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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

**Defence Response to Prosecution's Sixth Request for the Admission of Evidence
from the Bar Table (ICC-01/05-01/13-1784-Red)**

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. The Defence for Mr. Jean-Pierre Bemba here files its response to the Prosecution's Sixth Bar Table Motion.¹

Submissions

2. The Defence opposes the admission of ICC-01/05-01/13-845-Conf-AnxD-Red.

3. Firstly, the Prosecution has advanced no explanation as to why it waited for almost a month to seek to tender it into evidence;² its submission on the last day for the introduction of evidence for both parties is inherently prejudicial as concerns the ability of the Defence to tender responsive evidence, or request the disclosure of contextual evidence.³

4. This is particularly the case given that the Prosecution did not apply to amend its list of evidence to include this item.

5. In line with the Trial Chamber's decision of 14 December 2015,⁴ the Prosecution's failure to include ICC-01/05-01/13-845-Conf-AnxD-Red on the Prosecution list of evidence precludes the admission of this item.

6. Secondly, the Prosecution has also failed to establish that the criteria for admissibility have been met. Contrary to the assertion of the Prosecution, the

¹ ICC-01/05-01/13-1784-Conf.

² The Prosecution received it on 10 March 2016.

³ See paragraph 10 below.

⁴ ICC-01/05-01/13-1524, para.6: "The Chamber considers that the failure to include these four annexes on the list of evidence creates an unacceptable risk that the accused were unprepared for these items during the Prosecution's evidence presentation, particularly given that they were only submitted contemporaneously with the Prosecution closing its evidence presentation."

attribution of this SIM card has not been established;⁵ it cannot be assumed that it is “Kilolo’s seized SIM card”.⁶

7. The contact list table has been manually typed by the Independent Counsel; it is not apparent how the Independent Counsel extracted and formatted the information.

8. The date of the contact list has also not been established, and is not possible to identify when certain numbers were inputted into the list. Attribution of a number to a person has no evidential value in relation to particular call patterns if it cannot be ascertained when the number was attributed to the person in question.

9. Since the owner of the SIM card has not been established or given evidence, there is also no objective information as concerns:

- a. the system for attributing names and labels to different numbers; and
- b. the means by which the contact list was created (i.e. whether it is a SIM specific list, or merely an automatic duplicate from another device, which has no independent, corroborative value).

10. The Defence was also never disclosed the contact list in its entirety, and as such⁷, was denied the opportunity to examine the overall pattern used for labelling numbers.

11. In these circumstances, the probative value of the list is outweighed by the prejudicial impact of its admission.

⁵ CAR-D20-0006-2021, CAR-D20-0006-2020

⁶ Cf ICC-01/05-01/13-1784-Conf, para. 11.

⁷ ICC-01/05-01/13-845-Conf, para. 43.

Relief sought

12. For the reasons set out above, the Defence for Mr. Bemba opposes the admission of ICC-01/05-01/13-845-Conf-AnxD-Red.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 18th day of April 2016

The Hague, The Netherlands