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

Date: **14 November 2023**

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***

Public

**Public Redacted Version of "Yekatom Defence Request for Disclosure of
Telecommunication Related Material", 21 August 2023, ICC-01/14-01/18-
2038-Conf**

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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INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom (“Defence”) hereby requests the Chamber to order the Prosecution to disclose the following telecommunication related material (“Sought Material”):
 - a. Inventories of all the Call Data Records (“CDR”) obtained by the Prosecution, irrespective of whether or not they were disclosed, related to (i) Mr. Yekatom’s phone numbers, and (ii) phone numbers attributed to Prosecution’s witnesses;
 - b. All Call Sequence Tables (“CST”) produced by the Prosecution on numbers attributed to Mr. Yekatom.
2. The Defence submits that the Sought Material is material for its preparation and that immediate disclosure is warranted in light of the near completion of the Prosecution case.

PROCEDURAL HISTORY

3. On 22 January 2021, the Defence requested to the Prosecution confirmation that all CDRs of witnesses were duly disclosed and, if should it not be the case, their disclosure.¹
4. On 25 February 2021, the Prosecution rejected the Defence request on the basis that it “will not consider this generalised request for all the CDR of all Prosecution trial witnesses. It will consider specific requests that identify the materiality of the CDR sought in respect of a given witness or witnesses, in that the CDR go to a live issue in the case”.²
5. On 29 May 2023, the Chamber issued Further Directions on the Conduct of the Proceedings, noting *inter alia* that it expected the completion of the

¹ Letter ARY-2021-0158 from the Defence to the Prosecution dated 22 January 2021 (available upon request).

² Annex to email from the Prosecution to the Defence sent on 25 February 2021 at 15:30 (available upon request).

Prosecution's presentation of evidence by the end of August 2023.³ The Chamber also ordered the Defence to file its final lists of witnesses and evidence, as well as complete its disclosures, by 17 November 2023.⁴

6. On 21 July 2023, the Defence sent an email to the Prosecution requesting disclosure of the Sought Material mentioned in paragraph 1 of the present request.⁵
7. On 8 August 2023, the Prosecution rejected the Defence request regarding the Sought Material. The Prosecution indicated that the "relatively small number of undisclosed CDRs" were assessed as not disclosable and that there is no basis for the disclosure of inventories. The Prosecution further argued that CSTs are not subject to disclosure as they are to be considered internal work product.⁶

APPLICABLE LAW

8. Rule 77 of the Rules of Procedure and Evidence ("Rules") states that :

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

9. Jurisprudence of the Court consistently held that the term "material to the preparation of the defence" present in Rule 77 of the Rules must be construed broadly, referring to all objects relevant for the preparation of the defence.⁷

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³ [ICC-01/14-01/18-1892](#), para. 1.

⁴ [ICC-01/14-01/18-1892](#), para. 21.

⁵ Email from the Defence to the Prosecution dated 21 July 2023 at 14:59 (available upon request).

⁶ Email from the Prosecution to the Defence dated 8 August 2023 at 08:40 (available upon request).

⁷ *Lubanga v. Prosecutor*, Appeals Chamber, Decision on Mr Thomas Lubanga's request for disclosure, 11 April 2013, [ICC-01/04-01/06-3017](#), para. 10.

10. The Defence will first address its request for disclosure of inventories of CDRs in possession of the Prosecution (A), before detailing its request for disclosure of the Prosecution's CSTs in relation to Mr. Yekatom's phone numbers (B).

A. On the disclosure of the CDRs inventories

11. The Defence requests disclosure by the Prosecution of an inventory of all the CDRs in their possession for phone numbers attributed to Mr. Yekatom or Prosecution's witnesses, irrespective as to whether those CDRs are disclosed or undisclosed ("Inventories"). The Defence submits that those Inventories are material to its preparation.
12. Indeed, it is recalled that the Prosecution alleges in its Trial Brief that before the 5th of December 2013 attack, Mr. Yekatom was in contact through his phone with Mr. Mokom to prepare for the said attack.⁸ During the 5th of December 2013 attack the Prosecution further alleges that Mr. Mokom communicated with various individuals to coordinate the attack, including with Mr. Yekatom through his phone.⁹ The Prosecution also relies on telecommunication data to allege that after the attack Mr. Yekatom "communicated with Anti-Balaka National Coordination and senior Anti-Balaka members", including *inter alia* Messrs Ngaissona & Mokom as well as Prosecution's witnesses such as P-0487, P-0884, P-1647, P-0974, P-1339, P-0954, P-1193 or P-1172.¹⁰
13. Throughout the course of its presentation of evidence the Prosecution continued to show particular interest in telecommunication data, either during in-court examination of witnesses¹¹ or written filings.¹² This led the Prosecution

⁸ ICC-01/14-01/18-723-Conf, para. 90, fn. 214.

⁹ ICC-01/14-01/18-723-Conf, para. 113, fn. 269.

¹⁰ ICC-01/14-01/18-723-Conf, para. 415, fn. 1059.

¹¹ See as examples Prosecution's interventions in [T-099-ENG ET](#) at [10:52:10] or T-116-CONF-ENG CT at [16:00:13].

¹² ICC-01/14-01/18-808-Conf, paras 31-32.

to seek submission in the case file of numerous CDRs through a Bar Table motion.¹³

14. As of the day of this filing the Prosecution disclosed 712 items labelled as “Call Data Records (CDR)”. During *inter partes* discussion the Prosecution also indicated that it was in possession of a “*relatively small number of undisclosed CDRs*”.¹⁴
15. In light of the relative importance of telecommunication evidence in the present case, the Defence submits that disclosure of the Inventories is material to its preparation. Indeed, such disclosure will allow the Defence to assess the telecommunication evidence in possession of the Prosecution and, should it be necessary, lead to specific disclosure request of still undisclosed CDRs. This approach would be in line with the Prosecution’s 25 January 2021 email to the Defence which indicated that it would only consider specific disclosure requests of CDRs.¹⁵ Moreover, disclosure of the Inventories would enable the Defence to ascertain whether or not material in the Prosecution’s possession might affect the credibility of witnesses’ evidence on telecommunication matter, as an example by cross-verifying the accuracy of phone numbers provided by different witnesses, which, on some occasions, proved to be erroneous.¹⁶
16. The Defence further submits that its request for Inventories is not overly broad as it specifically targets CDRs from Mr. Yekatom and from Prosecution’s witnesses.
17. Finally, the Defence notes that the present request for disclosure of the Inventories is in line with the recent Pre-Trial Chamber II decision in the

¹³ [ICC-01/14-01/18-1296](#). See also the Chamber’s decision related to this request : [ICC-01/14-01/18-1499](#).

¹⁴ Email from the Prosecution to the Defence dated 8 August 2023 at 08:40 (available upon request).

¹⁵ See paragraph 4 above.

¹⁶ See for example P-0287 : ICC-01/14-01/18-T-021-CONF-ENG CT from [14:46:11] or P-0487 : ICC-01/14-01/18-T-203-CONF-ENG ET, [14:28:29] [REDACTED].

Mokom case which considered such documents as material to the preparation of the defence and thus disclosable.¹⁷

18. Consequently, in light of the above, the Defence respectfully requests the Chamber to grant its request for disclosure of inventories of CDRs, related to Mr. Yekatom or witnesses of the case, in the Prosecution's possession.

B. On the disclosure of the CSTs

19. The Defence requests disclosure by the Prosecution of all CSTs in its possession related to phone numbers attributed to Mr. Yekatom.
20. The Defence refers to paragraphs 12 and 13 above regarding the importance of telecommunication material in the present proceedings, and specifically emphasizes the Prosecution's use of phone contacts of Mr. Yekatom to further allegations regarding the 5th of December attack or links with the so-called coordination which are core issues of the case.
21. The present high relevance for the Prosecution of Mr. Yekatom's phone communications, particularly with Mr. Mokom as alleged in the Trial Brief,¹⁸ is similar to the situation of Mr. Mokom in his own case, in which Pre-Trial Chamber II found that : "all CSTs produced by the Prosecution are material for the preparation of the Defence, and should be disclosed. Indeed, the Defence must be in a position to place communication between Mr Mokom and other persons on which the Prosecution relies in their proper context [...]".¹⁹ The Defence submits that the same reasoning should be applied in the present instance as, at this stage of the proceedings, marked by the end of the Prosecution's evidence and final preparations of the Defence's one, the Defence

¹⁷ *Prosecutor v. Mokom*, Decision on the Defence's requests for disclosure and rectification of disclosure metadata, 3 July 2023, [ICC-01/14-01/18-219-Red](#), paras 42-43.

¹⁸ See paragraph 12 above.

¹⁹ *Prosecutor v. Mokom*, Decision on the Defence's requests for disclosure and rectification of disclosure metadata, 3 July 2023, [ICC-01/14-01/18-219-Red](#), para. 47.

needs the requested CSTs in order to have the full context surroundings Mr. Yekatom's calls relied by the Prosecution.

22. This will allow the Defence to fully assess areas which potentially need to be addressed during its own presentation of evidence. As an example, by requesting the testimony of an individuals who called Mr. Yekatom, or got called by him, immediately before / after a phone call relied upon by the Prosecution to further its case, in order for the Chamber to be informed of the context of those interactions. Indeed, for instance, during its questioning of P-0446 the Defence attempted to put to him that the evidence in the case show that there were no contact between Mr. Yekatom and Mr. Yvon Konate on 5 December 2013 despite the witness' assertion.²⁰ The Prosecution objected twice to the question stating

And the basis of [Ms Dimitri] question is on incomplete information because it's based solely on CDR data that we were able to acquire. If Mr Yekatom and the Defence is willing to give us all of his telephone communications, then she can put that proposition to the extent that all of the available CDR would be before the Chamber, but it's not.²¹

23. This Request is made in the spirit of having at hand all the necessary information to put forward the Defence's case as pointed out by the Prosecution. Indeed, while in this specific example the Prosecution has the burden to prove that a contact did take place, the Defence has to be provided with all the material which could help affecting the credibility of the Prosecution's evidence. Consequently, the Defence submits that CSTs prepared by the Prosecution of Mr. Yekatom's attributed numbers are material to its preparation.
24. During *inter partes* discussions the Prosecution rejected this disclosure request on the basis that CSTs are "internal work product and fall withing the express

²⁰ ICC-01/14-01/18-T-096-CONF-ENG, [10:51:29].

²¹ ICC-01/14-01/18-T-096-CONF-ENG, [10:48:58] and [10:52:14].

terms of Rule 81(1). They are not subject to disclosure. The underlying data has in any case been provided to the Defence by way of raw CDRs".²²

25. The Defence however notes that in the Mokom case Pre-Trial Chamber II held a different reasoning, ruling that:

CSTs are not per se exempt from disclosure. CSTs are not reports, memoranda or internal documents susceptible of revealing the Prosecution's internal strategies as they merely organise CDRs in a manner which is easily readable. In addition, the Prosecution has itself chosen to disclose several CSTs to the Defence, and it is now contradictory for it to generally argue that this material is non-disclosable in the absence of specific arguments [...].²³

26. It is recalled that in the present proceedings the Prosecution also chose to disclose some of its CSTs, within the context of the submission of CDRs through a Bar Table Motion, as the CSTs were described as "presenting in an easily readable and accessible format the relevant call data relied upon in the Prosecution's case as pleaded in its Trial Brief".²⁴ The Prosecution's own description of its CSTs and the disclosure of some of them militate in favor of rejecting the argument that they constitute internal documents non subject to disclosure pursuant to Rule 81(1) of the Rules.

27. In light of the above, and of the very limited nature of the request which only relates to CSTs of phone numbers attributed to Mr. Yekatom by the Prosecution, the Defence respectfully requests the Chamber to order the Prosecution to disclose the Sought Material.

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²² Email from the Prosecution to the Defence dated 8 August 2023 at 08:40 (available upon request).

²³ *Prosecutor v. Mokom*, Decision on the Defence's requests for disclosure and rectification of disclosure metadata, 3 July 2023, [ICC-01/14-01/18-219-Red](#), para. 46.

²⁴ [ICC-01/14-01/18-1296](#), para. 3 ; and the associated CSTs in ICC-01/14-01/18-1296-Conf-AnxA-Corr.

28. The present request is filed on a confidential basis in light of references to the content of confidential filings which could disclose the identity of Prosecution's witnesses. A public redacted version will be filed forthwith.

RELIEF SOUGHT

29. In light of the above, the Defence respectfully requests Trial Chamber V to:

ORDER the Prosecution to disclose inventories of all Call Data Records in their possession related to phone numbers attributed to either Mr. Yekatom or Prosecution's witnesses; and

ORDER the Prosecution to disclose all CSTs in their possession regarding phone numbers attributed to Mr. Yekatom.

RESPECTFULLY SUBMITTED ON THIS 14th DAY OF NOVEMBER 2023



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