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

Date: 28/09/2015

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 Response to Prosecution Request ICC-01/05-01/13-1303

Source: Counsel for Jean-Pierre Bemba Gombo

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

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Introduction

1. On Friday 25 September 2015, the Prosecution applied to the Single Judge to vary the classification of confidential materials in order to facilitate the ability of the Prosecution to cite such materials in its opening statement (the Request).¹
2. The specific content of this Request has been filed on an *ex parte* basis in order to preserve the confidentiality of the Prosecution's opening statement.
3. It would, however, appear that the Prosecution intends to utilise extracts from intercepted communications.²
4. As a result, the Defence is not in a position to advance specific observations on the Request. The Defence nonetheless notes that many of the fourteen witnesses in the Article 70 case are subject to continuing protective measures in the Main Case. These protective measures concern not only their identity, but also identifying information concerning the nature of their testimony, the witnesses' positions, the names of officers mentioned in their testimony and their movements in 2002 and 2003.³

¹ ICC-01/05-01/13-1303

² Request, para. 5.

³ Original Defence Filing for Protective measures of witnesses, ICC-01/05-01/08-2244-Conf. Decision on Protective measures from the Chamber: D-13, ICC-01/05-01/08-2873-Conf; D-54, ICC-01/05-01/08-2852-Conf; D-29, ICC-01/05-01/08-2770-Conf; D-23, ICC-01/05-01/08-2746-Conf; D-25, ICC-01/05-01/08-2746-Conf; D-26, ICC-01/05-01/08-2746-Conf; D-15, ICC-01/05-01/08-2741-Conf; D-6, ICC-01/05-01/08-2701-Conf; D-3, ICC-01/05-01/08-2694-Conf; D-4, ICC-01/05-01/08-2694-Conf; D-2, ICC-01/05-01/08-2663-Conf; D-55, T-264-Conf-ENG-ET, p.2., line 16 - p.5, line 10; D-57, T-256-Conf-ENG-ET, p.2, line 9 - p.4, line 24; D-64, T-259-Conf-ENG-ET, p.2, line 1 - p.4, line 17.

5. The testimony of D-54 was entirely in closed session,⁴ and any information which touches on the content of his testimony could violate the Main Case protective measures.
6. The use of voice distortion would not be an adequate protective measure, as concerns materials which include information which could potentially identify the witness, or information which was addressed in closed session.
7. The Defence therefore respectfully requests the Single Judge to deny the reclassification of any materials, which could undermine continuing protective measures in the Main Case.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 28th day of September, 2015

The Hague, The Netherlands

⁴ ICC-01/05-01/08-2852-Conf, paras.15-17.