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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*

Public

**Public Redacted Version of Defence Response to Prosecution's Motion to Exclude
the Evidence of Witnesses D20-0002 and D21-0009, or, in the alternative, to Restrict
the Scope of Witness D-20-0002's Evidence (ICC-01/05-01/13-1633)**

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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1. The Prosecution's request to strike, or in the alternative, limit the testimony of D20-0002 (the Request)¹ is misconceived, and has no legal or factual basis.

2. [REDACTED].

3. D20-0002 is not providing abstract expert opinion concerning the role of the [REDACTED];² D20-0002 was the [REDACTED], and it was in that capacity that he was involved in this proceedings, which are the subject of his testimony.

4. The Defence requested D20-0002 to respond to a series of questions which concerned:

i. [REDACTED]; and

ii. [REDACTED].

5. It was not possible to question D20-0002 in a meaningful manner in respect of the second subset of questions, without first establishing the standard procedures, with which this particular case either complied, or from which it deviated.³

6. [REDACTED].⁴

7. D20-0002's proposed testimony is fully set out in the disclosed responses dated 2 February 2016, and 11 February 2016, and contrary to the submission of the Prosecution, [REDACTED].⁵

¹ ICC-01/05-01/13-1633.

² Cf Request, para. 3: "Only an expert, due to their specialised knowledge, skill, or training, is afforded the latitude to offer opinions within their expertise not based upon first-hand knowledge or experience."

³ See for example, D20-0002's response to Question 1, Letter of 2 February 2006, CAR-D20-0006-1316, at 1318.

⁴ CAR-D20-0006-1316 at 1319, 1320.

8. The information elicited from D20-0002 also mirrors the pattern of testimony elicited from Mr. Smetana, who was not called as an expert witness. In particular, in light of Mr. Smetana's role as Director of Global Investigations at Western Union, the Prosecution questioned him in relation to the standard procedures employed at Western Union offices, and how Western Union would respond, in general, to law enforcement requests.⁶

9. Other tribunals have accepted the propriety of questioning a fact-witness (who was involved in the facts in a specialist capacity), in relation to general procedures and protocols which might have regulated their personal involvement in the subject matter of their testimony.⁷

10. [REDACTED].

11. This response has been filed on confidential basis due to the fact that it refers to the position of the witness, and contents of his letters. A public redacted version will be filed forthwith.

Relief sought

⁵ Letter of 2 February 2016, Response to Question 10, p. 7 –CAR-D20-0006-1316 at 1322.

⁶ ICC-01/05-01/13-T-33-ENG ET, p. 20, ln. 12 to p. 22, ln. 9.

⁷ For example, in the Krajisnik case, the former Counsel for Mr. Krajisnik was questioned both in relation to his direct involvement in the case, and his experience in other cases, which could provide a yardstick for measuring certain aspects of the Krajisnik case. See Transcript of 11 November 2008, IT-00-39-A, pp 661-662: <http://www.icty.org/x/cases/krajisnik/trans/en/081111ED.htm>

See also the testimony of the legal advisor to Bosnia and Herzegovina, *Prosecutor v. Brdjanin and Talic*, Transcript of 28 February 2002, page 2456, in which the Trial Chamber explicitly considered whether the legal advisor was testifying as an expert witness, or as a witness of fact as concerns his understanding of the operation of legal decisions: <http://www.icty.org/x/cases/brdanin/trans/en/020228IT.htm>

In the *Prosecutor v. Stakic*, the Trial Chamber also permitted a politician, who was a fact witnesses, to comment on documents based on the witness's personal knowledge of events in the region: Defence Motion to Exclude Evidence, 10 July 2002, http://www.icty.org/x/cases/milan_kovacevic/tdec/en/16163851.htm

12. For the reasons set out above, the Defence for Mr. Bemba request the Honourable Trial Chamber to reject the Request.



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Counsel of Mr. Jean-Pierre Bemba

Dated this 22nd day of February 2016

The Hague, The Netherlands