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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
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 Second Request for the Admission of
Evidence from the Bar Table", 31 July 2015, ICC-01/05-01/13-1113-Conf**

Source: The Office of the Prosecutor

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”) to admit *in limine* 579 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 comprises ICC Detention Centre recordings and call logs of the Accused, Jean-Pierre Bemba Gombo’s non-privileged phone line. They were produced by the Registry and provided to the Parties, pursuant to the orders of Pre-Trial Chamber II. It also comprises transcriptions and translations of these recordings, produced by the Prosecution’s Language Services Unit (“LSU”), and properly disclosed to the Defence. Finally, the proposed evidence includes Registry-maintained lists of contacts authorised to communicate with Bemba on his non-privileged line.

3. The proposed recordings (“Recordings”), call logs (“Call Logs”), as well as derivative transcriptions and translations (collectively, “Derivative Material”) are *prima facie* relevant to material issues at trial. They constitute direct evidence and corroborate other evidence in the case. As the Registry – a Court organ – was responsible for having produced and provided the underlying audio material, it is sufficiently authentic and reliable to be admitted before the Court.

4. Admitting the proposed items *in limine* from the bar table would help streamline the presentation of the evidence, obviate the need to call Registry staff to attest to the authenticity of the underlying recordings and logs, and save valuable Court resources and time.

5. Annex A provides the following information in respect of each item tendered:

- (i) the evidence registration number (“ERN”); (ii) the type; (iii) the source identity;
- (iv) the date; (v) the basis of relevance; (vi) the relevant codes and/or terms used therein, where applicable; and (vii) the date of disclosure.

II. Confidentiality

6. This filing and its Annex A 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

7. The Prosecution incorporates by reference the discussion of the law applicable to the admission of evidence from the bar table set out at paragraphs 6 through 9 of the Prosecution’s First Request for the Admission of Evidence from the Bar Table.¹

IV. Submissions

A. The nature and scope of the proposed material

8. The 579 items for which the Prosecution seeks admission comprise 162 audio recordings, 162 transcriptions, 153 translations, 100 phone log records² and 2 lists of contacts. Each item is referenced in the attached Annex A.

¹ ICC-01/05-01/13-1013-Conf.

² For the conversations from 12 January 2011 to 29 April 2013 included, the logs have an independent ERN number; for the conversations from 30 April 2013 onwards, the logs are registered on the first page of the relevant audio.

9. The required criteria for admissibility are met, and the Chamber's admission of the proposed evidence in advance of trial will assist in adjudicating the contested issues and understanding other complex evidence in the case.

B. The Recordings, Call Logs, and Derivative Material are *prima facie* relevant to the issues at trial

(i) The Recordings

10. The Recordings are contemporaneous records and recorded conversations made from Bemba's non-privileged line at the ICC Detention Centre. They comprise calls placed by and to Bemba by other Accused (Jean-Jacques Mangenda and Fidèle Babala), Caroline Bemba and Thomas Luhaka between 12 January 2011 and 9 November 2013, covering the period within the timeframe of the confirmed charges.³

11. As set out at Annex A, they are relevant to contestable issues arising in the case on several grounds, including, *inter alia*: (a) that Bemba and Babala were frequently in contact,⁴ including during the charged period; (b) that Bemba and Babala discussed aspects of the Defence case, including its criminal component; (c) that Bemba and Babala arranged financial transactions to facilitate the implementation of the Overall Strategy,⁵ including by providing co-Accused Kilolo and Mangenda with funds, directly or through third persons;⁶ and (d) significantly, the codes and terms used by the Accused to communicate names, objects, places and actions forming part of, or concerning, the implementation of the article 70 offences committed pursuant

³ ICC-01/05-01/13-749, p.47.

⁴ ICC-01/05-01/13-749, paras.79, 84.

⁵ To defend Bemba against charges of crimes against humanity and war crimes in the Main Case by means which included the commission of offences against the administration of justice in violation of article 70 of the Statute ("Overall Strategy").

⁶ ICC-01/05-01/13-749, paras.79, 80, 84.

to the Overall Strategy.⁷

12. The Recordings demonstrate the frequency and extent of the Accused's communications, particularly Bemba and Babala, including in regard to the ongoing trial — and thus bear on Babala's knowledge of attendant facts and circumstances concerning the preparation and presentation of the Defence case, including witness identities.⁸ They are further probative of Babala's role as Bemba's link to co-Accused and others involved in implementing the Overall Strategy, passing on Bemba's instructions and reporting back on their execution. The Recordings also show the currency and extent of Bemba's knowledge of and control over the preparation and presentation of his case.

13. The Recordings bear on the frequency and extent of the Accused's use of codes in communicating amongst one another, including in respect of executing and concealing the Overall Strategy, as found by the Pre-Trial Chamber.⁹ Specifically, they show that codes¹⁰ were used to refer to people, objects, places, or actions, such as: "*Collègue d'en haut*",¹¹ referring to Kilolo;¹² [REDACTED],¹³ referring to Caroline Bemba¹⁴ or Western Union;¹⁵ [REDACTED],¹⁶ referring to CAR;¹⁷ [REDACTED]¹⁸

⁷ ICC-01/05-01/13-749, paras.52, 80.

⁸ See *contra* ICC-01/05-01/13-596-Conf, paras.14-15, 162.

⁹ ICC-01/05-01/13-526-Conf-AnxB1, section IV; ICC-01/05-01/13-749, para.52.

¹⁰ The Prosecution has annexed its submission on the meaning of the codes and terms used by the Accused to its Pre-Trial Brief, see ICC-01/05-01/13-1110-Conf-AnxA.

¹¹ See e.g., CAR-OTP-0077-0240 (Audio), CAR-OTP-0082-2437 at 2440, ln.49 (Translation); CAR-OTP-0077-0384 (Audio), CAR-OTP-0087-3479 at 3496, ln.515 (Translation); CAR-OTP-0077-0504 (Audio), CAR-OTP-0082-2527 at 2529, ln.5, at 2530, lns.46,51 (Translation); CAR-OTP-0077-0484 (Audio), CAR-OTP-0080-1069 at 1074, ln.136, at 1075, ln.168 (Translation); CAR-OTP-0074-0452 (Audio), CAR-OTP-0080-0939 at 0945, ln.143, at 0946, ln.174 (Translation).

¹² ICC-01/05-01/13-1110-Conf-AnxA, paras.25-28.

¹³ Referring to Caroline Bemba, see e.g., CAR-OTP-0074-0456 (Audio), CAR-OTP-0080-0947 at 0952, ln.125, at 0954, lns.195, 202 (Translation); CAR-OTP-0074-0304 (Audio), CAR-OTP-0080-0458 at 0460, ln.10 (Translation); CAR-OTP-0074-0618 (Audio), CAR-OTP-0077-1303 at 1305, ln.6 (Translation). Referring to Western Union, see e.g., CAR-OTP-0074-0418 (Audio), CAR-OTP-0087-1168 at 1171, ln.41 (Translation); CAR-OTP-0074-0146 (Audio), CAR-OTP-0086-1036 at 1038, ln.5 (Translation); CAR-OTP-0079-0264 (Audio), CAR-OTP-0087-2158 at 2169, ln.361 (Translation).

¹⁴ ICC-01/05-01/13-1110-Conf-AnxA, paras.47-49.

¹⁵ ICC-01/05-01/13-1110-Conf-AnxA, paras.109-112.

¹⁶ See e.g., CAR-OTP-0074-0701 (Audio), CAR-OTP-0077-1348 at 1350, ln.21 (Translation); CAR-OTP-0074-0248 (Audio), CAR-OTP-0079-1698 at 1702, ln.102, at 1703, ln.129 (Translation); CAR-OTP-0074-0454

referring to France;¹⁹ and [REDACTED],²⁰ referring to Cameroon.²¹ An understanding of these codes is necessary to comprehending the significance of the conversations themselves, and other key evidence in the case.

(ii) *The Call Logs*

14. Each Recording has a corresponding log, provided by Registry, and comprising technical telecommunications data, establishing the attendant date, time, duration, direction, and phone numbers participating in the conversation. 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”.²² As such, this evidence is material to the relevance of the underlying Recordings.

(iii) *The Derivative Material*

15. The Derivative Material comprises transcriptions and translations from Lingala to French of the underlying Recordings. Thus, the relevance discussion above fully applies.

16. In contrast to the Dutch intercepts vetted by the Independent Counsel and already tendered for admission,²³ no Chamber has pronounced on the relevance of the Recordings. Accordingly, Annex A sets out a particularised description of the

(Audio), CAR-OTP-0086-1542 at 1546, ln.78 (Translation); CAR-OTP-0077-1237 (Audio), CAR-OTP-0089-0990 at 0992, lns.29, 32 (Translation).

¹⁷ ICC-01/05-01/13-1110-Conf-AnxA, paras.147-150.

¹⁸ See e.g., CAR-OTP-0077-0384 (Audio), CAR-OTP-0087-3479 at 3491, ln.349, at 3492, lns.377, 391 (Translation); CAR-OTP-0077-0490 (Audio), CAR-OTP-0082-2501 at 2503, lns.5, 12 (Translation); CAR-OTP-0077-0484 (Audio), CAR-OTP-0080-1069 at 1073, ln.69, at 1078, lns.266, 275 (Translation); CAR-OTP-0079-0511 (Audio), CAR-OTP-0089-0515 at 0518, ln.49 (Translation).

¹⁹ ICC-01/05-01/13-1110-Conf-AnxA, paras.137-139.

²⁰ CAR-OTP-0074-0697 (Audio), CAR-OTP-0077-1341 at 1343, lns.9,14,16,18 (Translation).

²¹ ICC-01/05-01/13-1110-Conf-AnxA, paras.144-146.

²² ICC-01/04-01/07-2635, para.24(d), p.19.

²³ See ICC-01/05-01/13-1013-Conf, Category I: intercepted communications, corresponding phone logs and transcripts/translations.

relevance of each tendered audio and corresponding transcription and/or translation. It also contains a sourced inventory of the relevant codes and terms used therein.

C. The Recordings, Call Logs, and Derivative Material are *prima facie* reliable and authentic

(i) The Recordings and Derivative Material

17. The Recordings bear sufficient indicia of reliability and authenticity for admission from the bar table.

18. *First*, as noted, they were obtained in accordance with judicial authorisation.²⁴

19. *Second*, neither Bemba nor Babala has challenged their respective participation in the proposed conversations. To the contrary, in their pre-trial submissions they confirm a number of facts transpiring from the Recordings, such as [REDACTED];²⁵ [REDACTED];²⁶ or else [REDACTED].²⁷ While Bemba and Babala dispute the Prosecution's reading of certain conversations, they do not oppose their occurrence or contents.²⁸

20. *Third*, a plausible challenge to Bemba's participation in the tendered conversations cannot be sustained. All the calls have been placed from or to Bemba's phone extension at the Detention Centre.²⁹ As concerns Mangenda, Babala, Caroline Bemba and Thomas Luhaka, other evidence, including Registry-maintained lists of

²⁴ ICC-01/05-46, para.4, p.8; ICC-01/05-50, p.8.

²⁵ See ICC-01/05-01/13-599-Conf, paras.52, 69, 101, 103, 104, 106, 107, 111, 112, 114, 118, 120, 121, fn.54; ICC-01/05-01/13-596-Conf, para.14, fn.19.

²⁶ For example, when referring to a 5 October 2012 conversation, Bemba states: [REDACTED], see ICC-01/05-01/13-599-Conf, para.96. See also paras.52, 66-67, 101,106, 111, 112, 117,143.

²⁷ ICC-01/05-01/13-599-Conf, para.143.

²⁸ In respect of a 6 February 2013 conversation, Bemba states: [REDACTED], see ICC-01/05-01/13-599-Conf, para.105. See also paras.85-86, 114, 119, 122, 144; ICC-01/05-01/13-596-Conf, paras.38-39, 51.

²⁹ See ICC-01/05-46, para.4, p.8; ICC-01/05-50, p.8.

Bemba's contacts and independent commercial financial data, identify the relevant phone numbers as theirs.³⁰

21. *Fourth*, other evidence independently corroborates the reliability and accuracy of the Recordings. For example, in a 10 April 2013 conversation, [REDACTED].³¹ Western Union financial records show that the following day Babala transferred EUR 900 to Mangenda.³² Also, on 23 February 2013, [REDACTED],³³ [REDACTED].³⁴ Kilolo's cell phone directory also attributes this number to Babala.³⁵

22. Furthermore, in his pre-trial submissions, Bemba contextualises some of the tendered conversations. For instance, in respect of a 2 March 2012 conversation, Bemba states that he [REDACTED].³⁶

23. The Derivative Material accurately reflects the contents of the underlying Recordings. Certain Recordings are slightly out of synchronisation, such that the participants' voices periodically overlap.³⁷ However, the issue is minimal and does not affect the understanding of the conversations, or make them unintelligible.

³⁰ Mangenda used the number [REDACTED], see CAR-OTP-0074-0059 at 0061, row 16 (years 2011-2012). Babala used the number [REDACTED], see CAR-OTP-0074-0059 at 0061, row 12 (years 2011-2012), CAR-OTP-0070-0007, tab 32 A Musamba, row 124 (year 2011), CAR-OTP-0074-0855, tab 31 Fidele Babala, rows 20-22 (year 2012); the number [REDACTED], see CAR-OTP-0074-0059 at 0061, row 30 (years 2011-2012); the number [REDACTED], see CAR-OTP-0074-0059 at 0062, row 1 (year 2013), CAR-OTP-0074-0075 at 0075, row 34 (year 2013), CAR-OTP-0088-0370 at 0382-0383 (year 2013). Thomas Luhaka used the number [REDACTED], see CAR-OTP-0074-0059 at 0061, row 29 (years 2011-2012). Caroline Bemba used the number [REDACTED], see CAR-OTP-0074-0059 at 0061, row 17 (years 2011-2012), CAR-OTP-0070-0007, tab 32 A Musamba, rows 121, 128 (year 2012).

³¹ CAR-OTP-0074-0520 (Audio), CAR-OTP-0080-0485 at 0488, lns.67-70 (Translation). See also ICC-01/05-01/13-1110-Conf-AnxA, para.157; see generally, paras.156-158.

³² See CAR-OTP-0073-0274, tab 31, Fidèle BABALA, row 4, esp. column AO.

³³ CAR-OTP-0074-0182 (Audio), CAR-OTP-0082-2108 at 2111, lns.43-54; at 2112, lns.87-97 (Translation).

³⁴ CAR-OTP-0074-0075 at 0075, row 34; see also CAR-OTP-0074-0059 at 0062, row 1.

³⁵ See CAR-OTP-0088-0370 at 0383; CAR-OTP-0088-0398 at 0433.

³⁶ ICC-01/05-01/13-599-Conf, para.114, referring to an email CAR-D21-0001-0007.

³⁷ The Registry notified the service provider of the issue, who addressed it in a report, see CAR-OTP-0079-0205.

24. Furthermore, the established admissibility threshold favours admission of all *prima facie* relevant evidence subject to the Chamber's discretion.³⁸ A definitive proof of reliability is not required at this stage.³⁹ As such, the de-synchronisation issue is not one of admissibility of the Recordings, but rather of weight to be ultimately afforded to them.⁴⁰

(ii) *The Call Logs*

25. The Call Logs were provided to the Parties in this case, pursuant to the Single Judge's authorisation.⁴¹ The compilation and maintenance of these records is undertaken by the Registry in the regular administration of the Detention Centre, in accordance with the Regulations of the Registry⁴² and the Court's statutory framework. This alone imbues them with sufficient indicia of reliability for admission from the bar table.

D. There is no prejudicial effect

26. The admission of the tendered material is not prejudicial to the Defence. All items were lawfully obtained.

27. Cumulatively, the following factors readily establish that the probative value of the proposed material outweighs any prejudicial effect: (i) the tendered items are highly relevant to the confirmed charges; (ii) they are *prima facie* reliable and authentic, as they are Court records produced, collected and maintained by the Registry, in accordance with the statutory framework; (iii) the Accused confirm the

³⁸ ICC-01/09-01/11-1353, para.15.

³⁹ ICC-01/09-01/11-1353, para.15; ICC-01/09-01/11-1931-Red, para.7.

⁴⁰ ICC-01/05-01/08-1386, para.37; ICC-01/05-01/08-2012-Red, para.18; ICC-01/09-01/11-1353, para.18; ICC-01/09-01/11-1931-Red, para.7.

⁴¹ ICC-01/05-46, para.4, p.8; ICC-01/05-50, p.8.

⁴² See e.g., regulation 173(1) of the Regulations of the Registry.

facts and contents 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.

E. Additional material meets the required admissibility criteria

28. In addition, the Prosecution seeks admission of 2 lists of contacts authorised to communicate with Bemba on his non-privileged phone line. *First*, they are relevant to establish the participation in the tendered Recordings of Mangenda, Babala, Caroline Bemba and Thomas Luhaka. *Second*, that these lists have been compiled and maintained by the Registry based on the information provided by Bemba and/or his counsel readily satisfies the requirements of their *prima facie* reliability and authenticity. Furthermore, other evidence in the case independently attributes the relevant phone numbers to Bemba's correspondents.⁴³

29. *Finally*, the probative value of this evidence outweighs any prejudicial effect for the following reasons: (i) it is relevant to the confirmed charges; (ii) it is *prima facie* reliable as made and maintained by the Registry in conformity with the applicable regulations and rules of the Court; (iii) it will assist the Chamber in the determination of the truth and ensure an expeditious trial; (iv) the Defence has had sufficient notice of its content; and (v) its reliability, veracity, and weight are independently corroborated by other evidence in the case.

⁴³ For example, Babala used the number [REDACTED], see CAR-OTP-0070-0007, tab 32 A Musamba, row 124 (year 2011), CAR-OTP-0074-0855, tab 31 Fidele Babala, rows 20-22 (year 2012); the number [REDACTED], see CAR-OTP-0088-0370 at 0382-0383 (year 2013). Caroline Bemba used the number [REDACTED], see CAR-OTP-0070-0007, tab 32 A Musamba, rows 121, 128 (year 2012).

V. Requested Relief

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



Fatou Bensouda, Prosecutor

Dated this 6th Day of August 2015
At The Hague, The Netherlands