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No: **ICC-01/05-01/13**
Date: **10 August 2015**

TRIAL CHAMBER VII

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO

Public

Motion on the inadmissibility of material obtained in violation of the statutory guarantee that accused and counsel be able to communicate freely and in confidence

Source: **Defence for Aimé Kilolo Musamba**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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REGISTRY

Registrar Mr Herman von Hebel	**Defence Support Section**
Victims and Witnesses Unit	**Detention Section**
Victims Participation and Reparations Section	**Other**

I. INTRODUCTION

1. This motion is filed pursuant to the Trial Chamber's order that 'all motions that, in view of the parties, require resolution prior to the commencement of trial (…) be filed by 31 July 2015'.[1]

2. It is respectfully requested that the Trial Chamber rule that any evidence by way of communication between the accused and his counsel (and any communication/material made in Mr Kilolo's capacity as legal representative) be inadmissible at trial.

II. SUMMARY OF SUBMISSIONS

3. The following is a summary of the submissions advanced:

(i) Article 67(1)(b) of the Statute provides that communications between counsel and accused must be in confidence. Rule 73 provides only two limited exceptions to this rule.

(ii) There is no ICC regime or framework that provides for the monitoring and obtaining evidence of communications between counsel and accused.

(iii) Obtaining details of communications between counsel and accused amounts to a violation of the right to privacy.

(iv) Without there being any clear, readily available, pre-existing framework on how to monitor and obtain details of such communications, the interference with the right to privacy cannot be said to have been in 'accordance with the law' as required by Article 8 of the ECHR.

(v) Evidence of any communication between counsel and accused should be held inadmissible at trial pursuant to Article 69(7) of the Statute as both:

(a) a violation of the Statute, and

(b) a violation of internationally recognized human rights law.

[1] 'Order setting the commencement date for trial' 22 May 2015 at para. 14. Deadline extended by Trial Chamber on 30 July 2015 to 10 August 2015.

III. APPLICABLE LAW

Legal Professional Privilege under the ICC Regime

4. Article 67(1)(b) of the Rome Statute provides *inter alia*:

> In the determination of any charge, the accused shall be entitled to … to communicate freely with counsel of the accused's choosing in *confidence.* [Emphasis added]

5. A commentary to the Rome Statute on Article 67(1)(b) provides:

> With respect to communication with counsel, the addition of the words "freely" and "in confidence" underscore the privileged nature of the communication and the fact that it must be undertaken in secure premises not subject to eavesdropping by the authorities. However, there is nothing explicit in the Statute recognizing the privileged nature of solicitor-client communication. The Preparatory Committee considered that the question of privileged communication should not be dealt with in the provision on rights of the accused. Access to communication by the accused must be both in person and in writing.[2]

It is explained in the footnotes that respect for the privileged nature of lawyer-client communication was meant to be derived from Article 69(5) and the subsequent Rules of Procedure and Evidence.[3]

6. Article 69(5) (Evidence) provides:

> The Court *shall* respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence. [Emphasis added]

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[2] *Commentary on the Rome Statute of the International Criminal Court – Observors' Notes, Article by Article* – Otto Triffterer (ed) at p 855.

[3] The United States had proposed a draft set of rules of evidence for the Court containing a provision ensuring lawyer-client privilege: Reference Paper Submitted by the USA, UN Doc A/CONF.183/C.1/WGPM/L.21, p. 7 Rule 10.

7. Rule 73(1) of the Rules of Procedure and Evidence (Privileged communications and information) provides:

> 1. Without prejudice to article 67, paragraph 1 (b), communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded *as privileged, and consequently not subject to disclosure, unless:*
>
> *(a)* *The person consents in writing to such disclosure; or*
>
> (b) *The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.* [Emphasis added]

8. Rule 73(2) and (3) relate to the other professional or other confidential relationships. Rule 73 (4) to (6) relate to the privilege of the ICRC.

9. In a commentary on the Rules of Procedure and Evidence it is explained that:

> Rule 73 obtains its mandate from article 69, paragraph 5, of the Rome Statute (…). Prior to and at the Rome Diplomatic Conference, a number of specific proposals were made regarding lawyer-client privilege.[4]

10. Specifically with regard to privileged communications involving legal counsel, the commentary states the following regarding the drafting history of Rule 73: [5]

    (i) Concern was raised about whether some communications might not be made in the context of a professional relationship or might be made as part of a criminal scheme involving the lawyer as an accomplice. In these cases, the privilege should not attach to the communication.

    (ii) However, some participants queried how this would be known without examining the communication and also feared that national authorities could

[4] *The International Criminal Court – Elements of Crimes and Rules of Procedure and Evidence* Edited by Roy Lee pp. 358-359.

[5] *The International Criminal Court – Elements of Crimes and Rules of Procedure and Evidence* Edited by Roy Lee pp. 359-360.

defeat the privilege by claiming that the communication was not for the purpose of giving or receiving advice.

(iii) At the second session of the Preparatory Commission, it was again queried how a Chamber could be satisfied as to the purpose of the communication without examining its content.

(iv) Some delegations were not convinced that the third exception was compatible with article 67, paragraph 1(b) of the Statute.

(v) However, other delegations were of the view that the communications should only be privileged if made in the context of the lawyer-client relationship.

(vi) In informal consultations it was proposed that the chapeau be re-phrased to read: "communications made in the context of the professional relationship". This would subtly enable the Court not to recognize a privilege if the communication was outside the bounds of a professional relationship.

(vii) A reference to article 67, paragraph 1(b), was also added in order to ensure that any exceptions to the recognition of a privilege at a hearing of a Chamber did not prejudice the statutory right of an accused to communicate with counsel in confidence.

11. Rule 81(1) (Restrictions on disclosure) provides:

> Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case *are not subject to disclosure*. [Emphasis added]

12. Thus, all communications and material arising from case preparation between an accused and counsel should be confidential and not subject to disclosure. The rule appears <u>absolute</u> (subject to the two exceptions expressly set out in Rule 73).

13. Nothing in the Regulations of the Court, the Agreement on Privileges and Immunities of the International Criminal Court, or indeed any other official ICC

text provides for any exception to the privileged nature of communications between the accused and his counsel. Article 8 of the Code of Professional Conduct for Counsel specifically requires that counsel respect and actively exercise all care to ensure secrecy and confidentiality.

Legal Professional Privilege at other International Tribunals

14. Rule 97 of the ICTY's Rules of Procedure and Evidence (Lawyer client-privilege) provides:

> All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless:
> (i) the client consents to such disclosure; or
> (ii) the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

Like Article 67(1)(b) of the ICC Statute and Rule 73 of the Rules of Procedure and Evidence Rule 97 of the ICTY Rules provides only two exceptions to the privileged nature of lawyer-client communications (i.e. waiver and voluntary communication).

15. By contrast, Rule 97 (Lawyer-Client Privilege) of the ICTR's Rules of Procedure and Evidence does contain an additional express exception to the lawyer-client privilege. Rule 97 (A) is the same as the ICTY's Rule 97 but Rule 97(B) also provides:

> Nothing in this rule shall be interpreted as permitting the use of confidentiality between Counsel and Client to conceal the participation of Counsel in illegal practices such as fee-splitting with client.[6]

[6] Note that Rule 97(B) of the ICTR's Rules of Procedure and Evidence was added by amendment on 27 May 2003.

16. Rule 97 of the Rules of Procedure and Evidence for the Special Court for Sierra Leone provides the same two exceptions as the ICTY's Rule 97, but then contains an additional express exception:

> iii. The client has alleged ineffective assistance of counsel, in which case the privilege is waived as to all communications relevant to the claim of ineffective assistance.

17. Similarly, Rules 163 (Legal Professional Privilege) of the Rules of Procedure and Evidence of the Special Tribunal for Lebanon contains an additional exception and provides:

> Communications made in the context of the professional relationship between a person and his legal counsel shall be regarded as privileged and consequently not subject to disclosure at trial, unless:
>
> (i) the client consents to such disclosure;
>
> (ii) the client has voluntarily disclosed the content of the communications to a third party, and that third party then gives evidence of that disclosure; or
>
> (iii) *the client intended to perpetrate a crime and the communications were in furtherance of that crime*. [Emphasis added]

Necessity of Clear Regime

18. As the provisions on privilege at both the ICTR and STL make clear, there can be no principled objection to an interference with lawyer-client privilege in circumstances where the client and/or lawyer are using such communications to perpetrate crime.

19. However, and importantly, such interference with the lawyer-client privilege is only permissible and in accordance with the principles with international human rights law if it is '<u>in accordance with the law</u>', i.e. that there are very clear

guidelines and rules providing for how and when the privilege may be interfered with.

20. That there is no clear exception to the lawyer-client privilege provided for by Article 67(1)(b) of the Rome Statute and Rule 73 of the Rules of Procedure and Evidence means that communications between lawyer and client, save for in the limited circumstances provided by Rule 73(1), are inviolable.

21. Alternatively, even if some exception to legal-professional privilege is inferred, there is a clear lack of any clear guidelines or procedures as to how/when the prosecution might seek to go behind the privilege, for example:

(i) whether there needs to at least be a *prima facie* case of illegality;
(ii) the extent to which the material obtained should not be provided to the prosecution lawyers in the 'main case';
(iii) whether immunity needs to first be waived; and
(iv) whether independent counsel should be appointed and how they are to operate.

Failure to have any clear rules/guidance on these issues *before* any steps are taken to go behind legal professional privilege compounds the fact that, in this case, such intrusions are not 'in accordance with the law' as required by Article 8(2) of the ECHR.

Exclusion of Evidence Obtained in violation of the Statute and Human Rights

22. Article 69(7) of the Rome Statute provides:

> Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
> (a) The violation casts substantial doubt on the reliability of the evidence; or

(b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

23. In *Lubanga* it was held that in determining the admissibility of any piece of evidence, the ICC is not bound by any determination by national courts. However, pursuant to Article 69(7) evidence obtained in violation of either the Statute or internationally recognized human rights may be held inadmissible. The Chamber said:

> In order to determine whether there has been an illegality amounting to a violation of internationally recognized human rights or merely an infringement of domestic rules of procedure, guidance should be sought for international human rights jurisprudence.[7]

<u>*Right to Privacy*</u>

24. Article 8 of the ECHR[8] provides:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

25. Interception of communication, be it by telephone or email intercept, unquestionably amounts to an interference with the right to privacy guaranteed by Article 8 of the ECHR.

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[7] *Prosecutor v Thomas Lubanga Dyilo* 'Decision on the confirmation of charges'. 29 January 2007, ICC-01/04-01/06-803-tEN, para. 73.

[8] Similar safeguards are set out in Art. 17 of the ICCPR and Article 11 of IACHR.

26. Thus, to be in accordance with Article 8 it must be (i) in accordance with the law, and (ii) necessary in a democratic society, i.e. proportionate.

27. The term 'in accordance with law' enjoys a special meaning within the context of intrusive surveillance and the interception of communications. The law must give adequate indication of the circumstances in which, and the conditions under which, such surveillance can occur.[9]

28. The rules must define with clarity the categories of people liable to be subject of such techniques, the offences which may give rise to such an order, the permitted duration of the interception, and the circumstances in which recordings are to be destroyed.[10] There must also be adequate and effective safeguards against abuse.[11]

29. In *Huvig v France*[12] the European Court explained that:

> "[I]n accordance with law", within the meaning of Article 8(2), requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law.[13] [Emphasis added]

30. It was said moreover that the requirement of 'foreseeability' implies that the:

> [L]aw must be sufficiently clear in its terms to give citizens adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence.[14]

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[9] *Malone v UK* 7 EHRR 14.
[10] *Huvig v France* 12 EHRR 528 and *Kruslin v France* 12 EHRR 547
[11] *Klass v Germany* 2 EHRR 214 and *Malone v UK* 7 EHRR 14.
[12] *Huvig v France* 12 EHRR 528
[13] *Ibid* para. 26
[14] *Ibid* para. 29.

31. So, for example, in the UK, the Investigatory Powers Tribunal declared 'the regime for the interception/obtaining, analysis, use, disclosure and destruction of legally privileged material' in contravention of Article 8 and accordingly unlawful after it was conceded by the Security Services and GCHQ that the regime used was had 'not been in accordance with the law for the purposes of Article 8(2) of the ECHR. The Security Services and GCHQ undertook to review their policies and procedures in light of a draft *Interception Code of Practice*.[15]

Legal Professional Privilege protected by the Right to Privacy

32. Legal professional privilege has been held by the European Court of Human Rights to be an important part of the right of privacy guaranteed by Article 8 of the ECHR[16] and the monitoring of privileged communications engages the right.[17] Moreover, in *Niemietz v Germany* the Court held that:

> [W]here a lawyer is involved, an encroachment of professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 of the Convention.[18]

33. Even though lawyer-client privilege is protected by Article 8, the European Court has held there are plainly circumstances when there will be no violation even when such communications are interfered with. However, it is imperative that any such interference is pursuant to strict guidelines and a clear framework.

34. In *Andre and another v France* the Court said:

> [T]he Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the

[15] *Belhadj & others (including Amnesty International Ltd) v Security Services & others* Case No. IPT/13/132-9/H – declaration dated 26 February 2015. See also Judgment of 29 April 2015 – Neutral Citation Number [2015]UKIPTrib 13_132-H.
[16] *Campbell v UK* (1992) 15 EHRR 137; *Foxley v UK* (2000) 31 EHRR 637.
[17] *Niemietz v Germany* App. No. 13710/88, 251-B Eur HR Rep 97 (1992).
[18] At para. 37.

case in particular where credible evidence is found of the participation of a lawyer in an offence … or in connection with efforts to combat certain practices … . On that account, however, it is vital to provide a strict framework of such measures, since lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law.[19] [Emphasis added]

35. Even where there is a *prima facie* basis for believing that the crime/fraud exception applies, the European Court has upheld violations of Article 8 where the impugned measures were not 'in accordance with the law', either because they lacked a legal basis or because the law was insufficiently clear and foreseeable.[20]

36. Within the context of international trials, it has been recognized that 'intercepts of private conversations may breach the right to privacy when they are not executed according to the law'.[21]

Exclusion of Evidence

37. It is acknowledged that it does not necessarily follow that evidence obtained in violation of fundamental rights is always inadmissible at any subsequent trial.

38. In *Lubanga* it was not accepted that evidence obtained in violation of internationally recognized human rights standards would automatically be excluded.[22] Careful consideration is required of the need to ensure respect for the rights of the accused and the overall aim and objective of the Court. As the Pre-Trial Chamber held:

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[19] Application No. 18603/03. Judgment dated 24 July 2008 at para. 42.
[20] *Petri Sallinen and others v Finland* Application No. 50882/99, Judgment 27 September 2005, paras. 76 and 82 to 94.
[21] *Prosecutor v Radoslav Brdjanin* 'Decision on the defence, objection to intercept evidence'. 3 October 2003, TC II Case No. IT99-36-T, para. 31.
[22] *Prosecutor v Thomas Lubanga Dyilo* 'Decision on the confirmation of the charges', 29 January 2007, ICC-01-04-01/06-803-tEN.

[The Chamber] must ensure an appropriate balance between the rights of the accused and the need to respond to victims' and the international community's expectations'.[23]

39. Thus, in conducting that balance, within the context of a trial for very serious international crimes, the corresponding human rights violation must be serious before evidence is excluded.

40. It is submitted that the balancing exercise may be differently calibrated within the context of a trial under Article 70 of the Statute.

41. The European Court of Human Rights has said that the mere fact that evidence has been obtained in violation Article 8 does not necessarily mean that a trial is unfair. Thus, in *Schenk v Switzerland*[24] the Court held that the admission the recording of a telephone conversation in breach of the right of privacy in Article 8 did not violate Article 6(1).[25]

42. Similarly, in *Wood v UK*[26] the European Court held that the covert recording of defendants conversations while in police custody could amount to a violation of Article 8, but observed that the use at trial of material obtained without a proper legal basis or through unlawful means will not, generally, without more, of itself offend the standard of fairness imposed by Article 6(1) where proper procedural safeguards are in place and the nature and source of the material is not tainted.

[23] *Ibid* para. 86. See also *Prosecutor v Callixte Mbarushimana* 'Decision on the Confirmation of the charges'. 16 December 2011, ICC-01/04-01/10-465-Red, para 61 and the ICTY Decision of *Prosecutor v Radoslav Brdjanin* 'Decision on the Defence Objection to Intercept Evidence'. 3 October 2003, TC II Case No. IT99-36-T, para. 55.
[24] (1988) 13 E.H.R.R. 242.
[25] See also *Khan v UK* Judgment, 12 May 2000, Applic. No. 35394/97 para. 35 in which taped telephone conversations obtained without any legal basis were the main evidence against the applicant. The Court held that its use at trial was not unfair as procedures provided for the applicant to challenge its reliability and the fairness of its admission.
[26] Application No.23414/02, January 20, 2004.

43. However, given the special role played by lawyers in the administration of justice and the special need for confidential communications between client and lawyer, slightly different considerations apply to communications between lawyers and client.

44. The ECHR has emphasised the importance that attaches to confidentiality between lawyer and client. In two cases on telephone tapping brought against France, *Huvig v France*[27] and *Kruslin v France,*[28] the Court recognised the importance of the principle that telephone tapping had to be carried out in such a way that the exercise of the rights of the defence could not be jeopardized. The confidentiality of relations between the suspect or the person accused and his lawyer had to be respected.[29]

45. It has been held a matter of general importance that consultations between client and lawyer take place under conditions which favour full and uninhibited discussion.[30] Article 6(3)(c) of the ECHR has been interpreted as requiring confidentiality of communications between an accused person and their lawyer. Thus in *S v Switzerland*[31] the Court held that eavesdropping or interception by the police violated "one of the basic requirements of a fair trial in a democratic society".[32]

IV. SUBMISSIONS

46. All communications between Mr Kilolo and Mr Bemba that the Prosecution has obtained cannot be relied upon and such evidence should be excluded at trial pursuant to Article 69(7) of the Statute.

[27] (1990) 12 EHRR 528
[28] (1990) 12 EHRR 547
[29] See also *Kopp v Switzerland* (1999) 27 EHRR 91 in which the importance of protecting professional confidentiality was emphasised by the Court.
[30] *Campbell v UK* 15 EHRR 137 and *Foxley v UK* (2001) 31 EHRR 25
[31] 14 EHRR 670
[32] *Ibid* at para. 48.

47. This is because Article 67(1)(b) of the Statute clearly provides that the accused must be able to conduct such communications in 'confidence'. Rule 73 of the Rules of Procedure and Evidence provides only two exceptions to this (i) where the accused consents in writing, and (ii) where the communication is voluntarily disclosed to a third party.

48. Unlike some of the other international tribunals (ICTR, SCSL, and STL) the ICC's regime provides no other exception to the protection provided to communications between client and lawyer.

49. In this case the accused has not consented in writing and the communications not voluntarily disclosed to a third party.

50. Moreover, given the special prominence and protection afforded to communications between clients and lawyers, to be in conformity with internationally recognized human rights law, any interference with such communications must be pursuant to a very clear and carefully regulated framework.

51. The ICC regime provides no such framework, let alone a clear one. Neither the Statute, the Rules of Procedure and Evidence, the Regulations of the Court, the Agreement on Privileges and Immunities, nor the Code of Professional Conduct for Counsel provides for or explains the circumstances under which communications between client and lawyer can and will be monitored and obtained by the Prosecution. Any such interference therefore <u>cannot</u> be said to be 'in accordance with law'.

52. It is imperative that both accused persons before the ICC, and lawyers representing them, have clear knowledge of the circumstances in which their communications may be monitored by either the Court or Prosecution.

53. Those appearing before the Court must be confident of the sanctity and security of their communications and have forewarning of the circumstances and procedures by which such communications may be monitored. To do otherwise gives rise to a 'chilling effect' and concern about whether any given communication is being monitored or not.

54. To be compliant with international human rights law, the ICC must develop a pre-existing regime as to how and when lawyer-client communications may be monitored, with all the modalities of that regime published and readily available for all.

55. Such a regime should contain detailed regulations and guidelines on *inter alia* the following matters:

(i) The requisite standard of suspicion required of any criminal activity before an application can be made for access to confidential communications.

In the absence of any clearly stated standard there is a real risk of a 'speculative' interference with confidential.

(ii) Guidelines on whether or not any privileges and immunities need to be lifted before any interception of communication can be undertaken.

(iii) Clear guidance that any material obtained <u>must not</u> be provided to prosecuting lawyers involved in ongoing proceedings involving those whose communications are being monitored.

(iv) Clear guidelines as to the procedure for the review of any material obtained. For example, clear provision that any material obtained first be reviewed by independent counsel (with a suitable opportunity provided to the subject of the interference to comment on the material and whether it should be provided to any other party or not).

56. Absent such a regime and clear guidance it cannot be said that the interference in this case has been 'in accordance with the law'. [see paras. 24 to 31 above].

57. Given the important role that lawyers play in the administration of justice the balancing exercise is more finely balanced when determining whether admission of evidence obtained in violation of the right to privacy is unfair: [see paras. 32 to 36 and 43 to 45 above].

58. At international courts and tribunals, given the enormity of the crimes under consideration, it has rightly been held that any violation of fundamental rights would have to be of sufficient severity to damage the integrity of proceedings.

59. The balancing exercise is, however, manifestly different when considering crimes under Article 70 of the ICC Statute. Crimes which, although serious, are not as serious as the core crimes within the jurisdiction of the Court.

60. In this case evidence has been obtained in breach of the confidentiality of communications between client and lawyer guaranteed by Article 67(1)(c) of the Statute. Moreover, pursuant to Rule 81(1), material has been obtained which should not have been subject to disclosure.

61. The admission of that evidence, obtained in circumstances not provided for in either the Statute or Rules, or indeed any kind of pre-existing regime would be antithetical to and seriously damage the integrity of the proceedings as a whole. It should not be admitted.

V. RELIEF SOUGHT

62. On behalf the accused, Mr Kilolo, it respectfully requested that the Trial Chamber exclude the following categories of evidence at trial:

(i) The contents of all recorded communications relied upon by the Prosecution, whether oral or in writing, between him and his former client Mr Bemba (subject of course to any waiver by Mr Bemba).

(ii) The contents of all recorded communications relied upon by the Prosecution, whether oral or in writing, made by Mr Kilolo in his capacity as the legal representative of Mr Bemba (subject of course to any waiver by Mr Bemba or where a recipient third party of the communication voluntarily gives evidence of it).

(iii) All materials obtained by the Prosecution related to the investigation or preparation of Mr Bemba's case.

63. Mr Kilolo is, as Mr Bemba's former lawyer, duty bound to abide by his professional duty to maintain lawyer-client privilege. Absent any waiver from Mr Bemba, it is also respectfully requested that the Trial Chamber confirm that he is prohibited from disclosing the detail of any communication between him and Mr Bemba or matters related to the investigation or preparation of Mr Bemba's defence. He is otherwise unable to have a fair trial.

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Steven Powles
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Dated this 10 August 2015,

At The Hague, The Netherlands