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Date: **23 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO

Public Document
with
Confidential Annex A

**Prosecution's Formal Submission of Additional Evidence to be Considered
for Sentencing**

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. Pursuant to Trial Chamber VII's ("Chamber") 20 October 2016 Sentencing Calendar,¹ the Office of the Prosecutor ("Prosecution") requests that the Chamber recognise 27 additional documents as "formally submitted" in respect of the sentencing proceedings.

2. The proposed evidence comprises the following categories: Category I – documents related to Witness P-0256's testimony; Category II – open source documents; Category III – a press release issued by Guylain Mafuta Laman at Kilolo's direction and related documents; and Category IV – a report from the Registry setting out the costs incurred by the Court in respect of the Main Case.

3. The proposed evidence is *prima facie* relevant to the determination of the appropriate sentences for the Convicted Persons. It directly bears on the gravity of the crimes committed and/or the manner of their commission, constitutes aggravating circumstances, or counters potential mitigating circumstances. The tendered documents are all authentic, reliable, and of high probative value in respect of the sentencing issues before the Chamber.

4. The Chamber's recognition of the proposed evidence from the bar table as formally submitted would complete, contextualise, and ensure its fair assessment, and thus assist the Chamber in its sentencing determinations.

5. Annex A provides the following information with respect to each item tendered: (i) evidence registration number ("ERN"); (ii) type; (iii) source identity; (iv) date; (v) title; (vi) basis of relevance; and (vii) date of disclosure.

¹ ICC-01/05-01/13-1990.

II. Confidentiality

6. The Annex to this motion is classified as “*Confidential*” as it refers to material of the same designation.

III. Submissions

7. The 27 items for which the Prosecution seeks formal submission fall within the following four categories: Category I – documents related to Witness P-0256’s testimony; Category II – open source documents; Category III – a press release issued by Guylain Mafuta Laman at Kilolo’s direction and related documents; and Category IV – a report from the Registry setting out the general costs associated with the Main Case. As noted, Annex A describes the relevance of each item in detail. The proposed evidence will assist the Chamber in its determination of the appropriate sentences for the Convicted Persons.

A. Category I – Documents Related to Witness P-0256

8. The Prosecution tenders seven (7) documents in relation to P-0256’s prospective testimony. Each is relevant to Arido’s sentence, as corroborative of the Witness’s evidence that as a product of the corrupt influence by a member of Arido’s Defence, he fabricated evidence which the Arido Defence: (a) used in an attempt to impeach Prosecution witnesses at trial; (b) formally submitted to the Chamber; or (c) disclosed as material Arido intended to rely on in his case in chief. In particular:

- CAR-OTP-0094-1877, which consists of contemporaneous notes taken by P-0256 and reflects Arido’s corrupt influence of the Witness and other prospective Main Case witnesses. The document is relevant to substantiate P-0256’s narrative of the events underlying and explaining Arido’s motives in

attempting to corruptly influence his testimony and to obstruct justice in *this* case.

- CAR-OTP-0094-1882, which comprises an Investigator's Report summarizing the chain of custody of documents obtained from P-0256 and reflects the Witness's explanation of each document. The Investigator's Report is relevant to show the process by which the Witness forged documents that were formally submitted or disclosed as material Arido intended to rely on in his case in chief.
- CAR-OTP-0094-1884, CAR-OTP-0094-1885, CAR-OTP-0094-1886, CAR-D24-0003-0054, and CAR-OTP-0094-1888, which are all documents received by P-0256 or the Arido Defence and which the Witness claims to have forged. The documents were either formally submitted to the Chamber by the Arido Defence or otherwise disclosed as material Arido intended to rely on in his case-in-chief.

9. In addition to the established propriety of tendering evidence from the bar table for formal submission, the Witness will also be available for examination on these documents during the sentencing hearing, further allowing for a more complete assessment of their reliability and probative value.

B. Category II – Open Source Documents

10. The Prosecution tenders fourteen (14) documents extracted from open source websites which either created or originated the material. These documents are particularly relevant to the sentences of Kilolo and Mangenda. They demonstrate the gravity of their crimes and counter any mitigating circumstances they may seek to advance regarding their remorse or acceptance of responsibility. In particular:

- CAR-OTP-0084-0403, CAR-OTP-0086-0043, and CAR-OTP-0086-0057 concern a speech given by Kilolo to Gbagbo supporters shortly after Kilolo's release from the ICC Detention Centre. In the speech, Kilolo alleges that all proceedings at the ICC are "*politico-judiciaire*" and that his own charges in this case were the result of a conspiracy by the Prosecution to shut down the Main Case Defence. The documents counter any argument by Kilolo that he accepted responsibility for his crimes. Further, they reflect his persistent and continuing lack of respect for the Court and the integrity of its proceedings.
- CAR-OTP-0094-1827, CAR-OTP-0094-1898, and CAR-OTP-0094-2473 comprise the Belgian and Congolese codes of professional conduct. These codes apply to Kilolo (Belgium) and to both he and Mangenda (DRC) where they are respectively licensed to practice law. By their terms, these codes, with which both Mangenda and Kilolo would have been familiar as part of their legal training, underscore the deliberate and flagrant nature of their crimes. All the more so, given that their crimes also constituted acts directly contravening their national professional codes of conduct.
- CAR-OTP-0094-2314 and CAR-OTP-0094-2341 are documents extracted by the Prosecution from the websites of the Kinshasa Matete Bar and Lubumbashi Bar, showing that Mangenda and Kilolo were both qualified to practice law in the DRC and thus subject to their respective deontological codes throughout the period in which they committed their crimes.
- CAR-OTP-0094-1892, CAR-OTP-0094-1993, CAR-OTP-0094-2439, CAR-OTP-0094-2471, CAR-OTP-0094-2315, and CAR-OTP-0094-2342 comprise forensic extraction reports as well as screen shots taken by the Prosecution's forensics team, demonstrating how the open source material was extracted and where they are from. They thus reliably establish the provenance of the substantive underlying material.

C. Category III – Press Release Issued by Guylain Mafuta Laman

11. The Prosecution tenders five (5) documents concerning a press release issued by Guylain Mafuta Laman at Kilolo's direction. The press release itself (CAR-OTP-0094-2362) is *prima facie* relevant and authentic. It is an open source document widely disseminated by Mafuta and demonstrates Kilolo's lack of remorse for his crimes. For instance, the press release falsely alleges that Kilolo was unjustly incarcerated in this case; that the Prosecution allegedly threatened Defence witnesses in the Main Case; and that the Prosecution targeted only the 'black' lawyers on Bemba's Main Case Defence team, denigrating the Court's integrity by falsely implying that the case — then confirmed against him by Pre-Trial Chamber II — was racially motivated.² CAR-OTP-0094-2359, an email exchange between the Prosecution and the Kilolo Defence concerning the press release confirming Mafuta Laman's actions pursuant to the directions of Kilolo, and CAR-OTP-0094-2433, a media article referencing and summarizing the press release, corroborates the fact of its wide public dissemination. Finally, CAR-OTP-0094-2437 and CAR-OTP-0094-2417 comprise a forensic extraction report and a screen shot taken by the Prosecution's forensic team, respectively. These documents further reliably demonstrate the provenance of the extracted media article.

D. Category IV – Registry Report on Costs

12. Finally, the Prosecution tenders CAR-OTP-0094-2406. The document is a Registry report setting out the general costs associated with the Main Case for the period of 3 July 2008 to 3 March 2016, as well as a breakdown of specific costs associated with the calling of the 14 Main Case Defence witnesses that are the subject of the charges on which the Chamber issued its decision of conviction. The Registry produced the report pursuant to an order issued by the Chamber and at the

² CAR-OTP-0094-2362, at 2362. *See also* ICC-01/05-01/13-290, para. 13.

Prosecution's request.³ The report is *prima facie* relevant for the reasons articulated in the Prosecution's previous filings⁴ — incorporated by reference herein — and which the Chamber implicitly found in ordering its production.

IV. Conclusion

13. For the reasons above, the Chamber should recognise the documents identified at Annex A as formally submitted for the purpose of determining the Convicted Persons' respective sentences.



Fatou Bensouda, Prosecutor

Dated 23rd Day of November 2016
At The Hague, The Netherlands

³ See generally ICC-01/05-01/13-2026.

⁴ See ICC-01/05-01/13-1966; ICC-01/05-01/13-2007.