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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
with Confidential Ex Parte Annexes A and B

**Public Redacted Version of Defence Reply to the Prosecution's Response to
'Defence request for a stay of proceedings and request for further disclosure'**

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. BACKGROUND

1. On 19 June 2015, the Defence filed its ‘Request for a stay of proceedings and request for further disclosure’, demonstrating that the Prosecution has breached its disclosure obligations by failing to disclose investigators’ reports created in 2012, which concerned the credibility of Defence witnesses (‘the Material’).¹

2. Following receipt of the Prosecution’ response on 13 July 2015,² the Defence filed a request for leave to reply, identifying a number of misleading statements of law and fact on the part of the Prosecution.³ On 23 July 2015, Chamber gave the Defence 24 hours to file a reply, limiting the filing to 15 pages.⁴

B. SUBMISSIONS

i. The Prosecution has misrepresented the standard for Rule 77 disclosure.

3. The Chamber has previously held, on the issue of the scope of the Prosecution’s disclosure obligations under Rule 77, that an item will be considered ‘material to the preparation of the defence’ if it is:⁵

‘relevant for the preparation of the defence’ in the sense that it would ‘undermine the prosecution case or support a line of argument of the defence’ or ‘significantly assist the accused in understanding the incriminating and exculpatory evidence, and the issues, in the case.’

4. The Prosecution cites to this paragraph as support for the proposition that Rule 77 material is only disclosable if it ‘**significantly assists** the accused in understanding issues such as witness credibility.’⁶ However, in the cited paragraph, the Trial Chamber put **no such limitation** or qualification on the disclosure of material relevant to the credibility of Defence witnesses.

5. Nor can this purported standard be reconciled with the unambiguous and unqualified statements in *Lubanga*, that information that ‘concerns defence witnesses who are to be called, is to be disclosed to the defence for preparation, not least because it will enable the

¹ CAR-OTP-0084-0079-R01; CAR-OTP-0072-0476.

² ICC-01/05-01/08-3265-Red (‘Prosecution Response’).

³ ICC-01/05-01/08-3271.

⁴ ICC-01/05-01/08-3272.

⁵ ICC-01/05-01/08-1594-Red, para. 21.

⁶ ICC-01/05-01/08-3265-Red, paras. 6, 12-14.

accused to decide whether or not to call them’.⁷ The Prosecution’s purported test also runs counter to more recent jurisprudence of the Appeals Chamber in *Banda & Jerbo*, where it was held that the overarching consideration is whether the objects are ‘material to the preparation of the defence’, which is to ‘be understood as referring to **all objects** that are relevant for the preparation of the defence.’⁸ There is no qualifying requirement that if the material in question concerns witness credibility, it is only disclosable if it ‘significantly assists’ the accused his understanding, nor can any such limitation be sensibly read into the jurisprudence of the court.

6. Accordingly, the Prosecution’s enunciated standard is erroneously narrow, and undermines its subsequent submissions that the Material was not disclosable to the Defence.⁹

ii. The Prosecution was required to seek leave to be exempted from its disclosure obligations in the Main Case

7. The Prosecution is unapologetic in asserting that it took a unilateral ‘decision to delay the disclosure’ of the Material,¹⁰ on the alleged basis that disclosure would have ‘allowed counter measures capable of undermining the entire article 70 investigation.’¹¹

8. This argument cannot succeed. The Prosecution’s interview with P-31 took place on **2 August 2012**. There can be no suggestion that in August 2012, the disclosure of this document would have undermined ‘the entire article 70 investigation’, which at that period was in an absolute fledgling state, if it could even have been said to exist. It is worth recalling, on this point, that the Prosecution only seized the Trial Chamber with its first request for assistance in relation to the Article 70 investigation in **November 2012**.¹²

9. Regardless, even if it could reasonably be argued that an Article 70 investigation was ongoing on 2 August 2012 (keeping in mind that the Prosecution had only been in possession of the Defence list of witnesses for two weeks),¹³ the Prosecution was required to seize the Trial Chamber with a reasoned and contemporaneous request for authorisation not

⁷ ICC-01/04-01/06-2624, para. 18.

⁸ ICC-02/05-03/09-501, para. 38.

⁹ ICC-01/05-01/08-3265-Red, paras. 6, 12-14.

¹⁰ ICC-01/05-01/08-3265-Red, para. 17.

¹¹ ICC-01/05-01/08-3265-Red, para. 17.

¹² ICC-01/05-01/08-2412.

¹³ ICC-01/05-01/08-2243-Conf.

to disclose the Material to the Defence. Rule 81(2) of the Rules of Procedure and Evidence provides that:

Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence [...]

10. The Trial Chamber recently held that the Prosecution is not entitled to unilaterally defer disclosure on the basis of its desire to safeguard ongoing investigations in the Article 70 case, and as such this issue is *res judicata*.¹⁴ The Prosecution did not seek leave to appeal in relation to this ruling, and is therefore precluded from continuing to breach its disclosure obligations on this basis, or from raising the Article 70 Case as an excuse for having failed to comply.

iii. The argument that disclosure was ‘delayed’ in order to safeguard the Article 70 investigation is undermined by the timing of the disclosure

11. Had the Prosecution’s deliberate non-disclosure been genuinely motivated by a desire to safeguard its interests in the Article 70 Case, this justification for non-disclosure would have dissipated in November 2013, when the accused in that case were arrested.¹⁵ If the Prosecution argument is to be accepted, disclosure could have been immediately affected to the Defence in the Main Case once the Article 70 accused were behind bars.

12. In fact, the Prosecution continued to keep the Material hidden from the Defence in the Main Case until July 2015, a full 20 months after the arrests in the Article 70 Case. It was disclosed only when it became clear that the Prosecution would need to rely on the Material in the Article 70 trial, with the Prosecution being aware that disclosure in those proceedings would make it available to the Defence in the Main Case. Disclosure was made in the Article 70 Case on 4 June 2015.¹⁶ Disclosure in the Main Case followed four days later on 8 June 2015.¹⁷

13. This undermines, in full, the Prosecution’s alleged justification that the reason behind its non-disclosure was to ‘safeguard’ its Article 70 investigation. Had it not felt the

¹⁴ ICC-01/05-01/08-3255, para. 83.

¹⁵ ICC-01/05-01/13-11.

¹⁶ ICC-01/05-01/13-984-Conf-Anxs.

¹⁷ ICC-01/05-01/08-3254-Conf-AnxA.

need to rely on the Material in the Article 70 Case, these investigator's reports would simply never have come to light, and would have remained buried in the Prosecution archives. The Trial Chamber cannot accept the Prosecution's argument that its non-disclosure was justified by the link between the Material and the Article 70 investigation, when its own conduct renders this demonstrably false.

iv. The disclosure of allegedly 'similar' information to the Material does not relieve the Prosecution of its disclosure obligations

14. The Prosecution's attempt to justify non-disclosure of P-31's report on the basis that it disclosed information 'similar' to that contained therein, must also fail.¹⁸ Firstly, the 'similar' information allegedly disclosed by the Prosecution concerns only Defence witnesses D-51 and D-57. During the course of its interview with P-31, the Prosecution also discussed D-11, D-52 and CHM-01,¹⁹ about whom no allegedly similar evidence was disclosed. The non-disclosure of P-31's entire report was not justified on this basis.

15. Secondly, the Prosecution in *Banda & Jerbo* made a similar attempt to justify the non-disclosure of documents on the background of the Darfur conflict, on the basis that it had already disclosed 69 similar items of evidence to the Defence.²⁰ Even in those circumstances, where the material in question was background information about which a wealth of other evidence had been disclosed, the Appeals Chamber emphasised that:²¹

Where appropriate, in deciding whether the information sought continues to be material to the preparation of the defence, the Chamber may also take into account whether the defence has already received relevant documents from the Prosecutor. However, **caution should be exercised in taking such an approach** as it must not undermine the paramount right of the defence to disclosure of **all** information material to the preparation of the defence. In this regard, the Appeals Chamber again recalls that the disclosure process is essential in ensuring the fairness of the proceedings.

16. The caution to be exercised by a Trial Chamber is necessarily heightened when the material in question is not, as in the *Banda* case, general background information about a conflict, but rather a report in which a Prosecution witness is commenting on the credibility of Defence witnesses who will be brought to testify. The fact that the information is coming

¹⁸ ICC-01/05-01/08-3265-Red.

¹⁹ CAR-OTP-0084-0079-R01.

²⁰ ICC-02/05-03/09-501, para. 41.

²¹ ICC-02/05-03/09-501, para. 40 (emphasis added).

directly from a Prosecution witness is intrinsically relevant to an assessment of its content, and increases the report's relevance and materiality in terms of Defence preparation. In such circumstances, and given the Appeals Chamber's warning above, the disclosure of some partially overlapping material cannot justify the non-disclosure of P-31's investigative report.

v. Records of interviews with Prosecution witnesses are immediately disclosable to the Defence, irrespective of their content

17. P-31 was a significant witness for the Prosecution in the main trial. His evidence was referenced by both the Prosecution and the Defence liberally in their closing submissions to the Trial Chamber.²² As a Prosecution witness, any statement prior or subsequent to his testimony is necessarily disclosable to the Defence without more. The relevance to Defence preparation is amplified by the fact that the topics discussed with him included the credibility of Defence witnesses.²³ No sensible argument can be maintained that his interview was even tangentially related to the Article 70 investigation. He was a Prosecution witness who was interviewed about his knowledge of Defence witnesses. According to well established principles, of which the Prosecution was well aware, his interview had to be recorded, and disclosed.

18. Neither is it a justifiable reason for not disclosing the statement or interview of a Prosecution witness that the person in question was expressing opinions. In fact, if anything, that merely exaggerates the need for the Defence to be provided with it because the opinions he expresses are not just relevant to the credibility of the Defence witnesses about whom he is being asked but **his own** credibility. His opinions illuminate his prejudices. Had the interview been disclosed in a timely manner, the opinions expressed could have been investigated and perhaps demonstrated to be false. That in turn could have led to submissions being made about the credibility of those (admittedly limited) aspects of his evidence upon which the Prosecution seeks to rely. Providing disclosure of this material seven months after the closing arguments in the trial²⁴ renders impossible any investigation into the witness' opinions or use evidentially of exculpatory aspects of his interviews.

²² ICC-01/05-01/08-3121-Conf, paras. 285-286, 290-291, 306, 316-317, 326, 336, 348, etc.; ICC-01/05-01/08-3079-Conf, paras. 12-13, 17, 45, 123, 126-127, 140, 145, 153, etc.

²³ CAR-OTP-0084-0079.

²⁴ ICC-01/05-01/08-3254 +Conf-AnxA, 8 June 2015.

19. As previously, submitted, moreover, the Defence contends that all such interviews with Prosecution witnesses are disclosable whether or not they concern the credibility of Defence witnesses, but **especially** if they do. In the Defence submission, the Prosecution's response amounts in terms to a confession by silence to the suggestion that many more of these interviews have been conducted and withheld, often without even the most tenuous link to the subsequent Article 70 investigation.

20. Principal amongst those who simply must have been re-interviewed during the Prosecution's investigations into Defence witnesses are [REDACTED] witnesses. Given the large number of [REDACTED] who testified for the Defence, it is simply inconceivable that the prosecution did not re-interview [REDACTED] about his knowledge of [REDACTED], etc.²⁵ Similarly, given the [REDACTED] who gave evidence in the Defence case, interviews must have been conducted with at least [REDACTED].

21. The Defence has a reasonable expectation that these witnesses may very well have provided exculpatory evidence, disclosable as such. None of them can be said to have any link to [REDACTED], [REDACTED] or the so-called scheme to bribe witnesses,²⁶ and accordingly, no argument that non-disclosure or delayed disclosure was ever merited. The Prosecution's earlier assertions that it had complied with its disclosure responsibilities in light of recent events, unfortunately now ring hollow.

22. Similarly, the Defence imagines that [REDACTED] which involved the interview with P-31 would necessarily have included interviews with [REDACTED].²⁷ It is not, however, the responsibility of the Defence to try and "pin the tail on the donkey" by guessing who the Prosecution might have re-interviewed, but rather the responsibility of the Prosecution to make disclosure of material in its possession.

vi. The fact that P-07's report contained 'lead information important to the Article 70 investigation' does not justify its non-disclosure

23. In essence, the Prosecution is now attempting to excuse the breaches of its disclosure violations by submitting that the Material in question later became relevant to the Article 70 investigation and case. The Prosecution submits, for example, that it was not required to

²⁵ [REDACTED].

²⁶ ICC-01/05-01/13-597-Conf-AnxB.

²⁷ [REDACTED].

disclose P-07's report in the Main Case in October 2012 because it provided 'lead information which was important for the Article 70 investigation',²⁸ and parts of its content 'fall squarely within the Article 70 investigation'.²⁹

24. The interview with P-07 was conducted in the context of the Main Case investigations into Defence witnesses. This is borne out by its timing, and its content, and the fact that the Prosecution investigator introduced his report with the following:³⁰

[REDACTED].

[REDACTED].

25. The Prosecution itself concedes that its 'meeting with P-7 in October 2012 began within the context of Defence witness credibility.'³¹ In these circumstances, the Prosecution's retroactive and self-serving attempt to conveniently transform the document into one which falls within the purview of its Article 70 Case is not plausible. Regardless, this does not relieve the Prosecution of its obligation disclosing the report in the Main Case in the absence of authorisation from the Chamber.

26. Moreover, it is important for the Chamber to note that the P-07's October 2012 report is not a one-off. The Prosecution has now disclosed in the Article 70 Case, other reports detailing contacts between P-07 and the Prosecution in June 2014,³² July 2014,³³ and on 11 November 2014 (the day prior to the closing arguments in the present case).³⁴ Significantly, in his June 2014 interview, P-07 refers to [REDACTED]. [REDACTED].³⁵

27. The fact that the Prosecution disclosed P-07's October 2012 report in the Main Case (albeit three years late) undermines its argument that the non-disclosure of this document was justified on the basis that it later became relevant to the Article 70 Case. If the Prosecution genuinely believed its own characterisation of P-7's October 2012 report as falling within its Article 70 Case, the report would have remain buried among the other pile of reports of contacts with P-07, which the Prosecution has still (erroneously) failed to

²⁸ ICC-01/05-01/08-3265-Red, para. 31.

²⁹ ICC-01/05-01/08-3265-Red, para. 29.

³⁰ CAR-OTP-0072-0476 at 0476-0477.

³¹ ICC-01/05-01/08-3265-Red, para. 25.

³² CAR-OTP-0082-0460.

³³ CAR-OTP-0082-1961-R01.

³⁴ CAR-OTP-0084-0087.

³⁵ [REDACTED].

disclose in the Main Case. The fact of its disclosure, demonstrates that even the Prosecution cannot in good conscience claim this disclosure was not warranted in the Main Case, and renders its submissions to the contrary as disingenuous.

vii. The late disclosure of P-07's report caused concrete prejudice

28. The Prosecution repeats throughout its response that the late disclosure of P-07's report did not give rise to any prejudice on the part of the Defence.³⁶

29. The Prosecution placed this interview in front of the Trial Chamber in March 2013, as part of its submissions on [REDACTED].³⁷ The Prosecution accordingly relied on a document before the Trial Chamber which it had not disclosed to the Defence, despite now conceding that the Prosecution's meeting with P-7 in October 2012 indeed began within the context of Defence witness credibility in the Main Case.³⁸ Had the Prosecution complied with its obligations and disclosed the document contemporaneously as required, the Defence would have been in a position to conduct investigations into the credibility of P-07, and the claims made in his interview. Instead, the Prosecution was able to present this material to the Trial Chamber in the absence of any Defence scrutiny. Moreover, contemporaneous disclosure would have afforded the Defence an opportunity to explore the impact of P-07's conduct on the protection and security of Defence witnesses, of which it was deprived.³⁹ The concrete prejudice is patent, and warrants a remedy.

viii. The Chamber cannot accept the Prosecution's submissions about the credibility of the Article 70 case

30. The Prosecution's submissions as to why it was entitled to withhold disclosure of the instant material for three years (prior to its ultimate disclosure) and why it is entitled to continue to withhold other material in its possession, either indefinitely or for the time being, are grounded, indeed almost entirely dependant upon, the existence of a 'witness bribery and coaching' scheme, involving 'alleged criminality of persons including former Lead Counsel'⁴⁰ and its own subjective belief in 'the veracity of the information collected'

³⁶ ICC-01/05-01/08-3265-Red, paras. 4, 6, 17, 30.

³⁷ [REDACTED].

³⁸ ICC-01/05-01/08-3265-Red, para. 25.

³⁹ [REDACTED].

⁴⁰ ICC-01/05-01/08-3265-Red, para. 5.

in its Article 70 investigation. It prays in aid the ‘independent support’ of the confirmation decision of Pre-Trial Chamber II.⁴¹

31. These submissions cannot be entertained or upheld. This Trial Chamber is in no position to judge whether any criminality existed, or (assuming ‘coaching’ to refer to some lesser form of misconduct) any misbehaviour at all. The fact that the Pre-Trial Chamber has confirmed the charges⁴² is irrelevant, doubly so, now that the Prosecution has disclosed its witness list for trial in the Article 70 case,⁴³ revealing a significant abandonment of the material relied upon at confirmation. Neither can the Chamber permit the Prosecution unilaterally to ignore its disclosure obligations on the basis of its subjective beliefs as to the credibility of its own investigations. To accede to this submission would be an effective green light to the Prosecution to withhold disclosure of material in all cases where it had a subjective belief or suspicion of some misbehaviour by the Defence.

32. Even if the Prosecution had thought there was something suspicious about contacts between the Defence and its witnesses, it was obliged to seek relief from disclosure from this Chamber, an exercise it had plenty of opportunity to carry out during the five month period when it seized it with the details of the investigation in 2012 and 2013.⁴⁴

33. Moreover, in relation to much of the material still undisclosed (other interviews with Prosecution witnesses, the existence of which has not been denied) and, in the Defence submission, the interview with P-31 herein, the Article 70 investigation is a complete red herring. The reality is that the Prosecution has systematically failed to disclose interviews with its own witnesses and other sources about Defence witnesses. The process might well have gone undetected had the Prosecution not been compelled to disclose the material because it had to do so in order to use it in the Article 70 case.

ix. The issue of non-disclosure is not *res judicata*

34. The Prosecution asserts that ‘[t]he general issue of non-disclosure of article 70 information in this case has been litigated before the Chamber and is now *res judicata*.’⁴⁵

⁴¹ ICC-01/05-01/08-3265-Red, para. 16.

⁴² ICC-01/05-01/13-749.

⁴³ ICC-01/05-01/13-1048.

⁴⁴ ICC-01/05-01/08-2412; ICC-01/05-01/08-2548-Red4.

⁴⁵ ICC-01/05-01/08-3265-Red, para. 17.

This statements represents either a wilful misrepresentation or an alarming misapprehension of the Prosecution's disclosure obligations.

35. Determinations as to the disclosability of documents are necessarily fluid. An assessment that a document is not disclosable is limited to the circumstances of the case at a particular time. A change in these circumstances will necessarily alter the range and scope of materials which the Prosecution must reveal to the Defence. As has been emphasised by the Appeals Chamber, in the context of a Prosecution team who correctly sought leave to withhold the disclosure of documents under Rule 81(2):⁴⁶

Even if non-disclosure is authorised, this determination must be kept under review and altered should changed circumstances make that appropriate. In this regard, the Prosecutor should assist the Pre-Trial Chamber by bringing to its attention factors that may cause it to reconsider its ruling on non-disclosure. The overriding principle is that full disclosure should be made. It must always be borne in mind that the authorisation of nondisclosure of information is the exception to this general rule.

36. If the Prosecution team in the present case indeed subscribes to the approach that determinations as to disclosure are fixed, then it is breaching its ongoing duty to review whether non-disclosure is warranted, and whether material is disclosable in light of the present circumstances, and should take steps to redress this error. In addition, all submissions in the Prosecution Response which rely on the premise that the issue of non-disclosure is *res judicata* should be dismissed by the Chamber.

x. The Defence was entitled to rely on the Prosecution assertions that it had disclosed material relevant to the credibility of Defence witnesses

37. Having commenced in November 2010, the present proceedings have now reached their final stages. There can be no suggestion, however, that the issue of disclosure of documents relevant to the credibility of Defence witnesses is being raised by the Defence for the first time. On 17 August 2012, two weeks after the Prosecution's interview with P-31, the Defence sought an order from the Trial Chamber that the Prosecution 'conduct a full review of all relevant databases and archives' for purposes of locating all disclosable

⁴⁶ ICC-01/04-01/07-476, para. 64.

material in its possession; and to compel the Prosecution to ‘formally certify that it has fully complied with its disclosure obligations’.⁴⁷

38. In opposing this request, which was ultimately rejected by the Trial Chamber,⁴⁸ the Prosecution submitted as follows:⁴⁹

Following the Defence disclosure of its witness names on 13 July 2012, and in accordance with its ongoing obligations to disclose evidence as soon as practicable after identification, the Prosecution undertook a new search and review, which remains ongoing, of all its databases in order to disclose information that newly appears to be material to the preparation of the defence, in light of the further details provided, as well as potentially exculpatory evidence that may be related to the new Defence witnesses or impeaching material that it may wish to use at trial.

39. The Prosecution’s ‘decision’ not to disclose the Material until June 2015 simply cannot be reconciled with this statement. The Prosecution made these submissions to the Trial Chamber, knowing that two weeks earlier it had interviewed (at least) P-31 in specific context of [REDACTED].⁵⁰ The Prosecution had obtained a wealth of information relevant to the credibility of Defence witnesses, which it was deliberately not disclosing. This, of course, was not the only public declaration of compliance. In response to the Defence Request on Abuse of Process,⁵¹ the Prosecution submitted that:⁵²

On 22 May 2014, the Trial Chamber authorised the Defence to inspect ‘all interview notes, statements, or transcripts of interviews; generated by any Prosecution contact with Defence witnesses, subject to ‘the restrictions on disclosure provided for in the Statute and Rules 81 and 82 of the Rules, which should be assessed by the Prosecution on a case-by-case basis, or to any restrictions ordered by the Single Judge.’ **The Prosecution promptly complied.**

40. Not only does the disclosure of the Material undermine the factual basis for the Trial Chamber’s decision on abuse of process,⁵³ the Defence was also entitled to rely on these (and other) declarations of compliance. In this context, the subsequent revelation in June

⁴⁷ ICC-01/05-01/08-2269-Red, para. 21.

⁴⁸ ICC-01/05-01/08-2292.

⁴⁹ ICC-01/05-01/08-2283, para. 14.

⁵⁰ [REDACTED].

⁵¹ ICC-01/05-01/08-3217-Red2.

⁵² ICC-01/05-01/08-3229-Red2, para. 57.

⁵³ ICC-01/05-01/08-3255, para. 58, in which the Trial Chamber expressly relies on this paragraph of the Prosecution response.

2015 that disclosure of material relevant to witness credibility had been deliberately withheld, heightens the prejudice caused by the non-disclosure of the Material and provides further support for the relief sought by the Defence.

xi. The late and partial disclosure of the Material in the Article 70 Case does not remedy the Prosecution's violation, or redress the prejudice suffered

41. There was no disclosure of P-31's investigative report in either the Article 70 Case or the Main Case prior to June 2015.⁵⁴

42. Concerning P-07's investigative report, the Prosecution argues that even if the document contained information material to the Defence's preparation, the Defence has not suffered prejudice, given that the document was disclosed in the Article 70 Case. This self-serving argument does not stand up against an objective history of the Prosecution's non-disclosure of this document.

43. Firstly, for the reasons elaborated above and in the Defence Request, the P-07 report should have been disclosed in the Main Case immediately upon its creation. It was not disclosed until nearly three years later in June 2015.⁵⁵ Of significance, was a Defence request **in February 2014** to the Prosecution Senior Trial Attorney, asking for disclosure of records of the October 2012 interview.⁵⁶ The request was made in the context of the Defence Request for Abuse of process, as material relevant to substantiate its arguments of the impact of the Article 70 Case on the fairness of the proceedings.⁵⁷ Disclosure was only provided after the parties had filed their submissions in relation to the Defence request, meaning that the delayed disclosure effectively prevented the Defence from raising concrete issues of prejudice.

44. While there was partial disclosure of the P-07 report in the Article 70 Case, this came about only in February 2014, long after the last of the Defence witnesses had left the stand. Moreover, the version of P-07's report disclosed in February 2014 was in extract form only, with the Prosecution having deliberately deleted information concerning D-64, D-57, D-52 and D-04, and questions asked about other Defence witnesses.⁵⁸ The version of P-07's

⁵⁴ ICC-01/05-01/13-984+Conf-Anxs; ICC-01/05-01/08-3254 +Conf-AnxA.

⁵⁵ ICC-01/05-01/08-3254 +Conf-AnxA.

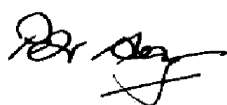
⁵⁶ ICC-01/05-01/08-3020-AnxB-Red, Letter Defence to Mr. Badibanga, 20 February 2014, pp.3-4.

⁵⁷ ICC-01/05-01/08-3217-Red2.

⁵⁸ ICC-01/05-01/08-3265-Conf-AnxB.

report disclosed in the Article 70 Case in June 2014 was also heavily redacted, with the redactions notably including the witness' name, being key to understanding his link to D-23.⁵⁹ Regardless, this disclosure in the Article 70 Case was made 20 months after the report was first generated, and three weeks after the Prosecution filed its Closing Brief in the Main Case.⁶⁰ This limited, partial, and late disclosure in the Article 70 Case cannot eliminate the prejudice suffered by the Defence in being deprived of this, and other material, in the very early stages of its Defence case.

The whole respectfully submitted.



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

Done at The Hague, the Netherlands
24 July 2015

⁵⁹ CAR-OTP-0072-0476-R01.

⁶⁰ ICC-01/05-01/08-3079.