

**Cour
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**International
Criminal
Court**



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

Date: **19 November 2015**

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 Narcisse Arido's
Response to the Prosecution's Fourth Bar Table Motion
(ICC-01/05-01/13-1403-Conf)**

Source: Counsel for Narcisse Arido

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

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Reparations Section

I. INTRODUCTION

1. On 28 September 2015, the Prosecution filed its fourth bar table motion, asking the Trial Chamber to admit 57 items into evidence.¹ The request includes call logs from the ICC Detention Centre (Category I), invoices, emails and letters containing the Accused's contact information (Category II), CDRs (Category III), intercepted communications (Category VI) and other materials (Category V).
2. The Arido Defence hereby submits its response.

II. CLASSIFICATION

3. Pursuant to Regulation 23*bis* of the Regulations of the Court ('RoC') and Regulation 24 of the Regulations of the Registry ('RoR'), this request is submitted as confidential, as it refers to a filing of the same classification. A public redacted version will be filed shortly. Annex A is classified as confidential as it refers to documents under this same classification.

III. APPLICABLE LAW

4. The Arido Defence incorporates by reference the relevant sections of its request for an order on the Prosecution to re-file its first bar table motion² and of its responses to the Prosecution's first and second bar table motions.³

IV. SUBMISSIONS

5. The Arido Defence incorporates by reference the arguments it made previously regarding the Prosecution's abusive reliance on bar table motions.⁴

A. Category I - Call Logs

6. Regarding Call logs ICC Detention Centre (Category I), the Arido Defence incorporates by reference the arguments contained in paragraphs 14-19 of its response to the Prosecution's Second Bar Table Motion.⁵

¹ ICC-01/05-01/13-1310-Conf.

² ICC-01/05-01/13-1038-Conf, paras 9-10.

³ ICC-01/05-01/13-1077-Conf, paras 5, 8-9, 25-26, 30; ICC-01/05-01/13-1197-Conf, paras 4-6, 10, 17.

⁴ ICC-01/05-01/13-1241-Conf, paras 7 to 9.

⁵ ICC-01/05-01/13-1197-Conf.

B. Category II - Invoices, Emails and Letters

7. Regarding the invoices, emails and letters containing the Accused's contact information (Category II), the Arido Defence does not take a position on the documents related to the other Accused.

8. The Prosecution in fact tenders 24 documents for the sole purpose of establishing Mr. Arido's phone number. While the Arido Defence does not oppose the admission into evidence of most of these documents, it recalls the ICTY jurisprudence that the Trial Chamber can deny the admissibility of evidence as being too repetitive of other evidence⁶ and suggests the Trial Chamber only admits the number of documents it finds necessary to establish this.

1. [REDACTED] Bills

9. The Prosecution submits 14 bills from Mr. Arido's company, [REDACTED], in order to establish Mr. Arido's phone number.⁷ While the Arido Defence does not oppose their admission into evidence, it submits that admitting 14 similar documents for the same purpose is not in the interests of judicial efficiency and would unnecessarily fill-in the trial record. In addition, three of these documents - CAR-OTP-0075-0237, CAR-OTP-0075-0216 and CAR-OTP-0075-0212 - are outside of the temporal scope of the charges as they are dated respectively from November and December 2011. Finally, the Arido Defence notes that CAR-OTP-0075-0237 and CAR-OTP-0075-0216 are the same document, one empty and the other signed and stamped, and the CAR-OTP-0075-0275 and CAR-OTP-0075-1229 are the exact same document. Admitting all these documents into evidence serves no purpose and fills-in the trial record with unnecessary documents.

10. In any event, the Arido Defence notes that the numbers indicated on the bills are linked to a company, so by definition, they can be used by individuals working for the company other than Mr. Arido. Further, the Arido Defence maintains that the attribution of a phone number does not establish that Mr. Arido actually used the phone number(s).

⁶ *Prosecutor v. Haradinaj et al.*, Decision on admission into evidence of Documents tendered during testimony of Bislim Zyrapi, Case No. IT-04-84-t, TC, 15 October 2007, paras 11 and 12, at: <http://www.icty.org/x/cases/haradinaj/tdec/en/071015a.pdf>.

⁷ CAR-OTP-0075-0212, CAR-OTP-0075-0216, CAR-OTP-0075-0231, CAR-OTP-0075-0237, CAR-OTP-0075-0241, CAR-OTP-0075-0243, CAR-OTP-0075-0256, CAR-OTP-0075-0275, CAR-OTP-0075-0282, CAR-OTP-0075-0384, CAR-OTP-0075-1215, CAR-OTP-0075-1229, CAR-OTP-0075-1234, CAR-OTP-0075-1237.

11. Finally, should the Trial Chamber decide to admit the documents into evidence, they must be admitted for the sole purpose of establishing the phone numbers and not for the truth of their content.

2. *Emails and letters*

12. Regarding CAR-OTP-0075-0284, the Arido Defence does not oppose its admission into evidence, however it submits that it must be admitted for the sole purpose of establishing Mr. [REDACTED] phone number and not for the truth of its contents.

13. The Arido Defence does not oppose the admission into evidence of CAR-OTP-0075-0484-R01, CAR-OTP-0075-0599-R01, CAR-OTP-0075-1251-R01 and CAR-OTP-0075-1254-R01. It notes however that CAR-OTP-0075-1251-R01, which is a letter Mr. Arido addressed to the VWU on 26 July 2012 wherein he raises his security concerns, and which was attached to CAR-OTP-0075-1254-R01, is incomplete as it should contain three pages. The same applies to CAR-OTP-0075-0599-R01, which only contains the first page of the document.

14. Regarding CAR-OTP-0075-0635, the Arido Defence does not oppose the admission of this document into evidence, as it also establishes that Mr. Arido provided an expert report for the Bemba Defence in the Main Case.

15. The documents CAR-OTP-0075-1160 and CAR-OTP-0075-1211 are outside of the scope of the charges (8 November 2011) and are repetitive of other evidence aiming to establish Mr. Arido's phone number. As a result, they must not be admitted into evidence.

16. Similarly, CAR-OTP-0075-1161-R01 is outside of the temporal scope of the charges as it is dated November 2011. Further, it is unrelated to the charges, and violates Mr. Arido's privacy as it contains personal communications. As a result, it must not be admitted into evidence.

17. While the Arido Defence does not oppose the admission into evidence of CAR-OTP-0075-1219-R01, it notes that the document is repetitive of other documents tendered by the Prosecution to establish Mr. Arido's phone number. As a result, its admission into evidence would not add anything to the case. Last but not least, should the Trial Chamber admit the document into evidence, it must be admitted for the limited purpose requested by the Prosecution, namely to establish Mr. Arido's phone number.

C. Category III - CDRs

18. Regarding the CDRs (Category III), the Arido Defence incorporates by reference the arguments contained in its response to the Prosecution's First Bar Table Motion.⁸

D. Category IV – Intercepted Communications

19. Regarding intercepted communications (Category VI), the Arido Defence incorporates the arguments contained in paragraphs 8 to 13 of its response to the Prosecution's Second Bar Table Motion⁹ and in paragraphs 12 to 13 of its Response to the Prosecution's Third Bar Table Motion.¹⁰

20. Further, documents CAR-OTP-0080-1355, CAR-OTP-0080-1358 and CAR-OTP-0080-1359 were authored by or addressed to P-260. They should have been discussed with him and tendered through him so that he can attest of its authenticity and reliability. Failure to do so by the Prosecution should lead to the Trial Chamber refusing their admission into evidence.

E. Category V - Other Materials

1. List of Defence witnesses phone numbers

21. The Arido Defence does not oppose the admission into evidence of CAR-OTP-0072-0116 and CAR-OTP-0077-0942. It notes however that for CAR-OTP-0077-0942, it appears that the phone numbers were listed in the Witness Information Forms by the Defence, and not the individuals themselves. Further, the Arido Defence opposes the statement of the VWU contained in footnote 1 of this same document, to the effect that Mr. Arido's phone number was noted as the phone number of a resource person by the Defence. The Arido Defence wishes to emphasise that Mr. Arido was never a resource person for the Bemba Defence - something which can easily be confirmed by the Counsel Support Section of the Court. As a result, the Arido Defence insists that the document can only be admitted for the limited purpose specified by the Prosecution, namely to establish the phone numbers of the Defence witnesses.

22. Regarding CAR-OTP-0072-0116, the Arido Defence notes that the Prosecution does not provide any indication as to how the phone numbers listed therein were gathered.

⁸ ICC-01/05-01/13-1077-Conf, paras. 20-22.

⁹ See ICC-01/05-01/13-1197-Conf.

¹⁰ ICC-01/05-01/13-1241-Conf.

23. In any event, the fact that certain Defence witnesses or representatives of the Bemba Defence may have put Mr. Arido's phone number as a contact number does not establish that Mr. Arido was aware of it. This is a fact which must be established beyond any reasonable doubt by the Prosecution. Further, there is no indication that the VWU actually contacted the witnesses through Mr. Arido's phone number.

2. *Independent Counsel's Reports*

24. The Prosecution attempts - again - to have the entirety of two annexes to Independent Counsel's reports admitted into evidence (CAR-OTP-0074-0926 and CAR-OTP-0080-1138). As argued previously, the Arido Defence submits that the Independent Counsel's Reports constitute testimonial evidence which is not admissible through the bar table, and that versions of the report containing the Counsel's own comments and interpretation must not be admitted. In this regard, the Arido Defence incorporates by reference the arguments contained in its Response to the Prosecution's Third Bar Table Motion.¹¹

25. Further, the Prosecution's reference to the "message portés" with regards to CAR-OTP-0074-0926 relates to charges which have been rejected by the Trial Chamber and are therefore not relevant.

26. The Arido Defence does not take a position on the remaining documents contained in Category V.

V. CONCLUSION

27. In light of the above, the Arido Defence does not oppose the admission into evidence of CAR-OTP-0075-0271-R01, CAR-OTP-0075-0212, CAR-OTP-0075-0216, CAR-OTP-0075-0231, CAR-OTP-0075-0237, CAR-OTP-0075-0241, CAR-OTP-0075-0243, CAR-OTP-0075-0256, CAR-OTP-0075-0275, CAR-OTP-0075-0282, CAR-OTP-0075-0384, CAR-OTP-0075-1215, CAR-OTP-0075-1229, CAR-OTP-0075-1234, CAR-OTP-0075-1237, CAR-OTP-0075-0284, CAR-OTP-0075- 0484-R01, CAR-OTP-0075-0599-R01, CAR-OTP-0075-1251-R01 and CAR-OTP-0075-1254- R01, CAR-OTP-0075-0635, CAR-OTP- 0075-1219-R01, CAR-OTP-0072-0116 and CAR-OTP-0077-0942.

¹¹ ICC-01/05-01/13-1241-Conf, paras 20-22, 72-74, 76-77.

28. The Arido Defence opposes the admission into evidence of CAR-OTP-0075-1160 and CAR-OTP-0075-1211, CAR-OTP-0075-1161-R01, CAR-OTP-0080-1355, CAR-OTP-0080-1358 and CAR-OTP-0080-1359, CAR-OTP-0074-0926 and CAR-OTP-0080-1138.

29. Regarding the remainder of the documents, the Arido Defence does not take a position.

A handwritten signature in black ink, appearing to read 'Charles Achaleke Taku', with a long horizontal flourish extending to the right.

Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 19th Day of November 2015

The Hague, The Netherlands