

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/13

Date: 6 August 2015

**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**

**Public redacted version of "Prosecution Request to Add Twelve Items of Evidence  
to its List of Evidence", 31 July 2015, ICC-01/05-01/13-1114-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. Pursuant to regulation 35(2) of the Regulations of the Court (“RoC”), the Office of the Prosecutor (“Prosecution”) seeks to add 12 items to its List of Evidence, comprising the following: (i) 1 handwritten document annexed to the Independent Counsel’s Report released to the Prosecution on 24 July 2015;<sup>1</sup> and (ii) 11 call logs detailing Bemba’s communications from the ICC Detention Centre during relevant periods<sup>2</sup> (“Request”). The addition of these items is justifiable in the circumstances, supported by good cause, and in the interest of justice. Further, the Request will not prejudice the Defence as all documents were disclosed as incriminatory evidence over 18 months ago.

## **II. Confidentiality**

2. This filing is classified as “Confidential” as it refers to confidential information. The Prosecution will file a redacted version.

## **III. Applicable Law**

3. Under regulation 35(2) of the RoC, a Chamber may extend a time limit “if good cause is shown”. The Appeals Chamber has further held that the extension of time limits is appropriate where it is in the “interest of justice.”<sup>3</sup> This Trial Chamber VII (“Chamber”) has taken into account the question of prejudice to the Defence when considering whether to allow the addition of certain items to the Prosecution’s List of Evidence.<sup>4</sup>

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<sup>1</sup> ICC-01/05-01/13-1047-Conf-Anx20.

<sup>2</sup> CAR-OTP-0074-0065; CAR-OTP-0074-0066; CAR-OTP-0074-0078; CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; and CAR-OTP-0074-0090.

<sup>3</sup> ICC-01/04-01/10-505, OA, para.11.

<sup>4</sup> [REDACTED].

4. No statutory provisions specifically regulate the use of a List of Evidence at trial.<sup>5</sup> Decisions on how to deal with amendments to the List of Evidence fall within the discretionary powers of each chamber.<sup>6</sup>

5. Trial Chamber VI in the *Ntaganda* case has adopted a flexible approach to List of Evidence amendments, finding it unnecessary to rule specifically on amendment requests.<sup>7</sup> Instead, the Chamber has authorised the Prosecution to file (promptly) an updated List of Evidence into the case record whenever amendments to it are made,<sup>8</sup> while noting that “any amendments ought to be kept to a minimum and the Defence may at any time challenge the use of items subsequently added to the list of evidence on the basis that it received unduly late notice of them or had inadequate time to prepare.”<sup>9</sup> Trial Chamber VI has further indicated that it would consider, among other factors, “how long after the Chamber’s deadline the Prosecution took to add a particular item to its List of Evidence, and the reason for that late notice, in its assessment as to whether the item can be used at trial.”<sup>10</sup>

6. In the *Ruto and Sang* case, Trial Chamber V(A) has considered the nature and size of the items to be added and the timing of their original disclosure to the Defence in ruling on applications brought under regulation 35(2).<sup>11</sup>

7. In the *Katanga and Ngudjolo* case, Trial Chamber II has held that even where the conditions of regulation 35(2) of the RoC are not met the Chamber may authorise the late addition of incriminating evidence pursuant to its powers under articles 64(6)(d) and 69(3) of the Rome Statute (“Statute”) to order the production of evidence that it deems necessary for the determination of the truth, provided it can be shown that:

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<sup>5</sup> ICC-01/04-02/06-611, para.13.

<sup>6</sup> *Ibid.*, para.13.

<sup>7</sup> ICC-01/04-02/06-T-19-ENG ET, 22 April 2015, p. 11, lns.18-19 ; ICC-01/04-02/06-611, para.3.

<sup>8</sup> ICC-01/04-02/06-T-19-ENG ET, 22 April 2015, p. 11, lns.18-19.

<sup>9</sup> *Ibid.*, p. 11, lns.19-22.

<sup>10</sup> *Ibid.*, p. 11, lns.22-25.

<sup>11</sup> ICC-01/09-01/11-1549-Red, para.21.

“(i) the new material is either significantly more compelling than other items of evidence already disclosed to the Defence, or brings to light a previously unknown fact which has a significant bearing upon the case; and (ii) the late addition will not cause undue prejudice to the Defence in relation to the latter’s right to have adequate time and facilities to prepare in accordance with article 67(1)(b) of the Statute.”<sup>12</sup>

#### **IV. Submissions**

##### *Handwritten document*

8. The handwritten document sought to be added [REDACTED].<sup>13</sup> [REDACTED].

9. There is good cause to vary the time limit in respect of this highly probative document. The document was only released to the Prosecution on 24 July 2015, as part of a group of 15 documents annexed to one of the Reports of the Independent Counsel.<sup>14</sup> The Chamber did not specify a particular timeline for the Prosecution to request addition of items from this group of documents to the List of Evidence, and the Prosecution has applied diligent and timely efforts to assess the incriminatory value of this document and the need to add it to the List of Evidence.

10. Granting the Request is further in the interest of justice, and causes no prejudice to the Accused. The document is only one page long, and if the Request is granted, the notification to the Defence of its intended use will still occur well in advance of the start of trial.

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<sup>12</sup> ICC-01/04-01/07-2325, para.15 (footnotes omitted).

<sup>13</sup> ICC-01/05-01/13-1047-Conf-Anx20, p.4.

<sup>14</sup> Pursuant to decision ICC-01/05-01/13-1094-Conf.

### Call Logs

11. The Prosecution also seeks the addition of 11 call logs<sup>15</sup> detailing Bemba's communications from the ICC Detention Centre during relevant periods. These logs were inadvertently excluded from the Prosecution's Trial List of Evidence. Their importance was underscored by information only recently made available to the Prosecution, as detailed below.<sup>16</sup> Inclusion of these 11 logs will make for a more complete Trial List of Evidence and will serve the interests of justice.

12. Three of the call logs<sup>17</sup> sought to be added detail Bemba's calls on the Registry's privileged line between January 2012 and August 2013. These three logs are critical to the Prosecution's allegations regarding the Accused's circumvention of the Detention Centre's monitoring system through multiparty calls that abused the Registry's privileged line. Inclusion of the logs on the Trial List of Evidence would therefore serve the interests of justice and the determination of the truth.

13. The other eight call logs<sup>18</sup> are monthly or bi-monthly logs of Bemba's communications on the non-privileged line allotted him at the ICC Detention Centre between 1 March 2013 and 18 November 2013. The content of these monthly or bi-monthly logs are also contained in two more wide-ranging call logs (covering the period 2008-2013) that were included in the Trial List of Evidence.<sup>19</sup> However, given that the monthly or bi-monthly logs are more user-friendly and easily searchable, the Prosecution seeks their inclusion in the Trial List of Evidence.

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<sup>15</sup> CAR-OTP-0074-0065; CAR-OTP-0074-0066; CAR-OTP-0074-0078; CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; and CAR-OTP-0074-0090.

<sup>16</sup> See *infra*, para.14.

<sup>17</sup> CAR-OTP-0074-0065; CAR-OTP-0074-0066; CAR-OTP-0074-0078.

<sup>18</sup> CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; and CAR-OTP-0074-0090.

<sup>19</sup> CAR-OTP-0079-0220 and CAR-OTP-0079-0221.

14. The importance of all of these call logs was underscored during the Prosecution's analysis of the Annex to the Addendum of one of the Independent Counsel's reports, recently released to the Prosecution on 24 July 2015.<sup>20</sup> [REDACTED].<sup>21</sup> That number had previously been understood to belong to Kilolo since it was listed as Kilolo's number on the Detention Centre's list of privileged numbers for Bemba.<sup>22</sup> On account of this new information, the Prosecution is currently undertaking further analysis of Bemba's communications with that number on both the Registry's privileged line and the non-privileged line. As such, good cause is established for the belated addition of the 11 requested logs to the List of Evidence.

15. The Defence will not be prejudiced by the late addition of these call logs to the List of Evidence. *First*, all 11 call logs have been disclosed as incriminatory evidence to the Defence since 20 December 2013, over one year and a half ago.<sup>23</sup> *Second*, 10 of the 11 logs<sup>24</sup> sought to be added were referenced in key prior documents, including (i) the List of Evidence submitted at the Confirmation Stage,<sup>25</sup> (ii) the Prosecution's submissions during the confirmation proceedings,<sup>26</sup> and (iii) the Confirmation Decision.<sup>27</sup> Accordingly, the Defence has had ample opportunity to acquaint themselves with these items over the course of these proceedings. *Third*, as mentioned in paragraph 13 above, eight of the call logs contain information also

<sup>20</sup> ICC-01/05-01/13-1035-Conf-Anx-Red, which was added to the Trial List of Evidence pursuant to the Chamber's authorisation (see ICC-01/05-01/13-1092).

<sup>21</sup> CAR-OTP-0090-1872 at 1873.

<sup>22</sup> See CAR-OTP-0074-0067 at 0071-0072.

<sup>23</sup> All 11 items were disclosed on 20 December 2013 in the package "Pre-Confirmation INCRIM Package 1 20 December 2013".

<sup>24</sup> The one exception is CAR-OTP-0074-0078. This item is a log of Bemba's calls on the privileged line from 2013 April to August 2013.

<sup>25</sup> ICC-01/05-01/13-526-Conf-AnxE, p.21, row 54 (CAR-OTP-0074-0065); p.21, row 55 (CAR-OTP-0074-0066); p.21, row 58 (CAR-OTP-0074-0078); p.45, row 555 (CAR-OTP-0074-0057); p.45, row 556 (CAR-OTP-0074-0058); p.46, row 576 (CAR-OTP-0074-0073); p.46, row 577 (CAR-OTP-0074-0074); p.46, row 581 (CAR-OTP-0074-0085); p.46, row 590 (CAR-OTP-0074-0086); p.48, row 656 (CAR-OTP-0074-0088); p.49, row 669 (CAR-OTP-0074-0090).

<sup>26</sup> Document Containing the Charges, ICC-01/05-01/13-526-Conf-AnxB1, paras.30 (fn. 57), 32 (fn.70), 99 (fn.288); Confirmation Submissions, ICC-01/05-01/13-597-Conf-AnxB, paras.29 (fn.43), 66 (fn.129), 213 (fn.579).

<sup>27</sup> ICC-01/05-01/13-749, paras.79, 99-101 (and footnotes cited therein).

represented in other items of evidence already listed on the Prosecution's List of Evidence, albeit in a different format, and their inclusion will not require the Defence to deal with any new information. *Fourth*, the notification of the Prosecution's intent to rely on these call logs at trial occurs still well in advance of the start of the trial.

## V. Relief Requested

16. Based on the foregoing, the Prosecution seeks the Chamber's permission to add 12 items<sup>28</sup> to its List of Evidence, pursuant to regulation 35 of the RoC.




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**Fatou Bensouda, Prosecutor**

Dated this 6<sup>th</sup> Day of August 2015  
At The Hague, The Netherlands

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<sup>28</sup> ICC-01/05-01/13-1047-Conf-Anx20; CAR-OTP-0074-0065; CAR-OTP-0074-0066; CAR-OTP-0074-0078; CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; and CAR-OTP-0074-0090.