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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public

**Public Redacted Version Defence Motion for the Admission of Documents related
to Witness 169 and Witness 178**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. CONFIDENTIALITY OF THE PRESENT FILING

1. Each of the documents and related filings concerning [REDACTED] CAR-OTP-WWWW-0169 (“Witness 169”) and CAR-OTP-WWWW-0178 (“Witness 178”) [REDACTED], and the payments and benefits provided to them remain confidential.¹ As such, the Defence also files the present submissions confidentially.

2. The Defence respectfully reiterates its submission² that with appropriate redactions, the majority of the information contained in these documents could and should be made public without any adverse impact on the security of witnesses, or the risk of revealing the identities of any of the individuals concerned, be they witnesses or ICC staff. Given the significance of the material contained in these documents and filings, and the public nature of such documents in other cases before both the International Criminal Court³ and other international tribunals,⁴ the Defence accordingly seizes the Chamber with a request to order that public versions be made available of all relevant documents, and associated filings and decisions.

B. BACKGROUND

3. Trial Chamber III (“the Chamber”) has thus far admitted 583 documents in the present case.⁵

¹ ICC-01/05-01/08-2924-Conf, para. 38.

² ICC-01/05-01/08-2872-Conf, para. 20.

³ See, for example, *Prosecutor v. Lubanga*, Corrigendum to Public to Redacted Decision on the defence 422 documents ICC-01/04-01/06-2595-Red-Corr, 8 March 2011, paras. 63-65; See also *Prosecutor v. Lubanga*, Judgement, ICC-01/04-01/06, 14 March 2012, paras. 294, 325, 460.

⁴ See, for example, *Prosecutor v. Charles Ghankay Taylor*, Judgement, SCSL-03-01-T, 26 April 2012, paras. 190-192; *Prosecutor v. Martić*, Judgement, IT-95-11-T, 12 June 2007, paras. 36 – 37; *Prosecutor v. Nahimana et al.*, (Transcript of 26 November 2001 at p.10, Exhibit #3D73 admitted on 19 November 2001) ICTR-99-52-T; *Prosecutor v. Casimir Bizimungu et al.*, Judgement and Sentence, ICTR-99-50-T, 30 September 2011, para. 830 and Annex A Procedural History, para. 35; *Prosecutor v. Édouard Karemera et al.*, Decision On Joseph Nzirorera’s Motion For Reconsideration Of Oral Decision On Motion To Compel Full Disclosure Of ICTR Payments For The Benefit Of Witnesses G And T And Motion For Admission Of Exhibit: Payments Made For The Benefit Of Witness G, ICTR-98-44-T, 29 May 2008, paras.8-9.

⁵ ICC-01/05-01/08-2921, para. 1.

4. A significant proportion of these documents have been tendered not through witnesses, but by way of written applications or “bar table” motions.⁶ In response to Defence submissions that the Prosecution has improperly resorted to written applications in an effort to evade the stricter obligations incumbent on admitting documents through witnesses, the Chamber has held that:⁷

[REDACTED]

5. In November 2013, as the Defence was preparing to present its final witnesses, the Prosecution was ordered⁸ by the Chamber to disclose information concerning [REDACTED] Prosecution Witnesses 169 and 178 [REDACTED].⁹

6. The Prosecution accordingly disclosed submissions appending Annexes A and B, of which the Defence has now received lesser-redacted versions.¹⁰ **ICC-01/05-01/08-2827-Conf-AnxA-Red2 (“7 June 2013 Letter”)** is an email dated 7 June 2013 attaching a letter of the same date from Witness 169, addressed to the Prosecutor of the ICC, with copies for information to the [REDACTED]. In this letter, Witness 169 identifies himself both by his name and as “Témoign No. 169 à la cour”, despite being the recipient of protective measures.

7. The 7 June 2013 Letter sets out a list of Witness 169’s alleged outstanding claims, including loss of income and “money promised by the Prosecution for witnesses”. It also contains a request to further discuss his loss of income in the presence of two specific VWU staff members, failing which he cites a risk that the situation will turn sour. Witness 169 states that, if his demands are not met, he will denounce the ICC publicly in the international media and through other channels.

⁶ ICC-01/05-01/08-2299-Conf; ICC-01/05-01/08-2688-Conf; ICC-01/05-01/08-2864-Conf.

⁷ ICC-01/05-01/08-2864-Conf, para.17.

⁸ ICC-01/05-01/08-2845-Conf-Red.

⁹ ICC-01/05-01/08-2827-Conf (hereinafter “Prosecution Submissions”).

¹⁰ ICC-01/05-01/08-2827-Conf-AnxA-RED2 and ICC-01/05-01/08-2827-Conf-AnxB-RED2.

Witness 169 also claims that VWU failed [REDACTED].

8. Witness 169 also states in the 7 June 2013 Letter that [REDACTED] Witness 178, and gathered together in [REDACTED] to look at loss of income claims. The letter annexes a [REDACTED] who are demanding to be paid by the ICC for loss of earnings. [REDACTED].¹¹

9. The second Annex B, **ICC-01/05-01/08-2827-Conf-AnxB-Red2** is an email of 10 June 2013, which attaches a letter from Witness 169 of 8 June 2013 (“**8 June 2013 Letter**”), which deals with the [REDACTED]. Witness 169 refers to a telephone conversation concerning [REDACTED], and then specifies the characteristics that [REDACTED] should have:

- [REDACTED].

10. Witness 169 also states that he has [REDACTED]. The 8 June 2013 Letter also appends the 7 June 2013 Letter, as well as the same [REDACTED].

11. On 11 November 2013, the Defence filed its “Defence Motion concerning ‘Information on [REDACTED]’”.¹² The Defence requested that the Chamber, *inter alia*.¹³

ORDER the Prosecution to provide the Defence with a lesser-redacted version of the Prosecution Submissions in compliance with paragraph 12 of the Chamber’s Decision, **and to formally disclose and attribute an ERN number to Annexes A and B to the Prosecution’s Submissions;**

ORDER the disclosure of any requests for payments or other benefits made by Witness 169, Witness 178, or [REDACTED]; and all details and dates of the payments or benefits provided to Witness 169, Witness 178, [REDACTED] by the Prosecution, VWU or the Registry, including those made in the period between 25 June 2013 and 3 October 2013; [...]

¹¹ [REDACTED].

¹² ICC-01/05-01/08-2872-Conf.

¹³ ICC-01/05-01/08-2872-Conf, para. 50.

ORDER the recall of Witness 169 and Witness 178.

12. On 26 November 2013, the Chamber held an *ex parte* status conference with the Prosecution and VWU.¹⁴ During this status conference, the Chamber instructed the VWU to provide: “(1) a table enclosing updated information in relation to financial benefits of the [REDACTED], and (2) a report containing ... a complete history of the facts, mainly in relation to these two witnesses ... and (3) a summary of this report containing information that can be shared with the parties in order to ensure ‘clarity’ and ‘transparency on the conducts [sic] of the Court as a whole.’”¹⁵

13. Pursuant to this order, on 29 November 2013, the VWU filed an *ex parte* VWU only report, (“**VWU Report**”)¹⁶ in which it annexed the following:

i) Annex A: tables containing information on VWU’s expenses in relation to [REDACTED] in the 7 June 2013 and 8 June 2013 Letters. These amounts vary between [REDACTED] per Prosecution witness. These amounts are said to cover expenditure for costs associated with travel, clothes, accommodation and meals, but also include amounts for payments characterized as “incidental allowances” and “other payments ([REDACTED])” (“**VWU Annex A**”);¹⁷

ii) Annex B: an information sheet containing relevant information with regards to Witnesses 169 and 178 (“**VWU Annex B**”); and

iii) Annex C: a summary of the information sheet “for the purpose of disclosing the information to the parties and participants,”¹⁸ which sets out the interaction between Witnesses 169 and 178 and the Court

¹⁴ ICC-01/05-01/08-2912-Conf, p. 3.

¹⁵ ICC-01/05-01/08-2912-Conf, p. 4.

¹⁶ ICC-01/05-01/08-2912-Conf.

¹⁷ ICC-01/05-01/08-2912-Conf-AnxA.

¹⁸ ICC-01/05-01/08-2912-Conf, p. 7.

but contains no details as to payments made or benefits provided (“**VWU Annex C:** ”);¹⁹

14. On 6 December 2013, VWU filed an “Addendum” to VWU Annex C, (“**VWU Annex D**”), which consists of a “table and information in relation to expenses made for CAR-OTP-PPPP-0169... provided to the witness for protection measures, including the [REDACTED] in order for the witness to [REDACTED] and “a table and information in relation to expenses made for CAR-OTP-PPPP-0178... consist[ing] of the financial assistance for the witness and his family’s move to a safe residence, and [REDACTED].”²⁰ **VWU Annex D** demonstrates that in addition to the payments outlined in **VWU Annex A**, the Court had also paid additional sums to these witnesses totaling [REDACTED] to Witness 169, and [REDACTED] to Witness 178. **VWU Annex D** also indicates that, in the opinion of VWU, these two witnesses had exaggerated their claims for financial assessment, and that the VWU could not ascertain the accuracy of documents supporting their alleged monetary claims.

15. On 18 December 2013, the Chamber rendered its “Decision on “Defence Motion concerning ‘Information [REDACTED].’”²¹ In this Decision, the Chamber held that, in compliance with international criminal jurisprudence concerning disclosure of benefits to witnesses,²² the Defence was entitled to disclosure of information concerning payments made to Prosecution witnesses in the present case. The Chamber held that:²³

In view of the circumstances relating to Witnesses 169 and 178, in particular the correspondence sent by Witness 169 and [REDACTED] Witness 178, the Chamber considers that it may be material for the preparation of the defence to receive a comprehensive picture of the witnesses' interaction with the Court and any assistance requested by

¹⁹ ICC-01/05-01/08-2912-Conf-AnxC.

²⁰ ICC-01/05-01/08-2912-Conf-AnxD.

²¹ ICC-01/05-01/08-2924-Conf.

²² ICC-01/05-01/08-2924-Conf, para. 19.

²³ ICC-01/05-01/08-2924-Conf, paras. 26-28.

or provided to the witnesses.

16. As such, on 18 December 2013, the **VWU Report** and **VWU Annex A**, **VWU Annex C** and **VWU Annex D** were reclassified as confidential and disclosed to the parties and participants.²⁴

17. The Chamber also ordered the Prosecution as follows:²⁵

ORDERS the prosecution to formally disclose by 13 January 2014 the lesser redacted versions of the letters of 7 and 8 June 2013 in accordance with the eCourt protocol;

The Defence has not yet received disclosure of these documents, nor do they appear in the electronic database of evidence in the case. As such, the Defence is currently unable to provide the Chamber with the ERN numbers of these letters in support of its request for admission.

18. Finally, the Chamber denied the Defence request to recall Witness 169 and Witness 178 to be questioned about their various financial claims and [REDACTED] [REDACTED], but held that the parties could seek leave to tender the related documents, deciding:

that any applications by the parties and participants for the admission into evidence of documents referred to in the present Decision are to be submitted **by 20 January 2014**.

19. Pursuant to that order, the Defence makes the current request for the admission of the following documents relevant to [REDACTED], and to payments and benefits made to Prosecution witnesses:

(a) ICC-01/05-01/08-2827-CONF-AnxA-RED2: **7 June 2013 Letter**

²⁴ ICC-01/05-01/08-2924-Conf, paras. 26-28.

²⁵ ICC-01/05-01/08-2924-Conf, para. 38.

- (b) ICC-01/05-01/08-2827-CONF-AnxB-RED2: **8 June 2013 Letter**
- (c) ICC-01/05-01/08-2912-Conf-AnxA: **VWU Annex A**
- (d) ICC-01/05-01/08-2912-Conf-AnxC: **VWU Annex C**
- (e) ICC-01/05-01/08-2912-Conf-AnxD: **VWU Annex D**

B. APPLICABLE LAW

20. Documents and records pertaining to the payment and benefits provided to Prosecution witnesses have been deemed admissible as evidence before the International Criminal Court,²⁶ and other international tribunals.²⁷ In the *Lubanga* case, Trial Chamber I admitted evidence of receipts, disbursements and payments provided to Prosecution witnesses, and relied on these documents in their assessment of the credibility of witnesses in the Trial Judgement.²⁸ In admitting these materials, the Trial Chamber held that they were relevant to “matters that are properly to be considered by the Chamber in its investigation of the charges against the accused.” The Chamber held that:²⁹

the documents bear sufficient indicia of reliability, given they are official reimbursement receipts originating from the prosecution, along with invoices that were submitted for reimbursement, the latter having been accepted by the prosecution. Therefore, the invoices and receipts are, *prima facie*, probative. In light of the above, these documents are relevant to, and probative of, the issues the Chamber is considering, and given the indicia of reliability it is fair for them to be introduced into evidence.

21. This is common practice. In the *Taylor* case before the Special Court for Sierra Leone, the Defence received disclosure of records of disbursements to Prosecution

²⁶ See, for example, *Prosecutor v. Lubanga*, Corrigendum to Public to Redacted Decision on the defence 422 documents ICC-01/04-01/06-2595-Red-Corr, ICC-01/04-01/06, 8 March 2011, paras. 63-65; See also *Prosecutor v. Lubanga*, Judgement, 14 March 2012, paras. 294, 325, 460.

²⁷ *Prosecutor v. Charles Ghankay Taylor*, Judgement, SCSL-03-01-T, 26 April 2012, paras. 190-192.

²⁸ *Prosecutor v. Lubanga*, Judgement, ICC-01/04-01/06, 14 March 2012, paras. 294, 325, 460.

²⁹ *Prosecutor v. Lubanga*, Corrigendum to Public to Redacted Decision on the defence 422 documents ICC-01/04-01/06-2595-Red-Corr, 8 March 2011, paras. 63-65

witnesses from the Special Court's "Witness and Victims Section", and disclosure of payments made by the Prosecution itself through its own "Prosecution Witness Management Unit". Records of these payments and disbursements were admitted into evidence,³⁰ and used by the Defence to cross-examine Prosecution witnesses.³¹

22. Records of payments made to Prosecution witnesses at the ICTR have also been held to be admissible as evidence. In the *Government I* case before the ICTR, the Chamber admitted an itemized statement of payments made to a Prosecution witness at the request of the Defence, finding:³²

this Chamber has already found that payments made by the Prosecution to a witness are relevant and probative for assessing that witness's credibility because "[m]aterial or information within the Prosecutor's knowledge concerning any benefits paid to and/or promises made to witnesses and victims beyond that which is reasonably required... may affect the credibility of witnesses..."³³ Accordingly, the Chamber admits the Prosecution's disclosure of payments to Witness G in the Bizimungu et al. case as an exhibit in this case."

23. Similar records of payments to Prosecution witnesses were admitted in the *Government II* case before the ICTR.³⁴

³⁰ See, *Prosecutor v. Charles Ghankay Taylor*, Judgement, SCSL-03-01-T, 26 April 2012, para. 191, fn 456, citing to: Exhibit P-048, "All Disbursements for Witness TF1-276"; Exhibit P-120, "All Disbursements for Witness TF1-561"; Exhibit P-200, "All Disbursements for Witness TF1-304"; Exhibit D-064, "All Disbursements for Witness TF1-197"; Exhibit D-069, "All Disbursements for Witness TF1-034"; Exhibit D-071, "All Disbursements for Witness TF1-023"; Exhibit P-501, "Report from WVS"; Exhibit P-517, "Inter-office Memo WVS dated 22 March 2010, Expenses Incurred on DCT-146, Dated 22 March 2010"; Exhibit P-554, "Record of Expenses Incurred on DCT-190 Dated 04 June-2010"

³¹ *Prosecutor v. Charles Ghankay Taylor*, Judgement, SCSL-03-01-T, 26 April 2012, paras. 190-192.

³² *Prosecutor v. Édouard Karemera et al.*, Decision On Joseph Nzirorera's Motion For Reconsideration Of Oral Decision On Motion To Compel Full Disclosure Of ICTR Payments For The Benefit Of Witnesses G And T And Motion For Admission Of Exhibit: Payments Made For The Benefit Of Witness G, ICTR-98-44-T, 29 May 2008, paras. 8-9.

³³ *Karemera et al.*, Decision on Defence Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses (TC), ICTR-98-44-PT, 23 August 2005, para. 7.

³⁴ *The Prosecutor v. Casimir Bizimungu et al.*, Judgement and Sentence, ICTR-99-50-T, 30 September 2011, para. 830 and Annex A Procedural History, para. 35: "Additionally, the Chamber granted Mugiraneza's Defence motion to admit 29 pages of a document which showed payments made to or on behalf of Witness D."

24. The Chamber in the present case has previously held that, for any tendered item to be admitted into evidence, it must satisfy a three-part admissibility test. Under this test, the Chamber will examine, on a preliminary basis, whether the submitted materials (i) are relevant to the case; (ii) have probative value; and (iii) are sufficiently relevant and probative to outweigh any prejudicial effect that could be caused by their admission.³⁵

25. The Chamber has held that in applying the admissibility test, the Chamber will examine each of the three requirements as follows:³⁶

Relevance. The first question is whether a submitted item is relevant in the sense that it "relates to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused." To pass the relevance test, an item must be logically connected to one or more facts at issue, in the sense that the item must have the capacity to make a fact at issue more or less probable than it would be without the item. Put differently, an item will be relevant only if it has the potential to influence the Chamber's determination on at least one fact that needs to be determined to resolve the case. The relevance of an item may be assessed in isolation or in relation to other items of evidence in the case.

Probative value. Under the second part of the admissibility test, the Chamber must consider, on a preliminary basis, whether the item in question has probative value. This will always be a fact-specific inquiry and may take into account innumerable factors, including the indicia of reliability, trustworthiness, accuracy or voluntariness that inhere in the item of potential evidence, as well as the circumstances in which the evidence arose. It may also take into account the extent to which the item has been authenticated. While it is not necessary that each item of evidence be authenticated via witness testimony, the Chamber needs to be satisfied that the item is what it purports to be, either because this is evident on its face or because other admissible evidence demonstrates the item's provenance.

Prejudice. Under the third part of the admissibility test, the Chamber must, where applicable, weigh the probative value of the item in question against the prejudicial effect that its

³⁵ ICC-01/05-01/08-2012-Red, para. 13.

³⁶ ICC-01/05-01/08-2012-Red, paras. 14-16.

admission as evidence "may cause to a fair trial or to a fair evaluation of the testimony of a witness". While this inquiry extends to prejudice to the proceedings as a whole, one important component is the extent to which an item's admission would unfairly prejudice the parties in the presentation of their cases. This will always be a fact-sensitive inquiry and the Chamber may consider such factors as whether an item's admission would encroach on the accused's rights under Article 67(1) of the Statute or potentially delay proceedings because it is unnecessary or cumulative of other evidence. If potential prejudice is identified, this will not necessarily preclude the item's admission. The item will be excluded only if its relevance and probative value are insufficient to justify its admission in light of its potentially prejudicial effect.

C. SUBMISSIONS

(a) 7 June 2013 Letter³⁷ and 8 June 2013 Letter³⁸

26. The 7 June 2013 Letter and 8 June 2013 Letter ("Letters") are **relevant** to the present case. Firstly, they demonstrate an expectation on the part of Witness 169 of significant financial and material benefits resulting from his association with the Court. This expectation is relevant to the credibility of the evidence he gave before the Chamber.

27. The Prosecution systematically questioned each Defence witness about whether they received promises of payment or other benefits in exchange for their testimony. Following a Defence objection on 28 November 2012, the Prosecution Senior Trial Attorney asserted: ³⁹

[REDACTED].

³⁷ ICC-01/05-01/08-2827-Conf-AnxA-RED2.

³⁸ ICC-01/05-01/08-2827-Conf-AnxB-RED2.

³⁹ ICC-01/05-01/08-T-277-CONF-ENG-ET, 28-11-2012, pp.35-37.

The Chamber then overruled the Defence objection on the basis that the issue of payments and benefits were relevant to the credibility of the witness.⁴⁰ By the same reasoning, the Letters are also relevant to credibility of Witness 169, and to any [REDACTED] who are seeking or sought a financial benefit from their [REDACTED]. Had the Letters been made available to the Defence at the time the relevant witnesses testified, they would have been appropriate material for use during the Defence examination. Having been deprived of this opportunity, the admission of the Letters as evidence in the case will mitigate this prejudice by allowing the Defence to make submissions in its Final Trial Brief as to their impact on the credibility of the relevant witnesses.

28. This Trial Chamber has previously admitted numerous documents on the basis that they were relevant to the credibility of witnesses heard during the case.⁴¹ To take one example, the Chamber admitted the personal notes of Witness D04-45 on the basis that “the information contained in document CAR-ICC-0001-0089 **may potentially be** of relevance to assessing the credibility of Witness D04-45”.⁴²

29. The Letters are also **relevant** in revealing [REDACTED] Prosecution witnesses, in apparent [REDACTED] orders for protective measures that require that [REDACTED].⁴³ The Letters are accordingly corroborative of other evidence

⁴⁰ICC-01/05-01/08-T-277-CONF-ENG-ET, 28-11-2012, pp.35-37.

⁴¹ See, for example, ICC-01/05-01/08-2688-Conf, para.41: “The witness recognised the document and identified it as a notification of his own appointment as a member of the MLC’s Conseil Politico-Militaire as of 11 November 2002. The Chamber therefore considers that the document may be of relevance in the assessment of the witness’s credibility”; ICC-01/05-01/08-2864-Conf, para.166: The Chamber admitted a press report about the witness involvement in the conflict by leading a rebel movement opposed to former President Bozizé, on the basis that it “may be relevant to the Chamber’s assessment of the credibility of this witness. The same may be said in relation to Witness D04-65. Regarding the defence’s argument that the document falls outside the temporal scope of the Charges, the Chamber considers this argument to be misconceived. In light of the purpose for which the document is tendered, i.e. to challenge the credibility of Witness D04-57, the fact that the document was created in 2007 does not undermines its relevance. In addition, the Majority finds that the admission of this document will facilitate the Chamber’s comprehension of the sections of Witness D04-57 and Witness D04-65’s testimony in which they addressed the content of the report.”

⁴² ICC-01/05-01/08-2864-Conf, para.160.

⁴³ T-50-Conf-ENG, page 37, line 24 – page 42, line 9; T-63-Conf-ENG, page 50, line 2 – page 51, line 19; T-32-ENG, page 61, line 8 – page 62, line 19; T-66-Conf-ENG, page 41, line 18 – page 44, line 9; T-

heard in the case about [REDACTED] Prosecution witnesses prior to their testimony.⁴⁴ However, an organised [REDACTED] suggests a significant level of coordination which is relevant to the credibility of all witnesses involved. It also provides a different and telling context to the rather [REDACTED] already heard of by the Chamber in evidence.⁴⁵

30. The Letters are also directly **relevant** to the credibility of those [REDACTED] who denied having received any payments or benefits in relation to their testimony before the Chamber;⁴⁶ [REDACTED] who denied [REDACTED];⁴⁷ and [REDACTED] who were open about such contacts.⁴⁸ The Letters will assist the Chamber in evaluating the testimony of these witnesses and as such they relate to matters which are properly before the Chamber in its investigation of the charges against the accused.⁴⁹

31. There is no dispute as to the **probative value** or provenance of the Letters, having been produced by the Prosecution and accepted by the Defence as being authored by Witness 169. In addition, they exhibit sufficient indicia of reliability to warrant their admission.

32. Their admission will not give rise to **prejudice** to either party. The Letters are known to the Prosecution, who had knowledge of their contents for months prior to

66- Conf-ENG, page 1 line 25 – page 4 line 5; T-79-Conf-ENG, page 44, line 11 – page 46, line 2; T-81-Conf-ENG, page 54, line 21 – page 56, line 24; T-115-Conf-ENG, page 53, line 19 – page 55, line 19; ICC-01/05-01/08-1940-Conf, 25-11-2011; T-134-CONF-ENG, page 26, line 5 – page 28, line 2; ICC-01/05-01/08-1021-Conf, 19-11-2010; T-176- Conf-ENG, page 6, line 4 – page 10, line 11; T-107-Conf - ENG, page 1, line 21 – page 3, line 5; T-47-Conf-ENG, page 45, line 12 – page 46, line 12; T-149-Conf - ENG, page 63, line 23 – page 65, line 25; T-123-Conf-ENG, page 31, line 23 – page 33, line 20; T-127-Conf-ENG, page 58, line 12 – page 60, line 10; T-90-Conf-ENG, page 5, line 19- page 60, line 1.

⁴⁴ ICC-01/05-01/08-2872-Conf paras. 44, 45.

⁴⁵ ICC-01/05-01/08-2872-Conf paras. 44, 45.

⁴⁶ See, for example, [REDACTED].

⁴⁷ See, for example, [REDACTED]; [REDACTED].

⁴⁸ ICC-01/05-01/08-2872-Conf paras. 44, 45.

⁴⁹ ICC-01/04-01/06-2595-Red-Corr, 8 March 2011, paras. 63-65.

first bringing them to the attention of the Chamber,⁵⁰ and as such had more than sufficient time to formulate a strategy in relation to their impact on the case. Moreover, in opposing the Defence request for leave to appeal the Chamber's decision not to recall Witnesses 169 and 178, the Prosecution has relied on the fact that the Chamber has:

[REDACTED].⁵¹

The Prosecution accordingly appears to have conceded that this evidence is in principle admissible, and in fact may be necessary to mitigate the impact on the fairness of the proceedings of the Chamber's decision not to allow Witnesses 169 or 178 to give further evidence.

33. Moreover, the Letters contain elements concerning [REDACTED] witnesses and demands for benefits which are not cumulative of other evidence heard by the Chamber. Their admission will not cause any delay in the proceedings or encroach on any of the accused's rights under Article 67(1) of the Statute. Indeed, given that the Defence's attempt to elicit evidence about payments to Witness 178 was prevented during his oral testimony, the admission of these documents will provide an important context for the assessment of his evidence:⁵²

[REDACTED].

(b) VWU Annex A,⁵³ VWU Annex C⁵⁴ and VWU Annex D⁵⁵

⁵⁰ ICC-01/05-01/08-2924-Conf, para. 15: At the outset, and before considering the merits of the Defence Motion, the Chamber regrets that, after having received the specific communications from Witness 169, the prosecution waited for over four months before seeking the Chamber's guidance in relation to any disclosure requirements resulting from that material. In view of this delay, the Chamber reiterates its instruction that "as an on-going obligation during the trial proceedings, [the prosecution] shall disclose any Article 67(2) items or permit the defence to inspect any Rule 77 material in its possession or control, promptly upon their identification, throughout the presentation of evidence by the defence."

⁵¹ ICC-01/05-01/08-2938-CONF, para. 28.

⁵² T-157-CONF-ENG, page 53, line 10 – page 54, line 3.

⁵³ ICC-01/05-01/08-2912-Conf-AnxA.

34. The VWU Annexes which detail payments and benefits provided to Prosecution witnesses are **relevant** to the case. The three Annexes must be read together to paint a complete picture of payments and benefits provided to Prosecution witnesses in the context of the present proceedings, and to provide a comparison of the payments made as between the different Prosecution witnesses. No sensible argument can be made that the provision of amounts in the order of [REDACTED] is not relevant to the Chamber's assessment of the credibility of the recipient witnesses, regardless of the weight ultimately ascribed by the Chamber in its final deliberations.

35. There is no dispute as to the **probative value** of the Annexes, having been produced by the Victims and Witness' Unit of the ICC.

36. No **prejudice** arises from their admission to either party. Both parties are able to analyse the Annexes and make any relevant submissions in their Final Trial Briefs as regards the impact of these documents on the credibility of the witnesses involved and the weight they should be ascribed by the Chamber. Indeed, as noted above, the Prosecution appears to have conceded that their admission is necessary in the particular circumstances to circumvent the impact of the Chamber's decision not to allow the recall of Witnesses 169 and 178.⁵⁶ The Annexes are not cumulative of other evidence heard in the case, and their admission will not cause any delay in the proceedings or encroach on any of the accused's rights under Article 67(1) of the Statute.

D. CONCLUSION

⁵⁴ ICC-01/05-01/08-2912-Conf-AnxC.

⁵⁵ ICC-01/05-01/08-2912-Conf-AnxD.

⁵⁶ ICC-01/05-01/08-2938-CONF, para. 28.

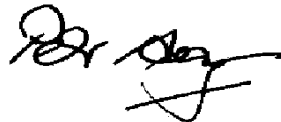
(b) For all of the above reasons, the Defence respectfully requests that the Chamber:

ORDER that the following documents are formally disclosed in the record of the case in accordance with the eCourt protocol

- a) ICC-01/05-01/08-2827-CONF-AnxA-RED2: **7 June 2013 Letter**
- b) ICC-01/05-01/08-2827-CONF-AnxB-RED2: **10 June 2013 Letter**
- c) ICC-01/05-01/08-2912-Conf-AnxA: **VWU Annex A**
- d) ICC-01/05-01/08-2912-Conf-AnxC: **VWU Annex C**
- e) ICC-01/05-01/08-2912-Conf-AnxD: **VWU Annex D**; and

ADMIT these documents as evidence in the present case:

The whole respectfully submitted.



Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

Done this day 24 September 2014

The Hague, The Netherlands