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**International
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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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Public Redacted Document
with
Confidential Annexes A and B**

**Public redacted version of "Prosecution's Motion for the Lifting of Redactions and
the Release of Information Contained in Independent Counsel Reports",
7 January 2016, ICC-01/05-01/13-1537-Conf**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”) to (1) re-assess and/or lift certain redactions applied to seven documents released by the Independent Counsel;¹ and (2) to disclose (a) the list of contacts extracted from a SIM card belonging to Kilolo (“Contacts List”),² and (b) the telephone number associated with this SIM card (“Telephone Number”). This request is filed pursuant to article 64(3)(c) of the Rome Statute.

2. The redactions should be re-assessed and/or lifted for several reasons. *First*, some of the information is already discernible given other evidence in the case, eliminating any need for their continuance. *Second*, redactions put in place because the information was deemed irrelevant may contain information concerning potential Defence witnesses or relevant in light of information elicited at trial. *Third*, other redactions may no longer be necessary as a result of the evidence elicited during trial, and should be re-assessed by the Chamber. *Fourth*, the Contacts List and Telephone Number are relevant to the attribution of certain telephone numbers to potential Defence witnesses and the Accused.

3. The information sought is material to the Prosecution’s preparation to meet the Defence cases foreshadowed in their respective provisional lists of witnesses and evidence. Providing this information is fully consonant with the fair conduct of the proceedings, which will further assist the Chamber’s determination of the truth. As there is no legal or factual impediment to the release of this information, it should be made available to the Prosecution well in advance of the commencement of the Defence cases. Annex A details the justifications for re-assessing and/or lifting redactions in respect of each document.

¹ See Annex A.

² ICC-01/05-01/13-845-Conf-Exp-AnxD.

II. Confidentiality

4. This filing and its Annexes are classified as “Confidential” as they refer to filings and materials of the same designation. A public redacted version will be filed.

III. Procedural background

5. On 25 April 2014, the Single Judge of Pre-Trial Chamber II (“Single Judge”) appointed the Independent Counsel to: (i) be present at the unsealing and the forensic acquisition of seized material; (ii) review that material, with a view to identifying privileged or irrelevant items; and (iii) promptly report the results of this review to the Single Judge.³

6. On 11 September 2014, the Independent Counsel reported on the review of an email account used by Kilolo (“September 2014 Report”).⁴ The Independent Counsel identified 16 emails of the 8,519 reviewed as relevant to this case.⁵

7. On 13 March 2015, the Independent Counsel reported on the unsealing procedure, forensic acquisition, and review of certain material, pursuant to the Single Judge’s orders (“March 2015 Report”).⁶ The March 2015 Report, contains material that the Independent Counsel identified as non-privileged and relevant to this case. These comprise of: (i) 35 emails sent or received from an email account belonging to Arido; (ii) 41 text messages; (iii) 196 phone calls; and (iv) contacts extracted from a SIM card belonging to Kilolo.⁷

³ ICC-01/05-01/13-366-Red, p. 10.

⁴ ICC-01/05-01/13-670-Conf.

⁵ ICC-01/05-01/13-670-Conf, paras. 7-8. *See also* ICC-01/05-01/13-670-Conf-AnxC-Red.

⁶ ICC-01/05-01/13-845-Conf.

⁷ ICC-01/05-01/13-845-Conf, paras. 38, 43-46. *See also* ICC-01/05-01/13-845-Conf-AnxA1-Red; ICC-01/05-01/13-845-Conf-AnxB-Red; ICC-01/05-01/13-845-Conf-AnxC-Red; ICC-01/05-01/13-845-Conf-Exp-AnxD.

8. On 9 April 2015, the Chamber maintained the procedure established by the Pre-Trial Chamber at the confirmation stage regarding the Independent Counsel's review of certain seized materials in this case.⁸

9. On 15 May 2015, the Chamber issued its decision releasing materials in two Independent Counsel Reports⁹ ("15 May 2015 Decision"). The Chamber directed the Independent Counsel to file confidential redacted versions of one annex to the September 2014 Report¹⁰ and three annexes to the March 2015 Report.¹¹

10. On 2 July 2015, the Independent Counsel filed confidential redacted versions of Annexes 2 and 4 to its report from the same day on the analysis of items seized by the Dutch authorities.¹² On the same day, the Independent Counsel also reported on the material seized by the Belgian authorities, identifying 21 groups of items as being relevant and non-privileged ("July 2015 Report").¹³

11. Finally, on 20 July 2015, the Chamber issued its decision on the July 2015 Report, directing the Registry to transmit certain of its annexes, including Annexes 4, 8 and 13, which were to be redacted¹⁴ ("20 July 2015 Decision").

IV. Submissions

A. The redacted information is relevant to the case and necessary for the determination of the truth

12. The current redactions are overly restrictive and potentially prejudicial to the Prosecution. They (1) redact certain information already known to the Parties, and (2)

⁸ ICC-01/05-01/13-446, pp. 7-8.

⁹ ICC-01/05-01/13-947.

¹⁰ ICC-01/05-01/13-947, para. 25. *See also* ICC-01/05-01/13-670-Conf-AnxC-Red.

¹¹ ICC-01/05-01/13-947, paras. 28, 33-34, 37-38. *See also* ICC-01/05-01/13-845-Conf-AnxA1-Red; ICC-01/05-01/13-845-Conf-AnxB-Red; ICC-01/05-01/13-845-Conf-AnxC-Red.

¹² ICC-01/05-01/13-982-Conf-Anx2-Red; ICC-01/05-01/13-982-Conf-Anx4-Red.

¹³ *See* ICC-01/05-01/13-1094-Conf, para. 4 (*referring to* ICC-01/05-01/13-1047-Conf-Exp).

¹⁴ ICC-01/05-01/13-1094-Conf, paras. 10, 14, 18, 21, p. 7. *See also* ICC-01/05-01/13-1047-Conf-Anx4-Red; ICC-01/05-01/13-1047-Conf-Anx8-Red; ICC-01/05-01/13-1047-Conf-Anx13-Red.

preclude access to information relevant to Defence witnesses and/or the evidence elicited at trial,¹⁵ affecting the Prosecution's preparation for the Defence cases. In addition, certain redactions may no longer be necessary in light of the totality of the trial evidence, inclusive of material deemed "formally submitted". The need for their continued application as against the Prosecution's right fairly to prepare for the Defence cases should thus be re-assessed.

i) Some redactions concern known information

13. Some redactions to the documents at issue concern information already known to the Parties, rendering them unnecessary. For instance, the contact information of P-0260/D-0002, D-0007/DEF-A12, D-0052/DEF-A2, Arido, and Mangenda is redacted¹⁶ although *prima facie* relevant to this case and already known to the Parties through previous disclosures.¹⁷ Those redactions should now be lifted.

ii) The redactions may concern information highly relevant to Defence witnesses and/or to the trial evidence

14. The Chamber should lift redactions on information relevant to the case in light of the trial evidence or the Defence's list of prospective witnesses. In its 15 May 2015 Decision and 20 July 2015 Decision, the Chamber ordered the redaction of information concerning individuals it deemed to be irrelevant to the case.¹⁸ This includes, potentially, individuals listed on the Defence's provisional list of witnesses. For instance, in its 15 May 2015 Decision, the Chamber considered "irrelevant and, if privileged, not covered by the crime/fraud exception" communications between the Accused and "persons not referred to in the Confirmation Decision or Document Containing the Charges [("DCC")]" about matters unrelated to the facts and

¹⁵ See generally ICC-01/05-01/13-1504-Conf; ICC-01/05-01/13-1507-Conf; ICC-01/05-01/13-1508; ICC-01/05-01/13-1509; ICC-01/0501/13-1510.

¹⁶ See e.g. ICC-01/05-01/13-845-Conf-AnxA1-Red, pp. 6, 14, 37, 41-42.

¹⁷ See Annex A.

¹⁸ See generally ICC-01/05-01/13-947, para.20; ICC-01/05-01/13-1094-Conf, paras. 10, 14.

circumstances described in the charges”.¹⁹ The Chamber also limited its determination of relevance to matters relating to the fourteen Main Case Defence witnesses subject to the charges in this case (“Fourteen Witnesses”),²⁰ excluding, *inter alia*, matters relating to “witnesses other than the Fourteen Witnesses and potential witnesses”.²¹ Similarly, in its 20 July 2015 Decision, the Chamber redacted information “concern[ing] persons irrelevant to the case” and those concerning individuals “neither listed in the Confirmation Decision nor any of the fourteen witnesses alleged to have been interfered with”.²²

15. Given the further substantiation *at trial* of the evidence on which the Confirmation Decision was based, many of these communications are relevant and material to the Prosecution’s ability to prepare for the Defence cases, as they go to proof of the charges and, importantly, the determination of the truth. For instance:

- Telephone numbers used by P-0245/D-0003, D-0006/DEF-A9, and D-0009 during the charged period were redacted from one of the reports on the analysis of material seized by the Dutch authorities,²³ despite their relevance to this case. Illicit contacts with P-0245/D-0003 and D-0006/DEF-A9 are charged incidents in this case and were elicited at trial.²⁴ The Accused’s contact with D-0009 is also relevant to the Prosecution’s charges *vis-à-vis* P-0260/D-0002, P-0245/D-0003, D-0004, and D-0006/DEF-A9, as the Accused’s conduct towards and contact with these witnesses often followed the same pattern.²⁵ Those contacts are also relevant to the Prosecution’s preparation for the Defence cases, as D-0006/DEF-A9 is listed as a Defence witness.²⁶

¹⁹ ICC-01/05-01/13-947, paras. 20(iii), 24, 34, 38.

²⁰ ICC-01/05-01/13-947, para. 19 (*referring to* Confirmation Decision, ICC-01/05-01/13-749, pp. 47-54).

²¹ ICC-01/05-01/13-947, para. 20(iii). *See also* para. 23.

²² ICC-01/05-01/13-1094-Conf, paras. 10, 14.

²³ ICC-01/05-01/13-982-Conf, pp. 9, 11, 13; ICC-01/05-01/13-982-Conf-Anx4-Red.

²⁴ *See* ICC-01/05-01/13-1110-Conf, paras. 131-142, 155-163.

²⁵ *See e.g.* ICC-01/05-01/13-1110-Conf, para. 51 and fn. 418.

²⁶ *See* Annex B.

- The telephone number and identity of a third person in communication with Kilolo and P-0201/D-0054 on the night of 31 October 2013 at 22:01 was redacted,²⁷ despite their relevance to the case as demonstrated at trial. Notably, this was the second day of P-0201/D-0054's testimony in the Main Case.²⁸ That night, Kilolo encouraged P-0201/D-0054 to liaise with other Main Case Defence witnesses and potential witnesses to align their fabricated testimonies.²⁹ Consequently, the name and telephone number of the person in contact with Kilolo and P-0201/D-0054 that night is highly relevant to the charges against the Accused.

16. There are several other individuals related to this case, who are neither cited in the Confirmation Decision nor the DCC, but whose communication with the Accused is manifestly relevant for similar reasons. A list of those individuals and their relevance to the case is set out at Annex B. For example, Bemba's close associate Jacques Lunguana is not cited in the Confirmation Decision or the DCC. However, evidence in the record establishes that Lunguana was in charge of MLC finances³⁰ and provided money on Bemba's behalf in the Main Case.³¹ Lunguana also made a payment of about USD 649 to P-0285/D-0029/D21-001/D-22_004 on 28 August 2013,³² the first day of the witness' testimony in the Main Case.³³ As reflected in the evidence

²⁷ ICC-01/05-01/13-947, para. 37. *See also* ICC-01/05-01/13-845-Conf-AnxC-Red, p. 37.

²⁸ ICC-01/05-01/08-T-348-CONF-ENG ET, 31 October 2013; ICC-01/05-01/08-T-348-CONF-FRA ET, 31 octobre 2013.

²⁹ *See* CAR-OTP-0080-1367 (Audio): CAR-OTP-0082-1109 at 1115-1118, lns. 147-280 (French Translation); CAR-OTP-0091-0230 at 0236-0239, lns. 152-271 (English Translation); CAR-OTP-0080-1368 (Audio): CAR-OTP-0082-0659 at 0661-0662, lns. 27-58 (French Translation); CAR-OTP-0091-0060 at 0062-0063, lns. 25-53 (English Translation); CAR-OTP-0080-1369 (Audio): CAR-OTP-0082-0663 at 0665-0668, lns. 8-112 (French Translation); CAR-OTP-0089-1497 at 1499-1502, lns. 8-108 (English Translation); CAR-OTP-0080-1371 (Audio): CAR-OTP-0082-0903 at 0906-0908, lns. 60-123 (French Translation); CAR-OTP-0089-1464 at 1467-1469, lns. 61-124 (English Translation).

³⁰ In a conversation on 7 March 2012, for example, Babala stresses: "*c'est LUNGUANA qui est chargé de finances, il faut que tout soit gardé par LUNGUANA*": CAR-OTP-0074-0452 (Audio); CAR-OTP-0080-0939 at 0941, ln. 26 (French Translation).

³¹ For example, one of the documents seized from Bemba's cell at the Detention Unit was a document titled "*Dépenses mission Brazzaville août 2013 pour une semaine*" indicating that EUR 6,000 was received from Lunguana: CAR-OTP-0082-0334 at 0334.

³² CAR-OTP-0074-0855, tab 28 [REDACTED], row 2.

³³ ICC-01/05-01/08-T-338-CONF-ENG ET, 28 August 2013; ICC-01/05-01/08-T-338-CONF-FRA ET, 28 août 2013.

of a witness at trial, this payment was made through P-0270.³⁴ Given Lunguana's involvement in the facts and circumstances of the case, communication between him and any Accused during the charged period is relevant.

17. As noted, many of these communications may concern prospective Defence witnesses and are thus material to the Prosecution's preparation for the Defence cases. These communications, having occurred during the charged time frame, are also relevant because they may corroborate and/or support other evidence in the trial record, including by demonstrating a pattern of illicit conduct. This information should not be withheld from the Prosecution, as it enables the Prosecution to make such assessments in preparation for the Defence cases,³⁵ is necessary to the determination of the truth, and will inform the Chamber as to what additional evidence, if any, it may consider calling to that end *proprio motu*.

iii) Certain redactions may no longer be necessary and should be re-assessed and lifted

18. In addition to the above, certain redactions may no longer be necessary and should be re-assessed by the Chamber.³⁶ This is the case for some communications contained in Annexes B and C to the March 2015 Report; and Annex C to the September 2014 Report.³⁷ Notwithstanding the content of these communications — which may require redaction — the names, telephone numbers, email addresses of individuals in communication with each other as well as their dates, times and durations, are likely to be relevant, particularly given the Independent Counsel's *prima facie* assessment of them as such.³⁸ Given the extent of the redactions, the Prosecution is unable to assess their necessity. For this reason, the Prosecution requests that the Chamber assess whether such redactions continue to be necessary in

³⁴ CAR-OTP-0088-0105 at 0013-0114, lns. 273-305.

³⁵ ICC-01/05-01/13-1148-Conf, para. 10 (holding that material which enables a party to "assess the legality of evidence" is relevant).

³⁶ ICC-01/05-01/13-947, paras. 24, 34, 38; ICC-01/05-01/13-1094-Conf, para. 10.

³⁷ See Annex A.

³⁸ ICC-01/05-01/13-670-Conf, para. 8; ICC-01/05-01/13-845-Conf, paras. 44-45.

light of the information available in the case, or that the basis for the redactions be indicated to the Parties to allow them to assess whether their lifting is necessary for other reasons.

B. The Contacts List and Telephone Number are relevant for telephone attributions

19. The Contacts List and Telephone Number are relevant to the Prosecution's preparation for the Defence cases and to the charged offences, in that they attribute telephone numbers to Kilolo and establish certain associations between him and *Bemba* Defence witnesses within the charged period.

20. The Contacts List attributes several telephone numbers, including those used by the Accused, which remain to be attributed. These are potentially relevant to provisional Defence witnesses which, as noted, include individuals involved in the confirmed charges. For these reasons, the Chamber has previously authorised the release of a similar "Contact List",³⁹ despite Defence challenges to its "accuracy or the Independent Counsel's methodology in preparing it".⁴⁰

21. Likewise, releasing the Telephone Number is the only means by which it can be attributed to Kilolo, and for the Prosecution to have a reasonable and fair opportunity to determine whether, and to what extent, it is reflected in Call Data Records ("CDRs") *already* formally submitted before the Chamber. For similar reasons, the Independent Counsel included the telephone number associated with the Accused's SIM card in previous reports.⁴¹ In this instance, the Independent Counsel only noted that the SMS and CDRs were extracted from "*la carte SIM Base*".⁴² There is no factual or legal impediment to the provision of the Telephone Number to

³⁹ ICC-01/05-01/13-1092, para. 5, p. 5; ICC-01/05-01/13-1035-Conf-Anx-Red.

⁴⁰ ICC-01/05-01/13-1092, para. 5.

⁴¹ See e.g. ICC-01/05-64-Conf-Anx; ICC-01/05-66-Conf-Anx-Corr; ICC-01/05-01/13-421-Conf-Anx.

⁴² ICC-01/05-01/13-845-Conf, para. 42.

the Prosecution, which is *prima facie* material for its preparedness to meet the Defence cases. It should now be made available.

V. Relief Requested

22. For the foregoing reasons, the Prosecution requests that the Chamber re-assess and/or lift the redactions identified in this filing, reclassify Annex D to the March 2015 Report, and release the Telephone Number to the Parties.



Fatou Bensouda, Prosecutor

Dated this 22nd Day of June 2016
At The Hague, The Netherlands