

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/05-01/13**  
Date: **18 September 2015**

**TRIAL CHAMBER VII**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

**IN THE CASE OF**

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO  
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU  
AND NARCISSE ARIDO***

**Public Redacted Document  
with  
Confidential Annex A**

**Public redacted version of the "Prosecution's Third Request for the Admission of  
Evidence from the Bar Table", 21 August 2015, ICC-01/05-01/13-1170-Conf**

**Source: The Office of the Prosecutor**

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

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## Introduction

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”) to admit 104 items of evidence from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”) and rule 63(2) of the Rules of Procedure and Evidence (“Rules”).
2. The proposed evidence comprises the following categories: Category I – Materials disclosed by the Defence; Category II – Statements of the Accused; Category III – Materials obtained from the Accused; Category IV – Victims and Witnesses Unit (“VWU”) documents; Category V – Independent Counsel reports and related materials; Category VI – Detention Centre materials; Category VII – Open source materials; Category VIII – Photographs; and Category IX – Other materials.
3. The evidence tendered is *prima facie* relevant and probative of material issues at trial. It constitutes direct evidence of the conduct charged and/or corroborates other such evidence in the case.
4. Some proposed materials were provided by the Registry, or national authorities. As such, they are sufficiently authentic and reliable to be admitted from the bar table. Other items were obtained from the Accused. These were provided voluntarily (*i.e.*, through disclosure in the context of the confirmation of charges proceedings, during the course of the proceedings in the Main Case), or were otherwise lawfully seized from the person or premises of the Accused pursuant to judicial authorisation and the applicable laws of the national jurisdictions where the seizures took place.
5. Admitting the proposed materials from the bar table would help streamline the presentation of evidence, obviate the need to call Registry staff to attest to the authenticity of some of the underlying materials, and save valuable Court resources and time.
6. Annex A provides the following information in respect of each item tendered: (i) the evidence registration number (“ERN”); (ii) the type; (iii) the source identity; (iv) the date; (v) the title; (vi) the basis of relevance; and (vi) the date of disclosure. With the exception of a few documents that are clearly indicated as such in Annex A, the proposed evidence is limited

to those items on which the Prosecution's Pre-Trial Brief ("PTB") and annex ("Code Submission") rely.<sup>1</sup>

## **I. Confidentiality**

7. This filing and its Annex are classified as "Confidential", as they refer to filings and material of the same designation. A public redacted version will be filed.

## **II. Applicable Law**

8. The Prosecution incorporates by reference the discussion of the law applicable to the admission of evidence from the bar table set out at paragraphs 6 through 9 of the Prosecution's First Request for the Admission of Evidence from the Bar Table.<sup>2</sup>

## **III. Submissions**

9. As noted, the items for which the Prosecution seeks admission comprise the following categories: materials disclosed by the Defence; statements of the Accused Kilolo, Arido and Mangenda; materials obtained from the Accused; VWU documents; Independent Counsel reports and related materials; Detention Centre materials; open source materials; photographs; and a limited number of miscellaneous items. Each category is addressed in turn below.

10. The Prosecution has described the relevance for each item of evidence in more detail in Annex A, including the references to the relevant paragraphs of the PTB. These references encompass the Prosecution's position on all the underlying evidence cited in the relevant PTB paragraphs. The Prosecution has also indicated the few instances of documents that are not cited in the PTB, but are listed on the Prosecution's List of Evidence for trial.

### **A. Category I: Materials disclosed by the Defence**

11. The Prosecution seeks the admission of 29 items of evidence: (a) disclosed by the Defence teams of Bemba, Kilolo, Babala, and Arido in these proceedings, and (b) disclosed by the Defence in the Main Case and tendered into the record of that case.

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<sup>1</sup> See ICC-01/05-01/13-1110-Conf and ICC-01/05-01/13-1110-Conf-AnxA (Substantive Annex A – Analysis of Codes and Terms used by the Accused).

<sup>2</sup> ICC-01/05-01/13-1013-Conf ("First Bar Table Motion").

(i) *The materials are prima facie relevant to the issues at trial*

12. Sub-category (a) material comprises:

- (i) Items disclosed by the *Bemba* Defence.<sup>3</sup> Specifically, Bemba’s financial log entries, invoices of the Main Case Defence team members concerning missions conducted, a list of payments registered to Bemba’s Detention Centre account, and a press article;
- (ii) Items disclosed by the *Kilolo* Defence.<sup>4</sup> Specifically, materials related to Main Case Defence team missions to meet with witnesses, namely hotel invoices, plane tickets (including for Kilolo), lists of expenses, and email correspondence between the Accused, different sections of the Court and Joachim Kokate.
- (iii) One item disclosed by the *Babala* Defence, namely the table entitled “*Retenue parti MLC 2012-2013*” (ERN CAR-D22-0001-0001); and
- (iv) One item disclosed by the *Arido* Defence, namely the document entitled “*Demande d’asile*” (ERN CAR-D24-0001-0032).

13. As detailed in Annex A, most of these materials bear on: (a) the dates, locations and participants of the missions in the Main Case to meet Defence witnesses comprising the charged incidents; (b) the connection between the Accused and Joachim Kokate – a named implementer of the Overall Strategy<sup>5</sup> – in relation to such missions; (c) links between Arido and members of the Main Case Defence team; (d) payments made by the Main Case Defence to Arido and Kokate; and (e) payments made to witnesses by the Main Case Defence. Document CAR-D24-0001-0032 is relevant to support the Prosecution’s allegations concerning Arido’s promises to witnesses regarding their seeking of asylum if they testified for the Defence in the Main Case.<sup>6</sup> Finally, the remainder of this category of material goes to proof of the codes used by the Accused to conceal and implement the Overall Strategy.

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<sup>3</sup> These are the items with ERNs starting with CAR-D20.

<sup>4</sup> These are the items with ERNs starting with CAR-D21.

<sup>5</sup> ICC-01/05-01/13-749, para.52.

<sup>6</sup> See ICC-01/05-01/13-1110-Conf, para.35.

14. Sub-category (b) material comprises:

- (i) A report from a Defence expert witness in the Main Case;<sup>7</sup>
- (ii) A set of court documents from judicial proceedings in Bangui in 2002;<sup>8</sup> and
- (iii) Four documents comprising Main Case Defence summaries of expected testimonies of witnesses D-23, and D-26;<sup>9</sup>

15. In addition to proving the codes used by the Accused in the course of planning and perpetrating the alleged crimes in this case as detailed in Annex A, these materials are also relevant to support allegations concerning promises made to, and the illicit coaching of, Main Case Defence witnesses.

(ii) *The materials are prima facie reliable and authentic*

16. The items in this category bear sufficient indicia of reliability and authenticity for admission from the bar table.

17. The authenticity of the materials in sub-category (a) is objectively established. The tendered emails bear all of the ordinary indicia of reliability expected to be found on such documents – the relevant headers, including sent/received indications, times, dates, and addressees (many of whom reflect obviously valid Court email extensions). Copies of invoices and travel documents obtained from hotels and travel companies similarly bear *prima facie* indicia of reliability, such as the relevant letterhead or the company name, dates, amounts, titles, etc. These are produced in the normal course of the relevant business activities by the companies issuing them, and are thus presumptively reliable. Further, other items in this sub-category comprise official documents issued in the context of lawful judicial or administrative proceedings before national authorities, bearing official stamps and signatures. These records are similarly imbued with sufficient indicia of reliability for their admission from the bar table.

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<sup>7</sup> CAR-D04-0003-0342.

<sup>8</sup> CAR-DEF-0002-0001.

<sup>9</sup> CAR-D04-0003-0170, CAR-D04-0004-0060, CAR-D04-0003-0168, and CAR-D04-0004-0057.

18. The Defence teams in this case relied on the documents that they disclosed during the confirmation of the charges proceedings.<sup>10</sup> Thus, in respect of each, there should be no dispute about their authenticity.

19. The documents in sub-category (b) comprise the documents disclosed by the *Bemba* Defence in the Main Case. Two of these were admitted in the Main Case.<sup>11</sup> The first, CAR-D04-0003-0342, is an expert report authored by Main Case Defence Witness D-53 and admitted after his testimony.<sup>12</sup> It is relevant to show the inconsistency between D-53's statement that [REDACTED], also a charged incident in this case, and [REDACTED].<sup>13</sup>

20. D-53's [REDACTED] is corroborated by the intercepted conversation in which Mangenda informed Kilolo that [REDACTED] testified<sup>14</sup> – contradictory to D-53's report – that [REDACTED].<sup>15</sup> Kilolo then acknowledged that this was "[REDACTED]", but told Mangenda that: "[REDACTED]",<sup>16</sup> suggesting that illicit coaching took place. Thus, regardless of the contents of the remainder of the report, the *prima facie* reliability of D-53's assertion therein of [REDACTED] is sufficiently established for the purpose of its admission.

21. The other document, CAR-DEF-0002-0001, is a set of multiple official court documents issued by judicial authorities in Bangui in 2002 – some of which are handwritten - which possess sufficient indicia of reliability including, letterheads, official dossier and other administrative numbers, stamps and signatures of relevant bodies. As indicated in Annex A, this document supports the allegation that the code "[REDACTED]", as used by the Accused in the charged timeframe, refers to [REDACTED] ([REDACTED]).

22. The four summaries tendered, concern Main Case Defence witnesses D-23 and D-26. Both comprise charged incidents in this case.<sup>17</sup> The summaries represent the Main Case *Bemba* Defence's submissions on the topics of the witnesses' prospective testimony, and were

<sup>10</sup> See, e.g., ICC-01/05-01/13-569-Conf-AnxA (List of evidence for the confirmation of charges for the *Bemba* Defence); ICC-01/05-01/13-599-Conf, paras.96, 106, 112, 125; ICC-01/05-01/13-600-Conf-Corr2, paras. 136, 279, 340, 446, 461; ICC-01/05-01/13-571-Conf-Anx-Corr (List of evidence for the confirmation of charges for the *Kilolo* Defence); ICC-01/05-01/13-596-Conf-Corr2, para.14 (CAR-D22-0001-0001); ICC-01/05-01/13-598-Conf, para.183 (CAR-D24-0001-0032).

<sup>11</sup> CAR-D04-0003-0342 and CAR-DEF-0002-0001.

<sup>12</sup> ICC-01/05-01/08-3019-Conf, para.56.

<sup>13</sup> See ICC-01/05-01/13-1110-Conf, para.216.

<sup>14</sup> See ICC-01/05-01/08-T-337-CONF-ENG, 27 August 2013, p.39, lns.6-9, ICC-01/05-01/08-T-337-CONF-FRA ET, 27 août 2013, p.41, lns.8-12.

<sup>15</sup> CAR-OTP-0074-0992 (Audio); CAR-OTP-0079-0114 at 0119-0120, lns.134-157 (Translation).

<sup>16</sup> CAR-OTP-0074-0992 (Audio); CAR-OTP-0079-0114 at 0120, lns.158-160, *more generally* 0119-0121, lns.135-183 (Translation).

<sup>17</sup> CAR-D04-0003-0170, CAR-D04-0004-0060, CAR-D04-0003-0168, and CAR-D04-0004-0057.

purportedly disclosed to provide the Prosecution the requisite notice of the witnesses' evidence in the Main Case. That these summaries comprise what the *Bemba* Defence in the Main Case represented as the subject matter of witnesses D-23 and D-26 testimony and when the Defence did so, is directly relevant to the allegations that these witnesses were illicitly coached. Regardless of the veracity of the information contained in the summaries or of the witnesses' testimony, the summaries are *prima facie* reliable to establish what the Defence submitted and represented about the witnesses' prospective evidence.

*(iii) Probative value outweighs any undue prejudice*

23. No undue prejudice ensues from the admission of the proposed evidence. The following factors cumulatively establish that the probative value of the proposed material outweighs any prejudicial effect: (a) the items are highly relevant to the confirmed charges; (b) the nature of the documents readily demonstrate their authenticity and reliability; (c) the Accused have, individually, relied on some of these materials at confirmation; (d) the materials will assist the Chamber in the determination of the truth; (e) the materials have been in the Defence's possession for a long time; (f) the Defence have been put on notice that the Prosecution would be relying on these documents; and (g) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case.<sup>18</sup>

**B. Category II: Statements of the Accused**

24. The Prosecution tenders six items, comprising Accused Kilolo's and Mangenda's respective statements,<sup>19</sup> an audio recording of Mangenda's statement, and two statements provided by Arido to national authorities.

*(i) The materials are prima facie relevant to the issues at trial*

25. The statements, taken shortly after the Accused's arrests, are relevant and probative of the contested issues in the case. They constitute admissions of the Accused in relation to the charged events: for example, [REDACTED];<sup>20</sup> [REDACTED];<sup>21</sup> and [REDACTED].<sup>22</sup>

<sup>18</sup> Prosecution's Pre-Trial-Brief in particular sets out the corroborative evidence in the relevant paragraphs, listed in Annex A for each of the documents.

<sup>19</sup> Kilolo's statement CAR-OTP-0079-0002 is the official version received from the Belgian authorities. The translation of the statement CAR-OTP-0072-0491 is the translation of the unofficial version, CAR-OTP-0072-0150, which the Prosecution is not tendering. However, the two versions, save for the stamp of the Belgian authorities affixed to the official version, are substantively identical.

<sup>20</sup> CAR-OTP-0074-1065, at 1066.



*(ii) The materials are prima facie reliable and authentic*

26. As is clear from the statements, they were obtained in full accordance with the applicable laws of Belgium, The Netherlands, and France, where Kilolo, Mangenda and Arido provided them, respectively.<sup>23</sup> The statements were also taken in full respect of the Accused's rights under the Statute. They were each represented by counsel, were fully informed of their rights, and, provided the tendered statements voluntarily.<sup>24</sup>

*(iii) Probative value outweighs any undue prejudice*

27. The admission of these materials does not cause any undue prejudice.<sup>25</sup> The following factors cumulatively establish that the probative value of the proposed material outweighs any prejudicial effect: (a) the items are highly relevant to the confirmed charges; (b) the statements were obtained in accordance with the laws governing the proceedings in Belgium, The Netherlands, and France; (c) the rights of the Accused were fully respected at the taking of the statements; (d) the materials will assist the Chamber in the determination of the truth; (e) the materials have been in the Defence's possession for a substantial period;<sup>26</sup> and (f) the Defence have been put on notice that the Prosecution would be relying on these documents.

**C. Category III: Materials obtained from the Accused**

28. The Prosecution tenders nine proposed items comprising evidence seized from Bemba's cell at the ICC Detention Centre, emails obtained from Arido's email account through a request for assistance ("RFA") to the French authorities, and one email extracted from Babala's seized iPad.

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<sup>21</sup> CAR-OTP-0074-0717, at 0762, ln.1566 to 0763, ln.1575.

<sup>22</sup> CAR-OTP-0079-0002, at 0005.

<sup>23</sup> CAR-OTP-0079-0002 at 0002-0009; CAR-OTP-0074-0717 at 0718-0724; CAR-OTP-0074-1065 at 1065-1066, 1070; CAR-OTP-0077-0169 at 0169-0170.

<sup>24</sup> CAR-OTP-0079-0002 at 0002-0003; CAR-OTP-0074-0717 at 0718-0724; CAR-OTP-0074-1065 at 1065-1066; CAR-OTP-0077-0169 at 0169-0170.

<sup>25</sup> ICC-01/05-01/13-1013-Conf, para.29.

<sup>26</sup> Document CAR-OTP-0079-0002 was disclosed to the Defence on 17 April 2014; document CAR-OTP-0072-0491 was disclosed on 31 January 2014; document CAR-OTP-0074-1065 was disclosed on 11 April 2014; document CAR-OTP-0077-0169 was disclosed on 10 March 2014; document CAR-OTP-0072-0163 was disclosed on 20 December 2013; document CAR-OTP-0074-0717 was disclosed on 31 January 2014.

*(i) The materials are prima facie relevant to the issues at trial*

29. As detailed in Annex A, the materials seized from Bemba's cell, which consist of financial logs and lists of expenses (including for Main Case Defence missions), demonstrate Bemba's knowledge regarding money transfers among other Accused during the period of the confirmed charges. The materials also reflect the expenses paid in relation to the Main Case Defence.

30. The Arido materials go to proof of: (a) the contacts between Arido and Kilolo; and (b) the contacts between Arido and Kokate.

*(ii) The materials are prima facie reliable and authentic*

31. The materials obtained from Bemba were seized from his cell pursuant to the execution of the 20 November 2013 Warrant of Arrest. On 13 December 2013, the Single Judge further designated an Independent Counsel to be present during the unsealing and forensic acquisition of these items.<sup>27</sup> The Independent Counsel subsequently submitted a report with the selected items, which were then transmitted through the Registry into the record of the proceedings.<sup>28</sup>

32. Emails from Arido's [REDACTED] email account were obtained pursuant to RFAs to the French authorities.<sup>29</sup> They were transmitted to the Prosecution on 23 January 2014.<sup>30</sup>

33. Finally, Babala's email was acquired from his iPad on 11 February 2014.<sup>31</sup> The device was seized from him on his arrest, pursuant to the Single Judge's order.<sup>32</sup> Following the Registry's completion of the forensic acquisition of its content,<sup>33</sup> the Registry provided the Prosecution with a copy thereof.<sup>34</sup> The device was subsequently returned to Babala on 21 February 2014.<sup>35</sup>

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<sup>27</sup> ICC-01/05-01/13-41-Red.

<sup>28</sup> ICC-01/05-01/13-374-Conf with annexes.

<sup>29</sup> RFAs OTP/CAR/FRA-20/ID-pt, OTP/CAR/FRA-20a/ID-ptlh and OTP/CAR/FRA-20b/TL/ID-ptlh.

<sup>30</sup> CAR-OTP-0075-0022.

<sup>31</sup> ICC-01/05-01/13-243-Conf, para.9, *see also* ICC-01/05-01/13-124-Conf-Anx5.

<sup>32</sup> ICC-01/05-01/13-1-US-Exp; ICC-01/05-01/13-27-US-Exp-Corr-Anx3, p.2.

<sup>33</sup> ICC-01/05-01/13-204-Conf, *see also* ICC-01/05-01/13-243-Conf-Corr, para.9.

<sup>34</sup> ICC-01/05-01/13-243-Conf-Corr, para.9.

<sup>35</sup> ICC-01/05-01/13-243-Conf-Corr, para.9. *See also* ICC-01/05-01/13-299-Conf-Anx5.

*(iii) Probative value outweighs any undue prejudice*

34. As is the case with the materials disclosed by the Defence, the probative value of the proposed material outweighs any prejudicial effect due to the following factors: (a) the items are highly relevant to the confirmed charges; (b) the items are reliable and authentic because they were collected in accordance with orders of the Court or pursuant to national laws; (c) the items emanate from the Accused themselves, and their possession of the material is not contestable, nor is the authenticity of their content; (d) the materials will assist the Chamber in the determination of the truth; (e) the Defence have been put on sufficient notice of the content of the items and that the Prosecution would be relying on these documents; and (f) the material is independently corroborated by other evidence in the case.

**D. Category IV: VWU documents**

35. The Prosecution tenders six items received from, and filed by, the VWU in the record of the case.

*(i) The materials are prima facie relevant to the issues at trial*

36. These materials are *prima facie* relevant because they provide essential information about [REDACTED].<sup>36</sup> [REDACTED].<sup>37</sup> Finally, document CAR-OTP-0072-0172—[REDACTED]— is directly relevant to the allegations of his illicit coaching of their evidence.

*(ii) The materials are prima facie reliable and authentic*

37. The items in this category bear sufficient indicia of reliability and authenticity for admission from the bar table, as they were provided by the VWU at the Chamber's direction.<sup>38</sup>

*(iii) Probative value outweighs any undue prejudice*

38. The probative value of the proposed material outweighs any prejudicial effect due to the following factors: (a) the items are highly relevant to the confirmed charges; (b) the items are reliable and authentic because they emanate from the Registry, which is an independent and impartial organ of the Court; (c) the materials will assist the Chamber in the determination of

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<sup>36</sup> CAR-OTP-0078-0290.

<sup>37</sup> CAR-OTP-0088-2936, CAR-OTP-0088-2911, CAR-OTP-0088-2915, CAR-OTP-0088-2917.

<sup>38</sup> ICC-01/05-01/13-983-Conf.

the truth; (d) the Defence have been put on sufficient notice of the content of the items and that the Prosecution would be relying on these documents; and (e) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case.

#### **E. Category V: Independent Counsel reports and related materials**

39. To complete the record, in addition to the materials submitted in its First Bar Table Motion, the Prosecution tenders six items comprising the reports of the Independent Counsel and their related materials.

40. The Prosecution further tenders one additional intercepted conversation between Kilolo and Mangenda.<sup>39</sup> A duplicate of this conversation is included in the Prosecution's First Bar Table Motion.<sup>40</sup> However, the Prosecution proposes the addition of this version of the intercept because, (a) both versions are cited in its Pre-Trial Brief and (b) the transcript and translation of this version bear a corrected time stamp.

41. The Prosecution hereby incorporates by reference the arguments made in support of the relevance, reliability and probative value of this material advanced in its First Bar Table Motion.<sup>41</sup> Further, but for the corrected time stamp, the Defence already has knowledge of the Prosecution's intention to rely on this particular intercept by virtue of the First Bar Table Motion. Thus, no prejudice reasonably arises in admitting this version of the intercept, should the Chamber otherwise admit the version proffered in the Prosecution's First Bar Table Motion.

#### **F. Category VI: Detention Centre materials**

42. In addition to the materials submitted in the Prosecution's Second Request for the Admission of Evidence from the Bar Table ("Second Bar Table Motion"),<sup>42</sup> the Prosecution tenders 13 additional Detention Centre items. These comprise Detention Centre call logs; one additional Detention Centre recording and its corresponding log information, transcript and translation; and the log information, transcript and translation of the conversation contained in

<sup>39</sup> CAR-OTP-0074-1005 and its transcript and translation.

<sup>40</sup> CAR-OTP-0074-1004 and its transcript and translation. The two audios are identical in content of the recorded conversation, but bear slightly different duration stamps (4:16 for CAR-OTP-0074-1004 and 4:12 for CAR-OTP-0074-1005, respectively) due to one of the recordings starting at a point in time a few seconds later than the other one, and therefore not capturing the entirety of the ringing tone prior to the call being picked up. However, the entirety of the conversation is recorded on both tapes.

<sup>41</sup> ICC-01/05-01/13-1013-Conf, paras.11-29.

<sup>42</sup> See ICC-01/05-01/13-1113-Conf.

CAR-OTP-0074-0514. Although that conversation was tendered in the Second Bar Table Motion, its accompanying documents were inadvertently replaced with other documents that were unrelated to the conversation.<sup>43</sup>

43. The Prosecution hereby incorporates by reference the arguments made in support of the relevance and reliability of these materials, and its submissions on their probative value, made in the Second Bar Table Motion.<sup>44</sup>

#### **G. Category VII: Open source materials**

44. The Prosecution tenders 24 open source items comprising press articles, books, and other material.

*(i) The materials are prima facie relevant to the issues at trial*

45. As detailed in Annex A, the proposed press articles, books and other open source materials support the meanings of codes used between the Accused in their phone conversations, or in support of the contextual facts and circumstances regarding the roles and functions of Bemba and Babala in the *Mouvement de Libération du Congo*, (“MLC”).

*(ii) The materials are prima facie reliable and authentic*

46. The materials in this category comprise documents published by official authorities<sup>45</sup> or books written by known authors, and researched prior to publication.<sup>46</sup> The tendered media articles are *prima facie* reliable, particularly in view of the limited purpose for which they are considered. The tendered articles were downloaded from public news portal servers of several countries, and are widely disseminated and available. The articles demonstrate and support the attributed meanings of various codes used by the Accused in the planning, concealment and implementation of the Overall Strategy. Given the other information supporting facts contained in these articles, they are at least admissible as corroborative of other evidence in the case.

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<sup>43</sup> The items thus inadvertently tendered in the Second Bar Table Motion are CAR-OTP-0074-0505, CAR-OTP-0086-0644, and CAR-OTP-0086-1597.

<sup>44</sup> See ICC-01/05-01/13-1113-Conf, paras.10-27.

<sup>45</sup> CAR-OTP-0087-4029, CAR-OTP-0072-0101. They also include a document referring to a title of a book: CAR-OTP-0087-4008.

<sup>46</sup> CAR-OTP-0087-4013, CAR-OTP-0087-4015, CAR-OTP-0085-0202, CAR-OTP-0087-3985.

47. For example, document CAR-OTP-0005-0198 shows that Bemba is the President of the MLC,<sup>47</sup> a publicly well-known fact, and confirmed by the Defence.<sup>48</sup> Documents CAR-OTP-0071-0049 and CAR-OTP-0071-0057, articles emanating from two different news portals, corroborate each other, as they both – in different contexts and time frames – mention that Bemba is referred to as “[REDACTED]”, and “[REDACTED]” which supports the attribution of these codes as used by the Accused in this case to Bemba. Documents CAR-OTP-0088-1619 and CAR-OTP-0088-1620 show, respectively, that [REDACTED] was elected in [REDACTED] as Member of Parliament in the DRC province, [REDACTED], and that that province is renowned for [REDACTED], and support the allegation that the code “[REDACTED]” can be attributed to [REDACTED]. This allegation is corroborated by the admission of the *Babala* Defence that the code “[REDACTED]” refers to a member of parliament elected in the province “[REDACTED]”.<sup>49</sup>

*(iii) Probative value outweighs any undue prejudice*

48. The admission of the materials is not prejudicial to the Defence. The materials were obtained from open sources. The following factors establish that the probative value of the proposed material outweighs any prejudicial effect: (a) the items are highly relevant to the confirmed charges; (b) the items bear sufficient indicia of reliability for what they purport to show; (c) the materials will assist the Chamber in the determination of the truth; (d) the Defence have been put on sufficient notice of the content of these items and the fact that the Prosecution would rely on these documents; and (e) the reliability of the material is independently corroborated by other evidence.

**H. Category VIII: Photographs**

49. The Prosecution tenders four photographs of [REDACTED] - Witness D-6, and [REDACTED] (P-0274), extracted from [REDACTED].

*(i) The materials are prima facie relevant to the issues at trial*

50. As detailed in Annex A, the photographs show [REDACTED] between D-6 and P-0274. The Prosecution alleges that on 20 June 2013 — the day before D-6 began testifying —

<sup>47</sup> CAR-OTP-0005-0198 at 0202.

<sup>48</sup> See ICC-01/05-01/13-599-Conf, para.50. See also ICC-01/05-01/13-1110-Conf, para.11.

<sup>49</sup> ICC-01/05-01/13-596-Conf-Corr2, para.49.

Caroline Bemba Wale transferred USD 1,335.16 to him through P-0274.<sup>50</sup> The tendered photographs thus support the Prosecution's allegations that the Accused transferred money to witnesses using third parties directly associated with the particular witness.<sup>51</sup>

*(ii) The materials are prima facie reliable and authentic*

51. The photographs are *prima facie* reliable and authentic. As noted, the photographs were [REDACTED] by D-6 and P-0274 [REDACTED], respectively. A cursory comparison of the images of D-6, as appear in [REDACTED], and the video recording of [REDACTED] evidence in the Main Case, reliably establish [REDACTED] identity in the tendered photographs and thus, the reliability of the identity of P-0274 in the same and related photographs. Their association is further established by P-0274's statement in which [REDACTED] acknowledges [REDACTED] prior relationship with D-6.<sup>52</sup>

52. The photographs show what they purport to, namely the images of the two individuals, and that they are linked to one another. They are further corroborative of other evidence in the case, notably (a) the Western Union transfer from Caroline Bemba to P-0274 discussed above, and (b) the evidence that [REDACTED].<sup>53</sup>

*(iii) Probative value outweighs any undue prejudice*

53. The admission of these materials is not prejudicial to the Defence. The following factors establish that the probative value of the proposed material outweighs any prejudicial effect: (a) the items are highly relevant to the confirmed charges; (b) the items bear sufficient indicia of reliability for what they purport to show; (c) the materials were obtained from open source; (d) the materials will assist the Chamber in the determination of the truth; (e) the Defence have been put on sufficient notice of these items and that the Prosecution would be relying on these documents; and (f) the reliability, veracity, and weight of this material is independently corroborated by other evidence in the case.

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<sup>50</sup> ICC-01/05-01/13-1110-Conf, para.158.

<sup>51</sup> ICC-01/05-01/13-1110-Conf, paras.47-48.

<sup>52</sup> CAR-OTP-0085-0523-R01 at 0527-0530, lns.130-229, at 0532-0535, lns.315-444.

<sup>53</sup> CAR-OTP-0085-0523-R01 at 0532-0535, lns.315-444.

## I. Category IX: Other materials

54. The Prosecution also tenders the seven items listed below. Their relevance is set out in detail in Annex A.

55. The following factors establish that the probative value of this material outweighs any prejudicial effect: (a) the items are highly relevant to the confirmed charges; (b) the items bear sufficient indicia of reliability for what they purport to show; (c) the materials will assist the Chamber in the determination of the truth; (e) the Defence have been put on sufficient notice of these items and the Prosecution's intention to rely on them; and (f) the reliability, veracity, and weight of this material is independently corroborated by other evidence in the case.

- CAR-OTP-0077-1026, A call data record ("CDR") reflecting a call between Mangenda and Kilolo.

56. The document, which is accompanied by its respective intercepted communication, submitted *via* the First Bar Table Motion,<sup>54</sup> is relevant to show that the Accused passed on Bemba's detailed instructions for Kilolo to illicitly coach D-54.<sup>55</sup> The Prosecution received this document from the Dutch authorities on 5 March 2014. In terms of the reliability and authenticity of CDRs, the Prosecution further incorporates by reference the arguments made in its First Bar Table Motion.<sup>56</sup>

57. The Defence have had this document since 18 March 2014.

- CAR-OTP-0041-0048, Public record containing information about the company "[REDACTED]"

58. This document is an extract from various public records containing the information about the company "[REDACTED]". The document was received from the [REDACTED] authorities on 29 May 2009, pursuant to an RFA.<sup>57</sup> Its official character and the manner of its reception attests to its *prima facie* reliability, especially in relation to the limited purpose for which the document is tendered to support the meaning of the code "[REDACTED]".<sup>58</sup>

<sup>54</sup> CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0133, Ins.15-30 (Translation).

<sup>55</sup> See ICC-01/05-01/13-1110-Conf, para.84.

<sup>56</sup> See ICC-01/05-01/13-1013-Conf, paras.36-39.

<sup>57</sup> [REDACTED].

<sup>58</sup> See ICC-01/05-01/13-1110-Conf-AnxA, para.58.



59. The Defence have had this document since 25 February 2015.

- CAR-OTP-0067-0384, [REDACTED]

60. The document is being tendered for the limited purpose of supporting the meaning of the codes “[REDACTED]” as [REDACTED], and “[REDACTED]” and “[REDACTED]” as [REDACTED], [REDACTED].<sup>59</sup>

61. The document was received from the [REDACTED] authorities on 25 June 2012, in response to an RFA from the Prosecution. The document is an official record of [REDACTED]. Its official character is attested by the stamps affixed to both of its pages, and its reliability is further established by the signatures and fingerprints of those present at the meeting.

62. The Defence have had this document since 25 February 2015.

- CAR-OTP-0072-0173, Emails between the Prosecution and the Defence in the Main Case

63. This document is a series of emails exchanged between the Prosecution and the *Bemba* Defence in the Main Case. The document is being tendered for the purpose of the attribution of Mangenda’s phone number “[REDACTED]”, found in Mangenda’s signature in the emails.<sup>60</sup>

64. The authenticity, and *prima facie* reliability, of these emails is based on the fact that they represent the business correspondence between the Parties in the Main Case, as attested by the valid ICC email addresses headings, signatures, and the general appearance of the emails.

65. The Defence have been in possession of this document since 20 December 2013.

- CAR-OTP-0017-0363-R01, letter from Bemba to the Special Representative of the United Nations General Secretary in the CAR

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<sup>59</sup> See ICC-01/05-01/13-1110-Conf-AnxA, paras.21, 48, 53.

<sup>60</sup> See ICC-01/05-01/13-1110-Conf, paras.79, 84.

66. This document is relevant to attribute the code “[REDACTED]” to [REDACTED].<sup>61</sup>

67. The document was obtained with the assistance of the [REDACTED] authorities during a search of Bemba’s properties for the purpose of the Main Case. The document is self-authenticating. Its last page contains the MLC stamp as well as Bemba’s name and signature.

68. The Defence have been in possession of this document since 19 June 2015.

- CAR-OTP-0044-0071, forensic report of Bemba’s SIM card in 2008 conducted by the [REDACTED] (“[REDACTED]”)

69. The document is relevant for the attribution of various phone numbers found in the SIM card.<sup>62</sup> It is also relevant for the attribution of the code “[REDACTED]” to [REDACTED].<sup>63</sup>

70. The document was obtained from the [REDACTED] authorities for the purpose of the Main Case proceedings. The document contains the insignia of the [REDACTED], its contact information, as well as the signatures of the officials on page 0073.

71. The Defence have been in possession of this document since 18 March 2014.

- DRC-OTP-0148-0002, the phone book of DRC Parliamentarians.

72. The document is relevant to attribute the codes “[REDACTED]” and “[REDACTED]” to [REDACTED].<sup>64</sup> It is also relevant for the attribution of the phone number “[REDACTED]”, that Kilolo had contacts with, and that appears in Bemba’s SIM Card,<sup>65</sup> to [REDACTED].<sup>66</sup>

73. The document was obtained from the [REDACTED] (“[REDACTED]”). The document, which originally emanates from the Secretariat of the DRC National Assembly, is an official phone book of the DRC MPS, also publicly available from the National Assembly.

74. The Defence have been in possession of this document since 30 June 2015.

<sup>61</sup> See ICC-01/05-01/13-1110-Conf-AnxA, para.17.

<sup>62</sup> See Annex A; ICC-01/05-01/13-1110-Conf, para.198.

<sup>63</sup> See ICC-01/05-01/13-1110-Conf-AnxA, para.42.

<sup>64</sup> See ICC-01/05-01/13-1110-Conf-AnxA, paras.41, 42, 44.

<sup>65</sup> CAR-OTP-0074-0897 at 0908-0909; CAR-OTP-0044-0071. See also above paras.69-71.

<sup>66</sup> See ICC-01/05-01/13-1110-Conf, para.198.

### III. Relief Requested

75. For the foregoing reasons, the Prosecution requests the Chamber to admit into evidence the materials listed in Annex A *in limine*.



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**Fatou Bensouda, Prosecutor**

Dated this 18<sup>th</sup> Day of September 2015  
At The Hague, The Netherlands