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**International
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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr

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**

Confidential, *EX PARTE*, only available to the Bemba Defence and the Registry

Prosecution's Submission on the Appointment of Defence Counsel

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 the Trial Chamber ("Chamber") to review the appointment of Ms Melinda Taylor as Counsel for the Accused, Jean-Pierre Bemba Gombo.

2. First, there appears to be an impediment to Ms Taylor's simultaneous representation of Bemba in this case and in *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08) ("Main Case") under article 12(3) of the Code of Professional Conduct for Counsel ("Code"). Second, such representation can give rise to actual and potential conflicts under article 16(1) of the Code. Third, Ms Taylor's assignment must be examined with a view towards avoiding future disruptions to the continuity of Bemba's representation in this case.

3. The Chamber's review of Ms Taylor's appointment is necessary under article 64(2) of the Rome Statute ("Statute") to ensure that the impediment and any present or latent conflict of interest affecting Bemba's representation are properly resolved, to guarantee the integrity and fairness of the proceedings.

II. Confidentiality

4. This filing is classified as "Confidential, *Ex Parte*, only available to the Bemba Defence and the Registry", as it involves matters strictly pertinent to Bemba. However, should the Chamber consider that a lesser restriction is appropriate and/or necessary in view of the arguments advanced, the Prosecution does not object to its reclassification.

III. Procedural History

5. On 8 December 2013, Bemba appointed Nicholas Kaufman as Counsel.¹
6. On 6 January 2014, the Registry filed a letter by Bemba designating Peter Haynes as "*Conseil principal*" in the Main Case, and further specifying the composition of his Defence Team, which included *inter alios*, Kate Gibson as "*Conseil adjoint*" and Ms Taylor as "Consultant."²
7. On 3 April 2014, the Registry filed a notification of Bemba's appointment of associate counsel which, on Mr Haynes' acceptance, modified Ms Taylor's appointment from Consultant to "associate counsel" in the Main Case.³
8. On 16 December 2014, Bemba informed the Registry of his agreement to Mr Kaufman's withdrawal, and the appointment of Ms Taylor as his replacement on a *pro bono* basis in this case.⁴
9. On 17 December 2014, Mr Kaufman requested the Chamber to grant leave to withdraw from representation.⁵ The Prosecution did not oppose the request, while underscoring the importance of ensuring the continuity and quality of Bemba's representation.⁶
10. On 18 December, Ms Taylor confirmed her intention to represent Bemba *pro bono* in this case.⁷

¹ ICC-01/05-01/13-36.

² ICC-01/05-01/08-2927, p.3.

³ ICC-01/05-01/08-3031, p.3.

⁴ ICC-01/05-01/13-789-AnxI.

⁵ ICC-01/05-01/13-783.

⁶ ICC-01/05-01/13-785.

⁷ ICC-01/05-01/13-789-Conf-AnxII.

11. On 8 January 2015, Pre-Trial Chamber II granted Mr Kaufman's withdrawal request.⁸

12. On 22 January 2014, the Registry informed the Chamber of Ms Taylor's formal appointment.⁹

IV. Submissions

13. The Code is "part of the Court's applicable law under article 21(1)(a) of the Statute".¹⁰ Article 12(3) of the Code articulates an impediment to representation, prohibiting Counsel from acting "in proceedings in which there is a substantial probability that Counsel or an associate of Counsel will be called to appear as a witness".¹¹ Article 16(1) of the Code addresses conflicts of interests and provides in pertinent part, that "Counsel shall exercise all care to ensure that no conflict arises". These provisions bear on Ms Taylor's representation of Bemba in this case, given her simultaneous membership in the Defence team representing him in the Main Case.¹²

14. First, there appears to be an impediment to Ms Taylor's representation due to the substantial probability that Mr Haynes and/or Ms Gibson (Lead Counsel and Co-Counsel in the Main Case, respectively) will be called as witnesses on contested issues in this case.

⁸ ICC-01/05-01/13-792.

⁹ ICC-01/05-01/13-796.

¹⁰ *Prosecutor v. Francis Kirimi Muthaura et al.*, ICC-01/09-02/11-365 ("Muthaura AJ"), para.48.

¹¹ Article 2(2) of Code defines the term 'associate' as "lawyers who practise in the same law firm as counsel". However, the fact that Ms Taylor's association with Mr Haynes and Ms Gibson does not comprise a formally constituted 'law firm' is irrelevant. Lawyers comprising a singular 'defence team' (i.e., working under the oversight of a lead counsel) fall within the type of professional relationship toward which article 12(3) of the Code is addressed.

¹² See ICC-01/05-01/08-2927, p.3 (indicating Ms Taylor's association with the *Bemba* Defence as 'Consultant' as of 6 January 2014) and ICC-01/05-01/08-3031 (modifying her appointment to 'associate counsel', as of 3 April 2014)

15. Second, Ms Taylor is actually and potentially conflicted in representing Bemba.

16. Third, the appointment has to be reviewed in light of the need to assure the future continuity of Bemba's representation in this case.

A. Article 12(3) of the Code presents an impediment to Ms Taylor's representation

i. A "substantial probability" exists that Counsel's Main Case associates will be called in this case

17. Article 12(3)'s "substantial probability" threshold is met in the circumstances. Mr Haynes and Ms Gibson were formerly part of the Bemba Defence team led by Accused, Aimé Kilolo Musamba. Due to their positions in the Bemba Defence, there is a substantial probability that they will be called as witnesses by a Party or the Chamber on matters concerning Kilolo's and the Accused, Jean-Jacques Mangenda Kabongo's conduct during the course of Bemba's defence in the Main Case.¹³

18. Ms Gibson and Mr Haynes may be required to testify on substantial issues concerning (a) expenses and payments by the Defence team to witnesses and their timing – advanced by the Kilolo Defence in the confirmation proceedings¹⁴ – as both appear as recipients of emails concerning this issue;¹⁵ and (b) the substance and circumstances of the initial statements of Defence witnesses, especially in comparison with the content of their in-court testimony. The Prosecution's evidence as well as the evidence proffered by the Kilolo Defence during the confirmation proceedings,¹⁶

¹³ See article 32(1)(a) of the Code concerning counsel's liability for the conduct of assistants or other staff.

¹⁴ See e.g., ICC-01/05-01/13-600-Conf-Corr2, para.279.

¹⁵ See e.g., CAR-D21-0003-0050; CAR-D21-0003-0187.

¹⁶ See e.g., ICC-01/05-01/13-674-Conf, para.95: "Les dépositions du témoin Gang étaient conformes aux déclarations préalables qu'il avait fournies à Me Kilolo et Me Gibson [...]", with reference to CAR-D21-0004-0463; CAR-D04-0004-0045; CAR-D04-0003-0200.

demonstrates their knowledge of the existence of these statements and presumably, their content. For instance, according to a conversation between Kilolo and Mangenda on 29 August 2013, Mr Haynes appears to have voiced his concerns to Bemba about discrepancies in the evidence provided by the Defence witnesses as compared to their prior interviews.¹⁷ In Ms Gibson's case, the evidence demonstrates her presence at several interviews conducted by Kilolo, during which witnesses' initial statements were taken.¹⁸

19. The Kilolo Defence has directly placed the content of these statements at issue in contending that the evidence on which the Prosecution relies (audio tapes) in alleging Kilolo's improper coaching of witnesses, merely demonstrates his refreshing of their recollection in accordance with their prior statements to the Defence.¹⁹ This contention further places at issue the circumstances and conditions under which the statements were made, subscribed, verified or adopted – since they bear directly on the subject matter of the witnesses' trial testimony impugned in this case. Further, Mr Haynes and Ms Gibson clearly hold evidence attendant to these circumstances, whether or not favourable to the Accused.

20. Assuming that Kilolo intends to legitimate his contentions, both he and Mangenda (who's basis of liability is interconnected with Kilolo's conduct) are substantially likely to call Ms Gibson and Mr Haynes at trial, since the Defence

¹⁷ See CAR-OTP-0080-0238 at 0241, lns.45-52.

¹⁸ The Kilolo Defence admitted that Ms Gibson was part of missions to Cameroun, Congo-Brazzaville, DRC and France in ICC-01/05-01/13-600-Conf-Corr2, para.121. Witness testimonies also clearly show that a 'white lady' who did not speak French was present at the interviews in Douala: D-2, ICC-01/05-01/08-T-321bis-CONF-ENG ET, p.37, lns.19-20 [open session]; D-6, ICC-01/05-01/08-T-329-CONF-ENG ET, p.15, ln.14 [open session]; D-3, ICC-01/05-01/08-T-330-CONF-ENG ET, p.19, lns.2-3 [private session]; D-23, ICC-01/05-01/08-T-333-CONF-ENG ET, p.33, ln.24 [open session]; D-26 mentioned that her name was "Kate", ICC-01/05-01/08-T-335-CONF-ENG ET, p.15, lns.4-5 [open session]; D-25, ICC-01/05-01/08-T-337-CONF-ENG ET, p.38, lns.11-17 [open session], p.39, ln.14 [private session]; D-29, ICC-01/05-01/08-T-339-CONF-ENG ET, p.20, lns.8-9 [open session]; D-13, ICC-01/05-01/08-T-351-CONF-ENG ET, p.49, lns.16-17 [open session]. Furthermore, the mission records show that Ms Gibson was on mission at the time: CAR-D20-0001-0004; CAR-D20-0001-0001; CAR-D21-0001-0061; CAR-D21-0003-0219; CAR-D21-0001-0017; CAR-D21-0003-0176; CAR-D21-0001-0007; CAR-D21-0001-0049; CAR-D21-0001-0028; CAR-D21-0001-0016; CAR-D21-0001-0050; CAR-D21-0001-0065.

¹⁹ See e.g., ICC-01/05-01/13-600-Conf-Corr2, para.202.

evidence proffered in these proceedings – Prosecution evidence as well – tends to show that Mr Haynes and Ms Gibson have knowledge of contested matters.

21. Additionally, the Prosecution itself does not exclude the possibility of calling Mr Haynes and Ms Gibson as witnesses at a later stage concerning, *inter alia*, the abovementioned issues, depending on (1), the nature of the case advanced by the various Defence teams; and (2), the evidence seized upon the Accused's arrests, some of which has yet to be provided to the Prosecution.²⁰

22. Moreover, by virtue of its overarching duty to search for the truth, the Chamber may also decide to call Mr Haynes and Ms Gibson *proprio motu*, irrespective of the parties' strategies.²¹ It should be noted in this regard that the Confirmation Decision even references a conversation between Kilolo and Mangenda directly related to Mr Haynes.²² In particular, the Pre-Trial Chamber referred to Mangenda having remarked that "*Alors qu'est-ce qu'il [Mr Haynes] veut, il y a un témoin qui dit la vérité qu'il soit content, voilà.*" Again, this suggests Mr Haynes' concerns about the nature of the evidence emanating from Defence witnesses. But, more directly, it comprises highly incriminating evidence against the Accused.

ii. *The article 12(3) impediment is non-waivable*

23. The impediment to representation posed by a Counsel's associates being called as witnesses in the subject case is dealt with exclusively in article 12(3) of the Code. This provision foresees only two exceptions, in subsections (3)(a) and (b). Neither is

²⁰ The Prosecution notes that certain material seized by national authorities pursuant to the execution of the arrest warrant against Mangenda in November 2013, was only recently delivered to the Registry. Other material, seized by national authorities in connection with Kilolo's November 2013 arrest, is still pending delivery to the Court.

²¹ See also ICTY: *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.1, Decision on Miroslav Šeparović's Interlocutory Appeal against Trial Chamber's Decisions on Conflict of Interest and Finding of Misconduct, 4 May 2007, para.18; *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Conflict of Interest of Attorney Miroslav Šeparović, 27 February 2007, p.7.

²² ICC-01/05-01/13-749, para.67; see CAR-OTP-0074-0997 (Audio); CAR-OTP-0080-0245 at 0252, ln.190 (Translation).

pertinent in this case. Subsection (a) does not apply because the potential testimony of Mr Haynes and/or Ms Gibson would relate to contested issues. Equally, subsection (b) is not applicable because the potential testimony of Mr Haynes or Ms Gibson would not relate to the nature and value of legal services rendered in *this* case.

24. Article 12(3) of the Code provides for no other exceptions to its application. And, contrary to article 12(1)(a), article 12(3) of the Code provides no workaround for a prospective Counsel through obtaining the consent of the affected party(ies).²³ Thus, Bemba may not waive the impediment to Ms Taylor's representation.

B. Conflict of interest: Counsel's associates' interests are in conflict with those of Counsel's client under article 16 of the Code

25. Should the Chamber determine that the facts and circumstances described above do not comprise an impediment under article 12(3) of the Code, they may nevertheless constitute a conflict of interest under article 16 of the Code.²⁴

26. Ms Taylor's concurrent representation of Bemba in the Main Case and this case seems to give rise to an *actual* conflict of interest because her association with counsel in the Main Case restricts her ability to pursue potentially viable defences; for example, mounting a defence strategy which discredits Bemba's overall representation in the Main Case.²⁵ This would impugn the very Defence team of which Ms Taylor's present superior Mr Haynes, and Ms Gibson were a part. While such a strategy is foreclosed to Ms Taylor, given that she is a member of the same

²³ Compare with article 12(1)(a) and 16(3)(b) of the Code.

²⁴ Article 12(4) of the Code notes the article's operation "without prejudice to article 16 of [the] Code".

²⁵ See also the broad definition of conflicts of interest made by two ICTY Chambers: *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić against Trial Chamber's Decision on Request for Appointment of Counsel, 24 November 2004, para.22; *Prosecutor v. Simić et al.*, IT-95-9, Decision on the Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Borislav Pisarevic, 25 March 1999, p.4: "A conflict of interest between an attorney and a client arises in any situation where, by reason of certain circumstances, representation by such an attorney prejudices, or could prejudice, the interests of the client and the wider interests of justice."

defence team as Mr Haynes and Ms Gibson, it is a strategy available to an unrelated counsel, and one already broached by Bemba's previous Counsel in the confirmation submissions.²⁶

27. Separately, Ms Taylor's concurrent appointment conditionally can give rise to a *latent* conflict of interest on two conditions: (1) *if* the evidence in this case were to demonstrate that Mr Haynes had "information suggesting" Kilolo's or Mangenda's charged conduct (i.e., conduct in violation of the Code)²⁷ and (2), he were called as a witness in this case. This is because, in such circumstances, article 32(1)(b) of the Code requires that Counsel must have taken reasonable remedial action.²⁸ The same issue would arise under the same conditions regarding Ms Gibson, given her domestic deontological obligations,²⁹ since she did not act as Counsel in the Main Case during the relevant period, but as a Legal Assistant.

28. To be clear, the information that may have been available to, or within the knowledge of either Mr Haynes or Ms Gibson regarding Kilolo's or Mangenda's conduct is not determined. However, certain conversations between Accused Kilolo and Mangenda merit consideration for the purposes of this submission.³⁰

29. For example, in a 28 August 2013 conversation between Kilolo and Mangenda, Kilolo recalls Mr Haynes' remarks regarding recent witnesses in the Main Case.

²⁶ ICC-01/05-01/13-599-Conf, para.148.

²⁷ See articles 7(4), 31 and 32 of the Code.

²⁸ See article 32(1)(b) of the Code holding Counsel liable for the misconduct of his or her staff or assistants when he or she "knows or has information *suggesting* that violations [of the Code] may be committed and takes not reasonable remedial action."

²⁹ See e.g., Australian Solicitors Conduct Rules, commenced 1 June 2012, Section 20.1, 20.1.1, 20.1.4 and 20.1.5 available at < <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/AustralianSolicitorsConductRules.pdf>> (requiring a solicitor to withdraw from a case on learning that a client or a witness lied in a material particular to the court or has procured another person to do so, else report this fact to the court on consent of the client).

³⁰ See CAR-OTP-0080-0238 at 0240, ln.26–0241, ln.52 (discussing Mr Haynes' inquiry as to whether Kilolo and Mangenda had met with a witness (believed to be D-36) just prior to his testimony, and his having asked Bemba if he was aware that a witness testifying the day before (believed to be D-29) was going to answer questions in a particular way, contrary to what the witness had previously informed the Defence).

Kilolo notes: *“En fait, en fait tu vois quand il [the witness] a varié là, il y a un truc aussi qu’il [Haynes] a dit ... mais d’une manière intelligente. Il [Haynes] a dit non: «Des gens que nous avons vu récemment et peut être on a même interviewé une seconde fois». Il a mis un point d’interrogation. En fait en réalité ... [...] euh ... il nous soupçonne que nous avons rencontré ces gens en question et que nous leur avons donné ces éléments-là”*.³¹

30. In a 2 October 2013 intercepted conversation, Kilolo mentions to Mangenda a complaint Mr Haynes made about not being invited to participate in certain field missions the two conducted.³² Kilolo states that he asked Mr Haynes why he had not previously mentioned this,³³ and recounts his response: *“Il [Haynes] m’a dit non, parce que j’avais compris vous [Kilolo and Mangenda] faisiez vos histoires”*.³⁴

31. In a 17 October 2013 conversation between Kilolo and Mangenda, Mangenda states, *“nos blancs ici qui sont avec nous [referring to the white members of the Bemba defence team] on ne peut pas les écarter. Ils en savent trop [...] [I]ls connaissent les histoires que tu [Mr. Kilolo] connais là. On ne peut pas les écarter. On ne peut pas les écarter parce que s’ils ne sont plus avec nous, nous n’aurons plus de contrôle sur eux. Alors ils peuvent parler des histoires-là que tu connais.”*³⁵ Kilolo agreed.³⁶

32. Should the evidence establish the requisite degree of information or knowledge which would have required Mr Haynes and/or Ms Gibson to have acted, and they were to testify to having done so, this would tend to confirm that the offences with which the Accused are charged, including Bemba, occurred — contrary to Bemba’s

³¹ CAR-OTP-0079-0122 at 0126, lns.98-103.

³² CAR-OTP-0080-0299 at 0301, lns.22-24; see also: CAR-OTP-0082-0116 at 0125, lns.267-281.

³³ CAR-OTP-0080-0299 at 0301, ln.26.

³⁴ CAR-OTP-0080-0299 at 0301, lns.26-27. See also footnote 17.

³⁵ CAR-OTP-0082-1293 at 1300, lns.211-222 (the conversation discusses replacing Ms Gibson on the Defence team and her possible reaction).

³⁶ CAR-OTP-0082-1293 at 1300, ln.223.

interests. Alternatively, testimony to the contrary would, *ceteris paribus*, undermine their own professional interests.³⁷

33. In either case, their appearance as witnesses in such circumstances would place Ms Taylor in an untenable position. It would divide her loyalties by pitting her client's interests against the professional interests of her teammates in the Main Case. Moreover, it would affect her ability to effectively cross-examine them at trial.³⁸ At the very least, this would present the appearance of a conflict of interest. Ms Taylor's concurrent representation of Bemba in both this and the Main Case is thus plainly inconsistent with article 16(1) of the Code.

C. Continuity of representation

34. It is axiomatic that conflicts of interest should be resolved expeditiously and prevented where possible.³⁹ This is not just to preserve the fairness of the proceedings and to avert miscarriages of justice at the end of a trial, but even more pragmatically, to avoid disruptions to representation during its course.

35. The repeated replacement of Lead Counsel will inevitably cause undue delay. At its worst, this could prejudice the Accused's preparations for trial, as it may prove difficult for a new Counsel to proceed with a predecessor's trial strategy. Alternatively, it may constrain representation such that Counsel may not be able to plead the case as he/she might have done if appointed from the start.⁴⁰ To ensure Bemba's continuous representation through trial and to avoid the need to replace

³⁷ See article 31(a) of the Code.

³⁸ See also ICTY: *Prosecutor v. Simić et al.*, IT-95-9, Decision on the Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Borislav Pisarevic, 25 March 1999, para.4 (Prosecution's submissions).

³⁹ See also ICTY: *Prosecutor v. Prlić et al.*, IT-06-90-AR73.1, Decision on Appeal by Bruno Stojić against Trial Chamber's Decision on Request for Appointment of Counsel, 24 November 2004, para.25.

⁴⁰ See also ICTY: *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Requests for Appointment of Counsel, 30 July 2004, para.31.

Counsel again at a later stage, a Counsel without any actual or latent conflicts of interest should, in due caution, be appointed.

D. The Chamber has the power to review the appointment of Counsel even if the Accused consents to representation despite a conflict or waivable impediment

36. Pursuant to article 64(2) of the Statute, the Chamber has the power to review an assignment of Counsel if the fairness and/or expeditiousness of a trial are at stake.⁴¹ Assuming, *arguendo*, that a waiver of the conflicts in this case is possible, the jurisprudence of the *ad hoc* tribunals shows that an accused's consent in the case of a conflict is not determinative.⁴² Thus, consent is no bar to a Chamber's independent responsibility to ensure the integrity of the proceedings.⁴³ In particular, the Chamber should decline the appointment of Counsel if it reasonably expects that he/she may be reluctant to use certain evidence or defence strategies due to a conflict, and would therefore violate professional duties under the Code.⁴⁴

37. Consequently, it is appropriate for the Chamber to use its powers to ensure the right of the Accused to a fair and expeditious trial and to maintain the proper

⁴¹ See *Muthaura* AJ, para.46; *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, ICC-02/05-03/09-252, para.30; *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, ICC-02/05-03/09-168, para.12; ICC-01/05-01/08-769, paras.39, 41. See also the findings of the ICTY in similar circumstances: *Prosecutor v. Mejakić et al.*, IT-02-65-AR73.1, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simic, 6 October 2004, para.7; *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić against Trial Chamber's Decision on request for Appointment of Counsel, 24 November 2004, para.21; *Prosecutor v. Blagojević*, IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence team, 7 November 2003, para.7; *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Requests for Appointment of Counsel, 30 July 2004, paras.15-16, 31.

⁴² See ICTY: *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para.35; *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić against Trial Chamber's Decision on request for Appointment of Counsel, 24 November 2004, para.27.

⁴³ See *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, ICC-01/09-01/11-1775-Red, para.20.

⁴⁴ See ICTY: *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para.23; *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Requests for Appointment of Counsel, 30 July 2004, para.15-16.

administration of justice.⁴⁵ As such, Ms Taylor's appointment should be reviewed in the interests of justice.⁴⁶

38. Should the Chamber consider it yet possible to proceed with Ms Taylor in place as Bemba's Counsel in the circumstances, it should require Bemba's unequivocal waiver on the record based on independent legal advice – that is, the advice of a counsel properly briefed on the facts who does not currently represent Bemba. This will best preserve the integrity of the proceedings and the safety of an eventual trial judgement.

V. Requested Relief

39. For the foregoing reasons, and given what appears to be a clear impediment to representation under article 12(3) of the Code, the Prosecution considers that the assignment of new Counsel is warranted. Alternatively, should the Chamber determine there is no such impediment, the Chamber should nevertheless require Bemba's proper waiver of any actual or latent conflicts under article 16 of the Code, pursuant to independent legal advice.



Fatou Bensouda, Prosecutor

Dated this 16th Day of February 2015
At The Hague, The Netherlands

⁴⁵ See e.g., ICTY: *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Requests for Appointment of Counsel, 30 July 2004, para.16.

⁴⁶ See article 64(2) of the Statute.