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

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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 with Confidential Annex A

Public Redacted Version of Response to Fifth Bar Table Motion

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

1. The Prosecution's Fifth Bar Table Motion fails to substantiate the criteria for the admissibility of its contents.
2. Relevance is not clearly explained, is presumed, or is predicated on false syllogisms. The flaws evident in past bar table motions authenticity, and probative value remain present, and are determinative.
3. Many of the items had a clear nexus to witnesses who were called by the Prosecution. The fact that the Prosecution *could* have put the contents to witnesses, but failed to do so, warrants their exclusion.
4. As regards information extracted from [REDACTED], these documents are a compilation of publicly available information extracted by the Prosecution staff members.¹ After being heavily processed, the nature of the documents is no longer "Open Source" as indicated in the Source Identity field. Since the authors of the documents did not testify, the Defence are deprived of the opportunity to test the reliability of the documents.
5. Second, the photos referred to in the spreadsheets do not bear an ERN number. It is therefore impossible to ascertain the photo that the metadata correspond to. Third, many URL addresses given in the spreadsheets are broken links,² while the rest do not link to the same page as any of the screenshots.³ They are of no probative value to the authenticity or reliability of the photo or screenshots.
6. Finally, the Prosecution has included five items which were not included on its list of evidence.⁴ The Prosecution has filed no application to amend its list to include them. Of greater concern, the Prosecution appears to have advance incorrect submissions on this point.⁵

¹ According to the document property of CAR-OTP-0088-0137, CAR-OTP-0088-0144, CAR-OTP-0088-0146 and CAR-OTP-0088-0150, the documents are authored by [REDACTED] and were last saved by [REDACTED]. Both are Prosecution investigators.

² CAR-OTP-0088-0137, rows 2-3; CAR-OTP-0088-0150, rows 2-3.

³ CAR-OTP-0088-0137, rows 4-6; CAR-OTP-0088-0144, row 2; CAR-OTP-0088-0146, rows 2-4.

⁴ ICC-01/05-01/13-1047-Conf-Anx8-Red (item #79); ICC-01/05-01/13-1047-Conf-Anx9 (item #80); ICC-01/05-01/13-1047-Conf-Anx13-Red (item #81); ICC-01/05-01/13-1047-Conf-Anx19 (item #82); CAR-OTP-0087-2679 (item #105.2). C.f. ICC-01/05-01/13-1196-Conf-AnxA.

⁵ ICC-01/05-01/13-1506-Conf, para. 5.

7. The observations of the Defence as concerns individual items are set out in Annex A.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a series of loops and a long horizontal stroke.

Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this ninth day of December 2015

The Hague, The Netherlands