

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 8 July 2015

**TRIAL CHAMBER VII**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Bertram Schmitt

**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***

**Confidential Document**

**Prosecution's Consolidated Response to the Arido and Babala Requests  
regarding the Prosecution's First Request for the Admission of Evidence from the  
Bar Table (ICC-01/05-01/13-1038-Conf, ICC-01/05-01/13-1051-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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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

## I. Introduction

1. The Office of the Prosecutor ("Prosecution") opposes the Arido and Babala Defence's respective requests (collectively, "Requests") for the Trial Chamber VII ("Chamber") to order the Prosecution to re-file its bar table motion.<sup>1</sup> The Requests fail to advance any plausible basis for the relief sought, and should be dismissed accordingly.

## II. Confidentiality

2. This submission is filed as "Confidential" as it responds to filings so designated. The Prosecution has no objection to this filing being reclassified as "Public".

## III. Submissions

### A. The Prosecution's bar table motion is legally sufficient

3. Contrary to both Requests, the Defence is in no way "preven[ed] from exercising its right to make submissions on the admissibility of the documents",<sup>2</sup> or impeded in presenting «*des observations sur l'admissibilité des documents concernés*».<sup>3</sup> *First*, the basis of relevance for the material tendered is set out throughout the Prosecution's bar table motion. *Second*, all of the tendered documents have been disclosed to the Defence for the better part of a year, if not more. *Third*, the charging instrument and confirmation submissions of the Parties, including those of Arido and Babala, attend to the relevance of most of the documents now being tendered. *Fourth*, as the Single Judge noted in relation to the confirmation proceedings, "the Defence cannot abdicate its duty and responsibility to examine such materials, which

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<sup>1</sup> See ICC-01/05-01/13-1038-Conf, para.2.

<sup>2</sup> ICC-01/05-01/13-1038-Conf, paras.2,12.

<sup>3</sup> ICC-01/05-01/13-1051-Conf, para.5.

examination is necessary for it to be in a position to decide whether to challenge the evidence.”<sup>4</sup>

4. The Arido Defence further misconstrues the *prima facie* standard for the admissibility of evidence from the bar table. The Prosecution’s incorporation of the Independent Counsel’s reports, which cover each and every tendered intercept (and their derivative transcripts, translations, etc.) is entirely appropriate and consistent with the purpose of tendering evidence from the bar table - i.e., to streamline the proceedings. Whether it is the Defence’s choice or strategy not to review this material, or whether they require more time to do so, does not translate into an additional onus on the Prosecution to restate, for their convenience, what is already clear in the record of the proceedings and which is readily accessible to them. The same applies to the material reflecting the Pre-Trial Chamber’s prior assessment of relevance.

5. Arido’s Request ignores the Prosecution’s submission that the *prima facie* relevance of the intercepted material is established by virtue of the process through which they were furnished to the Parties by the Pre-Trial Chamber. Not unlike the recent divulgations made by this Chamber concerning the seized materials,<sup>5</sup> the Pre-Trial Chamber made assessments of relevance in relation to the regime that it established for the vetting of potentially privileged material.<sup>6</sup> It is entirely appropriate for the Prosecution to rely on such a prior judicial determination of relevance in the context of a case where the confirmed charges are fundamentally the same as those initially brought, and which are predicated on conduct falling within the scope of an “overall strategy”<sup>7</sup> involving all of the Accused.

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<sup>4</sup> ICC-01/05-01/13-177, para.10.

<sup>5</sup> See ICC-01/05-01/13-1046-Red, paras.6-8; ICC-01/05-01/13-947, paras.13-19.

<sup>6</sup> See ICC-01/05-01/13-362-Red, p.5; ICC-01/05-01/13-457, p.3; ICC-01/05-01/13-893-Conf, para.16 (noting this Chamber’s adoption the review procedure established by the Pre-Trial Chamber); see also ICC-01/05-01/13-966, para.15 and ICC-01/05-01/13-1013-Red, para.15.

<sup>7</sup> ICC-01/05-01/13-749, para.52.

6. Further, besides citing various practice decisions of other Trial Chambers reflecting their preferences regarding the *format* of bar table motions, Arido cites no case establishing the pleading requirements for their *legal sufficiency*. Indeed, it is unlikely that any Chamber has previously considered the legal sufficiency of pleadings in respect of a bar table motion involving materials provided by a Chamber which, as a precondition thereof, determined the material's "relevance". Arido's further reliance on the *Bemba* Appeals Decision on the admission of evidence contained in the Prosecution's list of evidence is inapposite,<sup>8</sup> as the impugned decision there admitted materials not yet tendered by the Parties.

7. As concerns the CDR materials under Category II of the bar table motion, that the Prosecution is able to provide a basis of relevance for a given document does not require that it advance *every* basis of relevance to establish *prima facie* admissibility.<sup>9</sup> Further, as Arido acknowledges, the Prosecution provides a basis of relevance for each CDR *document* tendered, as is readily apparent from their "Description" set out in the attached index.<sup>10</sup> This information reflects, within the timeframe of the charges, contacts between witnesses and the Accused, or between witnesses and other participants in the overall strategy, and further identifies the relevant phone numbers and the source evidence for the respective attributions. Similarly, the relevance of the money transfer agency records comprising Category III material, like all other categories, are fully explained in the Prosecution's filing.<sup>11</sup>

8. As the bar table motion makes clear, the money transfer records serve, both as direct evidence in their own right, and to corroborate other evidence in the case on

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<sup>8</sup> ICC-01/05-01/13-1038-Conf, para.13; see e.g., ICC-01/05-01/08-1386 (OA5, OA6), paras.43, 46 ("*Bemba* Appeals Decision").

<sup>9</sup> See ICC-01/05-01/13-1038-Conf, para.11.

<sup>10</sup> ICC-01/05-01/13-1038-Conf, para.7, citing ICC-01/05-01/13-1013-Conf-AnxA, pp.24-32.

<sup>11</sup> ICC-01/05-01/13-1013-Red, paras.40-46; and as regards the Express Union records specifically, see references at ICC-01/05-01/13-1013-Conf-Anx, fns.1,6,4, and 7; and at ICC-01/05-01/13-1013-Red, para.43, fn.119.

contested facts, such as the attribution of telephone numbers to witnesses in the Defence case, the Accused, or participants in the overall strategy. They further bear on contestable issues regarding the familiarity of individuals with one another. Such as D-4 and Accused Arido - where the former testified he did not know Arido. However, the money transfer records reflect, and Arido concedes in his confirmation submissions that Arido transferred 18,000 CFA to D-4 on 19 January 2012.<sup>12</sup> Babala's confirmation submissions similarly concede the money transfers to witnesses, other Accused, and participants in the implementation of the overall strategy, in which Babala was involved directly or indirectly.<sup>13</sup>

9. The bar table motion is neither erroneous nor legal insufficient.

**B. Babala's request for the submission of a translated version of the bar table motion is unjustified**

10. First, Babala's request that the Chamber order the Prosecution to «*soumettre le tableau dans les deux langues de la Cour simultanément*»<sup>14</sup> is unsupported by the Regulations of the Court ("RoC"). To the contrary, regulation 39 of the RoC expressly provides, in pertinent part, that "[a]ll documents and materials filed with the Registry shall be in English or French."<sup>15</sup> Only where the original document is not in one of these languages must a participant submit a translation.<sup>16</sup> Babala's specific request is thus unfounded. Moreover, there is no basis for the Chamber to otherwise "authorise" a simultaneous translation of the relevant material.

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<sup>12</sup> See ICC-01/05-01/13-1013-Red, para.43, at fn.119; see also ICC-01/05-01/13-598-Red, para.204 (Arido's confirmation submission admitting Arido's transfer of money to D-4, and suggesting that D-4's statement denying he ever received money from Arido, might be due to his faulty memory).

<sup>13</sup> ICC-01/05-01/13-596-Conf-Corr, pp.57-67.

<sup>14</sup> ICC-01/05-01/13-1051-Conf, para.6.

<sup>15</sup> Regulation 39(1) of the RoC.

<sup>16</sup> Regulation 39(1) of the RoC.

11. *Second*, this Chamber has ensured that proper attention is paid to language issues in this case, noting the following during the 24 April 2015 Status Conference:

“Requests have been made to have a larger portion of the proceedings, process documents and evidential documents, to be translated into French. The requests are understandable and the Chamber is alive to the language needs of this case in the direction of the French language.”<sup>17</sup>

12. That said, the Chamber expressly stated “[t]he Chamber will work - will continue to work in English. The Chamber will not require any document filed or made in English to be made available simultaneously in French or vice-versa.”<sup>18</sup>

13. Babala’s request neither addresses this language, nor advances any compelling basis for the requested relief as concerns translation. Babala provides no indication of efforts the Defence has made to avail itself of appropriate and available assistance, as noted by the Counsel Support Section Chief:

“[w]hen there is a specific need, we have the assistance of the Court Interpretation and Translation Section of the Registry that can produce even not revised translation within a very, very short period of time to allow the teams to - to work with it. And if there is a specific need to -- to appoint new members of the team on the basis of languages, as always the Registry is more than willing to assess that need and to see if that need is reasonably necessary for the effective and efficient defence. And, I can - I think that what I can do here is to invite the - all the teams to address this issue with us if they see this need.”<sup>19</sup>

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<sup>17</sup> ICC-01/05-01/13-T-8-Red-ENG, p.25, lns.1-4.

<sup>18</sup> ICC-01/05-01/13-T-8-Red-ENG, p.25, lns.13-15.

<sup>19</sup> ICC-01/05-01/13-T-8-Red-ENG, p.80, lns.6-15.

14. Although the Prosecution is willing to assist where it can, it cannot be the institution of first resort for translation purposes in this case, over and above its obligations under the Regulations, absent any showing of compelling circumstances, and particularly, in view of the resources and assistance otherwise available to the Defence.

#### IV. Requested Relief

15. For the foregoing reasons, the Prosecution requests the Chamber to dismiss the Requests.



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**Fatou Bensouda, Prosecutor**

Dated this 8<sup>th</sup> Day of July 2015  
At The Hague, The Netherlands