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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt

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 “Prosecution’s First Request for the Admission of Evidence
from the Bar Table”, 16 June 2015, ICC-01/05-01/13-1013-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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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks the admission *in limine* of 345 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 is *prima facie* relevant to material issues at trial, is mutually corroborative, and bears sufficient indicia of reliability to be admitted. Its admission would assist the Chamber’s determination of the truth and ensure an expeditious trial.

3. The proposed evidence is grouped as follows: Category I - intercepted communications and their corresponding phone logs and transcripts/translations (“intercepts”); Category II - call data records from independent private carriers (“CDRs”); and Category III - financial records from commercial money transfer companies (“financial records”).

4. In respect of each item proposed for admission, the attached Annex lists the: (i) evidence registration number (“ERN”); (ii) date; (iii) title; (iv) source identity; and (v) date of disclosure.

II. Confidentiality

5. 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.

III. Applicable Law

6. Article 69(4) guides the factors to be considered when making general admissibility assessments.¹ A Chamber may thus, rule on “the relevance or admissibility of any evidence, taking into account, *inter alia*, [its] probative value [] and any prejudice that [it] may cause to a fair trial or to a fair evaluation of the testimony of a witness.” Article 64(9)(a) of the Statute governs the Chamber’s determination of the “admissibility or relevance of evidence”. Rule 63(2) of the Rules elaborates on this authority.

¹ ICC-01/09-01/11-1353, para.14.

7. The Statute and the Rules do not expressly stipulate the manner in which documentary evidence must be introduced. Nonetheless, Chambers have admitted evidence from the bar table.² In the *Lubanga* case, Trial Chamber I admitted evidence from the bar table,³ reasoning that, “notwithstanding the express reference to oral evidence from witnesses at trial, there is a clear recognition that a variety of other means of introducing evidence may be appropriate.”⁴ The Trial Chambers in the *Katanga and Ngudjolo*,⁵ *Ruto and Sang*,⁶ and *Bemba*⁷ cases followed the same approach. Specifically, in the *Ruto and Sang* case, Trial Chamber V(A) acknowledged that “the admission of evidence through a bar table is a practice established in the jurisprudence of the Court.”⁸

8. In accordance with this practice, the admissibility of evidence other than testimony requires consideration of three key factors: (i) its *prima facie* relevance to the issues at trial;⁹ (ii) its *prima facie* probative value;¹⁰ and (iii) its prejudicial effect as weighed against the probative value.¹¹

9. Although the Appeals Chamber has stated that “a Chamber’s determination of the relevance or admissibility of evidence be made on an item-by-item basis”¹², there will inevitably be circumstances which intrinsically satisfy the *prima facie* threshold for admission of evidence more broadly. As explained below, the specific nature of the categories of evidence concerned here warrants their admission from the bar table in their entirety.

² ICC-01/04-01/06-1399-Corr and ICC-01/04-01/06-1981 (*Lubanga* case); ICC-01/09-01/11-1353 (*Ruto and Sang* case); ICC-01/04-01/07-2635 (*Katanga and Ngudjolo* case); ICC-01/05-01/08-2012-Red and ICC-01/05-01/08-2299-Red (Main case).

³ ICC-01/04-01/06-1399-Corr, para.42; *See also* ICC-01/04-01/06-1981.

⁴ ICC-01/04-01/06-1399-Corr, para.22.

⁵ ICC-01/04-01/07-2635. *See also* ICC-01/04-01/07-1665, para.100.

⁶ ICC-01/09-01/11-1353.

⁷ ICC-01/05-01/08-2012-Conf ; ICC-01/05-01/08-2299-Red.

⁸ ICC-01/09-01/11-1353, para.13.

⁹ ICC-01/04-01/06-1399-Corr, para.27; ICC-01/04-01/07-2635, section B; ICC-01/05-01/08-2012-Red, paras.13-14; ICC-01/05-01/08-2299-Red, para.8; ICC-01/09-01/11-1353, para.15.

¹⁰ ICC-01/04-01/06-1399-Corr, paras.28-30; ICC-01/04-01/07-2635, section C; ICC-01/05-01/08-2012-Red, paras.13 and 15; ICC-01/05-01/08-2299-Red, para.8; ICC-01/09-01/11-1353, para.15.

¹¹ ICC-01/04-01/06-1399-Corr, paras.31-32; ICC-01/04-01/07-2635, section D; ICC-01/05-01/08-2012-Red, paras.13, 16-17; ICC-01/05-01/08-2299-Red, para.8; ICC-01/09-01/11-1353, para.16.

¹² ICC-01/05-01/08-1386, para.53.

IV. Submissions

A. Category I: intercepted communications, corresponding phone logs and transcripts/translations

10. The Prosecution seeks the admission of 96 intercepted voice calls, 35 intercepted SMS messages, 96 transcripts, 67 translations, and 8 phone logs. Category I of the Annex lists these items.

(i) *The material is prima facie relevant to the issues at trial*

11. Category I items comprise contemporaneous records and recorded conversations/text messages between the Accused; and between the Accused and witnesses involved in the confirmed incidents in the case. They cover the period between 20 August and 12 November 2013, within the timeframe of the confirmed charges.¹³

12. The material stems from the Prosecution's request to the Dutch authorities to intercept calls placed or received by Kilolo and Mangenda, pursuant to the authorisation of the Single Judge of Pre-Trial Chamber II.¹⁴ Prior to their transmittal to the Court, the material was examined by an independent counsel, assigned by the Single Judge to identify material which might be relevant for the proceedings, excluding potentially privileged information.¹⁵

13. The Independent Counsel selected intercepted communications in accordance with his mandate.¹⁶ He produced three reports, analysing them item-by-item, identifying the participants in the conversations, their telephone numbers, the most relevant portions of each conversation, and a detailed account of his findings.¹⁷

¹³ ICC-01/05-01/13-749, p.47.

¹⁴ ICC-01/05-52-Red2, p.7.

¹⁵ ICC-01/05-01/13-41-Red, p.4. *See also* ICC-01/05-52-Red2, pp.7-8; ICC-01/05-01/13-362-Conf, pp.4-5. On 9 April 2015, the Trial Chamber maintained the procedure initially established by the Pre-Trial Chamber, for the Independent Counsel to review material "which he considers to be relevant and not privileged" (*see* ICC-01/05-01/13-893-Red, paras.19-23).

¹⁶ CAR-OTP-0074-0887, para.11; CAR-OTP-0074-0919, para.5; CAR-OTP-0080-1124, para.8.

¹⁷ CAR-OTP-0074-0897 (*Annexe au premier rapport du Conseil Independent*); CAR-OTP-0074-0926 (*Annexe au deuxième rapport du Conseil Independent*); CAR-OTP-0080-1138 (*Annexe au troisième rapport du Conseil Independent*).

14. The Single Judge, in the exercise of his discretion, subsequently transmitted the reports, the intercepts and the underlying materials to the Parties.¹⁸ In doing so, the Single Judge made an independent determination of the relevance of the material to the proceedings, reasoning that, “the tasks more generally carried out by the Independent Counsel are [...] *without prejudice* to the Chamber’s power to assess the [...] relevance [...] of any item of evidence that had originally been identified by the Independent Counsel as non-privileged and relevant to the present case.”¹⁹

15. The Prosecution considers that these reports, incorporated by reference,²⁰ and the Single Judge’s separate assessment of the relevance of each communication and the supporting material, as a condition precedent to the Pre-Trial Chamber’s disclosure to the Parties, sufficiently establishes their *prima facie* relevance to the case. In particular, the Prosecution relies on this prior judicial determination of relevance to the proceedings.

16. Trial Chamber III in the Main case has determined that “the relevance of an item may be assessed in isolation or in relation to another item of evidence in the case.”²¹ Here, the Independent Counsel has repeatedly affirmed that during the review process [REDACTED].²² Collectively, this material substantiates and contextualises the Accused’s alleged illicit coaching and bribing of witnesses during the timeframe of the charges. As a result, the Prosecution requests the admission of this material in its entirety.²³

¹⁸ ICC-01/05-01/13-6-Conf-AnxA000 to AnxA042; ICC-01/05-01/13-6-Conf-AnxA000 and B001 to Anx B041; ICC-01/05-01/13-438-Conf-AnxB001 to AnxB063. *See also* ICC-01/05-64-Conf; ICC-01/05-64-Conf-Exp-Anx; ICC-01/05-66-Conf; ICC-01/05-66-Conf-Anx-Corr; ICC-01/05-01/13-421-Conf-Anx.

¹⁹ ICC-01/05-01/13-362-Conf, p.5 (emphasis added). The Chamber also confirmed recently that: “Independent Counsel is tasked merely to review seized material as to its relevance and potential privileged character, as defined in rule 73 of the Rules, and that the Chamber retains judicial control over the review process without being constrained by the Independent Counsel’s assessment.”: ICC-01/05-01/13-966, para.15. *See also* ICC-01/05-01/13-947, paras.16-20.

²⁰ CAR-OTP-0074-0887 and CAR-OTP-0074-0897; CAR-OTP-0074-0919 and CAR-OTP-0074-0926; CAR-OTP-0080-1124 and CAR-OTP-0080-1138.

²¹ ICC-01/05-01/08-2012-Red, para.14.

²² CAR-OTP-0074-0887 at 0890, para.7; *See also* CAR-OTP-0074-0919 at 0921, para.3; CAR-OTP-0080-1124 at 1126, para.5.

²³ With the exception of duplicates: CAR-OTP-0074-1005 (Audio) is the duplicate of CAR-OTP-0074-1004 (Audio); CAR-OTP-0074-1007 (Audio) is the duplicate of CAR-OTP-0074-1006 (Audio); CAR-OTP-0074-1010 (Audio) is the duplicate of CAR-OTP-0074-1009 (Audio); CAR-OTP-0080-1355 (SMS) is the duplicate of CAR-OTP-0080-1354 (SMS); CAR-OTP-0080-1358 (SMS) is the duplicate of CAR-OTP-0080-1356 (SMS); CAR-OTP-0080-1359 (SMS) is the duplicate of CAR-OTP-0080-1357 (SMS); and eight items that the Prosecution considers private in nature and irrelevant: CAR-OTP-0077-0189 (SMS); CAR-OTP-0077-0190 (SMS); CAR-OTP-0074-0987 (Audio); CAR-OTP-0074-0988 (Audio); CAR-OTP-0074-0989 (Audio); CAR-OTP-0077-0196 (SMS); CAR-OTP-0077-0197 (SMS); CAR-OTP-0077-0198 (SMS). *See also* CAR-OTP-0074-0887, para.20.

17. The Single Judge considered this material “of essence to the determinations to be made by the Chamber under article 61 of the Statute.”²⁴ Further, the Pre-Trial Chamber used it extensively in its decision on the confirmation of charges.²⁵ The proposed items thus remain relevant to the issues at trial and will assist the Chamber in determining the truth regarding several key matters, examples of which are detailed below.

18. *First*, the items are significant to establish Kilolo’s direct communication with witnesses to discuss the content of their testimony, relevant to the confirmed charges of corruptly influencing witnesses.²⁶ For example, they show that Kilolo called D-15 during his testimony,²⁷ between 10 and 13 September 2013,²⁸ well after the Victims and Witnesses Unit (“VWU”) cut-off date.²⁹ They discussed several areas of D-15’s testimony, including: (i) the witness’ contacts with the Bemba Defence;³⁰ (ii) Bemba’s command and control of MLC troops operating in the Central African Republic (“CAR”);³¹ (iii) the names of the military leaders exercising command and control of these troops;³² (iv) the language Bemba used when addressing them;³³ (v) the alleged crimes committed in CAR;³⁴ (vi) the questions of the Legal Representatives of Victims and the expected answers.³⁵

19. *Secondly*, combined with the testimony of the witnesses in the Main case, the intercepts bear on whether the witnesses testified in accordance with Kilolo’s instructions, relevant to the confirmed charges of intentionally presenting false evidence as set out in article 70(1)(b) of the Statute.³⁶ For instance, during his conversation with D-15 on 10 September 2013, Kilolo specified that [REDACTED].³⁷ Three days later, on 13 September 2013, D-15 falsely

²⁴ ICC-01/05-01/13-255, p.6.

²⁵ ICC-01/05-01/13-749, paras.60, 62, 63, 65-69, 75, 104.

²⁶ ICC-01/05-01/13-749, paras.53, 72 and pp.48-53.

²⁷ D-15 testified in the Main case from 11-13 September 2013. *See* ICC-01/05-01/08-T-343-CONF-ENG ET, 11 September 2013, ICC-01/05-01/08-T-343-CONF-FRA ET, 11 September 2013; ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, ICC-01/05-01/08-T-344-CONF-FRA ET, 12 September 2013; ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, ICC-01/05-01/08-T-345-CONF-FRA ET, 13 September 2013.

²⁸ Kilolo called D-15 to discuss the testimony on 10 September 2013 (*see* CAR-OTP-0074-1002 Audio; CAR-OTP-0079-0148 Translation); on 11 September 2013 (*see* CAR-OTP-0074-1003 Audio; CAR-OTP-0079-0154 Translation); and on 12 September 2013 (*see* CAR-OTP-0074-1008 Audio; CAR-OTP-0077-1389 Translation; CAR-OTP-0074-1011 Audio; CAR-OTP-0077-1407 Translation).

²⁹ The cut-off date for D-15 was 11 July 2013. *See* CAR-OTP-0078-0290 at 0297.

³⁰ CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0150-0152, lns.26-94 (Translation).

³¹ CAR-OTP-0074-1003 (Audio); CAR-OTP-0079-0154 at 0157-0158, lns.41-45, 78-83 (Translation).

³² CAR-OTP-0074-1003 (Audio); CAR-OTP-0079-0154 at 0157-0159 (Translation).

³³ CAR-OTP-0074-1003 (Audio); CAR-OTP-0079-0154 at 0168-0170, lns.479-522 (Translation).

³⁴ CAR-OTP-0074-1008 (Audio); CAR-OTP-0077-1389 at 1397, lns.257-270 (Transcript).

³⁵ CAR-OTP-0074-1008 (Audio); CAR-OTP-0077-1389 at 1393, lns.114-127 (Transcript); CAR-OTP-0074-1011 (Audio); CAR-OTP-0077-1407 at 1408-1413 (Transcript).

³⁶ ICC-01/05-01/13-749, paras.53, 72 and pp.48-53.

³⁷ CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0152, lns.81-89 (Translation).

testified that his last phone contact with Kilolo was “in January of this year”.³⁸

20. *Third*, the intercepts will assist the Chamber to determine Bemba’s and Mangenda’s knowledge of the alleged crimes.³⁹ For instance, on 29 August 2013, when discussing D-29’s testimony, Kilolo told Mangenda: [REDACTED].⁴⁰ Thus, the intercept is relevant to Mangenda’s awareness of Kilolo’s improper contact with witnesses. Similarly, other intercepts show, for example, that Mangenda reported to Kilolo on whether the witnesses testified in accordance with his instructions,⁴¹ and that he conveyed information related to corruptly influencing witnesses from Bemba to Kilolo and *vice versa*.⁴²

21. *Finally*, the proposed items are relevant to demonstrate the Accused’s use of codes to conceal the Common Plan or ‘overall strategy’, as found by the Pre-Trial Chamber.⁴³ The evidence shows that codes were used to refer to people, places, or actions: such as, [REDACTED]⁴⁴, referring to [REDACTED];⁴⁵ [REDACTED]⁴⁶, referring to [REDACTED];⁴⁷ [REDACTED]⁴⁸, referring to [REDACTED];⁴⁹ [REDACTED]⁵⁰, referring to [REDACTED];⁵¹ [REDACTED]⁵², referring to [REDACTED];⁵³ [REDACTED]⁵⁴, referring to [REDACTED];⁵⁵ [REDACTED]⁵⁶, referring to [REDACTED];⁵⁷ and

³⁸ ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.5, lns.8-20 ; p.9, lns.5-10; p.10, lns.1-5; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 September 2013, p.4, ln.26-p.5, ln.12 ; p.8, lns.15-21; p.9, lns.11-17.

³⁹ ICC-01/05-01/13-749, pp.47-54.

⁴⁰ CAR-OTP-0074-0997 (Audio); CAR-OTP-0080-0245 at 0248, lns.50-52 (Translation).

⁴¹ CAR-OTP-0074-0991 (Audio); CAR-OTP-0080-0228 at 0231, lns.59-62 (Translation); [REDACTED].

⁴² For example, in a 30 August 2013 conversation at 13:29, Mangenda told Kilolo that when illicitly coaching D-54 on the things he was supposed to testify to, Bemba [REDACTED]. (See CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0134, ln.52 (Translation). In another conversation, on 29 August 2013, Kilolo instructs Mangenda to tell Bemba [REDACTED]. (See CAR-OTP-0074-0997 (Audio); CAR-OTP-0080-0245 at 0250, lns.143-144 (Translation).

⁴³ ICC-01/05-01/13-526-Conf-AnxB1, section IV; ICC-01/05-01/13-749, para.52.

⁴⁴ CAR-OTP-0080-1325 (Audio); CAR-OTP-0082-1065 at 1074, ln.271 (Translation); CAR-OTP-0074-0997 (Audio); CAR-OTP-0080-0245 at 0248, ln.50 (Translation); CAR-OTP-0080-1419 (Audio); CAR-OTP-0082-1140 at 1142, lns.10-12 and at 1145-1146, lns.107, 143, 154 (Translation); CAR-OTP0074-1026 (Audio); CAR-OTP-0080-0299 at 0301, lns.4-5 (Translation).

⁴⁵ ICC-01/05-01/13-597-Conf-AnxB, para.81.

⁴⁶ CAR-OTP-0074-1000 (Audio); CAR-OTP-0079-0141 at 0143, ln.28 (Translation).

⁴⁷ ICC-01/05-01/13-597-Conf-AnxB, para.93.

⁴⁸ CAR-OTP-0074-1016 (Audio); CAR-OTP-0079-0172 at 174-175, lns.33-35 (Translation); CAR-OTP-0079-1510 (SMS); CAR-OTP-0074-1017 (Audio); CAR-OTP-0080-0278 at 0281, ln.67 (Translation).

⁴⁹ ICC-01/05-01/13-597-Conf-AnxB, para.87.

⁵⁰ CAR-OTP-0074-1018 (Audio); CAR-OTP-0079-0176 (Translation).

⁵¹ ICC-01/05-01/13-597-Conf-AnxB, para.79.

⁵² CAR-OTP-0074-0991 (Audio); CAR-OTP-0080-0228 at 0232, lns.92-93 (Translation); CAR-OTP-0074-0994 (Audio); CAR-OTP-0080-0238 at 0240, ln.26.

⁵³ ICC-01/05-01/13-597-Conf-AnxB, para.90.

⁵⁴ CAR-OTP-0080-1418 (Audio); CAR-OTP-0082-1355 at 1357 and 1365, lns.28 and 301 (Translation).

⁵⁵ ICC-01/05-01/13-597-Conf-AnxB, para.96.

⁵⁶ CAR-OTP-0080-1353 (Audio); CAR-OTP-0082-0637 at 0640-0643, lns.39, 85, 169 (Translation); CAR-OTP-0080-1342 (Audio); CAR-OTP-0082-0591 at 0592, ln.28 (Transcript); CAR-OTP-0080-1362 (Audio); CAR-

[REDACTED]⁵⁸, referring to [REDACTED].⁵⁹ An understanding of these codes is necessary to comprehending the significance of the intercepts themselves, and other key evidence in the case.

22. The corresponding phone logs complement the intercepts. They provide the date, time, duration, and interlocutors of each conversation and all salient information regarding SMS communications. Trial Chamber II in the *Katanga and Ngudjolo* case confirmed that, “the relevance of the audio or video material depends on the date and/or location of recordings...”⁶⁰ As such, this evidence is material to the relevance of the intercepted recordings and the SMSs it reflects.

(ii) *The material is prima facie reliable and authentic*

23. The Prosecution efforts to reach an agreement with the Defence regarding the authenticity/provenance of the materials proposed for admission in this Request have been unavailing.⁶¹ Nevertheless, as set out below for each category, the authenticity of the proposed material is unassailable.

24. The intercepts and their corresponding phone logs bear sufficient indicia of reliability and authenticity for admission from the bar table.

25. As noted, this material was obtained in accordance with judicial authorisation⁶² and [REDACTED].⁶³ [REDACTED].⁶⁴ [REDACTED].⁶⁵ [REDACTED].⁶⁶

OTP-0082-0649 at 0653, ln.83 (Translation); CAR-OTP-0080-1325 (Audio); CAR-OTP-0082-1065 at 1074, ln.274 (Translation); CAR-OTP-0080-1374 (Audio); CAR-OTP-0082-1368 at 1375 and 1380, lns.216, 379, 389-390 (Translation); CAR-OTP-0080-1420 (Audio); CAR-OTP-0082-1150 at 1152, lns.7-8 and 15 (Translation).

⁵⁷ ICC-01/05-01/13-597-Conf-AnxB, para.97.

⁵⁸ CAR-OTP-0080-1320 (Audio); CAR-OTP-0082-1309 at 1312, ln.42 (Translation); CAR-OTP-0080-1321 (Audio); CAR-OTP-0082-0614 at 0616, ln.13 (Translation); CAR-OTP-0080-1325 (Audio); CAR-OTP-0082-1065 at 1074 and 1078, lns.273 and 414 (Translation); CAR-OTP-0080-1331 (SMS); CAR-OTP-0074-0990 (Audio); CAR-OTP-0080-0560 at 0562, ln.52;

⁵⁹ ICC-01/05-01/13-597-Conf-AnxB, para.95.

⁶⁰ ICC-01/04-01/07-2635, para.24(d), p.19.

⁶¹ See ICC-01/05-01/13-T-8-CONF-ENG ET, p.38, ln.6-p.40, ln.19.

⁶² ICC-01/05-52-Red2, p.7.

⁶³ CAR-OTP-0079-1553 (Original); CAR-OTP-0085-0596 (Translation); CAR-OTP-0079-1571 (Original); CAR-OTP-0085-0606 (Translation); See also ICC-01/05-T-2-CONF-ENG ET, 30 August 2013.

⁶⁴ ICC-01/05-T-2-CONF-ENG ET, p.12, lns.3-6.

⁶⁵ ICC-01/05-64-Conf, para.4; see also ICC-01/05-T-3-CONF-ENG-ET, 25 September 2013, p.2, lns.7-17, p.4, lns.10-18, p.5, lns.10-15; ICC-01/05-T-2-CONF-ENG-ET, 30 August 2013, p.9, ln.20-p.10, ln.4, p.11, lns.16-25, p.21, lns.15-21.

⁶⁶ ICC-01/05-T-2-CONF-ENG-ET, 30 August 2013, p.15, lns.12-14.

26. Further, neither Mangenda nor Kilolo have challenged their respective participation in the intercepted conversations. To the contrary, in their confirmation submissions, they only challenge the content of the conversations, as opposed to their occurrence.⁶⁷ Additionally, independent media sources, commercial financial records, and evidence from state authorities confirm the attribution of the intercepted phone numbers to Kilolo and Mangenda.⁶⁸

27. Lastly, other evidence independently corroborates the reliability and accuracy of the content of the intercepts. For example, an intercepted SMS message that Caroline Wale Bemba sent to Mangenda on 16 September 2013 states: [REDACTED].⁶⁹ Western Union financial records show that on the same day, Mangenda received 1,761.06 EUR from Caroline Wale Bemba.⁷⁰ In another instance, the Western Union financial records show that on 17 October 2013, at 10:03 EST (15:03 GTM+1), Babala sent 1,656.21 EUR to Kilolo.⁷¹ An hour later, at 16:10 (GTM+1) hours, Babala sent the following SMS to Kilolo's Belgian phone number: [REDACTED].⁷²

(iii) There is no prejudicial effect

28. The admission of the material is not prejudicial to the Defence. All items were lawfully obtained. The confirmation decision specifically observes that the intercepts were obtained in full respect for article 69(7) of the Statute.⁷³

29. Cumulatively, the following factors readily establish that the probative value of the proposed material outweighs any prejudicial effect: (i) the items are highly relevant to the confirmed charges; (ii) the items are reliable, as they were collected in accordance with

⁶⁷ For instance, in the written submission Kilolo admits his conversation with D-26 on the morning of 20 August 2013, stating that: [REDACTED] (see ICC-01/05-01/13-600-Conf-Corr2, para.209). Mangenda admits speaking to Kilolo on the testimony of D-29: [REDACTED] (see ICC-01/05-01/13-594-Conf, para.78).

⁶⁸ The phone number [REDACTED] belongs to Kilolo. See CAR-OTP-0074-0067 at 0067, row 12 (year 2008); at 0068, row 5 (2009); at 0069, row 6 (2010); at 0070, row 4 (2011); at 0071, row 1 (2012); at 0072, row 1 (2013); CAR-OTP-0074-0079 at 0079-0082, row 5; CAR-OTP-0075-0586; CAR-OTP-0072-0234 at 0234; CAR-OTP-0072-0329 at 0329; CAR-OTP-0084-0152, from 00:06:37 to 01:05:47; CAR-OTP-0070-0007, tab 32 A Musamba, rows 2, 16, 26, 35, 36, 62, 63, 94, 100, 118, column E; CAR-D21-0003-0036 at 0036-0037. The phone number [REDACTED] belongs to Mangenda. See CAR-OTP-0074-0059; CAR-OTP-0074-0075. CAR-OTP-0073-0274, tab BABALA, rows 2, 4, 6, 12; tab NGINAMAU, row 2; tab MANGENDA, rows 2-9, 11-56, 58-79, 81-126). Mangenda admits that Kilolo called D-26 using his phone [REDACTED] during a Court recess in the morning of 20 August 2013 (see ICC-01/05-01/13-594-Conf-Corr, para.75; ICC-01/05-01/13-594-AnxA, p.13).

⁶⁹ CAR-OTP-0079-1513 (SMS).

⁷⁰ CAR-OTP-0074-0855, tab 38 Jean J K Mangenda, row 12, column AO.

⁷¹ CAR-OTP-0074-0855, tab 40 Aime Kilolo Musamba, row 4, column AO.

⁷² CAR-OTP-0080-1322.

⁷³ ICC-01/05-01/13-749, para.14.

national legislation and in accordance with the Statute; (iii) the Accused have confirmed the fact of several conversations; (iv) the items assist the Chamber in the determination of the truth; (v) the Defence had sufficient notice of the content of the items; and (vi) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case.

B. Category II: call data records (CDRs)

30. The Prosecution seeks the admission into evidence of 20 CDRs. CDRs are the technical records that telecommunications service providers (“TSP”) generate for mobile and fixed telephone communications. These items are listed in Category II of the Annex.

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

31. The proposed CDRs reflect communications among the Accused, and between the Accused and witnesses involved in confirmed incidents in the case. They identify the date, time, duration, and type of call (voice, SMS or data) on which the Prosecution relies, having taken place within the charged period,⁷⁴ between 1 January 2012 and 12 October 2013.⁷⁵

32. For instance, the CDRs establish that: (i) Kilolo and D-23 were in contact at least eight times⁷⁶ during the witness’ testimony.⁷⁷ The duration of these calls varies from about 1 to 19 minutes;⁷⁸ (ii) Kilolo and D-26 were in contact at least three times⁷⁹ during the witness’ testimony.⁸⁰ One call lasted 25 minutes.⁸¹ They also show that on the morning of D-26’s

⁷⁴ ICC-01/05-01/13-749, p.47.

⁷⁵ This period covers the date from the first date requested to the last date requested by OTP. Not all days may have data during this period.

⁷⁶ Phone contacts on 20 August 2013: CAR-OTP-0072-0082, rows 4097, 4100-4102, 4104, 4106; on 21 August 2013: CAR-OTP-0072-0082, row 4109 and CAR-OTP-0083-1472, row 30. Kilolo and D-23 were also in contact on 19 August 2013 (see CAR-OTP-0083-1472, rows 15 and 22), one day before the witness’ testimony and well after VWU’s cut-off date, which was 16 August 2013 (see CAR-OTP-0078-0290 at 0295). For telephone attributions, see Annex, Category II.

⁷⁷ D-23 testified in the Main case from 20 to 22 August 2013. ICC-01/05-01/08-T-332-CONF-ENG, 20 August 2013; ICC-01/05-01/08-T-333-CONF-ENG, 21 August 2013; ICC-01/05-01/08-T-334-CONF-ENG, 22 August 2013.

⁷⁸ CAR-OTP-0072-0082, row 4104; CAR-OTP-0083-1472, row 30.

⁷⁹ On 22 August 2013: CAR-OTP-0072-0082, row 4107; CAR-OTP-0072-0082, row 4178; CAR-OTP-0083-1465, row 35.

⁸⁰ D-26 testified in the Main case after D-23. D-26 started his testimony on 20 August 2013 at 3.11pm to 23 August 2013. See ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.54, ln.7; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 August 2013, p.59, ln.11; ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 August 2013; ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 August 2013; ICC-01/05-01/08-T-335-CONF-ENG ET, 23 August 2013; ICC-01/05-01/08-T-335-CONF-FRA ET, 23 August 2013.

testimony — well after the VWU cut-off date⁸² — they were in contact at least five times;⁸³ (iii) Kilolo and D-15 were in contact at least eight times⁸⁴ during the witness' testimony.⁸⁵ One call lasted 34 minutes.⁸⁶

33. The CDRs allow for a fair assessment of the truthfulness of some of the Main case defence witnesses testimonies' relative to the confirmed charges.⁸⁷ For example, during his 21 August 2013 testimony, D-26 denied having been in contact with the Defence the previous evening.⁸⁸ The relevant CDR contradicts this.⁸⁹ Likewise, D-15's 13 September 2013 testimony that his last contact with Kilolo was "in January of this year",⁹⁰ conflicts with the CDR.⁹¹

34. Lastly, the CDRs show how Kilolo and Bemba circumvented the Registry's monitoring system to discuss matters with third parties under the cloak of the lawyer-client privilege. For instance, the CDRs further show that on 5 October 2012, Bemba called Kilolo for approximately 32 minutes.⁹² During the call, Kilolo called D-55, which lasted for about four minutes.⁹³ Bemba spoke with D-55 during this call, allegedly to thank him for accepting to testify in his favour.⁹⁴ Following the call, D-55 agreed to testify to [REDACTED].⁹⁵ On 29

⁸¹ CAR-OTP-0072-0082, row 4178.

⁸² VWU's cut-off date was 16 August 2013. CAR-OTP-0078-0290 at 0295.

⁸³ On 20 August 2013: CAR-OTP-0083-1472, row 23; CAR-OTP-0072-0082, rows 4060-4063; CAR-OTP-0072-0396, row 957; CAR-OTP-0072-0078, row 1963.

⁸⁴ On 11 September 2013: CAR-OTP-0083-1472, rows 244 and 246; CAR-OTP-0083-1477, row 47; on 12 September 2013: CAR-OTP-0083-1472, row 250; CAR-OTP-0083-1478, rows 93, 94, 99, 106. Kilolo and D-15 were also in contact on 10 September 2013 (see CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0149_01 (Translation); CAR-OTP-0074-0926 at 0941-0942; CAR-OTP-0083-1472, rows 218, 223, 224, 232, 235, 237, 238, 240; CAR-OTP-0083-1477, row 26), one day before D-15's testimony and well after VWU's cut-off date, which was 11 July 2013 (see CAR-OTP-0078-0290 at 0297).

⁸⁵ D-15 testified in the Main case from 11 to 13 September 2013. See ICC-01/05-01/08-T-343-CONF-ENG ET, 11 September 2013, ICC-01/05-01/08-T-343-CONF-FRA ET, 11 September 2013; ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, ICC-01/05-01/08-T-344-CONF-FRA ET, 12 September 2013; ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, ICC-01/05-01/08-T-345-CONF-FRA ET, 13 September 2013.

⁸⁶ CAR-OTP-0083-1477, row 47.

⁸⁷ ICC-01/05-01/13-749, pp.47-54.

⁸⁸ ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.69, lns.6-10; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 August 2013, p.76, ln.28-p.77, ln.5 ("*Je n'ai pas de contact avec quelqu'un. Depuis hier, je suis à l'hôtel. Je n'ai pas de contact avec quelqu'un*").

⁸⁹ On 20 August 2013 at 23:23, [REDACTED] (Kilolo) called [REDACTED] (D-26). The duration of the call was approximately 23 minutes. See CAR-OTP-0072-0082, row 4107.

⁹⁰ ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.5, lns.8-20 ; p.9, lns.5-10; p.10, lns.1-5; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 September 2013, pp.4-5, lns.26-12 ; p.8, lns.15-21; p.9, lns.11-17.

⁹¹ On 10 September 2013, one day before D-15's testimony, [REDACTED] (Kilolo) and [REDACTED] and [REDACTED] (D-15) were in contact at least nine times. See CAR-OTP-0083-1472, rows 218, 223, 224, 232, 235, 237, 238, 240; CAR-OTP-0083-1477, row 26.

⁹² CAR-OTP-0072-0391, row 709.

⁹³ CAR-OTP-0072-0391, row 710.

⁹⁴ CAR-OTP-0074-0872 at 0879.

October 2012, D-55 falsely testified that his last contact with the Defence was in September 2011, deliberately concealing his phone contact with Bemba.⁹⁶ In his statement, D-55 admitted that [REDACTED].⁹⁷

35. As explained above, each record tendered references highly relevant and material contact information. Although not every call data entry comprising these records is relevant and probative, selecting only specific entries would mean altering their original format and affecting their context. Thus, the Prosecution requests the admission of this material in its entirety, which allows the Chamber to assess (a) the original form in which the records were provided; (b) their integrity and reliability; and (c) the context in which the highly probative material is framed in determining the appropriate weight to attach to it. This does not cause any additional burden to the Defence. The majority of the CDRs are electronic, compiled in user-friendly Excel sheets, and easily searchable.

(ii) The CDRs are prima facie reliable and authentic

36. The CDRs from Belgium and The Netherlands stem from the Prosecution's request to the Dutch and Belgian authorities to collect logs of calls or communications placed or received by Kilolo and Mangenda, pursuant to the Single Judge's authorisation.⁹⁸ Other CDRs were obtained with the assistance of the authorities of [REDACTED]. They originate from independent private telephone carriers such as [REDACTED]. The compilation and maintenance of accurate and complete records is undertaken by such companies in the regular course of business and in accordance with domestic laws. This alone imbues them with sufficient indicia of reliability for admission from the bar table.

37. Each phone number attributed to the Accused and to witnesses in the CDRs, is supported by reliable evidence.⁹⁹ These comprise, *inter alia*, VWU records,¹⁰⁰ witness statements, and information provided in Western Union records.¹⁰¹ Moreover, in their confirmation submissions, the Defence teams confirmed some of the attributions when

⁹⁵ CAR-OTP-0074-0872 at 0879.

⁹⁶ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.66, lns.17-20; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 October 2012, p.76, lns.3-9.

⁹⁷ CAR-OTP-0074-0872 at 0881.

⁹⁸ ICC-01/05-52-Red2, p.7.

⁹⁹ For phone attributions of the Accused and witnesses, see Annex, Category II.

¹⁰⁰ CAR-OTP-0072-0116; CAR-OTP-0077-0942.

¹⁰¹ See Annex, Category II.

challenging the content of conversations, as opposed to their occurrence.¹⁰²

38. Finally, the reliability, veracity, and weight of these records are independently corroborated by other evidence. For example, the conference call with D-55¹⁰³ referred to above is corroborated [REDACTED].¹⁰⁴ Moreover, in his submissions, Kilolo admits facilitating a call between Bemba and D-55 on Bemba's Detention Centre privileged line.¹⁰⁵

(iii) There is no prejudicial effect

39. As is the case with the intercepts, the probative value of the proposed CDRs evidence outweighs any prejudicial effect for the following reasons: (i) the items are highly relevant to the confirmed charges; (ii) the items are reliable as they were collected in accordance with national legislation, widely accepted and followed business practices in the relevant industry, and in accordance with the Statute; (iii) they assist the Chamber in the determination of the truth and ensure an expeditious trial; (iv) the Defence had sufficient notice of the content of the items; and (v) the reliability, veracity, and weight of these records are independently corroborated by other evidence in the case.

C. Category III: money transfer records

40. The Prosecution seeks the admission of fifteen Western Union and eight Express Union money transfer records. These items are listed in Category III of the Annex.

(i) The money transfer records are prima facie relevant to material issues at trial

41. The proposed items are *prima facie* relevant to the charges, events, and time frame, as set out in the Document Containing the Charges. They will assist the Chamber in determining the truth in relation specifically to the confirmed charges of corruptly influencing witnesses.¹⁰⁶

42. The records identify financial transactions between the Accused and the co-perpetrators. For example, they show that within the charged period Kilolo received approximately USD

¹⁰² See also para.26 above.

¹⁰³ See para.34 above.

¹⁰⁴ CAR-OTP-0074-0872 at 0879.

¹⁰⁵ Kilolo admits the multi-call with Bemba and D-55 (see ICC-01/05-01/13-674-Conf-Anx3, p.21, row 69).

¹⁰⁶ ICC-01/05-01/13-749, pp.47-54.

46,000 from Babala,¹⁰⁷ USD 20,000 from Nginamau,¹⁰⁸ and USD 23,000 from Caroline Bemba.¹⁰⁹ Françoise Bemba provided to Kilolo approximately USD 5,518.¹¹⁰ Arido also received approximately USD 8,200 from others, including Kilolo, Babala, Nginamau, and [REDACTED].¹¹¹

43. In addition, the records show financial transactions between the Accused/co-perpetrators and at least nine defence witnesses, directly or through their family members or associates, including, D-64,¹¹² D-57,¹¹³ D-55,¹¹⁴ D-29,¹¹⁵ D-25,¹¹⁶ D-23,¹¹⁷ D-6,¹¹⁸ D-4,¹¹⁹ and D-2.¹²⁰ At least two other witnesses were similarly paid – D-45¹²¹ and D-7.¹²²

44. These proposed records provide the date and time of highly relevant money transfers, in turn, bearing directly on the veracity of some of the defence witnesses' testimonies in the Main case. For example, Western Union financial records show that on 20 June 2013, the day

¹⁰⁷ CAR-OTP-0070-0004, tab 31 Babala, row 9; CAR-OTP-0070-0007, tab 32 A KILOLO, rows 126, 130; CAR-OTP-0074-0855, tab 40 A Kilolo, rows 4, 10, 29, 30, 36, 42, 49, 56; CAR-OTP-0074-0855, tab 31 Fidele Babala, rows 4, 11, 12.

¹⁰⁸ CAR-OTP-0070-0007, tab 32 A Kilolo, rows 85, 101, 103, 104, 119, 120, 129; CAR-OTP-0074-0855, tab 40 A Kilolo, rows 20, 37.

¹⁰⁹ CAR-OTP-0070-0007, tab 32 A Kilolo row 111; CAR-OTP-0074-0855 tab 40 A Kilolo, rows 3, 6, 19, 25, 26, 39, 40.

¹¹⁰ CAR-OTP-0074-0855, tab 40 A Kilolo, rows 8, 9.

¹¹¹ CAR-OTP-0070-0005, tab 1 Narcisse Arido, rows 72, 73, 74, 75, 77, 78, 80; CAR-OTP-0070-0005, tab 4 [REDACTED], row 92.

¹¹² On 14 June 2012, KILOLO paid USD 106.14 to D-64 (see CAR-OTP-0073-0273, tab 8 [REDACTED], row 4). On 17 October 2012, BABALA's close associate NGINAMAU paid D-64's daughter, [REDACTED] USD 700 via two Western Union transfers of USD 200 and 500 (see CAR-OTP-0070-0007, tab 34 Nginamau, rows 2, 3).

¹¹³ On 14 June 2012, KILOLO paid D-57 directly USD 106.14 (see CAR-OTP-0070-0007, tab 32 A Musamba, row 23). On 16 October 2012, D-57's wife [REDACTED] received USD 665 from BABALA (see CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14).

¹¹⁴ On 5 October 2012, KILOLO paid USD 130 to D-55 (see CAR-OTP-0070-0007, tab 32 A Kilolo Musamba, row 25).

¹¹⁵ On 28 August 2013, before D-29 began his testimony, he collected USD 649.43, sent to him by MOKULA, a BABALA associate (see CAR-OTP-0074-0855, tab 28 [REDACTED], row 2).

¹¹⁶ On 9 August 2013, KILOLO send USD 132.61 to D-25 (see CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 11).

¹¹⁷ On 9 August 2013, KILOLO transferred USD 132.21 to D-23 (see CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 12).

¹¹⁸ On 20 June 2013, the day before D-6 began testifying, Caroline BEMBA paid D-6 USD 1,335.16, through his close associate [REDACTED] (see CAR-OTP-0074-0856, tab 68 Caroline Bemba Wale, row 7).

¹¹⁹ On 19 January 2012, ARIDO paid CFA 18,000 to D-4 (see CAR-OTP-0073-0048 at 0049; CAR-OTP-0073-0046 at 0047).

¹²⁰ On 23 May 2013, KILOLO paid D-2 USD 128.17 (see CAR-OTP-0074-0854, tab 18 [REDACTED], row 7).

¹²¹ On 21 July 2012, D-45 received at least USD 300 from KILOLO (see CAR-OTP-0074-0855, tab 40 Aimé Musamba, row 46).

¹²² On 21 July 2012, D-7 received USD 200 from KILOLO (see CAR-OTP-0074-0855, tab 40 Aimé Musamba, row 47). In addition, Babala and Arido rely on the Western Union records to support their arguments regarding payments by and between the suspects, confirming their relevance to the case (ICC-01/05-01/13-596-Conf-Corr, pp.57-65, Tableau III; ICC-01/05-01/13-598-Conf, paras.123-124, 284-286).

before D-6 began testifying,¹²³ Caroline Bemba paid D-6 USD 1,335.16, through his associate [REDACTED].¹²⁴ However, D-6 testified that [REDACTED],¹²⁵ the equivalent of around [REDACTED].¹²⁶

45. Finally, Western Union collects additional client information, such as the telephone numbers, addresses, occupations, and biographical data of its customers. These details allow the determination of (i) telephone attributions;¹²⁷ (ii) the date of birth and occupation, confirming or corroborating individuals' identities; and (iii) addresses, which also bear on the individuals' identities, but further demonstrate the extent of the scheme and the places involved in carrying it out, including The Netherlands, Belgium, France, Portugal, Sweden, Cameroon, CAR, Republic of the Congo, and the DRC, as alleged.

46. The Prosecution requests the admission of this material in its entirety, which will allow the Chamber to assess the original form in which the records were provided. Even though the records cover the period from 2005 to 2013, the Prosecution only seeks to rely on those records from 2011 to 2013, which form the integral part of this electronic data. Selecting only specific entries would mean altering the original format, affecting the context of the entries. This causes no additional burden to the Defence because the records are electronic, compiled in user-friendly Excel sheets, and easily searchable. The Western Union financial records furthermore indicate money transfers concerning each of the Accused, co-perpetrators, or witnesses in easily navigable separate tabs. The Express Union records contain only 20 pages of information. They are neither voluminous nor cumbersome to review. The admission of the proposed money transfer records in full is thus, not overly burdensome and will maintain the integrity of the relevant evidence, as originally provided.

(ii) *The money transfer records are prima facie reliable and authentic*

47. The Western Union records were obtained with the assistance of the authorities of

¹²³ D-6 testified in the Main case from 21 to 24 June 2013. See ICC-01/05-01/08-T-328-CONF-ENG ET, 21 June 2013, ICC-01/05-01/08-T-328-CONF-FRA ET, 21 June 2013; ICC-01/05-01/08-T-328bis-CONF-ENG ET, 21 June 2013; ICC-01/05-01/08-T-329-CONF-ENG ET, 24 June 2013, ICC-01/05-01/08-T-329-CONF-FRA ET, 24 June 2013; ICC-01/05-01/08-T-329bis-CONF-ENG ET, 24 June 2013.

¹²⁴ CAR-OTP-0074-0856, tab 68 Caroline Bemba Wale, row 7.

¹²⁵ ICC-01/05-01/08-T-329-CONF-ENG ET, 24 June 2013, p.22, lns.3-24; ICC-01/05-01/08-T-329-CONF-FRA ET, 24 June 2013, p.23, ln.6-p.24, ln.7.

¹²⁶ [REDACTED].

¹²⁷ For example, Western Union record shows that D-55's telephone number was [REDACTED] (see CAR-OTP-0070-0007, tab 32 A Kilolo Musamba, row 25, column AA). This corroborates D-55's statement (see CAR-OTP-0074-0872 at 0875, 0879) as well as VWU list of telephone numbers used by witnesses in the Main case (see CAR-OTP-0077-0942, row 11).

[REDACTED]¹²⁸ and [REDACTED].¹²⁹ [REDACTED] authorities assisted with obtaining the Express Union records.¹³⁰ The records are from independent private commercial money transfer agencies. Such enterprises compile and maintain complete records in the regular course of business, and in accordance with domestic laws. Because the business' competitiveness and survival requires that such records are characterised by regularity, continuity and accuracy, they are implicitly imbued with indicia of reliability sufficient for their admission.

48. [REDACTED] verifies the authenticity of the financial records provided to the Prosecution.¹³¹ [REDACTED] confirms that Western Union employs safeguards to ensure the reliability and authenticity of their records. For instance, both the sender and receiver of money transfers must provide their personal details, which are thereafter recorded in the Western Union database.¹³² They must also present a valid identification document when sending or receiving money, so that their identity, gender, date of birth and other related information can be confirmed.¹³³

49. Express Union records are self-authenticating. Each page of the documents contains a stamp from "*Express Union Direction Générale*." The proposed items are also accompanied with a letter, signed by the [REDACTED] of Express Union.¹³⁴

50. Some Accused have also admitted Western Union transactions attributed to them in their confirmation submissions.¹³⁵ In addition, the reliability, veracity, and weight of these

¹²⁸ Western Union records received from the [REDACTED] authorities: CAR-OTP-0070-0004; CAR-OTP-0070-0005; CAR-OTP-0070-0006; CAR-OTP-0070-0007; CAR-OTP-0073-0273; CAR-OTP-0073-0274; CAR-OTP-0073-0275; CAR-OTP-0074-0854; CAR-OTP-0074-0855; CAR-OTP-0074-0856; CAR-OTP-0085-0856. Chain of custody documents from the [REDACTED] authorities: CAR-OTP-0070-0001-0001; CAR-OTP-0074-0826 (Original); CAR-OTP-0082-1952 (Translation); CAR-OTP-0074-0828 (Original); CAR-OTP-0082-1955 (Translation); CAR-OTP-0073-0278 (Original); CAR-OTP-0082-1948 (Translation); CAR-OTP-0073-0279 (Original); CAR-OTP-0082-1950 (Translation); CAR-OTP-0085-0842 (Original); CAR-OTP-0087-0004 (Translation); CAR-OTP-0085-0843 (Original); CAR-OTP-0087-0006 (Translation); CAR-OTP-0085-0844 (Original); CAR-OTP-0087-0008 (Translation); CAR-OTP-0085-0845 (Original); CAR-OTP-0087-0010 (Translation).

¹²⁹ Western Union records were received from the [REDACTED] authorities: CAR-OTP-0077-1696; CAR-OTP-0077-1697; CAR-OTP-0077-1698; CAR-OTP-0077-1699. Chain of custody document from the [REDACTED]: CAR-OTP-0077-1553.

¹³⁰ CAR-OTP-0073-0036, paras.6-9.

¹³¹ CAR-OTP-0084-0039, paras.25-33.

¹³² CAR-OTP-0084-0039, paras.12, 14-15.

¹³³ CAR-OTP-0078-0012; CAR-OTP-0084-0039, paras.11-16.

¹³⁴ CAR-OTP-0073-0042.

¹³⁵ Babala and Arido rely on the Western Union records to support their arguments regarding payments by and between the suspects, confirming their relevance to the case (ICC-01/05-01/13-596-Conf-Corr, pp.57-65, Tableau III; ICC-01/05-01/13-598-Conf, paras.123-124, 284-286).

records are independently corroborated by other evidence in the case. For example, financial records show that D-57's wife received a payment of USD 665 from Babala on 16 October 2012, one day before the start of D-57's testimony.¹³⁶ CDR shows that on 16 October 2012, D-57 was in contact with Kilolo.¹³⁷ When interviewed in January 2014, D-57 stated that he gave his wife's name to Kilolo because he (D-57) was going to be testifying in The Hague and that is why Kilolo sent [REDACTED].¹³⁸

(iii) *There is no prejudicial effect*

51. As in the case of the proposed CDRs, the probative value of the proffered money transfer records outweighs any prejudicial effect for the following reasons: (i) the items are highly relevant to the confirmed charges; (ii) the items are reliable, as collected in accordance with national legislation and the Statute; (iii) the Accused have confirmed the existence of the transfers; (iv) the material will assist the Chamber in determining the truth and ensure an expeditious trial; (v) the Defence has had sufficient notice of the items; and (vi) the reliability, veracity, and weight of the records are independently corroborated.

V. Requested Relief

52. For the foregoing reasons, the Prosecution requests that all items listed in the Annex to this filing be admitted *in limine* into evidence.



Fatou Bensouda, Prosecutor

Dated this 23rd Day of June 2015
At The Hague, The Netherlands

¹³⁶ CAR-OTP-0070-0004, tab 31 Babala, row 19.

¹³⁷ CAR-OTP-0072-0082, row 221.

¹³⁸ CAR-OTP-0074-0712 (Audio); CAR-OTP-0077-0088 at 0105, lns.586-587 (Transcript).