

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 November 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

Yekatom Defence Response to Prosecution Request for Redactions to CDRs

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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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
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REGISTRY

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**Victims Participation and Reparations
Section**

1. The counsel representing Mr. Alfred Rombhot Yekatom ("Defence") hereby respond to the *Confidential Redacted Version of "Prosecution's Request for Non-Standard Redactions to Call Data Records Relating to SELEKA Investigation"* ("Request").¹

SUBMISSIONS

2. The Defence does not oppose the proposed redactions over (i) the requests for assistance listed in Annex B to the *Request*; (ii) the transmission and related documentations listed in Annex C of the *Request*; or (iii) the names contained in Call Data Records ("CDR") CAR-OTP-2011-0849 listed as item 6 in Annex A of the *Request*.
3. However, the Defence opposes any redactions over phone numbers, IMSI and IMEI (collectively, "Numbers") in the CDRs listed in Annex A to the *Request*. It is unnecessary and overly intrusive.² The risk to the integrity of the Seleka investigation is non-existent.
4. By redacting the names of the registered user or the person of interest, the CDRs are anonymised. The ability of the Defence to infer the targets and direction of the Seleka investigation through analysing the call data is diminished.
5. On occasion, the Defence may learn the ownership or affiliation of certain Numbers from other sources. Whereas the Defence is not concerned with

¹ [ICC-01/14-01/18-714-Conf-Red](#).

² [ICC-01/14-01/18-273-Red2](#), para. 26(b), recalling the criterion of non-disclosure that "the non-disclosure of information could overcome or reduce and it is *necessary* in that there is no less intrusive measures, short of non-disclosure, that is available and feasible in the circumstances" (emphasis per original), citing *Prosecutor v. Katanga*, [Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"](#), ICC-01/04-01/07-475, 13 May 2008, paras 71-73; *Prosecutor v. Lubanga*, [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81"](#), ICC-01/04-01/06-773, 14 December 2006, paras 21, 33-34; *Prosecutor v. Ruto et al.*, [Redacted First Decision on the Prosecutor's Requests for Redactions and Related Requests](#), ICC-01/09-01/11-145-Conf-Red, 29 June 2011, paras 27-29.

Seleka numbers, this information would very unlikely be deemed as a relevant or viable investigative lead. Nonetheless, the Defence undertakes to not use it to circumvent the redactions which it does not oppose in this response, or in any way that could potentially jeopardise the ongoing Seleka investigation.³ Should it consider the information material to the preparation of defence ergo disclosable, the Defence will consult with the Prosecution or, where necessary, seize the Chamber to lift the effect of the redaction.

6. The Defence takes note of the information that is identified as solely relating to the Seleka investigation in Annex C to the *Request*.⁴ It agrees to the proposed approach and undertakes to not consider the information.
7. Lastly, the Defence notes the Prosecution's supposed explanation of CDRs and how they are generated.⁵ At the present, the Defence reserves the right to make submissions when the Prosecution tender the CDRs. Likewise, it will make submissions on the Prosecution's methodology for CDR collection, and its impact on the weight and/or reliability that may be given to the CDR evidence, at an appropriate junction.

CONFIDENTIALITY

8. This present response is filed on a confidential basis corresponding to the classification of the *Request*. The Defence does not oppose to its reclassification as public.
9. Rather, the Defence contends that the *Request* should be reclassified as public. As previously argued,⁶ for an investigation of the events in the 2010s, the fact that telephone records are queried cannot be said to be so sensitive that its

³ [ICC-01/14-01/18-714-Conf-Red](#), para. 19, suggesting a similar approach to the already disclosed materials.

⁴ [ICC-01/14-01/18-714-Conf-Red](#), para. 19.

⁵ [ICC-01/14-01/18-714-Conf-Red](#), paras 7-18.

⁶ [ICC-01/14-01/18-694-Conf](#), para. 18.

exposure could place the investigation in jeopardy,⁷ especially considering that the same enquiry into the Anti-Balaka is already known to the public.⁸

RELIEF SOUGHT

10. In light of the above, the Defence respectfully requests the Chamber to:

REJECT the request to apply redactions over phone numbers, IMSI and IMEI in the CDRs; and

ORDER the reclassification of the *Request* and the present response to public.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF NOVEMBER 2020



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⁷ [ICC-01/14-01/18-714-Conf](#), para. 5.

⁸ See, e.g., [ICC-01/14-01/18-335-Red2](#).