

Annex 19

From: Trial Chamber V Communications
Sent: 30 June 2020 18:55
To: Struyven, Olivia; Dimitri, Mylene
Cc: OTP CAR IIB Managers; [REDACTED] D30 Ngaissona Defence Team; [REDACTED]; D29 Yekatom Defence Team; V44LRVTeam-OPCV; Office of the Director DJSS; V44 LRV Team; V45 LRV Team; Trial Chamber V Communications
Subject: RE: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence
Follow Up Flag: Follow up
Flag Status: Flagged

Dear all,

Having considered the Prosecution's request and the Defence's response, and noting that the information in question is already publically available, the Single Judge is not convinced that a classification as confidential is warranted in this instance.

The Single Judge thus rejects the request and orders the Registry to lift the restriction on access to filing ICC-01/14-01/18-574.

Furthermore, the parties are reminded to copy the CLRV in requests to the Chamber.

Kind regards, TC V

From: Dimitri, Mylene
 Sent: 30 June 2020 12:23
 To: Trial Chamber V Communications
 Cc: OTP CAR IIB Managers; Struyven, Olivia; [REDACTED] D30 Ngaissona Defence Team; [REDACTED] D29 Yekatom Defence Team; V44LRVTeam-OPCV; Office of the Director DJSS; V44 LRV Team; V45 LRV Team
 Subject: RE: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence

Your Honours,

The Yekatom Defence objects to the *urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence*.

First, the mere fact that the Prosecution used Call Data Records (CDR) for the purpose of its investigation is referenced in several paragraphs of the public redacted version of the *Document Containing the Charges, ICC-01-14/01-18-282-AnxB1-Red*; (See 59, 333, 389, 392, 393, 394, 399, 429, 430, 459, 465, 497 and 526) as well as in the public redacted version of the *Decision on the confirmation of charges against Yekatom and Patrice-Edouard Ngaissona ICC-01-14/01-18-403-Red*; (See par. 158, 159, 180, 194, 228, 229). In addition, during the confirmation hearing, the Prosecution also referred to CDR as evidence they had collected in the course of their investigation in order to request confirmation of the charges against both accused; (See ICC-01/14-01/18-T-005-Red-ENG, p.54, 1.11-12 & ICC-01/14-01/18-T-007-Red-ENG, p.9, 1.11-24).

Second, the public redacted version of the DCC additionally refers to the fact that the Prosecution is specifically using CDR **location data** to pinpoint the location of a phone user; *Document Containing the Charges, ICC-01-14/01-18-282-AnxB1-Red*; (See par. 389, 465).

Third, the use of CDR in order to collect evidence in other situations or cases such as Mali is also part of the public domain as referenced in the *Version publique expurgée de la « Version amendée et corrigée du Document contenant les charges contre M. Al HASSAN Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud » ICC-01/12-01/18-335-Corr-Red*; (See. par. 355, 499, 506, 729).

Finally, the collection of evidence by the Prosecution, whether in the form of witness statements, photographs, satellite images or call data records is a matter of public interest as this evidence may or may not be relied upon in the final determination of the guilt or innocence of the accused in this case. The *Defence Motion to Exclude Call Location Evidence* doesn't reveal any confidential techniques or methods *per se* but simply refers to the type of evidence collected by the Prosecution without revealing its content therein.

More importantly, the fact that "*call location data now features in most prominently in most criminal investigations*" has been publicly referred to by the Prosecution: "*The collection of communications-related data, such as CDRs and intercepts, has also become a routine practice in the OTP.*" (See <https://www.icc-cpi.int/itemsDocuments/200508-OTP-response-to-OSJI-UoA-report.pdf> page 13).

Therefore, the Defence of Mr. Yekatom respectfully requests the Trial Chamber to reject the Prosecution urgent request for reclassification.

Kind regards,

Mylène Dimitri

From: Trial Chamber V Communications [mailto: [REDACTED]]
 Sent: 30 June 2020 10:23
 To: D29 Yekatom Defence Team
 Cc: OTP CAR IIB Managers; Struyven, Olivia; [REDACTED]; D30 Ngaissona Defence Team; [REDACTED]; Trial Chamber V Communications; [REDACTED]
 Subject: RE: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence

Dear Counsel,

The Single Judge sets 16:00 today as the deadline for the Defence's response to the Prosecution's request, if any.

Kind regards, TC V

From: [REDACTED]
 Sent: 30 June 2020 08:49
 To: Trial Chamber V Communications; [REDACTED]
 Cc: D29 Yekatom Defence Team; OTP CAR IIB Managers; [REDACTED]; D30 Ngaissona Defence Team
 Subject: RE: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence

Dear Trial Chamber V,

Thank you for the below instruction, CMS will inform you asap accordingly once the access has been blocked, and filing removed from public domain, where applicable.

Kind regards
CMS

From: Trial Chamber V Communications
Sent: 30 June 2020 08:46
To: [REDACTED]
Cc: D29 Yekatom Defence Team; OTP CAR IIB Managers; [REDACTED]s; D30 Ngaissona Defence Team; Trial Chamber V Communications
Subject: RE: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence

Dear colleagues in the Registry,

In view of the request below, please temporarily block access to public filing ICC-01/14-01/18-574.

Kind regards,
Trial Chamber V

From: Struyven, Olivia
Sent: 29 June 2020 21:34
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB Managers; [REDACTED]; D30 Ngaissona Defence Team; [REDACTED]
Subject: urgent request for reclassification of Defence motion ICC-01/14-01/18-574 - Motion to Exclude Call Location Evidence

Dear Chamber,

In it (public) motion ICC-01/14-01/18-574 (Motion to Exclude Call Location Evidence), the YEKATOM Defence alludes to the Prosecution's use of particular investigative techniques and methods, including in other situations and cases. For instance, in paragraph 37, the Defence states:

37. Since call location data now features prominently in most criminal investigations, the Prosecution's failure to seek judicial review when obtaining call location data likely cuts across most of the situations under active investigation, including those in Mali, Sudan, Libya, Ivory Coast, and Georgia, violating the privacy rights of hundreds of more persons. The Prosecution likely continues to obtain call location data without judicial review to this very day.

Regardless of its accuracy, the Prosecution believes that this type of information should be kept confidential in order to ensure the efficiency of the investigation techniques and methods mentioned, and therefore requests (i) that the motion be reclassified as confidential with a public redacted version that redacts this type of information throughout the document; and (ii) that the motion be removed from the ICC website (if already published).

Kind regards,

Olivia Struyven

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