

**Cour
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**International
Criminal
Court**

Original: **English**

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

Date: **13 April 2016**

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Public Redacted Document
with
Confidential Annex A**

**Public redacted version of "Prosecution's Sixth Request for the Admission of
Evidence from the Bar Table", 8 April 2016, ICC-01/05-01/13-1784-Conf**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”) to admit 25 items¹ of evidence from the bar table, pursuant to articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”) and rule 63(3) of the Rules of Procedure and Evidence (“Rules”).
2. The proposed evidence comprises the following categories: Category I – Annexes to Independent Counsel reports; Category II – Witnesses statements and related documents; and Category III – Other documents.
3. The evidence is *prima facie* relevant and probative of material issues at trial. It constitutes direct evidence of the conduct charged and/or corroborates other such evidence in the case. Some of the proposed materials were provided by the Registry, the Independent Counsel on the Court’s instruction, or by the Defence.
4. Admitting the proposed materials from the bar table would complete, contextualise and ensure the fair assessment of the evidence adduced at trial, and thus would assist the Chamber in its search for the truth.
5. Annex A provides the following information with respect to each item tendered: (i) evidence registration number (“ERN”); (ii) type; (iii) source identity; (iv) date; (v) title; (vi) basis of relevance; and (vii) date of disclosure.
6. Further, pending the Chamber’s disposition of the Disclosure Request,² the Prosecution reserves the right to seek the admission of audio recordings and transcripts of D21-0003’s 2012 interview with the Defence in the Main Case (“D21-0003 Materials”), should the Chamber order their production.

¹ This number does not include D21-0003’s audio recordings and transcripts mentioned in section B below because they are not yet in the Prosecution’s possession, pending the Chamber’s decision on the “Prosecution’s Motion for an Order of Disclosure or, in the Alternative, Partial Exclusion of D21-0003’s Evidence” (“Disclosure Request”), see ICC-01/05-01/13-1738.

² ICC-01/05-01/13-1738.

II. Confidentiality

7. The Motion is classified as “Confidential” as it refers to filings and materials of the same designation. A “Public Redacted” version will be filed shortly.

III. Applicable Law

8. The Prosecution incorporates by reference the discussion of the law applicable to the admission of evidence from the bar table set out at paragraphs 6 through 9 of the Prosecution’s First Bar Table Motion.³

IV. Submissions

A. Request for Admission of Evidence

9. The 25 items for which the Prosecution seeks admission fall within the following three categories: Category I – Annexes to Independent Counsel reports; Category II - Witnesses statements and related documents; and Category III – Other documents. As noted, Annex A describes the relevance of each item of evidence in detail. The admissibility criteria for each document are met, and the Chamber’s admission of the proposed evidence will assist in adjudicating the issues and understanding other complex evidence in the case.

a) Category I: Annexes to Independent Counsel reports

10. The Prosecution seeks the admission of three annexes to the Independent Counsel reports. These comprise filings ICC-01/05-01/13-982-Conf-Anx4-Red2, ICC-01/05-01/13-845-Conf-AnxA1-Red2 and ICC-01/05-01/13-845-Conf-AnxD-Red,⁴ which

³ ICC-01/05-01/13-1013-Conf (“First Bar Table Motion”).

⁴ These documents are registered under CAR-OTP-0094-0444, CAR-OTP-0094-0392, and CAR-OTP-0093-0634 respectively.

the Registry only recently notified to the Prosecution.⁵ The first two annexes were notified on 16 March 2016, and are the lesser redacted versions of annexes⁶ already deemed formally submitted by the Chamber.⁷ For the same reasons advanced in the Prosecution's First and Fifth Bar Table Motions underpinning the reliability, authenticity and probative value of the documents obtained from the Independent Counsel,⁸ the Prosecution requests the admission of these two lesser redacted documents.

11. The third annex, Annex ICC-01/05-01/13-845-Conf-AnxD-Red, is a new document only released to the Prosecution on 10 March 2016. It contains the Contact List found on Kilolo's seized SIM card, attributing phone numbers to several witnesses comprising the charged incidents as confirmed, including D-0015, D-0004, D-0054, D-0013, D-0057, D-0026, D-0025, D-0003, D-0002, and D-0064.⁹ This Annex also shows that Kilolo maintained "special" numbers for witnesses. For instance, two phone entries for D-0054 are respectively designated "[REDACTED] cpi", and "[REDACTED] special".¹⁰ Similarly, Kilolo designated "special" numbers for D-0015 - (i.e. "[REDACTED] special"),¹¹ D-0026 - (i.e. "[REDACTED] special"),¹² and D-0002 - (i.e. "[REDACTED] special").¹³

⁵ At the Prosecution's request (see ICC-01/05-01/13-1537-Conf), the Chamber authorised the lifting of redactions to Annex 1 to the March 2015 Report (ICC-01/05-01/13-845-Conf-AnxA1-Red) and Annex 4 to the June 2015 Report (ICC-01/05-01/13-982-Conf-Anx4-Red) and the disclosure of the Contact List of Kilolo's SIM Card (ICC-01/05-01/13-845-Conf-Exp-AnxD) and the Telephone Number corresponding to this SIM Card. (See ICC-01/05-01/13-1651). In accordance with the Chamber's instructions, the Registry transmitted to the Prosecution ICC-01/05-01/13-845-Conf-AnxD-Red on 10 March 2016 and ICC-01/05-01/13-845-Conf-AnxA1-Red2; and ICC-01/05-01/13-982-Conf-Anx4-Red2 on 16 March 2016.

⁶ [REDACTED].

⁷ Annexes ICC-01/05-01/13-845-Conf-AnxA1-Red (CAR-OTP-0088-0320) and ICC-01/05-01/13-982-Conf-Anx4-Red (CAR-OTP-0090-1807) were considered formally submitted pursuant to decision ICC-01/05-01/13-1524.

⁸ ICC-01/05-01/13-1013-Conf, paras. 11-29, ICC-01/05-01/13-1498-Conf, paras. 21-22 and ICC-01/05-01/13-1498-Conf-AnxA, p. 47, entry 74 and p. 48, entry 77.

⁹ CAR-OTP-0093-0634 compared with CAR-OTP-0090-0831.

¹⁰ CAR-OTP-0093-0634, at 0636, rows 16 and 21.

¹¹ CAR-OTP-0093-0634, at 0636, row 25.

¹² CAR-OTP-0093-0634, at 0638, row 52.

¹³ CAR-OTP-0093-0634, at 0639, rows 63.

12. This material corroborates other evidence on the Accused's alleged *modus operandi* of using special phones/numbers to illicitly contact Defence witnesses after the Victims and Witnesses Unit ("VWU") cut-off date and during their testimony.¹⁴ Indeed, call data records ("CDRs") confirm that Kilolo used D-0015's "special" number ([REDACTED]) to illicitly coach him after the VWU cut-off date and during his testimony.¹⁵ Kilolo also exclusively used D-0026's "special" number ([REDACTED])¹⁶ and D-0054's "special" number ([REDACTED])¹⁷ to illicitly coach them after their VWU cut-off dates and during their testimonies.

13. The Prosecution incorporates by reference the arguments made in its First Bar Table Motion,¹⁸ in respect of the reasons why the records obtained from the Independent Counsel are reliable and authentic, and why their probative value outweighs any undue prejudice. These documents were not presented during the Prosecution's case because they were only made available to the Prosecution on 10 and 16 March 2016, after the close of its case-in-chief on 27 November 2015.¹⁹ Noting that the Independent Counsel has not concluded his mandate, the Prosecution requests that it be given an opportunity to assess, and seek the admission of, any new evidence identified by the Independent Counsel after its release to the Parties.

¹⁴ See e.g. the Prosecution Pre-Trial Brief ("PTB"), ICC-01/05-01/13-1110-Conf, paras. 50-52.

¹⁵ See CAR-OTP-0090-0630 at 0677-0682. Note that during D-0015's testimony Kilolo only used this special number to contact him. See CAR-OTP-0090-0630 at 0681-0682. See also PTB, paras. 67, 69-74, 77, 78.

¹⁶ See CAR-OTP-0090-0630, at 0705-0706. See also PTB, paras. 109-116.

¹⁷ See CAR-OTP-0090-0630, at 0715-0716. See also PTB, paras. 93-106.

¹⁸ ICC-01/05-01/13-1013-Conf, paras. 11-29.

¹⁹ ICC-01/05-01/13-1499.

b) Category II – Witness statements and related documents

14. This Category comprises (1) P-0805's and P-0785's statements to the Prosecution and two letters from the Central African Republic's ("CAR") authorities²⁰ relevant to the Arido Defence's theory concerning the military status of [REDACTED] (D-0006 in the Main Case), [REDACTED] (D-0004 in the Main Case), and [REDACTED] (D-0008 in the Main Case); as well as (2) statements of Kilolo's character Witnesses D21-0004, D21-0005, and D21-0006 to the Prosecution.²¹

b.1.) Statements and related documents pertaining to the military status of D-0004, D-0006, and D-0008

15. The Prosecution conducted limited investigations further to the allegations advanced by the Arido Defence concerning the military status of D-0004, D-0006, and D-0008 who were originally scheduled to testify at trial ("Arido Witnesses").²² As a result, the Prosecution obtained P-0805's and P-0785's statements,²³ and two letters from the CAR authorities related to background checks of the Arido Witnesses²⁴ ("Military-Status Documents"). As set out below, the Military-Status Documents rebut the Arido Defence's assertions, and particularly its efforts to undermine the credibility of Prosecution Witnesses P-0245 and P-0260.

²⁰ These materials comprise P-0805's statement CAR-OTP-0093-0064 and its annex CAR-OTP-0093-0071; P-0785's statement CAR-OTP-0093-0092 and its annexes CAR-OTP-0093-0101, CAR-OTP-0093-0104, and CAR-OTP-0093-0106; the [REDACTED] letter, comprising a background check on D-0004, D-0006 and D-0008, CAR-OTP-0093-0152; and a letter from [REDACTED] confirming that D-0004's, D-0006's and D-0008's names are not mentioned in the CAR's Ministry of Budget and Finances payroll, CAR-OTP-0093-0197.

²¹ These materials comprise D21-0006's response to the Prosecution's questionnaire and related correspondence (CAR-OTP-0093-0447, CAR-OTP-0093-0448, CAR-OTP-0093-0449, CAR-OTP-0093-0460); D21-0005's declaration in response to the Prosecution's questionnaire and related correspondence (CAR-OTP-0093-0468, CAR-OTP-0093-0469); D21-0004's response to the Prosecution's questionnaire and related correspondence (CAR-OTP-0094-0002, CAR-OTP-0094-0003).

²² See ICC-01/05-01/13-1624-Conf-AnxA; CAR-D24-0004-0092 at 0093, 0096, 0097. The Arido Defence intended to call D-0004, D-0006 and D-0008 who were assigned witness codes in this case as [REDACTED].

²³ P-0805's statement CAR-OTP-0093-0064 and its annex CAR-OTP-0093-0071; P-0785's statement CAR-OTP-0093-0092 and its annexes CAR-OTP-0093-0101, CAR-OTP-0093-0104, and CAR-OTP-0093-0106.

²⁴ CAR-OTP-0093-0152 and CAR-OTP-0093-0197.

(i) *The Military-Status Documents are prima facie relevant to the issues at trial*

16. The Military-Status Documents are *prima facie* relevant and probative of the charges and do not concern the acts and conduct of the Accused.

- P-0805 was [REDACTED].²⁵ He was also [REDACTED].²⁶ P-0805 confirms that the Arido Witnesses were not among Bombayake's chauffeurs or *aides-de-camp*.²⁷ In support of his statement, P-0805 [REDACTED], which does not include any of the Arido Witnesses.²⁸
- P-0785's statement corroborates the same evidence provided by P-0805. He was [REDACTED] and confirms that none of the Arido Witnesses was ever a part of Bombayake's entourage.²⁹
- The two letters of the CAR authorities – from [REDACTED] - comprise a background check on the Arido Witnesses. Both confirm that they were never soldiers in the CAR army.³⁰

17. The Military-Status Documents respond to the Arido Defence's contention that D-0004 and D-0006 testified truthfully in the Main Case as to their military backgrounds.³¹ In support of its theory, the Arido Defence asserts that D-0004 [REDACTED], D-0006 [REDACTED] and D-0008 [REDACTED].³² In essence, the Arido Defence asserts that these individuals were soldiers who took part in the 2002/2003

²⁵ CAR-OTP-0093-0064, at 0067, paras. 11-12.

²⁶ CAR-OTP-0093-0064, at 0068, paras. 14-16, and CAR-OTP-0093-0071, at 0072.

²⁷ CAR-OTP-0093-0064, at 0068-0069, paras. 16-19.

²⁸ CAR-OTP-0093-0071.

²⁹ CAR-OTP-0093-0092, at 0097, paras. 22-25, and CAR-OTP-0093-0101, CAR-OTP-0093-0104, and CAR-OTP-0093-0106.

³⁰ CAR-OTP-0093-0152, at 0153, 0154 and 0155 and CAR-OTP-0093-0197 at 0197.

³¹ See ICC-01/05-01/13-T-39-CONF-ENG ET, p. 33, lns. 14-22.

³² CAR-D24-0004-0092 at 0093, 0096, 0097.

conflict,³³ challenging Prosecution Witnesses P-0245's and P-0260's testimonies [REDACTED] in Bemba's favour in the Main Case.³⁴

(ii) *The Military-Status Documents are prima facie reliable and authentic*

18. The Military-Status Documents bear sufficient indicia of reliability and authenticity. P-0805 and P-0785 provided their statements to the Prosecution voluntarily; the statements were taken in the language(s) the Witnesses fully spoke and understood, and in the knowledge that they would be used in judicial proceedings before the Court.³⁵ Each statement includes the date, location, and participants (witness and investigators) of the interviews. The participants' signatures further appear on each page of the statements.³⁶ The CAR authorities' letters are signed and stamped by the competent authorities and were obtained in accordance with the CAR domestic laws pursuant to a Request for Assistance ("RFA") from the Court.³⁷

(iii) *Probative value outweighs any undue prejudice and serves the interests of justice*

19. The admission of the Military-Status Documents would not prejudice the Defence. The following factors establish that the probative value of the Military-Status Documents outweighs any prejudicial effect, and therefore their admission would serve the interests of justice, in that they: (i) are relevant to the confirmed charges; (ii) bear sufficient indicia of reliability for what they purport to show; (iii) respond to an issue brought by the Arido Defence and known to all Defence teams³⁸;

³³ See ICC-01/05-01/13-T-39-CONF-ENG ET, p. 33, lns. 14-22.

³⁴ See P-0245's testimony: ICC-01/05-01/13-T-22-CONF-ENG ET, p. 37, ln. 9- p. 39, lns. 12-25, p. 55, lns. 12-18; P-0260's testimony: ICC-01/05-01/13-T-18-CONF-ENG ET, p. 67, ln. 10 – p.76, ln. 20.

³⁵ CAR-D24-0004-0092 at 0100 and CAR-OTP-0093-0064 at 0070.

³⁶ CAR-D24-0004-0092 and CAR-OTP-0093-0064.

³⁷ CAR-OTP-0093-0209.

³⁸ See ICC-01/05-01/13-T-39-CONF-ENG ET, p. 33, lns. 14-22; CAR-D24-0004-0092 at 0093, 0096, 0097.

and (iv) are internally consistent, and independently corroborated by other evidence in the case – for instance, Arido [REDACTED].³⁹ P-0245 [REDACTED].⁴⁰

20. Should the Chamber require P-0805's and P-0785's statements to be tendered under rule 68(2)(b) of the Rules, the Prosecution for the purpose of judicial economy and efficiency, requests that they be recognised as formally submitted now, subject to their certification, and their admissibility be subsequently assessed pursuant to the Chamber's stated position.⁴¹

(iv) Justification for not presenting the materials during the Prosecution's case

21. In October 2012, the Prosecution sought access to records in the CAR military archives relative to the military status of Defence witnesses claiming to have been FACA soldiers.⁴² However, the Prosecution's access to the CAR was limited due to the armed conflict that broke out towards the end of 2012 and the ensuing instability. Consequently, it was not able to gain access to the records.

22. Further, D-0004 and D-0006 refused the Prosecution's previous efforts to interview them.⁴³ When the Arido Defence gave notice that it intended to call D-0004, D-0006 and D-0008 asserting that [REDACTED],⁴⁴ the Prosecution renewed its efforts to contact them. [REDACTED].⁴⁵ However, he [REDACTED].⁴⁶

23. Given D-0004's and D-0006's lack of cooperation, and the relatively improved situation in the CAR, the Prosecution redirected its investigations to locate other

³⁹ CAR-OTP-0074-1065 at 1066-1069.

⁴⁰ P-0245 testified that "[REDACTED]." See ICC-01/05-01/13-T-26-CONF-ENG ET, p. 40, lns. 1-5.

⁴¹ The Chamber has concluded that: "as a general rule, these proceedings will be conducted more efficiently if the Chamber defers its assessment of the admissibility of evidence until deliberating its judgment pursuant to Article 74(2) of the Statute." ICC-01/05-01/13-1285, para. 9.

⁴² Forces Armées Centrafricaines ("FACA").

⁴³ [REDACTED].

⁴⁴ On 11 December 2015 the Arido Defence provided a provisional list of witnesses. On 21 January 2016, the Arido Defence disclosed the summaries of its witnesses' expected testimony, see CAR-D24-0004-0092, which it filed into the record of the case on 25 January 2016, see ICC-01/05-01/13-1573-Conf-AnxB.

⁴⁵ [REDACTED].

⁴⁶ CAR-OTP-0093-0628 at 0629, lns. 18-21.

potential sources of information on the Arido Witnesses' military status. Thus, it was only recently that the Prosecution was able to identify P-0785 and P-0805. Their interviews were conducted on [REDACTED] and [REDACTED], respectively.

b.2.) Statements of Kilolo's Character Witnesses D21-0004, D21-0005 and D21-0006 to the Prosecution

24. The Kilolo Defence tendered for admission the statements of five character Witnesses (D21-0004, D21-0005, D21-0006, D21-0007, and D21-0008) on 8 April 2016.⁴⁷ Accordingly, the Prosecution seeks to tender the Witness' responses to questionnaires provided by D21-0004 and D21-0006 ("Questionnaires") and a Declaration of D21-0005 ("Declaration") which the Witnesses provided at the Prosecution's request, pursuant to the Chamber's Contact Protocol.⁴⁸

(i) *The Questionnaires and the Declaration are prima facie relevant to the issues at trial*

25. The Questionnaires bear directly on the credibility of the witnesses' Defence statements and do not concern the acts and conduct of the Accused.⁴⁹ The weight of D21-0004's and D21-0006's statements to the Defence should be assessed in light of what they stated in their respective Questionnaires. Their confirmation, [REDACTED],⁵⁰ that a lawyer [REDACTED] who presents false testimony before a court, bribes or illicitly coaches witnesses and/or provides non-monetary promises to witnesses to influence their testimony or evidence breaches his legal, professional, and ethical obligations,⁵¹ is clearly relevant to Kilolo's character and professional

⁴⁷ ICC-01/05-01/13-1780-Conf.

⁴⁸ ICC-01/05-01/13-1093-Anx.

⁴⁹ The Chamber had found that: "evidence of Mr Kilolo's good character does not constitute the 'acts and conduct of the accused' for purposes of the procedural bar set by Rule 68(2)(b) of the Rules." ICC-01/05-01/13-1600, para. 16.

⁵⁰ D21-0004 is [REDACTED]. See CAR-OTP-0094-0003 at 0004, 0009 and ICC-01/05-01/13-1562-Conf-AnxB, pp. 5-6. He also holds the position [REDACTED]. See CAR-OTP-0094-0003 at 0005. D21-0006 is similarly [REDACTED]. See CAR-OTP-0093-0449 at 0454, 0455 and ICC-01/05-01/13-1562-Conf-AnxB, pp. 6-7.

⁵¹ For D21-0006, see: CAR-OTP-0093-0449 at 0452. For D21-0004, see: CAR-OTP-0094-0003, at 0005-0006.

standing, as represented by the Witnesses. Moreover, to the extent that these Witnesses [REDACTED] Kilolo has been trained and/or practised law prior to leading the Bemba Defence, their evidence is plainly relevant to the question of Kilolo's intent, as it further demonstrates his knowledge of the impropriety of his conduct.

26. The same holds true for D21-0005's Declaration stating, *inter alia*, that he had no knowledge of this case or the charges against the Accused.⁵² Clearly, this lack of knowledge is relevant to the weight, if any, of this Witness' statement to the Kilolo Defence regarding Kilolo's purported good character.

(ii) *The Questionnaires and the Declaration are prima facie reliable and authentic*

27. The Questionnaires and the Declaration bear sufficient indicia of reliability and authenticity. The Prosecution obtained them from the witnesses voluntarily in accordance with the Chamber's Contact Protocol,⁵³ in the language they fully speak and understand, and in the knowledge that they would be used as evidence in this case. Further, these materials are dated and signed by the respective witnesses.

(iii) *Probative value outweighs any undue prejudice and serves the interests of justice*

28. The admission of the Questionnaires and the Declaration would not prejudice the Defence. The following factors establish that the probative value of these materials outweighs any prejudicial effect and therefore serve the interests of justice: (i) they bear directly on the credibility of the witnesses statements to the Defence; (ii) they bear sufficient indicia of reliability for what they purport to show; (iii) admitting them comports with the principle of equity of justice – ensuring that the parties have equal opportunities to present evidence, and to challenge the opposing parties' evidence; (iv) admitting them is in the interests of justice because they would assist the Chamber in its search for the truth and the fair assessment of the Defence

⁵² CAR-OTP-0093-0469, at 0470.

⁵³ ICC-01/05-01/13-1093-Anx.

evidence obtained from the same witnesses; and (v) this is consistent with the Chamber's ruling that the Kilolo Defence's introduction of the character witnesses' statements would be "without prejudice to considering submission of any further evidence from the other parties in response to these matters."⁵⁴ Otherwise, the Prosecution would be unfairly precluded from challenging these witnesses evidence, which it would have done had they given *viva voce* testimony.

29. Accordingly, the Questionnaires and the Declaration should be admitted as relevant evidence pursuant to article 69(3) and (4) of the Statute. In this respect, the Prosecution does not seek their admission for the truth of their contents – and thus, they should not be considered testimonial evidence falling within the ambit of rule 68(2)(b) of the Rules⁵⁵ – but rather as evidence necessary for the fair assessment of the statements of the same witnesses to the Defence pursuant to article 69(3) and (4) of the Statute.

30. Should the Chamber, nevertheless, consider the Questionnaires and the Declaration to be testimonial and should therefore, meet the conditions of rule 68(2)(b) of the Rules, the Prosecution requests that D21-0004's Questionnaire – for which a certification is submitted⁵⁶ – be admitted. As to D21-0006's Questionnaire and D21-0005's Declaration, the Prosecution requests that they be deemed formally submitted now subject to provision of the required certification, and their admissibility be subsequently assessed pursuant to the Chamber's stated position.⁵⁷

⁵⁴ ICC-01/05-01/13-1600, para. 16.

⁵⁵ This is consistent with the Chamber's ruling that: "Rule 68 of the Rules is only applicable in cases where the tendering party wishes to adduce the prior recorded testimony for the truth of its contents. The determining factor is the intention of the tendering party. If a party wishes to introduce the testimony only with the aim of proving that the witness stated something – irrespective of if it is true or not – or in order to prove inconsistencies in the witness's statements, it is not necessary to introduce the statements pursuant to Rule 68 of the Rules." (footnotes omitted) See ICC-01/05-01/13-1478-Conf, para. 34.

⁵⁶ CAR-OTP-0094-0003 at 0013.

⁵⁷ The Chamber has concluded that: "as a general rule, these proceedings will be conducted more efficiently if the Chamber defers its assessment of the admissibility of evidence until deliberating its judgment pursuant to Article 74(2) of the Statute." ICC-01/05-01/13-1285, para. 9.

(iv) *Justification for not presenting the materials during the Prosecution's case*

31. The Defence identified these individuals as potential witnesses⁵⁸ after the close of the Prosecution's case-in-chief. Following the Chamber's 4 February 2016 decision permitting the Kilolo Defence to tender the character witnesses' statements in lieu of their *viva voce* testimonies,⁵⁹ the Prosecution prepared these questionnaires to assist the Chamber in its assessment of the credibility and the weight of these witnesses' statements to the Defence.

c) Category III – Other Documents

32. The Prosecution also tenders the six documents listed below. Their relevance is set out in detail in Annex A.

- Floorplan of Courtroom I at the former premises of the Court – CAR-OTP-0094-0474 and a related document.⁶⁰

33. This floorplan is provided by the Court's Facilities Management Unit ("FMU"), and shows the measurements of Courtroom I at the former premises of the Court. It pertains to an issue that arose during P-0245's testimony concerning [REDACTED].⁶¹ The Mangenda Defence sought to admit an affidavit to establish this distance. The Prosecution opposed the admission of that affidavit for lack of indicia of reliability.⁶² Unlike the affidavit provided by the Mangenda Defence⁶³ the FMU floorplan establishes the measurements of the Courtroom objectively and reliably.

⁵⁸ ICC-01/05-01/13-1507-Conf-Anx1.

⁵⁹ ICC-01/05-01/13-1600.

⁶⁰ To establish the chain of custody of the floorplan, the Prosecution also seeks the admission of the FMU's email (CAR-OTP-0094-0473) transmitting the floorplan.

⁶¹ See ICC-01/05-01/13-T-27-CONF-ENG ET, p.97, ln. 21 – p. 98, ln. 1.

⁶² See ICC-01/05-01/13-1720-Conf, paras. 31-32.

⁶³ See ICC-01/05-01/13-1665 and ICC-01/05-01/13-1665-Conf-AnxA, p. 21, entry 115.

- An identification form for a Vodacom subscriber - CAR-D20-0006-0478.

34. This 5 April 2012 Vodacom subscriber's identification form contains Kilolo's contact information including his email account ([REDACTED]), and telephone number ([REDACTED]). It is, thus, relevant to the attribution of the mentioned email account and telephone number to Kilolo, and corroborates other evidence in the case.⁶⁴ This document was only disclosed by the Bemba Defence on 21 January 2016 and therefore was not available to the Prosecution before the close of its case-in-chief.

- Email exchange between accused Arido, Kilolo and Mangenda - CAR-D21-0013-0154.

35. This document comprises an email exchange between Arido, Kilolo and Mangenda. In it, Arido sent his "*curriculum vitae*" ("CV") to Kilolo on 12 April 2012 who then forwarded it to Mangenda on 24 April 2012 seeking his opinion «[REDACTED]» Mangenda responded on the same day, advising that [REDACTED]. The document is relevant as it shows how Mangenda participated in strategic decisions taken in the Main Case. This is corroborated by other evidence in the case.⁶⁵ This document was not available to the Prosecution before the close of its case-in-chief because it was disclosed by the Kilolo Defence on 27 November 2015.

- English translations of intercepted conversations between Kilolo and Mangenda – CAR-OTP-0092-5469 and CAR-OTP-0092-5477.

36. These two documents are English translations of intercepted conversations between Kilolo and Mangenda. The corresponding audio recordings,⁶⁶ transcripts,⁶⁷

⁶⁴ See CAR-OTP-0088-0504 at 0516 CAR-OTP-0074-0067 at 0071 and 0072.

⁶⁵ [REDACTED], see CAR-OTP-0074-1001 (Audio); CAR-OTP-0079-1737 at 1739-1743, Ins. 32-161 (Translation).

⁶⁶ See CAR-OTP-0074-0993 and CAR-OTP-0074-0997 respectively.

⁶⁷ See CAR-OTP-0079-0082 and CAR-OTP-0080-0380 respectively.

and French translations,⁶⁸ have already been accepted as formally submitted by the Chamber.⁶⁹ The English translations were provided to facilitate the examination of Witness D21-0003 and are now tendered to facilitate the understanding of the evidence in English.

B. Request in relation to the admission of D21-0003 Materials pending the Chamber's disposition of the Disclosure Request

37. The Prosecution's request for the Kilolo Defence's disclosure of D21-0003 Materials remains pending.⁷⁰ Thus, should the Chamber grant the Disclosure Request, the Prosecution reserves the right to seek their admission.

(i) The D21-0003 Materials are prima facie relevant to the issues at trial

38. As the Disclosure Request notes, the substance of D21-0003's interview with Kilolo and Gibson in April 2012, and the participants of that interview are matters in dispute between the Parties.⁷¹ They are relevant to whether the Witness falsely testified in the Main Case as to the participants of that meeting.⁷² Whether the Witness also addressed the circumstances concerning his son during his meeting with Kilolo and Gibson also goes to the veracity of the Witness' testimony before this Chamber. The audio recording of that interview is the best evidence of its substance and record of its participants.⁷³

39. Accordingly, the D21-0003 Materials provide a contemporaneous record of what the Witness told the Defence in the Main Case prior to his testimony, and

⁶⁸ See CAR-OTP-0079-0122 and CAR-OTP-0080-0245 respectively.

⁶⁹ ICC-01/05-01/13-1285.

⁷⁰ ICC-01/05-01/13-1738.

⁷¹ See e.g. ICC-01/05-01/13-T-40-CONF-ENG ET, pp. 26-27, lns. 6-3; ICC-01/05-01/13-T-41-CONF-ENG ET, pp. 48-53, lns.17-3, 60, lns. 8-14.

⁷² Compare CAR-OTP-0085-0628 at 0664, lns. 1224-1229 ("[REDACTED]") and CAR-OTP-0085-0673 at 0698, lns. 845-847 ("[REDACTED]") with ICC-01/05-01/08-T-339-CONF-ENG, p. 36, lns. 8-10 ("[REDACTED]."). See ICC-01/05-01/13-1738, para. 9.

⁷³ ICC-01/05-01/13-1738, para. 9.

therefore are relevant both to establishing the alleged false testimony of Witness D21-0003 ([REDACTED]) and to assessing his credibility before this Chamber.

(ii) *The D21-0003 Materials are prima facie reliable and authentic*

40. Should the Chamber order the production of the D21-0003 Materials, their *prima facie* reliability and authenticity should be considered in light of the following factors:

(i) The Kilolo Defence confirmed that [REDACTED];⁷⁴ (ii) during D21-0003's testimony, the Kilolo Defence elicited evidence concerning the substance, date, and location of D21-0003's interview with Kilolo and Gibson;⁷⁵ (iii) the voices of the participants of these recordings (D21-0003, Kilolo and Gibson) are easily recognisable given their participation in proceedings before these Court; and (iv) similar recordings have been disclosed by the Kilolo Defence in relation to other Witnesses P-0260 (D-0002),⁷⁶ P-0245 (D-0003),⁷⁷ P-0261 (D-0023),⁷⁸ and P-0198 (D-0015).⁷⁹

(iii) *Probative value outweighs any undue prejudice*

41. The admission of the D21-0003 Materials would not prejudice the Defence. The following factors establish that their probative value outweighs any prejudicial effect, in that they: (i) are highly relevant to the confirmed charges; (ii) bear sufficient indicia of reliability for which they propose to show; (iii) originate from the Bemba Defence in the Main Case and therefore are known to at least Kilolo, Mangenda and Bemba; and (iv) were relied on by the Kilolo Defence, together with similar interviews with Defence witnesses in the Main Case, in support of its confirmation

⁷⁴ See ICC-01/05-01/13-600-Conf-Corr2, para. 127: "[REDACTED]." See also ICC-01/05-01/13-674-Conf, para. 91: "[REDACTED]".

⁷⁵ ICC-01/05-01/13-T-40-CONF-ENG ET, pp. 26-27, lns. 6-3; ICC-01/05-01/13-T-41-CONF-ENG ET, p. 60, lns. 8-14.

⁷⁶ See ICC-01/05-01/13-T-19-CONF-ENG ET, pp. 47-61, lns. 21-2; CAR-D21-0007-0017; CAR-D21-0007-0020; CAR-D21-0007-0025; CAR-D21-0004-0463.

⁷⁷ See ICC-01/05-01/13-T-27-CONF-ENG ET, pp. 6-16, lns. 25-8; CAR-D21-0008-0005.

⁷⁸ See ICC-01/05-01/13-T-14-CONF-ENG ET, pp. 29-37, lns. 23-7; ICC-01/05-01/13-T-15-CONF-ENG ET, pp. 4-13, lns. 3-13; CAR-D21-0006-0002; CAR-D21-0006-0003; CAR-D21-0006-0004; CAR-D21-0006-0005.

⁷⁹ See ICC-01/05-01/13-T-30-CONF-ENG ET, pp. 60-67, lns. 25-14; CAR-D21-0009-0001; CAR-D21-0009-0002; CAR-D21-0009-0003; CAR-D21-0009-0004; CAR-D21-0009-0005; CAR-D21-0009-0006; CAR-D21-0009-0013; CAR-D21-0009-0023; CAR-D21-0009-0028; CAR-D21-0009-0035.

submissions.⁸⁰ Additionally, all Defence teams have been aware of the Prosecution's intention to rely on these materials from as early as 18 February 2015.⁸¹

(iv) *Justification for not presenting the D21-0003 Materials during the Prosecution's case*

42. To date, the D21-0003 Materials are not yet in the Prosecution's possession.

V. Relief Requested

43. For the foregoing reasons, the Prosecution requests that the Chamber:

- (i) admit into evidence the materials listed in Annex A;
- (ii) authorise the Prosecution to include the materials in its exhibits list and update it accordingly; and
- (iii) authorise the Prosecution to seek the admission of D21-0003 Materials, should the Chamber grant the Disclosure Request.



Fatou Bensouda, Prosecutor

Dated this 13th Day of April 2016
At The Hague, The Netherlands

⁸⁰ The Kilolo Defence's confirmation submissions confirmed that prior interviews of Defence witnesses in the Main Case were audio recorded and transcribed: "[REDACTED]" See ICC-01/05-01/13-600-Conf-Corr2, para. 127. The Kilolo Defence further confirmed that this process was followed with respect to all Defence witnesses: "[REDACTED]". See ICC-01/05-01/13-674-Conf, para. 91.

⁸¹ The Defence is on notice of the Prosecution's intention to rely on these materials as early as 18 February 2015. See ICC-01/05-01/13-820-Conf.