paragraph 3 should be modified to make clear that pseudonyms should always be assigned. Accordingly the second sentence should be removed. The third sentence should also be modified to make clear that the categories of redaction applied must always be indicated over the information redacted. Lastly, the last sentence should be deleted altogether, along with categories A.7 et B.5.

63. Moreover, if it is determined to maintain category A.1 in the Redaction Protocol, any redaction of location the of witness interview/accommodation should be accompanied by a code, disclosed to the receiving party, identifying the type of location or accommodation used.

64. More importantly, any information redacted pursuant to this Redaction Protocol must be appear covered in black ink, in its entirety, with a view to informing the receiving party of the extent of the redaction applied. The use of the word redacted in square brackets ([REDACTED]) to depict a redaction must be prohibited.

65. “*Paragraph 4*”: The Defence opposes the content of paragraph 4 in its present form.

66. Taking into consideration that redactions applied by the disclosing party *proprio motu* pursuant to this Redaction Protocol constitute exceptions to information that should normally be disclosed to the receiving party pursuant to the Statute and the Rules it is imperative to modify paragraph 4 by including an objective and responsive mechanism for the timely resolution of disputes.

67. Taking stock of difficulties encountered in previous cases, in particular when disagreements between the disclosing and receiving parties occur shortly before the confirmation hearing or shortly before the testimony of a witness, the proposed mechanism must address differently the 30-day period before the confirmation hearing or before the testimony a witness.

68. *First*, in normal circumstances, a limit of 72 hours should be imposed for good faith consultations with a view to resolving the matter. Should the matter not be resolved after 72 hours, the receiving party may apply to the Chamber for a ruling, thereby triggering a 3-day response time for the disclosing party, along with a concurrent 5-day period for the Chamber to adjudicate the matter. Pursuant to this mechanism, disputes would be resolved within eight days.

69. *Second*, during the 30-day period before the confirmation hearing or during trial, before the scheduled testimony of a witness, the receiving party should be entitled to apply directly to the Chamber for a ruling, thereby triggering: (i) a compulsory 2-day response time for the calling party; followed by (ii) a 1-day reply time for the receiving party; along with (iii) a concurrent 4-day period for the Chamber to adjudicate the matter. Pursuant to this mechanism, disputes would be resolved within four days.

70. *“Paragraph 5”*: The Defence does not oppose paragraph 5 in its present form.

71. However, a provision should be added to this paragraph such that any statement or summary disclosed, in which the identity of a witness is redacted, must include the date of the disclosing party’s application to the Chamber to redact the identity of the witness, along with the filing number.

72. *“Paragraph 6”*: The Defence opposes the content of paragraph 6 in its present form.

73. Taking into consideration that redactions applied by the disclosing party *proprio motu* pursuant to this Redaction Protocol constitute exceptions to information that should normally be disclosed to the receiving party pursuant to the Statute and the Rules it is imperative to modify paragraph 6 by including an objective and responsive mechanism to ensure that such redactions are lifted as soon as no longer justified.

74. A provision should be added to this paragraph to make it compulsory for the disclosing party to review redactions applied pursuant to this Redaction Protocol in any document or statement disclosed, whenever a change of circumstances occurs in relation to the evidence disclosed. In respect of a witness' statement a change of circumstances includes but is not limited to: (i) the production of an investigation note related to the witness; (ii) the taking of an additional statement from the witness; (iii) receiving a document or new information from the witness; or (iv) obtaining information concerning the witness from another person or entity.

75. Whereas these additional obligations imposed on the disclosing party may appear onerous, they are fully justified considering the exceptional nature of *proprio motu* redactions of information, which constitute an exception to the disclosure of information provided for in the Statute and the Rules.

76. "Paragraph 7": The Defence does not oppose paragraph 7 in its present form. Nonetheless the letter, the Defence suggests to replace the letter 'E' with '81(1)', 'WP' or 'IWP'.

RELIEF SOUGHT

77. In light of the above, the Defence respectfully requests the Single Judge to:

DENY the Prosecution Request for the adoption of a Redaction Protocol in this case; or in the alternative

ADOPT a Redaction Protocol on the basis of and limited to that found in Annex A.

RESPECTFULLY SUBMITTED ON THIS 7TH DAY OF JANUARY 2019

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon *Ad.E*, Counsel for Alfred Rombhot Yekatom

The Hague, the Netherlands