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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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

**Defence Request for Leave to Appeal 'Decision on Joint Request to Strike
Prosecution Witnesses P-198 and P-201 from the Witness List'**

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

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Introduction

1. The Defence teams for Mssrs. Arido, Balala, Bemba, and Kilolo (hereinafter “the Defence”) respectfully seek leave to appeal the ‘Decision on Joint Request to Strike Prosecution Witnesses P-198 and P-201 from the Witness List’¹ (hereinafter “the Decision”), in relation to the issues as to:

- i. Whether the Prosecution can call a witness to testify as a Prosecution witness, in circumstances in which the Prosecution has failed to make good faith efforts to first obtain the witness’s consent;
- ii. Whether the Trial Chamber failed to consider/ give sufficient weight to the individual rights of each Defence team under Article 67(1) in finding that the prejudice arising from the lack of a statement was ‘minimal’, and did not, therefore bar the calling of the witnesses; and
- iii. Whether the Trial Chamber failed to give sufficient consideration to the rights of witnesses under Article 55, and Article 68(1) of the Statute and Rule 74 of the Rules of Procedure and Evidence, which militate against compelling witnesses to testify, without being informed of the prospective subject matter of their testimony.

Factual background

2. The Prosecution has not contested that it has not obtained any statements or summaries for P-201 or P-198.

3. The Trial Chamber also found that:

¹ ICC-01/05-01/13-1202.

- i. “the Prosecution tried to avoid pursuing P-198's statement, most notably by telling him during an interview that he was 'not to get into details about his role [played] or interactions with the ICC'”;² and
- ii. “the Prosecution's conduct with P-198 and P-201 falls short of the Article 54(l)(a) standard”.³

4. The Prosecution has refused to disclose any information concerning the steps, which it took to obtain their potential testimony as Prosecution witnesses in this case,⁴ and, as noted by the Trial Chamber, did not substantiate its position regarding P-198's ‘non-co-operation’, beyond “mention[ing] that historical non-cooperation with P-198 made it futile to attempt to obtain a statement from him”.⁵

5. It is apparent from the interview record of P-198 that he was not ‘adverse’ to the Prosecution, but simply required further particulars concerning who was calling him as a witness, and the scope of his future testimony.⁶ This request cannot be considered to objectively unreasonable in light of the fact that P-198 had been designated a suspect, did not have a lawyer present, and had already faced significant security risks in connection with his testimony in the Main Case.⁷

6. P-198 was also provided with ambiguous information concerning legal procedures in this case, which would have affected his ability to make an informed decision. For example, before the Prosecution had even applied for a ruling on these issues, the Prosecution informed P-198 that the process of appearing as a witness

² ICC-01/05-01/13-1202, para. 13.

³ Para. 14. The Defence notes that although this finding is preceded by “Even if”, the sentence does not employ conditional language (i.e. even if the Prosecution's conduct were to fall short...).

⁴ See ICC-01/05-01/13-1103, paras. 14 and 15. Although the Trial Chamber confirmed that the Prosecution was obliged to disclose any information concerning “the circumstances under which the witnesses recanted their testimony” (ICC-01/05-01/13-1172, para. 20), the Prosecution has not adduced any supplementary information concerning efforts to obtain the consent of its witnesses.

⁵ ICC-01/05-01/13-1202, para. 13.

⁶ CAR-0090-1779-R01, p. 3.

⁷ Both witnesses D-54 (P-201) and D-15 (P-0198) expressed concerns relating to their security when testifying in the Main Case (ICC-01/05-01/08). See ICC-01/05-01/08-2852-Conf, para.2 and ICC-01/05-01/08-2741, para. 1.

was a voluntary one, and that it was possible for the Prosecution to call him without a prior statement as long as the ‘Prosecution’ was convinced of the relevance of his testimony.⁸

7. These factual findings concerning the conduct of the Prosecution should therefore form the lens through which this application is viewed.

Submissions

The three issues arises from the Decision

Issue 1. Whether the Prosecution can call a witness to testify as a Prosecution witness, in circumstances in which the Prosecution has failed to make good faith efforts to first obtain the witness’s consent

8. In terms of the first issue, at paragraph 11 of the Decision, the Trial Chamber found that “the Prosecution is permitted to call witnesses when it has not obtained their consent to testify or collected any prior statements from them”.

9. In reaching this conclusion, the Trial Chamber cited the Appeals Chamber’s decisions in the *Ruto* case concerning the issue as to whether witness can be compelled to testify,⁹ and the *Banda* case regarding the translation, and format of witness statements.¹⁰

10. The Defence respectfully notes that the Appeals Chamber’s findings concerning the Court’s power to compel witnesses to testify was addressed to the scenario in which witnesses “do not wish to do so voluntarily”.¹¹

⁸ CAR-0090-1779-R01, p. 2.

⁹ ICC-01/09-01/11-1598, cited at para. 9 of the Decision.

¹⁰ CC-02/05-03/09-295, cited at para. 10.

¹¹ ICC-01/09-01/11-1598, para. 114.

11. Although not expressly addressed, the Appeals Chamber appears to have accepted through its references to witnesses, who did not wish to testify voluntarily, that the use of coercive powers should be an *ultimum remedium*, which should only be resorted to where necessary.¹²

12. This would be consistent with the practice of the *ad hoc* Tribunals. For example, in the *Karadzic* case, the Trial Chamber summarised the applicable law as follows:¹³

Even if the Trial Chamber is satisfied that the applicant has met the legitimate purpose requirement, the issuance of a subpoena may be inappropriate if the information sought is obtainable through other means. Finally, the applicant must show that he has made reasonable attempts to obtain the voluntary co-operation of the potential witness and has been unsuccessful. Subpoenas should not be issued lightly as they involve the use of coercive powers and may lead to the imposition of a criminal sanction. A Trial Chamber's discretion to issue subpoenas, therefore, is necessary to ensure that the compulsive mechanism of the subpoena is not abused and/or used as a trial tactic. In essence, a subpoena should be considered a method of last resort.

13. The twin notions of necessity and proportionality, which derive from both international law and human rights law, also require the Prosecution to first exhaust voluntary processes before resorting to coercive mechanisms.¹⁴

14. This Trial Chamber has also ruled that

The parties carry the responsibility of ensuring that the witnesses they intend to call provide, whenever possible, their informed consent to their involvement with the Court.¹⁵

¹² This is consistent with the practice of the *ad hoc* Tribunals (see for example, *Prosecutor v. Karadzic*, 'Public Redacted Version of "Decision On Accused's Motion To Subpoena Witness Kw540" Issued on 3 February 2014, paras. 8-9.

¹³ Public Redacted Version Of "Decision On Accused's Motion To Subpoena Witness Kw540" Issued On 3 February 2014, 4 May 2015, paras. 8-9.

¹⁴ *Prosecutor v. Blaskic*, 'Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997', 29 October 1997, para. 31; N Office of the High Commissioner for Human Rights, "Recommended Principles and Guidelines on Human Rights at International Borders", Doc. A/69/CRP. 1, 23 July 2014, Guideline 9: Human rights-based return or removal, paras. 2 and 17; General Comment No. 27, 1999, CCPR/C/21/Rev.1/Add.9

15. The Prosecution never sought leave to appeal that ruling or reconsideration.

16. The question as to whether the Prosecution should make good faith efforts to obtain the consent of witnesses to testify as Prosecution witnesses is also impacted by the fact that these particular persons are witnesses for the Defence in the Main Case, and are opponents to the current Government in the DRC. In this regard, Pre-Trial Chamber I emphasised that the obligation to secure the witness's consent derives from the duty of the Court to ensure the adequate protection of witnesses.¹⁶

17. The Prosecution's thesis that consent is not necessary seems to derive from the fact that these witnesses testified for the Defence rather than the Prosecution in the Main Case; no further evidence was adduced.

18. As noted in *ad hoc* Tribunal jurisprudence, the degree of caution regarding the use of subpoenas stems *inter alia* from the fact that a subpoenaed witness faces the risk of criminal sanctions,¹⁷ which can be implemented by the State party (i.e the DRC), if they refuse to testify.

19. There is therefore an appearance that these witnesses are being subjected to a coercive mechanism (and possible risks from a hostile State) as a result of their decision to testify for the Defence, rather than the Prosecution in the Main Case.

20. Unless a degree of circumspection is exercised (and good faith efforts are made to obtain the consent of the witnesses), these circumstances could create an

¹⁵ ICC-01/05-01/13-1093-Anx, para. 30.

¹⁶ ICC-01/04-01/07-412, pp. 7-8. See also ICC-01/04-01/06-803-tEN, para. 59.

¹⁷ *Prosecutor v. Karadzic*, 'Public Redacted Version of "Decision On Accused's Motion To Subpoena Witness Kw540" Issued on 3 February 2014, paras. 8-9.

objective appearance that coercive mechanisms were resorted to for strategic purposes,¹⁸ rather than strict necessity.

21. Accordingly, the fact that ICC can, in principle, compel a witness to testify does not in itself, answer the question as to whether the Prosecution can move the Court to exercise such a power in circumstances in which it has not adduced evidence that it made good faith efforts to first obtain the voluntary testimony of the witness.

22. The issue as to whether the Prosecution can call a witness to testify as a Prosecution witness, in circumstances in which the Prosecution has failed to make good faith efforts to first obtain their consent, therefore arises from the decision.

The Second Issue: Whether the Trial Chamber failed to consider/ give sufficient weight to the individual rights of each Defence team under Article 67(1) in finding that the prejudice arising from the lack of a statement was 'minimal', and did, not, therefore bar the calling of the witnesses

23. The Trial Chamber ruled that “even if the Prosecution's conduct with P-198 and P-201 falls short of the Article 54(l)(a) standard, the Chamber considers that the prejudice caused by such a breach would be minimal in the present circumstances.”¹⁹

24. The Trial Chamber's findings concerning the 'minimal' nature of the prejudice was in turn, predicated on the following considerations:

¹⁸ See *Prosecutor v. Halilovic*, 'Decision on the Issuance of Subpoenas', 21 June 2004: “Being a mechanism of judicial compulsion, backed up by the threat and the power of criminal sanctions for non-compliance, the subpoena is a weapon which must be used sparingly. While a Trial Chamber should not hesitate to resort to this instrument where it is necessary to elicit information of importance to the case and to ensure that the defendant has sufficient means to collect information necessary for the presentation of an effective defence, it should guard against the subpoena becoming a mechanism used routinely as a part of trial tactics.”

¹⁹ ICC-01/05-01/13-1202, para. 14.

the Defence has been well aware of these two witnesses' identities, the details of the underlying evidence of the incidents involving them, and their relevance to the charges for some time. Some of the accused are alleged to have personal interactions with these persons as Main Case defence witnesses, and much of the evidence on which the Prosecution intends to rely regarding P-198 and P-201 are allegedly intercepted communications with the accused. The Defence have been given timely access to the testimony of P-198 and P-201 in the Main Case. The Defence is also free to contact P-198 and P-201 in accordance with the Chamber's protocol for contacting opposing party witnesses. In this regard, the Chamber notes the Prosecution's submissions that these witnesses are adverse to it and that the Defence is 'presumptively in a more advantageous position when it comes to their examination in court, or even in securing advance interviews with them

25. Leaving aside the question as to whether the Defence teams are in fact in an 'advantageous' position as concerns potential interviews with these witnesses, or whether these witnesses can – with no evidential substantiation – be considered to be 'adverse' to the Prosecution, the five Defence teams have a right to be informed of the Prosecution evidence against them. This right remains unfulfilled.

26. Article 67(1)(a) sets out the right of the Defence to be informed *promptly* of the nature and details of the charges. The Defence also has the right to adequate time and facilities to prepare its Defence, as *per* Article 67(1)(b).

27. When read together, these rights equate to a right to receive the Prosecution evidence in support of its charges, sufficiently in advance of the trial so that the Defence can obtain instructions, and investigate as necessary.

28. This right is not satisfied by alleged knowledge of the charged incidents by the accused.

29. According to Article 67(1)(a), the accused has the right to be informed promptly of Prosecution evidence against him. This right centres on the right to be

informed, in detail, of the Prosecution's evidence; the accused's own alleged knowledge is irrelevant.

30. The right to receive statements derives from this right.²⁰ By the same token, the Defence cannot be deemed to be informed promptly of the Prosecution's evidence if it only receives information concerning a witness's account, when the witness is on the stand.

31. The Defence also has the right to adequate time and facilities to prepare its case. This right requires that the Defence has adequate time to obtain instructions from the client, and to conduct investigations into the credibility and veracity of the witness in advance of the Defence cross-examination of the witness.

32. Given that the disclosure obligations of the Prosecution are greater than those of the Defence, it would also be unfair to exempt the Prosecution from collecting and disclosing even the minimum amount of information, which is required in connection with Defence witnesses.

²⁰ See *Prosecutor v. Kordic and Cerkez*, Order on Motion to Compel Compliance by the Prosecutor with Rules 66(A) and 68, 26 February 1999: "the obligation to provide witness statements pursuant to Rule 66 (A)(ii) is intended to assist the Defence in its understanding of the case against the accused in accordance with his rights under Article 21 of the Statute of the International Tribunal and should thus be provided to the Defence as far in advance of the trial as is possible". The Defence also respectfully notes that the ICC Appeals Judgment in the *Banda* case explicitly tied the right to receive statements to the right of the Defence to be informed of the nature, cause and content of the Prosecution case and to conduct necessary investigations in advance of the trial; although the Appeals Chamber overturned the Trial Chamber's ruling concerning the particular format of such statements, it can only be read as an endorsement of the right to receive information concerning the prospective testimony of a witness in advance of the trial. ICC-02/05-03/09-295, para. 27: "Rule 76 requires the Prosecutor to disclose, prior to the trial, copies of statements of persons he or she intends to call to testify, irrespective of the form in which such statements are recorded. Disclosure serves to inform the accused person of the prior statements and likely future testimony of the witnesses against him or her, thereby enabling him or her to prepare and to conduct his or her defence". In the *Lubanga* case, Pre-Trial Chamber I also found that the particular investigative duties of the ICC Prosecution (as set out in Article 54(1)) imposed a positive duty on the Prosecution to collect statements, even if such statements were not in the custody or control of the Prosecution: ICC-01/04-01/06-718, p. 4.

33. ICC jurisprudence has uniformly imposed on the Defence the duty to disclose either statements or summaries of its witnesses. If the summaries were deficient in detail, the Chamber in question either ordered the Defence to submit more detailed summaries,²¹ or adjourned the witness's testimony in order to provide the Prosecution with more time to prepare its cross-examination.²²

34. Trial Chamber II noted that even though the Statute and Rules imposed no explicit duty on the Defence to disclose such information, the power to order its production inhered in Regulation 54 of the Regulations of the Court, and the Chamber's duty to ensure that both the Prosecution and any co-accused were in a position to adequately prepare their cross-examination.²³

35. In this regard, in a joint trial, the alleged knowledge of one accused is of no assistance to the other co-accused. The co-accused cannot compel him to enlighten them in relation to particular charged facts and circumstances, nor is that accused under any obligation to substitute for the Prosecutor.

36. The possibility that the Defence teams *could* meet the witnesses is also not a satisfactory alternative to the Defence right to be informed of the potential incriminating information, which the Prosecution might elicit from this witness, in a prompt manner.

37. Apart from confirming the right of the Defence to be informed of the nature, cause and content of the charge, Article 67(1) also sets out, in subsection (g), the right of the defendant:

not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence.

²¹ ICC-01/04-01/07-T-236-ENG, pp. 3-4.

²² ICC-01/04-01/06-T-342-ENG, pp. 60-61.

²³ ICC-01/04-01/07-2388, para. 57.

38. There is no hierarchy in Article 67(1); each of its provisions must therefore be interpreted and applied in a manner which allows the accused to enjoy his panoply of Article 67(1) rights in an effective manner. The Defence should therefore not be compelled to sacrifice the right of silence in order to obtain information concerning the likely evidence underpinning the Prosecution's charges.

39. Yet this is exactly the dilemma that the Defence faces, in the absence of Prosecution witness statements.

40. According to the protocol on contact with witnesses, if the Defence teams were to contact P-198 and 201, they would be required to video-record and disclose any such interviews to the Prosecution.²⁴ This would effectively require the Defence to waive the defendants' right of silence, and act as the conduit for potential incriminating evidence to the Prosecution.²⁵

41. Finally, the fact that the witnesses testified in the Main Case in relation to Main Case charges is also irrelevant to the fulfilment of the defendants' right to be informed of the nature, cause and content of the Article 70 charges. The Prosecution has alleged that these witnesses provided untruthful testimony in the Main Case. If that is correct, either in whole or in part, then their testimony in the Main Case clearly cannot be used as a barometer to ascertain their likely testimony as Prosecution witnesses in the Article 70 case.

²⁴ ICC-01/05-01/13-1093. Although this protocol is without prejudice to the right of the Defence for Mr. Bemba to maintain contact with witnesses in relation to their status as Defence witnesses in the Main Case, the interests of the Defence for Mr. Bemba *vis-à-vis* the Main Case are not necessarily aligned to those of other defendants in the Article 70 case.

²⁵ See ICC-01/05-01/13-907, para. 14.

42. For this reason, Trial Chamber I required the Prosecution to take a new statement from one of its witnesses in the *Lubanga* case after the witness acknowledged on the stand that aspects of his statement were false.²⁶

43. The issue as to whether the Trial Chamber failed to consider/ give sufficient weight to the individual rights of each Defence team under Article 67(1) in finding that the prejudice arising from the lack of a statement was ‘minimal’, and did, not, therefore bar the calling of the witnesses, therefore arises from the Decision.

The third issue: Whether the Trial Chamber failed to give sufficient consideration to the rights of witnesses under Article 55, and Article 68(1) of the Statute and Rule 74 of the Rules of Procedure and Evidence, which militate against compelling witnesses to testify, without being informed of the prospective subject matter of their testimony.

44. The Trial Chamber’s decision does not address the impact of not being questioned prior to testifying on the stand, and not having a statement taken from them, on the particular rights of the witnesses.

45. The process of being called to testify before the ICC can impact on the physical security and psychological well-being of the witnesses. For this reason, and independent of any requests from the parties, the Trial Chamber has the duty under Article 68(1) to take appropriate measures to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”. The Prosecution also has the duty to respect the rights of all witnesses and suspects.²⁷

46. The witnesses will not, however, be in a position to draw the attention of the Chamber or the Prosecution to possible risks associated with their testimony if they are completely in the dark as to the possible lines of questioning that they might face whilst on the stand.

²⁶ ICC-01/04-01/06-T-192-ENG-WT, page 10, line 15 to page 11, line 13.

²⁷ Article 54(1)(b) and (c), and Article 68(1) of the Statute.

47. The witnesses will also not be in the best position to assist the Chamber to ascertain the truth if they are being called, 'cold'. Trial Chamber I has therefore emphasised that:²⁸

allowing a witness to read his past statements will aid the efficient presentation of the evidence and help the Trial Chamber to establish the truth. Witnesses may well have given their original statements a year or more in advance of their in-court testimony. The Trial Chamber is aware that it can be difficult to remember events in their exact detail and the order in which they occurred, particularly when those events were traumatic. Thus, greater efficiency may be achieved by providing past statements to a witness in advance to assist that witness with his recollection. Overall, this process will clarify for the witness events that occurred sometime previously.

48. In relation to the prospective testimony of intermediaries regarding an alleged scheme to fabricate witness testimony, Trial Chamber I also found that:²⁹

It was right, proper and necessary for intermediary 316 to be shown the non-redacted transcripts of the evidence of a certain Defence Witness so that a full and comprehensive statement can be taken from him and so that he, prior to giving evidence, is aware of the issues he should address during his testimony.

49. The Prosecution has indicated that both P-198 and P-201 are considered to be suspects. They therefore have the right to avail themselves of the protections of both Article 55 (including the right to silence, and the right to legal assistance) and Rule 74.

50. The right to be questioned in the presence of counsel (as set out in Article 55(2)(d)) presupposes that Counsel has the ability to follow, intervene, and advise the suspect during the course of the witness's questioning. It is not feasible for Counsel to perform such a role once the suspect/witness has taken the stand.

²⁸ ICC-01/04-01/06-1049, para 50.

²⁹ ICC-01/04-01/06-T-303-Red-ENG, pp. 24-25.

51. It is also not possible to invoke the possibility of obtaining an assurance under Rule 74 if the prospective testimony of the witness (and potential for self-incrimination) is wholly unknown.

52. In light of these issues, Trial Chamber 1 has ruled in the *Lubanga* case that in order to ensure that the right to receive legal advice in relation to the privilege against self-incrimination is effective, the witness's counsel should be provided with copies of the witness's statements in advance of the witness's testimony.³⁰

53. The issue as to whether the Trial Chamber failed to give sufficient consideration to the rights of witnesses under Article 55, and Article 68(1) of the Statute and Rule 74 of the Rules of Procedure and Evidence therefore arises from the Decision.

The issues impact significantly on the fairness and expeditiousness of the proceedings

54. As is apparent from the above analysis, all three issues impact on fundamental rights of the accused, and suspects, including:

- a. The right to be informed of the nature, cause, and content of the charges in a prompt manner (Article 67(1)(a);
- b. The right to adequate time and facilities to prepare the Defence (in advance of the trial) (Article 67(1)(b));
- c. The right to present evidence in relation to these witnesses when they testify (Article 67(1)(e));

³⁰ "In order for a lawyer appointed by the Registry to advise those witnesses who do not have dual status, he or she will need to have been provided with the relevant witness statements and interviews of the witnesses to whom this ruling applies. If there are any difficulties that are apprehended in relation to the Prosecution providing that lawyer with this material, the concerns are to be brought to our attention at the earliest opportunity"; ICC-01/04-01/06-T-110-Red-ENG, p. 5, <http://www.icc-cpi.int/iccdocs/doc/doc976333.pdf>

- d. The right to examine witnesses, and to obtain their attendance under the same conditions as Prosecution witnesses (Article 67(1)(e)); and
- e. The right not to be compelled to testify or to confess guilt, and to remain silent (Article 67(1)(g)).

55. The circumstances under which a party can resort to coercive powers also impact on the scope of testimony which can and should be elicited in this case. If an appellate resolution of the legality of the Prosecution's approach were to be deferred until the trial stage, this could lead to the testimony of these witnesses "being stricken from the trial record. The potential consequences flowing therefrom would significantly affect the outcome of the trial, and in turn would have a bearing on the expeditiousness."³¹

56. The absence of any concrete indicia concerning the prospective testimony of the witness undermines the right of the Defence to be informed promptly of Prosecution evidence, retards Defence preparation in advance of the trial, and will necessitate multiple adjournments during trial in order to enable the Defence to obtain instructions from the clients, or to investigate issues arising for the first time during the trial process. All three consequences impact significantly on the overall expeditiousness of the proceedings.

The three issues would affect the outcome of the trial

57. The two witnesses have been described as 'material' witnesses. Their testimony will thus affect the outcome of the trial.³²

An immediate decision of the Appeals Chamber in relation to these issues would materially advance the proceedings

³¹ ICC-01/09-01/11-1313, para. 52.

³² ICC-01/09-01/11-1313, para. 52.

58. The Decision raises significant issues of law, which will have a profound influence on Defence preparation, the effective exercise of Defence rights, and the rights and entitlements of witnesses, who are also suspects.

59. An immediate decision of the Appeals Chamber would rid the “judicial process of possible mistakes that might taint either the fairness of the proceedings or the outcome of the trial”.³³

60. Critically, an immediate decision of the Appeals Chamber would avoid the situation whereby,³⁴

the parties, during further trial proceedings, as well as the preparation of closing briefs and arguments, would not know whether the viva voce evidence adduced from the [...] witnesses can be relied on or, alternatively, would be in need of substitution or introduction in a different manner, or would need to be challenged.

Relief Sought

61. For the reasons set out above, the Defence for Mssrs. Arido, Balala, Bemba, and Kilolo request the Trial Chamber to grant leave to appeal the ‘Decision on Joint Request to Strike Prosecution Witnesses P-198 and P-201 from the Witness List’, in relation to the three issues identified in this Request.

³³ ICC-01/04-168, para. 14.

³⁴ ICC-01/09-01/11-1313, para. 49.



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Dated this 7th day of September, 2015

The Hague, The Netherlands